



Ontario
Securities
Commission

Commission des
valeurs mobilières
de l'Ontario

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**IN THE MATTER OF THE *SECURITIES ACT*,
R.S.O. 1990, c. S.5, AS AMENDED**

AND

**IN THE MATTER OF
INTERRENT REAL ESTATE INVESTMENT TRUST**

AND

**IN THE MATTER OF
A DECISION OF THE TORONTO STOCK EXCHANGE**

**DECISION
(Sections 8 and 21.7 of the Act)**

Hearing: August 17, 2009

Decision: August 26, 2009

Panel: James E. A. Turner - Vice-Chair and Chair of the Panel
David L. Knight, F.C.A. - Commissioner

Counsel: David Hausman - For NorthWest Value Partners Inc.
Scott Rollwagen
Shelley Babin

Robert Cohen - For InterRent Real Estate Investment Trust
Ted Frankel

Linda Plumpton - For the Toronto Stock Exchange
Andrew Gray

Kelley McKinnon - For CLV Group Inc.
Tina Woodside

Usman Sheikh - For the Ontario Securities Commission
Naizam Kanji
Michael Tang

DECISION

A. Background

[1] This is the decision of the Ontario Securities Commission (the “Commission”) on the preliminary motions described below filed in connection with an application (the “Application”) brought by NorthWest Value Partners Inc. (“NorthWest”) pursuant to sections 8 and 21.7 of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the “Act”) to review two decisions of the Toronto Stock Exchange (the “TSX”).

[2] The first decision under review pursuant to the Application is the determination by the Listing Committee of the TSX dated August 5, 2009, that (i) a private placement (the “Private Placement”) of up to 9,333,333 units of InterRent Real Estate Investment Trust (“InterRent”), representing approximately 49 percent of the outstanding units, may proceed without unitholder approval, and (ii) the property management agreement to be entered into between InterRent and CLV Group Inc. (“CLV”) must be submitted to unitholders of InterRent for approval (which vote may include unitholders under the Private Placement) and that CLV, Mike McGahan (“McGahan”) and their related parties may not vote in respect of such approval. That decision is referred to as the “TSX Listing Committee Decision”.

[3] The second decision under review pursuant to the Application is the determination by the TSX dated June 19, 2009 that the TSX did “not object to” InterRent delaying its annual meeting of unitholders, such delayed meeting to be held on or before September 30, 2009. That decision is referred to as the “TSX Meeting Date Decision”.

[4] A hearing was held on August 17, 2009 to address preliminary motions in connection with the Application. The following motions were before us:

- (i) CLV and McGahan each brought a motion seeking full intervenor status; and
- (ii) NorthWest brought a motion raising the following questions for determination:
 - (1) What is the appropriate standard of review of the TSX Listing Committee Decision and the TSX Meeting Date Decision?
 - (2) With respect to the standard of review, and given the TSX record that has been provided to the parties, should the Commission defer to the decisions of the TSX, and does the Commission need additional information beyond the TSX record?
 - (3) If the Commission should not defer to the TSX Listing Committee Decision, is NorthWest entitled to particulars of: (i) the names of the subscribers to the Private Placement (the “private placees”); and (ii) any transcripts of the evidence of InterRent Trustees and the private placees?

- (4) If the Commission should defer to the TSX Listing Committee Decision, is NorthWest entitled to particulars of: (i) the names of the private placees; and (ii) any transcripts of the evidence of InterRent Trustees and the private placees?
- (5) If NorthWest is entitled to particulars, what is the schedule for providing those particulars?
- (6) Was the request for a hearing and review of the TSX Meeting Date Decision filed in time?

[5] We received materials and heard submissions on the motions from NorthWest, InterRent, the TSX, CLV and Staff of the Commission. We will address the motions in this decision in the same order as we dealt with them at the hearing.

