



**Fifth Report of KSV Kofman Inc.
as Receiver and Manager of
87 Elm Grove Avenue, 46 Puccini Drive
and 6216 Fifth Line**

July 17, 2019

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COURT FILE NO: CV-18-00608356-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

BETWEEN:

BUDUCHNIST CREDIT UNION LIMITED

Applicant

- and -

**2321197 ONTARIO INC., CARLO DEMARIA, SANDRA DEMARIA,
2321198 ONTARIO INC., SASI MACH LIMITED AND VICAR HOMES LTD.**

Respondents

**FIFTH REPORT OF KSV KOFMAN INC.
AS RECEIVER AND MANAGER**

JULY 17, 2019

1.0 Introduction

1. This report ("Report") is filed by KSV Kofman Inc. ("KSV") as receiver and manager (the "Receiver") of certain real property described below.
2. Pursuant to orders of the Ontario Superior Court of Justice (Commercial List) (the "Court") made on November 13, 2018, KSV was appointed as Receiver of the property at 87 Elm Grove Avenue, Richmond Hill, Ontario (the "Elm Grove Property") (the "Receivership Order") and as interim receiver of the property at 46 Puccini Drive, Richmond Hill, Ontario (the "Puccini Property"). On December 4, 2018, the interim receivership of the Puccini Property was converted to a receivership. On January 17, 2019, the Receivership Order was amended for a second time to include the property at 6216 Fifth Line, Egbert, Ontario (the "Cottage Property") (the "Second Amended and Restated Receivership Order")¹. A copy of the Second Amended and Restated Receivership Order is attached as Appendix "A".

¹ The Second Amended and Restated Receivership Order also provides for KSV's appointment as Receiver over a property at 211 Woodland Acres Crescent, Vaughan, Ontario. Enforcement of the Second Amended and Restated Receivership Order over this property is currently stayed on certain terms, as amended, which involve the Receiver monitoring the debtor's compliance in keeping property tax and other bills current for this property.

3. The receivership proceedings commenced on application made by Buduchnist Credit Union Limited (“BCU”), which holds mortgages on the three properties.
4. The principal purpose of these proceedings is for the Receiver to maximize value by realizing on the properties subject to the Second Amended and Restated Receivership Order.

1.1 Purposes of this Report

1. The purposes of this Report are to:
 - a) provide background information and a status update in respect of the properties subject to these receivership proceedings;
 - b) summarize the steps taken by the Receiver to sell the Cottage Property;
 - c) summarize a proposed transaction (the “Transaction”) with Kevin Breedon and Krista-Lee Breedon (jointly, the “Purchaser”) for the Cottage Property pursuant to an Agreement of Purchase and Sale dated June 26, 2019 between the Receiver and the Purchaser (the “APS”);
 - d) provide the basis for the Receiver’s recommendation that the APS and the Transaction be approved by this Honourable Court;
 - e) explain why the Receiver is of the view that the Confidential Appendices to this Report should be sealed pending closing of the Transaction; and
 - f) recommend that the Court issue an order, *inter alia*:
 - approving the APS and the Transaction;
 - vesting title to the Cottage Property in the Purchaser on closing of the Transaction; and
 - sealing the Confidential Appendices to this Report pending closing of the Transaction.

1.2 Currency

1. All currency references in this Report are to Canadian dollars.

2.0 Background

2.1 Elm Grove Property

1. The Elm Grove Property is comprised of land and a new, partially constructed residential home. At the commencement of these proceedings, 2321197 Ontario Inc. (“197”) was the registered owner of the Elm Grove Property. Carlo DeMaria is listed as the sole director and officer of 197.

2. BCU holds a charge/mortgage against the proceeds realized by the Receiver on the sale of the Elm Grove Property securing the principal amount of \$2.2 million. There were no other mortgages registered against the Elm Grove Property at the time it was sold.
3. Pursuant to a Court order made on March 29, 2019, the Court approved a transaction for the sale of the Elm Grove Property to an arm's length purchaser (the "Elm Grove Transaction"). The Elm Grove Transaction closed on April 16, 2019.
4. As at the date of this Report, there is approximately \$1.4 million on deposit in the Receiver's trust account², which largely represents the net proceeds of the Elm Grove Transaction.
5. There are pending motions before the Court in connection with a proceeding commenced under Brampton Court File No. CV-15-2110-00 by Trade Capital Finance Corp. against various defendants, including Mr. DeMaria and certain corporations with which Mr. DeMaria is alleged to have been involved (the "Mareva Order"). Certain of these motions may have implications on priorities and/or entitlement to the proceeds of sale realized in these proceedings. The Receiver intends to bring a distribution motion once the upcoming motions in respect of the Mareva Order have been heard. This sequencing is consistent with the Court's endorsements issued previously in these proceedings.

2.2 Puccini Property

1. The Puccini Property is a residential home in Richmond Hill, Ontario. At the commencement of these proceedings, 2321198 Ontario Inc. ("198") was the registered owner of the Puccini Property. Mr. DeMaria is listed as the sole director and officer of 198.
2. BCU holds a charge/mortgage against the proceeds realized by the Receiver on the sale of the Puccini Property securing the principal amount of \$2.5 million. There were no other mortgages registered against the Puccini Property. The Mareva Order was registered against the Puccini Property when it was sold.
3. Pursuant to a Court order made on February 27, 2019, the Court approved a transaction for the sale of the Puccini Property to an arm's length purchaser (the "Puccini Transaction"). The Puccini Transaction closed on April 5, 2019.
4. As at the date of this Report, there is approximately \$2.1 million on deposit in the Receiver's trust account³, which largely represents the net proceeds of the Puccini Transaction.
5. As with the Elm Grove Property, the Receiver intends to bring a distribution motion once the upcoming motions in respect of the Mareva Order have been heard.

² \$1.3 million has been invested by the Receiver in a fully redeemable term deposit bearing interest at 2.1%. The balance is on deposit in the Receiver's trust account.

³ \$2 million has been invested by the Receiver in a fully redeemable term deposit bearing interest at 2.1%. The balance is on deposit in the Receiver's trust account.

2.3 Woodland Property

1. As noted above, enforcement of the Second Amended and Restated Receivership Order over the property at 211 Woodland Acres Crescent is currently stayed on certain terms, as amended, through August 31, 2019.
2. The Receiver is presently monitoring Mr. DeMaria's compliance with certain terms of the stay, specifically his compliance in keeping property taxes and utilities current for this property. As at the date of this Report, Mr. DeMaria has remained compliant with the terms of the stay. BCU's counsel has advised the Receiver that the other terms of the stay have also been satisfied to-date.

2.4 Cottage Property

1. The Cottage Property is a four-acre, residential cottage in Egbert, Ontario. Mr. DeMaria and Sandra DeMaria are the registered owners of the Cottage Property.
2. BCU holds a charge/mortgage against the Cottage Property securing the principal amount of \$317,240. There are no other mortgages registered against the Cottage Property; however, the Mareva Order was registered against the Cottage Property on June 18, 2015.
3. As at June 30, 2019, the indebtedness owing to BCU secured by the Cottage Property was approximately \$188,250, plus interest and costs which continue to accrue.
4. The Cottage Property is presently occupied by tenants renting the Cottage Property on a month-to-month basis. The tenants are arm's length to Mr. DeMaria.

3.0 Appeal

1. On January 29, 2019, Mr. DeMaria filed a Notice of Appeal with the Court of Appeal of Ontario (the "Court of Appeal") in respect of the Second Amended and Restated Receivership Order, including as it relates to the appointment of the Receiver over the Cottage Property (the "Appeal").
2. On July 5, 2019, the Court of Appeal heard BCU's motion to have the Appeal quashed.
3. On July 11, 2019, the Court of Appeal granted BCU's motion to quash the Appeal. The Court of Appeal's reasons for its decision are attached as Appendix "B".

4.0 Sale Process – Cottage Property

4.1 Request for Proposals from Realtors

1. On April 21, 2019, the Receiver solicited proposals from two realtors to act as listing agent for the Cottage Property. The Receiver requested that each realtor provide:
 - a) a detailed marketing plan;
 - b) an estimate of the value and suggested list price;

- c) background information concerning their firm, including relevant and comparable experience in the Lake Simcoe region of their staff who will be leading this assignment (including résumés for any agents involved);
 - d) commission rate; and
 - e) a statement confirming that the agent is clear of any conflict of interest.
2. Based on its review of the listing proposals submitted to the Receiver on or around April 23, 2019, the Receiver, in consultation with BCU, selected Bernice Whelan Realty Inc. (“Whelan Realty”) to act as the listing broker. The Receiver considered, among other things, Whelan Realty’s substantial experience selling similar properties in the Lake Simcoe region and its commission rate, being 4.5%.
3. A summary of Whelan Realty’s qualifications and experience is provided in Appendix “C”.

4.2 Sale Process Overview

1. A summary of the steps taken by the Receiver to market and sell the Cottage Property in accordance with Paragraphs 3(c) and 3(h) of the Second Amended and Restated Receivership Order is as follows:
 - a) in May, 2019, Whelan Realty was retained as the listing agent to market the Cottage Property on a basis consistent with how similar properties are sold in the Lake Simcoe region, including:
 - listing the Cottage Property on the MLS system;
 - arranging for showings; and
 - placing a “for sale” sign on the property;
 - b) the Cottage Property was marketed on an “as is, where is” basis, meaning a buyer would need to perform/fund the substantial repair and maintenance work that had not been performed by the owner and/or tenants of the Cottage Property for a prolonged period of time; and
 - c) prospective purchasers were advised that:
 - the Receiver has the right to reject any and all offers, including the highest dollar value offer(s); and
 - any transaction will be subject to Court approval.
2. In determining a list price, Whelan Realty undertook an analysis of the market based on recent and relevant comparable transactions and listings and the state of the Cottage Property. Based on Whelan Realty’s advice, the list price was set at \$399,000.

4.3 Sale Process Results

1. Since being listed on June 12, 2019:
 - a) there were 65 showings of the Cottage Property;
 - b) three offers were submitted on June 21, 2019, including the Purchaser's initial offer. Each offer was conditional and required clarification. Accordingly, the bidders (and other parties who had scheduled showings) were requested to submit revised and final offers by June 26, 2019; and
 - c) on June 26, 2019, four offers were submitted, with the Purchaser's offer being for the highest value.
2. The Receiver prepared a summary of the four offers (the "Offer Summary"), a copy of which is attached as Confidential Appendix "1". For the reasons detailed in Section 5.1 of this Report, the Receiver is seeking to seal the Offer Summary pending closing of the Transaction.
3. After negotiating with the Purchaser for an increased deposit, a more expedited closing date (from August 26 to August 15, 2019) and clarifying that the APS is not subject to the Receiver delivering vacant possession, the APS was signed back by the Receiver on June 27, 2019 and accepted by the Purchaser on June 28, 2019.
4. For the benefit of the Court, the Receiver requested that Whelan Realty provide a letter explaining the factors that Whelan Realty considered in recommending its list price and the basis on which Whelan Realty recommends that the Receiver complete the Transaction.
5. A redacted version of Whelan Realty's letter dated July 9, 2019 is attached as Appendix "D", in which it provides details on the maintenance issues and repair work required at the Cottage Property, including issues involving heat, water damage, mold, a dry sump pump, deteriorating rim joists, the septic tank and leaking pipes. An unredacted version is attached as Confidential Appendix "2". The basis for the sealing request is provided in Section 5.1 of this Report.

5.0 Transaction

1. The APS is in the form of a standard Ontario Real Estate Association Agreement of Purchase and Sale, a summary of which is as follows:
 - a) **Purchaser:** the Purchaser is an arm's length residential home buyer.
 - b) **Purchased Assets:** the Cottage Property.
 - c) **Purchase Price:** for the reasons detailed in Section 5.1 of this Report, the Receiver believes that the purchase price should be sealed pending closing of the Transaction.
 - d) **Deposit:** the Purchaser has paid a deposit which is being held in Whelan Realty's trust account pending closing of the Transaction.

- e) **Representations and Warranties:** consistent with the standard terms of a receivership transaction, i.e. on an “as is, where is” basis, with limited representations and warranties.
 - f) **Closing Date:** August 15, 2019 (or earlier if agreed by the parties), should the Court grant the proposed Approval and Vesting Order.
 - g) **Existing Tenants:** the APS is not conditional on vacant possession; rather, it includes the following acknowledgement:

“The Buyer hereby acknowledges that the property is currently occupied by third parties. The Buyer will accept the property on closing subject to such occupancy and shall not require vacant possession thereof.”
 - h) **Material Conditions:** the only material condition precedent is the Court’s issuance of the proposed Approval and Vesting Order.
2. A copy of the redacted version of the APS is attached as Appendix “E”. An unredacted copy is attached as Confidential Appendix “3”.

