

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

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

BETWEEN:



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

Plaintiff

- and -

JOHN DAVIES AND AEOLIAN INVESTMENTS LTD.

Defendants

NOTICE OF ACTION

TO THE DEFENDANTS

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the plaintiff. The claim made 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 lawyer, serve it on the plaintiff, and file it, with proof of service, in this court office, **WITHIN TWENTY DAYS** after this Notice of Action 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 June 6, 2017 Issued by Maggie Kempa
Local Registrar

Address of
court office: 330 University Avenue
Toronto, ON M5G 1E6-1R7

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

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

- and -

24 Country Club Drive
King City, ON
L7B 1M5

CLAIM

1. The plaintiff, KSV Kofman Inc. (“**KSV**”), solely in its capacity as receiver and manager of certain property of 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**”) and Textbook (555 Princess Street) Inc. (“**555 Princess**”), (collectively, the “**Receivership Companies**”), and not in its personal capacity or in any other capacity, claims against the defendants, John Davies (“**Davies**”) and Aeolian Investments Ltd. (“**Aeolian**” and, together with Davies, the “**Defendants**”), jointly and severally (as applicable):

- (a) a constructive trust and/or damages in the sum of \$50,000,000 or, in the alternative, damages in an amount to be assessed or determined by this Honourable Court, for Davies’ fraud, deceit, conspiracy, breach of fiduciary duty, negligence, conversion, unlawful means tort and unjust enrichment, and for Aeolian’s fraud, deceit, conspiracy, unlawful means tort and unjust enrichment;
- (b) a declaration that the plaintiff is entitled to trace the Receivership Companies’ assets into the hands of the Defendants and a declaration that the Defendants hold those assets as constructive trustees for the plaintiff;
- (c) an interim, interlocutory and permanent order, in the form of a worldwide *Mareva* injunction, restraining the Defendants, and, as applicable, their respective servants, employees, agents, assigns, officers, directors and anyone else acting on their behalf or in conjunction with any of them, whether directly or indirectly, from

selling, liquidating, removing, dissipating, alienating, transferring, assigning, encumbering, or similarly dealing with any of their assets, wherever situate;

- (d) a declaration that the liability of Davies arises out of fraud, embezzlement, misappropriation and/or defalcation while acting in a fiduciary capacity for purposes of section 178(1)(d) of the *Bankruptcy and Insolvency Act*, RSC, 1985, c B-3, as amended;
- (e) special damages, including all costs and expenses arising out of the detection, investigation, and quantification of the losses suffered by the Receivership Companies, in an amount to be particularized prior to trial;
- (f) punitive or exemplary damages in an amount to be particularized prior to trial;
- (g) pre-judgment and post-judgment interest on a compound basis or, alternatively, pursuant to the *Courts of Justice Act*, RSO 1990, c C 43, as amended;
- (h) costs of this action, including the costs of any and all interim and interlocutory motions, on a full indemnity or other appropriate scale, including all applicable taxes; and
- (i) such further and other relief, including equitable relief and constructive trusts in favour of the plaintiff, as this Honourable Court deems just.

Parties

2. The plaintiff, KSV, is the court-appointed receiver and manager of certain property of the Receivership Companies appointed pursuant to orders of the Ontario Superior Court of Justice

(Commercial List) dated February 2, 2017, April 28, 2017 and May 2, 2017. Each of the Receivership Companies in respect of which KSV has been appointed receiver and manager was advanced monies on a secured basis by various trust corporations, which monies had been raised from investors through syndicated mortgages for particular real estate development projects specific to the respective Receivership Companies. In particular:

