



Court File No.

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

B E T W E E N:

**KSV RESTRUCTURING INC., IN ITS CAPACITY AS THE COURT-
APPOINTED RECEIVER AND MANAGER OF ALL ASSETS,
UNDERTAKINGS AND PROPERTIES OF FIRST SWISS MORTGAGE
CORP.**

Plaintiff

- and -

SYED RAZA and SYED A. RAZA PROFESSIONAL CORPORATION

Defendants

STATEMENT OF CLAIM

TO THE DEFENDANTS

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the plaintiff.
The claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or an Ontario lawyer acting for you must prepare a statement of defence in Form 18A prescribed by the *Rules of Civil Procedure*, serve it on the plaintiff's lawyer or, where the plaintiff does not have a lawyer, serve it on the plaintiff, and file it, with proof of service in this court office, **WITHIN TWENTY DAYS** after this statement of claim is served on you, if you are served in Ontario.

If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your statement of defence is forty days. If you are served outside Canada and the United States of America, the period is sixty days.

Instead of serving and filing a statement of defence, you may serve and file a notice of intent to defend in Form 18B prescribed by the *Rules of Civil Procedure*. This will entitle you to ten more days within which to serve and file your statement of defence.

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IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

IF YOU PAY THE PLAINTIFF'S CLAIM, and \$750 for costs, within the time for serving and filing your statement of defence you may move to have this proceeding dismissed by the Court. If you believe the amount claimed for costs is excessive, you may pay the plaintiff's claim and \$400 for costs and have the costs assessed by the Court.

TAKE NOTICE: THIS ACTION WILL AUTOMATICALLY BE DISMISSED if it has not been set down for trial or terminated by any means within five years after the action was commenced unless otherwise ordered by the court.

Date _____ Issued by _____
Local Registrar

Address of court office: Superior Court of Justice (Commercial List)
330 University Avenue, 9th Floor
Toronto ON M5G 1R7

TO: Syed Raza
250 Consumers Road
Suite 803
North York, ON
M2J 4V6

AND TO: Syed A. Raza Professional Corporation
250 Consumers Road
Suite 803
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CLAIM

1. The plaintiff, KSV Restructuring Inc. (**KSV**), solely in its capacity as the court-appointed receiver and manager (in such capacity, the **Receiver**) of all of the assets, undertakings, and properties of First Swiss Mortgage Corp. (**First Swiss**), claims against the defendants, Syed Raza (**Raza**) and Syed A. Raza Professional Corporation (**SRPC**, and together with Raza, the **Defendants**), on a joint and several basis, for the following relief:

- (a) general damages in the amount of \$25 million, and/or such further or other amounts as may be proven at trial, for negligence and/or breach of contract;
- (b) disgorgement of all fees, costs, disbursements and other funds paid by First Swiss to the Defendants;
- (c) a declaration that any provisions, express or implied, purporting to provide indemnity from First Swiss to any of the Defendants is inapplicable, or, in the alternative, void or voidable or, in the further alternative, unenforceable as against First Swiss and that the Defendants are not entitled to any indemnity of any kind from First Swiss;
- (d) the costs of this action on a full indemnity or other appropriate scale, plus all applicable taxes;
- (e) pre- and post-judgment interest on a compound basis at an appropriate rate; and
- (f) such further and other relief as this Honourable Court deems just.

Parties

2. First Swiss was incorporated on September 16, 2004, under the laws of Canada. At all material times, First Swiss was a licensed mortgage brokerage and mortgage administrator, which was authorized to practice as a mortgage brokerage and administrator in Ontario as well as in British Columbia. Its business was regulated by the *Mortgage Brokerages, Lenders and Administrators Act, 2006*, S.O. 2006, c. 29 (Ontario) (the **MBLAA**) and the *Mortgage Brokers Act*, RSBC 1996, c. 313 (British Columbia) (the **MBA**). First Swiss was registered with the Financial Services Regulatory Authority of Ontario (**FSRA**) (formerly the Financial Services Commission of Ontario, or FSCO) and with the British Columbia Financial Services Authority (**BCFSA**).