5.1 Sealing

- 1. The Receiver recommends that the unredacted copy of the APS, the Offer Summary and Whelan Realty’s July 9th letter be filed with the Court on a confidential basis and remain sealed pending closing of the Transaction as the availability of such information may negatively impact any future sale process for the Cottage Property if the Transaction does not close for any reason. In addition, the Offer Summary contains sensitive information, including the identity of bidders and the value of competing bids.
- 2. The Receiver does not believe that any stakeholder will be prejudiced if this information is sealed or redacted. Keeping this information sealed pending closing is beneficial to maximizing value.
- 3. On July 2, 2019, Mr. DeMaria (through counsel) sent an email to the Receiver asking about the purchase price of the Cottage Property. The Receiver promptly replied by advising that the Receiver is prepared to disclose the purchase price subject to Mr. DeMaria executing a confidentiality agreement (“CA”), a copy of which was attached to the Receiver’s email. As at the date of this Report, Mr. Demaria has not signed a CA.

5.2 Recommendation

- 1. The Receiver recommends that the Court approve the APS and the Transaction for the following reasons:
 - a) the Receiver undertook commercially reasonable steps to market and sell the Cottage Property as authorized under the Second Amended and Restated Receivership Order, including retaining Whelan Realty as the listing agent to sell the Cottage Property;

- b) the purchase price under the Transaction is the highest of the four offers received since the Cottage Property was listed in June, 2019 and, according to Whelan Realty, is consistent with the market value of comparable cottage properties in the area, particularly given the current state of the Cottage Property and the maintenance and other work that the Purchaser will need to fund in the near term;
 - c) in the Receiver's view, the 14-day listing period, 65 showings and four offers reflect that the market has been thoroughly canvassed and that further time spent listing the Cottage Property is unlikely to enhance value;
 - d) given the Cottage Property's current state of repair, the proposed Transaction eliminates the risk of further costs being incurred if the Cottage Property was to continue to be unmaintained and exposed to the elements should the listing period continue for a potentially prolonged period;
 - e) the Transaction contemplates a closing date of August 15, 2019 (or earlier if agreed by the parties), subject to Court approval. Accordingly, the Transaction can be completed expeditiously, which will avoid property taxes, professional fees and other costs that would otherwise continue to accrue for the duration of the listing period;
 - f) Whelan Realty is a reputable and qualified realtor with substantial experience selling cottage properties in the Lake Simcoe area. In its letter dated July 9, 2019 (Appendix "D"), Whelan Realty strongly recommends that the Transaction be completed forthwith;
 - g) the Purchaser has agreed to accept the Cottage Property subject to the existing tenants continuing to occupy and, accordingly, the Receiver will avoid the incremental cost and complexity that may be involved in delivering vacant possession;
 - h) the relief sought is in accordance with the Second Amended and Restated Receivership Order and Mr. DeMaria's Appeal thereof was quashed by the Court of Appeal on July 11, 2019; and
 - i) Mr. DeMaria's counsel has advised that he does not oppose the Transaction provided that the proceeds of sale will not be distributed without further order of the Court.
2. Subject to Court approval, the Receiver intends to complete the Transaction and retain the net proceeds therefrom pending further Court order.

6.0 Conclusion and Recommendation

1. Based on the foregoing, the Receiver respectfully recommends that the Court make an order granting the relief detailed in Section 1.1(1)(f) of this Report.

* * *

All of which is respectfully submitted,

Handwritten signature in blue ink that reads "KSV Kofman Inc".

**KSV KOFMAN INC.,
SOLELY IN ITS CAPACITY AS COURT-APPOINTED
RECEIVER AND MANAGER OF
87 ELM GROVE PROPERTY, 46 PUCCINI AVENUE AND
6216 FIFTH LINE AND NOT IN ITS PERSONAL CAPACITY**

Appendix “A”

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

THE HONOURABLE MR.

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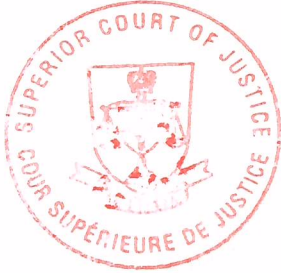
THURSDAY, THE 17th

JUSTICE PENNY

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DAY OF JANUARY, 2019

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BUDUCHNIST CREDIT UNION LIMITED

Applicant

- and -

**2321197 ONTARIO INC., CARLO DEMARIA, SANDRA DEMARIA,
2321198 ONTARIO INC., SASI MACH LIMITED and VICAR HOMES LTD.**

Respondents

APPLICATION UNDER SUBSECTION 243(1) OF THE *BANKRUPTCY AND INSOLVENCY ACT*, R.S.C. 1985, c. B-3, AS AMENDED AND SECTION 101 OF THE *COURTS OF JUSTICE ACT*, R.S.O. 1990, c. C.43, AS AMENDED

**SECOND AMENDED AND RESTATED ORDER
(appointing Receiver)**

THIS APPLICATION made by the Applicant for an Order pursuant to section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the “**BIA**”) and section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended (the “**CJA**”) appointing KSV Kofman Inc. (“**KSV**”) as receiver and manager (in such capacities, the “**Receiver**”) without security, of the Real Properties (defined below), was heard on January 16, 2019 at 330 University Avenue, Toronto, Ontario, with judgment having been reserved to this date for written reasons.

ON READING the Affidavit of Oksana Prociuk, sworn November 6, 2018, the Responding Affidavit of Oksana Prociuk, sworn November 20, 2018, the Supplementary

Affidavit of Oksana Prociuk, sworn November 30, 2018, the Affidavit of Carlo Demaria, sworn November 11, 2018, and the Affidavit of Darcy Thompson, sworn November 12, 2018, the Factum, dated November 30, 2018, and authorities of the Applicant, the Factum and Book of Authorities of the Respondents, 2321997 Ontario Inc., Carlo Demaria, 2321198 Ontario Inc. and Vicar Homes Ltd., dated January 14, 2019, Transcript of the examination under Rule 39.03 of Nestor Wolicki, taken December 17, 2018, and exhibit thereon, Transcripts of the examination under Rule 39.03 of Roma Bereza, taken on December 17, 2018 and January 10 and 11, 2019, and exhibits thereon, Transcript of the cross-examination of Carlo Demaria, taken on November 30, 2018, and answers to undertakings and exhibits thereon, Transcript of the cross-examination of Oksana Prociuk, taken on December 17, 2018, and answers to undertakings and exhibits thereon, the Applicant's Response to Request to Inspect Documents, dated December 11, 2018, and on hearing the submissions of counsel for the Applicant, Carlo Demaria, 2321197 Ontario Inc., 2321198 Ontario Inc., Vicar Homes Ltd., and Trade Capital Finance Corporation, no one appearing for Sandra Demaria although validly served as evidenced by the affidavits of service of Chris O'Rourke, sworn November 8, 2018, Rupert Mathias, sworn December 4, 2018 and Amanda Campbell, sworn December 3, 2018, filed, and on being advised by counsel that KSV consents to act as the Receiver,

SERVICE

1. **THIS COURT ORDERS** that the time for service of the Notice of Application and the Application is hereby abridged and validated so that this application is properly returnable today and hereby dispenses with further service thereof.

APPOINTMENT

2. **THIS COURT ORDERS** that pursuant to section 243(1) of the BIA and section 101 of the CJA, KSV is hereby appointed Receiver, without security, of the real properties described in Schedule "A" hereto (the "**Real Properties**" and each a "**Real Property**"), including all rents arising therefrom and proceeds thereof (collectively, the "**Property**").

RECEIVER'S POWERS

3. **THIS COURT ORDERS** that the Receiver is hereby empowered and authorized, but not obligated, to act at once in respect of the Property and, without in any way limiting the generality of the foregoing, the Receiver is hereby expressly empowered and authorized to do any of the following where the Receiver considers it necessary or desirable:

- (a) to take possession of and exercise control over the Property and any and all proceeds, receipts, rents and disbursements arising out of or from the Property;
- (b) to receive, preserve, and protect the Property, or any part or parts thereof, including, but not limited to, the changing of locks and security codes, the relocating of Property to safeguard it, the engaging of independent security personnel, the taking of physical inventories and the placement of such insurance coverage as may be necessary or desirable;
- (c) to engage consultants, appraisers, agents, experts, auditors, accountants, managers, counsel and such other persons from time to time and on whatever basis, including on a temporary basis, to assist with the exercise of the Receiver's powers and duties, including without limitation those conferred by this Order;
- (d) to receive and collect all monies, rent and accounts now owed or hereafter owing to the Respondents in respect of or relating to the Real Properties and to exercise all remedies of the Respondents in collecting such monies, including, without limitation, to enforce any security held by the Respondents;
- (e) to execute, assign, issue and endorse documents of whatever nature in respect of the Property, whether in the Receiver's name or in the name and on behalf of the Respondents, for any purpose pursuant to this Order;
- (f) to initiate, prosecute and continue the prosecution of any and all proceedings and to defend all proceedings now pending or hereafter instituted with respect to the Real Properties or the Receiver, and to settle

or compromise any such proceedings. The authority hereby conveyed shall extend to such appeals or applications for judicial review in respect of any order or judgment pronounced in any such proceeding;

- (g) to market any or all of the Real Properties, including advertising and soliciting offers in respect of the Real Properties or any part or parts thereof and negotiating such terms and conditions of sale as the Receiver in its discretion may deem appropriate;
- (h) to sell, convey, transfer, lease or assign the Property or any part or parts thereof with the approval of the Court and in such case, notice under subsection 63(4) of the Ontario *Personal Property Security Act*, or section 31 of the Ontario *Mortgages Act*, as the case may be, shall not be required;
- (i) to apply for any vesting order or other orders necessary to convey the Property or any part or parts thereof to a purchaser or purchasers thereof, free and clear of any liens or encumbrances affecting such Property;
- (j) to, without any further Court approval, on the condition that it is determined to be desirable by the Receiver, in its discretion, (i) sell and convey the real property municipally known as 87 Elm Grove, Richmond Hill, Ontario (the “**Elm Property**”) pursuant to the Agreement of Purchase and Sale, accepted May 19, 2017, between Vicar Homes Ltd. and Sylvia Conforti, as amended, subject to monetary adjustments and such amendments as the Receiver may deem appropriate, or (b) negotiate and enter into a new agreement for the sale of the Elm Property, on terms acceptable to the Receiver, and sell and convey the Elm Property to Sylvia Conforti pursuant to such sale agreement;
- (k) to report to, meet with and discuss with such affected Persons (as defined below) as the Receiver deems appropriate on all matters relating to the Property and the receivership, and to share information, subject to such terms as to confidentiality as the Receiver deems advisable;

- (l) to register a copy of this Order and any other Orders in respect of the Property against title to the Real Properties;
- (m) to enter into agreements with any trustee in bankruptcy appointed in respect of the Respondents, including, without limiting the generality of the foregoing, the ability to enter into occupation agreements for any property owned or leased by the Respondents; and
- (n) to take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations;

and in each case where the Receiver takes any such actions or steps, it shall be exclusively authorized and empowered to do so, to the exclusion of all other Persons (as defined below), including the Respondents, and without interference from any other Person.

DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE RECEIVER

4. **THIS COURT ORDERS** that (i) the Respondents, (ii) all of their current and former directors, officers, employees, agents, accountants, legal counsel and shareholders, and all other persons acting on their instructions or behalf, and (iii) all other individuals, firms, corporations, governmental bodies or agencies, or other entities having notice of this Order (all of the foregoing, collectively, being “**Persons**” and each being a “**Person**”) shall forthwith advise the Receiver of the existence of any Property in such Person's possession or control, shall grant immediate and continued access to the Property to the Receiver, and shall deliver all access codes and keys to the Real Properties to the Receiver upon the Receiver's request.

5. **THIS COURT ORDERS** that all Persons shall forthwith advise the Receiver of the existence of any books, documents, manuals, warranties, securities, contracts, orders, and any other papers, records and information of any kind relating to the Real Properties (the foregoing, collectively, the “**Records**”) in that Person's possession or control, and shall provide to the Receiver or permit the Receiver to make, retain and take away copies thereof, provided however that nothing in this paragraph 5 or in paragraph 6 of this Order shall require the delivery of Records, or the granting of access to Records, which may not be disclosed or provided to the

Receiver due to the privilege attaching to solicitor-client communication or due to statutory provisions prohibiting such disclosure.

6. **THIS COURT ORDERS** that if any Records are stored or otherwise contained on a computer or other electronic system of information storage, whether by independent service provider or otherwise, all Persons in possession or control of such Records shall forthwith give unfettered access to the Receiver for the purpose of allowing the Receiver to recover and fully copy all of the information contained therein whether by way of printing the information onto paper or making copies of computer disks or such other manner of retrieving and copying the information as the Receiver in its discretion deems expedient, and shall not alter, erase or destroy any Records without the prior written consent of the Receiver. Further, for the purposes of this paragraph, all Persons shall provide the Receiver with all such assistance in gaining immediate access to the information in the Records as the Receiver may in its discretion require including providing the Receiver with instructions on the use of any computer or other system and providing the Receiver with any and all access codes, account names and account numbers that may be required to gain access to the information.

NO PROCEEDINGS AGAINST THE RECEIVER

7. **THIS COURT ORDERS** that no proceeding or enforcement process in any court or tribunal (each, a “**Proceeding**”), shall be commenced or continued against the Receiver except with the written consent of the Receiver or with leave of this Court.

