



**Second Report of KSV Kofman Inc.
as Receiver and Manager of
87 Elm Grove Avenue and
46 Puccini Drive**

January 10, 2019

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

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

BETWEEN:

BUDUCHNIST CREDIT UNION LIMITED

Applicant

- and -

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

Respondents

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

JANUARY 10, 2019

1.0 Introduction

1. This report ("Report") is filed by KSV Kofman Inc. ("KSV") as receiver and manager (the "Receiver") of the real property located at 87 Elm Grove Avenue, Richmond Hill, Ontario (the "Elm Grove Property") and 46 Puccini Drive, Richmond Hill, Ontario (the "Puccini Property").
2. Pursuant to orders of the Ontario Superior Court of Justice (Commercial List) (the "Court") made on November 13, 2018, KSV was appointed as Receiver of the Elm Grove Property and as Interim Receiver of the Puccini Property. On December 4, 2018, the interim receivership of the Puccini Property was converted to a receivership proceeding. A copy of the Amended and Restated Receivership Order is attached as Appendix "A". The Amended and Restated Receivership Order was granted on application made by Buduchnist Credit Union Limited ("BCU"), the only mortgagee on both properties.
3. The principal purpose of these proceedings is for the Receiver to maximize value by realizing on the Elm Grove Property and the Puccini Property.

1.1 Purposes of this Report

1. The purposes of this Report are to:
 - a) provide background information about these proceedings;
 - b) summarize a proposed Occupancy Agreement dated December 28, 2018 between the occupants of the Puccini Property and the Receiver (the "Occupancy Agreement"), which is subject to Court approval;
 - c) provide the basis for the Receiver's recommendation that the Occupancy Agreement be approved by this Honourable Court; and
 - d) recommend that the Court issue an order, *inter alia*, approving the Occupancy Agreement and authorizing the Receiver to execute it.

1.2 Currency

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

1.3 Restrictions

1. In preparing this Report, the Receiver has relied upon unaudited financial information contained in the receivership application materials and discussions with legal counsel to the debtors, BCU and its legal counsel. The Receiver has not performed an audit or other verification of such information. The financial information discussed herein is preliminary and remains subject to further review. The Receiver expresses no opinion or other assurance with respect to the financial information presented in this Report.

2.0 Background

2.1 Elm Grove Property

1. The Elm Grove Property is comprised of land and a new vacant residential home which is only partially constructed. 2321197 Ontario Inc. ("197") is the registered owner of the Elm Grove Property. Carlo Demaria is listed as the sole director and officer of 197.
2. BCU holds a charge/mortgage against the Elm Grove Property securing the principal amount of \$2.2 million.
3. There are no other mortgages registered against the Elm Grove Property.
4. As of October 11, 2018, there were realty tax arrears owed to the Town of Richmond Hill with respect to the Elm Grove Property in the amount of approximately \$3,700.
5. The Receiver has taken steps recommended by a contractor to "winterize" and safeguard the property and prepare it for sale. As at the date of this Report, BCU has funded \$30,000 to the Receiver to take these steps and the Receiver has issued a Receiver's Certificate evidencing this funding in accordance with the Amended and Restated Receivership Order.

6. Pursuant to a Court order made on December 4, 2018, the Receiver was authorized to engage Re/Max Realtron Realty Inc. (“ReMax”) as the listing agent for the Elm Grove Property and to carry out the sale process described in the Receiver’s First Report to Court dated November 28, 2018 (the “First Report”). A copy of the First Report, without appendices, is attached as Appendix “B”. As at the date of this Report, the Elm Grove Property is listed for sale.

2.2 Puccini Property

1. The Puccini Property is a residential home in Richmond Hill, Ontario. 2321198 Ontario Inc. (“198”) is the registered owner of the Puccini Property. Mr. Demaria is listed as the sole director and officer of 198.
2. BCU holds a charge/mortgage against the Puccini Property securing the principal amount of \$2.5 million.
3. As of October 11, 2018, there were realty tax arrears covering multiple years owing to the Town of Richmond Hill with respect to the Puccini Property in the amount of approximately \$12,000.
4. There is an order registered against the Puccini Property issued by the Court dated May 6, 2015 in a proceeding commenced under Brampton Court File No. CV-15-2110-00 by Trade Capital Finance Corp. (“Trade Capital”) against various defendants, including Mr. Demaria and certain corporations (other than 198) with which Mr. Demaria is alleged to have been involved (the “Mareva Order”).
5. As at the date of this Report, BCU has funded \$5,000 to the Receiver to cover sundry expenses for the Puccini Property receivership. The Receiver has issued a Receiver’s Certificate evidencing this funding in accordance with the Amended and Restated Receivership Order.
6. As set out in the First Report:
 - a) the Puccini Property was vacant from the time it was built in 2015 until the end of May, 2018;
 - b) since late May, 2018, Mr. and Ms. Saad, being elderly family friends of Mr. Demaria, have occupied the Puccini Property. Their son has advised that he also spends approximately two days per week at the Puccini Property;
 - c) the Saad family has never paid rent, property taxes or any other occupancy costs; and
 - d) prior to the receivership, there was no written agreement pursuant to which the Saad family has been occupying the Puccini Property.
7. The endorsement of the Honourable Justice Penny dated December 4, 2018 (the “Endorsement”) provides the basis on which the interim receivership of the Puccini Property was converted to a receivership proceeding. The Endorsement, a copy of which is attached as Appendix “C”, also notes that “*the approach already taken for the marketing of the Elm Grove property as the appropriate approach to the marketing of the Puccini property*”. Accordingly, the Receiver intends to have ReMax list the Puccini Property for sale by mid-January, 2019.

