

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

B E T W E E N:

THE SUPERINTENDENT OF FINANCIAL SERVICES

Applicant

- and -

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

Respondents

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

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

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

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

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

**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

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

B E T W E E N:

GRANT THORNTON LIMITED, IN ITS CAPACITY AS THE COURT-APPOINTED TRUSTEE OF TEXTBOOK STUDENT SUITES (525 PRINCESS STREET) TRUSTEE CORPORATION, TEXTBOOK STUDENT SUITES (555 PRINCESS STREET) TRUSTEE CORPORATION, TEXTBOOK STUDENT SUITES (ROSS PARK) TRUSTEE CORPORATION, 2223947 ONTARIO LIMITED, MC TRUSTEE (KITCHENER) LTD., SCOLLARD TRUSTEE CORPORATION, TEXTBOOK STUDENT SUITES (774 BRONSON AVENUE) TRUSTEE CORPORATION, 7743718 CANADA INC., KEELE MEDICAL TRUSTEE CORPORATION, TEXTBOOK STUDENT SUITES (445 PRINCESS STREET) TRUSTEE CORPORATION AND HAZELTON 4070 DIXIE ROAD TRUSTEE CORPORATION, AND KSV KOFMAN INC., IN ITS CAPACITY AS THE COURT-APPOINTED RECEIVER AND MANAGER OF CERTAIN PROPERTY OF SCOLLARD DEVELOPMENT CORPORATION, MEMORY CARE INVESTMENTS (KITCHENER) LTD., MEMORY CARE INVESTMENTS (OAKVILLE) LTD., 1703858 ONTARIO LTD., LEGACY LANE INVESTMENTS LTD., TEXTBOOK (525 PRINCESS STREET) INC., TEXTBOOK (555 PRINCESS STREET) INC., TEXTBOOK (445 PRINCESS STREET) INC., MCMURRAY STREET INVESTMENTS INC., TEXTBOOK (774 BRONSON AVENUE) INC. AND TEXTBOOK ROSS PARK INC.

Plaintiffs

- 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, GREGORY HARRIS IN HIS PERSONAL CAPACITY AND IN HIS CAPACITY AS TRUSTEE OF THE DAVIES FAMILY TRUST, HARRIS + HARRIS LLP, NANCY ELLIOT, ELLIOT LAW PROFESSIONAL CORPORATION, WALTER THOMPSON, 1321805 ONTARIO INC., BRUCE STEWART, THE TRADITIONS DEVELOPMENT COMPANY LTD., DAVID ARSENAULT, JAMES GRACE, BHAKTRAJ SINGH A.K.A. RAJ SINGH, RS CONSULTING GROUP INC., TIER 1 TRANSACTION ADVISORY SERVICES INC., JUDE CASSIMY, FIRST COMMONWEALTH MORTGAGE CORPORATION, MEMORY CARE INVESTMENTS LTD., TEXTBOOK SUITES INC., TEXTBOOK STUDENT SUITES INC. AND MICHAEL CANE

Defendants

FACTUM OF THE MOVING PARTIES

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(Updated as of April 11, 2019)

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PART I – OVERVIEW

1. This is a motion brought by KSV Kofman Inc., solely in its capacity as Court-appointed receiver in these proceedings (the “**Receiver**”), and Grant Thornton Limited, solely in its capacity as Court-appointed trustee in these proceedings (the “**Trustee**”), to implement the terms of the Settlement Agreement (as defined below) previously approved by this Honourable Court. On this motion, the Receiver and the Trustee seek an Order: (1) lifting the Mareva injunction granted by the Honourable Justice Myers on August 30, 2017 (the “**Mareva Order**”) in the action bearing Court File No. CV-17-11822-00CL (the “**Original Action**”); (2) consolidating the Original Action with the action bearing Court File No. CV-18-606314-00CL (the “**Expanded Action**” and, as consolidated, the “**Consolidated Action**”); (3) amending the Statement of Claim in the Expanded Action to no longer seek injunctive relief as against the defendants subject to the Mareva Order and to remove the related allegations; and (4) rendering the Amended Statement of Claim in the Expanded Action the governing pleading in the Consolidated Action. The sought relief is necessary to give full effect to the Settlement Agreement, as specifically contemplated by the approval Order previously granted by this Honourable Court.

