



**Nineteenth Report of
KSV Kofman Inc.**

November 1, 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.**

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

and

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

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

IN THE MATTER OF THE RECEIVERSHIP OF SCOLLARD DEVELOPMENT CORPORATION, MEMORY CARE INVESTMENTS (KITCHENER) LTD., MEMORY CARE INVESTMENTS (OAKVILLE) LTD., 1703858 ONTARIO INC., LEGACY LANE INVESTMENTS LTD., TEXTBOOK (525 PRINCESS STREET) INC. AND TEXTBOOK (555 PRINCESS STREET) INC.

AND IN THE MATTER OF THE RECEIVERSHIP OF TEXTBOOK (445 PRINCESS STREET) INC.

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

**NINETEETH 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

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

AND

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

NOVEMBER 1, 2019

1.0 Introduction

1. This report ("Report") is filed by KSV Kofman Inc. ("KSV") in its capacity as receiver 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"), 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").
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 (in such capacity, the "Trustee") of eleven entities¹ (collectively, the "Trustee Corporations") which raised monies from investors ("Investors") through syndicated mortgage investments ("SMIs")². 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 "Initial Receivership Order") appointing KSV as receiver and manager (in such capacity, 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 Initial Receivership Order.
4. On April 18, 2017, the Trustee brought a motion, *inter alia*, seeking an order amending and restating the Initial 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.

¹ 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.

² 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. 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 is the subject of the Receiver’s various reports to Court (the “Litigation”).
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 for the primary purpose of including them and representing their interest in the Litigation. On May 30, 2018, the Court made the Bronson-Ross Park-McMurray Receivership Order. The Initial Receivership Order, the Amended and Restated Receivership Order, the 445 Receivership Order and the Bronson-Ross Park-McMurray Receivership Order are collectively referred to below as the “Receivership Orders”.
8. The Receivership Orders expressly empower and authorize the Receiver to initiate, prosecute and continue the prosecution of any and all proceedings on behalf of the companies subject to the Receivership Orders (i.e., the Receivership Companies). Under the Receivership Orders, the Receiver is also empowered and authorized to settle or compromise any such proceedings. The Receivership Orders further provide that the Receiver is at liberty and authorized and empowered to apply to any court for assistance in carrying out the terms of the Receivership Orders.

1.1 Litigation

1. Following the issuance of the Amended and Restated Receivership Order, the Receiver commenced a review of, *inter alia*, the receipts and disbursements of the Receivership Companies (other than 445 Princess, Bronson, Ross Park and McMurray, which were not in receivership at the time) (the “Review”). Additionally, at the request of the Trustee, the Receiver reviewed the receipts and disbursements of the balance of the Receivership Companies, namely 445 Princess, Bronson, Ross Park and McMurray.
2. On June 6, 2017, the Receiver filed its Fourth Report to Court (the “Fourth Report”), which provided the Court with the Receiver’s findings regarding the Review. The Fourth Report reflected that, *inter alia*, millions of dollars were paid by the Receivership Companies to their shareholders (the “Shareholders”) and related parties in respect of management fees, consulting fees, dividends, loans and other amounts.
3. Based on the Receiver’s findings as set out in the Fourth Report, the Receiver filed a statement of claim (the “Statement of Claim”) against John Davies (“Davies”) and Aeolian Investments Ltd. (“Aeolian”, and together with Davies, the “Davies Defendants”) alleging, *inter alia*, fraud, breach of fiduciary duty and negligence. Davies is a director and officer of each of the Receivership Companies. Aeolian is owned by Davies’ wife, Judith, and his children. Aeolian’s sole director and officer is Davies. Aeolian is a direct or an indirect Shareholder of each of the Receivership Companies other than McMurray, which is owned, in part, by the Davies Family Trust (the “Family Trust”).

