

**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**

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

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

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

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

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

B E T W E E N:

KINGSETT MORTGAGE CORPORATION

Applicant

- and -

TEXTBOOK (445 PRINCESS STREET) INC.

Respondent

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

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

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

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

B E T W E E N:

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

Plaintiff

- and -

**AEOLIAN INVESTMENTS LTD., JOHN DAVIES IN HIS PERSONAL
CAPACITY AND IN HIS CAPACITY AS TRUSTEE OF BOTH THE DAVIES
ARIZONA TRUST AND THE DAVIES FAMILY TRUST, JUDITH DAVIES IN
HER PERSONAL CAPACITY AND IN HER CAPACITY AS TRUSTEE OF
THE DAVIES FAMILY TRUST, AND GREGORY HARRIS SOLELY IN HIS
CAPACITY AS TRUSTEE OF THE DAVIES FAMILY TRUST**

Defendants

**MOTION RECORD
(Motion for Settlement Approval)**

May 17, 2018

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(Updated as of June 12, 2017)

CV-17-11689-00CL

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| AND TO: | <p>GRANT THORNTON LIMITED 19th Floor, Royal Bank Plaza South Tower, 200 Bay Street Toronto, ON M5J 2P9</p> <p>Jonathan Krieger Tel: 416-360-5055 Email: jonathan.krieger@ca.gt.com</p> <p>David Goldband Tel: 416-369-6446 Email: david.goldband@ca.gt.com</p> <p>Arsheel Muhit Tel: 416-777-6103 Email: Arsheel.Muhit@ca.gt.com</p> <p>Court-appointed Trustee</p> |

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| AND TO: | <p>AIRD & BERLIS LLP Brookfield Place Suite 1800, 181 Bay Street Toronto, ON M5J 2T9</p> <p>Steven L. Graff Tel: 416-865-7726 Email: sgraff@airdberlis.com</p> <p>Ian Aversa Tel: 416-865-3082 Email: iaversa@airdberlis.com</p> <p>Jeremy Nemers Tel: 416-865-7724 Email: jnemers@airdberlis.com</p> <p>Lawyers for the court-appointed Trustee</p> |
| AND TO: | <p>KSV KOFMAN INC. 150 King Street West Suite 2308 Toronto, ON M5H 1J9</p> <p>Bobby Kofman Tel: 416-932-6228 Email: bkofman@ksvadvisory.com</p> <p>Noah Goldstein Tel: 416-932-6207 Email: ngoldstein@ksvadvisory.com</p> <p>Andrew Edwards Tel: 416-932-6031 Email: aedwards@ksvadvisory.com</p> <p>Receiver and manager</p> |

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| | Memory Care Investments (Burlington) Ltd., Memory Care Investments (Kitchener) Ltd., Legacy Lane Investments Inc. and Scollard Development Corporation |
| AND TO: | <p>MINDEN GROSS LLP 145 King Street West, Suite 2200 Toronto, ON M5H 4G2</p> <p>Kenneth L. Kallish Tel: 416-369-4124 Email: kkallish@mindengross.com</p> <p>Catherine Francis Tel: 416-369-4137 Email: cfrancis@mindengross.com</p> <p>Lawyers for the Respondent, 2174217 Ontario Inc.</p> |
| AND TO: | <p>DEPARTMENT OF JUSTICE The Exchange Tower 130 King Street West, Suite 3400 Toronto, ON M5X 1K6</p> <p>Diane Winters Tel: 416-973-3172 Email: diane.winters@justice.gc.ca</p> |
| AND TO: | <p>HARRIS + HARRIS LLP 2355 Skymark Avenue Suite 300 Mississauga, ON L4W 4Y6</p> <p>Gregory H. Harris Tel: 905-629-7800 Email: gregharris@harrisandharris.com</p> <p>Peter V. Matukas Tel: 905-629-7800 Email: petermatukas@harrisandharris.com</p> <p>Amy Lok Tel: 905-629-7800 Email: amylok@harrisandharris.com</p> <p>Lawyers for Harris + Harris LLP</p> |

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| AND TO: | <p>WALTER THOMPSON Email: walter@textbooksuites.com</p> |

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| AND TO: | TEXTBOOK STUDENT SUITES (525 PRINCESS STREET) TRUSTEE CORPORATION 2355 Skymark Avenue, Suite 300 Mississauga, ON L4W 4Y6 |
| AND TO: | TEXTBOOK STUDENT SUITES (555 PRINCESS STREET) TRUSTEE CORPORATION 2355 Skymark Avenue, Suite 300 Mississauga, ON L4W 4Y6 |
| AND TO: | TEXTBOOK STUDENT SUITES (ROSS PARK) TRUSTEE CORPORATION 2355 Skymark Avenue, Suite 300 Mississauga, ON L4W 4Y6 |
| AND TO : | TEXTBOOK STUDENT SUITES (774 BRONSON AVENUE) TRUSTEE CORPORATION 2355 Skymark Avenue, Suite 300 Mississauga, ON L4W 4Y6 |
| AND TO : | TEXTBOOK STUDENT SUITES (445 PRINCESS STREET) TRUSTEE CORPORATION 2355 Skymark Avenue, Suite 300 Mississauga, ON L4W 4Y6 |
| AND TO: | TEXTBOOK SUITES INC. 2355 Skymark Avenue, Suite 300 Mississauga, ON L4W 4Y6 |
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| AND TO: | FIRST COMMONWEALTH MORTGAGE CORPORATION 337 Castlemore Avenue Markham, ON L6C 2Y1 |
| AND TO: | HAZELTON 4070 DIXIE ROAD TRUSTEE CORPORATION 2355 Skymark Avenue, Suite 300 Mississauga, ON L4W 4Y6 |
| AND TO: | KEELE MEDICAL TRUSTEE CORPORATION 2355 Skymark Avenue, Suite 300 Mississauga, ON L4W 4Y6 |
| AND TO: | TIER 1 MORTGAGE CORPORATION 604 Four Winds Way Mississauga, ON L5R 3M4 |
| AND TO: | DAVE BALKISSOON 604 Four Winds Way Mississauga, ON L5R 3M4 |
| AND TO: | JUDE CASSIMY 337 Castlemore Avenue Markham, ON L6C 2Y1 |
| AND TO: | VINCENT ALBERT GUIDO 4 Magic Avenue Markham, Ontario L4C 0A5 |
| AND TO: | ANTHONY DEGUSTOFARO 64 Carmen Crescent Woodbridge, Ontario L4L 5P5 |
| AND TO: | HLD CORPORATION LTD. 50 Howland Drive, Unit 4 Huntsville, Ontario P1H 2P9 |

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SERVICE LIST

CV-17-589078-00CL

April 17, 2018

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| AND TO: | <p>GRANT THORNTON LIMITED 19th Floor, Royal Bank Plaza South Tower, 200 Bay Street Toronto, Ontario M5J 2P9</p> <p>Jonathan Krieger Tel: 416-360-5055 Email: jonathan.krieger@ca.gt.com</p> <p>David Goldband Tel: 416-369-6446 Email: David.Goldband@ca.gt.com</p> <p>Arsheel Muhit Tel: 416-777-6103 Email: Arsheel.Muhit@ca.gt.com</p> <p>Court-appointed Trustee</p> |
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| AND TO: | WALTER THOMPSON Email: walter@textbooksuites.com |
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| AND TO: | SHOPPERS REALTY INC. 243 Consumers Road Toronto, Ontario M2J 4W8 |

**ONTARIO
DIVISIONAL COURT
SUPERIOR COURT OF JUSTICE**

BETWEEN:

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

Plaintiff

- and -

AEOLIAN INVESTMENTS LTD., JOHN DAVIES IN HIS PERSONAL CAPACITY AND IN HIS CAPACITY AS TRUSTEE OF BOTH THE DAVIES ARIZONA TRUST AND THE DAVIES FAMILY TRUST, JUDITH DAVIES IN HER PERSONAL CAPACITY AND IN HER CAPACITY AS TRUSTEE OF THE DAVIES FAMILY TRUST, AND GREGORY HARRIS SOLELY IN HIS CAPACITY AS TRUSTEE OF THE DAVIES FAMILY TRUST

Defendants

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(May 17, 2018)**

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Lawyers for the Defendants

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Defendant

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(MAY 17, 2018)**

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Etobicoke, ON M9P 3L8

Fax: (416) 243-7389

AND TO: **DACHSTEIN HOLDINGS INC.**
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Mississauga, ON L4W 4Y6

75 Golfwood Heights
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295 The West Mall, 6th Floor
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TAB 1

**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

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

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

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

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

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

BETWEEN:

KINGSETT MORTGAGE CORPORATION

Applicant

- and -

TEXTBOOK (445 PRINCESS STREET) INC.

Respondent

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

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

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

BETWEEN:

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

Plaintiff

- and -

**AEOLIAN INVESTMENTS LTD., JOHN DAVIES IN HIS PERSONAL
CAPACITY AND IN HIS CAPACITY AS TRUSTEE OF BOTH THE
DAVIES ARIZONA TRUST AND THE DAVIES FAMILY TRUST, JUDITH
DAVIES IN HER PERSONAL CAPACITY AND IN HER CAPACITY AS
TRUSTEE OF THE DAVIES FAMILY TRUST, AND GREGORY HARRIS
SOLELY IN HIS CAPACITY AS TRUSTEE OF THE DAVIES FAMILY
TRUST**

Defendants

NOTICE OF MOTION
(Settlement Approval)

KSV Kofman Inc., in its capacity as receiver of certain property of Scollard Development Corporation (“**Scollard**”), Memory Care Investments (Kitchener) Ltd. (“**Kitchener**”), Memory Care Investments (Oakville) Ltd. (“**Oakville**”), 1703858 Ontario Inc. (“**Burlington**”), Legacy Lane Investments Ltd. (“**Legacy Lane**”), Textbook (525 Princess Street) Inc. (“**525 Princess**”), Textbook (555 Princess Street) Inc. (“**555 Princess**”) and Textbook (445 Princess Street) Inc. (“**445 Princess**”), and in its capacity as proposed receiver (in such capacities, the “**Receiver**”) of Textbook Ross Park Inc. (“**Ross Park**”), Textbook (774 Bronson Avenue) Inc. (“**Bronson**”) and McMurray Street Investments Inc. (“**McMurray**”, and collectively with Scollard, Kitchener, Oakville, Burlington, Legal Lane, 525 Princess, 555 Princess, 445 Princess, Ross Park and Bronson, the “**Receivership Companies**”), and not in its personal capacity or in any other capacities, will make a motion to a judge presiding over the Commercial List on May 30, 2018, at 10:00 a.m., or as soon after that time as the motion can be heard, at 330 University Avenue, Toronto, Ontario.

PROPOSED METHOD OF HEARING: The motion is to be heard orally.

THE MOTION IS FOR:

1. An Order:
 - (a) approving the terms of settlement (the “**Settlement**”) as set out in the confidential settlement agreement (the “**Settlement Agreement**”) as between the Receiver and the Trustee (as defined in the Settlement Agreement) on the one hand, and the intended defendants, R. Alan Harris, Erika Harris and Dachstein Holdings Inc. (collectively, the “**Settling Parties**”), on the other hand, resolving and settling the Receiver’s and Trustee’s known claims as against the Settling Parties;
 - (b) providing that, upon the effectiveness of the Settlement, and subject to and in accordance with the terms and conditions of the Settlement Agreement, the Settling Parties are released and discharged from any and all known claims that the

Development Companies (as defined in the Settlement Agreement) and the Trustee Companies (as defined in the Settlement Agreement) have against them arising from the Released Matters (as defined in the Settlement Agreement); and

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

THE GROUNDS FOR THIS MOTION ARE:

1. The Receiver, with the assistance of the Trustee and their respective counsel, engaged in discussions and negotiations with the Settling Parties concerning the matters in issue as between them, which culminated in the Settlement as set out in the Settlement Agreement.
2. The Settlement is accretive and will immediately increase value in the estates of 555 Princess, 525 Princess, Ross Park and Bronson.
3. The Settlement avoids protracted, complex and costly litigation with the Settling Parties. Pursuant to the Settlement Agreement, all of the known claims the Receiver and Trustee have as against the Settling Parties will be fully and finally resolved. The Settlement therefore provides a degree of certainty with regard to costs, benefits, and timing, which cannot be expeditiously achieved otherwise.
4. The Settlement represents a fair and commercially reasonable compromise in all the circumstances and for the purposes of these proceedings.
5. It is in the best interests of the Receivership Companies and the Trustee Companies, and their respective stakeholders, that the terms contemplated under the Settlement Agreement be implemented.
6. The Trustee was involved in negotiating the Settlement and supports the approval of the Settlement Agreement and the granting of the related relief sought by the Receiver.
7. Such further and other grounds as set out in the Eleventh Report of the Receiver dated May 17, 2018 (the “**Eleventh Report**”).
8. The inherent and equitable jurisdiction of this Court.

9. Rules 1.04, 1.05, 2.01, 2.03, 3.02, 16.04 and 37 of the Ontario *Rules of Civil Procedure*, RRO 1990, Reg 194, as amended.
10. Such other grounds as counsel may advise and this Court may permit.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the motion:

1. the Eleventh Report; and
2. such further and other evidence as counsel may advise and this Court permit.

May 17, 2018

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

TO: THE SERVICE LISTS

THE SUPERINTENDENT OF FINANCIAL SERVICES

- and -

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

Applicant

Respondents

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

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

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

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

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

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

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

**KSV KOFMAN INC. in its capacity as Receiver and Manager of
Certain Property of Scollard Development Corporation, et al.**
Plaintiff

v.

JOHN DAVIES et al.

Defendants

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

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

**PROCEEDING COMMENCED AT
TORONTO**

**NOTICE OF MOTION
(Settlement Approval)**

BENNETT JONES LLP

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

TAB 2



**Eleventh Report of
KSV Kofman Inc.**

May 17, 2018

**as Receiver and Manager of Certain Property
of Scollard Development Corporation, Memory
Care Investments (Kitchener) Ltd., Memory
Care Investments (Oakville) Ltd., 1703858
Ontario Inc., Legacy Lane Investments Ltd.,
Textbook (525 Princess Street) Inc. and
Textbook (555 Princess Street) Inc.**

and

**Second Report of KSV Kofman Inc.
as Receiver and Manager of Certain Property
of Textbook (445 Princess Street) Inc.**

and

**Report of KSV Kofman Inc.
as Proposed Receiver of Certain Property of
Textbook (774 Bronson Avenue) Inc.,
Textbook Ross Park Inc. and McMurray Street
Investments Inc.**

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COURT FILE NO: CV-17-11689-00CL
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ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

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

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

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

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

AND

SECOND REPORT OF KSV KOFMAN INC.
AS RECEIVER AND MANAGER OF CERTAIN PROPERTY OF TEXTBOOK (445 PRINCESS STREET) INC.

AND

REPORT OF KSV KOFMAN INC. AS PROPOSED RECEIVER OF TEXTBOOK ROSS PARK INC., TEXTBOOK (774 BRONSON AVENUE) INC. AND MCMURRAY STREET INVESTMENTS INC.

MAY 17, 2018

1.0 Introduction

1. This report ("Report") is filed by KSV Kofman Inc. ("KSV") in its capacity as:
 - a) receiver and manager of the real property registered on title as being owned by Scollard Development Corporation ("Scollard"), Memory Care Investments (Kitchener) Ltd. ("Kitchener"), Memory Care Investments (Oakville) Ltd. ("Oakville"), 1703858 Ontario Inc. ("Burlington"), Legacy Lane Investments Ltd. ("Legacy Lane"), Textbook (555 Princess Street) Inc. ("555 Princess"), Textbook (525 Princess Street) Inc. ("525 Princess") and Textbook (445 Princess Street) Inc. ("445 Princess") (collectively, the "Receivership Companies"), and all of their assets, undertakings and properties acquired for or used in relation to their real property; and

- b) proposed receiver of certain of the assets, undertakings and properties of Textbook (774 Bronson Avenue) Inc. (“Bronson”), Textbook Ross Park Inc. (“Ross Park”) and McMurray Street Investments Inc. (“McMurray”). (Collectively, McMurray, Bronson and Ross Park are referred to as the “Additional Developers”. For the purposes of this Report, the Additional Developers and the Receivership Companies are referred to as the “Davies Developers”).
2. Pursuant to an order of the Ontario Superior Court of Justice (the “Court”) dated October 27, 2016, Grant Thornton Limited was appointed Trustee (the “Trustee”) of eleven entities¹ (collectively, the “Trustee Corporations²”) which raised monies from investors (“Investors”) through syndicated mortgage investments (the “SMIs”). Eight of the Trustee Corporations then advanced these monies to the Davies Developers on a secured basis pursuant to loan agreements (the “Loan Agreements”) between the Trustee Corporations and the Davies Developers.
 3. On January 21, 2017, the Trustee brought a motion for an order (the “Receivership Order”) appointing KSV as receiver and manager (the “Receiver”) of the real property owned by Scollard and the assets, undertakings and properties of Scollard acquired for or used in relation to the real property. On February 2, 2017, the Court made the Receivership Order.
 4. On April 18, 2017, the Trustee brought a motion, *inter alia*, seeking an order amending and restating the Receivership Order to include the real property registered on title as being owned by Kitchener, Oakville, Burlington, Legacy Lane, 555 Princess and 525 Princess and the assets, undertakings and properties of these entities acquired for or used in relation to their real property (the “Amended and Restated Receivership Order”). On April 28, 2017, the Court made the Amended and Restated Receivership Order. The Amended and Restated Receivership Order was further amended by Court order on May 2, 2017 to address clerical errors.
 5. On January 3, 2018, KingSett Mortgage Corporation, a secured creditor of 445 Princess, brought a motion for an order (the “445 Receivership Order”) in a separate Court proceeding to appoint KSV as receiver and manager of the real property owned by 445 Princess and the assets, undertakings and properties of 445 Princess acquired for or used in relation to the real property. On January 9, 2018, the Court made the 445 Receivership Order.

¹ 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

² Individuals who hold their mortgage investment in a Registered Retirement Savings Plan have a mortgage with Olympia Trust instead of the applicable Trustee Corporation.

6. On February 26, 2018, the Trustee brought a motion for an order (the "Ross Park Receivership Order") appointing MNP Ltd. ("MNP") as receiver of the real property owned by Ross Park and certain related assets, undertakings and properties of Ross Park (the "Ross Park Excluded Assets"). On March 1, 2018, the Court made the Ross Park Receivership Order. Pursuant to the Ross Park Receivership Order, MNP is not permitted to deal with the litigation that has been the subject of the Receiver's various reports to Court.
7. Following the issuance of the Amended and Restated Receivership Order, the Receiver commenced a review of the receipts and disbursements of the Receivership Companies (except for Scollard, which review was already underway) (the "Review"). Additionally, at the request of the Trustee, the Receiver reviewed the receipts and disbursements of the Additional Developers and 445, which were not in receivership at the time.
8. On June 6, 2017, the Receiver filed its Fourth Report to Court (the "Fourth Report"), which provided the Court with the Receiver's findings regarding the Review. The Fourth Report reflected that, *inter alia*, millions of dollars were paid by the Davies Developers to their shareholders (the "Shareholders") and related parties in respect of management fees, consulting fees, dividends, loans and other amounts. A copy of the Fourth Report (without appendices) is attached as Appendix "A".
9. Based on the Receiver's findings in the Fourth Report, the Receiver filed a statement of claim (the "Statement of Claim") against John Davies ("Davies") and Aeolian Investments Ltd. ("Aeolian", and together with Davies, the "Davies Defendants") alleging, *inter alia*, fraud, breach of fiduciary duty and negligence. Davies is a director and officer of each of the Davies Developers. Aeolian is owned by Davies' wife, Judith, and his children. Aeolian's sole director and officer is Davies. Aeolian is a direct or an indirect Shareholder of each of the Davies Developers other than McMurray, which is owned, in part, by the Davies Family Trust (the "Family Trust").
10. A corporate chart for each of the Davies Developers is attached as Appendix "B".
11. On July 12, 2017, the Receiver filed its Sixth Report to Court. The Sixth Report detailed, *inter alia*, that Davies and Aeolian inappropriately transferred assets received from the Davies Developers to Judith Davies, the Family Trust and the Davies Arizona Trust (the "Arizona Trust" and together with the Family Trust, the "Trusts"). A copy of the Sixth Report (without appendices) is attached as Appendix "C".
12. On August 31, 2017, the Court granted the Receiver leave to amend its Statement of Claim (the "Fresh as Amended Statement of Claim") to add as defendants Davies in his capacity as the trustee and/or representative of the Trusts, Judith Davies in her personal capacity and in her capacity as trustee and/or representative of the Family Trust, and Gregory Harris solely in his capacity as trustee and/or representative of the Family Trust (collectively with the Davies Defendants and any additional parties other than the Settling Defendants, the "Non-Settling Defendants"). A copy of the Fresh as Amended Statement of Claim is attached as Appendix "D".

13. The Receiver also contemplated further amending the Fresh as Amended Statement of Claim to name additional defendants, including Dachstein Holdings Inc. (“Dachstein”), Alan Harris and Erika Harris (Dachstein, Alan Harris and Erika Harris being the “Settling Defendants”). Alan and Erika Harris are Gregory Harris’s parents. Gregory Harris is a partner at Harris & Harris LLP (“Harris LLP”), legal counsel to the Davies Developers. As reflected on the corporate chart in Appendix “B”, the Settling Defendants are direct or indirect Shareholders of each of the Davies Developers.
14. The Receiver and the Settling Defendants have entered into a settlement agreement (the “Settlement Agreement”). The terms of the Settlement Agreement require a full and final release in favour of the Settling Defendants from the Davies Developers. Presently, the Receiver does not have the capacity to provide a release in respect of the Additional Developers. Accordingly, the Trustee has made an application to appoint KSV as receiver over certain assets of the Additional Developers in order to, *inter alia*, allow the Settlement Agreement to be finalized and the settlement to be implemented.

1.1 Purposes of this Report

1. The purposes of this Report are to:
 - a) provide background information with respect to these receivership proceedings;
 - b) provide the Court with a copy of the Settlement Agreement on a sealed and confidential basis; and
 - c) recommend the Court issue an order:
 - i. appointing KSV as receiver of certain assets of the Additional Developers, excluding, *inter alia*, the Ross Park Excluded Assets;
 - ii. approving the Settlement Agreement, and authorizing and directing the Receiver to take any and all steps necessary to give effect to the Settlement Agreement;
 - iii. providing that, upon the Settlement Agreement becoming effective, and subject to and in accordance with the terms and conditions of the Settlement Agreement, the Settling Defendants, on the one hand, and the Receiver and the Trustee, on the other, release and discharge all known claims that the parties have against one another arising from the Released Matters (as defined in the Settlement Agreement); and
 - iv. sealing the Settlement Agreement pending further order from this Court.

1.2 Currency

1. References to currency in this Report are in Canadian dollars, unless otherwise noted.

2.0 Background

1. The Davies Developers are developers of student residences, accommodations for people suffering from various forms of cognitive impairment and low-rise condominiums (collectively the "Projects").
2. The amounts borrowed by the Davies Developers total approximately \$119.940 million³, including approximately \$93.675 million (being the amounts that the Trustee Corporations raised from Investors), which was loaned on a secured basis by the respective Trustee Corporation to the respective Davies Developer, and \$26.265 million owing to other mortgagees (the "Mortgagees"). The Receiver understands that the obligations owing to the Mortgagees rank in priority to the Trustee Corporations.
3. The funds advanced from the Trustee Corporations to the Davies Developers were to be used to purchase real property and to pay the soft costs associated with the development of the Projects.

2.1 The SMI Scheme

1. For each of the Davies Developers' Projects, the applicable Davies Developer raised monies from Investors through SMIs which were sourced by Tier 1 Transaction Advisory Inc. or entities related to Tier 1 Transaction Advisory Inc. (collectively, "Tier 1"). Of the SMI monies raised, approximately 30% was used for the following purposes: to pay fees charged by Tier 1; to pay agents who sold the SMI product to Investors; to pay professional costs; and to fund a one-year interest reserve on each Davies Developer's Project.
2. Of the net amounts received by the Davies Developers, millions of dollars were paid to Shareholders in respect of management fees, dividends, consulting fees and loans. The remaining funds were routinely transferred from one Davies Developer to another, and/or to other related entities, in respect of which the Investors had no security or other interest. As reflected in the Fourth Report, less than 10% of the monies raised were spent on development costs associated with the Projects.
3. All of the Projects are, or have been, subject to receivership or power of sale proceedings.
4. A more detailed overview of the SMI scheme is provided in the Receiver's Supplement to the Sixth Report dated August 8, 2017 (the "Supplemental Report"). A copy of the Supplemental Report (without appendices) is attached as Appendix "E".

³ Represents the principal amounts owed, excluding interest and fees.

