

ALBERTA SECURITIES COMMISSION

Citation: Re La Terra Ventures Inc., 2015 ABASC 796

Date: 20150805
Docket: ENF-009034

SETTLEMENT AGREEMENT AND UNDERTAKING

La Terra Ventures Inc., La Terra Mortgage Inc., Discovery Plains Park Limited, Eagle Ridge Park Limited, Mariano Giuseppe Serpico and Kevin Gary Allan
(the **Respondents**)

Agreed Facts

Introduction

1. Staff of the Alberta Securities Commission (**Staff** and **Commission**, respectively) conducted an investigation into allegations that La Terra Ventures Inc. (**La Terra**), La Terra Mortgage Inc. (**LT Mortgage**), Discovery Plains Park Limited (**Discovery Plains**), Eagle Ridge Park Limited (**Eagle Ridge**), Mariano Giuseppe Serpico (**Serpico**), Kevin Gary Allan (**K Allan**) and other individuals were involved in illegal trades and distributions of securities in contravention of Alberta securities laws.
2. The investigation confirmed, and the Respondents admit, that such trades and distributions contravened those sections of the *Securities Act*, RSA 2000, c S-4, as amended, (**Act**), referred to in this Settlement Agreement and Undertaking (**Agreement**).
3. Solely for securities regulatory purposes in Alberta and elsewhere, and as the basis for the settlement and undertaking referred to in paragraphs 50-52, but not in respect of any other proceedings or claims that may now or at any time in the future exist, each of the Respondents agree to the facts and consequences set out in this Agreement.
4. Terms used in this Agreement have the same meaning as provided in the Alberta securities laws, a defined term in the *Act*.

Parties

5. La Terra is a corporation formed pursuant to the laws of Alberta. It was incorporated in June of 2008. At all material times it operated out of Calgary, Alberta. La Terra has focused its activities on real estate acquisition and management, pre-development activities, and sales. It has also been involved in the business of raising funds in order to finance real estate acquisitions and operations.

6. LT Mortgage is a corporation formed pursuant to the laws of Alberta. It was incorporated in October of 2011. At all material times it has operated out of Calgary, Alberta. Its business has focused on the sale of private mortgage loans connected to La Terra's land acquisitions.

7. Discovery Plains is a corporation formed pursuant to the laws of Alberta. It was incorporated in July of 2008. At all material times it has operated out of Calgary, Alberta. Its purpose has been to facilitate fund-raising in relation to a specific La Terra land acquisition.

8. Eagle Ridge is a corporation formed pursuant to the laws of Alberta. It was incorporated in January of 2009. At all material times it has operated out of Calgary, Alberta. Its purpose has been to facilitate fund-raising in relation to a specific La Terra land acquisition.

9. Serpico is a resident of Calgary, Alberta. At all material times he has been a director and shareholder of La Terra and LT Mortgage and a director of Eagle Ridge and Discovery Plains.

10. K Allan is a resident of Mission, British Columbia. At all material times he has been a director and shareholder of La Terra and LT Mortgage and a director of Eagle Ridge and Discovery Plains.

Circumstances

The Business of La Terra

11. La Terra has operated a real estate business in southern Alberta since June of 2008. Pursuant to its business model, La Terra would identify undeveloped lands that were at the edge of, or had recently been incorporated into, urban centres in southern Alberta. La Terra would seek to identify undeveloped land that had the potential for future development.

12. La Terra would enter into purchase and sale contracts with the owners of such lands. These contracts were conditional on La Terra raising funds to pay the purchase price. La Terra would then seek to raise capital to fund the acquisition. It did so through the sale of undivided interests in the land (**UDI(s)**). La Terra had begun making these sales by at least September of 2008.

13. La Terra represented to potential investors that once the acquisition closed it would manage all affairs relating to the land. Among its duties would be to take steps to move the land closer to being developable by initiating or supporting regulatory initiatives necessary for future development and by engaging in what La Terra described as "proactive planning" involving land planners and engineers. La Terra also indicated it would seek to attract and negotiate with potential buyers that may be interested in acquiring developable land.

14. At the time of investment, La Terra would have UDI purchasers sign a Sale and Purchase Agreement (**SPA**) and a Joint Venture Agreement (**JVA**). The SPA and JVA appointed La Terra as administrator of the investor's UDI unit and of a joint venture in relation to the respective property. The SPA required each investor purchasing a UDI to contribute to a "development fund" or an "administration fund" for the property. The SPA and JVA made La Terra

responsible for handling the administration fund. The JVA stated La Terra was permitted to use the funds to support “predevelopment activities”, such as recommending, initiating, or supporting an annexation or rezoning processes, and initiating or supporting planning and engineering processes, which might include area structure plans or conceptual/neighbourhood plans (the **Improvement Activities**).

