

# SUPERIOR COURT

CANADA  
PROVINCE OF QUEBEC  
DISTRICT OF MONTRÉAL

No.: 500-17-118996-217

DATE: May 21<sup>st</sup>, 2024.

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**BY THE HONOURABLE ELENI YIANNAKIS, J.S.C.**

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**PROMARK ELECTRONICS INC.**

Plaintiff/Cross-Defendant

v.

**BYOPLANET INTERNATIONAL LLC**

Defendant/Cross-Applicant

and

**RICHARD PATRICK MICHAEL O'SHEA**  
(also known as "Rick O'Shea")

Impleaded Party

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JUDGMENT

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## **OVERVIEW**

[1] Further to its judgment on the merits rendered on March 12, 2024 (the "Judgment") declaring ByoPlanet International LLC's ("ByoPlanet")<sup>1</sup> Cross-Application against Promark Electronics Inc.'s ("Promark") an abuse of process, the Court is tasked with determining the damages flowing from such a declaration of abuse. It must also determine whether the forced intervention of Rick O'Shea ("O'Shea")<sup>2</sup>, the Chief Executive Officer of ByoPlanet, should be ordered and whether he should be held liable for the damages claimed.

[2] For the reasons that follow, the Court finds that O'Shea should be forcibly impleaded since he is the principal and directing mind of ByoPlanet and his reprehensible conduct is at the core of the abuse. The Court awards Promark damages comprised of \$570,467.46 CAD in professional fees and disbursements and \$150 000 CAD in punitive damages.

## **CONTEXT**

### **Judgment and Declaration of Abuse of Process**

[3] On March 12, 2024, the Court rendered its Judgment condemning ByoPlanet to pay to Promark the amount of \$6,745,787.66 CAD<sup>3</sup>. The Court also found that ByoPlanet's Cross-Application was an abuse of process under article 51 of the *Code of Civil Procedure* ("CCP")<sup>4</sup>. In accordance with article 54 al. 2 CCP, the Court reserved Promark's right to claim damages<sup>5</sup>.

[4] The Judgment was not appealed. As of April 18, 2024, it acquired the authority of a final decision (*res judicata* or *chose jugée*)<sup>6</sup>.

[5] The Court concluded that ByoPlanet's manifestly unfounded Cross-Application unduly complicated a case that should have been a simple action on account, where the amounts were already admitted through an acknowledgement of debt<sup>7</sup>.

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<sup>1</sup> ByoPlanet is a Florida limited liability company. O'Shea is the Chief Executive Officer (Judgment, par. 6 and 7).

<sup>2</sup> The use of individual's first or last names in the present judgment is only for purposes of brevity and no disrespect is intended.

<sup>3</sup> The equivalent amount in US dollars is \$ 5,419,173.89 USD (see Judgment, par. 70). The award also bears annual interest of 7.5%, plus the additional indemnity provided for under article 1619 of the *Civil Code of Quebec*, as of the date of the letter of demand, being August 3, 2021, and expert fees in the amount of \$32,113.11 CAD (Judgment, par. 202 and 208).

<sup>4</sup> Judgment, par. 173-176, 204.

<sup>5</sup> Judgment, par. 176 and 205.

<sup>6</sup> The delay to appeal the Judgment is 30 days from the Notice of Judgment (art. 30, 360 and 363 CPC). According to the Court docket (*plumitif*), the Notice was sent on March 18, 2024.

<sup>7</sup> Judgment, par. 172.

[6] In finding the Cross-Application abusive, the Court determined that ByoPlanet's behaviour was laced with temerity and that it was attempting to make itself judgment proof through a series of questionable transactions notably involving Good Salt LLC ("Good Salt")<sup>8</sup> and RPMOS LLC ("RPMOS")<sup>9</sup>. O'Shea, the controlling mind of all the implicated entities (ByoPlanet, Good Salt and RPMOS) was essentially the one pulling all the strings:

[173] Here, ByoPlanet's behaviour is reckless (*téméraire*) and the Cross-Application can be viewed as an extension of the stalling tactics it employed when it invoked the defect issue to avoid paying Promark amounts that are clearly owing. The most revealing aspect of the abusive nature of the proceeding is the manifestly unfounded legal basis of its principal argument asking for the resolution of the sale for Control Panels it clearly did not pay for. This is a position that ByoPlanet maintained up until the end, even once the trial was completed.

