

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

**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***

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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***

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**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**

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**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 (774 BRONSON AVENUE) TRUSTEE  
CORPORATION, TEXTBOOK STUDENT SUITES (ROSS PARK) TRUSTEE  
CORPORATION AND 7743718 CANADA INC.**

Applicant

- and -

**TEXTBOOK (774 BRONSON AVENUE) INC., TEXTBOOK ROSS PARK INC. and  
MCMURRAY STREET INVESTMENTS INC.**

Respondents

**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**

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**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 RESTRUCTURING INC. (FORMERLY 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., AND TEXTBOOK STUDENT SUITES INC. ~~AND MICHAEL CANE~~**

Defendants

**JOINT FACTUM OF THE COURT-APPOINTED RECEIVER AND THE  
COURT-APPOINTED TRUSTEE  
(Motion for Default Judgment Returnable April 7, 2026)**

March 31, 2026

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## **PART I: OVERVIEW**

1. Grant Thornton Limited (“**GTL**”), in its capacity as the Court-appointed trustee (in such capacity, the “**Trustee**”) of the Trustee Corporations (as defined below), and KSV Restructuring Inc. (“**KSV**”), in its capacity as the Court-appointed receiver and manager (in such capacity, the “**Receiver**”) of the Receivership Companies (as defined below), seek judgment under Rule 19.05 of the *Rules of Civil Procedure* (the “**Rules**”) against Jude Cassimy (“**Cassimy**”) for, among other things, damages arising from his involvement and participation in a multimillion-dollar syndicated mortgage investment scheme that caused significant losses to, among others, Textbook Student Suites (445 Princess Street) Trustee Corporation (“**445 Trust Co.**”) – a company in respect of which he was a director and officer, and duty bound to protect.

2. The Trustee and Receiver jointly commenced this proceeding (the “**Litigation**”) by way of statement of claim on October 3, 2018 (as amended, the “**Statement of Claim**”). Cassimy was personally served with the Statement of Claim on October 12, 2018.

3. Despite initially retaining counsel and delivering a statement of defence, Cassimy never filed his statement of defence with the Court, delivered an affidavit of documents, nor participated in the Litigation in any way. Accordingly, after repeated efforts by the Receiver and Trustee to engage Cassimy in the Litigation, albeit to no avail, Cassimy was noted in default on August 18, 2021.

4. As a result of being noted in default, the facts set out in the Statement of Claim are deemed to be admitted and establish each element of the causes of action asserted against Cassimy, including breach of fiduciary duty and negligence. Cassimy’s misconduct and breaches of duty, which are deemed to be admitted, caused substantial losses to 445 Trust Co. Accordingly, the

Trustee and the Receiver move for default judgment seeking recovery of those losses. In particular, the Trustee and the Receiver seek judgment as against Cassimy in the amount of \$6 million.

5. It is anticipated that, once the claims against Cassimy are resolved, the claims against the Davies Defendants (i.e., John Davies, Judith Davies and Aeolian Investments Ltd.), who are the sole remaining active defendants in the Litigation (with First Commonwealth Mortgage Corporation (Cassimy's company) having been noted in default and the Receiver and Trustee not seeking to pursue recovery against it), will be promptly resolved too, such that the Litigation will come to a full and final conclusion. Beyond various administrative matters, the Litigation is the only substantive outstanding matter that needs to be completed before these Trusteeship and Receivership proceedings can be brought to an end. Accordingly, resolving the outstanding claims against Cassimy will facilitate the timely conclusion of the Trusteeship and Receivership proceedings (which commenced approximately 10 years ago), potentially generate additional recoveries for the innocent investors who lost millions of dollars in connection with the syndicated mortgage scheme, and would be in the best interest of all affected stakeholders.

6. Judgment as against Cassimy should be granted as sought.

## **PART I - THE FACTS**

7. The facts underlying this motion are more fully set out in the Trustee's and the Receiver's Reports to Court, including, in particular, the Receiver's Twenty-Fourth Report (the "**Twenty-Fourth Report**").<sup>1</sup> All capitalized terms used but not defined herein have the meanings ascribed to them in the Twenty-Fourth Report.

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<sup>1</sup> Twenty-Fourth Report of KSV Restructuring Inc. dated March 31, 2026 ("**Twenty-Fourth Report**"), Joint Motion Record dated March 31, 2026 ("**MR**"), Tab 2.

