



Supplement to Eighteenth 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.

May 23, 2019

Supplement to Sixth Report of KSV Kofman Inc. as Receiver and Manager of Certain Property of Textbook (445 Princess Street) Inc.

and

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

Contents		Page
1.0	Introduction.....	1
1.1	Purposes of this Report.....	2
2.0	Recent Developments	2
3.0	Conclusion and Recommendation	4

Appendices

Appendix	Tab
Eighteenth Report	A
Settlement Approval Order	B
Settlement Agreement.....	C
Proposed Amended Statement of Claim.....	D



COURT FILE NO.: CV-16-11567-00CL
COURT FILE NO: CV-17-11689-00CL
COURT FILE NO: CV-17-589078-00CL
COURT FILE NO.: CV-16-11822-00CL
COURT FILE NO.: CV-18-606314-00CL

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

AND IN THE MATTER OF THE RECEIVERSHIP OF TEXTBOOK ROSS PARK INC., TEXTBOOK (774 BRONSON AVENUE) INC. AND MCMURRAY STREET INVESTMENTS INC.

**SUPPLEMENT TO EIGHTEENTH 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

**SUPPLEMENT TO SIXTH REPORT OF KSV KOFMAN INC.
AS RECEIVER AND MANAGER OF CERTAIN PROPERTY OF
TEXTBOOK (445 PRINCESS STREET) INC.**

AND

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

MAY 23, 2019

1.0 Introduction

1. This supplemental report ("Report") is filed by KSV.
2. This Report supplements the Receiver's Eighteenth Report dated April 24, 2019 (the "Eighteenth Report"), a copy of which is attached hereto as Appendix "A" without attachments.

3. Unless otherwise stated, capitalized terms used in this Report have the meanings provided to them in the Eighteenth Report.

1.1 Purposes of this Report

1. The purposes of this Report are to:
 - a) report on the developments that have transpired since the Settlement Agreement was approved by the Court on May 2, 2019;
 - b) recommend that the Court issue an order:
 - i. lifting the Mareva Order, in accordance with the terms of the Settlement Agreement;
 - ii. consolidating the action bearing Court File No. CV-17-11822-00CL (the “Original Action”) with the action bearing Court File No. CV-18-606314-00CL (the “Expanded Action” and, as consolidated, the “Consolidated Action”); and
 - iii. amending the Statement of Claim in the Expanded Action, in accordance with the terms of the Settlement Agreement, and rendering it the governing Statement of Claim in the Consolidated Action.

2.0 Recent Developments

1. On May 2, 2019, the Court granted an Order approving the Settlement Agreement (the “Settlement Approval Order”). A copy of the Settlement Approval Order is attached as Appendix “B”. A copy of the Settlement Agreement subject to the Settlement Approval Order is attached as Appendix “C”.
2. Immediately following the granting of the Settlement Approval Order on May 2, 2019, Mr. Davies was paid the First Payment and the Receiver was paid the balance of funds then in Dentons’ trust account, being US\$468,478.84, in accordance with the terms of the Settlement Agreement.
3. On May 7, 2019, counsel for Mr. Davies advised the Receiver that Mr. Davies’ potential U.S. withholding tax obligation relating to the sale of the Arizona Property had been reduced to zero, and therefore the full amount being held back in respect of the potential withholding tax obligation, being USD\$247,500, could be released. These funds were paid to Dentons’ trust account for disbursement in accordance with the terms of the Settlement Agreement. On May 14, 2019, Mr. Davies and the Receiver were respectively paid their share of these funds, in accordance with the terms of the Settlement Agreement. In particular, Mr. Davies and the Receiver were respectively paid US\$115,548.85 and US\$131,931.15, in addition to the amounts previously paid.
4. All payments contemplated under the Settlement Agreement have now been made.
5. In accordance with Section 6 of the Settlement Agreement and the terms of the Settlement Approval Order, the Mareva Order must now be lifted, subject to the terms of the Settlement Agreement.

6. In accordance with Section 7 of the Settlement Agreement and the terms of the Settlement Approval Order, the Statement of Claim in the Expanded Action must also be amended to no longer seek injunctive relief against Mr. Davies, Ms. Davies, Aeolian, the Family Trust and the Arizona Trust (including Mr. Harris solely in his capacity as trustee of the Family Trust), and to also remove the related allegations in paragraphs 263-266 of the Statement of Claim. A copy of the proposed Amended Statement of Claim in the Expanded Action is attached as Appendix "D".
7. For the reasons set out below, the Receiver is of the view that the Original Action should be consolidated with the Expanded Action and it seeks an order consolidating the two proceedings because:
 - 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.

3.0 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)(b) of this Report.

* * *

All of which is respectfully submitted,



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. ., TEXTBOOK (445 PRINCESS
STREET) INC., TEXTBOOK ROSS PARK INC., TEXTBOOK (774 BRONSON AVENUE) INC.
AND MCMURRAY STREET INVESTMENTS INC.**

Appendix “A”



**Eighteenth Report of
KSV Kofman Inc.**

April 24, 2019

**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.**

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

and

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

Contents		Page
1.0	Introduction.....	1
1.1	Purposes of this Report.....	2
2.0	Background	3
3.0	The Settlement Agreement	4
4.0	Conclusion and Recommendation	5

Appendices

Appendix	Tab
Fourth Report.....	A
Sixth Report	B
Supplement to the Sixth Report.....	C
Seventeenth Report	D
Settlement Agreement.....	E



COURT FILE NO.: CV-16-11567-00CL
COURT FILE NO: CV-17-11689-00CL
COURT FILE NO: CV-17-589078-00CL
COURT FILE NO.: CV-16-11822-00CL
COURT FILE NO.: CV-18-606314-00CL

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

AND IN THE MATTER OF THE RECEIVERSHIP OF TEXTBOOK ROSS PARK INC., TEXTBOOK (774 BRONSON AVENUE) INC. AND MCMURRAY STREET INVESTMENTS INC.

**EIGHTEENTH 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

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

AND

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

APRIL 24, 2019

1.0 Introduction

1. This report (“Report”) is filed by KSV Kofman Inc. (“KSV”) as Court-appointed receiver (the “Receiver”) of certain assets of the companies listed below (the “Receivership Companies”) pursuant to the following orders of the Ontario Superior Court of Justice (Commercial List) (the “Court”):

- a) Scollard Development Corporation, pursuant to an order of the Court dated February 2, 2017;
 - b) 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., pursuant to an order of the Court dated April 28, 2017;
 - c) Textbook (445 Princess Street) Inc., pursuant to an order of the Court dated January 9, 2018; and
 - d) Textbook Ross Park Inc., Textbook (774 Bronson Avenue) Inc. and McMurray Street Investments Inc., pursuant to an order of the Court dated May 30, 2018.
2. Pursuant to an order of the Court dated October 27, 2016, Grant Thornton Limited was appointed trustee (the "Trustee") of eleven entities (collectively, the "Trustee Corporations"), which raised monies from investors through syndicated mortgage investments. Eight of the Trustee Corporations then advanced these monies on a secured basis pursuant to loan agreements between the Trustee Corporations and the Receivership Companies.
 3. On August 30, 2017, the Honourable Justice Myers issued an order (the "Mareva Order") in the civil litigation bearing Court File No. CV-17-11822-00CL (the "Action") against the defendants, 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"), Aeolian Investments Ltd. ("Aeolian", and together with Mr. Davies and Ms. Davies, the "Mareva Defendants") and Gregory Harris solely in his capacity as trustee of the Family Trust (in such capacity, "Mr. Harris").
 4. The Mareva Order 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, including but not limited to the assets and accounts listed in Schedule "A" to the Mareva Order and, in particular (but not limited to) the real estate that was owned by the Arizona Trust located at 35410 North 66th Place, Carefree, Arizona, 85377 (the "Arizona Real Property").

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) summarize the terms of a settlement agreement between the Receiver and the Trustee, on the one hand, and the Mareva Defendants, on the other hand, solely in respect of the Mareva Order (the "Settlement Agreement"); and

- c) recommend that the Court issue an order:
 - i. approving and giving effect to the Settlement Agreement; and
 - ii. authorizing and directing the Receiver and the Trustee to take any and all steps necessary to give effect to the Settlement Agreement.

2.0 Background

1. The background to this Report is set out in the Receiver's previous reports to Court, including its Fourth Report, Sixth Report, Supplement to the Sixth Report and Seventeenth Report, copies of which are respectively attached hereto as Appendices "A", "B", "C" and "D", without attachments. These reports are the most pertinent to this Report. All reports and other materials previously filed in these proceedings can be found on the Receiver's website at <https://www.ksvadvisory.com/insolvency-cases/case/scollard-development-corporation>.
2. On or about November 7, 2018, the Arizona Real Property was sold by the Arizona Trust for USD\$1.65 million along with the furnishings in the Arizona Real Property for a further USD\$150,000. The net proceeds generated from the sale (after paying realtor commissions, a mortgage, a lien on the property and closing costs) total USD\$862,568, which amount has since been reduced by virtue of Mr. Davies accessing living expenses of CDN\$7,500 per month pursuant to an order issued by the Honourable Mr. Justice Myers granting a limited exemption to the Mareva Order. The total amount of proceeds currently remaining is USD\$828,171.71 (the "Proceeds"), of which USD\$580,671.71 is currently being held in the trust account of Dentons Canada LLP ("Dentons"), counsel for the Mareva Defendants, with the balance, being USD\$247,500, currently being held by the United States Internal Revenue Service (the "IRS") in respect of a potential withholding tax obligation.
3. Dentons has provided the Receiver's counsel with information from Mr. Davies' agent in the United States, Mary-Heather Styles of Transatlantic Tax Inc., who has advised that the full amount of USD\$247,500 is likely to be released by the IRS to Dentons as there was a capital loss on the sale of the Arizona Real Property which she advises would eliminate any tax liability arising from the sale of the Arizona Real Property.
4. Dentons has provided an undertaking to the Receiver that none of the Proceeds will be distributed absent a court order authorizing Dentons to do so.
5. The Mareva Defendants have provided financial disclosures to the Receiver during these proceedings. Based on those disclosures, the Proceeds represent most of the Mareva Defendants' apparent assets currently known to the Receiver.
6. On January 19, 2018, Mr. Davies and Aeolian obtained leave to appeal the Mareva Order. The appeal (the "Appeal of the Mareva Order" and, together with the "Mareva Order", the "Mareva Issues") has been consensually adjourned on several occasions and is now adjourned *sine die*, pending the Court's approval of the Settlement Agreement.

3.0 The Settlement Agreement

1. The Receiver, in consultation with the Trustee and their respective counsel, engaged in discussions and negotiations with the Mareva Defendants concerning the Mareva Issues.
2. The negotiations resulted in a settlement (the "Settlement") between the Receiver and the Trustee, on the one hand, and the Mareva Defendants, on the other hand, resolving and settling solely the Mareva Issues on the terms set out in the Settlement Agreement. The Settlement is subject only to Court approval. A copy of the Settlement Agreement is attached as Appendix "E".
3. Pursuant to the Settlement Agreement, all the Mareva Issues will be fully and finally resolved in exchange for, among other things, payment of 72.5% of the Proceeds to the Receiver, with the balance of the Proceeds, amounting to 27.5%, being paid to Mr. Davies. The Receiver and the Trustee will determine the allocation of the Receiver's share of the Proceeds between them, with the majority of the Proceeds flowing to the Trustee.
4. Of the USD\$580,671.71 currently in Dentons' trust account, Mr. Davies will only receive CDN\$150,000 based on the Bank of Montreal conversion rate on the date of the payment (amounting to approximately 20% of the Proceeds currently in Dentons' trust account) and the Receiver will receive the balance, amounting to approximately USD\$467,000 (approximately 80% of the Proceeds currently in Dentons' trust account). Mr. Davies will get a larger share of the Proceeds held back by the IRS. This mitigates some of the risk related to the monies currently held by the IRS.
5. The Settlement is reasonable, particularly considering the ongoing professional costs of dealing with the Mareva Issues and the apparent limited assets of the Mareva Defendants currently known to the Receiver, which have been reviewed through the Receiver's independent investigations (including its review of the bank records of the Mareva Defendants obtained in connection with the Mareva Order) and in sworn disclosure affidavits provided by each of the Mareva Defendants in connection with the Settlement (the "Disclosure Affidavits"). The Settlement will immediately increase the value in the estates of the Receivership Companies and the Trustee Corporations, which will benefit their respective stakeholders. The Settlement also avoids the continued depletion of the Proceeds resulting from the existing exemption to the Mareva Order pursuant to which Mr. Davies has been accessing \$7,500 for living expenses. It also avoids the potential for further depletion resulting from any further exemptions to the Mareva Order, such as for the Mareva Defendants' legal fees. To date, Mr. Davies has made several requests for funding, including for legal representation.
6. Pursuant to the Settlement, the Mareva Order will be lifted and the Appeal of the Mareva Injunction will be dismissed on the consent of the parties. The Settlement avoids protracted and complex litigation with the Mareva Defendants with respect to the Mareva Issues and will also result in legal cost savings that would have otherwise been incurred to defend the Appeal of the Mareva Injunction and otherwise address the Mareva Issues.
7. To the extent it is found that there are any misrepresentations in any of the Disclosure Affidavits which serve, in part, as the basis for lifting the Mareva Order, the Mareva Order will be immediately reinstated, on the consent of the Mareva Defendants.

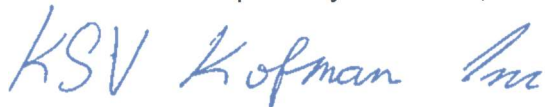
8. Additionally, going forward, the Mareva Defendants will be required to report to the Receiver and the Trustee on a quarterly basis regarding all their respective direct and indirect earnings for the previous quarter. Should any of their earnings, on an individual basis, exceed CAD\$50,000 for any given quarter, the relevant party or parties will be required to provide an accounting to the Receiver and the Trustee describing what they did with all of that quarter's earnings, including, without limitation, details of whether any earnings were sent out of the jurisdiction or used to acquire assets outside of the jurisdiction. The Receiver and/or the Trustee will be entitled to bring a new motion for a new Mareva injunction against any or all of the Mareva Defendants should the information in any of the accounting demonstrate that any of the Mareva Defendants was or is dissipating assets for the purpose of frustrating a potential judgment in the outstanding litigation.
9. The Settlement therefore provides a degree of certainty regarding costs and benefits relating to the Mareva Issues, which cannot be expeditiously or effectively achieved otherwise.
10. Importantly, no releases will be provided to any of the Mareva Defendants in connection with the Settlement. The Receiver and the Trustee will preserve all their rights to continue their claims and pursue recovery against the Mareva Defendants for any and all matters in the Action and in all other proceedings, subject to the terms of the Settlement Agreement. The Receiver and the Trustee will also preserve all claims, rights and remedies they have as against any and all non-Mareva Defendants in the Action and in all other proceedings.
11. The Settlement therefore represents a fair and commercially reasonable compromise in all the circumstances and for the purposes of these proceedings.
12. It is in the best interests of the Receivership Companies and the Trustee Corporations, and their respective stakeholders, that the terms contemplated under the Settlement Agreement be implemented.

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.,

**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. , TEXTBOOK (445 PRINCESS
STREET) INC., TEXTBOOK ROSS PARK INC., TEXTBOOK (774 BRONSON AVENUE) INC.
AND MCMURRAY STREET INVESTMENTS INC.**

Appendix “B”

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

THE HONOURABLE
MR. JUSTICE HAINEY

)
)
)

THURSDAY, THE 2nd DAY OF
MAY, 2019



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

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

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, 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., Textbook (445 Princess Street) Inc., Textbook (774 Bronson Avenue) Inc., Textbook Ross Park Inc. and McMurray Street Investments Inc., and not in its personal capacity or in any other capacity, and Grant Thornton Limited, solely in its capacity as the Court-appointed trustee (in such capacity, the “**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 not in its personal capacity or in any other capacity, for an Order:

- (a) approving and giving effect to the terms of settlement as set out in the settlement agreement (the “**Settlement Agreement**”) as between the Receiver and the Trustee, on the one hand, and the defendants, 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**”), on the other hand, resolving and settling solely the Mareva injunction granted by the Honourable Justice Myers on August 30, 2017 and the appeal of the decision of the Honourable Justice Myers relating to the Mareva injunction, in accordance with the terms set out in the Settlement Agreement; and
- (b) authorizing and directing the Receiver and the Trustee to take any and all steps necessary to give effect to the Settlement Agreement,

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

ON READING the Notice of Motion of the Receiver and the Trustee, the Eighteenth Report of the Receiver dated April 24, 2019, the Factum of the Receiver and the Trustee, and on hearing the submissions of counsel for the Receiver, counsel for the Trustee and counsel for the Mareva Defendants, 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 Joseph Blinick sworn April 26, 2019,

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 SETTLEMENT AGREEMENT

2. THIS COURT DECLARES that the Settlement Agreement is fair and reasonable in all the circumstances and for the purposes of these proceedings.

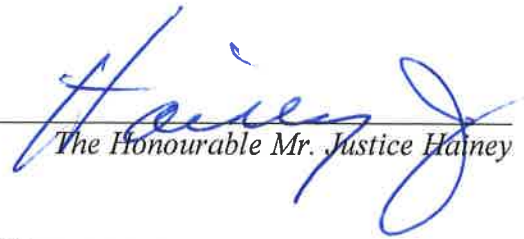
3. THIS COURT ORDERS AND DECLARES that the Settlement Agreement is hereby approved, and the Receiver and the Trustee are hereby authorized and directed to comply with their obligations thereunder and to take such further acts and steps as may be necessary to give effect to the terms of the Settlement Agreement and this Order.

4. THIS COURT ORDERS that the Receiver and the Trustee may from time to time apply to this Court for advice and directions in the discharge of its powers, duties and obligations under the Settlement Agreement and hereunder.

AID AND RECOGNITION OF FOREIGN COURTS

5. 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 Hainey

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

MAY 02 2019

PER / PAR:



Stacey Hutchison
Registrar Superior Court of Justice

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.

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

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

ORDER
(Settlement Approval)

BENNETT JONES LLP
3400 One First Canadian Place
P.O. Box 130
Toronto ON M5X 1A4

Sean Zweig (LSO#573071)
Phone: (416) 777-6254
Email: zweigs@bennettjones.com

Jonathan Bell (LSO#55457P)
Phone: (416) 777-6511
Email: bellj@bennettjones.com

Joseph Blinick (LSO#64325B)
Phone: (416) 777-4828
Email: blinickj@bennettjones.com

Facsimile: (416) 863-1716

Lawyers for KSV Kofman Inc., solely in its capacity as the Court-Appointed Receiver 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 in its capacity as Proposed Court-Appointed Receiver of Textbook (Ross Park) Inc., Textbook (774 Bronson Avenue) Inc. and McMurtry Street Investments Inc.