3.0 The Settlement Agreement

3.1 The Settling Defendants

1. As detailed below, each of the Settling Defendants is either a direct or indirect Shareholder of each of the Davies Developers:
 - a) Dachstein is a shareholder of Textbook Students Inc. ("TSI") and Textbook Student Suites Inc. ("TSSI"). TSI and TSSI are shareholders of 555 Princess, 525 Princess, 445 Princess, Ross Park and Bronson;
 - b) Erika Harris is a shareholder of Scollard and Memory Care Investments Ltd. ("MCIL"). MCIL is a direct or indirect shareholder of Oakville, Burlington and Kitchener; and
 - c) Alan Harris is a shareholder of Legacy Lane and McMurray.

3.2 Funds Received by the Settling Defendants

1. In conducting the Review, the Receiver identified \$1 million in dividends paid to Dachstein from the entities noted below (collectively, the "Settlement Entities").

| (unaudited; \$) | | | |
|------------------|-----------------------------|-------------------|-----------|
| Davies Developer | Date of Initial SMI Advance | Date of Dividend | Dividends |
| 525 Princess | December 15, 2015 | December 16, 2015 | 250,000 |
| 555 Princess | October 19, 2015 | October 20, 2015 | 250,000 |
| Bronson | March 31, 2016 | April 1, 2016 | 250,000 |
| Ross Park | July 14, 2015 | July 14, 2015 | 250,000 |
| Total | | | 1,000,000 |

2. The Receiver has not identified any other amounts paid to or transferred from the Davies Developers to the Settling Defendants. The Settling Defendants have also advised, and signed declarations confirming, that they received no further compensation or consideration of any kind from the Davies Developers.

3.3 Settlement Agreement

1. In December 2017, the Receiver and its counsel commenced negotiations with the Settling Defendants. The Receiver consulted the Trustee about these negotiations because, *inter alia*, neither Ross Park nor Bronson were subject to receivership proceedings and the intent was to settle with the Settling Defendants in respect of all amounts noted in Section 3.2 above.
2. The negotiations culminated in the Settlement Agreement among the Receiver, the Trustee and the Settling Defendants. The settlement is subject only to Court approval (the "Approval Order"). A copy of the Settlement Agreement is attached as Confidential Appendix "1".

3. The Settlement Agreement contemplates a full and final mutual release between the Settling Defendants, on the one hand,⁴ and the Receiver and the Trustee, on the other.
4. Under the Settlement Agreement, the Receiver and the Trustee preserve their rights to claim against the Settling Defendants for any unknown matters.⁵ The Receiver and the Trustee also preserve all claims, rights and remedies they have as against all Non-Settling Defendants.
5. The proceeds from the settlement will be distributed in due course to the Trustee Corporations of the Settlement Entities, subject to further order of the Court. Prior to making these distributions, it will be necessary to allocate a portion of the settlement proceeds to the other Davies Developers, as each incurred a fraction of the costs of the investigations and negotiations giving rise to the Settlement Agreement and, ultimately, the Settlement Agreement.

3.4 Confidentiality

1. The Receiver respectfully requests that the Settlement Agreement be filed with the Court on a confidential basis and be sealed (the "Sealing Order") as the documents contain sensitive and confidential information. The terms of the Settlement Agreement require it to be kept confidential, unless or until such disclosure is ordered by Court or required by law. The Receiver is not aware of any party that will be prejudiced if the information is sealed. Accordingly, the Receiver believes the proposed Sealing Order is appropriate in the context of facilitating the settlement. Additionally, this Report provides information sufficient for stakeholders to understand the material terms of the settlement.

3.5 Recommendation

1. The Receiver recommends that the Court issue an order appointing KSV as receiver of certain assets of the Additional Developers, approving the Settlement Agreement and sealing the Settlement Agreement because, among other things:
 - a) the appointment of KSV as receiver of certain assets of the Additional Developers is necessary to give effect to the Settlement Agreement;
 - b) the settlement avoids protracted, complex and costly litigation with the Settling Defendants in respect of the settled matters. Pursuant to the Settlement Agreement, all of the known claims the Receiver and Trustee have as against the Settling Defendants will be fully and finally resolved. The Settlement therefore provides a degree of certainty with regard to costs, benefits, and timing that cannot be expeditiously achieved otherwise;

⁴ Although only Dachstein received the amounts noted in Section 3.2 above, Erika Harris is the sole director and officer of Dachstein, and Alan Harris is her spouse. Further, the equity interest in Dachstein is held on behalf of members of the Harris family. The Settlement was therefore contingent on all Settling Defendants being released, and it was negotiated and agreed to on this basis.

⁵ There are references to resolving unknown claims in the recitals to the Settlement Agreement; however, the Receiver notes that the Full and Final Release only releases the Settling Defendants from known claims. The Full and Final Release is attached as Schedule "D" to the Settlement Agreement.

- c) the settlement allows the Receiver to focus on other actors in the SMI scheme in the going forward litigation, which will increase the efficiency and efficacy with which the litigation can be advanced, thereby resulting in further costs savings, timing efficiencies and benefits;
- d) The Settling Defendants will provide the Receiver and the Trustee with a broad full and final release of all claims they may have against the Davies Developers and the Trustee Corporations, providing a further degree of certainty and closure with respect to any disputes as between these parties;
- e) the Settlement Agreement is fair and reasonable in the circumstances as it represents a commercially reasonable compromise in respect of the known claims against the Settling Defendants and it is in the best interests of the Davies Developers, the Trustee Corporations and their respective stakeholders; and
- f) the Trustee has consented to and signed the Settlement Agreement, and the Trustee supports the granting of the sought orders appointing KSV as receiver of certain assets of the Additional Developers, approving the Settlement Agreement and sealing the Settlement Agreement pending further order of the Court.

4.0 Conclusion and Recommendation

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

* * *

All of which is respectfully submitted,

KSV Kofman Inc

**KSV KOFMAN INC.
SOLELY IN ITS CAPACITY AS RECEIVER AND MANAGER OF
CERTAIN PROPERTY OF SCOLLARD DEVELOPMENT CORPORATION, MEMORY CARE
INVESTMENTS (KITCHENER) LTD., MEMORY CARE INVESTMENTS (OAKVILLE) LTD.,
1703858 ONTARIO INC., LEGACY LANE INVESTMENTS LTD., TEXTBOOK (525 PRINCESS
STREET) INC., TEXTBOOK (555 PRINCESS STREET) INC. AND TEXTBOOK (445 PRINCESS
STREET) INC. AND SOLELY IN ITS CAPACITY AS PROPOSED RECEIVER OF CERTAIN
PROPERTY OF TEXTBOOK ROSS PARK INC., TEXTBOOK (774 BRONSON AVENUE) INC.
AND MCMURRAY STREET INVESTMENTS INC. AND NOT IN ITS PERSONAL OR IN ANY
OTHER CAPACITY**

TAB A

Appendix "A"



**Fourth Report of
KSV Kofman Inc.
as Receiver and Manager of Certain Property
of Scollard Development Corporation, Memory
Care Investments (Kitchener) Ltd., Memory
Care Investments (Oakville) Ltd., 1703858
Ontario Inc., Legacy Lane Investments Ltd.,
Textbook (525 Princess Street) Inc. and
Textbook (555 Princess Street) Inc.**

June 6, 2017

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COURT FILE NO: CV-17-11689-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

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

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

FOURTH REPORT OF
KSV KOFMAN INC.
AS RECEIVER AND MANAGER

JUNE 6, 2017

1.0 Introduction

1. This report ("Report") is filed by KSV Kofman Inc. ("KSV") as receiver and manager of the real property ("Real Property") registered on title as being owned by, and of all of the assets, undertakings and properties acquired for or used in relation to the Real Property (together with the Real Property, the "Property"), of the following entities:
 - a) Scollard Development Corporation ("Scollard");
 - b) Memory Care Investments (Kitchener) Ltd. ("Kitchener");
 - c) Memory Care Investments (Oakville) Ltd. ("Oakville");
 - d) 1703858 Ontario Inc. ("Burlington")¹;
 - e) Legacy Lane Investments Ltd. ("Legacy Lane");
 - f) Textbook (555 Princess Street) Inc. ("555 Princess"); and
 - g) Textbook (525 Princess Street) Inc. ("525 Princess").

Collectively the above entities are referred to as the "Companies".

¹ This entity owns the real property on which the development known as "Memory Care (Burlington)" was to be developed. Burlington's shares are owned by Memory Care Investments (Burlington) Ltd., which is defined below as MC Burlington.

2. Pursuant to an order of the Ontario Superior Court of Justice (“Court”) dated October 27, 2016, Grant Thornton Limited was appointed Trustee (“Trustee”) of eleven entities² which raised monies from investors (“Investors”) through syndicated mortgage investments (collectively, the “Trustee Corporations”)³. Eight of the Trustee Corporations then advanced these monies on a secured basis pursuant to loan agreements (“Loan Agreements”) between the Trustee Corporation and one or more “Davies Developer”. The Davies Developer is a defined term used throughout this Report and includes the Companies and the following entities, none of which is in receivership:
 - a) Textbook Ross Park Inc. (“Ross Park”);
 - b) Textbook (445 Princess Street) Inc. (“445 Princess”);
 - c) Textbook (774 Bronson Avenue) Inc. (“Bronson”); and
 - d) McMurray Street Investments Inc. (“McMurray”).
3. A copy of each Loan Agreement and each Davies Developer’s corporate profile report is attached as Appendix “A”.
4. On January 21, 2017, the Trustee brought a motion for an order (“Receivership Order”) appointing KSV as receiver and manager (“Receiver”) of the Property owned by Scollard. On February 2, 2017, the Court made the Receivership Order.
5. Following its appointment as the Receiver of Scollard, the Receiver reviewed Scollard’s books and records and identified transactions between Scollard and certain of the other Davies Developers and other related parties, including shareholders of the Davies Developers, John Davies (“Davies”), Walter Thompson (“Thompson”), Raj Singh (“Singh”) and Greg Harris (“Harris”), and/or corporations and individuals related to each of them.
6. On April 18, 2017, the Trustee brought a motion, *inter alia*, seeking orders:
 - a) amending and restating the Receivership Order to add the Property owned by the Companies (except for Scollard, which was already in receivership) (the “Amended and Restated Receivership Order”); and
 - b) compelling Davies to immediately deliver to the Trustee all of the bank statements for the Davies Developers (the “Production Order”).
7. On April 28, 2017, the Court made the Amended and Restated Receivership Order and the Production Order.

² 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

³ Individuals who hold their mortgage investment in a Registered Retirement Savings Plan have a mortgage with Olympia Trust instead of the applicable Trustee Corporation.

8. The Amended and Restated Receivership Order was further amended and restated by a Court order made on May 2, 2017 to rectify certain clerical errors.
9. Following the issuance of the Amended and Restated Receivership Order, the Receiver commenced a review of the receipts and disbursements of the Companies (except for Scollard, which review was already underway). Additionally, at the request of the Trustee, the Receiver reviewed the receipts and disbursements of Ross Park, 445 Princess, Bronson and McMurray. The review of the books and records, Loan Agreements and other materials discussed in this Report is defined as the "Review".
10. The Receiver has learned that Davies recently sold his cottage and his house. The sale of the cottage closed on April 25, 2017. As of June 5, 2017, the sale of the house does not appear to have closed.

1.1 Purposes of this Report

1. The purposes of this Report are to:
 - a) provide the Court with the Receiver's findings concerning the Review; and
 - b) recommend that the Court issue orders:
 - granting an interim Mareva injunction against Davies and Aeolian Investments Ltd., ("Aeolian"), an entity owned by Davies' wife and daughters, such that both are restrained from disposing of their property; and
 - compelling Textbook Suites Inc. ("TSI") and Textbook Student Suites Inc. ("TSSI"), the shareholders of the Textbook Entities (as defined in Section 2.1), Memory Care Investments Ltd ("MCIL"), the shareholder of the Memory Care Entities (as defined in Section 2.2) and Aeolian to forthwith provide the Receiver with a copy of their books and records.

1.2 Restrictions

1. In preparing this Report, the Receiver has reviewed the following information:
 - a) all of the materials filed in this proceeding, the proceeding appointing the Trustee, and the failed application of the Davies Developers under the *Companies' Creditors Arrangement Act* ("CCAA");
 - b) unaudited financial information of the Companies;
 - c) accounting records and bank statements for the Companies, which were provided to the Receiver by Davies;
 - d) accounting records and bank statements for Memory Care Investments Burlington Ltd. ("MC Burlington"), a non-receivership entity which owns the shares of Burlington, which were provided to the Receiver by Davies; and
 - e) bank statements for Ross Park, 445 Princess, Bronson and McMurray, which were provided to the Trustee pursuant to the Production Order, and which were subsequently provided by the Trustee to the Receiver.

2. The Receiver has not performed an audit of the financial information addressed in this Report. The findings discussed herein remain subject to further review. The Receiver expresses no opinion or other form of assurance with respect to the financial information presented in this Report.
3. The Receiver has had a small number of discussions with, and corresponded on a limited basis with, Davies and Harris regarding certain of the matters addressed in this Report. The Receiver has not spoken to or communicated with Singh or Thompson regarding the matters addressed in this Report. None of Davies, Thompson, Singh, Harris or any other person or entity referenced herein has had the opportunity to respond to this Report.
4. The Receiver has neither had access to the books, records and bank statements of Aeolian, TSI, TSSI or MCIL, nor the books and records of Ross Park, 445 Princess, Bronson and McMurray.
5. The Receiver has no knowledge of the business interests and activities of Aeolian other than those discussed in this Report.
6. The Davies Developers poorly documented their transactions and their books and records do not appear to be well maintained. Examples include, but are not limited to:
 - a) Burlington's accounting records appear to be inaccurate and/or incomplete. Burlington's balance sheet does not reflect any debt owing to a Trustee Corporation or the real property owned by Burlington. A copy of Burlington's balance sheet as at May 2, 2017 is attached as Appendix "B"; and
 - b) the Davies Developers paid millions of dollars in management fees and transferred millions of dollars – purportedly by way of loans - to related parties but appear to have never entered into any management services agreements or to have documented the terms of the loans.
7. **No party has contested or disputed any of the findings in the Receiver's First Report dated April 5, 2017, which addressed issues similar to those discussed in this Report. A copy of the First Report (without appendices) is attached as Appendix "C".**

1.3 Currency

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

2.0 Background⁴

1. The Davies Developers are developers of student residences, accommodations for people suffering from various forms of cognitive impairment and low-rise condominiums. All but one of the Davies Developers' projects (collectively the "Projects") are in pre-construction⁵.
2. The amounts borrowed by the Davies Developers total approximately \$119.940 million⁶, including approximately \$93.675 million in secured debt owing to the Trustee Corporations (being monies raised by the Trustee Corporations from Investors) and \$23.675 million owing to other mortgage lenders (the "Other Lenders"). The Receiver understands that all of the obligations owing to Other Lenders rank in priority to the Trustee Corporations.
3. The funds advanced from the Trustee Corporations to the Davies Developers were to be used to purchase real property and to pay the soft costs associated with the development of the Projects.
4. In raising monies from Investors:
 - a) the Davies Developers covenanted that they would not, without the consent of the applicable Trustee Corporation, "use the proceeds of any Loan Instalment for any purposes other than the development and construction of the project on the Property" (Section 7.02 (g) of the various Loan Agreements);⁷
 - b) all of the Trustee Corporations were to have a first ranking security interest against the applicable Davies Developer's property (Section 5.01 of the various Loan Agreements), with the exception of Ross Park, Bronson and 445 Princess, in which case the Trustee Corporations were to have a second ranking security interest behind existing mortgages; and
 - c) the security interests granted to the Trustee Corporations would only be subordinated in certain defined circumstances, such as to construction financing of certain specified maximum amounts and to Tarion warranty bond mortgage security (Section 5.01 of the various Loan Agreements). This was also noted on certain of the advertising materials, as evidenced by the Kitchener brochure attached as Appendix "D".

⁴ Unless otherwise noted, the background information in this section is sourced from the Affidavit of John Davies sworn December 6, 2016 filed in support of the Davies Developers' application for CCAA protection.

⁵ Footings and foundations have been laid down at the Project owned by Burlington.

⁶ Represents the principal amounts owed, excluding interest and fees.

⁷ The Loan Agreements for 445 Princess, 525 Princess, 555 Princess, Ross Park, Scollard and Bronson contain a carve-out allowing the Davies Developer to earn interest income on funds not immediately required to be expended.

2.1 Textbook Entities

1. The entities in the table below are defined in this Report as the "Textbook Entities". The Textbook Entities were intended to develop student residences. The table below provides the purchase price for each property and a summary of the Textbook Entities' secured obligations (principal only).

| (unaudited; \$000) Textbook Entity | Purchase Price | Trustee Corporation | Other Lenders | | Mortgagee | Total Secured Obligations |
|---------------------------------------|-------------------|------------------------|------------------|---|---|---------------------------------|
| 555 Princess | 2,000 | 7,927 | - | - | | 7,927 |
| 525 Princess | 2,400 | 6,387 | - | - | | 6,387 |
| 445 Princess | 9,300 | 8,397 | 7,000 | | Kingsett Mortgage Corporation | 15,397 |
| Bronson | 10,250 | 10,806 | 5,700 | | Vector Financial Services Ltd. | 16,506 |
| Ross Park | 7,000 | 11,617 | 3,500 | | 2377358 Ontario Ltd. and Creek Crest Holdings Inc. | 15,117 |

2. Davies and Thompson are the sole officers and directors of the Textbook Entities⁸.
3. The shareholders of the Textbook Entities are:
 - a) TSI;
 - b) TSSI; and
 - c) RS Consulting Group Inc. ("RSCG").
4. TSI and TSSI are owned (in different proportions) by Aeolian, RSCG, 1321805 Ontario Inc. ("132") and Dachstein Holdings Inc. ("Dachstein"). The Receiver understands that:
 - a) Aeolian is owned by Davies' wife and children;
 - b) RSCG is owned by Singh;
 - c) Singh is also:
 - the sole director, officer and shareholder of the Trustee Corporations⁹;
 - the sole director, officer and shareholder of Tier 1 Transaction Advisory Services Inc. ("Tier 1 Advisory"); and

⁸ As at the date of this Report. Certain of the Davies Developers may have had different or additional officers and directors at different points in time. This footnote applies throughout this Report.

⁹ Except for Textbook Student Suites (445 Princess Street) Trustee Corporation.

- a director and sole officer of Tier 1 Mortgage Corporation (“Tier 1 Mortgage”) and a licensed mortgage agent with First Commonwealth Mortgage Corporation (“FCMC”, and together with Tier 1 Mortgage, the “Brokers”). The Brokers and Tier 1 Advisory promoted and sold the syndicated mortgage investments to Investors;¹⁰
- d) 132 holds its equity interest on behalf of a trust, of which Thompson, among others, is a beneficiary; and
 - e) The equity interest in Dachstein is held on behalf of family members of Harris, a partner at Harris + Harris LLP, legal counsel to the Davies Developers.
5. A corporate chart for the Textbook Entities is attached as Appendix “E”.

2.2 Memory Care Entities

1. The entities in the table below are defined as the “Memory Care Entities”. The Memory Care Entities were intended to develop residences for people suffering from various forms of cognitive impairment. The table below provides the purchase price for each property and a summary of the Memory Care Entities’ present secured obligations (principal only).

| (unaudited; \$000) | Purchase | Trustee | Other | | Total Secured |
|--------------------|----------|-------------|---------|----------------------|---------------|
| Memory Care Entity | Price | Corporation | Lenders | Mortgagee | Obligations |
| Kitchener | 3,950 | 10,577 | 950 | 2174217 Ontario Inc. | 11,527 |
| Burlington | 2,500 | 8,303 | 1,250 | 2174217 Ontario Inc. | 9,553 |
| Oakville | 1,945 | 9,063 | 1,250 | 2174217 Ontario Inc. | 10,313 |

2. Pursuant to the Amended and Restated Receivership Order, MarshallZehr Group Inc. (“MZG”) made loans to the Receiver of \$1.475 million, \$1.775 million and \$1.662 million, and was granted a Court-ordered super-priority charge for these amounts on the properties owned by Kitchener, Burlington and Oakville, respectively. The MZG loans were used to repay the mortgages referenced in the table as owing to 2174217 Ontario Inc. (including principal, interest and fees) and to fund the fees and costs of the Kitchener, Burlington and Oakville receivership proceedings.
3. Davies is the sole director and officer of the Memory Care Entities.
4. MCIL is the shareholder of Kitchener and Oakville¹¹.
5. Burlington is a wholly owned subsidiary of MC Burlington. MCIL is the sole shareholder of MC Burlington.

¹⁰ The information concerning the Brokers and Tier 1 Advisory is sourced from the Affidavit of Mohammed Ali Marfatia sworn October, 20 2016 filed in support of the application by the Superintendent of Financial Services (“FSCO”) for an order appointing a receiver and manager over the property of the Trustee Corporations.

¹¹ The Class “B” shares of Oakville are owned by MCIL. The Class “A” preferred shares are owned by investors in the syndicated mortgage investment for Oakville.

6. MCIL is owned by Aeolian (50%) and Erika Harris (50%). Ms. Harris is the mother of Harris.
7. The Kitchener, Burlington and Oakville Loan Agreements prohibited each of them from granting a first ranking security interest in its real property to any lender other than the applicable Trustee Corporations, except in connection with construction financing.
8. A corporate chart for the Memory Care Entities is provided in Appendix "F".

2.3 Scollard

1. The real property owned by Scollard was purchased for \$9 million. Scollard was intended to develop a condominium project known as "Boathaus".
2. Scollard borrowed \$13.596 million from Investors.
3. Pursuant to the Receivership Order, Downing Street Financial Inc. ("Downing") made a \$3.5 million loan to the Receiver and was granted a super-priority Court ordered charge on the Property owned by Scollard. The Downing facility repaid a mortgage owing to Firm Capital Mortgage Corporation in the approximate amount of \$2.5 million and the balance is being used to fund the fees and costs of Scollard's receivership proceedings.
4. Three liens totalling approximately \$800,000 have been registered on title against the Scollard Real Property. The Receiver's counsel is reviewing the lien claims to determine their validity and priority.
5. Davies is the sole director and officer of Scollard.
6. The shareholders of Scollard are Aeolian (50%) and Erika Harris (50%).
7. The Scollard Loan Agreement prohibits it from granting a first ranking security interest in its real property to any lender other than the applicable Trustee Corporation, except in connection with construction financing.

2.4 Legacy Lane

1. Legacy Lane's real property was purchased for \$650,000. Legacy Lane was intended to develop a low-rise condominium building consisting of 33 townhomes.
2. Legacy Lane borrowed \$3.478 million from Investors. Legacy Lane has no other secured obligations.
3. Davies is the sole director and officer of Legacy Lane.
4. The shareholders of Legacy Lane are Aeolian (50%) and Alan Harris (50%). Alan Harris is the father of Harris.

2.5 McMurray

1. The real property owned by McMurray was purchased for \$650,000. McMurray was intended to develop 88 residential condominiums and lofts.
2. McMurray borrowed \$3.5 million from Investors.
3. McMurray has a mortgage owing in the amount of \$2 million to Pillar Financial Services Inc. ("Pillar"). The Receiver has not been able to trace the mortgage proceeds received from Pillar into McMurray's bank statements.
4. The sole directors and officers of McMurray are Davies and Harris. The officers of McMurray are Davies, Harris and David Arsenault.
5. The shareholders of McMurray are the Davies Family Trust (30%), Alan Harris (16%), Tori Manchulenko (46%) and D. Arsenault Holdings Inc. (8%). The latter two shareholders appear to be unrelated to any of the other Davies Developers' shareholders.
6. The McMurray Loan Agreement prohibits it from granting a first ranking security interest in its real property to any lender other than the applicable Trustee Corporation, except in connection with construction financing.

3.0 Review of Receipts and Disbursements

1. The table below provides a summary of the Review.¹²

| (unaudited; \$000) | Amount | % Receipts / Disbursements |
|---|---------|-------------------------------|
| <i>Receipts</i> | | |
| Loan proceeds | | |
| Trustee Corporations | 93,675 | 74.4% |
| Other loans | 26,265 | 20.8% |
| | 119,940 | 95.2% |
| Preference shares (Oakville) | 1,000 | 0.8% |
| Sales tax refunds | 1,717 | 1.4% |
| Other related parties | 345 | 0.3% |
| Sundry and unknown | 2,913 | 2.3% |
| Total receipts | 125,915 | 100% |
| <i>Disbursements</i> | | |
| Property related costs | | |
| Purchase of Real Property | 48,935 | 38.9% |
| Development costs | 12,354 | 9.8% |
| Subtotal | 61,289 | 48.7% |
| Payments to Shareholders ¹³ and entities related to Shareholders ¹⁴ | | |
| TSSI/TSI | 4,384 | 3.5% |
| MCIL | 1,124 | 0.9% |
| Davies and entities related to Davies | 6,763 | 5.4% |
| Singh and entities related to Singh, including broker commissions | 9,407 | 7.5% |
| Thompson and entities related to Thompson | 1,947 | 1.5% |
| Harris and entities related to Harris, excluding professional fees | 1,000 | 0.8% |
| Textbook (256 Rideau Street) Inc. | 3,700 | 2.9% |
| Advances to Affiliates | 339 | 0.3% |
| Subtotal | 28,664 | 22.8% |
| Interest and fees | 14,529 | 11.5% |
| FCMC broker commissions ¹⁵ | 9,988 | 7.9% |
| Professional fees | 3,357 | 2.7% |
| Traditions Development Company | 1,487 | 1.2% |
| Other related parties | 156 | 0.1% |
| Other and unknown | 6,440 | 5.1% |
| Subtotal | 35,957 | 28.5% |
| Total disbursements | 125,910 | 100.0% |
| Ending balance | 5 | |

¹² Includes MC Burlington transactions, i.e. the shareholder of Burlington.

