

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):

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COUNSEL FOR

Defendant(s):

Respondent(s):

JOHN DAVIES, JUDITH DAVIES + PHONE NO. & FAX
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RELIEF SOUGHT:

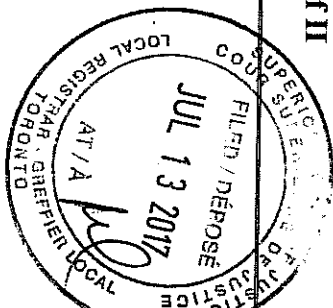
July 17/17

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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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17 (Yellow Sheeps)

For ~~Edward~~ attached, when to go
Despite the Order set out in the
attached exhibit Mr Davies is
authorised and ~~allowed~~ allowed
to ~~invest~~ spend up to an
aggregate amount of \$25,000
to ~~re-open~~ correct and sustain ~~lawful~~
in the interim period. *JP*

the TS give the order of ~~estimating~~
AN ENTIREMENT TO A MAJOR INSURANCE
I AGREE WITH THE ORDER THAT EXECUTION
BEFORE JUDGMENT IS A RARE, EXTRAORDINARY
EXCEPTION TO THE RULE. IT SHOULD NOT
BE AVAILABLE WHEN THE AS HAVE A
PLAUSIBLE, PLEASANT DEFENSE. CONVICTION

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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~~ ^A PRINCIPAL MANAGER AND
OWNER OF THE DEVELOPERS OR THEIR PARENT COMPANIES,
FOR FRAUD, BREACH OF FIDUCIARY DUTY, CONVERSION
~~AND~~ ^{AND} OTHER CAUSES OF ACTION. THE ESSENCE OF THE
CLAIMS ~~ARE~~ ^{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 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 ^{SOME OF THE} PROJECT COMPANIES OR THEIR
PARENT COMPANIES WITH DAVIES AND HIS OTHER
COHORTS.

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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 CONTRACTORS FEES ^{AND} ~~AND~~ ~~AND~~ WORST STILL FUNDS WERE ^{NOT} LENT AMONG THE COMPANIES (AND 5 OTHERS) ON AN UNSECURED BASIS TO MEET INTEREST OBLIGATIONS DUE ON ~~THE~~ THOSE COMPANIES BORROWING 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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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, FRAUDULENT 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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ANALYSIS & ITS FAILURE TO GIVE MR SINGH
SUFFICIENT 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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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 ~~TO~~ 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 ^{Rocky} ~~Rocky~~ TIMES. BUT HE

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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 INNOCENT
EXPLANATION DESPITE MR KRAFT'S CREATING EFFORTS
TO FIND ONE. MR DAVIES DOES NOT SAY HE DID
A POOR JOB OR ^{THAT} ~~AS~~ 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.

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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 LARGEST SUGGESTION THAT THERE MAY 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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THE DAVIES' REAL ESTATE.

IN MY VIEW THIS IS A CASE TO
 WAIVE ANY 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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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.

