

**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, VICAR HOMES LTD. And
TRADE CAPITAL FINANCE CORP.**

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

**MOTION RECORD
(returnable April 17, 2020)**

VOLUME 2 of 2

[Distribution of the Elm, Puccini and Cottage Net Proceeds of Sale]

February 20, 2020

DENTONS CANADA LLP
77 King Street West, Suite 400
Toronto-Dominion Centre
Toronto, ON M5K 0A1
Insolvency.Toronto@dentons.com

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

TO: SERVICE LIST

SERVICE LIST
(as at January 10, 2020)

TO:	<p>DENTONS CANADA LLP 77 King Street West, Suite 400 Toronto-Dominion Centre Toronto, ON M5K 0A1 Insolvency.Toronto@dentons.com</p> <p>Barbara Grossman Tel: (416) 863-4417 Fax: (416) 863-4592 barbara.grossman@dentons.com</p> <p>Kenneth Kraft Tel: (416) 863-4374 kenneth.kraft@dentons.com <i>Lawyers for Buduchnist Credit Union Limited</i></p>
AND TO:	<p>LAX O'SULLIVAN LISUS GOTTLIEB LLP 145 King Street West, Suite 2750 Toronto, ON M5H 1J8</p> <p>Andrew Winton Tel: (416) 644-5342 Fax: (416) 598-3730 awinton@lolg.ca</p> <p>Philip Underwood Tel: (416) 645-5078 punderwood@lolg.ca <i>Lawyers for the Respondents, 2321197 Ontario Inc., Carlo Demaria, 2321198 Ontario Inc., and Vicar Homes Ltd. in respect of the following real properties:</i></p> <ul style="list-style-type: none"><i>(a) 87 Elm Grove, Richmond Hill, Ontario ("Elm Property");</i><i>(b) 211 Woodland Acres Crescent, Richmond Hill, Ontario ("Woodland Property");</i><i>(c) 46 Puccini Drive, Richmond Hill, Ontario ("Puccini Property"); and</i><i>(d) 6216 Fifth Line RR #1, Egbert, Ontario ("Cottage Property").</i>

AND TO:	SANDRA DEMARIA 211 Woodland Acres Crescent Vaughan, ON L6A 1G1 sandra@vapz.com <i>Respondent in respect of the Woodland Property and the Cottage Property</i>
AND TO:	LOOPSTRA NIXON LLP 135 Queens Plate Drive, Suite 600 Etobicoke, ON M9W 6V7 Michael McWilliams Tel: (416) 748-4766 Fax: (416) 746-8319 mmcwilliams@loonix.com Peter W.G. Carey Tel: (416) 748-4774 pcarey@loonix.com Christopher Lee Tel: (416) 748-5117 clee@loonix.com <i>Lawyers for the Respondent, Trade Capital Finance Corporation, in capacity as Plaintiff named in Mareva Order, registered against Woodland Property, Puccini Property and Cottage Property</i>
AND TO:	KSV KOFMAN INC. 150 King Street West, Suite 2308 Toronto, ON M5H 1J9 David Sieradzki Tel: (416) 932-6030 dsieradzki@ksvadvisory.com <i>Receiver</i>
AND TO:	CHAITONS LLP 5000 Yonge Street North York, ON M2N 7E9 George Benchetrit Tel: (416) 218-1141 george@chaitons.com <i>Lawyers for KSV Kofman Inc.</i>

AND TO:	BLANEY MCMURTRY LLP 2 Queen Street East, Suite 1500 Toronto, ON M5C 3G5 Tim Farrell Tel: (416) 593-3917 Fax: (416) 593-5437 tfarrell@blaney.com Jordan Page Tel: (416) 596-4275 jpage@blaney.com <i>Lawyers for Chicago Title Insurance Company Canada</i>
----------------	--

	WITH A COURTESY COPY TO: BURYCH LAWYERS 204-89 Queensway W. Mississauga, ON L5B 2V2 Walter P. Burych Tel: (905) 896-8600 ext. 223 Fax: (905) 896-9757 wpburych@burychlawyers.com
--	--

Email List

kenneth.kraft@dentons.com; barbara.grossman@dentons.com;
Insolvency.Toronto@dentons.com; mmcwilliams@loonix.com; pcarey@loonix.com;
sandra@vapz.com; clee@loonix.com; awinton@lolg.ca; punderwood@lolg.ca;
dsieradzki@ksvadvisory.com; george@chaitons.com; tfarrell@blaney.com; jpage@blaney.com;
wpburch@burchlawyers.com

TABLE OF CONTENTS

TABLE OF CONTENTS

Tab	Document	Page No.
VOLUME 1 of 2		
1	Notice of Motion dated January 10, 2020	1-14
2	Second Supplementary Affidavit of Oksana Prociuk sworn February 20, 2020	15-35
A	Exhibit "A": draft Third Amended and Restated Receivership Order	36-54
B	Exhibit "B": Receiver's Interim Statement of Receipts and Disbursements	55-56
C	Exhibit "C": Puccini Mortgage as registered on February 27, 2015	57-63
D	Exhibit "D": Woodland Property Stay Extension Agreement dated November 26, 2019	64-80
E	Exhibit "E": Cottage Direction dated November 27, 2019	81-82
F	Exhibit "F": Consents to Judgment	83-109
G	Exhibit "G": Mr. McWilliams Letter dated February 3, 2016 (enclosing the letter and Mareva Order dated May 6, 2015)	110-160
H	Exhibit "H": Mareva Order made on March 24, 2016	161-168
I	Exhibit "I": Mr. McWilliams Letters dated March 24, 2016, April 1, 2016 and April 11, 2016	169-193
J	Exhibit "J": Relevant asset disclosure excerpt from Carlo's affidavit sworn May 15, 2015	194-197
K	Exhibit "K": Copy of a transaction history printout for Carlo's account covering the period between May 1, 2015 and August 7, 2017	198-199
L	Exhibit "L": Copy of a transaction history printout summary page reflecting the restored balance in Carlo's account as at February 20, 2020	200-201
M	Exhibit "M": Copy of the transaction history print outs in respect of the Elm Mortgage	202-211
N	Exhibit "N": Copy of the transaction history print outs in respect of the Puccini Mortgage	212-221

Tab	Document	Page No.
O	Exhibit "O": Copy of the transaction history print outs in respect of the Cottage Mortgage	222-228
VOLUME 2 of 2		
3	Elm Receivership Order dated November 13, 2018	229-243
4	Puccini Interim Receivership Order dated November 13, 2018	244-257
5	Endorsement of Justice Wilton-Siegel dated November 13, 2018 and Unofficial Transcript regarding Elm Receivership and Puccini Interim Receivership	258-287
6	Endorsement of Justice Wilton-Siegel dated November 29, 2018 and Unofficial Transcript regarding cross-examination by Trade Capital on the BCU Application Affidavit	288-289
7	Amended and Restated Receivership Order dated December 4, 2018	290-305
8	Endorsement #1 of Justice Penny dated December 4, 2018 regarding KSV Motion	306-307
9	Endorsement #2 of Justice Penny dated December 4, 2018 regarding Demaria Adjournment Request	308-313
10	Endorsement #3 of Justice Penny dated December 4, 2018 and Unofficial Transcript regarding Full Puccini Receivership	314-322
11	Endorsement of Justice Penny dated December 31, 2018 and Unofficial Transcript regarding Trade Capital Motion Costs	323-326
12	Second Amended and Restated Receivership Order dated January 17, 2019	327-344
13	Endorsement of Justice Penny dated January 17, 2019 and Transcript regarding Cottage and Woodland Receivership	345-378
14	Endorsement of Justice Penny dated February 22, 2019 and Unofficial Transcript regarding Cottage and Woodland Costs	379-381
15	Puccini Property Approval and Vesting Order dated February 27, 2019	382-389
16	Elm Property Approval and Vesting Order dated March 29, 2019	390-397

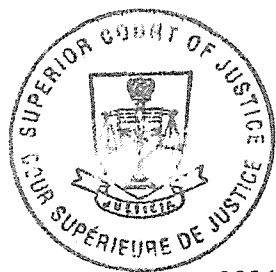
Tab	Document	Page No.
17	Case Conference Endorsement of Justice Penny dated April 25, 2019 and Unofficial Transcript regarding consent extension on additional terms of the Woodland Receivership	398-406
18	Cottage Property Approval and Vesting Order dated June 26, 2019	407-414
19	Case Conference Endorsement of Justice Penny dated July 5, 2019 in the Mareva Action and Unofficial Transcript regarding consent extension on additional terms of stay of Woodland Receivership	415-421
20	Endorsement of Justice Penny dated December 19, 2019 and Unofficial Transcript regarding Distribution Motion, etc.	422-425
21	Endorsement of Justice Penny dated January 15, 2020 and Unofficial Transcript regarding Cottage and Woodland Costs	426-435

Tab 3

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

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

THE HONOURABLE MR.)	TUESDAY, THE 13th
)	
JUSTICE H.J. WILTON-SIEGEL)	DAY OF NOVEMBER, 2018



BUDUCHNIST CREDIT UNION LIMITED

Applicant

- and -

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

Respondents

**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 Property (defined below), was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Affidavit of Oksana Prociuk, sworn November 6, 2018, and the Exhibits thereto, and on hearing the submissions of counsel for the Applicant, Carlo Demaria, and Trade Capital Finance Corporation, 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 property described in Schedule "A" hereto (the "**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 Property 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 Property 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 the Real Property, including advertising and soliciting offers in respect of the Real Property 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 out of the ordinary course of business,
 - (i) without the approval of this Court in respect of any transaction not exceeding \$50,000, provided that the aggregate consideration for all such transactions does not exceed \$100,000; and
 - (ii) with the approval of this Court in respect of any transaction in which the purchase price or the aggregate purchase price exceeds the applicable amount set out in the preceding clause;

and in each 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 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 Property;
- (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 Property to the Receiver upon the Receiver's request.

NO PROCEEDINGS AGAINST THE RECEIVER

5. **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

6. **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 Property.

NO EXERCISE OF RIGHTS OR REMEDIES

7. **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

8. **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 the Real Property 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

9. **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

10. **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

11. **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.

12. **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.

13. **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

14. **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 whole of the Property 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.

15. **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.

16. **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.

17. **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

18. **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*.

SERVICE AND NOTICE

19. **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.

20. **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

21. **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.

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

23. **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.

24. **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.

25. **THIS COURT ORDERS** that 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 Real Property with such priority and at such time as this Court may determine.

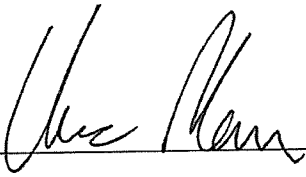
26. **THIS COURT ORDERS** that any interested party may apply to this Court to vary or amend this Order on not less than seven (7) days' notice to the Receiver and to any other party likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

ENTERED AT / INSCRIT À TORONTO
ON / BOOK NO:
LE / DANS LE REGISTRE NO:

NOV 14 2018

PER / PAR:

W


Uvez Memon, Registrar

SCHEDULE "A"**REAL PROPERTY**

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

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

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

SCHEDULE "B"

RECEIVER CERTIFICATE

CERTIFICATE NO. _____

AMOUNT \$ _____

1. **THIS IS TO CERTIFY** that KSV Kofman Inc., the receiver (the "**Receiver**") of the real property described in Schedule "A" hereto (the "**Real Property**"), including all rents arising therefrom and all proceeds thereof (collectively, the "**Property**"), appointed by Order of the Ontario Superior Court of Justice (Commercial List) (the "**Court**") dated the ___ day of _____, 2018 (the "**Order**") made in an action having Court file number __-CL-_____, 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 Property, 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 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 Property, and not in its
personal or corporate capacity

Per: _____

Name:

Title:

SCHEDULE "A" TO RECEIVER'S CERTIFICATE

REAL PROPERTY

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

BUDUCHNIST CREDIT UNION LIMITED
Applicant

- and -

2321197 ONTARIO INC. et al.
Respondents

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

PROCEEDING COMMENCED AT TORONTO

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

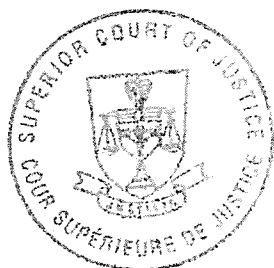
Lawyers for Buduchnist Credit Union Limited

Tab 4

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

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

THE HONOURABLE MR.)	TUESDAY, THE 13th
)	
JUSTICE H.J. WILTON-SIEGEL)	DAY OF NOVEMBER, 2018



BUDUCHNIST CREDIT UNION LIMITED

Applicant

- and -

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

Respondents

**ORDER
(appointing Interim Receiver)**

THIS APPLICATION made by the Applicant for an Order pursuant to section 47(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the “**BIA**”) appointing KSV Kofman Inc. (“**KSV**”) as interim receiver (in such capacities, the “**Interim Receiver**”) without security, of the Real Property (defined below), was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Affidavit of Oksana Prociuk, sworn November 6, 2018, and the Exhibits thereto, and on hearing the submissions of counsel for the Applicant, Carlo Demaria, Trade Capital Finance Corporation, and on being advised by counsel that KSV consents to act as the Interim 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 47(1) of the BIA, KSV is hereby appointed Interim Receiver, without security, of the real property described in Schedule "A" hereto (the "**Real Property**"), including all rents arising therefrom and proceeds thereof (collectively, the "**Property**").

INTERIM RECEIVER'S POWERS

3. **THIS COURT ORDERS** that the Interim 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 Interim Receiver is hereby expressly empowered and authorized to do any of the following where the Interim 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 Interim 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 Property, 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 report to, meet with and discuss with such affected Persons (as defined below) as the Interim Receiver deems appropriate on all matters relating to the Property and the interim receivership, and to share information, subject to such terms as to confidentiality as the Interim Receiver deems advisable;
- (f) to register a copy of this Order and any other Orders in respect of the Property against title to the Real Property; and
- (g) 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 Interim 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 INTERIM 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 grant immediate and continued access to the Property to the Interim Receiver, and shall deliver all access codes and keys to the Real Property to the Interim Receiver upon the Interim Receiver's request.

NO PROCEEDINGS AGAINST THE INTERIM RECEIVER

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

NO PROCEEDINGS AGAINST THE PROPERTY

6. **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 Interim 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 to, among other things, the Real Property.

NO EXERCISE OF RIGHTS OR REMEDIES

7. **THIS COURT ORDERS** that all rights and remedies against the Interim Receiver, or affecting the Property, are hereby stayed and suspended except with the written consent of the Interim 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 Interim Receiver or the Respondents to carry on any business which the Respondents are not lawfully entitled to carry on, (ii) exempt the Interim 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.

INTERIM RECEIVER TO HOLD FUNDS

8. **THIS COURT ORDERS** that all funds, monies, cheques, instruments, and other forms of payments received or collected by the Interim Receiver from and after the making of this Order from any source whatsoever, including without limitation 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 Interim Receiver (the “**Post Interim Receivership Accounts**”) and the monies standing

to the credit of such Post Interim Receivership Accounts from time to time, net of any disbursements provided for herein, shall be held by the Interim Receiver to be paid in accordance with the terms of this Order or any further Order of this Court.

LIMITATION ON ENVIRONMENTAL LIABILITIES

9. **THIS COURT ORDERS** that nothing herein contained shall require the Interim 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 Interim Receiver from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Interim Receiver shall not, as a result of this Order or anything done in pursuance of the Interim 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 INTERIM RECEIVER'S LIABILITY

10. **THIS COURT ORDERS** that the Interim 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 Interim Receiver by section 14.06 of the BIA or by any other applicable legislation.

INTERIM RECEIVER'S ACCOUNTS

11. **THIS COURT ORDERS** that the Interim Receiver and counsel to the Interim 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 Interim Receiver and counsel to the Interim Receiver shall be entitled to and are hereby granted a charge (the “**Interim 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 Interim 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.

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

13. **THIS COURT ORDERS** that prior to the passing of its accounts, the Interim 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 Interim 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

14. **THIS COURT ORDERS** that the Interim 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 \$50,000 (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 Interim Receiver by this Order, including interim expenditures. The whole of the Property shall be and is hereby charged by way of a fixed and specific charge (the “**Interim 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

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.

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

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

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

SERVICE AND NOTICE

18. **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.

19. **THIS COURT ORDERS** that if the service or distribution of documents in accordance with the Protocol is not practicable, the Interim 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

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

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

22. **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 Interim 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 Interim Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Interim Receiver and its agents in carrying out the terms of this Order.

23. **THIS COURT ORDERS** that the Interim 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 Interim 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.

24. **THIS COURT ORDERS** that the Applicant shall have its costs of this motion, 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 Interim Receiver from the sale of the Real Property with such priority and at such time as this Court may determine.

25. **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 Interim 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.

ENTERED AT / INSCRIT À TORONTO
ON / BOOK NO:
LE / DANS LE REGISTRE NO:

NOV 14 2018

m

PER / PAR:



Uvez Memon, Registrar

SCHEDULE "A"**REAL PROPERTY**

1. **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

SCHEDULE "B"**INTERIM RECEIVER CERTIFICATE**

CERTIFICATE NO. _____

AMOUNT \$ _____

1. THIS IS TO CERTIFY that KSV Kofman Inc., the interim receiver (the "**Interim Receiver**") of the real property described in Schedule "A" hereto (the "**Real Property**"), including all rents arising therefrom and all proceeds thereof, (collectively, the "**Property**") appointed by Order of the Ontario Superior Court of Justice (Commercial List) (the "**Court**") dated the ____ day of November, 2018 (the "**Order**") made in an action having Court file number __-CL-_____, has received as such Interim Receiver from the holder of this certificate (the "**Lender**") the principal sum of \$ _____, being part of the total principal sum of \$ _____ which the Interim 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 Interim Receiver pursuant to the Order or to any further order of the Court, a charge upon the whole of the Property, 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 Interim Receiver to indemnify itself out of such 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 Interim

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 Interim 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 Interim 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
Interim Receiver of the Real Property, and not in
its personal capacity

Per: _____

Name:

Title:

SCHEDULE "A" TO INTERIM RECEIVER CERTIFICATE**REAL PROPERTY**

1. **PIN:** **03206-3618 (LT)**
Property PT LOT 26, PLAN M807, PT1, 65R34410,; Town of Richmond Hill
Description:

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

BUDUCHNIST CREDIT UNION LIMITED
Applicant

- and -

2321197 ONTARIO INC. et al.
Respondents

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

PROCEEDING COMMENCED AT TORONTO

ORDER
(appointing Interim 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

Tab 5

Superior Court of Justice
Commercial List

FILE/DIRECTION/ORDER

Budachnest Credit Union Limited
Plaintiff(s)

AND

232197 Ontario Inc. et al
Defendant(s)

Case Management Yes No by Judge: _____

Counsel	Telephone No.:	Facsimile No.:

- Order Direction for Registrar (No formal order need be taken out)
- Above action transferred to the Commercial List at Toronto (No formal order need be taken out)
- Adjourned to: _____
- Time Table approved (as follows):

Interim receivership order respecting
46 Piacent Drive to go in the form attached,
Receivership order respecting 87 Elm Grove
Avenue to go in the form attached.
Both these orders go unopposed by the
respondents.
The remainder is to be set heard on Dec 7/18
(1 1/2 hrs.). Trade Capital Finance Corporation
may be bringing a receivership motion that
also extends to all of these properties. The
application judge will need to address the order of
consideration of these two motions if the Trade
Finance motion has been brought by that date.

Dec 13/18
Date

W. Van der ...
Judge's Signature

Additional Pages _____

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

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

THE HONOURABLE MR.)
JUSTICE H. J. WILSON-SIBER)

TUESDAY, THE 13th
DAY OF NOVEMBER, 2018 *HW*

BUDUCHNIST CREDIT UNION LIMITED

Applicant

- and -

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

Respondents

KJV Kofmen Inc

ORDER
(appointing Interim Receiver)

THIS APPLICATION made by the Applicant for an Order pursuant to section 47(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the "BIA") appointing ~~Zeifman Partners Inc.~~ ^{KJV} ("Zeifmans") as interim receiver (in such capacities, the "Interim Receiver") without security, of the Real Property (defined below), was heard this day at 330 University Avenue, Toronto, Ontario. *HW*

ON READING the Affidavit of Oksana Prociuk, sworn November 6, 2018, and the Exhibits thereto, and on hearing the submissions of counsel for the Applicant, Carlo Demaria, *and HW* Trade Capital Finance Corporation ~~and any other party appearing~~, and on reading the consent of ~~Zeifmans to act~~ as the Interim Receiver, *HW*

being advised by counsel that KJV consent to act

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 47(1) of the BIA, ^{KSV} Zeifmans is hereby appointed Interim Receiver, without security, of the real property described in Schedule "A" hereto (the "**Real Property**"), including all rents arising therefrom and proceeds thereof (collectively, the "**Property**"). ~~Handwritten initials~~

INTERIM RECEIVER'S POWERS

3. **THIS COURT ORDERS** that the Interim 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 Interim Receiver is hereby expressly empowered and authorized to do any of the following where the Interim 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 Interim 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 Property, 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 report to, meet with and discuss with such affected Persons (as defined below) as the Interim Receiver deems appropriate on all matters relating to the Property and the interim receivership, and to share information, subject to such terms as to confidentiality as the Interim Receiver deems advisable;
- (f) to register a copy of this Order and any other Orders in respect of the Property against title to the Real Property; and
- (g) 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 Interim 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 INTERIM 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 grant immediate and continued access to the Property to the Interim Receiver, and shall deliver all access codes and keys to the Real Property to the Interim Receiver upon the Interim Receiver's request.

