

AMENDED THIS DEC 03 2018 PURSUANT TO
MODIFIÉ CE CONFORMÉMENT À

RULE/LA RÈGLE 26.02 (A)

THE ORDER OF _____
L'ORDONNANCE DU _____

DATED / FAIT LE _____

May Nikolaidis
REGISTRAR / CLERK OF COURT
SUPERIOR COURT OF JUSTICE / COUR SUPÉRIEURE DE JUSTICE

Court File No. CV-18-00608356-00CL

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

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

AMENDED NOTICE OF APPLICATION

TO THE RESPONDENTS

A LEGAL PROCEEDING HAS BEEN COMMENCED by the Applicant. The claim made by the Applicant appears on the following pages.

THIS APPLICATION will come on for a hearing on **November 13, 2018 at 10:00 a.m.** at 330 University Avenue, Toronto, Ontario.

IF YOU WISH TO OPPOSE THIS APPLICATION, to receive notice of any step in the application or to be served with any documents in the application, you or an Ontario lawyer acting for you must forthwith prepare a notice of appearance in Form 38A prescribed by the Rules of Civil Procedure, serve it on the Applicant's lawyer or, where the Applicant does not have a lawyer, serve it on the Applicant, and file it, with proof of service, in this court office, and you or your lawyer must appear at the hearing.

IF YOU WISH TO PRESENT AFFIDAVIT OR OTHER DOCUMENTARY EVIDENCE TO THE COURT OR TO EXAMINE OR CROSS-EXAMINE WITNESSES ON THE APPLICATION, you or your lawyer must, in addition to serving your notice of appearance, serve a copy of the evidence on the Applicant's lawyer or, where the Applicant does not have a lawyer, serve it on the Applicant, and file it, with proof of service, in the court office where the application is to be heard as soon as possible, but not later than 2 p.m. on the day before the hearing.

IF YOU FAIL TO APPEAR AT THE HEARING, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO OPPOSE THIS APPLICATION BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL

AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

November 6, 2018

Issued By: "RAY WILLIAMS"
Local Registrar
330 University Avenue
Toronto, ON M5G 1R7

TO: THE SERVICE LIST

APPLICATION

1. The Applicant, Buduchnist Credit Union Limited (“**BCU**”), makes an application, for an order, *inter alia*:
 - (a) Appointing ~~Zeifman Partners Inc. (“**Zeifmans**”)~~ KSV Kofman Inc. (“**KSV**”) as receiver and manager (in such capacity, the “**Receiver**”) of the Real Properties (being ~~four~~ five residential properties defined below), including all rents arising therefrom and proceeds thereof, pursuant to Subsection 243(1) of the *Bankruptcy and Insolvency Act* (Canada) (the “**BIA**”) and Section 101 of the *Courts of Justice Act* Ontario (“**CJA**”);
 - (b) granting the Receiver, and counsel to the Receiver, a charge on the Real Properties (the “**Receiver’s Charge**”) as security for their fees and disbursements, and declaring that the Receiver’s Charge shall form a first charge on the Real Properties 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;
 - (c) granting a charge on the Real Properties as security for the payment of monies borrowed by the Receiver, 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;
 - (d) authorizing the Receiver, if it determines desirable, to sell the Elm Property (defined below) pursuant to the Agreement of Purchase and Sale, accepted May 19, 2017 (the “**APS**”), between Vicar Homes Ltd. (“**Vicar Homes**”) and Sylvia Conforti, as amended, subject to monetary adjustments and such amendments as the Receiver may deem appropriate, or to negotiate and enter into a new agreement for the sale of the Elm Property, on terms acceptable to the Receiver and the Applicant, and sell and convey the Elm Property pursuant to such sale agreement;

- (e) declaring that the Receiver is not a “vendor” as defined in, and for the purposes of, the *Ontario New Home Warranties Plan Act* (the “**ONHWPA**”);
- (f) granting judgment to the Applicant in the amounts indicated below, as of November 1, 2018, plus interest and costs, against:

Elm Property:

- (i) 2321197 Ontario Inc. (“**197 Ontario**”) and Carlo Demaria, in respect of the 197 Loan (defined below), the amount of \$2,263,227.94;

Puccini Property (defined below):

- (ii) 2321198 Ontario (“**198 Ontario**”) and Carlo Demaria, in respect of the 198 Loan (defined below), in the amount of \$2,582,078.43;

