

Court File No. CV-16-11567-00CL

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

THE HONOURABLE
MR. JUSTICE MYERS

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TUESDAY, THE 30th
DAY OF MAY, 2018

B E T W E E N:

THE SUPERINTENDENT OF FINANCIAL SERVICES

Applicant

- and -

TEXTBOOK STUDENT SUITES (525 PRINCESS STREET) TRUSTEE CORPORATION, TEXTBOOK STUDENT SUITES (555 PRINCESS STREET) TRUSTEE CORPORATION, TEXTBOOK STUDENT SUITES (ROSS PARK) TRUSTEE CORPORATION, 2223947 ONTARIO LIMITED, MC TRUSTEE (KITCHENER) LTD., SCOLLARD TRUSTEE CORPORATION, TEXTBOOK STUDENT SUITES (774 BRONSON AVENUE) TRUSTEE CORPORATION, 7743718 CANADA INC., KEELE MEDICAL TRUSTEE CORPORATION, TEXTBOOK STUDENT SUITES (445 PRINCESS STREET) TRUSTEE CORPORATION and HAZELTON 4070 DIXIE ROAD TRUSTEE CORPORATION

Respondents

APPLICATION UNDER SECTION 37 OF THE *MORTGAGE BROKERAGES, LENDERS AND ADMINISTRATORS ACT*, 2006, S.O. 2006, c. 29 and SECTION 101 OF THE *COURTS OF JUSTICE ACT*, R.S.O. 1990 c. C.43

Court File No. CV-17-11689-00CL

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

IN THE MATTER OF THE RECEIVERSHIP OF SCOLLARD DEVELOPMENT CORPORATION, MEMORY CARE INVESTMENTS (KITCHENER) LTD., MEMORY CARE INVESTMENTS (OAKVILLE) LTD., 1703858 ONTARIO INC., LEGACY LANE INVESTMENTS LTD., TEXTBOOK (525 PRINCESS STREET) INC. AND TEXTBOOK (555 PRINCESS STREET) INC.

**AND IN THE MATTER OF A MOTION PURSUANT TO SUBSECTION 243(1) OF THE
BANKRUPTCY AND INSOLVENCY ACT, R.S.C. 1985, c. B-3, AS AMENDED, AND
SECTION 101 OF THE COURTS OF JUSTICE ACT, R.S.O. 1990, c. C.43, AS AMENDED**

Court File No. CV-17-589078-00CL

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

B E T W E E N:

KINGSETT MORTGAGE CORPORATION

Applicant

- and -

TEXTBOOK (445 PRINCESS STREET) INC.

Respondent

**IN THE MATTER OF THE RECEIVERSHIP OF
TEXTBOOK (445 PRINCESS STREET) INC.**

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

Court File No. CV-17-11822-00CL

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

B E T W E E N:

**KSV KOFMAN INC. IN ITS CAPACITY AS RECEIVER AND MANAGER
OF CERTAIN PROPERTY OF SCOLLARD DEVELOPMENT
CORPORATION, MEMORY CARE INVESTMENTS (KITCHENER)
LTD., MEMORY CARE INVESTMENTS (OAKVILLE) LTD., 1703858
ONTARIO INC., LEGACY LANE INVESTMENTS LTD., TEXTBOOK (525
PRINCESS STREET) INC. AND TEXTBOOK (555 PRINCESS STREET)
INC.**

Plaintiff

- and -

**AEOLIAN INVESTMENTS LTD., JOHN DAVIES IN HIS PERSONAL
CAPACITY AND IN HIS CAPACITY AS TRUSTEE OF BOTH THE**

**DAVIES ARIZONA TRUST AND THE DAVIES FAMILY TRUST,
JUDITH DAVIES IN HER PERSONAL CAPACITY AND IN HER
CAPACITY AS TRUSTEE OF THE DAVIES FAMILY TRUST, AND
GREGORY HARRIS SOLELY IN HIS CAPACITY AS TRUSTEE OF THE
DAVIES FAMILY TRUST**

