

ONTARIO
SUPERIOR COURT OF JUSTICE

THE HONOURABLE MR.)
JUSTICE C.L. CAMPBELL) MONDAY, THE 24TH DAY OF
) AUGUST, 2009
)

BETWEEN:

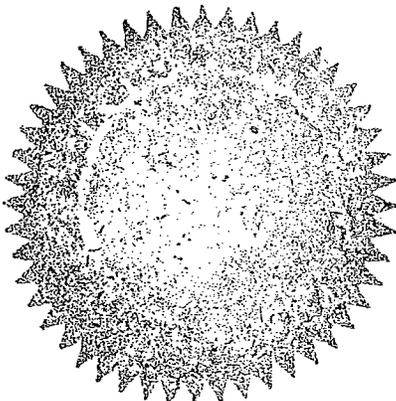
EVERLINK PAYMENT SERVICES INC.

Plaintiff

and

HANS HARRY DER VON FELIX

Defendant



**ORDER TO ALLOW ENTRY
AND SEARCH OF PREMISES**

IMPORTANT NOTICE TO HANS HARRY DER VON FELIX:

- (a) This Order orders you to allow the persons mentioned below to enter what are described in the Order as the "Premises" to search for, examine and remove or copy the articles specified in the Order. The persons mentioned will have no right to enter the Premises or, having entered without your consent, to remain at the Premises, unless you give your consent to their doing so. However, if you withhold your consent, you will be in breach of this Order and may be held in contempt of court. This part of the Order is subject to restrictions. This Order also requires you to provide information to the Plaintiff's lawyers and to hand over the specified articles which are under your control for examination and removal or copying, and prohibits you from doing certain acts.
- (b) You should read the terms of the Order very carefully. You are advised to consult a lawyer as soon as possible.
- (c) Before you or the person appearing to be in control of the Premises allow anybody onto the Premises to carry out this Order you are entitled to have the

Independent Supervising Lawyer who serves you with this Order explain to you what it means in everyday language.

- (d) While the Independent Supervising Lawyer, as an officer of this Court, will explain the effect of this Order to you he or she is not providing legal advice to you and no solicitor-client relationship exists or is created between the Independent Supervising Lawyer and you or the person appearing to be in control of the Premises.
- (e) You are entitled to refuse to permit initial entry to the Premises before 8:00 a.m. or after 6:00 p.m. or at all on any day that is not a weekday.
- (f) You are entitled to seek legal advice regarding the nature and effect of this Order and of the rights you may have to assert including solicitor-client privilege. You may refuse to permit the search to begin for a short time while you consult your solicitor (not to exceed two hours, unless the Independent Supervising Lawyer agrees to a longer period) provided you do so at once, and provided that meanwhile you permit the Independent Supervising Lawyer to enter, but not start to search.
- (g) You are at liberty to apply to this Court to set aside or vary this Order upon giving 24 hours' notice to the Plaintiff's solicitor of your intention to do so.

If you disobey this Order you may be guilty of contempt of court and may be sent to prison or fined or your assets seized.

THIS MOTION made without notice by the Plaintiff for the relief set out in its Notice of Motion filed herein was heard on August 24, 2009 at the 393 University Avenue, Toronto, Ontario.

ON READING the Statement of Claim and Notice of Motion filed in this action, the Affidavits of Mark Ripplinger sworn August 23, 2009 and Courtney Kindrat sworn August 23, 2009 and on noting the Plaintiff's undertaking to abide by any Order this Court may make concerning damages arising from the enforcement of this Order:

Entry and Search of Premises

1. **THIS COURT ORDERS** that the Defendant, his agents and anyone else acting on his behalf (including family members), and any person(s) appearing to be in charge of the premises known municipally as 1011-120 Widdicombe Hill Blvd., Etobicoke, Ontario, as well as any vehicles belonging to the Defendant present at those premises (the "Defendant's Premises") shall forthwith permit entry to those persons authorized herein for the purposes of searching for, identifying, inspecting, preserving, reproducing, and removing into the custody of the Independent Supervising Lawyer (as defined in paragraph 2 herein), any and all, documents, records, and other property as hereinafter specifically set out in Schedule "A" hereto (the "Evidence") or which the Plaintiff's legal counsel believe to be the Evidence.
2. **THIS COURT ORDERS** that for the purposes of this Order, the Defendant and any persons appearing to be in charge of the Defendant's Premises shall grant entry and permit re-entry into the Premises during the times and in the manner specified in this