NO PROCEEDINGS AGAINST THE INTERIM RECEIVER

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

NO PROCEEDINGS AGAINST THE PROPERTY

6. **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 Interim 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.

NO EXERCISE OF RIGHTS OR REMEDIES

7. **THIS COURT ORDERS** that all rights and remedies against the Interim Receiver, or affecting the Property, are hereby stayed and suspended except with the written consent of the Interim 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 Interim Receiver or the Respondents to carry on any business which the Respondents are not lawfully entitled to carry on, (ii) exempt the Interim 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.

This provision is without prejudice to Trade Capital Finance Corporation commencing an application for the appointment of a receiver in respect of among other things, the Real Property.

INTERIM RECEIVER TO HOLD FUNDS

8. **THIS COURT ORDERS** that all funds, monies, cheques, instruments, and other forms of payments received or collected by the Interim Receiver from and after the making of this Order from any source whatsoever, including without limitation 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 Interim Receiver (the "Post Interim Receivership Accounts") and the monies standing to the credit of such Post Interim Receivership Accounts from time to time, net of any

disbursements provided for herein, shall be held by the Interim Receiver to be paid in accordance with the terms of this Order or any further Order of this Court.

LIMITATION ON ENVIRONMENTAL LIABILITIES

9. **THIS COURT ORDERS** that nothing herein contained shall require the Interim 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 Interim Receiver from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Interim Receiver shall not, as a result of this Order or anything done in pursuance of the Interim 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 INTERIM RECEIVER'S LIABILITY

10. **THIS COURT ORDERS** that the Interim 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 Interim Receiver by section 14.06 of the BIA or by any other applicable legislation.

INTERIM RECEIVER'S ACCOUNTS

11. **THIS COURT ORDERS** that the Interim Receiver and counsel to the Interim 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 Interim

Receiver and counsel to the Interim Receiver shall be entitled to and are hereby granted a charge (the "**Interim 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 Interim 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.

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

13. **THIS COURT ORDERS** that prior to the passing of its accounts, the Interim 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 Interim 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

14. **THIS COURT ORDERS** that the Interim 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 \$50,000 (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 Interim Receiver by this Order, including interim expenditures. The whole of the Property shall be and is hereby charged by way of a fixed and specific charge (the "**Interim 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

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.

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

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

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

SERVICE AND NOTICE

18. **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, ~~with the following URL: <<https://www.zeifmans.ca/current-insolvency-files/>>~~.

19. **THIS COURT ORDERS** that if the service or distribution of documents in accordance with the Protocol is not practicable, the Interim 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

A
KMG

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

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

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

22. **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 Interim 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 Interim Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Interim Receiver and its agents in carrying out the terms of this Order.

23. **THIS COURT ORDERS** that the Interim 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 Interim 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.

24. **THIS COURT ORDERS** that the Applicant shall have its costs of this motion, 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 Interim Receiver from the sale of the Real Property with such priority and at such time as this Court may determine.

25. **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 Interim 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.

*Let the order issue on
avoidance with its terms
"W. Hon - Sept 5."*

SCHEDULE "A"

REAL PROPERTY

1. 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

SCHEDULE "B"

INTERIM RECEIVER CERTIFICATE

CERTIFICATE NO. _____

AMOUNT \$ _____ *KSV Kofran Im.*

1. THIS IS TO CERTIFY that ~~Zeifman Partners Inc.~~, the interim receiver (the "Interim Receiver") of the real property described in Schedule "A" hereto (the "Real Property"), including all rents arising therefrom and all proceeds thereof, (collectively, the "Property") appointed by Order of the Ontario Superior Court of Justice (Commercial List) (the "Court") dated the ____ day of November, 2018 (the "Order") made in an action having Court file number __-CL-_____, has received as such Interim Receiver from the holder of this certificate (the "Lender") the principal sum of \$ _____, being part of the total principal sum of \$ _____ which the Interim 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 Interim Receiver pursuant to the Order or to any further order of the Court, a charge upon the whole of the Property, 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 Interim Receiver to indemnify itself out of such 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 Interim

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 Interim 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 Interim 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 Kufman Inc.
~~Zeifman Partners Inc.~~, solely in its capacity as
Interim Receiver of the Real Property, and not in
its personal capacity

Per: _____

Name:

Title:

SCHEDULE "A" TO INTERIM RECEIVER CERTIFICATE**REAL PROPERTY**

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

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

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

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

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

THE HONOURABLE *MR.*)
JUSTICE *H.J. WILTON-SIEM*)

TUESDAY, THE 13th
DAY OF NOVEMBER, 2018 *AND*

BUDUCHNIST CREDIT UNION LIMITED

Applicant

- and -

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

Respondents

**ORDER
(appointing Receiver)**

*SV
ofman
Inc.* **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 ~~Zeifman Partners Inc.~~ ^{KSV} ("~~Zeifmans~~") as receiver and manager (in such capacities, the "Receiver") *AND* without security, of the Real Property (defined below), was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Affidavit of Oksana Prociuk, sworn November 6, 2018, and the Exhibits thereto, and on hearing the submissions of counsel for the Applicant, Carlo Demaria, *and KSV* Trade Capital Finance Corporation, ~~and any other party appearing,~~ and on reading the consent of ~~Zeifman~~ to act as the Receiver,

*Being advised by counsel
that KSV consents to
AND*

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, ~~Zeifmans~~ ^{KSV} is hereby appointed Receiver, without security, of the real property described in Schedule "A" hereto (the "**Real Property**"), including all rents arising therefrom and proceeds thereof (collectively, the "**Property**"). ~~XXXX~~

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 Property 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 Property 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 the Real Property, including advertising and soliciting offers in respect of the Real Property 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 out of the ordinary course of business,
 - (i) without the approval of this Court in respect of any transaction not exceeding \$50,000, provided that the aggregate consideration for all such transactions does not exceed \$100,000; and
 - (ii) with the approval of this Court in respect of any transaction in which the purchase price or the aggregate purchase price exceeds the applicable amount set out in the preceding clause;

and in each 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 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 the Applicant~~, and sell and convey the Elm Property to Sylvia Conforti pursuant to such sale agreement; * None
- (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 Property;
- (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 Property to the Receiver upon the Receiver's request.

NO PROCEEDINGS AGAINST THE RECEIVER

5. **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

6. **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.

NO EXERCISE OF RIGHTS OR REMEDIES

7. **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

The provision is without prejudice to Trade Credit Finance Corporation commencing and proceeding with an application for the appointment of a Receiver in respect of many other things, the Real Property.

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

8. **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 the Real Property 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

9. **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

10. **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

11. **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.

12. **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.

13. **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

14. **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 whole of the Property 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.

15. **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.

16. **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.

17. **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

18. **THIS COURT ~~ORDERS AND~~ DECLARES** that the Receiver is ~~not~~ a "vendor" as defined in, and for the purposes of, the *Ontario New Home Warranties Plan Act*.

making no determination as whether or not the Receiver is ~~not~~

SERVICE AND NOTICE

19. **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, with the following URL: ~~'<<https://www.zeifmans.ca/current-insolvency-files/>>'~~

Handwritten:
*
*

20. **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

21. **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.

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

23. **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.

24. **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.

25. **THIS COURT ORDERS** that 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 Real Property with such priority and at such time as this Court may determine.

26. **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.

*Let the order issue in
accordance with the terms
of W. Han-Siegel J.*

SCHEDULE "A"**REAL PROPERTY**

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

SCHEDULE "B"

RECEIVER CERTIFICATE

CERTIFICATE NO. _____

AMOUNT \$ _____ *KJV Kofman Inc.*

1. **THIS IS TO CERTIFY** that ~~Zeifman-Partners Inc.~~, the receiver (the "Receiver") of the real property described in Schedule "A" hereto (the "Real Property"), including all rents arising therefrom and all proceeds thereof (collectively, the "Property"), appointed by Order of the Ontario Superior Court of Justice (Commercial List) (the "Court") dated the ___ day of _____, 2018 (the "Order") made in an action having Court file number ___-CL-_____, 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 Property, 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 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.

- 2 -

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.
Zeifman Partners Inc., solely in its capacity
as Receiver of the Real Property, and not in its
personal or corporate capacity

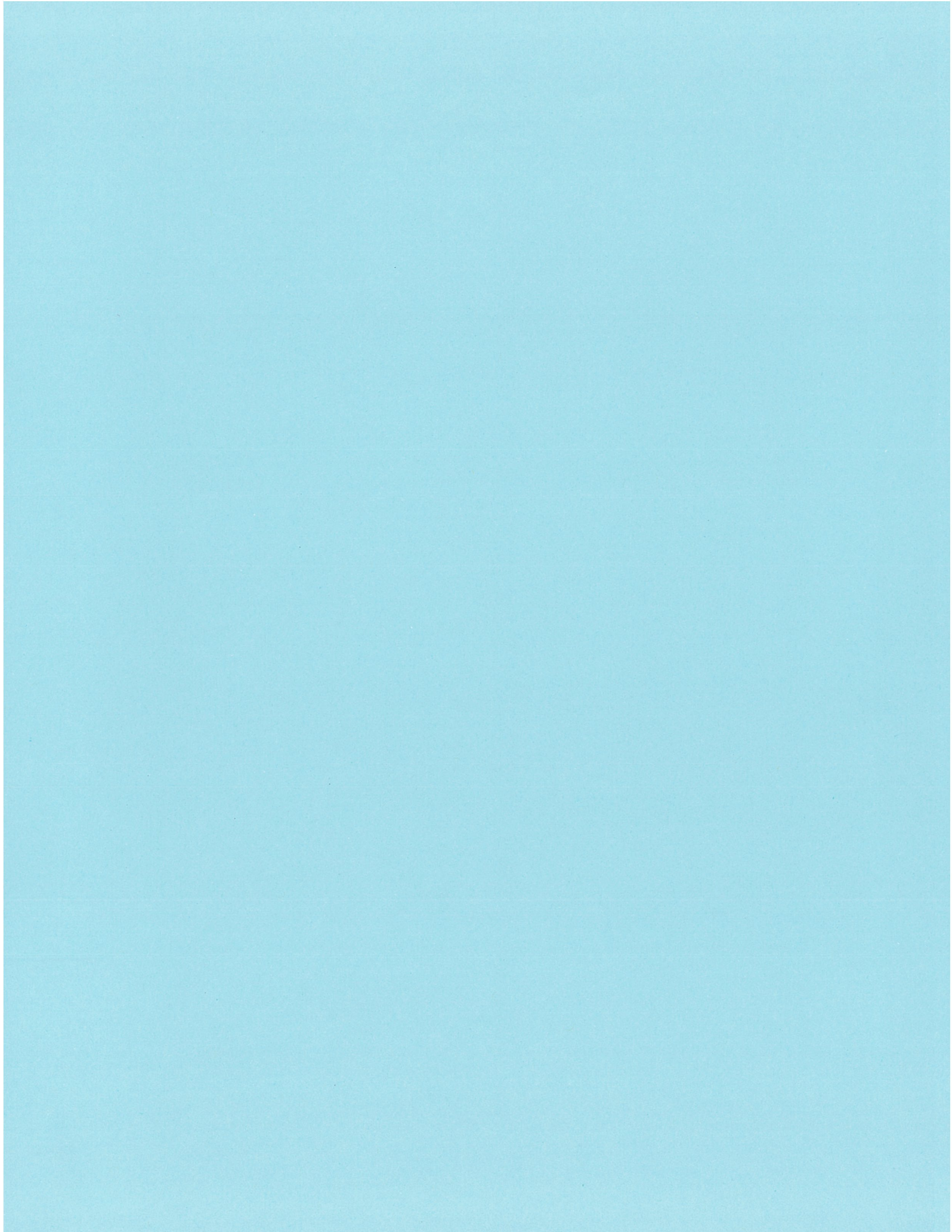
Per: _____

Name:

Title:

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

- i. **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



**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

**UNOFFICIAL TRANSCRIPT OF THE ENDORSEMENT OF
THE HONOURABLE JUSTICE WILTON-SIEGEL**

November 13, 2018

Interim receivership order respecting 46 Puccini Drive to go in the form attached.

Receivership order respecting 87 Elm Grove Avenue to go in the form attached.

Both these orders go unopposed by the respondents.

The remainder is to be heard on Dec 4/18 (1 ½ hrs.). Trade Capital Finance Corporation may be bringing a receivership motion that extends to all of these properties. The application judge will need to address the order of consideration of these two motions if the Trade Capital motion has been brought by that date.

The Honourable Justice Wilton-Siegel

Tab 6

9:30 ar 288

COUNSEL SLIP

COURT FILE NO CV-18-608356-C1

DATE November 29, 2018

NO ON LIST 1

TITLE OF PROCEEDING

Budochnist Credit Union v 2321197 Ontario Inc. etal

COUNSEL FOR:

PLAINTIFF(S)

KENNETH D KRAFT Sr
Budochnist Credit Union

PHONE & FAX NOS

T 416 863 4374

F 416 863 4592

E KENNETH.KRAFT@

DENTONS.COM

APPLICANT(S)

PETITIONER(S)

COUNSEL FOR:

DEFENDANT(S)

RESPONDENT(S)

Peter WG Carey

Chris Lee

for Trade Capital Finance Corp.

PHONE & FAX NOS

416-748-5117 (T)

416-746-8319 (F)

ccarey@loonix.com

clee@loonix.com

RESPONDENT - CARLO DEMARIA

416-645-5078 (T)

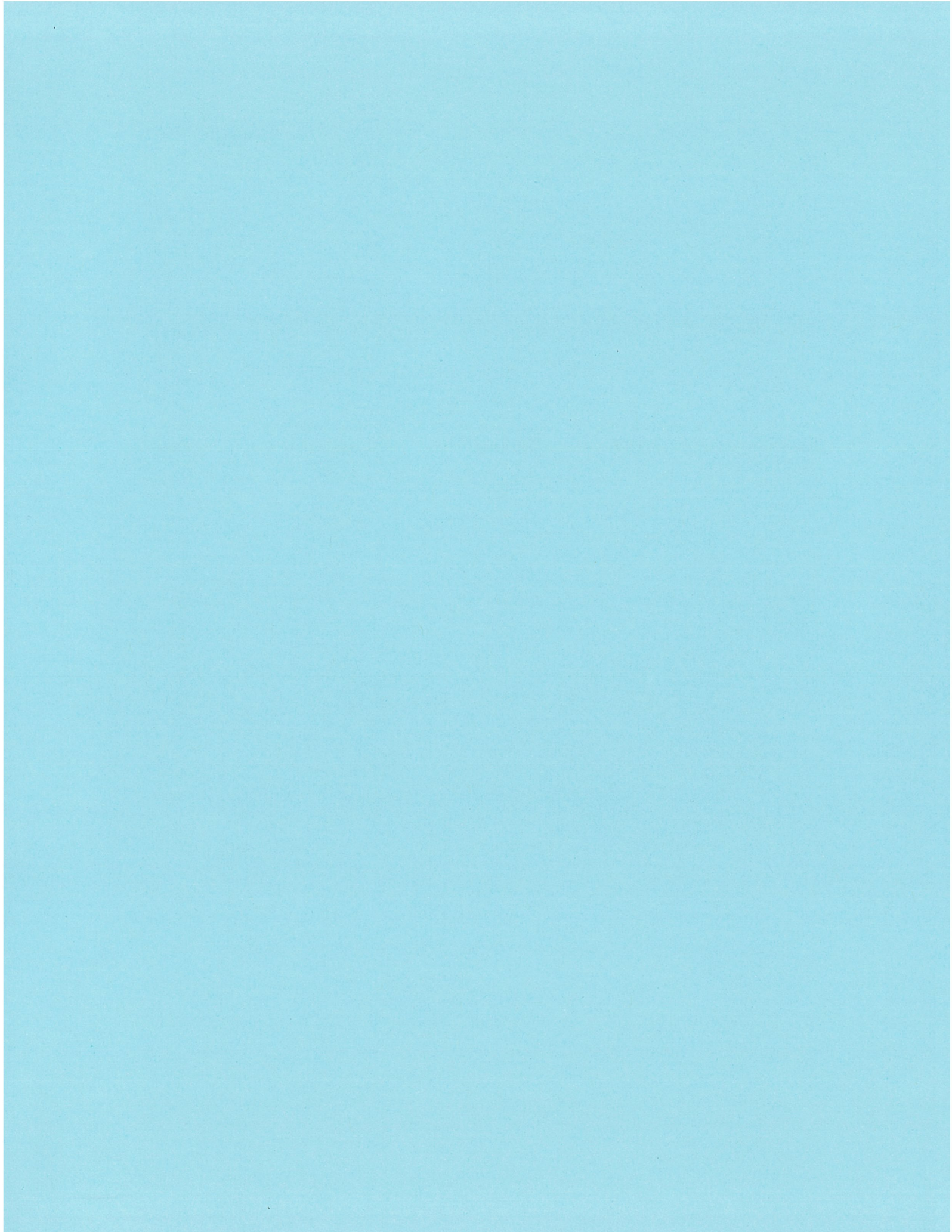
416-598-3730 (F)

PHILIP UNDERWOOD

punderwood@lolg.ca

November 29/18

The application of Trade Capital Finance will not be heard on December 4/18 at the time of the dictum of the application of the Budochnist Credit Union. However, Trade Capital Finance may bring a motion for the examination of cross-examination of the Credit Union's affidavit at that time. The application judge will determine whether such motion should be heard on that date or re-scheduled for another date. W. Lam-hut J.



**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

**UNOFFICIAL TRANSCRIPT OF THE ENDORSEMENT OF
THE HONOURABLE JUSTICE WILTON-SIEGEL**

November 29, 2018

Kenneth D. Kraft for Applicant Buduchnist Credit Union Limited

Peter W.G. Carey and Chris Lee for Respondents Trade Capital Finance Corp

Philip Underwood for Respondent Carlo Demaria

November 29, 2018

The application of Trade Capital Finance will not be heard on December 4, 2018 at the time of the return of the application of the Buduchnist Credit Union. However, Trade Capital Finance may bring a motion for the cross-examination of the Credit Union's affidavit at that time. The application judge will determine whether such motion should be heard on that date or re-schedule for another date.

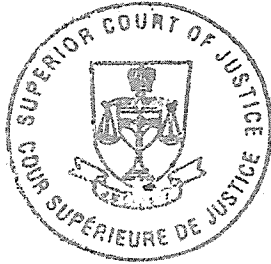
The Honourable Justice William Wilton-Siegel

Tab 7

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

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

THE HONOURABLE *Mr.*) TUESDAY, THE 4th
JUSTICE *Penny*)
) DAY OF DECEMBER, 2018
)



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 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 this day at 330 University Avenue, Toronto, Ontario.

ON READING the Affidavit of Oksana Prociuk, sworn November 6, 2018, and the Exhibits thereto, the Responding Affidavit of Oksana Prociuk, sworn November 20, 2018, the ~~Supplementary Affidavit of Oksana Prociuk, sworn November 30, 2018,~~ the Affidavit of Carlo *MAP*

Demaria, sworn November 11, 2018, and the Affidavit of Darcy Thompson, sworn November 12, 2018, and on hearing the submissions of counsel for the Applicant, Carlo Demaria, and Trade Capital Finance Corporation, 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*.

SERVICE AND NOTICE

21. **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.

22. **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

23. **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.

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

25. **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.

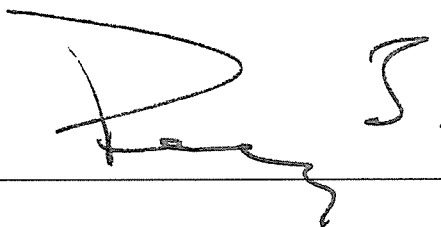
26. **THIS COURT ORDERS** that the Receiver be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and that the Receiver is 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.

27. **THIS COURT ORDERS** that 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 Real Properties with such priority and at such time as this Court may determine.


28. **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.

29. **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.