¹³ Defined in Section 3.2 below.

¹⁴ Reflects net payments to shareholders.

¹⁵ Of this amount, \$219,000 was paid to third party brokers.

2. The discussion in Section 3.1 to 3.6 below addresses each line item in the table, in the order presented in the table.
3. The table reflects that the Davies Developers had:
 - a) receipts of approximately \$125.915 million, including loans from Trustee Corporations of \$93.675 million and loans of \$26.265 million from Other Lenders; and
 - b) disbursements of approximately \$125.910 million, including:
 - \$48.935 million to purchase Real Property;
 - \$28.664 million to Shareholders and entities related to Shareholders¹⁶;
 - \$14.529 million in interest paid and fees;
 - \$12.354 million in development costs; and
 - \$9.988 million in broker fees paid to FCMC.
4. Schedules of the receipts and disbursements for each Davies Developer are attached as Appendices "G" to "Q".
5. The table above excludes monies transferred among the Davies Developers, which transfers exceed \$17.2 million. A summary of those transactions is provided in Section 4.0 below.

3.1 Property Related Costs

3.1.1 Real Property Transactions

1. The Davies Developers own eleven properties which were purchased for a total of approximately \$48.935 million.¹⁷ All of the property transactions appear to be at arm's length, except for the property owned by Kitchener, as discussed in the immediately following section.

3.1.2 Kitchener Property Purchase

1. On June 4, 2013, 2375219 Ontario Ltd. ("237"), an entity in which Singh and Harris have an ownership interest, purchased, in the context of a receivership, a retirement home located at 169 Borden Avenue, Kitchener (the "Kitchener Property") for \$1.585 million.

¹⁶ Defined in Section 3.2 below.

¹⁷ Excludes the purchase price of the real property owned by McMurray which was purchased for \$650,000 in January 2010.

2. MCIL incorporated Lafontaine Terrace Management Corporation (“Lafontaine”) to discontinue the business of the retirement facility which was operating on the Kitchener property¹⁸. Davies is the sole officer and director of Lafontaine. Further information regarding Lafontaine and 237 is provided in Section 3.2 below.
3. On February 25, 2014, approximately nine months after the retirement home was purchased, the Kitchener Property was sold by 237 to Kitchener for \$3.950 million, apparently netting a gain for 237 in the amount of approximately \$2.365 million. The Kitchener Property was purchased from 237 with funds advanced by Investors to Kitchener.
4. Harris has provided the Receiver with a copy of an Acknowledgement and Direction (the “Acknowledgement”), which Harris has advised was provided to all Kitchener syndicated mortgage investors. The Acknowledgement is attached as Appendix “R”. The Acknowledgement discloses that:
 - a) the Kitchener Property would be acquired from 237;
 - b) the shareholders of 237 would earn a gain on the transaction;¹⁹ and
 - c) Harris and Singh are the shareholders of 237.
5. The Receiver has asked Harris for further details regarding the sale to Kitchener, including confirmation of the amount of the gain earned by 237 and the ownership structure of 237. As of the date of this Report, the Receiver has not received this information.

3.1.3 Development Costs

1. A summary of the development costs paid by the Davies Developers is provided below.

| (unaudited; \$000) Davies Developer | Development Costs | Total Disbursements | % of Total Disbursements |
|--|----------------------|------------------------|-----------------------------|
| McMurray | 3,353 | 8,797 | 38.1% |
| Scollard | 2,737 | 20,493 | 13.4% |
| Burlington | 2,402 | 9,495 | 25.3% |
| Oakville | 1,478 | 11,236 | 13.2% |
| Kitchener | 762 | 10,069 | 7.6% |
| Ross Park | 705 | 16,963 | 4.2% |
| Legacy Lane | 502 | 4,318 | 11.6% |
| Bronson | 239 | 15,844 | 1.5% |
| 555 Princess | 74 | 8,047 | 0.9% |
| 525 Princess | 73 | 6,548 | 1.1% |
| 445 Princess | 29 | 14,100 | 0.2% |
| Total | 12,354 | 125,910 | 9.8% |

¹⁸ Sourced from the Affidavit of John Davies sworn December 6, 2016 filed in support of the Davies Developers’ application for protection under the *Companies’ Creditors Arrangement Act*.

¹⁹ The Acknowledgement states that 237 funded operating shortfalls. Information is not available to the Receiver so that it can confirm this statement.

2. The table reflects:
- Of the nearly \$126 million that was raised, \$12.354 million (or 9.8% of the total raised) was spent on development costs. Of this amount, \$8.4 million (or 68.7%) of the development costs were spent on the McMurray, Scollard and Burlington Projects.
 - Less than \$250,000 was spent on development costs for each of Bronson, 445 Princess, 555 Princess and 525 Princess.

3.2 Payments to Shareholders and Affiliates

1. A summary of the net amounts paid to Davies Developers' shareholders and entities related to and affiliated with the shareholders referenced in the table (collectively, the "Shareholders") is provided in the table below.

| (unaudited; \$000) | | | Davies | Singh | Thompson | Harris | | Total |
|--------------------|--------------|--------------|--------------|--------------|--------------|--------------|--------------|---------------|
| Davies Developer | TSI/TSSI | MCIL | Entities | Entities | Entities | Entities | Other | |
| Oakville | (35) | 305 | 1,231 | 2,142 | - | - | 2 | 3,645 |
| Ross Park | 1,554 | 2 | 499 | 434 | 749 | 250 | 1,267 | 4,755 |
| Kitchener | (48) | 128 | 510 | 2,579 | - | - | 111 | 3,280 |
| 525 Princess | 880 | 4 | 340 | 483 | 340 | 250 | 16 | 2,313 |
| 555 Princess | 786 | 3 | 408 | 401 | 408 | 250 | 1,478 | 3,734 |
| Burlington | (145) | 199 | 602 | 1,444 | - | - | 110 | 2,210 |
| Scollard | (27) | 181 | 1,310 | 286 | - | - | 75 | 1,825 |
| Bronson | 576 | - | 127 | 524 | 250 | 250 | 56 | 1,783 |
| 445 Princess | 843 | 48 | - | 264 | 200 | - | 767 | 2,122 |
| Legacy Lane | - | 44 | 363 | 556 | - | - | 207 | 1,170 |
| McMurray | - | 210 | 1,373 | 294 | - | - | (50) | 1,827 |
| Total | 4,384 | 1,124 | 6,763 | 9,407 | 1,947 | 1,000 | 4,039 | 28,664 |

2. A summary of these payments, including whether they were disclosed in the Loan Agreements, is provided in the table below.

| (unaudited; \$'000) | TSI/TSSI | MCIL | Davies | Singh | Thompson | Harris | Other | Amount | Disclosed |
|--------------------------|--------------|--------------|--------------|--------------|--------------|--------------|--------------|---------------|-----------|
| Referral and broker fees | - | - | - | 5,861 | - | - | - | 5,861 | Yes |
| Dividends | - | - | 875 | 1,125 | 1,000 | 1,000 | - | 4,000 | Yes |
| | - | - | 875 | 6,986 | 1,000 | 1,000 | - | 9,861 | |
| Moscowitz (section 3.2) | - | - | 935 | - | - | - | - | 935 | No |
| Management Fees | - | - | 4,069 | - | - | - | - | 4,069 | No |
| Loans to Shareholders | 3,512 | 602 | - | - | - | - | - | 4,114 | No |
| Rideau | - | - | - | - | - | - | 3,700 | 3,700 | No |
| Advances to affiliates | - | - | - | - | - | - | 339 | 339 | No |
| | 3,512 | 602 | 5,004 | - | - | - | 4,039 | 13,157 | |
| Other management fees | - | - | 500 | - | 947 | - | - | 1,447 | Note |
| Consulting | - | - | - | 1,485 | - | - | - | 1,485 | Note |
| Repayment of loan | - | - | - | 650 | - | - | - | 650 | Note |
| Notary fees | - | - | - | 330 | - | - | - | 330 | Note |
| Family members | - | - | 422 | - | - | - | - | 423 | Note |
| Other | 872 | 522 | 55 | 306 | - | - | - | 1,755 | Note |
| | 872 | 522 | 977 | 2,771 | 947 | - | - | 6,089 | |
| Less: receipts | - | - | (93) | (350) | - | - | - | (443) | |
| Total | 4,384 | 1,124 | 6,763 | 9,407 | 1,947 | 1,000 | 4,039 | 28,664 | |

Note: The Receiver is unable to determine if these transactions are permitted under the Loan Agreements. More information is required.

3. The Receiver's counsel has reviewed the Loan Agreements and other documents provided to Investors ("Ancillary Documents") to determine whether the payments to the Shareholders were disclosed and/or are prohibited. A list of the Ancillary Documents reviewed by the Receiver's counsel is attached as Appendix "S".

Disclosure

- a) **Referral and broker fees (\$5.861 million):** These amounts were disclosed in the Loan Agreements; however, the referral fees paid to Tier 1 Advisory were approximately \$69,000 greater than permitted (discussed in section 3.4 below).
- b) **Dividends (\$4 million):** Entities related to Davies, Thompson, Singh and Harris received \$4 million in dividends. These are disclosed in the Loan Agreements. They were to be paid from the "excess proceeds after the Property has been acquired". In each instance, the dividends were paid immediately after the applicable Davies Developer received the funds from the Trustee Corporation, and after the dividend was paid and related party transactions, the applicable Davies Developer had essentially no further monies to advance its project. These payments contributed to or may have caused each such Davies Developer to become insolvent, if they were not already insolvent at the time of payment. Additionally, the Receiver questions why dividends would be payable from a fundraising, particularly because the Shareholders had not created value for the Investors, no profits were generated (which is typically the source of

dividends) and all of the Davies Developers which paid dividends had negligible or no equity either prior to or shortly following the payment of the dividends.

Prohibited Payments

- c) **Payments to Moscowitz Capital Mortgage Fund II (“Moscowitz”) (\$935,000):** Moscowitz is not a mortgagee on the property owned by McMurray; however, it is a mortgagee on Davies’ home. A copy of a title search for Davies’ home reflecting the mortgage owing to Moscowitz is attached as Appendix “T”. The McMurray Loan Agreement prohibits these payments.
- d) **Management fees (\$4.069 million):** These amounts were paid to Aeolian from Oakville, Kitchener, Burlington, Scollard, McMurray and Legacy Lane. These payments are prohibited under the Loan Agreements with each of these entities.
- e) **Loans to TSI, TSSI and MCIL (\$4.114 million):** The Davies Developers made loans of approximately \$4.114 million to TSI, TSSI and MCIL, the parent companies of the Textbook Entities and the Memory Care Entities. Each loan was made by cheque and the memo line on each of the cheques indicated that payment was a “loan”. The Loan Agreements do not permit the Davies Developers to make loans. The Receiver is unaware of the terms of these loans and whether they were documented, but the Receiver notes that no interest was received by any Davies Development in respect of any loan.
- f) **Textbook (256 Rideau Street) Inc. (“Rideau”) (\$3.7 million):** The Davies Developers made payments of \$3.7 million to Rideau. The Loan Agreements do not permit the Davies Developers to make these payments and these amounts were not used by the applicable Davies Developer to advance the Project for which the funds were raised.
- g) **Advances to affiliates (\$339,000):** These amounts are comprised of \$324,000 to Lafontaine and \$15,000 to Memory Care Investments (Victoria) Ltd. (“MC Victoria”). Davies is the sole director and officer of Lafontaine and MC Victoria (the shareholders of these entities are not known to the Receiver).
- Lafontaine: The Receiver understands that Lafontaine was incorporated to discontinue the operations of the retirement facility on the Kitchener Property at the time it was purchased by 237. The payments to Lafontaine were made by Scollard, Legacy Lane, Burlington and Oakville. These payments contravene these entities’ Loan Agreements as the payments do not relate to their Projects.
 - MC Victoria: Davies has advised the Receiver that MC Victoria was considering a project in Victoria, British Columbia. The payments to MC Victoria were made by Legacy Lane. This payment contravenes Legacy Lane’s Loan Agreement as it did not relate to the Legacy Lane project.

Payments for which Additional Information is Required

- h) **Other management fees (\$1.447 million):** Pursuant to Section 7.02(c) of the Loan Agreements with Bronson, 445 Princess, 525 Princess, 555 Princess and Ross Park, ordinary course payments to shareholders for amounts related to the management, development and operation of the Property are permitted, provided such payments are reasonable in relation to the services rendered. The amounts paid by these entities to their indirect shareholders were \$500,477 (to Aeolian) and \$947,200 (to 132). Davies has advised the Receiver that none of the Davies Developers entered into a management agreement with any party, including with him or any of the Shareholders.
- i) **Consulting and diligence fees (\$1.485 million):** All consulting and diligence fees were paid to Tier 1 Advisory or RSCG. These amounts do not appear to be referenced or disclosed in the Loan Agreements or Ancillary Documents reviewed by the Receiver and its counsel. The consulting fees that were referenced and disclosed in the Ancillary Documents were exhausted by the payment of the referral and broker fees (i.e. 15% to 16% of amounts raised from Investors).
- j) **Repayment of loan to Singh (\$650,000):** The Receiver has no information concerning this loan, including whether a loan was made. The Receiver has asked Harris for information concerning this loan, but it has not been provided as of the date of this Report.
- k) **Notary fees (\$330,000):** These amounts were paid to Tier 1 Advisory by the Davies Developers to have each investor's loan documents notarized. The Receiver has no knowledge of the documents that were notarized and whether these fees are reasonable in the circumstances.
- l) **Payments to Davies' family members (\$423,000):** The permissibility of these payments depends on the services provided, if any, by these individuals. The Receiver has no knowledge of the services provided.
- m) **Other (\$1.755 million):** This amount is largely comprised of payments to TSSI and TSI (\$872,000) and MCIL (\$522,000). The purpose of these payments cannot be determined by the Receiver based on the available books and records. Their permissibility would likely depend on the services provided and the reasonableness of the amounts charged. Given the general prohibition in the Loan Agreements with respect to payments to shareholders, the Receiver and its counsel have concerns regarding these payments.

3.2.1 Textbook and MCIL

1. TSI and TSSI are shareholders of the Textbook Entities. TSI and TSSI received a net amount of \$4.384 million from the entities listed in the table below. Of the amount advanced to TSI and TSSI, \$3.512 million was advanced by way of a loan, which is prohibited, as noted in 3(e) above.

| (unaudited; \$000) | Amount |
|--------------------|--------|
| Ross Park | 1,554 |
| 525 Princess | 1,080 |
| 445 Princess | 843 |
| 555 Princess | 786 |
| Other | 122 |
| | 4,384 |

2. MCIL is the direct shareholder of Oakville and Kitchener, and the indirect shareholder of Burlington. MCIL received a net amount of \$1.124 million from the entities listed in the table below. Of the amount advanced to MCIL, \$602,000 was advanced by way of a loan, which is prohibited as noted in 3(e) above.

| (unaudited; \$000) | Amount |
|----------------------------|--------|
| Entities owned by MCIL | |
| Kitchener | 128 |
| Burlington | 199 |
| Oakville | 305 |
| | 632 |
| Entities not owned by MCIL | |
| McMurray | 210 |
| Scollard | 181 |
| Legacy Lane | 44 |
| 445 Princess | 48 |
| Other | 9 |
| | 492 |
| Total | 1,124 |

3. TSI, TSSI and MCIL are not subject to insolvency proceedings, and neither the Receiver nor the Trustee has access to their bank statements and/or accounting records. Accordingly, the Receiver is unable to confirm whether the amounts advanced to them were used for development purposes for any of the Davies Developers. As part of the relief sought by the Receiver, the Receiver is seeking an order compelling TSI, TSSI and MCIL to make their books and records available to the Receiver.

3.2.2 Davies Entities

1. The Davies Entities received a net amount of \$6.763 million from the Davies Developers. A summary of the funds received by the Davies Entities is provided below.

| (unaudited; \$000) | Amount |
|---|---------------------|
| Management fees paid to Aeolian | |
| Scollard | 1,244 |
| Oakville | 1,112 |
| Kitchener | 506 |
| Burlington | 592 |
| Legacy Lane | 341 |
| McMurray | 274 |
| | <u>4,069</u> |
| Ross Park | 249 |
| Other entities | 251 |
| | <u>500</u> |
| | 4,569 |
| Dividends paid to Aeolian | |
| 525 Princess | 250 |
| 555 Princess | 250 |
| Ross Park | 250 |
| Bronson | 125 |
| | <u>875</u> |
| Payments to family members | |
| Judith Davies | 365 |
| Sarah Davies | 29 |
| Y2 Media Group Ltd. (owned by son of John Davies) | 14 |
| Jessica Davies | 14 |
| | <u>422</u> |
| Payments to Moscovitz | 935 |
| Payments to Davies | 55 |
| Less: receipts from Aeolian | (93) |
| Total | <u><u>6,763</u></u> |

2. The table reflects that:
- a) Aeolian received management fees of \$4.569 million, of which \$4.069 million is prohibited under the Scollard, Oakville, Kitchener, McMurray and Burlington Loan Agreements. As noted, Davies has advised the Receiver that there are no management agreements between Aeolian and any of the Davies Developers;
 - b) Aeolian received dividends of \$875,000 from 525 Princess, 555 Princess, Bronson and Ross Park;

- c) Davies' family members and entities related to Davies' family members received approximately \$422,000, including \$365,000 by Judith Davies, Davies' wife; and
- d) McMurray paid \$935,000 to Moscovitz. Moscovitz is not a registered mortgagee on McMurray's real property or any of the other of the Davies Developers' real property. It is a registered mortgagee on Davies' personal residence.

3.2.3 Singh Entities

1. Singh and entities related to Singh (the "Singh Entities") received a net amount of \$9.407 million from the Davies Developers. A summary of the funds received by the Singh Entities is provided below.

| (unaudited; \$000) | RSCG | Tier 1 Advisory | Raj Singh | Total |
|------------------------------|-------|-----------------|-----------|-------|
| Broker and referral fees | - | 5,861 | - | 5,861 |
| Due diligence and consulting | | | | |
| Scollard | 113 | 217 | - | 330 |
| Kitchener | - | 116 | - | 116 |
| Burlington | - | 78 | - | 78 |
| Oakville | 158 | 138 | - | 296 |
| 525 Princess | 113 | - | - | 113 |
| 555 Princess | 113 | - | - | 113 |
| 445 Princess | 226 | - | - | 226 |
| Bronson | 100 | - | - | 100 |
| Ross Park | 113 | - | - | 113 |
| | 936 | 549 | - | 1,485 |
| Dividends | | | | |
| 525 Princess | 250 | - | - | 250 |
| 555 Princess | 250 | - | - | 250 |
| Ross Park | 250 | - | - | 250 |
| Bronson | 375 | - | - | 375 |
| | 1,125 | - | - | 1,125 |
| Loan payments (Kitchener) | - | - | 650 | 650 |
| Notary fees | - | 330 | - | 330 |
| Unknown | 56 | 250 | - | 306 |
| Less: receipts | - | (250) | (100) | (350) |
| Total | 2,118 | 6,740 | 550 | 9,407 |

2. The table reflects:
 - a) Tier 1 Advisory received broker and referral fees of approximately \$5.861 million. (This is discussed in Section 3.4 below);
 - b) RSCG and Tier 1 Transaction received \$1.485 million in due diligence and consulting fees;
 - c) RSCG received \$1.125 million in "dividends" from 525 Princess, 555 Princess, Bronson and Ross Park;

- d) Singh received \$650,000 from Kitchener, which is characterized in the books and records as a loan repayment;
 - e) Tier 1 Advisory received \$330,000 as a reimbursement of notary fees from several Davies Developers (as discussed in Section 3.2 above).
3. Additionally, as a shareholder of 237, Singh participated in the gain on the sale of Kitchener. This transaction is not reflected in the table above. The gain appears to be approximately \$2.365 million; however, the Receiver has asked Harris to provide an accounting for this transaction.

3.2.4 Thompson Entities

1. 132 received \$1.947 million from the Davies Developers, comprised of a total of \$1 million in dividends from 525 Princess, 555 Princess, Bronson and Ross Park (\$250,000 from each entity) and \$947,000 in management fees from 525 Princess, 555 Princess, 445 Princess and Ross Park. The Loan Agreements for 525 Princess, 555 Princess, 445 Princess and Ross Park permit the payment of management fees; albeit such amounts are required to be reasonable. Davies has advised that none of the Davies Developers had a management services agreement with any party, including Thompson and entities controlled by Thompson.

3.2.5 Harris Entities

1. Dachstein received \$1 million in "dividends" from 525 Princess, 555 Princess, Bronson and Ross Park (\$250,000 from each entity). This is in addition to \$2.4 million in legal fees paid to Harris, which is discussed in Section 3.5 below.
2. As a shareholder of 237, Harris participated in the gain on the sale of Kitchener.

3.2.6 Rideau

1. Rideau is neither subject to these receivership proceedings nor is it a Davies Developer. Rideau is the registered owner of real properties municipally described as 256 Rideau Street, Ottawa and 211 Besserer Street, Ottawa (jointly, the "Ottawa Property").
2. The officers and directors of Rideau are Davies and Thompson.
3. According to title searches, the Ottawa Property was purchased by Rideau for \$11 million on or around November 6, 2015. Kingsett has two mortgages totalling \$8.25 million (before interest and fees, which continue to accrue) registered on title to the Ottawa Property.
4. The Receiver identified payments of \$3.7 million by the Davies Developers to Rideau, including \$2.75 million paid on October 27, 2015 by 555 Princess (\$1.39 million), Kitchener (\$111,000) and Ross Park (\$1.25 million).
5. As set out in the Receiver's Third Report to Court dated May 16, 2017 (the "Third Report"), it appears that monies transferred to Rideau from 555 Princess, Kitchener and Ross Park were used to finance the acquisition of the Ottawa Property. These payments contravene the Loan Agreements of 555 Princess, Kitchener and Ross Park as they are not related to the development of their Projects.

6. On May 16, 2017, the Receiver sought an order that the registrar issue and register Certificates of Pending Litigation (“CPLs”) on and against title to the real property owned by Rideau. On May 17 2017, the Court made the order and the CPLs were subsequently registered (the “May 17 Order”). A copy of the May 17 Order and the Third Report (without appendices) are attached as Appendix “U”, together with the Court’s endorsement. No party has contested the May 17 Order or the Receiver’s Third Report in support of the May 17 Order.

3.3 Interest and fees

1. The Davies Developers paid interest and fees of \$14.529 million, comprised of \$12.191 million in interest paid to the Trustee Corporations and \$2.338 million in interest and fees paid to the Other Lenders.
2. The interest payments to the Trustee Corporations were disclosed in the Loan Agreements.

3.4 Brokers

1. The Brokers and Tier 1 Advisory promoted and sold the syndicated mortgage investments to Investors. The Brokers sold the mortgages through other brokers, who would receive a fee for doing so. The Receiver is not aware of the sharing arrangement between the individual brokers and Tier 1 Mortgage/FCCM.
2. Each of the Loan Agreements includes a provision requiring the Davies Developer to pay:
 - a) 1% of the amounts raised by the relevant Trustee Corporation as a brokerage fee to the Brokers; and
 - b) 15% to 16%²⁰ of the amounts raised by the Trustee Corporation as a referral fee to an entity directed by the Brokers (collectively, the “Broker and Referral Fees”).
3. Broker and Referral Fees totalling \$15.848 million were paid by the Davies Developers, comprised of \$5.861 million to Tier 1 Advisory, \$9.768 million to FCCM and \$219,000 to other referring brokers. Based on the Receiver’s review, the broker and referral fees paid in connection with Kitchener, Burlington and McMurray are \$113,915 greater than permitted under the Loan Agreements, as reflected below.

| (unaudited; \$000) | | Permitted | Actual | |
|--------------------|-----------------|---------------|---------------|-----------|
| | Paid to | Referral Fees | Referral Fees | Variance |
| Kitchener | Tier 1 | 1,692,288 | 1,733,088 | (40,800) |
| Burlington | Tier 1 | 1,328,416 | 1,356,231 | (27,815) |
| McMurray | Various brokers | 480,000 | 525,300 | (45,300) |
| | | 3,500,704 | 3,614,619 | (113,915) |

4. The remaining referral fees appear to be consistent with the referral fees set out in the various Loan Agreements.

²⁰ Except the McMurray Loan Agreement, which provides fixed referral fees of \$445,000 (12.7% of the funds raised).