[174] Moreover, considering the new facts brought to light regarding the Good Salt Transaction, it would appear that ByoPlanet is attempting to make itself judgment proof, thus demonstrating yet again its intent to use any means necessary to avoid paying the amounts it owes. While the Court was not tasked with determining whether Good Salt and O'Shea can be held liable for the monies owing to Promark, the facts put forward raise serious concerns, when one looks at the timing of this transaction, the fact that O'Shea is the principal and the directing mind of all of the implicated entities (ByoPlanet, Good Salt and RPMOS), and the minimal amount paid by Good Salt, at first glance, to acquire all of ByoPlanet's assets

[175] ByoPlanet is playing the clock and placing as many obstacles as it can in Promark's way, hoping time will run out, and that ultimately, Promark will give up on recovering the significant amounts it is owed. Simply put, it is attempting to defeat the ends of justice. This is exactly the type of conduct that article 51 CCP was meant to sanction.<sup>10</sup>

[7] The Court then rendered the following conclusions which are relevant here:

[204] **DECLARES** ByoPlanet International LLC's Amended Cross-Application, dated December 22, 2023, abusive within the meaning of articles 51 and following of the *Code of Civil Procedure*;

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<sup>8</sup> Good Salt is a Florida limited liability company whose Authorized Agent is RPMOS and whose president and sole director is O'Shea (Exhibit P-37, Judgment, par. 46).

<sup>9</sup> RPMOS is a Florida limited liability company. O'Shea is the only Authorized Person listed on the corporate registry (Judgment, par. 41).

<sup>10</sup> Judgment, par. 173-175.

[205] **DECLARES** that pursuant to article 54 al. 2 of the *Code of Civil Procedure*, Promark Electronics Inc. may claim and prove its damages in a subsequent hearing;<sup>11</sup>

### **Application for Damages and Hearing by Default**

[8] Pursuant to the Judgment, on March 22, 2024, Promark filed its Application for the Reimbursement of Professional Fees, with a notice of presentation indicating that it would be heard on May 10, 2024 (the "Application for Damages"). Promark is seeking the reimbursement of professional fees and disbursements incurred as well as punitive damages, in accordance with article 54 CCP. Promark is also requesting that the Impleaded Party, O'Shea, ByoPlanet's Chief Executive Officer and controlling mind, be held jointly liable with ByoPlanet for the compensatory damages sought by Promark and be personally condemned to punitive damages.

[9] The events that took place after the filing of Promark's Application for Damages demonstrate ByoPlanet's, and O'Shea's continued attempts to defeat the ends of justice and to frustrate Promark. At the forefront, O'Shea's multiple attempts to avoid service of the Application for Damages and his inexplicable manoeuvres relating to the voluntary dissolution of all the corporate entities involved in the proceedings.

[10] On or around March 22, 2024, Promark discovered that while the Judgment was under advisement, O'Shea voluntarily dissolved ByoPlanet<sup>12</sup> and RPMOS<sup>13</sup> on January 19, 2024, two entities that were under his complete and full control. After the Application for Damages was served on Dentons Canada LLP ("Dentons"), ByoPlanet's attorneys at the time, on March 26, 2024, Dentons, filed a *De Bene Esse Notice to Cease Representing ByoPlanet*. In its letter to the Court, Dentons indicated that it did not represent O'Shea and that it no longer represented ByoPlanet, although the attorneys did confirm having provided a copy of the Application to ByoPlanet<sup>14</sup>.

[11] Surprisingly, on March 26, 2024, O'Shea reactivated ByoPlanet's corporate status<sup>15</sup>.

[12] From April 1<sup>st</sup> to April 11<sup>th</sup>, 2024, the process server hired by Promark attempted to serve the Application for Damages to ByoPlanet and O'Shea in Florida<sup>16</sup>. The affidavit of non-service outlines in detail the numerous attempts that were made<sup>17</sup>. It is apparent that O'Shea was avoiding service of the Application.

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<sup>11</sup> Judgment, par. 204-205.

<sup>12</sup> Exhibit R-3.

<sup>13</sup> Exhibit R-4.

