



**Fifteenth Report of  
KSV Kofman Inc.**

January 16, 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.**

**and**

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

**and**

**First 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.**

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

**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.**

**FIFTEENTH 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**

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

**AND**

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

**JANUARY 16, 2019**

## 1.0 Introduction

1. This report ("Report") is filed by KSV Kofman Inc. ("KSV") in its capacity as receiver and manager of any real property registered on title as being owned by Scollard Development Corporation ("Scollard"), Memory Care Investments (Kitchener) Ltd. ("Kitchener"), Memory Care Investments (Oakville) Ltd. ("Oakville"), 1703858 Ontario Inc. ("Burlington"), Legacy Lane Investments Ltd. ("Legacy Lane"), Textbook (525 Princess Street) Inc. ("525 Princess"), Textbook (555 Princess Street) Inc. ("555 Princess"), Textbook (445 Princess Street) Inc. ("445 Princess"), Textbook (774 Bronson Avenue) Inc. ("Bronson"), Textbook Ross Park Inc. ("Ross Park") and McMurray Street Investments Inc. ("McMurray") (collectively, the "Receivership Companies"), and of all of their assets, undertakings and properties acquired for or used in relation to their real property subject to the receivership orders discussed below.
2. Pursuant to an order (the "Trustee Appointment Order") of the Ontario Superior Court of Justice (the "Court") dated October 27, 2016, Grant Thornton Limited ("GTL") was appointed Trustee (the "Trustee") of eleven entities<sup>1</sup> which raised monies from investors ("Investors") through syndicated mortgage investments ("SMIs") (collectively, the "Trustee Corporations")<sup>2</sup>. Eight of the Trustee Corporations then advanced these monies on a secured basis pursuant to loan agreements (the "Loan Agreements") between the Trustee Corporations and the Receivership Companies.
3. On January 21, 2017, the Trustee brought a motion for an order (the "Receivership Order") appointing KSV as receiver and manager (the "Receiver") of the real property owned by Scollard and the assets, undertakings and properties of Scollard acquired for or used in relation to the real property. On February 2, 2017, the Court made the Receivership Order.
4. On April 18, 2017, the Trustee brought a motion, *inter alia*, seeking an order amending and restating the Receivership Order to include the real property registered on title as being owned by Kitchener, Oakville, Burlington, Legacy Lane, 555 Princess and 525 Princess and the assets, undertakings and properties of these entities acquired for or used in relation to their real property (the "Amended and Restated Receivership Order"). On April 28, 2017, the Court made the Amended and Restated Receivership Order. The Amended and Restated Receivership Order was further amended by Court order on May 2, 2017 to address certain clerical errors.
5. On January 3, 2018, KingSett Mortgage Corporation, a secured creditor of 445 Princess, brought a motion for an order (the "445 Receivership Order") in a separate Court proceeding appointing KSV as Receiver of the real property owned by 445 Princess and the assets, undertakings and properties of 445 Princess acquired for or used in relation to the real property. On January 9, 2018, the Court made the 445 Receivership Order.

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<sup>1</sup> 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.

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

6. On February 26, 2018, the Trustee brought a motion for an order (the "Ross Park Receivership Order") appointing MNP Ltd. ("MNP") as receiver of the real property owned by Ross Park and certain related assets, undertakings and properties of Ross Park (the "Ross Park Excluded Assets"). On March 1, 2018, the Court made the Ross Park Receivership Order. Pursuant to the Ross Park Receivership Order, MNP is not permitted to deal with the litigation that has been the subject of the Receiver's various reports to Court.
7. On May 17, 2018, the Trustee brought a motion for an order (the "Bronson-Ross Park-McMurray Receivership Order") appointing KSV as Receiver of certain assets, undertakings and properties of Bronson, Ross Park and McMurray. On May 30, 2018, the Court made the Bronson-Ross Park-McMurray Receivership Order.
8. Pursuant to the Trustee Appointment Order and the above-referenced Receivership Orders, no proceedings may be commenced against the Receiver or the Trustee absent their consent or leave of the Court.

## 2.0 Recent Developments

1. On January 11, 2019, John Davies ("Davies"), Walter Thompson ("Thompson") and their respective holding companies, Aeolian Investments Ltd. And 1321805 Ontario Inc. together with several other purported plaintiffs, namely the Receivership Companies, issued a notice of action (the "Notice of Action") naming the Financial Services Commission of Ontario, the Trustee, the Receiver, and certain of their respective representatives, including Jonathan Krieger of GTL and Bobby Kofman and Noah Goldstein of KSV, as defendants. A copy of the Notice of Action is attached as Appendix "A". Consent or leave to file the Notice of Action was not sought or obtained prior to the filing of the Notice of Action.
2. In addition, on January 11, 2019, Davies and Thompson delivered an email to an undisclosed list of recipients, seemingly comprised of the Investors in the SMIs, in which they, among other things:
  - a) advised of the issuance of the Notice of Action;
  - b) provided a link to a webpage titled "Investors Raped by Government Sanctioned Process - The Story of Institutionalized Fraud in Ontario Today" (<https://textbookmemorycareaction.com/>) (the "Webpage"); and
  - c) provided a link to a YouTube video, also titled "Investors Raped by Government Sanctioned Process" ([https://www.youtube.com/watch?v=1\\_eORLZaAU4&feature=youtu.be](https://www.youtube.com/watch?v=1_eORLZaAU4&feature=youtu.be)) (the "YouTube Video").

A copy of the email from Davies and Thompson dated January 11, 2019 is attached as Appendix "B". A copy of the Webpage is attached as Appendix "C". A screenshot of the YouTube Video is attached as Appendix "D".

3. On January 13, 2019, counsel for the Receiver and the Trustee jointly delivered a letter to counsel for Davies and Thompson, Mr. Douglas Christie of Rubin & Christie LLP, who electronically issued the Notice of Action on their behalf. In the letter, counsel for the Receiver and the Trustee demanded that (i) the action against the Receiver, the Trustee and Messrs. Krieger, Kofman and Goldstein be immediately discontinued given that neither consent nor leave was obtained, let alone sought; and (ii) the Webpage and the YouTube Video be taken down given their defamatory content. A copy of the letter to Mr. Christie is attached as Appendix "E".
4. On January 14, 2019, Mr. Christie responded to the letter. Mr. Christie and counsel to the Receiver exchanged emails regarding the matters at issue. On January 14, 2019, Michael Beeforth of Dentons Canada LLP, counsel to Davies and Thompson in the Receivership proceedings, also sent an email to the Receiver's counsel regarding the Notice of Action, the Webpage and the YouTube Video. A copy of the email correspondence is collectively attached as Appendix "F".
5. On January 16, 2019, after the Receiver had already scheduled a case conference to address the above-noted matters, Mr. Christie sent a further email to the Receiver's counsel to advise that, among other things: (i) he demanded that Thompson remove the YouTube Video and the Website; and (ii) Thompson had apparently complied with his demand. Based on the Receiver's review of the relevant web links, it appears that, as of the time of this report, the YouTube Video is unavailable and the Website has been made private, at least temporarily. A copy of Mr. Christie's email dated January 16, 2019 is attached as Appendix "G".
6. As of the time of this Report, Mr. Christie has not discontinued the action against the Receiver, the Trustee or Messrs. Krieger, Kofman or Goldstein.

### 3.0 Key Decisions

1. Below is a list of certain key decisions issued by Mr. Justice Myers in these and related proceedings, copies of which are attached as Appendices "H" to "L".<sup>3</sup>
  - a) Endorsement dated June 7, 2017 (Appendix "H");
  - b) Endorsement dated June 27, 2017<sup>4</sup> (Appendix "I");
  - c) Endorsement dated July 17, 2017 (Appendix "J");
  - d) Endorsement dated August 30, 2017 (Appendix "K"); and
  - e) Endorsement dated December 14, 2018; (Appendix "L")

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<sup>3</sup> The Receiver has included unofficial typed transcripts of the endorsements where available.

<sup>4</sup> Issued in the receivership of Generx (Byward Hall) Inc. ("Generx"), an entity related to the Receivership Companies, in respect of which Messrs. Davies and Thompson are the two principals.

## 4.0 Conclusion and Recommendation

1. The Receiver recommends that the Court issue an order:
  - a) discontinuing the action commenced against the Receiver, the Trustee and Messrs. Krieger, Kofman and Goldstein pursuant to the Notice of Action; and
  - b) requiring the Webpage and the YouTube Video to remain taken down pending further order of the Court.

\* \* \*

All of which is respectfully submitted,

A handwritten signature in blue ink that reads "KSV Kofman Inc". The signature is written in a cursive, flowing style.

**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 (774 BRONSON AVENUE) INC., TEXTBOOK ROSS PARK INC.  
AND McMURRAY STREET INVESTMENTS INC., AND NOT IN ITS PERSONAL OR IN ANY  
OTHER CAPACITY**

## **Appendix “A”**





Court File No.

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

Electronically issued : 11-Jan-2019  
Délivré par voie électronique :  
Toronto

**JOHN DAVIES, WALTER THOMPSON, AEOLIAN INVESTMENTS LTD.,  
1321805 ONTARIO INC., MEMORY CARE INVESTMENTS LTD.,  
TEXTBOOK SUITES INC., TEXTBOOK STUDENT SUITES INC., 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 INVESTMENT INC., TEXTBOOK (774  
BRONSON AVENUE) INC., TEXTBOOK STUDENT SUITES (ROSS PARK) INC.  
and GENERX (BYWARD HALL) INC.**

Plaintiffs

- and -

**GRANT THORNTON LIMITED, KSV KOFMAN INC., KSV ADVISORY INC.,  
ROBERT DAVID KOFMAN, NOAH GOLDSTEIN, JONATHAN KRIEGER  
and FINANCIAL SERVICES COMMISSION OF ONTARIO**

Defendants

## **NOTICE OF ACTION**

### **TO THE DEFENDANTS:**

**A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU** by the plaintiffs. The claim against you is set out in the statement of claim served with this notice of action.

**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

- 2 -

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 LOCAL 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: January 11, 2019 Issued by \_\_\_\_\_  
Local Registrar

Address of Court Office: 393 University Avenue  
10<sup>th</sup> floor  
Toronto, Ontario  
M5G 1E6

- 3 -

- TO: Grant Thornton Limited**  
200 King Street  
11<sup>th</sup> Floor, Box 11  
Toronto, ON M5H 3T4
- TO: KSV Kofman Inc. and KSV Advisory Inc.**  
150 King Street West  
Suite 2308  
Toronto, ON M5H 1J9
- TO: Robert David Kofman**  
150 King Street West  
Suite 2308  
Toronto, ON M5H 1J9
- TO: NOAH GOLDSTEIN**  
150 King Street West  
Suite 2308  
Toronto, ON M5H 1J9
- TO: JONATHAN KRIEGER**  
200 King Street  
11<sup>th</sup> Floor, Box 11  
Toronto, ON M5H 3T4
- TO: FINANCIAL SERVICES COMMISSION OF ONTARIO**  
5160 Yonge Street  
16<sup>th</sup> Floor  
Toronto, ON M2N 6L9

1. **THE PLAINTIFFS CLAIM:**

- (a) leave of the Superior Court of Justice in bankruptcy to commence proceedings on behalf of any corporate plaintiffs which are currently in bankruptcy;
- (b) leave of the Superior Court of Justice to commence proceedings if necessary on behalf of all corporate plaintiffs now under the control of any or all of the defendants;
- (c) leave to add as a party defendant Her Majesty the Queen in Right of Ontario upon the expiration of the 60 day notice provided under s. 7 of the *Proceedings Against the Crown Act*, R.S.O. 1990, c. P 27, as amended;
- (d) a declaration against the Financial Services Commission of Ontario ("FSCO") to the effect that it, its officers, agents, subcontractors and appointees, were negligent in:
  - (a) the supervision, administration and licensing of Raj Singh, his associates, corporations and servants (the "Singh Group"), all of whom conducted the business of syndicated mortgage lenders generally referred to as the Textbook companies;
  - (b) permitting the said Singh Group to carry on the business of organizers, fundraisers and lenders of syndicated mortgages in Ontario knowing that

- 5 -

- such individuals failed to possess the required licence to conduct such business;
- (c) failing to acquaint themselves with the terms and conditions under which investors entered into syndicated mortgage agreements with the Singh Group;
  - (d) permitting the plaintiffs to enter into and continue as borrowers under various loan agreements for the Projects as described herein;
  - (e) failing to recognize the absolute right of the plaintiffs to seek construction financing for the said Projects and to subordinate the smi investors to such financing;
  - (f) commencing and continuing to prosecute receivership and other proceedings against the plaintiffs in the guise of protecting the syndicated mortgage (smi) investors;
  - (g) interfering with and causing the Plaintiffs' Projects to sustain fatal cash flow issues through the interruption of their business;
  - (h) refusing to permit the Plaintiffs from replacing Mr. Singh and others as trustees or controlling parties of the lender companies under the loan agreements on the Projects to allow the smi investments to properly come within FSCO requirements;
  - (i) persisting in a course of conduct which was unlawful and calculated to cause and in fact caused the Plaintiffs substantial injuries and financial loss;



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- (j) such further and other items of declaratory relief as may be subsequently advanced by counsel and permitted by this Honourable Court.
  