PART II – FACTS

The Mareva Order and the Appeal of the Mareva Order

2. On August 30, 2017, the Receiver sought, and the Honourable Justice Myers issued, the Mareva Order against the defendants in the Original Action, John Davies in his personal capacity and in his capacity as trustee of the Davies Family Trust (the “**Family Trust**”) and the Davies Arizona Trust (the “**Arizona Trust**”) (in all such capacities, “**Mr. Davies**”), Judith Davies in her personal capacity and in her capacity as trustee of the Family Trust (in all such capacities, “**Ms. Davies**”), and Aeolian Investments Ltd. (“**Aeolian**”, and together with Mr. Davies and Ms. Davies,

the “**Mareva Defendants**”) as well as Gregory Harris, solely in his capacity as trustee of the Family Trust (in such capacity, “**Mr. Harris**”).¹

3. The Mareva Order, *inter alia*, restricts the Mareva Defendants and Mr. Harris from selling, removing, dissipating, alienating, transferring, assigning, encumbering, or similarly dealing with any of their assets, wherever situate worldwide.²

4. On January 19, 2018, Mr. Davies and Aeolian obtained leave to appeal the Mareva Order. The appeal of the Mareva Order (the “**Appeal of the Mareva Order**” and, together with the Mareva Order, the “**Mareva Issues**”) was consensually adjourned on several occasions and is now set to be withdrawn by Mr. Davies and Aeolian in accordance with the terms of the Settlement Agreement.³

The Approval and Implementation of the Settlement Agreement

5. The Settlement Agreement, which resolves strictly the Mareva Issues, was approved by this Honourable Court on May 2, 2019 (the “**Settlement Approval Order**”).⁴ As part of the Settlement Approval Order, the Receiver and the Trustee were authorized and directed to take any and all steps necessary to give effect to the Settlement Agreement.⁵

¹ Supplement to the Eighteenth Report to Court of KSV Kofman Inc. in its Capacity as Receiver of certain property Scollard Development Corporation et al. dated May 23, 2019 (the “**Supplement to Eighteenth Report**”), Appendix “A” – Eighteenth Report to Court of KSV Kofman Inc. in its Capacity as Receiver of certain property Scollard Development Corporation et al. dated April 24, 2019 (the “**Eighteenth Report**”), Section 1.0, para. 3, Motion Record of the Moving Parties (the “**Motion Record**”), Tab 2A.

² Supplement to the Eighteen Report, Appendix “A” – Eighteenth Report, Section 1.0, para. 4, Motion Record, Tab 2A.

³ Supplement to the Eighteen Report, Appendix “A” – Eighteenth Report, Section 1.0, para. 6, Motion Record, Tab 2A.

⁴ Supplement to the Eighteen Report, Section 2.0, para. 1, Motion Record, Tab 2.

⁵ Supplement to the Eighteen Report, Appendix “C” – Settlement Approval Order, Motion Record, Tab 2C.

6. Pursuant to the Settlement Agreement, Mr. Davies was required to pay to the Receiver and the Trustee certain amounts as set out in the Settlement Agreement, which amounts have all now been paid.⁶

7. Pursuant to the Settlement Agreement and the Settlement Approval Order, upon receipt of all payments due and owing under the Settlement Agreement, the Receiver is required to lift the Mareva Order, and the Receiver and the Trustee are required to amend the Statement of Claim in the Expanded Action to no longer seek injunctive relief against the Mareva Defendants and Mr. Harris, and to also remove the related allegations in paragraphs 263-266 of the Statement of Claim.⁷

8. As all amounts contemplated under the Settlement Agreement have now been paid to the Receiver, the Receiver now seeks to lift the Mareva Order and the Receiver and the Trustee seek to amend the Statement of Claim in the Expanded Action in accordance with their obligations under the Settlement Agreement and the Settlement Approval Order.⁸

9. Additionally, the Receiver and the Trustee seek to consolidate the Original Action with the Expanded Action so that the parties are subject to a single, consolidated proceeding.⁹

The Consolidated Action

10. The Original Action ought to be consolidated with the Expanded Action because:

⁶ Supplement to the Eighteen Report, Appendix "B" – Settlement Agreement, Motion Record, Tab 2B.

⁷ Supplement to the Eighteen Report, Appendix "B" – Settlement Agreement, Motion Record, Tab 2B.

⁸ Supplement to the Eighteen Report, Section 2.0, paras. 2-6, Motion Record, Tab 2.

⁹ Supplement to the Eighteen Report, Section 2.0, para. 7, Motion Record, Tab 2.