NO PROCEEDINGS AGAINST THE PROPERTY

8. **THIS COURT ORDERS** that no Proceeding against or in respect of the Property shall be commenced or continued except with the written consent of the Receiver or with leave of this Court and any and all Proceedings currently under way against or in respect of the Property are hereby stayed and suspended pending further Order of this Court. This provision is without prejudice to Trade Capital Finance Corporation commencing and continuing an application for the appointment of a receiver in respect of, among other things, the Real Properties.

NO EXERCISE OF RIGHTS OR REMEDIES

9. **THIS COURT ORDERS** that all rights and remedies against the Receiver, or affecting the Property, are hereby stayed and suspended except with the written consent of the Receiver or leave of this Court, provided however that this stay and suspension does not apply in respect of any “eligible financial contract” as defined in the BIA, and further provided that nothing in this paragraph shall (i) empower the Receiver or the Respondents to carry on any business which the Respondents are not lawfully entitled to carry on, (ii) exempt the Receiver or the Respondents from compliance with statutory or regulatory provisions relating to health, safety or the environment, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien.

RECEIVER TO HOLD FUNDS

10. **THIS COURT ORDERS** that all funds, monies, cheques, instruments, and other forms of payments received or collected by the Receiver from and after the making of this Order from any source whatsoever, including without limitation the sale of all or any of the Real Properties and the collection of any rents or accounts receivable in whole or in part, whether in existence on the date of this Order or hereafter coming into existence, shall be deposited into one or more new accounts to be opened by the Receiver (the “**Post Receivership Accounts**”) and the monies standing to the credit of such Post Receivership Accounts from time to time, net of any disbursements provided for herein, shall be held by the Receiver to be paid in accordance with the terms of this Order or any further Order of this Court.

LIMITATION ON ENVIRONMENTAL LIABILITIES

11. **THIS COURT ORDERS** that nothing herein contained shall require the Receiver to occupy or to take control, care, charge, possession or management (separately and/or collectively, “**Possession**”) of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, the *Ontario Environmental Protection Act*, the *Ontario*

Water Resources Act, or the *Ontario Occupational Health and Safety Act* and regulations thereunder (the “**Environmental Legislation**”), provided however that nothing herein shall exempt the Receiver from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Receiver shall not, as a result of this Order or anything done in pursuance of the Receiver's duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

LIMITATION ON THE RECEIVER'S LIABILITY

12. **THIS COURT ORDERS** that the Receiver shall incur no liability or obligation as a result of its appointment or the carrying out the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part, or in respect of its obligations under sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*. Nothing in this Order shall derogate from the protections afforded the Receiver by section 14.06 of the BIA or by any other applicable legislation.

RECEIVER'S ACCOUNTS

13. **THIS COURT ORDERS** that the Receiver and counsel to the Receiver shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges unless otherwise ordered by the Court on the passing of accounts, and that the Receiver and counsel to the Receiver shall be entitled to and are hereby granted a charge (the “**Receiver's Charge**”) on the Property, as security for such fees and disbursements, both before and after the making of this Order in respect of these proceedings, and that the Receiver's Charge shall form a first charge on the Property in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subject to sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

14. **THIS COURT ORDERS** that the Receiver and its legal counsel shall pass its accounts from time to time, and for this purpose the accounts of the Receiver and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

15. **THIS COURT ORDERS** that prior to the passing of its accounts, the Receiver shall be at liberty from time to time to apply reasonable amounts, out of the monies in its hands, against its fees and disbursements, including legal fees and disbursements, incurred at the standard rates and charges of the Receiver or its counsel, and such amounts shall constitute advances against its remuneration and disbursements when and as approved by this Court.

FUNDING OF THE RECEIVERSHIP

16. **THIS COURT ORDERS** that the Receiver be at liberty and it is hereby empowered to borrow by way of a revolving credit or otherwise, such monies from time to time as it may consider necessary or desirable, provided that the outstanding principal amount does not exceed \$200,000 (or such greater amount as this Court may by further Order authorize) at any time, at such rate or rates of interest as it deems advisable for such period or periods of time as it may arrange, for the purpose of funding the exercise of the powers and duties conferred upon the Receiver by this Order, including interim expenditures. The Real Property identified in each Receiver's Certificate (defined below), including all rents arising therefrom and proceeds thereof, shall be and is hereby charged by way of a fixed and specific charge (the "**Receiver's Borrowings Charge**") as security for the payment of the monies borrowed, together with interest and charges thereon, in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subordinate in priority to the Receiver's Charge and the charges as set out in sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

17. **THIS COURT ORDERS** that neither the Receiver's Borrowings Charge nor any other security granted by the Receiver in connection with its borrowings under this Order shall be enforced without leave of this Court.

18. **THIS COURT ORDERS** that the Receiver is at liberty and authorized to issue certificates substantially in the form annexed as Schedule "B" hereto (the "**Receiver's Certificates**") for any amount borrowed by it pursuant to this Order.

19. **THIS COURT ORDERS** that the monies from time to time borrowed by the Receiver pursuant to this Order or any further order of this Court and any and all Receiver's Certificates

evidencing the same or any part thereof shall rank on a *pari passu* basis, unless otherwise agreed to by the holders of any prior issued Receiver's Certificates.

ONTARIO NEW HOME WARRANTIES PLAN ACT

20. **THIS COURT DECLARES** that the Court is making no determination as whether or not the Receiver is a “vendor” as defined in, and for the purposes of, the *Ontario New Home Warranties Plan Act*.

STAY OF ENFORCEMENT OVER WOODLAND PROPERTY

21. **THIS COURT ORDERS** that enforcement of this Order in respect of the Real Property municipally known as 211 Woodland Acres Crescent, Vaughan, Ontario (the “**Woodland Property**”), is stayed for 60 days from the date of this Order, or the disposition of the motion to be brought by Carlo Demaria seeking to set aside the Mareva injunction imposed pursuant to the Order of the Honourable Justice Ricchetti, dated May 6, 2015, issued in proceedings titled *Trade Capital Finance Corp. v. Peter Cook et al.*, bearing Brampton Court File No. CV-15-2110-00, whichever comes first. The stay ordered herein is subject to the following terms:

- (a) Carlo Demaria shall provide the Receiver, monthly, with evidence that the following payments are current on the Woodland Property:
 - (i) heat;
 - (ii) hydro
 - (iii) property taxes; and
 - (iv) property insurance;
- (b) upon the expiry of the 60 day stay period, or the disposition of the motion to set aside the Mareva injunction (or sooner if necessary), the parties shall schedule a 9:30 a.m. appointment to report on the status of the matter and the proposed next steps which are to be taken.

SERVICE AND NOTICE

22. **THIS COURT ORDERS** that the E-Service Protocol of the Commercial List (the “Protocol”) is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Protocol (which can be found on the Commercial List website at <http://www.ontariocourts.ca/scj/practice/practice-directions/toronto/e-service-protocol/>) shall be valid and effective service. Subject to Rule 17.05 this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the Rules of Civil Procedure. Subject to Rule 3.01(d) of the Rules of Civil Procedure and paragraph 21 of the Protocol, service of documents in accordance with the Protocol will be effective on transmission. This Court further orders that a Case Website shall be established in accordance with the Protocol.

23. **THIS COURT ORDERS** that if the service or distribution of documents in accordance with the Protocol is not practicable, the Receiver is at liberty to serve or distribute this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery or facsimile transmission to the Respondents’ creditors or other interested parties at their respective addresses as last shown on the records of the Respondents and that any such service or distribution by courier, personal delivery or facsimile transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

GENERAL

24. **THIS COURT ORDERS** that the Receiver may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

25. **THIS COURT ORDERS** that nothing in this Order shall prevent the Receiver from acting as a trustee in bankruptcy of the Respondents.

26. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States 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.

27. **THIS COURT ORDERS** that the Receiver be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and that the Receiver is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

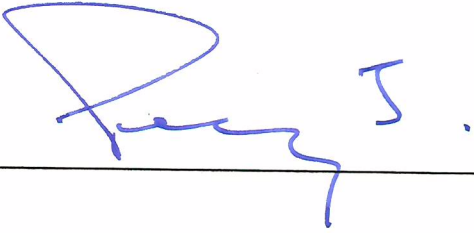
28. **THIS COURT ORDERS** that, with respect to the Elm Property and the real property municipally known as 46 Puccini Drive, Richmond Hill, Ontario (the "**Puccini Property**"), the Applicant shall have its costs of this application, up to and including entry and service of this Order, provided for by the terms of the Applicant's security or, if not so provided by the Applicant's security, then on a substantial indemnity basis to be paid by the Receiver from the sale of the Elm Property and the Puccini Property with such priority and at such time as this Court may determine.

29. **THIS COURT ORDERS** that, with respect to the Woodland Property and the real property municipally known as 6216 Fifth Line, Egbert, Ontario, costs of this application are reserved pending submissions.

30. **THIS COURT ORDERS** that any interested party may apply to this Court to vary or amend this Order on not less than seven (7) days' notice to the Receiver and to any other party likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

31. **THIS COURT ORDERS** that this Order takes precedence over the Order of the Honourable Justice Wilton Siegel, dated November 13, 2018 (the "**IR Order**"), appointing KSV as interim receiver (the "**Interim Receiver**") of the real property municipally known as 46 Puccini Drive, Richmond Hill, Ontario, and the Interim Receiver shall take no further steps to

carry out its powers and duties set forth in the IR Order, save and except for bringing a motion before this Honourable Court for discharge.



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ON / BOOK NO:
LE / DANS LE REGISTRE NO:

JAN 30 2019

PER / PAR:



SCHEDULE "A"

REAL PROPERTIES

1. **PIN:** **03199-0011 (LT)**

Property Description: PCL 7-1 SEC M1563; LT 7 PL M1563; Town of Richmond Hill

Address: 87 Elm Grove Avenue
 Richmond Hill, ON L4E 2W8

2. **PIN:** **03206-3618 (LT)**

Property Description: PT LOT 26, PLAN M807, PT1, 65R34410,; Town of Richmond Hill

Address: 46 Puccini Drive
 Richmond Hill, ON L4E 2Y6

3. **PIN:** **03342-0025 (LT)**

Property Description: PCL 23-1 SEC M1732; LT 23 PL M1732; S/T LT135993; Vaughan

Address: 211 Woodland Acres Crescent
 Vaughan, ON L6A 1G1

4. **PIN:** **58120-0162 (LT)**

Property Description: PT E 1/2 LT 10 CON 4 ESSA TWP PT 4 RD1027; ESSA

Address: 6216 Fifth Line RR#1
 Egbert ON L0L 1N0

SCHEDULE "B"

RECEIVER CERTIFICATE

CERTIFICATE NO. _____

AMOUNT \$ _____

1. **THIS IS TO CERTIFY** that KSV Kofman Inc., of the real properties described in Schedule "A" hereto (the "**Real Properties**" and each a "**Real Property**"), including all rents arising therefrom and all proceeds thereof, appointed by Order of the Ontario Superior Court of Justice (Commercial List) (the "**Court**") dated the 4th day of December, 2018 (the "**Order**") made in an action having Court file number CV-18-00608356-00CL, has received as such Receiver from the holder of this certificate (the "**Lender**") the principal sum of \$ _____, being part of the total principal sum of \$ _____ which the Receiver is authorized to borrow under and pursuant to the Order.
2. The principal sum evidenced by this certificate is payable on demand by the Lender with interest thereon calculated and compounded [daily][monthly not in advance on the _____ day of each month] after the date hereof at a notional rate per annum equal to the rate of _____ per cent above the prime commercial lending rate of Bank of _____ from time to time.
3. Such principal sum with interest thereon is, by the terms of the Order, together with the principal sums and interest thereon of all other certificates issued by the Receiver pursuant to the Order or to any further order of the Court, a charge upon the whole of the Real Property bearing PIN: _____, including all rents arising therefrom and proceeds thereof, in priority to the security interests of any other person, but subject to the priority of the charges set out in the Order and in the *Bankruptcy and Insolvency Act*, and the right of the Receiver to indemnify itself out of such Real Property in respect of its remuneration and expenses.
4. All sums payable in respect of principal and interest under this certificate are payable at the main office of the Lender at Toronto, Ontario.
5. Until all liability in respect of this certificate has been terminated, no certificates creating charges ranking or purporting to rank in priority to this certificate shall be issued by the Receiver

to any person other than the holder of this certificate without the prior written consent of the holder of this certificate.

6. The charge securing this certificate shall operate so as to permit the Receiver to deal with the Property as authorized by the Order and as authorized by any further or other order of the Court.

7. The Receiver does not undertake, and it is not under any personal liability, to pay any sum in respect of which it may issue certificates under the terms of the Order.

DATED the ____ day of _____, 20__.