3.0 Occupancy Agreement¹

1. Immediately following the issuance of the Amended and Restated Receivership Order, the Receiver commenced negotiations of the Occupancy Agreement with the Saad family. The Occupancy Agreement is attached as Appendix “D”.
2. A summary of the Occupancy Agreement is as follows:
 - a) Payment Obligations:
 - Pre-filing occupation: \$8,000;
 - Monthly occupancy fee: \$4,000; and
 - Security deposit: \$4,000.
 - b) Term: month to month or as otherwise terminated under the Occupancy Agreement.
 - c) Expenses: Occupants shall pay all telephone, utility and other expenses billed directly to the property, including exterior landscape maintenance and snow removal.
 - d) Occupation: Occupants shall occupy solely for residential purposes and shall maintain the property in a clean and safe condition. The only occupants shall be the Saad family.
 - e) Vacating Premises: Occupants must vacate the property in order to permit the Receiver to complete a sale of the property within 45 days written notice to be provided by the Receiver or such longer period as the Receiver may determine, in its sole discretion.
 - f) Conditions: the Occupancy Agreement is subject to Court approval and a Court order granting possession of the Puccini Property to the Receiver and a writ of possession in favour of the Receiver upon confirmation by the Receiver that the Receiver has provided a notice to vacate the property in accordance with the Occupancy Agreement. The Occupants have consented to such a Court order.
 - g) Cure Period: three days of written notification by the Receiver of any default under the agreement. Otherwise, the agreement may be terminated by the Receiver and the Occupants shall vacate the property within seven days of receiving a demand from the Receiver to vacate the property.
 - h) Other:
 - no alterations or additions are permitted to be made by the Occupants without the prior written approval of the Receiver;

¹ Capitalized terms not defined in this section of the Report have the meanings provided to them in the Occupancy Agreement.

- upon exit, the Occupants shall remove all of their furniture and belongings and shall leave the property in a clean and broom swept condition. A listing of material items that are to be excluded from any sale and removed by the Occupants is attached to the Occupancy Agreement. The Receiver is not aware of any dispute to the Occupants' ownership of these scheduled items by Mr. Demaria or otherwise; and
- the Receiver and any firm authorized by it, including ReMax, has the right to enter the property for showings or otherwise upon providing the occupants with 24 hours prior notice of any such attendance.

3.1 Recommendation

1. The Receiver recommends that the Court approve the Occupancy Agreement for the following reasons:
 - a) based on feedback provided by real estate agents approached by the Receiver (as summarized in the First Report), the Occupancy Agreement provides for the payment of rent during the occupancy period at a rate that is consistent with market;
 - b) it provides a 45-day notice period by which the Occupants would be required to vacate the Puccini Property. In the Receiver's view, this period is reasonable and appropriate as it should not jeopardize any potential transaction for the property and should enable the Occupants to prepare for a move and exit from the premises on an orderly basis;
 - c) the Occupants have voluntarily agreed to its terms, have executed the agreement and have paid \$12,000 to the Receiver to date. The Occupants have indicated that the payment of the balance owing at this time, being \$8,000, will be made on January 14, 2019;
 - d) it does not impair the pending listing of the Puccini Property. On the contrary, ReMax has advised that the Puccini Property will show more favourably in its current state (i.e. with the Occupants' furnishings in place) as opposed to it being empty and vacant during the listing period; and
 - e) BCU has consented to the terms of the Occupancy Agreement.

4.0 Conclusion and Recommendation

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

* * *

All of which is respectfully submitted,

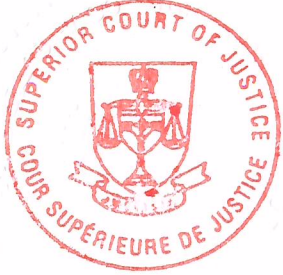
KSV Kofman Inc

**KSV KOFMAN INC., SOLELY IN ITS
CAPACITY AS COURT-APPOINTED
RECEIVER AND MANAGER OF THE
ELM GROVE PROPERTY AND THE
PUCCINI PROPERTY AND NOT IN ITS
PERSONAL CAPACITY**

Appendix “A”

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

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



BUDUCHNIST CREDIT UNION LIMITED

Applicant

- and -

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

Respondents

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

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

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

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

Demaria, sworn November 11, 2018, and the Affidavit of Darcy Thompson, sworn November 12, 2018, and on hearing the submissions of counsel for the Applicant, Carlo Demaria, and Trade Capital Finance Corporation, and on being advised by counsel that KSV consents to act as the Receiver,

SERVICE

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

APPOINTMENT

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

RECEIVER'S POWERS

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

- (a) to take possession of and exercise control over the Property and any and all proceeds, receipts, rents and disbursements arising out of or from the Property;
- (b) to receive, preserve, and protect the Property, or any part or parts thereof, including, but not limited to, the changing of locks and security codes, the relocating of Property to safeguard it, the engaging of independent security personnel, the taking of physical inventories and the placement of such insurance coverage as may be necessary or desirable;

