

**ONTARIO
SUPERIOR COURT OF JUSTICE**

B E T W E E N:

ARCÁDIA PARTICIPAÇÕES LTDA.

**Plaintiff/
Defendant by the Counterclaim**

and

ALEXEY KONDRATIEV and SMART GAMES CANADA, INC.

**Defendants/
Plaintiffs by the Counterclaim**

and

**EUGENE CHAYEVSKY, ADENILTON CEZAR XAVIER, CADILLAC
JACK, INC., FINSTAR FINANCIAL GROUP LLC and TILLEY
INTERNATIONAL & ASSOCIATES INC., carrying on business as
Tilley Entertainment**

Defendants by Counterclaim

AFFIDAVIT OF ALEXEY KONDRATIEV

I, Alexey Kondratiev, of the Township of King, in the Province of Ontario, **MAKE**

OATH AND SAY:

1. I am an individual Defendant, Plaintiff by Counterclaim, and a principal of the Defendant, Plaintiff by Counterclaim, Smart Games Canada, Inc. ("**SGC**"), and as such have knowledge of the matters contained in this affidavit. Where my knowledge is based on information and belief, I have so stated the basis of such information and I believe that information to be true.

2. This affidavit is served in support of a motion to:

- a) Allow **SGC** to be represented by Alexey Kondratiev, who is not a lawyer;
 - b) Validate the service of Affidavit of Documents by Alexey Kondratiev upon the lawyers of record of the Plaintiff and the Defendants by Counterclaim, other than Cadillac Jack, Inc. ("**Cadillac Jack**");
 - c) Strike the Statement of Defence of the Defendants by Counterclaim Finstar Financial Group LLC ("**Finstar LLC**") and Tilley International & Associates Inc. ("**Tilley**") for failure to produce their Affidavits of Documents;
3. In this affidavit, I first set out the history of the proceedings followed by the evidence of the information I obtained which prompted me to bring this motion.
4. I swear this affidavit, on my own behalf and on behalf of **SGC**, collectively, as "**the Kondratiev Parties**".

The Events giving rise to the Action and Counterclaim

5. This action arises out of an agreement entered into between the **Kondratiev Parties** and the Defendants by Counterclaim Eugene Chayevsky ("**Chayevsky**") and Cezar Xavier ("**Xavier**") to develop a new software platform to be used in electronic bingo gambling machines and other intellectual property for **Cadillac Jack** and **Arcádia**. **Chayevsky** was formerly the President of the Defendant by Counterclaim **Finstar LLC** and the former Director and CEO of **Cadillac Jack**. **Xavier** was the former President of the Plaintiff, Defendant by Counterclaim, **Arcádia**.
6. On behalf of the **Kondratiev Parties**, I entered into this agreement based on a number of representations made to me by **Chayevsky** and **Xavier**. Amongst other things, **Chayevsky** and **Xavier** represented to me that the owner, founder, Chief Executive

Officer and Chairman of **Finstar LLC**, Oleg Boyko, with whom, at the relevant time, the **Kondratiev Parties** had a personal business relationship, wanted the **Kondratiev Parties** to design and build prototype bingo machines and software (the "SGC Machines and Software") on a pilot basis to demonstrate the financial viability of the project. **Finstar LLC** is a private equity firm that has a number of subsidiary businesses. At the material time, the firm owned or held all and/or a significant portion and controlling interest of **Finstar LLC**, **Cadillac Jack** and **Arcádía**. If they liked the SGC Machines and Software, they represented to me that **Cadillac Jack** or **Arcádía** would purchase the SGC Machines and Software, otherwise the SGC Machines and Software would be returned to the **Kondratiev Parties**. Said representations are more thoroughly discussed in the Fresh as Amended Statement of Defence and Counterclaim attached at **Exhibit "A"**.

7. Based upon and in reliance on **Chayevsky** and **Xavier's** representations, on behalf of **SGC**, I agreed to design and build the SGC Machines and Software and to provide them to **Cadillac Jack** and/or **Arcadia** on a pilot basis.

8. Once completed, the SGC Machines and Software were shipped from Ontario to the Bingo Ra Casino in Mexico. I understood through discussions with **Chayevsky** and **Xavier** that the bingo machines had been installed and were successfully operating in the Bingo Ra Casino.

9. In or around February 2008, I learned that **Chayevsky** and **Xavier** had, either personally or on behalf of the companies they represented, and without my consent, authorization or knowledge, misappropriated and wrongfully converted the SGC Machines and Software for their own use and possession by entering into an agreement

with the Defendant by Counterclaim, **Tilley**, to provide **Tilley** with the SGC Machines and Software for **Tilley's** use in the Bingo Ra Casino for commercial purposes.

10. I subsequently learned that **Cadillac Jack** and **Arcadia**, under the direction of **Chayevsky** and **Xavier**, proceeded to replicate and duplicate the software used in the SGC Machines and caused it to be used in **Cadillac Jack** and **Arcadia's** own machines that were to be sold to **Tilley** and other gaming operations.