KSV Kofman Inc., solely in its capacity
as Receiver of the Real Properties, and not in its
personal or corporate capacity

Per: _____

Name:

Title:

**SCHEDULE "A" TO RECEIVER'S CERTIFICATE
REAL PROPERTIES**

1. **PIN:** **03199-0011 (LT)**

Property Description: PCL 7-1 SEC M1563; LT 7 PL M1563; Town of Richmond Hill

Address: 87 Elm Grove Avenue
 Richmond Hill, ON L4E 2W8

2. **PIN:** **03206-3618 (LT)**

Property Description: PT LOT 26, PLAN M807, PT1, 65R34410,; Town of Richmond Hill

Address: 46 Puccini Drive
 Richmond Hill, ON L4E 2Y6

3. **PIN:** **03342-0025 (LT)**

Property Description: PCL 23-1 SEC M1732; LT 23 PL M1732; S/T LT135993; Vaughan

Address: 211 Woodland Acres Crescent
 Vaughan, ON L6A 1G1

4. **PIN:** **58120-0162 (LT)**

Property Description: PT E 1/2 LT 10 CON 4 ESSA TWP PT 4 RD1027; ESSA

Address: 6216 Fifth Line RR#1
 Egbert ON L0L 1N0

BUDUCHNIST CREDIT UNION LIMITED

Applicant

- and -

2321197 ONTARIO INC. et al.

Respondents

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

PROCEEDING COMMENCED AT TORONTO

**SECOND AMENDED AND RESTATED ORDER
(appointing Receiver)**

DENTONS CANADA LLP
77 King Street West, Suite 400
Toronto-Dominion Centre
Toronto, ON M5K 0A1

Barbara Grossman (LSO # 20947K)

Tel: (416) 863-4417

Fax: (416) 863-4592

barbara.grossman@dentons.com

Kenneth Kraft (LSO # 31919P)

Tel: (416) 863-4374

kenneth.kraft@dentons.com

Lawyers for Buduchnist Credit Union Limited

Appendix “B”

COURT OF APPEAL FOR ONTARIO

CITATION: Buduchnist Credit Union Limited v. 2321197 Ontario Inc., 2019
ONCA 588
DATE: 20190711
DOCKET: M50486 (C66503)

Feldman, Hourigan and Brown JJ.A.

BETWEEN

Buduchnist Credit Union Limited

Applicant
(Respondent/Moving Party)

and

2321197 Ontario Inc., Carlo DeMaria, Sandra DeMaria, 232198 Ontario Inc.,
Sasi Mach Limited, Vicar Homes Ltd. and Trade Finance Capital Corp.

Respondents
(Appellants/Responding Parties)

Barabara L. Grossman, for the moving party/respondent

Andrew Winton and Philip Underwood, for the responding parties/appellants

Heard: July 5, 2019

REASONS FOR DECISION

I. OVERVIEW

[1] This is a motion by the respondent, Buduchnist Credit Union Limited (“BCU”), to quash the appeal filed by Carlo DeMaria and Vicar Homes Ltd. from the order of Penny J. dated January 17, 2019 (the “Order”). The Order appointed

a receiver over two pieces of real property pursuant to s. 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, and s. 101 of the *Courts of Justice Act*, R.S.O., c. C.43.

[2] The appellant, Carlo DeMaria, borrowed money for many years from BCU, both for his own use and the use of several of his companies, of which the appellant, Vicar Homes, is one.

[3] In 2010, Mr. DeMaria and his wife granted a first mortgage on their Family Residence to BCU. In 2012, the DeMarias granted a second mortgage over the Family Residence. In April 2015, Mr. DeMaria gave a personal guarantee to BCU to secure, in part, the indebtedness of Vicar Homes under certain loan agreements with BCU.

[4] In 2006, the DeMarias granted a charge against their Cottage to MCAP Mortgage Corporation, which later assigned the mortgage to BCU.

[5] In November, 2018 the Credit Union issued the notice of application in this proceeding seeking the appointment of a receiver over five properties, owned by the DeMarias and/or certain DeMaria companies, over which the BCU has security, as well as judgment for the debts owed. On November 13, 2018 a receiver was appointed over two of the properties.

[6] The Order appointed a receiver over two more properties: the Family Residence and Cottage. The Order was in the form of the Commercial List's Model Order for receivers appointed under the *BIA* and *CJA*, with some tweaks to reflect the specific circumstances.

[7] The Order in respect of the Family Residence has been stayed for a short period of time pending the determination of a motion to set aside a *Mareva* injunction granted against Mr. DeMaria at the instance of another creditor.

[8] On January 29, 2019, twelve days after the Order was made, the appellants filed a notice of appeal with this court, asking that the Order be set aside and the application to appoint a receiver over the Family Residence and Cottage be dismissed. The appellants did not seek leave to appeal. The appeal was perfected on March 4, 2019.

[9] On May 24, 2019, BCU filed this motion seeking to quash the appeal on the basis that the appellants have no right of appeal to this court, they have not sought or obtained leave to appeal to this court and, in any event, they cannot meet the test for leave to appeal.

II. THE APPLICABLE APPEAL ROUTES

[10] Both s. 243(1) of the *BIA* and s. 101 of the *CJA* authorize a court to appoint a receiver when it is "just or convenient to do so." In *Business Development Bank*

of Canada v. Astoria Organic Matters Ltd., 2019 ONCA 269, 69 C.B.R. (6th) 13, Zarnett J.A. concluded, at paras. 66 and 67, that where an order is made pursuant to both s. 243 of the *BIA* and s. 101 of the *CJA*, the more restrictive appeal provisions in the *BIA* govern the rights of appeal and appeal routes.

[11] In the present case, para. 1 of the Order expressly states that the appointment of the receiver is made pursuant to *BIA* s. 243(1) and *CJA* s. 101. The recitals to the Order state that the application is under both the *BIA* and the *CJA*. And the powers of the receiver to which the appellants object – the power to take possession of and exercise control over the Family Residence and Cottage – are powers that *BIA* ss. 243(1)(a) and (b) expressly authorize a court to grant to a receiver. Accordingly, the right to appeal the Order and the appeal routes are those set out in the *BIA*.

III. DOES AN APPEAL AS OF RIGHT FROM THE ORDER EXIST?

[12] There is no appeal as of right under *BIA* ss. 193(a) or (c) from an order appointing a receiver: *Business Development Bank of Canada v. Pine Tree Resorts Inc.*, 2013 ONCA 282, 115 O.R. (3d) 617, at para. 14.

[13] The appellants argue they have an appeal as of right under *BIA* s. 193(b): “if the order or decision is likely to affect other cases of a similar nature in the bankruptcy proceedings.” The jurisprudence has consistently interpreted s. 193(b) as meaning that a right of appeal will lie where the decision in question will likely

affect another case raising the same or similar issues in the same bankruptcy or receivership proceedings: *2403177 Ontario Inc. v. Bending Lake Iron Group Ltd.*, 2016 ONCA 225, 396 D.L.R. (4th) 635, at para. 32.

[14] Here, BCU's application for the appointment of a receiver concerns five residential properties. The application judge's endorsement for an April 25, 2019 case conference records that "a new receivership proceeding involving a property known as Stavebank" is contemplated. That new proceeding is not the receivership proceeding in which the Order was made. Accordingly, *BIA* s. 193(b) does not apply.

[15] As a result, the appellants require leave to appeal the Order under *BIA* s. 193(e).

IV. SHOULD LEAVE TO APPEAL BE GRANTED?

[16] Notwithstanding their technical non-compliance with *BIA* Rule 31(1) – namely, not filing the appeal in the proper office strictly within the prescribed time – the appellants request that leave to appeal be granted, if leave is required. Given that the appellants had an intention to appeal and exceeded the filing time prescribed by the *BIA Rules* by only one day, we shall consider their alternative position that leave to appeal should be granted.

(a) The guiding principles

[17] The principles guiding the consideration of a request for leave to appeal under s. 193(e) were set out by Blair J.A. in *Pine Tree Resorts* where, at para. 29, he stated:

Beginning with the overriding proposition that the exercise of granting leave to appeal under s. 193(e) is discretionary and must be exercised in a flexible and contextual way, the following are the prevailing considerations in my view. The court will look to whether the proposed appeal,

- a) raises an issue that is of general importance to the practice in bankruptcy/insolvency matters or to the administration of justice as a whole, and is one that this Court should therefore consider and address;
- b) is *prima facie* meritorious, and
- c) would unduly hinder the progress of the bankruptcy/insolvency proceedings.

(b) Consideration of the factors

(1) Issue of general importance

[18] The proposed appeal does not raise an issue of general importance to the practice in insolvency matters or to the administration of justice as a whole. It concerns a very fact-specific dispute between two debtors and their creditor.

(2) Is the appeal *prima facie* meritorious?

[19] In their appeal factum, the appellants advance two main grounds of appeal in respect of the Order: (i) the application judge failed to consider BCU's conduct in engaging in an unauthorized transaction; and (ii) the application judge's treatment of certain factors relevant to whether it was "just and convenient" to appoint a receiver was not appropriate.

The "unauthorized transaction"

[20] First, the appellants submit that in granting the Order, the application judge failed to take into consideration conduct by BCU that disentitled it to the equitable relief of the appointment of a receiver.

[21] In their appeal factum, the appellants acknowledge that the first mortgages on the Family Residence and Cottage fell into arrears in August 2018 and November 2018 respectively. Their main ground of appeal concerns the conduct of BCU in respect of the debt secured by the second mortgage on the Family Residence.

[22] The second mortgage on the Family Residence secures the line of credit extended to Vicar Homes (the "Vicar LOC"). In opposing the appointment of a receiver over the Family Residence, the appellants took the position that in February and March 2017 BCU carried out a series of unauthorized transactions

in respect of the Vicar LOC. Mr. DeMaria deposited funds into the account of a related company, Do You Know Inc. He transferred those funds to the Vicar LOC. The cheques deposited were returned NSF. As a result, BCU reversed the transactions, without Mr. DeMaria's authorization, thereby increasing the amount due under the Vicar LOC.

[23] In their appeal factum, the appellants contend that the reversal of the transactions constituted a breach of the Vicar LOC Loan Agreement and amounted to misconduct that deprived BCU of the ability to claim the equitable relief of the appointment of a receiver over the Family Residence. The second mortgage on the Family Residence secured the Vicar LOC but not the Do You Know account into which Mr. DeMaria initially deposited the NSF cheques.

[24] The appellants submit that "by failing to consider this breach, the application judge did not give any weight to this critical factor in the test for the appropriateness of the appointment of a receiver and in particular the issue of whether BCU had clean hands."

[25] The reasons of the application judge disclose that he did consider this issue.

He stated:

Before the cheques cleared, [DeMaria] instructed BCU to transfer the money from DYK to reduce the line of credit of Vicar. BCU did as instructed. The cheques bounced. BCU reversed the transfers, putting the Vicar LOC back

where it was before the NSF cheque amounts were transferred from the DYK to the Vicar account.

I simply cannot agree that this was misconduct or motivated by a conflict of interest by BCU. No money was actually deposited to DYK. Therefore, the “transfer” of this money to reduce the Vicar LOC was really nothing more than an accounting error on the part of BCU. Had it waited for the cheques to clear, no funds would have been transferred and there would never have been a credit of \$800,000 to the Vicar account. The problem arose, not from BCU misconduct, but from the fact that the cheques deposited to the DYK account were bad.

[26] In respect of the Vicar LOC, the application judge also reviewed and considered whether the change in the amount outstanding under the Vicar LOC amounted to a material variation in the guaranteed obligations and whether the relevant lending and security documents permitted the variation. He concluded that the documents permitted an increase in the amount loaned to Vicar Homes. That said, the application judge made it clear that: “This hearing, of course, is not a final ruling on the question. No doubt further evidence would be required in the event there are proceedings to enforce the guarantee.”

The application judge’s treatment of other factors

[27] Second, the appellants argue in their appeal factum that the application judge based his assessment on whether it would be “just and convenient” to appoint a receiver on two erroneous findings of fact: (i) the existence of competing

creditor claims to the Family Residence and Cottage; and (ii) the appointment of the receiver would not be the “high cost alternative”.

[28] As to the first finding of fact, the application judge’s reasons disclose that his reference to other creditors was made in his discussion of the earlier appointment of a receiver over two other properties and disputes involving other creditors “over adequacy of security and priority issues.” In those circumstances, the application judge concluded that it was “critical to move matters ‘under one roof’ so to speak”.

[29] As to the second finding of fact, the application judge expressed the view that given the existence of other receivership proceedings and added costs through private mortgage enforcement proceedings, “it is not at all clear to me that extending the receiver’s powers to [the Family Residence and Cottage] as well is the “high cost” alternative.”

[30] On the face of his reasons, it is not apparent that the application judge made any palpable and overriding error. The findings, when read in context, were more in the nature of his assessment of relevant factors to take into account in considering whether to appoint a receiver.

[31] When their grounds of appeal are considered together, it is far from clear that the appellants have demonstrated a *prima facie* meritorious appeal from the Order.

(3) Effect of an appeal on the conduct of the receivership

[32] Although the enforcement of the Order against the Family Residence has been stayed for a time, BCU contends that the receiver has been reluctant to freely exercise its powers under the Order to market and sell the Cottage while the appeal is pending.

(c) Conclusion

[33] From the materials before us, we conclude that: (i) an appeal would affect the conduct of the receivership proceedings, at least in respect to the Cottage; (ii) the appeal does not raise an issue of general importance; and (iii) the appellants have not demonstrated that their appeal is *prima facie* meritorious. In those circumstances, we do not grant leave to appeal the Order.

