

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**



THE HONOURABLE
JUSTICE MYERS

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TUESDAY, THE 19th DAY
OF DECEMBER, 2017

BETWEEN:

**KSV KOFMAN INC., IN ITS CAPACITY AS RECEIVER AND
MANAGER OF CERTAIN PROPERTY OF SCOLLARD
DEVELOPMENT CORPORATION, MEMORY CARE INVESTMENTS
(KITCHENER) LTD., MEMORY CARE INVESTMENTS (OAKVILLE)
LTD., 1703858 ONTARIO INC., LEGACY LANE INVESTMENTS LTD.,
TEXTBOOK (525 PRINCESS STREET) INC. AND TEXTBOOK (555
PRINCESS STREET) INC.**

Plaintiff

- and -

**AEOLIAN INVESTMENTS LTD., JOHN DAVIES IN HIS PERSONAL
CAPACITY AND IN HIS CAPACITY AS TRUSTEE OF BOTH THE
DAVIES ARIZONA TRUST AND THE DAVIES FAMILY TRUST,
JUDITH DAVIES IN HER PERSONAL CAPACITY AND IN HER
CAPACITY AS TRUSTEE OF THE DAVIES FAMILY TRUST, AND
GREGORY HARRIS SOLELY IN HIS CAPACITY AS TRUSTEE OF THE
DAVIES FAMILY TRUST**

Defendants

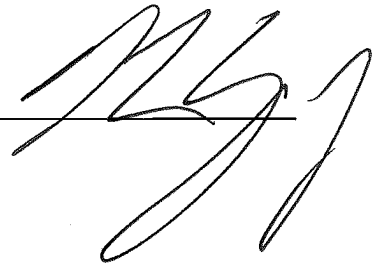
ORDER

THIS MOTION, made by the Defendant, John Davies, for an order granting permission to access additional funds for ordinary living expenses pursuant to the Order of the Honourable Justice Myers dated August 30, 2017 (the "**Mareva Order**"), which is attached hereto as **Appendix "A"**, was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the materials filed by the Defendant, including the Affidavit of John Davies sworn December 13, 2017, and on hearing the submissions of counsel for the Defendant and of the Plaintiff,

1. **THIS COURT ORDERS** that service of the Notice of Motion is hereby abridged and validated.

2. **THIS COURT ORDERS** that Mr. and Mrs. Davies, in their personal capacities, are authorized and permitted to access and spend up to \$30,000 in the aggregate for ordinary living expenses and legal representation. This amount is in addition to the \$25,000 referred to in paragraph 5 of the Mareva Order.



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LE / DANS LE REGISTRE NO:

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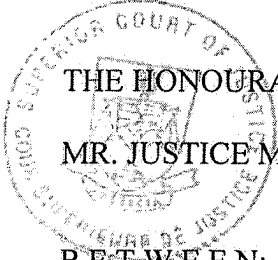
PER / PAR:



A handwritten signature in black ink, appearing to be 'ML', is written below the text 'PER / PAR:'.

Appendix "A"

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



THE HONOURABLE
MR. JUSTICE MYERS

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)

WEDNESDAY, THE 30th
DAY OF AUGUST, 2017

B E T W E E N:

**KSV KOFMAN INC. IN ITS CAPACITY AS RECEIVER AND MANAGER
OF CERTAIN PROPERTY OF SCOLLARD DEVELOPMENT
CORPORATION, MEMORY CARE INVESTMENTS (KITCHENER)
LTD., MEMORY CARE INVESTMENTS (OAKVILLE) LTD., 1703858
ONTARIO INC., LEGACY LANE INVESTMENTS LTD., TEXTBOOK
(525 PRINCESS STREET) INC. AND TEXTBOOK (555 PRINCESS
STREET) INC.**

Plaintiff

- and -

JOHN DAVIES AND AEOLIAN INVESTMENTS LTD.

Defendants

ORDER

NOTICE

If you, the defendants and intended defendants, John Davies in your personal capacity and in your capacity as trustee and/or representative of both the Davies Arizona Trust and the Davies Family Trust (in all such capacities, "**Mr. Davies**"), Judith Davies in your personal capacity and in your capacity as trustee and/or representative of the Davies Family Trust (in all such capacities, "**Ms. Davies**"), Gregory Harris solely in your capacity as trustee and/or representative of the Davies Family Trust ("**Mr. Harris**") and Aeolian Investments Ltd. ("**Aeolian**" and, collectively with Mr. Davies, Ms. Davies and Mr. Harris, the "**Defendants**"), disobey this order, you may be held to be in contempt of court and may be imprisoned, fined or have your assets seized. You are entitled to apply on at least twenty-four (24) hours notice to the Plaintiff, for an order granting you sufficient funds for ordinary living expenses and legal advice and representation.

Any other person who knows of this order and does anything which helps or permits the Defendants to breach the terms of this Order may also be held to be in contempt of court and may be imprisoned, fined or have their assets seized.