15. Once it had raised sufficient funds and completed its purchase of a property, La Terra would become the registered owner. It would then have the undivided interests of the investors registered on title.

16. La Terra would typically retain some undivided interests of its own in the properties in order to profit from the eventual sale of the land. It also made a profit by selling UDIs in a property for more than it agreed to pay the vendor.

17. La Terra described each of its UDI ventures with a promotional brand. The land ventures it promoted were as follows:

- “Discovery Plains”: A project involving a land acquisition in Olds, Alberta that closed in September 2009.
- “Eagle Ridge”: A project involving a land acquisition near Okotoks, Alberta that closed in October 2009.
- “Heritage Heights Project I”: A project involving a land acquisition in Strathmore, Alberta that closed in February 2012.
- “Heritage Heights Project II”: A project involving a land acquisition in Strathmore, Alberta that closed in July 2012.
- “Iron Landing”: A project involving a land acquisition near Crossfield, Alberta that closed in February 2011.
- “The Meadows”: A project involving a land acquisition near Claresholm, Alberta that closed in July 2011.
- “Creekside”: A project involving a land acquisition near Brooks, Alberta, for which La Terra sought to raise funds in or around 2012, but which did not close.

18. La Terra raised approximately \$28.4 million through the sale of UDIs between in or around September 2008 and in or around September 2012.

19. La Terra employed a group of salespeople to promote its distribution of UDIs. These individuals solicited investment and received commissions on their sales. La Terra provided them with promotional materials and managed their activities.

20. La Terra’s sale of UDIs constituted trades in investment contracts, a form of security under the *Act*. UDI purchasers invested in a common enterprise with the goal of making a profit.

They relied on La Terra to manage the acquired land and carry out the Improvement Activities in order to earn a return. Since the UDIs had not been previously issued, La Terra's sale of UDIs constituted the distribution of securities under the *Act*.

21. Neither La Terra, nor any other party, filed a preliminary or final prospectus with the Commission in regard to La Terra's sale of UDIs, nor did the Executive Director of the Commission issue a receipt for a prospectus in relation to La Terra's distribution of UDIs.

22. La Terra has never registered with the Commission as a dealer or in any other capacity. Some or all of the members of the sales force of La Terra involved in selling UDIs did not register with the Commission as a dealer or in any other capacity.

23. La Terra made no effort to limit its distribution of UDIs to investors who would have come under an exemption to issuer prospectus obligations under section 110(1) of the *Act*. Many UDI purchasers would not have met the requirements of an exemption had La Terra made inquiries.

24. In relation to trades involving La Terra before September 28, 2009, La Terra made no effort to limit its promotion and sale of UDIs to investors who would have come under an exemption to the obligation to register before trading imposed by section 75(1) of the *Act*. In relation to trades after September 28, 2009, La Terra acted as a dealer and was in the business of trading in securities without registration.

25. Serpico and K Allan were aware of and authorized, permitted, or acquiesced in La Terra's distribution of UDIs and the trading activity of La Terra's sales representatives.

Discovery Plains and Eagle Ridge

26. In order to allow investments from RRSP accounts in relation to the Discovery Plains project and the Eagle Ridge project, La Terra and its sales force promoted a scheme through which Discovery Plains and Eagle Ridge (the **Park Corporation(s)**) would hold undivided interests on behalf of investors. Investors would receive shares in one of the Park Corporations as part of the consideration for their investment. The respective Park Corporation would sign the SPA and the JVA as the UDI-holder.

27. The issuance and sale of shares by the Park Corporations were trades in a security under the *Act*. Since the shares had not been previously issued, the sale of shares in the Park Corporations constituted the distribution of securities under the *Act*.

28. Neither the Park Corporations, nor any other party, filed a preliminary or final prospectus with the Commission in regard to the distribution of shares by the Park Corporations, nor did the Executive Director of the Commission issue a receipt for a prospectus in relation to the Park Corporations' distribution of shares.

29. La Terra has never registered with the Commission as a dealer or in any other capacity. Some or all of the members of the sales force of La Terra involved in selling Park Corporation shares did not register with the Commission as a dealer or in any other capacity.

30. La Terra and the Park Corporations made no effort to limit the distribution of Park Corporation shares to investors who would have come under an exemption to issuer prospectus obligations imposed by section 110(1) of the *Act*.