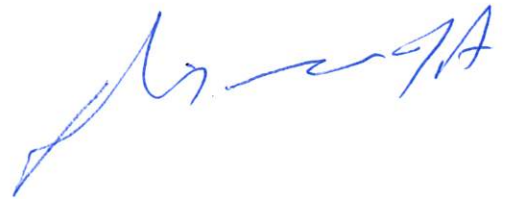
V. DISPOSITION

[34] For the reasons set out above, we grant the motion and quash the appeal on the basis that leave to appeal is required, which we decline to grant.

[35] BCU seeks full indemnity costs of this motion and the appeal. Although the appellants perfected their appeal, BCU has not filed its responding materials. While the charges enable BCU to recover its costs of enforcement on an elevated basis, this court retains the discretion to determine the award of costs that would be fair

and reasonable in the circumstances. We fix the fair and reasonable costs to which BCU is entitled at \$20,000, inclusive of disbursements and applicable taxes.

K. Feldman J.A.

A handwritten signature in blue ink, appearing to be 'M. J.A.', with a large, stylized initial 'M'.A handwritten signature in blue ink, appearing to be 'J.A.', with a large, stylized initial 'J'.

Appendix “C”

LISTING PRESENTATION
BERNICE WHELAN REALTY INC., BROKERAGE

BERNICE WHELAN
REALTY INC.

About Bernice Whelan

Known as one of the hardest-working Brokers in the Lake Simcoe region, Bernice Whelan brings a technological savvy and personable, get-it-done attitude to every client relationship she enters.

For over forty years, Bernice Whelan has successfully exemplified a steadfast commitment to exceptional real estate service and meeting the exacting needs of her high-end clientele. Participating in the Toronto and Lake Simcoe market demands extraordinary intelligence, creativity and discretion, especially for properties valued in the multi-million dollars and Bernice's proven results can attest to this.

Bernice Whelan's comprehensive knowledge and love of the picturesque Lake Simcoe area and neighbouring regions, along with her proven ability to market homes of the highest magnitude, are unparalleled - creating an extraordinary opportunity to bring Sellers and Buyers together. Much of her business is garnered from an enormous referral network through international contacts and the vast Toronto business community.

With both marketing and negotiating expertise, Bernice brings the skill sets needed to consistently sell her clients' properties for top dollar.



Bernice Whelan Realty Inc., Brokerage

Two Convenient Locations

LAKE SIMCOE REGION

186 Bayfield Street

Barrie, ON L4M 3B5

B: 705-739-8750

E: info@bernicewhelan.com



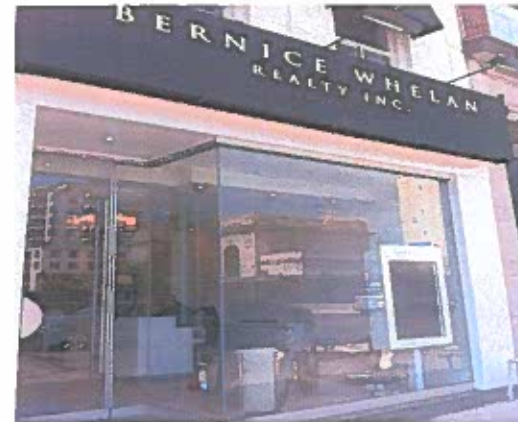
CENTRAL TORONTO

1166 Yonge Street

Toronto, ON M4W 2L9

B: 416-961-9000

E: info@bernicewhelan.com

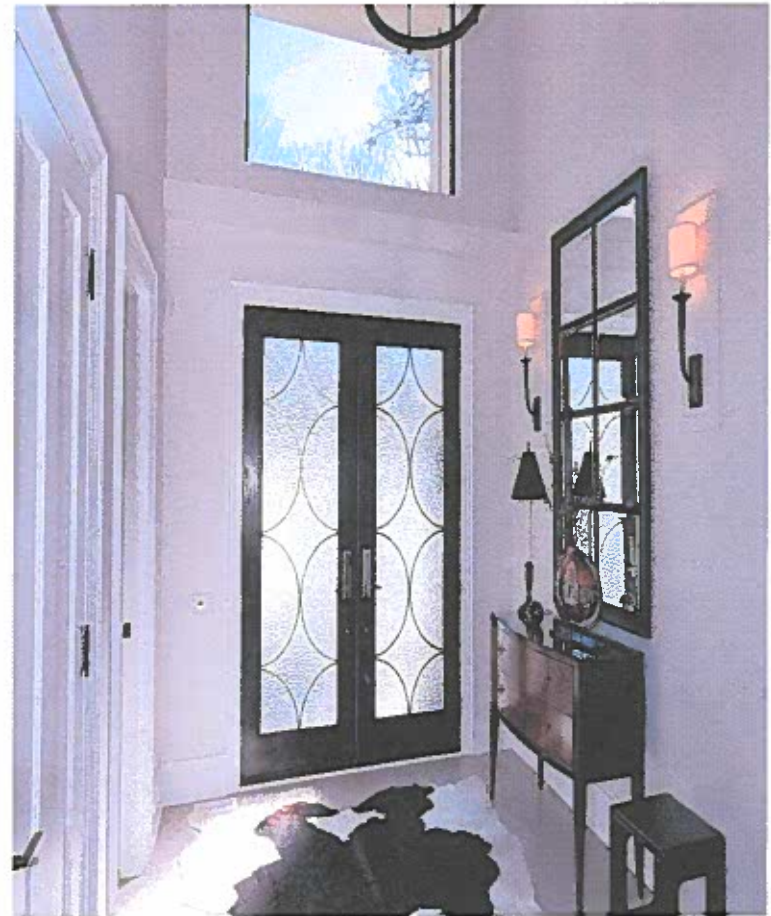


FOR MOST PEOPLE THE SALE OF THEIR HOME IS THE MOST IMPORTANT FINANCIAL TRANSACTION OF THEIR LIFE

Who you select to represent you in the sale of your home can have a tremendous effect on the amount of equity you walk away with when your sale is complete. For most people, their home is their largest asset and the Realtor they select can make a difference of tens to hundreds of thousands of dollars to their net worth.

At Bernice Whelan Realty Inc., Brokerage our main objective is to provide you as the Seller: the most amount of money, in the least amount of time and with the fewest obstacles. Our unmatched expertise, phenomenal service and forward-thinking marketing allow us to achieve these goals time and again for our clients.

There are many factors involved in selling a property, but getting the most money for your home really boils down to five things: Preparation, Presentation, Pricing, Promotion and Negotiation.



PREPARING YOUR HOME FOR SALE

The majority of homeowners prefer a home that looks new or is recently upgraded, yet most homes that come to market are not upgraded. Because of this, homebuyers will usually pay a premium of 5 – 7 % for homes that is upgraded or recently remodeled. To help maximize the value of your home, we offer expert advice on where to invest to ensure your maximum return when selling.



HOME UPGRADE ANALYSIS & PRE-INSPECTION

HOME UPGRADE ANALYSIS

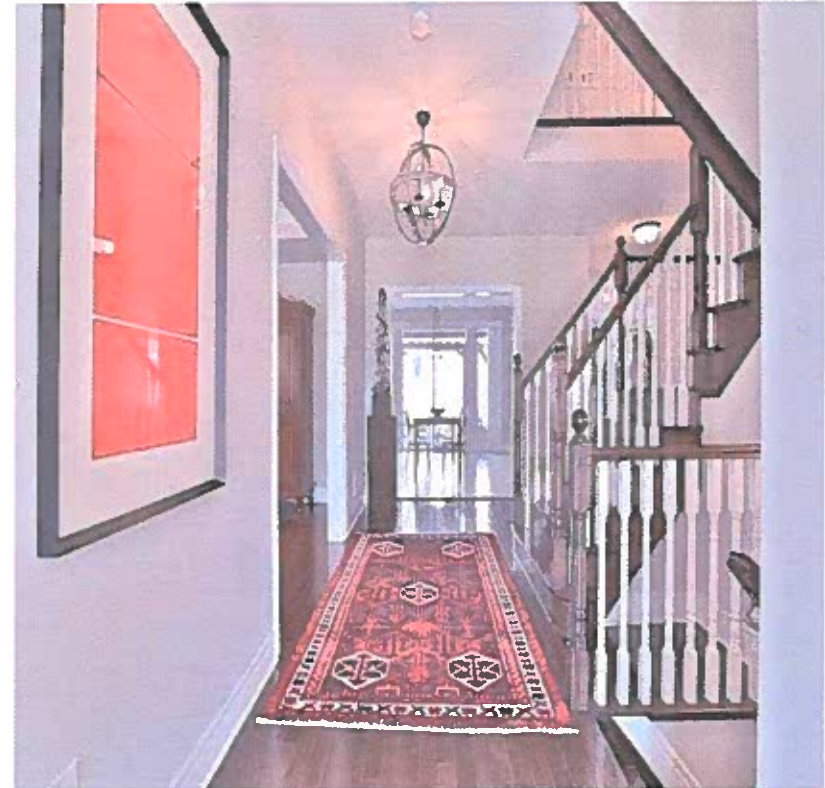
With every property we list, we provide a free home upgrade analysis, along with specific recommendations as to which upgrades will pay the most optimal return upon sale. Once we agree on a preparation plan that suits your budget, we immediately put our team of property preparation specialists to work for you to make the process as simple and hassle-free as possible.

Note: Upgrades are not a requirement, only a recommendation. We successfully sell properties in all conditions.

PRE-INSPECTION

The number one deal killer in most real estate transactions is the home inspection, Why? Once you receive an offer for your property, 80% of the negotiating power shifts to the Buyer.

Pre-inspecting your home enables us to know about and handle any potential issues with the property BEFORE you receive a purchase offer. This reduces the possibility of “surprises” during negotiations.



PRESENTING YOUR HOME TO THE MARKET

Once the property is prepared for market, it is time to stage the home and capture it in photos and video.

Our goal in the Presentation phase is to set the property apart from the competition and make a prospective Buyer say “Wow!” and compel them to come for a visit to look at it themselves.



COMPLIMENTARY STAGING

Professional staging defines the space and makes the property show in its best light.

Because the Internet has changed the way we buy and sell homes, most real estate professionals believe home staging is critical to selling success. Almost all home buyers begin their search online meaning sellers need to make a good first impression so potential buyers want to see their home in person.

- Sellers who spent \$500 on staging recovered over 343% of the cost when they sold their home. (Homegain.com)
- In controlled tests selling identical homes, professionally staged vs. non-staged, the non-staged houses sold in 102 days, while the staged houses sold in 45 days. (Real Estate Staging Association)



PROFESSIONAL PHOTOGRAPHY & VIDEO

We exclusively use HDR photography on every property we list. With 95% of Buyers starting their search on-line, that first impression has to be one that inspires Buyers, compelling them to see it in person.

We also include walk-through videos to further entice Buyers to view the property personally and HDR aerial photography, when suitable for the property.



STRATEGIC PRICING

Once your home is prepared and ready to present to the market, the next most important factor is making sure your home is priced properly to attract the highest possible offer.

Our Strategic Pricing model considers recent past sales, current listing competition and additional market and economic conditions to determine the current market trends and how to position your property on the market to maximize Buyer demand.

The most common mistake Sellers make is thinking, "I will list at a high price and if it does not sell, I can simply lower the price later."

Once listed, Buyer activity peaks in week 3, yet most over-priced Sellers do not reduce their price until week 5 or 6, effectively missing the peak of Buyer activity and interest in the property.

Pricing properly the first time enables you to maximize exposure and increase your chances of attracting the highest possible offer during the peak activity period.

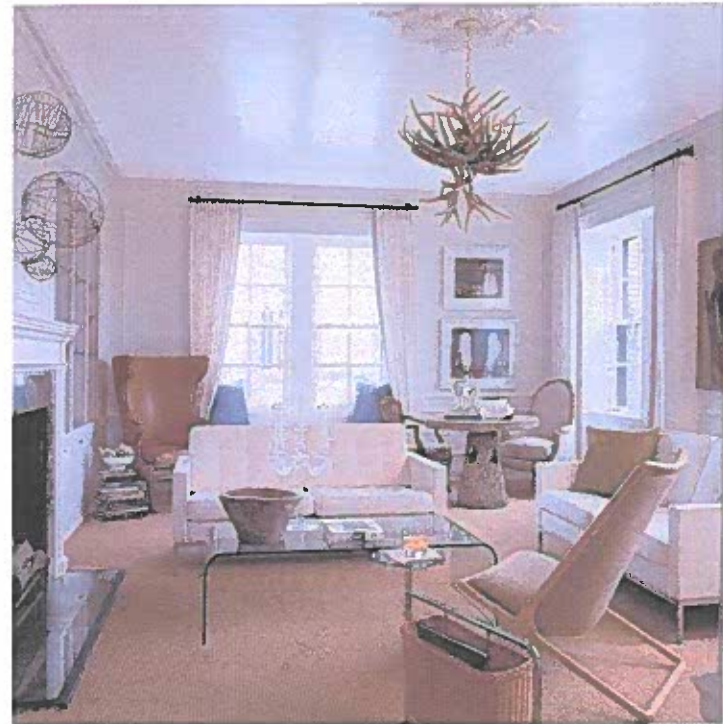
Overpricing is a critical mistake that costs homeowners time and money. Overpricing can discourage Buyers from viewing your home, while Underpricing can potentially cause you to leave money on the table.

