

Court File No. CV-09-377474

THE HONOURABLE MR. JUSTICE)
COLIN CAMPBELL)

THURSDAY, THE 4TH
DAY OF JUNE, 2009

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:

RONALD RUTMAN

Plaintiff

and

SAUL RABINOWITZ, JOHN DOE 2, JOHN DOE 3,
JOHN DOE 4 & JOHN DOE 5

Defendants

ORDER TO ALLOW ENTRY AND SEARCH OF PREMISES

IMPORTANT NOTICE TO SAUL RABINOWITZ:

- (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 Solicitor who serves you with this Order explain to you what it means in everyday language.
- (d) While the Independent Supervising Solicitor, 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 Solicitor 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 Solicitor agrees to a longer period) provided you do so at once, and provided that meanwhile you permit the Independent Supervising Solicitor 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 an order requiring Saul Rabinowitz (the "Defendant") to permit representatives of the Plaintiff, his lawyers, and other necessary persons, to enter and remain in the premises of the Defendant for the purposes of identifying, inspecting, copying, removing and preserving certain evidence set out in Schedule "A" hereto pertaining to defamatory communications regarding the Plaintiff, was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Statement of Claim, the Affidavits of Ronald Rutman, Kevin Lo and Melissa Lee, the Supplementary Affidavits of Ronald Rutman, Kevin Lo and Melissa Lee, and the Further Supplementary Affidavits of Ronald Rutman, Kevin Lo and Melissa Lee, on hearing the submissions of counsel for the Plaintiff, and on noting the undertaking of the Plaintiff 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 servants, agents, employees, 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 264 Arnold Avenue, Thornhill, Ontario, L4J 1C2 ("the Premises") shall forthwith permit entry into the Premises (including any vehicle owned by the Defendant at the Premises) to the persons authorized herein for the purposes of searching for, identifying, inspecting, preserving, reproducing, and removing into the custody of the Independent Supervising Solicitor (as defined in paragraph 2 herein), any and all documents, items, devices, equipment, and any component thereof, which are listed in Schedule "A" hereto (the "Evidence") or which the Plaintiff's lawyers believe to be the Evidence.

2. **THIS COURT ORDERS** that for purposes of this Order, the Defendant and any person(s) appearing to be in charge of the Premises shall grant entry and permit re-entry into the Premises during the times and in the manner specified in this 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) up to two lawyers, students-at-law, or law clerks from the law firm of Lenczner Slaght Royce Smith Griffin LLP, lawyers for the Plaintiff;
- (b) one representative of the Plaintiff, including any person designated as such by the Plaintiff's lawyer;
- (b) up to two lawyers from the law firm of Stockwoods LLP Barristers (the "Independent Supervising Solicitor"), and such other persons as they may require; and
- (c) one or more representatives of LECG Canada Ltd. ("LECG"), including one or more computer technicians.

3. **THIS COURT ORDERS** that the Independent Supervising Solicitor 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 to reasonably prevent or remove any impediment to its execution.

5. **THIS COURT ORDERS** that this Order may only be served and the initial entry to the Premises made between 8:00 a.m. and 6:00 p.m. 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 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 Solicitor and such other persons as he may require are also present

7. **THIS COURT ORDERS** that the Defendant, his servants, agents, employees, and anyone else acting on his behalf (including family members), and any person(s) appearing to be in charge of the Premises shall allow the Authorized Persons to remain on the 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 servants, agents, employees, and anyone else acting on his behalf (including family members), and any person(s) appearing to be in charge of the Premises shall allow the Authorized Persons to record by audio, video or

photograph the Evidence, the Premises, and all acts, 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 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 LECG 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. LECG 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 LECG 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 LECG 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 LECG determine that it is not practical to perform the tasks permitted in this Order while attending at the Premises, LECG shall be permitted to

remove any Computer Materials from the Premises for the purpose of performing such tasks, provided that LECG 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 Solicitor, 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 LECG 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 LECG 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 LECG to change the access to these accounts to allow LECG 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 Thornhill, Ontario be and hereby are authorized and directed (if requested by lawyers for the Plaintiff or the Independent Supervising Solicitor) 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 Premises, the Defendant and/or any person(s) appearing to be in charge of the 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 Solicitor 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 Solicitor 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 and segregating Privileged Documents 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 Solicitor and such other persons as he or she 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 the 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 Solicitor 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, LECG 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 Solicitor 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 Plaintiff's 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 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.