<sup>14</sup> Application for Authorization of Special Mode of Service, Exhibit R-7.

<sup>15</sup> Exhibit R-7.

<sup>16</sup> Application for Authorization of Special Mode of Service, Exhibit R-8.

<sup>17</sup> Application for Authorization of Special Mode of Service, Exhibit R-9.

[13] On April 17, 2024, Promark then brought an Application for Authorization of Special Mode of Service, which was granted by the Court on April 18, 2024. Promark was authorized to serve ByoPlanet and O'Shea by email, the same emails used by Dentons in its previous exchanges<sup>18</sup>.

[14] On April 19, 2024, the Application for Damages was served to ByoPlanet and O'Shea. It appears from the "read notification" message received on April 19, 2024, that O'Shea did indeed open and read the e-mail with the attached Application. On April 19, 2024, Promark also sent a formal notice to appoint a new attorney to ByoPlanet, which remained unanswered.

[15] Since, then, the only response provided by O'Shea is through an e-mail dated May 7, 2024, stating that he found an attorney which will be contacting Promark's lawyer shortly<sup>19</sup>. As of May 10, 2024, the date of the hearing, no attorney had contacted Promark's attorney, nor had any answer to the Application for Damages been filed before this Court on behalf of ByoPlanet or O'Shea.

[16] As such, the Court proceeded by default on the Application for Damages<sup>20</sup>.

#### **New Evidence demonstrating Continued Abuse**

[17] In its Judgment, the Court found that ByoPlanet was no longer operating and had no employees, most of which had been hired by Good Salt<sup>21</sup>. Essentially, Good Salt is the successor in interest to ByoPlanet<sup>22</sup>. O'Shea is Good Salt's president and RPMOS its agent<sup>23</sup>. Good Salt, RPMOS and O'Shea all have the same registered address<sup>24</sup>.

[18] At the hearing, Promark filed additional evidence demonstrating the intentional confusion O'Shea maintains between Good Salt and ByoPlanet, as well as his role in these companies.

[19] On April 25, 2024, O'Shea voluntarily dissolved Good Salt<sup>25</sup>. Nevertheless, O'Shea continues to attend events and to publicly represent that Good Salt still exists and that he is the Chief Strategy Officer<sup>26</sup>. On April 28, 2024, a post on ByoPlanet's Facebook page indicates that O'Shea is one of 18 exhibitors brought together to share insights on sports medicine developments:

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<sup>18</sup> Application for Authorization of Special Mode of Service, Exhibit R-7.

<sup>19</sup> Exhibit R-6.

<sup>20</sup> See judgment rendered in Minutes of the hearing on May 10, 2024, p. 2.

<sup>21</sup> Judgment, par. 45.

<sup>22</sup> Judgment, par. 46.

<sup>23</sup> Judgment, par. 46.

<sup>24</sup> Judgment, par. 46. The registered address is: 175 Royal Palm Drive, Fort Lauderdale, Florida.

<sup>25</sup> Exhibit R-12.

<sup>26</sup> See Exhibit R-6, where O'Shea signs as "Chief Strategy Officer" of Good Salt *Life*. Such an entity does not exist.

We were one of only 18 exhibitors sharing the stage with notable names like Aegis, Powerade and Enovis. Our founder Rick O'Shea took the stage to showcase our revolutionary #bCOOL cooling technology, which is trusted by top sports teams including the New York Yankees and Atlanta Braves.<sup>27</sup>

[Emphasis Added]

[20] The showcase referred to is the "AT100 Conference" which took place between April 24-26, 2024, in Charlotte North Carolina<sup>28</sup>. Pictures of the event reveal that O'Shea was on stage showcasing Good Salt Life's products<sup>29</sup>. Noteworthy is that there is no corporate entity registered under the name "Good Salt *Life*". The addition of the term "Life" is but another element adding to the confusion surrounding the entities operated by O'Shea.

[21] To add to the uncertainty, ByoPlanet, which was dissolved and then revived<sup>30</sup>, remains publicly associated to Good Salt on various websites and presentations<sup>31</sup>. For example, on February 15, 2024, (i.e., ByoPlanet is dissolved) O'Shea claims to be the author of an article published on "ByoPlanet (Good Salt LLC)'s" website where O'Shea is represented as "the CEO of Good Salt, LLC, parent to ByoPlanet"<sup>32</sup>.

