

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

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

**BUDUCHNIST CREDIT UNION LIMITED**

Applicant

- and -

**2321197 ONTARIO INC., CARLO DEMARIA, SANDRA DEMARIA,  
2321198 ONTARIO INC., SASI MACH LIMITED, 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 11, 2025)**

***/Settlement, Final Distribution, and Receiver's Discharge/***

April 2, 2025

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**TO: SERVICE LIST**

**SERVICE LIST**  
**(as at March 28, 2025)**

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# Tab 1

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

**ONTARIO  
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**BUDUCHNIST CREDIT UNION LIMITED**

Applicant

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APPLICATION UNDER SUBSECTION 243(1) OF THE *BANKRUPTCY AND INSOLVENCY  
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JUSTICE ACT*, R.S.O. 1990, c. C.43, AS AMENDED

**NOTICE OF MOTION  
(returnable April 11, 2025)**

The Applicant, Buduchnist Credit Union Limited (“BCU”), will make a motion to Ontario Superior Court of Justice (Commercial List) on April 11, 2025 at 11:00 a.m. or as soon after that time as the motion can be heard.

**THE PROPOSED METHOD OF HEARING:** The motion is to be heard

- ☐ In writing under subrule 37.12.1 (1) because it is (*insert one of* on consent, unopposed *or* made without notice);
- ☐ In writing as an opposed motion under subrule 37.12.1 (4);
- ☐ In person;
- ☐ By telephone conference;
- ☒ By video conference.

at the following location

330 University Ave, Toronto, Ontario, via Zoom (the details of which will be provided by the Court at a later date through Case Centre).

**THE MOTION IS FOR:**

1. An Order substantially in the form attached as Tab 3 of BCU's Motion Record, providing the following relief:
  - (a) authorizing and directing the Receiver to take all steps necessary or required to carry out the terms of the Offer to Settle between BCU and Trade Capital Finance Corp. ("**Trade Capital**"), dated February 7, 2025 (the "**Offer to Settle**"), pursuant to which BCU and Trade Capital have agreed to settle all outstanding claims and matters in dispute between them in the within proceeding and in the proceeding *Buduchnist Credit Union Limited v. 2454904 Ontario Inc.*, bearing Court File No. CV-21-00663709-00CL (together, the "**Proceedings**");
  - (b) directing the Receiver to distribute the remaining proceeds of the Woodland Property, the Elm Property and the Puccini Property (each defined below) held by the Receiver directly to BCU c/o Dentons Canada LLP in trust, and varying the Final Distribution Order (defined below), as varied by the Court of Appeal for Ontario, for this purpose;
  - (c) authorizing BCU to enforce the Judgment of the Honourable Justice Conway, dated August 28, 2020 (the "**August 28 Judgment Against Carlo Demaria et al**"), against the current assets in the accounts of Carlo Demaria at BCU (which are approximately CA\$82,560) by exercise of BCU's right of set-off against the account balances; and
  - (d) to the extent necessary to permit the distributions to and enforcements by BCU contemplated above, varying the Mareva Order, dated May 6, 2015, as amended (the "**Mareva Order**"), issued by the Ontario Superior Court of Justice in the proceeding *Trade Capital Finance Corp. v. Peter Cook et al.*, bearing Brampton Court File No. CV-15-2110-00 (the "**Brampton Action**") and related ancillary relief to clarify how the settlement payment amount from BCU to Trade Capital

under the terms of the Offer to Settle from the final distribution to BCU in (b) above is to be accounted for in relation to any future judgment or other monetary order against Carlo Demaria in the Brampton Action.

2. A Discharge Order, substantially in the form attached as Tab 4 of BCU's Motion Record providing the following relief:
  - (a) approving the activities of the Receiver as set out in the Eighth Report of the Receiver, dated March 28, 2025 (the "**Eighth Report**");
  - (b) approving the Receiver's interim statement of receipts and disbursements, as contained in the Eighth Report (the "**R&D**");
  - (c) approving the fees of the Receiver and its counsel, including the Fee Accrual (as defined in the Eighth Report);
  - (d) discharging the Receiver upon payment of the amounts set out therein; and
  - (e) releasing the Receiver from any and all liability relating to matters that were raised, or which could have been raised, in the within receivership proceedings, save and except for any gross negligence or wilful misconduct on the Receiver's part.
3. Such further and other relief as counsel may advise and this Honourable Court deems just.

## THE GROUNDS FOR THE MOTION ARE:

### Background

1. Upon the application of BCU as mortgagee, pursuant to the Amended and Restated Receivership Order, dated January 17, 2019, issued by this Honourable Court, KSV Kofman Inc. was appointed as receiver (the "**Receiver**") over the following four residential real properties (collectively, the "**Real Properties**"):
  - (a) 87 Elm Grove Avenue, Richmond Hill, Ontario (the "**Elm Property**");

- (b) 46 Puccini Drive, Richmond Hill, Ontario (the “**Puccini Property**”);
  - (c) 211 Woodland Acres, Vaughan, Ontario (the “**Woodland Property**”); and
  - (d) 6216 5<sup>th</sup> Line, Egbert, Ontario (the “**Cottage Property**”).
2. Pursuant to Approval and Vesting Orders and two interim distribution Orders, the Receiver sold the Real Properties and made interim distributions to BCU from the proceeds of sale and rental income. The Receiver had remaining net proceeds (the “**Proceeds**”) available for distribution from each of the Real Properties totaling approximately \$3.62 million.
  3. BCU claimed an entitlement to the entire Proceeds based on its valid and enforceable security registered against the Real Properties and on the basis of its Judgments dated August 26 and 28, 2020 against the mortgagors/owners of the Real Properties, guarantors and another debtor, for the secured indebtedness.
  4. On March 31, 2022, this Honourable Court heard BCU’s motion seeking, among other things, the distribution of the entirety of the Proceeds to BCU. Trade Capital opposed BCU’s claim to the Proceeds on the basis of the Mareva Order.
  5. Pursuant to the Endorsement and the Order of the Honourable Justice Penny, dated June 17, 2022 (the “**Final Distribution Order**”), the Court granted BCU’s motion in part and directed the priority payment to BCU of certain of the Proceeds and the remaining Proceeds to be distributed to the Sheriff for payment to BCU and any other judgment/execution creditors of the respective property owners/mortgagors.
  6. Trade Capital appealed the Final Distribution Order and BCU cross-appealed certain portions of the Final Distribution Order.
  7. Pursuant to reasons for decision of the Court of Appeal for Ontario, released January 26, 2024 (as corrected on March 14, 2024), the appeal was allowed, the cross-appeal was dismissed, and the Court remitted the issue as to the Woodland Property post-Mareva advances to the Superior Court. The Final Distribution Order was varied as summarized in the following paragraphs of the Reasons of the Court of Appeal for Ontario:



**Disposition**

[89] Accordingly, I would allow the appeal and dismiss the cross-appeal. I would order that the enforcement of BCU's judgment for funds advanced in breach of the *Mareva* Order be delayed until Trade Capital's action is determined, and that, if Trade Capital is successful in obtaining judgment, Trade Capital and BCU shall collect on their respective judgments *pari passu*.

[90] The issue of the Woodland Property advances is remitted to the Superior Court to be addressed by the parties concerning next steps in a case management conference before the case management judge assigned to this matter.

8. The distribution of the remaining Proceeds held by the Receiver is the final outstanding issue in these proceedings and, upon distribution of the funds, the Receiver can be discharged.

**Settlement**

9. Pursuant to the accepted Offer to Settle, BCU and Trade Capital have agreed to settle all outstanding claims and matters in dispute between them in the Proceedings, including all costs claims and costs awards. The settlement is conditional on various Orders being made as contemplated in the terms of the Offer to Settle.
10. The terms of the Offer to Settle provide that, among other things:
  - (a) BCU will pay to Trade Capital 50% of BCU's recovery of the remaining net proceeds available for distribution of the Woodland Property, the Elm Property, and the Puccini Property, which payment amount shall be not less than \$1,750,000.
  - (b) Trade Capital shall consent to the immediate distribution to BCU of the remaining Cottage Property proceeds, to be applied against BCU's enforcement costs;
  - (c) Trade Capital shall not oppose BCU obtaining an Order permitting it to enforce the August 28 Judgment Against Carlo Demaria *et al* against the current assets in the accounts of Carlo Demaria at BCU by exercise of BCU's right of set-off against the account balances;

- (d) BCU shall seek, and Trade Capital shall consent to, the following Orders:
- (i) an order varying the Final Distribution Order (as varied by the Court of Appeal for Ontario) to direct the Receiver to immediately distribute the remaining proceeds of the Woodland Property, the Elm Property and the Puccini Property held by the Receiver directly to BCU c/o Dentons Canada LLP in trust; and
  - (ii) an order varying the Mareva Order, to the extent necessary, to permit the distributions to and enforcements by BCU contemplated therein;
- (e) BCU and Trade Capital shall not oppose the Receiver's expeditious discharge.

### **Final Distributions**

- 11. The Receiver is currently holding the remaining Proceeds of the Real Properties, which total approximately \$3.6 million, as detailed in the R&D.
- 12. BCU holds first-ranking charges (the "**BCU Charges**") against each of the Elm Property, the Puccini Property, and the Cottage Property and first and second-ranking mortgages against the Woodland Property.
- 13. BCU also holds consent judgments (the "**Consent Judgments**") against the owners of the Real Properties, 2321197 Ontario Inc., 2321198 Ontario Inc., Carlo and Sandra Demaria, and registered Writs of Seizure and Sale in respect thereof.
- 14. The validity of the BCU Charges is not disputed and BCU was the only judgment/execution creditor of the mortgagors/owners of the Real Properties.
- 15. Pursuant to the Order of the Honourable Justice Conway, dated October 28, 2020 (the "**Interim Distribution Order**"), this Court approved an interim distribution to BCU from the proceeds of the Puccini Property, the Cottage Property and the Woodland Property.

16. Pursuant to the Order of the Honourable Justice Penny, dated April 12, 2022 (“**Interim Distribution Order #2**”), this Court approved a second interim distribution to BCU from the proceeds of the Woodland Property and Cottage Property.
17. Pursuant to a term of the Final Distribution Order that was not challenged by Trade Capital on Appeal, the Receiver made an additional distribution to BCU from the proceeds of the Puccini Property for interest owing on the pre-Mareva balance to the date of distribution of the pre-Mareva balance to BCU under the Interim Distribution Order.
18. Pursuant to the Offer to Settle, Trade Capital executed a consent, dated March 7, 2025 (the “**Consent**”) pursuant to which Trade Capital consented to the Receiver immediately distributing the Cottage Property proceeds to BCU. On March 7, 2025 the Receiver paid the remaining Cottage proceeds to BCU totaling \$59,807.
19. The BCU Charges and the amounts owing under the BCU Charges as confirmed in the Consent Judgments in favour of BCU in the Receivership proceeding are summarized below. The amounts still owing to BCU vastly exceed the remaining Proceeds held by the Receiver:

<b>Property</b>	<b>Registered Owner</b>	<b>BCU Charge</b>	<b>Indebtedness to BCU<sup>1</sup></b>	<b>Remaining Proceeds<sup>2</sup></b>
Elm Property	2321197 Ontario Inc.	Registered on Feb 5, 2016 Principal amount: \$2,200,000	\$2,042,159.56 plus interest and costs	\$1,593,107
Puccini Property	2321198 Ontario Inc.	Registered on Feb 27, 2015 Principal amount: \$2,500,000	\$1,648,274.03 <sup>3</sup> plus interest and costs	\$911,551
Woodland Property	Carlo and Sandra Demaria	1 <sup>st</sup> Mortgage Registered on Aug 16, 2010 Principal amount: \$1,490,000	Costs only. Principal and interest repaid in full pursuant to Interim Distribution Order.	\$1,069,630
		2 <sup>nd</sup> Mortgage Registered on Dec 5, 2012 Principal amount: \$3,000,000	\$1,462,089.88 <sup>4</sup> plus interest and costs	
Cottage Property	Carlo and Sandra Demaria	Registered on April 28, 2006 Principal amount: \$317,241	Remaining enforcement costs.	\$0.00 <sup>5</sup>

<sup>1</sup> All amounts as of June 30, 2021, as set out in Fourth Supplementary Affidavit of Oksana Prociuk, sworn June 18, 2021, less amounts distributed to BCU in 2022 pursuant to the Interim Distribution Order #2 and the portion of the Final Distribution Order that wasn't appealed. The Judgments of Justice Conway dated August 26 & 28, 2020 for the amounts owing under the BCU Charges all provide for interest at the contract rates from December 7, 2019 to the date of payment.

<sup>2</sup> As set out in the Receiver's Interim Statement of Receipts and Disbursements, as of March 24, 2025.

<sup>3</sup> Calculated as the amount outstanding as of June 30, 2021 totaling \$1,886,658.37 per Prociuk Fourth Supplementary Affidavit, para 52, less pre-Mareva interest of \$238,384.34 distributed to BCU pursuant to Final Distribution Order.

<sup>4</sup> Calculated as the amount outstanding as of June 30, 2021 totaling \$2,478,320.99 per Prociuk Fourth Supplementary Affidavit, para 52, less (a) Sandra Demaria's half share of Woodland Property proceeds totaling \$952,988.11, and (b) Sandra Demaria's half share of remaining Cottage Property proceeds totaling \$63,243 which was assigned to BCU pursuant to Irrevocable Quit Claim, Release and Direction, dated November 27, 2019, distributed pursuant to Interim Distribution Order #2. As Sandra Demaria has never been subject to the Mareva Order, the interim distributions of Sandra's half share of the Woodland Property proceeds and the remaining Cottage Property proceeds were applied against the post-Mareva advance amounts owing on the Second Woodland Mortgage, all in accordance with the Irrevocable Quit Claim, Release and Direction.

<sup>5</sup> Remaining Cottage Property Proceeds attributable to Carlo Demaria's ownership interest in the amount of \$59,807, were distributed to BCU on March 7, 2025 pursuant to Offer to Settle and Consent executed by Trade Capital dated March 7, 2025, to be applied against BCU's enforcement costs.

20. The validity of the BCU Charges is not disputed and BCU was the only judgment/execution creditor of the mortgagors/owners of the Real Property. Trade Capital was the only party that opposed the distribution to BCU of the remaining Proceeds on the basis of the Mareva Order. As set out above, BCU and Trade Capital have settled all matters between them in the Proceedings and Trade Capital now consents to the distribution to BCU of the remaining Proceeds.
21. Accordingly, on the consent of Trade Capital, BCU requests an Order varying the Final Distribution Order as varied by the Court of Appeal for Ontario to direct the Receiver to distribute the remaining Proceeds of the Real Properties to BCU at this time, in accordance with the terms of settlement.

**August 28 Judgment Against Carlo Demaria *et al***

22. The August 28 Judgment Against Carlo Demaria *et al* orders Carlo Demaria (among others) to pay BCU the amounts owing under the BCU Charges against the Woodland Property, the Elm Property and the Puccini Property, plus costs. After final distribution of the Proceeds to BCU, this judgment will only be partially satisfied.<sup>6</sup>
23. Pursuant to the Endorsement of the Honourable Justice Conway, dated August 28, 2020, the August 28 Judgment Against Carlo Demaria *et al* may not be enforced without further Order of the Court or the consent of Trade Capital.
24. Accordingly, BCU requests an Order permitting BCU to enforce the August 28 Judgment against the current assets in the accounts of Carlo Demaria at BCU, which total approximately \$82,560, by exercise of BCU's right of set-off against the account balances. The Offer to Settle provides that Trade Capital will not oppose same.

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<sup>6</sup> In the event that Trade Capital is successful in the Brampton Action, the amount paid by BCU to Trade Capital pursuant to the Offer to Settle is to be credited against Trade Capital's judgment against Carlo Demaria in the Brampton Action, with the result that only the 50% of Proceeds retained by BCU will be credited against BCU's Consent Judgments. This avoids the potential for double recovery by Trade Capital.

**Varying Mareva Order**

25. To the extent a variation of the Mareva Order is required in order to effect the distributions to and enforcements by BCU contemplated herein, BCU requests same and the Offer to Settle provides that Trade Capital will consent to same.

**Receiver's Activities, R&D and Fees**

26. The Receiver's activities and R&D are set out in the Eighth Report.
27. The Receiver's fees and disbursements, and the fees and disbursements of the Receiver's legal counsel, are described in the Eighth Report and the fee affidavits.

**Discharge**

28. Upon the payment of the Receiver's fees and disbursements and those of its counsel, the distributions herein approved, and any remaining matters as set out in the Eighth Report, the Receiver will have completed its administration of the estates and as such consents to its discharge at this time.
29. The draft Discharge Order contains standard release language as set out in the Commercial List Model Order.

**Other Grounds**

30. Rules 1.04, 1.05, 2.01, 2.03, 16.04, 37, 49.07(6) and 59.06(2) of the *Rules of Civil Procedure* (Ontario), as amended and s.39(1) of the *Credit Unions and Caisses Populaires Act, 2020*, SO 2020, c 36, sch 7 ; and
31. Such further and other grounds as counsel may advise and this Honourable Court may permit.

**THE FOLLOWING DOCUMENTARY EVIDENCE** will be used at the hearing of the Motion:

1. The Affidavit of Amanda Campbell, sworn April 1, 2025;

2. The Eighth Report;
3. Fee affidavits of the Receiver and its counsel; and
4. Such further and other evidence as counsel may advise and this Honourable Court may permit.

April 2, 2025

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[sara.wilson@dentons.com](mailto:sara.wilson@dentons.com)

*Lawyers for Buduchnist Credit Union Limited*

**TO: SERVICE LIST**

**BUDUCHNIST CREDIT UNION LIMITED**

Applicant

- and -

**2321197 ONTARIO INC. et al.**

Respondents

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

PROCEEDING COMMENCED AT TORONTO

**NOTICE OF MOTION**

**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](mailto:barbara.grossman@dentons.com)

**Sara-Ann Wilson** (LSO # 56016C)  
 Tel: 416-863-4402  
[sara.wilson@dentons.com](mailto:sara.wilson@dentons.com)

*Lawyers for Buduchnist Credit Union Limited*



# Tab 2

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, 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

**AFFIDAVIT OF AMANDA CAMPBELL  
(sworn April 1, 2025)**

I, **AMANDA CAMPBELL**, of the Municipality of Clarington, in the Regional Municipality of Durham, **MAKE OATH AND SAY AS FOLLOWS:**

1. I am the legal assistant with Dentons Canada LLP ("**Dentons**"), counsel to Buduchnist Credit Union Limited ("**BCU**") in respect of these proceedings, and as such, I have knowledge of the matters to which I hereinafter depose. Where I do not have personal knowledge, I have stated the source of my information and verily believe such information to be true.
2. Attached hereto as **Exhibit "A"** is the accepted Offer to Settle dated February 7, 2025 between BCU and Trade Capital Finance Corp. ("**Trade Capital**").

3. Attached hereto as **Exhibit “B”** is the email exchange dated February 12, 2025 to February 14, 2025 between counsel to BCU and Trade Capital containing BCU’s acceptance on February 14, 2025 of the February 7, 2025 Offer to Settle as last modified by Trade Capital.

4. Attached hereto as **Exhibit “C”** is the Consent in relation to the cottage property proceeds dated March 7, 2025, signed by counsel to Trade Capital to implement paragraph 4 of the accepted Offer to Settle.

5. Attached hereto as **Exhibit “D”** is an email from BCU dated January 14, 2025, containing screen shots showing the updated balances of the CHATS accounts and Carlo Demaria’s accounts at BCU. These are the account balances referred to in paragraph 3 of the accepted Offer to Settle (Exhibit A).

6. A chart summarizing all the Writs of Seizure and Sale issued and filed by BCU in respect of all the Consent Judgments and Orders in favour of BCU, with attached Writs of Execution OWL Report dated June 2, 2023, is attached hereto as **Exhibit “E”**. This chart with attached Writs of Execution OWL Reports was put in evidence and/or in the record of these proceedings by BCU as (a) the first version dated November 23, 2021 was included at Tab 11 to the Factum & Compendium of BCU dated December 9, 2021 on the distribution motion; (b) an updated version dated July 28, 2022 was included at Tab 42 of the Respondent’s Compendium dated January 13, 2023 in Court of Appeal file C70898; and (c) a further updated version dated June 2, 2023 was included at Tab 22 of the Compendium for Argument of BCU dated June 5, 2023 in Court of Appeal file C70898.

**SWORN** by Amanda Campbell of the Municipality of Clarington in the Regional Municipality of Durham, before me at the City of Toronto, in the Province of Ontario on April 1, 2025 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.

Signed by:

*Ying (Teddy) Ouyang*

EAED8D28A89144A...

Commissioner for Taking Affidavits  
**Ying Ouyang (LSO # P11287)**

DocuSigned by:

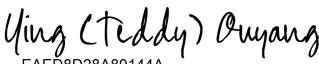
*Amanda Campbell*

141D0BFB1385499...

**AMANDA CAMPBELL**

THIS IS EXHIBIT "A" REFERRED TO IN THE  
AFFIDAVIT OF AMANDA CAMPBELL SWORN  
BEFORE ME THIS 1st DAY OF APRIL, 2025.

Signed by:

  
EAED8D28A89144A...

A Commissioner for Taking Affidavits, etc.

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, 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

---

Court File No. CV-21-00663709-00CL

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**

**BETWEEN:**

**BUDUCHNIST CREDIT UNION LIMITED**

Plaintiff

-and-

**2454904 ONTARIO INC.**

Defendant

**OFFER TO SETTLE**

The Applicant/Plaintiff, Buduchnist Credit Union Limited (“**BCU**”), hereby offers to settle with Trade Capital Finance Corp. (“**Trade Capital**”) all outstanding claims and matters in dispute between them in the within proceedings on the following terms:

1. BCU shall pay to Trade Capital from BCU's recovery from the assets specified in paragraph (a) below the following amounts, inclusive of costs, which payment shall be made by BCU within one week of BCU's receipt c/o Dentons Canada LLP in trust of the stated proceeds as provided for pursuant to paragraph 5 (a) below:

- (a) 50% of BCU's recovery of the remaining net proceeds available for distribution of the Woodland Property, the Elm Property, and the Puccini Property (each as defined in the Order of the Honourable Justice Penny dated June 17, 2022 (the "**Final Distribution Order**")) held by the Receiver. The Receiver's Statement of Receipts and Disbursements showing the remaining net proceeds of the Woodland Property, the Elm Property, and the Puccini Property now available for distribution is attached as **Schedule "A"**. Notwithstanding the above, the amount to be paid by BCU to Trade Capital shall not be less than \$1,750,000.00.

2. BCU and Trade Capital will abandon all costs awards and costs claims as against each other in the within proceedings including in the Appeal and Cross-Appeal proceedings from the Final Distribution Order.

3. As expediently as practicable, BCU shall seek the following orders, made without costs against Trade Capital, and Trade Capital shall not oppose such orders, permitting BCU to:

- (a) enforce the Judgment of the Honourable Justice Dietrich, dated August 30, 2021, issued in the proceeding bearing Court File No. CV-21-00663709-00CL (the "**245 Proceeding**"), against the current assets in the 245/CHATS accounts at BCU (which are approximately CA\$158,579) by exercise of BCU's right of set-off against the account balances; and

- (b) enforce the Judgment of the Honourable Justice Conway, dated August 28, 2020 in the proceeding bearing Court file CV-18-00608356-00CL (the “**Receivership Proceeding**”), against the current assets in the accounts of Carlo Demaria at BCU (which are approximately CA\$82,560) by exercise of BCU’s right of set-off against the account balances.
- 4. Trade Capital shall consent to the Receiver immediately distributing to BCU the remaining proceeds of the Cottage Property (as defined in the Final Distribution Order) held by the Receiver, to be applied on account of BCU’s enforcement costs in relation to the Cottage Property.
- 5. As expediently as practicable, BCU shall seek the following orders, made without costs against Trade Capital, and Trade Capital shall:
  - (a) consent to an order varying the Final Distribution Order (as varied by the Court of Appeal for Ontario) to direct the Receiver to immediately distribute the remaining proceeds of the Woodland Property, the Elm Property and the Puccini Property held by the Receiver directly to BCU c/o Dentons Canada LLP in trust; and
  - (b) consent to and cooperate in obtaining an order varying the Mareva Order dated May 6, 2015 as amended (the “**Mareva Order**”), to the extent necessary, to permit the distributions to and enforcements by BCU contemplated in paragraphs 3 (a), (b) and 5 (a) above.
- 6. BCU and Trade Capital shall not oppose the Receiver’s expeditious discharge motion.
- 7. BCU and Trade Capital shall deliver to each other a Mutual Full and Final Release, in form and content satisfactory to counsel for the parties acting reasonably, containing a non-



disparagement provision in favour of the other party and its privies, in respect of all claims, relief and remedies:

- (a) against BCU and its privies in relation to BCU's compliance with the Mareva Order, arising out of any acts or omission of BCU and its privies to the date of acceptance of this Offer to Settle; and
- (b) against Trade Capital in relation to the Mareva Order, arising out of any acts or omissions of Trade Capital to the date of acceptance of this Offer to Settle.

8. This settlement is conditional upon the Court making all the Orders contemplated in paragraphs 3 and 5 above, failing which the settlement will be null and void.

9. This Offer to Settle is open for acceptance in writing until February 14, 2025 unless it is withdrawn in writing earlier.

10. This Offer to Settle is made pursuant to Rule 49 of the *Rules of Civil Procedure*.

**SCHEDULE “A”****(Receiver’s consolidated Interim Statement of Receipts and Disbursements as of January 14, 2025)**

87 Elm Grove Avenue, 46 Puccini Drive, 6216 Fifth Line and 211 Woodland Acres

**Interim Statement of Receipts and Disbursements**

For the period November 13, 2018 to January 14, 2025

(CAD\$)

	<b>46 Puccini Dr.</b>	<b>87 Elm Grove Ave.</b>	<b>6216 Fifth Line</b>	<b>211 Woodland</b>
<i>Receipts</i>				
Sale proceeds	2,250,000	1,750,000	405,000	3,375,000
Extension fees paid by Purchaser	26,000	-	-	-
Advances from BCU under Receiver's Borrowings Charge	20,000	45,000	5,000	40,000
Rental income	23,453	-	3,850	31,500
Interest	175,176	232,107	12,877	130,362
Total Receipts	2,494,629	2,027,107	426,727	3,576,862
<i>Disbursements</i>				
HST remitted to CRA on new residential home (87 Elm Grove only)	-	204,089	-	-
Real estate commissions (including HST)	108,056	72,744	20,594	190,688
Property taxes	18,226	6,199	1,739	6,776
Insurance, maintenance and contractor costs	12,985	18,680	3,432	19,728
Professional fees (Receiver and legal counsel)	81,600	79,009	47,722	107,113
Repayment of receivership advances to BCU (principal and interest)	21,161	45,385	5,208	40,805
Court-approved interim distributions to BCU	1,329,623	-	277,729	2,132,620
HST on disbursements	12,574	12,940	6,937	12,914
Sundry expenses	3,604	3,270	3,559	2,167
Total Disbursements	1,587,830	442,314	366,920	2,512,810
<b>Balance in Receiver's accounts</b>	<b>906,799</b>	<b>1,584,793</b>	<b>59,807</b>	<b>1,064,052</b>
<b>Total</b>				<b>3,615,451</b>

Note: This statement has been prepared on a cash basis and excludes accrued obligations (if any).

February 7, 2025

-6-

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

**Barbara Grossman** (LSO # 20947K)  
Tel: (416) 863-4417  
Fax: (416) 863-4592  
[barbara.grossman@dentons.com](mailto:barbara.grossman@dentons.com)

**Sara-Ann Wilson** (LSO # 56016C)  
Tel: 416-863-4402  
[sara.wilson@dentons.com](mailto:sara.wilson@dentons.com)

*Lawyers for Buduchnist Credit Union Limited  
in the Receivership Proceeding*

**BLANEY MCMURTRY LLP**  
2 Queen Street East, Suite 1500  
Toronto ON M5C 3G5

**Tim Farrell** (LSO #34654F)  
Tel: 416-593-3917  
[tfarrell@blaney.com](mailto:tfarrell@blaney.com)

**Vagmi Patel** (LSO #72344B)  
Tel: 416-597-4884  
[vpatel@blaney.com](mailto:vpatel@blaney.com)

*Lawyers for Buduchnist Credit Union Limited  
in the 245 Proceeding*

TO: **LOOPSTRA NIXON LLP**  
135 Queens Plate Drive, Suite 600  
Etobicoke, ON M9W 6V7

**Christopher Lee**  
Tel: (416) 748-5117  
[clee@loonix.com](mailto:clee@loonix.com)

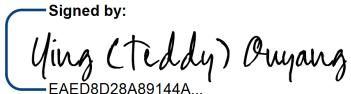
**LEVITT SHEIKH CHAUDHRI SWANN LLP**  
130 Adelaide Street West, Suite 801  
Toronto, ON M5H 3P5

**Peter W.G. Carey**  
Tel: 416-597-6480 ext. 503  
[pcarey@levittllp.com](mailto:pcarey@levittllp.com)

*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*

THIS IS EXHIBIT "**B**" REFERRED TO IN THE  
AFFIDAVIT OF AMANDA CAMPBELL SWORN  
BEFORE ME THIS 1st DAY OF APRIL, 2025.