[6] The issue of this decision is a matter of some urgency because the private placees have agreed to subscribe for units of InterRent and the funds representing those subscriptions are being held in trust by counsel for CLV. We understand that the Private Placement cannot be completed until the Commission has made a decision with respect to the Application. Accordingly, we are issuing this decision now on an expedited basis.

[7] This document does not constitute the reasons for our decision on the motions before us. We will issue full reasons in due course for purposes of subsection 9(1) of the Act.

B. The Intervenor Motion

[8] At the hearing, we granted full intervenor status to CLV. In our view, CLV is directly affected by the TSX Listing Committee Decision and will be directly affected by the Commission's decision on the merits in this matter. Therefore, we granted CLV full standing in this matter pursuant to subrule 1.8.1(3) of the Commission's *Rules of Procedure* (2009), 32 O.S.C.B. 1991 (the "Rules of Procedure"). We did not grant intervenor status to McGahan. We understand that McGahan is CLV's Chief Executive Officer and sole director and shareholder. Given our decision to grant full intervenor status to CLV, we concluded that McGahan would not bring a different or unique perspective to the Application.

C. Disclosure of Names of the Private Placees

[9] At the hearing, we decided not to order disclosure of the names of the private placees to us or to NorthWest. In our view, that disclosure is not necessary in these particular circumstances. In making that decision, we considered section 5.4 of the *Statutory Powers Procedure Act*, R.S.O. 1990, c. S.22, as amended and Rules 4.1, 4.2, 4.3 and 14.3 of the Rules of Procedure. On balance, we concluded that it was important to protect the privacy of those investors. Because we decided not to require disclosure of the names of the private placees, it is not necessary for us to address NorthWest's request to examine the private placees and to fix a schedule for doing so.

D. Should the Commission Defer to the TSX Listing Committee Decision?

[10] We are entitled to intervene in a decision of the TSX where (i) the TSX has proceeded on an incorrect principle; (ii) the TSX has erred in law; (iii) the TSX has overlooked material evidence; (iv) new and compelling evidence is presented to the Commission that was not presented to the TSX; and (v) the Commission's perception of the public interest conflicts with that of the TSX (see: *Re Canada Malting Co.* (1986), 9 O.S.C.B. 3566 ("*Canada Malting*") at para. 59). The Commission will intervene in a TSX decision, however, only in the rare case where the applicant has met the heavy burden of proving such intervention is justified in accordance with the principles referred to in *Canada Malting* or on some other ground acceptable to the Commission.

[11] We find that NorthWest has not established any of the grounds set out in *Canada Malting* upon which we would be entitled to intervene in the TSX Listing Committee Decision.

[12] In making the TSX Listing Committee Decision, the TSX considered all of the relevant information and assessed all of the relevant considerations. The process it followed was appropriate and its reasons carefully articulated its rationale for the decision. In our view, we have a sufficient basis upon which to defer to the TSX Listing Committee Decision and, in our view, that decision was reasonable in the circumstances. Accordingly, we defer to the TSX Listing Committee Decision.

[13] We therefore dismiss NorthWest's Application for a hearing and review of the TSX Listing Committee Decision.

E. Request for a Hearing and Review of the TSX Meeting Date Decision

[14] NorthWest also applied to the Commission for a hearing and review of the TSX Meeting Date Decision (not to object to InterRent postponing its annual meeting of unitholders to a date on or before September 30, 2009).

[15] The TSX Meeting Date Decision was confirmed by letter from the TSX to InterRent on June 19, 2009. The correspondence shows that NorthWest was aware of that decision by June 24, 2009. The request for a hearing and review of that decision by NorthWest is dated August 4, 2009. Because the date of NorthWest's request for a hearing and review of the TSX Meeting Date Decision is more than 30 days after the date of that decision, NorthWest's application for review is out of time. Accordingly, we dismiss that application.

DATED at Toronto on the 26th day of August 2009.

"James E. A. Turner"

James E. A. Turner

"David L. Knight"

David L. Knight, F.C.A.