THIS MOTION, made on notice by the Plaintiff, KSV Kofman Inc. ("**KSV**" or the "**Receiver**"), solely in its capacity as receiver and manager of certain property of Scollard Development Corporation, Memory Care Investments (Kitchener) Ltd., Memory Care Investments (Oakville) Ltd., 1703858 Ontario Inc., Legacy Lane Investments Ltd., Textbook (525 Princess Street) Inc. and Textbook (555 Princess Street) Inc. and not in its personal capacity or in any other capacity, for an interlocutory Order in the form of a worldwide *Mareva* injunction restraining the Defendants from dissipating their assets and other relief, was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Notice of Motion, the Receiver's Fourth Report dated June 6, 2017 with the appendices thereto, the Receiver's Sixth Report dated July 12, 2017 with the appendices thereto, the Receiver's Supplement to the Sixth Report dated August 8, 2017 with the appendices thereto, the factum and book of authorities of the Plaintiff, and the affidavits of Mr. Davies sworn July 14 and July 27, 2017 (collectively, the "**Davies Affidavits**") and the transcript of the cross-examination of Mr. Davies on the Davies Affidavits,

AND ON HEARING the submissions of counsel for the Plaintiff and counsel for Mr. Davies, Aeolian and Ms. Davies, with Mr. Harris's counsel having advised that he takes no position on the motion,

Service

1. **THIS COURT ORDERS** that, to the extent necessary, service of the Notice of Motion, Motion Record, Supplementary Motion Record, Factum and Book of Authorities is hereby abridged and validated.

Mareva Injunction

2. **THIS COURT ORDERS** that the Defendants and, as applicable, their respective servants, employees, agents, assigns, officers, directors and anyone else acting on their behalf or in conjunction with any of them, and any and all persons with notice of this injunction, are restrained from directly or indirectly, by any means whatsoever:

- (a) selling, removing, dissipating, alienating, transferring, assigning, encumbering, or similarly dealing with any assets of the Defendants, wherever situate worldwide, including but not limited to the assets and accounts listed in Schedule "A" hereto;
- (b) instructing, requesting, counselling, demanding, or encouraging any other person to do so; and
- (c) facilitating, assisting in, aiding, abetting, or participating in any acts the effect of which is to do so.

3. **THIS COURT ORDERS** that paragraph 1 applies to all of the Defendants' assets whether or not they are in their own name and whether they are solely or jointly owned. For the purpose of this order, the Defendants' assets include any asset which they have the power, directly or indirectly, to dispose of or deal with as if it were their own. The Defendants are to be regarded as having such power if a third party holds or controls the assets in accordance with their direct or indirect instructions.

4. **THIS COURT ORDERS** that if the total value free of charges or other securities of the Defendants' assets worldwide exceeds \$9,039,740, the Defendants may sell, remove, dissipate, alienate, transfer, assign, encumber, or similarly deal with them so long as the total unencumbered value of the Defendants' assets worldwide remains above \$9,039,740.

Ordinary Living Expenses

5. **THIS COURT ORDERS** that Ms. Davies, in her personal capacity, remains authorized and permitted to access and spend up to an aggregate amount of \$25,000 for ordinary living expenses and legal advice and representation.

6. **THIS COURT ORDERS** that the Defendants may apply for an order, on at least twenty-four (24) hours notice to the Plaintiff, specifying the amount of funds which they are entitled to spend on ordinary living expenses and legal advice and representation.

Third Parties

7. **THIS COURT ORDERS** Royal Bank of Canada, The Toronto-Dominion Bank, Canadian Imperial Bank of Commerce, Bank of Nova Scotia, Bank of Montreal, National Bank of Canada, Laurentian Bank of Canada, Tangerine Bank, President's Choice Bank, JP Morgan Chase and all other banks, credit unions, trusts, financial institutions and financial services companies, whether in Canada or elsewhere, including all of their respective affiliates and branches (collectively, the "**Banks**"), to forthwith freeze and prevent any removal or transfer of monies or assets of the Defendants held in any account or on credit on behalf of the Defendants, with the Banks, until further Order of the Court, including but not limited to the accounts listed in Schedule "A" hereto.

8. **THIS COURT ORDERS** that, to the extent not already done, the Banks forthwith disclose and deliver up to the Plaintiff any and all records held by the Banks concerning the Defendants' assets and accounts, including the existence, nature, value and location of any monies or assets or credit, wherever situate worldwide, held on behalf of the Defendants by the Banks.

Alternative Payment of Security into Court

9. **THIS COURT ORDERS** that this Order will cease to have effect if the Defendants provide security by paying the sum of \$9,039,740 into Court, and the Accountant of the Superior Court of Justice is hereby directed to accept such payment.

Dispensing with Requirement of Rule 40.03

10. **THIS COURT ORDERS** that the requirements of Rule 40.03 of the *Rules of Civil Procedure* shall be and are hereby dispensed with pending further Order of this Court.

Extra-Territorial Application

11. **THIS COURT ORDERS** that, insofar as this Order purports to have any effect outside of the territorial jurisdiction of this Court, no person shall be affected by it or concerned by the terms of it until this Order is declared enforceable or registered or enforced by a foreign court of competent jurisdiction for that purpose, unless that person is:

- (a) a party to this action or any agent of a party to this action; or
- (b) a person who is subject to the judicial jurisdiction of this Court, who has received written notice of this Order within the territorial jurisdiction of this Court.