- (c) to engage consultants, appraisers, agents, experts, auditors, accountants, managers, counsel and such other persons from time to time and on whatever basis, including on a temporary basis, to assist with the exercise of the Receiver's powers and duties, including without limitation those conferred by this Order;
- (d) to receive and collect all monies, rent and accounts now owed or hereafter owing to the Respondents in respect of or relating to the Real Properties and to exercise all remedies of the Respondents in collecting such monies, including, without limitation, to enforce any security held by the Respondents;
- (e) to execute, assign, issue and endorse documents of whatever nature in respect of the Property, whether in the Receiver's name or in the name and on behalf of the Respondents, for any purpose pursuant to this Order;
- (f) to initiate, prosecute and continue the prosecution of any and all proceedings and to defend all proceedings now pending or hereafter instituted with respect to the Real Properties or the Receiver, and to settle or compromise any such proceedings. The authority hereby conveyed shall extend to such appeals or applications for judicial review in respect of any order or judgment pronounced in any such proceeding;
- (g) to market any or all of the Real Properties, including advertising and soliciting offers in respect of the Real Properties or any part or parts thereof and negotiating such terms and conditions of sale as the Receiver in its discretion may deem appropriate;
- (h) to sell, convey, transfer, lease or assign the Property or any part or parts thereof with the approval of the Court and in such case, notice under subsection 63(4) of the Ontario *Personal Property Security Act*, or section 31 of the Ontario *Mortgages Act*, as the case may be, shall not be required;

- (i) to apply for any vesting order or other orders necessary to convey the Property or any part or parts thereof to a purchaser or purchasers thereof, free and clear of any liens or encumbrances affecting such Property;
- (j) to, without any further Court approval, on the condition that it is determined to be desirable by the Receiver, in its discretion, (i) sell and convey the real property municipally known as 87 Elm Grove, Richmond Hill, Ontario (the “**Elm Property**”) pursuant to the Agreement of Purchase and Sale, accepted May 19, 2017, between Vicar Homes Ltd. and Sylvia Conforti, as amended, subject to monetary adjustments and such amendments as the Receiver may deem appropriate, or (b) negotiate and enter into a new agreement for the sale of the Elm Property, on terms acceptable to the Receiver, and sell and convey the Elm Property to Sylvia Conforti pursuant to such sale agreement;
- (k) to report to, meet with and discuss with such affected Persons (as defined below) as the Receiver deems appropriate on all matters relating to the Property and the receivership, and to share information, subject to such terms as to confidentiality as the Receiver deems advisable;
- (l) to register a copy of this Order and any other Orders in respect of the Property against title to the Real Properties;
- (m) to enter into agreements with any trustee in bankruptcy appointed in respect of the Respondents, including, without limiting the generality of the foregoing, the ability to enter into occupation agreements for any property owned or leased by the Respondents; and
- (n) to take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations;

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

DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE RECEIVER

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

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

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

providing the Receiver with any and all access codes, account names and account numbers that may be required to gain access to the information.

NO PROCEEDINGS AGAINST THE RECEIVER

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

NO PROCEEDINGS AGAINST THE PROPERTY

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

NO EXERCISE OF RIGHTS OR REMEDIES

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

RECEIVER TO HOLD FUNDS

10. **THIS COURT ORDERS** that all funds, monies, cheques, instruments, and other forms of payments received or collected by the Receiver from and after the making of this Order from any source whatsoever, including without limitation the sale of all or any of the Real Properties and the collection of any rents or accounts receivable in whole or in part, whether in existence on

the date of this Order or hereafter coming into existence, shall be deposited into one or more new accounts to be opened by the Receiver (the “**Post Receivership Accounts**”) and the monies standing to the credit of such Post Receivership Accounts from time to time, net of any disbursements provided for herein, shall be held by the Receiver to be paid in accordance with the terms of this Order or any further Order of this Court.

LIMITATION ON ENVIRONMENTAL LIABILITIES

11. **THIS COURT ORDERS** that nothing herein contained shall require the Receiver to occupy or to take control, care, charge, possession or management (separately and/or collectively, “**Possession**”) of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, the *Ontario Environmental Protection Act*, the *Ontario Water Resources Act*, or the *Ontario Occupational Health and Safety Act* and regulations thereunder (the “**Environmental Legislation**”), provided however that nothing herein shall exempt the Receiver from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Receiver shall not, as a result of this Order or anything done in pursuance of the Receiver's duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

LIMITATION ON THE RECEIVER'S LIABILITY

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

RECEIVER'S ACCOUNTS

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

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

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

FUNDING OF THE RECEIVERSHIP

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

interest and charges thereon, in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subordinate in priority to the Receiver's Charge and the charges as set out in sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

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

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

19. **THIS COURT ORDERS** that the monies from time to time borrowed by the Receiver pursuant to this Order or any further order of this Court and any and all Receiver's Certificates evidencing the same or any part thereof shall rank on a *pari passu* basis, unless otherwise agreed to by the holders of any prior issued Receiver's Certificates.

ONTARIO NEW HOME WARRANTIES PLAN ACT

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

SERVICE AND NOTICE

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

documents in accordance with the Protocol will be effective on transmission. This Court further orders that a Case Website shall be established in accordance with the Protocol.

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

GENERAL

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

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

25. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.

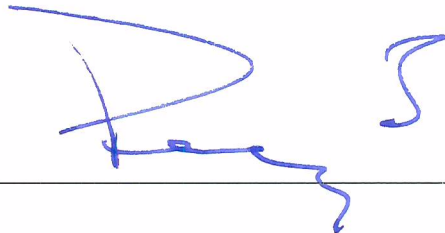
26. **THIS COURT ORDERS** that the Receiver be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and that the Receiver is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

proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

27. **THIS COURT ORDERS** that the Applicant shall have its costs of this application, up to and including entry and service of this Order, provided for by the terms of the Applicant's security or, if not so provided by the Applicant's security, then on a substantial indemnity basis to be paid by the Receiver from the sale of the Real Properties with such priority and at such time as this Court may determine.

