



Court File No.

**ONTARIO
SUPERIOR COURT OF JUSTICE**

IN THE MATTER OF THE BERNARD SHERMAN 2016 TRUST

BETWEEN:

MATTHEW SHECHTMAN and REBECCA SHECHTMAN

Applicants

and

ALEX GLASENBERG, JONATHON SHERMAN and BRADLEY KRAWCZYK, each in their capacity as trustee of the BERNARD SHERMAN 2016 TRUST, and EDWARD FLORENCE, SARA FLORENCE, RACHEL FLORENCE, NATALIE FLORENCE, KENNETH FLORENCE, KAREN STEKEL, RICHARD FLORENCE, MICHELLE PAGOTTO, SAMANTHA SHUBAT, JESSICA FLORENCE, TAYLOR FLORENCE, JOSHUA FLORENCE, JOSEPH GRECO-FLORENCE, ALEXANDRA GRECO-FLORENCE, ADAM FLORENCE, RYAN FLORENCE, NOAH SHECHTMAN, JONATHON SHERMAN, ALEXANDRA SHERMAN, KAELEN SHERMAN, LAUREN SHERMAN, and THE OFFICE OF THE CHILDREN'S LAWYER

Respondents

APPLICATION UNDER Section 37 of the *Trustee Act*, R.S.O. 1990, c. T.23 and Rules 14.05(3) and 75 of the *Rules of Civil Procedure*

NOTICE OF APPLICATION

TO THE RESPONDENTS:

A LEGAL PROCEEDING HAS BEEN COMMENCED by the applicant. The claim made by the applicant appears on the following page.

THIS APPLICATION will come on for a hearing (*choose one of the following*)

In person

By telephone conference

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By video conference

at 330 University Avenue, Toronto, Ontario M5G 1R7 on a date to be fixed by the Court.

IF YOU WISH TO OPPOSE THIS APPLICATION, to receive notice of any step in the application or to be served with any documents in the application, you or an Ontario lawyer acting for you must forthwith prepare a notice of appearance in Form 38A prescribed by the Rules of Civil Procedure, serve it on the applicant's lawyer or, where the applicant does not have a lawyer, serve it on the applicant, and file it, with proof of service, in this court office, and you or your lawyer must appear at the hearing.

IF YOU WISH TO PRESENT AFFIDAVIT OR OTHER DOCUMENTARY EVIDENCE TO THE COURT OR TO EXAMINE OR CROSS-EXAMINE WITNESSES ON THE APPLICATION, you or your lawyer must, in addition to serving your notice of appearance, serve a copy of the evidence on the applicant's lawyer or, where the applicant does not have a lawyer, serve it on the applicant, and file it, with proof of service, in the court office where the application is to be heard as soon as possible, but at least two days before the hearing.

IF YOU FAIL TO APPEAR AT THE HEARING, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO OPPOSE THIS APPLICATION BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

Date: December 13, 2023

Issued by:

Local Registrar

Address of court office:
330 University Avenue
Toronto, Ontario M5G 1R7

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NOAH SHECHTMAN

Respondent

JONATHON SHERMAN

Respondent

ALEXANDRA SHERMAN

Respondent

KAELAN SHERMAN

Respondent

LAUREN SHERMAN

Respondent

THE OFFICE OF THE CHILDREN'S LAWYER

393 University Avenue 14th Floor

Toronto, Ontario M5G 1E6

Respondent

APPLICATION

THE APPLICANTS MAKE APPLICATION FOR:

Passing of Accounts

1. An order requiring the trustees of the Bernard Sherman 2016 Trust (the “Trustees”) to commence an application to pass their accounts and that the application include, without limitation, a statement of the value of the Shermco Shares (as defined below) and financial statements for Shermco Inc. and Sherfam Inc.

Production of Documents

2. An interim order requiring the Trustees to produce to the parties hereto all documents related to the administration of the Trust, including as a preliminary request (and without limiting the generality of the foregoing):
 - a. minutes of meetings of the Trustees;
 - b. all legal advice provided to the Trustees with respect to the administration of the Trust;
 - c. correspondence among the Trustees with respect to the administration of the Trust including (without in any way limiting the generality of the foregoing) with communications among the Trustees and their counsel regarding the Trustees’ communication to beneficiaries on or about September 22, 2023; and,
 - d. a statement setting out the rights that attach to the 1,000 common shares of Shermco Inc. held by the Trust (the “Shermco Shares”).