Woodland Property (defined below):

- (iii) Carlo and Sandra Demaria, in respect of the First Woodland Mortgage (defined below), in the amount of \$995,199.35;
- (iv) Vicar Homes, in respect of the Vicar Homes Loan (defined below), in the amount of \$2,198,910.42 and against Carlo Demaria, as guarantor of the Vicar Homes Loan, in the amount of \$1,000,000;
- (v) Carlo and Sandra Demaria, in respect of the Second Woodland Mortgage (defined below), in the amount of \$2,198,910.42; and

Wilson Heights Property (defined below):

- (vi) Sasi Mach Limited (“**Sasi Mach**”) and Sandra Demaria, in respect of the Sasi Mach Loan (defined below), in the amount of \$485,485.85; and

Cottage Property (defined below)

- (vii) Carlo and Sandra Demaria, in respect of the Cottage Mortgage (defined below), in the amount of \$179,083.37.

- (g) such further and other relief as counsel may advise and this Honourable Court may permit.
2. In the alternative, BCU makes an application for an order, *inter alia*:
- (a) appointing ~~Zeifmans~~ KSV as interim receiver (in such capacity, the “**Interim Receiver**”) of the real properties municipally known as, (i) 87 Elm Grove Avenue, Richmond Hill, Ontario (the “**Elm Property**”), (ii) 46 Puccini Drive, Richmond Hill, Ontario (the “**Puccini Property**”); and (iii) 506 Wilson Heights Blvd, North York, Ontario (the “**Wilson Heights Property**”); and (iv) 6216 Fifth Line RR #1 Egbert Ontario (the “**Cottage Property**”), and collectively with the Elm Property, the Wilson Heights Property and the Puccini Property, the “**IR Properties**”), including all rents arising therefrom and proceeds thereof, pursuant to Subsection 47(1) of the BIA;
 - (b) granting the Interim Receiver, and counsel to the Interim Receiver, a charge on the IR Properties (the “**Interim Receiver’s Charge**”) as security for their fees and disbursements, and declaring that the Interim Receiver’s Charge shall form a first charge on the IR Properties 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;
 - (c) granting a charge on the IR Properties as security for the payment of monies borrowed by the Interim Receiver, 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 Interim Receiver’s Charge and the charges as set out in Sections 14.06(7), 81.4(4), and 81.6(2) of the BIA;
 - (d) authorizing the Interim Receiver, if it determines desirable, to sell the Elm Property pursuant to the APS, subject to adjustments and such minor amendments as the Receiver may deem appropriate, or to negotiate and enter into a new agreement for the sale of the Elm Property, on terms acceptable to the Interim Receiver and the Applicant, and sell and convey the Elm Property pursuant to such sale agreement;

- (e) declaring that the Interim Receiver is not a “vendor” as defined in, and for the purposes of, the ONHWPA; and
- (f) such further and other relief as counsel may advise and this Honourable Court may permit.

THE GROUNDS FOR THE APPLICATION ARE:

Background

- 3. 197 Ontario and 198 Ontario are each corporations incorporated pursuant to the laws of the Province of Ontario. Their registered office address is located at 211 Woodland Acres Crescent, Vaughan, Ontario (the “**Woodland Property**”, and together with the IR Properties, the “**Real Properties**”);
- 4. The sole director and officer of each of 197 Ontario and 198 Ontario is Carlo Demaria;
- 5. 197 Ontario is the registered owner of the Elm Property and 198 Ontario is the registered owner of the Puccini Property;
- 6. Carlo Demaria and Sandra Demaria are individuals and the registered owners of the Woodland Property and the Cottage Property;
- 7. Sasi Mach is a corporation incorporated pursuant to the laws of the Province of Ontario. Its registered office address is located at the Woodland Property;
- 8. Sandra Demaria is the sole director and officer of Sasi Mach;
- 9. Sasi Mach is the registered owner of the Wilson Heights Property;
- 10. Vicar Homes is a corporation incorporated pursuant to the laws of the Province of Ontario. Carlo Demaria is a director and officer of Vicar Homes;
- 11. BCU is the largest Ukrainian credit union in Canada and advanced loans to each of the Respondents, which loans are secured by mortgages on the Real Properties that are in default;

