

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

B E T W E E N:

BUDUCHNIST CREDIT UNION LIMITED

Applicant

and

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

Respondents

RESPONDING APPLICATION RECORD

November 12, 2018

LAX O'SULLIVAN LISUS GOTTLIEB LLP
Counsel
Suite 2750, 145 King Street West
Toronto ON M5H 1J8

Andrew Winton LSO#: 54473I
awinton@counsel-toronto.com

Tel: 416 644 5342

Philip Underwood LSO#: 73637W
punderwood@counsel-toronto.com

Tel: 416 645 5078

Fax: 416 598 3730

Lawyers for the Respondent,
Carlo DeMaria

TO: **DENTONS CANADA LLP**
Barristers and Solicitors
77 King Street West, Suite 400
Toronto-Dominion Centre
Toronto ON M5K 0A1

Barbara Grossman
barbara.grossman@dentons.com
Tel: 416 863 4417
Fax: 416 863 4592

Kenneth Kraft
kenneth.kraft@dentons.com
Tel: 416 863 4374
Fax: 416 863 4592

Lawyers for the Applicant

AND TO: **2321197 ONTARIO INC.**
211 Woodland Acres Crescent
Vaughan ON L6A 1G1

Respondent

AND TO: **BURYCH LAWYERS**
204-89 Queensway W.
Mississauga ON L5B 2V2

Walter P. Burych
wpburych@burychlawyers.com
Tel: 905 896 8600
Fax: 905 896 9757

Lawyers for the Respondents,
Sandra DeMaria and Sasi Mach Limited

AND TO: **2321198 ONTARIO INC.**

Respondent

AND TO: **VICAR HOMES LTD.**
80 Bass Pro Mills,
Suite 11-A
Vaughan ON L4K 5W9

Respondent

AND TO: **HORLICK LEVITT DI LELLA LLP**
100 Sheppard Avenue East
Suite 870
Toronto ON M2N 6N5

Brian Horlick
bhorlick@hldlawyers.com
Tel: 416 512 7440
Fax: 416-512-8710

Lawyers for Sylvia Conforti, *potential purchaser of Elm Property*

AND TO: **LOOPSTRA NIXON LLP**
Barristers and Solicitors
Woodbine Place
135 Queen's Plate Drive
Suite 600
Toronto ON M9W 6V7

Michael McWilliams
mmcwilliams@loonix.com
Tel: 416 748 4766
Fax: 416 746 8319

Peter W. G. Carey
pcarey@loonix.com
Tel: 416 748 4774
Fax: 416 746 8319

Lawyers for Trade Capital Finance, in capacity as Plaintiff named in *Mareva* Order,
registered against Woodland Property and Puccini Property

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TAB 1

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

**AFFIDAVIT OF CARLO DEMARIA
(Sworn November 11, 2018)**

I, Carlo DeMaria, of the town of Vaughan, in the province of Ontario, MAKE OATH AND SAY:

1. I am a Respondent in this proceeding, and, as such, have personal knowledge of the matters contained in this affidavit. Where I have relied on information from others, I have stated the source of that information and verily believe it to be true.

The Properties at Issue in this Proceeding

2. This proceeding concerns three properties (the “**Properties**”) in the northern Greater Toronto Area, all of which are owned by me or by companies I control.

3. The Properties are subject to mortgages in favour of Buduchnist Credit Union (“**BCU**”), a Ukrainian credit union based in Toronto, Ontario.

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4. The property municipally known as 87 Elm Grove Ave., Richmond Hill, Ontario (“**Elm Grove**”) is a plot of land on which I am building a house for sale. It is owned by a company I control named 2321197 Ontario Inc. (“**197 Ontario**”). The property is subject to a \$2,200,000 mortgage in favour of BCU, which was registered on February 5, 2016. A parcel register is included in Tab 2 of the Application Record as Exhibit I to the Affidavit of Oksana Prociuk, dated November 6, 2018 (the “**Prociuk Affidavit**”).

5. The property municipally known as 46 Puccini Drive, Richmond Hill, Ontario (“**Puccini**”) is a single-family home which is currently occupied by a family friend and his elderly parents. It is owned by a company I control named 2321198 Ontario Inc. (“**198 Ontario**”). 198 Ontario is not collecting rent from the current residents of Puccini. The property is subject to a \$2,500,000 mortgage in favour of BCU, which was registered on February 27, 2015. A parcel register is included in the Application Record as Exhibit O to the Prociuk Affidavit.

6. The property municipally known as 211 Woodland Acres Crescent, Vaughan, Ontario (“**Woodland**”) is my family home. It is occupied by myself, my wife (Sandra DeMaria) and my children. It is jointly owned by me and my wife. A parcel register is included in the Application Record as Exhibit BB to the Prociuk Affidavit.

