

Court File No.

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

B E T W E E N:

**LONDON VALLEY IV INC.,
by its Court-Appointed Receiver and Manager, KSV RESTRUCTURING INC.**

Plaintiff

- and -

RANDY HOFFNER

Defendant

**FACTUM OF THE PLAINTIFF
(*Ex Parte* Motion for Certificate of Pending Litigation –
Returnable April 10, 2025)**

April 9, 2025

AIRD & BERLIS LLP
Barristers and Solicitors
Brookfield Place
181 Bay Street, Suite 1800
Toronto, Ontario M5J 2T9

Mark van Zandvoort (LSO No. 59120U)
Email: mvanzandvoort@airdberlis.com

Kyle Plunkett (LSO No. 61044N)
Email: kplunkett@airdberlis.com

Adrienne Ho (LSO No. 68439N)
Email: aho@airdberlis.com

Calvin Horsten (LSO No. 90418I)
Email: chorsten@airdberlis.com

Lawyers for the Plaintiff

PART I – OVERVIEW

1. This is a motion for the issuance of a certificate of pending litigation (a “**CPL**”) on the real property municipally known as 601 Maplehurst Avenue, Oakville, Ontario and legally described under PIN 24847-0084 (LT) as PT LT 41, PL 350, AS IN 745783; OAKVILLE (the “**Maplehurst Property**”), being a property owned by the Defendant, Randy Hoffner.

2. The Plaintiff, KSV Restructuring Inc. (“**KSV**”), solely in its capacity as receiver and manager (in such capacity, the “**Receiver**”) of London Valley IV Inc. (“**LV IV**”) and not in its personal capacity or in any other capacity, claims an interest in the Maplehurst Property.

3. The Plaintiff now seeks the issuance of a CPL on title to the Maplehurst Property in order to preserve the status quo and protect its proprietary interest in the Maplehurst Property pending a disposition of the matter on the merits or until further Order of this Court.

4. The Defendant is currently attempting to further encumber and sell the Maplehurst Property. Despite the Plaintiff’s inquiries of the Defendant, the Defendant refuses to provide information to the Plaintiff concerning the transactions which form the basis of the Plaintiff’s claim.

5. The Plaintiff has a reasonable claim to an interest in the Maplehurst Property and, in all of the circumstances, the equities support the issuance of a CPL. Accordingly, a CPL should be issued.

PART II – FACTS

Parties

6. On March 6, 2025, The Honourable Madam Justice Steele of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) appointed KSV as Receiver of the assets, undertakings and properties of, *inter alios*, LV IV, and the proceeds thereof, including with respect to the LV IV Property (as defined below), pursuant to section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended (the “**Receivership Order**”).¹

7. The receivership application was brought by Mizue Fukiage, Akiko Kobayashi, Yoshiki Fukiage, Kobayashi Kyohodo Co., Ltd. and Toru Fukiage (collectively, the “**Kobayashi Group**”).²

8. The Kobayashi Group and other members of their family invested funds in certain land banking projects. According to materials filed by the Kobayashi Group, various companies were formed to hold title to various pieces of real estate in Ontario as nominees and bare trustees. The Receiver has been advised that the investments made by the Kobayashi Group and numerous other investors (the “**Co-Owners**”) were used to finance the acquisition of such real estate.³

9. As a result of concerns regarding, amongst other things, the alleged improper transfer and sale of the real estate subject to these land banking projects, the Kobayashi Group commenced the receivership application.⁴

10. As part of the Receiver’s powers under the Receivership Order, it has the ability to trace and follow the proceeds of any real property previously owned by any of the Respondents that was

¹ First Report of the Receiver dated April 9, 2025 [First Report] at para. 2, Tab 2 of the Plaintiff’s Motion Record dated April 9, 2025 [Motion Record].

² First Report, *supra* at paras. 2.0.1.

³ First Report, *supra* at paras. 2.0.2.