## ISSUES

[22] The Court must decide the following issues:

1. Should the forced intervention of O'Shea be authorized to the Application for Damages?
2. Is Promark entitled to claim compensatory damages and if so, what amount?
3. Is Promark entitled to claim punitive damages and if so, what amount?

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<sup>27</sup> Exhibit R-10.

<sup>28</sup> AT100 Conference, Advancing the Field of Athletic Training Leadership, Exhibit R-11.

<sup>29</sup> Exhibit R-10, p. 2.

<sup>30</sup> ByoPlanet was temporarily dissolved on January 19, 2024, but was revived on March 26, 2024, Exhibits R-3 and R-12.

<sup>31</sup> Exhibits R-8A and R-8B.

<sup>32</sup> Exhibit R-9, p. 3.

## **ANALYSIS**

### **1. SHOULD THE FORCED INTERVENTION OF O'SHEA BE AUTHORIZED TO THE APPLICATION FOR DAMAGES?**

#### **1.1 Legal Principles**

[23] Promark is requesting that the Impleaded Party, O'Shea, ByoPlanet's Chief Executive Officer, be held jointly and solidarily liable with ByoPlanet for the compensatory damages sought by Promark and be personally condemned to punitive damages.

[24] In accordance with article 56 CCP, the directors and officers of the legal person who committed the abuse may be ordered personally to pay damages if they participated in the decision which lead to the abuse:

56. If a legal person is responsible for an abuse of procedure, those of its directors and officers who participated in the decision may be ordered personally to pay damages. The same holds for an administrator of the property of others who is responsible for such an abuse.

[Emphasis Added]

[25] One of the purposes of article 56 CCP is to dissuade directors of closely held corporations from hiding behind them in the course of the litigation<sup>33</sup>:

[106] [Translation]The Courts do not hesitate to resort to Article 56 CCP when a preponderance of evidence reveals that the executive or director of a legal entity has approved or participated in decisions that led to the abuse, or when such participation can be inferred from their status within the legal entity.<sup>34</sup>

#### **1.2 Application**

[26] The Court has already found in its Judgment that O'Shea was the principal and the controlling mind of all of the implicated entities (ByoPlanet, Good Salt and RPMOS)<sup>35</sup>. This element alone is sufficient to justify the application of article 56 CCP and forcibly implead O'Shea to the current proceeding. It is obvious that he directed the filing of the

<sup>33</sup> *Bich c. Harpur*, 2023 QCCS 5098, par. 14.

<sup>34</sup> *Bich c. Harpur*, 2023 QCCS 5098, par. 13 citing *9118-3905 Québec inc. v. 9288-4576 Québec inc.*, 2022 QCCS 2759, par. 106:

[106] Les tribunaux n'hésitent pas à recourir à l'article 56 C.p.c. lorsqu'une preuve prépondérante révèle que le dirigeant ou l'administrateur d'une personne morale a approuvé ou participé aux décisions à l'origine de l'abus ou qu'une telle participation s'infère de son statut au sein de la personne morale.

<sup>35</sup> Judgment, par. 174.

manifestly ill-founded Cross-Application and was the mastermind behind the entire strategy to delay payment to Promark.

[27] Moreover, O'Shea's recent actions, which include the voluntary dissolution of all of these entities, demonstrate to the Court that O'Shea is manipulating these entities to attempt to shield his own personal liability.

[28] The forced intervention of O'Shea to the Application for Damages is well founded. He must be personally held accountable for his actions which reveal a total disrespect of the Court's authority.

## 2. IS PROMARK ENTITLED TO CLAIM COMPENSATORY DAMAGES AND IF SO, WHAT AMOUNT?

### 2.1 Legal Principles

[29] Under Quebec law, parties must pay the legal fees they incur unless the Court finds that there is an abuse of process<sup>36</sup>.

[30] The authority of *res judicata* attaches to all of the conclusions of the Judgment including the one declaring the Cross-Application abusive<sup>37</sup>. Such a conclusion can no longer be contested or revisited at this stage of the proceeding<sup>38</sup>. The only issue that remains to be determined is damages.