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

Steven L. Graff (LSUC# 31871V)
Phone: (416) 865-7726
Email: sgraff@airdberlis.com

Hau Aversa (LSUC# 55449N)
Phone: (416) 865-3082
Email: haversa@airdberlis.com

Jeremy Nemers (LSUC# 66410Q)
Phone: (416) 865-4620
Email: jnemers@airdberlis.com

Fax: (416) 863-1515

Lawyers for Grant Thornton Limited, solely in its capacity as 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., Keck Medical Trustee Corporation, Textbook Student Suites (445 Princess Street) Trustee Corporation and Hazelton 4070 Dixie Road Trustee Corporation

Appendix “C”

SETTLEMENT AGREEMENT (this "Settlement Agreement")

AMONGST:

KSV KOFMAN INC., SOLELY IN ITS CAPACITY AS THE COURT-APPOINTED RECEIVER 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., TEXTBOOK (445 PRINCESS STREET) INC., MCMURRAY STREET INVESTMENTS INC., TEXTBOOK (774 BRONSON AVENUE) INC., AND TEXTBOOK ROSS PARK INC., AND NOT IN ITS PERSONAL CAPACITY OR ANY OTHER CAPACITY

(in such capacity, the "**Receiver**")

-and-

GRANT THORNTON LIMITED, SOLELY 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 NOT IN ITS PERSONAL CAPACITY OR ANY OTHER CAPACITY

(in such capacity, the "**Trustee**")

-and-

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**")

-and-

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**")

WHEREAS:

- A. Grant Thornton Limited was appointed as the Trustee pursuant to an Order of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) issued on October 27, 2016;
- B. KSV Kofman Inc. was appointed as the Receiver pursuant to Orders of the Court issued on February 2, 2017, April 28, 2017, May 2, 2017, January 9, 2018 and May 30, 2018;
- C. The Receiver filed a notice of action in the Court on June 6, 2017, bearing Court File No. CV-17-11822-00CL (the “**Original Action**”), against Mr. Davies (solely in his personal capacity) and Aeolian;
- D. The Receiver filed a statement of claim in the Original Action, which was subsequently amended to name additional defendants, including Mr. Davies (in his additional capacity as trustee of both the Arizona Trust and the Family Trust), Ms. Davies, and Gregory Harris solely in his capacity as trustee of the Family Trust (in such capacity, “**Mr. Harris**”);
- E. On August 30, 2017, the Court granted a Mareva injunction as against the Mareva Defendants and Mr. Harris in the Original Action, which restricts them, including the Arizona Trust, from selling, dissipating, alienating, transferring, assigning, encumbering or similarly dealing with any of their assets, wherever situate worldwide (the “**Mareva Injunction**”);
- F. The Arizona Trust owned real property located at 35411 North 66th Place, Carefree, Arizona, 85377 (the “**Arizona Real Property**”), which, on or about November 7, 2018, was sold by the Arizona Trust for USD\$1,650,000 along with the furnishings situated on the Arizona Real Property for a further USD\$150,000. The net proceeds generated from the sale (after paying realtor commissions and a mortgage and a lien that were registered against the Arizona Real Property) amount to USD\$862,568, which amount has since been reduced by virtue of Mr. Davies accessing living expenses of CDN\$7,500 per month pursuant to a Court-approved exemption to the Mareva Injunction. The total amount of net proceeds currently remaining from the sale amounts to USD\$828,171.71 (the “**Proceeds**”), of which USD\$580,671.71 is currently being held in Dentons Canada LLP’s (“**Dentons**”) trust account, with the balance, being USD\$247,500, currently being held by the United States Internal Revenue Service (the “**IRS**”) in respect of a potential withholding tax obligation. Dentons, counsel for Mr. Davies, has provided the Receiver’s counsel with information from Mr. Davies’ agent in the United States, Mary-Heather Styles of Transatlantic Tax Inc., who has advised that the full amount of USD\$247,500 will ultimately be released by the IRS. The Proceeds represent most of the Mareva Defendants’ assets known to the Trustee and the Receiver;
- G. The Trustee and the Receiver commenced a further action in the Court by the issuance of a statement of claim on October 3, 2018 bearing Court File No. CV-18-606314-00CL (the “**Expanded Action**”) against the Mareva Defendants and the following additional parties: Mr. Harris (in his personal capacity and in his capacity as trustee of the 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 (collectively, in any and all capacities, and together with any and all other parties or potential parties in the Expanded Action and in any other claims and proceedings, the “**Defendants**”);

- H. In the Expanded Action, the Trustee and the Receiver seek an interim, interlocutory and permanent Mareva injunction as against the Mareva Defendants and Mr. Harris in his capacity as trustee of the Family Trust;
- I. The Receiver intends to consolidate the Original Action with the Expanded Action;
- J. On January 19, 2018, the Ontario Superior Court of Justice (Divisional Court) (the “**Divisional Court**”) granted leave to Mr. Davies and Aeolian to appeal the Mareva Injunction;
- K. The appeal of the Mareva Injunction (the “**Appeal of the Mareva Injunction**”) is currently scheduled to be heard on April 17, 2019;
- L. The Trustee and the Receiver, on the one hand, and the Mareva Defendants, on the other hand, wish to resolve solely the Mareva Injunction and the Appeal of the Mareva Injunction (collectively, the “**Mareva Issues**”) in accordance with the terms set out below;

NOW THEREFORE in consideration of the promises set forth herein, the mutual covenants and agreements contained herein, and for further and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

1. **Recitals.** The above recitals are true and accurate, and form part of this Settlement Agreement.
2. **Adjournment of Appeal of the Mareva Injunction.** As soon as possible following the execution of this Settlement Agreement, and in any event prior to April 17, 2019, Mr. Davies and Aeolian shall adjourn the Appeal of the Mareva Injunction on the consent of the Receiver to a mutually agreeable date. If necessary, counsel for Mr. Davies and Aeolian and counsel for the Receiver shall attend at Divisional Court to speak to the adjournment.
3. **Court Approval.** Provided that Mr. Davies and Aeolian adjourn the Appeal of the Mareva Injunction in accordance with the terms and timelines provided by paragraph 2 of this Settlement Agreement, then, subject only to paragraph 4 of this Settlement Agreement, the Receiver and the Trustee shall apply forthwith to the Court for and recommend an order approving and giving full effect to this Settlement Agreement (the “**Order**”, and upon such Order being issued by the Court, the “**Effective Time**”).
4. **Asset Disclosure.** Prior to the Receiver and the Trustee seeking the Order from the Court, Mr. Davies, Ms. Davies, Aeolian, the Family Trust (through its designated trustee) and the Arizona Trust (through its designated trustee) shall each first swear

affidavits fully and accurately disclosing all of their assets wherever located (the “**Disclosure Affidavits**”) and deliver such Disclosure Affidavits to the Receiver and the Trustee. If the assets disclosed by Mr. Davies, Ms. Davies, Aeolian, the Family Trust and the Arizona Trust in the Disclosure Affidavits are not limited to what each has previously disclosed to the Receiver, the Receiver and/or the Trustee may, in their discretion, decline to perform their obligations otherwise provided by paragraph 3 of this Settlement Agreement.

5. **Disbursement of the Proceeds.** Provided that the Order is granted by the Court, the parties to this Settlement Agreement (the “**Parties**”) shall divide the Proceeds such that the Receiver shall receive 72.5% of the Proceeds and Mr. Davies shall receive 27.5% of the Proceeds. For greater clarity, in monetary terms, the Receiver shall receive USD\$600,424.49 and Mr. Davies shall receive USD\$227,747.22, subject to the Order being granted by the Court and subject to the additional terms set out below:
- (a) **Payment of Proceeds to Mr. Davies.** Mr. Davies shall be paid CAD\$150,000 (the “**Initial Payment**”) from the Proceeds currently in Dentons’ trust account immediately after the Effective Time, with the balance of Mr. Davies’ share of the Proceeds to be paid from the amount currently held back by the IRS upon receipt by Dentons of such amount in compliance with the undertakings previously given to the Receiver regarding payment of this amount directly to Dentons. The exchange rate to be used for calculating the Initial Payment shall be the exchange rate applied by Bank of Montreal on the day the Initial Payment is made;
 - (b) **Payment of the Proceeds to the Receiver.** Following the Initial Payment, the Receiver shall be paid the balance of the Proceeds currently in Dentons’ trust account immediately after the Effective Time, and, in any event, within no more than two business days after the Effective Time. Provided that the funds currently held back by the IRS are released in full, the balance of the Receiver’s share of the Proceeds shall be paid from the released funds forthwith upon receipt by Dentons of such funds in compliance with the undertakings previously given to the Receiver regarding payment of this amount directly to Dentons and, in any event, within no more than two business days following receipt of such amount;
 - (c) **Authorization and Direction for Dentons Canada LLP.** This Settlement Agreement shall serve as Dentons’ formal and irrevocable authorization and direction from Mr. Davies, Ms. Davies, Aeolian, the Family Trust and the Arizona Trust to transfer the funds to the Receiver as set out above without any further act, formality or instruction being required from any of Mr. Davies, Ms. Davies, Aeolian, the Family Trust, the Arizona Trust, or any other party;
 - (d) **Pro Rata Distribution.** To the extent the funds currently held back by the IRS are not released in full as expected, the Receiver and Mr. Davies shall divide such proceeds according to their pro rata entitlement, having regard to the amounts already paid to both the Receiver and Mr. Davies on the initial distribution from Dentons’ trust account. For greater certainty, the funds released by the IRS shall be divided so that the Receiver and Mr. Davies receive 72.5% and 27.5% of the total net proceeds of sale of the Arizona Real Property (to the extent possible, having regard to the quantum of funds released by the IRS). For further greater certainty, the quantum of the release of the IRS funds shall in no event entitle

either Mr. Davies or the Receiver to demand repayment of the initial payments made out of the proceeds currently held by Dentons contemplated by paragraphs 5(a) and (b) above; and

- (e) **No Admission of Liability.** The payments to be made hereunder shall be without any admission of liability. All liability is expressly denied by Mr. Davies, Ms. Davies, Aeolian, the Family Trust and the Arizona Trust.
6. **Lifting of the Mareva Injunction.** Provided that the Order is granted by the Court, then, following the Effective Time and the Receiver's receipt of all payments contemplated in this Settlement Agreement, the Mareva Injunction will be terminated on consent on a without costs basis, subject to the additional terms set out below:
- (a) If any of Mr. Davies, Ms. Davies, Aeolian, the Family Trust or the Arizona Trust is ever found to have made any misrepresentation in any of the Disclosure Affidavits, the Trustee and/or the Receiver shall be entitled to immediately bring a new motion for a Mareva injunction against the Mareva Defendants on the express consent of all of Mr. Davies, Ms. Davies, Aeolian, the Family Trust and the Arizona Trust. In that regard, Mr. Davies, Ms. Davies, Aeolian, the Family Trust and the Arizona Trust each hereby provides such consent and shall each take any and all additional steps as may be necessary or reasonable to give full effect to this subparagraph;
 - (b) Each of Mr. Davies, Ms. Davies, Aeolian, the Family Trust (through its designated trustee) and the Arizona Trust (through its designated trustee) shall report to the Receiver and the Trustee on a quarterly basis regarding all of their respective direct and indirect earnings for the previous quarter. Should any of their earnings, on an individual basis, exceed CAD\$50,000 for any given quarter, the relevant party or parties shall provide a general accounting to the Receiver and the Trustee describing what they did with all of that quarter's earnings, including, without limitation, details of whether any earnings were sent out of the Province of Ontario or used to acquire assets outside of the Province of Ontario. Failure by any of Mr. Davies, Ms. Davies, Aeolian, the Family Trust (through its designated trustee) and the Arizona Trust (through its designated trustee) to provide a quarterly report within 15 calendar days of the end of each quarter (beginning with respect to the quarter ending on June 30, 2019), and to cure such failure within 7 calendar days' notice provided by the Receiver or the Trustee of the failure to report, shall entitle the Trustee and/or the Receiver to immediately bring a new motion for a Mareva injunction on the express consent of all of Mr. Davies, Ms. Davies, Aeolian, the Family Trust and the Arizona Trust. In that regard, Mr. Davies, Ms. Davies, Aeolian, the Family Trust and the Arizona Trust each hereby provides such consent and shall each take any and all additional steps as may be necessary or reasonable to give full effect to this subparagraph. Notwithstanding the obligations in this paragraph, there is no reporting obligation on: (i) any assets, properties or undertakings disclosed in the Disclosure Affidavits, or (ii) Mr. Davies' share of the Proceeds; and
 - (c) The Receiver, the Trustee or both of them shall be able and entitled to bring a new motion for a new Mareva injunction against any or all of Mr. Davies, Ms. Davies, Aeolian, the Family Trust and/or the Arizona Trust should the information in any of the accounting described above demonstrate that any of Mr. Davies, Ms.

Davies, Aeolian, the Family Trust or the Arizona Trust was or is dissipating assets for the purpose of frustrating a potential judgment in any outstanding litigation by the Receiver or the Trustee against any of Mr. Davies, Ms. Davies, Aeolian, the Family Trust and/or the Arizona Trust. The evidence to be used on any such motion brought under this subsection 6(c) of this Settlement Agreement will be restricted only to new information acquired after the Effective Time. For greater clarity, any or all of Mr. Davies, Ms. Davies, Aeolian, the Family Trust and/or the Arizona Trust shall be entitled to fully resist any motion brought under this subsection 6(c) of this Settlement Agreement.

7. **Amendment of statement of claim in the Expanded Action.** Provided that the Order is granted by the Court, then, following the Effective Time and the Receiver's receipt of all payments contemplated in this Settlement Agreement, the Receiver and the Trustee shall amend their statement of claim in the Expanded Action (and, if necessary, the Receiver shall also amend its statement of claim in the Original Action) to no longer seek injunctive relief against Mr. Davies, Ms. Davies, Aeolian, the Family Trust and the Arizona Trust (including Mr. Harris solely in his capacity as trustee of the Family Trust), and will also remove the related allegations in paragraphs 263-266 of the Expanded Action. Aside from this amendment to the statement of claim in the Expanded Action (and, if necessary, the Original Action), nothing in this Settlement Agreement shall otherwise affect in any way, or be deemed to affect in any way, the Expanded Action or any related or other proceedings. For greater clarity, and regardless of whether the Order is granted by the Court, nothing in this Settlement Agreement shall be construed or deemed in any way to constitute a release of any kind in respect of any of Mr. Davies, Ms. Davies, Aeolian, the Family Trust, the Arizona Trust, Mr. Harris or any of the Defendants.
8. **Withdrawal of Appeal.** Provided that the Order is granted by the Court, then following the Effective Time, Mr. Davies and Aeolian shall forthwith withdraw the Appeal of the Mareva Injunction on the consent of the Receiver, on a without costs basis. For greater clarity, Mr. Davies and Aeolian shall not forego any of their appeal rights unless and until the Order is granted by the Court..
9. **Further Terms.**
 - (a) The Parties hereby declare, represent and warrant that they have each consulted with and been advised by independent legal counsel with respect to the terms of the settlement set forth herein, that they have read and fully understand all of the terms of this Settlement Agreement, and that they enter into this Settlement Agreement freely and voluntarily, without coercion or duress, and without reliance upon any representation, warranty, condition or agreement, whether written or oral, other than as expressly set out or referred to herein.
 - (b) The Parties shall execute all documents and take all steps as are necessary or reasonable to accomplish the objectives of this Settlement Agreement and give full effect to this Settlement Agreement.
 - (c) This Settlement Agreement may not be altered, amended or modified except by written agreement of the Parties. This Settlement Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario and the laws

of Canada applicable therein. Any dispute arising out of or in connection with this Settlement Agreement shall be exclusively and finally determined by the Court.

- (d) The terms of this Settlement Agreement shall enure to the benefit of, and be binding upon, the Parties and their respective heirs, successors and assigns, as applicable.
- (e) This Settlement Agreement constitutes the entire agreement among the Parties, and supersedes all other prior agreements and understandings, both written and oral, between the Parties with respect to the subject matter hereof.
- (f) The Parties acknowledge that KSV Kofman Inc. and Grant Thornton Limited are entering into this Settlement Agreement solely in their respective capacities as the Receiver and the Trustee and shall have absolutely no personal or corporate liability under or as a result of this Settlement Agreement in any respect.
- (g) This Settlement Agreement may be executed in counterparts, all of which taken together shall be deemed to constitute one and the same instrument, and a facsimile, email or electronically transmitted signature shall be deemed an original signature and of equally binding force and effect.

IN WITNESS WHEREOF, the parties hereto have duly executed this Settlement Agreement:

[Remainder of Page Intentionally Left Blank]

GRANT THORNTON LIMITED,
SOLELY 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 NOT IN ITS PERSONAL
CAPACITY OR ANY OTHER
CAPACITY

D. K. W.

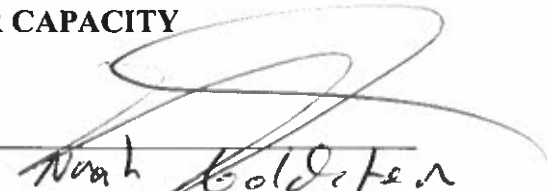
Witness Name: *Dave Goldblatt*

[Signature]

Name: *J. KUMBER*
Title: *SR. VICE PRESIDENT*

KSV KOFMAN INC., SOLELY IN ITS CAPACITY AS THE COURT-APPOINTED RECEIVER 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., TEXTBOOK (445 PRINCESS STREET) INC., MCMURRAY STREET INVESTMENTS INC., TEXTBOOK (774 BRONSON AVENUE) INC., AND TEXTBOOK ROSS PARK INC., AND NOT IN ITS PERSONAL CAPACITY OR ANY OTHER CAPACITY

Witness Name: 
Jonathan Joffe

Name: 
Title: Managing Director

Witness Name: _____

JOHN DAVIES, in his personal capacity and in his capacity as trustee of the Davies Family Trust and the Davies Arizona Trust

Witness Name: _____

JUDITH DAVIES, in her personal capacity and in her capacity as trustee of the Davies Arizona Trust

AEOLIAN INVESTMENTS LTD.

Witness Name: _____


Name: _____
Title: _____
I have authority to bind the corporation.

KSV KOFMAN INC., SOLELY IN ITS CAPACITY AS THE COURT-APPOINTED RECEIVER 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., TEXTBOOK (445 PRINCESS STREET) INC., MCMURRAY STREET INVESTMENTS INC., TEXTBOOK (774 BRONSON AVENUE) INC., AND TEXTBOOK ROSS PARK INC., AND NOT IN ITS PERSONAL CAPACITY OR ANY OTHER CAPACITY

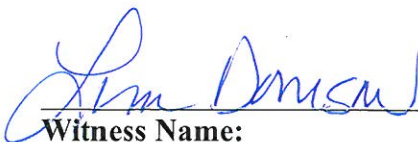
Witness Name:



Witness Name:



Witness Name:




Witness Name:

Name:
Title:



JOHN DAVIES, in his personal capacity and in his capacity as trustee of the Davies Family Trust and the Davies Arizona Trust



JUDITH DAVIES, in her personal capacity and in her capacity as trustee of the Davies Arizona Trust

AEOLIAN INVESTMENTS LTD.



Name:
Title:

I have authority to bind the corporation.

Appendix “D”

**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

AMENDED STATEMENT OF CLAIM

TO THE DEFENDANTS

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the plaintiffs. The claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or an Ontario lawyer acting for you must prepare a statement of defence in Form 18A prescribed by the *Rules of Civil Procedure*, serve it on the plaintiff's lawyer or, where the plaintiff does not have a lawyer, serve it on the plaintiff, and file it, with proof of service in this court office, **WITHIN TWENTY DAYS** after this statement of claim is served on you, if you are served in Ontario.

If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your statement of defence is forty days. If you are served outside Canada and the United States of America, the period is sixty days.

Instead of serving and filing a statement of defence, you may serve and file a notice of intent to defend in Form 18B prescribed by the *Rules of Civil Procedure*. This will entitle you to ten more days within which to serve and file your statement of defence.

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LEGAL AID OFFICE.

TAKE NOTICE: THIS ACTION WILL AUTOMATICALLY BE DISMISSED if it has not been set down for trial or terminated by any means within five years after the action was commenced unless otherwise ordered by the court.