## A. Background

### 1. The Appointment of Grant Thornton Limited as Trustee

8. On October 27, 2016, this Court granted an order (the “**Trustee Appointment Order**”) appointing GTL as Trustee of eleven entities (collectively, the “**Trustee Corporations**”) that raised monies from investors (the “**Investors**”) through syndicated mortgage investments (the “**SMIs**”). Certain of the Trustee Corporations then advanced these monies on a secured basis pursuant to loan agreements (the “**Loan Agreements**”) between the Trustee Corporations and various real estate Receivership Companies (collectively, the “**Receivership Companies**”).<sup>2</sup>

9. The Trustee Corporations were special purpose entities required under their relevant constating agreements to hold the SMIs in trust for the Investors and to act in a fiduciary capacity to administer and enforce the SMIs.<sup>3</sup>

10. The Trustee Appointment Order expressly empowers and authorizes the Trustee to initiate, prosecute and continue the prosecution of any and all proceedings on behalf of the Trustee Corporations. Under the Trustee Appointment Order, the Trustee is also empowered and authorized to settle or compromise any such proceedings and apply to any Court for assistance in carrying out the terms of the Trustee Appointment Order.<sup>4</sup>

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<sup>2</sup> Twenty-Fourth Report, s 1 at para 2, MR, Tab 2; The Receivership Companies include the following: 1703858 Ontario Inc., Legacy Lane Investments Ltd., McMurray Street Investments Inc., Memory Care Investments (Kitchener) Ltd., Memory Care Investments (Oakville) Ltd., Scollard Development Corporation, Textbook (445 Princess Street) Inc., Textbook (525 Princess Street) Inc., Textbook (555 Princess Street) Inc., Textbook (774 Bronson Avenue) Inc. and Textbook Ross Park Inc.

<sup>3</sup> Twenty-Fourth Report, s 1 at para 2, MR, Tab 2.

<sup>4</sup> Trustee Appointment Order dated October 27, 2026 (available on the Trustee’s website [here](#)).

## 2. The Appointment of KSV Restructuring Inc. as Receiver

11. On January 21, 2017, the Trustee brought a motion for an order (the “**Initial Receivership Order**”) appointing KSV as Receiver of the real property owned by Scollard Development Corporation (“**Scollard**”) and the assets, undertakings and properties of Scollard acquired for or used in relation to such real property. On February 2, 2017, this Court granted the Initial Receivership Order.<sup>5</sup>

12. On April 18, 2017, the Trustee brought a motion seeking, among other things, an order amending and restating the Initial Receivership Order to include the real property registered on title as being owned by 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., Textbook (555 Princess Street) Inc. and the assets, undertakings and properties of these entities acquired for or used in relation to their real property (the “**A&R Order**”). The Court granted the A&R Order on April 28, 2017, and further amended the A&R Order on May 2, 2017, to address certain clerical errors.<sup>6</sup>

13. On January 3, 2018, KingSett Mortgage Corporation (“**KingSett**”), a secured creditor of Textbook (445 Princess Street) Inc. (“**445 Princess**”), brought a motion in a separate Court proceeding for an order (the “**445 Receivership Order**”) appointing KSV as Receiver of the real property owned by 445 Princess and the assets, undertakings and properties of 445 Princess acquired for or used in relation to such real property. On January 9, 2018, the Court granted the 445 Receivership Order.<sup>7</sup>

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<sup>5</sup> Twenty-Fourth Report, s 1 at para 3, MR, Tab 2.

<sup>6</sup> Twenty-Fourth Report, s 1 at para 4, MR, Tab 2.

<sup>7</sup> Twenty-Fourth Report, s 1 at para 5, MR, Tab 2.

14. On May 17, 2018, the Trustee, as a secured creditor of Textbook (774 Bronson Avenue) Inc. (“**Bronson**”), Textbook Ross Park Inc. (“**Ross Park**”), and McMurray Street Investments Inc. (“**McMurray**”), brought a motion for an order appointing KSV as Receiver of certain property of Bronson, Ross Park and McMurray (the “**Bronson, Ross Park and McMurray Receivership Order**” and, together with the A&R Order and the 445 Princess Receivership Order, the “**Receivership Orders**”). On May 30, 2018, the Court made the Bronson, Ross Park and McMurray Receivership Order.<sup>8</sup>

15. The Receivership Orders expressly empower and authorize the Receiver to initiate, prosecute and continue the prosecution of any and all proceedings on behalf of the Receivership Companies. Under the Receivership Orders, the Receiver is also empowered and authorized to settle or compromise any such proceedings and apply to any Court for assistance in carrying out the terms of the Receivership Orders.<sup>9</sup>

## **B. The Litigation**

16. As authorized under the Trustee Appointment Order and the Receivership Orders, respectively, the Trustee and the Receiver jointly commenced the Litigation on October 3, 2018, seeking damages of over \$100 million (amongst other relief) against several parties involved with the Trustee Corporations and the Receivership Companies in the SMI scheme under which substantial losses were suffered.<sup>10</sup>

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<sup>8</sup> Twenty-Fourth Report, s 1 at para 7, MR, Tab 2.

<sup>9</sup> Twenty-Fourth Report, s 1 at para 8, MR, Tab 2; Receivership Orders, Appendix A to the Twenty-Fourth Report, MR, Tab 2(A).

<sup>10</sup> Twenty-Fourth Report, s 1.2 at paras 6, 7, 8, MR, Tab 2; Fresh Statement of Claim issued October 3, 2018, Appendix B to the Twenty-Fourth Report, MR, Tab 2(B).