Signed by:

A handwritten signature in blue ink that reads "Ying (Teddy) Ouyang". The signature is written in a cursive, flowing style.

EAED8D28A89144A...

---

A Commissioner for Taking Affidavits, etc.

**From:** [Grossman, Barbara](#)  
**To:** [Christopher Lee](#); [Campbell, Amanda](#)  
**Cc:** [Wilson, Sara-Ann](#); [tfarrell@blaney.com](#); [Hartloff, Ann](#); [pcarey@levittllp.com](#); [Lindsay Stark \(she/her\)](#); [lbajada@levittllp.com](#)  
**Subject:** RE: Buduchnist Credit Union Limited v. 2321197 Ontario Inc., et al. - CV-18-00608356-00CL; Buduchnist Credit Union Limited v. 2454904 Ontario Inc. - CV-21-00663709-00CL  
**Date:** Friday, February 14, 2025 7:30:44 AM  
**Attachments:** [image001.png](#)  
[image002.png](#)  
[image003.png](#)  
[image004.png](#)  
[image005.jpg](#)  
[TC Offer to Settle with BCU--2015 02 15 2.pdf](#)

Chris, BCU accepts the settlement terms as revised by you in Trade Capital's settlement counter-offer sent below (and attached) in response to BCU's revised and updated Offer to Settle dated Feb 7, 2025 that was served on Tuesday.

As the initial implementation step, we will:

- advise the Receiver and counsel for Carlo Demaria et al of the settlement and provide them with a copy of the settlement terms, and
- send you a form of Consent to execute on behalf of Trade Capital and transmit to the Receiver (copied to us) to confirm Trade Capital's consent to the Receiver immediately distributing the remaining proceeds of the Cottage Property to BCU in accordance with paragraph 4 of the terms of the settlement.

Thank you.

Barbara

**Barbara L. Grossman**

Partner

Certified by the Law Society of Ontario as a Specialist in Civil Litigation

 +1 416 863 4417

Dentons Canada LLP | [Toronto](#)

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**From:** Christopher Lee <clee@LN.Law>  
**Sent:** Wednesday, February 12, 2025 10:20 PM  
**To:** Campbell, Amanda <amanda.campbell@dentons.com>  
**Cc:** Wilson, Sara-Ann <sara.wilson@dentons.com>; [tfarrell@blaney.com](#); Grossman, Barbara <barbara.grossman@dentons.com>; Hartloff, Ann <ann.hartloff@dentons.com>; [pcarey@levittllp.com](#); Lindsay Stark (she/her) <lstark@LN.Law>; [lbajada@levittllp.com](#)  
**Subject:** RE: Buduchnist Credit Union Limited v. 2321197 Ontario Inc., et al. - CV-18-00608356-00CL; Buduchnist Credit Union Limited v. 2454904 Ontario Inc. - CV-21-00663709-00CL

**[WARNING: EXTERNAL SENDER]**

WITHOUT PREJUDICE

Barbara,  
 I think we are there. A slightly revised offer is attached.

The changes provide clarity as to the recovery.

The first is that TC asks to have its recovery numerically specified, to avoid any potential that there are additional deductions to the amount. This is reasonable. TC needs the settlement to specify the amount it will received, which you have previously stated in the covering letters and emails. A change to this in

paragraph one is the change we have made. We have rounded it down to allow for some wiggle room. This should not be controversial.

The only other change is to give certainty that there are not some other amounts that can be collected through paragraph 3. This also should not be controversial.

We will send a blackline to your last offer tomorrow am.




The offer will expire on Friday.

Hopefully, this gets the job done.

Thanks,

**Christopher Lee**

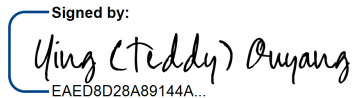
Partner | Commercial Litigation | Loopstra Nixon LLP

 [416.748.5117](tel:416.748.5117) |  [647.883.2533](tel:647.883.2533) |  416.746.8319

 [clee@LN.Law](mailto:clee@LN.Law)

THIS IS EXHIBIT "C" REFERRED TO IN THE  
AFFIDAVIT OF AMANDA CAMPBELL SWORN  
BEFORE ME THIS 1st DAY OF APRIL, 2025.

Signed by:

A blue ink signature that reads "Ying (Teddy) Ouyang". The signature is written in a cursive, flowing style.

EAED8D28A89144A...

A Commissioner for Taking Affidavits, etc.



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, 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

**CONSENT RE COTTAGE PROCEEDS DISTRIBUTION**

Trade Capital Finance Corp., by its counsel, hereby consents to KSV Restructuring Inc., in its capacity as Court-appointed receiver (the “**Receiver**”), immediately distributing to Buduchnist Credit Union Limited (“**BCU**”) the remaining proceeds of the property municipally known as 6216 Fifth Line, Egbert, Ontario (the “**Cottage Property**”) held by the Receiver (which total approximately \$59,807), to be applied on account of BCU’s enforcement costs in relation to the Cottage Property.

DATED this 7th day of March, 2025

**LOOPSTRA NIXON LLP**

Signed by:  
  
88F6DE613301446...

---

Per: Christopher Lee

*Lawyers for the Respondent, Trade Capital  
Finance Corporation and on behalf of co-counsel,  
Levitt Sheikh Chaudhri Swann LLP*

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

**BUDUCHNIST CREDIT UNION LIMITED**

**2321197 ONTARIO INC., et al.**

- and -


Applicant

Respondents

<p><b>ONTARIO</b></p> <p><b>SUPERIOR COURT OF JUSTICE</b></p> <p><b>(COMMERCIAL LIST)</b></p> <p><b>PROCEEDING COMMENCED AT TORONTO</b></p>	
<p><b>CONSENT RE COTTAGE PROCEEDS</b></p> <p><b>DISTRIBUTION</b></p>	
<p><b>DENTONS CANADA LLP</b></p> <p>77 King Street West, Suite 400</p> <p>Toronto-Dominion Centre</p> <p>Toronto, ON M5K 0A1</p> <p><b>Barbara Grossman</b> (LSO # 20947K)</p> <p>Tel: (416) 863-4417</p> <p>Fax: (416) 863-4592</p> <p><a href="mailto:barbara.grossman@dentons.com">barbara.grossman@dentons.com</a></p> <p><b>Sara-Ann Wilson</b> (LSO # 56016C)</p> <p>Tel: 416-863-4402</p> <p><a href="mailto:sara.wilson@dentons.com">sara.wilson@dentons.com</a></p> <p><i>Lawyers for Buduchnist Credit Union Limited</i></p>	

THIS IS EXHIBIT "**D**" REFERRED TO IN THE  
AFFIDAVIT OF AMANDA CAMPBELL SWORN  
BEFORE ME THIS 1st DAY OF APRIL, 2025.

Signed by:

  
EAED8D28A89144A...

A Commissioner for Taking Affidavits, etc.

41

## Campbell, Amanda

---

**From:** Damian Snih <Damian.Snih@bcufinancial.com>  
**Sent:** Tuesday, January 14, 2025 1:21 PM  
**To:** Grossman, Barbara  
**Subject:** FW: Balances as of 14Jan2025@12:34PM

**[WARNING: EXTERNAL SENDER]**

---

Good Afternoon Barbara,

Please see attached screenshots for updated balances as of today.

Thank you,

**Damian Snih**  
Chief Executive Officer



☎ 416-763-7020

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---

**From:** Iryna Lytvyn <Iryna.Lytvyn@bcufinancial.com>  
**Sent:** Tuesday, January 14, 2025 12:41 PM  
**To:** Damian Snih <Damian.Snih@bcufinancial.com>  
**Subject:** Balances as of 14Jan2025@12:34PM

2

43

Customer Profile

Customer Information

Customer

35926

Branch

miss

Phone

Representative

Raissa Radejewsky

Name

Mr Carlo Demaria

Gender

male

Signer

yes

Address

211 Woodland Acres Cres Vaughan ON L6A 1G1

Phone

416 902-0565

Employer



Birth Date

06Jun1975

Age: 49

SIN

500-616-529

Customer Relationship Information

Profitability Tier

Profit Contribution:

Profit from Activity

\$0.00

Profit from Balances

\$0.00

Total Profit Contribution

\$0.00

Tenure

24 Years

Maintenance

Accounts

Demographic

Financial

Services

Identification

Rates

Reminder

Exit

Deposits		Loans		Time Deposits		Retirement		Joint Accts		Share of Wallet		Individual Accts	
Account	Type	Sub	Fund	Description	Portion Owned	Ledger Balance	Status	Rate					
0	cheq	1	CAD	Chequing Account	\$82,350.00	\$82,350.00	dormant	0.000					
0	cheq	2	CAD	Collateral LOC	\$0.00	\$0.00	dormant	0.000					
0	daily	1	CAD	Daily Savings Account	\$75.10	\$75.10	dormant	0.050					
0	mshare	1	CAD	Membership Share Account	\$100.00	\$100.00	dormant	0.000					
0	pshare	1	CAD	Patronage Bonus Share Account	\$0.00	\$0.00	dormant	0.000					
0	usacct	1	USD	US Savings Account	\$25.18	\$25.18	dormant	0.000					
				Domestic Funds		\$35.59		1.414					
					\$82,560.69								

Iryna Lytvyn

Chief Compliance Officer



416-763-8914 x7028

Iryna.Lytvyn@bcufinancial.com

5045 Orbitor Dr. Unit7-300, | Mississauga | ON | L4W 4Y4

44



[www.bcufinancial.com](http://www.bcufinancial.com)

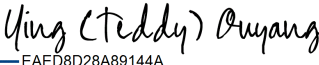
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THIS IS EXHIBIT "E" REFERRED TO IN THE  
AFFIDAVIT OF AMANDA CAMPBELL SWORN  
BEFORE ME THIS 1st DAY OF APRIL, 2025.

Signed by:

  
EAED8D28A89144A...

A Commissioner for Taking Affidavits, etc.

**Chart Summarizing Writs of Seizure and Sale  
as at November 23, 2021**

<b>Debtor</b>	<b>Creditor</b>	<b>Enforcement Office</b>	<b>Writ Number</b>	<b>Date of Issue</b>	<b>Effective Date</b>
<b>2321198 Ontario Inc.</b> <i>[owner of Puccini Property]</i>	Buduchnist Credit Union Limited ("BCU")	Barrie	20-0000576	September 8, 2020	October 28, 2020
	BCU	Toronto	20-0002568	September 8, 2020	September 18, 2020
	BCU	Brampton	20-0001640	September 8, 2020	September 25, 2020
	BCU	Newmarket	20-0001223	September 8, 2020	October 1, 2020
<b>2321197 Ontario Inc.</b> <i>[owner of Elm Property]</i>	BCU	Barrie	20-0000576	September 8, 2020	October 28, 2020
	BCU	Toronto	20-0002568	September 8, 2020	September 18, 2020
	BCU	Brampton	20-0001640	September 8, 2020	September 25, 2020
	BCU	Newmarket	20-0001223	September 8, 2020	October 1, 2020
<b>Carlo Demaria</b> <i>[co-owner of Woodland &amp; Cottage Properties]</i>	BCU	Barrie	20-0000575	September 15, 2020	October 28, 2020
	BCU	Barrie	20-0000576	September 8, 2020	October 28, 2020
	BCU	Toronto	20-0002568	September 8, 2020	September 18, 2020
	BCU	Toronto	20-0002654	September 15, 2020	September 28, 2020
	BCU	Brampton	20-0001640	September 8, 2020	September 25, 2020
	BCU	Brampton	20-0001641	September 15, 2020	September 29, 2020
	BCU	Newmarket	20-0001223	September 8, 2020	October 1, 2020
	BCU	Newmarket	20-0001224	September 15, 2020	October 2, 2020

Debtor	Creditor	Enforcement Office	Writ Number	Date of Issue	Effective Date
<b>Sandra Demaria</b> <i>[co-owner of Woodland &amp; Cottage Properties]</i>	BCU	Barrie	20-0000575	September 15, 2020	October 28, 2020
	BCU	Toronto	20-0002568	September 8, 2020	September 18, 2020
	BCU	Toronto	20-0002654	September 15, 2020	September 28, 2020
	BCU	Brampton	20-0001640	September 8, 2020	September 25, 2020
	BCU	Brampton	20-0001641	September 15, 2020	September 29, 2020
	BCU	Newmarket	20-0001223	September 8, 2020	October 1, 2020
	BCU	Newmarket	20-0001224	September 15, 2020	October 2, 2020
<b>Vicar Homes Ltd.</b> <i>[not an owner of any of the subject properties, but debtor under the LOC secured on the Woodland Property]</i>	BCU	Barrie	20-0000576	September 8, 2020	October 28, 2020
	BCU	Toronto	20-0002568	September 8, 2020	September 18, 2020
	BCU	Brampton	20-0001640	September 8, 2020	September 25, 2020
	Workplace Safety and Insurance Board	Newmarket	20-0000214	January 29, 2020	January 30, 2020
	Great Northern Insulation Contracting Ltd.	Newmarket	20-0000579	February 28, 2020	March 13, 2020
	BCU	Newmarket	20-0001223	September 8, 2020	October 1, 2020



**Chart Summarizing Writs of Seizure and Sale  
as at July 18 2022**

<b>Debtor</b>	<b>Creditor</b>	<b>Enforcement Office</b>	<b>Writ Number</b>	<b>Date of Issue</b>	<b>Effective Date</b>
<b>2321198 Ontario Inc.</b> <i>[owner of Puccini Property]</i>	Buduchnist Credit Union Limited ("BCU")	Barrie	20-0000576	September 8, 2020	October 28, 2020
	BCU	Toronto	20-0002568	September 8, 2020	September 18, 2020
	BCU	Brampton	20-0001640	September 8, 2020	September 25, 2020
	BCU	Newmarket	20-0001223	September 8, 2020	October 1, 2020
<b>2321197 Ontario Inc.</b> <i>[owner of Elm Property]</i>	BCU	Barrie	20-0000576	September 8, 2020	October 28, 2020
	BCU	Toronto	20-0002568	September 8, 2020	September 18, 2020
	BCU	Brampton	20-0001640	September 8, 2020	September 25, 2020
	BCU	Newmarket	20-0001223	September 8, 2020	October 1, 2020
<b>Carlo Demaria</b> <i>[co-owner of Woodland &amp; Cottage Properties]</i>	BCU	Barrie	20-0000575	September 15, 2020	October 28, 2020
	BCU	Barrie	20-0000576	September 8, 2020	October 28, 2020
	BCU	Toronto	20-0002568	September 8, 2020	September 18, 2020
	BCU	Toronto	20-0002654	September 15, 2020	September 28, 2020
	BCU	Brampton	20-0001640	September 8, 2020	September 25, 2020
	BCU	Brampton	20-0001641	September 15, 2020	September 29, 2020
	BCU	Newmarket	20-0001223	September 8, 2020	October 1, 2020
	BCU	Newmarket	20-0001224	September 15, 2020	October 2, 2020

Debtor	Creditor	Enforcement Office	Writ Number	Date of Issue	Effective Date
<b>Sandra Demaria</b> <i>[co-owner of Woodland &amp; Cottage Properties]</i>	BCU	Barrie	20-0000575	September 15, 2020	October 28, 2020
	BCU	Toronto	20-0002568	September 8, 2020	September 18, 2020
	BCU	Toronto	20-0002654	September 15, 2020	September 28, 2020
	BCU	Brampton	20-0001640	September 8, 2020	September 25, 2020
	BCU	Brampton	20-0001641	September 15, 2020	September 29, 2020
	BCU	Newmarket	20-0001223	September 8, 2020	October 1, 2020
	BCU	Newmarket	20-0001224	September 15, 2020	October 2, 2020
<b>Vicar Homes Ltd.</b> <i>[not an owner of any of the subject properties, but debtor under the LOC secured on the Woodland Property]</i>	BCU	Barrie	20-0000576	September 8, 2020	October 28, 2020
	BCU	Toronto	20-0002568	September 8, 2020	September 18, 2020
	BCU	Brampton	20-0001640	September 8, 2020	September 25, 2020
	Workplace Safety and Insurance Board	Newmarket	20-0000214	January 29, 2020	January 30, 2020
	Great Northern Insulation Contracting Ltd.	Newmarket	20-0000579	February 28, 2020	March 13, 2020
	BCU	Newmarket	20-0001223	September 8, 2020	October 1, 2020



**Chart Summarizing Writs of Seizure and Sale  
as at June 2, 2023**

<b>Debtor</b>	<b>Creditor</b>	<b>Enforcement Office</b>	<b>Writ Number</b>	<b>Date of Issue</b>	<b>Effective Date</b>
<b>2321198 Ontario Inc.</b> <i>[owner of Puccini Property]</i>	Buduchnist Credit Union Limited ("BCU")	Barrie	20-0000576	September 8, 2020	October 28, 2020
	BCU	Toronto	20-0002568	September 8, 2020	September 18, 2020
	BCU	Brampton	20-0001640	September 8, 2020	September 25, 2020
	BCU	Newmarket	20-0001223	September 8, 2020	October 1, 2020
<b>2321197 Ontario Inc.</b> <i>[owner of Elm Property]</i>	BCU	Barrie	20-0000576	September 8, 2020	October 28, 2020
	BCU	Toronto	20-0002568	September 8, 2020	September 18, 2020
	BCU	Brampton	20-0001640	September 8, 2020	September 25, 2020
	BCU	Newmarket	20-0001223	September 8, 2020	October 1, 2020
<b>Carlo Demaria</b> <i>[co-owner of Woodland &amp; Cottage Properties]</i>	BCU	Barrie	20-0000575	September 15, 2020	October 28, 2020
	BCU	Barrie	20-0000576	September 8, 2020	October 28, 2020
	BCU	Toronto	20-0002568	September 8, 2020	September 18, 2020
	BCU	Toronto	20-0002654	September 15, 2020	September 28, 2020
	BCU	Brampton	20-0001640	September 8, 2020	September 25, 2020
	BCU	Brampton	20-0001641	September 15, 2020	September 29, 2020
	BCU	Newmarket	20-0001223	September 8, 2020	October 1, 2020
	BCU	Newmarket	20-0001224	September 15, 2020	October 2, 2020



Debtor	Creditor	Enforcement Office	Writ Number	Date of Issue	Effective Date
<b>Sandra Demaria</b> <i>[co-owner of Woodland &amp; Cottage Properties]</i>	BCU	Barrie	20-0000575	September 15, 2020	October 28, 2020
	BCU	Toronto	20-0002568	September 8, 2020	September 18, 2020
	BCU	Toronto	20-0002654	September 15, 2020	September 28, 2020
	BCU	Brampton	20-0001640	September 8, 2020	September 25, 2020
	BCU	Brampton	20-0001641	September 15, 2020	September 29, 2020
	BCU	Newmarket	20-0001223	September 8, 2020	October 1, 2020
	BCU	Newmarket	20-0001224	September 15, 2020	October 2, 2020
<b>Vicar Homes Ltd.</b> <i>[not an owner of any of the subject properties, but debtor under the LOC secured on the Woodland Property]</i>	BCU	Barrie	20-0000576	September 8, 2020	October 28, 2020
	BCU	Toronto	20-0002568	September 8, 2020	September 18, 2020
	BCU	Brampton	20-0001640	September 8, 2020	September 25, 2020
	Workplace Safety and Insurance Board	Newmarket	20-0000214	January 29, 2020	January 30, 2020
	Great Northern Insulation Contracting Ltd.	Newmarket	20-0000579	February 28, 2020	March 13, 2020
	BCU	Newmarket	20-0001223	September 8, 2020	October 1, 2020



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**Requested By:** CENTRO  
**Reference:**  
**Date of Search:** June 2, 2023  
**Total Cost (including HST):** \$72.32  
**Name Searched:** 2321198 ONTARIO INC.

### The following writs of execution were retrieved:

ENFORCEMENT OFFICE: BARRIE

WRIT NUMBER:  
20-0000576

ENFORCEMENT OFFICE: TORONTO

WRIT NUMBER:  
20-0002568

ENFORCEMENT OFFICE: BRAMPTON

WRIT NUMBER:  
20-0001640

ENFORCEMENT OFFICE: NEWMARKET

WRIT NUMBER:  
20-0001223

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**Requested By:** CENTRO  
**Reference:**  
**Date of Search:** June 2, 2023  
**Total Cost (including HST):** \$72.32  
**Name Searched:** 2321197 ONTARIO INC.

### The following writs of execution were retrieved:

ENFORCEMENT OFFICE: BARRIE

WRIT NUMBER:  
20-0000576

ENFORCEMENT OFFICE: TORONTO

WRIT NUMBER:  
20-0002568

ENFORCEMENT OFFICE: BRAMPTON

WRIT NUMBER:  
20-0001640

ENFORCEMENT OFFICE: NEWMARKET

WRIT NUMBER:  
20-0001223

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HST Registration No.: 130867526

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**Requested By:** CENTRO  
**Reference:**  
**Date of Search:** June 2, 2023  
**Total Cost (including HST):** \$72.32  
**Name Searched:** DE MARIA, CARLO

### The following writs of execution were retrieved:

ENFORCEMENT OFFICE: BARRIE

WRIT NUMBER:

20-0000575

20-0000576

ENFORCEMENT OFFICE: TORONTO

WRIT NUMBER:

20-0002568

20-0002654

ENFORCEMENT OFFICE: BRAMPTON

WRIT NUMBER:

20-0001640

20-0001641

ENFORCEMENT OFFICE: NEWMARKET

WRIT NUMBER:

20-0001223

20-0001224

HST Registration No.: 130867526

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**Requested By:** CENTRO  
**Reference:**  
**Date of Search:** June 2, 2023  
**Total Cost (including HST):** \$72.32  
**Name Searched:** DEMARIA, CARLO

### The following writs of execution were retrieved:

ENFORCEMENT OFFICE: BARRIE

WRIT NUMBER:

20-0000575

20-0000576

ENFORCEMENT OFFICE: TORONTO

WRIT NUMBER:

20-0002568

20-0002654

ENFORCEMENT OFFICE: BRAMPTON

WRIT NUMBER:

20-0001640

20-0001641

ENFORCEMENT OFFICE: NEWMARKET

WRIT NUMBER:

20-0001223

20-0001224



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**Requested By:** CENTRO  
**Reference:**  
**Date of Search:** June 2, 2023  
**Total Cost (including HST):** \$72.32  
**Name Searched:** DE MARIA, SANDRA

### The following writs of execution were retrieved:

ENFORCEMENT OFFICE: BARRIE

WRIT NUMBER:  
20-0000575

ENFORCEMENT OFFICE: TORONTO

WRIT NUMBER:  
20-0002568  
20-0002654

ENFORCEMENT OFFICE: BRAMPTON

WRIT NUMBER:  
20-0001640  
20-0001641

ENFORCEMENT OFFICE: NEWMARKET

WRIT NUMBER:  
20-0001223  
20-0001224

HST Registration No.: 130867526

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**Requested By:** CENTRO  
**Reference:**  
**Date of Search:** June 2, 2023  
**Total Cost (including HST):** \$72.32  
**Name Searched:** DEMARIA, SANDRA

### The following writs of execution were retrieved:

ENFORCEMENT OFFICE: BARRIE

WRIT NUMBER:  
20-0000575

ENFORCEMENT OFFICE: TORONTO

WRIT NUMBER:  
20-0002568  
20-0002654

ENFORCEMENT OFFICE: BRAMPTON

WRIT NUMBER:  
20-0001640  
20-0001641

ENFORCEMENT OFFICE: NEWMARKET

WRIT NUMBER:  
20-0001223  
20-0001224

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**Requested By:** CENTRO  
**Reference:**  
**Date of Search:** June 2, 2023  
**Total Cost (including HST):** \$72.32  
**Name Searched:** VICAR HOMES LTD.

### The following writs of execution were retrieved:

ENFORCEMENT OFFICE: BARRIE

WRIT NUMBER:  
20-0000576

ENFORCEMENT OFFICE: TORONTO

WRIT NUMBER:  
20-0002568

ENFORCEMENT OFFICE: BRAMPTON

WRIT NUMBER:  
20-0001640

ENFORCEMENT OFFICE: NEWMARKET

WRIT NUMBER:  
20-0000214  
20-0000579  
20-0001223

67

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Court File No: CV-18-00608356-00CL 68

**BUDUCHNIST CREDIT UNION LIMITED**  
Applicant

- and -

**2321197 ONTARIO INC. et al.**  
Respondents

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

PROCEEDING COMMENCED AT TORONTO

**AFFIDAVIT OF AMANDA CAMPBELL**

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

**Barbara Grossman** (LSO # 20947K)  
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[barbara.grossman@dentons.com](mailto:barbara.grossman@dentons.com)

**Sara-Ann Wilson** (LSO # 56016C)  
Tel: 416-863-4402  
[sara.wilson@dentons.com](mailto:sara.wilson@dentons.com)

*Lawyers for Buduchnist Credit Union Limited*



# Tab 3

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

THE HONOURABLE	)	FRIDAY, THE 11th DAY
	)	
JUSTICE CONWAY	)	OF APRIL, 2025
	)	

BETWEEN:

**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

**ORDER**  
**(Settlement and Final Distribution)**

**THIS MOTION**, made by the Applicant, Buduchnist Credit Union Limited (“BCU”), for an order directing KSV Restructuring Inc. in its capacity as Court-appointed receiver (the “Receiver”) to make certain final distributions and granting certain other relief, was heard this day by judicial video conference via Zoom.

**ON READING** the Motion Record of BCU, the Affidavit of Amanda Campbell, sworn April 1, 2025, the Factum of BCU, dated April 2, 2025, the Eighth Report of the Receiver, dated

March 28, 2025, which includes the fee verification affidavits of the Receiver and Chaitons LLP appended thereto, and on hearing the submissions of counsel for BCU, counsel for the Receiver, [counsel for the Respondents 2321197 Ontario Inc., Carlo Demaria, Sandra Demaria, 2321198 Ontario Inc., and Vicar Homes Ltd.] and counsel for the Respondent Trade Capital Finance Corp. (“**Trade Capital**”), no one appearing for any other person on the service list, although properly served as appears from the affidavits of service of [NAME], sworn [DATE], filed, and on being advised that Trade Capital consents to the relief set out in paragraphs 1, 2, 3 and 5 of this Order and does not oppose the relief set out in paragraphs 4 and 6 of this Order:

#### **SETTLEMENT BETWEEN BCU AND TRADE CAPITAL**

1. **THIS COURT ORDERS** that the Receiver is authorized and directed *nunc pro tunc* to take all steps necessary or required to carry out the terms of the settlement documented in the accepted Offer to Settle dated February 7, 2025.

#### **FINAL DISTRIBUTION**

2. **THIS COURT ORDERS** that, after payment of the fees and disbursements of the Receiver and its counsel approved by this Court, the Receiver is hereby authorized and directed to distribute to BCU c/o Dentons Canada LLP in trust the remaining proceeds of the following properties:

- (a) 87 Elm Grove Avenue, Richmond Hill, Ontario;
- (b) 46 Puccini Drive, Richmond Hill, Ontario; and
- (c) 211 Woodland Acres, Vaughan, Ontario.

3. **THIS COURT ORDERS** that the Final Distribution Order of the Honourable Justice Penny, dated June 17, 2022, as varied by the Court of Appeal for Ontario, be and is hereby varied as necessary to effect the distributions by the Receiver contemplated herein.

#### **JUDGMENT ENFORCEMENT**

4. **THIS COURT ORDERS** that BCU be and is hereby authorized to enforce the Judgment of the Honourable Justice Conway against Carlo Demaria et al, dated August 28, 2020, against the current assets in the accounts of Carlo Demaria at BCU bearing account number 35926 inclusive of all subaccounts (which are approximately CA\$82,560) by exercise of BCU's right of set-off against the account balances.