DATE: October 3, 2018

Issued by:

Local Registrar

Address of Court Office:
330 University Avenue
7th Floor
Toronto, Ontario
M5G 1E6

TO: JOHN DAVIES
24 Country Club Drive
King City, ON L7B 1M5

AND TO: AEOLIAN INVESTMENTS LTD.
2355 Skymark Avenue, Suite 300
Mississauga, ON L4W 4Y6

- and -

24 Country Club Drive
King City, ON L7B 1M5

AND TO: JUDITH DAVIES
24 Country Club Drive
King City, ON L7B 1M5

AND TO: GREGORY HARRIS
295 The West Mall, 6th Floor
Etobicoke, ON M9C 4Z4

- and -

95 Loch Erne Lane
Nobleton, ON L0G 1N0

AND TO: HARRIS + HARRIS LLP
295 The West Mall, 6th Floor
Etobicoke, ON M9C 4Z4

AND TO: NANCY ELLIOTT
5000 Yonge Street, Suite 1901
Toronto, ON M2N 7E9

AND TO: ELLIOT LAW PROFESSIONAL CORPORATION
5000 Yonge Street, Suite 1901
Toronto, ON M2N 7E9

AND TO: WALTER THOMPSON
18 Brookfield Road
Toronto, ON M2P 1A9

- and -

1248 Atkins Drive
Newmarket, ON L3X 0C3

AND TO: 1321805 ONTARIO INC.
9140 Leslie Street
Richmond Hill, ON L0H 1G0

AND TO: BRUCE STEWART
127 Teskey Drive, RR2
Clarksburg, ON N0H 1J0

AND TO: THE TRADITIONS DEVELOPMENT COMPANY LTD.
127 Teskey Drive, RR2
Clarksburg, ON N0H 1J0

AND TO: DAVID ARSENAULT
5186 Dundas Street West
Toronto, ON M9A 1C4

AND TO: JAMES GRACE
266 Oriole Parkway
Toronto, ON M5P 2H3

AND TO: BHAKTRAJ SINGH A.K.A. RAJ SINGH
7 Bowam Court
Toronto, ON M2K 3AB

- and -

20 Damian Drive
Richmond Hill, ON L4B 3Z9

AND TO: RS CONSULTING GROUP INC.
20 Damian Drive
Richmond Hill, ON L4B 3Z9

- and -

2355 Skymark Avenue, Suite 300
Mississauga, ON L4W 4Y6

- and -

295 The West Mall, 6th Floor
Etobicoke, ON M9C 4Z4

AND TO: TIER 1 TRANSACTION ADVISORY SERVICES INC.
7 Bowam Court
Toronto, ON M2K 3A8

- and -

2100 Steeles Avenue East, Suite 902
Markham, ON L3R 8T3

AND TO: JUDE CASSIMY
445 Snowball Crescent
Scarborough, ON M1B 1S5

- and -

337 Castlemore Ave.
Markham, ON L6C 2Y1

AND TO: FIRST COMMONWEALTH MORTGAGE CORPORATION
337 Castlemore Ave.
Markham, ON L6C 2Y1

AND TO: MEMORY CARE INVESTMENTS LTD.
51 Caldari Road, Suite #A1M
Concord, ON L4K 4G3

- and -

24 Country Club Drive
King City, ON L7B 1M5

AND TO: TEXTBOOK STUDENT SUITES INC.
2355 Skymark Avenue
Suite 300
Mississauga, ON L4W 4Y6

- and -

51 Caldari Road, Suite #A1M
Concord, ON L4K 4G3

- and -

295 The West Mall, 6th Floor
Etobicoke, ON M9C 4Z4

AND TO: TEXTBOOK SUITES INC.
2355 Skymark Avenue
Suite 300
Mississauga, ON L4W 4Y6

- and -

51 Caldari Road, Suite #A1M
Concord, ON L4K 4G3

- and -

295 The West Mall, 6th Floor
Etobicoke, ON M9C 4Z4

AND TO: MICHAEL CANE
320 Tweedsmuir Ave, Suite 902
York, ON M5P 2Y3

CLAIM

Definitions

1. The following definitions apply for the purpose of this pleading:
 - (a) “**445 Princess**” means Textbook (445 Princess Street) Inc.;
 - (b) “**445 Trust Co.**” means Textbook Student Suites (445 Princess Street) Trustee Corporation;
 - (c) “**525 Princess**” means Textbook (525 Princess Street) Inc.;
 - (d) “**525 Trust Co.**” means Textbook Student Suites (525 Princess Street) Trustee Corporation;
 - (e) “**555 Princess**” means Textbook (555 Princess Street) Inc.;
 - (f) “**555 Trust Co.**” means Textbook Student Suites (555 Princess Street) Trustee Corporation;
 - (g) “**Aeolian**” means the defendant Aeolian Investments Ltd.;
 - (h) “**Brokers**” means Tier 1 Mortgage and the defendant FCMC;
 - (i) “**Bronson**” means Textbook (774 Bronson Avenue) Inc.;
 - (j) “**Bronson Trust Co.**” means Textbook Student Suites (774 Bronson Avenue) Trustee Corporation;
 - (k) “**Burlington**” means 1703858 Ontario Ltd.;

- (l) “**Court**” means the Ontario Superior Court of Justice (Commercial List);
- (m) “**Dachstein**” means Dachstein Holdings Inc.;
- (n) “**Davies Children**” means the children of Mr. and Ms. Davies: Jessica Deborah Davies, Sarah Ramona Davies, Andrew John Davies and Walter Robert Jackson Davies;
- (o) “**Davies Defendants**” means Aeolian, Mr. Davies, Ms. Davies and Mr. Harris (solely in his capacity as trustee and representative of the Family Trust and not in his personal capacity or any other capacity):
- (p) “**Davies, Thompson, Stewart and Singh Defendants**” means the Davies Defendants, the Thompson Defendants, the Stewart Defendants and the Singh Defendants;
- (q) “**Development Companies**” means the Receivership Companies and the Non-Receivership Development Companies;
- (r) “**Elliot Co.**” means the defendant Elliot Law Professional Corporation;
- (s) “**Elliot Defendants**” means Ms. Elliot and Elliot Co.;
- (t) “**FCMC**” means the defendant First Commonwealth Mortgage Corporation;
- (u) “**Guildwood**” means 1416958 Ontario Inc.;
- (v) “**Grant Thornton**” means Grant Thornton Limited;
- (w) “**Harris Defendants**” means Mr. Harris (in his personal capacity) and Harris LLP;

- (x) “**Harris LLP**” means the defendant Harris + Harris LLP;
- (y) “**Hazelton**” means Hazelton Development Corporation;
- (z) “**Hazelton Trust Co.**” means Hazelton 4070 Dixie Road Trustee Corporation;
- (aa) “**Keele Medical**” means Keele Medical Properties Ltd.;
- (bb) “**Keele Medical Trust Co.**” means Keele Medical Trustee Corporation;
- (cc) “**Kitchener**” means Memory Care Investments (Kitchener) Ltd.;
- (dd) “**Kitchener Trust Co.**” means MC Trustee (Kitchener) Ltd.;
- (ee) “**KSV**” means KSV Kofman Inc.;
- (ff) “**Legacy Lane**” means Legacy Lane Investments Ltd.;
- (gg) “**Loan Agreements**” means the loan agreements respectively between the Development Companies and the Tier 1 Trust Companies;
- (hh) “**MC Burlington**” means Memory Care Investments Burlington Ltd.;
- (ii) “**McMurray**” means McMurray Street Investments Inc.;
- (jj) “**McMurray Trust Co.**” means 7743718 Canada Inc.;
- (kk) “**MCIL**” means the defendant Memory Care Investments Ltd.;
- (ll) “**Moscowitz**” means Moscovitz Capital Mortgage Fund II;
- (mm) “**Mr. Arsenault**” means the defendant David Arsenault;

- (nn) “**Mr. Cane**” means the defendant Michael Cane;
- (oo) “**Mr. Cassimy**” means the defendant Jude Cassimy;
- (pp) “**Mr. Davies**” means the defendant John Davies in his personal capacity and, separately, in his capacity as trustee and/or representative of both the Davies Arizona Trust and the Davies Family Trust;
- (qq) “**Mr. Grace**” means the defendant James Grace;
- (rr) “**Mr. Harris**” means the defendant Gregory Harris;
- (ss) “**Mr. Singh**” means the defendant Raj Singh;
- (tt) “**Mr. Stewart**” means the defendant Bruce Stewart;
- (uu) “**Mr. Thompson**” means the defendant Walter Thompson;
- (vv) “**Ms. Davies**” means the defendant Judith Davies in her personal capacity and, separately, in her capacity as trustee and/or representative of the Davies Family Trust;
- (ww) “**Ms. Elliott**” means the defendant Nancy Elliott;
- (xx) “**Ms. Harris**” means Erika Harris;
- (yy) “**Non-Receivership Development Companies**” means Vaughan Crossings, Silver Seven, Keele Medical, Guildwood, and Hazelton;
- (zz) “**Oakville**” means Memory Care Investments (Oakville) Ltd.;

- (aaa) **“Oakville/Burlington/Guildwood/Legacy Lane Trust Co.”** means 2223947 Ontario Limited;
- (bbb) **“Project”** means, for each Development Company, the real estate development project that was to have been developed by such Development Company;
- (ccc) **“Receiver”** means KSV, solely in its capacity as the court-appointed receiver and manager or, as applicable, receiver, of certain property of the Receivership Companies and not in its personal capacity or any other capacity;
- (ddd) **“Receivership Companies”** means 445 Princess, 525 Princess, 555 Princess, Bronson, Burlington, Kitchener, Legacy Lane, McMurray, Oakville, Ross Park and Scollard;
- (eee) **“Ross Park”** means Textbook Ross Park Inc.;
- (fff) **“Ross Park Trust Co.”** means Textbook Student Suites (Ross Park) Trustee Corporation;
- (ggg) **“Scollard”** means Scollard Development Corporation;
- (hhh) **“Scollard/Vaughan Crossings/Silver Seven Trust Co.”** means Scollard Trustee Corporation;
- (iii) **“Silver Seven”** means Silver Seven Corporate Centre Inc.;
- (jjj) **“Singh Co.”** means the defendant RS Consulting Group Inc.;
- (kkk) **“Singh Defendants”** means Mr. Singh, Singh Co. and Tier 1 Advisory;

- (lll) “**SMIs**” means syndicated mortgage investments, specifically in respect of the Tier 1 Trust Companies;
- (mmm) “**Stewart Co.**” means the defendant Traditions Development Company Ltd.;
- (nnn) “**Stewart Defendants**” means Mr. Stewart and Stewart Co.;
- (ooo) “**Thompson Co.**” means the defendant 1321805 Ontario Inc.;
- (ppp) “**Thompson Defendants**” means Mr. Thompson and Thompson Co.;
- (qqq) “**Tier 1 Advisory**” means the defendant Tier 1 Transaction Advisory Services Inc.;
- (rrr) “**Tier 1 Mortgage**” means Tier 1 Mortgage Corporation;
- (sss) “**Tier 1 Trust Companies**” means 445 Trust Co., 525 Trust Co., 555 Trust Co., Bronson Trust Co., Hazelton Trust Co., Keele Medical Trust Co., Kitchener Trust Co., McMurray Trust Co., Oakville/Burlington/Guildwood/Legacy Lane Trust Co., Ross Park Trust Co, and Scollard/Vaughan Crossings/Silver Seven Trust Co.;
- (ttt) “**Trust Companies**” means 445 Trust Co., 525 Trust Co., 555 Trust Co., Bronson Trust Co., Kitchener Trust Co., McMurray Trust Co., Oakville/Burlington/Guildwood/Legacy Lane Trust Co. (solely in its capacity as lender to Oakville, Burlington and Legacy Lane), Ross Park Trust Co, and Scollard/Vaughan Crossings/Silver Seven Trust Co. (solely in its capacity as lender to Scollard);

(uuu) “**Trustee**” means Grant Thornton, solely in its capacity as the court appointed trustee of the Trust Companies and not in its personal capacity or any other capacity;

(vvv) “**TSI**” means the defendant Textbook Suites Inc.;

(www) “**TSSI**” means the defendant Textbook Student Suites Inc.; and

(xxx) “**Vaughan Crossings**” means Vaughan Crossings Inc.

Relief Sought

2. The plaintiffs, the Trustee and the Receiver, as applicable, make the following claims as against the defendants on a joint and several basis (as particularized in more detail below):

(a) As against the Singh Defendants:

(i) a constructive trust and/or damages in the sum of \$106 million or, in the alternative, damages in an amount to be assessed or determined by this Honourable Court for fraud, deceit, conspiracy, conversion and/or unjust enrichment, and, additionally, as against Mr. Singh, for breach of fiduciary duty, knowing assistance in breach of fiduciary duty and/or negligence;

(ii) a declaration that the liability of Mr. Singh in his personal capacity arises out of fraud, embezzlement, misappropriation and/or defalcation while acting in a fiduciary capacity; and/or that the liability of the Singh Defendants arises from obtaining property or services by false pretenses 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;

- (iii) orders for restitution, an accounting, and disgorgement of all assets, properties, and funds belonging to the Tier 1 Trust Companies and the Receivership Companies, and improperly diverted by or to any of the Singh Defendants or any person, corporation or other entity on any of their behalf;
- (iv) a declaration that the plaintiffs are entitled to trace the assets, properties and funds of the Tier 1 Trust Companies and the Receivership Companies into the hands of the Singh Defendants, and a declaration that the Singh Defendants hold those assets, properties, and funds as constructive trustees for the plaintiffs; and
- (v) a constructive trust and tracing or following order in respect of all assets, properties, and funds belonging to the Tier 1 Trust Companies and the Receivership Companies, and improperly diverted by or to any of the Singh Defendants or any person, corporation or other entity on any of their behalf, and in respect of all the traceable products thereof.

(b) As against the Davies Defendants:

- (i) a constructive trust and/or damages in the sum of \$84 million or, in the alternative, damages in an amount to be assessed or determined by this Honourable Court for fraud, deceit, conspiracy, conversion and/or unjust

enrichment, and, additionally, as against Mr. Davies, for breach of fiduciary duty, knowing assistance in breach of fiduciary duty and/or negligence;

- (ii) a declaration that the liability of Mr. Davies in his personal capacity arises out of fraud, embezzlement, misappropriation and/or defalcation while acting in a fiduciary capacity; and/or that the liability of the Davies Defendants arises from obtaining property or services by false pretenses 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;
- (iii) orders for restitution, an accounting, and disgorgement of all assets, properties, and funds belonging to the Tier 1 Trust Companies and the Receivership Companies, and improperly diverted by or to any of the Davies Defendants or any person, corporation or other entity on any of their behalf;
- (iv) a declaration that the plaintiffs are entitled to trace the assets, properties and funds of the Tier 1 Trust Companies and the Receivership Companies into the hands of the Davies Defendants, and a declaration that the Davies Defendants hold those assets, properties, and funds as constructive trustees for the plaintiffs; and
- (v) a constructive trust and tracing or following order in respect of all assets, properties, and funds belonging to the Tier 1 Trust Companies and the Receivership Companies, and improperly diverted by or to any of the

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

~~(vi) an interim, interlocutory and permanent order, in the form of a worldwide *Mareva* injunction, restraining the Davies 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 situated.~~

(c) As against the Stewart Defendants:

- (i) a constructive trust and/or damages in the sum of \$30 million or, in the alternative, damages in an amount to be assessed or determined by this Honourable Court for unjust enrichment, and, additionally, as against Mr. Stewart, for breach of fiduciary duty, knowing assistance in breach of fiduciary duty and negligence;
- (ii) orders for restitution, an accounting, and disgorgement of all assets, properties, and funds belonging to the Tier 1 Trust Companies and the Receivership Companies, and improperly diverted by or to any of the Stewart Defendants or any person, corporation or other entity on any of their behalf;

- (iii) a declaration that the plaintiffs are entitled to trace the assets, properties and funds of the Tier 1 Trust Companies and the Receivership Companies into the hands of the Stewart Defendants, and a declaration that the Stewart Defendants hold those assets, properties, and funds as a constructive trustee for the plaintiffs; and
 - (iv) a constructive trust and tracing or following order in respect of all assets, properties, and funds belonging to the Tier 1 Trust Companies and the Receivership Companies, and improperly diverted by or to any of the Stewart Defendants, or any person, corporation or other entity on any of their behalf, and in respect of all the traceable products thereof.
- (d) As against the Thompson Defendants:
- (i) a constructive trust and/or damages in the sum of \$40 million or, in the alternative, damages in an amount to be assessed or determined by this Honourable Court for unjust enrichment, and, additionally, as against Mr. Thompson for breach of fiduciary duty, knowing assistance in breach of fiduciary duty and negligence;
 - (ii) orders for restitution, an accounting, and disgorgement of all assets, properties, and funds belonging to the Tier 1 Trust Companies and the Receivership Companies, and improperly diverted by or to any of the Thompson Defendants or any person, corporation or other entity on any of their behalf;

- (iii) a declaration that the plaintiffs are entitled to trace the assets, properties and funds of the Tier 1 Trust Companies and the Receivership Companies into the hands of the Thompson Defendants, and a declaration that the Thompson Defendants hold those assets, properties, and funds as a constructive trustee for the plaintiffs; and
 - (iv) a constructive trust and tracing or following order in respect of all assets, properties, and funds belonging to the Tier 1 Trust Companies and the Receivership Companies, and improperly diverted by or to any of the Thompson Defendants, or any person, corporation or other entity on any of their behalf, and in respect of all the traceable products thereof.
- (e) As against Mr. Arsenault:
 - (i) a constructive trust and/or damages in the sum of \$3.5 million or, in the alternative, damages in an amount to be assessed or determined by this Honourable Court for breach of fiduciary duty, knowing assistance in breach of fiduciary duty, negligence and/or unjust enrichment;
 - (ii) orders for restitution, an accounting, and disgorgement of all assets, properties, and funds belonging to the Tier 1 Trust Companies and the Receivership Companies, and improperly diverted by or to Mr. Arsenault or any person, corporation or other entity on his behalf;
 - (iii) a declaration that the plaintiffs are entitled to trace the assets, properties and funds of the Tier 1 Trust Companies and the Receivership Companies into

the hands of Mr. Arsenault, and a declaration that Mr. Arsenault holds those assets, properties, and funds as a constructive trustee for the plaintiffs; and

(iv) a constructive trust and tracing or following order in respect of all assets, properties, and funds belonging to the Tier 1 Trust Companies and the Receivership Companies, and improperly diverted by or to Mr. Arsenault, or any person, corporation or other entity on his behalf, and in respect of all the traceable products thereof.

(f) As against Mr. Grace:

(i) a constructive trust and/or damages in the sum of \$8.4 million or, in the alternative, damages in an amount to be assessed or determined by this Honourable Court for breach of fiduciary duty, knowing assistance in breach of fiduciary duty, negligence and/or unjust enrichment;

(ii) orders for restitution, an accounting, and disgorgement of all assets, properties, and funds belonging to the Tier 1 Trust Companies and the Receivership Companies, and improperly diverted by or to Mr. Grace or any person, corporation or other entity on his behalf;

(iii) a declaration that the plaintiffs are entitled to trace the assets, properties and funds of the Tier 1 Trust Companies and the Receivership Companies into the hands of Mr. Grace, and a declaration that Mr. Grace holds those assets, properties, and funds as a constructive trustee for the plaintiffs; and

- (iv) a constructive trust and tracing or following order in respect of all assets, properties, and funds belonging to the Tier 1 Trust Companies and the Receivership Companies, and improperly diverted by or to Mr. Grace, or any person, corporation or other entity on his behalf, and in respect of all the traceable products thereof.

- (g) As against Mr. Cassimy:
 - (i) a constructive trust and/or damages in the sum of \$8.4 million or, in the alternative, damages in an amount to be assessed or determined by this Honourable Court for, breach of fiduciary duty, knowing assistance in breach of fiduciary duty, negligence and/or unjust enrichment;

 - (ii) orders for restitution, an accounting, and disgorgement of all assets, properties, and funds belonging to the Tier 1 Trust Companies, and improperly diverted by or to Mr. Cassimy or any person, corporation or other entity on his behalf;

 - (iii) a declaration that the Trustee is entitled to trace the assets, properties and funds of the Tier 1 Trust Companies into the hands of Mr. Cassimy, and a declaration that Mr. Cassimy holds those assets, properties, and funds as a constructive trustee for the Trustee; and

 - (iv) a constructive trust and tracing or following order in respect of all assets, properties, and funds belonging to the Tier 1 Trust Companies, and

improperly diverted by or to Mr. Cassimy, or any person, corporation or other entity on his behalf, and in respect of all the traceable products thereof.