17. Since commencing the Litigation, the Trustee and the Receiver have resolved the Litigation against most of the defendants to the Litigation by way of Court-approved settlements (including the most recent settlements concluded in 2025 following a judicial mediation held before the Honourable Justice Conway prior to the Litigation being set down for trial), each of whom had different roles in the SMI scheme (including directors and officers of the Receivership Companies, a principal of the Trustee Corporations, the appraiser of the real properties acquired by the Receivership Companies, the solicitors for the Receivership Companies and the Trustee Corporations, and others).<sup>11</sup>

18. The Court-approved settlements have resulted in approximately \$20 million in total recoveries to date, which recoveries ultimately stand to benefit the innocent Investors who lost funds in connection with the SMI scheme.<sup>12</sup> The majority of these funds, net of fees and a holdback for the ongoing Litigation, have been distributed by the Receiver to the Trustee for ultimate distribution to Investors. The Trustee is allocating such funds across the various Trustee Corporations.

19. As a result of all of the Court-approved settlements achieved to date, there now remain only a few remaining defendants to the Litigation, including the Davies Defendants (who are self-represented, without insurance, and who the Receiver understands have no or insufficient assets to satisfy a judgment), as well as Cassimy and FCMC (who, as described below, have not participated in the Litigation and have been noted in default).<sup>13</sup>

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<sup>11</sup> Twenty-Fourth Report, s 1.2 at para 9, MR, Tab 2.

<sup>12</sup> Twenty-Fourth Report, s 1.2 at para 11, MR, Tab 2.

<sup>13</sup> Twenty-Fourth Report, s 1.2 at para 12, MR, Tab 2.

**C. Jude Cassimy**

20. Cassimy was a licensed mortgage broker who served as the principal broker and the sole director and officer of FCMC. FCMC was a licensed mortgage brokerage firm that promoted and sold the SMIs to the Investors.<sup>14</sup>

21. Cassimy was also, at all material times, a director and officer of 445 Trust Co., a Trustee Corporation.<sup>15</sup> As such, Cassimy simultaneously held dual roles as a director and officer of 445 Trust Co., while also serving as the sole director, officer, and principal mortgage agent of FCMC.<sup>16</sup>

22. While the claims against Cassimy are fully set out in the Statement of Claim, they include a claim for a constructive trust and/or damages in the amount of \$8.4 million against Cassimy for breach of fiduciary duty, knowing assistance in breach of fiduciary duty, negligence and/or unjust enrichment.<sup>17</sup>

23. These claims arise from allegations that, among other things:

- (a) Cassimy failed to act in the manner that was required of him as a director and/or officer of 445 Trust Co., including to act honestly and in good faith with a view to the best interests of the corporation;

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<sup>14</sup> Twenty-Fourth Report, s 2.2.1 at para 1, MR, Tab 2; Corporate Profile Report of FCMC, Appendix E to the Twenty-Fourth Report, MR, Tab 2(E).

<sup>15</sup> Twenty-Fourth Report, s 2.2.1 at para 2, MR, Tab 2; Corporate Profile Report of 445 Trust Co., Appendix F to the Twenty-Fourth Report, MR, Tab 2(F). While Cassimy also served as a director and officer of another Trustee Corporation, Hazelton 4070 Dixie Road Trustee Corporation, no damages are being sought in respect of his misconduct relating to that entity, as the SMI in the amount of approximately \$6.4 million advanced by Hazelton has been fully distributed to investors pursuant to a Court-approved settlement transaction, under which the Hazelton Development Corporation paid approximately \$6.6 million to the Trustee in exchange for certain releases.

<sup>16</sup> Twenty-Fourth Report, s 2.2.1 at para 2, MR, Tab 2.

<sup>17</sup> Twenty-Fourth Report, s 2.2.1 at para 4, MR, Tab 2.

- (b) Cassimy failed to administer and enforce the applicable SMIs on behalf of 445 Trust Co. against 445 Princess in the best interests of 445 Trust Co. and, by extension, the Investors in the SMIs held by 445 Trust Co.;
- (c) Cassimy failed to recognize when potential conflicts of interest ripened into actual conflicts or, in the alternative, failed to take steps to appropriately avoid or resolve those conflicts;
- (d) Cassimy solicited and/or knowingly obtained appraisal reports that did not reflect the as-is value of the applicable real properties at the time of the relevant SMIs but, rather, reflected the hypothetical value of the fully developed Projects (premised on the successful completion of the proposed developments), such that 445 Trust Co. and its Investors were presented a false and/or misleading appraisal value that failed to disclose that the true values of the properties and corresponding security were inadequate to cover the respective SMIs;
- (e) Cassimy knowingly and/or recklessly permitted the funds advanced by 445 Trust Co. to 445 Princess to be used for purposes other than those for which they were intended pursuant to the applicable Loan Agreement between 445 Trust Co. and 445 Princess; and
- (f) Cassimy allowed the Davies Defendants to defraud 445 Princess, as well as the other Receivership Companies, while enriching himself and parties related to him

at the expense of the Receivership Companies and their creditors, including the Trustee Corporations.<sup>18</sup>