#### **MAREVA ORDER VARIED**

5. **THIS COURT ORDERS** that, to the extent necessary to permit the distributions to and enforcements by BCU contemplated above, the Mareva Order, dated May 6, 2015, as amended, issued by the Ontario Superior Court of Justice in the proceeding of *Trade Capital Finance Corp. v. Peter Cook et al.*, bearing Brampton Court File No. CV-15-2110-00 (the "**Brampton Action**"), be and is hereby varied.

6. **THIS COURT ORDERS** that in the event Trade Capital recovers a judgment or other monetary order against Carlo Demaria in the pending Brampton Action, then the 50% portion of the funds distributed to BCU under paragraph 2 above that is to be paid by BCU to Trade Capital under the terms of the accepted Offer to Settle dated February 7, 2025, shall be credited as of the date received by Trade Capital to any judgment or other monetary order later made in favour of Trade Capital against Carlo Demaria in the Brampton Action. Unless and until there is a

judgment or other monetary order in favour of Trade Capital against Carlo Demaria in the Brampton Action, all of the funds distributed to BCU under paragraph 2 above including the 50% portion that is to be paid to Trade Capital under the terms of the accepted Offer to Settle dated February 7, 2025, shall be credited as of the date received by BCU against the indebtedness to BCU under the Judgment of the Honourable Justice Conway against Carlo Demaria et al, dated August 28, 2020.

---

**BUDUCHNIST CREDIT UNION LIMITED**

Applicant

- and -

**2321197 ONTARIO INC. et al.**

Respondents

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

PROCEEDING COMMENCED AT TORONTO

**ORDER  
(Settlement and Final Distribution)**

**DENTONS CANADA LLP**

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

**Barbara Grossman** (LSO # 20947K)

Tel: (416) 863-4417

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[barbara.grossman@dentons.com](mailto:barbara.grossman@dentons.com)

**Sara-Ann Wilson** (LSO # 56016C)

Tel: 416-863-4402

[sara.wilson@dentons.com](mailto:sara.wilson@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	)	FRIDAY, THE 11th DAY
	)	
JUSTICE CONWAY	)	OF APRIL, 2025

BETWEEN:

**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

**DISCHARGE ORDER**

**THIS MOTION**, made by the Applicant, Buduchnist Credit Union Limited (“**BCU**”), for an order directing KSV Restructuring Inc. (“**KSV**”), in its capacity as Court-appointed receiver (the “**Receiver**”), to make certain final distributions and granting certain other relief, was heard this day by judicial video conference via Zoom.

**ON READING** the Motion Record of BCU, including the Affidavit of Amanda Campbell sworn April 1, 2025, the Factum of BCU dated April 2, 2025, the Eighth Report of the



Receiver dated March 28, 2025 (the “**Report**”), which includes the fee verification affidavits of the Receiver and Chaitons LLP appended thereto (the “**Fee Affidavits**”), and on hearing the submissions of counsel for BCU, counsel for the Receiver, counsel for the Respondents 2321197 Ontario Inc., Carlo Demaria, Sandra Demaria, 2321198 Ontario Inc., and Vicar Homes Ltd. and counsel for the Respondent Trade Capital Finance Corp., no one appearing for any other person on the service list, although properly served as appears from the affidavits of service of [NAME], sworn [DATE], filed:

1. **THIS COURT ORDERS** that the activities of the Receiver, as set out in the Report, are hereby approved.
2. **THIS COURT ORDERS** that the Receiver’s interim statement of receipts and disbursements at Appendix “B” to the Report is hereby approved.
3. **THIS COURT ORDERS** that the fees and disbursements of the Receiver and its counsel, Chaitons LLP, as set out in the Report and the Fee Affidavits, including the Fee Accrual (as defined in the Report) are hereby approved.
4. **THIS COURT ORDERS** that, after payment of the fees and disbursements herein approved, including the Fee Accrual, the Receiver shall pay the monies remaining in its hands as directed by this Court pursuant the Order (Settlement and Final Distribution) issued in this proceeding on this date.
5. **THIS COURT ORDERS** that upon payment of the amounts set out in paragraph 4 hereof, the Receiver shall be discharged as Receiver, provided however that notwithstanding its discharge herein, (a) the Receiver shall remain Receiver for the performance of such incidental duties as may be required to complete the administration of the receivership herein, and (b) the

Receiver shall continue to have the benefit of the provisions of all Orders made in this proceeding, including all approvals, protections and stays of proceedings in favour of KSV in its capacity as Receiver.

6. **THIS COURT ORDERS AND DECLARES** that KSV is hereby released and discharged from any and all liability that KSV now has or may hereafter have by reason of, or in any way arising out of, the acts or omissions of KSV while acting in its capacity as Receiver herein, save and except for any gross negligence or wilful misconduct on the Receiver's part. Without limiting the generality of the foregoing, KSV is hereby forever released and discharged from any and all liability relating to matters that were raised, or which could have been raised, in the within receivership proceedings, save and except for any gross negligence or wilful misconduct on the Receiver's part.

---

<b>BUDUCHNIST CREDIT UNION LIMITED</b> Applicant	- and -	<b>2321197 ONTARIO INC. et al.</b> Respondents
<b>ONTARIO</b> <b>SUPERIOR COURT OF JUSTICE</b> <b>(COMMERCIAL LIST)</b>		
PROCEEDING COMMENCED AT TORONTO		
<b>DISCHARGE ORDER</b>		
<b>DENTONS CANADA LLP</b> 77 King Street West, Suite 400 Toronto-Dominion Centre Toronto, ON M5K 0A1 <b>Barbara Grossman</b> (LSO # 20947K) Tel: (416) 863-4417 Fax: (416) 863-4592 <a href="mailto:barbara.grossman@dentons.com">barbara.grossman@dentons.com</a> <b>Sara-Ann Wilson</b> (LSO # 56016C) Tel: 416-863-4402 <a href="mailto:sara.wilson@dentons.com">sara.wilson@dentons.com</a> <i>Lawyers for Buduchnist Credit Union Limited</i>		

# Tab 5

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

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

~~THE HONOURABLE~~ ) ~~WEEKDAY, THE #~~  
~~JUSTICE~~ ) ~~DAY OF MONTH, 20YR~~

THE HONOURABLE ) FRIDAY, THE 11th DAY  
JUSTICE CONWAY ) OF APRIL, 2025

~~BETWEEN~~ BETWEEN:

**BUDUCHNIST CREDIT UNION LIMITED**

~~PLAINTIFF~~ Applicant

~~Plaintiff~~

- 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

~~DEFENDANT~~

~~Defendant~~

**DISCHARGE ORDER**

**THIS MOTION**, made by ~~[RECEIVER'S NAME] in its capacity as the Court-appointed~~  
~~receiver (the "Receiver") of the undertaking, property and assets of [DEBTOR] (the "Debtor");~~

~~for an order:~~ the Applicant, Buduchnist Credit Union Limited (“BCU”), for an order directing KSV Restructuring Inc. (“KSV”), in its capacity as Court-appointed receiver (the “Receiver”), to make certain final distributions and granting certain other relief, was heard this day by judicial video conference via Zoom.

ON READING the Motion Record of BCU, including the Affidavit of Amanda Campbell sworn April 1, 2025, the Factum of BCU dated April 2, 2025, the Eighth Report of the Receiver dated March 28, 2025 (the “Report”), which includes the fee verification affidavits of the Receiver and Chaitons LLP appended thereto (the “Fee Affidavits”), and on hearing the submissions of counsel for BCU, counsel for the Receiver, counsel for the Respondents 2321197 Ontario Inc., Carlo Demaria, Sandra Demaria, 2321198 Ontario Inc., and Vicar Homes Ltd. and counsel for the Respondent Trade Capital Finance Corp., no one appearing for any other person on the service list, although properly served as appears from the affidavits of service of [NAME], sworn [DATE], filed:

- ~~1. approving the activities of the Receiver as set out in the report of the Receiver dated [DATE] (the "Report");~~
- ~~2. approving the fees and disbursements of the Receiver and its counsel;~~
- ~~3. approving the distribution of the remaining proceeds available in the estate of the Debtor;~~  
~~{and}~~
- ~~4. discharging [RECEIVER'S NAME] as Receiver of the undertaking, property and assets of the Debtor; and~~

~~5. releasing [RECEIVER'S NAME] from any and all liability, as set out in paragraph 5 of this Order]<sup>1</sup>;~~

~~was heard this day at 330 University Avenue, Toronto, Ontario.~~

~~ON READING the Report, the affidavits of the Receiver and its counsel as to fees (the "Fee Affidavits"), and on hearing the submissions of counsel for the Receiver, no one else appearing although served as evidenced by the Affidavit of [NAME] sworn [DATE], filed<sup>2</sup>;~~

1. **THIS COURT ORDERS** that the activities of the Receiver, as set out in the Report, are hereby approved.

2. **THIS COURT ORDERS** that the Receiver's interim statement of receipts and disbursements at Appendix "B" to the Report is hereby approved.

23. **THIS COURT ORDERS** that the fees and disbursements of the Receiver and its counsel, Chaitons LLP, as set out in the Report and the Fee Affidavits, including the Fee Accrual (as defined in the Report) are hereby approved.

34. **THIS COURT ORDERS** that, after payment of the fees and disbursements herein approved, including the Fee Accrual, the Receiver shall pay the monies remaining in its hands ~~to~~ [NAME OF PARTY]<sup>3</sup> as directed by this Court pursuant the Order (Settlement and Final Distribution) issued in this proceeding on this date.

45. **THIS COURT ORDERS** that upon payment of the amounts set out in paragraph 3 hereof ~~[and upon the Receiver filing a certificate certifying that it has completed the other~~

<sup>1</sup> If this relief is being sought, stakeholders should be specifically advised, and given ample notice. See also Note 4, below.

<sup>2</sup> This model order assumes that the time for service does not need to be abridged.

<sup>3</sup> This model order assumes that the material filed supports a distribution to a specific secured creditor or other party.

~~activities described in the Report]~~4 hereof, the Receiver shall be discharged as Receiver ~~of the undertaking, property and assets of the Debtor~~, provided however that notwithstanding its discharge herein, (a) the Receiver shall remain Receiver for the performance of such incidental duties as may be required to complete the administration of the receivership herein, and (b) the Receiver shall continue to have the benefit of the provisions of all Orders made in this proceeding, including all approvals, protections and stays of proceedings in favour of ~~[RECEIVER'S NAME]~~KSV in its capacity as Receiver.

56. **{THIS COURT ORDERS AND DECLARES** that ~~[RECEIVER'S NAME]~~KSV is hereby released and discharged from any and all liability that ~~[RECEIVER'S NAME]~~KSV now has or may hereafter have by reason of, or in any way arising out of, the acts or omissions of ~~[RECEIVER'S NAME]~~KSV while acting in its capacity as Receiver herein, save and except for any gross negligence or wilful misconduct on the Receiver's part. Without limiting the generality of the foregoing, ~~[RECEIVER'S NAME]~~ is KSV is hereby forever released and discharged from any and all liability relating to matters that were raised, or which could have been raised, in the within receivership proceedings, save and except for any gross negligence or wilful misconduct on the Receiver's part.<sup>4</sup>

<sup>4</sup>The model order subcommittee was divided as to whether a general release might be appropriate. On the one hand, the Receiver has presumably reported its activities to the Court, and presumably the reported activities have been approved in prior Orders. Moreover, the Order that appointed the Receiver likely has protections in favour of the Receiver. These factors tend to indicate that a general release of the Receiver is not necessary. On the other hand, the Receiver has acted only in a representative capacity, as the Court's officer, so the Court may find that it is appropriate to insulate the Receiver from all liability, by way of a general release. Some members of the subcommittee felt that, absent a general release, Receivers might hold back funds and/or wish to conduct a claims bar process, which would unnecessarily add time and cost to the receivership. The general release language has been added to this form of model order as an option only, to be considered by the presiding Judge in each specific case. See also Note 1, above.





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

BUDUCHNIST CREDIT UNION LIMITED

Applicant

- and -

2321197 ONTARIO INC. et al.

Respondents

ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)

PROCEEDING COMMENCED AT TORONTO

DISCHARGE ORDER

DENTONS CANADA LLP

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Toronto, ON M5K 0A1

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Lawyers for Buduchnist Credit Union Limited

<b>Summary report:</b> <b>Litera Compare for Word 11.4.0.111 Document comparison done on</b> <b>4/2/2025 11:23:39 AM</b>	
<b>Style name:</b> Underline Strikethrough	
<b>Intelligent Table Comparison:</b> Active	
<b>Original filename:</b> C:\Users\campbellam\OneDrive - Dentons\Documents\AB, BC and CL Model Orders\receivership-discharge-order-EN.doc	
<b>Modified DMS:</b> iw://worksite.ca.dentons.com/NATDOCS/86000929/2	
<b>Changes:</b>	
<u>Add</u>	40
<del>Delete</del>	44
<del>Move From</del>	0
<u>Move To</u>	0
<u>Table Insert</u>	1
<del>Table Delete</del>	1
<u>Table moves to</u>	0
<del>Table moves from</del>	0
Embedded Graphics (Visio, ChemDraw, Images etc.)	0
Embedded Excel	0
Format changes	0
<b>Total Changes:</b>	86

# Tab 6

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

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

THE HONOURABLE MR.

)

THURSDAY, THE 17<sup>th</sup>

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



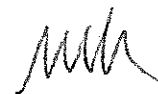
carry out its powers and duties set forth in the IR Order, save and except for bringing a motion before this Honourable Court for discharge.



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        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
4.     **PIN:**            **58120-0162 (LT)**  
  
      Property        PT E 1/2 LT 10 CON 4 ESSA TWP PT 4 RD1027; ESSA  
      Description:  
  
      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        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
4.     **PIN:**            **58120-0162 (LT)**  
  
      Property        PT E 1/2 LT 10 CON 4 ESSA TWP PT 4 RD1027; ESSA  
      Description:  
  
      Address:        6216 Fifth Line RR#1  
                      Egbert ON L0L 1N0

**BUDUCHNIST CREDIT UNION LIMITED**  
Applicant

- and -

**2321197 ONTARIO INC. et al.**  
Respondents

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

PROCEEDING COMMENCED AT TORONTO

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

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

**Barbara Grossman (LSO # 20947K)**  
Tel: (416) 863-4417  
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**Kenneth Kraft (LSO # 31919P)**  
Tel: (416) 863-4374  
[kenneth.kraft@dentons.com](mailto:kenneth.kraft@dentons.com)

*Lawyers for Buduchnist Credit Union Limited*

# Tab 7

Superior Court of Justice  
Commercial List

## FILE/DIRECTION/ORDER

BCU Limited

Plaintiff(s)

AND

Carlo DeMaria

Defendant(s)

Case Management ☐ Yes ☐ No by Judge: \_\_\_\_\_

Counsel	Telephone No:	Facsimile No:
K. Kraft for BCU		
A Winton P Underwood for De Maria		
P. Corey and C. Lee for Trade Capital		

- ☐ 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

Rory J.  
 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 debtor, Mr. DeMaria's home) and a property on 5th line in Egbert Ontario (which is DeM's cottage), to ~~today~~ <sup>yesterday</sup> pre-emptory to DeM.

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

DeM 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 DeM 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 monitory 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 Jamaica or ~~Jamaica~~ ~~setting~~ 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 Victor 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 ~~to~~ when it used the Vicar 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 Vicar'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, DeM 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 Vicar. BCU did as instructed.

The cheques bounced.

BCU reversed the transfers, putting the Vicar LOC back where it was before the NSF cheques amount were transferred from DYK to the Vicar 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 Vicar 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 \$80,000 to The Vicar account. The problem arose, not from BCE misconduct, but from the fact that the cheques deposited to the DYK account were bad.

10b) 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 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.

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Superior Court of Justice  
Commercial List

## FILE/DIRECTION/ORDER

## Judges Endorsment Continued

Barrera seems to say 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

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Superior Court of Justice  
Commercial List

## FILE/DIRECTION/ORDER

## Judges Endorsment Continued

De M'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 De M'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.

~~That being proved the next~~

## 2. Discharge of Guarantee

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



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Superior Court of Justice  
Commercial List

## FILE/DIRECTION/ORDER

## Judges Endorsment Continued

Vicar LOC and That his guarantee is limited to ~~Can~~ \$1 million. However, De M argues, relying on Banque de Montreal v. Union 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 ~~appears~~ is no doubt The position

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

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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

Superior Court of Justice  
Commercial List

## FILE/DIRECTION/ORDER

## Judges Endorsment Continued

Limit on the guarantee of Lijah  
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  
~~if~~ 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?

Re 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 in friction 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 shareholders, taken as a whole, ~~to~~ to appoint a

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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 these receivership orders over other assets.

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

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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 mechanisms.

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 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

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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  $3\frac{1}{2}$  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 De M's property. De M 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



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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 Masera 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 Masera 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  $3\frac{1}{2}$  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, assets and hit on his rights.

This motion of course, is not before me (it has not even been fought 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  
Mareva 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 wasting asset.  
That contributed to my conclusion  
that the receivers ~~full~~ 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 taxes are not on Woodland  
 have been paid although property tax  
 arrears (in lativel modest) have  
 accrued on The Cottage.  
 And, while the ~~is~~ 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 ~~part 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 Mareva 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<sup>shall</sup> 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 ~~at~~ of the same length.





**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 PENNY<sup>1</sup>**

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.

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<sup>1</sup> 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 5<sup>th</sup> 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 <sup>at</sup> not all clear to me that extending the receiver's powers to these two properties as well is the "high cost" alternative. MAH

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.

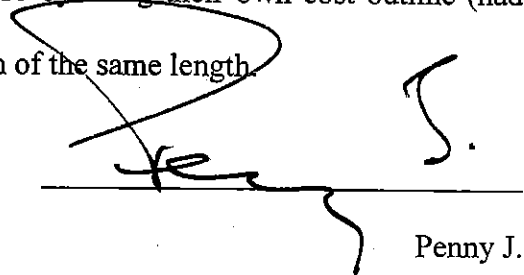
2. Upon the expiry of 60 days or the disposition of the motion to set aside the Mareva injunction (or sooner if necessary) the parties shall schedule a 9:30am appointment to report on the status of the proposed next steps which are to be taken.

### 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.



Penny J.

# Tab 8



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

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

THE HONOURABLE MR.

)  
)  
)  
)

MONDAY, THE 17th DAY

JUSTICE PENNY

OF JUNE, 2022

BETWEEN:

**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

**ORDER  
(Final Distribution)**

**THIS MOTION**, made by the Applicant, Buduchnist Credit Union Limited (“**BCU**”), for an order authorizing and directing the KSV Kofman Inc., in its capacity as court-appointed receiver (the “**Receiver**”), to make distributions to BCU of all funds held by the Receiver (set out in the Receiver’s Interim Statement of Receipts and Disbursements as of May 20, 2021 attached as Schedule A to BCU’s Fresh As Amended Notice of Motion dated June 18, 2021, as subsequently updated as of March 22, 2022 and attached as **Schedule “A”** to this Order, and as further updated as of June 20, 2022 following the distributions ordered by Interim Distribution Order #2 dated April 12, 2022 made on this motion and attached as **Schedule “B”** to this Order), and other alternative relief, was heard March 31, 2022 at Toronto via Zoom video conference.

**ON READING** the Motion Record of BCU (volumes 1 and 2) dated February 20, 2020, Supplementary Motion Record of BCU (volumes 1 and 2) dated June 18, 2021, Second Supplementary Motion Record of BCU dated November 18, 2021, Chart Summarizing Writs of Seizure and Sale appearing in OWL Search dated November 23, 2021, Endorsement of Justice Emery dated September 9, 2021, Amount Owing with Interest under Woodland Cost Order of Justice Conway up to December 13, 2021, Application Record returnable March 13, 2021 in BCU v. Vicar Corporate Holdings Ltd. (CV-21-00661918-00CL), the Seventh Report of the Receiver dated October 21, 2020 (without appendices), Transcript of the Cross-Examination of Oksana Prociuk held December 17, 2018, Transcript of the Cross-Examination of Oksana Prociuk held March 11, 2020, Endorsement of Justice Penny (Scheduling Conference) dated December 7, 2021, Updated Interim Statement of Receipts and Disbursements as of March 22, 2022, Woodland Motion Costs Award Amount (BCU) up to March 31, 2022, Transcript of the Rule 39.03 Examinations of Roma Bereza held September 11, 2020, Transcript of the Rule 39.03 Examinations of Roma Bereza held January 10, 2019, Notice of Motion of BCU in CV-21-00663709-00CL dated March 22, 2022, the Responding Motion Record of Trade Capital Finance Corp. ("**Trade Capital**") (volumes 1-5) dated January 24, 2020, Supplementary Application Record (Reply) of BCU dated November 18, 2019 in CV-19-00618175-00CL, and Interim Distribution Order #2 dated April 12, 2022 made upon Trade Capital withdrawing its opposition to certain further distributions to BCU following the conclusion of argument, and on hearing the submissions of counsel for BCU, and counsel for Trade Capital, and in the presence of counsel for 2321197 Ontario Inc., Carlo Demaria, Sandra Demaria, 2321198 Ontario Inc., and Vicar Homes Ltd., no one appearing for any other person on the service list although properly served as appears from the affidavits of service filed, decision having been reserved to this day for written reasons delivered by Endorsement dated this day and subsequent correspondence from Justice Penny dated August 3, 2022 responding to Trade Capital's request made by letter dated June 30, 2022 for a clarification,

#### **PRIORITY DISTRIBUTIONS**

1. **THIS COURT ORDERS** that, with the exception of the priority distributions authorized in paragraphs 2-5 below and pursuant to the Interim Distribution Order #2, dated April 12, 2022,

BCU's motion in its capacity as mortgagee for priority distribution of the proceeds of sale and rental income (the "**Proceeds**") of the following real properties is denied:

- (a) 87 Elm Grove Avenue, Richmond Hill, Ontario (the "**Elm Property**");
- (b) 46 Puccini Drive, Richmond Hill, Ontario (the "**Puccini Property**"); and
- (c) 211 Woodland Acres Crescent, Vaughan, Ontario (the "**Woodland Property**").

### **WOODLAND SECOND MORTGAGE**

2. **THIS COURT ORDERS** that, on account of outstanding advances of \$1,003,510.23 as of May 6, 2015 under the mortgage/charge in favour of BCU registered against the Woodland Property on December 5, 2012, BCU is entitled to a priority distribution as mortgagee plus interest thereon<sup>1</sup> out of the Proceeds of the Woodland Property.

3. **THIS COURT ORDERS AND DIRECTS** the Receiver, after payment of its fees and expenses, including the fees and expenses of its counsel, to pay to BCU the remaining net Proceeds of the Woodland Property, up to the maximum amount in paragraph 2 above.

### **PUCCINI MORTGAGE**

4. **THIS COURT ORDERS** that BCU is entitled to a priority distribution as mortgagee of \$238,384.34<sup>2</sup> out of the Proceeds of the Puccini Property.

5. **THIS COURT ORDERS AND DIRECTS** the Receiver to pay to BCU the amount of \$238,384.34 out of the Proceeds of the Puccini Property.

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<sup>1</sup> Calculated from December 7, 2019, pursuant the Judgments dated August 28, 2020 in favour of BCU against each of Carlo Demaria and Sandra Demaria, at a rate of 22% per year, payable monthly in respect of the amount in excess of \$2,080,000 and at the rate of 4.50% per year, payable monthly in respect of the amount up to \$2,080,000.

<sup>2</sup> Computed as interest for the period from May 6, 2015 to December 6, 2019 on the \$1,047,552.15 balance owing as of May 5, 2015 under the mortgage/charge in favour of BCU registered against the Puccini Property on February 27, 2015, calculated at the rate of BCU's prime rate of interest in effect from time to time plus 1.00% per year.

## **COTTAGE ENFORCEMENT COSTS**

6. **THIS COURT ORDERS** that BCU is entitled to costs in respect of enforcement of the mortgage/charge registered on April 28, 2006 against the property municipally known as 6216 Fifth Line, Egbert, Ontario (the “**Cottage Property**”), in accordance with the terms of its mortgage security, in an amount to be quantified by the Court (the “**Cottage Enforcement Costs**”) (subject to BCU’s right to waive the priority payment of the Cottage Enforcement Costs in lieu of quantifying such costs).

7. **THIS COURT ORDERS AND DIRECTS** the Receiver, after payment of its fees and expenses, including the fees and expenses of its counsel, to pay to BCU the Cottage Enforcement Costs (after quantification by the Court and provided BCU does not waive the priority payment of such costs) out of the net proceeds of the Cottage Property.

## **PAYMENTS TO SHERIFF**

8. **THIS COURT ORDERS** that Trade Capital Finance Corp.’s request for an order requiring the Receiver to hold the disputed Proceeds as security for the Mareva Order issued by the Honourable Justice Ricchetti on May 6, 2015 issued in the proceeding *Trade Capital Finance Corp. v. Peter Cook et al.*, bearing Brampton Court File No. CV-15-2110-00, is denied.

9. **THIS COURT ORDERS AND DIRECTS** the Receiver, after payment of all priority distribution amounts directed herein and its fees and expenses, including the fees and expenses of its counsel, to forthwith pay to the Sheriff in the judicial district in which each of the subject properties is located:

- (a) any remaining Proceeds of the Elm Property for the benefit of the execution creditors of 2321197 Ontario Inc.;
- (b) any remaining Proceeds of the Puccini Property for the benefit of the execution creditors of 2321198 Ontario Inc.;
- (c) any remaining Proceeds of the Woodland Property for the benefit of the execution creditors of Carlo Demaria; and

- (d) any remaining proceeds of the Cottage Property for the benefit of the execution creditors of Carlo Demaria.

### **JUDGMENT ENFORCEMENT**

10. **THIS COURT ORDERS AND DECLARES** that, (a) BCU is entitled to enforce its Judgments, dated August 26 and 28, 2020 (and Writs of Seizure and Sale filed in respect thereof), against the proceeds of assets of all judgment debtors thereunder including Carlo Demaria, 2321197 Ontario Inc., 2321198 Ontario Inc. and Vicar Homes Ltd. held by the Sheriff for the benefit of judgment/execution creditors including without limitation the payments by the Receiver to the Sheriff directed by this Order, and (b) the Mareva Order shall be and is hereby lifted for this limited purpose.

### **SECOND INTERIM DISTRIBUTION ORDER AMENDMENT**

11. **THIS COURT ORDERS** that paragraph 1(a) of the Order of the Honourable Justice Penny, dated April 12, 2022, be and is hereby amended to correct a typographical error by deleting \$83,297.78 and inserting in its place \$83,397.78.

### **COSTS OF THIS MOTION**

12. **THIS COURT ORDERS** that there shall be no order as to costs of this motion.



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**Schedule "A"**  
**Receiver's Interim Statement of Receipts and Disbursements as of March 22, 2022**

87 Elm Grove Avenue, 46 Puccini Drive, 6216 Fifth Line and 211 Woodland Acres

**Interim Statement of Receipts and Disbursements**

For the period November 13, 2018 to March 22, 2022

(CAD\$)

	<b>46 Puccini Dr.</b>	<b>87 Elm Grove Ave.</b>	<b>6216 Fifth Line</b>	<b>211 Woodland</b>
<b><u>Receipts</u></b>				
Sale proceeds	2,250,000	1,750,000	405,000	3,375,000
Extension fees paid by Purchaser	26,000	-	-	-
Advances from BCU under Receiver's Borrowings Charge	20,000	45,000	5,000	40,000
Rental income	23,453	-	3,850	31,500
Interest	72,308	55,476	5,903	9,910
<b>Total Receipts</b>	<b>2,391,761</b>	<b>1,850,476</b>	<b>419,753</b>	<b>3,456,410</b>
<b><u>Disbursements</u></b>				
HST remitted to CRA on new residential home (87 Elm Grove only)	-	204,089	-	-
Real estate commissions (including HST)	108,056	72,744	20,594	190,688
Property taxes	18,226	6,199	1,739	-
Insurance, maintenance and contractor costs	12,985	18,680	3,432	26,497
Professional fees (Receiver and legal counsel)	71,990	63,014	38,789	96,271
Repayment of receivership advances to BCU (principal and interest)	21,161	45,385	5,208	40,805
Court-approved interim distributions to BCU	1,091,239	-	214,486	1,096,334
HST on disbursements	11,325	10,860	5,776	14,609
Sundry expenses	3,287	2,920	3,243	1,834
<b>Total Disbursements</b>	<b>1,338,270</b>	<b>423,889</b>	<b>293,267</b>	<b>1,467,037</b>
<b>Balance in Receiver's accounts and/or Term Deposits</b>	<b>1,053,491</b>	<b>1,426,587</b>	<b>126,486</b>	<b>1,989,374</b>
<b>Total</b>				<b>4,595,938</b>

Note: This statement has been prepared on a cash basis and excludes accrued obligations (if any).