(h) As against FCMC:

- (i) a constructive trust and/or damages in the sum of \$106 million or, in the alternative, damages in an amount to be assessed or determined by this Honourable Court for knowing assistance in breach of fiduciary duty, negligence and/or unjust enrichment;
- (ii) orders for restitution, an accounting, and disgorgement of all assets, properties, and funds belonging to the Tier 1 Trust Companies, and improperly diverted by or to FCMC or any person, corporation or other entity on its behalf;
- (iii) a declaration that the Trustee is entitled to trace the assets, properties and funds of the Tier 1 Trust Companies into the hands of FCMC, and a declaration that FCMC holds those assets, properties, and funds as a constructive trustee for the Trustee; and
- (iv) a constructive trust and tracing or following order in respect of all assets, properties, and funds belonging to the Tier 1 Trust Companies and improperly diverted by or to FCMC, or any person, corporation or other entity on its behalf, and in respect of all the traceable products thereof.

(i) As against each of the Harris Defendants:

- (i) damages in the sum of \$106 million or, in the alternative, damages in an amount to be assessed or determined by this Honourable Court for negligence, breach of contract, breach of fiduciary duty and/or knowing assistance in breach of fiduciary duty; and
 - (ii) disgorgement of all costs and legal fees paid by the Tier 1 Trust Companies and the Receivership Companies to the respective Harris Defendants.
- (j) As against each of the Elliot Defendants:
 - (i) damages in the sum of \$84.6 million or, in the alternative, damages in an amount to be assessed or determined by this Honourable Court for negligence, breach of contract, breach of fiduciary duty and/or knowing assistance in breach of fiduciary duty; and
 - (ii) disgorgement of all costs and legal fees paid by the Tier 1 Trust Companies and the Receivership Companies to the Elliot Defendants.
- (k) As against Mr. Cane:
 - (i) damages in the sum of \$88 million or, in the alternative, damages in an amount to be assessed or determined by this Honourable Court for negligence and breach of contract; and
 - (ii) disgorgement of all costs and fees paid by the Receivership Companies to Mr. Cane.
- (l) As against each of MCIL, TSI and TSSI:

- (i) orders for restitution, an accounting, and disgorgement of all assets, properties, and funds belonging to the Tier 1 Trust Companies and the Receivership Companies, and improperly diverted by or to MCIL, TSI and TSSI, or any person, corporation or other entity on any of their behalf;
 - (ii) a declaration that the plaintiffs are entitled to trace the assets, properties and funds of the Tier 1 Trust Companies and the Receivership Companies into the hands of MCIL, TSI and TSSI, and a declaration that MCIL, TSI and TSSI hold those assets, properties, and funds as constructive trustees for the plaintiffs; and
 - (iii) a constructive trust and tracing or following order in respect of all assets, properties, and funds belonging to the Tier 1 Trust Companies and the Receivership Companies, and improperly diverted by or to MCIL, TSI and TSSI or any person, corporation or other entity on any of their behalf, and in respect of the traceable products thereof.
- (m) In addition to the above, as against each of the Defendants, as applicable:
- (i) special damages, including all costs and expenses arising out of the detection, investigation, and quantification of the losses suffered by the Tier 1 Trust Companies and the Receivership Companies, in an amount to be particularized prior to trial;
 - (ii) punitive and/or exemplary damages in an amount to be particularized prior to trial;

- (iii) 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;
- (iv) 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
- (v) such further and other relief, including equitable relief and constructive trusts in favour of the plaintiffs, as this Honourable Court deems just.

Overview

3. This action is in respect of a SMI scheme involving 16 different real estate development Projects, including (1) eleven Projects respectively undertaken by the eleven Receivership Companies (collectively, the “**Receivership Projects**”); and (2) five other distinct Projects respectively undertaken by the five Non- Receivership Development Companies (the “**Non- Receivership Projects**”).

The Receivership Projects

4. As it relates to the Receivership Projects, this action is in respect of a fraudulent scheme whereby the Davies Defendants and Singh Defendants conspired with each other to have the Trust Companies, and their underlying investors, loan moneys through SMIs to the Receivership Companies based on false, inaccurate and misleading statements and covenants. The Davies Defendants and Singh Defendants then misappropriated tens of millions of dollars of those loans from the Receivership Companies by improperly diverting funds to themselves, related defendant

parties and others through management fees, professional fees, broker and referral fees, consulting fees, dividends and/or other means using corporate structures, directly and/or indirectly controlled by and/or related to them.

5. The Davies Defendants and Singh Defendants were aware that appraisals used to promote investment in the SMIs were inflated and inaccurate, and that assurances that money loaned by the Trust Companies to the Receivership Companies would be fully secured were false, inaccurate and misleading. They were further aware that covenants in the applicable Loan Agreements between the Trust Companies and the Receivership Companies restricting the use of loaned funds would not be fully honoured, but instead such funds would be diverted for other purposes to the Defendants' direct and indirect personal benefit.

6. Notwithstanding this knowledge, the Davies Defendants and Singh Defendants continued to raise, and/or facilitated the raising of, further funds from public investors which were then advanced by the Trust Companies to Receivership Companies and other related entities they directly or indirectly owned, perpetuating a "Ponzi Scheme".

7. The actions of the Davies Defendants and Singh Defendants were facilitated by some or all of the other Defendants, who failed to discharge their respective duties as outlined below, and who, in many cases, benefited financially from their improper actions and from the improper actions taken by the Davies Defendants and Singh Defendants.

8. In this action, the Trustee and the Receiver both seek relief in respect of the Receivership Projects.

The Non-Receivership Projects

9. As it relates to the five Non-Receivership Projects, this action is in respect of a scheme whereby the Singh Defendants, in conjunction with others, caused the Tier 1 Trust Companies, and their underlying investors, to loan moneys through SMIs to the Non-Receivership Development Companies based on undisclosed conflicts of interest and other false, inaccurate and misleading statements and covenants. The Singh Defendants also then improperly diverted funds raised for two of the Non-Receivership Projects to related defendant parties and others. These actions led to millions of dollars of realized or anticipated losses, as applicable, for four of the five SMIs.

10. The Singh Defendants were aware that appraisals used to promote investment in three of the five SMIs were inflated and inaccurate, and that assurances that money loaned by at least two of the Tier 1 Trust Companies to the Non-Receivership Development Companies would be fully secure were false, inaccurate and misleading. They were further aware that covenants in the applicable Loan Agreements between at least two of the Tier 1 Trust Companies and the Non-Receivership Development Companies restricting the use of loaned funds would not be fully honoured, but instead such funds would be diverted for other purposes.

11. The actions of the Singh Defendants were facilitated by some or all of the other Defendants, who failed to discharge their respective duties as outlined below, and who, in certain cases, benefited financially from their improper actions and from the improper actions taken by the Singh Defendants.

12. In this action, only the Trustee seeks relief in respect of the Non-Receivership Projects. The Receiver seeks no relief in respect of the Non-Receivership Projects.

Parties

(a) Plaintiffs

13. The plaintiff, Grant Thornton, is the court-appointed Trustee, over all of the assets, undertakings and properties of the Tier 1 Trust Companies, appointed pursuant to an order of the Court dated October 27, 2016.

14. The purpose of the Trustee's appointment is to, among other things, protect the interests of the investing public, who were or are (through the Tier 1 Trust Companies and subsequently the Trustee) mortgagees with secured lending positions registered on title to real properties owned by the Development Companies. The mortgages registered on title in favour of the Tier 1 Trust Companies were or are also co-registered in favour of Olympia Trust Company, which acted as administrative agent for RRSP and other registered investments made through the Tier 1 Trust Companies.

15. The plaintiff, KSV, is the court-appointed Receiver of certain property of the Receivership Companies appointed pursuant to orders of the Court dated February 2, April 28 and May 2, 2017 (for all Receivership Companies other than 445 Princess, McMurray, Bronson and Ross Park), January 9, 2018 (for 445 Princess) and May 30, 2018 (for McMurray, Bronson and Ross Park).

16. The Receiver's mandate includes pursuing litigation claims on behalf of the Receivership Companies and maximizing recoveries on behalf of their creditors, including the Trust Companies, which are the largest creditors in each receivership, by far. In this action, the Receiver is seeking relief strictly on behalf of the Receivership Companies and not on behalf of the broader group of Development Companies or any other entities.

(b) Davies Defendants

17. 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. He was also, at all material times, the trustee and/or representative of the Davies Family Trust, together with Ms. Davies and Mr. Harris (further identified below), and the sole trustee and/or representative of the Davies Arizona Trust.

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

19. The Davies Family Trust and the Davies 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 Davies Family Trust are Mr. Davies, Ms. Davies and the Davies Children, as well as any future children and issue of Mr. Davies. The beneficiaries of the Davies Arizona Trust are the Davies Children.

20. 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.

21. Aeolian is directly owned by Ms. Davies and the Davies Children. Mr. Davies is Aeolian's sole officer and director.

22. Aeolian is a direct shareholder of Scollard and Legacy Lane and an indirect shareholder of each of the other Receivership Companies (other than McMurray, which is owned, in part, by the Davies Family Trust).

23. Aeolian is also a shareholder of:

(a) MCIL, which is a shareholder of Kitchener, Oakville and MC Burlington. MC Burlington is the sole shareholder of Burlington;

(b) TSSI, which is a shareholder of 525 Princess, 555 Princess and Ross Park; and

(c) TSI, which is a shareholder of 445 Princess and Bronson.

(c) Thompson Defendants

24. The defendant, Mr. Thompson, is an individual residing in Aurora, Ontario.

25. He was, at all material times, a director and officer of certain of the Receivership Companies, including 525 Princess, 555 Princess, 445 Princess, Bronson and Ross Park.

26. He was also, at all material times, a director and officer of TSI and TSSI.

27. The defendant, Thompson Co., is a company incorporated pursuant to the laws of Ontario. Mr. Thompson is Thompson Co.'s sole officer and director.

28. Thompson Co. is an indirect shareholder of certain of the Receivership Companies. Specifically, Thompson Co. is a shareholder of TSI and TSSI, which are shareholders of 525 Princess, 555 Princess, 445 Princess, Bronson and Ross Park.

(d) Stewart Defendants

29. The defendant, Mr. Stewart, is an individual residing in Clarksburg, Ontario. He was, at all material times, a founder and directing mind of MCIL and associated with certain Receivership Companies.

30. Mr. Stewart previously had an indirect ownership interest in MCIL and Legacy Lane.

31. He was formerly a director and officer of certain Receivership Companies, including Legacy Lane, Kitchener, Burlington and Oakville.

32. The defendant, Stewart Co., is a company incorporated pursuant to the laws of Ontario. Mr. Stewart is a director and officer of Stewart Co.

(e) Singh Defendants

33. The defendant, Mr. Singh, is an individual residing in Richmond Hill, Ontario.

34. He is the sole director, officer and shareholder of each of the Tier 1 Trust Companies (other than 445 Trust Co. and Hazelton Trust Co., for both of which Mr. Cassidy is the sole registered director and officer, although Mr. Singh was a de facto director and officer of these entities).

35. Mr. Singh was also the sole director and officer of three of the five Non-Receivership Development Companies, being Keele Medical, Guildwood and Hazelton.

36. Mr. Singh was also a director and the sole officer of Tier 1 Mortgage, which was a licensed mortgage brokerage firm that promoted and sold the SMIs to public investors.

37. Mr. Singh was also previously a licensed mortgage broker with FCMC, which was also a licensed mortgage brokerage firm that promoted and sold the SMIs to public investors.

38. Mr. Singh's and Tier 1 Mortgage's mortgage brokerage 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.

39. The defendant, Singh Co., is a company incorporated pursuant to the laws of Ontario. Singh Co. is owned by Mr. Singh, and he is the sole director and officer of Singh Co.

40. Singh Co. is a direct shareholder of certain Development Companies, including 555 Princess, 525 Princess, 445 Princess, Bronson and Ross Park, and one or more of the Singh Defendants is or was also a shareholder of Vaughan Crossings.

41. Singh Co. is also a shareholder of TSI and TSSI, which are also shareholders of 555 Princess, 525 Princess, 445 Princess, Bronson, and Ross Park.

42. The defendant, Tier 1 Advisory, is a company incorporated pursuant to the laws of Ontario. Mr. Singh is the sole director, officer and shareholder of Tier 1 Advisory.

43. Tier 1 Advisory arranged and facilitated the SMIs that the Brokers marketed and sold to public investors. In particular, Tier 1 Advisory performed marketing and project development consultation services and structured deals with the Development Companies, it prepared investment information and it developed and presented promotional materials for the various Projects to solicit investments in the Projects.

(f) The defendant Jude Cassimy

44. The defendant, Mr. Cassimy, is an individual residing in Markham, Ontario.

45. He was a director and officer of 445 Trust Co. and Hazelton Trust Co. He was also the sole director and officer of the defendant, FCMC.

46. Mr. Cassimy was a licensed mortgage broker. He was the principal broker of FCMC.

47. Mr. Cassimy's and FCMC's licenses were also 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.

(g) The defendant FCMC

48. The defendant, FCMC, was formerly a licensed mortgage brokerage firm, which promoted and sold the SMIs to public investors.

(h) The defendant David Arsenault

49. The defendant, Mr. Arsenault, is an individual residing in Toronto, Ontario. At all material times, he was an officer of McMurray. At all material times, he was also an indirect shareholder of McMurray through his holding company, D. Arsenault Holdings Inc.

(i) The defendant James Grace

50. The defendant, Mr. Grace, is an individual residing in Toronto, Ontario. At all material times, he was an officer of 445 Princess.

(j) Harris Defendants

51. The defendant, Mr. Harris, is an individual residing in the Town of Nobleton, Ontario.

52. He is a licensed Ontario lawyer in private practice and a partner at Harris LLP.

53. As noted above, Mr. Harris was a trustee and/or representative of the Davies Family Trust, together with Mr. Davies and Ms. Davies. The Receiver has no knowledge of any material facts indicating that Mr. Harris in his capacity as a trustee and/or representative of the Davies Family

Trust engaged in any fraudulent, deceitful or other misconduct relating to the Davies Family Trust. Nevertheless, given that the Davies 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 Davies Defendants. In any event, each of the trustees of the Family Trust must be named as a defendant to allow the Receiver to obtain the sought after relief regarding the assets improperly funneled to the Davies Family Trust.

54. Mr. Harris was also legal counsel at all material times to each of the Development Companies except for Vaughan Crossings and Silver Seven, and served as legal counsel providing ongoing legal advice to all the Tier 1 Trust Companies at material times.

55. The defendant, Harris LLP, is an Ontario limited liability partnership of lawyers which carries on business from an office located in Mississauga, Ontario.

56. At all material times, Harris LLP acted as the solicitors for each of the Development Companies except for Vaughan Crossings and Silver Seven.

57. At material times, Harris LLP also acted as the solicitors for each of the Tier 1 Trust Companies and provided ongoing advice and representation to the Tier 1 Trust Companies.

58. Throughout the material period, Harris LLP held itself out as being experienced in advising clients on corporate and real estate law matters, including in relation to commercial real estate transactions, real estate financing, property and asset acquisitions, and general corporate law matters.

59. One or more of the Harris Defendants is or was also a shareholder of Vaughan Crossings.

(k) Elliott Defendants

60. The defendant, Ms. Elliott, is an individual residing in Toronto, Ontario. She is a licensed Ontario lawyer in private practice and the principal and sole director of Elliot Co.

61. The defendant, Elliot Co., is a professional corporation incorporated pursuant to the laws of Ontario.

62. The Elliot Defendants specialize in Canadian immigration law, providing immigration and related legal services to individual and corporate clients.

63. At material times, the Elliott Defendants acted as the solicitors for the Tier 1 Trust Companies except for McMurray Trust Co. and Scollard/Vaughan Crossings/Silver Seven Trust Co. to the extent of its advancement of monies to Vaughan Crossings and Silver Seven. In other words, the Elliot Defendants provided advice and representation to the lenders in respect of their loans to the following Development Companies: 445 Princess, 525 Princess, 555 Princess, Bronson, Scollard, Legacy Lane, Burlington, Ross Park, Oakville, Kitchener, Keele Medical, Guildwood and Hazelton.

(l) The defendant MCIL

64. The defendant, MCIL, is a company incorporated pursuant to the laws of Ontario. Mr. Davies is the sole officer and director of MCIL. MCIL is owned by Aeolian and Ms. Harris. MCIL is a shareholder of Kitchener, Oakville and MC Burlington, which is the sole shareholder of Burlington.

(m) The defendant TSI

65. The defendant, TSI, is a company incorporated pursuant to the laws of Ontario. The only officers and directors of TSI are Messrs. Davies and Thompson.

66. TSI is owned by Aeolian, Thompson Co., Singh Co. and Dachstein.

67. TSI is a shareholder of 445 Princess and Bronson.

(n) The defendant TSSI

68. The defendant, TSSI, is a company incorporated pursuant to the laws of Ontario. The only officers and directors of TSSI are Messrs. Davies and Thompson.

69. TSSI is owned by Aeolian, Thompson Co., Singh Co. and Dachstein.

70. TSSI is a shareholder of 525 Princess, 555 Princess and Ross Park.

(o) The defendant Michael Cane

71. The defendant, Mr. Cane, is an individual residing in the City of Toronto, Ontario.

72. He is an appraiser of real property, with over 40 years of experience, who focuses on the valuation of commercial real estate on behalf of developers, mortgage lenders and others.

73. He is a member of the Appraiser Institute of Canada, a fellow of the Royal Institution of Chartered Surveyors and Professional Land Economist from the Association of Ontario Land Economists, among other professional accreditations.

74. At all material times, he acted as the appraiser for each of the Development Companies in respect of their real properties and related Projects, except for Vaughan Crossings and Silver Seven. Mr. Cane was aware that his appraisals were used and relied upon to promote and solicit the SMIs in the various Projects.

Capital Raised Through SMIs

75. SMIs are mortgages for which there are more than one lender or investor. SMIs are a financial instrument used by real estate developers to finance real estate development.

76. The Brokers, in conjunction with Tier 1 Advisory, promoted and sold SMIs to investors in relation to the Projects.

77. The Tier 1 Trust Companies were incorporated to hold the SMIs in trust and to administer the SMIs on behalf of investors.

78. The Tier 1 Trust Companies are distinct entities from the Development Companies. They are the lenders to the Development Companies.

79. Approximately \$131 million was raised through SMIs administered by the Tier 1 Trust Companies and advanced for the benefit of the Development Companies' in respect of their Projects, of which approximately \$94 million was advanced, on a secured basis, by the Trust Companies for the benefit of the Receivership Companies. The Development Companies further raised an additional amount of approximately \$62 million from other mortgage lenders, for a combined total of approximately \$193 million in secured loans.