11. On May 12, 2008 **Arcadia** commenced an action bearing the Court File No. CV-08-354560 against the **Kondratiev Parties** claiming, inter alia a declaration that it owned the SGC Machines and Software. The **Kondratiev Parties** defended that action and counterclaimed for, amongst other things, the same declaratory relief (i.e. that the **Kondratiev Parties** owned the SGC Machines and Software).

12. On August 27, 2009, the **Kondratiev Parties** brought an action bearing Court File No. CV-09-385909 against **Chayevsky, Xavier, Cadillac Jack, Finstar LLC and Tilley**. The Statement of Defence was served on October 1, 2013, after various amendments were made to the Statement of Claim following a number of pleadings motions.

13. On February 24, 2014, Master Haberman ordered the consolidation of the 2009 action into the 2008 Action.

14. On January 22, 2016, the **Kondratiev Parties** delivered the Fresh as Amended Defence and Counterclaim in the consolidated action.

15. A copy of the Reply and Defence to Counterclaim of **Arcadia, Xavier, Chayevsky, Finstar LLC and Tilley**, dated March 22, 2016, is attached hereto as **Exhibit "B"**.

16. A copy of the Defence to Counterclaim of **Cadillac Jack**, dated March 31, 2016, is attached hereto as **Exhibit "C"**.

17. The parties have finalized pleadings and some of the parties have exchanged Affidavits of Documents. The Examinations for discovery of the **Kondratiev Parties** have been completed. The **Kondratiev Parties** have examined the Defendants by counterclaim **Chayevsky** and **Cadillac Jack**.

The status of the Corporate Plaintiff and Defendants by Counterclaim

18. I verily believe that the Plaintiff, Defendant by Counterclaim, **Arcádia** was dissolved by the Brazilian government. On February 14, 2018, I obtained a certified translation of the Certificate of Cancellation of **Arcádia's** National Register of Legal Entities registration. From my own review of the Certificate of Cancellation, I note that the cited reason for cancellation is "repeated violations". The Certificate of Cancellation further confirms that the Minister of Finance, Federal Revenue of Brazil, cancelled **Arcádia's** National Register of Legal Entities registration effective February 9, 2015. According to my own experience, such cancellation of the registration can occur due to a failure to file taxes for at least five years. A copy of the certified translation which I reference here is attached as **Exhibit "D"**.

19. I also verily believe that the Defendant by Counterclaim **Tilley** has been dissolved or abandoned. My belief is based on a correspondence from **Tilley's** counsel which is dated May 31, 2016. In said correspondence, a copy of which is attached hereto as **Exhibit "E"**, counsel enclosed the affidavit of documents of **Finstar LLC**, **Chayevsky** and **Xavier**, respectively, and advised that **Arcádia** relies on its previously delivered affidavit of documents. With respect to the Defendant by Counterclaim **Tilley**, counsel

advised as follows: *"We have been unable to reach Mr. Tilley on behalf of Tilley International & Associates" Inc."*.

20. The Reply and Defence to Counterclaim states in paragraph 7 that **Finstar LLC** ceased conducting business and was dissolved in 2013, four years after it was served with the original Statement of Defence and Counterclaim by **Kondratiev Parties**.

21. On or about July 1, 2019, I obtained a document indicating that the Chief Executive Officer and Chairman of **Finstar LLC**, Oleg Boyko, is a subject of international arrest warrant issued by Nicosia District Court in the Republic of Cyprus. The charges include Commercial Fraud for which the maximum penalty is ten years imprisonment. A copy of the Interpol Red Notice Application is attached as **Exhibit "F"**.

22. Mr. Boyko is listed as a potential target for the US sanctions according to a US congressional report pursuant to Section 241 of the Countering America's Adversaries Through Sanctions Act (CAATSA) of 2017. He is listed as number 17 in the Appendix B on the list of Russian oligarchs with potential for sanctions in this report. A copy of the Report dated January 29, 2018 is attached here as **Exhibit "G"**.

23. I have known Mr. Boyko since 1981 and conducted business with him for about twenty years. I know him as a person who has absolutely no respect for the rule of the law. I have witnessed Mr. Boyko conducting business with known organized crime figures and corrupt Russian government officials. I have personally participated in some financial activities with Mr. Boyko that may have been illegal in Russia and other countries, but I have never been investigated or criminally prosecuted for them.

24. When I have traveled to Brazil on request of Mr. Boyko to oversee his business that was not related to Arcadia, I was introduced to Ronnie Ferreira by **Chayevsky**.

Chayevsky explained to me that Mr. Ferreira is a known Brazilian criminal who has connections in Brazilian criminal world and provides protection services from local organized crime.

25. Orestes Pasparakis, as the lawyer of record for the Defendant by Counterclaim, **Arcadia**, invited Ronnie Ferreira to Toronto in order to be examined on **Arcadia's** behalf. Mr. Ferreira had no real association with **Arcadia** and was provided with a Power of Attorney by **Arcadia's** parent offshore shell company.