5. **THIS COURT ORDERS** that this Order may only be served and the initial entry to the Premises made between 8:00 am and 6:00 pm on a weekday and that the Authorized Persons may remain at the Premises until such time as they have executed this Order.
6. **THIS COURT ORDERS** that following the service of the Order on any person(s) appearing to be in charge of the Defendant's Premises, no entry to the premises shall be permitted unless there are present at the time of entry the Authorized Persons, or any of them, provided that one Independent Supervising Lawyer and such other persons as he may require are also present.
7. **THIS COURT ORDERS** that the Defendant, his agents and anyone else acting on his behalf, and any person(s) appearing to be in charge of the Defendant's Premises shall allow the Authorized Persons to remain on the Defendant's Premises until further order of this Court, to exercise their rights and discharge their duties as set out in this Order.
8. **THIS COURT ORDERS** that the Defendant, his agents and anyone else acting on his behalf (including family members), and any person(s) appearing to be in charge of the Defendant's Premises shall allow the Authorized Persons to record by audio, video or photograph the Evidence, the Premises and all actions, conversations and discussions occurring in the course of the Authorized Persons' search of the Premises and that relate to this Order between the time this Order is served and the completion of the search, with the exception of communications between the Defendant and his lawyers.
9. **THIS COURT ORDERS** that the Defendant and any person(s) upon whom the Order is served are restrained from concealing, moving, tampering with, altering, erasing or destroying any information, data, documentation (whether in electronic, hardcopy or

Order to the following persons, collectively or individually, at the same time or different times (such persons hereinafter collectively referred to as "Authorized Persons"):

- (a) One representative of the Plaintiff, including any person designated as such by the Plaintiff's lawyer;
 - (b) up to three lawyers, students-at-law, or law clerks or employees of the law firm of Lenczner Slaght Royce Smith Griffin LLP, lawyers for the Plaintiff;
 - (c) up to three lawyers from the law firm of Stockwoods LLP ("the Independent Supervising Lawyer"), and such other persons as they may require;
 - (d) one or more representatives of H & A Forensics, including one or more computer technicians; and
 - (e) such additional persons as may be required for the purposes of making photographs or other copies of information and documents, who shall be permitted to attend with any necessary equipment for this purpose, including a locksmith to open any locked portions of the Defendant's Premises.
3. **THIS COURT ORDERS** that the Independent Supervising Lawyer shall act as an officer of the Court in respect of the observance and implementation of the terms of this Order.
 4. **THIS COURT ORDERS** that all persons responsible for service and execution of this Order be entitled to take all necessary reasonable measures to enforce it and reasonably prevent or remove any impediment to its execution.

other form), computers, computer programs, computer tapes, computer disks or other data stored on any other data storage media wherever located. To effect this, the Defendant and any person(s) upon whom the Order is served, shall not turn on any of the electronic devices covered by this Order and such devices already turned on shall be shut down immediately, without making any changes or alterations as described above to preserve all information including metadata.

10. **THIS COURT ORDERS** that H & A Forensics is (for the purpose of securing and preserving the Evidence) entitled to take an image of the data on any computer, magnetic tape or disk, DVD, CD, USB device, and any other electronic storage media device located on the Premises, to be provided to the Independent Solicitor pending further order of this Court. H & A Forensics shall be given access to any computer systems, computer stored information, computer equipment, magnetic tape or disk, DVD, CD, USB device, and any other electronic storage media device (collectively, the “**Computer Materials**”) that are on the Premises, for the purpose of retrieval and duplication of any and all electronic records or information contained herein. To facilitate this access, the Defendant shall disclose to H & A Forensics all usernames, accounts, passwords, access codes, keys and encryption solutions and shall remove and deactivate any other security safeguards existing on any of the foregoing or restricting access to any storage computer data located at the Premises to which the Defendant may have remote access. The Defendant shall permit H & A Forensics to connect a hard drive or external media to such Computer Materials, to execute an imaging software program, to make two (2) complete images of the data from all the Computer Materials on the Premises and to test the new images that have been made.