**Schedule "B"**  
**Receiver's Interim Statement of Receipts and Disbursements as of June 20, 2022**

87 Elm Grove Avenue, 46 Puccini Drive, 6216 Fifth Line and 211 Woodland Acres

**Interim Statement of Receipts and Disbursements**

For the period November 13, 2018 to June 20, 2022

(CAD\$)

	46 Puccini Dr.	87 Elm Grove Ave.	6216 Fifth Line	211 Woodland
<b><u>Receipts</u></b>				
Sale proceeds	2,250,000	1,750,000	405,000	3,375,000
Extension fees paid by Purchaser	26,000	-	-	-
Advances from BCU under Receiver's Borrowings Charge	20,000	45,000	5,000	40,000
Rental income	23,453	-	3,850	31,500
Interest	75,824	58,725	6,217	14,938
<b>Total Receipts</b>	<b>2,395,277</b>	<b>1,853,725</b>	<b>420,067</b>	<b>3,461,438</b>
<b><u>Disbursements</u></b>				
HST remitted to CRA on new residential home (87 Elm Grove only)	-	204,089	-	-
Real estate commissions (including HST)	108,056	72,744	20,594	190,688
Property taxes	18,226	6,199	1,739	-
Insurance, maintenance and contractor costs	12,985	18,680	3,432	26,497
Professional fees (Receiver and legal counsel)	74,439	65,538	41,234	96,271
Repayment of receivership advances to BCU (principal and interest)	21,161	45,385	5,208	40,805
Court-approved interim distributions to BCU	1,091,239	-	277,729	2,132,620
HST on disbursements	11,644	11,188	6,093	14,609
Sundry expenses	3,323	2,956	3,292	1,895
<b>Total Disbursements</b>	<b>1,341,073</b>	<b>426,777</b>	<b>359,322</b>	<b>2,503,384</b>
<b>Balance in Receiver's accounts and/or Term Deposits</b>	<b>1,054,203</b>	<b>1,426,948</b>	<b>60,745</b>	<b>958,054</b>
<b>Total</b>				<b>3,499,951</b>

Note: This statement has been prepared on a cash basis and excludes accrued obligations (if any).

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

**BUDUCHNIST CREDIT UNION LIMITED**

Applicant

- and -

**2321197 ONTARIO INC. et :**

Responder

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

PROCEEDING COMMENCED AT TORONTO

**ORDER**

**DENTONS CANADA LLP**

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

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*Lawyers for Buduchnist Credit Union Limited*

# Tab 9

Corrected decision: The text of the original judgment was corrected on March 14, 2024, and the description of the correction is reported at 2024 ONCA 190.

## COURT OF APPEAL FOR ONTARIO

CITATION: Buduchnist Credit Union Limited v. 2321197 Ontario Inc., 2024

ONCA 57

DATE: 20240126

DOCKET: C70898

Roberts, Trotter and Sossin JJ.A.

BETWEEN

Buduchnist Credit Union Limited

Applicant (Respondent/  
Appellant by way of cross-appeal)

and

2321197 Ontario Inc., Carlo Demaria, Sandra Demaria,  
2321198 Ontario Inc., Sasi Mach Limited, Vicar Homes Ltd. and  
Trade Capital Finance Corp.\*

Respondents (Appellant/  
Respondent by way of cross-appeal\*)

Peter Carey, Christopher Lee and Kiren Purba, for the appellant/respondent by  
way of cross-appeal

Barbara Grossman and Sara-Ann Wilson, for the respondent/appellant by way of  
cross-appeal

Heard: June 12, 2023

On appeal from the order of Justice Michael A. Penny of the Superior Court of  
Justice, dated June 17, 2022, with reasons reported at 2022 ONSC 3414.

**Roberts J.A.:**

[1] This appeal concerns the breadth of the court's jurisdiction to respond to a breach of a court order and relieve against an abuse of its process. This question arises in the context of a creditor's claim for priority and payment that results solely as a consequence of its breach of a *Mareva* order. The disposition of this appeal allows this court to restate the scope of the court's jurisdiction and discretion to craft the appropriate order in light of a creditor's breach of a clear court order. Specifically, this appeal answers the question of whether the court may delay a creditor's enforcement of its claim that only exists as a result of its breach of a court order.

[2] The appellant, Trade Capital Finance Corp. ("Trade Capital"), appeals the distribution order made by the motion judge in favour of the respondent, Buduchnist Credit Union Limited ("BCU").

[3] Trade Capital was the victim of an elaborate fraud. On May 6, 2015, Trade Capital obtained a comprehensive *Mareva* order ("the *Mareva* Order") over assets held by named defendants.

[4] Some of the parties to the fraud were significant clients of BCU. BCU continued to make advances to these clients, under mortgages for which it was the mortgagee, in breach of the *Mareva* Order. BCU then obtained consent judgments against these clients for both pre- and post-*Mareva* advances and

moved for a distribution order before the motion judge. The parties agreed that BCU was entitled to enforce any claim for advances made prior to the *Mareva* Order, although they disputed the timing of some advances. They also disagreed about whether BCU could enforce its post-*Mareva* advances.

[5] The motion judge found that BCU had breached the *Mareva* Order and disallowed BCU's claim as a secured creditor for the post-*Mareva* advances. However, the motion judge concluded that BCU was nevertheless entitled to enforce its claim as an unsecured judgment creditor and granted the distribution order over both the pre- and post-*Mareva* advances.

[6] Trade Capital argues that the motion judge erred by varying the *Mareva* Order and allowing BCU to immediately enforce its claim as an unsecured creditor for the post-*Mareva* advances, when that portion of the claim arose from BCU's breach of the *Mareva* Order. In particular, Trade Capital maintains that the motion judge should have delayed the enforcement of BCU's claim until Trade Capital's action was determined. Trade Capital also argues that the motion judge erred in finding that some of BCU's advances were made before the *Mareva* Order when they were in fact post-*Mareva* advances made in contravention of the *Mareva* Order.

[7] BCU submits Trade Capital's appeal should be dismissed. It cross-appeals with respect to the amount of proceeds available for distribution and its loss of

priority as a secured creditor, arguing that the motion judge had no jurisdiction to alter its creditor status.

[8] The key issue before the motion judge was whether, in light of BCU's breach that gave rise to its claim, the *Mareva* Order should have been varied to permit BCU to enforce its claim against the assets covered by the *Mareva* Order. As I shall explain, when the motion is properly framed from that perspective, BCU's creditor status becomes irrelevant. Rather, once the motion judge determined, correctly in my view, that BCU breached the *Mareva* Order, he had broad jurisdiction to deal with BCU's abuse of the court's process because of its breach, regardless of the procedural route chosen by the parties to bring the issues before the court. This broad jurisdiction included the motion judge's order that BCU lose its priority as a secured creditor for the post-*Mareva* advances and the further discretion to order, as Trade Capital seeks, that the *Mareva* Order not be varied and enforcement of BCU's claim for the post-*Mareva* advances be delayed until Trade Capital's action is determined.

## **A. FACTUAL BACKGROUND**

### **(i) Fraud Against Trade Capital**

[9] Trade Capital was the victim of an elaborate fraud. As indicated in Ricchetti J.'s May 11, 2015 reasons for the *Mareva* Order, Trade Capital purchases accounts receivable at a discount from face value. Unbeknownst to the



company, its then president, Peter Cook, arranged for payment by Trade Capital of approximately \$7 million in receivables which were entirely fraudulent. Confronted, Mr. Cook admitted to the fraudulent scheme. Carlo De Maria and various other individuals and corporations also allegedly participated in the fraudulent scheme or received monies obtained from or through the fraudulent scheme.

**(ii) De Maria Related Corporations and Properties**

[10] A brief summary of the alleged participants and relationships among the alleged participants serves to illustrate the complicated web of the alleged fraudulent scheme and explain the necessarily broad ambit of the *Mareva* Order. Several corporations controlled or owned by, or otherwise related to, Mr. De Maria were implicated in the transactions relevant to this appeal.

[11] Mr. De Maria was involved in The Cash House Inc. (“The Cash House”), a money services business that Trade Capital alleges was also party to the fraud against it. BCU handled a large portion of The Cash House’s business.

[12] Mr. De Maria was a director and officer of Vicar Homes Ltd. (“Vicar Homes”) and owned Vicar Corporate Holdings Ltd. (“Vicar Corp”). In addition, Mr. De Maria owned and controlled Do You Know Inc. (“DYKI”), a corporation with bank accounts at both BCU and Toronto Dominion Bank (“TD”). Mr. De Maria was also

the sole shareholder and director of both 2321197 Ontario Inc. (“197”) and 2321198 Ontario Inc. (“198”).

[13] In his personal capacity and through related corporations, Mr. De Maria owned four properties at the time the *Mareva* Order was issued that were relevant to BCU’s distribution motion. Mr. De Maria and his wife jointly owned properties in Vaughan (the “Woodland Property”) and Egbert (the “Cottage”). Mr. De Maria’s numbered corporations also owned two Richmond Hill properties: 197 was the registered owner of a property on Elm Grove Avenue (the “Elm Grove Property”), and 198 was the registered owner of a property on Puccini Drive (the “Puccini Property”).

[14] In February 2015, Mr. De Maria sold The Cash House to 2454904 Ontario Inc. (“245”). 245 was purportedly owned by Osman Khan, who was previously Mr. De Maria’s driver. In his June 10, 2015 endorsement dismissing the motion by Mr. De Maria, The Cash House, and another one of his companies to set aside the *Mareva* Order, Ricchetti J. noted that the transfer of The Cash House to Mr. Khan “has all the indicia of a ‘fake’ transaction.”

### **(iii) Pre-*Mareva* Encumbrances**

[15] Prior to the *Mareva* Order, BCU held first mortgages over three of the properties owned by Mr. De Maria and 198.

[16] In August 2010, BCU registered a first mortgage on the Woodland Property in the amount of \$1,490,000. In December 2012, BCU registered a second mortgage to secure a line of credit for Vicar Homes in the amount of \$3,000,000.

[17] In February 2015, BCU registered a mortgage on the Puccini Property in the principal amount of \$2,500,000. This mortgage was personally guaranteed by Mr. De Maria.

[18] When the *Mareva* Order was issued, the balance on the Puccini mortgage was \$1,042,552.15, and the balance on the second Woodland mortgage was \$1,003,510.23.<sup>1</sup>

**(iv) The *Mareva* Order**

[19] Trade Capital has necessarily expended considerable effort to trace and recover the monies lost through the fraudulent scheme. I highlight summarily the steps relevant to this appeal.

[20] On October 28, 2013, Trade Capital obtained a *Norwich* order, subsequently amended and extended on several occasions, that permitted it to obtain voluminous documentation regarding the fraudulent scheme and the trail of monies generated by the fraudulent scheme. The fruits of these orders supported its

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<sup>1</sup> The mortgage on the Cottage Property was also registered prior to the *Mareva* Order. The motion judge observed that there was “effectively, no dispute about any aspect of the Cottage property or mortgage.”

*ex parte* motion for a *Mareva* order. Over \$4 million of the money stolen from Trade Capital subsequently passed through The Cash House.

[21] On May 6, 2015, Trade Capital obtained, on an *ex parte* motion, the *Mareva* Order, which froze any assets owned directly or indirectly by the *Mareva* defendants, including any assets the defendants controlled through related individuals and corporations. The Cash House and Mr. De Maria were among the named *Mareva* defendants. Vicar Homes, Vicar Corp, 197, 198, DYKI, Mr. Khan, and 245 were not.

[22] On the *Mareva* motion, Ricchetti J. was satisfied that Trade Capital had made out a strong *prima facie* claim of fraud on the basis of the voluminous materials filed that showed the details of the documented fraudulent scheme. He held that “[t]he evidence, which includes Mr. Cook’s confession, is overwhelming that a fraud was carried out against Trade Capital” and that “each of the [*Mareva*] defendants perpetrated, facilitated or received the proceeds of a fraudulent scheme against Trade Capital”. He characterized the fraudulent scheme as “a very complex fraud”, describing how the *Mareva* defendants “went to great lengths to perpetrate this fraud” and how “[t]he monies were traced into numerous accounts”. He was persuaded that “unless a *Mareva* Injunction is granted ... there is a very real risk that the proceeds from the fraud would be disposed of or transferred beyond the jurisdiction of this court.”

[23] On May 6, 2015, Trade Capital served the *Mareva* Order on BCU.

[24] As already noted, Mr. De Maria and The Cash House were unsuccessful in having the *Mareva* Order set aside. They did not appeal from Ricchetti J.'s June 10, 2015 order dismissing their motion to set aside the *Mareva* Order.

[25] On January 21, 2016, Mackenzie J. found that The Cash House, 245, and Mr. Khan intentionally breached the *Mareva* Order by continuing to operate The Cash House's business after being served with the order. Their appeal was dismissed by this court on April 4, 2017: *Trade Capital Finance Corp. v. Cook*, 2017 ONCA 281, leave to appeal refused, [2017] S.C.C.A. No. 219.

[26] On March 24, 2016, Emery J. issued an order expanding the *Mareva* Order to the assets of 245 and Mr. Khan, among others.<sup>2</sup> On September 24, 2019, Penny J. dismissed a second motion by Mr. De Maria and one of his numbered companies to set aside the *Mareva* Order: *Trade Capital Finance Corp. v. Cook*, 2019 ONSC 4950.

[27] Prior to BCU's distribution order, another creditor, Maple Trust Company ("Maple Trust"), sought to vary the *Mareva* Order: *Trade Capital Finance Corp. v. Cook*, 2017 ONSC 1857, 137 O.R. (3d) 685, aff'd 2018 ONCA 27, 56 C.B.R. (6th) 1 (*"Maple Trust"*). As I explain in greater detail below, Maple Trust was successful

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<sup>2</sup> These parties were not added as defendants but were each referred to in Emery J.'s March 24, 2016 order as a "Mareva Respondent".

in varying the *Mareva* Order to enforce two costs orders obtained against The Cash House.

[28] Based on the record before us, Trade Capital's claim has not yet gone to trial and is being case managed in the Commercial Court by Emery J.

**(v) Post-*Mareva* Advances**

[29] Following receipt of the *Mareva* Order, BCU made monetary advances to Mr. De Maria and his related corporations on the Puccini, Woodland, and Elm Grove mortgages.<sup>3</sup> Though the Puccini mortgage and the second Woodland mortgage pre-dated the *Mareva* Order, further advances were made under these mortgages by BCU after the *Mareva* Order was put into place. The mortgage on the Elm Grove Property was entered into, with advances made, after BCU's receipt of the *Mareva* Order. All these mortgages went into default.

[30] BCU sought and obtained the appointment of a receiver and obtained judgment against Mr. De Maria and his related companies with the latter's consent. The Receiver sold the properties and BCU moved for an order directing the Receiver to distribute to it the net proceeds of sale after payment of the Receiver's fees and expenses.

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<sup>3</sup> The advances made under the Woodland mortgages are described in detail below under that section of my analysis.

[31] The parties agreed that BCU should retain its priority for all pre-*Mareva* advances. However, Trade Capital submitted that BCU should not be paid any amounts that it advanced following its receipt of the *Mareva* Order in priority to the amounts owing to Trade Capital. Included in those amounts, according to Trade Capital, are advances BCU made post-*Mareva* Order against the Woodland Property, which was jointly owned by Mr. De Maria and his wife, and against the Puccini Property, which was owned by 198.

**(vi) The Distribution Order**

[32] The motion judge concluded that BCU breached the *Mareva* Order and that, as a result, it could not claim priority payment as a secured creditor for the advances made in breach of that order. However, he determined that BCU, in its capacity as a judgment creditor, was still entitled to immediately enforce its judgment against Mr. De Maria and therefore varied the application of the *Mareva* Order for that limited purpose. He found that some, but not all, of the Woodland Property advances were made before the *Mareva* Order was in place. He noted that Trade Capital's action had not yet proceeded to judgment and that there was no evidence about its status. He concluded that he did not have "jurisdiction to order the Receiver to hold proceeds of sale 'as security' for Trade Capital's as yet unproven claims." He ordered that all the net proceeds of sale be paid by the Receiver to the Sheriff for the benefit of Mr. De Maria's creditors.

[33] The effect of the motion judge's order is that BCU can execute on its judgment and recover amounts owed, including the funds advanced contrary to the *Mareva* Order. If Trade Capital is ultimately successful, those funds will no longer be available to satisfy its claim.

[34] Moreover, at the time of the distribution motion, BCU was the only claimant to the funds, aside from Trade Capital. As a result, if BCU's post-*Mareva* Order advances were paid out at that time, there would be insufficient funds remaining to satisfy Trade Capital's claim.

## **B. ANALYSIS**

[35] The parties raise several grounds on the appeal and cross-appeal. It is necessary to consider only three issues to dispose of the appeal and cross-appeal: 1) whether BCU breached the *Mareva* Order; 2) if so, the scope of the motion judge's jurisdiction and discretion to craft an appropriate order in the context of BCU's claim for a distribution order and its breach of the *Mareva* Order; and 3) whether BCU's claim in relation to the Woodland Property represents advances made before or after the *Mareva* Order was in place.

[36] The motion judge's interpretation of the *Mareva* Order is a question of law reviewable on a correctness standard: *Onion Lake Cree Nation v. Stick*, 2020 SKCA 101; *Housen v. Nikolaisen*, 2002 SCC 33, [2002] 2 S.C.R. 235, at para. 8.



As explained below, I see no error in the motion judge's interpretation of the *Mareva* Order, nor in his determination that BCU breached the *Mareva* Order.

[37] With respect to the legal issue of the motion judge's jurisdiction, while he made no error in removing BCU's priority as a secured creditor, as I shall explain, the motion judge unnecessarily limited the scope of his jurisdiction and discretion in relation to the appropriate order that he could make in response to BCU's distribution request. This is an error of law that is subject to a correctness standard on appellate review: *Housen*, at para. 8.

[38] The motion judge's finding of fact that the Woodland Property advances were made prior to the *Mareva* Order is subject to deference, absent palpable and overriding error: *Housen*, at para. 10. However, for the reasons set out below, I agree with Trade Capital that the evidence does not support the motion judge's finding that the Woodland Property advances were made prior to the *Mareva* Order.

**(a) BCU's Breach of the *Mareva* Order**

[39] BCU repeats the argument rejected by the motion judge that the assets of 197 and 198 (which were not named *Mareva* defendants) were not caught by the *Mareva* Order. Relying on non-binding jurisprudence from other jurisdictions, BCU maintains that the assets of 197 and 198 were not under the direct or indirect

control of Mr. De Maria, even though he was the sole shareholder and director of both entities.

[40] I agree with the motion judge's reasons for distinguishing the U.K. and, on appeal, Australian jurisprudence that has not been followed in Ontario. In particular, I note and accept the motion judge's highlighted distinguishing factor that:

[I]n any event, on the undisputed facts presented here, it is not 'merely' because of Mr. De Maria's status as sole shareholder and director that the assets are caught. With BCU's knowledge, and indeed at its request or demand, Mr. De Maria actually exercised that control so as to cause 197 and 198 to encumber their assets to fulfill personal obligations Mr. De Maria owed to BCU.

[41] This issue turns on the motion judge's interpretation of the following provisions of the *Mareva* Order:

1. THIS COURT ORDERS that each Mareva Defendant and its servants, employees, agents, assigns, officers, directors, affiliates and anyone else acting on their behalf or in conjunction with any of them, and any and all persons with notice of this injunction, are restrained from directly or indirectly, by any means whatsoever:

- (a) selling, removing, dissipating, alienating, transferring, assigning, encumbering, or similarly dealing with any assets of any of the Mareva Defendants, that are located in Canada or the United States, including but not limited to the assets and accounts listed in Schedule "A" hereto;
- (b) instructing, requesting, counselling, demanding, or encouraging any other person to do so; and,

(c) facilitating, assisting in, aiding, abetting, or participating in any acts the effect of which is to do so.

2. THIS COURT ORDERS that paragraph 1 applies to all of the assets of each Mareva Defendant whether or not they are in such Defendant's own name and whether they are solely or jointly owned or whether the assets are held in trust for the Defendant. For the purpose of this order, a Defendant's assets include any asset which such Defendant has the power, directly or indirectly, to dispose of or deal with as if it were such Defendant's own. A Defendant is to be regarded as having such power if a third party holds or controls the assets in accordance with such Defendant's direct or indirect instructions.

[42] I agree with the motion judge's conclusion that the *Mareva* Order's "clear and express terms" speak for themselves. They are broad and plainly extend to unnamed affiliates of each named *Mareva* defendant, as well as all persons with notice of the *Mareva* Order, and to the assets each *Mareva* defendant "has the power, directly or indirectly, to dispose of or deal with" as if they were their own, whether or not they are in the *Mareva* defendant's name. There is no question that BCU had the knowledge necessary to determine the relationship between Mr. De Maria and the various companies with which he was affiliated and which he directly or indirectly controlled. The motion judge correctly determined that the words of paragraph 2 of the *Mareva* Order were intended to catch assets of corporations over which Mr. De Maria exercised complete control, and that properly interpreted, the words of the *Mareva* Order have that effect. Nor do I see

any error in his conclusion that 197 and 198 and their respective assets were covered by the *Mareva* Order, and that BCU was “well aware of all relevant facts.”

[43] I would therefore reject this ground of appeal.

**(b) Jurisdiction and Scope of Discretion**

[44] As earlier noted, the parties agree that BCU should be repaid for advances made on the subject properties before the *Mareva* Order was issued. Trade Capital argues, however, that the motion judge erred in ordering that BCU could immediately collect the amounts it advanced in breach of the *Mareva* Order from the Sheriff as a judgment creditor. Trade Capital contends that the motion judge should have exercised his jurisdiction to prevent BCU from recovering any monies obtained by breaching the *Mareva* Order until the final determination of Trade Capital’s action.

**(i) Governing Principles**

[45] *Mareva* injunctive orders restrain the defendant and others from improperly disposing of or dealing with their assets in order to prevent them from putting the assets beyond the court’s reach. These orders stand as an exception to the general principle that plaintiffs are not entitled to pre-judgment relief to ensure the enforcement of their claim post-judgment: *Sabourin and Sun Group of Companies v. Laiken*, 2013 ONCA 530, 116 O.R. (3d) 641, at para. 53, *aff’d Carey v. Laiken*, 2015 SCC 17, [2015] 2 S.C.R. 79. *Mareva* orders are not intended to place the

plaintiff in the position of a secured creditor, prevent legitimate creditors from enforcing debts, or impede the defendant from meeting “legitimate debt payments accruing in the ordinary course”: *Aetna Financial Services Ltd. v. Feigelman*, [1985] 1 S.C.R. 2, at pp. 25-26; *Halifax Plc. v. Chandler*, [2001] EWCA Civ. 1750. They are granted only where there is a “genuine risk of disappearance of assets”: *Aetna*, at p. 25. Although not dependent on the existence of fraud, *Mareva* orders often restrain the defendant’s dealing with its assets before trial on the basic premise that the defendant “is a rogue bent on flouting the process of the court”: *Sabourin*, at para. 53.

[46] A *Mareva* order is a discretionary equitable remedy: *Kepis & Pobe Financial Group Inc. v. Timis Corporation*, 2018 BCCA 420, 429 D.L.R. (4th) 237, at para. 3. *Mareva* orders are granted as an exceptional remedy to maintain the integrity of the court’s process and prevent the frustration of the course of justice, objectives that transcend the parties’ interests, by preventing defendants and others from disposing of assets and flouting the court’s process: *Sabourin*, at paras. 50 and 53; *Equustek Solutions Inc. v. Jack*, 2014 BCSC 1063, at para. 132, aff’d *Equustek Solutions Inc. v. Google Inc.*, 2015 BCCA 265, 75 B.C.L.R. (5th) 315, aff’d *Google Inc. v. Equustek Solutions Inc.*, 2017 SCC 34, 72 B.C.L.R. (5th) 100, citing *Grenzservice Speditions Ges.m.b.h v. Jans* (1995), 15 B.C.L.R. (3d) 370 (S.C.), at para. 92; David A. Crerar, *Mareva and Anton Piller Preservation Orders in Canada: A Practical Guide* (Toronto: Irwin Law, 2017) at p. 35.

[47] The equitable function of *Mareva* orders to prevent an abuse of the court's process and to maintain its integrity provides the context in which any request to vary should be considered. Where a party seeks a discretionary exercise of the court's equitable jurisdiction, the court may deny relief if the party is in default of a court order or has otherwise acted inequitably: *Brewster Transport Co. v. Rocky Mountain Tours & Transport Co.*, [1931] S.C.R. 336; *White v. E.B.F. Manufacturing Ltd.*, 2005 NSCA 103.

[48] A well-established corollary of this principle is that a party cannot take advantage of the existence of a state of affairs produced by its own wrong: see *Berlingieri v. DeSantis et al.* (1980), 31 O.R. (2d) 1 (C.A.); *Barclays Bank PLC v. Devonshire Trust*, 2013 ONCA 494, 265 D.L.R. (4th) 15, at paras. 147-61, leave to appeal refused, [2013] S.C.C.A. No. 374; *McCallum et al. v. Zivojinovic* (1977), 16 O.R. (2d) 721 (C.A.), at p. 726.

[49] As the request to vary a *Mareva* order involves the exercise of the court's equitable jurisdiction, applicants must come to the court "with clean hands" with respect to the transaction they base their claim upon: *City of Toronto v. Polai*, [1970] 1 O.R. 483 (C.A.), aff'd [1973] S.C.R. 38; *BMO Nesbitt Burns Inc. v. Wellington West Capital Inc.* (2005), 77 O.R. (3d) 161 (C.A.), at paras. 27 and 28.

[50] Accordingly, the focus of the motion judge's analysis in this case should have been on whether he should exercise his equitable jurisdiction to permit BCU

to vary the *Mareva* Order for the purpose of enforcing its judgment to recover funds advanced in what the motion judge found was a breach of the *Mareva* Order. BCU's status as a secured or unsecured creditor was irrelevant to that analysis.

[51] I do not agree with BCU's submissions that the motion judge erred in taking away BCU's secured creditor status and effectively allowing the *Mareva* Order to reorder creditor priorities. The motion judge correctly recognized that the *Mareva* Order could not, by itself, grant Trade Capital creditor priority. But that was not the point of the motion judge's order. The order was not about granting Trade Capital priority because of the *Mareva* Order; rather, it was the court's response to BCU's breach of a court order.

[52] Nor am I persuaded by BCU's submission that Trade Capital failed to properly frame its request for relief as a motion for contempt. It was not necessary to do so. Trade Capital was not seeking a declaration that BCU was in contempt of a court order but was resisting BCU's request for a distribution order and implicit variance of the *Mareva* Order on the ground that BCU was in breach of a court order. This is an important distinction. As in *Maple Trust*, BCU was the moving party and the onus was on BCU to demonstrate why the *Mareva* Order should be varied and the distribution order granted. So long as BCU was given the opportunity to respond to the issues, as it was here, there is no prejudice. Regardless of the procedural framework, the issues of BCU's breach of the *Mareva* Order, the appropriate response in the light of that breach, and BCU's

request for a distribution order, were squarely before the court and could have been raised on the court's own initiative.

[53] The court's broad jurisdiction to craft an appropriate order in response to a breach of a court order arises from its well-established inherent jurisdiction to prevent an abuse of the court's process. Section 140(5) of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, gives the court express power to stay or dismiss a proceeding as an abuse of process. The deliberate breach of court orders strikes at the very heart of the administration of justice and can never be tolerated. It is beyond trite to say that a court order must be followed until it is set aside. Self-help remedies will never be tolerated because they undermine the rule of law. In *United Nurses of Alberta v. Alberta (Attorney General)*, [1992] 1 S.C.R. 901, at p. 931, in the context of civil and criminal contempt, McLachlin J. (as she then was) wrote a strong affirmation of the connection between the rule of law and enforcement of the court's process, which is apposite here: "The rule of law is at the heart of our society; without it there can be neither peace, nor order nor good government. The rule of law is directly dependent on the ability of the courts to enforce their process and maintain their dignity and respect."

