

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

BETWEEN:

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***

**MOTION RECORD
(Returnable January 31, 2017)**

Volume 2 of 2

January 20, 2017

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*Lawyers for Grant Thornton Limited, in its
capacity as the court-appointed trustee of the
Tier 1 Trustee Corporations*

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Respondents

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

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Applicant

- and -

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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-16-11625-00CL

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

IN THE MATTER OF THE COMPANIES' CREDITOR ARRANGMENT ACT, R.S.C. 1985, C. C-36, AS AMNEDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF TEXTBOOK (525 PRINCESS STREET) INC., TEXTBOOK (555 PRINCESS STREET) INC., TEXTBOOK (ROSS PARK) INC., TEXTBOOK (774 BRONSON AVENUE) INC., 1703858 ONTARIO INC., MEMORY CARE INVESTMENTS (OAKVILLE) LTD., MEMORY CARE INVESTMENTS (KITCHENER) LTD., MEMORY CARE INVESTMENTS (BURLINGTON) LTD., LEGACY LANE INVESTMENTS LTD. and SCOLLARD DEVELOPMENT CORPORATION (collectively the "CCAA Applicants")

THIRD REPORT OF THE TRUSTEE

DECEMBER 13, 2016



Grant Thornton Limited
200 King Street, 11th Floor
Toronto, Ontario
M5H 3T4

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INTRODUCTION AND PURPOSE

1. This report (the **"Third Report"**) is filed by Grant Thornton Limited (**"GTL"**) in its capacity as the court-appointed trustee (in such capacity, the **"Trustee"**) of each of the 11 above-named Respondents (collectively, the **"Tier 1 Trustee Corporations"**, and individually, a **"Tier 1 Trustee Corporation"**). GTL was appointed as the Trustee pursuant to the Order of the Honourable Justice Newbould of the Ontario Superior Court of Justice (Commercial List) (the **"Commercial List Court"**) made on October 27, 2016 (the **"Appointment Order"**), a copy of which is attached hereto as **Appendix "A"** (together with His Honour's endorsement).
2. The purpose of the Trustee's appointment (the **"Appointment"**) is to protect the interests of the investing public, who, through the Tier 1 Trustee Corporations, invested funds by way of a syndicated mortgage investment (**"SMI"**) with secured lending positions registered on title to real property owned by 16 borrowers/developers (the **"Developers"**) (collectively, the **"Investors"**). The Developers are distinct entities from the Tier 1 Trustee Corporations.
3. Detailed background information pertaining to the circumstances leading to the Trustee's Appointment is contained in the affidavit of Mohammed Ali Marfatia sworn October 20, 2016 (the **"Marfatia Affidavit"**), which was filed by the Superintendent of Financial Services (the **"Superintendent"**) in support of the Appointment.
4. Apart from the Marfatia Affidavit, responding affidavits to the Appointment were sworn by each of John Davies (a principal for 11 of the 16 Developers, which affidavit was filed in opposition to the Appointment) and Gregory Harris (a lawyer at Harris + Harris LLP (**"H+H"**)). The Appointment Order was granted notwithstanding the submissions of these stakeholders and their counsel to the Court.
5. On November 10, 2016, the Trustee filed its first report (the **"First Report"**) in the context of a motion to stay certain paragraphs of the Appointment Order (the **"Stay Motion"**) before the Ontario Superior Court of Justice (Divisional Court) (the

"Divisional Court"), which had been brought by 11 of the Developers for whom Mr. John Davies is the principal (the "Davies Developers").¹

6. On November 28, 2016, the Trustee filed its second report (the "**Second Report**") which provided the Court and stakeholders with, among other things, an update on the challenges encountered by the Trustee in performing its mandate as a result of the actions of certain parties, including the lack of information provided by the Davies Developers. A copy of the Second Report is attached without appendices as **Appendix "C"**. Furthermore, the Trustee has been seeking information from the Davies Developers in respect of the use of Investors' funds, which requests remain unanswered.
7. On December 7, 2016, nine of the Davies Developers (and one of Mr. Davies' related companies) (the "**CCAA Applicants**") sought protection from their creditors under the *Companies' Creditors Arrangement Act* (the "**CCAA Proceedings**"), which application was heard on December 9, 2016 and adjourned to December 14, 2016 to allow for opposing materials to be delivered.
8. The Tier 1 Trustee Corporations hold SMIs totalling approximately \$80 million cumulatively to the nine projects controlled by the CCAA Applicants, consisting of over 1,600 individual investors.
9. The purpose of this Third report is to provide the Court and the stakeholders with the Trustee's preliminary views on the proposed CCAA Proceedings.
10. Copies of materials filed in these proceedings generally are available on the Trustee's website at www.grantthornton.ca/tier1.

DISCLAIMER

11. This Third Report has been prepared solely for the use of the Court and the Tier 1 Trustee Corporations' stakeholders as general information relating to the Tier 1 Trustee Corporations.

¹ The Davies Developers are Textbook (525 Princess Street) Inc., Textbook (555 Princess Street) Inc., Textbook (Ross Park) Inc., 1703858 Ontario Inc., Memory Care Investments (Oakville) Ltd., Memory Care Investments (Kitchener) Ltd., Textbook (774 Bronson Ave) Inc., Legacy Lane Investments Ltd., Scollard Development Corporation, McMurray Street Investments Inc. and Textbook (445 Princess Street) Inc.

12. All references to dollars in this Third Report are in Canadian currency unless otherwise noted.

TRUSTEE'S VIEWS ON PROPOSED CCAA PROCEEDINGS

13. As described in detail in the First Report and the Second Report, the Trustee has been seeking documentation from the Davies Developers since the Appointment Order to evaluate the status of the projects controlled by the Davies Developers (the "Davies Projects") and provide meaningful reporting to the Investors. To date, the Davies Developers have not provided any meaningful information in which the Trustee can assess the status of the Davies Projects, their development prospects or the value of the developments should they proceed, the existence of purported construction financing on the Davies Projects (with the exception of one project known as 'Boathaus'), nor the use of Investor funds advanced by the Investors to each of the Davies Developers.
14. Based on limited information provided by counsel to the Davies Developers and the proposed monitor in the CCAA Proceedings, KSV Kofman Inc., it appears that for most of the Davies Projects, the Investors will suffer a significant shortfall on their respective SMIs if the underlying mortgages or any prior ranking mortgages are enforced at this point. On the contrary, third party first secured mortgages (other than the Tier 1 mortgages) appear to be well secured. As such, the Tier 1 Trustee Corporations, and thus the Investors, appear to be the fulcrum stakeholders, who will ultimately be the most impacted by the proposed CCAA Proceedings or the actions that may be taken by the first ranking secured mortgagees.
15. As described in the First report and the Second Report, the Trustee has requested an accounting of funds raised in respect of the SMI's and access to the trust ledgers for each of the Davies Projects, which have not been produced as of the date of this Third Report. The Trustee has received hundreds of inquiries from Investors who are concerned about the lack of reporting from the Davies Developers and the status of the SMIs.
16. In order properly evaluate the alternatives available to the Davies Developers, the Trustee requires reporting on each Davies Project and for such reporting to be independently verified by a third party. Absent such information, it is difficult for


the Trustee to adequately report to and make sound recommendations to the Investors in the Davies Projects. In addition, absent the requested accounting from the Davies Developers, the Trustee cannot evaluate the propriety of the Davies Developers' use of Investor funds.

17. Based on the lack of responses from the Davies Developers for the past six weeks since the Appointment Order, the Trustee is only supportive of CCAA Proceedings which provides additional powers to the Court officer who can facilitate information flow to the Trustee for the benefit of Investors, and, in the interim, stop any enforcement proceedings by prior ranking mortgagees.
18. At this point, the Trustee does not view the proposed CCAA Proceedings as a means to a restructuring of the CCAA Applicants. However, the proposed CCAA Proceedings appear to create a mechanism for the flow of information under the supervision of a Court officer with enhanced powers under the proposed order (at least in respect of the CCAA Applicants, which includes 9 of the 11 Davies Developers). While the Trustee has concerns with the various Court ordered charges proposed in the CCAA Proceedings and its impact on the Investors' positions, the existence of a Court officer creates independent oversight in the short term and will facilitate the transfer of information from the proposed monitor to the Trustee in respect of the CCAA Applicants.

All of which is respectfully submitted,

**GRANT THORNTON LIMITED,
IN ITS CAPACITY AS COURT-APPOINTED
TRUSTEE OF THE TIER 1 TRUSTEE CORPORATIONS
AND NOT IN ITS PERSONAL OR CORPORATE CAPACITY**

Per:

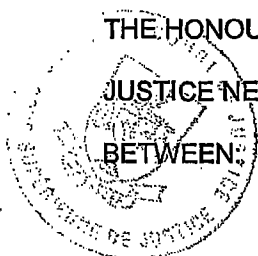


J. Krieger, CPA, CA, CIRP, LIT
Senior Vice President

Appendix A

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

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**



THE HONOURABLE
JUSTICE NEWBOULD

) THURSDAY, THE 27TH DAY
)
) OF OCTOBER, 2016

THE SUPERINTENDENT OF FINANCIAL SERVICES

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- and -

**TEXTBOOK STUDENT SUITES (525 PRINCESS STREET) TRUSTEE CORPORATION,
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29 and SECTION 101 OF THE COURTS OF JUSTICE ACT, R.S.O. 1990 c. C.43**

APPOINTMENT ORDER

THIS APPLICATION, made by The Superintendent of Financial Services (the "**Superintendent**"), for an Order, *inter alia*, pursuant to section 37 of the *Mortgage Brokerages, Lenders and Administrators Act, 2006*, S.O. 2006, c. 29, as amended (the "**MBLAA**"), and section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended, appointing Grant Thornton Limited ("**GTL**") as trustee (in such capacity, the "**Trustee**"), without security, of all of the assets, undertakings and properties of 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 Trust Corporation, Textbook Student Suites (445 Princess Street) Trustee Corporation and Hazelton 4070 Dixie Road Trustee Corporation (collectively, the "Respondents"), was heard this day at 330 University Avenue, Toronto, Ontario;

ON READING the affidavit of Mohammed Ali Marfatia sworn October 20, 2016 and the exhibits thereto (the "Supporting Affidavit") and on reading the Affidavit of Mr. John Davies sworn October 26, 2016 and the Affidavit of Mr. Gregory Harris sworn October 26, 2016 and the consent of GTL, and on hearing the submissions of counsel for the Superintendent, counsel for certain of the developers, counsel for Harris + Harris, LLP and counsel for Tier 1 Advisory Transaction Advisory Services Inc. and Mr. Singh, no one appearing for any other person on the service list, although duly served as appears from the affidavit of service of Eunice Baltkois sworn October 20, 2016, filed;

SERVICE

1. **THIS COURT ORDERS** that the time for service and filing of the notice of application and the application record 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 37 of the MBLAA, GTL is hereby appointed Trustee, without security, of all of the assets, undertakings and properties of the Respondents, including, without limitation, all of the assets held in trust or required to be held in trust by the Respondents, their counsel, agents and/or assignees on behalf of syndicated mortgage investors (collectively, the "Property"), which Property, for greater certainty, includes any and all real property charges in favour of the Respondents (the "Real Property Charges"), including, without limitation, any and all monetary and non-monetary entitlements in respect to the assets and values thereunder.