[31] Article 54 par. 1 CCP provides for the damages that may be awarded in the event of a finding of abuse, which include compensatory and punitive damages:

54. On ruling on whether a judicial application or pleading, including one presented under this division, is abusive, the court may order a provision for costs to be reimbursed, order a party to pay, in addition to legal costs, damages for any injury suffered by another party, including to cover the professional fees and disbursements incurred by that other party, or award punitive damages if warranted by the circumstances.

(...)

[32] The compensatory damages include the professional fees and disbursements that a party was forced to incur to defend itself against an abusive proceeding<sup>39</sup>.

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<sup>36</sup> *Viel v. Entreprises immobilières du terroir Ltée.*, 2002 CanLII 41120 (QC CA).

<sup>37</sup> Judgment, par. 204.

<sup>38</sup> 9083-8210 Québec inc. v. Paquette, 2015 QCCS 4765, par. 28-31; *Greenstone Realities Inc./Immeubles Greenstone inc. and Immeubles Bleu Stone inc.*, 2020 QCCS 3310, par. 30.

<sup>39</sup> *Greenstone Realities Inc./Immeubles Greenstone inc. and Immeubles Bleu Stone inc.*, 2020 QCCS 3310, par. 29.



[33] The reasons outlined in the judgment dismissing the action and declaring a proceeding abusive must be considered when determining the quantum of the damages to be awarded<sup>40</sup>.

[34] Moreover, the Court must adopt a global approach when analyzing the professional fees claimed<sup>41</sup>. The fees must be reasonable. To assess the reasonableness of the professional fees claimed, the Court may consider the following factors:

- a) The importance and degree of difficulty of the dispute;
- b) The time required to address it;
- c) The manner in which the proceedings were conducted by the party seeking reimbursement of their extrajudicial fees;
- d) The intrinsic reasonableness of the hourly rate charged by the attorney of the requesting party, or the amount billed;
- e) The proportionality of the fees claimed in relation to the judgment rendered and the overall context.<sup>42</sup>

[35] The party seeking the reimbursement of its professional fees must also demonstrate a causal connection between the fees claimed and the abuse of process<sup>43</sup>.

## 2.2 Application

[36] Here, it is clear to the Court that the present matter is one where Promark was forced to incur legal fees needlessly.

[37] Promark is asking for its fees as of February 7, 2022, until December 22, 2023. The starting point is the day where ByoPlanet announced in its Summary Statement of Oral Grounds of Defence, that it would be invoking serious defects to Promark's products in order to ask for the resolution of the sale, restitution of the purchase price as well as damages for any injuries suffered as a result of the manufacturing defects<sup>44</sup>.

[38] ByoPlanet clearly states that the amounts that will be claimed in its Cross-Application are equal or higher to the amount claimed by Promark:

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<sup>40</sup> *Greenstone Realities Inc./Immeubles Greenstone inc. and Immeubles Bleu Stone inc.*, 2020 QCCS 3310, par. 30-31.

<sup>41</sup> *Bich c. Harpur*, 2023 QCCS 5098, par. 60-61.

<sup>42</sup> *Greenstone Realities Inc./Immeubles Greenstone inc. and Immeubles Bleu Stone inc.*, 2020 QCCS 3310, par. 32.

<sup>43</sup> *Greenstone Realities Inc./Immeubles Greenstone inc. and Immeubles Bleu Stone inc.*, 2020 QCCS 3310, par. 33.

<sup>44</sup> Summary Statement of Oral Grounds of Defence dated February 7, 2022, par. 5-12.

13. Accordingly, ByoPlanet claims compensation between the amounts owed by Promark as a result of the defective Control Panels, which amounts will be more fully detailed in its Cross-Application, against the full amount of \$6,731,673.89 USD claimed by Promark for alleged outstanding invoices and work-in-progress and raw materials.<sup>45</sup>

[39] The Cross-Application was later filed on September 9, 2022, where as expected the amounts claimed by ByoPlanet, \$8,291,576.90 USD, were higher than those claimed by Promark<sup>46</sup>. It was modified several times thereafter, the last modification occurring on December 22, 2023, a few days after the trial ended. ByoPlanet maintained up until the end its manifestly unfounded position asking for the resolution of the sale, still claiming it had paid for the products, while the evidence had shown the opposite<sup>47</sup>.