- (e) Damages against all other defendants (except FSCO) in the sum of \$250,000,000.00 for negligence and civil abuse of process (pleaded as the independent tort against defendants Kofman, Goldstein and Kreiger) for their failure to properly advise FSCO, recognize that the Plaintiffs were not conducting a Ponzi Scheme respecting the Projects, deliberately misrepresenting to the Court the true state of the financial dealings of the Plaintiffs, all with a view to causing the Projects to fall into receivership for the purpose of generating substantial professional fees and to churn the Projects for such purposes. These defendants deliberately misled the Court as to the nature of the commercial arrangements of the syndicated mortgage investments, failed to recognize the arms length regulatory role played by Olympia Trust, and advanced specious claims to be the parties safeguarding the interests of the syndicated investors. Their actions specifically accrued to themselves substantial fees and prejudiced the syndicated investors by denying them full recompense for their investment. Furthermore, the Plaintiffs put these defendants on notice that the consequences of their actions would result in the prejudice just mentioned. These defendants, their servants and agents, falsely represented to the smi investors who supported the replacement of Mr. Singh and the continuation of the Projects under the supervision and control of the Plaintiffs, that the Plaintiffs

- 7 -

were in danger of losing control of the Projects to creditors, which was not the case until the Defendants took the actions complained of herein.

- (f) Punitive damages against the non-FSCO defendants equal to the sum of all fees generated by them for high handed and objectionable conduct and the abuse of their privileges as officers of the court;
- (g) general damages in the sum of \$10,000,000. against the defendant, KSV Kofman Inc. and KSV Advisory Inc. for breach of its duty of confidentiality, having represented some or all of the Plaintiffs in CCAA proceedings then taking all of the information acquired from the Plaintiffs and changing sides to join Grant Thornton Limited and using such confidential information against the Plaintiffs.
- (h) such further and other claims as may be pleaded by the Plaintiffs in their statement of claim.

2. The Plaintiffs shall rely upon the factual allegations contained in paragraph 1 above and additional allegations in their statement of claim in support of their claim for relief herein.

3. The Projects refers to any and all projects of John Davies, Walter Thompson, Memory Care Investments Ltd., Textbook Suites Inc., Textbook Student Suites Inc.

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or any and all affiliates who used smi loans to finance their initial costs for each and every project as arranged by the Singh Group.

4. The plaintiffs allege that the defendants knew or ought to have known that the Projects were created and prosecuted within the terms of all relevant agreements with lenders and that no smi loan funds were misappropriated, misused or improperly applied as alleged by the defendants in their submissions to the Court or in their advice to FSCO.

5. The plaintiffs allege that the negligence or deliberate misrepresentation of the activities of the plaintiffs was calculated to and in fact generated substantial fees to the defendants, primarily at the expense of the smi investors whom they purported to represent and safeguard. These defendants knowingly pretended to claim a crisis existed when in fact none existed to further their own financial interests.

6. Once the Province of Ontario is properly placed on notice of the plaintiffs' claims, it will be joined as a party defendant and damages of the kind claimed against all non-FSCO defendants will be alleged against the Province on the basis that it is vicariously liable for the wrongs of FSCO.



- 9 -

January 11, 2019

**RUBIN & CHRISTIE LLP**

Lawyers

219 Finch Avenue West

2<sup>nd</sup> Floor

Toronto, Ontario

M2R 1M2

**Douglas Christie**

Law Society No. 226560

416-361-0900 (telephone)

416-361-3459 (facsimile)

**Lawyers for the plaintiffs**

Court File No.

**JOHN DAVIES et al.**  
Plaintiffs

-and-

**GRANT THORNTON LIMITED et al.**  
Defenda

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at TORONTO

**NOTICE OF ACTION**

**RUBIN & CHRISTIE LLP**

Lawyers  
219 Finch Ave. West  
2<sup>nd</sup> Floor  
Toronto, Ontario  
M2R 1M2

Douglas Christie  
LSUC #22656 O

Tel: (416) 361-0900  
Fax: (416) 361-3459  
Email: dchristie@rubinchristie.ca

**Lawyers for the Plaintiffs**

## **Appendix “B”**

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From: Investor Recovery <[textbook.memory.care@gmail.com](mailto:textbook.memory.care@gmail.com)<<mailto:textbook.memory.care@gmail.com>>>  
Sent: January 11, 2019 5:40 PM  
To: [textbook.memory.care@gmail.com](mailto:textbook.memory.care@gmail.com)<<mailto:textbook.memory.care@gmail.com>>  
Subject: Court Action to recover your Syndicated Mortgage Investment in Textbook (555 Princess Street)

Dear Textbook (555 Princess Street) SMI Investors,

As each of you know, the sale of the 11 Textbook and Memory Care properties is nearing completion. One property remains to be sold. You have received pennies on your Tier 1 investment after being advised you could expect to receive substantially more if you put your faith in the Receivership Process. Instead, millions and millions of dollars have been paid to Receivers, Trustees, and their Lawyers. While you have received literally pennies on the dollar.

It is a heartbreaking situation made worse because the process that was trumpeted to help you, has failed. Miserably. If you click VIDEO<[https://www.youtube.com/watch?v=1\\_eORLZaAU4&feature=youtu.be](https://www.youtube.com/watch?v=1_eORLZaAU4&feature=youtu.be)> you will be directed to a You Tube Video that provides a glimpse into what has transpired. It's a shocking indictment of a situation and a process that no one could have foreseen. The following is a quote from the Video by one of the Developer's Co-Presidents that summarizes the situation:

“It's one thing to be raped by a Court process initiated by the Province of Ontario. It's another thing to watch the rapists destroy small investors who have invested their retirement savings and children's education funds; all because of Government incompetence and corporate greed. Twelve excellent projects destined for success were stolen from us. Our business destroyed. Our reputations ruined. Ourselves and our Small Investors robbed. But we will not stop until Justice is served, our Investors are repaid, and these Court sanctioned criminals are brought to Justice.”

To that end, today our lawyers filed a Statement of Defence and Notice of Action against the Financial Services Commission of Ontario, Grant Thornton, KSV and the principals of these companies who managed the process. You can access them by clicking on the following links:

Notice of  
Action<<https://static1.squarespace.com/static/5c38c05036099bce94747f6/t/5c38ee53032be4fc46f313ca/1547234906426/Notice+of+Action.pdf>>

Statement of Defence<<https://textbookmemorycareaction.com/s/Statement-of-Defence-FINAL.pdf>>

Or by going to the website we have created to keep you and the public apprised of matters as they unfold:

<https://textbookmemorycareaction.com/>

We are steadfast in our resolve to right this wrong, see you repaid, recover our losses and bring the offending Parties to justice.

In the meantime, we urge each of you to reach out to your local Minister of Provincial Parliament to make your feelings known, loudly. They need to understand the devastation we have all experienced. Together, we can make a difference. If we work together we can bring this injustice to the forefront, recover our losses, and spare others the heartbreaking tragedy we have each experienced.

Sincerely,

<Textbook logo.png>

John Davies and Walter Thompson

Co-Presidents

---

Disclaimer: This email is intended solely for the person or entity to which it is addressed and may contain confidential and/or privileged information. Any review, dissemination, copying, printing or other use of this email by persons or entities other than the addressee is prohibited. If you have received this email in error, please contact the sender immediately and delete the material from any computer.

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## **Appendix “C”**

# INVESTORS RAPED BY GOVERNMENT SANCTIONED PROCESS

*The sory of Insitutionalized Fraud in Ontario today*

**TEXTBOOK**

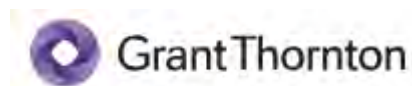
and

**MEMORY CARE**

**COMPANIES**

V.

## FINANCIAL SERVICES COMMISSION OF ONTARIO



**JONATHAN KRIEGER**



**BOBBY KOFMAN**

**NOAH GOLDSTEIN**

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“

“It’s a combination of Kafka, Fake News, and Death by a Thousand Cuts. It’s the most unbelievable story you could ever imagine. It’s one thing to be raped by a Court process initiated by the Province of Ontario. It’s another thing to watch the rapists destroy small investors who have invested their retirement savings and children’s education funds; all because of Government incompetence and corporate greed.”

“Twelve excellent projects destined for success were stolen from us. Our business destroyed. Our reputations ruined. Ourselves and our Small Investors robbed. But



we will not stop until Justice is served, our Investors are repaid, and these Court sanctioned criminals are brought to Justice.”

— Walter Thompson, CPA, CA, Co-President Textbook Suites Inc.



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**READ THE COURT FILINGS:**

- **STATEMENT OF DEFENSE**
- **NOTICE OF ACTION**

# Request Information

**Name \***

First Name

Last Name

**Email Address \***

**Subject \***

**Message \***

↙

## **Appendix “D”**





# INVESTORS RAPED BY GOVERNMENT SANCTIONED PROCESS

*The story of Institutionalized Fraud in Ontario today*



INVESTORS RAPED BY GOVERNMENT SANCTIONED PROCESS

413 views

7 3 SHARE SAVE ...



**Textbook & Memory Care Developments**  
Published on Jan 11, 2019

**SUBSCRIBE 4**

The story of Institutionalized Fraud in Ontario today

SHOW MORE

## **Appendix “E”**



Bennett Jones

Bennett Jones LLP

3400 One First Canadian Place, PO Box 130

Toronto, Ontario, Canada M5X 1A4

Tel: 416.863.1200 Fax: 416.863.1716

**Jonathan G. Bell**  
Partner  
Direct Line: 416.777.6511  
e-mail: bellj@bennettjones.com

January 13, 2019

**Via E-Mail**

**Rubin & Christie LLP**  
219 Finch Avenue West, 2<sup>nd</sup> Floor  
Toronto, ON M2R 1M2

**Attention: Douglas Christie**

Dear Mr. Christie:

**Re: The Superintendent of Financial Services v. Textbook Student Suites (525 Princess Street) Trustee Corporation et al. (Court File No. CV-16-11567-00CL) (the “Tier 1 Syndicated Mortgage Proceedings”)**

**And Re: Notice of Action Issued on January 11, 2019 and Related Matters**

We are the lawyers for KSV Kofman Inc. (“KSV”), in its capacity as the Court-appointed receiver (the “Receiver”) of the Textbook and Memory Care entities appointed pursuant to Orders of the Ontario Superior Court of Justice (Commercial List) (the “Court”) dated February 2, April 28 and May 2, 2017, and January 9, March 1 and May 30, 2018.

We are delivering this letter jointly with Aird & Berlis LLP, the lawyers for Grant Thornton Limited (“GTL”), in its capacity as the Court-appointed trustee (the “Trustee”) of all the assets, undertakings and properties of the Respondents that are named in the Appointment Order of the Honourable Mr. Justice Newbould of the Court made October 27, 2016 in the Tier 1 Syndicated Mortgage Proceedings.

It has come to our attention that, on January 11, 2019, you electronically issued a notice of action purportedly commencing an action against the Receiver, the Trustee and several other parties, including representatives of KSV and GTL in their personal capacities.

We have enclosed copies of the above-referenced Court Orders, all of which were served on you and your clients, including Messrs. Thompson and Davies.

As you know, your clients unsuccessfully opposed the Trustee’s appointment and then brought motions to stay certain terms of the Trustee’s Appointment Order pending your clients’ further motions for leave to appeal the Trustee’s Appointment Order, all of which efforts were either unsuccessful or withdrawn. During this time, your clients withheld requested information from the Trustee, promoted false allegations and encouraged investors to be uncooperative with the Trustee.

Although you and your clients are well aware of the contents of the Court Orders, and have been since the time they were issued, for your ease of reference, we direct you to the sections of those Orders which specifically provide that no proceedings may be commenced against the Receiver or the Trustee, which includes their representatives, absent their consent or leave of the Court. No such consent or leave has been obtained, let alone sought, which consent or leave would also be required for certain of the purported plaintiffs to commence litigation against anyone in light of the receivership Orders against such plaintiffs. Accordingly, and putting aside the outrageous and unmeritorious allegations in the notice of action for a moment, the proceeding is improperly constituted and, on this basis alone, is an abuse of process. We hereby demand that you discontinue the action against the Receiver and the Trustee, as well as their respective representatives (Messrs. Kofman, Goldstein and Krieger), immediately and by no later than 5:00 p.m. on January 14, 2019, failing which we have instructions to attend Court on an urgent basis to enjoin the action and to seek costs as against your clients on a full indemnity basis for having proceeded in this fashion.