4. Corporate charts for each of the Receivership Companies are collectively attached as Appendix “A”.
5. On July 12, 2017, the Receiver filed its Sixth Report to Court. The Sixth Report detailed, *inter alia*, that Davies and Aeolian inappropriately transferred assets received from the Receivership Companies to Judith Davies, the Family Trust and the Davies Arizona Trust (the “Arizona Trust” and together with the Family Trust, the “Trusts”).
6. On August 31, 2017, the Court granted the Receiver leave to amend its Statement of Claim (the “Amended Statement of Claim”) to add as defendants Davies in his capacity as the trustee and/or representative of the Trusts, Judith Davies in her personal capacity and in her capacity as trustee and/or representative of the Family Trust, and Gregory Harris, solely in his capacity as trustee and/or representative of the Family Trust.
7. On October 3, 2018, the Trustee and the Receiver jointly commenced a new Statement of Claim (the “Fresh Statement of Claim”) against, among others, all the principals of the Receivership Companies and the Trustee Corporations, certain related persons, companies and entities, and several of their advisors and related companies and entities, including:
 - Raj Singh (“Singh”), Tier 1 Transaction Advisory Services Inc. (“Tier 1”), and RS Consulting Group Inc. (“RSCG”, and collectively with Singh and Tier 1, the “Singh Defendants”);
 - The Davies Defendants, Judith Davies and the Trusts;
 - Davies’ business partner, Walter Thompson, and a related corporation;
 - certain current and former directors and officers of the Trustee Corporations, the Receivership Companies and Tier 1, including, Bruce Stewart, Jude Cassimy, David Arsenault, James Grace and certain related corporations;
 - Gregory Harris and his law firm, Harris & Harris LLP, which acted for the Receivership Companies and the Trustee Corporations;
 - Nancy Elliot and Elliot Law Professional Corporation, which ostensibly acted for the Trustee Corporations; and
 - Michael Cane, who prepared appraisals on the real properties on which the SMIs were raised (the foregoing, other than the Singh Defendants, together with any and all other parties, are collectively referred to as the “Non-Settling Defendants”).
8. A copy of the Fresh Statement of Claim is attached as Appendix “B”.

1.2 Purposes of this Report

1. The purposes of this Report are to:
 - a) provide background information with respect to the Litigation in these receivership proceedings;
 - b) summarize the terms of the proposed settlement between the Receiver and the Trustee, on the one hand, and the Singh Defendants, on the other hand (the “Settlement”); and
 - c) recommend that the Court issue an order, *inter alia*:
 - i. approving the Settlement; and
 - ii. authorizing and directing the Receiver and the Trustee to take any and all steps necessary to give effect to the Settlement.

2.0 Background

1. The Davies Developers were developers of student residences, accommodations for people suffering from various forms of cognitive impairment and low-rise condominiums (collectively the “Projects”).
2. The Davies Developers borrowed \$119.940 million, comprised of \$93.675 million in secured debt owing to the Trustee Corporations (being monies raised by the Trustee Corporations from Investors) and \$23.675 million owing to mortgage lenders (the “Other Lenders”). The Receiver understands that the obligations owing to the Other Lenders rank in priority to the Trustee Corporations.
3. The funds advanced to the Davies Developers from the Trustee Corporations were to be used to purchase real property and to pay soft costs associated with the development of the Projects.
4. The background to this Report is further set out in the Receiver’s previous reports to Court, including its Fourth Report, Sixth Report, Supplement to the Sixth Report, Seventeenth Report and the Eighteenth Report, copies of which are respectively attached hereto as Appendices “C”, “D”, “E” “F” and “G”, without attachments. The attached reports provide further background concerning the Litigation. All reports and other materials previously filed in these proceedings can be found on the Receiver’s website at <https://www.ksvadvisory.com/insolvency-cases/case/scollard-development-corporation>.

2.1 Prior Settlements

2.1.1 Settlement with Alan Harris, Erika Harris and Dachstein Holdings Inc.

1. In connection with the initial Litigation, the Receiver contemplated further amending its statement of claim to name additional defendants, including Dachstein Holdings Inc. (“Dachstein”), Alan Harris (“A. Harris”) and Erika Harris (“Ms. Harris”) (collectively, the “Harris Settling Defendants”). A. Harris and Ms. Harris are the parents of Gregory Harris.