ENTERED AT / INSCRIT A TORONTO
ON / BOOK NO:
LE / DANS LE REGISTRE NO:

DEC 04 2018

PER / PAR: 

SCHEDULE "A"
REAL PROPERTIES

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

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

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

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

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

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

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

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

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

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

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


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

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

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

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

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

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

BUDUCHNIST CREDIT UNION LIMITED
Applicant

- and -

2321197 ONTARIO INC. et al.
Respondents

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

PROCEEDING COMMENCED AT TORONTO

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 Buduchmist Credit Union Limited

Tab 8

04 Dec 2018

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

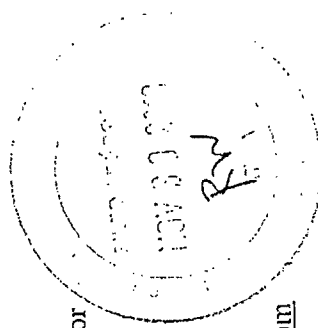
BUDUCHNIST CREDIT UNION LIMITED

- and -

Respondents

Applicant

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)
PROCEEDING COMMENCED AT TORONTO
MOTION RECORD
(RETURNABLE DECEMBER 4, 2018)



CHATONS LLP
5000 Yonge Street, 10th Floor
Toronto, ON M2N 7E9
George Benchetrit
Tel: (416) 218-1141
Fax: (416) 222-8402
Email: george@chaitons.com

Lawyers for KSV Kofman Inc., in its capacities as Receiver of the Elm Grove Property and as Interim Receiver of the Puccini Property

December 4, 2018
G. Benchetrit

The order sought by the

Respondent KSV is not opposed.

Our satisfied that the

proposed sale proceeds for the Elm Grove property, ~~and~~ has been

prudently developed and appears to comply with

the terms of conversion loan continued in found file.

The proposed sale power is approved.

I am also satisfied ~~with~~ with the Receiver's report, and it is approved.

The sealed material should remain so until any sale is concluded.

This is necessary to preserve the ability of the Receiver to maximize value if the transactions contemplated are not concluded.

The DeWitt principles are met in the circumstances. Order to ~~use~~ use in the form signed by me this day, 1997.

Tab 9

Court File Number: CV-18-60856-CL ³⁰⁸

Superior Court of Justice
Commercial List

FILE/DIRECTION/ORDER

Budweiser Credit Union Limited

Plaintiff(s)

AND

2321197 Ontario Inc.

Defendant(s)

Case Management Yes No by Judge: _____

Counsel	Telephone No:	Facsimile No:

- Order Direction for Registrar (No formal order need be taken out)
- Above action transferred to the Commercial List at Toronto (No formal order need be taken out)
- Adjourned to: _____
- Time Table approved (as follows):

This matter was originally
 returned in early November.
 A partial receivership/interim
 receivership order was made at
 that time, over the Elm Grove and
 Paccini properties - the balance of
 the application was adjourned to
 today.
 There was another scheduling conference

Dec 4, 2018

Date

[Signature]

Judge's Signature

Additional Pages 4

Court File Number: _____

Superior Court of Justice
Commercial List

FILE/DIRECTION/ORDER

Judges Endorsment Continued

Walter Geyrol J. on November 29.

Today, not having yet filed
any material, Mr. De Maria
asks an adjournment to
January on the basis that
new material has been filed
late.
from Trade Capital
and The credit Union

I am prepared to adjourn the
portion of the application
regarding Mr. De Maria's residence.

I am not prepared to adjourn
the receivership application
regarding the Puccini
property, the property over
which an interim receiver
has already been appointed.

Note of the late filed material

Court File Number: _____

Superior Court of Justice
Commercial List

FILE/DIRECTION/ORDER

Judges Endorsment Continued

effects the application ~~of~~ for
a hearing over the Puccini
property. That property was held
already in play from the outset.
Mr. DeMoria has never lived
in that property. It was built for res. sub.
~~#2~~ am not persuaded that
there is any need for an
adjournment re the Puccini
property.

The application regarding the
Woodland property, Mr. DeMoria's
family home, is adjourned to
Tuesday, 16, 2018 before me for
90 minutes.

This is preceptory to Mr. DeMoria.

The issues for trial are:

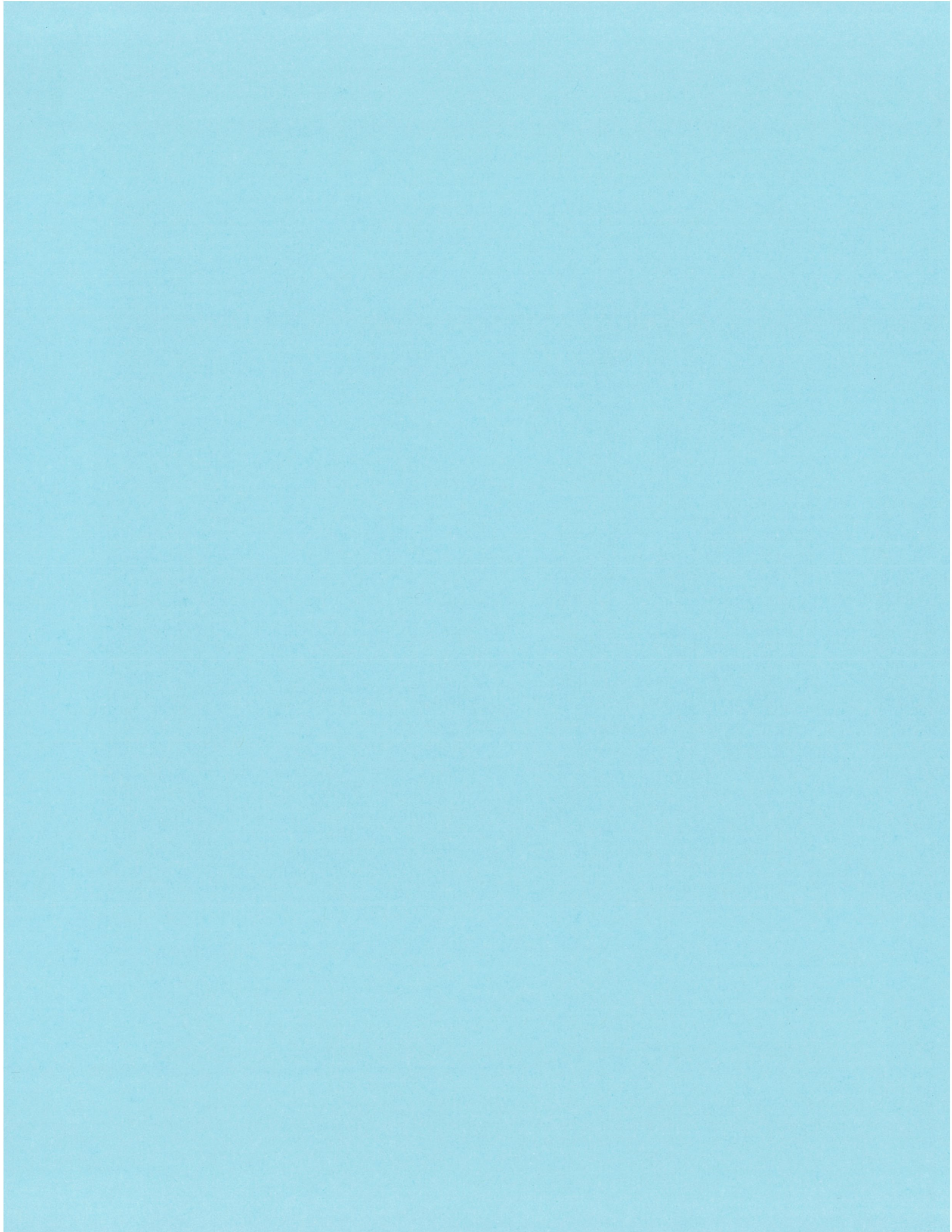
Court File Number: _____

Superior Court of Justice
Commercial List

FILE/DIRECTION/ORDER

Judges Endorsment Continued

a) Take Exhibit starting
and cross examination of The
Budaquist deponent; and
b) whether to convert the interim
receivership over Paccini to
a full receivership, subject to
the same rules, protocols and
process as was approved for
the Elm Grove project.



Court File No. CV-18-608356-00CL

**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

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

**UNOFFICIAL TRANSCRIPT OF THE ENDORSEMENT OF
THE HONOURABLE JUSTICE PENNY**

December 4, 2018

Barbara Grossman and Kenneth Kraft for Applicant Buduchnist Credit Union Limited

Peter W.G. Carey and Chris Lee for Respondents Trade Capital Finance Corp.

Andrew Winton and Philip Underwood for Respondent Carlo Demaria

George Benchetrit for the Receiver, KSV Kofman Inc.

December 4, 2018

This matter was originally returnable in early November. A partial receivership / interim receivership on this was made at that time, over the Elm Grove and Puccini properties. The balance of the application was adjourned to today.

There was another scheduling conference with Wilton-Siegel J. on November 29.

Today, not having yet filed any material, Mr. DeMaria seeks an adjournment to January, on the basis that new material from Trade Capital and the Credit Union has been filed late.

I am prepared to adjourn the portion of the application regarding Mr. DeMaria's residence. I am not prepared to adjourn the receivership application regarding the Puccini property, the property over which an interim receiver has already been appointed.

None of the late filed material affects the application for a receiver over the Puccini property. That property was clearly already in play from the outset. Mr. DeMaria has never lived in that property. It was built for re-sale. I am not persuaded that there is any and for an adjournment re the Puccini property.

The application regarding the Woodland property, Mr. DeMaria's family house, however, is adjourned to January 16, 2018, before me for 90 minutes.

This is peremptory to Mr. DeMaria.

The issues for today are:

- a) Trade Capital's standing and cross examination of the Buduchnist deponent; and
- b) Whether to convert the interim receivership over Puccini to a full receivership, subject to the same sales protocol and process as was approved for the Elm Grove property.

The Honourable Justice Penny

Tab 10

Court File Number: CV-1P-50835/6 - CL314

Superior Court of Justice
Commercial List

FILE/DIRECTION/ORDER

Budachrist Credit Union Limited

Plaintiff(s)

AND

232 1197 Ontario Inc.

Defendant(s)

Case Management Yes No by Judge: _____

Counsel	Telephone No:	Facsimile No:

- Order Direction for Registrar (No formal order need be taken out)
 Above action transferred to the Commercial List at Toronto (No formal order need be taken out)

- Adjourned to: _____
 Time Table approved (as follows):

This is a motion to convert an interim receivership over a residential property, the Puccini property, into a full receivership.

The Resp admits that at least \$1.5 M was advanced to fund this property. It was built for resale. The Demerits do not

December 4, 2018
Date

[Signature]
Judge's Signature

Additional Pages 6

Court File Number: _____

Superior Court of Justice
Commercial List

FILE/DIRECTION/ORDER

Judges Endorsment Continued

live there.

On fact the property was vacant for several years. It is currently occupied by friends of Mr. DeMarice who have no lease and pay no rent.

The evidence is not contradicted that no payments have been made in respect of the loan on the Puccini property for over a year and that tax arrears are not being paid and are accumulating.

That the Applicant's mortgage is in default is not in dispute.

The purpose for expanding the Receiver's powers over this property is to market and sell it for the

Court File Number: _____

Superior Court of Justice
Commercial List

FILE/DIRECTION/ORDER

Judges Endorsment Continued

highest realizable value.

Mr. Winter argues there is no rush, and that Mr. De Maria has testified that he cannot recall signing a second mortgage document increasing the loan to \$2.5M, and that the initials are not his initials.

I am not persuaded by these arguments. This project is, in effect, a wasting asset. It is not being deployed to any economic advantage while tax arrears, not to mention the BCU loan, are not being paid.

Whether the amount secured is \$1.5M or 2.5M does not, at

Court File Number: _____

Superior Court of Justice
Commercial List

FILE/DIRECTION/ORDER

Judges Endorsment Continued

This point matter as to whether
the process for realizing on the
economic value of the process
is put in motion.

The Interim Receiver having investigated
the Puccini property (and determined
it is not being managed for any
economic benefit and is occupied
by persons with ~~no~~ no lease and
who pay no rent recommended
expanding the receivership so that
the Puccini property can be marketed
and sold.

The appointment of ~~the~~ Receiver
is of course a matter of discretion.
I must have regard to all the
circumstances, particularly the
nature of the property and the

Court File Number: _____

Superior Court of Justice
Commercial List

FILE/DIRECTION/ORDER

Judges Endorsment Continued

rights and interests of all parties in
the property.

Here, given the occupancy by
non-paying tenants, the number of
creditors over time, claims and
the potential for controversial
priority and other issues, I
am satisfied that a private
receivership would be a much better
effective approach.

I find, in all the circumstances
that it would be just and
convenient to appoint KSV as
receiver of the Puccini property,
and to approve the approach
already taken for the marketing
of the Elm Grove property as the
appropriate approach to the marketing

Court File Number: _____

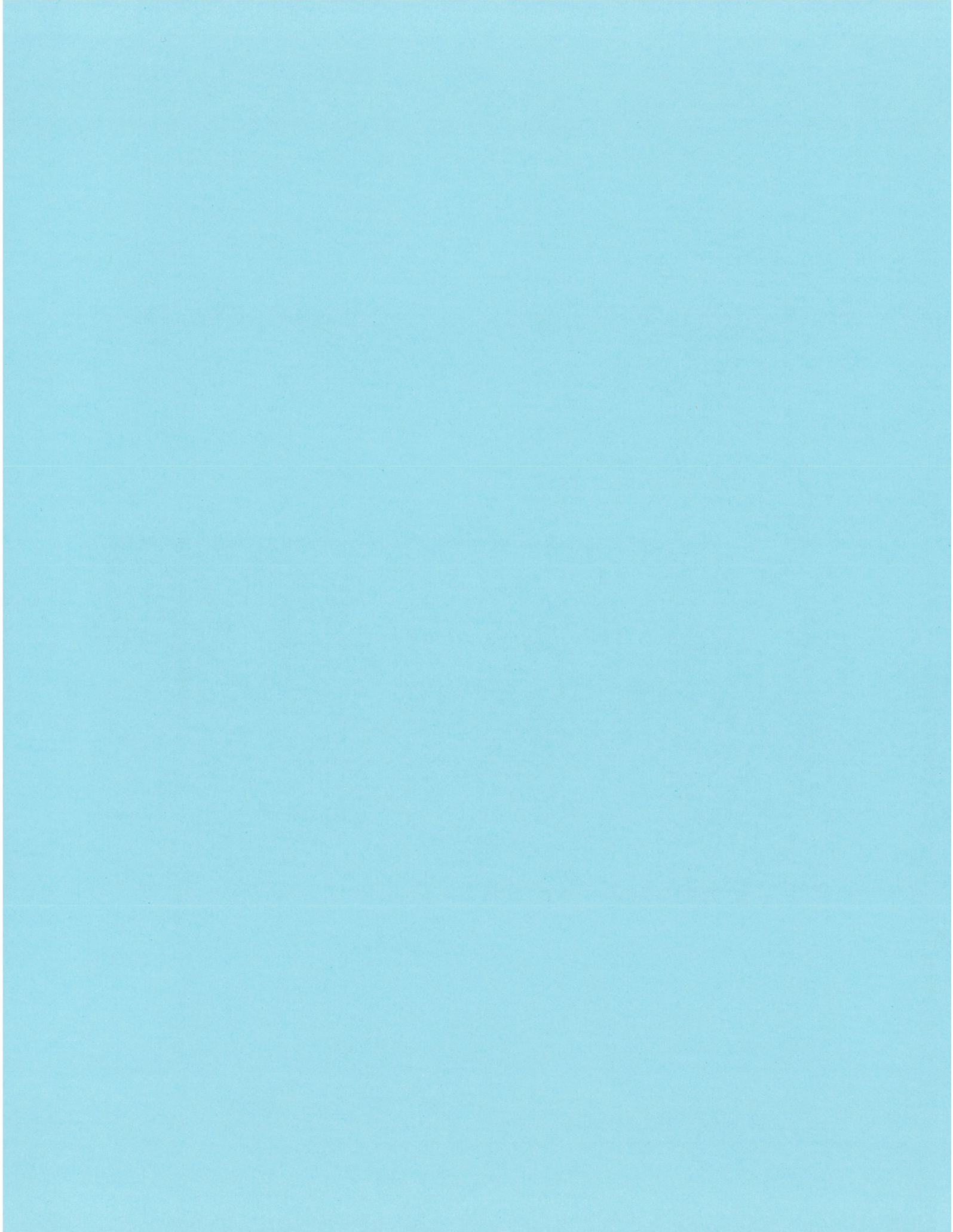
Superior Court of Justice
Commercial List

FILE/DIRECTION/ORDER

Judges Endorsment Continued

of the Puccini property.

I grant the order sought earlier
today with reasons to follow. These
are those reasons.



Court File No. CV-18-608356-00CL

**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

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

**UNOFFICIAL TRANSCRIPT OF THE ENDORSEMENT OF
THE HONOURABLE JUSTICE PENNY**

December 4, 2018

Barbara Grossman and Kenneth Kraft for Applicant Buduchnist Credit Union Limited

Peter W.G. Carey and Chris Lee for Respondents Trade Capital Finance Corp.

Andrew Winton and Philip Underwood for Respondent Carlo Demaria

George Benchetrit for the Receiver, KSV Kofman Inc.

December 4, 2018

This is a motion to convert an interim receivership over a residential property, the Puccini property, into a full receivership.

The Respondent admits that at least \$1.5 million was advanced to build this property. It was built for resale. The Demarias do not live there.

In fact, the property was vacant for several years. It is currently occupied by friends of Mr. DeMaria who have no lease and pay no rent.

The evidence is not contradicted that no payments have been made in respect of the loan on the Puccini property, for over a year and that tax arrears are not being paid and are accumulating.

That the Applicants mortgage is in default is not in dispute.

The purpose for expanding the Receiver's powers over their property is to market and sell it for the highest realizable value.

Mr. Winton argues there is no rush, and that Mr. DeMaria has testified that he cannot recall signing a second mortgage document increasing the loan to \$2.5 million, and that the initials are not his initials.

I am not persuaded by these arguments. This property is, in effect, a wasting asset. It is not being deployed to any economic advantage while tax arrears, not to mention the BCU loan, are not being paid.

Whether the amount secured is \$1.5 million or \$2.5 million does not, at this point matter as to whether the process for realizing on the economic value of the process is put in motion.

The Interim Receiver, having investigating **[investigated]** the Puccini property and determined it is not being managed for any economic benefit and is occupied by persons with no lease and

who pay no rent, recommended expanding the receivership so that the Puccini property can be marketed and sold.

The appointment of the Receiver is of course a matter of discretion. I must have regard to all of the circumstances, particularly the nature of the property and the rights and interests of all parties in the property.

Here, given the occupancy by non-paying tenants, the number of creditors asserting claims, and the potential for controversial priority and other issues. I am satisfied that a private receivership would be a much less effective approach.

I find, in all the circumstances that it is just and convenient to appoint KSV as receiver of the Puccini property, and to approve the approach already taken for the marketing of the Elm Grove property as the appropriate approach to the marketing of the Puccini property.

I granted the order sought earlier today with reasons to follow. These are these reasons.

The Honourable Justice Penny

Tab 11

BUDUCHNIST CREDIT UNION LIMITED
Applicant

- and -

2321197 ONTARIO INC. et al.
Respondents

December 31, 2018

On December 4, 2018, I received

Trova Capital's request to be

added as a party, to receive documents

filed in the receivership application

of Buduchnist and to cross examine

the Buduchnist defendant.

Mr. Gerry says costs of \$21,376

for this motion. Buduchnist

argues that there should be

no order as to costs on, if

any costs are awarded, they should

be limited and extremely modest.