[40] As such February 7<sup>th</sup>, 2022, was the turning point, where the file went from a simple action on account for breach of contract to a complex litigation regarding manufacturing defects affecting Promark's products. From then on, the complexity of the litigation cannot be denied. The allegations put forward by ByoPlanet required the filing of expert reports, two on ByoPlanet's side, and one on Promark's, lengthy proceedings which were modified on multiple occasions, hundreds of exhibits, the conduct of extensive pre-trial examinations and the review of multiple undertakings, as well as a four-day trial.

[41] At trial, ByoPlanet had three attorneys present at all times as well as an articling student while Promark was also represented by three attorneys. The vast majority of the trial was spent on the manufacturing defects aspect of the case, since Promark's Originating Application was straightforward and was supported by an uncontested acknowledgement of debt by ByoPlanet<sup>48</sup>. Another significant issue that took up the Court's time was ByoPlanet's Confidentiality Application, which had to be decided in the Judgment<sup>49</sup>. The trial resulted in a 40-page Judgment, a clear indication as to the complexity of the case.

[42] In support of its Application for Damages, Promark filed all of its attorneys' invoices for the period claimed, which are slightly redacted. Based on these invoices, the work conducted by Promark's attorneys as of February 7, 2022, was directly related to ByoPlanet's new allegations of defective products. It is asking for a total amount of \$570,467.46 CAD<sup>50</sup>. The hourly rates range from approximately \$545 CAD for a senior attorney to \$200 CAD for a junior associate, which are reasonable.

[43] Overall, using a global approach, the Court finds that the total amount claimed is reasonable and proportionate to the degree of difficulty of this file and its level of complexity. There is also causal connection between the fees claimed and the abuse of

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<sup>45</sup> Summary Statement of Oral Grounds of Defence, par. 13.

<sup>46</sup> Judgment, par. 163.

<sup>47</sup> Judgment, par. 164-169, 173.

<sup>48</sup> Judgment, par. 66-76.

<sup>49</sup> Judgment, par. 177-197.

<sup>50</sup> Exhibit R-2.

process. As such, the professional fees and disbursements claimed by Promark are well founded and should be granted. Given the Court's previous finding that O'Shea is an Impleaded Party to these proceedings, the Court will hold both ByoPlanet and O'Shea jointly and solidarily liable for the amount of \$570,467.46 CAD.

**3. IS PROMARK ENTITLED TO CLAIM PUNITIVE DAMAGES AND IF SO, WHAT AMOUNT?**

**3.1 Legal Principles**

[44] Promark is seeking an award of punitive damage solely against O'Shea. It justifies its request stating that O'Shea's actions are so unpredictable and his flagrant scheming of the legal entities under his controls so disconcerting, that in the end he is the master manipulator and the one who should be punished.

[45] It is asking for \$150 000 CAD, arguing that O'Shea's recent actions coupled with ByoPlanet and O'Shea's abusive conduct for over two years justifies a significant deterrent by way of punitive damages.

[46] Article 54 al. 1 CCP specifically allows the Court to grant punitive damages when a finding of abuse of process is made, "if warranted by the circumstances". Punitive damages are not intended to compensate the victim for a loss that he has suffered, but rather to denounce the conduct of the other party and to dissuade it from repeating it in the future<sup>51</sup>.

[47] In Quebec, awards for punitive damages range from \$ 5,000 to \$ 250,000 CAD<sup>52</sup>. In determining the quantum of the punitive damages to be awarded in a particular case, the party's financial situation can be taken into account in order to make sure that the dissuasive goal of the award is achieved<sup>53</sup>.

[48] In a recent case which bears some similarities with the present one, the Court indicates the importance of sending the right message when awarding punitive damages:

[87] Defendants posit that significant and exemplary punitive damages should be awarded to remind both Mr. Bich and the Bellini family that instituting judicial proceedings is an act filled with symbolism and responsibility and that conduct laced with temerity, in the context of abusive proceedings, stubbornly advanced to trial, will be sanctioned severely by the Court. Judicial resources should not be misused to intimidate and

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<sup>51</sup> *Bich v. Harpur*, 2023 QCCS 5098, par. 101.

<sup>52</sup> *Bich v. Harpur*, 2023 QCCS 5098, par. 102 citing *Cinar Corporation v. Robinson*, 2013 CSC 73, par. 138.