Extra-Territorial Assistance

12. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada, in the United States or elsewhere to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.

Variation, Discharge or Extension of Order

13. **THIS COURT ORDERS** that anyone served with or notified of this Order may apply to the Court at any time to vary or discharge this Order, on four (4) days notice to the Plaintiff.

14. **THIS COURT ORDERS** that this Order shall remain in full force and effect until there is a final disposition of this action on the merits, unless varied or amended by further Order of this Court.

Costs

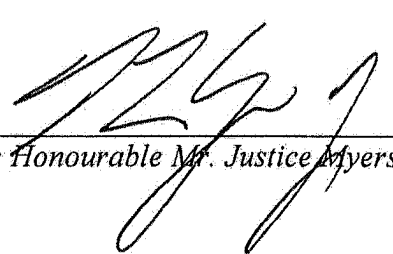
15. **THIS COURT ORDERS** that costs shall be payable to the Plaintiff on a substantial indemnity basis.

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AUG 31 2017

PER / PAR:

ME


The Honourable Mr. Justice Myers

SCHEDULE "A"

| ACCOUNTS | | | |
|----------------------------|---|----------------------------------|--------------------------|
| BANK | ADDRESS | ACCOUNT NO. | ACCOUNT HOLDER |
| Royal Bank of Canada | Aurora-Yonge & Edward Branch, 14785 Yonge St-Unit 101, 14785 Yonge St, Aurora, ON L4G 1N1 | 00442 101 3069 | Aeolian Investments Ltd. |
| JP Morgan Chase Bank, N.A. | 270 Park Avenue, New York, NY, 10017 | 939712261 | Davies Arizona Trust |
| Toronto Dominion Bank | | 5223071 3184 | Davies Family Trust |
| Toronto Dominion Bank | | 7109208 1044 | Judith Davies |
| Toronto Dominion Bank | | 6290533 1044 | Judith Davies |
| Toronto Dominion Bank | | VISA 4520880001949922 3184 | Judith Davies |
| Toronto Dominion Bank | | HELOC 3226203-3184 | John Davies |
| Toronto Dominion Bank | | VISA 4520700001429883 1988 | John Davies |
| Toronto Dominion Bank | | VISA 4520020000093816 3184 | John Davies |

| REAL PROPERTY | | |
|--|---------------------|--|
| MUNICIPAL ADDRESS | PROPERTY PIN | LEGAL DESCRIPTION |
| 24 Country Club Drive King City, ON L7B 1M5 | 29530-0018 (LT) | UNIT 18, LEVEL 1, YORK REGION VACANT LAND CONDOMINIUM PLAN NO. 999 AND ITS APPURTENANT INTEREST. THE DESCRIPTION OF THE CONDOMINIUM PROPERTY IS : PT BLK 1 PL 65M3631, PTS 2, 3 & 4, 65R26022; TOWNSHIP OF KING. S/T & T/W AS SET OUT IN SCHEDULE "A" OF DECLARATION YR325496. S/T EASE IN YR342172. |
| 35411 N. 66th Place, Carefree, Arizona, USA, 85377 -and/or- 35410 N. Ridgeway Drive, Carefree, Arizona, USA, 85377 | APN 216-32-102 | PARCEL 1: LOT 17, CAREFREE GRAND VIEW ESTATES UNIT I, ACCORDING TO BOOK 224 OF MAPS, PAGE 26, RECORDS OF MARICOPA COUNTY, ARIZONA. PARCEL2: AN EASEMENT FOR INGRESS AND EGRESS AND PUBLIC UTILITIES, APPURTENANT TO PARCEL NO. 1, AS SET FORTH IN INSTRUMENT RECORDED IN DOCKET 14945, PAGE 461 AND IN DOCKET 14945, PAGE 464, RECORDS OF MARICOPA COUNTY, ARIZONA, OVER ALL THE PRIVATE ROADS IN CAREFREE GRAND VIEW ESTATES I, ACCORDING TO BOOK 224 OF MAPS, PAGE 26, BOULDER VISTA ESTATES, ACCORDING TO BOOK 227 OF MAPS, PAGE 35; AND CAREFREE GRAND VIEW ESTATES II, ACCORDING TO BOOK 228 OF MAPS, PAGE 2, RECORDS OF MARICOPA COUNTY, ARIZONA. |

**KSV KOFMAN INC. in its capacity as Receiver and Manager of
Certain Property of Scollard Development Corporation, et al.**
Plaintiff

v.

JOHN DAVIES et al.

Defendants

Court File No: CV-17-11822-00CL

ONTARIO

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

**PROCEEDING COMMENCED AT
TORONTO**

ORDER

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Lawyers for the Plaintiff

KSV KOFMAN INC.
Plaintiff

- and -

AEOLIAN INVESTMENTS LTD. et al.
Defendants

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

Proceeding Commenced at Toronto

ORDER

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and Aeolian Investments Ltd.