Defendants

SETTLEMENT APPROVAL ORDER

THIS MOTION, made by KSV Kofman Inc., solely in its capacity as receiver (in such capacity, the “**Receiver**”), of certain property of Scollard Development Corporation (“**Scollard**”), Memory Care Investments (Kitchener) Ltd. (“**Kitchener**”), Memory Care Investments (Oakville) Ltd. (“**Oakville**”), 1703858 Ontario Inc. (“**Burlington**”), Legacy Lane Investments Ltd. (“**Legacy Lane**”), Textbook (525 Princess Street) Inc. (“**525 Princess**”), Textbook (555 Princess Street) Inc. (“**555 Princess**”), Textbook (445 Princess Street) Inc. (“**445 Princess**”), Textbook Ross Park Inc. (“**Ross Park**”), Textbook (774 Bronson Avenue) Inc. (“**Bronson**”) and McMurray Street Investments Inc. (“**McMurray**”) (collectively, the “**Receivership Companies**”), for an Order, *inter alia*:

- (a) approving the terms of settlement (the “**Settlement**”) as set out in the confidential settlement agreement dated May 30, 2018 and all of the schedules thereto (collectively, the “**Settlement Agreement**”) as between the Receiver and the Trustee (as defined below) on the one hand, and the intended defendants, R. Alan Harris, Erika Harris and Dachstein Holdings Inc. (collectively, the “**Settling Parties**”) on the other hand, resolving and settling the Receiver’s and Trustee’s known claims as against the Settling Parties;
- (b) providing that, upon the effectiveness of the Settlement, and subject to and in accordance with the terms and conditions of the Settlement Agreement, the Settling Parties are released and discharged from any and all known claims that the Receivership Companies and the Trustee Corporations (as defined below) have against them arising from the Released Matters (as defined in the Settlement Agreement); and

- (c) sealing the confidential Settlement Agreement, such that it shall not form part of the public record, pending further order of the Court,

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

ON READING, the Notice of Motion, the Eleventh Report of the Receiver and the appendices thereto (the “**Eleventh Report**”), and on hearing the submissions of counsel for the Receiver, counsel for Grant Thornton Limited (“**GTL**”), in its capacity as the Court-appointed trustee (in such capacity, the “**Trustee**”) for Textbook Student Suites (525 Princess Street) Trustee Corporation, Textbook Student Suites (555 Princess Street) Trustee Corporation, Textbook Student Suites (Ross Park) Trustee Corporation, 2223947 Ontario Limited, MC Trustee (Kitchener) Ltd., Scollard Trustee Corporation, Textbook Student Suites (774 Bronson Avenue) Trustee Corporation, 7743718 Canada Inc., Keele Medical Trustee Corporation, Textbook Student Suites (445 Princess Street) Trustee Corporation and Hazelton 4070 Dixie Road Trustee Corporation (collectively, the “**Trustee Corporations**”), and such other counsel as were present, and no one appearing for any other party, although duly served, as appears from the affidavit of service of Elsa Diaz sworn May 17, 2018,

SERVICE

1. THIS COURT ORDERS that to the extent necessary, the time for service of the Notice of Motion and the Motion Record is hereby abridged and validated so that this Motion is properly returnable today and hereby dispenses with further service thereof.

APPROVAL OF THE MINUTES OF SETTLEMENT

2. THIS COURT DECLARES that the Settlement Agreement is fair and reasonable in all the circumstances and for the purposes of these proceedings.
3. THIS COURT ORDERS AND DECLARES that the Settlement Agreement is hereby approved, and the Receiver and the Trustee are hereby authorized and directed to comply with their obligations thereunder and to take such further acts as may be necessary to give effect to the terms of the Settlement Agreement and this Order.

4. THIS COURT ORDERS AND DECLARES that, subject to and in accordance with the terms and conditions of the Settlement Agreement and this Order, the Settling Parties are hereby released and discharged from any and all known ^{and unknown} claims, manners of action, causes of action, suits, proceedings, debts, dues, covenants, contracts, rights, obligations, costs, expenses, penalties, claims, indemnities, demands, issues, damages, losses, injuries and liabilities of any and every nature whatsoever that the Receivership Companies and the Trustee Corporations have against them arising from the Released Matters (as defined in the Full and Final Release at Schedule "D" to the Settlement Agreement).