3.5 Professional fees

1. A summary of the professional fees paid by the Davies Developers is reflected in the table below.

| (unaudited; \$000) Davies Developer | Harris | Elliot Law Firm | Other | Total |
|--|--------------|--------------------|------------|--------------|
| Kitchener | 189 | 49 | 32 | 270 |
| Oakville | 402 | 68 | 48 | 518 |
| Bronson | 160 | 23 | 61 | 244 |
| 445 Princess | 255 | 29 | 186 | 470 |
| Burlington | 168 | 49 | 42 | 259 |
| Scollard | 308 | 32 | 107 | 447 |
| 555 Princess | 181 | 26 | 11 | 218 |
| 525 Princess | 188 | 26 | 11 | 225 |
| Legacy Lane | 96 | 26 | 27 | 149 |
| Ross Park | 274 | 26 | 11 | 311 |
| McMurray | 185 | - | 62 | 247 |
| Total | 2,406 | 354 | 598 | 3,357 |

2. The table reflects that:
 - a) \$2.406 million was paid to Harris. The Loan Agreements provide a combined estimate for Harris' legal fees of \$748,060, plus disbursements and HST. Pursuant to the Loan Agreements, Harris was to charge fees ranging \$25,000 to \$35,000 on the first advance under a Loan Agreement and \$15,000 to \$20,000 on subsequent advances. Harris has advised the Receiver that his law firm provided services to the Davies Developers in addition to those contemplated in the Loan Agreements. The Receiver is reviewing Harris' invoices, which were recently provided to it by Harris;
 - b) \$354,000 was paid to Elliot Law Firm ("Elliot"), counsel to the Trustee Corporations. The Loan Agreements provide a combined estimate for Elliot's legal fees of \$287,020, plus disbursements and HST; and
 - c) \$598,000 was paid in other professional fees.

3.6 Traditions Development Company

1. The Memory Care Entities and Legacy Lane made payments to Traditions Development Company ("Traditions") totaling \$1.487 million.
2. Davies has advised the Receiver that:
 - a) the fees paid to Traditions were development management fees relating to the Memory Care Entities and Legacy Lane Projects;

- b) there is no consulting or other agreement between Traditions and either the Memory Care Entities or Legacy Lane; and
 - c) the principal of Traditions, Bruce Stewart, was formerly a director and officer of the Memory Care Entities and Legacy Lane.
3. Harris has provided the Receiver with copies of the directors', officers' and shareholders' registers for each of the Memory Care Entities and Legacy Lane. A copy of the registers is attached as Appendix "V".
 4. The Legacy Lane Loan Agreement prohibits the payment of management and consulting fees to Legacy Lane's directors and officers.

4.0 Davies Developer Transactions

1. The table below illustrates that the Davies Developers routinely transferred monies between entities in contravention of the Loan Agreements. The Loan Agreements require that funds advanced from Investors are to be used solely for the Project for which the funds were raised. A summary of the transactions between Davies Developers is provided in the table below.

| (unaudited, \$000) Davies Developer | Amounts Received from Other Davies Developers | Amounts Advanced to Other Davies Developers | Net Received/ (Advanced) |
|--|--|--|-----------------------------|
| McMurray | 4,137 | 401 | 3,736 |
| Scollard | 5,980 | 2,906 | 3,074 |
| Legacy Lane | 1,023 | 773 | 250 |
| Ross Park | 838 | 247 | 591 |
| 555 Princess Street | 55 | 24 | 31 |
| 525 Princess Street | 57 | 80 | (23) |
| Burlington | 2,178 | 2,571 | (393) |
| Bronson | 281 | 1,087 | (806) |
| Kitchener | 1,225 | 2,943 | (1,718) |
| 445 Princess | 61 | 1,732 | (1,671) |
| Oakville | 1,368 | 4,439 | (3,071) |
| | 17,203 | 17,203 | - |

2. The details of the transactions among the Davies Developers is provided in Appendices "G" to "Q".

5.0 Disposition by Davies of His Cottage and a Home

1. The Receiver understands that Davies recently sold his cottage and is in the process of selling his house. In this regard:
 - a) on April 25, 2017, Davies sold his cottage for \$3 million. A copy of the title search for the cottage is attached as Appendix "W"; and
 - b) Davies has sold his home, which is jointly owned with his wife; however, based on the title search, it appears that the transaction has not yet closed. The listing price for the house was \$1.6 million.²¹ The Receiver does not know the current balance of the mortgage (Moscowitz is the registered mortgagee) and whether there is any equity in the house.
2. The Receiver has also been advised that Davies and/or his family, either directly or indirectly, own a property in Arizona in the United States. The Receiver has no other information regarding this property.

6.0 Conclusion and Recommendation

1. Based on the Receiver's findings as detailed throughout this Report, the Receiver recommends that the Court issue orders: (i) granting an interim Mareva injunction against Davies and Aeolian, and (ii) compelling TSI, TSSI and MCIL to forthwith provide a copy of its books and records to the Receiver. Certain of the Receiver's critical findings are summarized below:
 - a) The Davies Developers raised a total of approximately \$125 million to develop eleven Projects, including approximately \$93.975 million from Investors. Notwithstanding the substantial monies raised, each of the Projects is in the early stages of development and none has any capital to further develop its Project. Each is insolvent.
 - b) Millions of dollars were paid by the Davies Developers to the Shareholders in respect of management fees, consulting fees, dividends, loans and other amounts. A substantial portion of these payments contravenes the Loan Agreements.
 - c) Davies and entities or individuals related to him received a net amount of \$6.763 million from the Davies Developers, including at least \$4.069 million in prohibited management fees, \$875,000 in dividends, over \$900,000 in payments to Moscowitz, and over \$422,000 paid to family members. This does not consider any amounts that he may have received from TSI, TSSI and MCIL, which, on a combined basis, received over \$5.5 million from the Davies Developers. The Receiver believes it is appropriate to investigate further, *inter alia*, the use of the monies by TSI, TSSI and MCIL.
 - d) Of the amounts paid to Davies and parties related to Davies, Aeolian received \$5.444 million, including the prohibited management fees and dividends. Aeolian is also a shareholder of TSI, TSSI and MCIL.

²¹ The selling price is not known to the Receiver.

- e) Moscovitz is the mortgagee on Davies' personal residence. Moscovitz is not the mortgagee on any of the Davies Developers' real estate, including McMurray, which is the entity from which these payments were sourced.
- f) Entities related to the Shareholders received \$4 million in dividends. Although the intention to pay these dividends was disclosed in the applicable Davies Developer Loan Agreements, no value was created to justify the payment of the dividends and each entity had no or negligible equity after related party transactions and the payment of dividends. It is possible that the entities were insolvent at the time these amounts were paid, or that the payment of them contributed to their insolvency.
- g) The Davies Developers' transactions are poorly documented and their books and records are incomplete.
- h) There are numerous other breaches of the Loan Agreements, including: i) in the case of the Memory Care Entities, Scollard and McMurray, the granting of security interests on their real estate in priority to the security interests granted to the applicable Trustee Corporations; and ii) the routine transfer of dollars among the Davies Developers.
- i) Davies recently closed the sale of his cottage. His house has been sold and to the Receiver's knowledge, has not yet closed. In light of those dispositions and Davies' other conduct described in this Report, the Receiver is concerned that Davies is attempting to dissipate assets so that they are out of reach of creditors.

* * *

All of which is respectfully submitted,

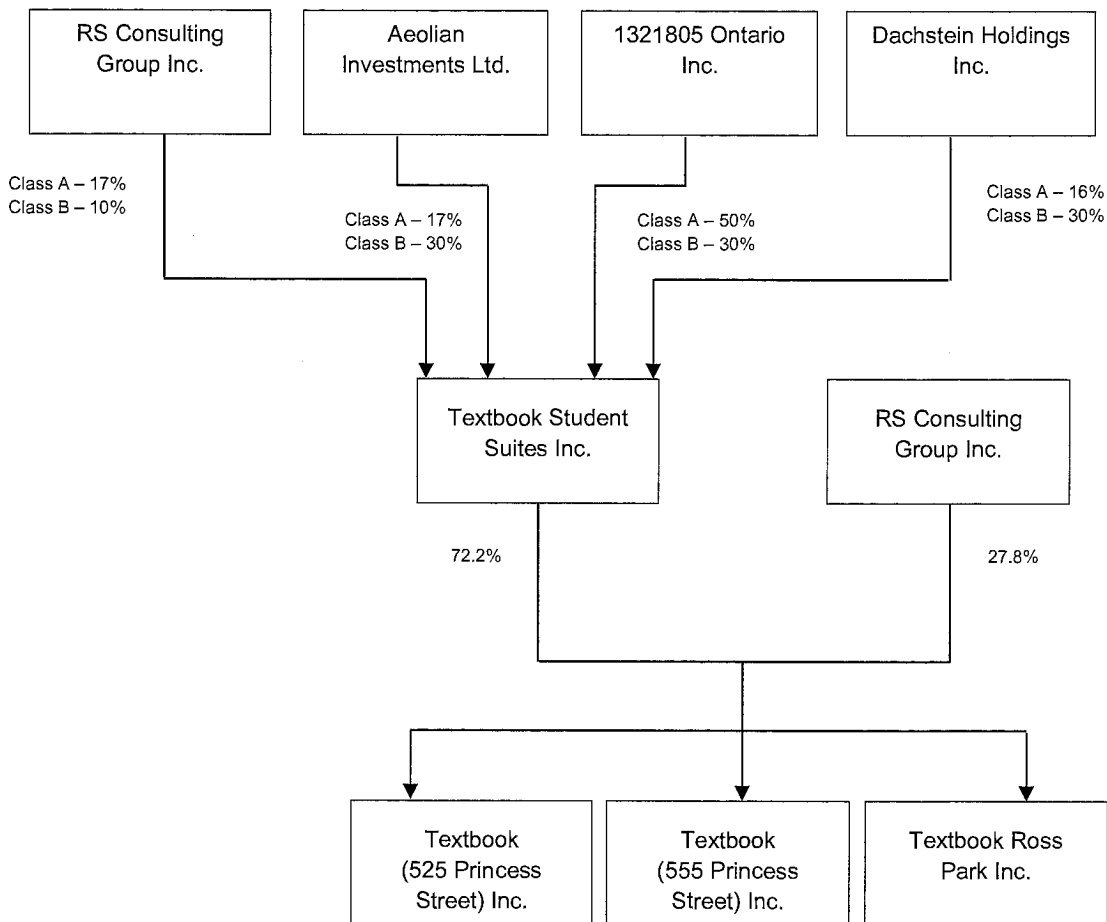
KSV Kofman Inc

**KSV KOFMAN INC.
SOLELY IN ITS CAPACITY AS RECEIVER AND MANAGER OF
CERTAIN PROPERTY OF SCOLLARD DEVELOPMENT CORPORATION, MEMORY CARE
INVESTMENTS (KITCHENER) LTD., MEMORY CARE INVESTMENTS (OAKVILLE) LTD.,
1703858 ONTARIO INC., LEGACY LANE INVESTMENTS LTD., TEXTBOOK (525 PRINCESS
STREET) INC. AND TEXTBOOK (555 PRINCESS STREET) INC.
AND NOT IN ITS PERSONAL OR IN ANY OTHER CAPACITY**

TAB B

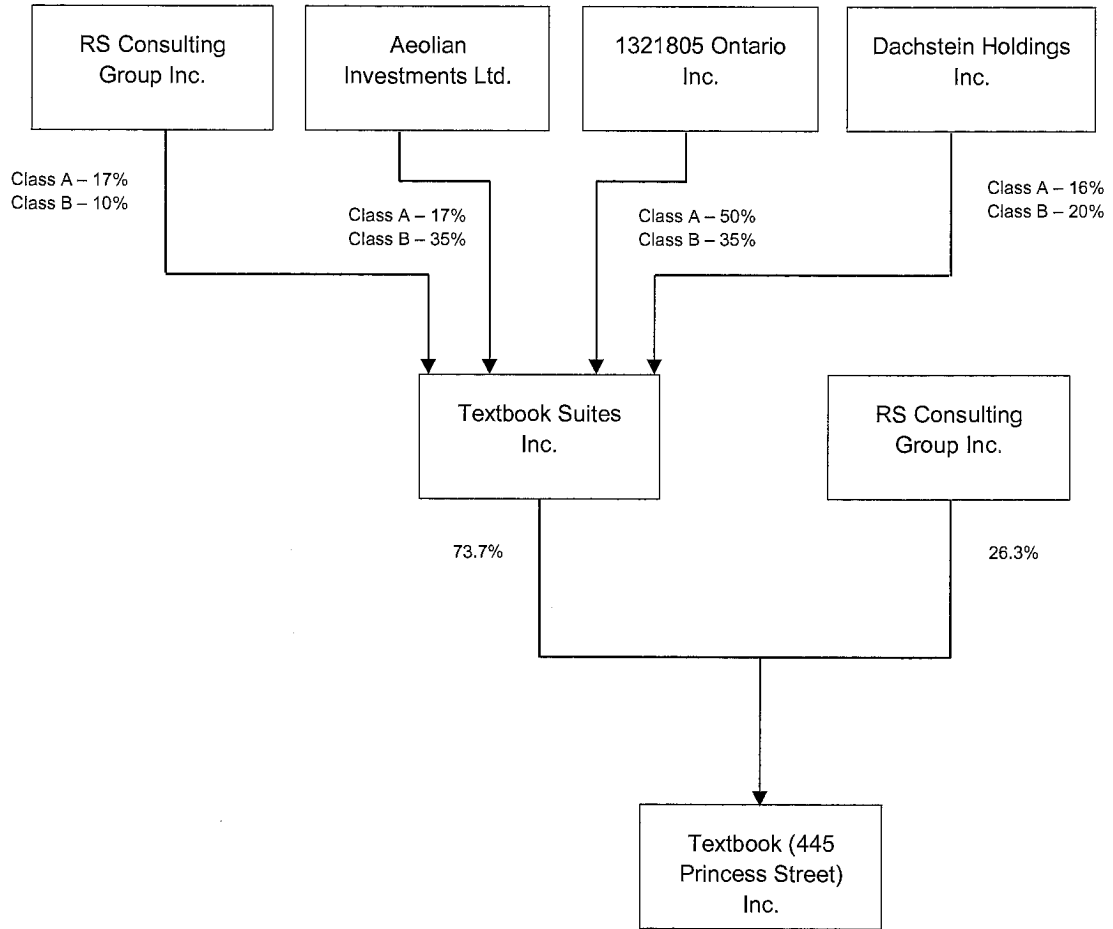
Appendix "B"

Textbook (525 Princess Street) Inc.¹
Textbook (555 Princess Street) Inc.
Textbook Ross Park Inc.



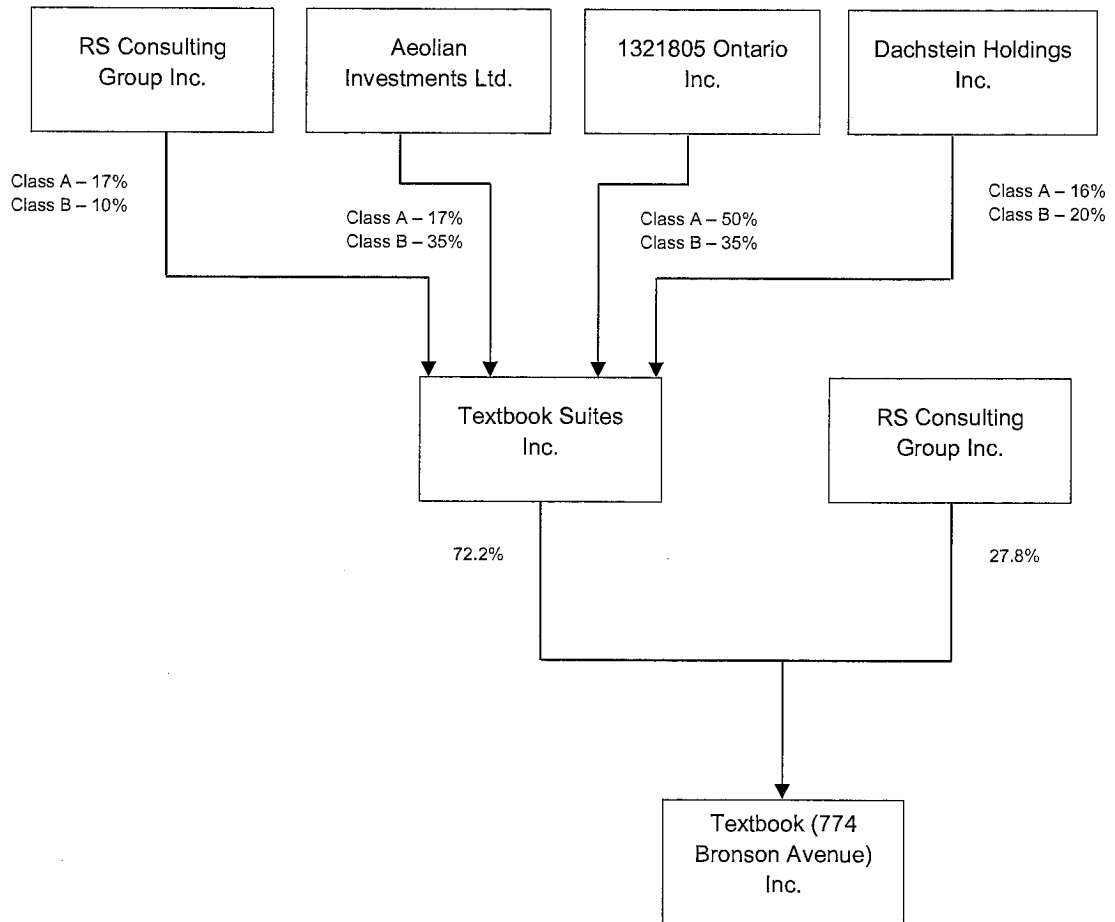
¹ Sourced from the Affidavit of John Davies sworn December 6, 2016 filed in support of the Davies Developers' application for protection under the *Companies' Creditors Arrangement Act*.

Textbook (445 Princess Street) Inc.¹



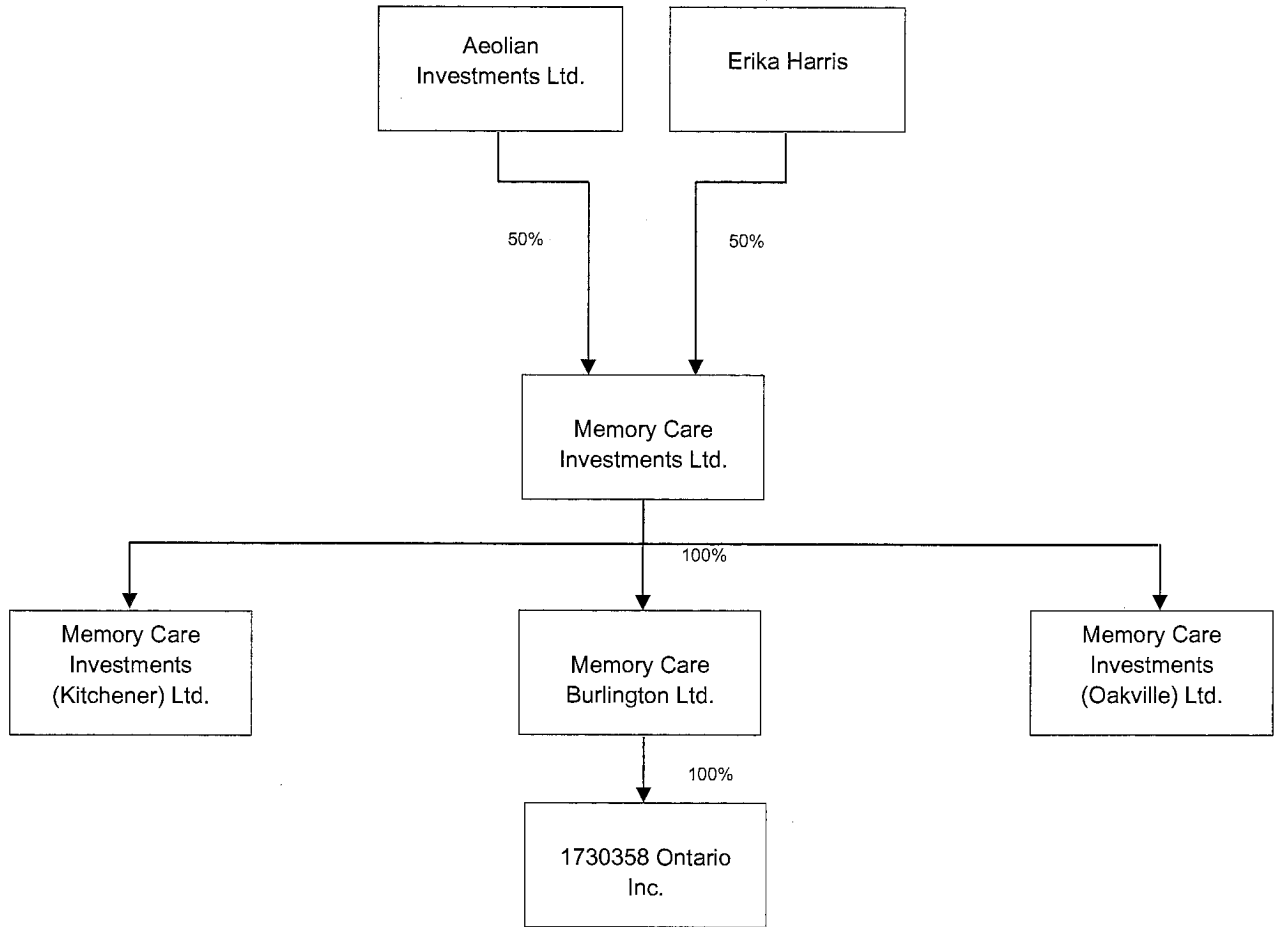
¹ Sourced from the Affidavit of John Davies sworn December 6, 2016 filed in support of the Davies Developers' application for protection under the *Companies' Creditors Arrangement Act*.

Textbook (774 Bronson Avenue) Inc.¹



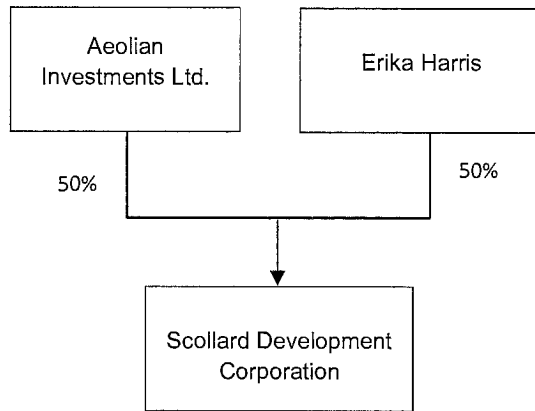
¹ Sourced from the Affidavit of John Davies sworn December 6, 2016 filed in support of the Davies Developers' application for protection under the *Companies' Creditors Arrangement Act*.

Memory Care Investments (Kitchener) Ltd. ¹
17303858 Ontario Inc.
Memory Care Investments (Oakville) Ltd.

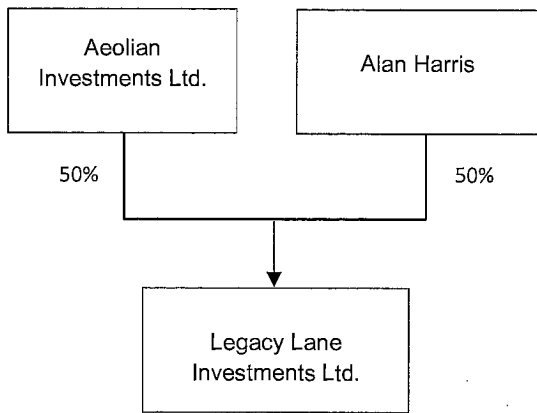


¹ Sourced from the Affidavit of John Davies sworn December 6, 2016 filed in support of the Davies Developers' application for protection under the *Companies' Creditors Arrangement Act*.