24. Cassimy's (and FCMC's) mortgage broker licenses were ultimately revoked by the Financial Services Commission of Ontario in connection with its investigation into the SMIs that form the subject matter of this Litigation.<sup>19</sup>

**D. Cassimy and FCMC Fail to Participate in the Litigation and are Noted in Default**

25. On October 12, 2018, Cassimy and FCMC were each personally served with a copy of the Statement of Claim.<sup>20</sup> Upon being duly served with the Statement of Claim, Cassimy and FCMC retained Sheldon Benjamin ("**Benjamin**") to represent them in the Litigation.<sup>21</sup>

26. Several months after being served with the Statement of Claim, Benjamin delivered a statement of defence on behalf of Cassimy and FCMC on March 15, 2019 (the "**Statement of Defence**").<sup>22</sup>

27. On September 3, 2020, after the Receiver circulated a discovery plan (the "**Discovery Plan**") that was heavily negotiated by many of the parties to the Litigation for execution by all parties, Benjamin advised the Receiver (for the first time) that he was no longer acting for Cassimy and FCMC and indicated that new counsel would be in touch with the Receiver. This was notwithstanding the fact that: (i) Benjamin ostensibly remained counsel of record and had taken no steps to be removed since serving the Statement of Defence on behalf of Cassimy and FCMC;

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<sup>18</sup> Twenty-Fourth Report, s 2.2.1 at para 4, MR, Tab 2.

<sup>19</sup> Twenty-Fourth Report, s 2.2.1 at para 5, MR, Tab 2.

<sup>20</sup> Twenty-Fourth Report, s 2.2.2 at para 1, MR, Tab 2; Affidavits of Service sworn October 16, 2018, Appendix H to the Twenty-Fourth Report, MR, Tab 2(H).

<sup>21</sup> Twenty-Fourth Report, s 2.2.2 at para 2, MR, Tab 2.

<sup>22</sup> Twenty-Fourth Report, s 2.2.2 at para 3, MR, Tab 2; Statement of Defence dated March 15, 2019, Appendix I to the Twenty-Fourth Report, MR, Tab 2(I).

and (ii) Benjamin had been on the service list since the Statement of Claim was served and had not raised any issue regarding his representation despite receiving numerous communications and documents relating to the Litigation, including in respect of the Discovery Plan.<sup>23</sup>

28. Despite repeated follow-ups, the Receiver never received an executed copy of Discovery Plan on behalf of Cassimy or FCMC.<sup>24</sup>

29. On or about October 1, 2020, the Receiver was contacted by Roberto Cucci (“**Cucci**”), who advised that he would be acting for both Cassimy and FCMC. At that time, Cucci also advised that while Benjamin previously served the Statement of Defence on behalf of Cassimy and FCMC, Benjamin never actually filed it with the Court. Accordingly, Cucci sought an indulgence until October 31, 2020 to serve and file a (potentially amended) statement of defence on behalf of Cassimy and FCMC, which he proposed to deliver concurrently with his clients’ affidavit of documents and Schedule “A” productions (which were due on October 31, 2020 in accordance with the terms of the Discovery Plan negotiated by the parties). The Receiver, in good faith, provided the requested indulgence.<sup>25</sup>

30. However, after Cucci represented to the Receiver that he would be acting for Cassimy and FCMC, and that he would soon be delivering a (potentially amended) statement of defence on their behalf concurrently with their affidavit of documents and Schedule “A” productions, Cucci failed to participate in the Litigation in any capacity, despite repeated communications and follow-ups from the Receiver. In fact, none of Cucci, Cassimy or FCMC delivered an amended statement of

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<sup>23</sup> Twenty-Fourth Report, s 2.2.2 at para 4, MR, Tab 2; Emails between Bennett Jones and Sheldon Benjamin dated September 3, 2020, Appendix J to the Twenty-Fourth Report, MR, Tab 2(J).

<sup>24</sup> Twenty-Fourth Report, s 2.2.2 at para 5, MR, Tab 2.

<sup>25</sup> Twenty-Fourth Report, s 2.2.2 at para 6, MR, Tab 2; Email from Bennett Jones to Roberto Cucci dated October 1, 2020, Appendix K to the Twenty-Fourth Report, MR, Tab 2(K).

defence, nor did they file any statement of defence with the Court whatsoever. They also did not deliver an affidavit of documents nor any Schedule “A” productions at any time.<sup>26</sup>

31. Furthermore, neither Cassimy nor his counsel attended the scheduled examination for discovery, notwithstanding that Cassimy was served with a Notice of Examination (through Cucci) and notwithstanding that both Cucci and Cassimy were copied on correspondence regarding the scheduled examination.<sup>27</sup>

32. Following their failure to attend examinations for discovery, their failure to file a defence in the more than three years since the Litigation was commenced, and their failure to engage in the Litigation in any meaningful way, on August 18, 2021, the Receiver and the Trustee took steps to note Cassimy and FCMC in default.<sup>28</sup>