Mortgages by the Tier 1 Trust Companies to the Development Companies

80. The relevant mortgages between the Tier 1 Trust Companies and the Development Companies are as follows:

Real Property Project	Development Company (Mortgagee)	Tier 1 Trust Company (Mortgagor)	Approximate Principal Amount of SMI
445 Princess Street	445 Princess	445 Trust Co.	\$8.4 million
525 Princess Street	525 Princess	525 Trust Co.	\$6.4 million
555 Princess Street	555 Princess	555 Trust Co.	\$7.9 million
Bronson Ave.	Bronson	Bronson Trust Co.	\$10.8 million
Scollard Project	Scollard	Scollard/Vaughan Crossings/Silver Seven Trust Co.	\$13.6 million
Legacy Lane Project	Legacy Lane	Oakville / Burlington / Guildwood / Legacy Trust Co.	\$3.5 million
Memory Care Burlington	MC Burlington	Oakville / Burlington / Guildwood / Legacy Trust Co.	\$8.3 million
Memory Care Oakville	Oakville	Oakville / Burlington / Guildwood / Legacy Trust Co.	\$9 million
Memory Care Kitchener	Kitchener	Kitchener Trust Co.	\$10.6 million
McMurray Street	McMurray	McMurray Trust Co.	\$3.5 million
Ross Park	Ross Park	Ross Park Trust Co.	\$11.6 million
TOTAL FOR ALL RECEIVERSHIP COMPANIES			\$93.6 million
Keele Medical Project	Keele Medical	Keele Medical Trust Co.	\$4.1 million
Highlands Mississauga	Hazelton	Hazelton Trust Co.	\$6.4 million
Guildwood Project	Guildwood	Oakville / Burlington / Guildwood / Legacy Trust Co.	\$6.4 million

Real Property Project	Development Company (Mortgagee)	Tier 1 Trust Company (Mortgagor)	Approximate Principal Amount of SMI
Silver Seven Project	Silver Seven	Scollard/Vaughan Crossings/Silver Seven Trust Co.	\$6 million
Vaughan Crossings Project	Vaughan Crossings	Scollard/Vaughan Crossings/Silver Seven Trust Co.	\$14.8 million
TOTAL FOR ALL NON-RECEIVERSHIP DEVELOPMENT COMPANIES			\$37.7 million
TOTAL FOR ALL DEVELOPMENT COMPANIES			\$131.3 million

81. As described further below, these various Development Companies continue to owe, in each case, millions of dollars to the corresponding Tier 1 Trust Companies without the means to satisfy such indebtedness (other than Hazelton, which paid its indebtedness in respect of the Hazelton SMI, and Guildwood and Silver Seven, which entered into settlement agreements to pay less than the indebtedness owing in respect of the Guildwood SMI and the Silver Seven SMI). Apart from the Hazelton SMI, the other SMIs, including all of the SMIs for which the Receivership Companies were borrowers, were effectively doomed to fail from the outset, and they did in fact fail. In this action, the plaintiffs seek no relief from any of the Defendants with respect to the Hazelton SMI (which was the only SMI that was repaid in full) or the Guildwood SMI (the settlement agreement for which treats the Guildwood SMI's indebtedness as having been repaid in full).

Faulty and Misleading Appraisals

82. To support the amounts raised for the SMIs, all the Receivership Companies and certain of the Development Companies retained the defendant Mr. Cane as an appraiser to provide estimated hypothetical market values of the subject sites, assuming they could be developed.

83. The appraisals were based on several other assumptions, including: (i) development costs, as estimated by the applicable Development 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, and completed, in a timely manner.

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

- (a) reflected an equity injection by the shareholders of the respective Development Company in cases where no such equity contribution was ever made by Mr. Davies, Aeolian, Mr. Thompson, Thompson Co., Mr. Stewart, Stewart Co., Mr. Singh, Singh Co., Mr. Arsenault, D. Arsenault Holdings Inc., or any of the other shareholders of the applicable Development Companies;¹
- (b) failed to account for a significant portion of the initial costs, consisting of fees payable to Tier 1, amounts paid or payable to agents who sold the SMIs to investors, professional costs and amounts to fund a one-year interest reserve; and

¹ Oakville raised \$1 million from five individuals through the issuance of preference shares. These individuals were also investors in the Oakville SMI.

- (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, 555 Princess, Bronson and Ross Park.

85. 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.

86. Other appraisal reports contained development timelines that had already lapsed by the time Mr. Cane was asked to prepare a further appraisal report for that same property at a higher value.

SMIs Under Secured

87. Each SMI was registered on title in favour of the applicable Tier 1 Trust Company (and, as set out above, Olympia Trust for administrative purposes).

88. The Singh Defendants and/or Mr. Davies (in the latter case in relation to the Receivership Companies), and/or individuals and/or entities acting on their instruction or behalf, led the SMI investors to believe that the advances from the Tier 1 Trust Companies to the Development Companies would be used for, and fully secured against, specific real property projects of the applicable Development Companies with a first-ranking security interest (which would only be subordinated to construction financing intended to advance the applicable Project).

89. Based on these assurances, investors invested in the SMIs and the Tier 1 Trust Companies advanced the funds raised from investors through SMIs to the Development Companies.

90. However, contrary to the above representations made to investors and the Tier 1 Trust Companies that the SMIs would have first-ranking security, certain Development Companies, including Scollard, Oakville, Kitchener, Burlington and McMurray, borrowed funds on a first-ranking secured basis against the applicable real property after funding for the SMIs was raised and advanced.

91. Furthermore, and more generally, each SMI, together with any applicable pre-existing encumbrances, significantly exceeded the purchase price of the real property, resulting in the advances from each of the Tier 1 Trust Companies to the Development Companies being under-secured from the day they were made.

92. In particular, at all material times, the only assets of material value owned by the Development Companies were their real properties, for which they paid, collectively, approximately \$77 million.

93. All of the Receivership Companies' properties remain in the pre-construction phase, with the exception of Burlington, which has footings and foundations.

94. Of the approximately \$94 million advanced by the Trust Companies to the Receivership Companies, only approximately \$12.4 million was spent on development costs.

95. With the exception of Oakville (which was purchased for \$1.945 million and sold for \$4.25 million during the receivership proceedings), none of the Receivership Companies' properties has increased materially in value from the time it was purchased, including as a result of any development activities undertaken by the Receivership Companies. The increase in Oakville's value is not attributable to any activity performed by the Davies Developers but, rather, it is mainly

a result of the increase in the value of real estate in the Greater Toronto Area during the relevant period.

96. Further, as at each of the respective receivership dates, none of the Receivership Companies had any cash or any access to capital to further develop their Projects.

97. All the Receivership Companies, and some of the non-Receivership Development Companies, were insolvent from the date of the first SMI advance, and the Projects undertaken by these Development Companies had virtually no prospect of success due to, among other things, the lack of capital (which necessitated further borrowing to advance the Projects), the significant initial costs, the improper use of monies to fund expenses on other unrelated projects and the front-end loading of excessive dividends, management fees and other undue payments directly or indirectly to some or all of the Davies, Thompson, Stewart and Singh Defendants and Mr. Cassimy and to affiliates of, and persons related to, the Davies, Thompson, Stewart and Singh Defendants and Mr. Cassimy, as well as others, as described in more detail below.

98. 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 and future costs, the Receivership Companies would have been unable much earlier to service interest and other obligations they were required to pay. Accordingly, the scheme as among the Receivership Companies had the hallmarks of a Ponzi scheme as its continuance was dependent upon the raising of ever-increasing sums of new money.

Restrictions on Use of Advanced Funds under the Loan Agreements

99. Under the Loan Agreements between the respective Development Companies and the applicable Tier 1 Trust Companies, the funds advanced from the Tier 1 Trust Companies to the Development Companies were to be used to purchase real property and to pay the soft costs associated with the Projects for which the funds were invested and advanced.

100. Under the Loan Agreements, the Development Companies covenanted that they would not, without the consent of the applicable Tier 1 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”.

101. Despite these restrictions, as particularized below, the Defendants collectively received at least \$45 million from the Development Companies making use of the funds advanced under the SMIs

(a) Prohibited Management Fees

102. Pursuant to Section 7.02(c) of the Loan Agreements with Scollard, Oakville, Kitchener, Burlington, Legacy Lane, McMurray, Silver Seven and Vaughan Crossings, the payment of management fees to shareholders is prohibited absent the written consent of the applicable Tier 1 Trust Company.

103. Pursuant to Section 7.02(c) of the Loan Agreements with 525 Princess, 555 Princess, 445 Princess, Ross Park, Bronson and Keele Medical, 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 Tier 1 Trust Company is obtained.

104. Contrary to the terms of these Loan Agreements and the Receivership Companies' other legal obligations, and contrary to Messrs. Davies', Thompson's and Stewarts' respective fiduciary and other obligations, Mr. Davies caused, and Messrs. Thompson and/or Stewart allowed, certain Receivership Companies to improperly pay millions of dollars in management fees directly to Aeolian, Thompson Co. and Stewart Co., notwithstanding that, among other things, the Receivership Companies never:

- (a) received the written consent of the Trust Companies for these payments (or, alternatively, to the extent such consent was provided, it was provided unlawfully given the clear conflict of interest of Mr. Singh who was the controlling mind of the Trust Companies and simultaneously held a financial interest in each of the Receivership Companies to which the funds were advanced by the Trust Companies);
- (b) entered into any management services agreements; or
- (c) received services that would justify such payments.

105. Specifically, Mr. Davies caused, and in some instances Mr. Stewart allowed, certain Receivership Companies, including Scollard, Oakville, Kitchener, Burlington, Legacy Lane and McMurray, to transfer approximately \$4.069 million in prohibited management fees directly to Aeolian, as follows:

- (a) Scollard transferred approximately \$1,244,000;

- (b) Oakville transferred approximately \$1,112,000;
- (c) Kitchener transferred approximately \$506,000;
- (d) Burlington transferred approximately \$592,000;
- (e) Legacy Lane transferred approximately \$341,000; and
- (f) McMurray transferred approximately \$274,000.

106. Mr. Davies further caused, and Mr. Stewart allowed, certain Receivership Companies, including Kitchener, Burlington, Oakville and Legacy Lane, to transfer approximately \$1.487 million in prohibited management fees directly to Stewart Co.

107. These payments are all prohibited under the Loan Agreements. In addition, these payments were caused and/or allowed to be made on the basis of knowingly false representations and/or material omissions made by Mr. Davies.

108. Mr. Davies also caused, and Mr. Thompson allowed, 525 Princess, 555 Princess, 445 Princess, Bronson and Ross Park to transfer to Aeolian and Thompson Co. (purportedly in respect of management fees) amounts that are unreasonable, particularly given that these Receivership Companies never entered into any management agreements with Aeolian or Thompson Co., the Projects for which the funds were advanced have achieved very limited progress (they all remain in the pre-development phase), and the intended Projects are unlikely to ever be developed because of, among other things, zoning and other restrictions that preclude such developments. Specifically, Aeolian received approximately \$500,000 and Thompson Co. received

approximately \$947,000 in management fees from 525 Princess, 555 Princess, 445 Princess, Ross Park and/or Bronson.

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

110. The management fees in respect of each of the Projects were also paid at an accelerated rate inconsistent with the stage of development of the Projects.

(b) Improper Transfers to TSI, TSSI and MCIL

111. Contrary to the terms of the Loan Agreements and the Receivership Companies' other legal obligations, Mr. Davies caused, and Messrs. Thompson and/or Stewart allowed, certain of the Receivership Companies to improperly transfer approximately \$5.5 million to TSI, TSSI and MCIL, the parent companies of Kitchener, Oakville, Burlington, 525 Princess, 555 Princess, 445 Princess, Bronson and Ross Park.

112. TSI and TSSI are both owned by Aeolian, Thompson Co., Singh Co. and Dachstein.

113. MCIL is owned by Aeolian and Ms. Harris.

114. Of the approximately \$5.5 million transferred to TSI, TSSI and MCIL, approximately \$4.1 million was transferred 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) no interest has been received by any of the applicable Receivership Companies on account of any such "loan"; and

- (c) the relevant Loan Agreements do not permit the applicable Receivership Companies to make these loans absent the applicable Trust Company's consent.

115. The balance of approximately \$1.4 million was also transferred by the relevant Receivership Companies to TSI, TSSI and MCIL for which no explanation is available in the books and records of the applicable Receivership Companies or the books and records of TSI, TSSI and MCIL.

(c) Improper Dividends

116. Mr. Davies also caused, and Mr. Thompson allowed, certain Receivership Companies to improperly pay significant dividends to Aeolian, Thompson Co. and Singh Co. Specifically, Mr. Davies caused, and Mr. Thompson allowed, each of 525 Princess, 555 Princess, Bronson and Ross Park to pay:

- (a) \$250,000 in dividends to Aeolian (for a total of \$1 million);
- (b) \$250,000 in dividends to Thompson Co. (for a further total of \$1 million); and
- (c) \$250,000 in dividends to Singh Co. (for a further total of \$1 million).

117. 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, and Mr. Thompson allowed, the dividends to be paid to Aeolian, Thompson Co. and Singh Co. immediately after 525 Princess, 555 Princess, Bronson and Ross Park received the funds from the applicable Trust Company at a time when each of 525 Princess, 555 Princess, Bronson and Ross Park had no profits and insufficient cash to develop their respective Projects. As a result of the payment of

dividends and other payments to related parties, 525 Princess, 555 Princess, Bronson and Ross Park essentially had no further monies to advance their respective Projects.

118. The payment of improper dividends as set out above was done on the basis of knowingly false representations and/or material omissions made by Mr. Davies.

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

120. At or around the same time of the above-noted dividend payments to Aeolian, Thompson Co. and Singh Co., an additional \$250,000 in dividends was paid by each of 525 Princess, 555 Princess, Bronson and Ross Park to Dachstein (for a total payment of \$1 million to Dachstein). The Receiver and the Trustee recently entered into a settlement with Dachstein pursuant to which the full amount of \$1 million was returned to the Receiver and the Trustee by Dachstein. In this action, the plaintiffs seek no relief from any of the Defendants with respect to the dividend payments made by 525 Princess, 555 Princess, Bronson and Ross Park to Dachstein.

(d) Improper Inter-Company Transfers and Transfers to Affiliates

121. In further contravention of the Loan Agreements, and their own legal and contractual obligations, Mr. Davies routinely caused, and/or Messrs. Thompson, Stewart and/or Singh routinely allowed, the Receivership Companies to improperly transfer monies between entities and to affiliates, including over \$17 million to and among the Receivership Companies.

122. Mr. Davies caused, and/or Messrs. Thompson, Stewart and/or Singh allowed, 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 the hallmarks of a Ponzi scheme.

123. Mr. Davies caused, and Messrs. Thompson Stewart and/or Singh allowed, certain Receivership Companies to improperly transfer monies to Lafontaine Terrace Management Corporation and Memory Care Investments (Victoria) Ltd. – two companies in respect of which Mr. Davies is the sole director and officer. Specifically:

- (a) Scollard, Legacy Lane, Burlington and Oakville improperly transferred a total of \$324,000 to Lafontaine Terrace Management Corporation; and
- (b) Legacy Lane improperly transferred \$15,000 to Memory Care Investments (Victoria) Ltd.

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

(e) Misappropriation of Funds to Finance the Purchase of the Ottawa Property

125. Mr. Davies improperly diverted and Mr. Thompson allowed the diversion of further funds from 555 Princess, Kitchener and Ross Park (and the respective Projects in which the funds were required to be invested) to a company they controlled, Generx (Byward Hall) Inc. (formerly Textbook (256 Rideau St.) Inc.) (“**Rideau**”), to finance its purchase of real property municipally described as 256 Rideau Street, Ottawa, Ontario and 211 Besserer Street, Ottawa, Ontario (collectively, the “**Ottawa Property**”).

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

127. Immediately prior to Rideau's purchase of the Ottawa Property, on October 27, 2015, Mr. Davies caused, and Mr. Thompson allowed, 555 Princess to improperly transfer \$1.39 million to Rideau, Mr. Davies caused Kitchener to improperly transfer \$111,000 to Rideau, and Mr. Davies caused, and Mr. Thompson allowed, Ross Park to transfer approximately \$1.25 million to Rideau, all by way of cheque. The cheques were all signed by Mr. Davies. These monies were used to fund the purchase price of the Ottawa Property. The balance of the purchase price was funded by way of a mortgage.

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

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

130. Following Rideau's acquisition of the Ottawa Property, Mr. Davies and/or Mr. Thompson caused and/or allowed a further \$900,900 to be improperly transferred to Rideau from 555 Princess, 525 Princess, Burlington, 445 Princess, Bronson and Ross Park by way of cheques, each

of which was also signed by Mr. Davies. Specifically, Mr. Davies caused, and Mr. Thompson allowed, these Receivership Companies to transfer the following amounts to Rideau:

(unaudited; \$)	
Transferor	Amount
445 Princess	766,500
Bronson	56,200
555 Princess	43,000
Ross Park	17,000
525 Princess	16,000
Burlington	2,200
Total	900,900

131. Despite the fact that these funds were required to be used for the specific Projects to be respectively undertaken by 555 Princess, 525 Princess, Burlington, 445 Princess, Bronson and Ross Park, the \$900,900 was transferred to Rideau for no consideration, with no security, for an illegitimate business purpose and in contravention of the relevant Loan Agreements.

132. The above misappropriations were based on knowingly false representations and/or material omissions made by Mr. Davies.

133. The Ottawa Property was recently sold through a Court-approved receivership sale, and, given the purchase price and the quantum of the liens registered against the property, there are no funds available to satisfy any of the plaintiffs' claims with respect to this property.

(f) Improper Payments to Mr. Davies' Family Members

134. Mr. Davies also caused certain of the Receivership Companies to make further payments, totaling approximately \$423,000 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.

(g) Prohibited Payments in Respect of Mr. and Ms. Davies' Mortgage on their Personal Residence

135. Mr. Davies improperly caused McMurray to make prohibited payments in the total amount of approximately \$935,000 to Moscowitz, a mortgage lender. Moscowitz is not a mortgagee on the property owned by McMurray; however, it is a mortgagee on Mr. and Ms. Davies' personal residence (and formerly on their cottage, which they recently sold). The Loan Agreement between McMurray and McMurray Trust Co. prohibits these payments. There is no legitimate reason why SMI funds were used to service Mr. Davies' mortgage payments, or any of the other personal obligations of Mr. and Ms. Davies.

(h) The Arizona Property

136. Mr. Davies, in his capacity as sole trustee of the Davies 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.

137. The Arizona Property was purchased by the Davies 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.

138. Aeolian funded a substantial portion of the costs to purchase and renovate the Arizona Property (at least in part through the Davies Family Trust and the Davies Arizona Trust), which funds came from the Receivership Companies.

139. Ms. Davies and Mr. Harris in their capacities as trustees and/or representatives of the Davies Family Trust had knowledge of, facilitated and/or allowed some of these payments.

(i) Aeolian and Ms. Davies

140. Aeolian's only source of income and/or receipts was from the Davies Developers. Aeolian transferred over \$2.5 million, which it received from the Receivership Companies, 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 approximately \$1.3 million, which it received from the Receivership Companies, to service an American Express card used by Mr. and Ms. Davies to fund their personal day-to-day and other expenses. Additionally, as described above, the Receivership Companies' funds went from Aeolian toward the purchase and renovation of the Arizona Property. Mr. and Ms. Davies had no personal bank accounts and they used Aeolian's account for their own personal banking.

141. 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 and his family members for their own personal use and benefit.

(j) Repayment of Purported Loan to Mr. Singh

142. Mr. Singh received \$650,000 from Kitchener, which is characterized in Kitchener's books and records as a loan repayment. To the extent Singh did not advance funds to Kitchener, or to the

extent such funds were advanced but not in an amount commensurate to the repayment, Singh's receipt of such funds from Kitchener was improper.

(k) Improper Broker and Referral Fees Paid to Parties related to Mr. Singh

143. Each of the Loan Agreements includes a provision requiring the Development Companies to pay the following brokerage and referral fees (collectively, the "**Broker and Referral Fees**"):

- (a) 1% of the amounts raised by the relevant Trust Companies as a brokerage fee to the Brokers; and
- (b) 15% to 16% of the amounts raised by the Tier 1 Trust Companies as a referral fee to an entity directed by the Brokers;
- (c) Except for:
 - (i) the McMurray Loan Agreement, which provides fixed referral fees of \$445,000 (i.e., 12.7% of the funds raised);
 - (ii) the Silver Seven Loan Agreement, which provides for a 16.5% broker fee and no referral fee;
 - (iii) the Vaughan Crossings Loan Agreement, which provides for a 16% broker fee and a 2% referral fee; and
 - (iv) the Keele Medical Loan Agreement, which provides for a 1% broker fee and a 17% referral fee.