- (a) all of the parties to the Original Action are parties to the Expanded Action, with the Expanded Action simply containing additional parties;
- (b) none of the defendants to the Original Action have defended the Original Action by delivering Statements of Defence;
- (c) to date, most defendants to the Expanded Action (including all defendants to the Original Action) have defended the Expanded Action by delivering Statements of Defence;
- (d) both the Original Action and the Expanded Action remain at the pleadings stage;
- (e) pleadings have not yet closed in either the Original Action or the Expanded Action;
- (f) the relief claimed in both the Original Action and the Expanded Action arises out of the same transactions and occurrences or series of transactions and occurrences;
- (g) the issues in the Original Action and the Expanded Action are integrally interwoven and intertwined (the issues being effectively the same, or substantially the same, both factually and legally);
- (h) there is expected to be a complete overlap of evidence and of witnesses among the two actions and, as such, consolidating the actions would avoid a multiplicity of proceedings;
- (i) the parties will save costs and avoid delays if the actions are consolidated;
- (j) it would be a waste of party and judicial resources, and there could be a risk of inconsistent findings or judgment, if the actions are not consolidated; and

- (k) there is no known prejudice to the parties in either action if the Original Action is consolidated with the Expanded Action.¹⁰

PART III – ISSUES

11. The sole issues to be determined on the motion are whether this Court should make an Order lifting the Mareva Order, amending the Statement of Claim in the Expanded Action, and consolidating the Original Action with the Expanded Action, in accordance with the terms of the Settlement Agreement and the Settlement Approval Order.

PART IV – LAW AND ARGUMENT

The Mareva Order Ought to be Lifted and the Statement of Claim Ought to be Amended

12. The law is well-established that settlements are to be both encouraged and supported,¹¹ and Court Orders are to be strictly followed.¹² Here, the Settlement Agreement and the Settlement Approval Order both require that the Mareva Order be lifted and that the Statement of Claim in the Expanded Action be amended to remove the request for injunctive relief as against the Mareva Defendants and Mr. Harris along with the related allegations.¹³

13. Insofar as the proposed amendments to the Statement of Claim go, Rule 26 of the *Rules of Civil Procedure* (the “**Rules**”) addresses the amendment of pleadings and provides that:

26.02 A party may amend the party’s pleading,

¹⁰ Supplement to the Eighteen Report, Section 2.0, para. 7, Motion Record, Tab 2.

¹¹ *Whitehall Homes & Construction Ltd. v. Hanson*, 2012 ONSC 3307, at para. 52.

¹² *Dimatt Investments Inc. v. Presidio Clothing Inc.* (1993), 48 CPR (3d) 46 (FCTD), at para. 14.

¹³ Supplement to the Eighteen Report, Appendix “B” – Settlement Agreement, and Appendix “C” – Settlement Approval Order, Motion Record, Tabs 2B and 2C.

(a) without leave, before the close of pleadings, if the amendment does not include or necessitate the addition, deletion or substitution of a party to the action;

14. Here, pleadings have not yet closed and no additional parties are being added, deleted or substituted. The Receiver and the Trustee simply propose that the Statement of Claim in the Expanded Action be amended in accordance with the Settlement Agreement, the Settlement Approval Order and Rule 26 of the Rules, and that the Mareva Order be lifted in accordance with the Settlement Agreement and the Settlement Approval Order.

A Consolidation Order Ought to be Granted

15. In addition to lifting the Mareva Order and amending the Statement of Claim in the Expanded Action, the Receiver and the Trustee also seek an order consolidating the Original Action with the Expanded Action.

The Test for Consolidation

16. Rule 6.01 of the Rules addresses consolidation and provides that:

6.01(1) Where two or more proceedings are pending in the court and it appears to the court that,

- (a) they have a question of law or fact in common;
- (b) the relief claimed in them arises out of the same transaction or occurrence or series of transactions or occurrences; or
- (c) for any other reason an order ought to be made under this rule,

the court may order that,
- (d) the proceedings be consolidated, or heard at the same time or one immediately after the other...

(2) In the order, the court may give such directions as are just to avoid unnecessary costs or delay...¹⁴

17. The underlying policy of the consolidation rule is to avoid a multiplicity of proceedings, to promote the expeditious and inexpensive determination of disputes, and to avoid inconsistent judicial findings.¹⁵

18. In order to have the proceedings consolidated, the moving party must meet one of the criteria set out in Rule 6.01(1).¹⁶ In this case, *each* criterion under Rule 6.01(1) is met to order consolidation.