7. Woodland is subject to a \$1,490,000 mortgage in favour of BCU, which was registered on August 16, 2010. The mortgage secures a loan made to me and my wife (the “**First Woodland Loan**”). The amount currently owing under the First Woodland Loan is approximately \$995,000. Woodland is also subject to a \$3,000,000 second mortgage in favour of BCU, which secures two revolving lines of credit: one extended to me and my wife in November 2012, and one extended to Vicar Homes Ltd. (“**Vicar**”), a company controlled by me, in April 2015.

8. The Properties and associated loans and/or lines of credit (the “**BCU Loans**”) at issue are listed in a table attached to this affidavit as **Exhibit “A”**.

My Relationship with BCU

9. I have had an extensive business relationship with BCU for over 20 years.

10. Over that time, I have – individually, through companies I control, and/or with family members – purchased numerous homes with financing from BCU.

11. Aside from the Properties at issue in this Application, I currently own, individually or with family members, seven properties for which BCU provided financing. Those properties are subject to mortgages in favour of BCU, all of which are currently in good standing.

12. Over the course of my business relationship with BCU, I paid large amounts of fees, and referred significant amounts of business, to BCU. I also developed close ties with the credit union and its executives. This relationship is demonstrated, for example, in the business loan application for Vicar dated April 1, 2015, which is included in the Application Record as Exhibit P to the Prociuk Affidavit. The loan application, which was prepared by a BCU employee and is signed by Ms. Prociuk in her capacity as the CEO of BCU, notes that there had been “no issues” with my business and that the “management assessment is excellent”. It also explains that I had “consistently refer[red] new business to BCU and BCU affiliates”.

13. As a result of the complexity and closeness of our ongoing relationship, BCU and I did not always observe strict business formalities when dealing with each other. Many transactions were completed informally, and I was in frequent communication with BCU’s managers and employees, including its CEO, during the lifetime of the BCU Loans.

The BCU Loans

14. My wife and I have transferred \$7,800 every month to BCU as payment towards the BCU Loans since the execution of the First Woodland Loan in August 2010. This fee was direct-deposited from my (and, later, my wife's) bank account to BCU every month until August 2018.

15. At all times between August 2010 and August 2018, I understood that this monthly payment was sufficient to keep the BCU Loans in good standing, and that BCU was applying the payment to the BCU Loans as it deemed appropriate. At no time prior to August 2018 was I aware that any of the BCU Loans were in default.

16. In her Affidavit, Ms. Prociuk alleges that no payments have been made on the Elm Grove or Puccini loans since October 30, 2017, and that no payments have been made on the 2015 Vicar loan since November 2, 2017. I note that Ms. Prociuk did not attach any documentary evidence to her affidavit to support that allegation, nor has BCU indicated the amounts that are allegedly owed to it as a result of the alleged missed payments.

17. Ms. Prociuk's Affidavit also fails to allege that I was informed of the alleged defaults and fails to provide any evidence that I was so informed before September 2018. This is in sharp contrast to the clearly-documented demands which BCU made in September 2018 and which are attached to its Application Record.

18. In all of my communications with BCU employees between 2010 and August 2018, none of them ever informed me of any problem with the payment of the BCU Loans, and I always believed that the Loans were all in good standing.

The *Mareva* Order and My Financial Reorganization

19. On May 6 2015, the Ontario Superior Court of Justice issued an order (the “***Mareva* Order**”) implementing a *Mareva* injunction against me and a number of other defendants in a proceeding named *Trade Capital Finance Corp. v. Peter Cook et al.*, court file no. CV-15-2110-00 (the “**Trade Capital Action**”). A copy of the *Mareva* Order is attached as Exhibit P to the Prociuk Affidavit.

20. The basis for the *Mareva* Order was an allegation that a company controlled by me had received funds which were the product of fraud during the course of its cheque-cashing business.

21. I maintain that these allegations are baseless. However, the Trade Capital Action has not progressed to an adjudication over the intervening three-and-a-half years, so they have not yet been addressed on their merits. As a result, I remain subject to the *Mareva* Order.

22. The *Mareva* Order has had the effect of freezing all of my assets. Since it came into effect in May 2015, I have experienced great difficulty in operating my business and providing for my family. I receive funds for my day-to-day expenses from my wife, other family members, and friends.

23. In large part as a result of the *Mareva* Order, my financial position has become increasingly difficult to manage over the last three years. As a result, I recently decided to do a thorough review and reorganization of my finances in August 2018.

24. In order to complete this reorganization, I placed all significant recurring payments on temporary hold. I believed that this would allow me to determine how best to meet my obligations in the future.

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25. As part of the financial reorganization process, I asked BCU to provide me with the documentation for the BCU Loans. As I noted above, my relationship with BCU had been somewhat informal, and I did not know how my payments were being attributed to the various BCU Loans or the precise amounts remaining on each of the Loans. I assumed that BCU was keeping all of the BCU Loans in good standing and that, if there was any issue with any of the loans, it would have informed me promptly.

26. BCU did not provide the requested documents to me. Instead, it served me with demand letters alleging previously unmentioned defaults and sought to enforce its security against all of the Properties, including my family home.

The Receivership Application and My Response

27. I have not made payments on the BCU Loans since the end of August 2018. However, since then I have been trying to secure funds in order to begin making payments again.