- (a) Scollard is a company incorporated pursuant to the laws of Ontario. It was advanced monies on a secured basis by Scollard Trustee Corporation (“**Scollard Trust Co.**”), which monies had been raised from investors through a syndicated mortgage for a particular real estate development project specific to Scollard. The sole officer and director of Scollard is Davies.
- (b) Kitchener is a company incorporated pursuant to the laws of Ontario. It was advanced monies on a secured basis by MC Trustee (Kitchener) Ltd. (“**Kitchener Trust Co.**”), which monies had been raised from investors through a syndicated mortgage for a particular real estate development project specific to Kitchener. The sole officer and director of Kitchener is Davies.
- (c) Oakville is a company incorporated pursuant to the laws of Ontario. It was advanced monies on a secured basis by 2223947 Ontario Limited (“**Oakville/Burlington/Legacy Lane Trust Co.**”), which monies had been raised from investors through a syndicated mortgage for a particular real estate development project specific to Oakville. The sole officer and director of Oakville is Davies.

- (d) Burlington is a company incorporated pursuant to the laws of Ontario. It was advanced monies on a secured basis by the Oakville/Burlington/Legacy Lane Trust Co., which monies had been raised from investors through a syndicated mortgage for a particular real estate development project specific to Burlington. The sole officer and director of Burlington is Davies.
- (e) Legacy Lane is a company incorporated pursuant to the laws of Ontario. It was advanced monies on a secured basis by the Oakville/Burlington/Legacy Lane Trust Co., which monies had been raised from investors through a syndicated mortgage for a particular real estate development project specific to Legacy Lane. The sole officer and director of Legacy Lane is Davies.
- (f) 525 Princess is a company incorporated pursuant to the laws of Ontario. It was advanced monies on a secured basis by Textbook Student Suites (525 Princess Street) Trustee Corporation (“**525 Trust Co.**”), which monies had been raised from investors through a syndicated mortgage for a particular real estate development project specific to 525 Princess. The only officers and directors of 525 Princess are Davies and Walter Thompson (“**Thompson**”).
- (g) 555 Princess is a company incorporated pursuant to the laws of Ontario. It was advanced monies on a secured basis by Textbook Student Suites (555 Princess Street) Trustee Corporation (“**555 Trust Co.**” and together with Scollard Trust Co., Kitchener Trust Co., Oakville/Burlington/Legacy Lane Trust Co. and 525 Trust Co., the “**Trust Companies**”), which monies had been raised from investors through a syndicated mortgage for a particular real estate development project

specific to 555 Princess. The only officers and directors of 555 Princess are Davies and Thompson.

3. The defendant, Davies, is an individual residing in King City, Ontario. He was, at all material times, a director and officer of the Receivership Companies.

4. The defendant, Aeolian, is a company incorporated pursuant to the laws of Ontario. Aeolian's mailing address is Davies' personal residence in King City, Ontario. Aeolian is directly owned by Davies' spouse and children: Judith Davies, Sarah Davies and Jessica Davies.

Background

5. This action is in respect of a fraudulent scheme whereby the Defendants misappropriated millions of dollars from the investing public by diverting funds from the Receivership Companies (and the respective real estate development projects in which the funds were required to be invested) through corporate structures Davies controlled to, *inter alia*, himself, his family members and other parties related to him, including Aeolian.

6. The Defendants' conduct has exposed the Receivership Companies to significant liabilities in the form of claims for damages and losses from their creditors, including the innocent investors whose funds they misappropriated.

The Loan Agreements

7. Under the loan agreements between the respective Receivership Companies and the applicable Trust Companies (the "**Loan Agreements**"), the funds advanced from the Trust Companies to the Receivership Companies were to be used to purchase real property and to pay

the soft costs associated with the specific real estate development projects (the “**Projects**”) for which the funds were invested and advanced.

8. In raising the monies from investors, the Receivership Companies covenanted that they would not, without the consent of the applicable Trust Company (subject to certain limited exceptions), “use the proceeds of any Loan Instalment for any purposes other than the development and construction of the project on the Property”.

Prohibited Management Fees

9. Contrary to the Loan Agreements and the Receivership Companies’ contractual and legal obligations, Davies caused the Receivership Companies to improperly pay millions of dollars in management fees to his family members and other related parties, notwithstanding that the Receivership Companies never entered into any management services agreements or received services that would justify such payments.