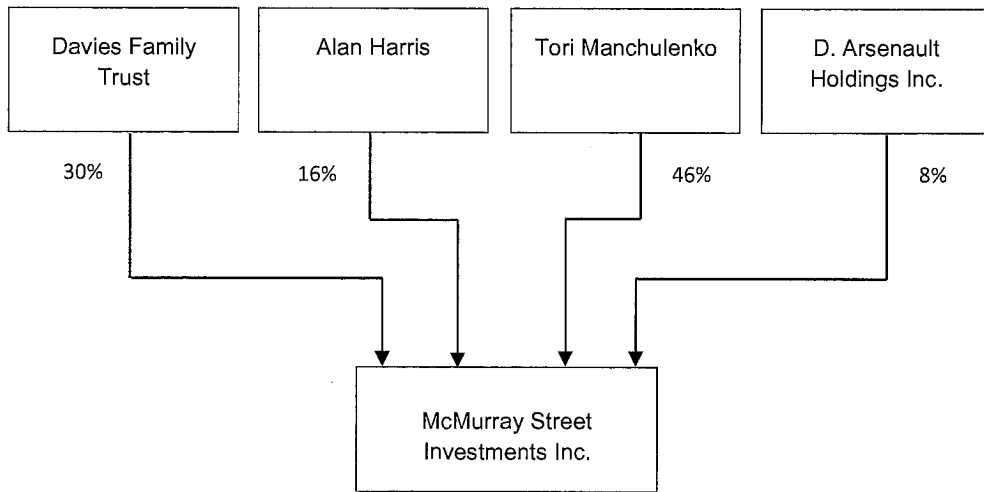
Scollard Development Corporation



Legacy Lane Investments Ltd.



McMurray Street Investments Inc.



TAB C

Appendix "C"



**Sixth Report of
KSV Kofman Inc.
as Receiver and Manager of Certain Property
of Scollard Development Corporation, Memory
Care Investments (Kitchener) Ltd., Memory
Care Investments (Oakville) Ltd., 1703858
Ontario Inc., Legacy Lane Investments Ltd.,
Textbook (525 Princess Street) Inc. and
Textbook (555 Princess Street) Inc.**

July 12, 2017

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

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

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

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

JULY 12, 2017

1.0 Introduction

1. This report ("Report") is filed by KSV Kofman Inc. ("KSV") as receiver and manager of the real property registered on title as being owned by Scollard Development Corporation ("Scollard"), Memory Care Investments (Kitchener) Ltd. ("Kitchener"), Memory Care Investments (Oakville) Ltd. ("Oakville"), 1703858 Ontario Inc. ("Burlington"), Legacy Lane Investments Ltd. ("Legacy Lane"), Textbook (555 Princess Street) Inc. ("555 Princess") and Textbook (525 Princess Street) Inc. ("525 Princess") (collectively the "Companies", and each a "Company"), and of all of their assets, undertakings and properties acquired for or used in relation to their real property (the "Property").
2. Pursuant to an order of the Ontario Superior Court of Justice ("Court") dated October 27, 2016, Grant Thornton Limited was appointed Trustee ("Trustee") of eleven entities¹ which raised monies from investors ("Investors") through syndicated mortgage investments (collectively, the "Trustee Corporations")². Eight of the Trustee Corporations then advanced these monies on a secured basis pursuant to loan agreements ("Loan Agreements") between the Trustee Corporation and the Companies and four related entities, Textbook Ross Park Inc. ("Ross Park"), Textbook (445 Princess Street) Inc. ("445 Princess"), Textbook (774 Bronson Avenue) Inc. ("Bronson") and McMurray Street Investments Inc. ("McMurray") (collectively, including the Companies, the "Davies Developers").

¹ 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

² Individuals who hold their mortgage investment in a Registered Retirement Savings Plan have a mortgage with Olympia Trust instead of the applicable Trustee Corporation.

3. On January 21, 2017, the Trustee brought a motion for an order (the "Receivership Order") appointing KSV as receiver and manager ("Receiver") of the Property owned by Scollard. On February 2, 2017, the Court made the Receivership Order.
4. On April 18, 2017, the Trustee brought a motion, *inter alia*, seeking orders:
 - a) amending and restating the Receivership Order to add the Property owned by the Companies (except for Scollard, which was already in receivership) (the "Amended and Restated Receivership Order"); and
 - b) compelling John Davies ("Davies"), a director and officer of each of the Davies Developers, to immediately deliver to the Trustee all of the bank statements for the Davies Developers (the "Production Order").
5. On April 28, 2017, the Court made the Amended and Restated Receivership Order and the Production Order.
6. The Amended and Restated Receivership Order was further amended and restated pursuant to a Court order made on May 2, 2017 to rectify certain clerical errors.
7. Following the issuance of the Amended and Restated Receivership Order, the Receiver commenced a review of the receipts and disbursements of the Companies (except for Scollard, which review was already underway). Additionally, at the request of the Trustee, the Receiver reviewed the receipts and disbursements of Ross Park, 445 Princess, Bronson and McMurray.
8. On June 6, 2017, the Receiver filed its Fourth Report to Court (the "Fourth Report"). The Fourth Report recommended, *inter alia*, that the Court issue an order restraining Davies and Aeolian Investments Ltd. ("Aeolian" and together with Davies, the "Defendants") from disposing of their assets (the "Mareva Order"). Aeolian is owned by Davies' wife, Judith, and his children. Its sole director and officer is Davies. Aeolian is an indirect or direct shareholder of each of the Davies Developers.³ A copy of the Fourth Report is attached as Appendix "A", without appendices.
9. On June 7, 2017, the Court made the Mareva Order on an interim basis. In addition to restraining the Defendants from disposing of their assets, the Mareva Order required:
 - a) Davies and Aeolian to provide sworn statements describing the nature, value and location of their worldwide assets (the "Asset Summaries");
 - b) Davies and Aeolian's authorized representative (being Davies) to submit to examinations regarding the Asset Summaries (the "Examination"); and
 - c) the Receiver to apply for an extension of the Mareva Order within ten days, failing which the Mareva Order would terminate.

³ Other than McMurray which is partially owned by the Davies Family Trust.

10. On June 12, 2017, the Receiver brought a motion to compel Textbook Suites Inc. ("TSI"), Textbook Student Suites Inc. ("TSSI"), Memory Care Investments Ltd ("MCIL") and Aeolian, each being shareholders of Davies Developers, to forthwith provide the Receiver with a copy of their books and records (the "Second Production Order").
11. On June 16, 2017, on the consent of the Defendants, the Court extended the Mareva Order until July 17, 2017.
12. Also on June 16, 2017, the Court made the Second Production Order. Davies has provided the Receiver with bank statements and financial information for TSI, TSSI, MCIL and Aeolian. The Defendants' legal counsel has also provided select emails which had been reviewed by their legal counsel; however, the Receiver is seeking production of all non-privileged emails, which has still not occurred as at the date hereof.
13. On June 23 and 27, 2017, the Defendants' legal counsel also produced several binders containing, among other things, email correspondence between Greg Harris ("Harris"), Raj Singh ("Singh"), Walter Thompson ("Thompson"), Bruce Stewart ("Stewart") and Davies relating to intercompany loans, development management fees, Davies' family members' work for the Davies Developers and various other issues; the pro formas for the Davies Developers that were provided to Tier 1 Transaction Advisory Inc. ("Tier 1") and the Trustee Corporations; and limited email correspondence to and from Tier 1/the Trustee Corporations.
14. On June 30, 2017, the Defendants' legal counsel produced answers to all of the undertakings given at the Examination (the "Undertakings").

1.1 Purposes of this Report

1. The purposes of this Report are to:
 - a) provide a summary of:
 - i. the Examination;
 - ii. Davies' and Judith Davies' re-listing of their jointly owned personal residence for sale (on the day that the Mareva Order was granted) and their subsequent conduct;
 - iii. the Receiver's review of Aeolian's receipts and disbursements for the period October 1, 2012 to May 29, 2017; and
 - b) recommend that the Court issue an order:
 - o extending the Mareva Order to apply to Davies and Aeolian on an interlocutory basis (until a final disposition of the proceeding); and
 - o expanding the Mareva Order to include the trustees (in such capacity) of the Davies Family Trust and the Davies Arizona Trust (jointly, the "Trusts"), and Judith Davies.

1.2 Restrictions

1. In preparing this Report, the Receiver has reviewed the information noted in Section 1.2 of the Fourth Report, as well as the following information:
 - a) Aeolian's accounting records and bank statements;
 - b) Aeolian's unaudited financial information;
 - c) the transcript of the Examination; and
 - d) the Undertakings.
2. A representative of the Receiver attended at the Examination.
3. The Receiver has not performed an audit of the financial information addressed in this Report. The findings discussed herein remain subject to further review. The Receiver expresses no opinion or other form of assurance with respect to the financial information presented in this Report.
4. The Receiver has not discussed this Report with Davies, Judith Davies or any other person, nor has Davies or Judith Davies had an opportunity to review the Report in advance of it being served.
5. To date, no party has refuted any of the findings in any of the reports filed by the Receiver, with the exception of Raj Singh and Tier 1, which claim that no unauthorized payments were made to Mr. Singh or entities related to Mr. Singh. Additionally, Mr. Davies, through his counsel, Dentons Canada LLP ("Dentons"), has advised that management fees paid to him and others were disclosed to Mr. Singh and were referenced in project forecasts provided by Davies and others to Mr. Singh. A copy of a document in this regard was included in documents provided on June 27, 2017 by Dentons to Bennett Jones LLP, the Receiver's legal counsel, and is attached as Appendix "B".

1.3 Currency

1. All references to currency in this Report are in Canadian dollars, unless otherwise noted.

2.0 Background

1. The Davies Developers are developers of student residences, accommodations for people suffering from various forms of cognitive impairment and low-rise condominiums. All but one of the Davies Developers' projects are in pre-construction⁴ (collectively the "Projects").

⁴ Footings and foundations have been laid down at the Project owned by Burlington.

2. The amounts borrowed by the Davies Developers total approximately \$119.940 million⁵, including approximately \$93.675 million in secured debt owing to the Trustee Corporations (being monies raised by the Trustee Corporations from Investors) and \$23.675 million owing to other mortgage lenders (the "Other Lenders"). The Receiver understands that all of the obligations owing to Other Lenders rank in priority to the Trustee Corporations.
3. The funds advanced from the Trustee Corporations to the Davies Developers were to be used to purchase real property and to pay the soft costs associated with the development of the Projects.

2.1 The Fourth Report

1. The Receiver's findings detailed in the Fourth Report include the following:
 - a) only a small percentage of the monies raised from Investors appear to have been used for their intended purpose;
 - b) each of the Projects is in the early stages of development and none of the Davies Developers has any capital to further develop their respective Projects;
 - c) millions of dollars were paid by the Davies Developers to their shareholders, including corporations relating to Davies, Thompson, Singh, Harris and Stewart, in respect of management fees, consulting fees, dividends, loans and other amounts. A substantial portion of these payments contravene the Loan Agreements;
 - d) Aeolian received approximately \$5.4 million from the Davies Developers, including at least \$4.1 million in prohibited management fees and \$875,000 in dividends;⁶
 - e) Davies and his family members received more than \$1.322 million from the Davies Developers, including \$900,000 in payments made from McMurray towards mortgages on Davies' personal residence and cottage and more than \$422,000 paid to family members;
 - f) entities related to the Davies Developers' shareholders (other than Aeolian) received \$3.125 million in dividends. The Receiver advised in the Fourth Report that it is its view that no value was created to justify the payment of the dividends. Each entity had no or negligible equity after related party transactions and the payment of the dividends; and

⁵ Represents the principal amounts owed, excluding interest and fees.

⁶ These amounts are based on the Davies Developers' financial records. Aeolian's financial records reflect that Aeolian received approximately \$5.6 million from the Davies Developers, including \$3.9 million in prohibited management fees and \$625,000 in dividends. A reconciliation of the differences is provided in Appendix "C".

- g) there appear to be numerous other breaches of the Loan Agreements, including: i) the granting of security interests on certain of the Davies Developers' real estate in priority to the security interests granted to the applicable Trustee Corporations;⁷ and ii) the routine transfer of monies among the Davies Developers.

3.0 Asset Summaries

1. Davies provided the Receiver with the Asset Summaries on June 14, 2017. Copies of Davies' Asset Summary and Aeolian's Asset Summary provided on that date are found in Appendix "D" and "E", respectively.
2. The Asset Summaries reflect that:
 - a) Davies has assets of approximately \$1.7 million (excluding the Davies Arizona Trust, which he has not quantified) and liabilities of \$2.0 million; and
 - b) Aeolian has shareholdings in six companies of no value or of an "unknown" value, and liabilities of approximately \$200,000.
3. Following the Examination, on June 30, 2017, in an answer to an undertaking, Davies provided the Receiver with revised Asset Summaries for him and Aeolian. Copies of Davies' revised Asset Summary and Aeolian's revised Asset Summary are attached at Appendix "F" and "G", respectively.
4. The revised Asset Summaries reflect that:
 - a) Davies has assets of approximately \$1.7 million (excluding the Davies Arizona Trust, which he has not quantified) and liabilities of approximately \$2.1 million; and
 - b) Aeolian has shareholdings in eight companies of no value or of an "unknown" value, and liabilities of approximately \$170,000.

4.0 Examination

1. The Receiver and its counsel, Bennett Jones LLP, conducted the Examination on June 16, 2017. A copy of the transcript from the Examination is attached as Appendix "H". Key items identified in the Examination are detailed in the sections below.

⁷ All of the Trustee Corporations were to have a first ranking security interest against the applicable Davies Developers' property, with the exception of Ross Park, Bronson and 445 Princess, in which case the Trustee Corporations were to have a second ranking security interest behind existing mortgages. In certain circumstances, the relevant Loan Agreements provide that the Trustee Corporation may be subordinated in limited situations, such as to grant a security interest to Taron Warranty Corporation.

4.1 The Davies Family Trust

1. During the Examination, Davies testified that, in or around 2002 or 2003, he established the Davies Family Trust.⁸ He further testified that the beneficiaries of the Davies Family Trust are Judith Davies and his four children: Jessica Deborah Davies, Sarah Ramona Davies, Andrew John Davies and Walter Robert Jackson Davies (collectively, the "Davies Children").⁹
2. Following the Examination, in an answer to an undertaking, Davies produced the Declaration of Trust for the Davies Family Trust, which indicates that the Davies Family Trust was established in December 2000 and the beneficiaries of the Davies Family Trust include not only Judith Davies and the Davies Children, but also Davies himself and any future children and issue of Davies. A copy of the Declaration of Trust for the Davies Family Trust is attached as Appendix "I".
3. Davies testified that the Davies Family Trust owns no property, has no assets and no bank account, though he subsequently admitted that the trust has an ownership interest in McMurray.¹⁰
4. Davies also testified that the Davies Family Trust received over \$300,000 from Aeolian, all of which was used to help fund part of a renovation on the Arizona Property (as defined in, and discussed in, Section 5.2.2 below).¹¹
5. The trustees of the Davies Family Trust are Davies, Judith Davies and Harris.¹² Harris is related to corporations that have ownership interests in several of the Davies Developers and has also acted as legal counsel to some or all of the Davies Developers.

4.2 The Davies Arizona Trust

1. During the Examination, Davies testified that, in or around 2013, the Davies Arizona Trust was established.¹³ He further testified that the beneficiaries of the Davies Arizona Trust are himself, Judith Davies, the Davies Children, Judith Davies' parents and siblings, as well as certain other family members.¹⁴

⁸ Qs. 137-138, p 31, lines 12-15.

⁹ Q. 141, p 31, lines 20-21.

¹⁰ Qs. 142-148, p 31, lines 22-25, p 32, lines 1-13.

¹¹ Qs. 401-402, p 101, lines 7-23.

¹² Qs. 139-140, p 31, lines 16-19; Declaration of Trust for the Davies Family Trust attached as Appendix "I".

¹³ Q. 150, p 32, lines 23-25.

¹⁴ Qs. 157-159, p 34, lines 4-14.

2. Following the Examination, in an answer to an undertaking, Davies produced the Irrevocable Trust Agreement for the Davies Arizona Trust, which indicates that the Davies Arizona Trust was established in December 2013 and the beneficiaries include only the Davies Children, though as the sole trustee, Davies may, among other things, distribute trust property to other persons and entities for the use and benefit of a beneficiary. As sole trustee, Davies also has broad powers under the Irrevocable Trust Agreement, including the power to, among other things, sell or convey real property in the manner and on the terms and conditions he, as sole trustee, deems appropriate. A copy of the Irrevocable Trust Agreement, along with the Certification of Trust, for the Davies Arizona Trust is attached as Appendix "J".

4.3 The Davies Arizona Trust's Arizona Property and Bank Account with JP Morgan Chase¹⁵

1. During the Examination, Davies testified that when the Davies Arizona Trust was first established in December 2013, it immediately purchased a house located at 35410 North 66th Place, Carefree, Arizona, 85377 (the "Arizona Property").¹⁶ Davies further testified that:
 - a) the Arizona Property was purchased for US\$1.2 million;¹⁷
 - b) the funds used to purchase the Arizona Property came from Aeolian,¹⁸ with the Bank of Internet having a US\$600,000 mortgage on the Arizona Property;^{19,20}
 - c) there are no other liens on the Arizona Property;²¹
 - d) almost US\$2 million was spent to renovate the Arizona Property following its acquisition;²² and
 - e) Aeolian funded all the costs to purchase and renovate the home, in part through the Trusts.
2. Davies testified that, notwithstanding the US\$1.2 million purchase price and the US\$2 million spent on renovations for the Arizona Property, it is currently worth US\$1.795 million given the depressed market for real estate in Arizona.²³

¹⁵ The amounts reflected in this section do not necessarily reconcile to the results of the Receiver's investigation.

¹⁶ Qs. 153-154 and 161, p. 33, lines 17-21, and p. 35, lines 15-20.

¹⁷ Q. 170, p 36, lines 18-19.

¹⁸ Q. 155, p 33, lines 22-24.

¹⁹ Qs. 171-172, p 36, lines 20-23.

²⁰ The Receiver has since obtained a Deed of Trust for the Arizona Property, which reflects that the lender is BOFI Federal Bank.

²¹ Q. 173, p 36, lines 24-25 and p 37, line 1.

²² Qs. 356-357, p 91, lines 5-9.

²³ Qs. 464-466, p 115, lines 17-24.

3. Following the Examination, in an answer to an undertaking, Davies produced an “as is” appraisal for the Arizona Property, a copy of which is attached as Appendix “K” (the “Appraisal”). The Appraisal states that the market value of the Arizona Property, as of December 9, 2015, is \$1,740,000; however, the Appraisal appears to have been performed before additional funds were spent on the Arizona Property. Davies has recently advised the Receiver that further renovations are required in order to complete the house and the house may be worth less than \$1,740,000.
4. Davies also testified that the Davies Arizona Trust has a bank account with the Chase Bank in Arizona (“Chase”) over which he has control.²⁴ The Receiver's legal counsel notified the Chase Bank about the Mareva Order, but received a response that Chase would not freeze the account in the US or provide information about the account until the Order is domesticated and recognized in the US. Davies' counsel recently advised that the current account balance of the Chase account is \$62.67 (chequing) and \$2.30 (savings).
5. On June 21, 2017, legal counsel for the Receiver sent a letter to legal counsel for Davies advising of the Receiver's position that the Arizona Property (and any other property of the Davies Arizona Trust) is caught by the terms of the Mareva Order and that Davies is accordingly precluded from, among other things, selling and encumbering the Arizona Property. A copy of the letter from the Receiver's counsel is attached as Appendix “L”.
6. On June 26, 2017, legal counsel for Davies responded by letter that it disagreed with the Receiver's position that the Arizona Property is subject to the terms of the Mareva Order, but confirmed that Davies will take no steps to sell or encumber the Arizona Property. A copy of the letter from Davies' counsel is attached as Appendix “M”.

4.4 Judith Davies

1. During the Examination, Davies acknowledged that funds flowed from Aeolian to his spouse Judith Davies.²⁵ Davies further testified that Judith Davies only recently began working part-time (and not for Aeolian or any Davies Developer) as a result of the activities involving the Davies Developers over the last eight or nine months. Prior to that, she did not work. During the Examination, Davies admitted that Judith Davies never worked for any of the Davies Developers²⁶; however, management fees were paid to her, through Aeolian, in any event.

²⁴ Qs. 164-165, p 36, lines 2-5.

²⁵ Qs. 391-393, p 98, lines 9-25 and p 99, lines 1-12.

²⁶ Q. 301, p 77, lines 10-13.

2. During the Examination, Davies testified that, over the last five years, he funded his living expenses by receiving development fees from the various Projects through Aeolian, and this has been his only employment over the last five years.²⁷ Davies testified that he does not have a personal bank account and has not had one for seven or eight years.²⁸ He testified that, in order to pay for living expenses, he either uses an Aeolian debit card or Judith Davies pays the expenses.^{29, 30} During the Examination, Davies further testified that funds flowed from Aeolian to Judith Davies for "income splitting" purposes.^{31, 32}
3. Davies also testified that Judith Davies has a bank account with Toronto-Dominion Bank.³³ The Receiver has no information concerning this account.

4.5 The Davies Children

1. During the Examination, Davies testified that certain Davies Children had limited involvement in some of the Davies Developers' projects. He testified that his daughter, Sarah Davies, was employed by the Davies Developers as a marketing director at a starting salary of \$3,300/month (in 2013), which was subsequently raised to \$3,600/month with a \$400 car allowance.³⁴ He testified that another daughter, Jessica Davies, was the receptionist for the McMurray sales centre for one summer.³⁵ He further testified that his son, Andrew Davies, and his company, Y2 Media, made recommendations on advertising rates and suggestions about the advertising for various companies, specifically McMurray and Scollard.³⁶
2. During the Examination, Davies testified that Aeolian has been making payments to Auto One to cover lease payments for certain of his children's vehicles, including a Range Rover Evoque and Ford Escape for two of his daughters.³⁷
3. Davies also testified that in the last eight months he has been selling assets belonging to his children, including artwork (which Aeolian purchased) to fund his living expenses.³⁸

²⁷ Qs. 36-37, p 10, lines 22-25 and p 11, lines 1-6.

²⁸ Qs. 17-22, p 8, lines 7-25.

²⁹ Q. 23, p 9, lines 1-4.

³⁰ The Receiver's investigation has revealed that Davies also used his Amex to pay for personal expenses.

³¹ Qs. 391-394, p 98, lines 9-25 and p 99, lines 1-14.

³² During the examination, Davies was asked to undertake to produce copies of his income tax returns for the last five years. This request was taken under advisement by Davies' legal counsel and, to date, the tax returns have not been provided. On June 30, 2017, Davies' legal counsel did, however, advise that "[t]his question was taken under advisement in order to agree upon terms for production. Mr. Davies and Aeolian are prepared to produce income statements and capital gains statements from their tax returns over the last five years."

³³ Qs. 63-64, p 15, lines 2-5.

³⁴ Qs. 293-297, p 75, lines 3-25 and p 76, lines 1-2.

³⁵ Q. 298, p 76, lines 3-8.

³⁶ Q. 299, p 76, lines 9-25 and p 77, lines 1-3.

³⁷ Qs. 416-418, p 107, lines 6-17.

³⁸ Qs. 53-57, p 13, lines 16-25, p 14, lines 1-6.

4.6 The Mortgage on Davies' and Judith Davies' Personal Residence

1. During the Examination, Davies testified that the mortgage on his and Judith Davies' personal residence located at 24 Country Club Drive, King City, Ontario in favour of Moskowitz Capital Mortgage Fund II (the "Moskowitz") has not been, and is not being, serviced and is in arrears.³⁹
2. On June 12, 2016, legal counsel to Moskowitz wrote to the Receiver's counsel to advise that the mortgage is in default and that Moskowitz had commenced power of sale proceedings. The Notice of Sale under Mortgage was enclosed with the letter, which advised that the redemption date under the power of sale proceedings is July 22, 2017.
3. On July 4, 2017, the Receiver's legal counsel wrote to Moskowitz's legal counsel to request a detailed breakdown of the amounts claimed under the Notice of Sale, including evidence of advances made under the mortgage and that the funds were used in connection with Davies' house. A copy of the letter is attached as Appendix "N". As of the date of this Report, Moskowitz has not provided the information.

4.7 The Recent Listing for Sale of Davies' and Judith Davies' Personal Residence

1. During the Examination, when asked whether his and Judith Davies' personal residence is currently listed for sale, Davies testified that the house "has not been re-listed".⁴⁰ However, the Receiver has recently learned that this is not true. Davies' and Judith Davies' personal residence is currently listed for sale on the MLS. The listing agreement with the real estate agent was entered into on June 7, 2017 (the date that the Mareva Order was first granted). An open house was held on July 8, 2017.
2. On July 10, 2017, immediately after learning about the listing and the open house, the Receiver's counsel contacted Davies' counsel and made inquiries regarding these developments. Davies' counsel confirmed that the residence is currently listed for sale and that Davies and Judith Davies are making active attempts to sell the residence due to concerns that if the residence is sold in a power of sale proceeding, it will sell at a lower price.
3. In light of this conduct, and the other conduct described in this Report, the Receiver is concerned that Davies is attempting to alienate and dissipate assets to put them beyond the reach of creditors, in direct contravention of the Mareva Order, and Judith Davies is assisting him in doing so, which is also in direct contravention of the Mareva Order.