TRUSTEE'S POWERS

3. **THIS COURT ORDERS** that the Trustee 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 Trustee is hereby expressly empowered and authorized to do any of the following where the Trustee considers it necessary or desirable:

- (a) to take possession of and exercise control over the Property and any and all proceeds, receipts and disbursements arising out of or from the Property;
- (b) to receive, preserve, protect and maintain control of the Property, or any part or parts thereof, including, but not limited to, the holding of mortgage security in trust on behalf of syndicated mortgage investors, the administering of the mortgages, 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 manage, operate, and carry on the businesses of the Respondents, including the powers to enter into any agreements, incur any obligations in the ordinary course of business, cease to carry on all or any part of the business, or cease to perform any contracts of each of the Respondents;
- (d) 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 Trustee's powers and duties, including, without limitation, those conferred by this Order;
- (e) to purchase or lease such machinery, equipment, inventories, supplies, premises or other assets to continue the business of each of the Respondents or any part or parts thereof;
- (f) to receive and collect all monies and accounts now owed or hereafter owing to each of the Respondents and to exercise all remedies of each of the Respondents in collecting such monies, including, without limitation, to enforce any security held by each of the Respondents, including, without limitation, such security held on behalf of syndicated mortgage investors;
- (g) to settle, extend or compromise any indebtedness owing to each of the Respondents;

- (h) to execute, assign, issue and endorse documents of whatever nature in respect of any of the Property, whether in the Trustee's name or in the name and on behalf of the Respondents, or any of them, for any purpose pursuant to this Order;
- (i) 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 any of the Respondents, the Property or the Trustee, 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;
- (j) to market any or all of the Property, including advertising and soliciting offers in respect of the Property or any part or parts thereof and negotiating such terms and conditions of sale as the Trustee in its discretion may deem appropriate;
- (k) with the approval of this Court, to sell, convey, transfer, lease or assign the Property or any part or parts thereof out of the ordinary course of business, 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, and in such case the Ontario *Bulk Sales Act* shall not apply;
- (l) 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;
- (m) to report to, meet with and discuss with such affected Persons (as defined below) as the Trustee deems appropriate on all matters relating to the Property and the Trustee's mandate, and to share information, subject to such terms as to confidentiality as the Trustee deems advisable;
- (n) to register a copy of this Order and any other Orders in respect of the Property against title to any of the Property;
- (o) to apply for any permits, licences, approvals or permissions as may be required by any governmental authority and any renewals thereof for and on behalf of

and, if thought desirable by the Trustee, in the name of the Respondents, or any of them;

- (p) to enter into agreements with any trustee in bankruptcy appointed in respect of any 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 any of the Respondents;
- (q) to exercise any shareholder, partnership, joint venture or other rights which each of the Respondents may have; and
- (r) 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 Trustee 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 TRUSTEE

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 Trustee of the existence of any Property in such Person's possession or control, shall grant immediate and continued access to the Property to the Trustee, and shall deliver all such Property to the Trustee upon the Trustee's request.

5. **THIS COURT ORDERS** that, pursuant to and without limiting the generality of paragraph 4 of this Order, all Persons, including, without limitation, Harris + Harris LLP ("**H&H**"), shall, unless otherwise instructed by the Trustee: (i) deliver to the Trustee (or in the case of RRSP or other registered funds administered by Olympia Trust Company ("**OTC**") not release to any Person without further Order of this Court) any and all monies held in trust that are related to any of the Respondents or their businesses (collectively, the "**Trust Funds**"), which Trust Funds, for greater certainty, include any and all monies in any H&H or OTC account that are purported to be held in trust for the investors in or beneficiaries under any of the Real Property

Charges, including, without limitation, all monies held by way of interest reserve to satisfy interest payments to such investors or beneficiaries, which Trust Funds are to be held or used by the Trustee in accordance with the terms of this Order and any further Order of this Court; and (ii) upon the Trustee's request, provide an accounting of all funds received from or on behalf of the Respondents or their associated businesses.

6. **THIS COURT ORDERS** that all Persons shall forthwith advise the Trustee of the existence of any books, documents, securities, contracts, orders, corporate and accounting records, and any other papers, records and information of any kind related to the business or affairs of any of the Respondents, and any computer programs, computer tapes, computer disks, or other data storage media containing any such information (the foregoing, collectively, the "Records") in that Person's possession or control, and shall provide to the Trustee or permit the Trustee to make, retain and take away copies thereof and grant to the Trustee unfettered access to and use of accounting, computer, software and physical facilities relating thereto, provided however that nothing in this paragraph 6 or in paragraph 7 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 Trustee due to the privilege attaching to solicitor-client communication or due to statutory provisions prohibiting such disclosure.

7. **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 Trustee for the purpose of allowing the Trustee 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 Trustee in its discretion deems expedient, and shall not alter, erase or destroy any Records without the prior written consent of the Trustee. Further, for the purposes of this paragraph, all Persons shall provide the Trustee with all such assistance in gaining immediate access to the information in the Records as the Trustee may in its discretion require including providing the Trustee with instructions on the use of any computer or other system and providing the Trustee with any and all access codes, account names and account numbers that may be required to gain access to the information.

8. **THIS COURT ORDERS** that the Trustee shall provide each of the relevant landlords with notice of the Trustee's intention to remove any fixtures from any leased premises at least

seven (7) days prior to the date of the intended removal. The relevant landlord shall be entitled to have a representative present in the leased premises to observe such removal and, if the landlord disputes the Trustee's entitlement to remove any such fixture under the provisions of the lease, such fixture shall remain on the premises and shall be dealt with as agreed between any applicable secured creditors, such landlord and the Trustee, or by further Order of this Court upon application by the Trustee on at least two (2) days' notice to such landlord and any such secured creditors.

NO PROCEEDINGS AGAINST THE TRUSTEE

9. **THIS COURT ORDERS** that, with the exception of each of the NOP (as defined in the Supporting Affidavit), the Suspension Order (as defined in the Supporting Affidavit) and the Compliance Order (as defined in the Supporting Affidavit), no proceeding or enforcement process in any court or tribunal (each, a "Proceeding"), shall be commenced or continued against the Trustee except with the written consent of the Trustee or with leave of this Court.

NO PROCEEDINGS AGAINST THE RESPONDENTS OR THE PROPERTY

10. **THIS COURT ORDERS** that, with the exception of each of the NOP, the Suspension Order and the Compliance Order: (i) no Proceeding against or in respect of the Respondents, or any of them, or the Property shall be commenced or continued except with the written consent of the Trustee or with leave of this Court; and (ii) any and all Proceedings currently under way against or in respect of the Respondents, or any of them, or the Property are hereby stayed and suspended pending further Order of this Court.

NO EXERCISE OF RIGHTS OR REMEDIES

11. **THIS COURT ORDERS** that, with the exception of each of the NOP, the Suspension Order and the Compliance Order, all rights and remedies against each of the Respondents, the Trustee, or affecting the Property, are hereby stayed and suspended except with the written consent of the Trustee 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 *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the "BIA"), and further provided that nothing in this paragraph shall: (i) empower the Trustee or the Respondents to carry on any business which the Respondents are not lawfully entitled to carry on; (ii) exempt the Trustee 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.

NO INTERFERENCE WITH THE TRUSTEE

12. **THIS COURT ORDERS** that no Person shall discontinue, fail to honour, alter, interfere with; repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by any of the Respondents, without written consent of the Trustee or leave of this Court.

CONTINUATION OF SERVICES

13. **THIS COURT ORDERS** that all Persons having oral or written agreements with the Respondents, or any of them, or statutory or regulatory mandates for the supply of goods and/or services, including, without limitation, all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation services, utility or other services to the Respondents are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Trustee, and that the Trustee shall be entitled to the continued use of the Respondents' current telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Trustee in accordance with normal payment practices of the Respondents or such other practices as may be agreed upon by the supplier or service provider and the Trustee, or as may be ordered by this Court.

TRUSTEE TO HOLD FUNDS

14. **THIS COURT ORDERS** that all funds, monies, cheques, instruments, and other forms of payments received or collected by the Trustee from and after the making of this Order from any source whatsoever, including, without limitation, the sale of all or any of the Property and the collection of any 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 Trustee (the "Post Trusteeship Accounts") and the monies standing to the credit of such Post Trusteeship Accounts from time to time, net of any disbursements provided for herein, shall be held by the Trustee to be paid in accordance with the terms of this Order or any further Order of this Court.

EMPLOYEES

15. **THIS COURT ORDERS** that all employees of the Respondents shall remain the employees of the Respondents until such time as the Trustee, on the Respondents' behalf, may terminate the employment of such employees. The Trustee shall not be liable for any employee-related liabilities, including any successor employer liabilities as provided for in subsection 14.06(1.2) of the BIA, other than such amounts as the Trustee may specifically agree in writing to pay, or in respect of its obligations under subsections 81.4(5) and 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*.

PIPEDA

16. **THIS COURT ORDERS** that, pursuant to clause 7(3)(c) of the Canada *Personal Information Protection and Electronic Documents Act* and any other applicable privacy legislation, the Trustee shall disclose personal information of identifiable individuals to prospective purchasers or bidders for the Property and to their advisors, but only to the extent desirable or required to negotiate and attempt to complete one or more sales of the Property (each, a "Sale"). Each prospective purchaser or bidder to whom such personal information is disclosed shall maintain and protect the privacy of such information and limit the use of such information to its evaluation of the Sale, and if it does not complete a Sale, shall return all such information to the Trustee, or in the alternative destroy all such information. The purchaser of any Property shall be entitled to continue to use the personal information provided to it, and related to the Property purchased, in a manner which is in all material respects identical to the prior use of such information by the Respondents, and shall return all other personal information to the Trustee, or ensure that all other personal information is destroyed.

LIMITATION ON ENVIRONMENTAL LIABILITIES

17. **THIS COURT ORDERS** that nothing herein contained shall require the Trustee 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 Trustee from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Trustee shall not, as a result of this Order or anything done in pursuance of the Trustee'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 TRUSTEE'S LIABILITY

18. **THIS COURT ORDERS** that the Trustee 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 subsections 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 Trustee by section 14.06 of the BIA or by any other applicable legislation.

TRUSTEE'S ACCOUNTS

19. **THIS COURT ORDERS** that the Trustee and counsel to the Trustee 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, which fees and disbursements shall be added to the indebtedness secured by the Real Property Charges, and that the Trustee and counsel to the Trustee shall be entitled to and are hereby granted a charge (the "Trustee'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 Trustee'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 subsections 14.06(7), 81.4(4) and 81.6(2) of the BIA.

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

21. **THIS COURT ORDERS** that prior to the passing of its accounts, the Trustee 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 Trustee or its counsel, and such amounts shall constitute advances against its remuneration and disbursements when and as approved by this Court.

FUNDING OF THE APPOINTMENT

22. **THIS COURT ORDERS** that the Trustee 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 \$300,000.00 (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 Trustee by this Order, including interim expenditures. The whole of the Property shall be and is hereby charged by way of a fixed and specific charge (the "**Trustee'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 Trustee's Charge and the charges as set out in subsections 14.06(7), 81.4(4) and 81.6(2) of the BIA.

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

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

25. **THIS COURT ORDERS** that the monies from time to time borrowed by the Trustee pursuant to this Order or any further order of this Court and any and all Trustee'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 Trustee's Certificates.

SERVICE AND NOTICE

26. **THIS COURT ORDERS** that the E-Service Protocol of the Commercial List (the "**Protocol**") is approved and adopted by reference herein and, in these proceedings, 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/eservice-commercial/>) shall be valid and effective service. Subject to Rule 17.05 of the *Rules of Civil Procedure* (the "Rules"), this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the Rules. Subject to Rule 3.01(d) of the Rules 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 with the following URL: <http://www.grantthornton.ca/tier1>.

27. **THIS COURT ORDERS** that if the service or distribution of documents in accordance with the Protocol is not practicable, the Trustee 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

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

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

30. **THIS COURT ORDERS** that Confidential Exhibit "A" and Confidential Exhibit "B" to the Supporting Affidavit be and are hereby sealed until further Order of this Court.

31. **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 Trustee 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 Trustee, as an officer of

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

32. **THIS COURT ORDERS** that the Trustee 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 Trustee 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.

33. **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, or such shorter period of time as the Court may permit, to the Trustee 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.