10. Specifically, Davies caused Scollard, Oakville, Kitchener, Burlington, Legacy Lane, and a non-Receivership Company that Davies controls, McMurray Street Investments Inc. (“**McMurray**”), to transfer \$4.069 million in prohibited management fees to Aeolian:

- (a) Scollard transferred \$1,244,000 to Aeolian;
- (b) Oakville transferred \$1,112,000 to Aeolian;
- (c) Kitchener transferred \$506,000 to Aeolian;
- (d) Burlington transferred \$592,000 to Aeolian;
- (e) Legacy Lane transferred \$341,000 to Aeolian; and

(f) McMurray transferred \$274,000 to Aeolian.

11. These payments are all prohibited under the Loan Agreements.

Further Potentially Improper Management Fees

12. Pursuant to Section 7.02(c) of the Loan Agreements with 525 Princess and 555 Princess, ordinary course payments to shareholders for amounts related to the management, development and operation of the Property are permitted, provided such payments are reasonable in relation to the services rendered.

13. Davies caused 525 Princess and 555 Princess to transfer to Aeolian (purportedly in respect of management fees) amounts that appear to be unreasonable, particularly given that these Receivership Companies never entered into any management agreements with Aeolian and the Projects for which the funds were advanced have achieved very limited progress (they both remain in the pre-construction phase).

Improper Transfers to TSI, TSSI and MCIL

14. Contrary to the Loan Agreements and the Receivership Companies' contractual and legal obligations, Davies caused certain of the Receivership Companies to improperly transfer millions of dollars to Textbook Suites Inc. ("TSI"), Textbook Student Suites Inc. ("TSSI") and Memory Care Investments Ltd. ("MCIL"), the parent companies of Kitchener, Oakville, Burlington, 525 Princess and 555 Princess, all three of which are owned, in part, by Aeolian.

15. These funds were transferred to TSI, TSSI and MCIL by cheque. The memo line on each of the cheques indicated that payment was a "loan", notwithstanding that:

- (a) none of these “loans” were documented;
- (b) no interest has been received by any of the applicable Receivership Companies on account of any such “loan”; and
- (c) the relevant Loan Agreements do not permit the applicable Receivership Companies to make these loans.

Improper Dividends

16. Davies also caused certain Receivership Companies to improperly pay significant dividends to Aeolian. Specifically, Davies caused 525 Princess and 555 Princess to each pay \$250,000 in dividends to Aeolian.

17. While the payment of dividends is permitted under the Loan Agreements in certain circumstances, dividends are only to be paid from the “excess proceeds after the [real estate development property] has been acquired”. In each instance, Davies caused the dividends to be paid immediately after 525 Princess and 555 Princess received the funds from the applicable Trust Company at a time when 525 Princess and 555 Princess had no profits. Further, as a result of the payment of dividends and the payments to related parties, 525 Princess and 555 Princess essentially had no further monies to advance their respective Projects.

18. These dividend distributions caused or contributed to 525 Princess and 555 Princess becoming insolvent (if they were not already insolvent at the time of payment).

Improper Payments to Davies' Family Members

19. Davies also caused certain of the Receivership Companies to make further payments directly to his spouse and children for services purportedly rendered by them in connection with the Projects. These services were not provided, or the payments in respect of any services that were provided are unreasonable. These payments are prohibited under the applicable Loan Agreements and constitute a breach of the Loan Agreements.

Improper Inter-Company Transfers and Transfers to Affiliates

20. In further contravention of the Loan Agreements, Davies routinely caused the Receivership Companies to improperly transfer monies between entities and to affiliates, including over \$17 million to and among the Receivership Companies and certain non- Receivership Companies that Davies controls, including Textbook Ross Park Inc., Textbook (445 Princess Street) Inc., Textbook (774 Bronson Avenue) Inc. and McMurray.