12. The mortgages in favour of BCU are the only mortgages registered against the Real Properties, and the only other creditors BCU is aware of with potential encumbrances against the Real Properties are the municipalities for tax and utility arrears;

Elm Property

(A) Indebtedness and Security

13. The Elm Property is comprised of land and a new vacant residential home the construction of which is not complete. It is subject to an agreement of purchase and sale which failed to close on October 1, 2018, as result of the vendor's default;
14. Pursuant to the Commitment Letter, dated January 29, 2016, and the Line of Credit Loan Agreement, dated January 29, 2016 (together, the "**197 Loan Agreements**"), BCU advanced a demand loan to 197 Ontario in the principal amount of \$2,200,000 (the "**197 Loan**");
15. Repayment of the 197 Loan is guaranteed by Carlo Demaria pursuant to a Guarantee and Postponement of Claim, dated January 29, 2016;
16. The 197 Loan is secured by a charge/mortgage in the principal amount of \$2,200,000, registered in favour of BCU against the Elm Property on February 5, 2016;
17. There are no other mortgages registered against title to the Elm Property;
18. As of November 1, 2018, 197 Ontario is indebted to BCU in the amount of \$2,263,227.94 plus interest and costs to the date of payment;

(B) Default and Demand

19. 197 Ontario is in default of the 197 Loan Agreements for failing to, (a) make monthly payments of principal and interest when due, and (b) pay realty taxes on the Elm Property when due;

20. The last payment made in respect of the 197 Loan was received on October 30, 2017, and there is currently \$3,731.20 of realty tax arrears owing on the Elm Property. Accordingly, the default is continuing;
21. By letters, dated September 21, 2018, delivered to 197 Ontario and Carlo Demaria, as guarantor, BCU demanded repayment of the 197 Loan, plus all accrued and outstanding interest and costs, by October 3, 2018. The demand letter to 197 Ontario was accompanied by a Notice of Intention to Enforce Security pursuant to Subsection 244(1) of BIA (“**BIA Notice**”), dated September 21, 2018;
22. The 10-day notice period prescribed by the BIA has expired without payment to BCU;

Puccini Property

(A) Indebtedness and Security

23. The Puccini Property is a residential property which BCU believes to be occupied by tenant(s);
24. Pursuant to the Line of Credit Mortgage Loan Agreement and Statement of Disclosure, dated February 17, 2015, the Mortgage Loan Offer, dated February 17, 2015, and the Line of Credit Mortgage Loan Agreement and Statement of Disclosure, dated October 20, 2015, BCU made loan advances to 198 Ontario (the “**198 Loan**”);
25. The 198 Loan is secured by a charge/mortgage in the principal amount of \$2,500,000 (the “**Puccini Mortgage**”), registered in favour of BCU against the Puccini Property on February 27, 2015;
26. Repayment of the Puccini Mortgage is guaranteed by Carlo Demaria pursuant to the Guarantor Clause, dated February 26, 2015;
27. There are no other mortgages registered against title to the Puccini Property;
28. However, on September 29, 2015, an Order issued by the Ontario Superior Court, dated May 6, 2015 (the “**Mareva Order**”), in the proceeding of *Trade Capital Finance Corp. v.*

Peter Cook et al., bearing Brampton Court File No. CV-15-2110-00, was registered against the Puccini Property;

29. The obligations of 198 Ontario to BCU are also secured by a General Security Agreement, dated February 17, 2015;
30. On September 20, 2018, BCU registered a financing statement pursuant to the *Personal Property Security Act* (Ontario) (“PPSA”) against 198 Ontario over all collateral classes except “consumer goods”;
31. As of November 1, 2018, 198 Ontario is indebted to BCU in the amount of \$2,582,078.43 plus interest and costs to the date of payment;
32. BCU believes that the Puccini Property is tenanted, however it received no response to its letter, dated September 24, 2018, delivered to each of 198 Ontario and the tenant requesting information in respect of the tenancy;

(B) Default and Demand

33. 198 Ontario is in default of the Puccini Mortgage for failing to, (a) make monthly payments of principal and interest when due, and (b) pay realty taxes on the Puccini Property when due;
34. The last payment made in respect of the 198 Loan was received on October 30, 2017, and there is currently \$12,146.12 of realty tax arrears owing on the Puccini Property. Accordingly, the default is continuing;
35. By letters, dated September 24, 2018, delivered to 198 Ontario and Carlo Demaria, as guarantor, BCU demanded repayment of the 198 Loan, plus all accrued and outstanding interest and costs, by October 5, 2018. The demand letter to 198 Ontario was accompanied by a BIA Notice, dated September 24, 2018;
36. The 10-day notice period prescribed by the BIA has expired without payment to BCU;