⁴ First Report, *supra* at paras. 2.0.3.

sold, transferred, assigned or conveyed on or after October 31, 2024, including in respect of the LV IV Property.⁵

11. LV IV is an Ontario corporation, and owned the property municipally known as 6211 Colonel Talbot Road, London, Ontario (the “**LV IV Property**”) until the property was sold and transferred to a third party purchaser, Titan Lands Inc., for consideration of \$2 million on February 5, 2025.⁶ The transfer occurred prior to the Receiver’s appointment.

12. The Defendant, Hoffner, is an Ontario resident. Hoffner is currently the sole registered owner of the Maplehurst Property.⁷

Interests of the Kobayashi Group

13. The Kobayashi Group claims to have invested the aggregate amount of \$3.7 million to acquire an approximately 72% undivided beneficial interest in the LV IV Property. This interest was acquired pursuant to four sale agreements among the applicable member of the Kobayashi Group, as purchaser, LV IV, as nominee, and TSI-LV IV International Canada Inc., as vendor. Each of these sale agreements include certain co-owner agreements, which require, amongst other things, net income from the property be paid to co-owners and that owners holding at least 51% of the interests in the property approve any sale.⁸

14. The term “Property” is defined in the co-owner agreements to refer to the LV IV Property.⁹

⁵ Appointment Order at para. 4(t), Appendix A to the First Report.

⁶ First Report, *supra* at paras. 3.1.1-3.1.6.

⁷ First Report, *supra* at para. 3.1.6.

⁸ First Report, *supra* at paras. 3.2.1-3.2.4.

⁹ First Report, *supra* at para. 3.2.5.

15. The Kobayashi Group filed evidence in support of the appointment order that the sale of the LV IV Property to Titan Lands Inc. on February 5, 2025 was completed without the Kobayashi Group's knowledge or consent. Further, the Kobayashi Group asserted that they have not received any net income or other proceeds from LV IV, LV IV Capital Management Inc. or any other party in connection with the LV IV Property.¹⁰

16. Based on the Receiver's review of various transactions, as further described below, the Receiver has reason to believe that the proceeds from the sale of the LV IV Property may have been used to discharge a charge on one of Mr. Hoffner's properties. As such, the Receiver may have an interest this property and any sale proceeds thereof, on the basis that Co-Owners, including the Kobayashi Group, may have a claim to these funds.¹¹

Alleged Misappropriation of Funds

17. On or about December 6, 2023, a collateral mortgage in favour of Olympia Trust Company ("**Olympia**") in the amount of \$700,000 (the "**Olympia Charge**") was registered against each of (i) the LV IV Property; and (ii) the property municipally known as 1264 Falgarwood Drive, Oakville previously owned by Hoffner (the "**Falgarwood Property**" and, together with the Maplehurst Property, the "**Residential Properties**"), to secure a mortgage loan principally registered against the Maplehurst Property (collectively with the Falgarwood Property and the LV IV Property, the "**Properties**").¹² Specifically, the Olympia Charge instruments state the following:

¹⁰ First Report, *supra* at para 3.2.6.

¹¹ First Report, *supra* at para 3.2.6.

¹² First Report, *supra* at para 3.3.3.

The within charge is a registered mortgage against the property municipally known as 601 Maplehurst Ave, Oakville, Ontario (PIN 24847- 0084 registered owner, Randy Hoffner) and is registered as a collateral mortgage against the properties municipally known as 6211 Colonel Talbot, London, Ontario (08211-0150 registered owner, LONDON VALLEY IV INC.) and 1264 Falgarwood Dr, Oakville, ON (24888-0109 registered owner, Randy Hoffner). Payment or default against or in respect of one of the charges shall constitute payment or default, as the case may be, against the principal charge and all other collateral charges.¹³

18. The Receiver is not aware of any basis upon which the LV IV Property ought to have been used as collateral to secure financing for Hoffner's Maplehurst Property.¹⁴

19. Despite the Receiver's inquiries of Hoffner and his known lawyers, no explanation or response has been provided by Hoffner in an effort to explain why the LV IV Property was used as collateral to secure financing for Hoffner's Maplehurst Property.¹⁵

20. On August 16, 2024, Hoffner sold the Falgarwood Property.¹⁶

21. On February 5, 2025, the LV IV Property was sold and transferred for \$2 million.¹⁷ While it is unclear as to what, if any, involvement Hoffner had in the sale of the LV IV Property, the Norwich Order obtained as part of the Receivership Order revealed that :

- (a) On February 5, 2025, a payment was disbursed from the trust account (the "**Hundal Account**") for the lawyer, Parminder Hundal ("**Hundal**") who acted for LV IV on the sale transaction ; and

¹³ First Report, *supra* at para 3.1.3.