21. Davies also caused the Receivership Companies to improperly transfer monies to Lafontaine Terrace Management Corporation (“**Lafontaine**”) and Memory Care Investments (Victoria) Ltd. (“**MC Victoria**”) – two companies in respect of which Davies is the sole director and officer. Specifically:

- (a) Scollard, Legacy Lane, Burlington and Oakville improperly transferred a total of \$324,000 to Lafontaine; and
- (b) Legacy Lane improperly transferred \$15,000 to MC Victoria.

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

Misappropriation of Funds to Finance the Purchase of the Ottawa Property

23. Davies also improperly diverted further funds from 555 Princess and Kitchener (and the respective Projects in which the funds were required to be invested) to a non-Receiver'ship Company that he controls, Textbook (256 Rideau St.) Inc. ("**Rideau**"), to finance Rideau's purchase of real property municipally described as 256 Rideau Street, Ottawa, Ontario and 211 Besserer Street, Ottawa, Ontario (collectively, the "**Ottawa Property**").

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

25. Immediately prior to Rideau's purchase of the Ottawa Property, on October 27, 2015, Davies caused 555 Princess to improperly transfer \$1.39 million to Rideau, and he caused Kitchener to improperly transfer \$111,000 to Rideau, both by way of cheque. The cheques were both signed by Davies.

26. The funds were transferred from 555 Princess and Kitchener to Rideau for no consideration, for an illegitimate business purpose and in contravention of the relevant Loan Agreements. Despite the fact that the funds were required to be used for specific Projects to be respectively undertaken by 555 Princess and Kitchener, Davies caused the funds to be transferred to Rideau with complete disregard for the separate corporate identities of 555 Princess, Kitchener and Rideau and the contractual and legal obligations of the parties, which had the result of sheltering assets and frustrating both 555 Princess's and Kitchener's creditors.

27. Following Rideau's acquisition of the Ottawa Property, Davies caused a further \$61,200 to be improperly transferred to Rideau from 555 Princess, 525 Princess and Burlington by way of cheques, each of which was also signed by Davies. Specifically:

- (a) \$2,200 was transferred by Burlington to Rideau on November 5, 2015;
- (b) \$36,000 was transferred by 555 Princess to Rideau on December 17, 2015;
- (c) \$7,000 was transferred by 555 Princess to Rideau on May 31, 2016; and
- (d) \$16,000 was transferred by 525 Princess to Rideau on June 20, 2016.

28. Despite the fact that these funds were required to be used for the specific Projects to be respectively undertaken by 555 Princess, 525 Princess and Burlington, the \$61,200 was transferred to Rideau for no consideration, for an illegitimate business purpose and in contravention of the relevant Loan Agreements.

29. On May 16, 2016, KSV (in its capacity as receiver and manager of 555 Princess, 525 Princess, Kitchener and Burlington) sought an order, on an *ex parte* basis, for the issuance and registration of Certificates of Pending Litigation ("CPLs") on title to the Ottawa Property. On May 17, 2017, the Court granted the order (the "CPL Order") and the CPLs were registered on title. Neither Davies nor Rideau, nor any other party, has since contested the CPL Order or the registration of the CPLs on title.

The Defendants' Fraud and Deceit

30. The Defendants perpetrated the fraudulent scheme described herein. Although the precise particulars of the fraudulent scheme are only fully known to the Defendants at this time, they include, without limitation:

- (a) knowingly concealing and falsely representing the relationships between themselves and other related, non-arm's length parties;
- (b) knowingly directing and causing prohibited payments and transfers to be made by the Receivership Companies to such related, non-arm's length parties, including payments and transfers for which no goods or services of value were provided;
- (c) dishonestly diverting funds (which were effectively trust funds) from the Receivership Companies to shell corporations and a network of non-arm's length parties to obtain secret profits for their own benefits; and
- (d) intentionally and deceitfully directing payments to shell corporations and a network of non-arm's length parties to covertly divert funds from the Receivership Companies, shelter the funds, avoid detection and thwart recovery attempts.