2. The Receiver engaged in negotiations with A. Harris, as representative for the Harris Settling Defendants, regarding the claims against them by the applicable Receivership Companies, particularly regarding Dachstein's receipt of dividends totalling \$1 million, comprised of \$250,000 from each of 555 Princess, 525 Princess, Bronson and Ross Park.
3. Those discussions and negotiations culminated in a settlement (the "Harris Settlement") between the Receiver and the Trustee, on the one hand, and the Harris Settling Defendants, on the other hand (the "Harris Settlement Agreement").
4. Pursuant to the Harris Settlement Agreement, the Receiver and the Trustee agreed to resolve all known claims that they have against the Harris Settling Defendants in exchange for a payment of \$1 million, representing a return of all amounts that the Harris Settling Defendants received from the Receivership Companies (which amount was confirmed by an investigation conducted by the Receiver and further confirmed in a series of sworn declarations provided to the Receiver and the Trustee by the Harris Settling Defendants).
5. On May 30, 2018, the Court approved the Harris Settlement. The Receiver has been paid all amounts due and owing by the Harris Settling Defendants under the Harris Settlement Agreement. The proceeds of this settlement were allocated equally to 555 Princess, 525 Princess, Bronson and Ross Park.

2.1.2 The Mareva Settlement with Davies, Judith Davies and the Trusts

1. On August 30, 2017, the Court issued an order (the "Mareva Order") against John Davies in his personal capacity and in his capacity as trustee of the Family Trust and the Arizona Trust, Judith Davies in her personal capacity and in her capacity as trustee of the Family Trust, Aeolian (collectively, the "Davies Mareva Defendants") and Gregory Harris, solely in his capacity as trustee of the Family Trust.
2. The Mareva Order restricted the Davies Mareva Defendants and Mr. Harris, as trustee of the Family Trust, from selling their assets, including the real estate owned by the Arizona Trust located at 35410 North 66th Place, Carefree, Arizona, 85377 (the "Arizona Real Property").
3. On January 19, 2018, the Davies Mareva Defendants obtained leave to appeal the Mareva Order (the "Mareva Appeal").
4. In early November 2018, the Arizona Trust sold the Arizona Real Property for USD\$1.65 million along with the furnishings in the Arizona Real Property for a further USD\$150,000. The net proceeds generated from the sale (after payment of transaction expenses and the liens on the property) totalled US\$862,568, which amount was then reduced by virtue of Davies accessing living expenses of \$7,500 per month pursuant to an order issued by the Court. Net of the amounts used by Davies for his living expenses, the remaining proceeds from the sale of the Arizona Real Property was US\$828,172 (the "Proceeds"). The Davies Mareva Defendants provided financial disclosure to the Receiver which indicated that the Proceeds represented a significant portion of the Davies Mareva Defendants' assets.

5. The Receiver, in consultation with the Trustee, negotiated with the Davies Mareva Defendants concerning the Mareva Order. These negotiations culminated in a settlement of the Mareva issues only (the "Mareva Settlement"), which was approved by the Court on May 2, 2019.
6. Pursuant to the Mareva Settlement, all the Mareva related issues were resolved in exchange for payment of 72.5% of the Proceeds to the Receiver, with the balance paid to Davies. Accordingly, the Receiver was to receive a total of US\$584,027.69 under the Mareva Settlement (the "Mareva Settlement Proceeds").
7. The Receiver has received all the Mareva Settlement Proceeds and allocated the proceeds equally across all of the Receivership Companies. The Receiver subsequently distributed approximately US\$425,000 of the Mareva Settlement Proceeds to the Trustee.
8. As required under the Mareva Settlement, the Receiver lifted the Mareva Order and the parties dismissed the Mareva Appeal on consent, subject to the condition that the Mareva Order would be immediately reinstated in the event of, among other things, any misrepresentations in the disclosure provided to the Receiver and the Trustee by the Davies Mareva Defendants in connection with the Mareva Settlement.
9. Pursuant to the Mareva Settlement, no releases were provided to any of the Davies Mareva Defendants in respect of the Fresh Statement of Claim or otherwise. The Receiver and the Trustee preserved all of their rights to continue their claims and pursue recovery against the Davies Mareva Defendants for the matters in the Litigation and otherwise.