¹⁴ First Report, *supra* at para. 3.3.13.

¹⁵ First Report, *supra* at para 3.3.

¹⁶ First Report, *supra* at para. 3.1.5.

¹⁷ First Report, *supra* at para 3.1.5.

- (b) On the same date, a payment was received in the Hundal Account in the amount of \$1,899,510.70 from “Mckenzie Lake Lawyers LLP”. The Receiver understands that McKenzie Lake Lawyers LLP were the lawyers for the purchaser of the LV IV Property.¹⁸

22. The Olympia Charge was discharged from title to the LV IV Property on the same date. The discharge of the Olympia Charge was signed by Hundal.¹⁹

23. A few days later, on February 11, 2025, the charge in favour of Olympia was also discharged from title to the Maplehurst Property. This discharge was also signed by Parminder Hundal.²⁰

24. On February 5, 2025, a new charge in favour of Computershare Trust Company of Canada (the “**Computershare Charge**”) was registered on title to the Maplehurst Property in the principal amount of \$360,000 on behalf of Hoffner.²¹

25. Hoffner, in his capacity as director of LV IV, breached his fiduciary and other legal obligations to LV IV by offering the LV IV Property as collateral for the mortgage loan principally registered against his Maplehurst Property. The transactions described above indicate that Mr. Hoffner may have misappropriated the proceeds of sale of the LV IV Property by using such proceeds to discharge the Olympia Charge from title to the Maplehurst Property.

26. There is no evidence of any consideration nor valid business purpose for the LV IV Property to have been offered as collateral to secure the mortgage loan against the Maplehurst

¹⁸ First Report, *supra* at para 3.3.2.

¹⁹ First Report, *supra* at para 3.1.5.

²⁰ First Report, *supra* at para 3.1.5.

²¹ First Report, *supra* at para 3.1.5.

Property.²² Doing so also seems to be in contravention of certain co-ownership arrangements governing the LV IV Property.²³

27. Hoffner profited and benefited from these breaches of his duties.

28. Despite the Receiver's demands and inquiries of both Hoffner and his known lawyers, including the Receiver's requests for information concerning the Olympia Charge and the Receiver's demands that the proceeds of any sale of the Maplehurst Property be held in trust pending the adjudication or resolution of the Receiver's entitlement to the sale proceeds or any portion thereof, the Receiver's demands have been ignored and remain unanswered.²⁴

29. At the time of the Receiver's appointment, the Maplehurst Property was listed for sale for \$3.15 million.²⁵ On March 26, 2025, the Receiver's counsel received an email from Porcaro Law indicating it was acting for Hoffner and Pauline Hoffner in their refinance of the Maplehurst Property, and requesting that a caution registered by the Receiver be deleted, or alternatively, if the Receiver would consent to the registration of a second mortgage on title to the Maplehurst Property.²⁶ By letter dated March 27, 2025, the Receiver's counsel responded to Porcaro Law requesting certain information, for which no response has been provided by Porcaro Law.²⁷ On March 27, 2025, the listing price of the Maplehurst Property was reduced to \$2,999,000. The listing no longer appears on realtor.ca.²⁸

²² First Report, *supra* at para. 3.3.13.

²³ First Report, *supra* at para. 3.2.4.

²⁴ First Report, *supra* at paras 3.3.

²⁵ First Report, *supra* at para. 3.4.4.

²⁶ First Report, *supra* at para. 3.3.10.

²⁷ First Report, *supra* at para. 3.3.11.

²⁸ First Report, *supra* at para. 3.4.4.

Unjust Enrichment

30. By virtue of the facts set out above, Hoffner has been unjustly enriched. LV IV has suffered a corresponding deprivation. There is no juristic reason for Hoffner's enrichment or for LV IV's corresponding deprivation.