Turning to the substantive content of your clients' pleading, your clients have effectively alleged criminal and fraudulent conduct against Court-appointed officers. Needless to say, these are the most serious allegations a party can conceivably make for which there are significant and far-reaching consequences, not only for the Court-appointed officers in this case but, more generally, for the administration of justice. We remind you of your obligations under the *Rules of Professional Conduct* (the "**Rules**") to, among other things, not countenance abuses of process or do anything to bring the administration of justice into disrepute. Under the *Rules*, you are required to encourage public respect for the administration of justice and take care not to weaken or destroy public confidence in legal institutions or authorities by irresponsible allegations. Without limiting the generality of the foregoing, we remind you of your obligations under Rule 5.1-2 of the *Rules* not to: (a) abuse the process of the Court by instituting or prosecuting proceedings which are clearly motivated by malice on the part of your clients and are brought solely for the purpose of injuring the other parties; (b) knowingly assist or permit your clients to do anything that you consider to be dishonest or dishonourable; (c) knowingly attempt to deceive the Court or influence the course of justice by misstating facts or law, offering false evidence, presenting or relying upon a false or deceptive affidavit, suppressing what ought to be disclosed, or otherwise assisting in any fraud, crime, or illegal conduct; (d) knowingly misstate the contents of a document, the testimony of a witness, the substance of an argument, or the provisions of a statute or like authority; and (e) knowingly assert as true a fact when its truth cannot reasonably be supported by the evidence or as a matter of which notice may be taken by the tribunal. We hereby demand that you familiarize yourselves with the profession's governing *Rules* and act accordingly.

Finally, we bring the enclosed email, the linked webpage (<https://textbookmemorycareaction.com/>) and the linked video ([https://www.youtube.com/watch?v=1\\_eORLZaAU4&feature=youtu.be](https://www.youtube.com/watch?v=1_eORLZaAU4&feature=youtu.be)) to your attention in case you are not already aware of the existence and dissemination of these materials. All of these materials are plainly defamatory of the Receiver and Messrs. Kofman and Goldstein, as well as the Trustee and Mr. Krieger. For instance, the materials expressly refer to these parties as "criminals" and suggest they have "raped" investors with the Court's approval. We hereby demand that the email be retracted and that the webpage and video be permanently taken down and destroyed by no later than 5:00 p.m. on January 14, 2019. We will seek to hold your clients fully accountable for any and all damage and harm flowing from such defamatory and unlawful conduct.





We trust both you and your clients will comply with the above demands. We will be taking all necessary and appropriate steps to prevent this outrageous and reprehensible conduct from continuing and we will seek to remedy all damage and harm flowing from it. We note that, given the serious nature of your clients' baseless allegations and the unlawful conduct undertaken by them to date, financial damages alone will be wholly insufficient to remedy the irreparable harm your clients' conduct has caused, and will continue to cause, the Receiver, the Trustee, their respective principals and the Court itself.

We have copied Messrs. Kraft and Beeforth on this correspondence as they are counsel to Messrs. Davies and Thompson, as well as Aeolian Investments Ltd., in the ongoing Receivership proceedings, in which we will be moving to enjoin your clients' action and related conduct in the event they decline to address this matter as required.

Yours truly,

**BENNETT JONES LLP**



Jonathan G. Bell

JGB

cc: Kenneth Kraft and Michael Beeforth, *Dentons Canada LLP*  
Sean Zweig and Joseph Blinick, *Bennett Jones LLP*  
Ian Aversa and Jeremy Nemers, *Aird & Berlis LLP*





## **Appendix “F”**

**From:** Douglas Christie <dchristie@rubinchristie.ca>  
**Sent:** January 14, 2019 11:50 AM  
**To:** Joseph Blinick <BlinickJ@bennettjones.com>  
**Cc:** Beeforth, Michael (michael.beeforth@dentons.com) <michael.beeforth@dentons.com>; 'kenneth.kraft@dentons.com' <kenneth.kraft@dentons.com>; Jonathan Bell <BellJ@bennettjones.com>; Sean Zweig <ZweigS@bennettjones.com>; 'Ian Aversa' <iaversa@airdberlis.com>; 'Jeremy Nemers' <jnemers@airdberlis.com>  
**Subject:** RE: Walter Thompson et al v KSV et al - IMMEDIATE ACTION REQUIRED [BJ-L.FID4190141]

Mr. Blinick:

I believe that you misunderstood what I wrote. I am going to respond to you this afternoon once I read everything. I cannot attend a case conference until Friday of this week. Due to a family crisis, my partner is not available to attend in my place.

Doug Christie

**From:** Joseph Blinick [<mailto:BlinickJ@bennettjones.com>]  
**Sent:** January 14, 2019 11:45 AM  
**To:** Douglas Christie  
**Cc:** Beeforth, Michael ([michael.beeforth@dentons.com](mailto:michael.beeforth@dentons.com)); 'kenneth.kraft@dentons.com'; Jonathan Bell; Sean Zweig; 'Ian Aversa'; 'Jeremy Nemers'  
**Subject:** RE: Walter Thompson et al v KSV et al - IMMEDIATE ACTION REQUIRED [BJ-L.FID4190141]  
**Importance:** High

Dear Mr. Christie,

We reiterate the deadlines in our earlier correspondence. End of day Thursday, for you to simply review and respond, is unacceptable, particularly given the relative ease and expedience with which our demands can be addressed. In light of the seriousness and urgency of the matter and your perfunctory response, we have instructions to attend a case conference before Justice Myers at the earliest opportunity to address this matter. We will let you know once the date is scheduled. If you are unable to attend, we expect one of your colleagues to attend on your behalf.

Yours truly,



**Joseph N. Blinick**  
*Litigation Associate, Bennett Jones LLP*

3400 One First Canadian Place, P.O. Box 130, Toronto, ON, M5X 1A4  
T. [416 777 4828](tel:4167774828) | F. [416 863 1716](tel:4168631716)  
E. [blinickj@bennettjones.com](mailto:blinickj@bennettjones.com)

**From:** Douglas Christie <[dchristie@rubinchristie.ca](mailto:dchristie@rubinchristie.ca)>  
**Sent:** Monday, January 14, 2019 9:28 AM  
**To:** Joseph Blinick <[BlinickJ@bennettjones.com](mailto:BlinickJ@bennettjones.com)>  
**Cc:** John Davies ([johndavies55@rogers.com](mailto:johndavies55@rogers.com)) <[johndavies55@rogers.com](mailto:johndavies55@rogers.com)>; Walter Thompson ([walter@gxudc.com](mailto:walter@gxudc.com)) <[walter@gxudc.com](mailto:walter@gxudc.com)>; Beeforth, Michael ([michael.beeforth@dentons.com](mailto:michael.beeforth@dentons.com))

<[michael.beeforth@dentons.com](mailto:michael.beeforth@dentons.com)>

**Subject:** RE: Walter Thompson et al v KSV et al - IMMEDIATE ACTION REQUIRED [BJ-L.FID4190141]

Mr. Blinick:

I will be in discovery meetings until about 2 pm today. I will be involved in discoveries, partially in Barrie and elsewhere until the end of business on Thursday. I will review your correspondence at that time and respond.

I have no knowledge of any video mentioned in the attached email. I will listen to it as well before I respond.

Doug Christie

**From:** Joseph Blinick [<mailto:BlinickJ@bennettjones.com>]

**Sent:** January 13, 2019 11:24 PM

**To:** Douglas Christie

**Cc:** Jonathan Bell; Sean Zweig; 'Ian Aversa'; 'Jeremy Nemers'; 'michael.beeforth@dentons.com'; 'kenneth.kraft@dentons.com'

**Subject:** RE: Walter Thompson et al v KSV et al - IMMEDIATE ACTION REQUIRED [BJ-L.FID4190141]

Dear Mr. Christie:

Please see below and attached. Note that our initial email was delivered to the address listed on your clients' statement of defence.

Yours truly,



**Joseph N. Blinick**  
*Litigation Associate, Bennett Jones LLP*

3400 One First Canadian Place, P.O. Box 130, Toronto, ON, M5X 1A4  
T. [416 777 4828](tel:4167774828) | F. [416 863 1716](tel:4168631716)  
E. [blinickj@bennettjones.com](mailto:blinickj@bennettjones.com)

**From:** Joseph Blinick

**Sent:** 13 January 2019 9:49 PM

**To:** 'dchristie@rubinchristie.com' <[dchristie@rubinchristie.com](mailto:dchristie@rubinchristie.com)>

**Cc:** Jonathan Bell <[BellJ@bennettjones.com](mailto:bellj@bennettjones.com)>; Sean Zweig <[ZweigS@bennettjones.com](mailto:ZweigS@bennettjones.com)>; 'Ian Aversa' <[iaversa@airdberlis.com](mailto:iaversa@airdberlis.com)>; Jeremy Nemers <[jnemers@airdberlis.com](mailto:jnemers@airdberlis.com)>; [michael.beeforth@dentons.com](mailto:michael.beeforth@dentons.com); 'kenneth.kraft@dentons.com' <[kenneth.kraft@dentons.com](mailto:kenneth.kraft@dentons.com)>

**Subject:** Walter Thompson et al v KSV et al - IMMEDIATE ACTION REQUIRED [BJ-L.FID4190141]

**Importance:** High

Dear Counsel:

Please see attached.

Yours truly,



**Joseph N. Blinick**  
*Litigation Associate, Bennett Jones LLP*

3400 One First Canadian Place, P.O. Box 130, Toronto, ON, M5X 1A4  
T. [416 777 4828](tel:4167774828) | F. [416 863 1716](tel:4168631716)  
E. [blinickj@bennettjones.com](mailto:blinickj@bennettjones.com)

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If you no longer wish to receive commercial messages, you can unsubscribe by accessing this link: <http://www.bennettjones.com/unsubscribe>

**From:** Douglas Christie <dchristie@rubinchristie.ca>  
**Sent:** January 14, 2019 3:54 PM  
**To:** Jonathan Bell <BellJ@bennettjones.com>; Joseph Blinick <BlinickJ@bennettjones.com>  
**Cc:** Beeforth, Michael (michael.beeforth@dentons.com) <michael.beeforth@dentons.com>; David Rubin <drubin@rubinchristie.ca>  
**Subject:** FW: draft

Mr. Bell:

We are responding to your letter of January 13, 2019 received at approximately 1130 pm.

Here are the facts with which you may be unaware.

First, no lawyer associated with our office or Dentons was aware of the You Tube video posted on Friday nor do we approve of it. It is a significant complicating factor in the decisions we must make going forward. Those decisions have not been made as of this moment.

Second, I am co-counsel to Dentons in the defence of this action and as such I have been involved in the preparation of the statement of defence served last Friday.

Third, during the course of preparing the defence, I was asked to deal with the possible claims against the Receiver, Trustee et al. Certain of the facts which would be relevant to our clients' claim are set out in the statement of defence. Of course, my immediate concern was to pull together the information necessary for such a claim, including potential limitation periods facing our clients.

I came to the conclusion that limitations were a concern. I therefore adopted the course of issuing the Notice of Action to safeguard against the expiry of limitation periods, with the intention of seeking all the necessary leaves nunc pro tunc. As you are aware, this practice has been widely approved by the courts for years. In short, the absence to date of a leave application was a response to the impending limitation period expiring and not for a duplicitous purpose as your letter suggests.

It is of course our intention to seek leave of the Court to:

- (a) Move the civil action to the Commercial List;
- (b) Seek leave to proceed with a statement of claim by way of leave vis a vis the various court orders you sent me last night;
- (c) Seek leave to proceed with a statement of claim due to the stay of proceedings under the BIA; and
- (d) Seek leave under the OBCA to have representative plaintiffs for the corporations under receivership and bankruptcy.

I am free on Friday morning or most of next week to attend a 930 appointment to schedule our proposed motion. We would likely seek to have our clients' claims heard together with the action commenced against them by your clients.

We categorically reject any position taken by you that our course of conduct in issuing the Notice of Action was improper as our intention is to seek leave nunc pro tunc. You are of course aware that this is commonplace. The requirement for leave is also mentioned in the Notice of Action.

We categorically reject any position taken by you that the statements in the Notice of Action are in any way actionable. The statements are privileged, whether or not you are successful in striking out the Notice of Action.