37029170_7INATDOCS

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

PROCEEDING COMMENCED AT TORONTO

COSTS SUBMISSIONS

DENTONS CANADA LLP
77 King Street West, Suite 400
Toronto-Dominion Centre
Toronto, ON M5K 0A1
Insolvency.Toronto@dentons.com

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

Kenneth Kraft
Tel: (416) 863-4374
kenneth.kraft@dentons.com

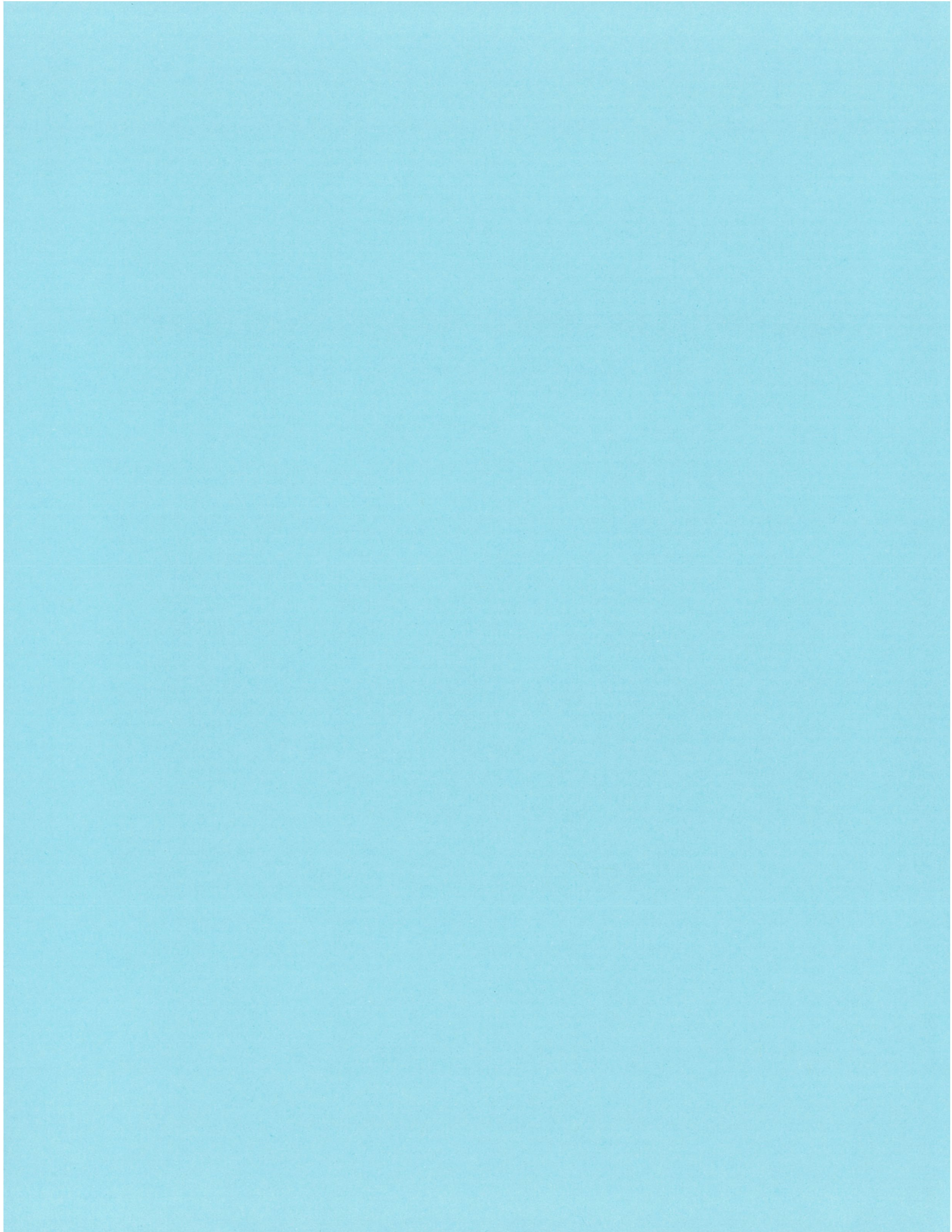
Lawyers for Buduchnist Credit Union Limited

Although Trade Capital was successful³²²⁴
on its motion, there remains a very
significant issue about whether,
as a matter of substance, Trade
Capital's interest in this receivership
application is of any material value.

In the circumstances, I am not
inclined to make any order as to
costs. Trade Capital wanted information,
and "invited itself to the party" to
get that information. It is
just and reasonable, in these circum-
stances, for the parties to bear their
own costs of this particular step
in the ongoing litigation.

No order as to costs.

James J.



Court File No. CV-18-608356-00CL

**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

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

**UNOFFICIAL TRANSCRIPT OF THE ENDORSEMENT OF
THE HONOURABLE JUSTICE PENNY**

December 31, 2018

On December 4, 2018, I granted Trade Capital's request to be added as a party to receive documents filed in the receivership application of Buduchnist and to cross-examine the Buduchnist deponent.

Mr. Carey seeks costs of \$21,356 for this motion. Buduchnist argues that there should be no order as to costs or, if any costs are awarded, they should be limited and extremely modest.

Although Trade Capital was successful on its motion, there remains a very significant issue about whether, as a matter of substance, Trade Capital's interest in this receivership application is of any material value.

In the circumstances, I am not inclined to issue any order as to costs. Trade Capital wanted information and “invited itself to the party” to get that information. It is just and reasonable, in these circumstances, for the parties to bear their own costs of this particular step in the ongoing litigation.

No order as to costs.

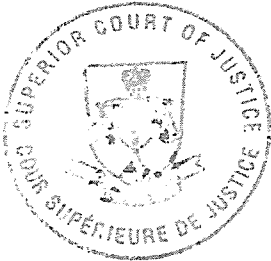
The Honourable Justice Penny

Tab 12

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

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

THE HONOURABLE MR.) THURSDAY, THE 17th
JUSTICE PENNY)
) DAY OF JANUARY, 2019



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.

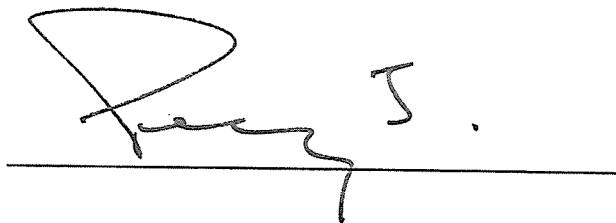
25. **THIS COURT ORDERS** that nothing in this Order shall prevent the Receiver from acting as a trustee in bankruptcy of the Respondents.

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.



ENTERED AT / INSCRIT A TORONTO
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: PTE 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: PTE 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 -

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

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

Tab 13

Court File Number: CV-18-608356-345

Superior Court of Justice
Commercial List

FILE/DIRECTION/ORDER

BCU Limited

Plaintiff(s)

AND

Carlo DeMaurio

Defendant(s)

Case Management Yes No by Judge: _____

Counsel	Telephone No:	Facsimile No:
<u>K. Kraft for BCU</u>		
<u>A Winton P Underwood for DeMaurio</u>		
<u>P. Corey and C. Lee for Trade Capital</u>		

- Order Direction for Registrar (No formal order need be taken out)
 Above action transferred to the Commercial List at Toronto (No formal order need be taken out)

- Adjourned to: _____
 Time Table approved (as follows):

The hearing today is one step in a series of matters originally brought on November 13, 2018 for the appointment of a receiver. A receiver was appointed over a property known as Elm Grove. An interim receiver was appointed over a property known as Puccini. On December 4, 2018 I expanded the Puccini interim receivership to a

January 17, 2019
Date

[Signature]
Judge's Signature

Additional Pages 24

Court File Number: _____

Superior Court of Justice
Commercial List

FILE/DIRECTION/ORDER

Judges Endorsment Continued

full receivership.

I adjourned the application to appoint a receiver over Woodland (which is the respondent's letter, Mr. De Maria's home) and a property on 5th line in Egbert Ontario (which is De M's cottage), to ~~today~~ ^{yesterday} preemption to De M.

De M and two representatives of BCU have been cross-examined on their affidavits.

De M opposes the application to appoint a receiver over Woodland and the cottage. He bases this opposition on four grounds, in essence:

1) BCU misconduct disentitles it to equitable relief in two respects:

a) increasing the size of a loan (The Vicer loan) guaranteed by De M without

Court File Number: _____

Superior Court of Justice
Commercial List

FILE/DIRECTION/ORDER

Judges Endorsment Continued

notice or authorization; and
(b) "falsely" witnessing signatures on
loan documentation.

2) The unauthorized increases in the
Vicar loan vitiated or discharged De M's
guarantee (which is the principle
source of liability in monetary
terms - \$1 million);

3) The circumstances (standard mortgages
over a residence and a cottage) do not
justify the need for or appointment of
a receiver; and

4) The source of De M's financial woes is
the Mareva injunction obtained
by Trade Capital over 3½ years ago.
The action to prove liability, which
De M wholly contests, has not progressed.
De M ~~has~~ proposes to bring a
motion for a hearing in January
or February ~~to~~ to set aside

Court File Number: _____

Superior Court of Justice
Commercial List

FILE/DIRECTION/ORDER

Judges Endorsment Continued

The Mauerer injunction on the basis of delay in the prosecution of the action. If that motion were granted, De M says he would be in a position to redeem the mortgages, currently in default, on the home and the cottage. On this basis, he argues that any receivership over these properties should at least be stayed until his motion has been decided.

1(a) Misconduct - Increasing the Vicar Loan

Although De M says he thought the monthly payment of \$7,000 was keeping all of his obligations current,

(he was making to BCY

The burden of the evidence suggests De M must have known this was insufficient and that his ~~the~~ debt obligations were increasing.

Court File Number: _____

Superior Court of Justice
Commercial List

FILE/DIRECTION/ORDER

Judges Endorsment Continued

The real issue under this head is the alleged left-help exercised by BCU ~~on~~ when it used the Vicor loan (secured against the home and guaranteed by DeM (to a limit of \$1 Million) to fund shortfalls in a completely different account of another company also owned by DeM, which was not secured or guaranteed by DeM. By doing so, De M argues, BCU increased Vicor's debt obligation to DeM's prejudice and BCU's gain.

I am unable to agree with this argument. What happened was, several cheques totalling about \$800,000 were deposited into the account of DeM's "Do You Know" account. Before the cheques cleared, De M instructed ~~the~~

Court File Number: _____

Superior Court of Justice
Commercial List

FILE/DIRECTION/ORDER

Judges Endorsment Continued

BCU to transfer the money from DYK to reduce the line of credit of Vicor BCU did as instructed.

The cheques bounced.

BCU reversed the transfers, putting the Vicor LOC back where it was before the NSF cheques amounts were transferred from ^{the} DYK to ^{the} Vicor account.

I simply cannot agree that this was misconduct motivated by a conflict of interest by BCU. No money was actually deposited to DYK. Therefore, the "transfer" of this money to reduce the Vicor LOC was really nothing more than an accounting error on the part of BCU. Had it waited ~~to~~ for the cheques to clear, no funds would have been transferred and there would never have been

Court File Number: _____

Superior Court of Justice
Commercial List

FILE/DIRECTION/ORDER

Judges Endorsment Continued

a credit of \$20,000 to the Vicar account. The problem arose, not from BCE's misconduct, but from the fact that the cheques deposited to the DYK account were bad.

1(b) Misconduct - False Witness

De M relies on the cross examination of the former account manager ~~to~~ to argue that the manager, Ms. Bereza, witnessed ~~the~~ signatures on loan ~~for~~ documents when she did not actually see the party sign.

As I read the evidence, Bereza admitted to doing this once, at De M's request (or at least with his knowledge) in connection with a mortgage given to De M's mother on a property called The Stonebank property.

Court File Number: _____

Superior Court of Justice
Commercial List

FILE/DIRECTION/ORDER

Judges Endorsment Continued

Berera seems to see she right here, but was not here, done this one other time for DeM when he was ~~away~~ out of town and sending him documents ~~to~~ electronically she was for signature.

DeM argues that this conduct was dishonest and demonstrates, at the very least, a lack of proper procedure and internal control. He argues that such conduct taints the veracity of all the BCU's evidence and the reliability of its documentation. It shows a failure to protect its customers interest.

Again, I am unable to agree. The only clearly admitted incident involved DeM's mother and a property which has nothing to do with this case. There is no evidence from

Court File Number: _____

Superior Court of Justice
Commercial List

FILE/DIRECTION/ORDER

Judges Endorsment Continued

De Ms mother. This might have happened again, it might not. At worst, however, it appears if it was done on another occasion, it was done to facilitate De M schedule, being out of town. There is no evidence or even suggestion. This was done for defensible purposes. While it is hardly conduct to condone or be proud of, I cannot find in the circumstances of this case, that it rises to the level of misconduct sufficient to deny BCU the appointment of a receiver if it is otherwise entitled to one.

~~That being said to the next~~

2. Discharge of Guarantee

There is no dispute that De M gave a personal guarantee of the

Court File Number: _____

Superior Court of Justice
Commercial List

FILE/DIRECTION/ORDER

Judges Endorsment Continued

Vicar LOC and That his guarantee is limited to ~~the~~ \$1 million. However, De M argues, relying on Bank of Montreal v Wilder [1986] 2 SCR para 29, That any material variation of the terms of the contract which is being guaranteed will discharge ~~the~~ debtors obligation under the guarantee.

De M argues That ~~the~~ increasing the LOC in excess of \$1M, was a material variation in the obligation being guaranteed. This increased the risk he would be called on the guarantee (even though the \$1 million limit did not change). Accordingly, his liability under the guarantee has been discharged.

This ~~is~~ is no doubt the position

Court File Number. _____

Superior Court of Justice
Commercial List

FILE/DIRECTION/ORDER

Judges Endorsment Continued

at common law. However, a proper analysis of this question requires consideration of the agreement, because it is equally true law that ^{these} common law obligations may be varied by contract so long as the "contracting-out language" is clear and unambiguous.

A two stage analysis is required. First, it must be determined whether there was a material alteration. Even if there is, one has to consider whether the documents permit the material alteration.

In this case, they do.

The vicar ~~to~~ LOC agreement was signed by DeM as principal of vicar and personally as guarantor. While it contemplated the amount to be advanced as \$1 million,

Court File Number: _____

Superior Court of Justice
Commercial List

FILE/DIRECTION/ORDER

Judges Endorsment Continued

The agreement expressly provides that BCU may "vary the limit without notice at any time."

The guarantee also signed by De M, provides that De M guarantees the Borrowers indebtedness "on all accounts of the Borrower."

The ~~loan~~ LOC agreement signed by De M expressly permits an increase in the amount loaned to Vicar.

The guarantee is an "all accounts" guarantee. The language is clear and unambiguous. The advances to LOC over \$1 million, even if they were material alterations, were contemplated by the parties, permitted by the language of the loan agreement and the guarantee and inherent in a continuing all accounts guarantee, subject, of course to the \$1 million

Court File Number. _____

Superior Court of Justice
Commercial List

FILE/DIRECTION/ORDER

Judges Endorsment Continued

Limit on the guarantee obligation
itself, Royal Bank of Canada v. Samson
Management 2013 ONCA 313 at
paras 51-52 and 61-63 (lv denied).

This hearing, of course, is not a final
ruling on the question. No doubt
for the evidence would be required
~~it~~ in the event there are proceedings
to enforce the guarantee.

But for purposes of establishing
whether or not equitable relief should
be denied, I am not prepared to
say that the alleged discharge of
the guarantee is a sufficient
ground to do so.

Are Circumstances such that a Receivingship
is Necessary?

De M argues that these are
standard mortgages on a home and

Court File Number. _____

Superior Court of Justice
Commercial List

FILE/DIRECTION/ORDER

Judges Endorsment Continued

a cottage. The ~~woodland~~ mortgage does not contemplate a receiver (although the cottage mortgage does). There is no reason or need for a receiver — BCU can exercise its mortgage remedies in the usual way, at much less expense and intrusion into De M's affairs.

Under the CJA s. 101, the court has the power to appoint a receiver when it is "just and convenient" to do so. Whether the creditor has a right to appoint a private receiver is a consideration, as it goes to whether the relief is "extraordinary" in nature, among other things. The question ultimately coalesces around whether it is in the interests of the stakeholders, taken as a whole, ~~to~~ to appoint a

Court File Number: _____

Superior Court of Justice
Commercial List

FILE/DIRECTION/ORDER

Judges Endorsment Continued

receiver.

Were these the only two parties, and the only two properties, involved? There would be much to be said for this argument. However, regrettably, there are already two properties under a court appointed receiver's supervision and authority. There is a very active dispute between two known creditors already, Trade Capital and BCU, over adequacy of security and priority issues. More creditors may well emerge. And, there are pending motions by Trade Capital to seek for their receivership orders over other assets.

Two factors in particular persuade me that a receivership is appropriate. First, given the number of competing

Court File Number: _____

Superior Court of Justice
Commercial List

FILE/DIRECTION/ORDER

Judges Endorsment Continued

claim, The extent of the ongoing litigation and the number of properties/assets involved, it seems to me critical to have matters "under one roof" so to speak. It seems to me the potential for chaos increases if some proceedings are through court appointed receivers while others are pursuing private enforcement remedies.

The second is that given the receiver has already been appointed for two properties, and given the high of added cost through private enforcement and lack of coordination and oversight, it is not at all clear to me that extending the receiver's powers to these two properties as well is the "high cost" alternative.

For these reasons, I conclude that

Court File Number: _____

Superior Court of Justice
Commercial List

FILE/DIRECTION/ORDER

Judges Endorsment Continued

it is just and convenient to appoint a receiver over the home and the cottage which secure the mortgage financing advanced by the BCU.

Motion to Set Aside Mareva in circumstances

Finally, there is the issue of the Mareva injunction, ~~has~~ now extant for $2\frac{1}{2}$ years, where discovery has not even taken place, and the pending motion to lift, in whole or in part, the Mareva injunction as it relates to DeM's property. DeM argues that his motion is not frivolous. He also argues somewhat persuasively, given the evidence, that the cause of all his troubles with the BCU is the Mareva injunction obtained by Trade

Court File Number: _____

Superior Court of Justice
Commercial List

FILE/DIRECTION/ORDER

Judges Endorsment Continued

Capital.

De M points out that the arrears (leaving aside the principal amount loaned on the cottage which is due and owing) is less than \$20,000. De M says it would be possible to restructure the Marera injunction, even if not lifted in its entirety, to prevent the seizure and sale of his home. Thus, De M argues that at the very least, enforcement of a receivership order on these two properties should be stayed until his motion to set aside the Marera has been heard.

Against this BCU argues that this is speculative and that nothing has prevented De M from

Court File Number: _____

Superior Court of Justice
Commercial List

FILE/DIRECTION/ORDER

Judges Endorsment Continued

seeking tailored relief of this nature for the last 3 1/2 years. ~~It~~ It is also the case that De M made such applications in 2015, which were unsuccessful on the motion and at the Divisional Court.

Nevertheless, De M argues that the *quid pro quo* of a Mareva injunction is a speedy trial. A plaintiff cannot obtain a Mareva, tie up the defendant's assets and hit on his rights.

This motion of course, is not before me (it has not even been heard yet) and Mr. Corey, who acts for Trade Capital, took no position on the BCU motion. I have no doubt he will have something

Court File Number: _____

Superior Court of Justice
Commercial List

FILE/DIRECTION/ORDER

Judges Endorsment Continued

to say about setting aside the
Marera when the time comes.

The point is, at this juncture,
simply when the enforcement
against DeM home and cottage,
which are secured, should be
delayed for a few months to
see whether some relief might
emerge from his proposed motion
that would enable him to redeem
the mortgage (on his home at
least).

On my December 4, 2018 ruling on the
Puccini property, I found that the
accumulation of tax arrears created
a situation akin to a wasted asset.
That contributed to my conclusion
that the receivers ~~with~~ full powers

Court File Number: _____

Superior Court of Justice
Commercial List

FILE/DIRECTION/ORDER

Judges Endorsment Continued

should be applied to that asset.

Here, ~~the~~ evidence is that

property tax arrears on Woodland

have been paid although property tax

arrearers (in lativel, not best) have

accrued on The Cottage.

And, while the ~~of~~ mortgage payments

arrears are ~~only about~~ less than

\$20,000 at present, they too are

accumulating monthly. Finally,

The Cottage mortgage is overdue,

so that principal of in the

neighbourhood of \$150,000 is owing on

that ~~of~~ mortgage.

On all of the circumstances, I

exercise my discretion under the

just and convenient test as

follows.

Court File Number: _____

Superior Court of Justice
Commercial List

FILE/DIRECTION/ORDER

Judges Endorsment Continued

The application for the appointment of a receiver over the Cottage is granted. Cottages are luxury items. The mortgage grants BCE the right to a private receiver. The taxes are accruing, the debt is not being serviced. The full amount of the principal is due and owing. No plan has been advanced for how that debt will be satisfied.

The application for the appointment of a receiver over the Woodland home is also granted, but enforcement is stayed for 60 days or the disposition of De M motion to set aside the Morera injunction is heard, whichever comes first. The stay is on the following terms:

Court File Number: _____

Superior Court of Justice
Commercial List

FILE/DIRECTION/ORDER

Judges Endorsment Continued

1. De M^{shall} provide the receiver monthly with evidence that the following are current:

- 1) heat
- 2) hydro
- 3) property taxes, and
- 4) property insurance on the woodland property

2. Upon the expiry of 60 days, or the disposition of the motion to set aside the Mareva injunction (or sooner if necessary) the parties shall schedule a 9:30 AM appointment to report on the status of the matter and the proposed next steps which are to be taken.

Counsel asked to have the result for today before addressing costs.