19. Once any one of the criteria set out in Rule 6.01(1) is satisfied, courts will also consider other factors (the balance of convenience) to determine whether or not the order ought to be granted.¹⁷ Ultimately, the court must balance the competing interests of expediency along with convenience and possible prejudice to the parties.¹⁸ In this case, the balance of convenience weighs heavily in favour of making an order under Rule 6.01.

The Original Action and the Expanded Action Have Questions of Fact and Law in Common

20. The Original Action and the Expanded Action not only have questions of fact and law in common, but the issues of fact and law in the Original Action are completely subsumed in the Expanded Action, which relates to the very same subject matter, both factually and legally. Although the Expanded Action has additional parties giving rise to additional issues of fact and

¹⁴ *Rules of Civil Procedure*, RRO 1990, Reg 194, r 6.01, Schedule B.

¹⁵ *Canadian National Railway Co. v. Homes*, 2011 ONSC 4837 at para. 43 [*Canadian National Railway*]; *Logtenberg v. ING Insurance Co.*, [2008] O.J. No. 3394 (Sup. Ct. J.) at para. 7 [*Logtenberg*].

¹⁶ *Logtenberg* at para. 8.

¹⁷ *Logtenberg* at para. 10; *Marchant (Litigation Guardian of) v. RBC Dominion Securities Inc.*, 2013 ONSC 2042 at para. 11 [*Marchant*].

¹⁸ *Brown v Matawa Project Management Group Inc*, 2005 CarswellOnt 2283 at para 23.

law, every single issue of fact and law in the Original Action is subsumed in the Expanded Action, and the Original Action is a subset of the Expanded Action.

The Relief Claimed in the Original Action and the Expanded Action Arises from the Same Occurrence or Series of Occurrences

21. The facts and circumstances giving rise to the Receiver's claims in the Original Action are identical to the facts and circumstances giving rise to the Receiver's and the Trustee's claims in the Expanded Action. All of the relief claimed in the Original Action relates to the very same series of occurrences relating to the relief claimed in the Expanded Action, with only additional occurrences factoring into the Expanded Action.

There are Many Other Compelling Reasons to Consolidate the Proceedings and the Balance of Convenience Favours making the Order to Consolidate

22. Ontario courts have considered a number of factors in determining whether there is other good reason to make an order pursuant to Rule 6.01(1)(c). Many of these factors are also considered when determining whether the balance of convenience favours making the order, and therefore have been considered together in this factum. These factors (all of which support consolidating the Original Action with the Expanded Action) include:

- (a) the extent to which the issues are interwoven;
- (b) whether the same damages are sought in both proceedings or whether a global assessment of damages is required;
- (c) whether there will be a duplication of evidence;

- (d) whether the parties are the same in both proceedings;
- (e) whether counsel are the same in both proceedings;
- (f) the relative stages of the two proceedings;
- (g) whether there will be a real reduction in the number of court days taken up by the proceedings being heard at the same time;
- (h) whether there is a risk of inconsistent findings;
- (i) whether any party will save costs or have their costs increased as a result of consolidation;
- (j) the level of complexity or undue procedural complexities if the proceedings are heard together, or whether the issues in one proceeding are relatively straightforward compared to the complexity of the other proceeding;
- (k) whether a decision in one proceeding, if kept separate, would likely put an end to the other proceeding or significantly narrow the issues in the other proceeding or significantly increase the likelihood of settlement;
- (l) whether further delay will result from an order for consolidation;
- (m) any advantage or prejudice the parties are likely to experience if the proceedings are kept separate or consolidated; and

- (n) whether any prejudice a party may suffer as a result of the consolidation or any delay outweighs the potential benefits that consolidation may otherwise have.¹⁹

23. The Receiver and the Trustee submit that each and every one of the above factors favours consolidating the Original Action with the Expanded Action. Among other things:

- (a) the issues in the two proceedings are integrally interwoven;
- (b) the same relief is sought as against the defendants in the two proceedings, though the Expanded Action seeks additional relief as against additional defendants;
- (c) there will be a complete duplication of evidence in the two proceedings;
- (d) all of the parties to the Original Action are parties to the Expanded Action;
- (e) counsel for all parties to the Original Action are the same as in the Expanded Action;
- (f) both actions remain at the pleadings stage; however, no defendants have defended the Original Action whereas virtually all defendants (including all of the defendants in the Original Action) have defended the Expanded Action;
- (g) consolidating the two actions will create efficiencies for the parties and the Court;
- (h) if the actions are not consolidated, there would be a risk of inconsistent findings;
- (i) parties will save costs by virtue of the consolidation;

¹⁹ *Logtenberg* at para. 10; *Canadian National Railway* at para. 44; *Marchant* at paras. 11-12.