28. Despite our twenty-year long relationship, BCU has not worked cooperatively with me to resolve the issues surrounding the BCU Loans. Instead, without any prior notice, it brought this Application for a receiver on November 6, 2018, returnable one week later.

29. The appointment of a receiver over the Woodland and Puccini homes would incur large additional costs, which would be hugely disproportionate to the benefit of doing so. It would also lead to great hardship for my wife and daughters, who currently live in the Woodland home, as well as the residents of the Puccini home, two of whom are over 90 years old.

30. I do not oppose the appointment of an interim receiver over the Elm Grove property while I sort out with BCU how best to resolve its concerns regarding that loan.

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31. However, the appointment of a receiver over the Woodland and Puccini properties is not necessary to remediate the issues surrounding the BCU loans, which I am currently attempting to resolve.

32. In order to demonstrate my commitment to resolving the issues between me and BCU, I have already paid, or am in the process of paying, down the arrears in property taxes arrears on all of the Properties.

33. I am also prepared to pay any deficit resulting from missed payments on the loans regarding the Woodland and Puccini properties resulting from missed payments since August 2018 (the **“Deficit”**).

34. I am currently attempting, through counsel, to negotiate a resolution with BCU under which I will immediately make payment to BCU in the amount of the Deficit and agree to restart monthly payments on the Woodland and Puccini loans in exchange for BCU’s agreement to withdraw its receivership application with respect to those properties.

35. I understand that my wife and her company, Sasi Mach Ltd., have already reached an agreement with BCU on similar terms. Under this agreement, BCU has withdrawn its application to appoint a receiver over the property located at 506 Wilson Heights Boulevard, Toronto, Ontario, in exchange for her agreement to make up any missed payments owing under a loan made by BCU with respect to that property.

36. I expect to be able to bring the BCU Loans back into good standing in very short order, without the expense and hardship which would be occasioned by the appointment of a receiver over all of the Properties.

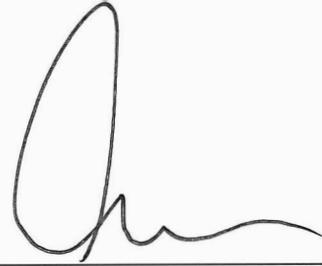
SWORN BEFORE ME at the City of
~~Bridgetown~~, in the Country of
~~Barbados~~ on November 12, 2018



Commissioner for Taking Affidavits
(or as may be)

ALEXANDRIA THOMAS
ATTORNEY-AT-LAW

Khan Chambers
Speedbird House
Independence Square
Bridgetown
Attorney-at-Law



CARLO DEMARIA

TAB A

This is Exhibit "A" referred to in the Affidavit of Carlo DeMaria
sworn November 12, 2018



Commissioner for Taking Affidavits (or as may be)

ALEXANDRIA THOMAS
ATTORNEY-AT-LAW

**Khan Chambers
Speedbird House
Independence Square
Bridgetown
Attorney-at-Law**

**Exhibit A: List of Loans and Lines of Credit Referred to in Affidavit of Carlo DeMaria,
dated November 12, 2018**

Name	Borrower	Mortgage Registration Date	Loan Amount/Line of Credit Limit	Property Securing Loan
197 Loan	2321197 Ontario Inc.	February 5, 2016	\$2,200,000	87 Elm Grove Ave., Richmond Hill
198 Loan	2321198 Ontario Inc.	February 27, 2015	\$2,500,000	46 Puccini Drive, Richmond Hill
First Woodland Mortgage	Carlo DeMaria and Sandra DeMaria	August 16, 2010	\$1,490,000	211 Woodland Acres Cres., Vaughan
Second Woodland Mortgage (Line of Credit)	Carlo DeMaria and Sandra DeMaria	December 5, 2012	\$3,000,000	
Vicar Homes Line of Credit	Vicar Homes Ltd.	N/A	\$1,000,000	

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PROCEEDING COMMENCED AT
TORONTO

AFFIDAVIT OF CARLO DEMARIA

LAX O'SULLIVAN LISUS GOTTLIEB LLP
Counsel
Suite 2750, 145 King Street West
Toronto ON M5H 1J8

Andrew Winton LSO#: 544731
awinton@counsel-toronto.com
Tel: 416 644 5342

Philip Underwood LSO#: 73637W
punderwood@counsel-toronto.com
Tel: 416 645 5078
Fax: 416 598 3730

Lawyers for the Respondent, Carlo DeMaria

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PROCEEDING COMMENCED AT
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RESPONDING APPLICATION RECORD

LAX O'SULLIVAN LISUS GOTTLIEB LLP

Counsel

Suite 2750, 145 King Street West
Toronto ON M5H 1J8

Andrew Winton LSO#: 544731

awinton@counsel-toronto.com

Tel: 416 644 5342

Philip Underwood LSO#: 73637W

punderwood@counsel-toronto.com

Tel: 416 645 5078

Fax: 416 598 3730

Lawyers for the Respondent,
Carlo DeMaria