Proprietary Interest in the Maplehurst Property

31. By virtue of the facts set out about, including but not limited to Hoffner's improper use of LV IV and the LV IV Property to finance a loan principally relating to his Maplehurst Property, the Plaintiff has a proprietary interest in the Maplehurst Property and Hoffner holds such property as a constructive trustee for the benefit of the Plaintiff.

32. To preserve its interest in the Property pending this motion, on March 14, 2025, the Receiver caused a caution (the "**Caution**") to be registered against title to the Maplehurst Property. While as of April 8, 2025 the Caution appears to remain registered on title, the Land Registry Office has indicated it has and/or will be withdrawn, giving rise to the urgency that leave be granted for the Receiver to register a Certificate of Pending Litigation on title to the Maplehurst Property.²⁹

33. In light of the withdrawal of the Caution by the Land Registry Office, on April 8, 2025 and the fact there have been no undertakings from counsel to hold sale proceeds in trust, the Receiver took steps to register the Receivership Order against title to the Maplehurst Property.³⁰

PART III – ISSUE

²⁹ First Report, *supra* at paras. 3.4.2-3.4.4.

³⁰ First Report, *supra* at para. 3.4.5.

34. The sole issue that arises on this motion is whether the Receiver has met the test for the issuance of a CPL over the Maplehurst Property.

PART IV – LAW AND ARGUMENT

The Test for a CPL

35. Section 103 of the *Courts of Justice Act* and Rule 42 of the *Rules of Civil Procedure* empower the Court to issue a CPL over property where an interest in the property is in question.³¹

36. The test to be met for the Court for granting leave to issue a CPL is well-established. The moving party must demonstrate that there is a triable issue with respect to the moving party’s claim to an interest in the property.³² A “triable issue” is a relatively low test – it does not require the moving party to show that it will likely succeed, but simply that the party has “a reasonable claim to the interest in the land claimed”.³³ If this requirement is satisfied, the Court must then consider all of the relevant matters between the parties and make a determination, in equity, as to whether or not the CPL should issue.³⁴

37. A claim based on constructive trust, including to trace funds, can give rise to an interest in land.³⁵ Further, a constructive trust claim, based on unjust enrichment, can form the basis of a CPL.³⁶ If there is sufficient concern regarding the timing and movement of certain funds, this is

³¹ *Courts of Justice Act*, RSO 1990, c. C-34, [s. 103](#); *Rules of Civil Procedure*, RRO 1990, Reg. 194, [R. 42](#).

³² *Pacione v Pacione*, [2019 ONSC 813](#) at para. [20](#).

³³ *G.P.I. Greenfield Pioneer Inc. v. Moore*, [2002 CanLII 6832 \(ON CA\)](#), 2002 CarswellOnt 219 (C.A.) at para. [20](#).
Ambassador Electric Inc. v. Fernwood Builders (London) Ltd., 2014 ONSC 3738 at [para 8](#).

³⁴ *Perruzza v. Spatone*, [2010 ONSC 841](#) at para. [20](#).

³⁵ *Avan v. Benarroch*, [2017 ONSC 4729](#) at para. [26](#).

³⁶ *1861067 Ontario Inc. v. Sang*, [2021 ONSC 7226](#) at [para 55](#) and *HarbourEdge Mortgage Investment Corp. v. Timbercreek Mortgage Investment Corp. (Trustee of), (sub nom. HarbourEdge Mortgage Investment Corp. v. Community Trust Co.)* [2016 ONSC 448](#) at [paras 45-71](#), leave to appeal refused [2016 ONSC 2507](#) (Div. Ct.).

sufficient basis for a CPL, and “speed and security are called for” where there may have been a misappropriation of investor funds.³⁷

The Plaintiff Has Met the Test for Obtaining a CPL

38. As required under Rule 42, the Plaintiff has claimed an interest in the Maplehurst Property.³⁸

39. Based on the transactions involving the Hundal Account, and the timing of the discharges of the Olympia Charge from both the Maplehurst Property and LV IV Property, the Receiver has reason to believe that the proceeds from the sale of the LV IV Property may have been used to discharge the Olympia Charge. As such, the Receiver may have an interest in the Maplehurst Property and any sale proceeds thereof, on the basis that Co-Owners, including the Kobayashi Group, may have a claim to these funds.³⁹

40. The Plaintiff submits that there is a clear, or sufficient, link between the funds misappropriated from the sale of the LV IV Property, which properly belong to the underlying Co-Owners, and the funds used to discharge the Olympia Charge as against the Maplehurst Property.