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

29. **THIS COURT ORDERS** that this Order takes precedence over the Order of the Honourable Justice Wilton Siegel, dated November 13, 2018 (the "**IR Order**"), appointing KSV as interim receiver (the "**Interim Receiver**") of the real property municipally known as 46 Puccini Drive, Richmond Hill, Ontario, and the Interim Receiver shall take no further steps to carry out its powers and duties set forth in the IR Order, save and except for bringing a motion before this Honourable Court for discharge.



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

DEC 04 2018

PER / PAR:



SCHEDULE "A"

REAL PROPERTIES

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

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

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

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

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

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

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

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

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

MAP

SCHEDULE "B"

RECEIVER CERTIFICATE

CERTIFICATE NO. _____

AMOUNT \$ _____

1. **THIS IS TO CERTIFY** that KSV Kofman Inc., of the real properties described in Schedule "A" hereto (the "**Real Properties**" and each a "**Real Property**"), including all rents arising therefrom and all proceeds thereof, appointed by Order of the Ontario Superior Court of Justice (Commercial List) (the "**Court**") dated the 4th day of December, 2018 (the "**Order**") made in an action having Court file number CV-18-00608356-00CL, has received as such Receiver from the holder of this certificate (the "**Lender**") the principal sum of \$ _____, being part of the total principal sum of \$ _____ which the Receiver is authorized to borrow under and pursuant to the Order.

2. The principal sum evidenced by this certificate is payable on demand by the Lender with interest thereon calculated and compounded [daily][monthly not in advance on the _____ day of each month] after the date hereof at a notional rate per annum equal to the rate of _____ per cent above the prime commercial lending rate of Bank of _____ from time to time.

3. Such principal sum with interest thereon is, by the terms of the Order, together with the principal sums and interest thereon of all other certificates issued by the Receiver pursuant to the Order or to any further order of the Court, a charge upon the whole of the Real Property bearing PIN: _____, including all rents arising therefrom and proceeds thereof, in priority to the security interests of any other person, but subject to the priority of the charges set out in the Order and in the *Bankruptcy and Insolvency Act*, and the right of the Receiver to indemnify itself out of such Real Property in respect of its remuneration and expenses.

4. All sums payable in respect of principal and interest under this certificate are payable at the main office of the Lender at Toronto, Ontario.

5. Until all liability in respect of this certificate has been terminated, no certificates creating charges ranking or purporting to rank in priority to this certificate shall be issued by the Receiver

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

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

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

DATED the _____ day of _____, 20__.

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

Per: _____

Name:

Title:

SCHEDULE "A" TO RECEIVER'S CERTIFICATE

REAL PROPERTIES

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

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

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

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

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

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

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

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

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



BUDUCHNIST CREDIT UNION LIMITED
Applicant

- and -

2321197 ONTARIO INC. et al.
Respondents

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

PROCEEDING COMMENCED AT TORONTO

AMENDED AND RESTATED ORDER
(appointing Receiver)

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

Barbara Grossman (LSO # 20947K)
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kenneth.kraft@dentons.com

Lawyers for Buduchnist Credit Union Limited

Appendix “B”



**First Report of KSV Kofman Inc.
as Receiver and Manager of
87 Elm Grove Avenue and
Interim Receiver of 46 Puccini Drive**

November 28, 2018

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

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

BETWEEN:

BUDUCHNIST CREDIT UNION LIMITED

Applicant

- and -

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

Respondents

**FIRST REPORT OF KSV KOFMAN INC.
AS RECEIVER AND MANAGER (ELM GROVE PROPERTY)
AND INTERIM RECEIVER (PUCCINI PROPERTY)**

NOVEMBER 28, 2018

1.0 Introduction

1. This report ("Report") is filed by KSV Kofman Inc. ("KSV") as receiver and manager (the "Receiver") of the real property located at 87 Elm Grove Avenue, Richmond Hill, Ontario (the "Elm Grove Property") and as interim receiver (the "Interim Receiver") of the real property located at 46 Puccini Drive, Richmond Hill, Ontario (the "Puccini Property").
2. Pursuant to orders of the Ontario Superior Court of Justice (Commercial List) (the "Court") made on November 13, 2018, KSV was appointed as Receiver of the Elm Grove Property (the "Receivership Order") and as Interim Receiver of the Puccini Property (the "Interim Receivership Order"). Copies of the Receivership Order and the Interim Receivership Order are attached as Appendices "A" and "B", respectively.
3. The principal purpose of the mandate of the Receiver is to maximize value by realizing on the Elm Grove Property. The principal purpose of the mandate of the Interim Receiver is to take appropriate steps to preserve the Puccini Property and to prepare for the marketing of the Puccini Property should the Court grant the Interim Receiver the authority to sell the Puccini Property and/or appoint it as receiver over the Puccini Property.

1.1 Purposes of this Report

1. The purposes of this Report are to:
 - a) provide background information about the Elm Grove Property and the Puccini Property, including the grounds asserted by Buduchnist Credit Union Limited (“BCU”), the Applicant and only mortgagee on both properties, for the commencement of this proceeding;
 - b) provide an overview of the Receiver’s activities in respect of the Elm Grove Property, including a summary of the listing proposals obtained from three realtors;
 - c) summarizing the proposed sale process for the Elm Grove Property (“Sale Process”), including the basis on which the Receiver is proposing to list the Elm Grove Property for sale with Re/Max Realtron Realty Inc. (“Re/Max”) pursuant to a listing agreement dated November 28, 2018 (the “Listing Agreement”);
 - d) provide an overview of the Interim Receiver’s activities in respect of the Puccini Property, including a summary of the listing proposals obtained from three realtors and the basis on which the Interim Receiver is recommending that the Puccini Property be placed in receivership and listed for sale by the Receiver forthwith; and
 - e) recommend that the Court issue an order, *inter alia*:
 - approving the Sale Process and the Listing Agreement in respect of the Elm Grove Property;
 - placing the Puccini Property in receivership and authorizing the Receiver to list the Puccini Property for sale;
 - approving the activities of the Receiver and Interim Receiver to-date, as summarized in this Report; and
 - sealing the Confidential Appendix to this Report until further order of this Court.

