

IN THE COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL DISTRICT OF CALGARY

BETWEEN:

**BRIAN MALLARD INSURANCE SERVICES LTD.
and BRIAN MALLARD**

PLAINTIFFS

- and -

KENT SHIRLEY

DEFENDANT

BEFORE THE HONOURABLE
MR. JUSTICE D. B. MASON
IN CHAMBERS

) ON THURSDAY, THE 28th DAY
) OF OCTOBER, 2004,
) AT THE CITY OF CALGARY, ALBERTA.

ORDER

UPON the *ex parte* application of the Plaintiff, Brian Mallard Insurance Services Ltd. and Brian Mallard ("Mallard"); AND UPON reading the Statement of Claim, the Affidavit of Brian Mallard, the Affidavit of Albert J. Sweet; all filed; AND UPON Mallard filing an Undertaking in Damages herein; AND UPON noting that KPMG have consented to act as Court appointed Custodian herein; AND UPON being advised that the Plaintiffs are aware that the Defendant has consulted legal counsel in respect to the termination of his employment by the Plaintiffs; AND UPON hearing counsel for Mallard; AND UPON being advised that the Defendant is represented by counsel in Saskatchewan; AND UPON it appearing just and equitable to provide interim injunctive relief on an *ex parte* basis;

IT IS HEREBY ORDERED THAT:

1. The Defendant, Kent Shirley (the "Defendant") is required to provide permission to representatives of KPMG Forensic ("KPMG"), accompanied by legal counsel of the Plaintiffs, MacPherson Leslie & Tyerman LLP, to enter onto the premises of:

- a. the personal residence of Kent Shirley at Suite 415 f2936 Gaetz Avenue, RedDeer Alberta;
- b. or at such other location as personal or business records of the Defendant may be stored including any location where the Defendant has located any computer, laptop or any device referred to in paragraph 4 hereof;

for the purpose of:

- c. carrying out a search and seizure of the Defendant's computer(s), computer equipment and documents for evidence of confidential and proprietary information of the Plaintiffs, and material relating to telephone charges; software; computer files and discs (including hard drives of any computers); and for any material which may be used as evidence in the within action. KPMG shall copy such seized information, either at the premises where seized or at its offices in Calgary, Alberta; and
- d. performing Bit Stream Imaging of the Defendant's computer(s) and other electronic media to preserve data integrity and provide information for further investigation.

Disclosure of Information

2. Each Occupant shall disclose to the persons enforcing this Order:
 - a. the whereabouts of all Relevant Documents of which he or she have knowledge, whether on the said premises or elsewhere; and
 - b. his or her name and address;
3. Each Occupant shall allow the persons enforcing this Order to photograph or video tape the premises.
4. With respect to the personal residence of the Defendant, any adult persons at those residences are required to provide permission to enter the personal residence in accordance with this paragraph.

5. Counsel for the Plaintiffs shall attend at the premises to explain the terms of the Order, but shall not otherwise engage in the search for or seizure of information and material described herein.

6. The Defendant is hereby enjoined and restrained from the following:

- a. From making statements whether orally or in writing, including via mail, email or Internet posting to any person or authority about the Plaintiffs, its agents, employees, officers, directors and customers without first obtaining leave of this Honourable Court applied for on two days' clear notice to the Plaintiffs;
- b. From contacting the Plaintiffs, their agents, officers, employees or customers directly for any purpose. All communication with the said persons is to be made by the Defendant through counsel for the Plaintiffs, or by leave of this Honourable Court applied for on two days' clear notice to the Plaintiffs; and
- c. From possessing in any capacity, whether in written form, on computer disc drive, floppy disc, CD ROM, or in any other media, any documentation obtained while in the employ of the Plaintiffs or pertaining to the Plaintiffs and their business affairs or the affairs of their clients and customers, or which are the property of the Plaintiffs.