Court File Number: _____

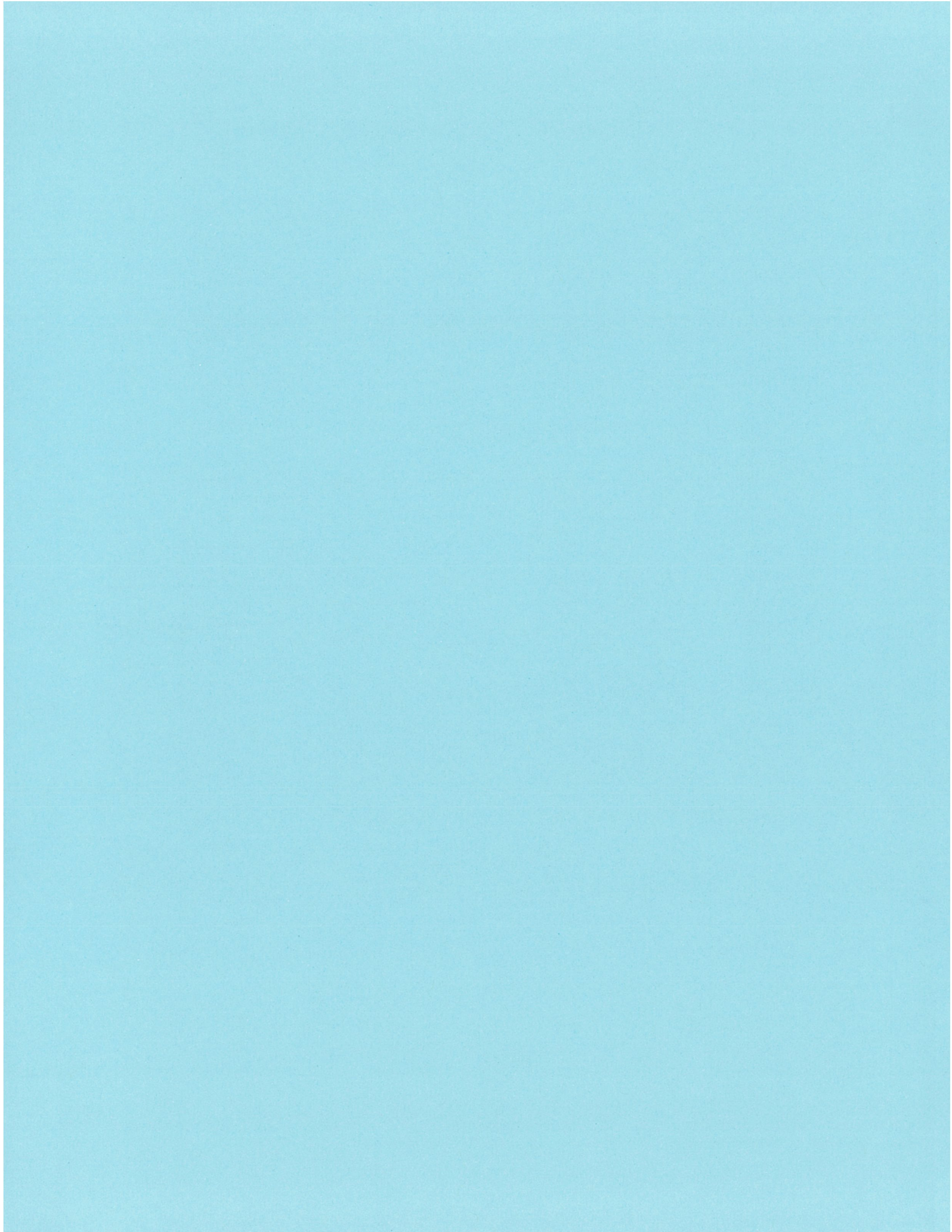
Superior Court of Justice
Commercial List

FILE/DIRECTION/ORDER

Judges Endorsment Continued

Anyone seeking costs shall do so by filing a brief submission not to exceed two typed double spaced pages and a cost outline within 7 days.

Anyone wishing to respond to such a request shall do so by filing their own cost outline (had they been seeking costs) together with a brief submission ~~of~~ at the same length.



Court File No. CV-18-608356-00CL

**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

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

**TRANSCRIPT OF THE ENDORSEMENT OF
THE HONOURABLE JUSTICE PENNY¹**

January 17, 2019

K. Kraft for Applicant, Buduchnist Credit Union Limited

A. Winton and P. Underwood for Respondents, 2321197 Ontario Inc., Carlo Demaria, 2321198 Ontario Inc. and Vicar Homes Ltd.

P. Carey and C. Lee for Respondent, Trade Capital Finance Corporation

Heard: January 16, 2019

The hearing today is one step in a series of matters originally brought on November 13, 2018 for the appointment of a receiver. A receiver was appointed over a property known as Elm Grove.

¹ This transcript has been reviewed by Penny J. and contains only his minor typographical, grammatical changes and two omitted headings from the handwritten endorsement.

An interim receiver was appointed over a property known as Puccini. On December 4, 2018 I expanded the Puccini interim receivership to a full receivership.

I adjourned the application to appoint a receiver over Woodland (which is the respondent debtor, Mr. DeMaria's, home) and property on 5th Line in Egbert, Ontario (which is Mr. DeMaria's cottage), to yesterday, peremptory to DeMaria. DeMaria and one representative of BCU, Ms. Oksana Prociuk, have been cross-examined on their affidavits and a third person, Ms. Roma Bereza, a former employee of BCU was examined pursuant to Rule 39.03 at the request of DeMaria.

DeMaria opposes the application to appoint a receiver over Woodland and the Cottage. He bases this opposition on four grounds, in essence:

1. BCU misconduct disentitles it to equitable relief in two respects:
 - a. increasing the size of a loan (the Vicar Loan) guaranteed by DeMaria without notice or authorization; and
 - b. "falsely" witnessing signatures on loan documentation.
2. The unauthorized increases in the Vicar Loan vitiated or discharged DeMaria's guarantee (which is the principal source of liability in monetary terms - \$1 Million);
3. The circumstances (standard mortgages over a residence and a cottage) do not justify the need for or appointment of a receiver; and
4. The source of DeMaria's financial woes is the Mareva injunction obtained by Trade Capital over 3 ½ years ago. The action to prove liability, which DeMaria hotly contests,

has not progressed. DeMaria proposes to bring a motion for a hearing in January or February seeking to set aside the Mareva injunction on the basis of the delay in the prosecution of the action. If that motion were granted, DeMaria says he would be in a position to redeem the mortgages, currently in default on the home and the Cottage. On this basis, he argues that any receivership over these properties should at least be stayed until his motion has been decided.

1. (a) **Misconduct – Increasing the Vicar Loan**

Although DeMaria says he thought the monthly payment he was making to BCU of \$7,800 was keeping all of his obligations current, the burden of the evidence suggests DeMaria must have known this was insufficient and that his debt obligations were increasing. The real issue under this head is the alleged self-help exercised by BCU when it used the Vicar Loan (secured against the home and guaranteed by DeMaria to a limit of \$1 Million) to fund shortfalls in a completely different account of another company, also owned by DeMaria, which was not secured or guaranteed by DeMaria. By doing so, DeMaria argues, BCU increased Vicar's debt obligation to DeMaria's prejudice and BCU's gain.

I am unable to agree with this argument. What happened was, several cheques totalling about \$800,000 were deposited into the account of DeMaria's "Do You Know" account. Before the cheques were 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.

1. **(b) Misconduct – False Witness**

DeMaria relies on the Rule 39.03 examination of the former account manager to argue that the manager, Ms. Bereza, witnessed signatures on loan documents when she did not actually see the party sign.

As I read the evidence, Bereza admitted to doing this once, at DeMaria’s request (or at least with his knowledge) in connection with a mortgage given to DeMaria’s mother on a property called the Stavebank property.

Bereza seems to say she might have, but was not sure, done this one other time for DeMaria when he was out of town and she was sending him documents electronically for signature.

DeMaria argues that this conduct was dishonest and demonstrates, at the very least, a lack of proper procedure and internal control. He argues that such conduct taints the veracity of all the BCU’s evidence and the reliability of its documentation. It shows a failure to protect its customer’s interest.

Again, I am unable to agree. The only clearly admitted incident involved DeMaria’s mother and a property which has nothing to do with this case. There is no evidence from DeMaria’s mother.

This might have happened again, it might not. At worst, however, it appears if it was done on another occasion, it was done to facilitate DeMaria's schedule, being out of town. There is no evidence, or even suggestion, this was done for nefarious purposes. While it is hardly conduct to condone or be proud of, I cannot find in the circumstances of this case that it rises to the level of misconduct sufficient to deny BCU the appointment of a receiver if it is otherwise entitled to one.

2. Discharge of Guarantee

There is no dispute that DeMaria gave a personal guarantee of the Vicar LOC and that his guarantee is limited to \$1 Million. However, DeMaria argues, relying on *Bank of Montreal v. Wilder* [1986] 2 SCR para 29, that "any material variation of the terms of the contract which is being guaranteed will discharge the debtors obligation under the guarantee".

DeMaria argues that increasing the LOC in excess of \$1 Million was a material variation in the obligation being guaranteed. This increased the risk he would be called on the guarantee (even though the \$1 Million limit did not change). Accordingly, his liability under the guarantee has been discharged.

This is no doubt the position at common law. However, a proper analysis of this question requires consideration of the agreements because it is equally trite law that these common law obligations may be varied by contract so long as the "contracting-out language" is clear and unambiguous.

A two stage analysis is required. First, it must be determined whether there was a material alteration. Even if there is, one has to consider whether the documents permit the material alteration.

In this case, they do.

The Vicar LOC agreement was signed by DeMaria as principal of Vicar and personally as guarantor. While it contemplates the amount to be advanced as \$1 Million, the agreement expressly provides that BCU may “vary the limit without notice at any time.”

The guarantee also signed by DeMaria guarantees the Borrowers indebtedness “on all accounts of the Borrower.”

The LOC agreement signed by Demaria expressly permits an increase in the amount loaned to Vicar. The guarantee is an “all accounts” guarantee. The language is clear and unambiguous. The advances from the LOC over \$1 Million, even if these were a material alteration, were contemplated by the parties, permitted by the language of the loan agreement and the guarantee and inherent in a continuing, all accounts guarantee subject, of course, to the \$1 Million limit on the guarantee obligation itself, *Royal Bank of Canada v. Samson Management*, 2013 ONCA 313 at paras 51-52 and 61-63 (lv. denied).

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.

But for purposes of establishing whether or not equitable relief should be denied. I am not prepared to say that the alleged discharge of the guarantee is a sufficient ground to do so.

3. Are Circumstances Such That a Receivership is Necessary?

DeMaria argues that these are standard mortgages on a home and a cottage. The Woodland mortgage does not contemplate a receiver (although the Cottage mortgage does). There is no

reason or need for a receiver – BCU can exercise its mortgage remedies in the usual ways at much less expense and intrusion into DeMaria’s affairs.

Under the CJA s. 101, the Court has the power to appoint a receiver where it is “just and convenient” to do so. Whether the creditor has a right to appoint a private receiver is a consideration, as it goes to whether the relief is “extraordinary” in nature, among other things. The question ultimately coalesces around whether it is in the interests of the stakeholders, taken as a whole, to appoint a receiver.

Were these the only two parties and the only two properties involved, there would be much to be said for this argument. However, regrettably, there are already two properties under a court appointed receiver’s supervision and authority. There is a very active dispute between two known creditors already, Trade Capital and BCU, over adequacy of security and priority issues. More creditors may well emerge. And, there are pending motions by Trade Capital to seek further receivership orders over other assets.

Two factors in particular persuade me that a receivership is appropriate. First, given the number of competing claims, the extent of the ongoing litigation and the number of properties / assets involved, it seems to me critical to move matters “under one roof” so to speak. It seems to me the potential for chaos increases if some proceedings are through court-appointed receivers while others are pursuing private enforcement remedies.

The second is that, given the receiver has already been appointed for two properties, and given the risk of added cost through private enforcement and lack of coordination and oversight, it is not all clear to me that extending the receiver’s powers to these two properties as well is the “high cost” alternative.

MAF

For these reasons, I conclude that it is just and convenient to appoint a receiver over the home and the Cottage which secure the mortgage financing advanced by the BCU.

4. Motion to Set Aside Mareva

Finally, there is the issue of the Mareva injunction, now extant for 3 ½ years, in circumstances where discovery has not even taken place, and the pending motion to lift, in whole or in part, the Mareva injunction as it relates to DeMaria's property. DeMaria argues that his motion is not frivolous. He also argues, somewhat persuasively given the evidence, that the cause of all his troubles with the BCU is the Mareva injunction obtained by Trade Capital.

DeMaria points out that the arrears (leaving aside the principal amount loaned on the Cottage which is due and owing) is less than \$20,000. DeMaria says it would be possible to restructure the Mareva injunction, even if not lifted in its entirety, to prevent the seizure and sale of his home. Thus, Demaria argues that at the very least, enforcement of a receivership order on these two properties should be stayed until his motion to set aside the Mareva has been heard.

Against this, BCU argues that this is speculative and that nothing has prevented DeMaria from seeking tailored relief of this nature for the last 3 ½ years. It is also the case that DeMaria made such applications in 2015, which were unsuccessful on the motion and at the Divisional Court.

Nevertheless, DeMaria argues that the quid pro quo of a Mareva injunction is a speedy trial. A plaintiff cannot obtain a Mareva, tie up the defendant's assets and sit on his rights.

This motion of course, is not before me (it has not even been brought yet) and Mr. Carey, who acts for Trade Capital, took no position on the BCU motion. I have no doubt he will have something to say about setting aside the Mareva when the time comes.

The point is, at this juncture, simply whether enforcement against DeMaria's home and Cottage, which are secured, should be delayed for a few months to see whether some relief might emerge from his proposed motion that would enable him to redeem the mortgage (on his home at least).

In my December 4, 2018 ruling on the Puccini property, I found that the accumulation of tax arrears created a situation akin to a wasting asset. That contributed to my conclusion that the receiver's full powers should be applied to that asset. Here, the evidence is that property tax arrears on Woodland have been paid although property tax arrears (relatively modest) have accrued on the Cottage.

And, while the mortgage payments arrears are less than \$20,000 at present, they too are accumulating monthly. Finally, the Cottage mortgage is overdue, so that principal of in the neighbourhood of \$180,000 is owing on that mortgage.

Conclusion

In all of the circumstances, I exercise my discretion under the just and convenient test as follows.

The application for the appointment of a receiver over the Cottage is granted. Cottages are luxury items. The mortgage grants BCU the right to a private receiver. The taxes are accruing, the debt is not being serviced. The full amount of the principal is due and owing. No plan has been advanced for how that debt will be satisfied.

The application for the appointment of a receiver over the Woodland home is also granted, but enforcement is stayed for 60 days or the disposition of DeMaria's motion to set aside the Mareva injunction is heard, whichever comes first. The stay is on the following terms:

1. DeMaria shall provide the receiver monthly with evidence that the following are current:
 - 1) Heat;
 - 2) Hydro;
 - 3) Property taxes; and
 - 4) Property insurance on the Woodland property.

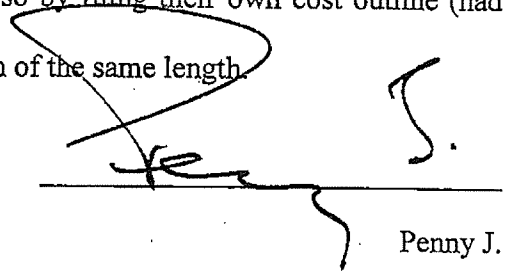
2. Upon the expiry of 60 days or the disposition of the motion to set aside the Mareva injunction (or sooner if necessary) the parties shall schedule a 9:30am appointment to report on the status of the proposed next steps which are to be taken.

Costs

Counsel asked to have the result from today before addressing costs.

Anyone seeking costs should do so by filing a brief submission, not to exceed two typed double spaced pages and cost outline within 7 days.

Anyone wishing to respond to such a request shall do so by filing their own cost outline (had they been seeking costs) together with a brief submission of the same length.



A handwritten signature in black ink, appearing to be 'Penny J.', is written over a horizontal line. To the right of the signature is a large, stylized handwritten mark that resembles a 'J' or 'S' with a dot.

Penny J.

Tab 14

BUDUCHNIST CREDIT UNION LIMITED
Applicant

- and -

2321197 ONTARIO INC. et al.
Respondents

February 23, 2019

Costs should be addressed as contemplated in the Commercial List Mutual Receivership Order.

There are already two other propositions of the Dominion under the C.M.R.O. Enforcement costs for all proceedings should be dealt with at one time at the distribution phase, where the costs (and other stakeholders) will have the right to question whether

37692078_4\NATDOCS

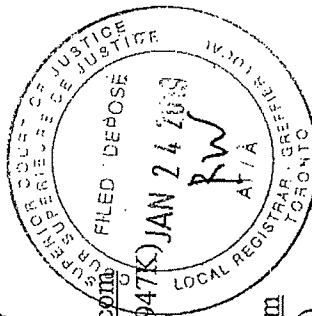
ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

PROCEEDING COMMENCED AT TORONTO

COSTS SUBMISSIONS

DENTONS CANADA LLP
77 King Street West, Suite 400
Toronto-Dominion Centre
Toronto, ON M5K 0A1
Insolvency.Toronto@dentons.com
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

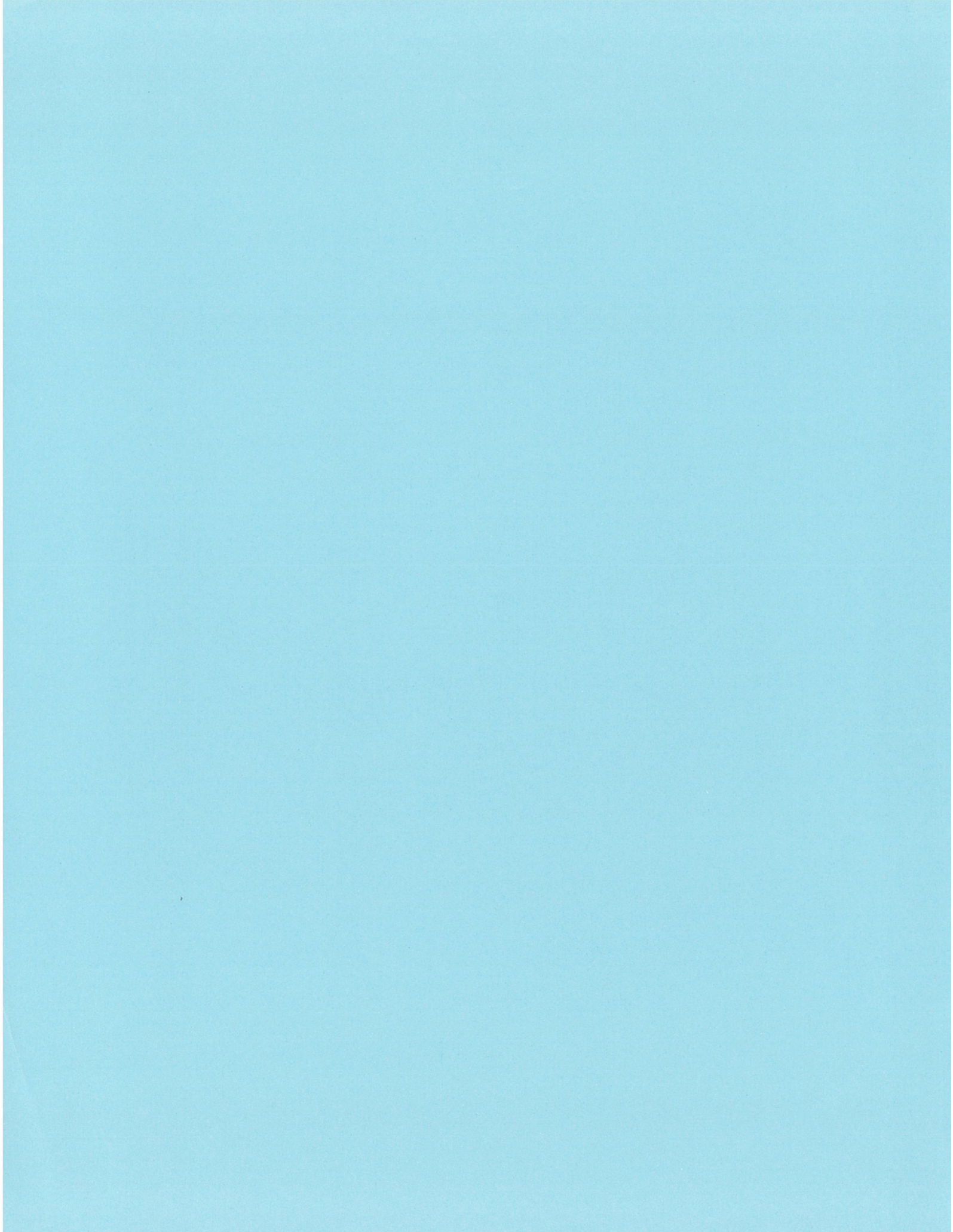
Lawyers for Buduchnist Credit Union Limited



The fees sought are reasonable and fair.

It has been to me that, ~~with~~
~~respect to~~ The Trade Capital matter
 to be added as a party, and cross examination
 and document production, relate
 to steps taken, within the receivership
 to ~~separate~~ within the receivership
 in respect of which I have
 already ordered that BCU (and
 Trade Capital) shall bear its own
 costs.

Ray J.



Court File No. CV-18-608356-00CL

**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

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

**UNOFFICIAL TRANSCRIPT OF THE ENDORSEMENT OF
THE HONOURABLE JUSTICE PENNY**

**(Cottage and Woodland costs, pursuant to Jan 17/19 endorsement and Second Amended
and Restated Receivership Order)**

February 22, 2019

Costs should be addressed as contemplated in the Commercial List Model Receivership Order. There are already two other properties of Mr. Demaria under the CLMRO. Enforcement costs for all proceedings should be dealt with at one time at the distribution phase, where the debtor (and other stakeholders) will have the right to question whether the fees sought are reasonable and fair.