³⁹ Q. 113, p 25, lines 23-25 and p 26, line 1.

⁴⁰ Q. 135, p 30, lines 11-13.

5.0 Review of Aeolian's Receipts and Disbursements

1. The Receiver prepared the financial information in this section based on information provided by Davies under the Second Production Order and bank statements provided by Royal Bank of Canada under the Mareva Order.
2. Aeolian's receipts and disbursements for the period October 1, 2012 to May 29, 2017 (the "Period") are provided in the table below.

| (unaudited; \$000) | Amount | % Receipts / Disbursements |
|---|--------|-------------------------------|
| Receipts | | |
| Advances from Related Parties | | |
| Davies Developers | 5,592 | 65.2% |
| TSSI, TSI and MCIL | 1,160 | 13.5% |
| Other related parties | 249 | 2.9% |
| | 7,001 | 81.6% |
| Raj Singh and entities related to Mr. Singh | 646 | 7.5% |
| Other | 230 | 2.7% |
| Unidentified | 695 | 8.1% |
| Total receipts | 8,572 | 100% |
| Disbursements | | |
| Personal | | |
| Judith Davies | 2,509 | 29.3% |
| Arizona Property | 1,841 | 21.5% |
| AMEX | 1,346 | 15.7% |
| Other | 1,387 | 16.2% |
| | 7,084 | 82.6% |
| Other and unidentified | 1,488 | 17.4% |
| Total disbursements | 8,572 | 100.0% |
| Ending balance | - | |

3. The table reflects that Aeolian had:
 - a) receipts of \$8.572 million, including advances from related parties of \$7.001 million; and
 - b) disbursements of approximately \$8.572 million, including Davies' and/or his family's personal expenses of \$7.084 million.
4. A discussion of certain of the line items in the table is provided below. Appendix "O" provides Aeolian's detailed Statement of Receipts and Disbursements (the "R&D").

5.1 Receipts

5.1.1 Amounts Received by Aeolian from Davies Developers

1. According to Aeolian's books and records, a summary of the amounts received by Aeolian from the Davies Developers is provided in the table below.

| (unaudited; \$000) | Amount |
|-----------------------------------|---------------------|
| Management fees | |
| Scollard | 1,248 |
| Oakville | 1,137 |
| Kitchener | 481 |
| Burlington | 433 |
| Legacy Lane | 316 |
| McMurray | 272 |
| | <u>3,887</u> |
| Other entities | 500 |
| | <u>4,387</u> |
| Dividends paid to Aeolian | |
| 555 Princess | 250 |
| Ross Park | 250 |
| Bronson | 125 |
| | <u>625</u> |
| Other | |
| Reimbursement of costs – McMurray | 236 |
| Profit from the sale of Kitchener | 344 |
| | <u>580</u> |
| Total | <u><u>5,592</u></u> |

2. The table reflects that:
 - a) Aeolian received management fees of \$4.387 million, of which \$3.887 million is prohibited under the Scollard, Oakville, Kitchener, McMurray and Burlington Loan Agreements. As discussed in the Fourth Report, Davies has advised the Receiver that there are no management agreements between Aeolian and any of the Davies Developers;
 - b) Aeolian received dividends of \$625,000 from 555 Princess, Bronson and Ross Park. According to the books and records of 525 Princess, Aeolian also received a \$250,000 dividend from 525 Princess. These funds do not appear to have been deposited into Aeolian's bank account; they were used to repay a loan owing to RS Consulting Group Inc., an entity controlled by Singh. The payment was made directly from Harris & Harris LLP to RS Consulting Group Inc.; and
 - c) Aeolian received \$344,000 in profit from the sale of the Kitchener property. Further details regarding this transaction are provided in Section 3.1.2 of the Fourth Report.

5.1.2 TSI, TSSI and MCIL

1. Approximately \$1.160 million was paid to Aeolian by TSI, TSSI and MCIL, consisting of management fees in the amount of approximately \$887,000, with the balance recorded as a reimbursement of costs. The Receiver tied the source of the majority of these payments to the general ledgers of TSI, TSSI and MCIL. For the most part, the source of these monies was the Davies Developers.

5.2 Disbursements

5.2.1 Judith Davies

1. Judith Davies received approximately \$2.509 million from Aeolian.
2. The payments to Judith Davies are recorded in Aeolian's financial statements as management fees. During the Examination, Davies testified that Judith Davies provided no services to the Davies Developers or Aeolian, but management fees were paid to her in any event.
3. Davies has advised that Judith Davies did not have any other source of income during the Period.

5.2.2 Arizona Property

1. The Davies Arizona Trust owns the Arizona Property.
2. Notwithstanding that the Receiver identified \$1.841 million being paid by Aeolian in respect of the Arizona Property, Davies testified during the Examination that:
 - a) approximately US\$3.2 million was spent to purchase and renovate the Arizona Property;
 - b) there is a US\$600,000 mortgage on the Arizona Property; and
 - c) Aeolian provided all of the funds used to purchase and renovate the Arizona Property.

5.2.3 Amex and Other Personal Payments

1. Other personal payments include:
 - a) approximately \$1.3 million to American Express - on July 4, 2017, the Receiver's legal counsel requested that Davies provide copies of the relevant American Express statements. Davies has provided statements for the period December 28, 2016 to June 27, 2017. Davies' legal counsel advised that the remaining statements have been requested from American Express;
 - b) \$160,000 paid to the Oshawa Generals Hockey Team – Davies or entities related to Davies had an ownership interest in the team;

- c) approximately \$105,000 for art purchases; and
 - d) approximately \$50,000 for jewellery.
2. Further details on these payments are provided in the R&D.

6.0 Conclusion

1. For the reasons detailed in this Report, the Receiver recommends that the Court issue an order (1) extending the Mareva Order to apply to Davies and Aeolian on an interlocutory basis (until a final disposition of the proceeding); and (2) expanding the Mareva Order to include the trustees (in such capacity) of the Trusts and Judith Davies.
2. Based on the currently available evidence, it would appear that Davies has transferred misappropriated assets to the Trusts and to Judith Davies in a transparent attempt to put such assets beyond the reach of the Companies to which he owed fiduciary duties. Further, it appears that Davies and Judith Davies are actively attempting to sell their personal residence and to dissipate assets in contravention of the Mareva Order. Given this pattern of conduct, there are concerns that the already depleted misappropriated assets may well continue to be further transferred to frustrate recovery efforts. The expansion of the Mareva Order is directly targeted at combatting that risk.

* * *

All of which is respectfully submitted,

KSV Kofman Inc

**KSV KOFMAN INC.
SOLELY IN ITS CAPACITY AS RECEIVER AND MANAGER OF
CERTAIN PROPERTY OF SCOLLARD DEVELOPMENT CORPORATION, MEMORY CARE
INVESTMENTS (KITCHENER) LTD., MEMORY CARE INVESTMENTS (OAKVILLE) LTD.,
1703858 ONTARIO INC., LEGACY LANE INVESTMENTS LTD., TEXTBOOK (525 PRINCESS
STREET) INC. AND TEXTBOOK (555 PRINCESS STREET) INC.
AND NOT IN ITS PERSONAL OR IN ANY OTHER CAPACITY**

TAB D

Appendix "D"

AMENDED THIS August 31/17 PURSUANT TO
MODIFIÉ CE CONFORMÉMENT À

75

RULE/LA RÈGLE 26.02 (c)

THE ORDER OF Justice Myers
L'ORDONNANCE DU

DATED / FAIT LE Aug 30 / 17

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

REGISTRAR
SUPERIOR COURT OF JUSTICE

GREFFIER
COUR SUPÉRIEURE DE JUSTICE

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

BETWEEN:

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

Plaintiff

- and -

AEOLIAN INVESTMENTS LTD., JOHN DAVIES IN HIS PERSONAL CAPACITY AND IN HIS CAPACITY AS TRUSTEE OF BOTH THE DAVIES ARIZONA TRUST AND THE DAVIES FAMILY TRUST, JUDITH DAVIES IN HER PERSONAL CAPACITY AND IN HER CAPACITY AS TRUSTEE OF THE DAVIES FAMILY TRUST, AND GREGORY HARRIS SOLELY IN HIS CAPACITY AS TRUSTEE OF THE DAVIES FAMILY TRUST

Defendants

FRESH AS AMENDED STATEMENT OF CLAIM

Notice of Action issued on June 6, 2017

CLAIM

1. The plaintiff, KSV Kofman Inc. (“KSV”), solely in its capacity as receiver and manager of certain property of Scollard Development Corporation (“Scollard”), Memory Care Investments (Kitchener) Ltd. (“Kitchener”), Memory Care Investments (Oakville) Ltd. (“Oakville”), 1703858 Ontario Inc. (“Burlington”), Legacy Lane Investments Ltd. (“Legacy Lane”), Textbook (525 Princess Street) Inc. (“525 Princess”) and Textbook (555 Princess Street) Inc. (“555 Princess”)

(collectively, the “**Receivership Companies**”), and not in its personal capacity or in any other capacity, claims against the defendants, Aeolian Investments Ltd. (“**Aeolian**”), John Davies (“**Mr. Davies**”) in his personal capacity and in his capacity as trustee and/or representative of both the Davies Arizona Trust (the “**Arizona Trust**”) and the Davies Family Trust (the “**Family Trust**”), Judith Davies (“**Ms. Davies**”) in her personal capacity and in her capacity as trustee and/or representative of the Family Trust, and Gregory Harris solely in his capacity as trustee and/or representative of the Family Trust (“**Mr. Harris**” and collectively with Aeolian, Mr. Davies and Ms. Davies, the “**Defendants**”), jointly and severally (as applicable):

- (a) a constructive trust and/or damages in the sum of \$50,000,000 or, in the alternative, damages in an amount to be assessed or determined by this Honourable Court, for the Defendants’ fraud, deceit, conspiracy, conversion, unlawful means tort and/or unjust enrichment, and for Mr. Davies’ breach of fiduciary duty and negligence;
- (b) orders for restitution, an accounting, and disgorgement of all assets, properties, and funds belonging to the Receivership Companies and improperly diverted by or to the Defendants or any person, corporation or other entity on their behalf;
- (c) a declaration that the plaintiff is entitled to trace the Receivership Companies’ assets, properties, and funds into the hands of the Defendants, and a declaration that the Defendants hold those assets, properties, and funds as constructive trustees for the plaintiff;
- (d) a constructive trust and tracing or following order in respect of all assets, properties, and funds belonging to the Receivership Companies and improperly diverted by or

to the Defendants or any person, corporation or other entity on their behalf, and in respect of the traceable products thereof;

- (e) an interim, interlocutory and permanent order, in the form of a worldwide *Mareva* injunction, restraining the Defendants and, as applicable, their respective servants, employees, agents, assigns, officers, directors and anyone else acting on their behalf or in conjunction with any of them, whether directly or indirectly, from selling, liquidating, removing, dissipating, alienating, transferring, assigning, encumbering, or similarly dealing with any of their assets, wherever situate;
- (f) a declaration that the liability of Mr. Davies arises out of fraud, embezzlement, misappropriation and/or defalcation while acting in a fiduciary capacity, and/or that the liability of Mr. Davies, Ms. Davies and Mr. Harris arises from obtaining property or services by false pretences or fraudulent misrepresentation, for purposes of sections 178(1)(d) and/or 178(1)(e) of the *Bankruptcy and Insolvency Act*, RSC, 1985, c B-3, as amended;
- (g) special damages, including all costs and expenses arising out of the detection, investigation, and quantification of the losses suffered by the Receivership Companies, in an amount to be particularized prior to trial;
- (h) punitive and/or exemplary damages in an amount to be particularized prior to trial;
- (i) pre-judgment and post-judgment interest on a compound basis or, alternatively, pursuant to the *Courts of Justice Act*, RSO 1990, c C 43, as amended;

- (j) costs of this action, including the costs of any and all interim and interlocutory motions, on a full indemnity or other appropriate scale, including all applicable taxes; and
- (k) such further and other relief, including equitable relief and constructive trusts in favour of the plaintiff, as this Honourable Court deems just.

Parties

2. The plaintiff, KSV, is the court-appointed receiver and manager of certain property of the Receivership Companies appointed pursuant to orders of the Ontario Superior Court of Justice (Commercial List) dated February 2, April 28 and May 2, 2017. Each of the Receivership Companies in respect of which KSV has been appointed receiver and manager was advanced monies on a secured basis by various trust corporations, which monies had been raised from investors through syndicated mortgage investments (“SMIs”) for particular real estate development projects specific to the respective Receivership Companies. In particular:

- (a) Scollard is a company incorporated pursuant to the laws of Ontario. It was advanced monies on a secured basis by Scollard Trustee Corporation (“**Scollard Trust Co.**”), which monies had been raised from investors through a SMI for a particular real estate development project specific to Scollard. The sole officer and director of Scollard is Mr. Davies.
- (b) Kitchener is a company incorporated pursuant to the laws of Ontario. It was advanced monies on a secured basis by MC Trustee (Kitchener) Ltd. (“**Kitchener Trust Co.**”), which monies had been raised from investors through a SMI for a

particular real estate development project specific to Kitchener. The sole officer and director of Kitchener is Mr. Davies.

- (c) Oakville is a company incorporated pursuant to the laws of Ontario. It was advanced monies on a secured basis by 2223947 Ontario Limited (“**Oakville/Burlington/Legacy Lane Trust Co.**”), which monies had been raised from investors through a SMI for a particular real estate development project specific to Oakville. The sole officer and director of Oakville is Mr. Davies.
- (d) Burlington is a company incorporated pursuant to the laws of Ontario. It was advanced monies on a secured basis by the Oakville/Burlington/Legacy Lane Trust Co., which monies had been raised from investors through a SMI for a particular real estate development project specific to Burlington. The sole officer and director of Burlington is Mr. Davies.
- (e) Legacy Lane is a company incorporated pursuant to the laws of Ontario. It was advanced monies on a secured basis by the Oakville/Burlington/Legacy Lane Trust Co., which monies had been raised from investors through a SMI for a particular real estate development project specific to Legacy Lane. The sole officer and director of Legacy Lane is Mr. Davies.
- (f) 525 Princess is a company incorporated pursuant to the laws of Ontario. It was advanced monies on a secured basis by Textbook Student Suites (525 Princess Street) Trustee Corporation (“**525 Trust Co.**”), which monies had been raised from investors through a SMI for a particular real estate development project specific to

525 Princess. The only officers and directors of 525 Princess are Mr. Davies and Walter Thompson (“**Mr. Thompson**”).

- (g) 555 Princess is a company incorporated pursuant to the laws of Ontario. It was advanced monies on a secured basis by Textbook Student Suites (555 Princess Street) Trustee Corporation (“**555 Trust Co.**” and together with Scollard Trust Co., Kitchener Trust Co., Oakville/Burlington/Legacy Lane Trust Co. and 525 Trust Co., the “**Trust Companies**”), which monies had been raised from investors through a SMI for a particular real estate development project specific to 555 Princess. The only officers and directors of 555 Princess are Mr. Davies and Mr. Thompson.

3. The defendant, Mr. Davies, is an individual residing in King City, Ontario. He was, at all material times, a director and officer of the Receivership Companies and other relevant entities. He was also, at all material times, the trustee and/or representative of the Family Trust, together with Ms. Davies and Mr. Harris. He was also, at all material times, the sole trustee and/or representative of the Arizona Trust.

4. The defendant, Ms. Davies, is an individual residing in King City, Ontario. She is Mr. Davies’ spouse. She was, at all material times, the trustee and/or representative of the Family Trust, together with Mr. Davies and Mr. Harris.

5. The defendant, Mr. Harris, is an individual residing in the Town of Nobleton, Ontario. He is a licensed Ontario lawyer in private practice. He was, at all material times, the trustee and/or representative of the Family Trust, together with Mr. Davies and Ms. Davies. Mr. Harris is a party to this litigation solely in his capacity as the trustee and/or representative of the Family Trust and

not in his personal capacity or in any other capacity. All allegations and claims against Mr. Harris relate exclusively to his role as trustee and/or representative of the Family Trust.

6. While the plaintiff's investigation into the SMI scheme is presently ongoing, the plaintiff has discovered no reason to date to believe that Ms. Davies or Mr. Harris, in their capacities as trustees of the Family Trust, engaged in any fraudulent, deceitful or other misconduct relating to the Family Trust. Nevertheless, given that the Family Trust improperly received and retained funds that were initially sourced from SMI monies advanced to the Receivership Companies, one or more of the trustees of the Family Trust caused, directed and/or had knowledge of such improper transfers. The role that each of the trustees played (or did not play) in these improper transfers is known only to the Defendants. In any event, each of the trustees of the Family Trust must be named as a defendant to allow the plaintiff to obtain the sought after relief regarding the assets improperly funneled to the Family Trust.

7. The Family Trust and the Arizona Trust are trusts that were established by or at the direction of Mr. Davies in or around 2003 and 2013, respectively. The beneficiaries of the Family Trust are Mr. Davies, Ms. Davies and the Davies children: Jessica Deborah Davies, Sarah Ramona Davies, Andrew John Davies and Walter Robert Jackson Davies (collectively, the "**Davies Children**"), as well as any future children and issue of Mr. Davies. The beneficiaries of the Arizona Trust are the Davies Children. Mr. Davies, in his capacity as sole trustee of the Arizona Trust, owns, among other things, real property municipally described as 35411 N. 66th Place in Carefree, Arizona, United States (the "**Arizona Property**"), that was acquired with funds from Aeolian, which were initially sourced from SMI monies advanced to the Receivership Companies and related entities.

8. The defendant, Aeolian, is a company incorporated pursuant to the laws of Ontario. Aeolian's mailing address is Mr. and Ms. Davies' personal residence in King City, Ontario. Aeolian is directly owned by Ms. Davies and the Davies Children. Mr. Davies is Aeolian's sole officer and director. Aeolian is a direct or indirect shareholder of each of the Receivership Companies. Specifically, Aeolian is a direct shareholder of Scollard and Legacy Lane. Aeolian is also a shareholder of Memory Care Investments Ltd. ("MCIL"), which is a shareholder of Kitchener, Oakville and Memory Care Investments Burlington Ltd. ("MC Burlington"), which wholly owns Burlington. Aeolian is a shareholder of Textbook Student Suites Inc. ("TSSI"), which is a shareholder of 525 Princess and 555 Princess. Aeolian is also a shareholder of Textbook Suites Inc. ("TSI"), which is a shareholder of Textbook (445 Princess Street) Inc. ("445 Princess"), a non-Receiver'ship Company.

Background

9. This action is in respect of a fraudulent SMI scheme whereby the Defendants conspired with one another to misappropriate millions of dollars from the investing public by diverting funds from the Receivership Companies (and the respective real estate development projects (the "Projects") for which the funds were specifically advanced) through corporate structures Mr. Davies directly and/or indirectly controlled to, *inter alia*, himself, his family members (including Ms. Davies) and other parties related to them (including Aeolian, the Family Trust and the Arizona Trust).

10. For each of the Receivership Companies' Projects, the applicable Receivership Company was advanced monies that were raised from investors through SMI offerings, which were sourced by Tier 1 Transaction Advisory Inc. and/or related entities (collectively, "Tier 1").

11. To support the amounts raised, the Receivership Companies retained an appraiser to provide estimated hypothetical market values of the subject sites, assuming they could be developed. The appraisals were based on several other assumptions, including: (i) development costs, as estimated by the applicable Receivership Company and as set out in the applicable Project pro forma, remaining consistent with the budget; (ii) the necessary planning approvals being obtained in a timely manner; and (iii) the development being commenced in a timely manner.

12. Importantly, certain of the Project pro formas on which the appraisals were based contained false and/or materially inaccurate and misleading information. For instance, certain of the pro formas:

- (a) reflected an equity injection by the respective Receivership Company, but in no case was such an equity contribution ever made by Mr. Davies or any of the other shareholders of the Receivership Companies;
- (b) failed to account for a significant portion of the initial costs, consisting of fees payable to Tier 1, amounts due to agents who sold the SMI products to investors, professional costs and amounts to fund a one-year interest reserve (the “**Initial Costs**”); and
- (c) did not reflect the payment of dividends, which, as described in more detail below, were paid from the initial SMI advances for each of 525 Princess and 555 Princess.

13. Further, certain appraisals were based on unrealistic and unattainable development plans that could never come to fruition given, among other things, zoning, planning and other restrictions.

14. Investors were led to believe that the advances from the Trust Companies to the Receivership Companies would be used for, and fully secured against, specific real property with a first-ranking security interest. However, this was not the case. Each initial SMI fundraise significantly exceeded the purchase price of the real property, resulting in the loans from each of the Trust Companies to the Receivership Companies being under-secured from the day they were made. Further, contrary to the representations made to investors, in some instances the Receivership Companies borrowed funds on a first-ranking secured basis against the real property *after* raising the SMIs.

15. Of the SMI monies raised, approximately 30% of the proceeds was immediately used to pay the Initial Costs.

16. The remaining amounts were routinely used for other Projects in respect of which the investors had no security interest.

17. Certain (and perhaps all) of the Receivership Companies were insolvent from the date of the first SMI advance and the Projects undertaken by the Receivership Companies had virtually no prospect of success due to, among other things, the lack of equity capital (which necessitated further borrowing to advance the Projects), the significant Initial Costs, the use of monies to fund expenses on other unrelated projects, and the front-end loading of excessive dividends, management fees and other undue payments to Mr. Davies and to affiliates of, and persons related to, Mr. Davies and others.

18. Notwithstanding that approximately \$65 million was raised from investors through SMIs during a booming real estate market, the Receivership Companies currently only have properties

for which they collectively paid approximately \$13.5 million,¹ all of which remain in the pre-construction phase (with the exception of the Burlington Project, which has footings and foundations), and no available cash to further develop the Projects. Had there not been new financings in other projects that raised additional funds from new investors, which funds were loaned to and among the Receivership Companies to fund pre-existing liabilities, the Receivership Companies would have been unable to service interest and other obligations they were required to pay. Accordingly, the scheme had all of the hallmarks of a Ponzi scheme as its continuance was dependent upon the raising of ever increasing sums of new money.

19. Mr. Davies, Ms. Davies and entities related to them collectively received approximately \$5 million from the Receivership Companies, yet the investors, who were advised they would have safe and fully secured investments in real property with a first-ranking charge (which would only be subordinated to construction financing intended to create additional value), stand to lose the majority of their investment.

20. The Defendants' conduct has exposed the Receivership Companies to significant liabilities in the form of claims for damages and losses from their creditors, including the innocent investors whose funds they misappropriated.

The Loan Agreements

21. Under the loan agreements between the respective Receivership Companies and the applicable Trust Companies (the "**Loan Agreements**"), the funds advanced from the Trust

¹ Pursuant to a Court Order dated August 3, 2017, the Scollard property, which was acquired for \$9 million, was sold.

Companies to the Receivership Companies were to be used to purchase real property and to pay soft costs associated with the Projects for which the funds were invested and advanced.

22. In raising the monies from investors, the Receivership Companies covenanted that they would not, without the consent of the applicable Trust Company (subject to certain limited exceptions), “use the proceeds of any Loan Instalment for any purposes other than the development and construction of the project on the Property”.

Prohibited Management Fees

23. Pursuant to Section 7.02(c) of the Loan Agreements with Scollard, Oakville, Kitchener, Burlington and Legacy Lane, the payment of management fees to shareholders is prohibited absent the written consent of the applicable Trust Company.

24. Pursuant to Section 7.02(c) of the Loan Agreements with 525 Princess and 555 Princess, ordinary course payments to shareholders for amounts related to the management, development and operation of the Property are permitted, but only if such payments are reasonable in relation to the services rendered, unless the written consent of the applicable Trust Company is obtained.

25. Contrary to these Loan Agreements and the Receivership Companies’ contractual and legal obligations, Mr. Davies caused the Receivership Companies to improperly pay millions of dollars in management fees directly to Aeolian, notwithstanding that, among other things, the Receivership Companies never (i) received the written consent of the Trust Companies for these payments, (ii) entered into any management services agreements, or (iii) received services that would justify such payments.

26. Specifically, Mr. Davies caused certain Receivership Companies, including Scollard, Oakville, Kitchener, Burlington and Legacy Lane, to transfer \$3.795 million in prohibited management fees directly to Aeolian:

- (a) Scollard transferred approximately \$1,244,000 to Aeolian;
- (b) Oakville transferred approximately \$1,112,000 to Aeolian;
- (c) Kitchener transferred approximately \$506,000 to Aeolian;
- (d) Burlington transferred approximately \$592,000 to Aeolian; and
- (e) Legacy Lane transferred approximately \$341,000 to Aeolian.