3. The defendant Raza is an individual ordinarily resident in Ontario. At all material times, Raza held himself out as a Chartered Professional Accountant and Licensed Public Accountant specializing in, among other things, audit engagements and business accounting.

4. The defendant SRPC is a professional corporation through which Raza practices as an accountant. SRPC is incorporated under the laws of Ontario, with its office located in Toronto, Ontario.

5. Beginning in March 2023, FSRA received a series of complaints concerning First Swiss and its representatives from certain parties that had invested in and funded residential mortgages through First Swiss. These complaints alleged, among other things, that First Swiss:

- (a) misreported the value of mortgages under its administration in FSRA filings;

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- (b) discharged mortgages represented to be held in trust for individual investors, without notice to the investors and without repayment to them;
 - (c) failed to register on title certain mortgages that investors had funded and that First Swiss represented were entered into on behalf of investors;
 - (d) failed to make interest payments to the investors when due;
 - (e) ceased operations without accounting to investors for their funds; and
 - (f) declared itself to be insolvent and delivered a bankruptcy statement of affairs that did not account for investors' funds.
6. First Swiss filed an assignment in bankruptcy on March 15, 2023.
7. Pursuant to an order of the Ontario Superior Court of Justice (Commercial List) (the **Court**) dated March 17, 2023, on application by FSRA, KSV was appointed as Receiver of First Swiss (the **Initial Appointment Order**). The Initial Appointment Order was amended and restated on May 19, 2023, pursuant to a further order of the Court (the **Amended and Restated Appointment Order**).
8. Pursuant to the Amended and Restated Appointment Order, the Receiver's mandate includes, among others, pursuing litigation claims on behalf of First Swiss to maximize recoveries for the benefit of its creditors—including investors, who are the largest creditors of First Swiss by far. In this action, the Receiver is seeking relief as against the Defendants strictly on behalf of First Swiss.

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9. On March 22, 2023, FSRA issued a Notice of Proposal to Revoke Licenses as well as an Interim Order, which suspended the mortgage administrator and mortgage brokerage licenses issued to First Swiss as well as the mortgage brokerage license issued to its principal, Reza Nezami-Nia.

10. On May 25, 2023, FSRA revoked the mortgage administrator and mortgage brokerage licenses issued to First Swiss on the basis that First Swiss was no longer suitable to be licensed under the *MBLAA* due to, among other things, the bankruptcy and financial position of First Swiss, contraventions of requirements under the *MBLAA*, and provision of false/deceptive information to FSRA.

Background

11. Since its initial appointment, the Receiver has investigated investors' allegations of wrongdoing against First Swiss and its representatives, including the individuals employed by First Swiss at the time of its assignment into bankruptcy —Mr. Nezami-Nia (the principal and sole named director of First Swiss), Patrick Dookram (Vice President of Trading and Portfolio Management for First Swiss), and Yana Papanyan (Lead Underwriter for First Swiss).

12. In the course of its investigation, the Receiver learned that the Defendants served as First Swiss' auditor from its fiscal year ended August 31, 2015 through to its fiscal year ended August 31, 2022, which corresponds with the period of time that coincides with the investor complaints.

13. The Defendants assumed audit responsibilities in or around 2015 from First Swiss' former auditor, PricewaterhouseCoopers Inc. (**PwC**).

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14. Specifically, in or around 2015, the Defendants undertook three main auditing services for First Swiss, which the Defendants continued to undertake in each fiscal year during the material time leading up to First Swiss' assignment into bankruptcy:

- (a) auditing First Swiss' financial statements;
- (b) auditing First Swiss' compliance with the standards in the *MBLAA* applicable to mortgage administrators with trust funds, expressing an opinion on First Swiss' compliance with Ontario Regulation 189/08 (Mortgage Administrators: Standards of Practice) and Ontario Regulation 193/08 (Reporting Requirements for Licensees), and reporting to FSRA and its predecessor, FSCO, regarding the same. Such reporting included opining on whether First Swiss complied with, among other things: (i) its management of the trust accounts, including its duty to report any shortfalls; (ii) its duty to establish certain policies and procedures; (iii) its duty to maintain a financial guarantee in the amount of \$25,000; and (iv) its duty to complete certain filings within a prescribed time period; and
- (c) reporting to the BCFSA, and providing the BCFSA with an audit opinion on First Swiss' compliance with the *MBA*. In doing so, the Defendants were asked to review the Mortgage Broker's Representation to the Registrar of Mortgage Brokers in British Columbia.