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

OCT 27 2016

PER / PAR: 

SCHEDULE "A"
TRUSTEE CERTIFICATE

CERTIFICATE NO. _____

AMOUNT \$ _____

1. **THIS IS TO CERTIFY** that Grant Thornton Limited., the Trustee (in such capacities, the "Trustee") of all of the assets, undertakings and properties of 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 Trust Corporation, Textbook Student Suites (445 Princess Street) Trustee Corporation and Hazelton 4070 Dixie Road Trustee Corporation (collectively, the "Respondents"), including all of the assets held in trust by the Respondents on behalf of syndicated mortgage investors (collectively, the "Property") appointed by Order of the Ontario Superior Court of Justice (Commercial List) (the "Court") dated the 27th day of October, 2016 (the "Order") made in an action having Court file number CV-16-11567-00CL, has received as such Trustee from the holder of this certificate (the "Lender") the principal sum of \$ _____, being part of the total principal sum of \$ _____ which the Trustee 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 Trustee pursuant to the Order or to any further order of the Court, a charge upon the whole of the Property (as defined in the Order), 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 Trustee to indemnify itself out of such 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 Trustee 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 Trustee to deal with the Property (as defined in the Order) as authorized by the Order and as authorized by any further or other order of the Court.
7. The Trustee 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 _____, 2016.

GRANT THORNTON LIMITED, solely in its capacity as Trustee of the Property (as defined in the Order), and not in its personal capacity

Per: _____

Name: Jonathan Krieger

Title: Senior Vice President

0
8 THE SUPERINTENDENT OF FINANCIAL SERVICES

- and -

TEXTBOOK STUDENT SUITES (525 PRINCESS STREET)
TRUSTEE CORPORATION, ET AL.

Applicant

Respondents

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

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

Proceedings commenced at Toronto

APPOINTMENT ORDER

THE SUPERINTENDENT OF FINANCIAL SERVICES
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*Lawyers for the Applicant, The Superintendent of
Financial Services*

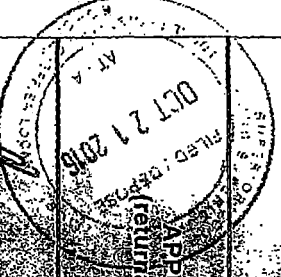
Applicant

Respondents

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

October 27, 2016

In my view, the appropriate remedy is to
suspend the policy to protect the
interests of the insureds. I refer to the
policy as a "policy" and not as a "contract".



ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST
Proceedings commenced at Toronto

APPLICATION RECORD
(returnable October 27, 2016)
(Volume 1 of 3)

THE SUPERINTENDENT OF FINANCIAL SERVICES
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Lawyers for the Applicant, The Superintendent of
Financial Services

Appendix B

Div. Ct. File No. 535/16
Court File No. CV-16-11567-00CL

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

BETWEEN:

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**

FIRST REPORT OF THE TRUSTEE

NOVEMBER 10, 2016

**Grant Thornton Limited
200 King Street, 11th Floor
Toronto, Ontario
M5H 3T4**

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- Appendix E Trustee's Letter dated November 1, 2016 to Mr. Singh
- Appendix F Correspondence between the Trustee and Mr. Davies to schedule a meeting
- Appendix G Trustee's correspondence with Mr. Davies related to the information request and a list of Mr. Davies' Initial Information
- Appendix H Trustee's Letter to the Investors dated November 3, 2016

Div. Ct. File No. 535/16
Court File No. CV-16-11567-00CL

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

BETWEEN:

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**

FIRST REPORT OF THE TRUSTEE

NOVEMBER 10, 2016

INTRODUCTION

1. This report (the "**First Report**") is filed by Grant Thornton Limited ("**GTL**") in its capacity as the court-appointed trustee (in such capacity, the "**Trustee**") of each of the 11 above-named Respondents (collectively, the "**Tier 1 Trustee Corporations**", and individually, a "**Tier 1 Trustee Corporation**"). **GTL** was appointed as the Trustee pursuant to the Order of the Honourable Justice Newbould of the Ontario Superior Court of Justice (Commercial List) (the "**Commercial List Court**") made on October 27, 2016 (the "**Appointment**")

Order"), a copy of which is attached hereto as **Appendix "A"** (together with His Honour's endorsement).

2. The purpose of the Trustee's appointment (the "**Appointment**") is to protect the interests of the investing public, who, through the Trustee, are mortgagees with secured lending positions registered on title to real property owned by 16 borrowers/developers (the "**Developers**"). The Developers are distinct entities from the Tier 1 Trustee Corporations.
3. This First Report is filed in the context of a motion (the "**Stay Motion**") returnable on November 14, 2016 before the Ontario Superior Court of Justice (Divisional Court) (the "**Divisional Court**"), which has been brought by 11 of the Developers (the "**Moving Parties**").¹ In substance, the Stay Motion seeks a stay of paragraphs 5 and 19 of the Appointment Order pending the hearing of the Moving Parties further motion to the Divisional Court for leave to appeal the Appointment Order (the "**Leave to Appeal Motion**").
4. Detailed background information pertaining to the circumstances leading to the Trustee's Appointment is contained in the affidavit of Mohammed Ali Marfatia sworn October 20, 2016 (the "**Marfatia Affidavit**"), which was filed by the Superintendent of Financial Services (the "**Superintendent**") in support of the Appointment.
5. In summary, the Marfatia Affidavit describes a series of 16 syndicated mortgage investments ("**SMIs**") sold to the investing public (the "**Investors**"), in respect of which, amongst other things:
 - (i) the Moving Parties (for 11 of the 16 SMIs) and other Developers (for the remaining 5 SMIs) are the owners of the real property, borrowers in the mortgage transactions and developers of the underlying real estate projects;

¹ The Moving Parties are Textbook (525 Princess Street) Inc., Textbook (555 Princess Street) Inc., Textbook (Ross Park) Inc., 1703858 Ontario Inc., Memory Care Investments (Oakville) Ltd., Memory Care Investments (Kitchener) Ltd., Textbook (774 Bronson Ave) Inc., Legacy Lane Investments Ltd., Scollard Development Corporation, McMurray Street Investments Inc. and Textbook (445 Princess Street) Inc.

- (ii) the 11 Tier 1 Trustee Corporations (prior to the Appointment of the Trustee) were special purpose entities required under their relevant constating agreements to hold the mortgages in trust for the Investors and to act in a fiduciary capacity to administer and enforce the mortgages (some of the Tier 1 Trustee Corporations held more than one mortgage); and
 - (iii) other entities, being First Commonwealth Mortgage Corporation ("**First Commonwealth**") and Tier 1 Mortgage Corporation ("**Tier 1 Mortgage**"), were amongst those licensed mortgage brokers that promoted and sold the SMLs, and a third entity, being Tier 1 Transaction Advisory Services Inc. ("**Tier 1 Transaction**"), was also heavily involved in the SMLs and had applied for a mortgage brokerage license.
6. The Marfatia Affidavit further describes how Mr. Raj Singh, who is simultaneously the President, the CEO and a shareholder of Tier 1 Transaction, a mortgage agent of First Commonwealth, a director, officer, shareholder (either directly or indirectly) and/or profit participation interest holder in at least 11 of the Developers (including many of the Moving Parties) and the sole director, officer and shareholder of all but two of the Trustee Corporations, was in a clear conflict of interest position not properly disclosed to the Investors, in that, amongst other things, he was required to administer and enforce the SMLs on behalf of the Investors as against borrowers in which he had a financial interest in the majority of cases.
7. As discussed in the Marfatia Affidavit, the Superintendent also discovered systematic and recurrent failures by First Commonwealth and Tier 1 Mortgage to abide by the basic consumer protection measures put in place by the *Mortgage Brokerages, Lenders and Administrators Act, 2006* (Ontario), which resulted in the Superintendent issuing: (i) a Notice of Proposal to revoke the licenses of First Commonwealth, Tier 1 Mortgage and Mr. Singh (amongst others) and to refuse the license surrender application of First Commonwealth; (ii) an Interim Suspension Order against these same entities/persons, preventing them from

dealing or trading in mortgages in Ontario; and (iii) an Interim Compliance Order against Tier 1 Transaction, requiring that it cease and desist unlicensed activity.

8. Finally (and without being exhaustive), the Marfatia Affidavit also discussed the Superintendent's concern that the appraisal values provided to the Investors did not reflect the value of the real property, such that the true values may be inadequate to cover the respective SMLs.
9. Apart from the Marfatia Affidavit, responding affidavits to the Application were also sworn by each of John Davies (one of the principals of the Moving Parties in the present Stay Motion, which was filed in opposition to the Appointment) and Gregory Harris (the lawyer at Harris + Harris LLP ("H+H") with custody of the trust accounts that essentially forms the subject matter of the Stay Motion).
10. The Trustee understands that the Superintendent has filed or will shortly file each of the Marfatia Affidavit and the responding affidavits thereto as part of the Superintendent's responding materials to the Stay Motion.
11. Copies of materials filed in these proceedings generally are available on the Trustee's website at www.grantthornton.ca/tier1.

PURPOSE AND DISCLAIMER

12. This First Report has been prepared for the use of the Commercial List Court, the Divisional Court and the Tier 1 Trustee Corporations' stakeholders as general information relating to the Tier 1 Trustee Corporations and to assist the Divisional Court in making a determination of whether to approve the relief sought by the Moving Parties in the Stay Motion. Accordingly, the reader is cautioned that this First Report may not be appropriate for any other purpose. The Trustee will not assume responsibility or liability for losses incurred by the reader as a result of the circulation, publication, reproduction or use of this First Report for any other purpose.
13. In preparing this First Report, the Trustee has relied upon certain unaudited financial information provided by parties who had knowledge of the affairs of the Tier 1 Trustee Corporations, including Gregory Harris, Raj Singh and John Davies. The Trustee has not performed an audit or verification of such

information for accuracy, completeness or compliance with Generally Accepted Accounting Principles (“GAAP”) or International Financial Reporting Standards (“IFRS”). Accordingly, the Trustee expresses no opinion or other form of assurance pursuant to GAAP or IFRS with respect to such information.

14. All references to dollars in this First Report are in Canadian currency unless otherwise noted.

CONCERNS RAISED BY THE MOVING PARTIES

15. Prior to its appointment, GTL and its counsel met with John Davies (on behalf of the Moving Parties) and the Moving Parties’ counsel, Raj Singh and his counsel and Gregory Harris on October 25, 2016 to discuss the affairs of the Tier 1 Trustee Corporations and the Developers, on a without prejudice basis (the “**October 25 Meeting**”).
16. As a result of what was discussed at that meeting, both Gregory Harris and John Davies swore their responding affidavits to GTL’s pending appointment (respectively, the “**Harris Affidavit**” and the “**First John Davies Affidavit**”, and collectively, the “**Responding Affidavits**”), addressing concerns with respect to what they perceived to be the impact of the proposed appointment, including how the appointment would be funded, the scope of the mandate and the treatment of funds held in trust by H+H. The Responding Affidavits were served on the afternoon preceding the hearing, and resulted in certain changes being made to the proposed form of Appointment Order, which changes were served prior to the commencement of the hearing.
17. Attached as **Appendix “B”** is a cumulative blackline form of Order, reflecting the differences between the form of Order originally proposed in the Superintendent’s materials and the Appointment Order obtained from the Commercial List Court. In response to what was discussed and requested at the October 25 Meeting, the terminology used to describe GTL’s role was changed from receiver and manager to trustee. Also added to the Order as a result of the October 25 Meeting and the Responding Affidavits was certain “for greater certainty” and related language in the paragraphs of the Appointment Order that are now subject to the Stay Motion.

18. Prior to making the Appointment Order, each of the Superintendent's counsel, the Moving Parties' counsel, Raj Singh's counsel, H+H and the then-proposed Trustee's counsel made submissions in Chambers to the Honourable Justice Newbould in regards to the issues that are now the subject of the Stay Motion, which submissions resulted in the Appointment Order being granted. Amongst other things, His Honour recognized that the Trustee could not fulfill its mandate to protect the Investors' interests without access to the funds held in trust by H+H.

TRUSTEE'S REQUESTS FOR INFORMATION

19. The following section outlines the Trustee's requests for information related to the Tier 1 Trustee Corporations and the Trustee's interactions with each party.