33. Notwithstanding them being noted in default, the Receiver and the Trustee continued to communicate with Cassimy and FCMC, including directly and through Cucci. Both Cassimy and Cucci have been, and remain, on the service list for all documents served in the Receivership proceedings, including all motions brought to approve various settlements in the Litigation (e.g., the Arsenault Settlement, the Cane Settlement, the Thompson Settlement, the Stewart Settlement, and the Harris Settlement).<sup>29</sup>

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<sup>26</sup> Twenty-Fourth Report, s 2.2.2 at para 7, MR, Tab 2; Emails between Bennett Jones and Roberto Cucci dated October to December 2020, Appendix L to the Twenty-Fourth Report, MR, Tab 2(L).

<sup>27</sup> Twenty-Fourth Report, s 2.2.2 at para 8, MR, Tab 2; Emails from Bennett Jones to Roberto Cucci and Jude Cassimy, Appendix M to the Twenty-Fourth Report, MR, Tab 2(M); Notice of Examination and Corresponding Affidavit of Service, Appendix N to the Twenty-Fourth Report, MR, Tab 2(N); Certificate of Non-Attendance dated July 27, 2021, Appendix O to the Twenty-Fourth Report, MR, Tab 2(O).

<sup>28</sup> Twenty-Fourth Report, s 2.2.2 at para 9, MR, Tab 2; Filed Requisition Noting Jude Cassimy and FCMC in Default, Appendix P to the Twenty-Fourth Report, MR, Tab 2(P).

<sup>29</sup> Twenty-Fourth Report, s 2.2.2 at para 10, MR, Tab 2.

34. In addition, on June 19, 2025, the Receiver and the Trustee sent a letter directly to Cassimy urging him to engage in the Litigation, even though he had been noted in default. Cassimy failed to respond or engage in any way.<sup>30</sup>

35. Cassimy and FCMC (and their purported counsel) have remained unresponsive to all efforts by the Receiver, the Trustee and their counsel to engage them in the Litigation, despite being repeatedly made aware of the claims against them and persistent efforts to have them participate in the Litigation.<sup>31</sup>

## **E. Losses Attributable to Cassimy**

### **1. The Sale of the 445 Princess Property**

36. 445 Trust Co. held an SMI in the principal amount of approximately \$8.4 million over certain of 445 Princess' real property, which was registered on title behind encumbrances of approximately \$7 million, including a first-ranking mortgage in favour of KingSett.<sup>32</sup>

37. The Receiver conducted a thorough marketing and sale process for 445 Princess' applicable real property. On April 20, 2018, the Receiver brought a motion for an order (which was subsequently issued by the Court) approving, among other things, the sale of the 445 Princess property for \$7.55 million (the "**445 Princess Transaction**").<sup>33</sup>

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<sup>30</sup> Twenty-Fourth Report, s 2.2.2 at para 10, MR, Tab 2; Letter from Bennett Jones dated June 19, 2025, Appendix Q to the Twenty-Fourth Report, MR, Tab 2(Q).

<sup>31</sup> Twenty-Fourth Report, s 2.2.2 at para 11, MR, Tab 2.

<sup>32</sup> Twenty-Fourth Report, s 2.2.3 at para 1, MR, Tab 2.

<sup>33</sup> Twenty-Fourth Report, s 2.2.3 at para 2, MR, Tab 2.

38. The net sale proceeds from the 445 Princess Transaction were insufficient to repay in full the amount owing to KingSett as first mortgagee. As a result, the recovery to 445 Trust Co. from the 445 Princess Transaction, as second mortgagee, was nil.<sup>34</sup>

## **2. Losses to 445 Trust Co. in respect of its SMI**

39. To date, 445 Trust Co. has not recovered any portion of its SMI. Its only source of recovery will be the settlement proceeds allocated to 445 Trust Co.

40. Based on the anticipated allocation of settlement proceeds to 445 Trust Co., 445 Trust Co. will sustain losses of at least \$6 million, exclusive of costs and interest. Cassimy, as the director and officer of 445 Trust Co., is fully responsible for these losses, and judgment is accordingly sought as against Cassimy in the amount of \$6 million, representing only a portion of the losses that 445 Trust Co. will have incurred once the settlement proceeds are allocated by the Trustee.

## **PART II - ISSUE**

41. The sole issue on this motion is whether the Court should grant default judgment against Cassimy in the amount sought.

## **PART III - LAW & ARGUMENT**

### **A. General Principles Governing Default Proceedings**

42. Rule 19 of the *Rules* governs default proceedings, including motions for default judgment. Specifically, Rule 19.05 of the *Rules* provides:<sup>35</sup>

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<sup>34</sup> Twenty-Fourth Report, s 2.2.3 at para 3, MR, Tab 2.

<sup>35</sup> *Rules of Civil Procedure*, [RRO 1990, Reg 194](#) ("*Rules*"), r. [19.05](#).