15. The Receiver identified issues of significant concern regarding First Swiss' bank accounts and its financial and reporting practices, particularly relating to its trust accounts and the misuse

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of trust funds, among other issues, which the Defendants were required to investigate and identify, and ought to have detected (but failed to detect) in the course of their auditing work for First Swiss.

16. During the material time, approximately \$23 million of Investor funds were misused, including by being improperly transferred between First Swiss trust accounts to First Swiss' general operating account. A significant portion of these trust funds were then transferred to First Swiss' parent company (and sole shareholder), 680771 Canada Corp. (“680”), which were used to fund, among other things, Mr. Nezami-Nia's personal lifestyle expenses (such as aviation equipment, private school tuition, life insurance and vehicle lease payments). Mr. Nezami-Nia is the sole named director of 680.

17. In addition to failing to discover and/or failing to report this misconduct in the course of the Defendants' audit work on an annual basis—knowing that the financial statements they audited were filed with FSRA and would be relied upon by investors and regulators—the Defendants also inappropriately booked accounting entries which eliminated amounts due to First Swiss from 680 (in respect of improperly advanced funds) by offsetting those amounts with amounts that were properly due, owing and payable to investors.

18. The Defendants' failure to employ appropriate audit techniques, including their failure to review the use of trust funds, their failure to diligently review First Swiss' (and 680's) bank records, and their failure to make appropriate inquiries of First Swiss personnel, resulted in First Swiss being able to continue operating as a licensed mortgage administrator, and its personnel being able to continue as licensees. This allowed First Swiss to continue to raise funds from investors, ultimately resulting in substantial additional losses to First Swiss, including in the form

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of investor liabilities, that would not have arisen but for the Defendants' negligence, breach of contract, and breach of their professional, regulatory and other legal obligations.

Negligence

Duty of Care

19. Each year between First Swiss' fiscal year ended 2015 and its fiscal year ended August 31, 2022, the Defendants entered into an engagement letter with First Swiss to provide auditing services regarding First Swiss' financial statements and compliance with the *MBLAA* and *MBA*.

20. The purpose of these engagements was to, among other things, ensure that the financial statements were free from material misstatements and thereby protect First Swiss from the consequences (that is, financial loss) arising from any otherwise undetected errors or wrongdoing. The Defendants were also engaged to report on First Swiss' compliance with the *MBLAA* and *MBA*, particularly regarding First Swiss' use of trust funds.

21. The Defendants were required to report any financial irregularities or other indicators of non-compliance with applicable statutes, including the mishandling of trust funds, to regulatory authorities, with a view to halting financial losses to First Swiss arising from any such conduct as soon as possible.

22. Accordingly, at all material times, First Swiss, its investors and regulators, were reasonably entitled to—and did—rely on the Defendants as First Swiss' auditor for these purposes.

23. The Defendants were in a sufficiently close and direct relationship with First Swiss that they were required to perform their auditing services with reasonable care, diligence, and

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competence. Financial loss to First Swiss resulting from abuse that they failed to detect (but reasonably ought to have detected) in the course of their engagements, as in fact occurred, was an objectively foreseeable harm that could result should the Defendants provide their services negligently.

Standard of Care

24. In providing their services to First Swiss, the Defendants were subject to auditing and professional standards including Generally Accepted Auditing Standards (**GAAS**)—which, in each annual engagement letter, they expressly assured First Swiss they would follow—and the Canadian Standard on Assurance Engagements 3531 (**CSAE 3531**). As a general matter, they were required to exercise the degree of care, diligence, and skill that a reasonably prudent person would exercise in similar circumstances. GAAS and CSAE 3531, among other applicable standards, inform this standard of care.