144. The Broker and Referral Fees paid to the Brokers and/or Tier 1 Advisory in respect of Kitchener, Burlington, Silver Seven and Vaughan Crossings are, cumulatively, approximately \$272,000 greater than permitted under the Loan Agreements.

145. In total, entities related to Mr. Singh received Broker and Referral Fees of approximately \$21.9 million from the Development Companies comprised of approximately \$11.9 million to Tier 1 Advisory, \$9.8 million to FCMC and \$200,000 to other referring brokers.

146. Mr. Singh, as a director, officer and/or shareholder of Tier 1 Advisory and FCMC, was also an officer, director and/or shareholder (directly or indirectly) and/or had other financial interests in many of the Development Companies that borrowed investor funds from the Tier 1 Trust Companies. As such, Mr. Singh not only benefitted from the Broker and Referral Fees, but he also benefitted from his financial interests in the Development Companies (which were not disclosed to the investors from whom the SMI funds were raised).

147. Mr. Singh also authorized approximately \$2 million of monies raised by Scollard/Vaughan Crossings/Silver Seven Trust Co. to be diverted to certain shareholders of Vaughan Crossings and a further amount of approximately \$5 million of monies raised by Scollard/Vaughan Crossings/Silver Seven Trust Co. to be diverted to pay another mortgagee, when, according to the applicable Loan Agreement, these monies should have been used for the sole purpose of developing and constructing a commercial/office development on the Vaughan Crossings property.

(l) Improper Consulting and Diligence Fees Paid to Parties related to Mr. Singh

148. Approximately \$1.485 million in purported consulting and diligence fees were paid by the Receivership Companies to Singh Co. and/or Tier 1 Advisory. These amounts were not referenced or disclosed in any of the Loan Agreements or the ancillary documents. As such, these payments constitute a breach of the applicable Loan Agreements.

(m) Improper Notary Fees Paid to Parties related to Mr. Singh

149. Approximately \$420,000 in purported notary fees were paid by the Development Companies and related entities to Tier 1 Advisory to have each investor's loan documents notarized, notwithstanding that these amounts are unreasonable.

Causes of Action

(a) Causes of Action Asserted by the Receiver Alone

Messrs. Davies', Thompson's and/or Stewart's Breach of Fiduciary Duty, Negligence, Breach of Contract and Knowing Assistance in Breach of Fiduciary Duty

150. By virtue of the positions Messrs. Davies, Thompson and Stewart respectively held, Mr. Davies was a fiduciary of each of the Receivership Companies, Mr. Thompson was a fiduciary of 525 Princess, 555 Princess, 445 Princess, Bronson and Ross Park and Mr. Stewart was a fiduciary of Legacy Lane, Kitchener, Burlington and Oakville, and they respectively owed the applicable Receivership Companies 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 a reasonably prudent person would exercise in comparable circumstances.

151. By reason of the facts described above, Messrs. Davies, Thompson and Stewart breached these duties and failed to act in a manner that was required of them as directors and officers of the applicable companies.

152. The applicable companies were vulnerable to the unilateral exercise of Messrs. Davies', Thompson's and Stewart's respective discretion and power, particularly given that they were the controlling minds and management of the applicable companies. By reason of the facts described above, Messrs. Davies, Thompson and Stewart breached their respective duties to the companies, including their fiduciary and other duties owed, including but not limited to their duties of good faith, honest performance and loyalty.

153. By reason of the facts described above, Messrs. Davies, Thompson and Stewart also breached express and/or implied terms of their employment agreements with the respective companies. Among other things, Messrs. Davies, Thompson and Stewart were, at a minimum, required to conduct themselves and the operations of the applicable companies in a competent and lawful manner, which they failed to do. Additionally, Messrs. Davies', Thompson's and Stewart's conduct breached the standard of care required of them and they were grossly negligent in the performance of their duties as officers and directors of the applicable companies.

154. Messrs. Davies, Thompson and/or Stewart effectively treated the respective companies as their own personal fiefdoms, without due regard for transparency, disclosure, the avoidance of self-dealing and conflicts of interest, or corporate separateness, amongst other things. Messrs. Davies, Thompson and/or Stewart effectively operated the applicable companies as their own personal corporations and saw the respective corporations' assets as their own. This resulted in their failure to act in the best interests of the companies, including by Messrs. Thompson and Stewart allowing the Davies Defendants to defraud the Receivership Companies, all the while enriching themselves, parties related to them, and parties working with them, at the expense of the Receivership Companies and their creditors, including the Trust Companies.

155. Like Mr. Davies, Messrs. Thompson and Stewart were both compensated handsomely for facilitating the Davies Defendants' fraudulent scheme in breach of their respective fiduciary, contractual and other duties owed to the applicable Receivership Companies. Mr. Thompson and entities related to him (including Thompson Co., TSI and/or TSSI) received undue management fees (which exceeded \$900,000 from the Receivership Companies), dividends (\$1 million from the Receivership Companies) and/or other amounts to which they were not properly entitled. Mr. Stewart and entities related to him (including Stewart Co., Lafontaine and/or MC Victoria) received undue management fees (which exceeded \$1.48 million from the Receivership Companies) and/or other amounts to which they were not properly entitled.

156. Messrs. Davies, Thompson and Stewart each had knowledge of one another's fiduciary duties owed to the applicable Receivership Companies. By virtue of their acts and omissions as described above, each of Messrs. Davies, Thompson and Stewart assisted one another in breaching their respective fiduciary duties owed to the applicable Receivership Companies.

Mr. Arsenault's Breach of Fiduciary Duty, Negligence, Breach of Contract and Knowing Assistance in Breach of Fiduciary Duty

157. As an officer of McMurray, Mr. Arsenault was a fiduciary of McMurray and owed it 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 common law duty of care to, among other things, act competently, diligently and in its best interests. In particular, Mr. Arsenault was, at a minimum, required to have a rudimentary knowledge of McMurray's business and exercise a degree of monitoring in order to keep himself apprised of and familiar with the general affairs of the company, including the financial status of the company.

158. Mr. Arsenault failed to act in a competent or diligent manner, or in the company's best interests, as he preferred the interests of management, including Mr. Davies, over the interests of the company itself, in contravention of his duties owed to McMurray. Mr. Arsenault allowed Mr. Davies to engage in gross misconduct and treat McMurray 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. Mr. Arsenault's conduct breached the standard of care required of him and he was negligent in the performance of his duties as an officer of McMurray. Mr. Arsenault also assisted Mr. Davies' breach of fiduciary and other legal duties owed to McMurray, and the wider group of Receivership Companies.

159. By reason of the facts described above, Mr. Arsenault also breached express and/or implied terms of his employment agreement with McMurray. Among other things, Mr. Arsenault was, at a minimum, required to ensure that McMurray conducted itself in a competent and lawful manner, which he failed to do.

160. Mr. Arsenault's failure to fulfill his fiduciary, contractual, statutory and other obligations as an officer of McMurray allowed Mr. Davies to perpetrate the fraudulent scheme described herein and caused damages to McMurray and the other Receivership Companies.

Mr. Grace's Breach of Fiduciary Duty, Negligence, Breach of Contract and Knowing Assistance in Breach of Fiduciary Duty

161. As an officer of 445 Princess, Mr. Grace was a fiduciary of 445 Princess and owed it 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 common law duty of care to, among other things, act competently, diligently and in its best interests. In particular, Mr. Grace was, at a minimum, required to have a rudimentary knowledge of 445 Princess' business and exercise a degree of monitoring in order to keep himself apprised of and familiar with the general affairs of the company, including the financial status of the company.

162. Mr. Grace failed to act in a competent or diligent manner, or in the company's best interests, as he preferred the interests of management, including Mr. Davies, over the interests of the company itself, in contravention of his duties owed to 445 Princess. Mr. Grace allowed Mr. Davies to engage in gross misconduct and treat 445 Princess 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. Mr. Grace's conduct breached the standard of care required of him and he was negligent in the performance of his duties as an officer of 445 Princess. Mr. Grace also assisted Messrs. Davies' and Thompson's breach of their fiduciary and other legal duties owed to 445 Princess, and the wider group of Receivership Companies.

163. By reason of the facts described above, Mr. Grace also breached express and/or implied terms of his employment agreements with 445 Princess. Among other things, Mr. Grace was, at a minimum, required to ensure that 445 Princess conducted itself in a competent and lawful manner, which he failed to do.

164. Mr. Grace's failure to fulfill his fiduciary, contractual, statutory and other obligations as an officer of 445 Princess allowed Mr. Davies to perpetrate the fraudulent scheme described herein and caused damages to 445 Princess and the other Receivership Companies.

(b) Causes of Action Jointly and Severally Asserted by the Receiver on behalf of the Receivership Companies and the Trustee exclusively on behalf of the Trust Companies

Fraud and Deceit

165. The Davies Defendants and Singh Defendants perpetrated the fraudulent scheme described herein. Although the precise particulars of the fraudulent scheme are only fully known to some or all of the Davies Defendants and Singh Defendants at this time, they include, without limitation:

- (a) intentionally and knowingly/recklessly creating, facilitating and/or allowing the creation of Project pro formas containing false information 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 funds from investors;
- (b) intentionally and knowingly/recklessly creating, using and/or allowing inaccurate and/or misleading appraisals containing false information to be created and/or used to raise funds from investors;

- (c) knowingly or recklessly and falsely misrepresenting the nature of the Projects and the potential for the Projects to be successfully executed in a timely manner, or at all, including the likelihood of obtaining the necessary zoning and planning approvals;
- (d) knowingly or recklessly and falsely misrepresenting other facts and omitting material risks in order to raise and/or facilitate the raising of funds from investors;
- (e) knowingly and falsely representing, and making material omissions regarding, the capital structure of the Receivership Companies, including the purported equity injections that would be made by their shareholders;
- (f) intentionally, deceitfully and knowingly/recklessly making false representations to raise and/or facilitate the raising of funds from investors, and diverting those funds from the Receivership Companies to which they were advanced (and, in at least two cases, from the Non- Receivership Development Companies to which they were advanced), for purposes inconsistent with their intended use;
- (g) knowingly and falsely representing, and/or knowingly/recklessly making material omissions regarding, the relationships between themselves and other related, non-arm's length parties;
- (h) knowingly/recklessly and falsely directing, causing, facilitating and/or allowing prohibited payments and transfers to be made by certain of the Development 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;

- (i) knowingly, falsely and dishonestly diverting funds from certain of the Development Companies to shell corporations and a network of non-arm's length parties and others to obtain secret profits for their own benefits;
- (j) intentionally, deceitfully and knowingly/recklessly making false representations to direct and/or facilitate 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;
- (k) knowingly receiving, retaining and/or using funds, which rightfully belonged to the Development Companies;
- (l) intentionally and knowingly/recklessly making the false representations and undertaking the acts and omissions with respect to prohibited management fees as set out above;
- (m) intentionally and knowingly/recklessly making the false representations and undertaking the acts and omissions with respect to improper dividends as set out above;
- (n) intentionally and knowingly/recklessly making the false representations and undertaking the acts and omissions with respect to the misappropriation of funds as set out above; and/or

- (o) making material omissions, failing to take any steps, or any reasonable or sufficient steps, to stop the improper conduct or mitigate the harm being caused by it.

166. All of the above acts, false representations and material omissions were intended to and did cause the Trust Companies and the Receivership Companies to act.

167. All of the above acts, false representations and material omissions caused detriment and deprivation to each of the Trust Companies and the Receivership Companies, as further set out below.

168. The Davies Defendants and Singh Defendants perpetrated and/or facilitated the fraudulent scheme described herein in order to profit, and continue to profit, through the receipt of millions in undue fees, dividends, and/or other amounts to which they were not properly entitled.

Conspiracy

169. The Davies Defendants and Singh Defendants acted in combination or in concert, by agreement or with a common design, to perpetrate the 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.

170. The conduct of these Defendants in perpetrating the scheme was unlawful (including the torts and other wrongful acts and omissions described herein) and directed towards the Trust Companies, the Receivership Companies and the innocent investors whose funds they misappropriated. As described herein, for which further particulars will be provided in advance of trial as such particulars are currently only known to these Defendants at this time, these Defendants each committed overt acts in furtherance of the agreement. These Defendants knew that injury to

the Trust Companies, the Receivership Companies and the innocent investors whose funds they misappropriated was likely to result in the circumstances, and such injury did result.

171. The predominant purpose of these Defendants' conduct was to intentionally harm the Trust Companies, the Receivership Companies and/or the innocent investors whose funds they misappropriated, and the conduct of these Defendants did harm them.

172. As further described below, as a result of the above, each of the Trust Companies and the Receivership Companies suffered injury and damage.

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

Conversion

174. The Receivership Companies were in possession of, or entitled to immediate possession of, the specific and identifiable funds described above. The Davies Defendants and Singh Defendants intentionally and wrongfully converted and/or facilitated the conversion of the Receivership Companies' funds inconsistent with the Receivership Companies' right of possession and other rights, and thereby deprived the Receivership Companies and their creditors, including the Trust Companies, of the benefit of the funds, exposing them to significant liabilities. The Receivership Companies, for the benefit of their creditors, including the Trust Companies, are entitled to recover the amounts that these Defendants have converted.

(c) **Causes of Action Jointly and Severally Asserted by the Receiver on behalf of the Receivership Companies and the Trustee on behalf of all Tier 1 Trust Companies**

Unjust Enrichment

175. As particularized above, some or all of the Defendants received by improper means or purposes monies from the Tier 1 Trust Companies and the Receivership Companies, enriching these Defendants.

176. The Tier 1 Trust Companies and the Receivership Companies have suffered a corresponding deprivation.

177. There is no juristic reason for these Defendants' enrichment or for the Tier 1 Trust Companies' and the Receivership Companies' corresponding deprivation.

178. These Defendants should be held to account for their enrichment and for the corresponding deprivation they have caused.

Constructive Trust(s)

179. Some or all of the Defendants received and retained the Tier 1 Trust Companies' and/or the Development Companies' funds with full knowledge of some or all of the unlawful acts pleaded herein, including Messrs. Davies', Thompson's, Stewart's, Arsenault's, Grace's, Singh's and/or Cassimy's breach of their respective fiduciary and other legal duties owed to the Tier 1 Trust Companies and the Development Companies, as applicable.

180. By virtue of the facts described herein, these Defendants hold all assets, properties, and funds that they diverted, misappropriated and improperly received from the Tier 1 Trust

Companies and the Development Companies, and all traceable products thereof, as trustees of a constructive trust (or trusts) for the benefit of the plaintiffs.

Mr. Cane's Professional Negligence and Breach of Contract

181. As the appraiser for certain of the Development Companies' respective real properties (including, without limitation, all the Receivership Companies' respective real properties), Mr. Cane owed these Development Companies contractual, common law, regulatory, professional and other duties, which required him to bring reasonable care, skill and knowledge to the performance of his professional services in order to meet the standards of a reasonable, competent appraiser.

182. The legal standards of conduct that applied to Mr. Cane are informed by, among other things, the Canadian Uniform Standards of Professional Appraisal Practice, which provide, among other things, that:

- (a) members shall carry out work with integrity, due skill, care and diligence and with proper regard for the technical standards expected of them;
- (b) members shall carry out work in a timely manner and avoid conflicts of interests and situations inconsistent with their professional obligations;
- (c) members shall have the competence for any professional services assignment undertaken; and
- (d) members shall comply with the applicable legislative and/or licensing requirements for all types of professional services assignments undertaken.

183. Mr. Cane knew that his appraisal reports would be used by most of the Development Companies and relied on by the Tier 1 Trust Companies in raising funds from investors and advancing those funds to these Development Companies. Given Mr. Cane's knowledge and all of the other circumstances, he was, and is, subject to a higher standard in performing professional services for these Development Companies.

184. The engagement agreements between Mr. Cane and these Development Companies also contained express and/or implied terms that required Mr. Cane to, among other things, perform his services in a competent, skilled, diligent and workmanlike manner.

185. Mr. Cane breached his contractual, common law, regulatory, professional and other duties owed to each of these Development Companies. Mr. Cane is liable for his acts and omissions as the appraiser for these Development Companies' Projects.

186. The particulars of Mr. Cane's breach of contract, breach of duty and professional negligence include but are not limited to the following errors and omissions made in the course of preparing his appraisal reports and rendering professional services to these Development Companies, many of which are unrelated and gave rise to discrete losses specific to each of these Development Companies and the Tier 1 Trust Companies (other than in respect to the Hazelton Project, for which no losses have been suffered, or the Guildwood Project, the settlement agreement for which treats the Guildwood SMI's indebtedness as having been repaid in full):

- (a) failing to adequately identify the scope of work employed in the appraisal reports;

- (b) failing to make thorough inquiries of the actions of marketplace participants to obtain market derived data that might be relevant to answering the appraisal questions in issue;
- (c) failing to provide market support for supply analysis;
- (d) failing to provide market support for absorption of the proposed units over the development timelines;
- (e) failing to obtain adequate support for the costs of development;
- (f) failing to obtain comparative support for revenues and operating expenses in the development pro formas relied on;
- (g) failing to adequately vet the purported construction costs and other relevant financial information;
- (h) failing to adequately disclose any vetting and/or investigations of factual and/or unaudited information upon which the appraisal reports were based;
- (i) failing to describe and analyze all data relevant to the assignments;
- (j) failing to use comparables and failing to make such inquiries and investigations as were necessary with respect to the use of such comparables;
- (k) failing to take sufficient steps to inform himself about the values of relevant properties and the relevant circumstances which affect the properties;
- (l) basing his appraisal reports on unreasonable, irrational and unrealistic assumptions;

- (m) failing to adequately disclose extraordinary assumptions and hypothetical conditions;
- (n) failing to explore different appraisal techniques that were available in the toolbox of appraisal theory and practice that would have assisted in answering the ultimate questions of value;
- (o) failing to use as many appraisal methodologies as possible to arrive at answers to the inquiries from different approaches so that the most accurate market derived determinations of the ultimate issues were obtained and provided;
- (p) failing to describe and apply the appraisal procedures relevant to the assignments and support the reasons for the exclusion of any of the usual valuation procedures;
- (q) failing to adequately disclose extraordinary limiting conditions necessary for the exclusion of certain valuation approaches in valuing the properties through comparative analyses;
- (r) employing a hybrid valuation methodology and/or other valuation approaches that were not common, proper or appropriate for the given assignments;
- (s) using questionable inputs in the Argus Developer software modelling used in connection with the appraisals;
- (t) relying on unsupported results from the Argus Developer software;
- (u) failing to properly detail the reasoning supporting the analyses, opinions and conclusions of the employed valuation approaches;

- (v) failing to make reasoned reconciliations of the indicators to obtain the best estimates of the answers to the ultimate issues of value;
- (w) failing to provide proper opinions as to whether the analyses and conclusions in the reports were appropriate, reasonable and suitable for reliance by the intended user for the intended use;
- (x) preparing reports that were flawed by inconsistencies, typos, incongruent procedures and incorrect arithmetical results;
- (y) grossly overstating the values of the applicable properties; and/or
- (z) ignoring or, alternatively, failing to identify major red flags which ought to have caused heightened caution relating to the Development Companies' Projects.