- (1) Where a defendant has been noted in default, the plaintiff may move before a judge for judgment against the defendant on the statement of claim in respect of any claim for which default judgment has not been signed.
- (2) A motion for judgment under subrule (1) shall be supported by evidence given by affidavit if the claim is for unliquidated damages.
- (3) On a motion for judgment under subrule (1), the judge may grant judgment, dismiss the action or order that the action proceed to trial and that oral evidence be presented.
- (4) Where an action proceeds to trial, a motion for judgment on the statement of claim against a defendant noted in default may be made at the trial.

43. Where a defendant is noted in default, the facts asserted in the statement of claim are deemed to be admitted. The Court is entitled to look to the pleadings and affidavit evidence to establish liability. Rule 19.06 requires that the material facts deemed admitted by the defendants must entitle the plaintiff to judgment. The plaintiff must show that the deemed admissions support the elements of the causes of action alleged.<sup>36</sup>

44. Although on a motion for default judgment the Court will not inquire into the factual underpinnings of the torts or causes of action alleged, since all of the facts are deemed to be admitted, the facts supporting the quantum of damages claimed must be proven. A trial will not be

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<sup>36</sup> [Rules](#), r. [19.06](#).

necessary unless the Court is unable to calculate the sum of money to which the plaintiff is entitled.<sup>37</sup>

## **B. The Deemed Admissions Support the Elements of Each of the Claims**

45. The Receiver and the Trustee are entitled to default judgment against Cassimy in the amount claimed. The facts set out in the Statement of Claim, now deemed admissions, satisfy the elements of the causes of action alleged against Cassimy, including breach of fiduciary duty and negligence.

### **1. Cassimy is Liable for Breach of Fiduciary Duty**

46. At all material times, Cassimy was a director and officer of 445 Trust Co. By virtue of the positions held by Cassimy, he owed fiduciary duties and duties of care both at common law and pursuant to statute (including under section 134 of Ontario's *Business Corporations Act*) to 445 Trust Co. Such duties required that Cassimy, among other things, act diligently and in the company's best interests while avoiding conflicts of interest and improper self-dealing.<sup>38</sup>

47. Cassimy breached these fiduciary duties and failed to act in a manner that was required of him as a director and officer of 445 Trust Co. In particular, Cassimy's duties required that he administer and enforce the SMI on behalf of 445 Trust Co. against 445 Princess in the best interests of the 445 Trust Co. Instead of fulfilling his duties, Cassimy (admittedly):

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<sup>37</sup> *Beals v. Saldanha*, [1998 CanLII 14709 \(ONSC\)](#) at p. 21; *Salimijazi v. Pakjou*, [2009 CanLII 17354 \(ONSC\)](#) at paras. 34-35; *Paul's Transport Inc. v. Immediate Logistics Limited*, [2022 ONCA 573](#) at para 80.

<sup>38</sup> *Business Corporations Act*, [RSO 1990, c B.16](#), s. [134\(1\)](#); *BCE Inc. v. 1976 Debentureholders*, [2008 SCC 69 \(CanLII\)](#) at paras. 36-37, *Peoples Department Stores v. Wise*, [2004 SCC 68](#); *Re Unique Broadband Systems, Inc.*, [2014 ONCA 538](#) at paras. 45-46.

- (a) failed to administer and enforce the SMI on behalf of 445 Trust Co. against 445 Princess in the best interests of 445 Trust Co. and, by extension, the Investors in the SMI held by 445 Trust Co.;<sup>39</sup>
- (b) solicited and/or knowingly obtained appraisal reports that did not reflect the as-is value of the applicable real properties at the time of the SMI but, rather, reflected the hypothetical value of the fully developed Projects, such that 445 Trust Co. and its Investors were presented a false and/or misleading appraisal value that failed to disclose that the true values of the properties and corresponding security were inadequate to cover the SMI;<sup>40</sup>
- (c) knowingly and/or recklessly permitted the funds advanced by 445 Trust Co. to 445 Princess to be used for purposes other than those for which they were intended pursuant to the Loan Agreement between 445 Trust Co. and 445 Princess;<sup>41</sup>
- (d) failed to notify the Investors of numerous events of default as defined in the Loan Agreement;<sup>42</sup>
- (e) failed to recognize when potential conflicts of interest ripened into actual conflicts or, in the alternative, failed to take steps to appropriately avoid or resolve those conflicts;<sup>43</sup> and

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<sup>39</sup> Fourth Amended Statement of Claim at para 227, Appendix D to the Twenty-Fourth Report, MR, Tab 2(D); Twenty-Fourth Report, s 2.2.1 at para 4, MR, Tab 2.

<sup>40</sup> Fourth Amended Statement of Claim at para 220, Appendix D to the Twenty-Fourth Report, MR, Tab 2(D); Twenty-Fourth Report, s 2.2.1 at para 4, MR, Tab 2.

<sup>41</sup> Fourth Amended Statement of Claim at para 222, Appendix D to the Twenty-Fourth Report, MR, Tab 2(D); Twenty-Fourth Report, s 2.2.1 at para 4, MR, Tab 2.