[54] BCU's creditor priority arguments ignore the consideration, in light of the motion judge's finding of its breach, that its claim to the post-*Mareva* advances would never have arisen but for its breach of a clear court order. And they fail to take into account the court's broad jurisdiction in response to BCU's abuse of the



court's process by its breach of the *Mareva* Order. As this court noted in *Paul Magder Furs Ltd. v. Ontario (Attorney General)* (1991), 6 O.R. (3d) 188 (C.A.), leave to appeal refused, [1992] S.C.C.A. No. 92: "it is an abuse of process to assert a right to be heard by the court and at the same time refuse to undertake to obey the order of the court so long as it remains in force".

[55] The court's broad jurisdiction in the face of a breach of a court order includes the power to dismiss or refuse to entertain a proceeding, strike pleadings, or adjourn a party's request for relief: see, for example, *Thrive Capital Management Ltd. v. Noble* 1324, 2021 ONCA 722, 463 D.L.R. (4th) 377, at para. 22; *Dickie v. Dickie* (2006), 78 O.R. (3d) 1 (C.A.), Laskin J.A. dissenting, aff'd 2007 SCC 8, [2007] 1 S.C.R. 346, at para. 6; *Paul Magder Furs Ltd.*; *First Majestic Silver Corp. v. Davila Santos*, 2015 BCCA 452, 391 D.L.R. (4th) 553, at paras. 19-25; *Yao v. Li*, 2012 BCCA 315, at para 41. The breadth of the court's jurisdiction that would allow it to dismiss, refuse to entertain or adjourn proceedings in the face of a breach of an order clearly encompasses the jurisdiction to postpone the enforcement of a creditor's claim arising solely from a breach of a court order.

[56] BCU is not in the same position as the creditor in *Maple Trust*. In my view, the *Maple Trust* case is clearly distinguishable from the present case.

[57] In *Maple Trust*, the moving party successfully moved to vary the *Mareva* Order to enforce its writs of seizure and sale in relation to costs awards ordered payable to it by The Cash House in an unrelated action. Trade Capital resisted Maple Trust's motion on the basis that the account against which Maple Trust moved to enforce its cost orders contained funds stolen from Trade Capital through the fraud.

[58] The motion judge in *Maple Trust* held that Trade Capital's *Mareva* Order was not a proprietary injunction that prevented a legitimate creditor from enforcing its judgment, nor had Trade Capital provided any evidence that the funds held in the account for The Cash House came directly or indirectly from any fraud committed against Trade Capital. The motion judge concluded that Maple Trust had met the test to vary the *Mareva* Order and ordered that Maple Trust could seize the funds in The Cash House's account.

[59] Unlike Maple Trust, who was truly an unrelated creditor, and who was justifiably permitted to vary the *Mareva* Order in part to recover its debt,<sup>4</sup> BCU does not have a judgment for debt that arose in the normal course. Rather, the debt owed to BCU only arose because of BCU's breach of a clear court order.

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<sup>4</sup> As this court wrote in Trade Capital's appeal of *Maple Trust*, "[t]here is no basis for the third party, Maple Trust, to suffer prejudice as a result" of the *Mareva* Order: *Trade Capital Finance Corp. v. Cook*, 2018 ONCA 27, at para. 4.

[60] In the present case, by his removal of BCU's secured creditor status for the post-*Mareva* advances, the motion judge properly recognized that BCU should not be permitted to defy a clear court order and obtain relief that would effectively defeat the purpose of the *Mareva* Order it breached. However, the motion judge mistakenly concluded that he lacked jurisdiction to order that the Receiver hold the proceeds pending the resolution of Trade Capital's claims, noting that there was no contempt motion before him. In doing so, he unnecessarily and incorrectly fettered the exercise of his discretion.

[61] It therefore falls to this court to undertake the requisite analysis.

**(ii) Disposition of BCU's Distribution Motion**

[62] The variation of the *Mareva* Order stands as a precondition to the granting of BCU's distribution motion. Any variation of a *Mareva* order is an exercise of the court's equitable jurisdiction and should not, in the ordinary course, "conflict with the purpose for which the order was made in the first place", namely, to prevent the plaintiff from being cheated out of the proceeds of their action, should it be successful: *Break Fast Investments Pty Ltd v. Gravity Ventures Pty Ltd*, [2013] VSC 89, at para. 43; *Maple Trust*, at para 51; *First Majestic Silver Corp. v. Santos*, 2014 BCSC 1564, at para. 18; *Australian Mortgage & Finance Company v. Rome Euro Windows Pty Ltd*, [2014] NSWSC 996, at para. 38. Any variation will therefore require the balancing of the parties' competing interests: see e.g.,

*Canadian Imperial Bank of Commerce v. Credit Valley Institute of Business and Technology*, 2003 CanLII 12916 (Ont. S.C.). Having made a *Mareva* order, a court “should not be quick to reverse it save for good reason and the dictates of justice”: *MG Corrosion Consultants Pty Ltd v. Gilmour*, [2012] FCA 568, at para. 14. The overarching consideration is whether the justice of the case warrants the variance.<sup>5</sup>

[63] Applying these principles to the present case, does the justice of the case warrant the variance of the *Mareva* Order in favour of BCU to permit the distribution of the post-*Mareva* advances, in light of its breach of the *Mareva* Order? I conclude that it does not.

[64] Considering the motion judge’s finding of breach, BCU does not come to this court with clean hands because BCU’s claim for the post-*Mareva* advances arises out of its breach of a clear court order. There is no unfairness to BCU if the *Mareva* Order is not varied and it is not granted immediate enforcement of the entirety of its claim. But for BCU’s breach of the *Mareva* Order, the indebtedness in issue would not exist.

[65] In balancing the parties’ competing interests, I look at the effect of varying the *Mareva* Order on Trade Capital. There would be tremendous unfairness to Trade Capital. Trade Capital is the victim of an elaborate fraud and has expended

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<sup>5</sup> Without limiting the criteria that a court may take into account when determining whether the justice of the case warrants the variance, these criteria may include but are not limited to those considered by the motion judge in *Maple Trust*, at paras. 43 and 51.

considerable time and expense to obtain the *Mareva* Order. Recall that Trade Capital met the stringent requirements of a *Mareva* Order: in granting it, Ricchetti J. was satisfied that Trade Capital had made out a strong *prima facie* claim of fraud and that the evidence of the fraud perpetrated against Trade Capital was “overwhelming”. Without the *Mareva* Order, Ricchetti J. held that there was a “very real risk that the proceeds from the fraud would be disposed of or transferred beyond the jurisdiction of this court”. The purpose of the *Mareva* Order was, and remains, the preservation of assets. Allowing BCU to immediately enforce its judgment would defeat that purpose.

[66] Importantly, allowing BCU to reap the fruits of its improper actions by immediate enforcement would undermine the due administration of justice and offend the rule of law. Although aware of the *Mareva* Order, BCU did not seek to set it aside prior to making any of the post-*Mareva* advances. BCU was not entitled to ignore a clear court order. Nor was it open to BCU to engage in “self-help” remedies by encumbering the very assets subject to the *Mareva* Order in an attempt to obtain further security and payment for past advances.

[67] For these reasons, I would not grant BCU’s distribution motion as requested by BCU. As earlier noted, the motion judge’s removal of BCU’s secured creditor priority was a reasonable exercise of his jurisdiction. However, it did not adequately respond to BCU’s breach in the circumstances of this case where there were no other judgment creditors at the time of the motion and where payment of the

amounts owing to BCU would exhaust the funds available to Trade Capital. Allowing BCU to profit from its breach in this way, to Trade Capital's detriment, would effectively condone its abuse of process.

[68] Trade Capital asks that the enforcement of BCU's judgment be delayed until it obtains judgment against Mr. De Maria and his related companies. It submits that BCU's judgment should rank behind Trade Capital's judgment, alternatively, they should collect on their judgments *pari passu*.

[69] In my view, in light of BCU's breach and in response to its motion for a distribution, the appropriate and proportionate order in all the circumstances is to delay the enforcement of BCU's judgment while the *Mareva* Order remains in place and until Trade Capital's action against Mr. De Maria and his related companies is determined. It is not unfair that BCU must wait until Trade Capital's action is determined. The indebtedness in issue arose only as a result of BCU's breach of the *Mareva* Order. That said, there is no question that BCU advanced monies to, and was not fully repaid by, Mr. De Maria and his related corporations. The monies under the judgment are still owing to BCU. The question is the timing of the repayment to BCU considering its breach of the *Mareva* Order. As a result, if Trade Capital successfully obtains judgment in its action, Trade Capital and BCU should collect on their respective judgments *pari passu*.

**(iii) Conclusion**

[70] As a result, I would order that the enforcement of BCU's judgment for the recovery of monies advanced in breach of the *Mareva* Order be delayed until Trade Capital obtains judgment or its action is otherwise determined, provided the *Mareva* Order remains in place. If and once Trade Capital obtains judgment, Trade Capital and BCU should collect on their respective judgments *pari passu*.

[71] I do not, respectfully, share the motion judge's concern about the lack of evidence indicating steps taken by Trade Capital in the prosecution of its action to-date. As earlier noted, Trade Capital's action has serious merit. The record also demonstrates that Trade Capital has not been sitting idle – as already noted, it has expended significant effort to recover and preserve the millions of dollars stolen from it.

[72] I also note that this action is being case managed by an experienced Commercial Court judge. Any concerns about any delay are within his province to deal with, as required. Now that this matter has been disposed of, Trade Capital's action will undoubtedly move forward with alacrity. If it does not, BCU is not foreclosed in the future from bringing a new motion to seek to vary the *Mareva* Order and seek a distribution order and from arguing that the interests of justice warrant varying the *Mareva* Order at that time.

**(c) Woodland Property Advances**

[73] My disposition of the question of creditor priorities as between Trade Capital and BCU does not resolve the issue raised with respect to the Woodland Property advances: whether the amount owing when BCU was served with the *Mareva* Order was subsequently advanced in breach of the *Mareva* Order. The motion judge found that the amount owing on the Woodland mortgage upon service on BCU “was not, and could not have been,” advanced in contravention of the *Mareva* Order. It is common ground that if this finding is upheld, BCU is entitled to payment of this amount as part of the pre-*Mareva* advances from the net proceeds of sale in priority to Trade Capital.

[74] Trade Capital submits that, after the *Mareva* Order, all advances on the Woodland Property were paid back to BCU, and BCU subsequently made further advances in contravention of the *Mareva* Order. It argues that the motion judge erred in finding that the advances made by BCU following the *Mareva* Order were the product of dishonoured cheques<sup>6</sup> that were reversed or nullified. Rather, according to Trade Capital, the impugned advances now claimed by BCU were

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<sup>6</sup> The motion judge found that Mr. De Maria wrote close to \$6 million of cheques from DYKI's TD account to The Cash House's account at BCU. TD dishonoured these cheques because of the *Mareva* Order, but the funds were quickly transferred out of The Cash House's account, leaving BCU short several million dollars.



made in July 2015, several months before the dishonoured cheques were even tendered.

[75] Trade Capital takes issue with the following factual finding in paragraph 30 of the motion judge's reasons:

[T]here is the question of whether the full amount in excess of \$2.4 million was advanced post-Mareva Order. Trade Capital says yes. This is because the second mortgage account fell to zero during the post-Mareva Order period. I do not agree. Some of the \$18 million of dishonoured cheques from Mr. De Maria's Do You Know account were initially applied to reduce the Woodland Acres second mortgage account. Once those cheques were dishonoured, the paydowns on the Woodland Acres second mortgage were reversed or nullified such that the outstanding balances remained owing: *Buduchnist Credit Union v. 2321197 Ontario Inc.*, Endorsement of Penny J. (January 17, 2020), p. 3. I conclude, on the basis of the evidence, that \$1,003,510.23 was owing on the Woodland Acres second mortgage before BCU had notice of the Mareva Order. This amount was not, and could not have been, advanced in contravention of the Mareva Order.

[76] The second mortgage referenced by the motion judge was registered on the Woodland Property in 2012 in the principal amount of \$3 million dollars. The Woodland Property was the matrimonial home of Mr. De Maria and his wife. Trade Capital submits that the second mortgage secured the line of credit held by Vicar Homes. The line of credit agreement was signed by Mr. De Maria as principal of Vicar Homes and personally as guarantor of the mortgage to a limit of \$1,000,000.

[77] On May 6, 2015, the day the *Mareva* Order was issued and served on BCU, the balance owing on the Vicar Homes account, secured by the second mortgage, was \$1,003,510.23. The BCU transaction history for Vicar Homes indicates that several withdrawals and deposits were made following this date, many of which were in quick succession, and some of which were for tens or hundreds of thousands of dollars.

[78] In some instances, the account balance surpassed zero dollars owing and reached a positive balance. Notably, the Vicar Homes account balance read \$350,918.22, \$351,050.72, \$240,089.72, and \$23,566.53 at points on July 13, 14, 15, and 16, 2015, respectively. In this time period, most transactions were deposits to or withdrawals from other accounts associated or previously associated with Mr. De Maria, including CHATS, Vicar Corp, and 198. Instances of positive balance are highlighted in yellow in the excerpt from Vicar Homes' transaction history with BCU, reproduced below<sup>7</sup>:

13Jul2015	Clearing Cheque Chq	-1,469.00	-985,521.78
13Jul2015	Clearing Cheque Chq	-13,560.00	-999,081.78
13Jul2015	Deposit Vicar Corp.	50,000.00	-949,081.78
13Jul2015	Transfer In from CHATS, current sub: 1, CHATS	50,000.00	-899,081.78
13Jul2015	Withdrawal Vicar Corp.	-50,000.00	-949,081.78
13Jul2015	Deposit CHATS	500,000.00	-449,081.78
13Jul2015	Deposit CHATS	500,000.00	50,918.22
13Jul2015	Deposit CHATS	300,000.00	350,918.22
13Jul2015	Withdrawal Vicar Corp.	-500,000.00	-149,081.78
13Jul2015	Withdrawal Vicar Corp.	-500,000.00	-649,081.78
13Jul2015	Withdrawal Vicar Corp.	-300,000.00	-949,081.78

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<sup>7</sup> The account numbers on the clearing cheques have been removed and the account numbers have been replaced with the names of the corporations that own the accounts.

13Jul2015	Transfer in from Vicar Corp., current sub: 1	100,000.00	-849,081.78
13Jul2015	Withdrawal Vicar Corp.	-150,000.00	-999,081.78
14Jul2015	Clearing Cheque Chq	-3,000.00	-1,002,081.78
14Jul2015	Deposit Vicar Corp.	150,000.00	-852,081.78
14Jul2015	Withdrawal Lighthouse	-30,000.00	-882,081.78
14Jul2015	Withdrawal Lighthouse	-16,867.50	-898,949.28
14Jul2015	Withdrawal Vapz	-50,000.00	-948,949.28
14Jul2015	Transfer in from CHATS, current sub: 1	430,000.00	-518,949.28
14Jul2015	Transfer in from CHATS, current sub: 1	430,000.00	-88,949.28
14Jul2015	Transfer in from CHATS, current sub: 1	440,000.00	351,050.72
14Jul2015	Withdrawal Vicar Corp.	-430,000.00	-78,949.28
14Jul2015	Withdrawal Vicar Corp.	-430,000.00	-508,949.28
14Jul2015	Withdrawal Vicar Corp.	-440,000.00	-948,949.28
15Jul2015	Clearing Cheque Chq	-10,961.00	-959,910.28
15Jul2015	Deposit	600,000.00	-359,910.28
15Jul2015	Deposit	600,000.00	240,089.72
15Jul2015	Withdrawal Vicar Corp.	-530,000.00	-289,910.28
15Jul2015	Withdrawal Vicar Corp.	-530,000.00	-819,910.28
15Jul2015	Deposit	400,000.00	-419,910.28
15Jul2015	Withdrawal Vicar Corp.	-540,000.00	-959,910.28
16Jul2015	Clearing Cheque Chq	-5,278.23	-965,188.51
16Jul2015	Clearing Cheque Chq	-1,988.80	-967,177.31
16Jul2015	Clearing Cheque Chq	-9,256.16	-976,433.47
16Jul2015	Transfer in from 198, current sub: 1	500,000.00	-476,433.47
16Jul2015	Transfer in from 198, current sub: 1	500,000.00	23,566.53
16Jul2015	Transfer out to Vicar Corp., current sub: 1	-350,000.00	-326,433.47
16Jul2015	Transfer out to Vicar Corp., current sub: 1	-350,000.00	-676,433.47

[79] Similarly, in December 2015 and January 2016, the Vicar Homes line of credit again reached a positive balance on several occasions.

[80] Before the motion judge, Trade Capital argued that these instances of positive balance rendered the entirety of the amount presently claimed by BCU as owing on the second mortgage a post-*Mareva* advance, including the \$1,003,510.23 that was owing when BCU was served with the *Mareva* Order. Trade Capital argues that the \$1,003,510.23 amount was subsequently repaid and re-advanced.

[81] As noted above, the motion judge acknowledged these instances of positive balance. He ultimately concluded that they were the result of the dishonoured TD cheques and that the balance remained owing after the paydowns were nullified.

[82] On appeal, Trade Capital argues that the \$1,003,510.23 owing at the time BCU was served with the *Mareva* Order was subsequently repaid and re-advanced when the Vicar Homes account balance reached a positive balance in July 2015. Trade Capital argues that, because the dishonoured cheques were deposited in December 2015 and January 2016, they could have caused the December 2015 and January 2016 positive balances but not the positive balances recorded months earlier in July 2015.

[83] On this basis, Trade Capital argues that the motion judge erred in his findings of fact with respect to the status of post-*Mareva* encumbrances of the second mortgage on the Woodland Property. In Trade Capital's submission, the July 2015 repayment and re-lending meant that all monies owing on Vicar Homes' line of credit constitute post-*Mareva* encumbrances, notwithstanding that \$1,003,510.23 was owing when the *Mareva* Order was served on BCU.

[84] BCU contends that the instances of positive balance in July 2015 were due to accounting errors and corrections, but BCU adduced no evidence in support of this contention. The only evidence that monies were still owing are the bald

statements from BCU's President and Chief Executive Officer, Oksana Prociuk, that the account was never paid down.

[85] The issue of the December 2015 and January 2016 transfers was addressed by the motion judge. In his January 17, 2019 endorsement on BCU's application for the appointment of a receiver over Mr. De Maria's properties, the motion judge concluded that the transfer of monies to reduce the Vicar Homes line of credit "was really nothing more than an accounting error on the part of BCU" and "[h]ad it waited for the [dishonoured] cheques to clear, no funds would have been transferred and there would never have been a credit of \$800,000 to the Vicar account." He referenced this past finding in the context of the transfers that occurred in December 2015 and January 2016.

[86] It is well-established that the motion judge's findings of fact based on the evidence before him would be subject to appellate deference absent palpable and overriding error or material legal error: *Housen*, at para. 10. Here, as the motion judge did not make any legal error, if the evidence supports the motion judge's finding, there would be no basis to intervene. However, given the evidence set out above, I am persuaded that it does not support the motion judge's finding that the amount owing at the time the *Mareva* Order was issued could not have been advanced in contravention of the *Mareva* Order. Specifically, the dishonoured cheques do not account for the repayment of the Woodland mortgage in July 2015 and the further advances made after the account balance reached zero.

[87] That is not the end of the matter. The difficulty in the present case is that the argument that the Woodland mortgage was repaid by July 2015 does not appear to have been the focus of the motion. There is no real cross-examination on the point, nor was this argument clearly and squarely made to the motion judge. Rather, the parties' focus was on the dishonoured cheques and the positive balances in December 2015 and January 2016. It was only on appeal that the argument took its present form.

[88] As a result, we lack the record that would permit us to determine this issue. This issue should return to the motion judge or another judge of the Superior Court for adjudication. The parties can canvass how best to address this issue before the case management judge.

### **Disposition**

[89] Accordingly, I would allow the appeal and dismiss the cross-appeal. I would order that the enforcement of BCU's judgment for funds advanced in breach of the *Mareva* Order be delayed until Trade Capital's action is determined, and that, if Trade Capital is successful in obtaining judgment, Trade Capital and BCU shall collect on their respective judgments *pari passu*.

[90] The issue of the Woodland Property advances is remitted to the Superior Court to be addressed by the parties concerning next steps in a case

management conference before the case management judge assigned to this matter.

[91] If the parties cannot agree on the disposition of the costs of the appeal, cross-appeal and before the motion judge, I would permit them to make brief written submissions of no more than two pages, plus a costs outline, within ten days of the release of these reasons.

Released: January 26, 2024 *L.B.R.*

*L.B. Roberts J.A.*

*I agree. K. J. J. J.A.*

*I agree. S. J. A.*

# Tab 10



**COURT OF APPEAL FOR ONTARIO**

THE HONOURABLE JUSTICE ROBERTS

)

FRIDAY, THE 26th

THE HONOURABLE JUSTICE TROTTER

)

DAY OF JANUARY, 2024

THE HONOURABLE JUSTICE SOSSIN

)

B E T W E E N :

**BUDUCHNIST CREDIT UNION LIMITED**

Applicant  
(Respondent in Appeal)  
(Cross-Appellant)

- and -

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

Respondents  
(Appellant, Trade Capital Finance Corp.)

**ORDER**

**THIS APPEAL** by the Appellant, Trade Capital Finance Corp. (“**Trade Capital**”) and  
Cross-Appeal by the Cross-Appellant, Buduchnist Credit Union Limited (“**BCU**”), for an Order

varying the Order of the Honourable Justice Penny dated June 17, 2022 (“**Penny J. Order**”) was heard in person at Osgoode Hall, 130 Queen Street West, M5H 2N5, on June 12, 2023 .

**ON READING** the Appeal Book and Compendium, Factum, Book of Authorities, Compendium, and Cost Submissions of the Appellant, the Compendium, Factum, Compendium for Oral Argument, and Costs Submissions of the Respondent, as well as the Factum of the Cross-Appellant and Factum of the Cross-Respondent, and on hearing the submissions of lawyers for Trade Capital, and lawyers for BCU, decision of the appeal and cross-appeal having been reserved to this day for written reasons that were corrected on March 14, 2024 and the decision on costs having been reserved until March 14, 2024 for written reasons,

1. **THIS COURT ORDERS** that the Appeal is allowed and the Cross-Appeal is hereby dismissed.
2. **THIS COURT ORDERS** that paragraphs 1, 2, 3, 9, 10 and 12 of the Penny J. Order are deleted and replaced with the following (paragraphs 4, 5, 6, 7, 8, and 11 of the Penny J. Order are not affected by the terms of this Order and remain in full force and effect):
  - (a) BCU’s motion for priority distribution in its capacity as mortgagee of the proceeds of sale and rental income is denied, except as provided in paragraphs 4,5, 6 and 7;
  - (b) the enforcement of BCU’s judgments, dated August 26, and 28, 2020 (and Writs of Seizure and Sale filed in respect thereof), be delayed while the Mareva Order dated May 6, 2015 remains in place until Trade Capital’s action bearing Court File No. CV-15-2110-00 (the “**Mareva Action**”) is determined and if Trade Capital obtains judgment, Trade Capital and BCU should collect on their respective judgments *pari passu*; and
  - (c) the issue of the Woodland Property advances in respect of BCU’s second mortgage registered on 211 Woodland Acres Crescent, Vaughan, Ontario (the “**Woodland Property**”) that is identified in paragraphs 73 to 88 of this Court’s Reasons for

Decision shall be remitted to the Superior Court to be addressed by the parties concerning next steps in a case management conference before the case management judge assigned to this matter.

3. **THIS COURT ORDERS** that Trade Capital is granted its partial indemnity costs of the Appeal and Cross-Appeal in the all-inclusive amount of \$83,736.97.
4. **THIS COURT ORDERS** that BCU shall pay costs of the underlying motion to Trade Capital fixed in the all-inclusive amount of \$80,000.00.
5. **THIS COURT ORDERS** that, with respect to the motion costs related to the issue of the Woodland Property advances remitted to the Superior Court of Justice, those costs be fixed in the amount of \$15,000 and be to the successful party in the cause of that issue.

**THIS ORDER BEARS INTEREST** at the rate of seven per cent (7%) per annum commencing on March 14, 2024.

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

March 11, 2025

PER / PAR: ND



Noah Dragalin-Reeves

Registrar, Court of Appeal for Ontario

# Tab 11

### **Endorsement of Conway J. in connection with issuance of the Two Consent Judgments**

Nothing in the two attached consent judgments (the “Two Consent Judgments”) determines or affects the entitlement or priorities as between BCU and Trade Capital on any property or asset subject to the Mareva Order dated May 6, 2015 in OSCJ Action # CV-15-2110-00 (Brampton) (the “Mareva Order”) unless ordered by the Court or agreed to by BCU and Trade Capital. Subject to the next sentence,

- i. the Two Consent Judgments and any writs of seizure and sale issued and registered in respect of same and any other enforcement of the two Consent Judgments are without prejudice to any arguments or claims that Trade Capital may have on any assets subject to the Mareva Order, and
- ii. neither of the Two Consent Judgments may be enforced without further order of the Court made with at least fourteen (14) days’ notice to Trade Capital, or the agreement of BCU and Trade Capital, provided that BCU may only immediately have issued and register writs of seizure and sale with respect to the full amounts owing under the Two Consent Judgments providing that BCU immediately advises Trade Capital of the Sheriffs and Land Titles offices where the Writs are registered.

Notwithstanding the above, there is no entitlement or priority issue as between BCU and Trade Capital with respect to the portions of the Two Consent Judgments representing the monies listed below owing as a result of advances made by BCU prior to the May 6, 2015 date of the Mareva Order, and therefore Trade Capital and BCU agree that there may be an immediate enforcement and distribution to BCU pursuant to enforcement of the following portions of the Two Consent Judgments without a further order of the Court:

1. Sandra re Woodland Judgment: para 1
2. Carlo, Vicar, 197 and 198 Judgment: para 5, and with respect to para 2 \$1,047,552.15.



# Tab 12

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

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

THE HONOURABLE

)

FRIDAY, THE 28TH

JUSTICE CONWAY

)

DAY OF AUGUST, 2020

)



**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

**JUDGMENT**

**THIS MOTION**, made by the Applicant, Buduchnist Credit Union Limited (“**BCU**”), on consent, for Judgment as against the Defendant, Sandra Demaria (“**Sandra**”), for amounts owing in respect of BCU’s first and second mortgages registered against 211 Woodland Acres Crescent, Vaughan, Ontario, L6A 1G1 (the “**Woodland Property**”) as instrument number YR1534099 registered on August 16, 2010 (the “**Woodland 1<sup>st</sup> Mortgage**”) and instrument number YR1920510 registered on December 5, 2012 (the “**Woodland 2<sup>nd</sup> Mortgage**”) (together with the Woodland 1<sup>st</sup> Mortgage, the “**Woodland Mortgages**”), was read this day at 330 University Avenue, Toronto, Ontario.

**ON READING** the Consent of BCU and Sandra, filed,

1. **THIS COURT ORDERS** that Sandra shall pay to BCU the sum of \$1,049,319.69, plus interest from December 7, 2019, to the date of payment at the rate of 4.50 per cent per year, payable monthly, in respect of the Woodland 1<sup>st</sup> Mortgage.
2. **THIS COURT ORDERS** that Sandra shall pay to BCU in respect of the Woodland 2<sup>nd</sup> Mortgage the sum of \$2,239,906.38, plus interest from December 7, 2019, to the date of payment at a rate of 22 per cent per year, payable monthly, in respect of that portion of the Woodland 2<sup>nd</sup> Mortgage indebtedness in excess of \$2,080,000, and at the rate of 4.50 per cent per year, payable monthly, in respect of that portion of the Woodland 2<sup>nd</sup> Mortgage indebtedness up to \$2,080,000.
3. **THIS COURT ORDERS** that the entitlement to the net proceeds of the receivership of the Woodland Property shall be determined by separate distribution Order made in the receivership proceedings on notice to all interested persons.
4. **THIS COURT ORDERS** that Sandra shall pay BCU's costs of this Application referable to the Woodland Mortgages in an amount to be agreed or determined by the Court in accordance with the terms of the Woodland Mortgages and in accordance with paragraph 28 of the Third Amended and Restated Receivership Order dated February 22, 2019.