Our Strategic Pricing will guide you to position your home in the market to attract the highest possible offer based on current conditions.

PROMOTION: TELLING THE WORLD ABOUT YOUR PROPERTY

Once your home is prepared and priced for the market, it's time to launch the listing and promote your home to buyers and agents everywhere.

A well-executed plan includes local, national and social media campaigns to maximize exposure to buyers.



PROMOTION: HOW WE CONNECT WITH BUYERS

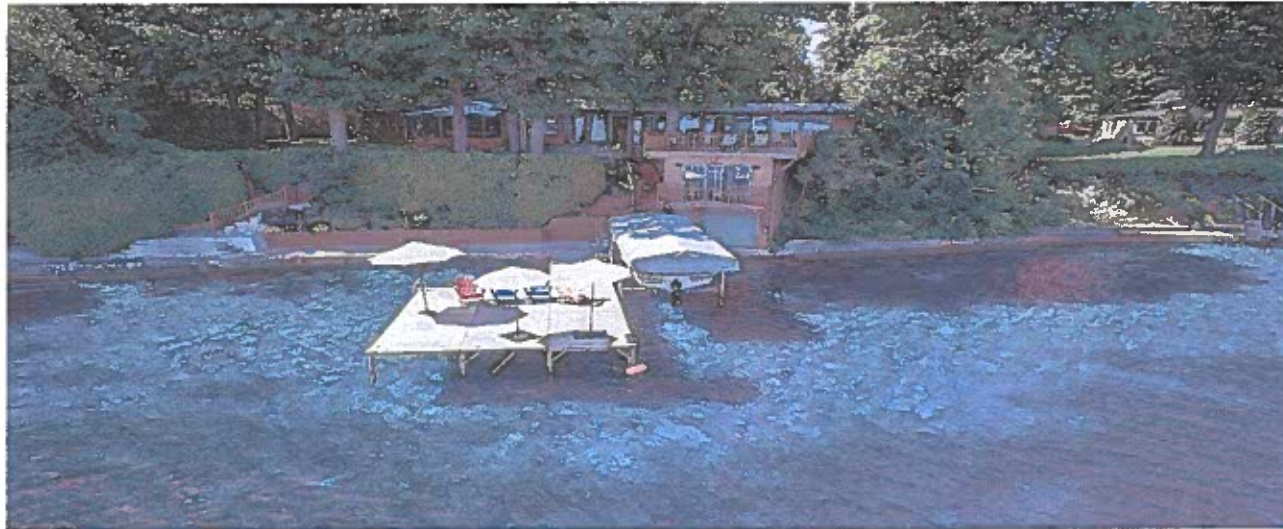
Our comprehensive marketing strategy for exposure to motivated Buyers:

- Multiple Listing Service – Members of Toronto and Barrie Real Estate Boards
- Strong Internet & Digital Presence via BerniceWhelan.com and various real estate websites (local, national and international)
- Print advertising (local, national and international)
- Featured magazine articles, such as Toronto Homes, Good Life & Zoomer
- Social Media presence on Facebook, Twitter & Instagram
- Open Houses
- High Quality Photo Presentation including Aerial photographs & Brochures
- Virtual Tour of Property
- Custom Email Campaign
- Networking with top producing Agents
- Network, Network, Network with our vast client list of qualified Buyers

NEGOTIATION

Negotiation skills are the single most important variable that can help you maximize the equity in your property sale once offers come in.

My clients would tell you that it pays to have me on their side. I have negotiated multiple price records for them, including the top price ever sold on MLS for a Lake Simcoe waterfront. My experience, expertise and calm yet firm demeanour ensure that we realize our number one goal to sell your home for the maximum price based on current market conditions.



EXECUTION

PUTTING IT ALL TOGETHER

With so many variables in the process, selling your home for top dollar requires a team effort to ensure everything gets done and done right.

Our team of qualified representatives work personally with me and stay focused on making sure that no detail is overlooked right up to the Closing date.

It is this ability to do a lot of little things right along with the big items too – on a tight deadline – that enables us to sell your home for the highest price in the least amount of time with the fewest hassles.



CONTACT BERNICE WHELAN

Broker of Record/Owner

Bernice Whelan Realty Inc., Brokerage

E: Bernice@bernicewhelan.com

B: 416-961-9000

F: 416-961-9001

www.bernicewhelan.com



Appendix “D”

BERNICE WHELAN
REALTY INC.

July 9, 2019

KSV Advisory Inc.
Attn: David Sieradzki
150 King Street West, Suite 2308
Toronto, ON M5H 1J9

RE: Agreement of Purchase & Sale for 6216 Fifth Line, Egbert, Ontario

Dear David,

As requested, we are sending this letter to provide our opinion as to why the sale price of [REDACTED] for 6216 Fifth Line is a reasonable price based on current market conditions and why the signed Agreement of Purchase and Sale should be accepted.

The most influential reason for the property selling for [REDACTED] were the numerous and significant maintenance issues that we discovered at the time of listing. In order to fully understand all the issues, we had the property inspected by a qualified local contractor, Richard Charbonneau, in order to obtain an objective and qualified assessment of the property. These issues were due to an ongoing lack of maintenance by the owner and tenant over many years. Many of these items were not noted or were not discovered by the appraiser for the appraisal that was issued on March 5, 2019.

Here is a summary of the most critical maintenance issues.

Oil Tank:

The oil tank needed to be replaced as it was more than twenty years old and the fuel supply company refused to fill it due to the age. KSV approved the installation of a new oil tank immediately prior to the listing.

No Heat from Radiators:

Once the new oil tank was installed, the tenant then advised that even when she was filling up the tank on her own (with diesel from gas station), the radiators were not emitting any heat. The oil tank installer investigated and advised that either air needed to be bled from the radiator lines or the circulator pump replaced.

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Cause of Water damage in Basement:

The contractor did not see any noticeable cracks in the concrete block foundation so thinks clay weeping tiles were most likely used around the foundation and they have stopped working due to deterioration, tree roots, frost, etc. Clay weeping tiles basically stop working after a few decades and that is why they are not used anymore.

The best solution provided was to remove and replace the weeping tile – which is a very significant job which involves excavating around the outside of the house down to the footings in order to replace the weeping tile. Another solution is to install an interior weeping tile system, but this is not the preferred option.

The contractor estimated this repair cost to be approximately \$30,000.

Mold in Basement due to Water damage:

There is noticeable black mold on walls and baseboards in the basement. Anyone who purchases the property should have a mold remediation company inspect the house to confirm how much mold there was and the best way to remove it. We understand that some areas can be removed with a bleaching process while other areas might need the entire drywall and insulation replaced.

Dry Sump Pump:

Sump Pumps should always have water in them. This sump pump is completely dry. The pump itself turns on, so we know it is functional. No water in the pump is a classic sign of an improperly installed pump or a problem with the drainage system, which could be expensive to repair.

Rim Joists holding up house showing severe deterioration:

House is an older modular home placed on joists on top of concrete block foundation. The rim joists are deteriorating around the house. The kitchen floor is noticeably lower on one side by the exterior walls and this is most likely caused by the rotting rim joists.

Septic Tank - Leaking pipes:

The lush grass on the front lawn is a common sign that the septic tank and/or septic pipes are leaking raw sewage into the ground. One pipe is very visibly leaking and two pipes are showing partial leakage. Most likely, a new septic system would be required which would cost approximately \$25,000.

BERNICE WHELAN
REALTY INC.

The above noted maintenance issues are only the most significant. There is general disrepair and damage in all of the interior rooms as well as the exterior of the property. Note that we never went inside the detached garage due to the numerous dogs and cats being housed by the tenant inside the garage, so we have no idea what condition it is in.

Comparable Sale – 7460 Fifth Line:

Along with the numerous maintenance issues, we also look at the most recent comparable sales in order to gauge the market value based on current economic conditions. The appraisal was completed on March 5, 2019, but there was a sale that posted on March 13, 2019 for 7460 Fifth Line.

7460 Fifth Line sold for \$499,900 on March 13, 2019. It comprised 8.6 acres (283' x 1379') with much more useable acreage than 6216 Fifth Line. 6216 Fifth Line is 4 acres but a large portion of the acreage is environmentally protected due to it being a ravine lot with a river running through it. 7460 Fifth Line was a well-maintained, owner-occupied home offering 3,000 square feet, four bedrooms and three and a half bathrooms plus a large detached garage/workshop. See attached MLS listing and photos.

Based on the above information and our own market expertise and knowledge of the local market, we are completely satisfied that the sale price of [REDACTED] is a very reasonable sale price for the property. Please let us know if you require anything further at any time regarding the sale of 6216 Fifth Line. We acknowledge that you may append this letter to the Receiver's Report to Court, the purpose of which is to recommend the sale transaction for the property subject to the Receivership Order.

Best Regards,



Bernice Whelan
Broker of Record/Owner
Bernice Whelan Realty Inc., Brokerage

Appendix “E”

This Agreement of Purchase and Sale dated this 26 day of June 2019

BUYER: Kalvin Breedon and Krista Lee Breedon, agrees to purchase from (Full legal names of all Buyers)

SELLER: Ksv Kofman Inc. In Capacity As Court-Appointed Receiver of the Property Municipally Owned Know the following (Full legal names of all Sellers)

REAL PROPERTY:

Address 6216 FIFTH LINE, Township of Essa, County of Simcoe, fronting on the West side of 5th Line in the Municipality of Essa and having a frontage of 397.5 more or less by a depth of 442 and legally descr bed as Pt E 1/2 Lt 10 Con 4 Essa Twp Pt 4 Rd 1027; Essa (legal description of land including easements not described elsewhere) (the "property")

PURCHASE PRICE: Dollars (CDN\$) [Redacted] Dollars

DEPOSIT: Buyer delivers 2 Days After Acceptance (Marked Upon Acceptance of this Agreement) [Redacted] Dollars (CDN\$) [Redacted]

by negotiable cheque payable to Bernice Whelan Realty Inc., Brokerage "Deposit Holder" to be held in trust pending completion or other termination of this Agreement and to be credited toward the Purchase Price on completion. For the purposes of this Agreement, "Upon Acceptance" shall mean that the Buyer is required to deliver the deposit to the Deposit Holder within 24 hours of the acceptance of this Agreement. The parties to this Agreement hereby acknowledge that, unless otherwise provided for in this Agreement, the Deposit Holder shall place the deposit in trust in the Deposit Holder's non-interest bearing Real Estate Trust Account and no interest shall be earned, received or paid on the deposit.

Buyer agrees to pay the balance as more particularly set out in Schedule A attached.

SCHEDULE(S) A B attached hereto form(s) part of this Agreement.

1. IRREVOCABILITY: This offer shall be irrevocable by Buyer until 12:00 P.M. on the 27th day of June 2019 after which time, if not accepted, the offer shall be null and void and the deposit shall be returned to the Buyer in full without interest.

2. COMPLETION DATE: This Agreement shall be completed by no later than 6:00 p.m. on the 26th day of August 2019. Upon completion, vacant possession of the property shall be given to the Buyer unless otherwise provided for in this Agreement.

INITIALS OF BUYER(S): [Handwritten initials]

INITIALS OF SELLER(S): [Handwritten initials]

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3. **NOTICES:** The Seller hereby appoints the listing Brokerage as agent for the Seller for the purpose of giving and receiving notices pursuant to this Agreement. Where a Brokerage (Buyer's Brokerage) has entered into a representation agreement with the Buyer, the Buyer hereby appoints the Buyer's Brokerage as agent for the purpose of giving and receiving notices pursuant to this Agreement. Where a Brokerage represents both the Seller and the Buyer (multiple representation), the Brokerage shall not be appointed or authorized to be agent for either the Buyer or the Seller for the purpose of giving and receiving notices. Any notice relating hereto or provided for herein shall be in writing. In addition to any provision contained herein and in any Schedule hereto, it's offer, any counter-offer, notice of acceptance thereof or any notice to be given or received pursuant to this Agreement or any Schedule hereto (any of them, "Document") shall be deemed given and received when delivered personally or hand delivered to the Address for Service provided in the Acknowledgment below, or where a facsimile number or email address is provided herein, when transmitted electronically to that facsimile number or email address, respectively, in which case, the signature(s) of the party (parties) shall be deemed to be original.

FAX No. _____ (for delivery of Documents to Seller)

FAX No. _____ (for delivery of Documents to Buyer)

Email Address: bernicc@igovethewaterfront.ca (for delivery of Documents to Seller)

Email Address: tomn@ronarealty.com (for delivery of Documents to Buyer)

4. **CHATELLE INCLUDED:**

Unless otherwise stated in this Agreement or any Schedule hereto, Seller agrees to convey all fixtures and chattels included in the Purchase Price free from all liens, encumbrances or claims affecting the said fixtures and chattels.

5. **FIXTURES EXCLUDED:**

Tenants chattels.