<sup>42</sup> Fourth Amended Statement of Claim at para 221, Appendix D to the Twenty-Fourth Report, MR, Tab 2(D); Twenty-Fourth Report, s 2.2.1 at para 4, MR, Tab 2.

<sup>43</sup> Fourth Amended Statement of Claim at para 230, Appendix D to the Twenty-Fourth Report, MR, Tab 2(D).

- (f) simultaneously held dual roles as a director and officer of 445 Trust Co. while also serving as the sole director, officer, and principal mortgage agent of FCMC, in a clear conflict of interest position that was not properly disclosed to the Investors.<sup>44</sup>

48. Simply put, Cassimy failed to act diligently and in 445 Trust Co.'s best interests. He acted without due regard for transparency, disclosure, the avoidance of self-dealing and conflicts of interest. By reason of the foregoing, Cassimy breached his statutory and common law fiduciary duties to 445 Trust Co., and his breaches directly caused 445 Trust Co. to suffer losses of at least \$6 million.

## **2. Cassimy is Liable for Negligence**

49. To establish the tort of negligence, a plaintiff must demonstrate: (a) that the defendant owed the plaintiff a duty of care; (b) that the defendant breached the applicable standard of care; (c) that the plaintiff suffered damage; and (d) that the damage was caused, in fact and in law, by the defendant's breach.<sup>45</sup>

50. As a director and officer of 445 Trust Co., Cassimy owed a duty of care to 445 Trust Co. at common law and pursuant to statute.<sup>46</sup> For the reasons set out above, Cassimy breached the applicable standard of care and was negligent in the performance of his duties as a director and officer of 445 Trust Co.

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<sup>44</sup> Fourth Amended Statement of Claim at paras 45, 226, Appendix D to the Twenty-Fourth Report, MR, Tab 2(D).

<sup>45</sup> *Mustapha v. Culligan of Canada Ltd.*, [2008 SCC 27 \(CanLII\)](#) at paras. 3, 11-14.

<sup>46</sup> *Business Corporations Act*, [RSO 1990, c B.16](#), s. [134\(1\)](#); *BCE Inc. v. 1976 Debentureholders*, [2008 SCC 69 \(CanLII\)](#) at paras. 36-37, *Peoples Department Stores v. Wise*, [2004 SCC 68](#); *Re Unique Broadband Systems, Inc.*, [2014 ONCA 538](#) at paras. 45-46.

51. Indeed, Cassimy's (and FCMC's) mortgage broker licence was ultimately revoked by the Financial Services Commission of Ontario in connection with its investigation into the SMIs that form the subject matter of this Litigation.<sup>47</sup>

52. 445 Trust Co. sustained significant losses as a direct result of Cassimy's negligent conduct, which enabled the perpetration of a multi-million-dollar fraud and caused substantial harm to 445 Trust Co. and its creditors, including the investing public.

**C. Cassimy is Liable for the Losses Sustained by 445 Trust Co.**

53. The \$8.4 million in SMI funds advanced by 445 Trust Co. to 445 Princess was to be used to purchase real property and to fund the soft costs associated with the 445 Princess Project.<sup>48</sup> However, the SMI funds advanced by 445 Trust Co. to 445 Princess were misappropriated, diverted, and used for other purposes, and the SMI in respect of 445 Princess was not properly administered or enforced by Cassimy as a director and officer of 445 Trust Co.<sup>49</sup>

54. To date, 445 Trust Co. has not recovered any portion of the amount owing under the syndicated mortgage. As described above, the real property owned by 445 Princess was sold, and there was a shortfall to KingSett as the first secured creditor who held a prior-ranking mortgage on the property. 445 Trust Co. recovered no funds from the sale of the 445 Princess property, and its only source of recovery will be the settlement funds allocated to it by the Trustee.

55. Based on the anticipated allocation of settlement proceeds to 445 Trust Co., it will sustain losses of at least \$6 million, exclusive of costs and interest. Cassimy is fully responsible for these

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<sup>47</sup> Twenty-Fourth Report, s 2.2.1 at para 5, MR, Tab 2.

<sup>48</sup> Twenty-Fourth Report, s 2.2.4 at para 1, MR, Tab 2.

<sup>49</sup> Twenty-Fourth Report, s 2.2.4 at para 2, MR, Tab 2.

losses, among others, given his breaches of fiduciary duty and negligence which directly caused these losses.<sup>50</sup>

**D. Granting Default Judgment Against Cassimy is in the Interests of Justice**

56. Cassimy has failed to participate in the Litigation. The claims against him are not only borne out by deemed admissions but they are supported by strong documentary evidence, and there is no indication that he has any bona fide defence to the allegations in the Statement of Claim. Allowing Cassimy's continued non-participation to stand without consequence would undermine the integrity of the Court's processes, prejudice the Trustee, the Receiver, the Investors and other stakeholders, and needlessly prolong proceedings that are otherwise nearing completion. Granting default judgment will promote finality, facilitate enforcement for the benefit of Investors, and meaningfully advance the orderly and timely conclusion of the Litigation and the broader Trusteeship and Receivership proceedings.