41. Further, the Plaintiff has also raised a triable issue that, if successful, could entitle it to an interest in the Maplehurst Property on the basis of, amongst other things, equitable tracing and unjust enrichment resulting in a constructive trust.⁴⁰

³⁷ KSV Kofman Inc., in its capacity as Receiver and manager of Certain Property of Scollard Development Corporation et al v. Textbook (256) Rideau Street) Inc., Court File No. CV-17-11805-00CL, Order of Justice Meyers and Endorsement dated May 17, 2017, Tab 1 of the Receiver’s Compendium.

³⁸ Notice of Action, para. 17, Motion Record, Tab 3.

³⁹ First Report, *supra* at paras. 3.3.3.

⁴⁰ Notice of Action, *supra* at para. 17.

42. It cannot be said at this stage that a proprietary interest will not be found by a trial judge if the Plaintiff's evidence is accepted. Therefore, a triable issue exists with respect to the Plaintiff's interest in the Maplehurst Property.

43. Accordingly, a CPL is warranted in the circumstances to prevent the Maplehurst Property from being transferred to a *bona fide* purchaser without notice, which would frustrate and potentially defeat the Plaintiff's recovery efforts.

The CPL Should Issue on an Ex Parte Basis

44. Generally, a CPL is ordered in the first instance on an *ex parte* basis, as provided for in Rule 42.01(3) of the *Rules of Civil Procedure*.⁴¹

45. As stated by Nordheimer J. (as His Honour then was) in *Sunshine Films Ltd. v. Cleaver*:

[6] The recognition that notice will usually not be given of such a motion is evident from the provisions of Rule 42 itself. In particular, rule 42.01(3) & (4) state:

“(3) A motion for an order under subrule (1) may be made without notice.

(4) A party who obtains an order under subrule (1) shall forthwith serve it, together with a copy of the notice of motion and all affidavits and other documents used at the hearing of the motion, on all parties against whom an interest in land is claimed in the proceeding.”

[7] These provisions contemplate that the usual process to obtain a certificate of pending litigation will be through a motion without notice. While there may be circumstances where a party would be content to give notice of the motion, and there might also be circumstances where the court would order notice to be given, in my view, that would normally be the exception and not the rule.⁴²

⁴¹ *Rules of Civil Procedure*, RRO 1990, Reg. 194, [R. 42](#).

⁴² *Sunshine Films Ltd. v. Cleaver*, 2003 CanLII 18914 (ON SC), [2003 CanLII 18914 \(ONSC\)](#) at [paras. 6-7](#).

46. It is necessary and important for this motion to be heard on an *ex parte* basis in order to protect the Receiver's interests. If notice were given, the Receiver is concerned that the Maplehurst Property could be alienated to a third party who does not have actual notice of the allegations made in this litigation.

47. On an *ex parte* motion for obtaining a CPL, it is necessary to provide full and fair disclosure of all material facts.⁴³

48. As set out above, the Receiver has sent written requests for information to Mr. Hoffner, but has not received a response. Therefore, the Receiver cannot know with certainty the use of the funds which flowed from the sale of the LV IV Property and it is possible that Hoffner could provide an explanation. Further, there has been no evidence of a commercial or legitimate purpose for the LV IV Property to have been used as collateral to secure financing for Hoffner's Maplehurst Property. Hoffner's conduct has been less than *bona fide* from all appearances. This makes it necessary to give the Receiver leave to issue a CPL against the Maplehurst Property without notice.

