

Court File No. CV-20-00653410-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

B E T W E E N:

(Court Seal)

ANSON ADVISORS INC., ANSON FUNDS MANAGEMENT LP,
ANSON INVESTMENTS MASTER FUND LP AND MOEZ KASSAM
Plaintiffs (Moving Parties)

- and -

ROBERT LEE DOXTATOR
Defendant (Responding Party)

- and -

JACOB DOXTATOR AND JOHN DOE 1, JOHN DOE 2, JOHN DOE 3,
JOHN DOE 4 AND OTHER PERSONS UNKNOWN
Defendants

NOTICE OF MOTION

The Plaintiffs, Anson Advisors Inc., Anson Funds Management LP, Anson Investments Master Fund LP and Moez Kassam, will make a Motion to a Judge presiding over the Commercial List on a date to be determined at 10:00 a.m., or as soon after that time as the Motion can be heard, by judicial videoconference via Zoom at Toronto, Ontario.

PROPOSED METHOD OF HEARING: The Motion is to be heard orally by videoconference.

THE MOTION IS FOR:

- (a) an Order validating the Plaintiffs' service of the Statement of Claim (the "**Claim**"), this Notice of Motion, and all materials filed by the Plaintiffs in connection with this motion on the Responding Party, Robert Lee Doxtator ("**Robert**");
- (b) in the alternative, an Order for substituted service of the Claim, this Notice of Motion, and all materials filed by the Plaintiffs in connection with this motion on Robert by email at 1888bruiser@gmail.com, or in the further alternative, an Order dispensing with service of these motion materials;
- (c) an Order permitting the Plaintiffs to serve all materials filed in connection with this action on Robert via email at the email address 1888bruiser@gmail.com;
- (d) the costs of this motion against Robert on a substantial indemnity basis; and
- (e) such further and other relief as to this Honourable Court may seem just.

THE GROUNDS FOR THE MOTION ARE:

- (a) Robert is aware of the Claim. He has purposefully evaded multiple attempts by the Plaintiffs to serve him in accordance with the *Rules of Civil*

Procedure, which has forced the Plaintiffs to seek relief from the Court. In fact, the Plaintiffs believe that Robert is already in possession of a copy of the Claim, which was sent to him by counsel for the Plaintiffs by email.

- (b) The Claim was issued on December 18, 2020.
- (c) The Plaintiffs successfully served the Defendant Jacob Doxtator, Robert's cousin, with the Claim at approximately 1:00 p.m. on the same day.
- (d) At approximately 1:28 p.m. on December 18, 2020, Iris Fischer, counsel for the Plaintiffs at Blake, Cassels & Graydon LLP, received a voicemail from Robert regarding the Plaintiffs' service of the Claim on Jacob Doxtator.
- (e) At approximately 2:00 p.m. on December 18, 2020, the Plaintiffs attempted to serve Robert with the Claim via process server at the address [REDACTED] [REDACTED] ("[REDACTED]"). According to the records at canada411.ca, a person named Robert Doxtator lives at [REDACTED]. At that address, the process server encountered a man who refused to identify himself and claimed that Robert did not live there. Service was not successful.
- (f) At approximately 4:10 p.m. on December 18, 2020, Ms. Fischer received a telephone call from a man identifying himself as Robert. The caller ID for the call indicated that it came from "Robert Doxtator". In the call, Ms. Fischer requested a service address for Robert so that he could be served with the

Claim. Robert refused to provide a valid address. Ms. Fischer advised that she would send the Claim to Robert by email.

- (g) At approximately 5:01 pm on December 18, 2020, Ms. Fischer emailed the Claim to Robert at 1888bruiser@gmail.com, an email address that he is known to use. Ms. Fischer requested both a “delivery receipt” and a “read receipt” in her email. In response, she received an automated notification that “Delivery to these recipients or groups”, meaning 1888bruiser@gmail.com, “is complete, but no delivery notification was sent by the destination server”. Ms. Fischer received no other reply to her email.
- (h) In addition, on December 18, 2020, Robert sent What’s App messages to the Plaintiff, Moez Kassam, regarding the Claim. Robert wrote, “It’s between you and I. But regardless you wanna sue then we can go on that route. Lawyer is on stand by and we are dragging a lot of people into this whom you consider friends...” [sic].
- (i) On December 29, 2020, counsel for the Plaintiffs sent a copy of the Claim to [REDACTED] by registered mail. The package was subsequently returned on the basis that the recipient had refused to accept it.
- (j) Counsel for the Plaintiffs obtained a corporate profile report for a company that Robert founded, Harvest Moon Cannabis Company Inc. The report stated that Robert’s address was [REDACTED] (“ [REDACTED] ”) and that the registered office of Harvest Moon Cannabis

Company Inc. was [REDACTED]

[REDACTED].