We take no position as to the actionability of this video. For our part, having not been consulted about it, we have to examine our solicitor-client relationships and make a determination of that relationship on a going forward basis.

We trust that this matter can be scheduled for a 930 on Friday or thereafter in light of the fact that there is no real urgency to this dispute.

Doug Christie

**From:** Beeforth, Michael <michael.beeforth@dentons.com>  
**Sent:** January 14, 2019 7:29 PM  
**To:** Jonathan Bell <BellJ@bennettjones.com>  
**Cc:** Kraft, Kenneth <kenneth.kraft@dentons.com>; Joseph Blinick <BlinickJ@bennettjones.com>  
**Subject:** Davies

Jon – I wanted to follow up on Mr. Christie's email below. As he correctly states, we were not aware of the YouTube video or the website prior to receiving your letter. We are currently working to gain an understanding of the circumstances behind its creation so that we can determine what steps are required, if any.

With respect to the balance of Mr. Christie's email, although we act as co-counsel on the defence of the claim brought by Grant Thornton and KSV, we are no in way involved in the standalone claim that has been commenced by Messrs. Davies and Thompson. Any of Mr. Christie's references to "we" or "our" in his email should be interpreted as references solely to his firm.

I trust the foregoing is clear. Please let me know if you have any questions.

Mike



**Michael Beeforth**  
Partner

D +1 416 367 6779  
[michael.beeforth@dentons.com](mailto:michael.beeforth@dentons.com)  
Bio | Website

Dentons Canada LLP  
77 King Street West, Suite 400, Toronto-Dominion Centre Toronto, ON M5K 0A1  
Canada

[Hamilton Harrison & Mathews](#) > [Mardemootoo Balgobin](#) > [HPRP](#) > [Zain & Co.](#) > [Delany Law](#) > [Dinner Martin](#) > [Maclay Murray & Spens](#) > [Gallo Barrios Pickmann](#) > [Muñoz](#) > [Cardenas & Cardenas](#) > [Lopez Velarde](#) > [Rodyk](#) > [Boekel](#) > [OPF Partners](#) > 大成

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**From:** Douglas Christie <[dchristie@rubinchristie.ca](mailto:dchristie@rubinchristie.ca)>  
**Sent:** January 14, 2019 3:54 PM  
**To:** [bellj@bennettjones.com](mailto:bellj@bennettjones.com); Joseph Blinick <[BlinickJ@bennettjones.com](mailto:BlinickJ@bennettjones.com)>  
**Cc:** Beeforth, Michael <[michael.beeforth@dentons.com](mailto:michael.beeforth@dentons.com)>; David Rubin <[drubin@rubinchristie.ca](mailto:drubin@rubinchristie.ca)>  
**Subject:** FW: draft

Mr. Bell:

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Here are the facts with which you may be unaware.

First, no lawyer associated with our office or Dentons was aware of the You Tube video posted on Friday nor do we approve of it. It is a significant complicating factor in the decisions we must make going forward. Those decisions have not been made as of this moment.

Second, I am co-counsel to Dentons in the defence of this action and as such I have been involved in the preparation of the statement of defence served last Friday.

Third, during the course of preparing the defence, I was asked to deal with the possible claims against the Receiver, Trustee et al. Certain of the facts which would be relevant to our clients' claim are set out in the statement of defence. Of course, my immediate concern was to pull together the information necessary for such a claim, including potential limitation periods facing our clients.

I came to the conclusion that limitations were a concern. I therefore adopted the course of issuing the Notice of Action to safeguard against the expiry of limitation periods, with the intention of seeking all the necessary leaves nunc pro tunc. As you are aware, this practice has been widely approved by the courts for years. In short, the absence to date of a leave application was a response to the impending limitation period expiring and not for a duplicitous purpose as your letter suggests.

It is of course our intention to seek leave of the Court to:

- (a) Move the civil action to the Commercial List;
- (b) Seek leave to proceed with a statement of claim by way of leave vis a vis the various court orders you sent me last night;
- (c) Seek leave to proceed with a statement of claim due to the stay of proceedings under the BIA; and
- (d) Seek leave under the OBCA to have representative plaintiffs for the corporations under receivership and bankruptcy.



I am free on Friday morning or most of next week to attend a 930 appointment to schedule our proposed motion. We would likely seek to have our clients' claims heard together with the action commenced against them by your clients.

We categorically reject any position taken by you that our course of conduct in issuing the Notice of Action was improper as our intention is to seek leave nunc pro tunc. You are of course aware that this is commonplace. The requirement for leave is also mentioned in the Notice of Action.

We categorically reject any position taken by you that the statements in the Notice of Action are in any way actionable. The statements are privileged, whether or not you are successful in striking out the Notice of Action.

We take no position as to the actionability of this video. For our part, having not been consulted about it, we have to examine our solicitor-client relationships and make a determination of that relationship on a going forward basis.

We trust that this matter can be scheduled for a 930 on Friday or thereafter in light of the fact that there is no real urgency to this dispute.

Doug Christie

## **Appendix “G”**

**From:** Douglas Christie <dchristie@rubinchristie.ca>  
**Sent:** January 16, 2019 12:14 PM  
**To:** Joseph Blinick <BlinickJ@bennettjones.com>  
**Cc:** Ian Aversa <iaversa@airdberlis.com>; Jeremy Nemers <jnemers@airdberlis.com>; Sean Zweig <ZweigS@bennettjones.com>; Jonathan Bell <BellJ@bennettjones.com>; Elsa Diaz <DiazE@bennettjones.com>  
**Subject:** RE: Walter Thompson et al v KSV et al [BJ-L.FID4190141]

Mr. Blinick:

Following my demand issued to Walter Thompson yesterday that he remove both the You Tube Video and the website by noon today, I have checked just now for compliance. Based on my limited knowledge of the technology, it would appear that he has now complied with my demand.

I believe he will be present on Friday. As I do not represent Mr. Thompson respecting this video and website, I have recommended that he appoint counsel for these matters. I will not be able to address these matters on Friday or at any other time.

All remaining issues remain to be discussed in our camp after Friday. Obviously the events of this past few days will have some impact on our involvement.

Doug Christie

## **Appendix “H”**

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

B E T W E E N:

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

Plaintiff

- and -

**AEOLIAN INVESTMENTS LTD. AND JOHN DAVIES**

Defendants

**ENDORSEMENT OF MYERS J. – JUNE 7, 2017**

**(UNOFFICIAL TRANSCRIPT)**

I am satisfied that there is a strong *prima [facie]* case that Mr. Davies and his family's corporation misappropriated a significant amount of the investors' funds that were supposed to go to the development of properties.

Moreover, Mr. Davies has not actively participated in the proceedings to date and he is actively selling his assets – including his cottage and home. I am satisfied that this is a case in which proof of wrongdoing including likely defalcation by a fiduciary coupled with asset sales, readily leads to an inference that absent injunctive relief the Defendants will dissipate their assets to avoid recovery by the Receiver and the Investors. Order signed as asked.

Motion return booked for June 16, 2017 9:30 a.m. in open court.

- Myers. J

June 7/17

I AM SATISFIED THAT THERE IS A  
~~SERIOUS~~ STRONG PRIMA CASE THAT  
MR. DAVIES AND HIS FAMILY'S  
CORPORATION MISAPPROPRIATED A  
SIGNIFICANT AMOUNT OF THE INVESTORS'  
FUNDS THAT WERE SUPPOSED TO GO TO  
THE DEVELOPMENT OF PROPERTIES.  
MOREOVER, MR DAVIES HAS NOT ACTIVELY  
PARTICIPATED IN THE PROCEEDINGS TO  
DATE AND HE IS ACTIVELY SELLING HIS  
ASSETS - INCLUDING HIS COTTAGE AND  
HOME. I AM SATISFIED THAT THIS IS  
A CASE IN WHICH A GROUP OF UNWINDING  
INCLUDING LIKELY DEFRAUDATION BY A  
FIDUCIARY COUPLED WITH ASSET SALES  
READY LEADS TO AN IMPERIL THAT  
ABSENT INSURGENT BELIEF THE DS  
WILL DISSIPATE THEIR ASSETS TO AVOID  
RECOVERY BY THE RECEIVER AND  
THE INVESTORS. ORDER SIGNED AS  
ASSETS MOTION RETURNED

BOOKED BY JUNE 16, 2017 AT 7:50 A.M. IN OPEN COURT.

ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)

PROCEEDING COMMENCED AT  
TORONTO

MOTION RECORD  
(Motion for Interim Mareva Injunction -  
Returnable June 7, 2017)

VOLUME 2 of 2

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

Facsimile: (416) 863-1716

Lawyers for the Plaintiff



[Handwritten signature]

## **Appendix “I”**

June 27/17

For Handwritten reviews attached  
order signed appointing a 'Reviewer  
as usual.

A handwritten signature in cursive script, appearing to be 'MJC'.



Court File Number: CV-17-11832-00CL

Superior Court of Justice  
Commercial List

FILE/DIRECTION/ORDER

KINGSETT MORTGAGE CORPORATION  
Plaintiff(s)

AND

GENEX (BYWARD HALL) INC.  
Defendant(s)


Case Management  Yes  No by Judge: \_\_\_\_\_

Counsel	Telephone No:	Facsimile No:

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

THE IT IS 1<sup>ST</sup> AND 2<sup>ND</sup> MORTGAGES <sup>OWED</sup> ~~BY~~ APPROX. \$8.8 MILLION TODAY. THE MORTGAGES ARE IN DEFAULT. PROPER DEFAULT AND BIA NOTICES HAVE BEEN GIVEN. THE IT GAVE NOTICE OF SALE TO LET IT MOVE PRIVATELY TO SELL THE SUBJECT LAND. THE STATUTORY 35 DAYS HAVE EXPIRED. IN THE INTERIM, THE RECEIVER OF A NUMBER OF ENTITIES, WAS OBTAINED AND REGISTERED ON TITLE A CPL SUPPORTING CLAIMS TO TRACE \$1.5 MILLION INTO THE

June 27/16  
Date

  
Judge's Signature

Additional Pages 7

Superior Court of Justice  
Commercial List

**FILE/DIRECTION/ORDER**

Judges Endorsment Continued

SUBJECT PROPERTY THAT WAS ALLEGEDLY MISAPPROPRIATED BY COMMON MANAGEMENT OF THE COMPANIES IN RECEIVERSHIP AND THE  $\Delta$  MORTGAGOR IN THIS CASE.

THE  $\Delta$  SEEKS TO LIFT THE CPL AND OPPOSES THE RECEIVERSHIP. IT SAYS THE JUST AND CONVENIENT OUTCOME IS FOR IT TO REFINANCE TO PAY OUT THE  $\Pi$  AND TO SECURE THE RECEIVER'S CLAIMS.

THE  $\Pi$  SAYS THAT AS THE RECEIVER REPRESENTS ENTITIES WITH PUBLIC INVESTORS WHO APPEAR TO HAVE SUFFERED ~~LOSSES~~ LOSSES OF FUNDS DUE TO MISAPPROPRIATION, A COURT-SUPERVISED PROCESS IS REQUIRED TO ENSURE THAT A TRANSPARENT VALUE-MAXIMIZING SALE OCCURS TO PROTECT NOT JUST  $\Pi$  BUT \$1 MILLION IN LIEN-CLAIMANTS AND THE INTERESTS OF THE RECEIVER AND PUBLIC INVESTORS. THE TRUSTEE APPOINTS OVER A NUMBER OF RELATED ENTITIES AT THE MOTION OF

Superior Court of Justice  
Commercial List

**FILE/DIRECTION/ORDER**

Judges Endorsment Continued

THE REGULATOR AGREES. ALL CREDITORS WANT AN ASSURANCE OF A COURT-BASED PROCESS WITH TRANSPARENCY AND ACCOUNTABILITY TO ALL INTERESTED PARTIES.

THE  $\Delta$  FEARS THAT A FIRE-SALE BY A ~~RECEIVER~~ WILL DESTROY ITS "EQUITY" IN THE SUBJECT PROPERTY. I PUT THE WORD IN QUOTATION MARKS AS THE RECEIVER ~~IS~~ HAS SHOWN THAT MOST, IF NOT ALL, OF THE SUPPOSED EQUITY IS IN FACT FUNDS MISAPPROPRIATED FROM RELATED ENTITIES IN RECEIVERSHIP OR TRUSTESHIP.