49. If a CPL is not registered on title to the Maplehurst Property, then the Maplehurst Property may be alienated, which could cause significant prejudice and harm to the Plaintiff and its stakeholders. Accordingly, even to the extent that Hoffner may argue that he will suffer any harm or prejudice as a result of a CPL being issued and registered on title to the Maplehurst Property, such harm and prejudice would pale in comparison to that which could be suffered by the Receiver (and in turn, the Co-Owners) if the Maplehurst Property was permitted to be sold and the Receiver

⁴³ *Rules of Civil Procedure*, RRO 1990, Reg. 194, R. [39.01\(6\)](#).

lost recourse to the Maplehurst Property over which it holds a proprietary interest and which Hoffner holds as its constructive trustee.

50. In all of the circumstances, it is just and equitable for a CPL to issue and be registered on title to the Maplehurst Property.

PART V – RELIEF REQUESTED

51. In light of the foregoing, the Plaintiff respectfully requests an Order that the registrar issue and register a CPL on title to the Maplehurst Property.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 9th day of April, 2025.



AIRD & BERLIS LLP

Barristers and Solicitors
Brookfield Place
181 Bay Street, Suite 1800
Toronto, Ontario M5J 2T9

Mark van Zandvoort (LSO No. 59120U)

Tel: (416) 865-4742

Email: mvanzandvoort@airdberlis.com

Kyle Plunkett (LSO No. 61044N)

Tel: (416) 865-3406

Email: kplunkett@airdberlis.com

Adrienne Ho (LSO No. 68439N)

Tel: (416) 865-7980

Email: aho@airdberlis.com

Calvin Horsten (LSO No. 90418I)

Tel: (416) 865-3077

Email: chorsten@airdberlis.com

Lawyers for the Plaintiff

SCHEDULE “A”**AUTHORITIES CITED**Jurisprudence

1. *De Cotiis and Others v De Cotiis et al*, [2004 BCSC 1658](#).
2. *G.P.I. Greenfield Pioneer Inc. v. Moore*, [2002 CanLII 6832 \(ON CA\)](#), 2002 CarswellOnt 219 (C.A.).
3. *Pacione v Pacione*, [2019 ONSC 813](#).
4. *Ambassador Electric Inc. v. Fernwood Builders (London) Ltd.*, [2014 ONSC 3738](#)
5. *Avan v. Benarroch*, [2017 ONSC 4729](#)
6. *Perruzza v. Spatone*, [2010 ONSC 841](#).
7. *Sunshine Films Ltd. v. Cleaver*, [2003 CanLII 18914 \(ONSC\)](#).
8. *1861067 Ontario Inc. v. Sang*, [2021 ONSC 7226](#)
9. *HarbourEdge Mortgage Investment Corp. v. Timbercreek Mortgage Investment Corp. (Trustee of), (sub nom. HarbourEdge Mortgage Investment Corp. v. Community Trust Co.)* [2016 ONSC 448](#), leave to appeal refused [2016 ONSC 2507](#) (Div. Ct.).
10. *KSV Kofman Inc., in its capacity as Receiver and manager of Certain Property of Scollard Development Corporation et al v. Textbook (256 Rideau Street) Inc., Court File No. CV-17-11805-00CL, Order of Justice Meyers and Endorsement dated May 17, 2017*

Certificate of Authenticity

I, Adrienne Ho, am satisfied as to the authenticity of every authority cited in the factum, in accordance with Rule 4.06.1(2.1) of the *Rules of Civil Procedure*, R.R.O, 1990, Reg. 194.

9- APR- 2025

DATE



Adrienne Ho

SCHEDULE “B”

TEXT OF STATUTES & REGULATIONS

Courts of Justice Act, R.S.O. 1990, c. C-34, as amended, s. 103

Certificate of pending litigation

103 (1) The commencement of a proceeding in which an interest in land is in question is not notice of the proceeding to a person who is not a party until a certificate of pending litigation is issued by the court and the certificate is registered in the proper land registry office under subsection (2).

Registration

(2) Where a certificate of pending litigation is issued under subsection (1) it may be registered whether the land is registered under the [Land Titles Act](#) or the [Registry Act](#).

Exception

(3) Subsections (1) and (2) do not apply to a proceeding for foreclosure or sale on a registered mortgage or to enforce a lien under the [Construction Act](#).

Liability where no reasonable claim

(4) A party who registers a certificate under subsection (2) without a reasonable claim to an interest in the land is liable for any damages sustained by any person as a result of its registration.