11. **THIS COURT ORDERS** that should H & A Forensics determine that it is not practical to perform the tasks permitted in this Order while attending at the Premises, H & A Forensics shall be permitted to remove any Computer Materials from the Premises for the purpose of performing such tasks, provided that H & A Forensics shall return the Computer Materials to the Premises within three (3) business days of their removal, and shall subsequently provide any images captured to the Independent Supervising Lawyer, pending further order of this Court.
12. **THIS COURT ORDERS** that the Defendant and any person(s) upon whom the Order is served shall immediately inform H & A Forensics of the location of the Computer Materials of the Defendant and if the materials are located at a different location such location shall be treated as part of the Premises for purposes of carrying out the terms of the Order.
13. **THIS COURT ORDERS** that the Defendant and any person(s) upon whom the Order is served shall immediately inform H & A Forensics of the existence of any on-line internet based e-mail or other accounts or remotely accessed computers where information may be stored, provide all means of accessing these accounts or computers and allow H & A Forensics to change the access to these accounts to allow H & A Forensics an adequate opportunity to secure the information contained on these accounts or computers.
14. **THIS COURT ORDERS** that the Sheriff and any police services having jurisdiction in Etobicoke, Ontario be and hereby are authorized and directed (if requested by lawyers for the Plaintiff or Independent Supervising Lawyer) to attend on the execution of this Order at the Premises and to keep the peace in the carrying out of this Order.

Rights of the Defendant and Persons Served

15. **THIS COURT ORDERS** that at the time of initial entry into the Defendant's Premises, the Defendant and any person(s) appearing to be in charge of the Defendant's Premises shall be served with this Order, the Statement of Claim herein, and a copy of the Motion Record containing the evidence by which the Order was obtained, with only one lawyer of the Plaintiff, the Independent Supervising Lawyer, and a peace officer (if present at the time of execution of this Order pursuant to paragraph 14 above) being present at the time of initial entry into the Premises.
16. **THIS COURT ORDERS** that upon service of this Order, the person(s) served shall forthwith be advised in plain language by the Independent Supervising Lawyer of the nature of the Order and their legal rights, including the right to seek legal advice and to segregate documents over which legal privilege is claimed ("Privileged Documents"), provided that they do so forthwith, and while seeking legal advice may refuse entry to the Premises for a period not to exceed two hours to all of the Authorized Persons except for the Independent Supervising Lawyer and such other persons as he may require who shall be and hereby are authorized to enter the Premises and take such steps as they deem necessary to secure and preserve the Evidence therein and ensure that no steps are taken to alter, deface, discard, conceal or destroy any of the Evidence while the Defendant and/or person(s) served are seeking legal advice.
17. **THIS COURT ORDERS** that the Defendant and his lawyers shall be entitled, although not obligated, to be present during the search.

18. **THIS COURT ORDERS** that any Privileged Documents identified as provided for in paragraph 16 shall be provided directly to the Independent Supervising Lawyer and sealed pending further order of the Court. For greater certainty, where a claim of privilege is made over a document or file contained in Computer Materials, H & A Forensics shall be entitled to take an image of such Computer Materials in accordance with paragraphs 10-11 above, and shall subsequently provide any images captured to the Independent Supervising Lawyer to be sealed pending further order of this Court. A claim of privilege on the document or file applies only to the document or file and not the entire electronic device on which the document is contained.
19. **THIS COURT ORDERS** that the Independent Supervising Lawyer shall ensure that a list is made of all the evidence that is seized or delivered up pursuant to this Order and shall serve a copy of that list on the Defendant or the Defendant's lawyers.

Obligations of the Defendant and Persons Served

20. **THIS COURT ORDERS** that the Defendant and his agents all other persons to whom notice of such order may be and are restrained from using or disclosing to any other person, the confidential or proprietary information of the Plaintiff.
21. **THIS COURT ORDERS** that the Defendant return to the Independent Supervising Lawyer forthwith any property and proprietary information belonging to the Plaintiff, taken or misappropriated by the Defendant whether in electronic format or otherwise.
22. **THIS COURT ORDERS** that upon service of the Order, the Defendant and any person(s) upon whom the Order is served, shall forthwith disclose to the Authorized

Persons and grant access and deliver up to the Authorized Persons any and all of the Evidence, wherever situate, including but not limited to the whereabouts of all of the Evidence, whether under the possession, custody or control of the Defendant or any third party.