21. **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 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 provision of all keys, identification codes, passwords, passphrases, or any other such information or knowledge necessary to achieve access thereto.

22. **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 Solicitor and the persons assisting him or her to enable them to effectively carry out their responsibilities under this Order.

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

23. **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 Solicitor pending the trial of this action, or until such time as the Court orders otherwise.

24. **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 Solicitor including any images captured by LECG for the purpose of examining and making copies of the said Evidence in the presence of a representative of the Independent Supervising Solicitor.

25. **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 Defendant consents or this Court orders otherwise.

26. **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

27. **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.

28. **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

29. **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 June 15, 2009, to apply to continue this Order.

30. **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

31. **THIS COURT ORDERS** that the Independent Supervising Solicitor, 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 Solicitor, 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

32. 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.

PlCasper

ENTERED AT / INSCRIT À TORONTO
ON / BOOK NO:
LE / DANS LE REGISTRE NO.:

JUN - 4 2009

AS DOCUMENT NO.:
À TITRE DE DOCUMENT NO.:
PER / PAR: TH

SCHEDULE "A" - THE EVIDENCE

1. Any computer, magnetic tape or disk, DVD, CD, USB device, and any other electronic storage media device that has recorded on it any:

- (a) record of any email, msn messenger, instant messenger, or other electronic communication (including the meta-data regarding, associated with, or pertaining to these communications) from or to the following email addresses:
 - a. ronald.rutman@gmail.com;
 - b. rutman.ronald@gmail.com;
 - c. handrmember@gmail.com;
 - d. toronto.vaad@gmail.com; and
 - e. reit.unitholder@gmail.com;
- (b) record of any other communication or entry (of any type whatsoever) including any email, msn messenger, instant messenger, or other electronic communication (including the meta-data regarding, associated with, or pertaining to these communications) regarding or relating to postings regarding Ronald Rutman on a website maintained or operated by Gigpark Inc.;
- (c) Any other file, folder, document, program, or data of any type whatsoever that contains evidence of communications that allege improper, unprofessional, inappropriate or unlawful conduct on the part of the Plaintiff or anyone who might reasonably be identified as the Plaintiff, or which attack, degrade or malign the Plaintiff's character ("Defamatory Communications"); and,
- (d) Any data or information regarding an assault on the Plaintiff.

2. Any hard copy or print out of any information described above.
3. Any other document (as defined by Rule 30.01 of the *Rules of Civil Procedure*) containing evidence regarding:
 - (a) the email addresses described above;
 - (b) the postings on a website monitored or operated by Gigpark;
 - (c) Defamatory Communications regarding the Plaintiff; and/or
 - (d) a physical assault on the Plaintiff.

RONALD RUTMAN
Plaintiff

-and-

SAUL RABINOWITZ ET AL
Defendants

Court File No. CV-09-377474

**ONTARIO
SUPERIOR COURT OF JUSTICE**

PROCEEDING COMMENCED AT
TORONTO

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

**LENCZNER SLAGHT ROYCE
SMITH GRIFFIN LLP**

Barristers
Suite 2600
130 Adelaide Street West
Toronto ON M5H 3P5

Peter H. Griffin (19527Q) 865-2921
Matthew P. Sammon (46985F) 865-3057
Tel: (416) 865-9500
Fax: (416) 865-9010

Lawyers for the Plaintiff Ronald Rutman