H+H

20. Both the Marfatia Affidavit and the Harris Affidavit explain that the Syndication Mortgage Participation Agreements between the applicable Tier 1 Trustee Corporation and the Investors require the Tier 1 Trustee Corporation or its solicitor to hold interest holdback monies in trust for the Investors, and that H+H assumed responsibility of these monies from the Tier 1 Trustee Corporations' solicitor.
21. H+H provided the Trustee with copies of H+H's trust ledgers in respect of which monies were being held in trust for the Investors, which trust ledgers and associated accounts appear to be segregated on a project-by-project basis, and which trust ledgers were also attached as exhibits to the Harris Affidavit (collectively, the "Trust Ledgers").
22. The Trust Ledgers reflect that at least six of the 11 mortgages in respect of which the Moving Parties are developers/borrowers were in default of their interest obligations to the corresponding Tier 1 Trustee Corporations prior to the Appointment of the Trustee for failure to make a quarterly interest payment. Despite requests by the Trustee (as outlined below), neither Raj Singh nor John Davies has provided the Trustee with evidence of any steps taken by the Tier 1 Trustee Corporations to cure or otherwise address these defaults or take

enforcement action in respect of same, despite the obligations to do so (as outlined earlier in this First Report and discussed in more detail in the Marfatia Affidavit).

23. On October 28, 2016, the Trustee sent a letter to H+H requesting certain information related to, amongst other things, details of the Investors and the funds held on their behalf in H+H's trust accounts (the "**Trust Funds**").
24. H+H provided a preliminary response on October 31, 2016 addressing certain general questions, and the Trustee responded with an email on October 31, 2016 asking for additional information.
25. As of the date of this First Report, H+H has provided the majority of the requested information for two of the 16 projects, and has advised that additional material for the other projects will be provided.
26. Copies of the Trustee's letter dated October 28, 2016, H+H's response on October 31, 2016 and the Trustee's email on October 31, 2016 are collectively attached hereto as **Appendix "C"**.
27. On November 2, 2016, in accordance with paragraph 5 of the Appointment Order, Aird & Berlis LLP ("**A&B**"), counsel to the Trustee, sent a letter to H+H requesting that the Trust Funds (excluding RRSP or other register funds) be delivered to the Trustee by November 4, 2016.
28. On November 4, 2016, H+H responded with a letter to A&B explaining that before the Trust Funds could be delivered, H+H must cancel all post-dated cheques that are in the hands of Investors, which could take approximately 40 hours, and requested an extension to deliver the Trust Funds.
29. Later on November 4, 2016, A&B responded with a letter to H+H extending the time by which H+H may deliver the Trust Funds to the Trustee to no later than November 7, 2016, and requested that H+H focus its efforts to cancel cheques on a single account at a time and transfer the Trust Funds to the Trustee on an account by account basis upon the final cheque being cancelled on that account.

30. Despite advising in an email chain on November 8, 2016 that it hoped to begin wiring funds the next day, H+H did not do so.
31. Copies of the correspondence amongst A&B, H+H and the Trustee are attached hereto as **Appendix "D"**.
32. As of the date of this First Report, the Trustee has still not received any of the Trust Funds from H+H.

Raj Singh

33. On October 31, 2016, the Trustee met with Raj Singh, in his capacity as controlling mind of the Tier 1 Trustee Corporations, as principal stakeholder of three of the Developers (the "**Singh Developers**") and a further stakeholder in certain of the Moving Parties.
34. During the meeting, Mr. Singh confirmed that several of the Moving Parties' mortgages are in default, and also advised the Trustee of other mortgages being in default.
35. Mr. Singh also advised the Trustee that the Tier 1 Trustee Corporations do not have any books or records of their own and that all Investor and SMI information is held by the mortgage brokerages, which the Trustee understands share an office with Mr. Singh and Tier 1 Transaction and/or Tier 1 Mortgage.
36. Mr. Singh undertook to provide the Trustee with a number of documents, which the Trustee requested in a letter to Mr. Singh dated November 1, 2016, a copy of which is attached hereto as **Appendix "E"**.
37. The nature of the Trustee's requests for information from Mr. Singh included, amongst other things:
 - (i) information related to the Investors;
 - (ii) the status of the projects of the Singh Developers;

- (iii) a detailed accounting of the use of funds from the mortgages by the Singh Developers;
 - (iv) information related to mortgages ranking ahead or behind the mortgages held by the Tier 1 Trustee Corporations on the Singh Developers' projects;
 - (v) the status of the projects controlled by other Developers, including, without limitation, the Moving Parties, as reported by the Developers to the respective Tier 1 Trustee Corporation;
 - (vi) details of any actions taken by the Tier 1 Trustee Corporations in respect of mortgages that are in default; and
 - (vii) other details in respect of the mortgages.
38. As of the date of this First Report, and despite the Trustee having followed-up with Mr. Singh on November 7, 2016, Mr. Singh has only provided the Trustee with certain limited information in respect of the Investors. No information has been provided in respect of the other items enumerated in the above paragraph.

John Davies

39. Immediately after the Appointment Order was granted, the Trustee scheduled a meeting with John Davies for October 28, 2016, in his capacity as controlling mind of the Moving Parties, being a number of the Developers. The Trustee in part scheduled the meeting as an urgency, to respond to the urgencies raised by John Davies in the October 25 Meeting and the First John Davies Affidavit.
40. On October 27, 2016, Mr. Davies advised that he would have to postpone the meeting to the following week.
41. On October 31, 2016, after multiple follow-ups by the Trustee, Davies requested to postpone the meeting to November 3, 2016 or November 4, 2016. The Trustee responded by confirming the meeting for November 3, 2016.

42. Mr. Davies later requested, after a second confirmation by the Trustee for the November 3, 2016 meeting, that the meeting be postponed further to November 10, 2016 or November 11, 2016.
43. Copies of the correspondence related to the scheduling of the meeting, including the Trustee's request to expedite the meeting due to its importance to the administration of these proceedings, is attached hereto as **Appendix "F"**.
44. In light of John Davies' refusal to expedite the meeting, the Trustee sent a letter to Mr. Davies on November 2, 2016 requesting information related to the Moving Parties and the mortgages registered against them by the Tier 1 Trustee Corporations.
45. The nature of the Trustee's requests for information from Mr. Davies included, amongst other things:
 - (i) the status of the projects of the Moving Parties, including the Moving Parties' plans and intentions to repay the mortgages in favour of the Tier 1 Trustee Corporations;
 - (ii) an accounting of the use of funds from these mortgages by the Moving Parties;
 - (iii) information related to mortgages ranking ahead or behind the mortgages held by the Tier 1 Trustee Corporations on the Moving Parties' projects; and
 - (iv) information related to any correspondence with Investors (as one of John Davies' emails included in Appendix F explains that he is having 'town hall' meetings with Investors). The Trustee requested that Mr. Davies: (a) provide the Trustee with draft copies of any correspondence intended for the Investors so that the Trustee can review and approve such communications in advance; and (b) provide the Trustee with advance notice and details of any meetings scheduled with the Investors so that the Trustee may consider the necessity of any such meetings and have the ability to attend.

46. The Trustee believes that in accordance with the mortgage agreements with the Moving Parties (as with other Developers as well) and the terms of the Appointment Order, it is the Trustee's responsibility to ask these questions (as it was the responsibility of the Tier 1 Trustee Corporations prior to the Appointment Order). As the Trustee has been empowered by the Court to protect the Investors' interests as against the Moving Parties, the Trustee also has concerns about the Moving Parties communicating with the Investors without the Trustee's involvement.
47. The Trustee has received a substantial number of inquiries from Investors who have serious concerns with respect to the status of the projects, the lack of reporting from the Tier 1 Trustee Corporations, the lack of transparency with respect to their investments, the nature of Raj Singh's purported undisclosed interest in certain of the Developers' projects and the existence of defaults by the Moving Parties specifically and the Developers generally.
48. Further, the Trustee has concerns (which have also been expressed by certain Investors) that both the First John Davies Affidavit and the affidavit sworn by Mr. Davies in support of the Stay Motion state, without providing any accounting, that the mortgage funds received by the Moving Parties from the Tier 1 Corporations have been fully-expended. According to information received by the Trustee from H+H, the most recent SMI (for the property municipally known as 445 Princess Street) raised \$4,295,300, \$2,241,150 and \$1,860,300 from Investors in July 11, 2016, August 22, 2016 and September 28, 2016, respectively.
49. On November 7, 2016, John Davies provided very limited relevant information related to the projects controlled by the Moving Parties (the "**Davies' Initial Information**") and failed to address almost any of the key concerns and requests raised by the Trustee.
50. The Davies' Initial Information, while voluminous, mostly includes development materials about each project, and fails to provide any insight into the status of the projects with respect to the Moving Parties' plan or ability to repay the respective mortgages upon maturity or cure any defaults. The Davies' Initial Information also fails to address the Trustee's questions related to the Moving Parties' use of

funds of the mortgages. The Davies' Initial Information did include information related to pro-forma analyses and projected use of funds of certain of the projects of the Moving Parties, without reflecting whether these projections were achieved.

51. The Trustee advised Mr. Davies of the shortcomings with the Davies' Initial Information by way of a letter dated November 7, 2016, which listed the outstanding information.
52. Mr. Davies responded to the Trustee's November 7, 2016 letter by email on November 8, 2016, explaining that he has not had sufficient time to prepare the remaining information and does not provide a timeline to provide same.
53. Copies of the Trustee's November 2, 2016 letter, a summary of the Davies' Initial Information, the Trustee's November 7, 2016 letter and Mr. Davies' November 8, 2016 email are attached hereto as **Appendix "G"**.

INVESTOR CORRESPONDENCE

54. The Trustee has been provided by Raj Singh with contact information for over two thousand unique investors. Since its appointment, the Trustee set up a 1-800 hotline telephone number and dedicated email address for Investors to contact the Trustee with questions, both of which were posted to the Trustee's website and provided to Raj Singh to forward to Investors who contact him.
55. The Trustee also sent a letter to Investors advising them of the proceedings generally and providing an update on the administration to date. A copy of this letter was also posted to the Trustee's website and is attached hereto as **Appendix "H"**.
56. In addition to the general concerns raised by Investors, a number of Investors have raised the following specific concerns:

- (i) several Investors reported rumours that the Trustee has issued an invoice to certain of the Moving Parties for over \$300,000. The Trustee confirmed to these Investors that this is untrue;
- (ii) several Investors reported rumours that the Trustee has refused to provide approval for construction financing to some of the Moving Parties which could jeopardize the development of their projects. The Trustee confirmed to these investors that neither the Moving Parties, nor any of the Developers, has contacted the Trustee to discuss construction financing; and
- (iii) several Investors reported that John Davies is planning further Investor 'town halls' with a view to seeking support to replace the Trustee.

57. To date, the Trustee has been advising Investors that it has submitted requests for information to the Developers and once it has information related to the SMIs, it will proactively keep Investors apprised of the status of the Developers' projects (i.e., the Investors' security).

STATUS OF THE MORTGAGES

58. As described above, the Trustee has not yet been provided with relevant information with respect to the statuses of the mortgages from John Davies or Raj Singh.
59. Based on the Trustee's preliminary discussions with Raj Singh, its review of the Marfatia Affidavit and its review of the Trust Ledgers, the Trustee has prepared the following summary of the status of the various SMIs:

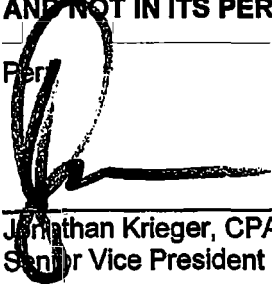
Project Name	Controlling Move-in Operator	Default as of 10/1/15	Other Default	Comments
445 Princess Street	Davies	N		
525 Princess Street	Davies	N		
555 Princess Street	Davies	N		
774 Bronson Avenue	Davies	N		
Highlights Mississauga Condo-miniums and Towns	Singh	N		
Legacy Lane	Davies	Y	Mortgage Due	Due on Dec 31/15
Keele Medical	Singh	N		Due on Nov 3/16
Guildwood	Singh	N		
Memory Care Burlington	Davies	Y		
Memory Care Kitchener	Davies	Y		
Memory Care Oakville	Davies	Y	Mortgage Due	Due on Oct 29/16
Muskoka (McMurray St.)	Davies	Y	Mortgage Due	Due on Apr 30/16
Ross Park	Davies	N		
Silver Seven		N		Due on Jan 22/16
Vaughan Crossings	Private receiver appointed	Y		Due on Sep 30/15
Boathaus	Davies	Y	Oct 1/16 payment was missed	

60. As indicated in the above table and earlier in this First Report, the limited information currently available to the Trustee reflects that a number of the SMIs are in default, including at least six of the Moving Parties 11 projects, and the Trustee is working actively to determine the best course(s) of action in respect of the SMIs, including the calling of Investor meetings where appropriate.