Declaratory Relief

3. A declaration that the Trustees have breached their fiduciary duties towards the beneficiaries.

Appointment of TDL

4. Suspending, on an interlocutory basis, the Trustees for the duration of this litigation and appointing a Trustee During Litigation (“TDL”) in order to ensure the fair and proper administration of the Trust during the litigation.
5. An order dispensing with the requirement that the TDL post bond as part of the appointment of the TDL.
6. An order vesting all assets of the Trust with the TDL.
7. An order that the TDL shall receive out of the assets of the Trust reasonable compensation calculated in accordance with the fee schedule filed with the Court, subject to further review by the Court, if required, or subject to further review on a passing of accounts.

Removal of Trustees

8. An order permanently removing the Trustees and appointing a Succeeding Trustee of the Trust.

Order Giving Directions

9. An Order for the scheduling and timetabling of all necessary steps to have this Application heard and decided by this Honourable Court.
10. Costs of this Application on such scale as the Court deems appropriate.
11. Such further and other relief as counsel may advise and this Honourable Court may deem just.

THE GROUNDS FOR THE APPLICATION ARE

Background

12. The Trust was established in 2016 by the late Bernard “Barry” Sherman. The Applicants believe that the Trust was established as part of an estate freeze, and that the Trust’s main asset is the Shermco Shares. The Shermco Shares capture the growth in the value of Sherfam Inc. from 2016 forward.
13. Sherfam Inc. is the main Sherman family holding company, the principal asset of which was ownership of the companies collectively known as “Apotex”, a major pharmaceutical enterprise founded by Barry Sherman.
14. However, the Applicants’ understanding of the Trust is limited because, as set out herein, the Trustees have failed or refused to share basic information with the Applicants. As a starting point, despite the Trust being settled in 2016, the Trustees did not provide the beneficiaries with a copy of the trust deed or indeed *any* information about the trust until such was requested by the Applicants in 2023. The Trustees were apparently content, for nearly six years since the tragic death of Barry (and Honey) Sherman in 2017, to leave the beneficiaries entirely in the dark with respect to essential information such as the trust deed.
15. The beneficiaries of the Trust are, in simplified terms:
 - a. the children and future issue of Barry and Honey Sherman, defined here as the “Sherman Siblings”;
 - b. the children and future issue of Mary Shechtman (Honey’s sister), being the Applicants Matthew and Rebecca Shechtman, and their brother Noah Shechtman, collectively defined herein as the “Shechtman Beneficiaries”;

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- c. the children and future issue of Sandra Florence (Barry's sister), collectively defined herein as the "Florence Beneficiaries"; and,
 - d. any registered charity.
16. The Trust is a discretionary trust, with the Trustees having complete and unfettered discretion with respect to distribution of capital and income among the beneficiaries. The Trustees must not exercise that discretion improperly and thus cannot exercise discretion on the basis of personal animosity towards any beneficiaries or other extraneous considerations such as (but not limited to) their own personal liability risk.
17. The Applicants do not know the value of the Trust's only asset, being the Shermco Shares, but believe that the value may well exceed \$500 million.

Relationship Breakdown

18. Regrettably, following the murders of Barry and Honey Sherman in December 2017, the relationship between the Sherman Siblings and Mary Shechtman, her husband Allen, and the Applicants broke down. Over the passage of time, it has become clear that the breakdown is irreparable. Although the primary conflict is with Mary Shechtman, it has extended to her children Matthew and Rebecca, who are not on speaking terms with the Sherman Siblings.

Passing of Accounts

19. The Applicants, as beneficiaries, requested that the Trustees pass their fiduciary accounts on March 5, 2023. They repeated that request on March 26 after the Trustees failed to provide any substantive response.

20. The Trustees have refused to pass their accounts. Their position, communicated on March 29, 2023, is that there is “no relevant accounting.” The Trustees’ fiduciary obligations do not permit them to refuse to account simply because they believe that the accounting is “not relevant”. Even if the accounting is simple and lists only the Shermco Shares, the beneficiaries are entitled to the passing of accounts.
21. Even a simple accounting is important to the beneficiaries because it would disclose the value of the Shermco Shares. That information is of obvious and considerable importance to the beneficiaries. It is also information to which they are entitled as a matter of basic trust law.
22. The Trustees have breached their fiduciary duties by refusing to pass their accounts.