31. All of the above caused detriment and deprivation to the Receivership Companies.

The Defendants' Conspiracy

32. The Defendants acted in combination or in concert, by agreement or with a common design, to perpetrate the fraudulent scheme described herein. The full particulars of the agreement

or common design are only fully known to the Defendants at this time, but further particulars will be provided in advance of trial.

33. The Defendants' conduct in perpetrating the fraudulent scheme was unlawful (including the torts and other wrongful acts and omissions described herein) and directed towards the Receivership Companies and their creditors, including the innocent investors whose funds they misappropriated. The Defendants knew that injury to the Receivership Companies and their creditors was likely to result in the circumstances, and such injury did result.

34. The predominant purpose of the Defendants' conduct was to intentionally harm the Receivership Companies and their creditors, and the Defendants' conduct did harm them.

35. The Defendants are liable to the Receivership Companies for predominant purpose conspiracy and unlawful act conspiracy, amongst other things.

Davies' Breach of Fiduciary Duty and Negligence

36. By virtue of the positions Davies held, he was a fiduciary of the Receivership Companies and owed each of them fiduciary duties, contractual duties, statutory duties (including pursuant to sections 71 and 134 of the *Business Corporations Act*, RSO 1990, c B 16, as amended) and a duty of care to, among other things:

- (a) act honestly and in good faith with a view to their best interests;
- (b) avoid improper self-dealing;
- (c) avoid conflicts of interest; and

- (d) exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances.

37. By reason of the facts described above, Davies breached these duties and failed to act in a manner that was required of him as a director and an officer of the Receivership Companies.

38. The Receivership Companies were vulnerable to the unilateral exercise of Davies' discretion and power, particularly given that he was the controlling mind and management of the Receivership Companies. By reason of the facts described above, Davies breached his duties to the Receivership Companies, including his fiduciary and other duties owed, including but not limited to his duties of good faith, honest performance and loyalty.

39. By reason of the facts described above, Davies also breached express and/or implied terms of his employment agreement with the Receivership Companies. Among other things, Davies was, at a minimum, required to conduct himself and the operations of the Receivership Companies in a competent and lawful manner, which he failed to do. Davies' conduct breached the standard of care required of him and he was grossly negligent in the performance of his duties as an officer of the Receivership Companies.

40. Davies effectively treated the Receivership Companies as his own personal fiefdom, without due regard for transparency, disclosure, the avoidance of self-dealing and conflicts of interest, or corporate separateness, amongst other things. He effectively operated each of the Receivership Companies as his own personal corporation and saw their assets as his own. This resulted in his failure to act in the best interests of the Receivership Companies, including by defrauding the Receivership Companies and enriching himself and parties related to him at the expense of the Receivership Companies and their creditors.

The Unlawful Means Tort

41. By virtue of the Defendants' acts and omissions as described herein, they intentionally inflicted economic harm on the Receivership Companies and their creditors. In doing so, they used unlawful means (including but not limited to fraud, deceit and conspiracy) as against third parties, including the innocent investors whose funds they misappropriated.

The Defendants' Conversion

42. The Receivership Companies were in possession of, or entitled to immediate possession of, the specific and identifiable funds described above. The Defendants intentionally and wrongfully converted the Receivership Companies' funds for their own use inconsistent with the Receivership Companies' right of possession and other rights, and thereby deprived the Receivership Companies (and their creditors) of the benefit of the funds, exposing them to significant liabilities. KSV is entitled to recover the entire amount the Defendants have converted.

The Defendants' Unjust Enrichment

43. By virtue of the facts set out above, the Defendants and parties related to the Defendants have been unjustly enriched. The Receivership Companies have suffered a corresponding deprivation, and there is no juristic reason for the Defendants' enrichment or for the Receivership Companies' corresponding deprivation. There is no reason why the Defendants should not be held to account for their enrichment and for the damages they have caused.