31. In relation to trades involving the Park Corporations and La Terra before September 28, 2009, La Terra made no effort to limit its promotion and sale of Park Corporation shares to investors who would have come under an exemption to the obligation to register before trading imposed by section 75(1) of the *Act*. In relation to trades after September 28, 2009, La Terra acted as a dealer and was in the business of trading in securities without registration.

32. Serpico and J Allan were all aware of and authorized, permitted or acquiesced in the distributions of shares by the Park Corporations and the involvement of the La Terra sales force in promoting these share sales to investors.

Mortgage Financing and LT Mortgage

33. In order to raise funds in each of its projects, La Terra would arrange for some individuals to lend money to UDI purchasers in return for annual interest and the registration of a mortgage on title.

34. La Terra would typically itself first extend credit to the investor by registering the investor's interest on title before receiving full payment of the cost of the UDI. It would have itself registered on title as a mortgagee over the borrower's undivided interest. La Terra would then transfer the mortgage interest to the lender in return for the lender paying the remaining cost of the UDI purchase. The investor would then pay interest on the loan to the lender.

35. LT Mortgage eventually took over La Terra's mortgage operations as described in paragraphs 33 and 34 above.

36. La Terra and LT Mortgage would sometimes find more than one lender to fund the UDI purchase of a single investor. In such cases, several lenders would advance loan funds and appear on title as mortgagees.

37. La Terra and LT Mortgage employed a group of salespeople to promote their distribution of mortgages. These individuals solicited investment by lenders and received commissions on their sales. La Terra and LT Mortgage provided them with promotional materials and managed their activities.

38. Neither La Terra nor LT Mortgage were licensed as mortgage brokers or mortgage dealers in Alberta. Neither Serpico, K Allan nor any other officer or director of La Terra or LT Mortgage were registered as mortgage brokers or mortgage dealers in Alberta; nor were some or all individuals who were members of the sales force of La Terra or LT Mortgage registered as mortgage brokers or mortgage dealers in Alberta.

39. The mortgage offerings of La Terra and LT Mortgage constituted securities under the *Act*. Brokering the mortgage loans between investors and lenders constituted trading in a security. Registering and then transferring mortgage interests from La Terra and LT Mortgage to

lenders constituted trading in newly issued securities and was therefore a distribution of securities under the *Act*.

40. Neither La Terra, LT Mortgage, nor any other party, filed a preliminary or final prospectus with the Commission in regard to the issuance of mortgages by La Terra and LT Mortgage, nor did the Executive Director of the Commission issue a receipt for a prospectus in relation to the issuance of mortgages by La Terra and LT Mortgage.

41. Neither La Terra nor LT Mortgage has ever registered with the Commission as a dealer or in any other capacity. Some or all of the members of the sales force of La Terra and LT Mortgage involved in selling mortgages also did not register with the Commission as a dealer or in any other capacity.

42. La Terra and LT Mortgage made no effort to limit the distribution of mortgages to investors who would have come under an exemption to issuer prospectus obligations imposed by section 110(1) of the *Act*.

43. In relation to trades involving mortgages before September 28, 2009, La Terra made no effort to limit its sale of mortgages to investors who would have come under an exemption to the obligation to register before trading imposed by section 75(1) of the *Act*. In relation to trades involving mortgages after September 28, 2009, La Terra and LT Mortgage acted as dealers and were in the business of trading in securities without registration.

44. Serpico and K Allan were aware of and authorized, permitted, or acquiesced in the distribution of mortgages by La Terra and LT Mortgage and the trading activity of the sales force of La Terra and LT Mortgage in relation to mortgage brokering.

Admitted Contraventions of Alberta securities laws (the Admitted Contraventions)

45. Based on the Agreed Facts above, the Respondents admit the following:

45.1 La Terra, LT Mortgage, Discovery Plains, and Eagle Ridge all violated section 110(1) of the *Act* by distributing securities without having filed and received a receipt for a preliminary prospectus or a prospectus, and without an exemption from that requirement for some or all of those distributions;

45.2 in relation to trades in UDIs, Park Corporation shares and mortgages before September 28, 2009, La Terra violated section 75(1) of the *Act* by trading in securities without being registered in accordance with Alberta securities laws and without an exemption from that requirement for some or all of those trades;

45.3 in relation to trades in UDIs, Park Corporation Shares and mortgages after September 28, 2009, La Terra and LT Mortgage violated section 75(1) of the *Act* by acting as a dealer without being registered in accordance with Alberta securities laws;

45.4 Serpico and K Allan authorized, permitted, or acquiesced in the violations of Alberta securities laws by the La Terra, LT Mortgage, Discovery Plains and Eagle Ridge;

45.5 the Respondents' misconduct, as described in each of the above breaches of Alberta securities laws, constitutes conduct that was contrary to the public interest.