187. Further particulars may be provided prior to trial.

188. By virtue of his acts and omissions as described above, Mr. Cane failed to meet the standards of a reasonable, competent appraiser and he was professionally negligent. Mr. Cane also breached express and/or implied terms of his agreements with the applicable Development Companies to provide appraisals with integrity, due skill, care and diligence and with proper regard for the technical standards expected of him. Mr. Cane's failure to appropriately discharge his contractual, common law, regulatory, professional and other duties and obligations owed to these Development Companies allowed a multi-million dollar fraud to be perpetrated by the Davies Defendants and Singh Defendants and caused significant damage to these Development Companies and their creditors, including the Tier 1 Trust Companies.

189. Had Mr. Cane fulfilled his duties and professional obligations, the fraud and other misconduct would not have occurred, or it would not have occurred to the same degree or extent.

Harris LLP's and its Lawyers' Breach of Duties, Professional Negligence, Breach of Contract and Knowing Assistance in Breach of Fiduciary Duty

190. Mr. Harris introduced Mr. Davies to Tier 1, which helped set in motion the wheels of the SMI scheme.

191. Harris LLP and its lawyers then provided professional legal services and acted as the solicitors for each of the non-Vaughan Crossings and non-Silver Seven Development Companies in connection with the loan transactions pursuant to which approximately \$131 million in SMI monies were loaned by the Tier 1 Trust Companies to the Development Companies for purposes of purchasing real estate and developing projects thereon.

192. Pursuant to the Loan Agreements, Harris was to charge fees ranging from \$25,000 to \$35,000 on the first advance under a Loan Agreement and \$15,000 to \$20,000 on subsequent advances.

193. Section 2.01 of the Loan Agreements provide that:

- (a) "Borrower's Solicitors" shall mean Harris + Harris LLP, or such other solicitors that the Borrower may in writing designate (except in the case of the Loan Agreements for Vaughan Crossings and Silver Seven, where a third-party law firm is listed as "Borrower's Solicitors"); and
- (b) "Lender's Solicitors" shall mean Nancy Elliot, Barrister & Solicitor, or such other solicitors that the Lender may in writing designate (except in the case of the Loan

Agreements for McMurray, where Harris LLP is listed as both “Lender’s Solicitors” and “Borrower’s Solicitors”, and Vaughan Crossings and Silver Seven, where Harris LLP is listed as “Lender’s Solicitors”).

194. Pursuant to delegation agreements between Harris LLP and Ms. Elliot, certain mortgage administration and facilitation responsibilities were delegated by Ms. Elliot to Harris LLP in connection with the loan transactions. Under these delegation agreements, Harris LLP was delegated the responsibilities of, among other things, holding the Interest Reserve (as defined in the Loan Agreements) in trust for the benefit of the SMI lenders (the Tier 1 Trust Companies) and disbursing the Interest Reserve proceeds to the SMI lenders from its trust account.

195. Harris LLP and, in particular, Mr. Harris, also performed further functions on behalf of the Tier 1 Trust Companies and/or Mr. Singh, including providing ongoing advice and representation to the Tier 1 Trust Companies and/or Mr. Singh with respect to the Loan Agreements and the other affairs and operations of the Tier 1 Trust Companies, including their ongoing relations with the Development Companies and their rights under the Loan Agreements. For these services, Harris LLP was paid by the Development Corporations.

196. Harris LLP and its lawyers, including but not limited to Mr. Harris, also provided ongoing advice and representation to each of the Development Companies (except for Vaughan Crossings and Silver Seven) in respect of other matters unrelated to the loan transactions both before and after funds were advanced to the Development Companies, including advice and representation with respect to incorporation, property acquisitions, property development, zoning, planning and other discrete matters. Essentially, Harris LLP and its lawyers provided ongoing advice and

representation to each of the Development Companies (except for Vaughan Crossings and Silver Seven) in respect of substantially all legal matters relating to the companies and their business.

197. Throughout the retainers, several lawyers at Harris LLP provided legal advice and performed legal services for the various applicable Development Companies, including not only Mr. Harris but also Peter Matukas, Amy Lok and Mark McMackin. Other staff of Harris LLP, including articling students and law clerks, also performed services for the various applicable Development Companies.

198. Each of the Tier 1 Trust Companies and the Development Companies (except in the latter case for Vaughan Crossings and Silver Seven) as well as their respective management were highly reliant upon the legal advice and professional services provided by Harris LLP. At all material times, the Tier 1 Trust Companies and these Development Companies effectively had no other legal counsel advising them other than lawyers of Harris LLP. This fact was well known to Harris LLP and Mr. Harris.

199. Harris LLP and its lawyers owed these Development Companies contractual, professional and other duties, which required them to bring reasonable care, skill and knowledge to the performance of their professional services.

200. Harris LLP held itself out as having “significant experience in commercial real estate transactions, including real estate financing using syndicated mortgages”. It further held itself out as having “extensive experience in buying, selling and financing all types of commercial real estate and all its concomitant perils and nuances.” As the Harris Defendants were hired to provide legal services in the areas of, among other things, real estate law, corporate law and corporate finance requiring expertise, which it and its lawyers claimed to possess, and given all the other

circumstances, the Harris Defendants were, and are, subject to a higher standard in performing legal services for these Development Companies.

201. The legal standards of conduct that applied to Harris LLP and its lawyers are informed by, among other things, the Rules of Professional Conduct of the Law Society of Upper Canada (the “**Rules**”). The Rules state, among other things, that:

- (a) a lawyer is required to perform any legal services undertaken on behalf of a client to the standard of a competent lawyer (Rule 3.1(2));
- (b) when retained by a corporation, a lawyer must recognize that the client is the corporation itself, not the individual members of management or the board of directors (Rule 3.2(3));
- (c) a lawyer shall not knowingly assist in or encourage any dishonesty, fraud, crime, or illegal conduct, or do or omit to do anything that the lawyer ought to know assists in, encourages or facilitates any dishonesty, fraud, crime, or illegal conduct by a client or any other person (Rule 3.2(7));
- (d) a lawyer has a duty to avoid conflicts of interest (Rule 3.4); and
- (e) a lawyer, or two or more lawyers practising in partnership or association, must not act for or otherwise represent both lender and borrower in a mortgage or loan transaction (Rule 3.4(11)).

202. In performing its duties, Harris LLP and its lawyers were also required to:

- (a) make reasonable efforts to ascertain the purpose and objectives of the retainer and to obtain information about the client necessary to fulfill this obligation (Rule 3.2(7.2));
- (b) be on guard against being used as the tool or dupe of an unscrupulous client or persons associated with such a client or any other person (Commentary to Rule 3.2(7)); and
- (c) be vigilant in identifying the presence of 'red flags' in their areas of practice and make inquiries to determine whether a proposed retainer relates to a bona fide transaction (Commentary to Rule 3.2(7)).

203. The retainer agreements between Harris LLP and the respective Tier 1 Trust Companies and Development Companies contained express and/or implied terms that required Harris LLP and its lawyers to, among other things, perform services in a competent manner, act in the best interests of each of the companies and avoid conflicts of interest.

204. Similarly, as fiduciaries, Harris LLP and its lawyers were required to protect and act in the best interests of each of the Tier 1 Trust Companies and the applicable Development Companies while avoiding conflicts of interest.

205. Harris LLP and its lawyers breached their contractual, common law and other duties owed to each of the respective Tier 1 Trust Companies and non-Vaughan Crossings and non-Silver Seven Development Companies. Harris LLP and its lawyers are liable for their acts and/or omissions as the lawyers for the respective Tier 1 Trust Companies and these Development

Companies, which have caused damages to the Tier 1 Trust Companies and the Receivership Companies.

206. The particulars of the Harris Defendants' breach of contract, breach of duty and professional negligence include but are not limited to the following errors and omissions, many of which are unrelated and gave rise to discrete losses specific to each of the Receivership Companies and the Tier 1 Trust Companies (other than in respect to the Hazelton Project, for which no losses have been suffered, or the Guildwood Project, the settlement agreement for which treats the Guildwood SMI's indebtedness as having been repaid in full):

- (a) entering into delegation agreements and/or other formal arrangements pursuant to which Harris LLP and its lawyers acted for both the borrowers and the lenders in connection with certain or all aspects of the various loan transactions;
- (b) acting in the cases set out above for both the Development Companies as borrowers and the Tier 1 Trust Companies as lenders, in a conflict of interest, in connection with certain aspects of the various loan transactions and the ongoing relations between these Development Companies and the Tier 1 Trust Companies;
- (c) providing ongoing advice and representation to the Tier 1 Trust Companies and Tier 1 and/or its representatives, including Mr. Singh, while simultaneously providing ongoing advice and representation to the applicable Development Companies, despite conflicts of interest at the outset and/or the emergence of diverging and conflicting interests;

- (d) failing to recognize when potential conflicts of interest, referred to above, ripened into actual conflicts or, in the alternative, failing to take steps to appropriately avoid or resolve those conflicts;
- (e) failing to recognize inaccuracies and materially misleading information in marketing material being used in connection with the SMI offerings and/or having recognized such inaccuracies and/or materially misleading information and failing to take any adequate steps to correct the information and/or ensure that representations regarding the Tier 1 Trust Companies, the applicable Development Companies and their affairs were true and accurate;
- (f) failing to properly consider and/or advise the Tier 1 Trust Companies of the statutory requirements under relevant legislation, including, for instance, the *Loan and Trust Corporations Act*, R.S.O. 1990, c. L.25, as amended;
- (g) failing to take steps at the outset to properly structure the SMIs and the subsequent loans by the Tier 1 Trust Companies to the Development Companies with appropriate controls to safeguard funds;
- (h) failing to properly consider and/or advise the applicable Development Companies of the regulatory, planning, zoning and other perils and nuances associated with their acquisitions of various real properties;
- (i) failing to recognize and/or to take appropriate steps to ensure that the security of certain of the SMIs was secured on a first-ranked basis against the real property for which the investments were made and the funds were advanced;

- (j) failing to recognize that some of the borrowing of funds by the Development Companies on a first-ranking secured basis was contrary to the representations made to investors in the respective SMIs and/or failing to take appropriate and/or any steps to ensure that such borrowing was appropriately secured;
- (k) failing to advise of and recommend to the applicable Development Companies and Tier 1 Trust Companies appropriate, or any, corporate governance safeguards;
- (l) failing to prevent, facilitating, suggesting and/or directing that intercompany loans be made by certain Receivership Companies to other Receivership Companies in order to fund ongoing interest payment obligations and/or other costs and liabilities;
- (m) failing to prevent, facilitating, suggesting and/or directing that intercompany loans be made by certain Development Companies to non-Development Companies;
- (n) acting for both borrowers and lenders in connection with such intercompany loan transactions (including (1) between and among the Receivership Companies, and (2) between and among the Development Companies and non-Development Companies);
- (o) failing to properly document such intercompany loans;
- (p) failing to ensure such intercompany loans were made on reasonable terms;
- (q) failing to ensure that reasonable or sufficient security was obtained by the lending Development Companies in respect of such intercompany loans;

- (r) disbursing and/or facilitating the disbursement of interest payments to the SMI lenders in respect of one Receivership Company with funds obtained from another Receivership Company, while failing to recognize that this was inappropriate and/or contrary to representations made to investors and the covenants given to the Trust Companies;
- (s) failing to prevent and/or facilitating the funding of liabilities of one Receivership Company with funds obtained from another Receivership Company, while failing to recognize that this was inappropriate and/or contrary to representations made to investors and the covenants given to the Trust Companies;
- (t) acting, and continuing to act, for all of the Development Companies (other than Vaughan Crossings and Silver Seven) notwithstanding the emergence of diverging and conflicting interests between and among them;
- (u) failing to terminate the retainers with the applicable Development Companies when conflicts arose and circumstances rendered the continued representation of some or all of the applicable Development Companies inappropriate;
- (v) ignoring or, alternatively, failing to identify major red flags which ought to have caused heightened caution relating to the Development Companies and their affairs;
- (w) failing to make the requisite inquiries regarding the highly unusual business practices of the Development Companies, the Tier 1 Trust Companies and others;

- (x) failing to insist on the verification of the legitimacy of the Development Companies' business, development Projects, representations and financial condition in light of all the red flags;
- (y) failing to provide appropriate advice regarding the raising of SMI monies in circumstances where it was known that such monies could be applied and used in a manner inconsistent with representations made to investors, brokers and others;
- (z) failing to provide appropriate advice and/or take reasonable, appropriate or adequate steps to address the highly unusual business practices of the Development Companies, the Tier 1 Trust Companies and others; and/or
- (aa) failing to guide the Development Companies and the Tier 1 Trust Companies to act in ways that were ethical and consistent with their responsibilities to their stakeholders and to the public.

207. The Harris Defendants' failure to appropriately discharge the duties owed to the Development Companies (except for Vaughan Crossings and Silver Seven) and the Tier 1 Trust Companies constituted a breach of their duties as these Development Companies' counsel and the Tier 1 Trust Companies' counsel and allowed a multi-million dollar fraud to be perpetrated by the Davies Defendants and Singh Defendants on the Receivership Companies and the Tier 1 Trust Companies.

208. By virtue of their positions as lawyers for these Development Companies and the Tier 1 Trust Companies, the Harris Defendants had knowledge of Messrs. Davies', Thompson's, Stewart's, Arsenault's, Grace's, Singh's and Cassimy's fiduciary duties respectively owed to the

Tier 1 Trust Companies and/or the Receivership Companies, as applicable. By virtue of the Harris Defendants' acts and omissions as described above, they knowingly assisted Messrs. Davies, Thompson, Stewart, Aresenault, Grace, Singh and/or Cassimy in breaching their respective fiduciary duties owed to the Tier 1 Trust Companies and Receivership Companies, as applicable.

209. Had the Harris Defendants fulfilled their duties and professional obligations as the lawyers for the Tier 1 Trust Companies and the Receivership Companies, provided proper advice and taken steps to address the misconduct by management of the Tier 1 Trust Companies and the Receivership Companies, the fraud and other misconduct would not have occurred, or it would not have occurred to the same degree or extent.

210. Through their negligent acts and omissions, the Harris Defendants breached their duties and obligations owed to the Development Companies (except for Vaughan Crossings and Silver Seven) and the Tier 1 Trust Companies. As a result, the Receivership Companies and the Tier 1 Trust Companies (and thereby their respective creditors, including public investors), suffered significant damages for which the Harris Defendants are jointly and severally responsible.

Improper Legal Fees Paid to the Harris Defendants

211. The Development Companies improperly paid over \$3.1 million in fees to the Harris Defendants for legal services purportedly rendered by them in connection with the Projects, of which approximately \$2.4 million was paid by the Receivership Companies for which the plaintiffs are seeking recovery, notwithstanding that the Loan Agreements provide a combined estimate for Harris LLP's fees in an amount well-below that.

(d) **Additional Causes of Action Asserted by the Trustee Alone**

Breach of Fiduciary Duty and Duty of Care Owed by Directors & Officers of the Tier 1 Trust Companies

212. The Tier 1 Trust Companies were special purpose entities required to hold the mortgages in trust for the investors and to act in a fiduciary capacity to administer and enforce the mortgages.

213. At all material times, Mr. Singh was the sole director and officer of each of the Tier 1 Trust Companies (other than 445 Trust Co. and Hazelton Trust Co.).

214. At all material times, Mr. Cassimy was a director and officer of 445 Trust Co. and Hazelton Trust Co. However, Mr. Singh also served as a de facto director and officer of 445 Trust Co. and Hazelton Trust Co.

215. By virtue of the positions held by Mr. Singh and Mr. Cassimy, they respectively owed fiduciary duties and duties of care both at common law and pursuant to statute (including pursuant to sections 71 and 134 of the *Business Corporations Act*, RSO 1990, c B 16, as amended, and sections 120 and 122 of the *Canada Business Corporations Act*, RSC, 1985, c C-44, as amended) to the applicable Tier 1 Trust Companies.

216. These duties also formed part of the terms of their employment with the Tier 1 Trust Companies.

217. Their duties required that they, among other things, act diligently and in the Tier 1 Trust Companies' best interests while avoiding conflicts of interest and improper self-dealing.

218. By reason of the facts described above and further summarized below, Mr. Singh and Mr. Cassimy each breached these duties and failed to act in a manner that was required of them.

219. Mr. Singh's and Mr. Cassimy's duties required that they each administer and enforce the applicable SMIs on behalf of the applicable Tier 1 Trust Companies against the applicable Development Companies in the best interests of the Tier 1 Trust Companies' investors.

220. Instead of fulfilling their duties, Mr. Singh and Mr. 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 SMIs but, rather, reflected the hypothetical value of the fully developed Projects (premised on the successful completion of the proposed developments), such that the Tier 1 Trust Companies and their investors were presented a false and/or misleading appraisal value that failed to disclose to the Tier 1 Trust Companies and their investors that the true values of the properties and corresponding security were inadequate to cover the respective SMIs.

221. They each also failed to notify the investors of numerous Events of Default as defined in the applicable Loan Agreements (for instance, under section 6.01 the Loan Agreements, in which the applicable Development Companies represented that they had obtained all material licences, permits and approvals, which were required and which would allow for the development of the applicable property, which they had not, in fact, obtained). By virtue of their respective failures to properly administer and enforce some or all of the SMIs as required, they caused the Tier 1 Trust Companies to suffer significant losses and harm.

222. Furthermore, they each knowingly and/or recklessly permitted the funds advanced by the Tier 1 Trust Companies to the Development Companies to be used for purposes other than for which they were intended pursuant to the applicable Loan Agreements.

223. As described above, among the improper uses of such funds, were payments and transfers directly or indirectly to Mr. Singh or entities in which he had a financial interest, including but not

limited to certain Receivership Companies. Specifically, Mr. Singh and entities related to him (including Singh Co., Tier 1 Advisory and the Brokers) received undue Broker and Referral fees (approximately \$15.848 million), undue consulting and diligence fees (approximately \$1.45 million), dividends (\$1 million) and/or other amounts to which they were not properly entitled.

224. Mr. Singh and Mr. Cassimy also facilitated and/or furthered Mr. Davies' gross mismanagement and other misconduct vis-à-vis the Receivership Companies, including with respect to the making of improper inter-company transfers as between the Receivership Companies and to affiliates and other related entities.

225. Mr. Singh, who simultaneously to his positions with the Tier 1 Trust Companies, was (i) the President, the CEO and a shareholder of Tier 1 Advisory, (ii) a mortgage agent of FCMC, and (iii) a director, officer, shareholder (either directly or indirectly) and/or a financial interest holder in some or all of the Development Companies. As such, he was in a clear conflict of interest position, which was not properly disclosed to the investors. Among other non-disclosures, Mr. Singh did not disclose that he would benefit from the loans to the entities in which he had a financial interest.

226. Mr. Cassimy, who simultaneously to his positions with 445 Trust Co. and Hazelton Trust Co., was (i) the sole director and officer of FCMC and (ii) the principal mortgage agent of FCMC, was also in a clear conflict of interest position, which was not properly disclosed to the investors.

227. Rather than properly administering and enforcing the SMIs as required, Mr. Singh and/or Mr. Cassimy were instead driven to further market SMIs and raise as much money as possible from further investors in order to obtain further Broker and Referral Fees, consulting and diligence

fees and other compensation while simultaneously feeding more funds to the Development Companies in which Mr. Singh had a financial interest.

228. Mr. Cassimy and entities related to him (including FCMC) received undue Broker and Referral fees totaling \$9.8 million and/or other amounts to which they were not properly entitled.

229. The Tier 1 Trust Companies were vulnerable to the unilateral exercise of Mr. Singh's and Mr. Cassimy's discretion and power, particularly given that they were the controlling mind of the applicable Tier 1 Trust Companies.

230. They effectively treated the applicable Tier 1 Trust Companies as their own personal fiefdom, without due regard for transparency, disclosure, the avoidance of self-dealing and conflicts of interest.

231. By reason of the facts described above, Mr. Singh and Mr. Cassimy breached their respective statutory, common law and employment duties to the applicable Tier 1 Trust Companies including, but not limited to, their fiduciary duties of good faith, honest performance and loyalty and their duties of care.