<sup>53</sup> *Bich v. Harpur*, 2023 QCCS 5098, par. 110.

coerce a party to negotiate a settlement. The Court should set an example for other deep-pocket litigants.<sup>54</sup>

[Emphasis Added]

### 3.2 Application

[49] It is difficult to imagine a case more appropriate than this one to grant punitive damages. O'Shea's conduct is simply reprehensible. Prior to the Judgment, he had already tried every trick in the book to avoid paying Promark:

- a) Attempting to set aside the agreement which provided for the acknowledgement of debt<sup>55</sup>;
- b) Pasting together unfounded allegations that Promark's products were defective, when no such defects existed<sup>56</sup>;
- c) Authorizing the institution of a Cross-Application seeking the resolution of the sale for products it did not pay for and claiming \$10,915,031.83 CAD from Promark<sup>57</sup>;
- d) Using the Cross-Application as an extension of the stalling tactics it employed when it invoked the defect issue to avoid paying Promark amounts that are clearly owing<sup>58</sup>;
- e) Attempting to make ByoPlanet judgment proof through a series of questionable transactions involving Good Salt and RPMOS<sup>59</sup>;

[50] However, O'Shea's maneuvering did not stop there. More recently, he:

- a) Voluntarily dissolved ByoPlanet on January 19, 2024<sup>60</sup>, while the Judgment was under advisement, only to revive it a few months later on March 26, 2024<sup>61</sup>;
- b) Voluntarily dissolved RPMOS on January 19, 2024<sup>62</sup>;
- c) Voluntarily dissolved Good Salt on April 25, 2024<sup>63</sup>;

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<sup>54</sup> *Bich c. Harpur*, 2023 QCCS 5098, par. 87.

<sup>55</sup> Judgment, par. 68, 144.

<sup>56</sup> Judgment, par. 91-154.

<sup>57</sup> The equivalent amount in US dollars is \$8,291,576.90 USD (see Judgment, par. 163).

<sup>58</sup> Judgment, par. 173.

<sup>59</sup> Judgment, par. 174.

<sup>60</sup> Exhibit R-3.

<sup>61</sup> Exhibit R-7.

<sup>62</sup> Exhibit R-4.

<sup>63</sup> Exhibit R-12.

- d) Continues to maintain confusion between ByoPlanet and Good Salt, while publicly projecting that these corporations are up and running, even taking the stage as a speaker at a recent event on April 24-26, 2024<sup>64</sup>;
- e) Avoided service of the Application for Damages<sup>65</sup>;
- f) Purported to have found an attorney to represent him for the Application for Damages, but no such attorney was present at the hearing, nor filed an answer to the proceeding on his behalf<sup>66</sup>;

[51] O'Shea's conduct in these proceedings is an abuse of process and must be severely sanctioned. He has weaponized our justice system, using stalling tactics for the last two years to avoid paying Promark amounts that it is clearly owed. Instituting judicial proceedings is an act filled with symbolism and the Court cannot allow a litigant to misuse judicial resources<sup>67</sup>. Moreover, the abuse at issue here is *on-going*. O'Shea is essentially a moving target. This element shifts the needle on the scale of a potential award of punitive damages to the higher end.

[52] More disconcerting is that the Judgment rendered by this Court calling out the abuse of process did not deter O'Shea, nor did he adjust his conduct accordingly. He voluntarily dissolved the implicated entities he controls, ByoPlanet and RPMOS, while the Judgment was under advisement and then Good Salt after the Judgment was rendered. His actions demonstrate a complete disregard and disrespect for the Canadian justice system. O'Shea did not even bother to show up at the hearing of the Application for Damages leading to this judgment.

[53] O'Shea evidently knows that obtaining a Canadian Judgment is but one step in a lengthy legal process that Promark must continue to navigate, since this Court's Judgment will have to be recognized in the United-States in order to have full force and effect over O'Shea and all of the entities he controls.

[54] The evidence presented as to O'Shea's financial situation consists of ByoPlanet's balance sheet as of December 31, 2022, showing a distribution to O'Shea in the amount of \$ 4,333,243 USD<sup>68</sup>. Moreover, the evidence revealed that O'Shea lives at 175 Royal Palm Drive in Fort Lauderdale, Florida, which appears to be a luxurious home by the water<sup>69</sup>. Based on these elements, the Court concludes that O'Shea comes from an affluent background and that a substantial award of punitive damages is warranted.