Recovery of damages

(5) The liability for damages under subsection (4) and the amount thereof may be determined in the proceeding in respect of which the certificate was registered or in a separate proceeding.

Order discharging certificate

(6) The court may make an order discharging a certificate,

- (a) where the party at whose instance it was issued,
 - (i) claims a sum of money in place of or as an alternative to the interest in the land claimed,
 - (ii) does not have a reasonable claim to the interest in the land claimed, or
 - (iii) does not prosecute the proceeding with reasonable diligence;
- (b) where the interests of the party at whose instance it was issued can be adequately protected by another form of security; or
- (c) on any other ground that is considered just,

and the court may, in making the order, impose such terms as to the giving of security or otherwise as the court considers just.

Effect

(7) Where a certificate is discharged, any person may deal with the land as fully as if the certificate had not been registered.

Rules of Civil Procedure, R.R.O. 1990, Reg. 194, as amended, Rule 39.01 and Rule 42.01

RULE 39 EVIDENCE ON MOTIONS AND APPLICATIONS

Evidence by Affidavit

Generally

39.01 (1) Evidence on a motion or application may be given by affidavit unless a statute or these rules provide otherwise.

Service and Filing

(2) Where a motion or application is made on notice, the affidavits on which the motion or application is founded shall be served with the notice of motion or notice of application and shall be filed with proof of service in the court office where the motion or application is to be heard at least seven days before the hearing.

(3) All affidavits to be used at the hearing in opposition to a motion or application or in reply shall be served and filed with proof of service in the court office where the motion or application is to be heard at least four days before the hearing.

Contents — Motions

(4) An affidavit for use on a motion may contain statements of the deponent's information and belief, if the source of the information and the fact of the belief are specified in the affidavit.

Contents — Applications

(5) An affidavit for use on an application may contain statements of the deponent's information and belief with respect to facts that are not contentious, if the source of the information and the fact of the belief are specified in the affidavit.

Full and Fair Disclosure on Motion or Application Without Notice

(6) Where a motion or application is made without notice, the moving party or applicant shall make full and fair disclosure of all material facts, and failure to do so is in itself sufficient ground for setting aside any order obtained on the motion or application.

Expert Witness Evidence

(7) Opinion evidence provided by an expert witness for the purposes of a motion or application shall include the information listed under [subrule 53.03 \(2.1\)](#).

RULE 42 CERTIFICATE OF PENDING LITIGATION

Issuing of Certificate

Court Order Required

42.01 (1) A certificate of pending litigation (Form 42A) under [section 103](#) of the [Courts of Justice Act](#) may be issued by a registrar only under an order of the court.

Claim for Certificate to be in Originating Process

(2) A party who seeks a certificate of pending litigation shall include a claim for it in the originating process or pleading that commences the proceeding, together with a description of the land in question sufficient for registration.

Motion Without Notice

(3) A motion for an order under subrule (1) may be made without notice.

Order to be Served Forthwith

(4) A party who obtains an order under subrule (1) shall forthwith serve it, together with a copy of the notice of motion and all affidavits and other documents used at the hearing of the motion, on all parties against whom an interest in land is claimed in the proceeding.

**LONDON VALLEY IV INC., by its Court-Appointed Receiver
and Manager, KSV RESTRUCTURING INC.**

- and -

RANDY HOFFNER

Plaintiff

Defendant

Court File No.

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

Proceedings commenced at Toronto

FACTUM OF THE PLAINTIFF
(Motion for Certificate of Pending Litigation –
Returnable April 10, 2025)

AIRD & BERLIS LLP
181 Bay Street, Suite 1800
Toronto, ON M5J 2T9

Mark van Zandvoort (LSO No. 59120U)
Email: mvanzandvoort@airdberlis.com

Kyle Plunkett (LSO No. 61044N)
Email: kplunkett@airdberlis.com

Adrienne Ho (LSO No. 68439N)
Email: aho@airdberlis.com

Calvin Horsten (LSO No. 90418I)
Email: chorsten@airdberlis.com

Tel: (416) 863-1500

Lawyers for the Plaintiff