Production of Documents

23. The Trustees have a legal obligation to produce documents related to the administration of the Trust. The beneficiaries are entitled to reasonable information with respect to the Shermco Shares, including the value of those shares and the rights attaching to them.
24. The beneficiaries are also entitled to disclosure of the minutes of trustee meetings and legal advice related to the administration of the Trust. This information is particularly important because the Trustees have engaged in an ongoing pattern of refusing to provide the beneficiaries with reasonable information that the beneficiaries have requested. In some cases, the Trustees have not even responded to such requests.
25. The Trustees’ ongoing refusal to provide information to which the beneficiaries are entitled is a breach of their fiduciary duties. The trustees refuse even to meet with the beneficiaries. A court order is required to address the Trustees’ ongoing breach.

Declaratory Relief

26. The Trustees have breached their fiduciary duties by refusing to pass their accounts, refusing to provide information, and refusing meet with the beneficiaries.

Suspension of Trustees and Appointment of TDL

27. The Trustees cannot administer the Trust fairly and properly during the litigation. They have already breached their fiduciary duties by refusing to pass their accounts. They compound that breach by refusing to provide information to which the beneficiaries are clearly and unequivocally entitled at law. The Trustees' breach is so broad, intentional, and steadfast that they refuse even to *meet* with the beneficiaries – outright rejecting a simple, basic step that is in the beneficiaries' interest and would at least be the start of a good faith effort by the Trustees to meet their legal duties.

28. The Trustees have substantial animosity towards the Applicants. The Trustees actively encouraged Noah Shechtman to commence litigation against Mary and the Applicants. Alex Glasenberg and Jonathon Sherman, who are both Trustees, actively encouraged Noah to sue his mother and siblings. Noah followed the Trustees' instigation and sued Mary and the Shechtman family members regarding a Shechtman family trust. For the Trustees to be actively encouraging and facilitating litigation between beneficiaries is a clear and obvious conflict, and a breach of their fiduciary duties.

29. There is also conflict among the Trustees themselves. Jonathon Sherman is no longer on speaking terms with Alex Glasenberg and actively disagrees with decisions made by Mr. Glasenberg and Mr. Krawczyk, the other two Trustees. All of this was evident, for

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example, in email exchanges of September 22, 2023 between counsel for Mr. Glasenberg and Mr. Krawczyk, Jonathon Sherman, and the beneficiaries. Specifically, counsel for Messrs. Glasenberg and Krawczyk advised the beneficiaries that the Trustees would not agree to a meeting and were not providing certain information that had been requested, at which point Jonathon Sherman expressly and in writing disavowed that the communication was approved by or coming from him.

30. Alex Glasenberg is now adverse in interest to Noah Shechtman in Noah's claim against the Shechtman family. Noah is seeking to examine Alex in that litigation, and Alex is taking an adverse position to Noah in that litigation.

31. The Trustees must therefore be temporarily suspended from their roles during this litigation. This is not one of the "clearest of cases" where the Court should decline to appoint a TDL. A TDL is necessary to ensure the proper administration of the Trust on an interlocutory basis.

Removal of Trustees

32. For the same reasons, the Trustees ought to be permanently removed. They are all in a conflict of interest by virtue of their dual roles as Trustees and beneficiaries (in the case of Jonathon Sherman), or Trustees and directors of Shermco (in the case of Alex Glasenberg and Brad Krawczyk).

33. The relationship breakdown between the Trustees and the Applicants cannot be remedied. The Trustees have to this point used their power over Shermco to ensure that no funds are available for distribution to the Trust in order to prevent the Applicants from receiving any distributions from the Trust. Such conduct cannot continue.

Court's Jurisdiction

34. The Court's jurisdiction to grant the relief sought herein is grounded in ss. 3, 5, and 37 of the *Trustee Act*, rules 74 and 75 of the Rules of Civil Procedure, and the Court's inherent jurisdiction.

THE FOLLOWING EVIDENCE WILL BE USED ON THIS APPLICATION

35. The affidavit of Matthew Shechtman, to be sworn.

36. The oral examinations of Jonathon Sherman, Alex Glasenberg, and Brad Krawczyk.

37. Such further and other evidence as counsel may advise.

December 13, 2023

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Applicants

-and-

JONATHAN SHERMAN et. al.

Respondents

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PROCEEDING COMMENCED AT
TORONTO

NOTICE OF APPLICATION

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RCP-F 4C (September 1, 2020)