THE  $\Delta$ 'S EVIDENCE IS THAT THE LIQUIDATION VALUE OF THE SUBJECT PROPERTY IS AROUND \$11 MILLION. ~~B~~ IF I LIFT THE CPL,  $\Delta$  HAS A LENDER WHO WILL ADVANCE UP TO \$3 MILLION UNDER A NEW 3<sup>RD</sup> MORTGAGE. THAT MONEY WILL BE USED TO BRING THE MORTGAGES UP-TO-DATE, TO PAY \$250,000 INTO COURT AS PART SECURITY FOR THE

Superior Court of Justice  
Commercial List

## FILE/DIRECTION/ORDER

## Judges Endorsement Continued

RELEASERS TO CLAIM OF \$1.5 MILLION  
(AT <sup>TAT</sup> CURRENT TIME) AND TO PROVIDE A  
SECURITY DEPOSIT OF \$2 MILLION TO  
ANOTHER LENDER WHO AGREES TO  
ADVANCE \$15.5 MILLION ON AN UNSECURED  
BASIS IN 45 DAYS.

A LENDER WILLING TO MAKE AN  
UNSECURED ADVANCE OF MORE THAN THE  
CURRENT FAIR MARKET VALUE OF THE SUBJECT  
PROPERTY SOUNDS LIKE AN EXCELLENT  
OPPORTUNITY. IN FACT IT SOUNDS TOO GOOD  
TO BE TRUE. EVEN A QUICK REVIEW OF  
THE PROPOSED LOAN AGREEMENT SHOWS IT  
HAS MORE HOLE THAN SWISS CHEESE.  
THE Δ IS ALREADY IN DEFAULT OF THE  
AGREEMENT JUST DUE TO THESE PROBLEMS.  
THERE IS A MATERIAL ADVERSE CHANGE  
CONDITION THAT LETS THE PROPOSED LENDER  
WALK AWAY ON SUBJECTIVE GROUNDS. THERE IS  
NO CERTAINTY AT ALL OF THE PROPOSED TRANSACTION CLS/MW



Superior Court of Justice  
Commercial List

## FILE/DIRECTION/ORDER

## Judges Endorsment Continued

IN GRANTING THE  $\Delta$  AN ADVANCEMENT ON JUNE 15, 2017, THE COURT GAVE IT TWELVE DAYS TO RE-FINANCE. A CONDITION WAS DEAL 45 DAYS HENCE SUBJECT TO AN EARLIER \$3 MILLION BORROWING ON UNDISCLOSED TERMS ~~IS NOT~~ A RE-FINANCING THAT CAN INSTILL CONFIDENCE IN THE CREDITORS OR THE COURT AS TO THE LIKELIHOOD OF CLOSING.

BUT IS THERE PREJUDICE IN TRYING? THE RECEIVER FAIRLY NOTES THAT IF ITS CLAIMS COME BEHIND THOSE OF TR AND THE LIENS, THERE IS LITTLE EQUITY AVAILABLE FOR IT AT ~~THE~~ <sup>THE</sup> \$11 MILLION VALUE ASSERTED BY  $\Delta$ . THE \$250,000 PAYMENT INTO COURT ~~IS~~ PROMISED TODAY FALLS FAR SHORT OF SECURING ITS CLAIM. THE NEW \$3 MILLION ADVANCE AND MORTGAGE ALLOWS MANAGEMENT TO SUEK ~~THE EQUITY~~ WHAT LITTLE EQUITY MIGHT REMAIN FROM

Superior Court of Justice  
Commercial List

**FILE/DIRECTION/ORDER**

Judges Endorsment Continued

THE BODY OF THE  $\Delta$ . TRUST RECEIVERS  
CLAIMS ARE PREJUDICED AND PROBABLY  
PULSED OUT OF THE MONEY IF  $\Delta$  DOES  
NOT COMPLETE ITS RE-FINANCING AND THEN  
SUCCESSFULLY DEVELOP THE PROPERTY.

PLZ, TRUST HAS LOST FAITH IN  
MANAGEMENT. IT HAS GIVEN THEM  
AMPLE TIME AND RECEIVED MULTIPLE  
OFFERS FROM MANAGEMENT THAT HAVE NOT  
COME TO FRUITION IN A SUCCESSFUL  
REFINANCING. THE TRUST NOTES THAT  $\Delta$  IS  
EFFECTIVELY SEEKING A 95+ DAY ADJOURN-  
MENT WHEN THIS MOTION WAS MADE  
PEREMPTORY ON  $\Delta$  ON JUNE 15, 2017.

IN MY VIEW IT IS JUST AND  
CONVENIENT TO APPOINT A RECEIVER TO RUN  
THE PROPOSED SALE WITH COURT SUPERVISION.  
THERE ARE TOO MANY DISPARATE INTERESTS  
AT PLAY FOR A PRIVATE SALE PROCESS TO  
RUN SMOOTHLY WITHOUT PUTTING OTHER INTERESTS

Superior Court of Justice  
Commercial List

FILE/DIRECTION/ORDER

Judges Endorsment Continued

AT RISK. THE SECURITY PROPOSED FOR THE RECEIVOR'S CLAIM OF \$ 250 000 PLUS AN UNDERTAKING TO TOP THAT AMOUNT UP IN 45 DAYS IF THE PROPOSED UNSURETY ADVANCE IS MADE, EXPOSES THE RECEIVOR TO THE PREJUDICE OF SUBORDINATION IN THE FAR MORE LIKELY EVENT THAT A PROPOSAL THAT APPEARS TO BE TOO GOOD TO BE TRUE PROVES TO BE JUST THAT.

MOREOVER, THE POSITION OF THE ~~RECEIVOR~~ IS PREJUDICED IF MANAGEMENT REMAINS IN PLACE. ~~RECEIVOR'S POSITION IS PREJUDICED~~ AS ABOVE, THERE ARE GOOD GROUNDS TO SUPPORT A LENDER'S LOSS OF CONFIDENCE IN MANAGEMENT, REQUIRING THE LENDER TO STAND DOWN AT THE SUFFERANCE OF MANAGEMENT UNDERTAKING THE LENDER'S LEGAL RIGHTS.

IT FOLLOWS THAT I WILL SIGN THE RECEIVORSHIP ORDER AS SOUGHT. THE AS NOTION TO LIST THE CPL IS DISMISSED AS

Court File Number: \_\_\_\_\_

Superior Court of Justice  
Commercial List

**FILE/DIRECTION/ORDER**

Judges Endorsment Continued

17007 BUT I WOULD HAVE DISMISSED IT  
ON THE MERITS IN ANY EVENT.





## **Appendix “J”**

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

B E T W E E N:

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

Plaintiff

- and -

**AEOLIAN INVESTMENTS LTD. AND JOHN DAVIES**

Defendants

**ENDORSEMENT OF MYERS J. – JULY 17, 2017**

**(UNOFFICIAL TRANSCRIPT)**

For Endorsement attached, order to go. Despite the Orders set out in the attached Endorsement, Mrs. Davies is authorized and allowed to access and spend up to an aggregate amount of \$25,000 to retain counsel and sustain herself for the interim period.

\*\*\*\*

The court previously found a sufficiently strong prima facie case exists against the defendants to justify extraordinary pretrial injunctive relief issuing against them. A very substantial amount of money invested by public shareholders appears to have been misappropriated at first blush, whether that conclusion changes as the matter proceeds will be determined at a later date.

The defendants consent to a brief continuation of the Mareva injunction with no admission that it is proper but merely to allow for a scheduled, efficient hearing process for his intended motion to

set the injunction aside. The consent therefore is wholly without prejudice to the defendants. It cannot be used to answer any later arguments that they make.

The Receiver asks to extend the order to Judith Davies personally and she and two others as Trustees. The Receiver has demonstrated that funds from the public investors that are subject to plaintiff's claims against the defendants, were given to Mrs. Davies and all 3 Trustees. Among other things, allegedly misappropriated funds are admitted by John Davies to have been used to buy and renovate the home in Arizona that was purchased through the AZ Trust.

The plaintiff has a clear claim under Ontario law to ownership of an interest in property purchased with funds it proves at trial were misappropriated and used in non-arm's length transactions such as funding one's spouse or home.

I am satisfied that despite Mr. Davies undertaking to hold the AZ property, an order should issue as sought by the Receiver. The court cannot protect public investors' interests by accepting the word of someone who is alleged to have misappropriated and hidden millions or tens of millions of investors' money. But in light of the offer of the undertaking, I am satisfied that the balance of convenience supports the order sought. There is a real risk of dissipation of assets by Mrs. Davies and the Trustees. They are all under Mr. Davies control to a greater or lesser extent. Mr. Davies says he has no bank account. His personal expenses come from the corporate defendant or from funds given by that company to Mrs. Davies. She's but a funnel through which investor funds are poured as part of the laundering cycles of corporate entities and trusts lined up to protect and hide potentially ill-gotten funds. Mrs. Davies acted in concert with Mr. Davies in response to their mortgagee's supposed enforcement efforts and re-listed their Toronto home despite this court's order. Mr. Davies says the Receiver is too late as he has no assets left. Perhaps it is not too late to find plaintiff's funds (as proven) with Mrs. Davies and the Trusts to whom they were moved. Mrs. Davies asks how her family is to sustain itself. If this is a reference to funds that originated with public investors subject to this action, the answer is that the court will respond to reasonable requests for access to funds on Mrs. Davies providing full disclosure. She also may have some personal employment funds that she might be able to show are entirely independent of plaintiff's claims.

This is not a case for an undertaking on damages. Plaintiff acts for public investors whose funds are missing. If defendants left themselves vulnerable to even such extraordinary relief as a Mareva injunction, then they have to bear the risk of costs incurred during the ensuing investigation of the plaintiff's strong prima facie case.

Orders signed as asked. The court respectfully requests the aid and recognition by the State Courts of Arizona and the Federal District Courts in that State as this court stands ready to recognize our neighbour's Orders and procedures.

-Myers J.

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

JOHN DAVIES et al.

Defendants

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

July 17/17

July 17/17

ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)

PROCEEDING COMMENCED AT  
TORONTO

MOTION RECORD  
(Motion for an Extension of the *Mareva* Injunction -  
Returnable July 17, 2017)  
Volume I of II

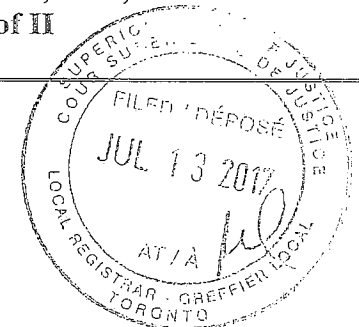
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Jonathan Bell (LSUC#55457P)  
Phone: (416) 777-6511  
Email: bellj@bennettjones.com

Facsimile: (416) 863-1716

Lawyers for the Plaintiff



For kindred attached, order to go.  
Despite the Orders set out in the  
attached exhibit Mrs Davies is  
authorised and ~~allowed~~ allowed  
to access all spend up to an  
aggregate amount of \$25,000  
to return counsel and sustain brief  
in the interim period.

*[Handwritten signature]*

Superior Court of Justice

(Name of Court)

at 393 University Avenue, 10th Floor, Toronto, Ontario

M5G 1E6

(Court office address)

Endorsement



Date	Applicant(s):	KSV KOFFMAN INC. et al.	<input type="checkbox"/>	Present
	<del>Counsel:</del>		<input type="checkbox"/>	Present
			<input type="checkbox"/>	Duty Counsel
	Respondent(s):	<del>REAL</del> JOHN DAVIES et al.	<input type="checkbox"/>	Present
	<del>Counsel:</del>		<input type="checkbox"/>	Present
			<input type="checkbox"/>	Duty Counsel
	<input type="checkbox"/> Order to go in accordance with minutes of settlement or consent filed.			
<p>THE COURT PREVIOUSLY FOUND A SUFFICIENTLY STRONG PRIMA FACIE CASE EXISTS AGAINST THE DEFENDANTS TO JUSTIFY EXTRAORDINARY PRETRIAL INJUNCTIVE RELIEF ISSUING AGAINST THEM. A VERY SUBSTANTIAL AMOUNT OF MONEY INVESTED BY PUBLIC SHAREHOLDERS APPEARS TO HAVE BE MISAPPROPRIATED AT FIRST BLUSH. WHETHER THAT CONCLUSION CHANGES AS THE MATTER PROCEEDS WILL BE DETERMINED AT A LATER DATE.</p>				
<p>THE Δs CONSENT TO A BRIEF CONTINUATION OF THE MAREVA INJUNCTION WITH NO ADMISSION THAT IT IS PROPER BUT MERELY TO ALLOW FOR A SCHEDULED, EFFICIENT HEARING &amp; PROCESS FOR HIS INTENDED MOTION TO SET THE INJUNCTION ASIDE. THE CONSENT THEREFORE IS WROLLY WITHOUT PREJUDICE TO THE Δs</p>				

1/2

Superior Court of Justice

(Name of Court)

at 393 University Avenue, 10th Floor, Toronto, Ontario  
M5G 1E6

(Court office address)

2

Endorsement

Date	Applicant(s):	<input type="checkbox"/>	Present
	Counsel:	<input type="checkbox"/>	Present
		<input type="checkbox"/>	Duty Counsel
	Respondent(s):	<input type="checkbox"/>	Present
	Counsel:	<input type="checkbox"/>	Present
		<input type="checkbox"/>	Duty Counsel

Order to go in accordance with minutes of settlement or consent filed.