All of which is respectfully submitted,

**GRANT THORNTON LIMITED,
IN ITS CAPACITY AS COURT-APPOINTED
TRUSTEE OF THE TIER 1 TRUSTEE CORPORATIONS
AND NOT IN ITS PERSONAL OR CORPORATE CAPACITY**

Per



Jonathan Krieger, CPA, CA, CIRP, LIT
Senior Vice President

27622550.2

Appendix C

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

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

BETWEEN:

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**

SECOND REPORT OF THE TRUSTEE

NOVEMBER 28, 2016



Grant Thornton Limited
200 King Street, 11th Floor
Toronto, Ontario
M5H 3T4

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- Appendix H Trustee's frequently asked questions document

CONFIDENTIAL APPENDIX

- Confidential Appendix 1 Letter from WeirFoulds LLP dated November 24, 2016

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

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

BETWEEN:

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

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C.43**

SECOND REPORT OF THE TRUSTEE

NOVEMBER 28, 2016

INTRODUCTION

1. This report (the "Second Report") is filed by Grant Thornton Limited ("GTL") in its capacity as the court-appointed trustee (in such capacity, the "Trustee") of each of the 11 above-named Respondents (collectively, the "Tier 1 Trustee Corporations", and individually, a "Tier 1 Trustee Corporation"). GTL was appointed as the Trustee pursuant to the Order of the Honourable Justice Newbould of the Ontario Superior Court of Justice (Commercial List) (the "Commercial List Court") made on October 27, 2016 (the "Appointment

Order"), a copy of which is attached hereto as **Appendix "A"** (together with His Honour's endorsement).

2. The purpose of the Trustee's appointment (the "**Appointment**") is to protect the interests of the investing public, who, through the Trustee, are mortgagees with secured lending positions registered on title to real property owned by 16 borrowers/developers (the "**Developers**"). The Developers are distinct entities from the Tier 1 Trustee Corporations.
3. Detailed background information pertaining to the circumstances leading to the Trustee's Appointment is contained in the affidavit of Mohammed Ali Marfatia sworn October 20, 2016 (the "**Marfatia Affidavit**"), which was filed by the Superintendent of Financial Services (the "**Superintendent**") in support of the Appointment.
4. In summary, the Marfatia Affidavit describes a series of 16 syndicated mortgage investments ("**SMIs**") sold to the investing public (the "**Investors**"), in respect of which, amongst other things:
 - (i) the 16 Developers are the owners of the real property, borrowers in the mortgage transactions and developers of the underlying real estate projects;
 - (ii) the 11 Tier 1 Trustee Corporations (prior to the Appointment of the Trustee) were special purpose entities required under their relevant constating agreements to hold the mortgages in trust for the Investors and to act in a fiduciary capacity to administer and enforce the mortgages (some of the Tier 1 Trustee Corporations held more than one mortgage); and
 - (iii) other entities, being First Commonwealth Mortgage Corporation ("**First Commonwealth**") and Tier 1 Mortgage Corporation ("**Tier 1 Mortgage Corp**"), were amongst those licensed mortgage brokers that promoted and sold the SMIs, and a third entity, being Tier 1 Transaction Advisory Services Inc. ("**Tier 1 Transaction**"),

was also heavily involved in the SMIs and had applied for a mortgage brokerage license.

5. The Marfatia Affidavit further describes how Mr. Raj Singh, who is simultaneously the President, the CEO and a shareholder of Tier 1 Transaction, a mortgage agent of First Commonwealth, a director, officer, shareholder (either directly or indirectly) and/or profit participation interest holder in at least 11 of the Developers and the sole director, officer and shareholder of all but two of the Trustee Corporations, was in a clear conflict of interest position not properly disclosed to the Investors, in that, amongst other things, he was required to administer and enforce the SMIs on behalf of the Investors as against borrowers in which he had a financial interest in the majority of cases.
6. As discussed in the Marfatia Affidavit, the Superintendent also discovered systematic and recurrent failures by First Commonwealth and Tier 1 Mortgage Corp to abide by the basic consumer protection measures put in place by the *Mortgage Brokerages, Lenders and Administrators Act, 2006* (Ontario), which resulted in the Superintendent issuing: (i) a Notice of Proposal to revoke the licenses of First Commonwealth, Tier 1 Mortgage Corp and Mr. Singh (amongst others) and to refuse the license surrender application of First Commonwealth; (ii) an Interim Suspension Order against these same entities/persons, preventing them from dealing or trading in mortgages in Ontario; and (iii) an Interim Compliance Order against Tier 1 Transaction, requiring that it cease and desist unlicensed activity.
7. Finally (and without being exhaustive), the Marfatia Affidavit also discussed the Superintendent's concern that the appraisal values provided to the Investors did not reflect the value of the real property, such that the true values may be inadequate to cover the respective SMIs.
8. Apart from the Marfatia Affidavit, responding affidavits to the Application were sworn by each of John Davies (a principal for 11 of the 16 Developers, which affidavit was filed in opposition to the Appointment) and Gregory Harris (a lawyer at Harris + Harris LLP ("H+H")). The Appointment Order was granted

notwithstanding the submissions of these stakeholders and their counsel to the Court.

9. On November 10, 2016, the Trustee filed its first report (the "**First Report**") in the context of a motion (the "**Stay Motion**") before the Ontario Superior Court of Justice (Divisional Court) (the "**Divisional Court**"), which had been brought by 11 of the Developers for whom Mr. John Davies is the principal (the "**Moving Parties**").¹ In substance, the Stay Motion sought a stay of certain paragraphs of the Appointment Order pending the hearing of the Moving Parties' further motion to the Divisional Court for leave to appeal the Appointment Order (the "**Leave to Appeal Motion**"). The First Report also outlined the various degrees to which each of Mr. Davies, Mr. Singh and H+H were cooperating with the Trustee. A copy of the First Report is attached without appendices as **Appendix "B"**.
10. The Stay Motion was heard by the Divisional Court on November 14, 2016, which heard submissions from counsel for each of the Superintendent, the Trustee and the Moving Parties. Also making submissions was Matthew Gottlieb from the law firm of Lax O'Sullivan Lisus Gottlieb LLP, which had been retained by Mr. Garry Levy – an investor in certain of the SMIs and spokesperson for a group of investors – for the purpose of, amongst other things, potentially bringing a motion to amend the Appointment Order. No such motion has been brought as of the date of this Second Report.
11. The Divisional Court dismissed the Stay Motion and ordered the Moving Parties to pay to the Trustee \$5,000 for its costs within 30 days (the "**Cost Award**"). To date, the Moving Parties have not satisfied the Cost Award.
12. The Divisional Court also held that it had no jurisdiction to hear the Leave to Appeal Motion or the underlying appeal of the Appointment Order (the "**Appeal**"), and, on consent of both the Superintendent and the Trustee, transferred the Appeal to the Court of Appeal for Ontario. The date for the hearing of the Appeal

¹ The Moving Parties are Textbook (525 Princess Street) Inc., Textbook (555 Princess Street) Inc., Textbook (Ross Park) Inc., 1703858 Ontario Inc., Memory Care Investments (Oakville) Ltd., Memory Care Investments (Kitchener) Ltd., Textbook (774 Bronson Ave) Inc., Legacy Lane Investments Ltd., Scollard Development Corporation, McMurray Street Investments Inc. and Textbook (445 Princess Street) Inc.

has not yet been set. The Trustee understands that the Moving Parties are now also pursuing the Stay Motion at the Court of Appeal for Ontario, which Stay Motion has been scheduled for December 7, 2016.

13. The purpose of this Second Report is to provide the Court and the stakeholders with information on the Trustee's activities to date as well as information on some of the challenges encountered by the Trustee in performing its mandate as a result of the actions or omissions of certain parties.
14. Copies of materials filed in these proceedings generally are available on the Trustee's website at www.grantthornton.ca/tier1.

DISCLAIMER

15. This Second Report has been prepared for the use of the Court and the Tier 1 Trustee Corporations' stakeholders as general information relating to the Tier 1 Trustee Corporations. Accordingly, the reader is cautioned that this Second Report may not be appropriate for any other purpose. The Trustee will not assume responsibility or liability for losses incurred by the reader as a result of the circulation, publication, reproduction or use of this Second Report for any other purpose.
16. In preparing this Second Report, the Trustee has relied upon certain unaudited financial information provided by parties who had knowledge of the affairs of the Tier 1 Trustee Corporations, including Gregory Harris of H+H, Raj Singh and John Davies. The Trustee has not performed an audit or verification of such information for accuracy, completeness or compliance with Generally Accepted Accounting Principles ("GAAP") or International Financial Reporting Standards ("IFRS"). Accordingly, the Trustee expresses no opinion or other form of assurance pursuant to GAAP or IFRS with respect to such information.
17. All references to dollars in this Second Report are in Canadian currency unless otherwise noted.

TRUSTEE'S REQUESTS FOR INFORMATION

18. The First Report summarizes the Trustee's requests to each of H+H, Raj Singh and John Davies for information related to the Tier 1 Trustee Corporations and

the Trustee's interactions with these parties. The following section provides an update on these interactions and the information provided by each of the parties to date.

H+H

19. As outlined in the First Report, the Trustee sent a letter to H+H on October 31, 2016 requesting certain information related to, amongst other things, details of the Investors and the funds held on their behalf in H+H's trust accounts (the "Trust Funds").
20. As of the date of the Second Report, H+H has provided the majority of the requested information for three of the 16 projects. The Trustee continues to follow up with H+H for the information related to the remaining 13 projects.
21. As also outlined in the First Report, the Appointment Order requires H+H to deliver the Trust Funds (excluding RRSP or other registered funds) to the Trustee, and a formal request was made on November 2, 2016 to H+H in this regard. On November 4, 2016, H+H indicated that it required approximately 40 business hours to address the administrative issues involved in transferring the Trust Funds.
22. As of the date of the Second Report, the Trustee has only received the Trust Funds for three of the six accounts in which there appears to have been a balance held by H+H as at the date of the Appointment Order.
23. No reasonable explanation has been given by H+H for the continued delay, and it is unclear as to what purported basis or in what purported capacity H+H continues to retain the balance of the Trust Funds. Correspondence with H+H in regards to the Trustee's repeated requests for delivery of the Trust Funds in accordance with the terms of the Appointment Order is attached as Appendix "C".

Raj Singh

24. Since the date of the First Report, Mr. Singh (either directly or through H+H) has provided the Trustee with the majority of the requested information in his capacity

as controlling mind of the Tier 1 Trustee Corporations and certain of the requested information in his capacity as principal stakeholder of three of the Developers (the "Singh Developers", distinct from the Moving Parties).

25. The Trustee is in the process of reviewing the information provided by Mr. Singh, and has been in touch with Mr. Singh's counsel to obtain certain outstanding information, being a detailed accounting of the use of funds raised by the Singh Developers as well as a summary of the statuses of each project controlled by the Singh Developers.