1.2 Restrictions

1. In preparing this Report, the Receiver/Interim Receiver has relied upon unaudited financial information contained in the receivership application materials and discussions with legal counsel to the debtors, BCU and its legal counsel. The Receiver/Interim Receiver has not performed an audit or other verification of such information. The financial information discussed herein is preliminary and remains subject to further review. The Receiver/Interim Receiver expresses no opinion or other assurance with respect to the financial information presented in this Report.

2.0 Background

2.1 Elm Grove Property

1. The Elm Grove Property is comprised of land and a new vacant residential home which is only partially constructed. 2321197 Ontario Inc. ("197") is the registered owner of the Elm Grove Property. Carlo Demaria is listed as the sole director and officer of 197.
2. BCU holds a charge/mortgage against the Elm Grove Property securing the principal amount of \$2.2 million.
3. There are no other mortgages registered against the Elm Grove Property.
4. As of October 11, 2018, there were realty tax arrears owed to the Town of Richmond Hill with respect to the Elm Grove Property in the amount of approximately \$3,700.
5. The Elm Grove Property was subject to an Agreement of Purchase and Sale ("APS") dated May 19, 2017 between Vicar Homes Ltd.¹, as vendor, and Sylvia Conforti ("Conforti"), which was scheduled to close on June 1, 2018 and later extended to October 1, 2018. The vendor failed to complete construction of the home and the transaction under the APS failed to close.
6. Pursuant to paragraph 3(j) of the Receivership Order, the Receiver is expressly empowered and authorized, without further approval of the Court, to: (a) sell and convey the Elm Grove Property pursuant to the APS, 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 Grove Property, on terms acceptable to the Receiver, and sell and convey the Elm Grove Property to Conforti pursuant to such sale agreement.
7. As described in more detail below, there are significant issues at the Elm Grove Property which require immediate attention, particularly given the upcoming winter season.

2.2 Puccini Property

1. The Puccini Property is a residential home in Richmond Hill, Ontario. 2321198 Ontario Inc. ("198") is the registered owner of the Puccini Property. Mr. Demaria is listed as the sole director and officer of 198.
2. BCU holds a charge/mortgage against the Puccini Property securing the principal amount of \$2.5 million.
3. As of October 11, 2018, there were realty tax arrears covering multiple years owing to the Town of Richmond Hill with respect to the Puccini Property in the amount of approximately \$12,000.

¹ Carlo Demaria is listed as the President of Vicar Homes Ltd.

4. There is an order registered against the Puccini Property issued by the Court dated May 6, 2015 in a proceeding commenced under Brampton Court File No. CV-15-2110-00 by Trade Capital Finance Corp. (“Trade Capital”) against various defendants, including Mr. Demaria and certain corporations (other than 198) with which Mr. Demaria is alleged to have been involved (the “Mareva Order”).
5. The Interim Receivership Order does not empower the Interim Receiver to sell the Puccini Property. Accordingly, as noted below, the Interim Receiver’s activities vis-à-vis the Puccini Property have largely been focused on preserving the Puccini property, and information gathering, including determining the basis on which certain family friends of Mr. Demaria are presently occupying the Puccini Property.

3.0 Activities of the Receiver re the Elm Grove Property

1. Since its appointment, the Receiver’s activities in respect of the Elm Grove Property have included the following:
 - a) instructing Chaitons LLP (“Chaitons”), the Receiver’s legal counsel, to register a copy of the Receivership Order against title to the Elm Grove Property in accordance with Paragraph 3(l) of the Receivership Order;
 - b) engaging a contractor to attend at the Elm Grove Property to assess the condition of the partially completed residence, including obtaining a report which confirmed that certain critical steps must be undertaken immediately given the colder weather to secure the property and safeguard against further value degradation of the construction that has been completed to-date. A copy of the contractor’s report is attached as Appendix “C”;
 - c) arranging for Conforti to access the Elm Grove Property to quantify the cost to complete the residence, which it requested in order to submit a revised offer to the Receiver²;
 - d) engaging a contractor to quantify the cost to complete the Elm Grove Property residence;
 - e) attempting to negotiate and complete a transaction with Conforti that would have resulted in an expeditious sale of the Elm Grove Property;
 - f) liaising with BCU and its legal counsel routinely since its appointment;
 - g) arranging to obtain the listing proposals detailed in Section 5.1 of this Report;
 - h) negotiating the Listing Agreement with Re/Max; and
 - i) dealing with sundry matters, including carrying out its activities under the *E-Service Protocol* and preparing and sending notices of the Receiver pursuant to Section 246 of the BIA.

² According to the material filed by BCU in support of the receivership application, Conforti had not been provided recent access to the Elm Grove Property, notwithstanding its requests.