IT CANNOT BE USED TO ANSWER ANY LATER  
OBJECTIONS THAT THEY MAKE.

THE RECEIVER ASKS TO EXTEND THE ORDER  
TO JUSTICE DAVIES PERSONALLY AND SHE AND  
TWO OTHERS AS TRUSTEES. THE RECEIVER HAS  
DEMONSTRATED THAT FUNDS FROM THE PUBLIC  
INVESTORS THAT ARE SUBJECT TO THE CLAIMS  
AGAINST US WE GIVEN TO MRS DAVIES AND  
ALL 3 TRUSTEES. AMONG OTHER THINGS,  
ALLEGEDLY MISAPPROPRIATED FUNDS ARE  
ADMITTED BY JOHN DAVIES TO HAVE BEEN  
USED TO BUY AND RENOVATE THE HOME IN  
ARIZONA THAT WAS PURCHASED THROUGH THE  
AZ. TRUST.

THE IT HAS A CLEAR CLAIM UNDER  
ONTARIO LAW TO OWNERSHIP OF AN

15

Superior Court of Justice

(Name of Court)

at 393 University Avenue, 10th Floor, Toronto, Ontario  
M5G 1E6

(Court office address)

Endorsement



Date	Applicant(s): .....	<input type="checkbox"/> Present
	Counsel: .....	<input type="checkbox"/> Present <input type="checkbox"/> Duty Counsel
	Respondent(s): .....	<input type="checkbox"/> Present
	Counsel: .....	<input type="checkbox"/> Present <input type="checkbox"/> Duty Counsel

Order to go in accordance with minutes of settlement or consent filed.

INTEREST IN PROPERTY PURCHASES WITH FUNDS IF PROVES AT TRIAL WERE MISAPPROPRIATED AND USED IN NON-ARMY'S LENGTH TRANSACTIONS SUCH AS FUNDING ONE'S SPOUSE OR HOME.

I AM SATISFIED THAT DESPITE THE DAVIES UNDERTAKING TO HOLD THE AS PROPERTY, AN ORDER SHOULD ISSUE AS SOUGHT BY THE RELIEVER. THE COURT CANNOT PROTECT PUBLIC INVESTORS' ~~CHARACTER~~ INTERESTS BY ACCEPTING THE WORDS OF SOMEONE WHO IS ALLEGED TO HAVE MISAPPROPRIATED AND HIDDEN MILLIONS OR TENS OF MILLIONS OF INVESTORS' MONEY. BUT IN LIGHT OF THE OFFER OF THE UNDERTAKING, I AM SATISFIED THAT THE BALANCE OF CONVENIENCE SUPPORTS THE ORDER SOUGHT. THERE IS A REAL RISK OF DISSIPATION OF

Superior Court of Justice

(Name of Court)

at 393 University Avenue, 10th Floor, Toronto, Ontario  
M5G 1E6

(Court office address)

Endorsement

4

Date	Applicant(s): _____	<input type="checkbox"/> Present
	Counsel: _____	<input type="checkbox"/> Present <input type="checkbox"/> Duty Counsel
	Respondent(s): _____	<input type="checkbox"/> Present
	Counsel: _____	<input type="checkbox"/> Present <input type="checkbox"/> Duty Counsel
<input type="checkbox"/> Order to go in accordance with minutes of settlement or consent filed.		
<p>ASSETS BY MRS. DAVIES AND THE TRUSTS. THEY ARE ALL UNDER MR. DAVIES CONTROL TO A GREATER OR LESSER EXTENT. MR. DAVIES SAYS HE HAS NO BANK ACCOUNT. HIS PERSONAL EXPENSES COME FROM THE CORPORATE Δ OR FROM FUNDS GIVEN BY THAT COMPANY TO MRS. DAVIES. Δ SHE IS BUT A FUNNEL THROUGH WHICH INVESTOR FUNDS ARE POURED AS PART OF THE LAUNDERING CYCLES OF CORPORATE SATITIES AND TRUSTS LINKS UP TO PROTECT AND HIDE POTENTIALLY ILL-GOTTEN <del>AND</del> FUNDS. MRS. DAVIES ALSO IN CONCERT WITH MR. DAVIES IN RESPONSE TO THEIR MORTGAGE'S SUPPORTS ENFORCEMENT EFFORTS AND RE-LISTING THEIR Toronto HOME DESPITE THIS COURT'S ORDER. MR. DAVIES SAYS THE REMEDY IS TOO LATE AS HE HAS</p>		

5



Superior Court of Justice

(Name of Court)

at 393 University Avenue, 10th Floor, Toronto, Ontario  
M5G 1E6

(Court office address)

Endorsement

5

Date	Applicant(s): .....	<input type="checkbox"/> Present
	Counsel: .....	<input type="checkbox"/> Present <input type="checkbox"/> Duty Counsel
	Respondent(s): .....	<input type="checkbox"/> Present
	Counsel: .....	<input type="checkbox"/> Present <input type="checkbox"/> Duty Counsel
<input type="checkbox"/> Order to go in accordance with minutes of settlement or consent filed.		
<p>NO ASSETS LEFT. PERHAPS IT IS NOT TOO LATE TO FIND <del>IT'S</del> FUNDS (OR PRODUCE) WITH MRS DAVIES AND THE TRUSTS TO WHICH THEY WERE TITLED. MRS DAVIES ASKS HOW HER FAMILY IS TO SUSTAIN ITSELF. IF THIS IS A REFERENCE TO FUNDS THAT ORIGINATED WITH PUBLIC INVESTMENTS SUBJECT TO THIS ACTION, THE ANSWER IS THAT THE COURT WILL RESPOND TO REASONABLE REQUESTS FOR ACCESS TO FUNDS ON MRS. DAVIES PROVIDING FULL DISCLOSURE. SHE ALSO MAY HAVE SOME PERSONAL EMPLOYMENT FUNDS THAT SHE MIGHT BE ABLE TO SHOW ARE ENTIRELY INDEPENDENT OF IT'S CLAIMS.</p> <p>THIS IS NOT A CASE FOR AN UNDERTAKING ON DAMAGES. IT ACTS FOR PUBLIC INVESTORS WHOSE FUNDS ARE MISSING. IF <del>IT'S</del> LEFT</p>		

Superior Court of Justice

(Name of Court)

at 393 University Avenue, 10th Floor, Toronto, Ontario

MSG 1E6

(Court office address)

Endorsement

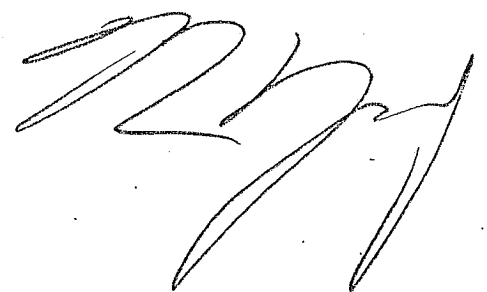
6

Page

Date

THEMSELVES VULNERABLE TO EVEN SUCH  
EXTRAORDINARY RELIEF AS A MAREVA  
INJUNCTION, THEN THEY HAVE TO BEAR THE  
RISK OF COSTS INCURRED DURING THE ENSUING  
INVESTIGATION OF THE IT'S STRONG PRIMA  
FACTE CASE.

ORDERS SIGNED AS REQUESTED, THE  
COURT RESPECTFULLY REQUESTS THE AID  
AND RECOGNITION BY THE STATE ~~AND~~  
COURTS OF ARIZONA AND THE FEDERAL  
DISTRICT COURTS IN THAT STATE AS THIS  
COURT STANDS READY TO RECOGNIZE  
OUR NEIGHBOUR'S ORDERS AND PROBLEMS.



## **Appendix “K”**

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

B E T W E E N:

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

Plaintiff

- and -

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

Defendants

**ENDORSEMENT OF MYERS J. – AUGUST 30, 2017**

**(UNOFFICIAL TRANSCRIPT)**

The Plaintiffs have the burden of establishing an entitlement to a Mareva Injunction. I agree with Mr. Kraft that execution before judgment is a rare, extraordinary exception to the norm. It should not be available when the Defendants have a plausible, acceptable defence. Conversely it should only be available where the Plaintiff is clearly likely to succeed and there is evidence of a real risk of dissipation of assets by the Defendant.

Order to go as asked.

The Plaintiff, the Receiver of 7 developers, sues John Davies and others, a principal manager and owner of the developers or their parent companies, for fraud, breach of fiduciary duty, conversion and other causes of action. The essence of the claims is that the developers raised money from the public through Tier 1 companies owned or run by Mr. Singh. Mr. Singh's companies lent the investors funds to the developers ostensibly on a secured basis to fund the construction of 7 separate projects. Singh's companies took a 25% fee. Singh is also a shareholder of some of the project companies or their parent companies with Davies and his other cohorts.

The money was not used to build any buildings. Footings have started on 1 project and 1 project is said to be near construction. Instead of using the funds for each corporation's corporate purpose, Mr. Davies paid himself and cohorts fees and dividends. Worst still, funds were lent among the companies (and 5 others) on an unsecured basis to meet interest obligations due on those companies' borrowings from Tier 1 (for the public investors). Mr. Davies admitted on cross-examination that each developer had serious cash flow issues as soon as its funds were raised. That is, after fees, compensation to Tier 1, dividends, salaries and 1 year of interest held in reserve, each company had insufficient funds to pay interest after the year and, significantly, to build a building. This was apparent on day one. To answer the systemic cash drain built into the companies by design, Mr. Davies and Mr. Singh would have Tier 1 obtain further public investments. Tier 1 raised funds from real people on the basis that the funds would be lent to a developer on a secured basis to fund a building. But instead, Singh and Davies used new funds to pay accruing interest on earlier investments in other of the 11 companies. That is called a Ponzi Scheme.

This is just a motion early in the case, so how can I say this so definitely? Mr. Davies prepared a 2 page explanation of how his financing model works. It is shocking in its clarity of a description of an illicit, fraudulent scheme without Mr. Davies seemingly having the least bit of compunction about it.

Mr. Kraft tried on several answers. First he argued that the Receiver's analysis and Plaintiff's failure to sue Mr. Singh give an air of plausibility to Mr. Davies righteousness. This cannot survive the clear admissions in Mr. Davies own hands and cross examination.

Mr. Kraft argues that Mr. Singh consented so that the developers did not breach their loan agreements with Tier 1 in making the various distributions and supposed loans that they made. While not noted, Singh is not arm's length. I doubt he could unilaterally give a valid consent given his personal conflicts of interest. Regardless, the claims against Davies are brought by the developer companies. Davies is said to have committed fraud on them and breached his fiduciary duties to them by declaring dividends, paying himself front-end loaded fees, paying himself above-market salary and lending funds of each developer to his other 10 insolvent, similarly, cash-strapped developer companies. With over \$100 million raised and spent, there are no buildings! Mr. Singh and Mr. Davies have emails in which they plainly know the companies are insolvent and desperately look for cash to avoid an interest default that would trigger a FSCO report and would dry up future investment needed to support the Ponzi Scheme. In addition, the Receiver fairly submits that the inter-company unsecured loans from one cash-strapped insolvent company to another were not real loans. There was no expectation of repayment. There were payments to keep the Ponzi alive a bit longer.

Mr. Kraft says, Mr. Davies might just have been a poor developer. Perhaps, Mr. Kraft hypothesized, he should have stopped after a few buildings hit rocky times. But he didn't and that's the point. An honest but lousy developer would not have gone along to 10 or 11 projects with each contributing its new investment to old debt. Mr. Davies said on cross examination that he expected construction financing to fill the ever-increasing debt. That makes no sense at all. Construction financing is used to build not to re-pay old debt incurred to fund front-end loaded cash stripping by Davies and cohorts.

In addition, Davies offers no innocent explanation despite Mr. Kraft's creative efforts to find one. Mr. Davies does not say he did a poor job or that some identified circumstances in the market caused delays or increased costs. Instead, he says that only he understands how the development industry works. He says he was doing what people in the industry do to keep companies going during development. Not the honest ones.