27. These payments are all prohibited under the Loan Agreements.

28. Mr. Davies also caused 525 Princess and 555 Princess to transfer to Aeolian (purportedly in respect of management fees) amounts that are unreasonable, particularly given that these Receivership Companies never entered into any management agreements with Aeolian, the Projects for which the funds were advanced have achieved very limited progress (they both remain in the pre-construction phase), and the intended Projects are unlikely to ever be developed because of, among other things, zoning and other restrictions that preclude such developments.

29. These payments are also all prohibited under the Loan Agreements.

30. Further, the management fees in respect of each of the Projects were paid at an accelerated rate inconsistent with the stage of development of the Projects.

31. These payments are all in addition to other improper payments that Mr. Davies caused certain non-Receiverhip Companies that Mr. Davies controls, including McMurray Street Investments Inc. (“**McMurray**”) and Textbook Ross Park Inc. (“**Ross Park**”), to make to Aeolian, purportedly also in respect of management fees.

Improper Transfers to TSI, TSSI and MCIL

32. Contrary to the Loan Agreements and the Receiverhip Companies’ contractual and legal obligations, Mr. Davies caused certain of the Receiverhip Companies to improperly transfer approximately \$2.1 million to TSI, TSSI and MCIL, the parent companies of Kitchener, Oakville, Burlington, 525 Princess and 555 Princess, all three of which are owned, in part, by Aeolian.

33. These funds were transferred to TSI, TSSI and MCIL by cheque. The memo line on each of the cheques indicated that payment was a “loan”, notwithstanding that:

- (a) none of these “loans” were documented;
- (b) none of these “loans” were secured in any way;
- (c) no interest has been received by any of the applicable Receiverhip Companies on account of any such “loan”; and
- (d) the relevant Loan Agreements do not permit the applicable Receiverhip Companies to make these loans.

Improper Dividends

34. Mr. Davies also caused certain Receiverhip Companies to improperly pay significant dividends to Aeolian and others. Specifically, Mr. Davies caused 525 Princess and 555 Princess

to respectively pay \$250,000 each in dividends to Aeolian (for a total of \$500,000). Mr. Davies further caused an additional \$1.5 million in dividends to be paid from 525 Princess and 555 Princess to the companies' other shareholders.

35. While the payment of dividends is permitted under the Loan Agreements in certain circumstances, dividends are only to be paid from the "excess proceeds after the [real estate development property] has been acquired". In each instance, Mr. Davies caused the dividends to be paid to Aeolian and the other shareholders immediately after 525 Princess and 555 Princess received the funds from the applicable Trust Company at a time when 525 Princess and 555 Princess had no profits and insufficient cash to develop the respective Projects. As a result of the payment of dividends and the payments to related parties, 525 Princess and 555 Princess essentially had no further monies to advance their respective Projects.

36. These dividend distributions caused 525 Princess and 555 Princess to become insolvent or contributed to their insolvency (if they were not already insolvent at the time of payment).

Improper Payments to Mr. Davies' Family Members

37. Mr. Davies also caused certain of the Receivership Companies to make further payments directly, and indirectly through Aeolian, to Ms. Davies and certain Davies Children for services purportedly rendered by them in connection with the Projects. To the extent these services were not provided, or the payments in respect of any services that were provided are unreasonable, these payments are prohibited under the applicable Loan Agreements and constitute a breach of the Loan Agreements.

Improper Inter-Company Transfers and Transfers to Affiliates

38. In further contravention of the Loan Agreements, Mr. Davies routinely caused the Receivership Companies to improperly transfer monies between entities and to affiliates, including over \$17 million to and among the Receivership Companies and certain non-Receivership Companies that Mr. Davies controls, including 445 Princess, Textbook (774 Bronson Avenue) Inc. ("**Bronson**"), Ross Park and McMurray as well as TSI, TSSI and MCIL, amongst others.

39. Mr. Davies caused such intercompany transfers to be made as the Receivership Companies' Projects were facing a liquidity crisis, which necessitated the making of intercompany loans to perpetuate the scheme and avoid defaulting on the loans from the Trust Companies and the Receivership Companies' other obligations. This has all of the hallmarks of a Ponzi scheme.

40. Mr. Davies also caused certain Receivership Companies to improperly transfer monies to Lafontaine Terrace Management Corporation ("**Lafontaine**") and Memory Care Investments (Victoria) Ltd. ("**MC Victoria**") – two companies in respect of which Mr. Davies is the sole director and officer, which are both owned, in different proportions, by Mr. Davies and/or Aeolian, amongst others. Specifically:

- (a) Scollard, Legacy Lane, Burlington and Oakville improperly transferred a total of \$324,000 to Lafontaine; and
- (b) Legacy Lane improperly transferred \$15,000 to MC Victoria.

41. These transfers are prohibited under the applicable Loan Agreements and constitute a breach of the Loan Agreements.

Misappropriation of Funds to Finance the Purchase of the Ottawa Property

42. Mr. Davies also improperly diverted further funds from 555 Princess and Kitchener (and the respective Projects in which the funds were required to be invested) to a non-Receiver'ship Company that Mr. Davies controlled, Generx (Byward Hall) Inc. (formerly Textbook (256 Rideau St.) Inc.) ("**Rideau**"), which is also now in receivership, to finance Rideau's purchase of real property municipally described as 256 Rideau Street, Ottawa, Ontario and 211 Besserer Street, Ottawa, Ontario (collectively, the "**Ottawa Property**").

43. The Ottawa Property was purchased by Rideau on or around November 6, 2015 for \$11 million.

44. Immediately prior to Rideau's purchase of the Ottawa Property, on October 27, 2015, Mr. Davies caused 555 Princess to improperly transfer \$1.39 million to Rideau, and Mr. Davies caused Kitchener to improperly transfer \$111,000 to Rideau, both by way of cheque. The cheques were both signed by Mr. Davies.

45. The funds were transferred from 555 Princess and Kitchener to Rideau for no consideration, with no security, for an illegitimate business purpose and in contravention of the relevant Loan Agreements.

46. Despite the fact that the funds were required to be used for specific Projects to be respectively undertaken by 555 Princess and Kitchener, Mr. Davies caused the funds to be transferred to Rideau with complete disregard for the separate corporate identities of 555 Princess, Kitchener and Rideau and the contractual and legal obligations of the parties, which had the result of sheltering assets and frustrating creditors of both 555 Princess and Kitchener.

47. Following Rideau's acquisition of the Ottawa Property, Mr. Davies caused a further \$61,200 to be improperly transferred to Rideau from 555 Princess, 525 Princess and Burlington by way of cheques, each of which was also signed by Mr. Davies. Specifically:

- (a) \$2,200 was transferred by Burlington to Rideau on November 5, 2015;
- (b) \$36,000 was transferred by 555 Princess to Rideau on December 17, 2015;
- (c) \$7,000 was transferred by 555 Princess to Rideau on May 31, 2016; and
- (d) \$16,000 was transferred by 525 Princess to Rideau on June 20, 2016.

48. Despite the fact that these funds were required to be used for the specific Projects to be respectively undertaken by 555 Princess, 525 Princess and Burlington, the \$61,200 was transferred to Rideau for no consideration, with no security, for an illegitimate business purpose and in contravention of the relevant Loan Agreements.

The Arizona Property

49. The Arizona Property was purchased by the Arizona Trust for US\$1.2 million. The funds used to purchase the Arizona Property came from Aeolian, with the BofI Federal Bank having a US\$600,000 mortgage on the Arizona Property. Almost US\$2 million was spent to renovate the Arizona Property following its acquisition. Aeolian funded substantially all of the costs to purchase and renovate the Arizona Property (at least in part through the Family Trust and the Arizona Trust), which funds came directly and/or indirectly from the Receivership Companies and related entities. Ms. Davies and/or Mr. Harris, as trustees and/or representatives of the Family Trust, had knowledge of these payments.

Aeolian and Ms. Davies

50. Aeolian transferred over \$2.5 million, which it received from the Receivership Companies and other related entities, directly to Ms. Davies, purportedly in respect of management fees, although she performed no work for or on behalf of Aeolian or any of the Receivership Companies. Aeolian further used \$1.3 million, which it received from the Receivership Companies and other related entities, to pay day-to-day living and other personal expenses charged on an American Express card used by Mr. and Ms. Davies. Additionally, over US\$1.8 million, which initially came from the Receivership Companies and other related entities, went from Aeolian toward the purchase and renovation of the Arizona Property.

51. At all material times, Aeolian and Ms. Davies knowingly acted as a conduit for Mr. Davies to improperly divert and funnel millions of dollars from the Receivership Companies to himself, his family members and others for their own personal use and benefit.

Current Status of Projects

52. Millions of dollars were paid by the Receivership Companies to Mr. Davies, Ms. Davies and other related parties in respect of management fees, dividends and other amounts; however, all of the Projects remain in the early stages of development and none of the Receivership Companies has any capital to further develop their respective Projects.

53. Mr. Davies was fully aware that the Projects would suffer, and were in fact suffering, from a liquidity crisis. Notwithstanding this knowledge, rather than addressing the liquidity issues in a reasonable and appropriate manner in accordance with his legal obligations, Mr. Davies instead raised, and/or facilitated the raising of, further funds from investors, purportedly for particular

Projects, with full knowledge, and with the intention, that those funds would instead be used to improperly pay interest payments and other expenses in relation to other Projects that had no connection to the specific Projects for which the funds were purportedly raised, in contravention of the Loan Agreements. This allowed the Defendants to perpetuate, and continue to perpetuate, their fraudulent scheme.

54. The acts and omissions of Mr. Davies purposefully mislead and defrauded the Receivership Companies and their creditors, including the innocent investors whose funds were misappropriated. Specifically, investors were intentionally lead to believe that they were investing on the basis of a particular Loan Agreement (and the attributes of a specific Project), when Mr. Davies specifically knew and intended that the funds would go elsewhere, resulting in the misappropriation and pilfering of funds.

Fraud and Deceit

55. The Defendants perpetrated the fraudulent scheme described herein. Although the precise particulars of the fraudulent scheme are only fully known to the Defendants at this time, they include, without limitation:

- (a) With respect to Mr. Davies:
 - (i) intentionally creating and/or facilitating the creation of Project pro formas that in no way reflected commercial reality to obtain artificially inflated appraisals that were used in connection with the SMI offerings and the raising of capital from investors;

- (ii) misrepresenting the nature of the Projects and the potential for the Project development to be successfully executed, including the likelihood of obtaining the necessary planning approvals;
 - (iii) knowingly concealing and falsely representing the capital structure of the Receivership Companies, including the purported equity injections that would be made by shareholders; and/or
 - (iv) intentionally and deceitfully raising and/or facilitating the raising of funds from investors, and diverting those funds from the Receivership Companies to which they were advanced, for purposes inconsistent with the purposes for which the funds were purportedly invested and advanced;
- (b) With respect to Mr. Davies, Ms. Davies and/or Aeolian:
- (i) knowingly concealing and falsely representing the relationships between themselves and other related, non-arm's length parties;
 - (ii) knowingly directing, causing, facilitating and/or allowing prohibited payments and transfers to be made by the Receivership Companies to such related, non-arm's length parties, including payments and transfers for which no goods or services, or no goods or services of any material value, were provided;
 - (iii) dishonestly diverting funds from the Receivership Companies to shell corporations and a network of non-arm's length parties to obtain secret profits for their own benefits; and/or

- (iv) intentionally and deceitfully directing and/or facilitating payments to shell corporations and a network of non-arm's length parties to covertly divert funds from the Receivership Companies, shelter the funds, avoid detection and thwart recovery attempts;
- (c) With respect to some or all of the Defendants:
- (i) knowingly receiving, retaining and/or using funds, which rightfully belonged to the Receivership Companies; and/or
 - (ii) failing to take any steps, or any reasonable or sufficient steps, to stop the improper conduct or mitigate the harm being caused by it.

56. Mr. Davies, Ms. Davies and entities related to them (including Aeolian, the Family Trust and the Arizona Trust) perpetrated and/or facilitated the fraudulent scheme described herein in order to profit, and continue to profit, through the receipt of millions in undue management fees (which exceeded \$3.8 million from the Receivership Companies), dividends (\$500,000 from the Receivership Companies) and/or other amounts to which they were not properly entitled.

57. All of the above caused detriment and deprivation to the Receivership Companies.

Conspiracy

58. Some or all of the Defendants acted in combination or in concert, by agreement or with a common design, to perpetrate the fraudulent scheme described herein. The full particulars of the agreement or common design are only fully known to these Defendants at this time, but further particulars will be provided in advance of trial.

59. The conduct of these Defendants in perpetrating the fraudulent scheme was unlawful (including the torts and other wrongful acts and omissions described herein) and directed towards the Receivership Companies and their creditors, including the innocent investors whose funds they misappropriated. These Defendants knew that injury to the Receivership Companies and their creditors was likely to result in the circumstances, and such injury did result.

60. The predominant purpose of these Defendants' conduct was to intentionally harm the Receivership Companies and their creditors, and the conduct of these Defendants did harm them.

61. These Defendants are liable to the Receivership Companies for predominant purpose conspiracy and unlawful act conspiracy, amongst other things.

Mr. Davies' Breach of Fiduciary Duty and Negligence

62. By virtue of the positions Mr. Davies held, he was a fiduciary of each of the Receivership Companies and owed each of them fiduciary duties, contractual duties, statutory duties (including pursuant to sections 71 and 134 of the *Business Corporations Act*, RSO 1990, c B 16, as amended) and a duty of care to, among other things:

- (a) act honestly and in good faith with a view to their best interests;
- (b) avoid improper self-dealing;
- (c) avoid conflicts of interest; and
- (d) exercise the care, diligence and skill that reasonably prudent persons would exercise in comparable circumstances.

63. By reason of the facts described above, Mr. Davies breached these duties and failed to act in a manner that was required of him as a director and officer of the Receivership Companies.

64. The Receivership Companies were vulnerable to the unilateral exercise of Mr. Davies' discretion and power, particularly given that he was the controlling mind and management of the Receivership Companies. By reason of the facts described above, Mr. Davies breached his duties to the Receivership Companies, including his fiduciary and other duties owed, including but not limited to his duties of good faith, honest performance and loyalty.

65. By reason of the facts described above, Mr. Davies also breached express and/or implied terms of his employment agreements with the respective Receivership Companies. Among other things, Mr. Davies was, at a minimum, required to conduct himself and the operations of the Receivership Companies in a competent and lawful manner, which he failed to do. Mr. Davies' conduct breached the standard of care required of him and he was grossly negligent in the performance of his duties as an officer of each of the Receivership Companies.

66. Mr. Davies effectively treated the respective Receivership Companies as his own personal fiefdom, without due regard for transparency, disclosure, the avoidance of self-dealing and conflicts of interest, or corporate separateness, amongst other things. He effectively operated each of the Receivership Companies as his own personal corporation and saw their assets as his own. This resulted in his failure to act in the best interests of the Receivership Companies, including by defrauding the Receivership Companies and enriching himself and parties related to him at the expense of the Receivership Companies and their creditors.

Unlawful Means Tort

67. By virtue of their acts and omissions as described herein, some or all of the Defendants intentionally inflicted economic harm on the Receivership Companies and their creditors. In doing so, they used unlawful means (including but not limited to fraud, deceit and conspiracy) as against third parties, including the innocent investors whose funds they misappropriated.

Conversion

68. The Receivership Companies were in possession of, or entitled to immediate possession of, the specific and identifiable funds described above. Some or all of the Defendants intentionally and wrongfully converted the Receivership Companies' funds for their own use inconsistent with the Receivership Companies' right of possession and other rights, and thereby deprived the Receivership Companies (and their creditors) of the benefit of the funds, exposing them to significant liabilities. The plaintiff is entitled to recover the entire amount that these Defendants have converted.

Unjust Enrichment

69. By virtue of the facts set out above, some or all of the Defendants and/or parties related to them have been unjustly enriched. The Receivership Companies have suffered a corresponding deprivation, and there is no juristic reason for these Defendants' enrichment or for the Receivership Companies' corresponding deprivation. There is no juristic reason why these Defendants should not be held to account for their enrichment and for the damages they have caused.

Constructive Trust(s)

70. Some or all of the Defendants received and retained the Receivership Companies' funds with full knowledge of the fraud, deceit, conspiracy, conversion and other unlawful acts they had committed, and with full knowledge of Mr. Davies' breach of his fiduciary and other legal duties owed to the Receivership Companies. By virtue of facts described herein, these Defendants hold all assets, properties, and funds that they diverted, misappropriated and improperly received from the Receivership Companies, and all traceable products thereof, as trustees of a constructive trust (or trusts) for the benefit of the plaintiff.

Mr. and Ms. Davies' Liquidation and Alienation of Assets

71. Following their improper conduct as described above, and after the commencement of the receivership proceeding in January 2017, Mr. and Ms. Davies embarked on a course of conduct designed to liquidate their assets and put them beyond the reach of the Receivership Companies and their creditors. Among other things, on April 25, 2017, Mr. Davies sold his family cottage located in Gravenhurst, Ontario for approximately \$3 million.

72. Mr. and Ms. Davies also attempted, and continue to attempt, to sell their personal residence located in King City, Ontario, which they jointly own in their capacities as trustees of the Family Trust.

Losses and Harm

73. The conduct of the Defendants as described above has caused, and is continuing to cause, reasonably foreseeable and proximate damage to the Receivership Companies and their creditors,

including financial losses and loss of profitable business opportunities, the full extent of which has not yet fully materialized and is not yet fully known to the plaintiff at this time.

74. The secured debt obligations of the Receivership Companies currently total approximately \$60,243,000, including approximately \$54,231,000 owing to the Trust Companies (being monies raised by the Trust Companies from investors) and the balance owing to other lenders, primarily mortgagees. Virtually the only valuable assets the Receivership Companies currently have to satisfy these secured debt obligations (and all the other debt obligations and liabilities of the Receivership Companies) are the real properties for which the Receivership Companies collectively paid approximately \$13,455,000.²

75. Some or all of the Defendants not only stripped the Receivership Companies of millions of dollars, and preferred their own interests over those of the Receivership Companies and their creditors (including the investing public), but they also deprived the Receivership Companies of the opportunity to pursue legitimate and profitable real estate development and other revenue-generating business opportunities, causing considerable additional losses and damages to the Receivership Companies.

76. Full particulars of the Receivership Companies' damages will be provided prior to trial.

77. The conduct of the Defendants as described above has also caused, and is continuing to cause, irreparable harm to the Receivership Companies and their creditors. In the absence of relief from this Honourable Court, Mr. and Ms. Davies (and the entities they control, including Aeolian,

² On August 3, 2017, the Receiver obtained an approval and vesting Order from the Court authorizing the sale of the Scollard property (which was acquired by Scollard for \$9 million). In accordance with the Order, the Receiver subsequently sold the Scollard property, which resulted in an initial distribution from Scollard to the Scollard Trust Co. in the amount of approximately \$5.1 million, thereby reducing the Receivership Companies' secured debt obligations accordingly.

the Arizona Trust and the Family Trust) will be able to liquidate and alienate assets, and/or continue to liquidate and alienate assets, thereby causing the Receivership Companies and their creditors further harm which would not be compensable in damages alone.

78. The plaintiff has incurred, and is continuing to incur, costs and out-of-pocket expenses relating to investigations into the Defendants' acts and omissions, which special damages shall be particularized prior to trial.

79. Some or all of the Defendants' actions constitute a wanton, callous, high-handed and outrageous disregard for the Receivership Companies' rights and interests, and for the rights and interests of their creditors, including the investing public whose funds they misappropriated. These Defendants deliberately and willfully undertook the fraudulent and unlawful activities described herein in an underhanded manner, knowing that their conduct was wrong and would cause harm to the Receivership Companies and their creditors. The conduct of these Defendants ought to attract the disapproval of this Honourable Court and result in a material award of punitive and/or exemplary damages.

80. Given the duplicitous and deceitful manner in which Mr. Davies, Ms. Davies and Aeolian have acted, together with all the surrounding circumstances, including Mr. Davies' sale of the family cottage and Mr. and Ms. Davies' attempted sale of their personal residence, there is a real and demonstrated risk that Mr. and Ms. Davies as well as Aeolian, the Family Trust and the Arizona Trust (all three of which are controlled by Mr. Davies and/or Ms. Davies) will dissipate assets and/or permanently abscond with the Receivership Companies' funds to avoid enforcement of any judgment the plaintiff may ultimately obtain. In all the circumstances, interim, interlocutory

and permanent injunctive relief, *inter alia*, enjoining the Defendants from accessing, liquidating, dissipating, alienating or otherwise dealing with their assets is necessary, just and appropriate.

Place of Trial

81. The plaintiff proposes that the trial of this action take place in the City of Toronto in the Province of Ontario.

~~August 30, 2017~~

July 6, 2017

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Lawyers for the Plaintiff

**KSV KOFMAN INC. in its capacity as Receiver and Manager of
Certain Property of Scollard Development Corporation et al.**
Plaintiff

v.

JOHN DAVIES et al.

Defendants

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

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

**PROCEEDING COMMENCED AT
TORONTO**

**FRESH AS AMENDED STATEMENT OF CLAIM
Notice of Action issued on June 6, 2017**

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Lawyers for the Plaintiff

T A B E

Appendix "E"



**Supplement to the Sixth Report of
KSV Kofman Inc.**

August 8, 2017

**as Receiver and Manager of Certain Property
of Scollard Development Corporation, Memory
Care Investments (Kitchener) Ltd., Memory
Care Investments (Oakville) Ltd., 1703858
Ontario Inc., Legacy Lane Investments Ltd.,
Textbook (525 Princess Street) Inc. and
Textbook (555 Princess Street) Inc.**

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COURT FILE NO: CV-17-11689-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

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

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

SUPPLEMENT TO THE SIXTH REPORT OF
KSV KOFMAN INC.
AS RECEIVER AND MANAGER

AUGUST 8, 2017

1.0 Introduction

1. This supplemental report ("Report") is filed by KSV.
2. This Report supplements the Receiver's Sixth Report dated July 12, 2017 (the "Sixth Report").
3. Unless otherwise stated, capitalized terms used in this Report have the meanings provided to them in the Sixth Report.

1.1 Restrictions

1. This Report is subject to the restrictions set out in the Sixth Report.

2.0 Background

1. On July 14, 2017, Davies swore and produced an affidavit in response to the Receiver's Reports and in opposition to the Receiver's motion seeking, among other things, interlocutory injunctive relief as against him and Aeolian.

2. Davies and Aeolian subsequently consented to a further but temporary continuation of the Mareva Order, on a without prejudice basis, to allow for a scheduled hearing process for the Receiver's motion for interlocutory injunctive relief as against Davies and Aeolian.
3. On July 17, 2017, on the consent of the parties, the Court granted an order extending the Mareva Order as against Davies in his personal capacity and Aeolian (the "July 17th Order"). On that day, the Court also granted a Mareva Order as against Davies in his capacity as the trustee of both the Davies Family Trust and the Davies Arizona Trust, Judith Davies, in her personal capacity and in her capacity as trustee of the Davies Family Trust, and Harris, solely in his capacity as trustee of the Davies Family Trust. Copies of the July 17th Order and the endorsement are attached as Appendix "A".
4. In accordance with the terms of the July 17th Order, Davies, in his capacity as the trustee of both the Davies Family Trust and the Davies Arizona Trust, Judith Davies, in her personal capacity and in her capacity as trustee of the Davies Family Trust, and Harris, in his capacity as trustee of the Davies Family Trust, produced asset and liability statements, copies of which are collectively attached as Appendix "B".
5. On July 27, 2017, Davies swore and produced an affidavit to supplement the affidavit he swore on July 14, 2017 in opposition to the Receiver's motion seeking injunctive relief (the "Davies Affidavit" and, collectively with the affidavit sworn by Davies on July 14, 2017, the "Davies Affidavits").

2.1 Purpose of this Report

1. The purpose of this Report is to reply to the Davies Affidavits, including with respect to the following:
 - a) the overall nature of the Davies Developers' syndicated mortgage investment ("SMI") scheme;
 - b) the development management fees paid by the Davies Developers to affiliates of Davies and others;
 - c) the intercompany loans among the Davies Developers;
 - d) the statements which Davies alleges in the Davies Affidavit were made to him by representatives of KSV;
 - e) additional conduct by Davies and related parties; and
 - f) the necessity of continuing the Mareva injunction, on an interlocutory basis, until a final disposition of the proceeding as against Davies in his personal capacity and in his capacity as trustee of both the Davies Family Trust and the Davies Arizona Trust, Aeolian, Judith Davies in her personal capacity and in her capacity as trustee of the Davies Family Trust, and Harris in his capacity as trustee of the Davies Family Trust.

2. This Report does not, for reasons of practicality, address every issue in the Davies Affidavits and the Receiver should not be taken to agree with statements in the Davies Affidavits simply because the Receiver has not replied to each issue or statement raised by Davies in the Davies Affidavits.
3. The Receiver repeats and relies on its Fourth Report and Sixth Report. Nothing in the Davies Affidavits changes any of the Receiver's findings, conclusions or recommendations set out therein. In many respects, the Davies Affidavits, including the emails and memoranda he appends, reinforce the prior findings of the Receiver.