**THIS JUDGMENT BEARS INTEREST:**

with respect to the amount in paragraph 1 herein, at the rate of 4.50 per cent per year, payable monthly, commencing on the date hereof; and

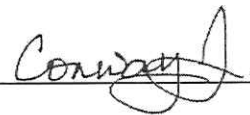
with respect to the amount in paragraph 2 herein, at a rate of 22 per cent per year, payable monthly, in respect of that portion of the Woodland 2<sup>nd</sup> Mortgage indebtedness in excess of \$2,080,000, and at the rate of 4.50 per cent per year, payable monthly, in respect of that portion of the Woodland 2<sup>nd</sup> Mortgage indebtedness up to \$2,080,000, commencing on the date hereof.

with respect to the costs amount in paragraph 4 herein, at the rate of 3.0 per cent per year commencing on the date that costs are quantified by agreement or by determination of the Court.

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

SEP 01 2020







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

**BUDUCHNIST CREDIT UNION LIMITED**  
Applicant

- and -

**2321197 ONTARIO INC. et al.**  
Respondents

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

PROCEEDING COMMENCED AT TORONTO

**JUDGMENT**

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*Lawyers for Buduchnist Credit Union Limited*

# Tab 13

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

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

THE HONOURABLE

)

FRIDAY, THE 28TH

JUSTICE CONWAY

)

DAY OF AUGUST, 2020

)



**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

**JUDGMENT**

**THIS MOTION**, made by the Applicant, Buduchnist Credit Union Limited (“BCU”), on consent, for Judgment as against the Defendants, Carlo Demaria (“Carlo”), 2321197 Ontario Inc. (“197”), 2321198 Ontario Inc. (“198”) and Vicar Homes Ltd., (“Vicar Homes”), for the amounts owing in respect of BCU’s first and second mortgages registered against 211 Woodland Acres Crescent, Vaughan, Ontario, L6A 1G1 (the “Woodland Property”) as instrument number YR1534099 registered on August 16, 2010 (the “Woodland 1<sup>st</sup> Mortgage”) and instrument number YR1920510 registered on December 5, 2012 (the “Woodland 2<sup>nd</sup> Mortgage”, and together with the Woodland 1<sup>st</sup> Mortgage, the “Woodland Mortgages”), BCU’s mortgage registered against 87 Elm Grove, Richmond Hill, Ontario (the “Elm Property”) as instrument number YR2427027 on February 5, 2016 (the “Elm Mortgage”), BCU’s mortgage registered against 46 Puccini Drive, Richmond Hill, Ontario (the “Puccini Property”) as instrument

number YR2260847 on February 27, 2015 (the “**Puccini Mortgage**”) and certain indebtedness owing by Vicar Homes, as borrower, and Carlo, as guarantor under a guarantee and postponement of claim, dated April 1, 2015 (the “**Carlo Guarantee**”), to BCU under a line of credit granted by BCU to Vicar Homes (the “**Vicar Homes LOC**”), was read this day at 330 University Avenue, Toronto, Ontario.

**ON READING** the Consent of BCU, Carlo, 197, 198 and Vicar Homes, filed,

#### **ELM MORTGAGE**

1. **THIS COURT ORDERS** that 197 and Carlo shall pay to BCU the sum of \$2,413,959.87, plus interest from December 7, 2019, to the date of payment at BCU’s prime rate of interest in effect from time to time plus 0.5 per cent per year, payable monthly, in respect of the Elm Mortgage.

#### **PUCCINI MORTGAGE**

2. **THIS COURT ORDERS** that 198 and Carlo shall pay to BCU the sum of \$2,759,240.52, plus interest from December 7, 2019, to the date of payment at BCU’s prime rate of interest in effect from time to time plus 1.0 per cent per year, payable monthly, in respect of the Puccini Mortgage.

#### **VICAR HOMES LOC**

3. **THIS COURT ORDERS** that Vicar Homes shall pay to BCU in respect of the Vicar Homes LOC the sum of \$2,239,906.38, plus interest from December 7, 2019, to the date of payment at a rate of 22 per cent per year, payable monthly, in respect of that portion of the Vicar Homes LOC indebtedness in excess of \$2,080,000, and at the rate of 4.50 per cent per year, payable monthly, in respect of that portion of the Vicar Homes LOC indebtedness up to \$2,080,000.

4. **THIS COURT ORDERS** that Carlo shall pay to BCU the sum of \$1,029,991.33, plus interest from December 7, 2019, to the date of payment at the rate of 4.50 per cent per year, payable monthly, in respect of the Vicar Homes LOC.



**WOODLAND MORTGAGES**

5. **THIS COURT ORDERS** that Carlo shall pay to BCU the sum of \$1,049,319.69, plus interest from December 7, 2019, to the date of payment at the rate of 4.50 per cent per year, payable monthly, in respect of the Woodland 1<sup>st</sup> Mortgage.

6. **THIS COURT ORDERS** that Carlo shall pay to BCU in respect of the Woodland 2<sup>nd</sup> Mortgage securing the indebtedness owing under the Vicar Homes LOC the sum of \$2,239,906.38, plus interest from December 7, 2019, to the date of payment at a rate of 22 per cent per year, payable monthly, in respect of that portion of the Woodland 2<sup>nd</sup> Mortgage indebtedness in excess of \$2,080,000, and at the rate of 4.50 per cent per year, payable monthly, in respect of that portion of the Woodland 2<sup>nd</sup> Mortgage indebtedness up to \$2,080,000.

7. **THIS COURT ORDERS** that BCU remains at liberty to obtain a separate Judgment for the relief claimed in the Notice of Application against Sandra Demaria as co-mortgagor in respect of the Woodland Mortgages.

**RECEIVERSHIP PROCEEDS AND COSTS**

8. **THIS COURT ORDERS** that the entitlement to the net proceeds of the receiverships of the Elm Property, the Puccini Property and the Woodland Property, shall be determined by separate distribution Order made in the receivership proceedings on notice to all interested persons.

9. **THIS COURT ORDERS** that Carlo, 197, 198 and Vicar Homes shall pay BCU's costs of this Application referable to the Elm Property, the Puccini Property, the Woodland Property and the Vicar LOC in an amount to be agreed or determined by the Court in accordance with the terms of the Elm Mortgage, the Puccini Mortgage, the Vicar Homes LOC, the Carlo Guarantee and the Woodland Mortgages, and in accordance with paragraph 28 of the Third Amended and Restated Receivership Order dated February 22, 2019.

**THIS JUDGMENT BEARS INTEREST:**

with respect to the amount in paragraph 1 herein, at BCU's prime rate of interest in effect from time to time plus 0.5 per cent per year, payable monthly, commencing on the date hereof. BCU's prime rate of interest plus 0.5 per cent per year is currently 4.55 per cent per year;

with respect to the amount in paragraph 2 herein, at BCU's prime rate of interest in effect from time to time plus 1.0 per cent per year, payable monthly, commencing on the date hereof. BCU's prime rate of interest plus 1.0 per cent per year is currently 5.05 per cent per year;

with respect to the amounts in paragraphs 3 and 4 herein, at a rate of 22 per cent per year, payable monthly, in respect of that portion of the Vicar Homes LOC indebtedness in excess of \$2,080,000, and at the rate of 4.50 per cent per year, payable monthly, in respect of that portion of the Vicar Homes LOC indebtedness up to \$2,080,000, commencing on the date hereof;

with respect to the amount in paragraph 5 herein, at the rate of 4.50 per cent per year, payable monthly, commencing on the date hereof;


with respect to the amount in paragraph 6 herein, at a rate of 22 per cent per year, payable monthly, in respect of that portion of the Woodland 2<sup>nd</sup> Mortgage indebtedness in excess of \$2,080,000, and at the rate of 4.50 per cent per year, payable monthly, in respect of that portion of the Woodland 2<sup>nd</sup> Mortgage indebtedness up to \$2,080,000, commencing on the date hereof.

with respect to the costs amount in paragraph 9 herein, at the rate of 3.0 per cent per year commencing on the date that costs are quantified by agreement or by determination of the Court.

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

SEP 01 2020

PER / PAR:



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

**BUDUCHNIST CREDIT UNION LIMITED**  
Applicant

- and -

**2321197 ONTARIO INC. et al.**  
Respondents

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

PROCEEDING COMMENCED AT TORONTO

**JUDGMENT**

**DENTONS CANADA LLP**  
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**Kenneth Kraft** (LSO # 31919P)  
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[kenneth.kraft@dentons.com](mailto:kenneth.kraft@dentons.com)

*Lawyers for Buduchnist Credit Union Limited*

# Tab 14



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

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

THE HONOURABLE  
 JUSTICE CONWAY

)  
 )  
 )

WEDNESDAY, THE 26th  
 DAY OF AUGUST, 2020



**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

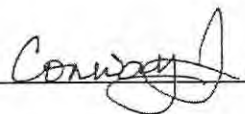
**JUDGMENT**

**THIS MOTION**, made by the Applicant, Buduchnist Credit Union Limited (“**BCU**”), on consent, for Judgment as against the Defendant, Sandra Demaria (“**Sandra**”), for amounts owing in respect of BCU’s mortgage registered against 6216 Fifth Line RR #1, Egbert, Ontario (the “**Cottage Property**”) as instrument number SC431876 registered on April 28, 2006 and assigned to BCU pursuant to the Transfer of Charge registered against the Cottage Property on May 12, 2009 as instrument number SC734513 (collectively, the “**Cottage Mortgage**”), was read this day at 330 University Avenue, Toronto, Ontario.

**ON READING** the Consent of BCU and Sandra, filed,

1. **THIS COURT ORDERS AND ADJUDGES** that Sandra shall pay to BCU the sum of \$207,393.29, plus interest from December 7, 2019, to the date of payment at the rate of 3.29 per cent per year, payable monthly, in respect of the Cottage Mortgage.
2. **THIS COURT ORDERS** that the entitlement to the net proceeds of the receivership of the Cottage Property shall be determined by separate distribution Order made in the receivership proceedings on notice to all interested persons.
3. **THIS COURT ORDERS** that Sandra shall pay BCU's costs of this Application referable to the Cottage Property in an amount to be agreed or determined by the Court in accordance with the terms of the Cottage Mortgage and in accordance with paragraph 28 of the Third Amended and Restated Receivership Order dated February 22, 2019.

**THIS JUDGMENT BEARS INTEREST** at a rate of 3.29 per cent per year, payable monthly, commencing on the date hereof.



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

AUG 31 2020

PER / PAR: 

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

**BUDUCHNIST CREDIT UNION LIMITED**  
Applicant

- and -

**2321197 ONTARIO INC. et al.**  
Respondents

**ONTARIO**

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

PROCEEDING COMMENCED AT TORONTO

**JUDGMENT**

**DENTONS CANADA LLP**  
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**Kenneth Kraft** (LSO # 31919P)  
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[kenneth.kraft@dentons.com](mailto:kenneth.kraft@dentons.com)

*Lawyers for Buduchnist Credit Union Limited*

# Tab 15

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

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

THE HONOURABLE  
 JUSTICE CONWAY

)  
 )  
 )

WEDNESDAY, THE 26TH  
 DAY OF AUGUST, 2020



**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

**JUDGMENT**

**THIS MOTION**, made by the Applicant, Buduchnist Credit Union Limited (“BCU”), on consent, for Judgment as against the Defendant, Carlo Demaria (“Carlo”), for the amounts owing in respect of BCU’s mortgage registered against 6216 Fifth Line RR #1, Egbert, Ontario (the “Cottage Property”) as instrument number SC431876 registered on April 28, 2006 and assigned to BCU pursuant to the Transfer of Charge registered against the Cottage Property on May 12, 2009 as instrument number SC734513 (collectively, the “Cottage Mortgage”), was read this day at 330 University Avenue, Toronto, Ontario.

**ON READING** the Consent of BCU and Carlo, filed,



1. **THIS COURT ORDERS** that Carlo shall pay to BCU the sum of \$207,393.29, plus interest from December 7, 2019, to the date of payment at the rate of 3.29 per cent per year, payable monthly, in respect of the Cottage Mortgage.
2. **THIS COURT ORDERS** that BCU remains at liberty to obtain a separate Judgment for the relief claimed in the Notice of Application against Sandra Demaria as co-mortgagor in respect of the Cottage Mortgage.
3. **THIS COURT ORDERS** that the entitlement to the net proceeds of the receivership of the Cottage Property shall be determined by separate distribution Order made in the receivership proceedings on notice to all interested persons.
4. **THIS COURT ORDERS** that Carlo shall pay BCU's costs of this Application referable to the Cottage Property in an amount to be agreed or determined by the Court in accordance with the terms of the Cottage Mortgage and in accordance with paragraph 28 of the Third Amended and Restated Receivership Order dated February 22, 2019.

**THIS JUDGMENT BEARS INTEREST** at a rate of 3.29 per cent per year, payable monthly, commencing on the date hereof.

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

AUG 31 2020

PER / PAR: 

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

**BUDUCHNIST CREDIT UNION LIMITED**  
Applicant

- and -

**2321197 ONTARIO INC. et al.**  
Respondents

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

PROCEEDING COMMENCED AT TORONTO

**JUDGMENT**

**DENTONS CANADA LLP**  
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*Lawyers for Buduchnist Credit Union Limited*

# Tab 16



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

THE HONOURABLE MADAM	)	WEDNESDAY, THE 28 <sup>TH</sup> DAY
	)	
JUSTICE CONWAY	)	OF OCTOBER, 2020

**BETWEEN:**

**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 CORP.**

Respondents

**ORDER**

THIS MOTION, made by KSV Restructuring Inc., formerly KSV Kofman Inc., in its capacity as court-appointed receiver and manager (the “**Receiver**”) of certain property as described in the Seventh Report of the Receiver dated October 21, 2020 (the “**Seventh Report**”), for an order (*inter alia*) approving a sale transaction (the “**Woodland Transaction**”) in respect of the property known as 211 Woodland Acres Crescent, Vaughan, Ontario (the “**Woodland Property**”), and authorizing and directing the Receiver to make certain distributions of funds to Buduchnist Credit Union Limited (“**BCU**”), was heard this day at Toronto via Zoom videoconference due to the COVID-19 Pandemic.

ON READING the Seventh Report and on hearing the submissions of counsel for the Receiver, for BCU, for Trade Capital Finance Corp. and for the other Respondents, no one appearing for any other person on the service list, although properly served as appears from the affidavit of Amy Casella sworn October 21, 2020, filed:

1. THIS COURT ORDERS that the Confidential Appendices to the Seventh Report shall be sealed pending completion of the Woodland Transaction.
2. THIS COURT ORDERS that the Receiver is hereby authorized and directed to make the following unopposed interim distributions to BCU, pending this Court's disposition of BCU's claims to additional distributions which are contested by Trade Capital Finance Corp:
  - (a) \$1,047,552.15, plus interest at BCU's prime rate of interest in effect from time to time plus 1.00% per year from December 7, 2019, calculated at \$43,686.92 to October 30, 2020, being a portion of the total amount owing under the Judgment dated August 28, 2020 in favour of BCU against (among others) 2321198 Ontario Inc. and Carlo DeMaria with respect to the mortgage registered by BCU against the property known as 46 Puccini Drive, Richmond Hill, Ontario;
  - (b) \$207,393.29, being the amount of BCU's mortgage registered against the property known as 6216 Fifth Line, Egbert, Ontario, plus interest at 3.29% per year from December 7, 2019, calculated at \$7,093.06 to October 30, 2020, pursuant to the Judgment dated August 26, 2020 in favour of BCU against Carlo DeMaria and Sandra DeMaria; and
  - (c) \$1,049,319.69, being the amount of BCU's first mortgage registered against the Woodland Property, plus interest at 4.50% per year from December 7, 2019, calculated at \$47,014.11 to December 1, 2020, pursuant to the Judgment dated August 28, 2020 in favour of BCU against Carlo DeMaria.



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BUDUCHNIST CREDIT UNION LIMITED

- and -

2321197 ONTARIO INC., CARLO DEMARIA, SANDRA  
DEMARIA, 2321198 ONTARIO INC., SASI MACH LIMITED,  
VICAR HOMES LTD. AND TRADE CAPITAL FINANCE CORP.  
Respondents

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Applicant

<p><b>ONTARIO</b> <b>SUPERIOR COURT OF JUSTICE</b> <b>(COMMERCIAL LIST)</b></p> <p>PROCEEDING COMMENCED AT TORONTO</p>	
<p><b>ORDER</b></p>	
<p><b>CHAITONS LLP</b> 5000 Yonge Street, 10<sup>th</sup> Floor Toronto, ON M2N 7E9</p> <p><b>George Benchetrit</b> Tel: (416) 218-1141 Fax: (416) 222-8402 Email: <a href="mailto:george@chaitons.com">george@chaitons.com</a></p> <p><b>Lawyers for KSV Restructuring Inc., in its capacity as Court-Appointed Receiver</b></p>	

# Tab 17



Electronically issued : 12-Apr-2022  
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Toronto

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

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

JUSTICE PENNY

TUESDAY, THE 12<sup>th</sup> DAY

OF APRIL, 2022

BETWEEN:

**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

**ORDER  
 (Interim Distribution #2)**

THIS MOTION, made by the Applicant, Buduchnist Credit Union Limited (“BCU”), for an order authorizing and directing the Receiver to make certain distributions of funds to BCU, was heard this day at Toronto via Zoom video conference due to the COVID-19 Pandemic.

ON READING the Motion Record of BCU dated February 20, 2020, Supplementary Motion Record of BCU dated June 28, 2021, Second Supplementary Motion Record of BCU dated November 18, 2021, Factum & Book of Authorities of BCU dated December 9, 2021, Factum & Compendium of BCU dated December 9, 2022, Supplementary Compendium of BCU dated March 30, 2022, the Seventh Report of the Receiver dated October 21, 2020 (without appendices), Transcript of the Cross-Examination of Okansa Prociuk held December 17, 2018, Transcript of the Continued Cross Examination of Oksana Prociuk held March 11, 2020,

Endorsement of Justice Penny (Scheduling Conference) dated December 7, 2021, Updated Interim Statement of Receipts and Disbursements as of March 22, 2022, Woodland Motion Costs Award Amount (BCU) up to March 31, 2022, Updated summary of what BCU contends should be non-contentious distributions to BCU as at March 31 2022, Transcript of the Rule 39.03 Examination of Roma Bereza held September 11, 2020, Transcript of the Rule 39.03 Examination of Roma Bereza held January 10, 2019 and Notice of Motion - Applicant - Buduchnist Credit Union Limited (CV-21-00663709-00CL), Responding Motion Record of Trade Capital Finance Corp. (“TC”) dated January 24, 2020, Factum of TC dated February 3, 2022, Book of Authorities of TC dated February 3, 2022, Compendium of TC dated February 3, 2022, Supplementary Compendium of TC dated March 30, 2022, Aides Memoire for Hearing of TC dated March 31, 2022 and Supplementary Application Record (Reply) dated November 18, 2019 (CV-19-00618175-00CL) and on hearing the submissions of counsel for BCU, TC, in the presence of counsel for 2321197 Ontario Inc., Carlo Demaria, Sandra Demaria, 2321198 Ontario Inc., and Vicar Homes Ltd. (collectively, the “**Demaria Parties**”), no one appearing for any other person on the service list although properly served as appears from the affidavits of service of Amanda Campbell sworn January 10, 2020, February 20, 2020, June 23, 2021, November 19, 2021 and December 10, 2021, filed and on being advised by counsel for BCU and TC on April 1, 2022 that TC no longer opposes the distributions below and that the Demaria Parties do not oppose and the Receiver supports the further interim distributions below,

1. **THIS COURT ORDERS AND DIRECTS** the Receiver to make the following unopposed interim distributions to BCU, pending this Court’s disposition of BCU’s claims to additional distributions which remain contested by TC:

- (a) \$83,297.78<sup>1</sup> of the net proceeds of the real property municipally known as 211 Woodland Acres Crescent, Vaughan, Ontario (the “**Woodland Property**”) as payment in full of the costs awarded in favour of BCU pursuant to the Order of the Honourable Justice Conway, dated August 20, 2020;

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<sup>1</sup> Calculated as \$77,500 cost award plus interest at the applicable post judgment interest rate from August 20, 2020 to March 31, 2022.

- (b) \$952,988.11<sup>2</sup> of the remaining net proceeds of the Woodland Property, being one half of the remaining net proceeds from the Woodland Property available for distribution as of March 22, 2022 after first deducting the amount in paragraph 1(a) above, which amount is attributable to Sandra Demaria's half interest in the Woodland Property as joint owner, being a portion of the total amount owing under paragraph 2 of the Judgment, dated August 28, 2020, against Sandra Demaria in respect of the second mortgage registered by BCU against the Woodland Property on December 5, 2012; and
- (c) \$63,243<sup>3</sup> being one half of the remaining net proceeds from the real property municipally known as 6216 Fifth Line, Egbert, Ontario (the "**Cottage Property**") available for distribution as of March 22, 2022, which amount is attributable to Sandra Demaria's half interest as joint owner and which was assigned to BCU by Sandra Demaria pursuant to the Irrevocable Quit Claim, Release and Direction, dated November 27, 2019, to be credited to Sandra Demaria's remaining liabilities to BCU in respect of the mortgages registered by BCU against the Cottage Property and the Woodland Property.



A handwritten signature in blue ink, appearing to read "Perry J.", is written over a horizontal line.

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<sup>2</sup> Calculated as 50% of the remaining net proceeds of the Woodland Property held by the Receiver as shown on the Receiver's Updated Interim Statement of Receipts and Disbursements, dated March 22, 2022 ("**Updated R&D**").

<sup>3</sup> Calculated as 50% of the remaining net proceeds of the Cottage Property held by the Receiver as shown on the Updated R&D, after first deducting the amount payable in paragraph 1(a) of this Order.

220

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

**BUDUCHNIST CREDIT UNION LIMITED**

Applicant

- and -

**2321197 ONTARIO INC. et :**

Responder

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

PROCEEDING COMMENCED AT TORONTO

**ORDER  
(Interim Distribution #2)**

**DENTONS CANADA LLP**

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Toronto-Dominion Centre  
Toronto, ON M5K 0A1

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*Lawyers for Buduchnist Credit Union Limited*



# Tab 18

Orig  
Mareva (1)

Court File No.: CV-15-2110-00

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**

THE HONOURABLE JUSTICE  
RICCHETTI

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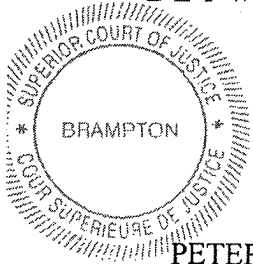
WEDNESDAY, THE 6TH  
DAY OF MAY, 2015

BETWEEN:

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 also known as BRUNO DIAIOMEDE, 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 also known as DON BONNY LOKUGE, VIRTUCALL INC., VIRTUCALL INTERNATIONAL LLC, DEBT RESOLVE-MORTGAGE FUNDING SOLUTIONS INC. carrying on business as DEBTRESOLVE 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 and MILLWALK ENTERPRISES INC.

Defendants

**ORDER**

**NOTICE**

If you, as a Defendant, disobey this order you may be held to be in contempt of court and may be imprisoned, fined or have your assets seized. You are entitled to apply on at least five (5) days notice to the Plaintiff, for an order granting you sufficient funds for ordinary living expenses and legal advice and representation.

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

**THIS MOTION**, brought without notice by the Plaintiff, TRADE CAPITAL FINANCE CORP., for an an interim Order in the form of a *Mareva* injunction restraining each of the Defendants, 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 Didionede also known as Bruno Diaionede, 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, Virtucall Inc., Debt Resolve-Mortgage Funding Solutions Inc. carrying on business as Debtresolve Inc., 2242116 Ontario Inc. carrying on business as Superior Medical Services Inc. and Superior Medical Services, The Cash House Inc., 1160376 Ontario Inc., Carlo De Maria also known as Carlo Vince De Maria also known as Carlo Vince De Maria also known as Carlo Vincenzo De Maria, Matteo Pennacchio, Frank Zito also known as Francesco Zito, Simone Sladkowski also known as Simona Sladkowski, Jobec Trade Finance Inc., 1461350 Ontario Inc., 2299430 Ontario Inc., WF Canada Limited, Jobec Investments RT Ltd., Green Link Canada Inc., 2339989 Ontario Inc., 2252364 Ontario Inc. and Millwalk Enterprises Inc. (collectively the "Mareva Defendants"), from dissipating their assets and other relief, was heard on May 4, 2015 at the Brampton Courthouse, 7755 Hurontario Street, Brampton Ontario.

ON READING the Affidavits of Darcy Thompson sworn April 30, 2015 and May 4, 2015, the Affidavit of Kevin D. Bousquet sworn April 27, 2015, and the Affidavit of Catherine Herring sworn April 27, 2015, and on hearing the submissions of counsel for the Plaintiff, and on noting the undertaking of the Plaintiff to abide by any Order this Court may make concerning damages arising from the granting and enforcement of this Order as set out in the Guarantee of Parkview Capital TCFC Inc. dated April 29, 2015,

### **Mareva Injunction**

1. **THIS COURT ORDERS** that each Mareva Defendant and its servants, employees, agents, assigns, officers, directors, affiliates and anyone else acting on their behalf or in conjunction with any of them, and any and all persons with notice of this injunction, are restrained from directly or indirectly, by any means whatsoever:

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

2. **THIS COURT ORDERS** that paragraph 1 applies to all of the assets of each Mareva Defendant whether or not they are in such Defendant's own name and whether they are solely or jointly owned or whether the assets are held in trust for the Defendant. For the purpose of this order, a Defendant's assets include any asset which such Defendant has the power, directly or indirectly, to dispose of or deal with as if it were such Defendant's own. A Defendant is to be regarded as having such power if a third party holds or controls the assets in accordance with such Defendant's direct or indirect instructions.

*incumbent*

**Ordinary Living Expenses**

3. **THIS COURT ORDERS** that any Defendant may apply for an order, on at least five (5) days notice to the Plaintiff, specifying the amount of funds which such Mareva Defendant seeks to have exempted from this Order as being needed and required by the Mareva Defendant for his/its ordinary living expenses and legal advice and representation.

**Disclosure of Information**

4. **THIS COURT ORDERS** that each Mareva Defendant prepare and provide to the Plaintiff's counsel of record within ten (10) days of the date of service of this Order, a sworn statement describing, in detail, the nature, value, and location of all assets worldwide, whether in his/its own name or not and whether solely or jointly owned, whether owned directly or indirectly and including any assets held in trust for the Mareva Defendant providing the sworn statement.

5. **THIS COURT ORDERS** that each Mareva Defendant submit to examinations under oath within thirty (30) days of the delivery by such Mareva Defendant of the aforementioned sworn statements or by such later date as may be confirmed by the Plaintiff's counsel of record. The Mareva Defendant shall bring to the said examination all original books, records and other documents relating to all financial affairs and assets of the said Mareva Defendant.

6. **THIS COURT ORDERS** that if the provision of any of this information is likely to incriminate a particular Mareva Defendant, such Mareva Defendant shall immediately seek an order within forty eight (48) hours permitting the Mareva Defendant not to answer the question or provide the information required to be provided herein or, alternatively, an order that any answer or information provided in accordance with this order shall not be admissible in any criminal proceedings in Canada, failing which, the Mareva Defendant shall answer any and all relevant questions regarding his/its financial affairs and assets.

**Third Parties**

7. **THIS COURT ORDERS** The Toronto-Dominion Bank also known as TD Canada Trust, The Bank of Nova Scotia also known as Scotiabank, Canadian Imperial Bank of Commerce also known as CIBC, Royal Bank of Canada also known as RBC, Bank of Montreal also known as BMO, City Savings and Credit Union Limited and the Buduchnist Credit Union Limited (the "Financial Institutions") to forthwith freeze and prevent any removal or transfer of monies or assets of the Mareva Defendants held in any account or on credit or on behalf of any Mareva Defendant with the Financial Institutions, including but not limited to the accounts listed in Schedule "A" hereto.

8. **THIS COURT ORDERS** that the Financial Institutions forthwith disclose and deliver up to the Plaintiff any and all records held by the Financial Institutions, and not already delivered to the Plaintiff, in any way relating to the Mareva Defendants whether such documentation includes information relating to assets and accounts other than those listed in Schedule "A" hereto or disclose the existence, nature, value and location of any other monies or assets or credit, wherever situate, held by or on behalf of the Mareva Defendants.

**Alternative Payment of Security into Court**

9. **THIS COURT ORDERS** that this Order will cease to have effect as against the Mareva Defendants if the Mareva Defendants, or any of them, deposit with the Accountant of the Superior Court of Justice to the credit of this action in total the sum of \$10,000,000.00 (CDN).