Mr. Kraft argues that there is no risk of dissipation as the Davies have no assets of value. They have recently sold the cottage. They have listed their house for sale despite the existence of Mareva Injunction already. They are living well despite a Mareva with funds being advanced from the architect on the projects. There is a substantial house in Arizona owned by the two trusts that the trustees undertake not to sell. But they are not willing to put an order on title. The Receiver has shown a *prima facie* ability to trace corporate funds into both properties. The architect's largesse suggests that there may well be hidden pools of funds yet undiscovered. I have no hesitation finding a proven risk of dissipation given the listing of the house in the face of a Mareva. I infer dissipation and likely flight to Arizona in light of the degree of dishonesty and the liquidation of the Davies' real estate.

In my view this is a case to waive undertakings on damages in accordance with the Court's discretion. The receiver has no skin in the game. To go to the government or to investors to fund these proceedings is an affront to access to justice. People invested their savings and retirements and it so far has taken two receivers and multiple court proceedings to peel back enough layers of the onion to let the weeping just begin. When I asked Mr. Kraft why there are no buildings built with \$100 million of investors' money, he said "the money was spent". Mr. Davies made no explanation at all beyond blaming FSCO for shutting his pipeline to yet further funding from the public at a time when the 7 developers had an aggregate of \$17,000 approximately in the bank. While the Defendants may suffer damages from the Mareva if they win at trial, so far it has not dampened their lifestyles. Moreover, given the strength of the case in Davies' own voice, access to justice concerns leads me to the view that this is a rare and unusual case where receiving an undertaking will do more harm than good.

Costs to the Plaintiff on a substantial indemnity basis in light of the admitted dishonest scheme perpetrated by Mr. Davies for the Defendants on the developer companies and their creditors.

COUNSEL SLIP (COMMERCIAL MOTIONS)

No On List: 7

Court File No: CV-17-11822-0001

DATE: Aug. 30/17

Title of Proceeding:

Morgan Care Investments (Kitchener) Ltd, et al v Davies, J, et al

COUNSEL FOR

Plaintiff(s):

Applicant(s):

Petitioner(s):

PHONE NO. & FAX

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Sean Zweig	F: 416 - 863-1716
For the Plaintiff and Receiver, 15V Korman Inc.	E: belljo@bennettjones.com E: zweigs@bennettjones.com

COUNSEL FOR

Defendant(s):

Respondent(s):

JOHN DAVIES, JUDITH DAVIES + PHONE NO. & FAX  
AEDLIAN INVESTMENTS LTD.

Kenneth D. Kraft	T 416.863.4374
Michael BEEFORTH	T 416 367 6779
	F: 416 863 4592
	E: KENNETH.KRAFT@DENTONS.COM MICHAEL.BEEFORTH@DENTONS.COM

RELIEF SOUGHT:

July 17/17

July 17/17

ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)

PROCEEDING COMMENCED AT  
TORONTO

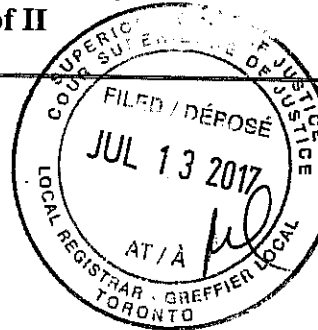
MOTION RECORD  
(Motion for an Extension of the Mareva Injunction -  
Returnable July 17, 2017)  
Volume I of II

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Jonathan Bell (LSUC#55457P)  
Phone: (416) 777-6511  
Email: bellj@bennettjones.com  
Facsimile: (416) 863-1716

Lawyers for the Plaintiff



For Endorsed attached, order to go.  
Despite the Order set out in the  
attached Endorsed Mrs Davies is  
authorised and ~~allowed~~ allowed  
to access and spend up to an  
aggregate amount of \$25,000  
to retain counsel and sustain herself  
in the interim period.

*[Handwritten signature]*

Aug 30/17

THE TS HAVE THE BURDEN OF ESTABLISHING  
AN ENTITLEMENT TO A MAREVA INJUNCTION.  
I AGREE WITH MR KRANT THAT EXECUTION  
BEFORE JUDGMENT IS A RARE, EXTRAORDINARY  
EXCEPTION TO THE RULE. IT SHOULD NOT  
BE AVAILABLE WHEN THE DS HAVE A  
PLAUSIBLE, ACCEPTABLE DEFENCE. CONVERSELY

1/2 (YELLOW SHEETS)



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**FILE/DIRECTION/ORDER**

Judges Endorsment Continued

IT SHOULD ONLY BE AVAILABLE WHERE IT IS CLEARLY  
LIKELY TO SUCCEED & THERE IS EVIDENCE OF A REAL RISK  
OF DISSIPATION OF ASSETS BY A.

ORDER TO GO AS ASKED.

II, THE RECEIVER OF 7 DEVELOPERS, SUES JOHN  
DAVIES AND OTHERS - ~~THE~~ <sup>A</sup> PRINCIPAL MANAGER AND  
OWNER OF THE DEVELOPERS OR THEIR PARENT COMPANIES,  
FOR FRAUD, BREACH OF FIDUCIARY DUTY, CONVERSION  
~~AND~~ <sup>AND</sup> OTHER CAUSES OF ACTION. THE ESSENCE OF THE  
CLAIMS ~~ARE~~ <sup>IS</sup> THAT THE DEVELOPERS RAISED MONEY  
FROM THE PUBLIC THROUGH TIER 1 COMPANIES OWNED  
OR RUN BY Mr. SINGH. Mr SINGH'S COMPANIES  
LENT THE INVESTOR'S FUNDS TO THE DEVELOPERS  
OSTENSIBLY ON A SECURED BASIS TO FUND THE  
CONSTRUCTION OF 7 SEPARATE PROJECTS. SINGH'S  
COMPANIES TOOK A 25% FEE. SINGH IS ALSO  
A SHAREHOLDER OF <sup>SOME OF THE</sup> PROJECT COMPANIES OR THEIR  
PARENT COMPANIES WITH DAVIES AND HIS OTHER  
COLLEAGUES.

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**FILE/DIRECTION/ORDER**

Judges Endorsment Continued

THE MONEY WAS NOT USED TO BUILD ANY BUILDINGS. FOOTINGS HAVE STARTED ON 2 PROJECT AND 3 PROJECT IS SAID TO BE NEAR CONSTRUCTION. INSTEAD OF USING THE FUNDS FOR EACH CORPORATION'S CORPORATE PURPOSE MR DAVIES PAID HIMSELF AND CONSULTANTS FEES <sup>AND</sup> ~~AND~~ ~~AND~~ WORST STILL FUNDS WERE <sup>NOT</sup> LENT AMONG THE COMPANIES (AND 5 OTHERS) ON AN UNSECURED BASIS TO MEET INTEREST OBLIGATIONS DUE ON ~~THE~~ THOSE COMPANIES BORROWINGS FROM TIER 1 (FOR THE PUBLIC INVESTORS). MR DAVIES ADMITTED ON X-6X THAT EACH DEVELOPER HAD ~~A~~ SERIOUS CASH FLOW ISSUES AS SOON AS ITS FUNDS WERE RAISED. THAT IS, AFTER FEES, COMPENSATION TO TIER 1, DIVIDENDS ~~AND~~ SALARIES & 1 YEAR OF INTEREST HELD IN RESERVE, EACH COMPANY HAD INSUFFICIENT FUNDS TO PAY INTEREST AFTER THE YEAR AND SIGNIFICANTLY TO BUILD A BUILDING. THIS WAS APPARENT ON DAY ONE. TO ANSWER THE SYSTEMIC CASH DRAIN BUILT

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**FILE/DIRECTION/ORDER**

Judges Endorsment Continued

INTO THE COMPANIES BY DESIGN MR DAVIES  
AND MR SINGH WOULD HAVE TIER 1 OBTAIN  
FURTHER PUBLIC INVESTMENTS. TIER 1 RAISED FUNDS  
FROM REAL PEOPLE ON THE BASIS THAT THE  
FUNDS WOULD BE LENT TO A DEVELOPER ON A  
SECURED BASIS TO FUND A BUILDING. BUT  
INSTEAD, SINGH AND DAVIES USED NEW FUNDS  
TO PAY ACCRUING INTEREST ON EARLIER  
INVESTMENTS IN OTHER OF THE 11 COMPANIES.  
THAT IS CALLED A PONZI SCHEME.

THIS IS JUST A MERE EVIDENCE IN THE  
CASE, SO HOW CAN I SAY THIS SO DEFINITELY?  
MR DAVIES PREPARED A 2 PAGE EXPLANATION  
OF HOW HIS FINANCING MODEL WORKS. IT IS  
SHOCKING IN ITS CLARITY OF A DESCRIPTION  
OF AN ILLICIT, FRAUDENT SCHEME WITHOUT MR  
DAVIES SEEMINGLY HAVING THE LEAST BIT OF  
COMPUNCTION ABOUT IT.

MR KRAFT NOTLY TRIED ON SEVERAL  
ANSWERS. FIRST HE ARGUED THAT THE RECEIVER'S

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**FILE/DIRECTION/ORDER**

Judges Endorsement Continued

ANALYSIS & ITS FAILURE TO SUE MR SINGH  
~~BRING~~ AN AIR OF PLAUSIBILITY TO MR  
 DAVIES' RIGHTEOUSNESS. THIS CANNOT SURVIVE  
 THE CLEAR ADMISSIONS IN MR DAVIES OWN  
 HAND & X-EXHIBIT.

MR KRAFT ARGUES THAT MR SINGH  
 CONSENTED SO THAT THE DEVELOPERS DID NOT  
 BREACH THEIR LOAN AGREEMENTS WITH TIER 1  
 IN MAKING THE VARIOUS DISTRIBUTIONS AND  
 SUPPORTED LOANS THAT THEY MADE. WHILE NOT  
 NAMED, SINGH IS NOT ARM'S LENGTH, I DOUBT  
 HE COULD UNILATERALLY GIVE A VALID CONSENT  
 GIVEN HIS PERSONAL CONFLICTS OF INTEREST. REGARDLESS,  
 THE CLAIMS AGAINST DAVIES ARE BROUGHT BY  
 THE DEVELOPER COMPANIES. DAVIES IS SAID TO  
 HAVE COMMITTED FRAUD ON THEM AND BREACHED HIS  
 FIDUCIARY DUTIES TO THEM BY DECLARING DIVIDENDS,  
 PAYING HIMSELF FRONT-END LOANED FEES, PAYING  
 HIMSELF ABOVE-MARKET SALARY AND LENDING  
 FUNDS OF EACH DEVELOPER TO HIS OTHER 10

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**FILE/DIRECTION/ORDER**

Judges Endorsment Continued

INSOLVENT, ~~AND~~ SIMILARLY CASH-STRAPPED  
DEVELOPER COMPANIES. WITH OVER \$100 MILLION  
RAISED ~~AND~~ AND SPENT, THERE ARE NO BUILDINGS.  
MR SINGH AND MR DAVIES WAVE 6-MAILS IN  
WHICH THEY PLAINLY KNOW THE COMPANIES ARE  
INSOLVENT AND DESPERATELY LOOK FOR CASH TO  
AVOID AN INTEREST DEFAULT THAT WOULD  
TRIGGER A FSCO REPORT AND WOULD BRING UP  
FUTURE INVESTMENT NEEDS TO SUPPORT THE  
POND SCHEME. IN ADDITION ~~THE~~ THE RECEIVER  
FAIRLY SUBmits THAT THE INTER-COMPANY  
UNSECURED LOANS FROM ONE CASH-STRAPPED  
INSOLVENT TO ANOTHER WERE NOT REAL LOANS.  
THERE WAS NO EXPECTATION OF REPAYMENT.  
THEY WERE PAYMENTS TO KEEP THE POND ALIVE  
A BIT LONGER.

MR KRAFT SAYS, MR DAVIES MIGHT JUST  
HAVE BEEN A POOR DEVELOPER. PERHAPS, MR KRAFT  
HYPOTHESIZED HE SHOULD HAVE STOPPED AFTER  
A FEW BUILDINGS HIT <sup>Rocky</sup> ~~Rocky~~ TIMES. BUT HE

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**FILE/DIRECTION/ORDER**

Judges Endorsment Continued

DIDN'T AND THAT'S THE POINT. AN HONEST  
BUT LOUSY DEVELOPER WOULD NOT HAVE GONE ALONG  
TO 10 OR 11 PROJECTS WITH EACH CONTRIBUTING  
17% NEW INVESTMENT TO OLD DEBT. MR DAVIES  
SAID ON X-EXAM THAT HE EXPECTED CONSTRUCTION  
FINANCING TO FILL THE EVER-INCREASING DEBT  
PIT. THAT MAKES NO SENSE AT ALL. CONSTRUCTION  
FINANCING IS USED TO BUILD NOT TO RE-PAY  
OLD DEBT INCURRED TO FUND FRONT-END LOADED  
CASH STRIPPING BY DAVIES & COHORTS.