232. Mr. Singh, and the companies which he owned, directed and/or managed (including the Brokers), failed to comply with minimum standards of practice, including failing to provide investors with proper disclosure of material risks, and failing to conduct proper suitability analyses to ensure that the SMIs were suitable for the investors to whom they were presented, marketed and sold.

233. Mr. Singh also conducted the business of the Trust Companies in a manner that contravened applicable statutes and regulations. Among other things, the Trust Companies were

required to be licensed under the *Mortgage Brokerages, Lenders and Administrators Act, 2006*, S.O. 2006, c. 29, as amended (the “**MBLAA**”) because they performed mortgage administration functions; however, contrary to the MBLAA, the Trust Companies were never licensed as required. Likewise, Mr. Singh himself was never licensed as a mortgage administrator under the MBLAA, yet this is the very function he was required to perform.

234. The Trust Companies were also not licensed to carry on business as trust corporations in Ontario. Consequently, Mr. Singh conducted their business in a manner that contravened the *Loan and Trust Corporations Act*, R.S.O. 1990, c. L.25, as amended.

235. Mr. Singh also caused and/or allowed the Trust Companies and the Development Companies to engage in business with companies that he owned, directed and/or managed (including Tier 1 Advisory and the Brokers), which had widespread, systematic and recurrent failures to abide by the basic consumer protection measures put in place by the MBLAA, which resulted in, among other things, the Superintendent of Financial Services revoking the licenses of the Brokers and Mr. Singh (amongst others), preventing them from dealing or trading in mortgages in Ontario. Likewise, Tier 1 Advisory was ordered by the regulator to cease and desist its operations for improperly soliciting persons or entities to borrow or lend money on the security of real property; providing information about a prospective borrower to a prospective lender; assessing prospective borrowers on behalf of prospective lenders; negotiating or arranging SMIs on behalf of another person and entity; and/or providing fees and remuneration to licensed and unlicensed individuals.

Knowing Assistance in Breach of Fiduciary Duty

236. FCMC knew of Messrs. Singh's and Cassimy's fiduciary duties owed to the applicable Tier 1 Trust Companies.

237. Notwithstanding its knowledge, FCMC willfully induced and/or assisted these Defendants to breach their respective fiduciary duties owed to the applicable Tier 1 Trust Companies, including by, among other things, encouraging and/or causing them to raise funds from investors and not enforce or properly administer the SMIs such that certain Tier 1 Trust Companies and Development Companies could solicit and obtain further funds from investors and FCMC could continue to earn further Broker and Referral fees. FCMC knowingly participated in, and assisted, Messrs. Singh's and Cassimy's conduct in this respect.

238. The Trustee has suffered damages as a direct result of FCMC's inducement and assistance, and Messrs. Singh's and Cassimy's corresponding breach of their fiduciary duties owed to the applicable Tier 1 Trust Companies.

239. As such, FCMC holds any proceeds of the scheme, including all Broker and Referral fees, as a constructive trustee for the Trustee.

240. The Trustee claims the return of those proceeds in whatever form to which they can be traced and claim damages against FCMC to the extent that such proceeds have been dissipated.

241. Besides FCMC, the defendants Messrs. Singh and Cassimy were aware of each other's fiduciary duties owed to the applicable Tier 1 Trust Companies, yet willfully induced and/or assisted one another in breaching their respective fiduciary duties.

242. These defendants are jointly and several liable to the applicable Tier 1 Trust Companies for all losses resulting from such breaches of fiduciary duties and other misconduct.

The Elliot Defendants' Negligence, Breach of Contract, Breach of Fiduciary Duty and Knowing Assistance in Breach of Fiduciary Duty

243. The Elliot Defendants purported to render professional legal services and act as the solicitors for all the Tier 1 Trust Companies except for McMurray Trust Co. (and Scollard/Vaughan Crossings/Silver Seven Trust Co. to the extent of its advancement of monies to Vaughan Crossings and Silver Seven) in connection with the loan transactions pursuant to which approximately \$107 million in SMI monies were loaned by these Tier 1 Trust Companies to these Development Companies for purposes of purchasing real estate and developing the Projects thereon.

244. Although under the applicable Loan Agreements, the "Lender's Solicitors" are defined to mean Ms. Elliot, at or around the time that funds were advanced by the applicable Tier 1 Trust Companies to the applicable Development Companies, Ms. Elliot delegated substantially all of her duties to Harris LLP, the borrower's solicitors. In doing so, she created, facilitated the creation of and/or furthered a conflict of interest situation in which Harris LLP and its lawyers acted for both borrowers and lenders under the applicable Loan Agreements.

245. Ms. Elliot effectively acted as a "straw man" under the applicable Loan Agreements in order to lend these Loan Agreements an air of legitimacy and create the false impression of an arm's length relationship between the borrowers and lenders when, in fact, the applicable Tier 1 Trust Companies and Development Companies were not at arm's length and were being directed by persons with conflicts of interest.

246. The Elliot Defendants owed the applicable Tier 1 Trust Companies duties in contract and at common law, which required them to, among other things, bring reasonable care, skill and knowledge to the performance of their professional services.

247. As immigration law practitioners, the Elliot Defendants were not qualified to act as corporate counsel to the applicable Tier 1 Trust Companies under the Loan Agreements and they failed to meet the requisite degree of care, skill and knowledge required of them in the performance, if any, of their professional services.

248. The Elliot Defendants failed to provide appropriate advice to the applicable Tier 1 Trust Companies and/or take reasonable, appropriate or adequate steps to protect their interests, including by, among other things, making the following errors and omissions, many of which are unrelated and gave rise to discrete losses specific to each of the applicable Tier 1 Trust Companies (other than in respect to the Hazelton Project, for which no losses have been suffered, or the Guildwood Project, the settlement agreement for which treats the Guildwood SMI's indebtedness as having been repaid in full):

- (a) failing to advise the applicable Tier 1 Trust Companies of the perils of having the Harris Defendants act for both them as lenders and the Development Companies as borrowers in connection with the Loan Agreements and the related matters thereunder;
- (b) failing to ensure the applicable Tier 1 Trust Companies received appropriate, independent advice and representation in connection with the Loan Agreements and the related matters thereunder; and

- (c) failing to appropriate diligence the applicable loan transactions to adequately protect the interests of the Tier 1 Trust Companies, including against, among other things, (i) transactions proceeding with what was clearly inadequate security to satisfy the amount of the mortgage loans and (ii) inter-company transfers and other payments being made by the Development Companies in the face of contractual provisions in the Loan Agreements prohibiting such transfers.

249. By virtue of their acts and omissions, the Elliot Defendants breached their duties and obligations owed to the applicable Tier 1 Trust Companies. Had the Elliot Defendants fulfilled their duties and professional obligations as the lawyers for the applicable Tier 1 Trust Companies, provided proper advice and taken steps to address the misconduct by management of the Tier 1 Trust Companies and the Harris Defendants, the damages claimed would not have been suffered, or they would not have suffered to the same degree or extent.

250. The Elliot Defendants also knowingly assisted the Harris Defendants' breach of their fiduciary and other legal duties owed to the Development Companies by delegating certain responsibilities to Harris LLP and allowing the Harris Defendants to act for both the Development Companies, as borrowers, and the Tier 1 Trust Companies, as lenders, on virtually all aspects of the loan transactions and the ongoing relations as between these companies. As a result, the Tier 1 Trust Companies, the Development Companies and their creditors, including public investors, suffered significant damages for which the Elliot Defendants are jointly and severally responsible.

Improper Legal Fees Paid to the Elliot Defendants

251. The Development Companies paid approximately \$410,000 in fees to the Elliot Defendants for legal services purportedly rendered by them to the applicable Tier 1 Trust Companies in

connection with the Loan Agreements, of which approximately \$354,000 was paid by the Receivership Companies to the Elliot Defendants. However, the Elliot Defendants delegated all, or substantially all, of their responsibilities to Harris LLP and performed virtually no services, or no services of value, for the Tier 1 Trust Companies and the Development Companies. These are fees to which the Elliot Defendants are not properly entitled.

Losses and Harm

252. The conduct of the Defendants as described above has caused, and is continuing to cause, reasonably foreseeable and proximate damage to the Tier 1 Trust Companies, the Receivership Companies and their respective 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 plaintiffs at this time.

253. Specifically:

- (a) Scollard/Vaughan Crossings/Silver Seven Trust Co.:
 - (i) held an SMI in the principal amount of \$13.6 million over Scollard's real property, which was registered on title behind encumbrances of approximately \$2.5 million. The Receiver conducted a thorough marketing and sale process for Scollard's real property, resulting in a Court-approved sale for approximately \$11.1 million;
 - (ii) held an SMI in the principal amount of approximately \$14.8 million over Vaughan Crossings' real property, which was registered on title behind encumbrances in excess of \$11.5 million. Vaughan Crossings' real property

was worth no more than \$15 million. To preserve the SMI investors' interest in Vaughan Crossings' real property in some capacity, the Court approved a \$15 million sale transaction pursuant to which, in substance, the SMI was partially converted into an equity position in the purchaser (which purchaser had to borrow \$15 million against the real property to fund the transaction), with the balance of the SMI retained by Scollard/Vaughan Crossings/Silver Seven Trust Co. on an entirely unsecured basis (for which balance of the SMI Vaughan Crossings has no assets to satisfy). The Court ordered that the Trustee has no further interests, duties or obligations in respect of the purchaser of Vaughan Crossings' real property; and

- (iii) held an SMI in the principal amount of approximately \$6 million over Silver Seven's real property, which was registered on title behind encumbrances in excess of \$15 million. The Court approved a settlement transaction pursuant to which Silver Seven paid approximately \$2.9 million to the Trustee in exchange for certain conditional releases and an assignment.
- (b) Kitchener Trust Co. holds an SMI in the principal amount of approximately \$10.6 million over Kitchener's real property, which is registered on title behind encumbrances of approximately \$1.5 million. No transaction has resulted to date from the Receiver's thorough marketing and sale process for Kitchener's real property, which real property was purchased by Kitchener in 2014 for \$3.95 million.
- (c) Oakville/Burlington/Guildwood/Legacy Lane Trust Co.:

- (i) held an SMI in the principal amount of approximately \$9 million over Oakville's real property, which was registered on title behind encumbrances in excess of \$1 million. The Receiver conducted a thorough marketing and sale process for Oakville's real property, resulting in a Court-approved sale for approximately \$4.2 million;
 - (ii) held an SMI in the principal amount of approximately \$8.3 million over Burlington's real property, which is registered on title behind encumbrances of approximately \$2 million. The Receiver conducted a thorough marketing and sale process for Burlington's real property, resulting in a Court-approved sale for approximately \$3.4 million;
 - (iii) held an SMI in the principal amount of approximately \$6 million over Guildwood's real property, which was registered on title behind encumbrances in excess of \$1 million. The Court approved a settlement transaction pursuant to which Guildwood paid approximately \$4.1 million to the Trustee in exchange for certain releases; and
 - (iv) held an SMI in the principal amount of approximately \$3.5 million over Legacy Lane's real property. The Receiver conducted a thorough marketing and sale process for Legacy Lane's real property, resulting in a Court-approved sale for approximately \$650,000.
- (d) 525 Trust Co. held an SMI in the principal amount of approximately \$6.4 million over 525 Princess' real property. The Receiver conducted a thorough marketing

and sale process for 525 Princess' real property, resulting in a Court-approved sale for approximately \$2.1 million.

- (e) 555 Trust Co. held an SMI in the principal amount of approximately \$8 million over 555 Princess' real property. The Receiver conducted a thorough marketing and sale process for 555 Princess' real property, resulting in a Court-approved sale for approximately \$2.1 million.
- (f) 445 Trust Co. held an SMI in the principal amount of approximately \$8.5 million over certain of 445 Princess' real property, which was registered on title behind encumbrances of approximately \$7 million. The Receiver conducted a thorough marketing and sale process for 445 Princess' applicable real property, resulting in a Court-approved sale for approximately \$7.55 million.
- (g) McMurray Trust Co. held an SMI in the principal amount of approximately \$3.5 million over McMurray's real property, which was registered on title behind encumbrances in excess of \$2 million. McMurray's real property was sold by private sale by a prior-ranking mortgagee for approximately \$2.8 million.
- (h) Bronson Trust Co. held an SMI in the principal amount of approximately \$10.9 million over Bronson's real property, which was registered on title behind encumbrances in excess of \$5.5 million. Bronson's real property was sold by private sale by a prior-ranking mortgagee for approximately \$7.2 million.
- (i) Ross Park Trust Co. holds an SMI in the principal amount of approximately \$11.6 million over Ross Park's real property, which is registered on title behind a

conditional \$4 million mortgage and certain other encumbrances. The Court has approved a sale transaction for \$7.25 million (of which only approximately \$2.25 million in cash is to be paid on closing, with the balance satisfied by a new mortgage) that is to be shared between the two mortgages, which sale transaction has closed.

- (j) Keele Medical Trust Co. holds an SMI in the principal amount of approximately \$4.0 million over Keele Medical's real property, which is registered on title behind encumbrances of approximately \$6 million and certain additional liens. Keele Medical purchased its real property in 2012 and 2014 for the aggregate of approximately \$10.2 million.
- (k) Hazelton Trust Co. held an SMI in the principal amount of approximately \$6.3 million over Hazelton's real property, which was registered on title behind encumbrances in excess of \$2 million. The Court approved a settlement transaction pursuant to which Hazelton paid approximately \$6.6 million to the Trustee in exchange for certain releases.

254. The Defendants' conduct has exposed most of the Development Companies, including all of the Receivership Companies, to significant liabilities in the form of claims for damages and losses from their creditors, including, most notably, the applicable Tier 1 Trust Companies on behalf of the innocent investors whose funds were misappropriated.

255. At the commencement of the initial receivership proceeding for Scollard in February 2017, the secured debt obligations of the Receivership Companies alone totalled approximately \$120 million, including approximately \$94 million owing to the Trust Companies prior to interest and

costs (being monies raised by the Trust Companies from investors), and the balance owing to other lenders, primarily mortgagees.

256. Payments to date to secured lenders of the Receivership Companies total approximately \$33 million, including approximately \$11 million to the Trust Companies (being only approximately 12% of the total funds advanced by the Trust Companies to the Receivership Companies).

257. The payments to the Trust Companies have been used to cover the professional costs in those proceedings and to repay a small portion of the investor debt on certain projects, which amounts will be determined through the Receivership proceedings.

258. As at September 26, 2018, the only realizable assets of the Receivership Companies to satisfy the remaining secured debt obligations (and all the other debt obligations and liabilities of the Receivership Companies) are the unsold real properties for which the Receivership Companies collectively paid approximately \$3.95 million, or the undistributed proceeds from the sales of the real properties.

259. 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.

260. The plaintiffs have incurred, and are 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.

261. Full particulars of the Tier 1 Trust Companies' and the Receivership Companies' damages will be provided prior to trial.

Punitive Damages

262. The Davies Defendants' and Singh Defendants' actions constitute a wanton, callous, high-handed and outrageous disregard for the Tier 1 Trust Companies' and the Development Companies' rights and interests, and for the rights and interests of their creditors, particularly the investing public whose funds were 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 Tier 1 Trust Companies, the Development Companies and their creditors. The Thompson, Stewart, Harris, Elliot and Cane Defendants, as well as MCIL, TSI and TSSI were financially incentivized to allow this fraud to proceed in breach of the fiduciary, contractual, common law, professional, equitable and/or other duties they respectively owed. The conduct of these Defendants ought to therefore attract the disapproval of this Honourable Court and result in a material award of punitive and/or exemplary damages as well as costs on an elevated scale.

Mareva Injunction

~~263. Following their improper conduct as described above, and after the commencement of the initial receivership proceeding for Scollard in February 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.~~

~~264.— 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 Davies Family Trust, as well as their personal belongings, such as art, jewelry and other assets.~~

~~265.— 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 as well as their sale and transferring of other personal assets, there is a real and demonstrated risk that Mr. and Ms. Davies as well as Aeolian, the Davies Family Trust and the Davies 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 plaintiffs may ultimately obtain. In all the circumstances, interim, interlocutory and permanent injunctive relief, *inter alia*, enjoining these Defendants from accessing, liquidating, dissipating, alienating or otherwise dealing with their assets is necessary, just and appropriate.~~

~~266.— The conduct of the Davies 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, the Davies Defendants 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.~~

Legislation

~~267.~~ 263. The plaintiffs plead and rely on all of the provisions of the following statutes, among others, all as amended:

- (a) *Assignments and Preferences Act*, RSO 1990, c A 33;
- (b) *Bankruptcy and Insolvency Act*, RSC 1985, c B-3;
- (c) *Business Corporations Act*, RSO 1990, c B 16;
- (d) *Canada Business Corporations Act*, RSC 1985, c C-44;
- (e) *Fraudulent Conveyances Act*, RSO 1990, Chapter F 29;
- (f) *Loan and Trust Corporations Act*, RSO 1990, c L 25; and
- (g) *Mortgage Brokerages, Lenders and Administrators Act, 2006*, SO 2006, c 29.

Place of Trial

~~268.~~ 264. The plaintiffs propose that the trial of this action take place in the City of Toronto in the Province of Ontario.

October 3, 2018
May ●, 2019

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

Steven L. Graff (LSUC# 31871V)
Phone: (416) 865-7726
Email: sgraff@airdberlis.com

Ian Aversa (LSUC# 55449N)
Phone: (416) 865-3082
Email: iaversa@airdberlis.com

Steve Tenai (LSUC# 33726R)
Phone: (416) 865-4620
Email: stenai@airdberlis.com

Facsimile: (416) 863-1515

Lawyers for the Plaintiff, Grant Thornton Limited, in
its capacity as court-appointed Trustee

BENNETT JONES LLP
3400 One First Canadian Place
P.O. Box 130
Toronto ON M5X 1A4

Sean Zweig (LSUC# 57307I)
Phone: (416) 777-6254
Email: zweigs@bennettjones.com

Jonathan Bell (LSUC# 55457P)
Phone: (416) 777-6511
Email: bellj@bennettjones.com

Joseph Blinick (LSUC# 64325B)
Email: blinickj@bennettjones.com

Facsimile: (416) 863-1716

Lawyers for the Plaintiff, KSV Kofman Inc., in its
capacity as court-appointed Receiver

**GRANT THORNTON LIMITED, in its capacity as Trustee of
Textbook Student Suites (525 Princess Street) Trustee
Corporation et al.**

v.

JOHN DAVIES et al.

Plaintiffs

Defendants

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

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

PROCEEDING COMMENCED AT TORONTO

AMENDED STATEMENT OF CLAIM

BENNETT JONES LLP
3400 One First Canadian Place
P.O. Box 130
Toronto, ON M5X 1A4

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

Sean Zweig (LSUC# 57307I)
Phone: (416) 777-6254
Email: zweigs@bennettjones.com

Steven L. Graff (LSUC# 31871V)
Phone: (416) 865-7726
Email: sgraff@airdberlis.com

Jonathan Bell (LSUC# 55457P)
Phone: (416) 777-6511
Email: bellj@bennettjones.com

Ian Aversa (LSUC# 55449N)
Phone: (416) 865-3082
Email: iaversa@airdberlis.com

Joseph Blinick (LSUC# 64325B)
Phone: (416) 777-4828
Email: blinickj@bennettjones.com

Steve Tenai (LSUC# 33726R)
Phone: (416) 865-4620
Email: stenai@airdberlis.com

Fax: (416) 863-1716

Fax: (416) 863-1515

Lawyers for the Plaintiff, KSV
Kofman Inc., in its capacity as court-
appointed Receiver

Lawyers for the Plaintiff, Grant Thornton
Limited, in its capacity as court-
appointed Trustee