Non-Disclosure of Order

7. Every person on whom this Order is served or who has notice of the service of this Order is prohibited for a period of 48 hours after such service from:

- a. disclosing to or discussing with any other persons the existence of these proceedings, this Order or its terms; and
- b. otherwise informing or warning any other person that the Plaintiffs might execute this Order against him or her.

8. Notwithstanding the preceding paragraph, any person on whom this Order is served and any person having notice of it may at any time consult a solicitor for the purpose of obtaining legal advice with respect to these proceedings.

9. The Defendant is hereby enjoined and restrained from causing or allowing the deleting, erasing, altering or otherwise dealing with any or all of the following:

- a. computers, central processing units, external and internal drives and external storage equipment or media, terminals or video display units, together with peripheral equipment such as keyboards, printers, modems or acoustic couplers, automatic diallers, speed diallers, programmable telephone dialling or signalling devices, electronic tone generating devices;
- b. any and all computer or data processing software, or data including, but not limited to, hard disks, floppy disks, cassette tapes, magnetic tapes, integral RAM or ROM units, and any other permanent or transient storage device(s);
- c. the following records and documents, whether contained on paper or handwritten, typed, photocopied, or printed form on computer printouts, magnetic tape, cassettes, disks, diskettes, photo optical devices, or any other medium: telephone and communications activity and service billing records, computer electronic and voicemail system information, access numbers, passwords, personal identification numbers (PINS), telephone and address directories, logs, notes, memoranda and correspondence relating to theft of telephone and communications services or to unauthorized access into computer, electronic and voice mail systems; and
- d. any computing or data processing literature, including, but not limited to, printed copy, instruction books, notes, papers or listed computer programs, in whole or in part.

10. The Defendant shall allow KPMG, to neutralize and seize degaussing equipment located at the search location.

11. The Defendant is hereby enjoined and restrained from causing or allowing to be caused, the following:

- a. Deleting the relevant temporary Internet cache files by using a utility program, such as Norton's Systems Works, which contains a "clean sweep" program which deletes such files. Such utility programs are widely available.

- b. Formatting his hard disk using a utility program such as Norton's Systems Works or PC Tools.
- c. Physically damaging the computer's hard disk in any manner, inter alia, physically removing the hard disk from the computer., damaging the hard disk by introducing it to water, by intentionally causing power surges to enter the computer or the hard disk, by causing static electricity discharges to enter the computer or the hard disk, or by causing other intrusive measures; and
- d. Using the following Disk Operating System (DOS) command:

"Format C:/u"

12. The Defendant shall provide his cooperation and shall identify to KPMG the location of all information hereinbefore enumerated and that such person shall immediately comply with any request to deliver up such information or documents whether in documentary or electronic form as evidence in the within action. With respect to the personal residence of Kent Shirley, any adult persons in attendance are also required to cooperate in accordance with this paragraph.

Court Appointed Custodian

13. KPMG shall act as Court appointed Custodian of all information seized hereunder. All information seized by KPMG shall be maintained by same in unaltered form at the offices of KPMG in Calgary, Alberta. Once copied to KPMG's satisfaction, any device or information may be returned to the Defendant, excepting any document which on its face purports to belong to the Plaintiffs, or any customer of the Plaintiffs, which shall not be returned to the Defendant without further Order of this Court. The Plaintiffs and its solicitors or agents shall not use any documents or information obtained as a result of the execution of this Order except for the purpose of advancing civil proceedings in relation to the within action without leave of this Honourable Court.

14. KPMG shall review and shall prepare a report on the seized materials and information hereunder which shall be submitted to the Court of Queen's Bench. The aforementioned report shall consist of all documents and entries apparently relating to possession and use of the Plaintiffs' records by the Defendant. The Court shall have regard to said report in any application

to review, modify or rescind the within Order. Further, KPMG shall include in its report any matter indicating deletions or alterations contrary to the terms of this Order. While conducting its review, KPMG shall make note of any documents or entries which appear to be the subject of solicitor/client privilege without revealing the content of such documentation, and shall where possible identify same for the Court, and shall include reference to same to this Honourable Court. KPMG shall provide a description only of the dates of such documents or communications and the identities of the parties apparently creating and receiving such information. Such review shall not constitute a waiver by the Defendant of privilege to which he is otherwise entitled.