John Davies

26. The First Report summarized the nature of the Trustee's requests from Mr. Davies, including the limited information that had been provided by Mr. Davies as of the date of the First Report.
27. On November 10, 2016, the Trustee had what it believed at the time to be a productive meeting with Mr. Davies, Walter Thompson (co-president, with Mr. Davies, of the Moving Parties), the Moving Parties' counsel and A&B. During this meeting, the attendees discussed, amongst other things, the Trustee's requests for information and, in particular, one of the projects of the Moving Parties that required the Trustee's immediate attention (the "Boathaus Project") as a result of a notice of intention to enforce security pursuant to section 244 of the *Bankruptcy and Insolvency Act* (Canada) having been issued by a prior-ranking mortgagee on title in respect of the Boathaus Project (the "Section 244 Notice").
28. Mr. Davies advised that his staff were in the process of preparing responses to the Trustee's requests and that the information would be forthcoming. Mr. Davies also indicated that a detailed summary of each of the projects would also be forthcoming, and advised that the first few summaries would be provided within two days of the November 10 meeting. Shortly before the finalization of this Second Report, Mr. Davies had still not provided the Trustee with any additional information (other than the Section 244 Notice and a commitment letter and term sheet for construction financing for the Boathaus Project, in respect of which Mr. Davies was seeking a postponement from the Trustee). Copies of the

repeated follow-up correspondence with Mr. Davies is attached as **Appendix "D"**.

29. Mr. Davies' failure on a timely basis to provide the Trustee with meaningful information on the projects controlled by the Moving Parties, including the Boathaus Project in particular, has seriously impacted the ability of the Trustee to carry out its mandate, to respond to the Investors' numerous questions and make decisions in respect of these projects.
30. On or around the close of business on November 24, 2016, the Trustee and its counsel were informed for the first time that counsel had been engaged by the Moving Parties for the purpose of a proposed filing under the *Companies' Creditors Arrangement Act (Canada)* (the "CCAA"), and were asked to attend a meeting to discuss same the next day. As a result of that meeting, and on the eve of the finalization of this Second Report, certain of the requested information from Mr. Davies began to flow to the Trustee, which the Trustee is now reviewing. The information provided does not include a detailed accounting of the use of funds raised by the Moving Parties, which has been requested on numerous occasions by the Trustee and is still outstanding as of the date of this Second Report. A copy of the November 24, 2016 letter advising of the contemplated CCAA filing is attached as **Confidential Appendix "1"**.

TRUSTEE'S ATTENDANCE AT INVESTOR MEETING AND INTERFERENCE WITH TRUSTEE'S MANDATE

31. The Trustee was invited to attend at an Investor meeting on Sunday, November 13, 2016 at the request of Tamara Adamson, a mortgage broker who placed Investor funds in certain of the SMIs (the "**November 13 Investor Meeting**"). The purpose of the November 13 Investor Meeting was, amongst other things, for the Trustee and its counsel, Aird & Berlis LLP ("**A&B**"), to speak and answer questions about its mandate and the information it had obtained in respect of the SMIs and the underlying real estate projects. Certain of the comments raised by Investors at this meeting mirrored those concerns identified by the Trustee in its First Report, which had been issued a few days earlier, namely:

- (i) several Investors reported and insisted upon rumours that the Trustee had already taken hundreds of thousands of dollars to satisfy its fees;
 - (ii) several Investors reported and insisted upon rumours that the Trustee has refused to provide approval for construction financing to some of the Moving Parties which could jeopardize the development of their projects; and
 - (iii) several Investors reported and insisted that efforts were being made to replace the Trustee.
32. Since serving the First Report on November 10 and attending at the November 13 Investor Meeting, the Trustee has managed to identify some of the sources of the above comments.

The Lantos Investor Communication

33. On November 12, 2016 Peter Lantos, a mortgage broker who placed approximately \$3.5 million of Investors into the SMIs, issued an email communication to his clients (the "Lantos Investor Communication").
34. The Lantos Investor Communication referred to the First Report and contained several factual inaccuracies and unsubstantiated and improper accusations against the Trustee, including:
- (i) that the Trustee had "*already taken \$428,700 in fees*" when, in fact, no such fees of this amount, or any amount, had even been invoiced, much less taken by the Trustee;
 - (ii) that he had "*confirmation and proof of [item (i)] from both Harris + Harris and from Grant Thornton's own lawyers!*," when he had no such confirmation or proof, as no fees of any amount had been invoiced, much less taken, by the Trustee;
 - (iii) that "*[e]verything was on track before FSCO and Grant Thornton stepped in,*" when, in fact, on their face, several of the SMIs were already in

default prior to the Trustee's appointment (including, without limitation, interest obligation defaults on October 1, 2016 for six of the 11 SMIs in respect of which the Moving Parties are developers/borrowers); and

(iv) that he was concerned about the Trustee's supposed "*interference and own agenda*," stating that the Trustee's "*objective is to create anxiety among [the] investors*," when, in fact, the Trustee's mandate as an independent officer of the Court is to protect the interests of the investors in accordance with the terms of the Appointment Order.

35. The Lantos Investor Communication also encouraged his clients to disregard the Trustee's request for investors to submit their contact information to the Trustee to facilitate future communications.
36. The Trustee was alarmed by the content in the Lantos Investor Communication, the inaccuracies of which would mislead investors, cause unnecessary confusion and panic and ultimately put their interests at further risk. At the Trustee's insistence, Mr. Lantos eventually issued a formal retraction of the Lantos Investor Communication on November 21, 2016 by way of emails to 43 different investors (or joint investors).
37. Copies of the Lantos Investor Communication, the resulting correspondence between the Trustee and Mr. Lantos and Mr. Lantos' template retraction email (all redacted to protect the identity of investors) are attached hereto as Appendix "E".

John Davies

38. As outlined above, John Davies is the principal of the Moving Parties, which had initially filed materials to oppose the Appointment Order and then brought the Stay Motion (both of which efforts were unsuccessful) and has now brought the Appeal and the Stay Motion before the Court of Appeal for Ontario (both of which are pending).
39. As discussed in the First Report and above in this Second Report, the Trustee has continued to experience difficulties in obtaining meaningful information from Mr. Davies in respect of the projects controlled by the Moving Parties.

40. Since the November 13 Investor Meeting, the Trustee has learned that Mr. Davies has been planning for the Moving Parties to make a filing under the CCAA, while, at the same time:
- (i) withholding the requested information from the Trustee;
 - (ii) promoting false allegations to encourage Investors to be uncooperative with the Trustee; and
 - (iii) communicating with Investors for the attempted purpose of replacing the Trustee and amending the Appointment Order.
41. Attached as **Appendix "F"** is a copy of an email exchange between several Investors and Mr. Davies. Certain parts of the email are highlighted below:
- (i) In response to an Investor enquiring about the existence of third-party mortgages in advance of the SMIs on certain projects, Mr. Davies provides a list of the relevant projects and the nature of the third-party mortgages in priority to the SMIs. The Trustee notes that the information contained in Mr. Davies' response is the exact information requested by the Trustee from Mr. Davies on November 2, 2016, yet Mr. Davies did not provide the Trustee with this information.
 - (ii) Having obtained a copy of A&B's letter to H+H requesting, on behalf of the Trustee, that the Trust Funds be delivered to the Trustee, Mr. Davies forwards the letter to 18 individuals (including Mr. Gottlieb, who is acting on behalf of Mr. Levy and his group of Investors), stating *"If anyone has any remaining doubts about whether Grant Thornton is really trying to take the investors deposit money earmarked for interest payments, see attached."*
42. Attached as **Appendix "G"** is a copy of an email exchange between an advisor who placed Investor funds (who also happens to be an Investor herself) and Mr. Davies in respect of the funds raised on the Boathaus Project. As is seen from the face of the email exchange, Mr. Davies once again raises certain unsubstantiated allegations against the Trustee and its counsel, creating further confusion and anxiety amongst the Investors.

43. As referenced in the First Report, the Trustee has also been advised from its telephone calls with Investors that Mr. Davies has advised that, amongst other things, the Trustee had refused to provide approval for construction financing to some of the Moving Parties which could jeopardize the development of their projects. The Trustee confirmed to these Investors that neither the Moving Parties, nor any of the Developers, had contacted the Trustee to discuss construction financing, other than in respect of the Boathaus Project (which the Trustee had been limited from investigating in any material manner given the absence of information provided by Mr. Davies until very recently).

Impact of the Above Noted Actions on the Proceedings and the Trustee's Response

44. Mr. Davies' and Mr. Lantos' promotion of false and distorted information to the Investors are examples of communications (of which the Trustee is aware) that have caused a significant amount of concern and confusion amongst the Investors. The Trustee has fielded hundreds of telephone calls and emails from Investors enquiring about the allegations noted above. The Trustee's efforts to respond to such allegations have taken considerable time and resulted in additional costs to the estates.
45. The Trustee has serious concerns about the nature of Mr. Davies' correspondence with Investors, as Mr. Davies' financial interests (as controlling mind of the Moving Parties, being 11 of the Developers) are not aligned with the general interests of the Investors.
46. In order to provide an efficient update to Investors which highlights questions previously asked by Investors as well as addresses the allegations against the Trustee and its appointment referenced above, the Trustee created a frequently asked questions document, a copy of which is attached as **Appendix "H"**, and posted the document to the Trustee's website.
47. It has been the Trustee's intention to hold meetings for each of the SMIs; however, given the lengthy delay by Mr. Davies in beginning to provide the requested information for the projects, and given the pending CCAA filing and the scope and ramifications of same, the Trustee does not believe that it would be productive at this time to hold meetings in respect of the projects for which the

Moving Parties are responsible. The Trustee intends to host an investor town hall conference call to address many of the investors' concerns and provide a general update on the proceedings, where possible.

CONCLUSION

48. The Trustee is deeply concerned that the allegations which have been brought to the Trustee's attention have created confusion and anxiety amongst the investors. The Trustee has and is continuing to work expeditiously to address any inaccuracies that are raised by investors.
49. The Trustee is also concerned that efforts to amend the Appointment Order or even replace the Trustee are being fueled by Mr. Davies and parties who have placed investor funds, all of whom are conflicted from impartially promoting the interests of the investors. Accordingly, the Trustee is concerned that actions may be initiated by stakeholders without sufficient knowledge of the circumstances and the advice that they receive.
50. Such actions have challenged the Trustee's ability to carry out its responsibilities pursuant to the Appointment Order. Notwithstanding this, the Trustee continues to advance the investors' interests and will continue to do so pursuant to the Appointment Order.

All of which is respectfully submitted,

**GRANT THORNTON LIMITED,
IN ITS CAPACITY AS COURT-APPOINTED
TRUSTEE OF THE TIER 1 TRUSTEE CORPORATIONS
AND NOT IN ITS PERSONAL OR CORPORATE CAPACITY**

Per:



Jonathan Krieger, CPA, CA, CIRP, LIT
Senior Vice President

27786494.3

THE SUPERINTENDENT OF FINANCIAL SERVICES

- and -

**TEXTBOOK STUDENT SUITES (525 PRINCESS STREET)
TRUSTEE CORPORATION, ET AL.**
Respondents

Applicant

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

IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, C. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF TEXTBOOK (525 PRINCESS STREET) INC., ET AL.

Court File No. CV-16-11625-00CL

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

Proceedings commenced at Toronto

THIRD REPORT OF THE TRUSTEE

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

Steven L. Graff (LSUC #31871V)

Tel: (416) 865-7726

Fax: (416) 863-1515

Email: sgraff@airdberlis.com

Ian Aversa (LSUC # 55449N)

Tel: (416) 865-3082

Fax: (416) 863-1515

Email: iaversa@airdberlis.com

Jeremy Nemers (LSUC # 66410Q)

Tel: (416) 865-7724

Fax: (416) 863-1515

Email: inemers@airdberlis.com

Lawyers for Grant Thornton Limited, in its capacity as the Trustee

TAB 5

Court File Number: CV-16-1162-00CL

Superior Court of Justice
Commercial List

419

FILE/DIRECTION/ORDER

CCAA

Re Textbook (525 Princess Street) Inc.

Plaintiff(s)

AND

et al.

Defendant(s)

Case Management Yes No by Judge: _____

Counsel	Telephone No:	Facsimile No:

- Order Direction for Registrar (No formal order need be taken out)
- Above action transferred to the Commercial List at Toronto (No formal order need be taken out)
- Adjourned to: _____
- Time Table approved (as follows):

As time is of the essence, I have chosen to issue my decision in this brief handwritten endorsement which focuses on the critical issue raised in opposition to the Application.