**Variation, Discharge or Extension of Order**

10. **THIS COURT ORDERS** that anyone served with or notified of this Order may apply, to the Court, to vary or discharge this order, on five (5) days' notice to the Plaintiff and all other parties.

11. **THIS COURT ORDERS** that this Order will be brought back before the Judge who issued this Order on **May 19, 2015 at 9:00 a.m.** All motions or applications to vary or discharge this Order, or arising out of the issuance or enforcement of this Order, shall be heard by the Judge who issued this Order with the exception of:

- (a) urgent matters for which the Judge is not available; or
- (b) as otherwise directed by the Judge.

**Expiry of Norwich Order**

12. **THIS COURT ORDERS** that upon this Order being issued and entered, the Order of Justice Ricchetti dated October 28, 2013 (as extended and amended) shall immediately expire.

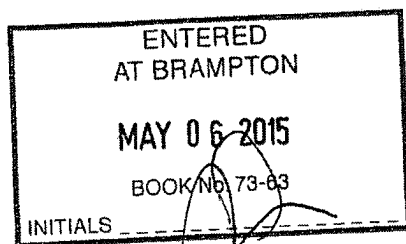
**Service of Materials**

13. **THIS COURT ORDERS** that the Plaintiff may serve the materials filed in relation to this Order, but not the order itself, on any person by attachments in PDF file format on a USB stick.

14. **THIS COURT ORDERS** that the Plaintiff shall, with this court within five (5) days of the issuance of this order, deposit the original guarantee of Parkview Capital TCFC Inc. dated April 29, 2015 as the Plaintiff's undertaking as to damages in this proceeding.

Sean Murphy

Ricchetti, J.



## SCHEDULE "A"

BANK	ADDRESS	ACCOUNT NAME	ACCOUNT NO.
TD Canada Trust	15255 Yonge Street Aurora ,Ontario L4G 1N5	Virtucall TD US Virtucall Account	1038-7303753
TD Canada Trust	15255 Yonge Street Aurora ,Ontario L4G 1N5	Global Medical Tom Barker Barker Global Account	1038-7303850
TD Canada Trust	15255 Yonge Street Aurora ,Ontario L4G 1N5	Virtucall TD Virtucall Canadian Account	1038-5214772
TD Canada Trust	2453 Yonge Street Toronto, Ontario M4P 2H6	2242116 Ontario Inc. Superior TD Superior Account	1928-5233022
Canadian Imperial Bank of Commerce	136 Rexdale Boulevard Etobicoke, Ontario M9W 1P6	2242116 Ontario Inc. Superior CIBC Superior Account	05022-9956611
TD Canada Trust	2038 Kipling Avenue Etobicoke, Ontario M9W 4K1	2339989 Ontario Inc. TD 233 Account	1552-5270311
TD Canada Trust	2038 Kipling Avenue Etobicoke, Ontario M9W 4K1	2339989 Ontario Inc.	1552-7327733
Royal Bank of Canada	5125 Sheppard Avenue E Scarborough, Ontario M1S 4N8	CJR Consulting o/b Christopher Jr. Bennett RBC CJR Consulting Account	06492-1010289
Bank of Nova Scotia	14720 Yonge Street Aurora, Ontario L4G 7H8	Virtucall Scotiabank Virtucall Account	10132-0073911
Canadian Imperial Bank of Canada	1 St. Clair Avenue West Toronto, Ontario M4V 1K7	Green Link Canada Inc. CIBC Greenlink Account	00112-4224213
Bank of Nova Scotia	14720 Yonge Street Aurora, Ontario L4G 7H8	Greenlink Canada Group Tom Barker Scotiabank Greenlink Account	10132-0151319



BANK	ADDRESS	ACCOUNT NAME	ACCOUNT NO.
Bank of Nova Scotia	14720 Yonge Street Aurora, Ontario L4G 7H8	LC Exchange Tom Barker Scotiabank LC Account	10132-0141216
Bank of Montreal	50 Bay Street South Hamilton, Ontario L8P 4V9	1461350 146 BMO Account	0006-1067356
Royal Bank of Canada	99 Mapleview Drive W Barrie, Ontario L4N 9H7	Millwalk RBC Millwalk Account	00292-1010024
Canadian Imperial Bank of Commerce	291 Rexdale Boulevard Etobicoke, Ontario M9W 1R8	2252364 Ontario Inc. (Rocky Racca)	05922-9991514
Canadian Imperial Bank of Commerce	15 Westney Road N Unit 22 Ajax, Ontario L1T 1P4	Rocky Racca	02542-6194338
Royal Bank of Canada	2 Harwood Avenue South Ajax, Ontario L1S 7L8	Rocky Racca	00042-5169057
Buduchnist Credit Union	2280 Bloor Street West Toronto, Ontario M6S 1N9	1160376 Ontario Limited (o/a The Cash House)	37922
Bank of Montreal	50 Bay Street South Hamilton, Ontario L8P 4V9	1461350 146 BMO Account	0006-1072075
Bank of Montreal	50 Bay Street South Hamilton, Ontario L8P 4V9	Bruno Didiomede	0006-4615388
Bank of Montreal	50 Bay Street South Hamilton, Ontario L8P 4V9	Bruno Didiomede	0006-8986451
Bank of Montreal	50 Bay Street South Hamilton, Ontario L8P 4V9	Bruno Didiomede	0006-10081205986 (TFSA)
Bank of Montreal	999 Upper Wentworth Street Hamilton, Ontario L9A 4X5	Bruno Didiomede	2919-8019047

BANK	ADDRESS	ACCOUNT NAME	ACCOUNT NO.
Meridian Credit Union Limited	Jackson Square 2 King Street West Hamilton, Ontario L8P 1A1	Bruno Didiomede	00842-037-7454903
TD Mutual Funds TD Investment Services Inc. Toronto-Dominion Bank	55 King Street West Toronto, Ontario M5K 1A2	Bruno Didiomede	0004-10202- 06905235875 91 479 5510439
Manulife Bank of Canada Royal Bank of Canada	8 Prince Andrew Place Don Mills, Ontario M3C 2B4	Bruno Didiomede	0003-02234- 000009930769
TD Canada Trust	981 Taunton Road East Oshawa, Ontario L1H 7K5	Peter Cook	3202-n/a
Bank of Nova Scotia	544 Bayfield Street Barrie, Ontario L4M 5A2	Alan Keery	85092
Royal Bank of Canada	7481 Woodbine Avenue Markham, Ontario L3R 2W1	Jobec Trade Finance Inc.	3012-0003-1029909
Canadian Imperial Bank of Commerce	1700 Wilson Avenue North York, Ontario M3L 1B2	Rocky Racca	00922
Buduchnist Credit Union Limited	1891 Rathburn Road East Mississauga, Ontario L4W 3Z3	The Cash House Inc.	1163457311
Bank of Nova Scotia	8565 Highway 27 Vaughan, Ontario L4L 1A7	Francesco Zito	42952-0045624
Bank of Nova Scotia	14720 Yonge Street Aurora, Ontario L4G 7H8	Tom Barker	10132
Royal Bank of Canada	7481 Woodbine Avenue Markham, Ontario L3R 2W1	Jobec Trade Finance Inc.	03012-4002010
Canadian Imperial Bank of Commerce	7220 Kennedy Road Markham, Ontario L3R 7P2	Matteo Pennacchio	03232

BANK	ADDRESS	ACCOUNT NAME	ACCOUNT NO.
TD Canada Trust	n/a	Todd Cadenhead	01238400
Wells Fargo Bank, N.A.	n/a	Marc D'Aoust	1221-0527-84 1221-0537-84

**TRADE CAPITAL FINANCE CORP.**  
(Plaintiff)

vs

**PETER COOK et al**  
(Defendants)

Court File No.

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at Brampton

**ORDER**

**LOOPSTRA NIXON LLP**

Barristers and Solicitors  
135 Queens Plate Drive  
Suite 600  
Toronto, Ontario  
M9W 6V7

**Michael B. McWilliams**

*LSUC#47320R*

Tel: (416) 746-4710  
Fax: (416) 746-8319

Lawyers for the Plaintiff

# Tab 19

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**

THE HONOURABLE JUSTICE  
 RICCHETTI **EMERY**

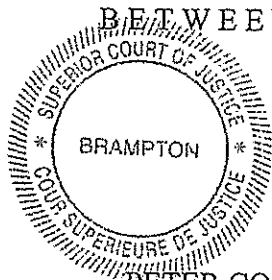
THURSDAY, THE 24<sup>TH</sup>  
 DAY OF MARCH, 2016

BETWEEN:

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 also known as BRUNO DIAIOMEDE, 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 also known as DON BONNY LOKUGE, VIRTUCALL INC., VIRTUCALL INTERNATIONAL LLC, DEBT RESOLVE-MORTGAGE FUNDING SOLUTIONS INC. carrying on business as DEBTRESOLVE 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 and MILLWALK ENTERPRISES INC.

Defendants

**ORDER**

**NOTICE**

If you, as a Defendant, disobey this order you may be held to be in contempt of court and may be imprisoned, fined or have your assets seized. You are entitled to apply on at least five (5) days notice to the Plaintiff, for an order granting you sufficient funds for ordinary living expenses and legal advice and representation.

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

**THIS MOTION**, brought without notice by the Plaintiff, TRADE CAPITAL FINANCE CORP., for an interim Order in the form of a Mareva injunction amending the Order of Justice Ricchetti dated May 6, 2015 to restrain each of the non-parties, 2454904 Ontario Inc., Osman Khan, Tax Tag Inc. and 2497743 Ontario Limited, (each a "Mareva Respondent") from dissipating their assets and other relief, was heard this day at the Courthouse, 7755 Hurontario Street, Brampton, Ontario.

**ON READING** the motion records of Trade Capital dated May 4, 2015, November 5, 2015, February 25, 2016 and March 23, 2016 and the responding record of the Khan Parties dated March 10, 2016, and on hearing the submissions of counsel for the Plaintiff, and on noting the undertaking of the Plaintiff to abide by any Order this Court may make concerning damages arising from the granting and enforcement of this Order as set out in the Guarantee of Parkview Capital TCFC Inc. dated April 29, 2015,

**Mareva Injunction**

1. **THIS COURT ORDERS** that each Mareva Respondent and its servants, employees, agents, assigns, officers, directors, affiliates and anyone else acting on their behalf or in conjunction with any of them, and any and all persons with notice of this injunction, are restrained from directly or indirectly, by any means whatsoever:

- (a) selling, removing, dissipating, alienating, transferring, assigning, encumbering, or similarly dealing with any assets of any of the Mareva Respondents, that are located in Canada or the United States, including but not limited to the assets and accounts listed in Schedule "A" hereto;

- (b) instructing, requesting, counselling, demanding, or encouraging any other person to do so; and,
- (c) facilitating, assisting in, aiding, abetting, or participating in any acts the effect of which is to do so.

2. **THIS COURT ORDERS** that paragraph 1 applies to all of the assets of each Mareva Respondent whether or not they are in such Mareva Respondent's own name and whether they are solely or jointly owned or whether the assets are held in trust for the Mareva Respondent. For the purpose of this order, a Mareva Respondent's assets include any asset which such Mareva Respondent has the power, directly or indirectly, to dispose of or deal with as if it were such Mareva Respondent's own. A Mareva Respondent is to be regarded as having such power if a third party holds or controls the assets in accordance with such Mareva Respondent's direct or indirect instructions.

#### **Ordinary Living Expenses**

3. **THIS COURT ORDERS** that any Mareva Respondent may apply for an order, on at least five (5) days notice to the Plaintiff, specifying the amount of funds which such Mareva Respondent seeks to have exempted from this Order as being needed and required by the Mareva Respondent for his/its ordinary living expenses and legal advice and representation.

#### **Disclosure of Information**

4. **THIS COURT ORDERS** that each Mareva Respondent prepare and provide to the Plaintiff's counsel of record within ten (10) days of the date of service of this Order, a sworn statement describing, in detail, the nature, value, and location of all assets worldwide, whether in his/its own name or not and whether solely or jointly owned, whether owned directly or indirectly and including any assets held in trust for the Mareva Respondent providing the sworn statement.

5. **THIS COURT ORDERS** that each Mareva Respondent submit to examinations under oath within thirty (30) days of the delivery by such Mareva Respondent of the aforementioned sworn statements or by such later date as may be confirmed by the Plaintiff's counsel of record.



The Mareva Respondent shall bring to the said examination all original books, records and other documents relating to all financial affairs and assets of the said Mareva Respondent.

6. **THIS COURT ORDERS** that if the provision of any of this information is likely to incriminate a particular Mareva Respondent, such Mareva Respondent shall immediately seek an order within forty eight (48) hours permitting the Mareva Respondent not to answer the question or provide the information required to be provided herein or, alternatively, an order that any answer or information provided in accordance with this order shall not be admissible in any criminal proceedings in Canada, failing which, the Mareva Respondent shall answer any and all relevant questions regarding his/its financial affairs and assets.

#### **Third Parties**

7. **THIS COURT ORDERS** The Toronto-Dominion Bank also known as TD Canada Trust, The Bank of Nova Scotia also known as Scotiabank, Canadian Imperial Bank of Commerce also known as CIBC, Royal Bank of Canada also known as RBC, Bank of Montreal also known as BMO, City Savings and Credit Union Limited and the Buduchnist Credit Union Limited (the "Financial Institutions") to forthwith freeze and prevent any removal or transfer of monies or assets of the Mareva Respondents held in any account or on credit or on behalf of any Mareva Respondent with the Financial Institutions, including but not limited to the accounts listed in Schedule "A" hereto.

8. **THIS COURT ORDERS** that the Financial Institutions forthwith disclose and deliver up to the Plaintiff any and all records held by the Financial Institutions, and not already delivered to the Plaintiff, in any way relating to the Mareva Respondents whether such documentation includes information relating to assets and accounts other than those listed in Schedule "A" hereto or disclose the existence, nature, value and location of any other monies or assets or credit, wherever situate, held by or on behalf of the Mareva Respondents.

#### **Alternative Payment of Security into Court**

9. **THIS COURT ORDERS** that this Order will cease to have effect as against the Mareva Respondents if the Mareva Respondents, or any of them, deposit with the Accountant of the Superior Court of Justice to the credit of this action in total the sum of \$10,000,000.00 (CDN).

**Variation, Discharge or Extension of Order**

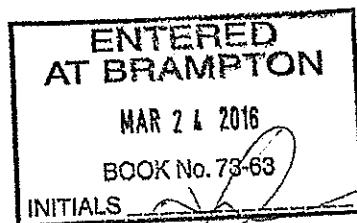
10. **THIS COURT ORDERS** that anyone served with or notified of this Order may apply, to the Court, to vary or discharge this order, on five (5) days' notice to the Plaintiff and all other parties.

*mcB.* 11. **THIS COURT ORDERS** that this Order will be brought back before ~~the Judge who~~ *Justice Mackenzie* in Guelph, ON. at 10 am on ~~issued this Order on~~ *MARCH 30, 2016*. All motions or applications to vary or discharge this Order, or arising out of the issuance or enforcement of this Order, shall be heard by the Judge *mcB.* who issued this Order with the exception of:

- (a) urgent matters for which the Judge is not available; or
- (b) as otherwise directed by the Judge.

**Service of Materials**

12. **THIS COURT ORDERS** that the Plaintiff may serve the materials filed in relation to this Order, but not the order itself, on any person by attachments in PDF file format on a USB stick.



*Ricchetti, J.*  
**EMERY, J.**

## SCHEDULE "A"

BANK	ADDRESS	ACCOUNT NAME	ACCOUNT NO.
Buduchnist Credit Union	1891 Rathburn Road East Mississauga, Ontario L4W 3Z3	2454904 Ontario Ltd./CHATS	69380
National Bank of Canada	3175 Rutherford Road Vaughan, Ontario L4K 5Y6	2454904 Ontario Ltd./CHATS	01-582-26
TD Canada Trust	2080 Danforth Avenue Toronto, Ontario M4C 1J9	2454904 Ontario Ltd.	0883-5216457
TD Canada Trust	2080 Danforth Avenue Toronto, Ontario M4C 1J9	2454904 Ontario Ltd.	0883-7300258
Bank of Montreal	55 Bloor Street West Toronto, Ontario M4W 1A5	2454904 Ontario Ltd.	1993-883

TRADE CAPITAL FINANCE CORP.  
(Plaintiff)

vs

PETER COOK et al  
(Defendants)

Court File No. CV-15-2110-00

ONTARIO  
SUPERIOR COURT OF JUSTICE

Proceeding commenced at Brampton

ORDER

LOOPSTRA NIXON LLP  
Barristers and Solicitors  
135 Queens Plate Drive, Suite 600  
Toronto, Ontario  
M9W 6V7

Michael B. McWilliams  
LSUC#47320R

Peter W.G. Carey  
LSUC#29410V

Christopher R. Lee  
LSUC#54040J

Tel: (416) 746-4710

Fax: (416) 746-8319

Lawyers for the Plaintiff



**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**

THE HONOURABLE JUSTICE  
 RICCHIETTI *EMERY*

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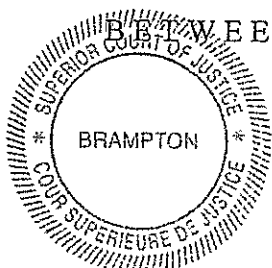
THURSDAY, THE 24 TH  
 DAY OF MARCH, 2016

BETWEEN:

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 also known as BRUNO DIAIOMEDE, 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 also known as DON BONNY LOKUGE, VIRTUCALL INC., VIRTUCALL INTERNATIONAL LLC, DEBT RESOLVE-MORTGAGE FUNDING SOLUTIONS INC. carrying on business as DEBTRESOLVE 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 and MILLWALK ENTERPRISES INC.

Defendants

**ORDER**

**NOTICE**

If you, as a Defendant, disobey this order you may be held to be in contempt of court and may be imprisoned, fined or have your assets seized. You are entitled to apply on at least five (5) days notice to the Plaintiff, for an order granting you sufficient funds for ordinary living expenses and legal advice and representation.

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

**THIS MOTION**, brought without notice by the Plaintiff, TRADE CAPITAL FINANCE CORP., for an interim Order in the form of a Mareva injunction amending the Order of Justice Ricchetti dated May 6, 2015 to restrain each of the defendant, Simone Sladkowski, and the non-party, Mark Pintucci, from dissipating their assets and other relief, ("Mareva Respondent") was heard this day at the Courthouse, 7755 Hurontario Street, Brampton, Ontario.

**ON READING** the Affidavits of Darcy Thompson sworn April 30, 2015, May 4, 2015, and March 1, 2016, the Affidavit of Kevin D. Bousquet sworn April 27, 2015, and the Affidavit of Catherine Herring sworn April 27, 2015, and on hearing the submissions of counsel for the Plaintiff, and on noting the undertaking of the Plaintiff to abide by any Order this Court may make concerning damages arising from the granting and enforcement of this Order as set out in the Guarantee of Parkview Capital TCFC Inc. dated April 29, 2015,

**Mareva Injunction**

1. **THIS COURT ORDERS** that each Mareva Respondent and its servants, employees, agents, assigns, officers, directors, affiliates and anyone else acting on their behalf or in conjunction with any of them, and any and all persons with notice of this injunction, are restrained from directly or indirectly, by any means whatsoever:

- (a) selling, removing, dissipating, alienating, transferring, assigning, encumbering, or similarly dealing with any assets of any of the Mareva Respondents, that are located in Canada or the United States, including but not limited to the assets and accounts listed in Schedule "A" hereto;

- (b) instructing, requesting, counselling, demanding, or encouraging any other person to do so; and,
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2. **THIS COURT ORDERS** that paragraph 1 applies to all of the assets of each Mareva Respondent whether or not they are in such Mareva Respondent's own name and whether they are solely or jointly owned or whether the assets are held in trust for the Mareva Respondent. For the purpose of this order, a Mareva Respondent's assets include any asset which such Mareva Respondent has the power, directly or indirectly, to dispose of or deal with as if it were such Mareva Respondent's own. A Mareva Respondent is to be regarded as having such power if a third party holds or controls the assets in accordance with such Mareva Respondent's direct or indirect instructions.

#### **Ordinary Living Expenses**

3. **THIS COURT ORDERS** that any Mareva Respondent may apply for an order, on at least five (5) days notice to the Plaintiff, specifying the amount of funds which such Mareva Respondent seeks to have exempted from this Order as being needed and required by the Mareva Respondent for his/its ordinary living expenses and legal advice and representation.

#### **Disclosure of Information**

4. **THIS COURT ORDERS** that each Mareva Respondent prepare and provide to the Plaintiff's counsel of record within ten (10) days of the date of service of this Order, a sworn statement describing, in detail, the nature, value, and location of all assets worldwide, whether in his/its own name or not and whether solely or jointly owned, whether owned directly or indirectly and including any assets held in trust for the Mareva Respondent providing the sworn statement.

5. **THIS COURT ORDERS** that each Mareva Respondent submit to examinations under oath within thirty (30) days of the delivery by such Mareva Respondent of the aforementioned sworn statements or by such later date as may be confirmed by the Plaintiff's counsel of record.



The Mareva Respondent shall bring to the said examination all original books, records and other documents relating to all financial affairs and assets of the said Mareva Respondent.

6. **THIS COURT ORDERS** that if the provision of any of this information is likely to incriminate a particular Mareva Respondent, such Mareva Respondent shall immediately seek an order within forty eight (48) hours permitting the Mareva Respondent not to answer the question or provide the information required to be provided herein or, alternatively, an order that any answer or information provided in accordance with this order shall not be admissible in any criminal proceedings in Canada, failing which, the Mareva Respondent shall answer any and all relevant questions regarding his/its financial affairs and assets.

### **Third Parties**

7. **THIS COURT ORDERS** The Toronto-Dominion Bank also known as TD Canada Trust, The Bank of Nova Scotia also known as Scotiabank, Canadian Imperial Bank of Commerce also known as CIBC, Royal Bank of Canada also known as RBC, Bank of Montreal also known as BMO, City Savings and Credit Union Limited and the Buduchnist Credit Union Limited (the "Financial Institutions") to forthwith freeze and prevent any removal or transfer of monies or assets of the Mareva Respondents held in any account or on credit or on behalf of any Mareva Respondent with the Financial Institutions, including but not limited to the accounts listed in Schedule "A" hereto.

8. **THIS COURT ORDERS** that the Financial Institutions forthwith disclose and deliver up to the Plaintiff any and all records held by the Financial Institutions, and not already delivered to the Plaintiff, in any way relating to the Mareva Respondents whether such documentation includes information relating to assets and accounts other than those listed in Schedule "A" hereto or disclose the existence, nature, value and location of any other monies or assets or credit, wherever situate, held by or on behalf of the Mareva Respondents.

### **Alternative Payment of Security into Court**

9. **THIS COURT ORDERS** that this Order will cease to have effect as against the Mareva Respondents if the Mareva Respondents, or any of them, deposit with the Accountant of the Superior Court of Justice to the credit of this action in total the sum of \$10,000,000.00 (CDN).

**Variation, Discharge or Extension of Order**

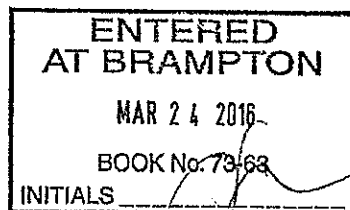
10. **THIS COURT ORDERS** that anyone served with or notified of this Order may apply, to the Court, to vary or discharge this order, on five (5) days' notice to the Plaintiff and all other parties.

11. **THIS COURT ORDERS** that this Order will be brought back before <sup>Justice MacKenzie</sup> ~~the Judge who~~ issued this Order on <sup>in Guelph ON at 10 a.m.</sup> ~~MARCH 30, 2016~~. All motions or applications to vary or discharge this Order, or arising out of the issuance or enforcement of this Order, shall be heard by the Judge who issued this Order with the exception of:

- (a) urgent matters for which the Judge is not available; or
- (b) as otherwise directed by the Judge.

**Service of Materials**

12. **THIS COURT ORDERS** that the Plaintiff may serve the materials filed in relation to this Order, but not the order itself, on any person by attachments in PDF file format on a USB stick.



*[Handwritten Signature]*  
Ricchetti, J.  
EMERY, J.

## SCHEDULE "A"

BANK	ADDRESS	ACCOUNT NAME	ACCOUNT NO.
Canadian Imperial Bank of Commerce / President's Choice Financial	P.O. Box 603 STN Agincourt Scarborough, Ontario M1S 5K9	Mark Pintucci	83764118
Bank of Montreal	1700 Wilson Avenue Downsview, Ontario M3L 1B2	Mark Pintucci	0373-3155-740
City Savings and Credit Union Limited	6002 Yonge Street North York, Ontario M2M 3V9	Simona Sladkowski aka Simone Sladkowski	n/a

TRADE CAPITAL FINANCE CORP.  
(Plaintiff)

vs

PETER COOK et al  
(Defendants)

Court File No. CV-15-2110-00

ONTARIO  
SUPERIOR COURT OF JUSTICE

Proceeding commenced at Brampton

ORDER

LOOPSTRA NIXON LLP  
Barristers and Solicitors  
135 Queens Plate Drive, Suite 600  
Toronto, Ontario  
M9W 6V7

Michael B. McWilliams  
LSUC#47320R

Peter W.G. Carey  
LSUC#29410V

Christopher R. Lee  
LSUC#54040J

Tel: (416) 746-4710

Fax: (416) 746-8319

Lawyers for the Plaintiff

# Tab 20

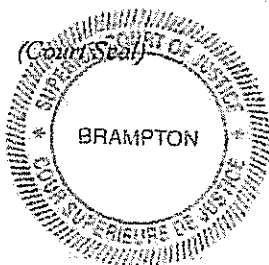
**ONTARIO  
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE JUSTICE

**EMERY**)  
)  
)FRIDAY, THE 20<sup>th</sup>

DAY OF MAY, 2016

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 DIDIO MEDE also known as BRUNO DIAIOMEDE, 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 also known as DON BONNY LOKUGE, VIRTUCALL INC., VIRTUCALL INTERNATIONAL LLC, DEBT RESOLVE-MORTGAGE FUNDING SOLUTIONS INC. carrying on business as DEBTRESOLVE 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 and MILLWALK ENTERPRISES INC.

Defendants

ORDER

THIS MOTION brought by the non-party Buduchnist Credit Union Limited ("Buduchnist") on consent of the Plaintiff, Trade Capital Finance Corp. ("Trade Capital") for an Order varying the Order of this Honourable Court dated March 24, 2016 granting a Mareva type injunction against the non-parties to these proceedings being Tax Tag Inc. ("Tax Tag"); 2497743 Ontario Inc., operating as Tax Tag, ("249"); 2454904 Ontario Inc. ("245"); and Osman Khan (collectively, the "Tax Tag Mareva Respondents" and each individually a "Tax Tag Mareva Respondent") (the said Order hereinafter referred to as the "Tax Tag Mareva Order") was heard this day at the Brampton Courthouse, 7755 Hurontario Street, Brampton, Ontario.