23. **THIS COURT ORDERS** that upon service of this Order, the Defendant and any person(s) upon whom this Order is served, shall forthwith render any necessary assistance to the Authorized Persons to locate, decode, access, and decrypt the Evidence and any and all information or electronic data to which the Authorized Persons may not have ready and immediate access, including the provisions of all e-mail addresses, keys, identification codes, passwords, passphrases, or any other such information or knowledge necessary to achieve access thereto.
24. **THIS COURT ORDERS** that upon service of this Order, the Defendant and any person(s) upon whom the Order is served, shall forthwith render any necessary assistance to the Independent Supervising Lawyer and the persons assisting him to enable them to effectively carry out their responsibilities under this Order.

Custody of, Access to, and Use of Evidence Seized or Delivered Up

25. **THIS COURT ORDERS** that all Evidence seized pursuant to this Order, including the Privileged Documents, shall be held in the custody of the Independent Supervising Lawyer pending the trial of this action, or until such time as the Court orders otherwise.
26. **THIS COURT ORDERS** that the Defendant and/or his lawyers shall be provided with reasonable access to all Evidence in the custody of the Independent Supervising Lawyer

including any images captured by H & A Forensics which is deemed by the Independent Supervising Lawyer not to be confidential or proprietary information belonging to the Plaintiff, for the purpose of examining and making copies of the said Evidence in the presence of a representative of the Independent Supervising Lawyer.

27. **THIS COURT ORDERS** that the Plaintiff shall not be permitted to access the Evidence seized prior to the delivery of the Defendant's affidavit of documents, unless the Independent Supervising Lawyer deems such information to be confidential or proprietary information belonging to the Plaintiff, or unless the Defendant consents or unless this Court orders otherwise.
28. **THIS COURT ORDERS** that the Evidence seized shall be used by the Plaintiff only for purposes of this action, unless the Court orders otherwise.

Prohibited Acts

29. **THIS COURT ORDERS** that unless otherwise ordered by this Court, the Defendant, his officers, directors, servants, agents or employees, anyone else acting on his behalf (including family members) and any person(s) served with this Order shall not directly or indirectly, by any means whatsoever:
- (a) remove any Evidence from the Premises, erase or delete from any means of electronic storage, or transmit any of the Evidence from the Premises, or alter, deface, discard, conceal or destroy in any manner any of the Evidence; and/or
 - (b) touch, activate, or operate any computer equipment either locally or remotely from any location, or access or alter any text, graphics, electronic data, information, or other content of any web site or its databases or any electronic mail, newsgroup or Internet relay chat communications, or other information, instructions or data stored in any location remote from the Premises that may contain or constitute the Evidence.

30. **THIS COURT ORDERS** that, in order to give effect to the Order, any person who is ordered not to do something shall not do it personally, through others acting on his behalf, or on his or her instructions, or with his or her encouragement or acquiescence, or in any other way.

Variation/Discharge or Confirmation of Order

31. **THIS COURT ORDERS** that the terms of this Order shall remain in force and be effective for ten (10) days and shall thereafter terminate unless the Plaintiff returns to the Court on or before September 3, 2009, to apply to continue this Order.
32. **THIS COURT ORDERS** that the Defendant or any person with notice of this Order may apply to the Court at any time to vary or discharge this Order or so much of it as affects such person, but anyone wishing to do so shall provide the Plaintiff's lawyers with at least twenty-four (24) hours' notice thereof.

Report to the Court

33. **THIS COURT ORDERS** that the Independent Supervising Lawyer, upon receipt of a request in writing from any party, shall within seven (7) business days of receiving such request, deliver a report which describes the execution of this Order, who was present at the execution, and what materials were reproduced and/or removed into the custody of the Independent Supervising Lawyer, and deliver a copy of the report to the parties, or their lawyers of record, and that the costs of the preparation of such a report shall be in the discretion of the Court as to quantum and the party who should bear them.

Protective Order

34. THIS COURT ORDERS that the Motion Record of the Plaintiff and any supplementary materials of the Plaintiff filed on this motion shall be subject to protective order and shall not form part of the public record unless and until so ordered by the Court.



J. Registrar

ENTERED AT / INSCRIT À TORONTO
ON / BOOK NO:
LE / DANS LE REGISTRE NO.:
AUG 24 2009
AS DOCUMENT NO.:
À TITRE DE DOCUMENT NO.:
PER / PAR:


SCHEDULE "A" - THE EVIDENCE

The Evidence includes the Defendant's computers, laptops, computer disks, computer drives and any other devices in the Defendant's possession upon which he may receive or store e-mails and other records wrongfully taken or misappropriated by the Defendant along with any documents or other records wrongfully taken or misappropriated by the Defendant in electronic format or otherwise.