Circumstances Relevant to Settlement

46. The Respondents have not been previously sanctioned by the Commission.
47. The Respondents cooperated with Staff during the investigation.
48. This Agreement has saved the Commission the time and expense associated with a contested hearing under the *Act*.

Additional Facts and Considerations

49. The Respondents state that while recognizing and accepting responsibility for the Admitted Contraventions, at no time were the Respondents deliberately or intentionally intending to contravene Alberta securities laws. Rather, the Respondents were attempting to operate within the parameters of Alberta securities laws, and, at the time of the conduct set out above, believed that their actions were in accordance with Alberta securities laws.

Settlement and Undertakings

50. Based on the Agreed Facts and Admitted Contraventions, Serpico and K Allan each undertake to pay respectively to the Commission the amount of \$50,000 in settlement of all allegations against each of them;
51. Serpico and K Allan each undertake to pay respectively to the Commission the amount of \$5,000 for investigation costs;
52. The Respondents undertake not to make use of any exemptions in Alberta securities laws for a period of one year from the date of this Agreement. However, this restriction will not apply in the case where the Respondents sell any UDIs they own in relation to the projects described in paragraph 18 as part of a sale of the project lands to a single buyer that has made an offer to purchase all UDIs in relation to the property.

Administration

53. The Respondents acknowledge that they received independent legal advice and have voluntarily made the admissions and undertakings in this Agreement.
54. The Respondents acknowledge and agree that the Commission may enforce this Agreement in the Court of Queen's Bench or in any other court of competent jurisdiction.
55. Execution and fulfillment of the terms of this Agreement by the Respondents resolves all issues involving the Respondents relating to the conduct described above, and Staff will take no further steps against them arising from these facts.

56. This Agreement may be executed in counterpart.

Signed by the duly authorized signatory)
of LA TERRA VENTURES INC., at)
Calgary, Alberta this) LA TERRA VENTURES INC.
4th day of August 2015, in the)
presence of:)
))
"Original Signed By")
WITNESS NAME) Per: "Original Signed By"
) Name of Authorized Signatory
))
WITNESS NAME)
SIGNATURE)

Signed by the duly authorized signatory)
of LA TERRA MORTGAGE INC., at)
Calgary, Alberta this) LA TERRA MORTGAGE INC.
4th day of August 2015, in the)
presence of:)
))
"Original Signed By")
WITNESS NAME) Per: "Original Signed By"
) Name of Authorized Signatory
))
WITNESS NAME)
SIGNATURE)

Signed by the duly authorized signatory)
of DISCOVERY PLAINS PARK)
LIMITED, at Calgary,) DISCOVERY PLAINS PARK LIMITED
Alberta this 4th day of)
August 2015, in the presence of:)
))
"Original Signed By")
WITNESS NAME) Per: "Original Signed By"
) Name of Authorized Signatory
))
WITNESS NAME)
SIGNATURE)

Signed by the duly authorized signatory)
of EAGLE RIDGE PARK LIMITED, at)
Calgary , Alberta this) EAGLE RIDGE PARK LIMITED
4th day of August 2015, in the)
presence of:)
))
))
“Original Signed By”)
WITNESS NAME) Per: “Original Signed By”
) Name of Authorized Signatory
))
“Original Signed By”)
SIGNATURE)

Signed by NAME OF MARIANO)
GIUSEPPE SERPICO at)
Calgary , Alberta this)
30 day of July 2015,)
in the presence of:)
))
))
WITNESS NAME)
WITNESS NAME) “Original Signed By”
) MARIANO GIUSEPPE SERPICO
))
“Original Signed By”)
SIGNATURE)

Signed by KEVIN GARY ALLAN at)
Mission, BC this)
28 day of July 2015,)
in the presence of:)
))
))
WITNESS NAME)
WITNESS NAME)
) “Original Signed By”
) KEVIN GARY ALLAN
))
“Original Signed By”)
SIGNATURE)

) ALBERTA SECURITIES COMMISSION
)
))
Calgary, Alberta, 5th August 2015)
) “Original Signed By”
) David C. Linder, Q.C.
) Executive Director