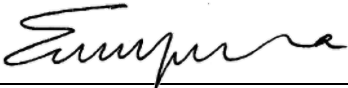
**PART IV - ORDER REQUESTED**

57. For the reasons set out above, the Trustee and the Receiver respectfully request an order in the form of the draft Judgment included as Tab 3 to the Joint Motion Record granting: (a) judgment against Cassimy in the amount of \$6 million, representing a portion of the losses that will be incurred by 445 Trust Co. as a result of Cassimy's breaches of fiduciary duty and negligence which caused these losses; and (b) interest in accordance with the *Courts of Justice Act*.

**ALL OF WHICH IS RESPECTFULLY JOINTLY SUBMITTED** this 31<sup>st</sup> day of March 2026.

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<sup>50</sup> Twenty-Fourth Report, s 2.2.4 at para 6, MR, Tab 2.

*per* 

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**BENNETT JONES LLP and AIRD & BERLIS LLP**

## SCHEDULE "A" - LIST OF AUTHORITIES

1. *BCE Inc. v. 1976 Debentureholders*, [2008 SCC 69 \(CanLII\)](#)
2. *Beals v. Saldanha*, [1998 CanLII 14709 \(ONSC\)](#)
3. *Mustapha v. Culligan of Canada Ltd.*, [2008 SCC 27 \(CanLII\)](#)
4. *Paul's Transport Inc. v. Immediate Logistics Limited*, [2022 ONCA 573](#)
5. *Peoples Department Stores v. Wise*, [2004 SCC 68](#)
6. *Re Unique Broadband Systems, Inc.*, [2014 ONCA 538](#)
7. *Salimijazi v. Pakjou*, [2009 CanLII 17354 \(ONSC\)](#)

I certify that I am satisfied as to the authenticity of every authority.

*Note: Under the Rules of Civil Procedure, an authority or other document or record that is published on a government website or otherwise by a government printer, in a scholarly journal or by a commercial publisher of research on the subject of the report is presumed to be authentic, absent evidence to the contrary (rule 4.06.1(2.2)).*

Date March 31, 2026

  
Signature

## SCHEDULE "B" - RELEVANT STATUTORY PROVISIONS

*Rules of Civil Procedure, [RRO 1990, Reg 194](#)*

### **By Motion for Judgment**

**19.05** (1) Where a defendant has been noted in default, the plaintiff may move before a judge for judgment against the defendant on the statement of claim in respect of any claim for which default judgment has not been signed.

(2) A motion for judgment under subrule (1) shall be supported by evidence given by affidavit if the claim is for unliquidated damages.

(3) On a motion for judgment under subrule (1), the judge may grant judgment, dismiss the action or order that the action proceed to trial and that oral evidence be presented.

(4) Where an action proceeds to trial, a motion for judgment on the statement of claim against a defendant noted in default may be made at the trial.

### **Facts Must Entitle Plaintiff to Judgment**

**19.06** A plaintiff is not entitled to judgment on a motion for judgment or at trial merely because the facts alleged in the statement of claim are deemed to be admitted, unless the facts entitle the plaintiff to judgment.

**THE SUPERINTENDENT OF FINANCIAL SERVICES**

Applicant

- and - **TEXTBOOK STUDENTS SUITES (525 PRINCESS STREET)  
TRUSTEE CORPORATION ET AL.**

Respondents

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

**IN THE MATTER OF THE RECEIVERSHIP OF SCOLLARD DEVELOPMENT CORPORATION, ET AL.**

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

**KINGSETT MORTGAGE CORPORATION**

Applicant

- and - **TEXTBOOK (445 PRINCESS STREET) INC.**  
Respondent

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

**GRANT THORNTON LIMITED IN ITS CAPACITY AS THE COURT- - and - TEXTBOOK (774 BRONSON AVENUE) INC., ET AL.**  
**APPOINTED TRUSTEE OF TEXTBOOK STUDENT SUITES (774**  
**BRONSON AVENUE) TRUSTEE CORPORATION, ET AL.**

Applicant

Respondents

Court File No. CV-18-598788-00CL

**GRANT THORNTON LIMITED, IN ITS CAPACITY AS THE COURT- - and - AEOLIAN INVESTMENTS LTD., ET AL.**  
**APPOINTED TRUSTEE OF TEXTBOOK STUDENT SUITES (525**  
**PRINCESS STREET) TRUSTEE CORPORATION, ET AL, AND KSV**  
**KOFMAN INC., IN ITS CAPACITY AS THE COURT-APPOINTED**  
**RECEIVER AND MANAGER OF CERTAIN PROPERTY OF SCOLLARD**  
**DEVELOPMENT CORPORATION, ET AL.**

Plaintiffs

Defendants

Court File No. CV-18-606314-00CL

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

PROCEEDING COMMENCED AT  
TORONTO

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