It does seem to me that, the Trade Capital motion to be added as a party, and cross examinations and document production relate to steps taken within the receivership in respect of which I have already ordered that BCU (and Trade Capital) shall bear its own costs.

The Honourable Justice Penny

Tab 15

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

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

THE HONOURABLE

)

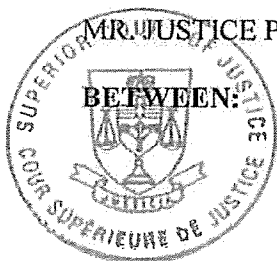
WEDNESDAY, THE 27TH

)

MR. JUSTICE PENNY

)

DAY OF FEBRUARY, 2019



BUDUCHNIST CREDIT UNION LIMITED

Applicant

- and -

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

Respondents

APPROVAL AND VESTING ORDER

This motion, made by KSV Kofman Inc., in its capacity as court-appointed receiver and manager (the “**Receiver**”) of the real property located at 46 Puccini Drive, Richmond Hill, Ontario and legal described in **Schedule A** hereto (the “**Puccini Property**”), for an order approving the proposed transaction (the “**Transaction**”) for the sale of the Puccini Property pursuant to an Agreement of Purchase and Sale dated February 3, 2019 (the “**Sale Agreement**”) and appended to the Third Report of the Receiver dated February 19, 2019 (the “**Report**”), and vesting in the purchaser the Puccini Property, was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Report and on hearing the submissions of counsel for the Receiver, no one appearing for any other person on the service list, although properly served as appears from the affidavit of Amy Casella sworn February 19, 2019, filed:

- 2 -

1. THIS COURT ORDERS AND DECLARES that the Transaction is hereby approved, and the execution of the Sale Agreement by the Receiver is hereby authorized and approved, with such minor amendments as the Receiver may deem necessary. The Receiver is hereby authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the Transaction and for the conveyance of the Puccini Property to the Purchaser.

2. THIS COURT ORDERS AND DECLARES that upon the delivery of a Receiver's certificate to the Purchaser substantially in the form attached as **Schedule B** hereto (the "**Receiver's Certificate**"), all of the right, title and interest of 2321198 Ontario Inc. ("**198**") in and to the Puccini Property shall vest absolutely in Issam Saad (the "**Purchaser**"), free and clear of and from any and all security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, levies, charges, or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise (collectively, the "**Claims**", including (i) any encumbrances or charges created by the Order of Justice Wilton-Siegel dated November 13, 2018; (ii) all charges, security interests or claims evidenced by registrations pursuant to the Personal Property Security Act (Ontario); and (iii) those Claims listed on **Schedule C** hereto (all of which are collectively referred to as the "**Encumbrances**"), and for greater certainty, this Court orders that all of the Encumbrances affecting or relating to the Puccini Property are hereby expunged and discharged as against the Puccini Property.

3. THIS COURT ORDERS that upon the registration in the Land Registry Office for the Land Titles Division of York Region of an Application for Vesting Order in the form prescribed by the *Land Titles Act* and/or the *Land Registration Reform Act*, the Land Registrar is hereby directed to enter the Purchaser as the owner of the subject real property identified in Schedule A hereto in fee simple, and is hereby directed to delete and expunge from title to the real property all of the Claims listed in Schedule C hereto.

4. THIS COURT ORDERS that for the purposes of determining the nature and priority of Claims, the net proceeds from the sale of the Puccini Property shall stand in the place and stead of the Puccini Property, and that from and after the delivery of the Receiver's Certificate all Claims and Encumbrances shall attach to the net proceeds from the sale of the Puccini Property

- 3 -

with the same priority as they had with respect to the Puccini Property immediately prior to the sale, as if the Puccini Property had not been sold and remained in the possession or control of the person having that possession or control immediately prior to the sale.

5. THIS COURT ORDERS AND DIRECTS the Receiver to file with the Court a copy of the Receiver's Certificate, forthwith after delivery thereof.

6. THIS COURT ORDERS that, notwithstanding:

- (a) the pendency of these proceedings;
- (b) any applications for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act* (Canada) in respect of 198 and any bankruptcy order issued pursuant to any such applications; and
- (c) any assignment in bankruptcy made in respect of 198;

the vesting of the Puccini Property in the Purchaser pursuant to this Order shall be binding on any trustee in bankruptcy that may be appointed in respect of 198 and shall not be void or voidable by creditors of 198, nor shall it constitute nor be deemed to be a fraudulent preference, assignment, fraudulent conveyance, transfer at undervalue, or other reviewable transaction under the *Bankruptcy and Insolvency Act* (Canada) or any other applicable federal or provincial legislation, nor shall it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

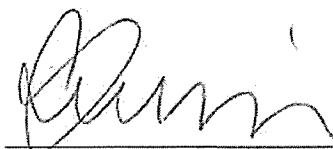
7. THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative 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.

ENTERED AT / INSCRIT À TORONTO
ON / BOOK NO:
LE / DANS LE REGISTRE NO:

FEB 27 2019

PER / PAR:

Doc#4397392v3



C. Irwin
Registrar

Schedule A – Puccini Property

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

Schedule B – Form of Receiver’s Certificate

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

RECEIVER’S CERTIFICATE**RECITALS**

- A. Pursuant to an Order of the Honourable Justice Penny of the Ontario Superior Court of Justice (the “**Court**”) dated December 4, 2016, KSV Kofman Inc. was appointed as receiver of the real property located at 46 Puccini Drive, Richmond Hill, Ontario (the “**Puccini Property**”).
- B. Pursuant to an Order of the Court dated February 27, 2019, the Court approved the Agreement of Purchase and Sale dated February 3, 2019 (the “**Sale Agreement**”) between the Receiver and Aim International Logistics and Trade Limited (the “**Purchaser**”) and provided for the vesting in the Purchaser of all of the right, title and interest of 2321198 Ontario Inc. (“**198**”) in and to the Puccini Property, which vesting is to be effective with respect to the Puccini Property upon the delivery by the Receiver to the Purchaser of a certificate confirming (i) the payment by the Purchaser of the purchase price for the Puccini Property; and (ii) the transaction has been completed to the satisfaction of the Receiver.

C. Unless otherwise indicated herein, terms with initial capitals have the meanings set out in the Sale Agreement.

THE RECEIVER CERTIFIES the following:

1. The Purchaser has paid and the Receiver has received the purchase price for the Puccini Property payable on the closing date pursuant to the Sale Agreement; and
2. The Transaction has been completed to the satisfaction of the Receiver.

This Certificate was delivered by the Receiver at _____ [TIME] on _____ [DATE].

**KSV Kofman Inc., in its capacity as Receiver
of the Puccini Property**

Per: _____
Name:
Title:

Schedule C – Claims to be deleted and expunged from title to Real Property

Instrument #	Registration Date	Instrument
YR2260847	2015/02/27	Charge (Buduchnist Credit Union Limited)
YR236333B	2015/09/29	Restrictions Order (Trade Capital Finance Corp.)
YR2897647	2018/11/15	Application To Register Court Order

BUDUCHNIST CREDIT UNION LIMITED

- and -

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

Applicant

Respondents

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

PROCEEDING COMMENCED AT TORONTO

APPROVAL AND VESTING ORDER

CHAITONS LLP
5000 Yonge Street, 10th Floor
Toronto, ON M2N 7E9

George Benchetrit
Tel: (416) 218-1141
Fax: (416) 222-8402
Email: george@chaitons.com

**Lawyers for KSV Kofman Inc., in its capacity as
Receiver of the Puccini Property**

Tab 16

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

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

THE HONOURABLE)
MR. JUSTICE PENNY) FRIDAY, THE 29TH
DAY OF MARCH, 2019

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

APPROVAL AND VESTING ORDER

This motion, made by KSV Kofman Inc., in its capacity as court-appointed receiver and manager (the “**Receiver**”) of certain real property including the real property located at 87 Elm Grove, Richmond Hill, Ontario and legal described in **Schedule A** hereto (the “**Elm Grove Property**”), for an order approving the proposed transaction (the “**Transaction**”) for the sale of the Elm Grove Property to Sutharsanan Nageswaran and Sukanya Sutharsanan (collectively, the “**Purchasers**”) pursuant to an Agreement of Purchase and Sale (the “**Sale Agreement**”) and appended to the Fourth Report of the Receiver dated March 22, 2019 (the “**Report**”), and vesting in the Purchasers the Elm Grove Property, was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Report and on hearing the submissions of counsel for the Receiver, no one appearing for any other person on the service list, although properly served as appears from the affidavit of Antoinette De Pinto sworn March 22, 2019, filed:

1. THIS COURT ORDERS AND DECLARES that the Transaction is hereby approved, and the execution of the Sale Agreement by the Receiver is hereby authorized and approved, with such minor amendments as the Receiver may deem necessary. The Receiver is hereby authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the Transaction and for the conveyance of the Elm Grove Property to the Purchasers.

2. THIS COURT ORDERS AND DECLARES that upon the delivery of a Receiver's certificate to the Purchaser substantially in the form attached as **Schedule B** hereto (the "**Receiver's Certificate**"), all of the right, title and interest of 2321197 Ontario Inc. ("**197**") in and to the Elm Grove Property shall vest absolutely in the Purchasers free and clear of and from any and all security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, levies, charges, or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise (collectively, the "**Claims**", including (i) any encumbrances or charges created by the Order of Justice Wilton-Siegel dated November 13, 2018; (ii) all charges, security interests or claims evidenced by registrations pursuant to the Personal Property Security Act (Ontario); and (iii) those Claims listed on **Schedule C** hereto (all of which are collectively referred to as the "**Encumbrances**"), and for greater certainty, this Court orders that all of the Encumbrances affecting or relating to the Elm Grove Property are hereby expunged and discharged as against the Elm Grove Property.

3. THIS COURT ORDERS that upon the registration in the Land Registry Office for the Land Titles Division of York Region of an Application for Vesting Order in the form prescribed by the *Land Titles Act* and/or the *Land Registration Reform Act*, the Land Registrar is hereby directed to enter the Purchaser as the owner of the subject real property identified in Schedule A hereto in fee simple, and is hereby directed to delete and expunge from title to the real property all of the Claims listed in Schedule C hereto.

4. THIS COURT ORDERS that for the purposes of determining the nature and priority of Claims, the net proceeds from the sale of the Elm Grove Property shall stand in the place and stead of the Elm Grove Property, and that from and after the delivery of the Receiver's Certificate all Claims and Encumbrances shall attach to the net proceeds from the sale of the Elm

Grove Property with the same priority as they had with respect to the Elm Grove Property immediately prior to the sale, as if the Elm Grove Property had not been sold and remained in the possession or control of the person having that possession or control immediately prior to the sale.

5. THIS COURT ORDERS AND DIRECTS the Receiver to file with the Court a copy of the Receiver's Certificate, forthwith after delivery thereof.

6. THIS COURT ORDERS that, notwithstanding:

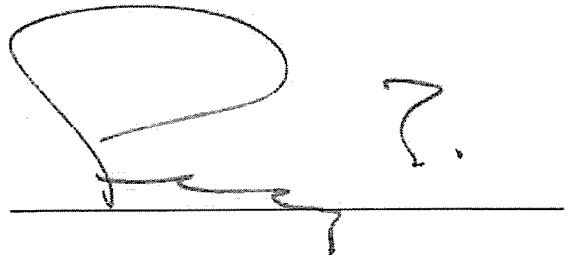
- (a) the pendency of these proceedings;
- (b) any applications for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act* (Canada) in respect of 198 and any bankruptcy order issued pursuant to any such applications; and
- (c) any assignment in bankruptcy made in respect of 198;

the vesting of the Elm Grove Property in the Purchaser pursuant to this Order shall be binding on any trustee in bankruptcy that may be appointed in respect of 198 and shall not be void or voidable by creditors of 198, nor shall it constitute nor be deemed to be a fraudulent preference, assignment, fraudulent conveyance, transfer at undervalue, or other reviewable transaction under the *Bankruptcy and Insolvency Act* (Canada) or any other applicable federal or provincial legislation, nor shall it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

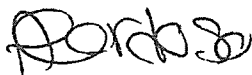
7. THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative 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

ENTERED AT / INSCRIT À TORONTO
ON / BOOK NO:
LE / DANS LE REGISTRE NO:

MAR 29 2019



Doc#4425495v1 PER / PAR:



Schedule A – Elm Grove Property

PIN: 03199-0011 (LT)

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

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

Schedule B – Form of Receiver’s Certificate

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

RECEIVER’S CERTIFICATE**RECITALS**

A. Pursuant to an Order of the Honourable Justice Penny of the Ontario Superior Court of Justice (the “**Court**”) dated December 4, 2016, KSV Kofman Inc. was appointed as receiver of the real property located at 87 Elm Grove Drive, Richmond Hill, Ontario (the “**Elm Grove Property**”).

B. Pursuant to an Order of the Court dated March 29, 2019, the Court approved the Agreement of Purchase and Sale (the “**Sale Agreement**”) between the Receiver and Sutharsanan Nageswaran and Sukanya Sutharsanan (collectively, the “**Purchasers**”) and provided for the vesting in the Purchaser of all of the right, title and interest of 2321197 Ontario Inc. (“**197**”) in and to the Elm Grove Property, which vesting is to be effective with respect to the Elm Grove Property upon the delivery by the Receiver to the Purchasers of a certificate confirming (i) the payment by the Purchaser of the purchase price for the Elm Grove Property; and (ii) the transaction has been completed to the satisfaction of the Receiver.

C. Unless otherwise indicated herein, terms with initial capitals have the meanings set out in the Sale Agreement.

THE RECEIVER CERTIFIES the following:

1. The Purchasers have paid and the Receiver has received the purchase price for the Elm Grove Property payable on the closing date pursuant to the Sale Agreement; and
2. The Transaction has been completed to the satisfaction of the Receiver.

This Certificate was delivered by the Receiver at _____ [TIME] on _____ [DATE].

KSV Kofman Inc., in its capacity as Court-Appointed Receiver

Per: _____

Name:

Title:

Schedule C – Claims to be deleted and expunged from title to Real Property

Instrument #	Registration Date	Instrument
YR2427027	2016/02/05	Charge (Buduchnist Credit Union Limited)
YR2897648	2018/11/15	Application to Register Court Order

BUDUCHNIST CREDIT UNION LIMITED

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

- and -

Applicant

Respondents

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

PROCEEDING COMMENCED AT TORONTO

APPROVAL AND VESTING ORDER

CHAITONS LLP
5000 Yonge Street, 10th Floor
Toronto, ON M2N 7E9

George Benchetrit
Tel: (416) 218-1141
Fax: (416) 222-8402
Email: george@chaitons.com

**Lawyers for KSV Kofman Inc., in its capacity as
Court-Appointed Receiver**

Tab 17

Superior Court of Justice
Commercial List

FILE/DIRECTION/ORDER

Trade Capital v De Maria
Plaintiff(s)
~~AND~~
BCU v De Maria
Defendant(s)

Case Management Yes No by Judge: _____

Counsel	Telephone No:	Facsimile No:

- Order Direction for Registrar (No formal order need be taken out)
- Above action transferred to the Commercial List at Toronto (No formal order need be taken out)
- Adjourned to: _____
- Time Table approved (as follows): _____

This case conference dealt with a number of issues in two existing proceedings and a new receivership proceeding involving a property known as Stonebank.

In respect of the Stonebank receivership application, all parties shall file responding materials by May 6, 2019. This is subject to

~~April 25, 2019~~ April 25, 2019
Date

[Signature]
Judge's Signature

Additional Pages 4

Court File Number: _____

Superior Court of Justice
Commercial List

FILE/DIRECTION/ORDER

Judges Endorsment Continued

potential variation as the counsel for some parties is in the process of being retained. Counsel may change the May 6 date on consent or apply for a different scheduling order at a 9:30 AM appointment.

Following responding material being delivered, parties shall hold a case conference to review issues and scheduling.

The motions to set aside the Marava order and for summary judgment shall proceed on August 15 and 16, 2019 before me (Chard). Parties shall adhere to the timetable attached as Sch A. On consent, my stay of the receivership over the DeMina's personal residence is extended on terms.

~~The term~~

additional

Court File Number: _____

Superior Court of Justice
Commercial List

FILE/DIRECTION/ORDER

Judges Endorsement Continued

The additional term is that Mr. DeMaize shall pay, on April 15, May 1, June 1 and July 1, the sum of \$15,200 each month to BCU. This will need to be extended into August but counsel did not have instructions on this today.

2. The implementation of my April 1, 2019 endorsement shall be the subject of a separate endorsement to be issued shortly.

3. BCU's proposed motion to deal with the "blue child" issue of the reach of the Marera and its impact on possible distributions in the main receivership will not occur until after the August motions have been resolved.

Court File Number: _____

Superior Court of Justice
Commercial List

FILE/DIRECTION/ORDER

Judges Endorsment Continued

4. The order adding Trade Capital
 as a party shall issue in the
 form filed by me this day.
 The form of order is without
 prejudice to Trade Capital's position
 on the validity/principal of BCU's
 security in that proceeding.

Sch A 2
Enforcement of
Frans J.

Due by

De Manra's Fact Aff't

May 6

De Manra and Trade Capital's
responding expert reports

May 31

Reply materials, including
reply expert reports

June 21

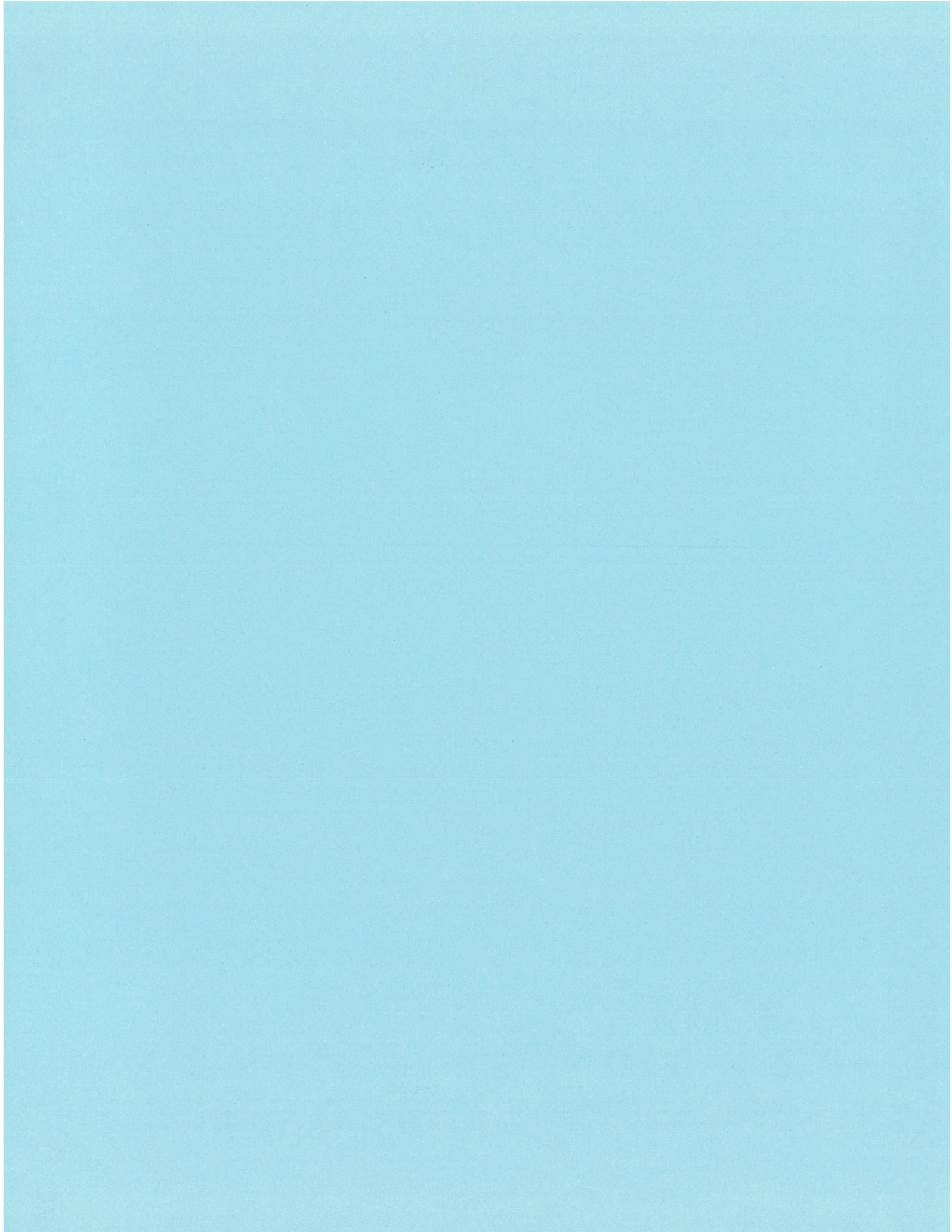
Cross-examinations

between

June 24
to July 12

Return Date

August 15+16



**ONTARIO
SUPERIOR COURT OF JUSTICE**

B E T W E E N:

TRADE CAPITAL FINANCE CORP.