25. During the relevant period, the Defendants failed to provide their auditing services in accordance with the applicable auditing and professional standards and their own representations (including as set out in the applicable engagement letters), and thereby failed to provide their services in accordance with the applicable standard of care. Broadly stated, they failed to review the use of trust funds, failed to diligently review First Swiss' bank records and other records, and failed to make appropriate inquiries of First Swiss personnel. Their misconduct included, but was not limited to, the following acts and omissions:

- (a) The Defendants did not check to verify that investor funds in First Swiss' trust account were invested in mortgages. As a result, they failed to identify that certain

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deposits were made in respect of duplicative mortgage advances or mortgages that did not exist at all;

- (b) The Defendants did not check to verify that funds repaid by borrowers were repaid to investors as required;
- (c) The Defendants failed to identify (much less inquire into) entries in First Swiss bank statements clearly showing the flow of funds from its trust accounts (i.e., investor funds, to be used for funding mortgages, or funds repaid by borrowers, to be repaid to investors), to its operating account, and on to 680, rather than funding mortgages or being repaid to investors as required. Further, despite possession of records which indicated an extensive flow of funds from First Swiss to 680, the Defendants confirmed that there were no significant related party transactions (except for rent sharing with 680) and this was reflected in the audited financial statements;
- (d) The Defendants' inquiries of First Swiss were generic and did not refer to the mortgage industry generally or First Swiss' operations in particular. Given the high risk of abuse inherent in trust accounts, particularly in the context of mortgage administration businesses such as that of First Swiss, the Defendants' inquiries were inadequate. The Defendants maintained virtually no working papers specific to their audits of First Swiss' *MBLAA* and *MBA* compliance, and their limited inquiries regarding the same would not have allowed them to

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confirm that First Swiss' trust accounts were being administered in accordance with the applicable requirements of the *MBLAA* and *MBA*;

- (e) The Defendants failed to inquire into who at First Swiss was responsible for repaying investors, how funds for repaid mortgages ought to have been disbursed, and how these aspects of First Swiss' financial practices should have been audited; and
- (f) The Defendants failed to obtain, or even request, from investors confirmation of their mortgage investments held with First Swiss—as was the standard practice of First Swiss' prior auditor, PwC;
- (g) Despite First Swiss' audited financial statements for the year ending August 31, 2022 disclosing that the total principal amount due from borrowers that year was \$1,869,632, the Defendants possessed documents from First Swiss that indicated it supposedly had more than ten times that amount, being \$18,754,380.92, in mortgages under administration at that time. This was a highly anomalous discrepancy that a diligent review of First Swiss' records would have readily identified; and
- (h) The Defendants inappropriately booked accounting entries which eliminated amounts due to First Swiss from 680 (in respect of improperly advanced trust funds) by offsetting those amounts with amounts that were properly due, owing and payable to investors.

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26. In light of the above and the other acts and omissions of the Defendants, they failed to perform their engagements for First Swiss with the required care, diligence, and skill that they represented they had the expertise to provide, that they were required to provide, and that First Swiss reasonably relied on them to provide.

Breach of contract

27. The engagement letters between the Defendants and First Swiss each year between the company's fiscal year ended August 31, 2015, and its fiscal year ended August 31, 2022, are valid and enforceable contracts.

28. Pursuant to each engagement letter, the Defendants were required to undertake the services described above (and in more detail in the engagement letters) competently and reasonably. They did neither. In doing so, they materially breached the express and implied terms of each engagement letter.

29. Among other things, the Defendants agreed to employ and comply with GAAS in their auditing work for First Swiss, and agreed to make appropriate inquiries of management regarding First Swiss' financials which would include requests for supporting documentation.

30. The Defendants did not employ or comply with GAAS in the course of their audits, as agreed and required. Nor did the Defendants make appropriate inquiries of management in the face of evident irregularities in First Swiss' financial records. On the occasions where the Defendants received supporting documentation from First Swiss, these were disregarded—for instance, when the Defendants ignored First Swiss records showing that the amount owing from borrowers was approximately ten (10) times greater than what the Defendants ultimately

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reported; or when the Defendants improperly booked accounting entries (amounting to millions of dollars) that eliminated amounts due to First Swiss from 680 (in respect of improperly advanced funds) by offsetting those amounts with amounts that were properly payable to investors.