Woodland Property

(A) Indebtedness and Security

37. The Woodland Property is a residential property that is the family home of Carlo Demaria and Sandra Demaria;
38. Pursuant to the Mortgage Loan Offer, dated August 4, 2010, Carlo and Sandra Demaria granted to BCU a mortgage/charge in the principal amount of \$1,490,000, which was registered against the Woodland Property on August 16, 2010 (the “**First Woodland Mortgage**”);
39. As of November 1, 2018, a total of \$995,199.35 is owing under the First Woodland Mortgage, plus interest and costs to the date of payment;
40. Pursuant to the Line of Credit Mortgage Loan Agreement and Statement of Disclosure, dated November 12, 2012 (the “**Demaria Loan Agreement**”), BCU made available certain credit facilities to Carlo and Sandra Demaria in the principal amount of \$3,000,000;
41. The obligations of Carlo and Sandra Demaria pursuant to the Demaria Loan Agreement were secured by a second collateral mortgage/charge in the principal amount of \$3,000,000 and registered against the Woodland Property on December 5, 2012 (the “**Second Woodland Mortgage**”);
42. Pursuant to the Line of Credit Loan Agreement, dated April 1, 2015 (“**Vicar Homes Loan Agreement**”), BCU advanced to Vicar Homes certain loan facilities (the “**Vicar Homes Loan**”);
43. Carlo Demaria guaranteed the repayment of the Vicar Homes Loan pursuant to the Guarantee and Postponement of Claim, dated April 1, 2015, which is limited to \$1,000,000;
44. It was the express intention of BCU and Carlo Demaria that the Second Woodland Mortgage would secure advances under the Vicar Homes Loan;

45. As of November 1, 2018, a total of \$2,198,910.42 is owing under the Vicar Homes Loan Agreement and the Second Woodland Mortgage, plus interest and costs to the date of payment;
46. There are no other mortgages registered against title to the Woodland Property, however, the Mareva Order was registered against the Woodland Property on June 18, 2015;

(B) Default and Demand

47. Carlo and Sandra Demaria are in default of the First Woodland Mortgage for failing to, (a) make monthly payments of principal and interest when due, and (b) pay realty taxes on the Woodland Property when due;
48. The last mortgage payment made in respect of the First Woodland Mortgage was received on August 9, 2018, and there is currently \$6,659.31 of realty tax arrears owing on the Woodland Property. Accordingly, the default is continuing;
49. On October 3, 2018, Carlo Demaria responded to a payment delinquency letter sent by BCU to Carlo and Sandra Demaria in respect of the First Woodland Mortgage by an email stating: "Can't pay mortgage or any bills at present time. Flat broke". Sandra Demaria did not respond;
50. By letter, dated October 18, 2018, delivered to Carlo and Sandra Demaria, BCU demanded repayment of the First Woodland Mortgage, plus all accrued and outstanding interest and costs, by October 31, 2018. The demand letter was accompanied by BIA Notices, dated October 18, 2018;
51. The 10-day notice period prescribed by the BIA has expired without payment to BCU;
52. Vicar Homes is in default of the Vicar Homes Loan Agreement for failing to make monthly payments of principal and interest when due;
53. The last payment made in respect of the Vicar Homes Loan was received on November 2, 2017;

54. By letters, dated October 18, 2018, delivered to Vicar Homes, Carlo and Sandra Demaria, BCU demanded repayment of the Vicar Homes Loan secured by the Woodland Second Mortgage, plus all accrued and outstanding interest and costs, by October 31, 2018. The demand letters were accompanied by BIA Notices, dated October 18, 2018;
55. The 10-day notice period prescribed by the BIA has expired without payment to BCU;