ON READING the Consent of the Plaintiff and Buduchnist filed,

AND UPON HEARING the submissions of counsel for Buduchnist, counsel for each of the Tax Tag Mareva Respondents, and counsel for Trade Capital,

**THIS COURT ORDERS THAT:**

1. Paragraph eight of the Tax Tag Mareva Order shall be varied as follows, solely in relation to Buduchnist:

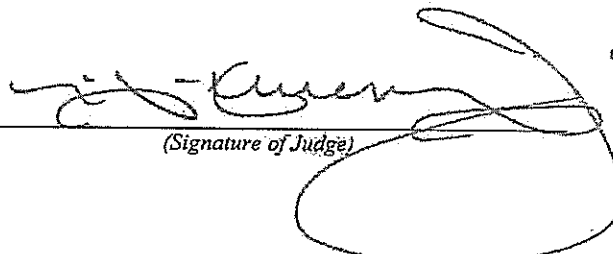
- (a) under paragraph eight of the Tax Tag Mareva Order Buduchnist shall be required to disclose and deliver to the Plaintiff copies of any specified records held by Buduchnist only after a request from the Plaintiff to Buduchnist that has been copied to counsel for the affected Tax Tag Mareva Respondent; *has been made*
- (b) for greater certainty, the records required to be disclosed under this paragraph include copies of all correspondence, data, documents, records, transaction documents, vouchers and instruments, including but not limited to:

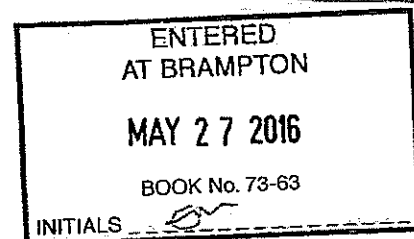
- (i) all files, records, papers, notes, correspondence, memoranda, computer data and other records and information in Buduchnist's possession or control and requested by the Plaintiff with respect to any transactions conducted by, or communications received in relation to, the assets and accounts subject to the Tax Tag Mareva Order ("**Accounts**");
  - (ii) the identity of any persons or entities who instructed Buduchnist to conduct any business on behalf of any of the Accounts, including the making of any payments or transfers to third parties, the identity of the payees, and particulars of the instructions and transactions; and,
  - (iii) the identity of any persons or entities to whom funds were transferred from the Tax Tag Mareva Respondents or Accounts, and particulars of the instructions and the transactions;
- (c) the Plaintiff shall only request information from Buduchnist after the respective Tax Tag Mareva Respondent has been asked to provide the records requested and has failed to do so within two days of such request to such Tax Tag Mareva Respondent;
- (d) a Tax Tag Mareva Respondent will be responsible to Buduchnist for the reasonable costs and disbursements of Buduchnist in retrieving and providing the information related to a request upon which it was copied at the rate of:
- (i) \$0.25 per page as a copy charge reimbursement for copies of all documents produced by Buduchnist under the Tax Tag Mareva Order or any future Order in this proceeding requiring information or production of



documents from Buduchnist in respect of any Tax Tag Mareva Respondent (collectively, the "**Production Orders**");

- (ii) \$30.00 per hour for reasonable internal time spent by Buduchnist to search for, identify and retrieve information and documents in compliance with the Production Orders; and,
  - (iii) Buduchnist's reasonable legal costs of compliance with the Production Orders;
  - (e) Buduchnist shall retrieve and provide any requested records requested by the Plaintiff as quickly as possible in the most efficient, effective, and cost-sensitive manner; and,
  - (f) Buduchnist shall advise the respective Tax Tag Mareva Respondent after a request has been fulfilled.
2. Nothing in this Order is intended to be a waiver of or otherwise limit any privilege rights of Buduchnist.
3. That there are no costs payable for this motion.

  
(Signature of Judge)



**TRADE CAPITAL FINANCE CORP.**  
Plaintiff

-and- **PETER COOK et al**  
Defendants

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**  
**PROCEEDING COMMENCED AT**  
**BRAMPTON**

**ORDER**

(May 20, 2016)  
(regarding Buduchnist and disclosure regarding  
Tax Tag et al.)

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

**Barbara L. Grossman**  
LSUC # 20947K  
Tel: (416) 863-4417  
Fax: (416) 863-4592

Lawyers for Buduchnist Credit Union  
Limited

# Tab 21

**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, 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

**FOURTH SUPPLEMENTARY AFFIDAVIT  
OF OKSANA PROCIUK  
(Sworn June 18, 2021)**

I, **OKSANA PROCIUK**, of the City of Toronto, in the Province of Ontario, **MAKE OATH AND SAY AS FOLLOWS:**

1. I am the President and Chief Executive Officer at Buduchnist Credit Union Limited (“**BCU**”), the Applicant in this proceeding. As such, I have personal knowledge of the matters to which I hereinafter depose. Where I do not have personal knowledge of the matters set out herein, I have stated the source of my information and, in all such cases, believe it to be true.

2. This Affidavit is sworn in support of the within application and BCU’s distribution motion scheduled for July 14-15, 2021, for an Order, among other things, directing KSV Kofman Inc., in

its capacity as Receiver to distribute the remaining net rental and sale proceeds in its hands to BCU and quantifying BCU's costs of this application for that purpose.

3. This affidavit is supplementary to my initial Affidavit in support of the within application sworn on November 6, 2018 ("**Initial Affidavit**"), my Responding Affidavit sworn November 20, 2018 ("**Responding Affidavit**"), my Supplementary Affidavit sworn November 30, 2018 ("**Supplementary Affidavit**"), my Second Supplementary Affidavit sworn February 20, 2020 ("**Second Supplementary Affidavit**") and my Third Supplementary Affidavit, sworn July 8, 2020. Except as otherwise noted herein, I adopt by reference the information and statements in my earlier Affidavits.

4. All capitalized terms used but not defined herein shall have the meanings ascribed to them in my Second Supplementary Affidavit.

#### **THE RECEIVERSHIP PROCEEDINGS**

5. An overview of the receivership proceedings is set out in paragraphs 10-14 of my Second Supplementary Affidavit.

6. The Receiver has now sold all four of the real properties that are the subject of this receivership proceeding. After an unopposed interim distribution to BCU previously approved by the Court, the Receiver has remaining net proceeds available for distribution as set out in its Interim Statement of Receipts and Disbursements, dated as of May 20, 2021 ("**Updated R&D**"), attached hereto as **Exhibit "A"**. BCU claims an entitlement to the entire net proceeds held by the Receiver.

7. Most recently the Receiver sold the property municipally known as 211 Woodland Acres, Vaughan, Ontario (the “**Woodland Property**”) and, prior to the sale, realized rental monies from the Woodland Property.

#### **THE WOODLAND PROPERTY AND MORTGAGES**

8. At the time of the Receiver’s appointment, Carlo and Sandra DeMaria (“**Carlo and Sandra**”) were the registered owners of the Woodland Property, a residential home in Vaughan, Ontario. Until August 31, 2020, Carlo and Sandra resided at the Woodland Property and for a period paid rent to the Receiver in respect of their continued occupancy pending the Receiver’s sale of the Woodland Property.

9. Pursuant to the Mortgage Loan Offer, dated August 4, 2010 (the “**DeMaria Mortgage Agreement**”), BCU made a first mortgage loan to Carlo and Sandra in respect of which they granted a mortgage/charge to BCU in the principal amount of \$1,490,000 (the “**First Woodland Mortgage**”). The First Woodland Mortgage was registered against the Woodland Property on August 16, 2010 and bears interest at a rate of 2.85% per annum. Copies of the DeMaria Mortgage Agreement and First Woodland Mortgage are attached to my Initial Affidavit as Exhibit “V”.

10. Attached as **Exhibit “B1”** hereto is a copy of the Standard Charge Terms 200033 incorporated by reference in the Woodland Mortgages, the Elm Mortgage and the Puccini Mortgage, which addresses BCU’s entitlement to mortgage enforcement costs under those mortgages. The applicable Standard Charge Terms that address BCU’s entitlement to mortgage enforcement costs under the Cottage Mortgage are 98019 and they are attached hereto as **Exhibit “B2”**.

11. Pursuant to the Interim Distribution Order (defined below), all principal and interest owing under the First Woodland Mortgage was repaid in full. BCU's costs of enforcement of the First Woodland Mortgage, the receivership application and this distribution motion have not been quantified, with the exception of the \$77,500 costs award granted in favour of BCU pursuant to the August 12 Order (defined below), which remains unpaid.

12. At the time of the Receiver's appointment, BCU also held a second ranking mortgage registered against the Woodland Property. The loan and mortgage documentation in respect of the second collateral mortgage/charge in the principal amount of \$3,000,000, registered against the Woodland Property on December 5, 2012 (the "**Second Woodland Mortgage**") and together with the first Woodland Mortgage, the "**Woodland Mortgages**"), were attached to my Initial Affidavit as follows:

<b>Document</b>	<b>Exhibit No. in Initial Affidavit</b>
Line of Credit Mortgage Loan Agreement and Statement of Disclosure, dated November 30, 2012	W
Second Woodland Mortgage	X
Line of Credit Loan Agreement, dated April 1, 2015, pursuant to which BCU made loan advances (the " <b>Vicar Homes Line of Credit</b> ") to Vicar Homes Ltd. (" <b>Vicar Homes</b> ")	Y
Guarantee and Postponement of Claim, dated April 1, 2015	Z
Application for Business Loan, dated April 1, 2015	AA

13. As of July 1, 2021, the total amount outstanding under the Second Woodland Mortgage is \$2,478,320.99, plus interest and costs (as yet unquantified). A statement of account showing the

principal and interest balance owing on the Second Woodland Mortgage is attached hereto as **Exhibit “C”**.

14. At the time of the Receiver’s appointment, the Woodland Mortgages were the only mortgages registered against title to the Woodland Property. A copy of the title abstract for the Woodland Property, dated October 2, 2020 (prior to completion of the Receiver’s sale of the Woodland Property) is attached hereto as **Exhibit “D”**. It shows the following registrations:

- (a) First Woodland Mortgage (\$1,490,000) - August 16, 2010;
- (b) Second Woodland Mortgage (\$3,000,000) - December 5, 2012;
- (c) Mareva Order (defined below) - June 18, 2015; and
- (d) Lien in favour of Minister of National Revenue (\$63,408) – March 5, 2019.

15. A copy of the lien registered in favour of the Minister of National Revenue in respect of Sandra DeMaria’s unpaid income taxes is attached hereto as **Exhibit “E”**.

## **SALE OF THE WOODLAND PROPERTY**

16. Pursuant the Order of the Honourable Justice Conway, dated August 12, 2020, the Court approved the engagement of Avenue Realty Inc. for the listing of the Woodland Property for sale at a list price of \$3.75 million. Pursuant to the Approval and Vesting Order, dated October 28, 2020 (the “**Woodland AVO**”), a transaction for the sale of the Woodland Property was approved.

17. The sale of the Woodland Property closed on December 1, 2020 and, prior to the sale, the Receiver realized rental monies from the DeMarías.



**WOODLAND STAY EXTENSION AGREEMENT AND CONSENT JUDGMENTS**

18. At the outset of these proceedings, the receivership of the Woodland Property was temporarily stayed by the Second Amended Receivership Order. On the consent of BCU, the stay was subsequently extended by the Court on terms pending argument in August 2019 of cross motions in Trade Capital's Mareva Action (as defined below). After the disposition of the cross motions in the Mareva Action, BCU agreed to further extend the stay of the receivership against the Woodland Property until October 31, 2020 on strict terms. The most recent terms of the stay are set out in the Stay Extension Agreement, dated November 26, 2019 (the "**Stay Extension Agreement**"), a copy of which is attached to my Second Supplementary Affidavit as Exhibit "D".

19. Pursuant to a Stay Extension Agreement, among other things, Carlo and Sandra irrevocably acknowledged and conceded: (i) the validity and enforceability of the Woodland Mortgages; (ii) that the Woodland Mortgages secure the indebtedness due and owing to BCU; (iii) that the First Woodland Mortgage matured and the Second Woodland Mortgage is in default and the Woodland Mortgages are therefore enforceable; (iv) that BCU is entitled to judgment against Carlo and Sandra for the full amounts owing under the Woodland Mortgages as set out in Schedule C thereto; (v) BCU is entitled to judgment against Vicar Homes in respect of the Vicar Homes Line of Credit, which is secured by the Second Woodland Mortgage; and (vi) BCU is entitled to judgment against Carlo as guarantor of the Vicar Homes Line of Credit.

20. In addition, Carlo and Sandra and Vicar Homes each executed consents to judgment in respect of their obligations to BCU under the Woodland Mortgages and the indebtedness that the Woodland Mortgages secure.

21. On February 25, 2020, BCU terminated the stay of the Woodland Receivership Order due to the failure to make the \$21,000 monthly payment due February 1, 2020 under the stay terms, and the receivership over the Woodland Property was effective as of that date.

22. Carlo and Sandra brought a motion to vacate or further stay the Woodland Receivership Order, which BCU vigorously opposed, and subsequently they abandoned their motion by Notice of Abandonment, dated July 10, 2020. By Order, dated August 12, 2020 (the “**August 12 Costs Order**”), on the consent of Carlo and Sandra, BCU was awarded costs of the abandoned motion payable by Sandra and Carlos and fixed on a full indemnity basis in the amount of \$77,500 plus interest.

23. On August 28, 2020, BCU took out consent judgments (the “**Consent Judgments**”) against each of Carlo and Sandra, Vicar Homes, 2321197 Ontario Inc. (“**197**”) and 2321198 (“**198**”), and thereafter registered Writs of Seizure and Sale in respect thereof. Copies of the Writs of Seizure and Sale registered by BCU, and not subsequently withdrawn, are attached hereto as **Exhibits “F” to “G”**.

24. A chart showing all the Writs of Seizure and Sale issued and filed by BCU in respect of all the Consent Judgments and Orders in favour of BCU, and the interim distribution amounts and other recoveries credited to the judgment debts where applicable, is attached hereto as **Exhibit “H”**.

25. The results of execution searches against all of the judgment debtors in Toronto and York and searches against Carlo and Sandra in Simcoe, are attached hereto as **Exhibits “I” to “M”**. The only writs registered against 198, 197, Carlo and Sandra are in favour of BCU. There are writs registered in favour of two other execution creditors against Vicar Homes in York.

26. By virtue of the Stay Extension Agreement, Carlo and Sandra and Vicar Homes concede BCU's entitlement to the remaining proceeds of the Woodland Property up to the full amount owing to BCU under the Woodland Mortgages. As set out in paragraph 34 of my Second Supplementary Affidavit, the same concessions were made with respect to the proceeds of the Elm Property, the Puccini Property and the Cottage Property. As described below, the sole opposition comes from the Mareva plaintiff, Trade Capital.

### **INTERIM DISTRIBUTION**

27. Pursuant to the Order of the Honourable Justice Conway, dated October 28, 2020 (the "**Interim Distribution Order**"), this Court approved an interim distribution to BCU from the proceeds of the Puccini Property, the Cottage Property and the Woodland Property.

28. Trade Capital ultimately did not oppose the Interim Distribution Order which provides for the repayment, in full, of the principal and interest owing under the First Woodland Mortgage and the Cottage Mortgage (not including the costs of the Receivership proceedings ordered in favour of BCU which remain to be quantified and the costs granted in favour of BCU pursuant to the August 12 Order), and partial repayment of the Puccini Mortgage.

29. Pursuant to the Interim Distribution Order, the Receiver distributed to BCU:

- (a) \$1,047,552.15 on account of the pre-Mareva Date portion of the principal and interest amount outstanding under the Puccini Mortgage as of December 6, 2019, plus interest of \$43,686.92 calculated from December 7, 2019 to October 30, 2020;
- (b) \$207,393.29 on account of the principal and interest amount outstanding under the Cottage Mortgage as of December 6, 2019, plus interest of \$7,093.06 calculated from December 7, 2019 to October 30, 2020; and

- (c) \$1,049,319.69 on account of the principal and interest amount outstanding under the First Woodland Mortgage, as of December 6, 2019, plus interest of \$47,014.11 calculated from December 7, 2019 to December 1, 2020.

30. The remaining net proceeds available for distribution are as set out in the Receiver's Updated R&D (Exhibit "A").

31. To date, there has been no distribution to BCU in respect of its costs, including legal fees, incurred in respect of this Receivership application. BCU's costs have not been quantified, save for its costs in respect of the abandoned motion brought by Carlo and Sandra in August 2020 seeking to vacate or stay the receivership in respect of the Woodland Property, which were quantified pursuant to the August 12 Costs Order in the amount of \$77,500 plus interest. The full amount of the costs award remains outstanding.

### **THE MAREVA ORDER**

32. The Mareva Order is described in detail in my Second Supplementary Affidavit.

33. Trade Capital is the plaintiff in the Mareva Action and the sole party opposing BCU's distribution motion.

34. As I understand its position in respect of the Woodland Property, Trade Capital objects to a distribution to BCU from the remaining proceeds of same. The grounds for its objection, as I understand it, relate to the revolving nature of the Vicar Homes Line of Credit, which is secured by the Second Woodland Mortgage.

35. The Woodland Property was jointly owned and mortgaged by Carlo and Sandra. There is no Mareva Order against Sandra and Trade Capital is not suing Sandra. Trade Capital nonetheless

opposes BCU's claim under the Woodland Second Mortgage even to the one half share of the proceeds allocable to Sandra's half interest. I am not aware of any basis for Trade Capital to oppose BCU's claim in respect of the one half share of the proceeds of the Woodland Property allocable to Sandra's half interest when Trade Capital has no Mareva Order against Sandra and is not even suing Sandra. No rationale for this position of Trade Capital has to my knowledge ever been provided by Trade Capital despite BCU's request almost a year ago at the time of the unopposed Interim Distribution Order.

36. As I understand its position, Trade Capital contests BCU's claim under the Second Woodland Mortgage in respect of monies advanced by BCU under the Vicar Homes Line of Credit from and after the date of the Mareva Order. As of the close of business on May 5, 2015 (the day before the Mareva Order), the Vicar Homes Line of Credit had a balance owing totalling \$963,517.12. That balance was never repaid to BCU.

37. Although there were subsequent transfer entries in to the Vicar Homes account from the BCU account of 2454904 Ontario Inc. (doing business as CHATS) in late December 2015 and January 2016 which appear to pay down the pre-Mareva balance owing on the Vicar Homes Line of Credit, there were no actual funds available in the CHATS accounts to fund these transfers to Vicar Homes because \$18.027M of cheques deposited to the CHATS account in December 2015 and January 2016 were dishonoured by the TD Bank. The transfers from the BCU accounts of CHATS to the BCU account of the Vicar Homes Line of Credit and then from there to the BCU line of credit account of 198/Puccini, were illusory, and were therefore substantially reversed (having regard to the limits of the lines of credit) and nullified to the extent possible, after the cheques were dishonoured.

38. A copy of the transaction history printout for the Vicar Homes Line of Credit account for the period from account opening on July 27, 2010 through to June 15, 2021 is attached hereto as **Exhibit “N”**.

39. Attached as **Exhibits “O”** and **“P”** respectively, are spreadsheets that I prepared to demonstrate that the post Mareva Date transfers from the CHATS account to the Vicar Homes Line of Credit account and from there to the Puccini Mortgage account in the period of December 2015 to January 2016 are not real pay downs of pre-Mareva date indebtedness as there were no actual funds available in the CHATS accounts to fund these transfers. The deposit of \$18.027M of cheques into the CHATS account in that period created the illusion of a credit balance available to fund transfers, however the 26 deposited cheques were dishonoured therefore there were no actual proceeds from these cheques. Consequently, the transfers were substantially reversed and the illusory pay downs in the Vicar Homes Line of Credit and Puccini Mortgage accounts were nullified to the extent possible. The Mareva Date balances owing remained owing.

40. More complete details of the 26 cheques drawn by Do You Know Inc. on its account at TD Bank in favour of CHATS in the aggregate amount of \$18.027M, which were deposited by CHATS in its account at BCU and then all returned by TD Bank as dishonoured, are set out in:

- (a) BCU’s Statement of Claim against 2454904 Ontario Inc., together with my Affidavit sworn May 27, 2021 in support of BCU’s motion for default judgment, copies of which are attached hereto collectively as **Exhibit “Q”** (without the exhibits to my affidavit); and
- (b) My Affidavit sworn November 15, 2019 in BCU’s companion application in Court File No. CV-19-00618175-00CL in respect of the enforcement of BCU’s registered

mortgage over the property at 1407 Stavebank Road, Mississauga. Trade Capital had itself joined as a party in this companion application and cross-examined me on my affidavits sworn in the companion application.

41. I categorically deny that BCU at any time intentionally failed to comply with the Mareva Order. As detailed in my Second Supplemental Affidavit, upon receipt of the Mareva Order, I ensured that the accounts of the Mareva Defendants (as defined in the Mareva Order) and all accounts specified in the Mareva Order at BCU were promptly frozen. Vicar Homes is not, and has never been, a Mareva Defendant or Mareva Respondent under the initial May 6, 2015 Mareva Order or the subsequent order made on March 24, 2016 extending the Mareva Order to additional Mareva Respondents. Neither the Vicar Homes Line of Credit nor any other account of Vicar Homes is listed in the Mareva Order as a frozen account. Counsel for Trade Capital who sent me the Mareva Order, never asserted that it applied to the Vicar Homes Ltd. accounts at BCU and never requested that BCU freeze the Vicar Homes Line of Credit at BCU. Accordingly, the Vicar Homes Line of Credit and accounts at BCU were not frozen by me and remained operational after the Mareva Order. Trade Capital first asserted this new position long after the fact in the context of BCU's receivership application initiated in November 2018, some two and half years after the Mareva Order.

#### **AVISO WEALTH INC./CREDENTIAL QTRADE SECURITIES INC. SECURITY**

42. On April 1, 2016, Vicar Corporate Holdings Ltd. ("**Vicar Holdings**") signed an Agreement for Security on Shares and Deposits ("**Agreement for Security**") pledging the sum of all investments as general security and continuing collateral security for the payment of present and future indebtedness and liability of all corporate accounts at BCU, including but not limited to,

Vicar Homes, Vicar Holdings, 197, Do You Know Inc., and Linda DeMaria. Attached hereto as **Exhibit “R”** is the Agreement for Security.

43. On March 29, 2021 a Settlement Agreement was made in the above mentioned companion application concerning BCU’s registered mortgage over the property at 1407 Stavebank Road, Mississauga which had a provision allowing BCU to bring an unopposed application for Judgment ordering the funds in accounts bearing account numbers Q5J-7EJ1-A and Q5J-7EJ1B (the “**Accounts**”) being held by Vicar Holdings at Aviso Wealth Inc./Credential Qtrade Securities Inc. (“**Aviso**”) to be paid out to BCU under BCU’s Agreement for Security .

44. On May 6, 2021, a Notice of Application was issued with BCU as the Applicant and Vicar Holdings as the Respondent (the “**Vicar Holdings Application**”). This application was heard before the Honourable Justice Hainey where he granted a Judgement dated May 13, 2021 in favour of BCU. Attached hereto as **Exhibit “S”** is the Judgment of Justice Hainey dated May 13, 2021 (the “**Vicar Holdings Judgment**”) in the Vicar Holdings Application.

45. The Vicar Holdings Judgment declares that BCU’s security interest in the Accounts is valid and enforceable and orders the payment of the balance in the Accounts to BCU.

46. On May 20, 2021, BCU received the funds in the Accounts from Aviso in the amounts of US\$361,303.32 and CA\$170,367.92 and applied the funds (totaling CA\$603,570.60) against the indebtedness secured by the Elm Mortgage. Attached hereto as **Exhibit “T”** is a statement of account showing the balance owing on the Elm Mortgage after application of the funds in the Accounts.



**REQUESTED DISTRIBUTION ORDER**

47. BCU seeks an Order, among other things, directing and authorizing the Receiver to make a distribution to BCU of the remaining net proceeds of each of the Elm Property, the Puccini Property, the Cottage Property and the Woodland Property.

48. BCU claims the entirety of the remaining undistributed net proceeds for amounts owing under the Mortgages and Consent Judgments plus costs. Below is a summary of the indebtedness owing to BCU as of June 30, 2021:

- (d) Elm Mortgage – \$2,042,159.56, plus interest from July 1, 2021 to the date of payment, plus costs;
- (e) Puccini Mortgage – \$1,886,658.37, plus interest from July 1, 2021 to the date of payment, plus costs;
- (f) Second Woodland Mortgage – \$2,478,320.99, plus interest from July 1, 2021 to the date of payment, plus costs;
- (g) costs of enforcement of the Cottage Mortgage, the Woodland Mortgages, the Elm Mortgage and the Puccini Mortgage, including the costs of the within receivership proceedings and this distribution motion, in an amount to be quantified; and
- (h) costs in the amount of \$77,500 plus interest thereon awarded to BCU pursuant to the August 12 Costs Order and secured by the First Woodland Mortgage, plus interest from August 12, 2020 to the date of payment.

49. Interest and costs continue to accrue until BCU is repaid. Statements of Account showing the balances owing on the Elm Mortgage and the Second Woodland Mortgage are attached hereto as **Exhibits “T” and “C”**. A statement of account showing the balance owing on the Puccini Mortgage is attached hereto as **Exhibit “U”**.

50. Title abstracts in respect of the Elm Property, the Puccini Property and the Cottage Property are attached hereto as **Exhibits “V” to “X”**. The title abstract for the Woodland Property (Exhibit D) is described in paragraph 14 above.

51. With respect to the Elm Mortgage, attached hereto as **Exhibit “Y”** is the appraisal report as of November 24, 2015 that was provided to BCU on or about December 15, 2015 as the basis for the Elm Mortgage. At the time there was a tear down house on the property. The Appraisal indicates that the land value alone is then \$1,040,000 and the rest of the appraised value (more than 50%) is based on the new house to be built per the attached plans. Had Trade Capital registered its Mareva Order on the Elm Property in a timely way (in fact, it never registered at all) and asserted the position it now asserts that the Mareva Order applies to the Elm Property owned by 197, it seems unlikely that the new house that has in part yielded the net sales proceeds would have been constructed. Accordingly, it seems that Trade Capital is now attempting to freeze not only the land value that existed on the Mareva Date but the additional value from the new house that was built subsequently.

52. The following chart summarizes the amounts available for distribution and the indebtedness owing to BCU. The indebtedness amounts do not include the unquantified costs of this application.

<b>Property &amp; Owner/mortgagor</b>	<b>Interim Distribution</b>	<b>Indebtedness as of June 30, 2021, plus interest from July 1, 2021(before costs)</b>	<b>Net Proceeds Available for Distribution <sup>1</sup></b>
<b>Elm Property Owner/mortgagor = 197</b>	NIL	\$2,042,159.56	\$1,423,983.00

<b>Puccini Property</b> <b>Owner/mortgagor = 198</b>	\$1,047,552.15 (Mareva Date balance)+ \$43,686.92 of interest on the Mareva Date balance from Dec 7, 2019 to October 30, 2020 <sup>2</sup>	\$1,885,658.37	\$1,051,690.00
<b>Cottage Property</b> <b>Owner/mortgagors = Sandra and Carlo</b>	\$214,486.35	\$0	\$126,992.00 (Carlo and Sandra <sup>3</sup> each allocated 50%)
<b>Woodland Property</b> <b>Owner/mortgagors = Sandra and Carlo</b>			\$1,988,346 (Carlo and Sandra each allocated 50%)
First Woodland Mortgage	\$1,096,333.80	\$77,500 costs award plus interest <sup>4</sup>	(Of this amount, \$963,517.12 was the balance owing as of the close of business the day before the Mareva Order was made, as set out in paragraph 36 above.)
Second Woodland Mortgage	NIL	\$2,478,320.99	

<sup>1</sup> Per Receiver's Updated R&D, as of May 20, 2021

<sup>2</sup> The full amount of interest owing to BCU on the Mareva Date balance of \$1,047,552.15 from the Mareva Date to October 30, 2020 was \$282,388.34. However, Trade Capital opposed payment of this full amount but did not oppose payment of interest for the period from December 7, 2019 to October 30, 2020 in the amount of \$43,686.92, so that is what was ordered in the unopposed Interim Distribution Order. The remaining interest of \$238,701.42 on the Mareva Date balance that accrued from the Mareva Date to Dec 6, 2019 remains unpaid and BCU claims entitlement to its payment. BCU is not aware of any rationale for Trade Capital's opposition to distribution to BCU of the full interest owing on the Mareva Date balance from the Mareva Date.

<sup>3</sup> Sandra is not a Mareva Defendant or Mareva Respondent. She executed an irrevocable quit claim, release and direction with respect to any surplus proceeds of the Cottage Property to which she may be entitled after payment in full of the Cottage Mortgage and directed payment of her entitlement to BCU.

<sup>4</sup> Costs award per August 12 Costs Order is secured by the First Woodland Mortgage and bears interest from August 12, 2020.

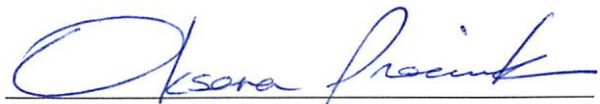
53. Due to the circumstances of the COVID-19 pandemic, I am unable to be physically present to swear this Affidavit. I, however, was linked by way of video technology to the Commissioner commissioning this document.

54. I make this affidavit in support of BCU's distribution motion in respect of the net proceeds of the Elm Property, Puccini Property, Cottage Property and Woodland Property.

**SWORN** by Oksana Prociuk of the City of Toronto, in the Province of Ontario, before me on June 18, 2021 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.



A Commissioner, etc.  
Anthony Scalia (LSO # 80243A)



OKSANA PROCIUK

**BUDUCHNIST CREDIT UNION LIMITED****2321197 ONTARIO INC. et al.**

Applicant

- and -

Respondents

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

PROCEEDING COMMENCED AT TORONTO

**AFFIDAVIT OF OKSANA PROCIUK  
(sworn June 18, 2021)**

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