2. Following negotiations with Conforti's counsel, the Receiver was unable to agree with Conforti on an acceptable sale price for the Elm Grove Property. Conforti's most recent offer to the Receiver was below the values provided by the listing agents, BCU's appraiser and, importantly, below lot value.
3. As a result, the Receiver will immediately be taking the steps recommended by the contractor to "winterize" and safeguard the property and prepare it for sale. BCU will be funding the Receiver to take these steps and the Receiver will be issuing Receiver's Certificates evidencing this funding in accordance with the Receivership Order.

4.0 Activities of the Interim Receiver re the Puccini Property

1. Since its appointment, the Interim Receiver's activities in respect of the Puccini Property have included the following:
 - a) instructing Chaitons to register a copy of the Interim Receivership Order against title to the Puccini Property in accordance with Paragraph 3(f) of the Interim Receivership Order;
 - b) attempting to understand the basis on which the Puccini Property is occupied, including sending an agent of the Receiver to attend at the Puccini Property on November 14, 2018, and corresponding with legal counsel to Mr. Demaria in respect thereof;
 - c) corresponding with the occupants of the Puccini Property and/or Mr. Demaria's legal counsel, who have indicated that:
 - the Puccini Property was vacant from the time it was built in 2015 until the end of May, 2018;
 - since late May, 2018, Mr. and Ms. Saad, being elderly family friends of Mr. Demaria, have occupied the Puccini Property. Their son has advised that he also spends approximately two days per week at the Puccini Property;
 - the Saad family has never paid rent, property taxes or any other occupancy costs; and
 - there is no written agreement pursuant to which the Saad family is presently occupying the Puccini Property; and
 - d) seeking listing proposals for the Puccini Property, including to determine its rental value (which appears to be in the \$3,500 to \$4,000 range on a monthly basis, before utilities and maintenance costs which would also be funded by the tenant).

2. Based on its preliminary findings summarized above, the Interim Receiver believes that its powers should be expanded to authorize it forthwith to market the Puccini Property for sale for the following reasons:
 - a) BCU is seeking the appointment of a receiver over the Puccini Property to list it for sale as its debt is in default and not being serviced and the realty taxes are not being paid;
 - b) the occupants are not paying any rent, property taxes or occupancy costs for the Puccini Property;
 - c) the Interim Receiver understands that Trade Capital is also seeking the appointment by the Court of a receiver to (among other things) take possession of and sell the Puccini Property; and
 - d) any dispute between BCU and Trade Capital regarding entitlement to the net proceeds of the sale of the Puccini Property can be determined by the Court under a schedule and process to be agreed upon by BCU and Trade Capital or by further order of the Court.

5.0 Sale Process

5.1 Request for Proposals from Realtors

1. On November 16, 2018, the Receiver solicited proposals from three realtors to act as listing agent for the Elm Grove Property and, potentially, the Puccini Property. The Receiver requested that each realtor provide:
 - a) a detailed marketing plan;
 - b) an estimate of the value and suggested list price;
 - c) an estimate of the rental value for the Puccini Property only;
 - d) background information concerning their firm, including relevant and comparable experience in the Richmond Hill area of their staff who will be leading this assignment (including résumés for any agents involved);
 - e) compensation structure, including what the commission rate would be for both properties and if the commission rate would change should only one of the properties be listed for sale; and
 - f) a statement confirming that the agent is clear of any conflict of interest.
2. The request for proposals, a copy of which is attached as Appendix “D”, was sent on November 16, 2018 and contemplated a deadline to submit proposals of November 21, 2018.
3. The Receiver prepared a summary of the three proposals submitted on November 21, 2018 (the “Proposal Summary”), a copy of which is attached as Confidential Appendix “1”. The rationale for seeking a sealing order for the Proposal Summary is provided in Section 5.2 below.

4. The Receiver, in consultation with BCU, is proposing to select Re/Max to act as the listing broker on this assignment. The Receiver considered, among other things, Re/Max's experience selling similar properties in the Richmond Hill area and its commission rate. In this regard, Re/Max was the only realtor that agreed to reduce its commission rate (from 4.25% to 4%) should it list both the Elm Grove and Puccini Properties.
5. A copy of the proposed Listing Agreement is provided in Appendix "E".

5.2 Confidentiality

1. The Receiver is of the view that the Proposal Summary be filed with the Court on a confidential basis and be sealed (the "Sealing Order") as the document contains information regarding the estimated value of the properties which, if made public, may influence the value of the offers submitted in the Sale Process. The Receiver is not aware of any party that will be prejudiced if the information is sealed. Accordingly, the Receiver believes the proposed Sealing Order is appropriate in the circumstances.

5.3 Sale Process

1. The Receiver recommends that the Court issue an order approving the Sale Process, which is summarized as follows:
 - a) Re/Max would market the Elm Grove Property on a basis consistent with how residential homes are sold in the Greater Toronto Area, including arranging for open houses, site visits, listing the Elm Grove Property on the MLS system and approaching builders given the partially completed state of the property;
 - b) it would be marketed and sold on an "as is, where is" basis, meaning a buyer would need to complete construction of the residence;
 - c) the Receiver will have the right to reject any and all offers, including the highest dollar value offer(s); and
 - d) any transaction will be subject to Court approval.

5.4 Sale Process Recommendation

1. The Receiver recommends that the Court issue an order approving the Sale Process, including the retention of Re/Max as the listing agent, for the following reasons:
 - a) the Sale Process is a fair, open and transparent process intended to canvass the market broadly in order to obtain the highest and best offer for the Elm Grove Property;
 - b) the Sale Process is consistent with the conventional manner residential real properties are sold. Re/Max is a reputable listing agent with considerable experience selling comparable homes in the Richmond Hill area;

- c) the duration of the Sale Process will depend on the offers submitted following the listing of the property. Given the upcoming holiday season and the partially complete state of the Elm Grove Property, Re/Max estimates that it may take 90 to 120 days to sell the Elm Grove Property; and
- d) Re/Max's commission rate (4.25%) is consistent with market and Re/Max was the only realtor approached that was willing to reduce its rate (to 4%) should it be engaged to sell the Puccini Property. Accordingly, it is the Receiver's intention to engage Re/Max should its powers be enhanced to sell the Puccini Property.