Plaintiff

and

PETER COOK, also known as Peter William Cook, MARC D'AOUST, also known as Jean Marc D'Aoust, THOMAS BARKER, also known as Thomas Richard Barker (personally and carrying on business as LC Exchange, Global Medical and Greenlink Canada Group), ROCKY RACCA, BRUNO DIDIOMEDE, ALAN KEERY, also known as Alan John Keery, CHRIS BENNETT JR., also known as Chris Bennett also known as Christopher Bennett (personally and carrying on business as CJR Consulting), TODD CADENHEAD, DAYAWANSA WICKRAMASINGHE, BONNY LOKUGE, VIRTUCALL INC., VIRTUCALL INTERNATIONAL LLC, DEBT RESOLVE-MORTGAGE FUNDING SOLUTIONS INC., THE CASH HOUSE INC., 1160376 ONTARIO LIMITED, operating as THE CASH HOUSE, 2242116 ONTARIO INC., carrying on business as Superior Medical Services Inc. and Superior Medical Services, CARLO DE MARIA, also known as Carlo Vince De Maria also known as Carlo Vincent De Maria also known as Carlo Vincenzo De Maria, MATTEO PENNACCHIO, FRANK ZITO, also known as Francesco Zito, SIMONE SLADKOWSKI, JOBEC TRADE FINANCE INC., 1461350 ONTARIO INC., 2299430 ONTARIO INC., WF CANADA LTD., JOBEC INVESTMENTS RT LTD., GREEN LINK CANADA INC., 2339989 ONTARIO INC., 2252364 ONTARIO INC., 2224754 ONTARIO LTD., 6980023 CANADA INC., operating as Living Benefits, MILLWALK ENTERPRISES INC. and OAK HILLS WATER DURHAM INC., JOSHUA COOK, ELIZABETH COOK, REBECCA COOK, MARK PINTUCCI, MARCO SANTONATO, also known as Marc Santonato, NEW ERA RESOLUTIONS & CONSULTING INC.

Defendants

Court File No. CV-19-00618175-0CL

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

B E T W E E N:

BUDUCHNIST CREDIT UNION LIMITED

Applicant

- and -

LINDA DE MARIA, CARLO DEMARIA (ALSO KNOWN AS CARLO DE MARIA)
and DO YOU KNOW INC.

Respondents

APPLICATION UNDER SUBSECTION 243(1) OF THE *BANKRUPTCY AND INSOLVENCY ACT*, R.S.C. 1985, c. B-3, AS AMENDED, SECTION 101 OF THE *COURTS OF JUSTICE ACT*, R.S.O. 1990, c. C.43, AS AMENDED, AND RULES 14.05(3)(e) AND 14.05(3)(g) OF THE *RULES OF CIVIL PROCEDURE*, R.R.O. 1990, REG 194, AS AMENDED

**UNOFFICIAL TRANSCRIPT OF THE ENDORSEMENT OF
THE HONOURABLE JUSTICE PENNY**

April 25, 2019 (Case Conference)

Heard: April 25, 2019

This case conference dealt with a number of issues in two existing proceedings and a new receivership proceeding involving a property known as Stavebank.

In respect of the Stavebank receivership application, all parties shall file responding materials by May 6, 2019. This is subject to potential variation as the counsel for some parties is in the process of being retained. Counsel may change the May 6 date on consent or apply for a different scheduling order at a 9:30 a.m. appointment.

Following responding materials being delivered, parties shall book a case conference to review issues and scheduling.

1. The motions to set aside the Mareva orders and for summary judgment shall proceed on August 15 and 16, 2019 before me (cleared). Parties shall adhere to the timetable attached as Schedule "A". On consent, my stay of the receivership over the DeMaria's personal residence is extended on additional terms.

The additional term is that Mr. DeMaria shall pay on April 15, May 1, June 1 and July 1 the sum of \$15,200 each month to BCU. This will need to be extended into August but counsel did not have instructions on this today.

2. The implementation of my April [1], 2019 endorsement shall be the subject to a separate endorsement, to be issued shortly.
3. BCU's proposed motion to deal with the "threshold" issue of the reach of the Mareva and its impact on possible distributions in the main receivership will not occur until after the August motions have been resolved.

4. The order addressing Trade Capital as a party shall issue in the form signed by me this day.
The form of order is without prejudice to Trade Capital's position on the validity / priority of BCU's security in that proceeding.

The Honourable Justice Penny

Schedule "A"
to Endorsement of Justice Penny

	Due By
De Maria's Fact Affidavit	May 6
De Maria's and Trade Capital's responding expert reports	May 31
Reply materials, including reply expert reports	June 21
Cross Examinations	Between June 24 to July 12
Return Date	August 15 & 16

Tab 18

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

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

THE HONOURABLE)	THURSDAY, THE 25 TH
)	
JUSTICE <i>CONWAY</i>)	DAY OF JULY, 2019

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

APPROVAL AND VESTING ORDER

THIS MOTION, made by KSV Kofman Inc., in its capacity as court-appointed receiver and manager (the “Receiver”) of the real property located at 6216 Fifth Line RR#1, Egbert, Ontario and legally described in **Schedule A** hereto (the “Egbert Property”), for an order approving the proposed transaction (the “Transaction”) for the sale of the Egbert Property pursuant to an Agreement of Purchase and Sale dated June 26, 2019 (the “Sale Agreement”) between the Receiver and Calvin Breedon and Krista-Lee Breedon and appended to the Fifth Report of the Receiver dated July 17, 2019 (the “Report”), and vesting the Egbert Property in the purchasers, was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Report and on hearing the submissions of counsel for the Receiver, no one appearing for any other person on the service list, although properly served as appears from the affidavit of Amy Casella sworn July 17, 2019, filed:

1. THIS COURT ORDERS AND DECLARES that the Transaction is hereby approved, and the execution of the Sale Agreement by the Receiver is hereby authorized and approved, with such minor amendments as the Receiver may deem necessary. The Receiver is hereby authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the Transaction and for the conveyance of the Egbert Property to Calvin Kenneth Breedon and Krista-Lee Jacqueline Breedon (collectively, the “**Purchasers**”).

2. THIS COURT ORDERS AND DECLARES that upon the delivery of a Receiver’s certificate to the Purchasers substantially in the form attached as **Schedule B** hereto (the “**Receiver's Certificate**”), all of the right, title and interest of Carlo De Maria and Sandra De Maria (collectively, the “**Owners**”) in and to the Egbert Property shall vest absolutely in the Purchasers, free and clear of and from any and all security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, levies, charges, or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise (collectively, the “**Claims**”) including, without limiting the generality of the foregoing: (i) any encumbrances or charges created by the Second Amended and Restated Order of Justice Penny dated January 17, 2019; (ii) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (Ontario) or any other personal property registry system; and (iii) those Claims listed on **Schedule C** hereto (all of which are collectively referred to as the “**Encumbrances**”) and, for greater certainty, this Court orders that all of the Encumbrances affecting or relating to the Egbert Property are hereby expunged and discharged as against the Egbert Property.

3. THIS COURT ORDERS that upon the registration in the Land Titles Division of Simcoe of an Application for Vesting Order in the form prescribed by the *Land Titles Act* and/or the *Land Registration Reform Act*, the Land Registrar is hereby directed to enter the Purchasers as the owners of the Egbert Property in fee simple, and is hereby directed to delete and expunge from title to the Egbert Property all of the Claims listed in Schedule C hereto.

4. THIS COURT ORDERS that for the purposes of determining the nature and priority of Claims, the net proceeds from the sale of the Egbert Property shall stand in the place and stead of

the Egbert Property, and that from and after the delivery of the Receiver's Certificate all Claims and Encumbrances shall attach to the net proceeds from the sale of the Egbert Property with the same priority as they had with respect to the Egbert Property immediately prior to the sale, as if the Egbert Property had not been sold and remained in the possession or control of the person having that possession or control immediately prior to the sale.

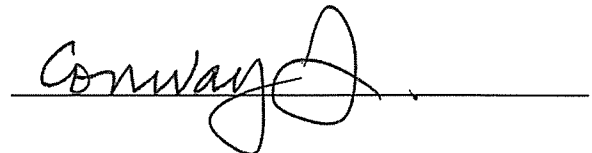
5. THIS COURT ORDERS AND DIRECTS the Receiver to file with the Court a copy of the Receiver's Certificate, forthwith after delivery thereof.

6. THIS COURT ORDERS that, notwithstanding:

- (a) the pendency of these proceedings;
- (b) any applications for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act* (Canada) in respect of the Owners and any bankruptcy order issued pursuant to any such applications; and
- (c) any assignment in bankruptcy made in respect of the Owners;

the vesting of the Egbert Property in the Purchasers pursuant to this Order shall be binding on any trustee in bankruptcy that may be appointed in respect of the Owners and shall not be void or voidable by creditors of the Owners, nor shall it constitute nor be deemed to be a fraudulent preference, assignment, fraudulent conveyance, transfer at undervalue, or other reviewable transaction under the *Bankruptcy and Insolvency Act* (Canada) or any other applicable federal or provincial legislation, nor shall it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

7. THIS COURT ORDERS that the Confidential Appendices to the Fifth Report shall be sealed until the delivery of the Receiver's Certificate.

A handwritten signature in cursive script, appearing to read "Conway", is written over a horizontal line.

Schedule A – Legal Description of Egbert Property

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 – Form of Receiver’s Certificate

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

RECEIVER’S CERTIFICATE**RECITALS**

A. Pursuant to the Second Amended and Restated Order of Justice Penny of the Ontario Superior Court of Justice (the “**Court**”) dated January 17, 2019, KSV Kofman Inc. was appointed as receiver and manager (the “**Receiver**”) of, *inter alia*, the real property located at 6216 Fifth Line RR#1, Egbert, Ontario (the “**Egbert Property**”).

B. Pursuant to an Order of the Court dated July 25, 2019, the Court approved the transaction (the “**Transaction**”) for the sale of the Egbert Property pursuant to an Agreement of Purchase and Sale dated June 26, 2019 (the “**Sale Agreement**”) between the Receiver and Calvin Breedon and Krista-Lee Breedon (collectively, the “**Purchasers**”) and provided for the vesting in the Purchasers of the right, title and interest of Carlo De Maria and Sandra De Maria (collectively, the “**Owners**”) in and to the Egbert Property, which vesting is to be effective with respect to the Egbert Property upon the delivery by the Receiver to the Purchasers of a certificate confirming (i) the payment by the Purchasers of the purchase price for the Egbert Property; (ii) that the conditions to closing as set out in the Sale Agreement have been satisfied or waived by the

Receiver and the Purchasers; and (iii) the Transaction has been completed to the satisfaction of the Receiver.

C. Unless otherwise indicated herein, terms with initial capitals have the meanings set out in the Sale Agreement.

THE RECEIVER CERTIFIES the following:

1. The Purchasers have paid and the Receiver has received the Purchase Price for the Egbert Property payable on the closing of the Transaction;
2. The conditions to closing under the Sale Agreement have been satisfied or waived by the Receiver and the Purchasers; and
3. The Transaction has been completed to the satisfaction of the Receiver.

This Certificate was delivered by the Receiver at _____ [TIME] on _____ [DATE].

**KSV KOFMAN INC., in its capacity as
receiver and manager of the real property
located at 6216 Fifth Line RR#1, Egbert,
Ontario, and not in its personal capacity**

Per: _____

Name:

Title:

Schedule C – Claims to be deleted and expunged from title to Egbert Property

Instrument #	Registration Date	Instrument
SC431876	2006/04/28	Charge
SC734513	2009/05/12	Transfer of Charge
SC1219342	2015/06/18	Restrictions Order
SC1575119	2019/02/12	APL Court Order

BUDUCHNIST CREDIT UNION LIMITED

- and -

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

Applicant

Respondents

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

PROCEEDING COMMENCED AT TORONTO

APPROVAL AND VESTING ORDER

CHAITONS LLP
5000 Yonge Street, 10th Floor
Toronto, ON M2N 7E9

George Benchetrit
Tel: (416) 218-1141
Fax: (416) 222-8402
Email: george@chaitons.com

**Lawyers for KSV Kofman Inc., in its capacity as
Court-Appointed Receiver**

Tab 19

ADD ON 1 415

COUNSEL SLIP

Court File No. CV-15-2110-00

Date: July 5 '19

No. On List ADDON-

Title of Proceeding

Trade Capital v. Cook et al

Counsel for:

Plaintiff(s)
Applicant(s)
Petitioner(s)

Peter W. G. Carey

Phone No. (416) 748-4777

Fax No. (416) 746-8311

Counsel for:

Defendant(s)
Respondent(s)

MILTON DAVY
De meta Hailey Abramsky

Phone No. _____

Fax No. _____

~~416 860 9001~~

Kenneth D Kraft for
Benedict Credit Union

T 416 863 4377

F 416 863 4592

E KENNETH.KRAFT@BENEDICTCREDITUNION.COM

G. Berchert
for KSV (Receiver)

T - 416 218-1141

F - 416-218-1841

E - gcoerge@chaitens.com

July 5, 2019

The revised timetable is as
set out in the attached.

Electronic versions of the factums
shall be sent to my att'n via
CL office. Also USB keys with full

should to be delivered by ~~the~~
~~date~~ July 26, 2019.

The copy of the receiver's
 order re: Workland property
 is extended with the
 additional terms set out
 in the attached email.

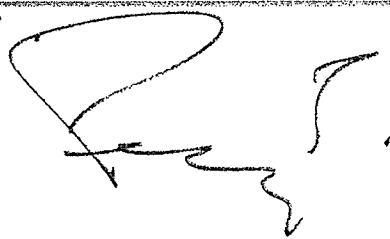
The Receiver will bring

it's motion for approval of
 sale of the cottage on

July 25 2019 As it is not
 anticipated to be opposed it
 will be on the list for
 20 minutes.

Factories may be no more

than 30 pages



TIMETABLE

A CROSS EXAMINATIONS

1. Darcy Thompson - July 22
2. Enzo Carlucci June 23
3. Andrew Cochran & Farley Cohen July 24
4. Carlo De Mana July 25
- F. Iken FROESE July 29

B. Report of HPMG by July 11

C. Plaintiff's factum - August 6

D. Defendants factum August 12

From: Davis, Milton A. <mdavis@foglers.com>
Sent: June 28, 2019 8:55 AM
To: Grossman, Barbara <barbara.grossman@dentons.com>; Abramsky, Hailey <hAbramsky@foglers.com>
Cc: Kraft, Kenneth <kenneth.kraft@dentons.com>
Subject: RE: C. Demaria / Woodland Property

Barbara

Thanks for the email below. We are in agreement with the terms below.

If you have a moment, please call me.

<image001.png>

Milton A. Davis
 Fogler, Rubinoff LLP
 Lawyers
 77 King Street West
 Suite 3000, P.O. Box 95
 TD Centre North Tower
 Toronto, ON M5K 1G8
 Direct: 416.860.8901
 Main: 416.864.9700
 Toll Free: 1.866.861.9700
 Fax: 416.941.8852
 Email: mdavis@foglers.com
foglers.com

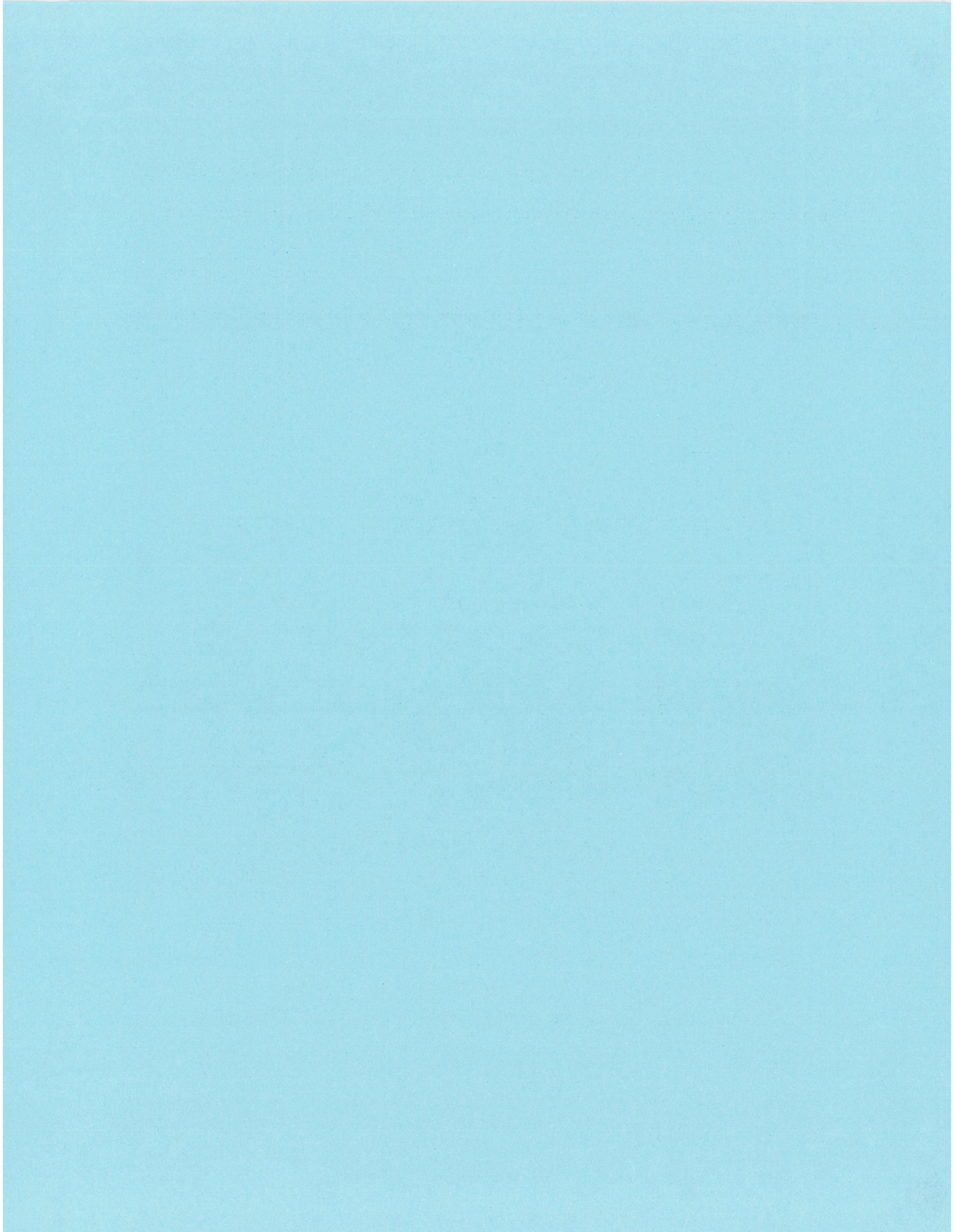
From: Grossman, Barbara [<mailto:barbara.grossman@dentons.com>]
Sent: Friday, June 28, 2019 8:00 AM
To: Abramsky, Hailey <hAbramsky@foglers.com>; Davis, Milton A. <mdavis@foglers.com>
Cc: Kraft, Kenneth <kenneth.kraft@dentons.com>
Subject: RE: C. Demaria / Woodland Property
Importance: High

Milt/Hailey,

Further to our June 25th call, I confirm your advice that funds for the \$15.2K payment due July 1st were paid into Fogler's trust account and the payment will be received by BCU from Fogler's trust account by wire transfer to be received by BCU by July 2nd (July 1st being a statutory holiday).

With respect to an extension of the stay in respect of the residence receivership through to the end of August, you advised that your client cannot afford to make a double payment by July 2nd but can make an additional \$15.2K payment to BCU by August 1 via your firm's trust account. In light of the track record of late payments, BCU is agreeable only on the condition that you must confirm to me by July 19 that \$15.2K has been received in the Fogler's trust account to fund this payment out of Fogler's trust account to BCU by August 1st (the July 19 deadline for Fogler's confirmation allows 10 days for uncertified funds to clear per the Fogler's trust account disbursement of funds policy that you previously advised). If this is acceptable it should be advised to Justice Penny next week so that it can be incorporated in a consent endorsement. Please advise if there is agreement.

Barbara



**ONTARIO
SUPERIOR COURT OF JUSTICE**

B E T W E E N:

TRADE CAPITAL FINANCE CORP.