This is an application for an initial order under CCAA. The Applicants are single purpose real estate developers. The projects involve housing for students and the elderly. The applicants have no employees. They have no ongoing or active business.

December 15, 2016

Date

Perry J.

Judge's Signature

Additional Pages 13

Court File Number: _____

Superior Court of Justice
Commercial List

FILE/DIRECTION/ORDER

Judges Endorsment Continued

Although, in some cases, substantial preponderant costs (zoning, planning ~~at~~ and the like) beyond the acquisition value of the land have been incurred, none of the applicants have projects that are actually under construction. There are nine properties in all.

In October, the Superintendent of Financial Institutions became concerned with the manner in which funds for these projects ~~was~~ ^{was} being raised and administered.

About 1600 "investors" advanced various sums (minimum \$25,000) to finance the land acquisition and soft costs.

In respect of the six properties which represent ~~the~~ ^{the} focal point of this application (because it is vigorously opposed by first mortgagees) the syndicated mortgage investors have

Court File Number: _____

Superior Court of Justice
Commercial List

FILE/DIRECTION/ORDER

Judges Endorsement Continued

advanced about \$65 M. ~~_____~~

The Superintendent took the view that the so called Trustee Corporation, holding and administering the SMI funds were unlicensed mortgage brokers such that their activities were illegal. They were also in conflict of interest.

A Trustee of these companies (one for each project) was appointed by order of Newbould J. on October 27, 2016.

A number of the Developer Corporations (applicants) in this Application sought a stay of the Newbould J. order. That motion was dismissed on November 14, 2016 by the Div. Ct.

The Applicants, supported by the Trustee, seek an initial order under the CCAA. They seek time, and a first charge over financing necessary, to

Court File Number: _____

Superior Court of Justice
Commercial List

FILE/DIRECTION/ORDER

Judges Endorsment Continued

conduct an analysis of the nine projects to determine what the best course of action is - sell, develop, or something else.

It should be noted that the mandate of the Trustee is the protection of the 1600 SMIs who have in excess of \$65M invested in these projects.

Given the history of this matter and questions raised about the bona fides of the developers, John Davis and others, the proposed initial order would grant extraordinary powers to the Monitor. The Applicants and their officers and directors would simply provide information and their experience to date to the Monitor. The Monitor would effectively run everything.

Court File Number: _____

Superior Court of Justice
Commercial List

FILE/DIRECTION/ORDER

Judges Endorsment Continued

As noted, six of the Applicants granted first mortgages over the land in their project. In all cases, the SMLs are in second position.

Vector Financial has a \$5.7 M first mortgage.

237735P Ontario has a \$3.5 M first mortgage

217421P Ontario has three first mortgages of about \$3.5 M in total

First Capital has a \$2.35 M first mortgage.

While the First Mortgages have many complaints about the Application, their critical issue is with the super-priority charges that are sought.

The Applicants seek an Administration Charge of \$500,000 to secure the fees of the Monitor and its counsel,

Court File Number: _____

Superior Court of Justice
Commercial List

FILE/DIRECTION/ORDER

Judges Endorsment Continued

as well as The Trustee and its counsel.

The Applicants seek a Directors Charge of \$100,000 to protect Mr. Davies and others.

The Applicants seek a DIP Lenders Charge up to a maximum of \$6.75M (The forecast initial advances are about \$1.4 M for the first 30 days).

All of these charges would "prime" the First Mortgage loans.

The Applicants also seek a stay. At least one of the Mortgage ~~loans~~ is in default, having come to maturity in October 2016. It has not been, nor is it contemplated in the foreseeable future that it will be, paid or assumed by

Court File Number: _____

Superior Court of Justice
Commercial List

FILE/DIRECTION/ORDER

Judges Endorsment Continued

The DIP Lender.

First Capital's mortgage it is contemplated, will be taken out by The DIP Lender.

The DIP Lender is prepared to take out this particular mortgage because there is a reasonable prospect that it will be able to re finance promptly with construction financing due to the particular stage of development at the property involved with The First Capital mortgage.

None of the other projects are in a like position. There is no prospect of immediate re financing for any of the other projects.

Most of the DIP funds will be used to conduct the analysis of the projects to see how best to maximize

Court File Number: _____

Superior Court of Justice
Commercial List

FILE/DIRECTION/ORDER

Judges Endorsment Continued

value for the SMLs. It is common ground that the DIP funding offers no real benefit to the First Mortgagees at all.

The First Mortgagees argue that they ought not to be forced to bear the risk that there will be a shortfall due to the accumulation of the requested charges. That is not what they bargained for. To the contrary, they advanced funds on the strength of their primary secured position.

The First Mortgagees therefore argue that they will be "paying" for the professional analysis meant only to benefit the SMLs, in the end.

The Applicants and Trustee argue that the First Mortgagees are well secured. Under no circumstances, they say, will the First Mortgagees be prejudiced.

Court File Number: _____

Superior Court of Justice
Commercial List

FILE/DIRECTION/ORDER

Judges Endorsment Continued

The factors to be considered in whether to grant super priority charges vary to some extent with the particular charge in issue.

S. 11.2(4) of the CCAA, for example, sets out a number of factors to be considered in respect of DIP financing and whether to grant a super priority.

The period of time during which the debtor company will be subject to proceedings, whether the company's management has the confidence of the major creditors, the nature and value of the company's property and whether any creditor would be materially prejudiced are all relevant considerations.

~~_____~~

~~_____~~

Court File Number: _____

Superior Court of Justice
Commercial List

FILE/DIRECTION/ORDER

Judges Endorsment Continued

~~_____~~

I am not prepared to authorize a
super priority for the sought after
charges, including the DIP Lender.

The initial investigation, analysis and
report on the various projects to the
court (hoped to take place by mid-February)
is only the beginning. Assuming some
of the projects, or all of them, are to
be pursued in hopes of increasing
realization (eventually) for the SMLs, there
will still have to be more time to bring
the projects to a construction-ready
state and try to find, negotiate and
close construction finance loans.

The First Mortgages would, in these
circumstances be held hostage on
the current model, until such time

Court File Number: _____

Superior Court of Justice
Commercial List

FILE/DIRECTION/ORDER

Judges Endorsment Continued

as take out financing can be found.

There is good reason to be suspicious of the appraisals brought forward by Mr. Davies. They are heavily qualified.

There has been, because they were filed at the 11th hour, no opportunity to respond or cross examine on them.

~~The~~ The Trustee's Second Report of November 28, 2016, recounts the Superintendent's concern "that the appraisal value provided to the investors did not reflect the value of the real property, such that the true values may be inadequate to cover the respective SMLs." That parenthetically appears to ~~be~~ have been proven true.

That report also makes adverse, serious criticism of Mr. Davies and his timeliness and forthrightness in

Court File Number: _____

Superior Court of Justice
Commercial List

FILE/DIRECTION/ORDER

Judges Endorsment Continued

The production of information.

I do not think the appraisal evidence is an adequate answer to the First Mortgagee's concerns.

If there is no question that adequate value is there, the DIP Lender Monitor, Directors and Trustee would presumably not be insisting on a Superpriority charge.

For an exercise that is quite explicitly designed to benefit only the SMLs (for whom I have great sympathy), it is, in my view, unreasonable to expect the First Mortgagee to take all the risk.

If the SMLs were being pursued by the Chargees, that would make sense because they are the ones benefitting. The DIP Lender, apparently, will not advance funds on that basis, however.

Court File Number: _____

Superior Court of Justice
Commercial List

FILE/DIRECTION/ORDER

Judges Endorsement Continued

Although I have misgivings about whether protection under the CCAA is the appropriate avenue in this case (see Cliffover Nipile 2008 BCCA 327; Rongean Investment 2014 ONSC 2781) had the Applicants been able to propose a more of financing the next steps without impairing the security of the First Mortgages (and honoring maturities and monthly servicing costs) I might have been inclined to entertain the proposal.

In the circumstances however, the application for a super priority charge for Administration Costs, Directors indemnity costs and DIP Lending is dismissed.

Given the critical nature of the DIP financing and the charges sought to the application for an initial order, the application as structured is dismissed.

Endorsement of the Honourable Justice Penny

CCAA

Re Textbook (525 Princess Street) Inc. et al.

As time is of the essence I have chosen to issue my decision in this brief handwritten Endorsement which focuses on the critical issues raised in opposition to the Application. This is an application for an initial order under the CCAA. The Applicants are single purpose real estate developers. The projects involve housing for students and the disabled. The Applicants have no employees. They have no ongoing or active business. Although, in some cases, substantial preparatory costs (zoning, planning and the like) beyond the acquisition value of the land have been incurred, none of the Applicants actually have projects that are under construction. There are nine projects in all.

In October, the Superintendent of Financial Institutions became concerned with the manner in which the funds for these projects was being raised and administered. About 1600 "investors" advanced various sums (minimum \$25,000) to finance the land acquisition and soft costs. In respect of the six properties which represent the focal point of this application (because it is vigorously opposed by first mortgagees) the syndicate mortgage investors (SMIs) have advanced about \$65M.

The Superintendent took the view that the so called Trustee Corporations holding and administering the SMI funds were unlicensed mortgage brokers such that their activities were illegal. They were also in a conflict of interest. A Trustee of these companies (one for each project) was appointed by order of Newbould J. on October 27, 2016.

A number of the Development Corporations (applicants in this Application) sought a stay of the Newbould J. Order. That motion was dismissed on November 14, 2016 by the Divisional Court.

The Applicants supported by the Trustee seek an initial order under the CCAA. They seek time and a first charge over financing necessary, to conduct an analysis of the nine projects to determine what the best course of action is – sell, develop or something else.

It should be noted that the mandate of the Trustee is the protection of the 1600 SMIs who have in excess of \$65M invested in these projects.

Given the history of this matter and questions raised about the bona fides of the developers, John Davies and others, the proposed initial order would grant extraordinary powers to the Monitor. The Applicants and their officers and directors would simply provide information and their experience to date to the Monitor. The Monitor effectively would run everything.

As noted, six of the Applicants granted first mortgages over the land in their project. In all cases, the SMIs are in second position. Vector Financial has a \$5.7M first mortgage. 2377358 Ontario Inc. has a \$3.5M first mortgage. 2174217 Ontario Inc. has three first mortgages of about \$3.5M in total. First Capital has a \$2.35M first mortgage.

While the First Mortgagees have many complaints about the Application, their critical issue is with the super priority charges that are sought.

The Applicants seek an Administration Charge of \$500,000 to secure the fees of the Monitor and its counsel, as well as the Trustee and its counsel.

The Applicants seek a Direction Charge of \$100,000 to protect Mr. Davies and others.

The Applicants seek a DIP Lenders Charge up to a maximum of \$6.75M (the forecast initial advances are about \$1.4M for the first 30 days).

All of these charges would "prime" the First Mortgagees loans.

The Applicants also seek a stay. At least once of the Mortgages is in default having come to maturity in October 2016. It has not been, or is it contemplated in the foreseeable future that it will be paid or assumed by the DIP Lender.

First Capital's mortgage, it is contemplated, will be taken out by the DIP Lender. The DIP Lender is prepared to take out this particular mortgage because there is a reasonable prospect that it will be able to refinance promptly with construction financing due to the particular stage of the development of the project involved with First Capital Mortgage. None of the other projects are in a like position. There is no prospect of immediate refinancing for any of the other projects.

Most of the DIP funding will be used to conduct the analysis of the projects to see how best to maximize value for the SMIs. It is common ground that the DIP funding offers no real benefit to the First Mortgagees at all.

The First Mortgagees argue that they ought not to be forced to bear the risk that there will be a shortfall due to the accumulation of the requested charges. That is not what they bargained for. To the contrary, they advanced funds on the strength of their primary secured position. The First Mortgagees therefore argue that they will be "paying" for the professional analysis meant only to benefit the SMIs, in the end.

The Applicants and Trustee argue that the First Mortgagees are well secured. Under no circumstances, they say, will the First Mortgagees be prejudiced.

The factors to be considered in whether to grant super priority charges vary to some extent with the particular charge in issue. S.11.2(4) of the CCAA for example, sets out a number of factors to be considered in respect of DIP financing and whether to grant a super priority.