6. **RENTAL ITEMS (including Lease, Lease to Own):** The following equipment is rented and **not** included in the Purchase Price. The Buyer agrees to assume the rental contract(s), if assumable.

The Buyer agrees to cooperate and execute such documentation as may be required to facilitate such assumption.

7. **HST:** If the sale of the property (Real Property as described above, is subject to Harmonized Sales Tax (HST), then such tax shall be included in _____ (included in/ in addition to) _____ the Purchase Price. If the sale of the property is not subject to HST, Seller agrees to certify on or before closing, that the sale of the property is not subject to HST. Any HST on chattels, if applicable, is not included in the Purchase Price.

INITIALS OF BUYER(S): (KD)

INITIALS OF SELLER(S): (W)

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8. **TITLE SEARCH:** Buyer shall be allowed until 5:00 p.m. on the 12 day of August, 2019 (Requestion Date) to examine the title to the property at Buyer's own expense and until the earlier of (i) thirty days from the later of the Requestion Date or the date on which the conditions in this Agreement are fulfilled or otherwise waived or (ii) five days prior to completion, to satisfy Buyer that there are no outstanding

were orders or deficiency notices affecting the property, and that its present use (single family residential) may be lawfully continued; and that the principal building may be insured against risk of fire. Seller hereby consents to the principal by or other governmental agencies releasing to Buyer details of all outstanding work orders and deficiency notices affecting the property, and Seller agrees to execute and deliver such further authorizations in this regard as Buyer may reasonably require.

9. **FUTURE USE:** Seller and Buyer agree that there is no representation or warranty of any kind that the future intended use of the property by Buyer is or will be lawful except as may be specifically provided for in this Agreement.

10. **TITLE:** Provided that the title to the property is good and free from all registered restrictions, charges, liens, and encumbrances except as otherwise specifically provided in this Agreement and save and except for (a) any registered restrictions or covenants that run with the land providing that such are complied with; (b) any regulated municipal agreements and registered agreements with publicly regulated utilities providing such have been complied with; or security has been posted to ensure compliance and completion, as evidenced by a letter from the relevant municipality or regulated utility; (c) any minor easements for the supply of domestic utility or telecommunication services to the property or adjacent properties; and (d) any governments (or drainage, storm or sanitary sewers, public utility lines, telecommunication lines, cable television lines or other services which do not materially affect the use of the property. If within the specified times referred to in paragraph 8 any valid objection to title or to any outstanding work order or deficiency notice, or to the fact the said present use may not lawfully be continued, or that the principal building may not be insured against risk of fire is made in writing to Seller and which Seller is unable or unwilling to remove, remedy or satisfy or obtain insurance save and except against risk of fire insurance in favour of the Buyer and any mortgagee, (with all related costs or the expense of the Seller), and which Buyer will not waive, this Agreement notwithstanding any site meetings or negotiations in respect of such objections, shall be of no and all moneys paid shall be returned without interest or deduction and Seller, Listing Brokerage and Cooperating Brokerage shall not be liable for any costs or damages. Save as to any valid objection so made by such day and except for any objection going to the root of the title, Buyer shall be conclusively deemed to have accepted Seller's title to the property.

11. **CLOSING ARRANGEMENTS:** Where each of the Seller and Buyer retain a lawyer to complete the Agreement of Purchase and Sale of the property and where the transaction will be completed by electronic registration pursuant to Part III of the Land Registration Reform Act, R.S.O. 1990, Chapter L6 and the Electronic Registration Act, S.O. 1991, Chapter 41 and any amendments thereto, the Seller and Buyer acknowledge and agree that the exchange of closing funds, non-registrable documents and other items (the "Requested Deliveries") and the release thereof to the Seller and Buyer will (a) not occur at the same time as the registration of the transfer deed (and any other documents intended to be registered in connection with the completion of this transaction) and (b) be subject to conditions whereby the lawyer(s) receiving any of the Requested Deliveries will be required to hold same in trust and not release same except in accordance with the terms of a document registration agreement between the said lawyers. The Seller and Buyer irrevocably instruct the said lawyers to be bound by the document registration agreement which is required to come into force by the law Society of Ontario. Unless otherwise agreed to by the lawyers, such exchange of Requested Deliveries shall occur by the delivery of the Requested Deliveries of each party to the office of the lawyer for the other party or such other location agreeable to both lawyers.

12. **DOCUMENTS AND DISCHARGE:** Buyer shall not call for the production of any title deed, abstract, survey or other evidence of title to the property except such as are in the possession or control of Seller. If requested by Buyer, Seller will deliver any sketch or survey of the property within Seller's control to Buyer as soon as possible and prior to the Requestion Date. If a discharge of any Charge/Mortgage held by a corporation incorporated pursuant to the Trust and Loan Companies Act (Canada), Chartered Bank Trust Company, Credit Union, Caisse Populaire or Insurance Company and which is not to be assumed by Buyer on completion, is not available in registrable form on completion, Buyer agrees to accept Seller's lawyer's personal undertaking to obtain, out of the closing funds, a discharge in registrable form and to register same, or cause same to be registered, on file within a reasonable period of time after completion, provided that on or before completion Seller shall provide to Buyer a mortgage statement prepared by the mortgagee setting out the balance required to obtain the discharge, and, where a real-time electronic cleared Lands transfer system is not being used, a direction executed by Seller directing payment to the mortgagee of the amount required to obtain the discharge out of the balance due on completion.

13. **INSPECTION:** Buyer acknowledges having had the opportunity to inspect the property and understands that upon acceptance of this offer there shall be a binding agreement of purchase and sale between Buyer and Seller. The Buyer acknowledges having the opportunity to include a requirement for a property inspection report in this Agreement and agrees that except as may be specifically provided for in this Agreement, the Buyer will not be obtaining a property inspection or property inspection report regarding the property.


14. **INSURANCE:** All buildings on the property and of other things being purchased shall be and remain until completion at the risk of Seller. Pending completion, Seller shall hold all insurance policies, if any, and the proceeds thereof in trust for the parties as their interests may appear and in the event of substantial damage, Buyer may either terminate this Agreement and have all moneys paid returned without deduction or else take the proceeds of any insurance and complete the purchase. No insurance shall be transferred on completion. If Seller is taking back a Charge/Mortgage, or Buyer is assuming a Charge/Mortgage, Buyer shall supply Seller with remittance evidence adequate to protect Seller's or other mortgagee's interest on completion.

INITIALS OF BUYER(S): (KAS)


INITIALS OF SELLER(S): ([Signature])

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15. **PLANNING ACT:** This Agreement shall be effective to create an interest in the property only if Seller complies with the subdivision control provisions of the Planning Act by completion and Seller covenants to proceed diligently at Seller's expense to obtain any necessary consent by completion.
16. **DOCUMENT PREPARATION:** The Transfer/Deed shall, save for the Land Transfer Tax Affidavit, be prepared in registrable form at the expense of Seller, and any Charge/Mortgage to be given back by the Buyer to Seller at the expense of the Buyer. If requested by Buyer, Seller covenants that the Transfer/Deed to be delivered on completion shall contain the statements contemplated by Section 50(22) of the Planning Act, R.S.O. 1990.
17. **RESIDENCY:** (a) Subject to (b) below, the Seller represents and warrants that the Seller is not and on completion will not be a non-resident under the non-residency provisions of the Income Tax Act which representation and warranty shall survive and not merge upon the completion of this transaction and the Seller shall deliver to the Buyer a statutory declaration that Seller is not then a non-resident of Canada. (b) provided that if the Seller is a non-resident under the non-residency provisions of the Income Tax Act the Buyer shall be credited towards the Purchase Price with the amount, if any, necessary for Buyer to pay to the Minister of National Revenue to satisfy Buyer's liability in respect of tax payable by Seller under the non-residency provisions of the Income Tax Act by reason of this sale. Buyer shall not claim such credit if Seller delivers on completion the prescribed certificate.
18. **ADJUSTMENTS:** Any rents, mortgage interest, realty taxes (including local improvement rates and unimproved public or private utility charges and unimproved cost of fire), as applicable, shall be apportioned and allowed to the day of completion, the day of completion itself to be apportioned to Buyer.
19. **PROPERTY ASSESSMENT:** The Buyer and Seller hereby acknowledge that the Province of Ontario has implemented current value assessment and properties may be re-assessed on an annual basis. The Buyer and Seller agree that no claim will be made against the Buyer or Seller, or any Brokerage, Broker or Salesperson for any changes in property tax as a result of a re-assessment of the property save and except any property taxes that accrued prior to the completion of this transaction.
20. **TIME HAZARDS:** Time shall in all respects be of the essence hereof provided that the time for doing or completing of any matter provided for herein may be extended or abridged by an agreement in writing signed by Seller and Buyer or by their respective lawyers who may be specifically authorized in that regard.
21. **TENDER:** Any tender of documents or money hereunder may be made upon Seller or Buyer or their respective lawyers on the day set for completion. Money shall be tendered with funds drawn on a lawyer's trust account in the form of a bank draft, certified cheque or wire transfer using the Large Value Transfer System.
22. **FAMILY LAW ACT:** Seller warrants that spousal consent is not necessary to this transaction under the provisions of the Family Law Act, R.S.O. 1990 unless the spouse of the Seller has executed the consent hereinafter provided.
23. **UFFB:** Seller represents and warrants to Buyer that during the time Seller has owned the property Seller has not caused any building on the property to be insulated with insulation containing ureaformaldehyde, and that to the best of Seller's knowledge no building on the property contains or has ever contained insulation that contains ureaformaldehyde. This warranty shall survive and not merge on the completion of this transaction, and if the building is part of a multiple unit building, this warranty shall only apply to that part of the building which is the subject of this transaction.
24. **LEGAL, ACCOUNTING AND ENVIRONMENTAL ADVICE:** The parties acknowledge that any information provided by the Brokerage is not legal, tax or environmental advice.
25. **CONSUMER REPORTS:** The Buyer is hereby notified that a consumer report containing credit and/or personal information may be referred to in connection with this transaction.
26. **AGREEMENT IN WRITING:** If there is conflict or discrepancy between any provision added to this Agreement (including any Schedule attached hereto) and any provision in the standard pre-set portion hereof, the added provision shall supersede the standard pre-set provision to the extent of such conflict or discrepancy. This Agreement, including any Schedule attached hereto, shall constitute the entire Agreement between Buyer and Seller. There is no representation, warranty, collateral agreement or condition which affects this Agreement other than as expressed herein. For the purposes of this Agreement, Seller means vendor and Buyer means purchaser. This Agreement shall be read with all changes of gender or number required by the context.
27. **TIME AND DATE:** Any reference to a time and date in this Agreement shall mean the time and date where the property is located.

INITIALS OF BUYER(S): 

INITIALS OF SELLER(S): 

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28. SUCCESSORS AND ASSIGNS: The heirs, executors, administrators, successors and assigns of the undersigned are bound by the terms herein

SIGNED, SEALED AND DELIVERED in the presence of
Thomas Murdoch
 (Witness)
Thomas Murdoch
 (Witness)

IN WITNESS whereof I have hereunto set my hand and seal
KB
 (Signature)
 (Date)

June 26/19
 (Date)
 June 26/19
 (Date)

I, the Undersigned Seller, agree to the above offer. I hereby irrevocably instruct my lawyer to pay directly to the brokerage(s) with whom I have agreed to pay commission, the unpaid balance of the commission together with applicable Harmonized Sales Tax (and any other taxes as may hereafter be applicable), from the proceeds of the sale prior to any payment to the undersigned on completion of the sale by the brokerage(s) to my lawyer.

IN WITNESS whereof I have hereunto set my hand and seal
Renee Salvendy
 (Signature)
 (Date)

IN WITNESS whereof I have hereunto set my hand and seal
[Signature]
 (Signature)
 (Date)

June 26/19
 (Date)

SPOUSAL CONSENT: The undersigned spouse of the Seller hereby consents to the disposition evidenced herein pursuant to the provisions of the Family Law Act, R.S.O. 1990 and hereby agrees to execute all necessary or incidental documents to give full force and effect to the sale evidenced herein.

(Spouse) (Date)

CONFIRMATION OF ACCEPTANCE: This offer is being accepted by all parties on this day of JUNE 2019 at 9:00 AM. The purchase price is 28 days of JUNE 19.