31. Accordingly, the Defendants are liable for the losses suffered by First Swiss that were the reasonably foreseeable consequence of their failure to perform their obligations under the engagement letters as agreed, at the required standard.

Causation and Damages

32. The Defendants ought to have detected and disclosed the significant errors and irregularities contained in First Swiss' books, records and financial reporting because the Defendants were uniquely positioned by reason of their represented expertise and their access to First Swiss' records and representatives.

33. Had the Defendants complied with their contractual, common law, professional and other obligations owed to First Swiss, and provided their services as a reasonable and prudent auditor would have, they would have understood the operations of First Swiss as a mortgage administrator. Had they performed their engagements in accordance with GAAS and CSAE 3531 (among other applicable professional and legal standards) as required, they would have readily identified the mishandling of trust funds and mortgages under First Swiss' administration. This misconduct was plainly identifiable in First Swiss' bank and other records which were in the Defendants' possession and to which they had ready access, and would have certainly been apparent following any reasonable inquiries regarding the same.

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34. Had the Defendants identified the significant financial irregularities within First Swiss, as they reasonably should have following their first audit engagement for First Swiss in 2015 (and in every fiscal year thereafter), and correspondingly qualified the opinions they provided to First Swiss and to FSRA and BCFSA at that time (or at any time thereafter), these regulators would have immediately suspended First Swiss' license and operations—as they ultimately did shortly after the Receiver was appointed. Had First Swiss' license and operations been suspended when they ought to have—namely, as soon as possible following the Defendants' first audit engagement for First Swiss and their associated reporting to FSRA and BCFSA—First Swiss would have ceased operating and it would not have incurred the extensive losses it incurred from the time of the Defendants' first audit in 2015 until 2023.

35. However, the Defendants' breach of their contractual, common law, professional and other obligations owed to First Swiss resulted in the regulators not being alerted to the losses actually being suffered by First Swiss and therefore not suspending First Swiss' operations at that time, or at any time during the Defendants' engagements with First Swiss. The Defendants' failure to appropriately discharge their contractual, common law, professional and other duties and obligations owed to First Swiss caused significant damage to First Swiss and its creditors, including the investors. In particular, First Swiss has incurred approximately \$25 million in losses, for which the Defendants are jointly and severally liable. If the Defendants had performed their duties to First Swiss as required, the resultant exposure of First Swiss' true financial position would have eliminated the losses, liabilities and damages incurred by First Swiss or, at a minimum, significantly reduced such losses, liabilities and damages.

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36. In addition, the Receiver seeks the disgorgement of all fees, costs, disbursements and other funds paid by First Swiss to the Defendants on a restitutionary basis because it would be inequitable to allow the Defendants to be unjustly enriched by retaining benefits they received in the expectation that they had competently and lawfully performed their duties owed to First Swiss, in light of the Defendants' subsequently revealed breaches of their contractual, common law, professional and other obligations owed to First Swiss.

37. Further particulars of the Receiver's damages may be provided prior to trial.

38. The Defendants knew or ought to have known, and foresaw or ought to have foreseen, that losses to First Swiss would result from their acts and omissions. Notwithstanding, they undertook (or failed to undertake, as the case may be) the actions described herein. Such losses were proximate to the Defendants' wrongful conduct described above.

39. The Receiver has also incurred, and is continuing to incur, significant costs and out-of-pocket expenses relating to investigations into First Swiss' true financial position and the Defendants' acts and omissions, which special damages will be particularized prior to trial.

Interest

40. First Swiss has suffered loss of profitable business opportunities and has been deprived of, among other things, the right to earn compound interest on the amounts at issue in this proceeding. Accordingly, the Receiver seeks pre- and post-judgment interest on a compound basis at an appropriate rate of interest.

Place of Trial

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41. The Receiver proposes that this action be tried at Toronto.

February 6, 2024

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STATEMENT OF CLAIM

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