6.0 Conclusion and Recommendation

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

* * *

All of which is respectfully submitted,



**KSV KOFMAN INC., SOLELY IN ITS
CAPACITY AS COURT-APPOINTED
RECEIVER AND MANAGER OF THE
ELM GROVE PROPERTY AND INTERIM
RECEIVER OF THE PUCCINI PROPERTY
AND NOT IN ITS PERSONAL CAPACITY**

Appendix “C”

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

B E T W E E N:

BUDUCHNIST CREDIT UNION LIMITED

Applicant

- and -

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

Respondents

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

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

December 4, 2018

Barbara Grossman and Kenneth Kraft for Applicant Buduchnist Credit Union Limited

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

Andrew Winton and Philip Underwood for Respondent Carlo Demaria

George Benchetrit for the Receiver, KSV Kofman Inc.

December 4, 2018

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

The Honourable Justice Penny

Appendix “D”

OCCUPANCY AGREEMENT

This Agreement is made the 28th day of December, 2018, between:

AFIF SAAD, MONA SAAD and ISAAM SAAD

(collectively, the "Occupants")

- and -

**KSV Kofman Inc., in its capacity as court-appointed receiver and manager
of the real property located at 46 Puccini Drive, Richmond Hill, Ontario**

(the "Receiver")

WHEREAS:

- A. By Order of the Ontario Superior Court of Justice (the "Court") dated November 13, 2018, KSV Kofman Inc. ("KSV") was appointed as interim receiver of the property municipally known as 46 Puccini Drive, Richmond Hill, Ontario (the "Property");
- B. By Order of the Court dated December 4, 2018, KSV was appointed receiver and manager of the Property;
- C. The Occupants have resided at the Property since May 2018, and have not made any rental payments to any party in respect of such occupancy;
- D. The Receiver is marketing the Property for sale; and
- E. The Occupants have agreed to the terms set out below as a condition of their continued occupation of the Property.

NOW THEREFORE THIS AGREEMENT WITNESSES that in consideration of the continued occupation of the Property by the Occupants, and for other good and valuable consideration (the receipt and sufficiency of which are hereby expressly acknowledged), the parties hereto hereby covenant and agree, to and with each other, as follows:

- 1. The Occupants acknowledge and agree that their continued occupation of the Property shall continue hereafter on a month to month basis or as otherwise terminated in accordance with the provisions of this agreement.
- 2. Upon execution and delivery of this agreement, the Occupants shall pay to the Receiver:
 - (a) the amount of \$8,000 in respect of their occupation of the Property to and including November 30, 2018;
 - (b) the amount of \$4,000 as the Monthly Occupancy Fee (defined below) for the month of December 2018; and

- (c) the amount of \$4,000 to be held, without interest, as security (without prejudice to the Receiver's other rights and remedies) for the observance and performance of the Occupants' obligations under this agreement (the "**Security Deposit**").
3. The Occupants shall pay to the Receiver the amount of \$4,000 (the "**Monthly Occupancy Fee**") monthly in advance on the first day of each and every month in respect of their continued occupation of the Property. The Occupants shall only be responsible for a pro-rated portion of the Monthly Occupancy Fee for the month when they vacate the Property if they vacate the Property before the last calendar day of the month.
 4. All payments by the Occupants to the Receiver shall be made by certified cheque or bank draft payable to "KSV Kofman Inc."
 5. The Occupants shall pay on a timely basis all telephone, utility and other charges and expenses billed directly to the Property by the supplier of such services, and shall be responsible for exterior landscape maintenance and snow removal.
 6. The Occupants shall forward all tax bills and tax assessment notices received by them directly to the Receiver.
 7. The Occupants shall occupy the Property solely for residential purposes, in accordance with the provisions of the applicable by-laws of the Town of Richmond Hill, and shall maintain the Property in a clean and safe condition.
 8. The Occupants agree to produce, at the request of the Receiver from time to time, evidence that the only persons residing in (or otherwise occupying) the Property are in fact the Occupants, and evidence of payment of telephone, utility and other charges and expenses billed directly to the Property.
 9. The Occupants agree not to make any alterations or additions of any nature or kind whatsoever to the Property, unless the Occupants have obtained the written approval of the Receiver prior to any such alterations or additions being made.
 10. The Occupants acknowledge that they must vacate the Property in order to permit the Receiver to complete a sale of the Property to a purchaser. The Occupants shall vacate the Property on ~~30~~ ⁴⁵ days written notice to be provided by the Receiver, or such longer notice period as the Receiver may in its sole discretion decide to provide.
 11. The Occupants shall be deemed to be in default under this agreement upon the failure by the Occupants to comply with any provision of this agreement, including default in payment of the Monthly Occupancy Fee, unless same has been remedied by the Occupants within three (3) days of written notification by the Receiver of such default.
 12. In the event that default occurs pursuant to this agreement and such default has not been fully rectified within the time periods contemplated therein, then the Receiver shall have the unilateral right to terminate this agreement, whereupon the Occupants shall forthwith give up vacant possession of the Property to the Receiver within seven (7) days of receiving a demand from the Receiver to vacate the Property.