[Signature] (Signature) (Date)

INFORMATION ON BROKERAGE(S)
 Listing Brokerage: **BERNICE WHELAN REALTY INC** (705) 739-8000 (Tel No)
 BERNICE M. WHELAN
 (Salesperson/Broker/Broker of Record Name)
 Co-op/Buyer Brokerage: **COLDWELL BANKER RONAN REALTY** (705) 435-4336 (Tel No)
 THOMAS MURDOCH
 (Salesperson/Broker/Broker of Record Name)

ACKNOWLEDGEMENT

I acknowledge receipt of my signed copy of this accepted Agreement of Purchase and Sale and I authorize the Brokerage to forward a copy to my lawyer.
 (Date)
 (Date)
 Address for Service
 (Tel No)
 Seller's lawyer
 Address
 Email
 (Tel No) (Fax No)

I acknowledge receipt of my signed copy of this accepted Agreement of Purchase and Sale and I authorize the Brokerage to forward a copy to my lawyer.
[Signature] (Date) JUNE 28 2019
[Signature] (Date) June 28/19
 Address for Service
 Buyer's Lawyer **PAUL GASTALDI**
 Address
 Email
 705-435-4336 (Tel No) (Fax No)

FOR OFFICE USE ONLY

COMMISSION TRUST AGREEMENT

To: Co-operating Brokerage shown on the foregoing Agreement of Purchase and Sale
 In consideration for the Co-operating Brokerage procuring the foregoing Agreement of Purchase and Sale, I hereby declare that all moneys received or receivable by me in connection with the transactions contemplated in the MLS® Rules and Regulations of my Real Estate Board shall be receivable and held in trust. This agreement shall constitute a Commission Trust Agreement as defined in the MLS® Rules and shall be subject to and governed by the MLS® Rules pertaining to Commission Trust.
 DATED as of the date and time of the acceptance of the foregoing Agreement of Purchase and Sale
 Authorized by: *Bernice Whelan*
 Acknowledged by: *Thomas Murdoch*
 (Authorized to sign for the Co-operating Brokerage) (Authorized to sign for the Co-operating Brokerage)

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This Schedule is attached to and forms part of the Agreement of Purchase and Sale between

BUYER: Kalvin Breedon and Krista-Lee Breedon and

SELLER: Ksv Kofman Inc In Capacity As Court-Appointed Receiver of the Property Municipally Owned Known as 6216

for the purchase and sale of 6216 FIFTH LINE, Township of Essa, County of Simcoe Essa

L.O.L. (NO dated the 26 day of June , 2019

Buyer agrees to pay the balance as follows:

The Buyer agrees to pay the balance of the purchase price, subject to adjustments, by bank draft or certified cheque, to the Seller on the completion of this transaction.

The Buyer hereby authorizes and directs the Seller, and the Seller agrees, when this Agreement becomes unconditional, to give to the tenant(s) the requisite notices under the Residential Tenancies Act, requiring vacant possession of the property for use by the Buyer or the Buyer's immediate family, effective as of the closing date, and the seller agrees to deliver copies of the requisite notices to the Buyer immediately after service of the notices upon the tenant. Upon vacant possession being provided to the Buyer, the Buyer or the Buyer's immediate family agrees to take possession of and occupy the property forthwith thereafter. The Buyer agrees to provide the Seller with a written indemnity on completion, indemnifying the Seller from all actions, causes of action, claims and demands of any kind whatsoever, that may occur in the event that the Buyer does not take possession of and occupy the property as aforesaid.

Handwritten initials: KRB

The Seller agrees to allow the Buyer access to the property prior to closing of this transaction on one occasion ~~including but not limited to~~ provided that at least 24 hours notice is given to the Seller prior to appointment

Handwritten initials: KRB

The Buyer hereby acknowledges that the property is currently occupied by third parties. The Buyer will accept the property on closing subject to such occupancy and shall not require vacant possession thereof.

Handwritten initials: KRB

This form must be initialed by all parties to the Agreement of Purchase and Sale

INITIALS OF BUYER(S): *(KRB)*

INITIALS OF SELLER(S): *(KRB)*

This Schedule is attached to and forms part of the Agreement of Purchase and Sale between

BUYER: *KALVIN + KRISTIN Lee Brown*

and

SELLER: KSV Kolman Inc., in its capacity as court appointed receiver of the property 6216 Fifth Line, RR #1, Egbert

for the property known as 6216 Fifth Line RR#1

EGBERT

LOL INO

dated the

day of

20

1. The parties to this Agreement hereby acknowledge and agree that the Deposit Holder shall place the deposit in an interest-bearing security with any accrued interest on the deposit to be paid to the Buyer upon closing, provided the amount of interest that BERNICE WHELAN REALTY INC., BROKERAGE earns on the deposit is greater than \$95.00 plus HST administration fee. The interest rate shall be provided to the Buyer within TEN (10) days of receipt of the deposit and interest shall be paid to the date of completion only. The parties to this Agreement hereby acknowledge and agree that BERNICE WHELAN REALTY INC., BROKERAGE shall be entitled to retain any interest earned on the deposit which is less than the administration fee detailed above. No interest shall be paid to the Buyer unless the Buyer provides the deposit holder with a Social Insurance Number in accordance with the Canada Revenue Agency requirements for the preparation of T5 slips by no later than TEN (10) days prior to the Completion date. Interest shall be paid to the SIN provider.

2. In the event this transaction is mutually released and becomes null and void, Bernice Whelan Realty Inc., Brokerage will issue a trust account cheque for return of the deposit, to the party designated by the fully and properly executed mutual release, not before ten (10) Business Days (as defined below) (for certified cheques or bank drafts) and not before twenty one (21) Business Days (for uncertified cheques) from the date the funds were deposited into the trust account as stated on its deposit receipts. A business day includes all weekdays except Saturday, Sunday or statutory holidays ("Business Days"). This policy is in place on the advice of the banking system, to protect trust deposits from fraud.

3. In the event of any conflict or inconsistency between any provision of this Schedule "B" and any provision of the Agreement of Purchase and Sale including Schedule "A" not contained in Schedule "B", the provisions of Schedule "B" shall govern and prevail.

4. The Buyer acknowledges that: (i) the Seller, in executing this Agreement, is entering into this Agreement of Purchase and Sale solely in its capacity as Court appointed receiver of the property municipally known as 6216 Fifth Line, RR #1, Egbert, Ontario (the "Property"), and not in its personal or any other capacity; (ii) the Receiver shall have no personal or corporate liability of any kind whether in contract, tort or otherwise, arising from this Agreement; and (iii) the Seller's authority to act in respect of the Property is governed by the Order of the Honourable Justice Winslow Siegel of the Ontario Superior Court of Justice (the "Court") dated November 13, 2018.

This form must be initialed by all parties to the Agreement of Purchase and Sale

INITIALS OF BUYER(S):

KALVIN

INITIALS OF SELLER(S):

NS

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This Schedule is attached to and forms part of the Agreement of Purchase and Sale between:

BUYER: KALVIN AND KRISTA-LEE BURETTON, and

SELLER: KSV Kofman Inc., in its capacity as court-appointed receiver of the property 6216 Fifth Line, RR #1, Egbert

for the property known as 6216 Fifth Line RR#1 EGBERT

LOL 1N0 dated the day of , 20

5 The Property is being sold and shall be accepted by the Buyer on an "as is, where is" and "without recourse" basis with no representations, warranties or condition, express or implied, statutory or otherwise, of any nature and kind whatsoever as to title, encumbrances, description, present or future use, fitness for use, environmental condition including the existence of hazardous substances, merchantability, quantity, defect (latent or patent), condition, location of structures, zoning or lawful use of the property, rights over adjoining properties and any easements, rights-of-way, rights of re-entry, restrictions and/or covenants which run with or affecting the land, ingress and egress to the property, the condition or state of repair of any chattels, encroachments on the property by adjoining properties or encroachments by the property on adjoining properties, if any, any outstanding work orders, orders to comply, deficiency notices, municipal or other governmental agreements or requirements (including site plan agreements, development agreements, subdivision agreements, building or fire codes, building and zoning by-laws and regulations, development fees, imposts, lot levies and sewer charges) or any other matter or thing whatsoever, either stated or implied. The Buyer acknowledges having reviewed the state of title to the Property and agrees to accept title subject to all of the foregoing.

6. The Seller's obligations contained in this Agreement shall be conditional upon the Seller receiving an order of the Court in a form satisfactory to the Seller, acting reasonably, or such other court as has jurisdiction in the matter, approving the sale of the Property to be vested in the Buyer, free and clear of all mortgages and/or security interests registered against the Property as contemplated by this Agreement (the "Court Approval").

7. The Seller covenants and agrees to use reasonable commercial efforts to attempt to obtain the Court Approval. If the sale of the Property is not approved by the Court, this Agreement shall be terminated without any penalty or liability whatsoever to the Seller or the Buyer, other than the return by the Seller to the Buyer of the Deposit, but without cost or other compensation, and each of the Seller and the Buyer shall be released from all other obligations hereunder except for the obligations of the Buyer that are specifically stated herein to survive Closing or other termination of this Agreement.

8. In the event that the sale of the Property is enjoined or not approved by the Court, where any part of the Property is removed from the control of the Seller by any means or process, or legal proceedings are threatened against the Seller to restrain the sale of the Property, or where the Property is redeemed in whole or in part by any party entitled thereto at law on or prior to Closing, the Seller, at its option, may terminate this Agreement without any penalty or liability whatsoever to the Seller or the Buyer, other than the return by the Seller to the Buyer of the Deposit, without deduction, and without cost or other compensation, and each of the Seller and the Buyer shall be released from all other obligations hereunder, except for the obligations of the Buyer that are specifically stated herein to survive Closing or other termination of this Agreement.

This form must be initialed by all parties to the Agreement of Purchase and Sale

INITIALS OF BUYER(S): (KRB)

INITIALS OF SELLER(S): (N)

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This Schedule is attached to and forms part of the Agreement of Purchase and Sale between

BUYER: KALVIN AND KATHA-LEE BIRKINSON

and

SELLER: KSV Kofman Inc., in its capacity as court-appointed receiver of the property 6216 Fifth Line, RR #1, Egbert
for the property known as 6216 Fifth Line RR#1 EGBERT

10/1/10 dated the _____ day of _____ 20____

9. The description of the Property contained in this Agreement is for the purposes of identification only and no representation, warranty or condition has or will be given by the Seller concerning the existence or accuracy of such description.

10. The Buyer shall accept title to the Property subject to, and whether complied with or not, any and all registered restrictions, agreements or covenants which run with the land, registered easements for the supply of utilities and services to the Property or through the Property to adjoining/adjacent properties or other easements, registered leases, rights-of-way, rights of re-entry by-laws, standard subdivision or site plan agreements (including any levies or charges payable thereunder) with the Municipality and/or Public Utility, and any encroachments

11. The Seller shall not be required to deliver a discharge, release or reassignment of any charge/mortgage of land, assignment, lien or other encumbrance registered against the title to the Property which would be extinguished by an order of the Court referred to in paragraph 6 above.

12. The Seller does not guarantee title to the chattels and does not warrant the condition or state of repair of the chattels. The Buyer must satisfy itself in this regard and accept the fixtures and chattels on an "as-is, where-is" basis. The Seller shall not provide a bill of sale for any chattels or fixtures, and shall make no further adjustments or abatement in the purchase price with respect thereto. The Seller will not remove and shall not be responsible for the removal of any chattels found on the Property prior to or on the date of closing.

13. The Buyer covenants and agrees not to register Notices of this Agreement, assignment thereof, Caution, Certificate of Pending Litigation, or any other instrument or reference to this Agreement or to his/her/its interest in the Property. If any such registration occurs, the Seller may, at its option, terminate this Agreement and all deposit monies shall be forfeited as liquidated damages and not as a penalty. The Buyer hereby irrevocably consents to a court order removing any such registrations and agrees to bear all costs in obtaining such order.

This form must be initialed by all parties to the Agreement of Purchase and Sale

INITIALS OF BUYER(S):

INITIALS OF SELLER(S):

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Form 801 for use in the Province of Ontario

For Brokerage submitting the offer on behalf of the Buyer:

When sent to the Listing Brokerage this form can be used as evidence that you have a written signed offer from a Buyer to the Seller

REAL PROPERTY ADDRESS: 6216 FIFTH LINE, Township of Essa, Co. Essa L0L 1N0 (the 'property')

for an Agreement of Purchase and Sale dated: the 26 day of June 2019 (the 'date')

This offer was submitted by: BROKERAGE: COLDWELL BANKER RONAN REALTY

SALES REPRESENTATIVE/BROKER: THOMAS MURDOCH

I/We, Calvin Breedon and Krista-Lee Breedon, have signed an offer for the property

(Signature of Buyer) June 26/19 (Date) (Signature of Buyer) June 26/19 (Date)

This offer was submitted by email to the Listing Brokerage at 6:00 p.m. on the 26 day of June

irrevocable until 12:00 p.m. on the 27 day of June

(For Buyer counter offer - complete the following)

I/We, Calvin Breedon and Krista-Lee Breedon, have signed an offer for the property

(Signature of Buyer) (Date) (Signature of Buyer) (Date)

An offer was submitted, (by fax, by email or in person) to the Listing Brokerage at (a.m./p.m.) on the (day) of (month) 20 (year)

irrevocable until (a.m./p.m.) on the (day) of (month) 20 (year)

For Listing Brokerage receiving the offer:

SELLER(S): Ksv Kofman Inc. In Capacity As Court-Appointed Receiver of the Property Municipally Owned Known as 621

SELLER(S) CONTACT: (e phone / email / fax)

LISTING BROKERAGE: BERNICE WHELAN REALTY INC.

SALES REPRESENTATIVE/BROKER: BERNICE M. WHELAN

This offer was received, by email, by the Listing Brokerage at 6:00 p.m. on the 26 day of June 2019

This offer was presented, by email, to the Seller(s) at 7:00 p.m. on the 26 day of June 2019

Offer was: [] Accepted [x] Signed Back/Countered [] Expired/Declined

Comments:

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