Wilson Heights Property

(A) Indebtedness and Security

56. The Wilson Heights Property is a residential property which BCU believes to be occupied by tenant(s);
57. Pursuant to the Commitment Letter and the Mortgage Loan Agreement, each dated October 9, 2015 (together, the “**Sasi Mach Loan Agreements**”), BCU advanced a loan to Sasi Mach in the principal amount of \$525,000 (the “**Sasi Mach Loan**”);
58. Repayment of the Sasi Mach Loan is guaranteed by Sandra Demaria pursuant to the Guarantee and Postponement of Claim, dated October 9, 2015;
59. The Sasi Mach Loan is secured by a charge/mortgage in the principal amount of \$525,000 (the “**Wilson Heights Mortgage**”), registered in favour of BCU against the Wilson Heights Property on October 14, 2015;
60. There are no other mortgages registered against title to the Wilson Heights Property;
61. As security for its obligations to BCU, Sasi Mach also executed and delivered to BCU:
 - (a) a General Assignment of Rents, dated October 9, 2015, which was registered against title to the Wilson Heights Property on October 15, 2015; and
 - (b) a General Security Agreement, dated October 9, 2015;
62. On October 14, 2015, BCU registered two financing statements pursuant to the PPSA against Sasi Mach, one of which is over all collateral classifications except “consumer goods”;

63. As of November 1, 2018, Sasi Mach is indebted to BCU in the amount of \$485,485.85, plus interest and costs to the date of payment;
64. BCU believes that the Wilson Heights Property is tenanted, however, it received no response to its letter, dated October 17, 2018, delivered to each of 198 Ontario and the tenants requesting information in respect of the tenancies;

(B) Default and Demand

65. Sasi Mach is in default of the Sasi Mach Loan Agreements for failing to, (a) make monthly payments of principal and interest when due, and (b) pay realty taxes on the Wilson Heights Property when due;
66. The last payment made in respect of the Sasi Mach Loan was received on August 20, 2018, and there is currently \$9,190.21 of realty tax arrears owing on the Wilson Heights Property. Accordingly, the default is continuing;
67. By letters, dated October 25, 2018, delivered to Sasi Mach and Sandra Demaria, as guarantor, BCU demanded repayment of the Sasi Mach Loan, plus all accrued and outstanding interest and costs, by November 5, 2018. The demand letter to Sasi Mach was accompanied by a BIA Notice, dated October 25, 2018, and by letter, dated October 26, 2018, BCU delivered to Sasi Mach a revised BIA Notice;
68. The 10-day notice period prescribed by the BIA has expired without payment to BCU;

Cottage Property

(A) Indebtedness and Security

69. The Cottage Property is a residential cottage property;
70. Carlo and Sandra Demaria granted a charge/mortgage (the “Cottage Mortgage”) to MCAP Mortgage Corporation (“MCAP”) in the principal amount of \$317,240.63, which was registered against the Cottage Property as Instrument No. SC431876 on April 28, 2006;

71. Pursuant to the Transfer of Charge, registered as Instrument No. SC734513 on May 12, 2009 against the Cottage Property, the Cottage Mortgage was assigned by MCAP to BCU;
72. There are no other mortgages registered against title to the Cottage Property, however the Mareva Order was registered against the Cottage Property on June 18, 2015;
73. As of November 1, 2018, Carlo and Sandra Demaria are indebted to BCU, in respect of the Cottage Mortgage, in the amount of \$179,083.37, plus interest and costs to the date of payment;

(B) Default and Demand

74. Carlo and Sandra Demaria are in default of the Cottage Mortgage for failing to, (a) make monthly payments of principal and interest when due, as of November 7, 2018 and (b) pay realty taxes on the Cottage Property when due;
75. The default is continuing;
76. By letters, dated November 21, 2018, BCU demanded repayment of the Cottage Mortgage, plus all accrued and outstanding interest and costs, by December 1, 2018. The demand letters were accompanied by BIA Notices;
77. The 10-day notice period prescribed by the BIA has expired without payment to BCU;

Appointment of the Receiver

78. The Respondents are in default of the terms of their respective loan agreements and mortgages with BCU;
79. All loan and mortgage repayments have ceased. In addition, the Respondents have been uncooperative with BCU in its attempts to gather information in respect of condition of the Elm Property and cost to complete construction of the residence and the tenancy arrangements for the Puccini Property and the Wilson Heights Property;