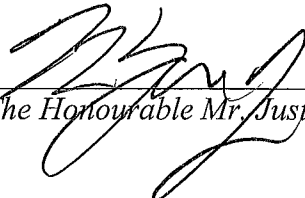
5. THIS COURT ORDERS AND DECLARES that, notwithstanding paragraph 4 above, the Settling Parties are not released or discharged in any way from any claims, manners of action, causes of action, suits, proceedings, debts, dues, covenants, contracts, rights, obligations, costs, expenses, penalties, claims, indemnities, demands, issues, damages, losses, injuries and liabilities of any nature whatsoever arising from any omissions in the Declarations (as defined in the Settlement Agreement and included at Schedules "A", "B" and "C" thereto) or arising after the date of the settlement, and for greater clarity, all of the Receiver's and Trustee's rights and remedies with respect to any and all such claims, manners of action, causes of action, suits, proceedings, debts, dues, covenants, contracts, rights, obligations, costs, expenses, penalties, claims, indemnities, demands, issues, damages, losses, injuries and liabilities, with respect to the Settling Parties, and all of the Receiver's and Trustee's rights and remedies with respect to any and all claims, manners of action, causes of action, suits, proceedings, debts, dues, covenants, contracts, rights, obligations, costs, expenses, penalties, claims, indemnities, demands, issues, damages, losses, injuries and liabilities of any nature whatsoever with respect to any other parties, are hereby preserved.

~~6. THIS COURT ORDERS that the confidential Settlement Agreement shall be and is hereby sealed and shall not form part of the public record pending further Order of the Court.~~

AID AND RECOGNITION OF FOREIGN COURTS

6. 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, the Trustee and their respective 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 and the Trustee, as officers of this Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver, the Trustee and their respective agents in carrying out the terms of this Order.


The Honourable Mr. Justice Myers

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

MAY 30 2018

PER / PAR:



ORDER

BENNETT JONES LLP

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Lawyers for KSV Kofman Inc. in its capacity as the Court-Appointed Receiver of Scollard Development Corporation, Memory Care Investments (Kitchener) Ltd., Memory Care Investments (Oakville) Ltd., 1703858 Ontario Inc., Legacy Lane Investments Ltd., Textbook (525 Princess Street) Inc., Textbook (555 Princess Street) Inc., Textbook (445 Princess Street) Inc., Textbook (Ross Park) Inc., Textbook (774 Bronson Avenue) Inc. and McMurray Street Investments Inc.

THE SUPERINTENDENT OF FINANCIAL SERVICES

- and -

TEXTBOOK STUDENTS SUITES (525 PRINCESS STREET)
TRUSTEE CORPORATION et al.

Applicant

Respondents

Court File No: CV-16-11567-00CL

IN THE MATTER OF THE RECEIVERSHIP OF SCOLLARD DEVELOPMENT CORPORATION, MEMORY CARE INVESTMENTS (KITCHENER) LTD., MEMORY CARE INVESTMENTS (OAKVILLE) LTD., 1703858 ONTARIO INC., LEGACY LANE INVESTMENTS LTD., TEXTBOOK (525 PRINCESS STREET) INC. AND TEXTBOOK (555 PRINCESS STREET) INC.

AND IN THE MATTER OF A MOTION PURSUANT TO SUBSECTION 243(1) OF THE *BANKRUPTCY AND INSOLVENCY ACT*, R.S.C. 1985, c. B-3, AS AMENDED, AND SECTION 101 OF THE *COURTS OF JUSTICE ACT*, R.S.O. 1990, c. C.43, AS AMENDED

Court File No: CV-17-11689-00CL

IN THE MATTER OF THE RECEIVERSHIP OF TEXTBOOK (445 PRINCESS STREET) INC.

AND IN THE MATTER OF AN APPLICATION PURSUANT TO SUBSECTION 243(1) OF THE *BANKRUPTCY AND INSOLVENCY ACT*, R.S.C. 1985, c. b-3, AS AMENDED, AND SECTION 101 OF THE *COURTS OF JUSTICE ACT*, R.S.O. 1990, c. C.43, AS AMENDED

Court File No: CV-17-589078-00CL

KSV KOFMAN INC. in its capacity as Receiver and Manager of

v.

JOHN DAVIES et al.

Certain Property of Scollard Development Corporation, et al.
Plaintiff

Defendants

Court File No: CV-17-11822-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)
PROCEEDING COMMENCED AT
TORONTO