The period of time during which the debtor company will be subject to proceedings, whether the company's management has the confidence of the major creditors, the nature and value of the company's property and whether any creditor would be materially prejudiced are all relevant considerations.

I am not prepared to authorize a super priority for the sought after Charges, including the DIP Lender.

The initial investigation, analysis and report on the various projects to the court (hoped to take place by mid-February) is only the beginning. Assuming some of the projects or all of them are to be pursued in hopes of increasing realizations (eventually) for the SMIs, there will still have to

be more time to bring the projects to a construction ready state and try to find, negotiate and close construction financing loans. The First Mortgagees would, in these circumstances, be held hostage, on the current model until such time as take out financing can be found.

There is good reason to be suspicious of the appraisals brought forth by Mr. Davies. They are heavily qualified. There has been, because they were filed at the 11th hour, no opportunity to respond or cross examine on them. The Trustee's Second Report of November 28, 2016 recounts the Superintendent's concern "that the appraisal value provided to the investors did not reflect the value of the real property, such that the true values may be inadequate to cover the respective SMIs". That parenthetically appears to have been proven true.

That report also makes adverse, serious criticism of Mr. Davies and his timeliness and forthrightness in the production of information. I do not think the appraisal evidence is an adequate answer to the First Mortgagee's concerns. If there is no question that adequate value is there, the DIP Lender, Monitors, Directors and Trustee would presumably not be insisting on a super priority charge.

For an exercise that is quite explicitly designed to benefit only the SMIs (for whom I have great sympathy), it is, in my view, unreasonable to expect the First Mortgagees to take all the risk.

If the SMIs were being primed by the other Charges, that would make sense because they are the ones benefitting. The DIP Lender apparently, will not advance funds on that basis, however.

Although I have misgivings about whether protection under the CCAA is the appropriate avenue in this case (see Cliffs over Maple 2008 BCCA 327; Romsqen Investment – 2014 ONSC 2781), had the Applicants been able to propose a means of financing the next steps without impairing the security of the First Mortgagees (and honouring maturities and monthly servicing costs), I might have been inclined to sustain the proposal.

In the circumstances, however, the application for a super priority charge for Administration Costs, Directors indemnity costs and DIP Lending is dismissed.

Given the critical nature of the DIP financing and the charges sought to the application for an initial order, the application as structured is dismissed.

MAP

TAB 6

NOTICE OF SALE UNDER MORTGAGE

- TO: Scollard Development Corporation
c/o Harris & Harris LLP
2355 Skymark Avenue
Suite 300
Mississauga, Ontario L4W 4Y6
- AND TO: Scollard Development Corporation
51 Caldari Road
Suite A1M
Vaughan, Ontario L4K 4G3
- AND TO: Scollard Development Corporation
24 Country Club Drive
King City, Ontario L7B 1M5
- AND TO: Olympia Trust Company
2200, 125 9th Avenue S.E.
Calgary, Alberta T2G 0P6
- AND TO: Scollard Trustee Corporation
3655 Kingston Road
Scarborough, Ontario M1M 1S2
- AND TO: Trisura Guarantee Insurance Company
333 Bay Street
Suite 1610
Toronto, Ontario M5H 2R2
- AND TO: Leeswood Design Build Ltd.
415 Ambassador Drive
Mississauga, Ontario L5T 2J3
- AND TO: Leeswood Design Build Ltd.
c/o DLR Piper (Canada) LLP
Suite 6000, 1st Canadian Place
Toronto, Ontario M5X 1E2
- Attention: Howard Krupat/Jennifer Saville
- AND TO: Leeswood Design Build Ltd.
7200 West Credit Avenue
Mississauga, Ontario L5N 5N1
- AND TO: Leeswood Design Build Ltd.
c/o DLR Piper (Canada) LLP
Suite 6000, 1st Canadian Place
100 King Street West
P.O. Box 367
Toronto, Ontario M5X 1E2
- Attention: Howard Krupat/Jennifer Saville
- AND TO: Grant Thornton Limited
200 King Street West
11TH Floor
Box 11
Toronto, Ontario M5H 3T4

AND TO: IBI Group Architects (Canada) Inc.
55 St. Clair Avenue West, 7th Floor
Toronto, Ontario M4V 2Y7

AND TO: IBI Group Architects (Canada) Inc.
c/o McLaughlin & Associates
155 University Avenue, Suite 200
Toronto, Ontario M5H 3B7

Attention: William McLaughlin

AND TO: Young & Wright/ IBI Group Architects
55 St. Clair Avenue West
7th Floor
Toronto, Ontario M4V 2Y7

AND TO: IBI Group Professional Services (Canada) Inc.
55 St. Clair Avenue West
7th Floor
Toronto, Ontario M4V 2Y7

AND TO: IBI Group Professional Services (Canada) Inc.
c/o McLaughlin & Associates
155 University Avenue, Suite 200
Toronto, Ontario M5H 3B7

Attention: Megan Wells Sanford

AND TO: IBI Group Architects (Canada) Inc.
55 St. Clair Avenue West
7th Floor
Toronto, Ontario M4V 2Y7

AND TO: Young & Wright/ IBI Group Architects
55 St. Clair Avenue West
7th Floor
Toronto, Ontario M4V 2Y7

TAKE NOTICE that default has been made in payment of the moneys due under a certain mortgage signed December 18, 2014, made between

SCOLLARD DEVELOPMENT CORPORATION

as Mortgagor,

- and -

FIRM CAPITAL MORTGAGE FUND INC.

as Mortgagee,

upon the following property namely:

PIN 26484 - 0005 (LT)
PT LT 8 BLK 4 PL H50035 WHITBY; PT LT 9 BLK 4 PL H50035 WHITBY; PT LT 14
BLK 4 PL H50035 WHITBY; PT LT 15 BLK 4 PL H50035 WHITBY AS IN D405505;;
TOWN OF WHITBY

Municipal Address 1606 CHARLES STREET, WHITBY

PIN 26484 - 0006 (LT)
 PT LT 8 BLK 4 PL H50035 WHITBY; PT LT 15 BLK 4 PL H50035 WHITBY AS IN
 CO139720 & PT 18, 40R10885; S/T CO139720;; TOWN OF WHITBY

Municipal Address 1610 CHARLES STREET, WHITBY

PIN 26484 - 0007 (LT)
 PT LT 7 BLK 4 PL H50035 WHITBY; PT LT 16 BLK 4 PL H50035 WHITBY AS IN
 D374163; S/T CO132238;; TOWN OF WHITBY

Municipal Address 1614 CHARLES STREET, WHITBY

Town of Whitby
 Regional Municipality of Durham
 Durham Land Titles Office (No. 40)

Municipal Address: 1606, 1610 and 1614 Charles Street, Whitby, Ontario L1N 1B9

which mortgage was registered on December 18, 2014, in the Durham Land Titles Office (No. 40) as No. DR1327137.

AND I hereby give you notice that the amount now due on the mortgage for principal money, interest, late payment interest, collection costs, three months' interest pursuant to Section 17 of the *Mortgages Act* and the terms of the mortgage, missed/returned payment fees, previous discharge statement fee, prior legal fees and costs respectively, are as follows:

For principal	\$2,350,000.00
For interest to December 16, 2016	\$18,873.25
For three month's interest pursuant to Section 17 of the <i>Mortgages Act</i> and the provisions of the mortgage	\$51,406.25
For missed/returned payment fees of the mortgagee	\$500.00
For previous discharge statement fee mortgagee	\$375.00
For statement fee of the mortgagee	\$100.00
For default administration fee of mortgagee	\$650.00
For tax account credit of the mortgagee	-\$19,943.46
For legal fees, disbursement and HST of Thornton Group Finnigan LLP for dealing with CCAA Application	\$24,063.35
For legal fees for docketed time prior to issuance of Notice of Sale	\$2,000.00
For legal fees for issuing Notice of Intention to Enforce Security	\$500.00
For costs (\$1,750 for first PIN and \$125.00 for each additional PIN x 2)	\$2,000.00
For HST on costs	\$585.00
	\$2,431,109.39

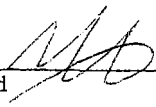
(such amount for costs being up to and including the service of this Notice only, and thereafter such further costs and disbursements will be charged as may be proper), together with interest at the greater of 8.75% per annum or at the Toronto Dominion Bank's prime rate plus 5% per annum, on the principal and interest hereinbefore mentioned, from the 16th day of December, 2016, to the date of payment.

AND unless the said sums are paid on or before the 21st day of January, 2017, I shall sell the property covered by the said mortgage under the provisions contained in it.

THIS notice is given to you as you appear to have an interest in the mortgaged property and may be entitled to redeem the same.

DATED the 16th day of December, 2016.

FIRM CAPITAL MORTGAGE FUND INC.
by its solicitors
MEYER, WASSENAAR & BANACH, LLP

Per: 
Joseph Fried

Meyer, Wassenaar & Banach, llp GST Registration # R 121596506

Municipal Address is: 1606, 1610 and 1614 Charles Street, Whitby, Ontario L1N 1B9

Please direct any enquiries to:

Ms. M. Young, Sr. Law Clerk
Meyer, Wassenaar & Banach, LLP
Barristers & Solicitors
5001 Yonge Street
Suite 301
North York, Ontario
M2N 6P6
Telephone: 416-223-9191 ext. 234
Fax: 416-223-9405
Email: myoung@mwb.ca

OR to:

Joseph Fried, Barrister and Solicitor
Meyer, Wassenaar & Banach, LLP
Email: jfried@mwb.ca

TAB 7

NOTICE OF SALE UNDER MORTGAGE

TO: (SEE SCHEDULE "A")

TAKE NOTICE that default has been made in payment of the moneys due under a certain mortgage signed February 17, 2015 made between

MEMORY CARE INVESTMENTS (KITCHENER) LTD.

- and - as Mortgagor,

2174217 ONTARIO INC.

as Mortgagee,

- and -

JOHN EVAN DAVIES

as Guarantor,

upon the following property, namely:

LT 6 PL 655 KITCHENER; KITCHENER

PIN No. 22507-0109 (LT)

which Charge/Mortgage was registered in the Land Registry Office for the Land Titles Division of Waterloo (No. 58) on February 17, 2015 as Instrument No. WR867451.

AND we hereby give you notice that the amount now due on the mortgage for principal money, interest, previously incurred legal fees and costs, respectively, are as follows:

for principal.....	\$950,000.00
for interest	\$35,036.20
for three (3) months interest pursuant to Section 17 of the Mortgages Act	\$47,499.99
for previously incurred legal fees	\$16,063.15
for costs (inclusive of HST).....	<u>\$6,237.60</u>
	<u>\$1,054,836.94</u>

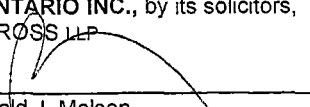
(such amount for costs being up to and including service of this Notice only, and thereafter such further costs and disbursements will be charged as may be proper), together with interest at the rate of 20.00% per annum, on the principal and interest hereinbefore mentioned, from December 22, 2016 to the date of payment.

AND unless the said sums are paid on or before February 1, 2017, we shall sell the property covered by the said mortgage under the provisions contained in it.

THIS notice is given to you as you appear to have an interest in the mortgaged property and may be entitled to redeem the same.

DATED at TORONTO the 22nd DAY OF December, 2016.

2174217 ONTARIO INC., by its solicitors,
MINDEN GROSS LLP

Per: 
Ronald J. Molson
145 King Street West, Suite 2200
Toronto, Ontario M5H 4G2
Tel: 416-369-4114

File No: 4102681
#2579687 v1 | 4102681

SCHEDULE "A"

Memory Care Investments (Kitchener) Ltd.
169 Borden Avenue North
Kitchener, Ontario N2H 3J5

Memory Care Investments (Kitchener) Ltd.
51-A Caldari Road
Suite 1-M
Vaughan, ON L4K 4G3

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Olympia Trust Company in trust for RRSP #111210
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Olympia Trust Company in trust for RRSP #110833
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