15. Counsel for the Plaintiffs may, in their discretion, direct that a peace officer or peace officers of the Calgary Police Service or the Royal Canadian Mounted Police or such other police service as has jurisdiction over the area in which the said business or personal records are maintained to accompany the Plaintiff's legal counsel and KPMG in conducting the said searches and seizures of any property at the said premises and shall keep the peace thereat. Upon the request of MacPherson Leslie & Tyerman LLP, a peace officer or peace officers of such police service shall forthwith accompany the Plaintiff's legal counsel and KPMG for the purpose of keeping the peace at any such search and seizure.

16. Entry of the said premises, being the personal residence, may take place at any time Monday through Saturday, between the hours of 8:00 a.m. and 8:00 p.m. If any of the premises noted in paragraph 1 of this Order are unoccupied at the time of execution of this Order, then the hours to which entry can be made and the seizure executed is extended as required. Once entry to premises to conduct a search has been initiated, the persons enforcing this Order may remain on the premises without interruption until the search is complete.

17. The Defendant or any adult person at the personal residence or at the business premises, shall provide access and entry to KPMG to any locked or secured cabinet, safe, container, computer, computer file or device located upon the personal residence or the business premises.

Request for Extra Provincial Assistance

18. This Court request the aid and recognition any Court or any judicial, regulatory or administrative body in any province or territory of Canada, and the Federal Court of Canada, and any court constituted pursuant to the Parliament of Canada or the legislature of any province to

act in aid of and to be complementary to this Court in carrying out the terms of any Order granted in the within proceedings;

19. In the event that aid and recognition is given to this Order pursuant to the previous paragraph, no person other than the parties hereto, and such person as may be specified by Order of the Court giving aid and recognition shall be liable for acts done outside of Alberta or the responding jurisdiction who have had notice of such Order, save to the extent that the Order has been declared enforceable in such responding jurisdiction.

20. Notwithstanding the preceding paragraph, any person on whom this Order is served and any person having notice of it may at any time consult a solicitor for the purpose of obtaining legal advice with respect to these proceedings.

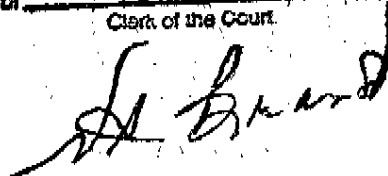
21. Either party shall be at liberty to apply upon two clear days notice to any Justice of the Court of Queen's Bench to modify or rescind the within Order.



J.C.C.Q.B.A.

TO: CLERK OF THE COURT

AND TO: THE DEFENDANT

Entered this 28 day
of OCTOBER 2024
Clerk of the Court.


Action No.: 0401-16581

2004.

IN THE COURT OF
QUEEN'S BENCH OF ALBERTA
JUDICIAL DISTRICT OF CALGARY

BETWEEN:

**BRIAN MALLARD INSURANCE
SERVICES LTD.
and BRIAN MALLARD**

PLAINTIFFS

- and -

KENT SHIRLEY

DEFENDANT

ENTERED

NOV 8 - 2004

ORSZ
ORM 201X ALLOW ENTRY
ORIN 1-X
ORM 201X CUSTODIAN APPOINTED
MASON

ORDER

**MacPherson Leslie Tyerman LLP
Lawyers**

**4505 Canterra Tower
400 - 3rd Avenue S.W.
Calgary, AB T2P 4H2**

Solicitor: Richard N. Billington
Telephone: (403) 693-4300
Facsimile: (403) 263-4302

File No.: 27359-2