3.0 The Syndicated Mortgage Investment Scheme

1. There are seven projects that are subject to these receivership proceedings - and four others for which Davies raised monies from SMI Investors but are too distressed to be placed into an insolvency process by the Trustee because the value of these entities' assets appear to be insufficient to repay first-ranking third party mortgages owing on those properties. Because the Investors rank behind these mortgagees, any recovery for the Investors of the non-receivership Davies Developers is likely to be nominal, at best¹.
2. The Fourth Report and the Sixth Report provide an overview of the structure of the SMI loans and focus on the flow of funds from the Investors to the Davies Developers, among the Davies Developers and from the Davies Developers to their parent companies, indirect shareholders and other related parties. This section of the Report provides further details about the SMI scheme.
3. For each of the Davies Developers' projects, the applicable Davies Developer raised monies from Investors through SMIs which were sourced by Tier 1 Transaction Advisory Inc. or entities related to Tier 1 (collectively, "Tier 1"). Of the SMI monies raised, approximately 30% was used to pay fees to Tier 1, amounts due to agents who sold the SMI product to Investors, professional costs and to fund a one-year interest reserve (the "Initial Costs").
4. To support the amounts raised, the Davies Developers retained an appraiser, Michael Cane Consultants ("Cane"), to provide an "estimated hypothetical market value of the subject site, assuming it could be developed" [emphasis added]. These appraisals were based on several assumptions, such as: (i) development costs, as estimated by the applicable Davies Developer and as set out in the applicable project pro forma, remaining consistent with the budget; (ii) the necessary planning approvals being obtained in a timely manner; and (iii) the development being commenced in a timely manner.

¹ The Investors were to have a first ranking security interest on the real property of the Davies Developers, subject only to construction financing. There are a few exceptions to this, but not in respect of any of the Receivership Companies (defined in paragraph 5 below).

5. Investors were led to believe that the advances would be fully secured against the real property, including in presentations prepared by Tier 1 which can be viewed on YouTube² and in marketing materials for the projects. As reflected in the table below, each initial SMI fundraise for the Davies Developers that is subject to these receivership proceedings (the "Receivership Companies") significantly exceeded the purchase price of the real property, reflecting that the loans were undersecured from the day they were made. The table reflects that Investor monies were used to acquire the land, as the initial SMI advance and the purchase price are on the same date, in all but one case. None of these projects had any equity from the principals of the applicable Davies Developer.

| (unaudited,\$000s) Entity | Purchase Price | Date Property Purchased | SMI Initial Advance | Date of SMI Initial Advance | Loan to Purchase Price Ratio |
|------------------------------|----------------|-------------------------|---------------------|-----------------------------|------------------------------|
| 525 Princess | 2,400 | Dec 16, 15 | 5,854 | Dec 16, 15 | 244% |
| 555 Princess | 2,000 | Oct 20, 15 | 6,615 | Oct 20, 15 | 331% |
| Scollard | 9,000 | Dec 8, 14 | 11,956 | Dec 8, 14 | 133% |
| Kitchener | 3,950 | Feb 25, 14 | 4,918 | Feb 25, 14 | 125% |
| Oakville | 1,945 | Oct 29, 12 | 2,550 | Oct 29, 12 | 131% |
| Burlington | 2,500 | May 17, 13 | 5,499 | May 17, 13 | 220% |
| Legacy Lane | 650 | Oct 2, 12 | 2,315 | Apr 2, 13 | 356% |
| | <u>22,445</u> | | <u>39,707</u> | | <u>177%</u> |

6. Attached as Appendix "C" are marketing materials for the Receivership Companies. In promoting the SMIs, the marketing materials indicated that the SMIs were to have first ranking security on the real property, which would only be subordinated to construction financing. Notwithstanding this representation to the public, after raising the SMIs, several of the Receivership Companies³ borrowed funds on a first ranking secured basis against the Receivership Companies' real property. The Trustee Corporations would have been required to subordinate to these mortgages – notwithstanding this representation. Singh is the primary representative of Trustee Corporations.
7. It appears from the Davies Affidavit that in several instances when the Davies Developers faced liquidity problems, Davies would request a fresh appraisal from Cane, which appraisal would then be provided by Davies to Tier 1 to raise more money from Investors. In some instances, the increases in appraised value appear to have been justified by, *inter alia*, spending money on development activities. The marketing materials note that such increases would be "certified by independent quantitative surveys". The Receiver is uncertain if these certifications were obtained, and if so, whether these were consistently obtained. The Receiver has seen no evidence that such certifications were obtained. The Receiver is unaware if Cane has these credentials, but typically these would be provided by a cost consultant who reviews the costs incurred and determines whether they are consistent with budget. To the extent further monies were raised by a Davies Developer based on a fresh

² <https://www.youtube.com/watch?v=09Yt90AfkIo>. This video, a Tier 1 promotion, compares a SMI to a traditional bank mortgage secured by real estate. The video highlights, among others, Singh and Davies.

³ Scollard, Kitchener, Burlington and Oakville each have a mortgage ranking in priority to the SMIs.

Cane appraisal, the Davies Developer appears to have routinely advanced such monies to other Davies Developers. Examples of this are provided in the email correspondence between Davies and others provided in Appendix "D" and Appendix "K".

8. The Receiver believes that the development projects undertaken by the Davies Developers had no prospect of success due to, among other things, a lack of equity capital, the significant Initial Costs and the amounts paid to related parties out of the SMI advances, including to affiliates of Davies, persons related to Davies and others.
9. Davies asserts in the Davies Affidavit that he believes the projects would have been successfully completed and each loan would have been repaid had Tier 1 Mortgage Corporation not been replaced as trustee of the Trustee Corporations by the Trustee. However, at the time the Trustee was appointed, each of the projects was significantly over-levered as the value of the debt substantially exceeded the value of the real property and none of the Receivership Companies had any capital to further advance its project. The cash balance of each of the Receivership Companies on the date the Trustee was appointed is provided below:

| (unaudited; \$) | |
|-----------------|---------------|
| Entity | Bank Balance |
| 525 Princess | 7,657 |
| 555 Princess | 7,663 |
| Scollard | 1,868 |
| Kitchener | 233 |
| Oakville | 359 |
| Burlington | 83 |
| Legacy Lane | 25 |
| Total | <u>17,888</u> |

10. Certain (and perhaps all) of the Davies Developers were insolvent from the date of the first SMI advance. An example of this is 525 Princess.
11. 525 Princess raised \$6.387 million from Investors, comprised of \$5.854 million on December 16, 2015 and \$533,000 on January 22, 2016. This amount was 263% greater than the purchase price of the real property. By January 28, 2016, 525 Princess had a cash balance of approximately \$111,000 and had not spent any money on development activity. Notwithstanding that it could not advance the project, 525 Princess managed to pay from the SMI proceeds a \$1 million dividend to entities related to Singh, Thompson, Harris and Davies (see Appendix "E", which discusses this dividend and other matters concerning the illiquidity of the various projects).

12. A summarized Statement of Receipts and Disbursements for 525 Princess for the period December 16, 2015 to January 28, 2016 is provided below.

| (unaudited; \$000s) | Amount |
|--------------------------------|--------|
| Receipts | |
| Syndicated Mortgage Investment | 6,387 |
| Other | 14 |
| Total | 6,401 |
| Disbursements | |
| Land | 2,131 |
| Broker Commissions | 1,086 |
| Interest holdback | 511 |
| Professional fees | 225 |
| Payments to shareholders | |
| Dividends | 1,000 |
| Other | 1,337 |
| Development costs | - |
| Total | 6,290 |
| Cash balance, January 28, 2016 | 111 |

4.0 Pro Formas Prepared by John Davies

1. Davies claims that the pro formas attached as Exhibit "B" to the Davies Affidavit reflect a genuine estimate of the costs that would be incurred and the fees that would be earned during the development process. The Receiver notes the following issues with the pro formas appended to the Davies Affidavit and therefore questions the extent to which they can and should be relied upon:
 - many of the pro formas reflect an equity injection by the respective Davies Developer. In no case did a Davies Developer make an equity injection⁴;
 - certain of the pro formas fail to account for a significant portion of the Initial Costs, including the pro formas for 525 Princess, 555 Princess and Burlington;
 - the pro formas for 525 Princess and 555 Princess do not appear to reflect the payment of dividends, which were paid from the initial SMI advance for each of these projects;
 - the 555 Princess pro forma reflects mortgage obligations (other than construction financing) ranking in priority to the syndicated mortgage investments even though such senior ranking debt was prohibited under the applicable Loan Agreements;

⁴ Other than Oakville which raised \$1 million from the sale of preferred shares. These shares were sold to individuals who are also investors.

- the pro forma for 555 Princess contains cells with “#VALUE!”, which means there are errors in the Excel formulas used by Davies. A copy of the pro forma for 555 Princess is attached as Appendix “F”; and
 - Davies had previously provided the Receiver with pro formas. Certain of the pro formas in the Davies Affidavit are different than the ones previously provided. The Receiver is uncertain which pro formas should be relied upon, if any. Certain of the pro formas previously provided have different profit projections due to different revenue and cost assumptions.
2. The Receiver has not retained a consultant to assess the reasonableness of the revenue and costs assumptions used in the pro formas attached to the Davies Affidavit.
 3. On August 1, 2017, the Receiver sent an email to Cane requiring that he provide the Receiver with copies of all appraisals and valuation reports that he prepared in respect of the Receivership Companies and all correspondence with the Receivership Companies and their principals. Cane provided the Receiver with some appraisals (and related pro formas) on August 4, 2017. An initial review of certain of the pro formas provided by Cane indicates that they are not consistent with the ones attached to the Davies Affidavit or the ones Davies previously provided. Additionally, the Receiver has not received any of the requested correspondence from Cane. If this correspondence is not provided forthwith, the Receiver intends to bring a motion in this regard. The Receiver’s email advised Cane of this intention.

5.0 Improper Development Management Fees

1. Davies takes the position that the development management fees paid by the Davies Developers were reasonable and earned. As detailed below, the Receiver has the following issues with these fees:
 - a) the amounts paid do not appear to have been earned or reasonable as they were disproportionate to the development progress of the Davies Developers’ projects; and
 - b) absent the written consent of the Trustee, development management fees are not permitted under the Loan Agreements for Oakville, Kitchener, Burlington, Scollard and Legacy Lane. Development management fees appear to be permissible in respect of the two Princess projects, provided they are reasonable and made in the ordinary course.

2. At paragraph 17 of the Davies Affidavit, Davies states that 57% of the budgeted development management fees across all projects have been paid - notwithstanding that construction has not commenced on any of the Receivership Companies⁵ nor has construction financing been secured⁶. Many of the projects require changes in zoning. For example, the project contemplated to be developed by 525 Princess was intended to be a 12-storey building. It is presently zoned to be no more than four storeys. In the best-case scenario, each of these projects is years from completion, including Burlington, Oakville and Kitchener, which are at the most advanced stages of the development process. Based on the stage of development of the Receivership Companies, the Receiver sees no basis on which nearly 60% of the development management fees should have been paid to date.

3. Davies states in the Davies Affidavit that the development management fees as a percentage of total project costs ranged from 2% (e.g. for Scollard) to 6% (e.g. for Burlington and Kitchener). Development management fees appear to have been paid to affiliates of Davies and others on an accelerated basis, prior to being earned. An example is reflected below in the context of the Scollard development, which had total anticipated project costs of approximately \$73.2 million and total anticipated development management fees of approximately \$1.8 million. Of the total capital raised to-date by Scollard (\$15.946 million), \$846,000 was, according to Davies, used to pay development management fees.⁷ Assuming a correlation between the rate at which project costs are incurred and management fees earned, the Receiver estimates that the earned management fees should have been approximately \$395,000, as reflected below.

| | (unaudited, \$000s) |
|--|---------------------|
| Total estimated project cost | 73,159 |
| Project costs to-date | 15,946 |
| Costs to-date as a percentage of total estimated project costs | 21.8% |
| | |
| Total estimated management fees over project | 1,803 |
| Percentage of earned management fees | 21.8% |
| Expected management fees to-date | 393 |
| Actual management fees paid | 846 |
| Estimated unearned management fees | 453 |

4. Attached as Appendix "G" is a chart setting out, among other things, the total estimated project costs, the total estimated development management fees, the total amount spent on the projects to-date (including as a percentage of total estimated project costs) and the total amount spent on development management fees to date (including as a percentage of total estimated development management fees) for each of the Receivership Companies. The chart reflects that the Receivership Companies have total anticipated project costs of approximately \$248 million and total projected development management fees of \$11.119 million (4.5% of total project costs). Of the \$68.721 million to-date raised by Receivership Companies, \$6.466 million of development management fees has already been paid (9.4% of project costs to-date).

⁵ With the exception of footings and foundations on Burlington.

⁶ With the exception of Scollard, which had signed a Letter of Commitment with Centurion Mortgage Capital Corporation to provide construction financing.

⁷ According to Scollard's books and records, Scollard paid Aeolian \$1.244 million, approximately \$400,000 more than the development management fees reflected in the Davies Affidavit. If the amount in the Davies Affidavit is correct, it is unclear to what the additional \$400,000 paid to Aeolian relates.

Assuming that there is a correlation between project costs and development management fees earned, the Receiver estimates that the management fees earned would be approximately \$3.3 million, meaning that development management fees have been overpaid by approximately \$3.1 million.

5. The issue of the premature (or unearned) payment of development management fees was raised by Singh in an email to Davies dated March 19, 2013, a copy of which is attached as Appendix "H". Singh states:

"I am not concerned about the quantum of the development fee (I am assuming this is fair market rates and will take your word for it). What I am concerned about [is] my complete reliance on you that construction financing will be successfully raised and the projects will be successful. The development fees being paid out prior to this is an extreme worry and makes me very uncomfortable. This allows \$3.2M of development fees to be withdrawn ahead of even knowing if construction financing can be arranged at all (a discussion that has come up several times)".

6. Under certain of the Loan Agreements, development management fees are also only permitted to be paid to shareholders with the prior written consent of the Trustee. Based on the currently available evidence reviewed by the Receiver, it does not appear that Singh or the Trustee Corporations consented to such payments in writing, in accordance with the terms of the applicable Loan Agreements. Even if Singh agreed in writing to some of these fees, or if he implicitly agreed to some of these fees, it is not clear that he agreed to all of them, and even if he did so, it is unclear if he permitted them to be paid at a rate greater than the development of the project. It is also unclear that he would allow development management fees in respect of one Davies Developer to be paid by another Davies Developer. Even if Singh or the Trustee Corporations did provide written consent, which is not supported by the evidence provided by Davies, such consent would only increase the Receiver's serious concerns regarding Singh's conduct and his participation in this scheme.

6.0 Improper Intercompany Loans

1. As described in more detail in the Fourth Report, over \$17 million was transferred among the Davies Developers. In the Davies Affidavit⁸, Davies attempts to justify the intercompany loans by suggesting that all intercompany loans stayed within the "umbrella" of the organization. For instance, at paragraph 31 of the Davies Affidavit, Davies states that:

"the umbrella nature of the [enterprise] allowed available cash to be deployed through intercompany loans to projects which were short on funds".

⁸ Including a memorandum he appears to have prepared found in Appendix "Q" of the Davies Affidavit which acknowledges the movement of monies.

2. The Receiver has no knowledge of which entities are included in Davies' alleged "umbrella". For example, the Receiver notes that \$3.7 million was advanced from various Davies Developers (including some that are not Receivership Companies) to Rideau, which did not have an SMI and which is owned indirectly by Davies, Thompson, Singh and Harris or individuals related to them. Additionally, loans were made by Davies Developers to TSI, TSSI and/or MCIL, which are parent companies of the Davies Developers and against which the Trustee Corporations have no direct connection or recourse.⁹
3. As discussed in more detail below, such intercompany loans are not permitted under the Loan Agreements and the Receiver is aware of no legitimate or reasonable commercial basis for such intercompany loans. Davies also appears to have been aware of the inappropriate nature of such intercompany loans, yet he continued to cause such loans to be made. For instance, on May 24, 2016, Harris, of Harris + Harris LLP ("Harris LLP"), legal counsel to the Davies Developers, sent an email to Davies wherein he expressly advised Davies that:

"you don't want to be obtaining financing from [Scollard] and then using it to further fund interest payments for other projects."

4. In response to this correspondence, Davies advised Harris that:

"[Scollard] is a good story. Lots of sales. Investors will want this loan. The net \$1.7 million from a \$2.4 million [Scollard] raise will fund 6 months of interest on all projects. I don't see an alternative and time will soon become a factor given the summer slowdown".

A copy of this email correspondence is attached as Appendix "I".

5. Contrary to Davies' assertion in his examination, Harris LLP was counsel to the Davies Developers, not counsel to Singh or to the Trustee Corporations. Under section 2.01 of the Loan Agreements, "Borrower's Solicitors" (i.e. the Davies Developers' solicitors) is defined to mean "Harris + Harris LLP, or such other solicitors that the Borrower may in writing designate". While "Lender's Solicitors" (i.e. the Trustee Corporations' solicitors) is defined to mean "Nancy Elliot, Barrister & Solicitor, or such other solicitors that the Lender may in writing designate", pursuant to delegation agreements between Harris LLP and Nancy Elliot ("Elliot"), certain mortgage administration and facilitation responsibilities were delegated by Elliot to Harris LLP. Collectively, attached as Appendix "J" are copies of the delegation agreements between Harris LLP and Elliot.
6. The Loan Agreements require that funds advanced from Investors be used solely for the project for which the funds were raised. Under the Loan Agreements, intercompany loans would only be permitted with the written consent of the trustee of the Trustee Corporations (i.e. Singh). While Davies has produced email correspondence at Exhibit "P" to the Davies Affidavit which allegedly reflects that Singh and the Trustee Corporations were aware of and consented to the making of intercompany loans, he has failed to include other relevant correspondence relating to this issue. For example, Appendix "K" includes email correspondence between Messrs. Davies and Singh and others, which reflect, among other things, that the

⁹ TSI and TSSI are owned by Aeolian (Davies), 132 (Thompson), RSCG (Singh) and Dachstein (Harris). MCIL is owned by Aeolian and Erika Harris.

Davies Developers were facing a liquidity crisis and they were “*completely tapped out of cash*”¹⁰ on some projects, which necessitated the making of intercompany loans to perpetuate the scheme and avoid defaulting on the loans from the Trustee Corporations. It was paramount to Singh that all interest payments be made, as there would be a confidence crisis among the Investors if that did not happen. This would impact some or all of the Davies Developers and the ability of Tier 1 to continue to raise monies through SMIs.

7. Further, based on the currently available evidence that the Receiver has reviewed, it does not appear that Singh or the Trustee Corporations formally consented to such intercompany loans in writing, in accordance with the terms of the applicable Loan Agreements. Even if Singh or the Trustee Corporations did provide written consent, which is not supported by the evidence provided by Davies, such consent would only increase the Receiver's concerns regarding Singh's conduct and his participation in this scheme.

7.0 Alleged Statement made by Representatives of KSV to Davies

1. In the latter part of 2016, certain of the Davies Developers were considering filing for protection under the *Companies' Creditors Arrangement Act* (“CCAA”) and seeking the appointment of KSV as the court-appointed monitor.
2. Davies alleges in the Davies Affidavit that in late 2016, Mr. Kofman of KSV expressed the view that intercompany loans were permissible if they stayed within the “enterprise” and were made with the consent of the Trustee Corporations. Mr. Kofman never expressed any such view nor made any such comment.
3. At time of the comments attributed to Mr. Kofman, Mr. Kofman had no knowledge of the prior movement of monies among the Davies Developers, all of which occurred before KSV had any involvement with the Davies Developers. Mr. Kofman did not have the requisite information to comment on any of the past activities of the Davies Developers and he did not do so.
4. Given that Mr. Kofman expressed no views about the Davies Developers' past activities, there was nothing for Mr. Goldstein to confirm in the subsequent meeting that took place on February 3, 2017.
5. As the prospective filing entities had no cash, there was a need to secure debtor-in-possession (“DIP”) funding for the CCAA proceedings. As part of structuring the DIP facility, consideration was given to seeking the Court's approval of an intercompany charge to secure any amounts funded by one entity to another. The proposed DIP facility and its attributes would have been subject to secured charges and to Court approval. It is possible that this is the discussion referenced in the Davies Affidavit. In any event, the Davies Developers' application for creditor protection was denied.

¹⁰ Email from Davies to Singh dated August 25, 2014.

8.0 Additional Improper Conduct by Davies and Related Parties

1. Notwithstanding the Mareva Order, Davies and Judith Davies continue to list and market for sale their personal residence. Further to these efforts, on July 18, 2017, they received an offer to purchase the residence. Although the Receiver understands that the offer has not yet been accepted, given all of Davies' and Judith Davies' efforts to date, there are concerns that they may sell the property and further deplete any assets that may be able to satisfy a judgment in this matter. The Receiver also has questions concerning the mortgage on the property.
2. Further, counsel for the Receiver has requested that Davies consent to the Mareva Order being registered on title to the Arizona Property; however, Davies refused to do so. While Davies did maintain his previously given undertaking not to sell or encumber the Arizona Property pending the return hearing for the motion, based on his refusal to consent to the registration of the Mareva Order, and all the other conduct of Davies as described herein and in the Fourth and Sixth Reports, there are concerns that the already depleted misappropriated assets may well continue to be further transferred to frustrate recovery efforts.

9.0 The Necessity of Continuing the Mareva Injunction on an Interlocutory Basis

1. Based on the above and all the other circumstances, including the reasons detailed in the Fourth and Sixth Reports, the Receiver recommends that the Court continue the Mareva Order as against Davies, in his personal capacity and in his capacity as trustee of both the Davies Family Trust and the Davies Arizona Trust, and Aeolian, as well as Judith Davies, in her personal capacity and in her capacity as trustee of the Davies Family Trust, and Harris, solely in his capacity as trustee of the Davies Family Trust, on an interlocutory basis until a final disposition of the proceeding.
2. Davies asserts in the Davies Affidavit that the effect of the receivership and the Receiver's purportedly unwarranted allegations against the Davies Developers and him personally have been harmful and caused him to lose virtually all of his assets; however, as detailed in the Sixth Report, Davies' asset and liability statement reflects that he has no assets and that he has not had any assets since prior to the commencement of the receivership proceeding.

* * *

All of which is respectfully submitted,

KSV Kofman Inc

**KSV KOFMAN INC.
SOLELY IN ITS CAPACITY AS RECEIVER AND MANAGER OF
CERTAIN PROPERTY OF SCOLLARD DEVELOPMENT CORPORATION, MEMORY CARE
INVESTMENTS (KITCHENER) LTD., MEMORY CARE INVESTMENTS (OAKVILLE) LTD.,
1703858 ONTARIO INC., LEGACY LANE INVESTMENTS LTD., TEXTBOOK (525 PRINCESS
STREET) INC. AND TEXTBOOK (555 PRINCESS STREET) INC.
AND NOT IN ITS PERSONAL CAPACITY**

TAB 3

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

THE HONOURABLE) TUESDAY, THE 30th
)
MR. JUSTICE MYERS) DAY OF MAY, 2018

B E T W E E N:

THE SUPERINTENDENT OF FINANCIAL SERVICES

Applicant

- and -

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

Respondents

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

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

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

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

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

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

BETWEEN:

KINGSETT MORTGAGE CORPORATION

Applicant

- and -

TEXTBOOK (445 PRINCESS STREET) INC.

Respondent

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

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

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

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

BETWEEN:

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

Plaintiff

- and -

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

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

Defendants

SETTLEMENT APPROVAL ORDER

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

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

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

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

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

SERVICE

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

APPROVAL OF THE MINUTES OF SETTLEMENT

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

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

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

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

AID AND RECOGNITION OF FOREIGN COURTS

7. THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Receiver, the Trustee and their respective agents in carrying

out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Receiver and the Trustee, as officers of this Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver, the Trustee and their respective agents in carrying out the terms of this Order.

The Honourable Mr. Justice Myers

THE SUPERINTENDENT OF FINANCIAL SERVICES

- and -

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

Applicant

Respondents

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

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

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

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

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

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

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

**KSV KOFMAN INC. in its capacity as Receiver and Manager of
Certain Property of Scollard Development Corporation, et al.**
Plaintiff

v.

JOHN DAVIES et al.

Defendants

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

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

**PROCEEDING COMMENCED AT
TORONTO**

ORDER

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

THE SUPERINTENDENT OF FINANCIAL SERVICES

- and -

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

Applicant

Respondents

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

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

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

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

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

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

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

KSV KOFMAN INC. in its capacity as Receiver and Manager of
Certain Property of Scollard Development Corporation, et al.
Plaintiff

v.

JOHN DAVIES et al.

Defendants

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

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

PROCEEDING COMMENCED AT
TORONTO

MOTION RECORD
(Motion for Settlement Approval)

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