- (k) On January 4, 2021, the Plaintiffs attempted to serve the Claim on Robert by process server at [REDACTED]. At that address, the process server encountered a woman who claimed that Robert did not live there and refused to identify herself or answer any questions. The names on the mailbox read "[REDACTED]". The process server spoke to a neighbour who stated that they believed Robert Doxtator is the son of the people who live at [REDACTED] but was unsure whether he lives there. Service was unsuccessful.
- (l) On January 6, 2021, the Plaintiffs sent a copy of the Claim by courier to [REDACTED]. The Plaintiffs' package was returned.
- (m) On January 7, 2021, the Plaintiffs attempted to serve the Claim on Robert by process server at [REDACTED]. At that address, the process server found [REDACTED] and [REDACTED] Law Firm, which did not accept service.

It is in the interests of justice to grant the relief sought

- (a) Robert is aware of the Claim and the Plaintiffs' efforts to serve him. The Claim was served or attempted to be served in multiple ways, such that it would have come to his attention but for his own attempts to purposefully evade service, and did, in fact, come to his attention, including through email. Further, the fact that Robert called Ms. Fischer on December 18,

2020 indicates that he was aware of the identity of Plaintiffs' counsel, and suggests he received (or at minimum, viewed) a copy of the Claim and Ms. Fischer's cover letter from his cousin, Jacob.

- (b) Because of Robert's conduct, going forward in this litigation it would be impractical, if not impossible, to effect prompt personal or mail service of the Claim and other documents on him.
 - (c) Robert is known to use the email address 1888bruiser@gmail.com. Service of the Claim has been and service of other documents in this litigation can continue to be made on him at that email address.
 - (d) It is in the interests of justice to grant the relief sought by the Plaintiffs. The Plaintiffs have been attempting to effect service of the Claim on Robert in accordance with the *Rules of Civil Procedure* for over a month, and have been unable to do so due to Robert's conduct. The Plaintiffs seek to prosecute their claims against Robert on an efficient and expedited basis, which cannot occur until the issue of service is resolved.
- (a) Rules 1.04(1), 2.03, 3.02, 16.01, 16.02, 16.03, 16.04, 16.08, 16.09, 37 and 39 of the *Rules of Civil Procedure*, as amended.
 - (b) Such further and other grounds as the lawyers may advise.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the Motion:

- (c) The Affidavit of Alissa Care, to be affirmed;
- (d) The Affidavit of Sunny Puri, to be affirmed; and
- (e) Such further and other evidence as the lawyers may advise and this Honourable Court may permit.

January 20, 2021

BLAKE, CASSELS & GRAYDON LLP
Barristers & Solicitors
199 Bay Street
Suite 4000, Commerce Court West
Toronto ON M5L 1A9

Michael Barrack LSO #21941W
Tel: 416-863-5280
michael.barrack@blakes.com

Iris Fischer LSO #52762M
Tel: 416-863-2408
iris.fischer@blakes.com

Kaley Pulfer LSO #58413T
Tel: 416-863-2756
kaley.pulfer@blakes.com

Christopher DiMatteo LSO #68711E
Tel: 416-863-3342
Fax: 416-863-2653
christopher.dimatteo@blakes.com

Lawyers for the Plaintiffs, Anson Advisors Inc., Anson Funds Management LP, Anson Investments Master Fund LP and Moez Kassam

TO: **ROBERT DOXTATOR**



1888bruiser@gmail.com

Anson Advisors Inc., Anson Funds Management LP,
Anson Investments Master Fund LP and Moez Kassam
Plaintiffs

-and- Robert Doxtator, Jacob Doxtator, and John Doe 1, John Doe 2,
John Doe 3, John Doe 4 and other persons unknown
Defendants

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ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

Proceeding commenced at Toronto

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BLAKE, CASSELS & GRAYDON LLP

Barristers & Solicitors

199 Bay Street

Suite 4000, Commerce Court West

Toronto ON M5L 1A9

Michael Barrack LSO #21941W

Tel: 416-863-5280

michael.barrack@blakes.com

Iris Fischer LSO #52762M

Tel: 416-863-2408

iris.fischer@blakes.com

Kaley Pulfer LSO #58413T

Tel: 416-863-2756

kaley.pulfer@blakes.com

Christopher DiMatteo LSO #68711E

Tel: 416-863-3342

Fax: 416-863-2653

christopher.dimatteo@blakes.com

Lawyers for the plaintiffs, Anson Advisors Inc., Anson Funds
Management LP, Anson Investments Master Fund LP and
Moez Kassam