Constructive Trust(s)

44. The Defendants received and retained the Receivership Companies' funds with full knowledge of the fraud, deceit, conspiracy and conversion they had committed, and with full

knowledge of Davies' breach of his fiduciary and other legal duties owed to the Receivership Companies. By virtue of facts described herein, including, among other things, the Defendants' unjust enrichment, the Defendants hold all funds that they diverted, misappropriated and improperly received from the Receivership Companies as trustees of a constructive trust (or trusts) for the benefit of the plaintiff.

Davies' Liquidation and Alienation of Assets

45. Following his improper conduct as described above, and after the commencement of the receivership proceeding in January 2017, Davies embarked on a course of conduct designed to liquidate his assets and put them beyond the reach of the Receivership Companies and their creditors. Among other things, on April 25, 2017, Davies sold his cottage located in Gravenhurst, Ontario for approximately \$3 million. Davies also sold his personal residence located in King City, Ontario, which he jointly owns with his spouse, though the transaction has not yet closed. The listing price for the residence was \$1.6 million.

Losses and Harm

46. The conduct of the Defendants as described above has caused, and is continuing to cause, significant damage to the Receivership Companies and their creditors, including financial losses and loss of profitable business opportunities, the full extent of which has not yet fully materialized and is not yet fully known to KSV at this time.

47. The secured debt obligations of the Receivership Companies currently total approximately \$65,281,000, including approximately \$59,331,000 owing to the Trust Companies (being monies raised by the Trust Companies from investors) and the balance owing to other lenders, primarily

mortgagees. Virtually the only valuable assets the Receivership Companies currently have to satisfy these secured debt obligations (and all the other debt obligations and liabilities of the Receivership Companies) are the real properties for which the Receivership Companies collectively paid approximately \$22,455,000. The creditors of the Receivership Companies will suffer a significant shortfall that cannot be precisely determined at this time but is expected to total tens of millions of dollars.

48. Full particulars of the Receivership Companies' damages will be provided prior to trial.

49. The conduct of the Defendants as described above has also caused, and is continuing to cause, irreparable harm to the Receivership Companies and their creditors. In the absence of relief from this Honourable Court, the Defendants will be able to continue liquidating assets and alienating them, thereby causing the Receivership Companies and their creditors further harm which would not be compensable in damages alone.

50. The plaintiff has incurred, and is continuing to incur, costs and out-of-pocket expenses relating to investigations into the Defendants' misconduct, which special damages shall be particularized prior to trial.

51. The Defendants' actions constitute a wanton, callous, high-handed and outrageous disregard for the Receivership Companies' rights and interests, and for the rights and interests of their creditors, including the investing public whose funds they misappropriated. The Defendants deliberately and wilfully undertook the fraudulent and unlawful activities described herein in an underhanded manner, knowing that their conduct was wrong and would cause harm to the Receivership Companies and their creditors. The Defendants' conduct ought to attract the

disapproval of this Honourable Court and result in a material award of punitive or exemplary damages.

52. Given the duplicitous and deceitful manner in which the Defendants have acted, together with all the surrounding circumstances, including Davies' sale of both his cottage and personal residence shortly after the receivership proceedings were commenced, there is a real and demonstrated risk that the Defendants will permanently abscond with the Receivership Companies' funds and dissipate assets to avoid enforcement of any judgment the plaintiff may ultimately obtain. In all the circumstances, interim and interlocutory injunctive relief, *inter alia*, enjoining the Defendants from accessing, liquidating, dissipating, alienating or otherwise dealing with their assets pending disposition of the matter on the merits is necessary, just and appropriate.

Place of Trial

53. KSV proposes that the trial of this action take place in the City of Toronto in the Province of Ontario.

June 6, 2017

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

v.

JOHN DAVIES et al.

Defendants

Court File No: **CV-17-1822-00CL**

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SUPERIOR COURT OF JUSTICE
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PROCEEDING COMMENCED AT
TORONTO

NOTICE OF ACTION

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