Plaintiff

and

PETER COOK, also known as Peter William Cook, MARC D'AOUST, also known as Jean Marc D'Aoust, THOMAS BARKER, also known as Thomas Richard Barker (personally and carrying on business as LC Exchange, Global Medical and Greenlink Canada Group), ROCKY RACCA, BRUNO DIDIOMEDE, ALAN KEERY, also known as Alan John Keery, CHRIS BENNETT JR., also known as Chris Bennett also known as Christopher Bennett (personally and carrying on business as CJR Consulting), TODD CADENHEAD, DAYAWANSA WICKRAMASINGHE, BONNY LOKUGE, VIRTUCALL INC., VIRTUCALL INTERNATIONAL LLC, DEBT RESOLVE-MORTGAGE FUNDING SOLUTIONS INC., THE CASH HOUSE INC., 1160376 ONTARIO LIMITED, operating as THE CASH HOUSE, 2242116 ONTARIO INC., carrying on business as Superior Medical Services Inc. and Superior Medical Services, CARLO DE MARIA, also known as Carlo Vince De Maria also known as Carlo Vincent De Maria also known as Carlo Vincenzo De Maria, MATTEO PENNACCHIO, FRANK ZITO, also known as Francesco Zito, SIMONE SLADKOWSKI, JOBEC TRADE FINANCE INC., 1461350 ONTARIO INC., 2299430 ONTARIO INC., WF CANADA LTD., JOBEC INVESTMENTS RT LTD., GREEN LINK CANADA INC., 2339989 ONTARIO INC., 2252364 ONTARIO INC., 2224754 ONTARIO LTD., 6980023 CANADA INC., operating as Living Benefits, MILLWALK ENTERPRISES INC. and OAK HILLS WATER DURHAM INC., JOSHUA COOK, ELIZABETH COOK, REBECCA COOK, MARK PINTUCCI, MARCO SANTONATO, also known as Marc Santonato, NEW ERA RESOLUTIONS & CONSULTING INC.

Defendants

**UNOFFICIAL TRANSCRIPT OF THE ENDORSEMENT OF
THE HONOURABLE JUSTICE PENNY**

July 5, 2019 (Case Conference)

The revised timetable is as set out in the attached. Electronic versions of the factums shall be sent to my attention via CL office. Also USB key with full record to be delivered by July 26, 2019.

The stay of the receivership order re: Woodland property is extended with the additional terms set out in the attached email.

The Receiver will bring its motion for approval of sale of the cottage on July 25, 2019 as it is not anticipated to be opposed it will be on the list for 20 minutes.

Factums may be no more than 30 pages

The Honourable Justice Penny

TIMETABLE

A. Cross Examination:

1. Darcy Thompson – July 22
2. Enzo Carlucci – June 23 [NTD- likely s/b July 23?]
3. Andrew Cochran & Farley Cohen – July 24
4. Carlo De Maria – July 25
5. Ken Froese – by July 11

B. Report of KPMG by July 11

C. Plaintiff's factum – August 6

D. Defendants factum – August 12

Tab 20

COUNSEL SLIP

COURT FILE

NO.:

CU-18-00608 356-0091

DATE:

DEC 19 2019

NO. ON LIST 18

TITLE OF PROCEEDING

Budochnist Credit Union Limited v
232 1197 ONTARIO INC et al

COUNSEL FOR:

- PLAINTIFF(S)
- APPLICANT(S)
- PETITIONER(S)

Barbara L. Grossman

PHONE 416 863-4417
 FAX 416 863 4592
 EMAIL barbaragrossman@
dantons.com

COUNSEL FOR:

- DEFENDANT(S)
- RESPONDENT(S)

Peter W.G. Corey
 Christopher R. Lee
 for Trade Capital Finance Corp.

PHONE 416-748-4774
 FAX 416-746-8319
 EMAIL pcorey@loonix.com
cllee@loonix.com

JUDICIAL NOTES:

G. Benchesrit
 for KSV (Receiver)

T - (4) 218-1141
 F - (4) 218-1841
 E - george@chaitans.com

December 19, 2019

The settlement of the order
 of my February 21, 2019 endorsement
 has been agreed. I will review the
 issue and notify parties shortly.

The Distribution matter
 will be argued before me in
 April ~~March~~ 2020. Notice of Motion by January
 10, 2020.

Mr. Corey will file any material

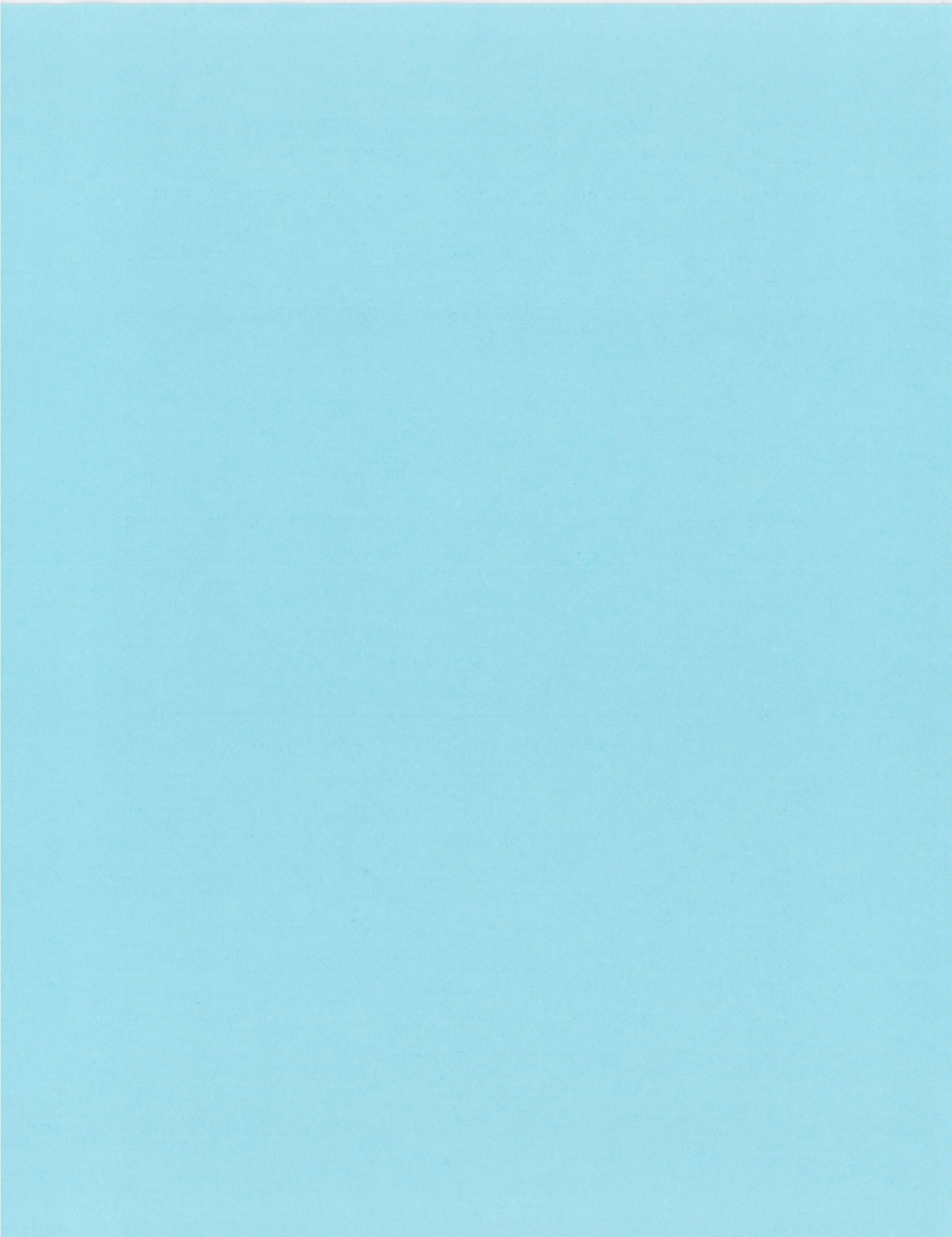
by January 24, 2020.

Any responses received by February 1~~st~~, 2020.

There may be limited additional cross examination of Ms. Prociuk and Ms. Berzsa (on summons as she is no longer an employee of BCU) on a mutually convenient date before March 13, 2020.

The cross examination shall not exceed 3 hours for Ms Prociuk and 2 hours ^{for Ms.} Berzsa (divided evenly ^{between} ^{parties})
 I have advised parties that ^{the} commercial list practice is to deal with refusals (other than privilege) on the basis of answering under reservation of rights and arguing the point, to the extent necessary, at the hearing. The notice will be before you ~~on~~ April 17, 2020 for 2.5 hours.

Reed



Court File No. CV-18-608356-00CL

**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, VICAR HOMES LTD. and
TRADE CAPITAL FINANCE CORP.**

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

**UNOFFICIAL TRANSCRIPT OF THE ENDORSEMENT OF
THE HONOURABLE JUSTICE PENNY**

(Case Conference)

December 19, 2019

The settlement of the order of my February 22, 2019 endorsement has been argued. I will review the issue and notify parties shortly.

The Distribution motion will be argued before me in April 2020. Notice of Motion by January 10, 2020.

Mr. Carey will file any material by January 24, 2020.

Any responding material by February 17, 2020.

There may be limited additional cross examination of Ms. Prociuk and Ms. Bereza (on summons as she is no longer an employee of BCU) on a mutually convenient date before March 12, 2020.

The cross-examination shall not exceed 3 hours for Ms. Prociuk and 2 hours for Ms. Bereza (divided evenly between parties).

I have advised parties that commercial list practice is to deal with refusals (other than privilege) on the basis of answering under reservation of rights and arguing the points, to the extent necessary, at the hearing.

The motion will be before me on April 17, 2020 for 2.5 hours.

The Honourable Justice Penny

Tab 21

BUDUCHNIST CREDIT UNION LIMITED

Applicant

- and -

December 19, 2019
Court File No: CV-18-00608356-00CL

2321197 ONTARIO INC. et al.
Respondents

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

PROCEEDING COMMENCED AT TORONTO

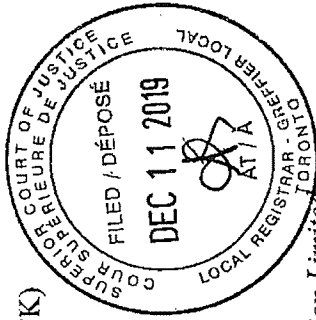
BRIEF OF DOCUMENTS
[Case Conference held December 19, 2019]

DENTONS CANADA LLP
77 King Street West, Suite 400
Toronto-Dominion Centre
Toronto, ON M5K 0A1
Insolvency: Toronto@dentons.com

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



January 15, 2020
The parties appeared before
me recently at a 9:30 the
appointment for purposes of
settling my order of February
22, 2019 as restated.
On February 22, I wrote in
an endorsement that
costs should be addressed
as contemplated in the stated
order and that enforcement
costs would be dealt with at

The distribution phase shows all stakeholders could question whether costs were reasonable and fair. In retrospect, this endorsement was made in haste, under the pressure of the moment without a full appreciation of the issues being engaged on the question of costs and how they should be addressed. I say this because, as it turns out, there is a conflict between these two statements: The Model Order provides that the applicant (creditor) is entitled to its costs in accordance with its security documentation. The idea that costs would be dealt with at the distribution phase is, in the particular circumstances of this case, almost certainly in conflict with

an order granting BCU an entitlement ^③₄₂₈
to its cost.

This is because of the unusual
circumstances that Trade Capital
had a world-wide comprehensive
injunction against the letter. It
made that order known to BCU.
Trade Capital alleges BCU violated
that order by making cash advances
to the letter against existing mortgages
after knowledge of the Morava order.
Whether, how and to what extent
these allegations, if proved, might
affect BCU's entitlement to its
costs if these proceedings cannot
be known at this point. There
will, in due course, be a full accounting
of all realizations and costs and
who and in what amount should

be reimbursed for costs and/or receive ⁽⁴⁾429
any payments on account of
net realizations.

Thinking these issues through now,
with the benefit of a better
appreciation of the competing claims
and the "intent" of my February 22,
2019 endorsement, I have come to
the following conclusion.

The usual order language may be
used but qualified as BCU's
prime facie right to recover
its costs and further qualified
by the language proposed by
Trade Capital, as set out in
the attachments to this endorsement.

Ray J.

Attachment to January 15,
2020 Endorsement of
-12-
Perry J.

430

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~~ 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~~ Real Properties with such priority and at such time as this Court may determine. *a prima facie right* MJD

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.~~

29. ~~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.

30. ~~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



LOOPSTRA NIXON LLP
BARRISTERS AND SOLICITORS

Attachment to January 15, 2020 431

Reimbursement
of Penny J.

Peter W.G. Carey
Tel: (416) 748-4774
Email: pcarey@loonix.com

BY EMAIL

December 17, 2019

Dentons Canada LLP
77 King Street West, Suite 400
Toronto- Dominion Centre
Toronto, ON M5K 0A1
Attn : Barbara Grossman

Dear Ms. Grossman,

RE: Trade Capital Finance Corporation v. 2321197 Ontario Inc. et al

In response to your latest email, I would propose that paragraph 28 of your proposed third amended and restated order as follows:

final determination of the
"THIS COURT ORDERS that the costs of this Application shall be ~~determined~~ at the distribution phase of the receivership with the exception that the Applicant shall bear its own costs for the motion to add Trade Capital Finance Corp. as a party to this Application."
MAF

This tracks Justice Penny's Endorsement, the previous paragraph 28 did not.

Yours very truly,

LOOPSTRA NIXON LLP

Per:

Peter W.G. Carey

PWC/lb

cc: C. Lee

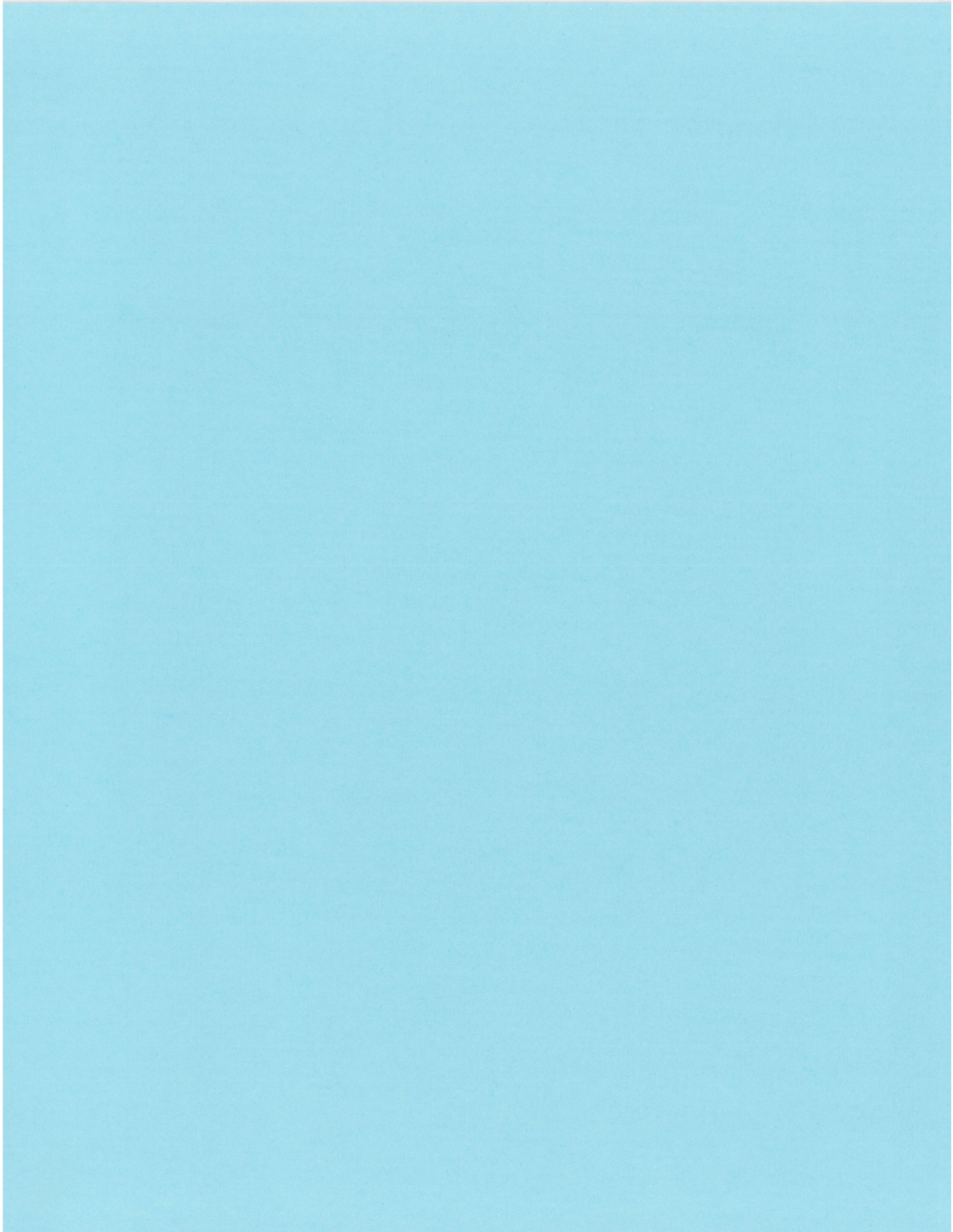
cc: K. Kraft and A. Campbell (Dentons)

cc: A. Winton and P. Underwood (Lax O'Sullivan)

cc: G. Benchatrit (Cheitons)

cc: A. Mezo (Mazo Chowbay)

cc: D. Zieradzki (KSV Advisory)



Court File No. CV-18-608356-00CL

**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, VICAR HOMES LTD. and
TRADE CAPITAL FINANCE CORP.**

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

**UNOFFICIAL TRANSCRIPT OF THE ENDORSEMENT OF
THE HONOURABLE JUSTICE PENNY**

(9:30am Appointment)

January 15, 2020

The parties appeared before me recently at a 9:30 AM appointment for purposes of settling my order of February 22, 2019 as restated.

On February 22, I wrote in an endorsement that costs should be addressed and are contemplated in the model order and that enforcement costs would be dealt with at the distribution phase where all stakeholders could question whether costs were reasonable and fair.

In retrospect, this endorsement was made in haste under the pressure of the moment without a full appreciation of the issues being engaged on the question of costs and how they should be addressed.

I say this because, as it turns out, there is a conflict between these two statements: The Model Order provides that the applicant (creditor) is entitled to its costs in accordance with its security documentation.

The idea that cash would be dealt with at the distribution phase is, in the peculiar circumstances of this case, almost certainly in conflict with an order granting BCU an entitlement to its costs.

This is because of the unusual circumstances that Trade Capital has a world-wide comprehensive injunction against the debtor. It made that order known to BCU.

Trade Capital alleges BCU violated that order by making cash advances to the debtor against existing mortgages after knowledge of the Mareva Order.

Whether, how and to what extent these allegations, if proved, might affect BCU's entitlement to its costs of these proceedings cannot be known at this point. There will, in due course, be a full accounting of all realizations and costs and who and in what amounts should be reimbursed for costs and/or receive any payments on account of net realization.

Thinking these issues through now, with the benefit of a better appreciation of the competing claims and the "intent" of my February 22, 2019 endorsement, I have come to the following conclusion.

The model order language may be used but qualified as BCU's *prima facie* right to recover its costs and further qualified by the language proposed by Trade Capital, as set out in the attachments to this Endorsement.

The Honourable Justice Penny

Attachment to January 15,
2020 Endorsement of
-12- Panny J.

434

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~~ 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~~ Real Properties with such priority and at such time as this Court may determine.

a prima facie right MJD

~~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.~~

~~29.~~ **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.

~~30.~~ **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



LOOPSTRA NIXON LLP
BARRISTERS AND SOLICITORS

Attachment to January 15, 2020 435

Endorsement
of Penny J.

Peter W.G. Carey
Tel: (416) 748-4774
Email: pcarey@loonix.com

BY EMAIL

December 17, 2019

Dentons Canada LLP
77 King Street West, Suite 400
Toronto- Dominion Centre
Toronto, ON M5K 0A1
Attn : Barbara Grossman

Dear Ms. Grossman,

RE: Trade Capital Finance Corporation v. 2321197 Ontario Inc. et al

In response to your latest email, I would propose that paragraph 28 of your proposed third amended and restated order as follows:

final determination of the
"THIS COURT ORDERS that the costs of this Application shall be ~~determined~~ at the distribution phase of the receivership with the exception that the Applicant shall bear its own costs for the motion to add Trade Capital Finance Corp. as a party to this Application."
MAT

This tracks Justice Penny's Endorsement, the previous paragraph 28 did not.

Yours very truly,

LOOPSTRA NIXON LLP

Per:

Peter W.G. Carey

PWC/lb

cc: C. Lee
cc: K. Kraft and A. Campbell (Dentons)
cc: A. Winton and P. Underwood (Lax O'Sullivan)
cc: G. Benchatrit (Chaitons)
cc: A. Mezo (Mazo Chowbay)
cc: D. Zieradzki (KSV Advisory)

BUDUCHNIST CREDIT UNION LIMITED
Applicant

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

2321197 ONTARIO INC. et al.
Respondents

- and -

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

PROCEEDING COMMENCED AT TORONTO

MOTION RECORD
(returnable April 17, 2020)

VOLUME 2 of 2

DENTONS CANADA LLP
77 King Street West, Suite 400
Toronto-Dominion Centre
Toronto, ON M5K 0A1
Insolvency.Toronto@dentons.com

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