13. On or before the expiry of the notice period provided by the Receiver under paragraphs 10 or 12, as the case may be, the Occupants shall remove all of their furniture and belongings, and shall be responsible to leave the Property in a clean and broom swept condition. [SEE ATTACHED FOR LISTING OF ITEMS TO BE EXCLUDED FROM SALE OF HOUSE]
14. The Occupants shall be responsible for all damages to the Property caused by the Occupants, their agents, servants, workmen, movers, invitees or anyone else for whom the Occupants are responsible at law. The Occupants shall forthwith reimburse the Receiver for the cost of all repairs in respect of any such damage, and shall indemnify and save the Receiver harmless from and against all costs, expenses, claims, damages and liabilities which the Receiver may suffer or incur in connection with any such damage, or as a result of the Occupants' failure to comply with the provisions herein.
15. If the Occupants default in the performance of any of the terms, covenants, conditions and provisions of this agreement as and when the same are due to be performed by the Occupants, then the Receiver, at its option, may appropriate and apply all or any part of the Security Deposit on account of any losses or damages sustained as a result of such default. Upon demand by the Receiver following any such appropriation, the Occupants shall pay to the Receiver an amount sufficient to restore the total original amount of the Security Deposit. If the Occupants comply with all of the terms, covenants, conditions and provisions under this agreement, any unused portion of the Security Deposit shall be returned to the Occupants, without interest, within sixty (60) days following the date when the Occupants have vacated the Property.
16. The Receiver hereby reserves for itself, and for any person, firm or corporation authorized by it (including any real estate agent engaged by the Receiver to market and sell the Property (the "Realtor")), and for any municipal or any other governmental official or representative, a right of entry onto and into the Property at all reasonable times, for the purposes of making inspections and/or repairs to the Property, and for showing the Property to prospective purchasers thereof, and the Occupants hereby acknowledge and consent to such right of re-entry for such purposes. The Occupants will provide their full cooperation with the Receiver and the Realtor with respect to the marketing of the Property for sale, including facilitating showings to prospective purchasers by keeping the interior and exterior of the Property clean, neat and tidy at all times, ensuring prompt snow and ice removal from all exterior walkways, driveways, porches and stairs required for full access to the Property, and vacating the residence during daytime hours on reasonable notice when the Realtor requires it to be empty for open house or private showings. The Occupants agree that, for the purpose of scheduling any attendances at the Property by the Receiver or its representatives or agents and/or any prospective purchaser, the Receiver and/or the Realtor shall only be required to provide 24 hours prior notice of such attendance to the Occupants.
17. This agreement is conditional upon the Receiver obtaining an order of the Court: (a) approving this agreement; and (b) granting possession of the Property to the Receiver and a writ of possession in favour of the Receiver upon confirmation by the Receiver that the Receiver has provided to the Occupants a notice to vacate the property as described in

paragraphs 10 or 12. The Occupants hereby consent to such a court order. This condition is strictly in favour of, and may be waived only by, the Receiver.

18. The Occupants acknowledge that they have been provided with an opportunity to obtain legal advice in connection with this agreement, and that they are entering into this agreement voluntarily after having reviewed this agreement with the benefit of any and all necessary professional advice.
19. All notices provided for in this agreement and other communications pursuant to this agreement shall be in writing and delivered by hand or transmitted by telephone facsimile or electronic transmission, and any notice or other communication shall be deemed conclusively to have been given and received on the day on which it was delivered or transmitted:

(a) in the case of the Receiver, to:

KSV Kofman Inc.
150 King Street West, Suite 2308
Toronto, Ontario, M5H 1J9

Attention: David Sieradzki
Fax: (416) 932-6266
Email: dsieradzki@ksvadvisory.com

(b) in the case of the Occupants, to:

46 Puccini Drive
Richmond Hill, Ontario
L4E 2Y6

Attention: Afif Saad, Mona Saad and Isaam Saad
Email: issamasaad1@gmail.com

20. This agreement is a contract made under and shall be governed by and construed in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein.
21. This agreement may be executed by the parties in counterparts and may be executed and delivered by fax or electronic transmission and all such counterparts shall together constitute one and the same instrument.
22. Each party hereto shall, upon reasonable request of the other party, make, do, execute or cause to be made, done or executed, all such further and other lawful acts, deeds, things, agreements, devices and assurances whatsoever for the better or more perfect and absolute performance of the terms and conditions of this agreement.

23. This agreement shall enure to the benefit of, and be binding upon, the parties hereto and their respective successors and permitted assigns.
24. Time shall be of the essence in all respects with respect to this agreement.

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LIST OF ITEMS TO BE EXCLUDED FROM SALE OF HOUSE

1. CHANDELIER IN DINING ROOM
2. LIGHT FIXTURES ABOVE ISLAND IN KITCHEN
3. LIGHT FIXTURES IN MUDROOM AND HALLWAY ON MAINFLOOR
4. ALL TV'S AND TV BRACKETS THROUGHOUT HOUSE
5. ALL LIGHT FIXTURES IN BEDROOMS AND BATHROOMS
6. ALL FURNITURE IN THE HOUSE
7. ALL ELECTRONICS INSIDE AND OUTSIDE THE HOUSE INCLUDING 4 SURVEILLANCE CAMERAS OUTSIDE, 8 SOUNDS AMPLIFIERS, AMPLIFIERS, WIRELESS MODEMS AND SPEAKERS.
8. HARD DRIVE FOR ELECTRONICS AND CAMERAS
9. EXTERIOR POT LIGHTS
10. ALL INTERIOR WINDOW COVERINGS, SHADES AND BLINDS