- (j) no delays will result from the consolidation; and
- (k) no known prejudice will result to any party by virtue of the consolidation; rather, it is in the interests of justice and fairness to all parties, particularly all defendants, to have the Original Action consolidated with the Expanded Action given the inclusion of additional relevant parties in the Expanded Action.²⁰

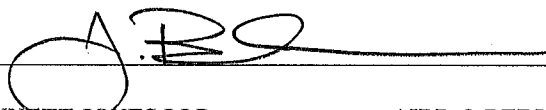
24. In deciding whether to order consolidation, another important consideration is section 138 of the *Courts of Justice Act*, which requires that, as far as possible, multiplicity of legal proceedings shall be avoided.²¹

25. Considering the above factors, there are many compelling reasons to consolidate the Original Action with the Expanded Action and the balance of convenience weighs heavily in favour of consolidation.

PART V - ORDER REQUESTED

26. For the foregoing reasons, the Receiver and the Trustee respectfully request that the Order included at Tab 3 of their Motion Record be granted.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 23rd day of May, 2019.



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²⁰ Supplement to the Eighteen Report, Section 2.0, para. 7, Motion Record, Tab 2.

²¹ *Courts of Justice Act*, RSO 1990, c C.43, s 138, Schedule B.

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TAB A

SCHEDULE "A"

LIST OF AUTHORITIES

1. *Whitehall Homes & Construction Ltd v Hanson*, 2012 ONSC 3307
2. *Dimatt Investments Inc. v Presidio Clothing Inc* (1993), 48 CPR (3d) 46 (FCTD)
3. *Canadian National Railway Co v Homes*, 2011 ONSC 4837
4. *Logtenberg v ING Insurance Co*, [2008] O.J. No. 3394 (Sup. Ct. J.)
5. *Marchant (Litigation Guardian of) v RBC Dominion Securities Inc*, 2013 ONSC 2042
6. *Brown v Matawa Project Management Group Inc*, 2005 CarswellOnt 2283

TAB B

SCHEDULE "B"

RELEVANT STATUTES

RULES OF CIVIL PROCEDURE, R.R.O. 1990, Reg. 194

RULE 6 – CONSOLIDATION OR HEARING TOGETHER

WHERE ORDER MAY BE MADE

6.01 (1) Where two or more proceedings are pending in the court and it appears to the court that,

(a) they have a question of law or fact in common;

(b) the relief claimed in them arises out of the same transaction or occurrence or series of transactions or occurrences; or

(c) for any other reason an order ought to be made under this rule,

the court may order that,

(d) the proceedings be consolidated, or heard at the same time or one immediately after the other; or

(e) any of the proceedings be,

(i) stayed until after the determination of any other of them, or

(ii) asserted by way of counterclaim in any other of them.

(2) In the order, the court may give such directions as are just to avoid unnecessary costs or delay and, for that purpose, the court may dispense with service of a notice of listing for trial and abridge the time for placing an action on the trial list.

RULE 26 – AMENDMENT OF PLEADINGS

GENERAL POWER OF COURT

26.01 On motion at any stage of an action the court shall grant leave to amend a pleading on such terms as are just, unless prejudice would result that could not be compensated for by costs or an adjournment.

WHEN AMENDMENTS MAY BE MADE

26.02 A party may amend the party's pleading,

(a) without leave, before the close of pleadings, if the amendment does not include or necessitate the addition, deletion or substitution of a party to the action;

(b) on filing the consent of all parties and, where a person is to be added or substituted as a party, the person's consent; or

(c) with leave of the court.

COURTS OF JUSTICE ACT, R.S.O. 1990, CHAPTER C.43

Multiplicity of proceedings

138 As far as possible, multiplicity of legal proceedings shall be avoided.

THE SUPERINTENDENT OF FINANCIAL SERVICES
Applicant

- and -

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

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

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 KOEFMAN 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

GRANT THORNTON LIMITED, in its capacity as Trustee of Textbook Student Suites (525 Princess Street) Trustee Corporation et al
Plaintiffs
v.
JOHN DAVIES et al
Defendants
Court File No: CV-18-606314-00CL

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

FACTUM OF THE MOVING PARTIES

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