80. Pursuant to the Mareva Order, upon the motion by Trade Capital Finance Corp. (“**Trade Capital**”), the Ontario Superior Court of Justice issued a Mareva injunction in respect of all assets of various defendants, including Carlo Demaria;
81. Carlo Demaria has communicated to BCU that he is “flat broke” and can’t pay any bills at the present time;
82. BCU has concerns as to the incomplete state of the Elm Property and has not been afforded the opportunity to inspect the Elm Property to determine its condition and the cost to complete construction of the residence. BCU also has concerns that the rental income on the Puccini Property and Wilson Heights Property are not being used to service the mortgage debt and accumulating tax arrears on those properties;
83. A Receiver is necessary to take possession of the Real Properties and conduct a court-supervised sale process;
84. Pursuant to an Agreement of Purchase and Sale, dated May 19, 2017, Vicar Homes agreed to sell the Elm Property to an individual for a purchase price of \$2,825,000;
85. The sale of the Elm Property was originally scheduled to close on June 1, 2018, and was later extended by way of amending agreement to October 1, 2018. However, the vendor failed to close. The purchaser has advised BCU it still wishes to complete the purchase and is willing to finish the house construction itself, subject to a reasonable monetary adjustment to the purchase price;
86. The construction of the residence on the Elm Property has ceased, and each of BCU and the purchaser have requested pursuant to their respective rights, but have not received access to view the status of construction and determine the cost to complete the residence;
87. In light of the upcoming winter months, it is imperative that a Receiver be appointed to take immediate possession of, and secure the Elm Property to ensure that no damage occurs as a result of the colder weather;
88. BCU requests that the Receiver be authorized to sell the Elm Property on terms acceptable to the Receiver and BCU;

89. The Puccini Property and the Wilson Heights Property are believed to be tenanted, however requests for particulars in respect of the lease terms have not been responded to and the current condition of these properties is unknown;
90. In light of the various potential competing interests, including any interests of Trade Capital, the Mareva plaintiff, a Receiver is for the benefit of all stakeholders as all distributions will be made in accordance with the parties' respective priorities;
91. If this Honourable Court does not see fit to appoint a Receiver at the original return date of the within Application, the Applicant requests that an Interim Receiver be appointed in respect of the IR Properties on an urgent basis for the purposes of, among other things, (a) securing the IR Properties and ensuring their condition does not deteriorate pending the appointment of a Receiver, (b) collecting the rental revenues from the Puccini Property and Wilson Heights Property, and (c) if determined desirable, complete the sale of the Elm Property;
92. In the circumstances, the appointment of the Interim Receiver is for benefit of the stakeholders and the preservation of the assets;
93. If the appointment of a receiver over the Cottage Property is unopposed, BCU requests that the receiver be appointed at the December 4, 2018 return date. If, however, such relief is opposed, BCU requests that the appointment of a receiver over the Cottage Property be heard on a date to be scheduled by the Court;
94. BCU may also, at a later date, seek the appointment of a Receiver over other mortgaged properties owned by the Demaria family or corporate entities of which they are officers and directors;
95. ~~Zeifmans~~ KSV is a licensed trustee in bankruptcy and has consented to act as court-appointed receiver with respect to the Property;
96. The provisions of the BIA, including subsections 47(1) and 243(1) thereof;
97. The provisions of the CJA, including section 101 thereof;

98. Rules 2.03, 3.02, 14.05, 16, 37, 38, 39 and 41 of the *Rules of Civil Procedure* (Ontario); and
99. Such further and other grounds as counsel may advise and this Honourable Court may permit.

THE FOLLOWING DOCUMENTARY EVIDENCE WILL BE USED AT THE HEARING OF THE APPLICATION:

1. The Affidavit of Oksana Prociuk, sworn November 6, 2018, and the exhibits referred to therein;
2. The Responding Affidavit of Oksana Prociuk, sworn November 12, 2018;
3. The Supplementary Affidavit of Oksana Prociuk, sworn November 30, 2018; and
4. ~~The Consent of Zeifmans to act as Receiver and as Interim Receiver, dated November 6, 2018; and~~
5. Such further and other material as counsel may advise and this Honourable Court may permit.

November 6, 2018

DENTONS CANADA LLP
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Lawyers for Buduchnist Credit Union Limited

Court File No:

BUDUCHNIST CREDIT UNION LIMITED
Applicant

- and -

2321197 ONTARIO INC. et al.
Respondents

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

PROCEEDING COMMENCED AT TORONTO

AMENDED NOTICE OF APPLICATION

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