IN ADDITION DAVIES OFFERS NO INNOVATIVE  
EXPLANATION DESPITE MR KRAFT'S CREATIVE EFFORTS  
TO FIND ONE. MR DAVIES DOES NOT SAY HE DID  
A POOR JOB OR <sup>THAT</sup> ~~A~~ SOME IDENTIFIED CIRCUMSTANCES  
IN THE MARKET CAUSED DELAYS OR INCREASED COSTS.  
INSTEAD, HE SAYS <sup>THAT</sup> ONLY HE UNDERSTANDS HOW  
THE DEVELOPMENT INDUSTRY WORKS. HE SAYS HE  
WAS DOING WHAT PEOPLE IN THE INDUSTRY DO  
TO KEEP COMPANIES GOING DURING DEVELOPMENT.  
NOT THE HONEST ONES.

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**FILE/DIRECTION/ORDER**

Judges Endorsment Continued

MR KRAFT ARGUES THAT THERE IS NO RISK OF DISSIPATION AS THE DAVIES HAVE NO ASSETS OF VALUE. THEY HAVE RECENTLY SOLD THE COTTAGE. THEY HAVE LISTED ~~THEIR~~ THEIR HOUSE FOR SALE DESPITE THE EXISTENCE OF A MARUA INJUNCTION AGREEMENT. THEY ARE LIVING WELL DESPITE A MARUA WITH FUNDS BEING ADVANCED FROM THE ARCHITECT ON THE PROJECT. THERE IS A SUBSTANTIAL HOUSE IN AZ. OWNED BY THE TWO TRUSTS THAT THE TRUSTEES UNDERTAKE NOT TO SELL. BUT THEY ARE NOT WILLING TO PUT AN ORDER ON TITLE. THE RECEIVER HAS SHOWN A PRIMA FACIE ABILITY TO TRACE CORPORATE FUNDS INTO BOTH PROPERTIES. THE ARCHITECT'S LARGESSE SUGGESTS THAT THERE MAY WELL BE HIDDEN POOLS OF FUNDS YET UNDISCOVERED. I HAVE NO HESITATION FINDING A PROVEN RISK OF DISSIPATION GIVEN THE LISTING OF THE HOUSE IN FACE OF A MARUA. I HAVE DISSIPATION AND LIKELY FLIGHT TO AZ IN LIGHT OF THE DEGREE OF DEBTORS AND THE LIQUIDATION OF

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**FILE/DIRECTION/ORDER**

Judges Endorsment Continued

THE DAVIES' REAL ESTATE.

IN MY VIEW THIS IS A CASE TO  
 WAIVE AN UNDERTAKING ON DAMAGES IN  
 ACCORDANCE WITH THE COURT'S DISCRETION. THE  
 RECEIVER HAS NO SKIN IN THE GAME. TO GO TO  
 THE GOVERNMENT OR TO INVESTORS TO FUND THESE  
 PROCEEDINGS IS AN AFFRONT TO ACCESS TO JUSTICE.  
 PEOPLE INVESTED THEIR SAVINGS AND RETIREMENTS  
 AND IT SO FAR HAS TAKEN TWO RECEIVERS AND  
 MULTIPLE COURT PROCEEDINGS TO PEEL BACK  
 ENOUGH LAYERS OF THE ONION TO LET THE  
 WEEPING JUST BEGIN. WHEN I ASKED MR  
 KRAFT ~~WHY~~ WHY THERE ARE NO BUILDINGS BUILT  
 WITH \$100 MILLION OF INVESTORS MONEY HE  
 SAID "THE MONEY WAS SPENT." MR DAVIES  
 MADE NO EXPLANATION AT ALL BEYOND BLAMING  
 ESTO FOR SHUTTING HIS PIPELINE TO YET FURTHER  
 FUNDING FROM THE PUBLIC AT A TIME WHEN THE  
 7 ~~PROJ~~ DEVELOPERS HAD AN AGGREGATE  
 OF \$17,000 APPROXIMATELY IN THE BANK. WHILE



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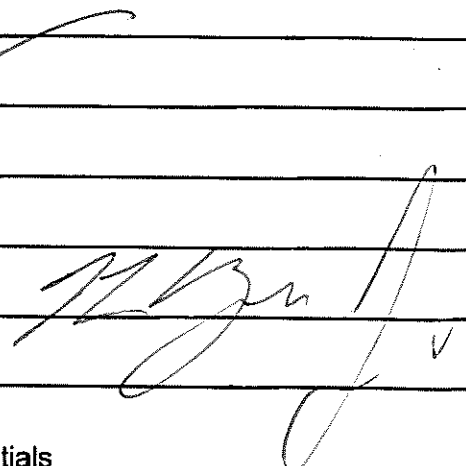
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FILE/DIRECTION/ORDER

Judges Endorsment Continued

THE AS MAY SUFFER DAMAGE FROM THE VIREVA  
IF THEY WIN AT TRIAL, SO FAR IT HAS NOT  
DAMPENED THEIR LIFESTYLES. MOREOVER, GIVEN THE  
STRENGTH OF THE CASE IN DAVIES OWN VOICE,  
ADVANCING ACCESS TO JUSTICE CONCERNS LEADS  
ME TO THE VIEW THAT THIS IS A RARE AND  
UNUSUAL CASE WHERE RECOVERING AN UNOBTAINABLE  
WILL DO MORE HARM THAN GOOD.

COSTS TO BE TO ON A SUBSTANTIAL  
INDIGNITY BASIS IN LIGHT OF THE  
ADMITTED DECEITFUL SCHEME PERPETRATED  
BY MR DAVIES FOR THE AS ON THE DEVELOPER  
COMPANIES AND THEIR CREDITORS.



## **Appendix “L”**

FILE/DIRECTION/ORDER

BEFORE JUDGE MYERS

ACTION # CV-17-11822-CL

KSV KOFMAN Inc, Receiver  
Plaintiff(s)

.v.

AEOLIAN INVESTMENTS LTD et al.  
Defendant(s)

CASE MANAGEMENT: YES [ ] NO [ ]

COUNSEL: \_\_\_\_\_ PHONE NO. \_\_\_\_\_

\_\_\_\_\_ PHONE NO. \_\_\_\_\_

\_\_\_\_\_ PHONE NO. \_\_\_\_\_

ORDER [ ] DIRECTION FOR REGISTRAR

[ ] REPORTED SETTLED ADJOURNED TO TRIAL SCHEDULING COURT \_\_\_\_\_

[ ] NO ONE APPEARED ADJOURNED TO TO BE SPOKEN TO COURT \_\_\_\_\_

IN MAR, 2018 JACK DAVIES WAS ADMITTED TO A  
US SCHOOL TO STUDY <sup>AN</sup> UNDERGRADUATE COURSE IN  
MUSIC. THE COST IS ABOUT \$31,000 US. SEVEN MONTHS  
LATER, MR DAVIES MOVES FOR URGENT RELIEF TO  
VARY THE MARUA INJUNCTION OUTSTANDING AGAINST  
MR DAVIES IN LIGHT OF ALLEGATIONS OF A  
VERY SUBSTANTIAL ~~AND~~ FRAUD UNDER WATCH

Dec 14/18  
DATE

[Signature]  
JUDGE'S SIGNATURE

# FILE DIRECTION/ORDER - page 2 of 6

Court File Number: \_\_\_\_\_

PUBLIC INVESTORS LOST OVER \$100 MILLION.

THE MOTION WAS BROUGHT TODAY AND IS RETURNABLE NEXT WEEK. ~~THE~~ MR DAVIES' EVIDENCE IS THAT UNLESS TUITION IS PAID BY DEC. 20/18, HIS SON WILL NOT BE ABLE TO ATTEND ~~THE~~ THE UK SCHOOL IN JANUARY.

THE RECEIVER'S COUNSEL IS OUT OF TOWN BUT MADE HIMSELF AVAILABLE FOR A CASE CONFERENCE TODAY. ON BEING TOLD AN URGENT MATTER HAD ARISEN, THE COURT TOO MADE ITSELF AVAILABLE.

THE RECEIVER NEGOTIATES TO AGREE TO MR DAVIES' REQUEST BECAUSE IT HAS BEEN BROUGHT SO LATE AS TO PREVENT THE DEVELOPMENT OF AN EVIDENTIARY RECORD. THE RECEIVER HAS CONCERNS WITH THE MARKETING AND SALE OF THE DAVIES' ARIZONA HOME DESPITE THE MARINA INJUNCTION. THIS IS NOT THE FIRST TIME MR DAVIES HAS MARKETED ASSETS UNILATERALLY DESPITE THE MARINA INJUNCTION.

DATE: \_\_\_\_\_

\_\_\_\_\_  
JUDGE'S SIGNATURE

# FILE DIRECTION/ORDER - page 3 of 6

Court File Number: \_\_\_\_\_

The Receiver and Mr. Davies have joined issue over whether the equity from the Arizona house is subject to the Receiver's tracing claim. That requires facts and evidence. I am concerned for to be told that the Davies sold the house at a loss to avoid a ~~mortgage~~ mortgage's enforcement. I do not have transparency into the economics of the purchase and sale of that house, which is, I believe, the only known asset available in judgment is obtained against Mr. Davies. While everyone in the civil justice system is available for emergencies as today's events disclose, one cannot fairly create one's own artificial urgency and then ask others to be prejudiced substantively or procedurally. Mr. Davies knew of his son's acceptance in 1997 according to his affidavit. He then marketed

DATE: \_\_\_\_\_

\_\_\_\_\_  
JUDGE'S SIGNATURE

# FILE DIRECTION/ORDER - page 4 of 6

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AND SOLD ALL HOUSE TO RAISE CASH FOR TUITION  
AND PERHAPS OTHER THINGS. IN ALL THOSE  
MONTHS KNOWING OF THE MARQUA, HE DID NOT  
RAISE THIS ISSUE WITH THE RECEIVER. IN FACT,  
THE DAVIES WERE BEFORE ME ON SEPTEMBER  
18, 2018 - SOME FOUR MONTHS AFTER JACOB'S  
ACCEPTANCE - AND OBTAINED A MONTHLY DRAW  
FOR LIVING EXPENSES UNDER THE MARQUA INJUNCTION.

YET THE WRITING UNTIL DEC. 14 TO ~~DATE~~ <sup>SPRING</sup> A  
PROVIDED ON THE RECEIVER, WITH ONLY SEVEN DAYS  
BEFORE THEY SAY THEY MUST HAVE THE TUITION  
MONEY. MR. BELL IS AWAY. I AM SCHEDULED  
TO SIT NEXT WEEK ALREADY.

THE RECEIVER IS ENTITLED TO SOME NOTICE  
TO RESPOND AND DEVELOP A FACTUAL RECORD. A  
19 YEAR OLD'S ENTRY <sup>INTO</sup> ~~THE~~ ~~THE~~ A FIRST UNDER-  
GRADUATE DEGREE IS NOT URGENT. FURTHER,  
THE TIME PRESSURE ADVANCED AS URGENTLY IS

DATE: \_\_\_\_\_

\_\_\_\_\_  
JUDGE'S SIGNATURE

# FILE DIRECTION/ORDER - page 5 of 6

Court File Number: \_\_\_\_\_

WHOLLY THE RESULT OF MR. DAVIS DECISION TO  
PUT OFF MENTIONING THE ISSUE TO THE RECEIVER  
AND FAIRLY ACCOMODATING COUNSEL AND THE  
COURT ON SCHEDULING. FORGIVE THE RECEIVER ON NEXT  
~~TO A HEARING AND COUNSEL FOR~~  
ISSUE IS NOT IN THE INTERESTS OF JUSTICE IN MY  
VIEW.

I DIRECT COUNSEL FOR THE RECEIVER AND  
FOR THE DAVIS TO AGREE ON A SCHEDULE FOR  
THE TIMELY EXCHANGE OF MATERIAL INCLUDING  
ANY EXAMINATIONS AS MAY BE REQUIRED. I HAVE  
TIME <sup>IN MY</sup> ~~ON~~ NON-SIT WEEKS \* JAN. 7 9 11 OR ANY  
DAY IN THE WEEK OF JAN 14 / 19 TO HEAR THE  
MOTION. COUNSEL SHOULD ADVISE THE COMMERCIAL  
LIST OFFICE ~~IF~~ WHEN THEY AGREE ON A  
DATE FOR THE HEARING.

IF THE DAVIS CANNOT WAIT, IT REMAINS  
OPEN TO THEM AND THE RECEIVER TO RESOLVE

DATE: \_\_\_\_\_

\_\_\_\_\_  
JUDGE'S SIGNATURE