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<sup>64</sup> Exhibits R-6, R-8A, R-8B, R-9 and R-10.

<sup>65</sup> Application for Authorization of Special Mode of Service, Exhibits R-8 and R-9.

<sup>66</sup> Exhibit R-6.

<sup>67</sup> *Bich c. Harpur*, 2023 QCCS 5098, par. 87.

<sup>68</sup> Exhibit P-48, ByoPlanet's Balance Sheet as of December 31, 2022, p. 8.

<sup>69</sup> Exhibit P-41, Google Maps Photos of the property.

[55] The Court has heard O'Shea's message loud and clear: "Catch me if you can". It intends, through this judgment, to issue a strong message in response, and firmly believes that with the assistance of its US counterparts, O'Shea's tactics will not go unpunished.

[56] In accordance with article 54 al. 1 CCP, the provision for costs in the amount of \$20,000 CAD which is currently held by Dentons, ByoPlanet's former attorneys, as per the judgment rendered on September 1, 2023, should be remitted to Promark, as partial payment of Promark's professional fees<sup>70</sup>.

[57] Finally, as provided by article 660(10) CCP, this judgment is provisionally executed as of right since it adjudicates on an abuse of procedure<sup>71</sup>.

#### **FOR THESE REASONS, THE COURT:**

[58] **GRANTS** Promark Electronics Inc.'s present *Application for the Reimbursement of Professional Fees and Disbursements incurred by Promark Electronics Inc. and for punitive damages following the Judgment rendered by Justice Eleni Yiannakis on March 12, 2024*;

[59] **DECLARES** that ByoPlanet International LLC and Richard Patrick Michael O'Shea (also known as "Rick O'Shea") jointly and solidarily liable for the reimbursement of professional fees and disbursements incurred by Promark Electronics Inc. from the period beginning February 7, 2022, and ending December 22, 2023, in the sum of **\$570,467.46 CAD**, with legal interest and the additional indemnity provided for by law from the date of the judgment to intervene;

[60] **ORDERS** ByoPlanet International LLC and Richard Patrick Michael O'Shea (also known as "Rick O'Shea") to pay to Promark Electronics Inc. the sum of **\$570,467.46 CAD** for the reimbursement of professional fees and disbursements incurred by from the period beginning February 7, 2022, and ending December 22, 2023, with legal interest and the additional indemnity provided for by law from the date of the judgment to intervene;

[61] **ORDERS** Dentons Canada LLP, former attorneys of ByoPlanet International LLC, to release the **\$20,000 CAD** provision for costs that it currently holds in trust on behalf of ByoPlanet International LLC pursuant to the judgment rendered on September 1, 2023, to Spiegel Sohmer Inc. as partial payment of Promark Electronics Inc.'s professional fees, within 15 days of the judgment to intervene;

[62] **ORDERS** Richard Patrick Michael O'Shea (also known as "Rick O'Shea") to pay to Promark Electronics Inc. the sum of **\$150,000.00 CAD** representing punitive damages, with legal interest and the additional indemnity provided for by law from the date of the judgment to intervene;

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<sup>70</sup> See Exhibit R-5, where Dentons confirms that it still holds the \$ 20,000 suretyship.

<sup>71</sup> *Berthiaume v. Carignan*, (2013) R.J.Q. 1369 (C.A.); *Droit de la famille — 142575*, 2014 QCCA 1934, par. 1.

[63] **ORDERS** the immediate execution of this judgment notwithstanding appeal.

[64] **THE WHOLE** with legal costs.

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**ELENI YIANNAKIS, J.S.C.**

**Mtre Jason S. Novak**  
**Mtre Lara Assy**  
**Spiegel Sohmer Inc.**  
Attorneys for Plaintiff/Cross-Defendant  
Promark Electronics Inc.

**ByoPlanet International LLC**  
**Defendant/Cross-Applicant**  
Absent and Unrepresented Party

**Richard O'Shea**  
**Impleaded Party**  
Absent and Unrepresented Party

Hearing date: May 10, 2023