26. Around the time of the examinations of discoveries in 2009, Mr. Pasparakis verbally accosted me in the presence of my attorney, Mr. Altshuller of Teplitsky Colson. In this exchange, Mr. Pasparakis called me a "nobody" and asked me to "think about my family".

27. Sometime in 2011, the founder and former CEO of **Cadillac Jack**, Mike Macke, told me that he has an audio recording of a meeting including Ronnie Ferreira and some of Mr. Boyko's associates where Mr. Ferreira offered to kill Mr. Macke for lower price than that offered by Russian counterparts.

Service of the Affidavit of Documents on behalf of the Kondratiev Parties

28. According to the timetable ordered by Master Josefo on May 8, 2019, the deadline for delivering the Affidavit of Documents on behalf of the **Kondratiev Parties** was set as June 30, 2019. A copy of Master Josefo's order is attached as **Exhibit "H"**.

29. On June 28, 2019, I personally served the lawyers for the parties other than those for Cadillac Jack with a Supplemental Affidavit of Documents by sending a copy by fax and email.

30. On July 31, 2019, Mr. Siddiqui of Norton Rose rejected the service of these documents stating, "*We do not concede that these documents were validly served*". A copy of Mr. Siddiqui's letter is attached as **Exhibit "I"**.

Deficiency of the Finstar LLC Affidavit of Documents

31. On May 31, 2016, the **Kondratiev Parties'** lawyers were served with the Affidavit of Documents of **Finstar LLC**, a copy of which is attached here as **Exhibit "J"**. The affidavit is sworn by a person who identifies himself as Pavel Ivlev and he is "*a consultant to Wolff Investments Limited*". The document does not indicate that Mr. Ivlev is an officer or director of **Finstar LLC** or was authorized to act on its behalf.

32. The Affidavit of Documents sworn by Mr. Ivlev contains the same set of the documents that was already provided by **Arcadia**. The same spelling errors in the index page make me believe that both Affidavits were prepared from the same original computer file by rearranging the order of the documents.

33. I believe that it is important for the **Kondratiev parties** to obtain the bank records of **Finstar LLC** in order to prove that **Finstar LLC** has financed the duplication of SGC machines and subsequent transfer of SGC intellectual property to **Cadillac Jack**.

34. Mr. Ivlev has attended the Mediation in this action as a third party on October 25, 2019.

35. Mr. Boyko introduced me to Mr. Ivlev sometime in 1999. Mr. Boyko explained to me that Mr. Ivlev is his lawyer who helps him with his illegal activities in Russia.

36. While preparing this affidavit, I have come across the article on the "Radio Free Europe" website that states that Mr. Ivlev was sentenced in absentia by Moscow court to

ten years of imprisonment for money laundering in May of 2019. A copy of the article is attached here as **Exhibit “K”**.

Mediation attendance

37. The Order of Master Brott dated October 3, 2019 states in paragraph 3:

The four defendants (save and except Cadillac Jack) shall be represented at mediation by one representative (as well as counsel) and it is understood that the representative has instructions from all defendants (except Cadillac Jack) that any settlement shall bind all of them. These defendants (except Cadillac Jack) have agreed to be bound by any settlement.

A copy of order is attached here as **Exhibit “L”**.

38. No representative of the defendants other than Cadillac Jack was in attendance at the mediation other than their counsel. The mediation was attended by Pavel Ivlev as a third party and he has produced no evidence that he is representing any of the defendants. A copy of Mediation agreement signed on behalf of the defendants other than Cadillac Jack is attached here as **Exhibit “M”**.

Smart Games Canada, Inc. Financial Status

39. As a principal of the Plaintiff by Counterclaim, **Smart Games Canada, Inc.**, I can confirm that the company has experienced undue hardship arising from the cause of action and subsequent steps in this litigation. **Smart Games Canada, Inc.** has not generated any revenue for over three years. I have attached financial statements from the company's accounting firm, "Accounting Plus" as **Exhibit “N”**.

SWORN BEFORE ME at the Township
of King, in the Province of Ontario on this
27th day of October, 2019



Commissioner for Taking Affidavits



Alexey Kondratiev

NATALIA KONDRATIEVA

LICENSED PARALEGAL

P14065

ARCÁDIA PARTICIPAÇÕES LTDA.
Plaintiff
ALEXEY KONDRATIEV et al.
Plaintiffs by Counterclaim

-and- ALEXEY KONDRATIEV et al.
Defendants
-and- ARCÁDIA PARTICIPAÇÕES LTDA. et al.
Defendants to the Counterclaim

Court File No. CV-08-354560

ONTARIO
SUPERIOR COURT OF JUSTICE
PROCEEDING COMMENCED AT
TORONTO

AMENDED NOTICE OF MOTION

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Defendants (Plaintiffs by Counterclaim)