3.0 The Singh Defendants

1. Singh was the sole director, officer and shareholder of all but two of the Trustee Corporations, and he was responsible for, among other things, administering and enforcing the SMLs on behalf of the applicable Trustee Corporations. Singh is also the principal of Tier 1 and RSCG. Tier 1 promoted and sold the SMLs to Investors. RSCG held an ownership interest in several of the Receivership Companies.
2. The Fourth Report sets out that the Singh Defendants received a net amount of \$9.407 million from the Receivership Companies. The Receiver has not received any information to indicate this finding is incorrect. Singh has advised that most of the monies paid to Tier 1 were paid to its brokers who raised monies from SMLs. A summary of the funds received by the Singh Defendants from the Receivership Companies is provided below.

(unaudited; \$000)	RSCG	Tier 1 Advisory	Raj Singh	Total
Broker and referral fees	-	5,861	-	5,861
Due diligence and consulting				
Scollard	113	217	-	330
Kitchener	-	116	-	116
Burlington	-	78	-	78
Oakville	158	138	-	296
525 Princess	113	-	-	113
555 Princess	113	-	-	113
445 Princess	226	-	-	226
Bronson	100	-	-	100
Ross Park	113	-	-	113
	936	549	-	1,485
Dividends				
525 Princess	250	-	-	250
555 Princess	250	-	-	250
Ross Park	250	-	-	250
Bronson	375	-	-	375
	1,125	-	-	1,125
Loan payments (Kitchener)	-	-	650	650
Notary fees	-	330	-	330
Unknown	56	250	-	306
Less: receipts	-	(250)	(100)	(350)
Total	2,118	6,740	550	9,407

3. The claims against the Singh Defendants are set out in the Fresh Statement of Claim and include:
 - a) a constructive trust and/or damages claim in the amount of \$106 million, representing the expected Investor losses; and
 - b) a claim for fraud while acting in a fiduciary capacity.

4.0 The Proposed Settlement with the Singh Defendants

1. Since the issuance of the Fresh Statement of Claim, the Receiver and the Trustee have engaged in negotiations with the Singh Defendants. After lengthy investigations and due diligence, those negotiations culminated in the Settlement between the Trustee and the Receiver, on the one hand, and the Singh Defendants, on the other hand, which was formalized in a written settlement agreement (the "Settlement Agreement"). The Settlement Agreement is subject only to Court approval. A copy of the Settlement Agreement is attached as Appendix "H".

2. The Settlement Agreement contemplates an exchange of full and final mutual releases between the Singh Defendants, on the one hand, and the Receiver and the Trustee, on the other hand. In exchange for the release from the Receiver and the Trustee, the Singh Defendants have, *inter alia*, paid \$2.1 million in escrow to the Trustee's counsel (the "Settlement Funds"), pending Court approval of the settlement. The Receiver intends to allocate the proceeds it receives evenly across each of the Receivership Companies. The Receiver's allocation is not binding on the Trustee when it makes distributions to the Trustee.
3. As part of the negotiations leading to the Settlement Agreement, the Receiver and the Trustee required the Singh Defendants to provide statutory declarations attesting to their financial assets and liabilities (the "Declarations"). The Receiver and the Trustee conducted extensive diligence on the Declarations, including several rounds of questions and follow-up questions of Singh, personally and as representative of RSCG and Tier 1, reviewing bank statements, general ledgers and additional support (e.g. tax filings) to reconcile the information provided in the Declarations with the Receiver's findings in its Fourth Report and other reports to Court. The Receiver also traced a substantial majority of the payments made from the Receivership Companies to the Singh Defendants to determine if any additional assets exist. The Receiver is reasonably satisfied that the Singh Defendants have disclosed all their assets; however, in the event that the Trustee and/or the Receiver believe there was a material misrepresentation in the Declarations, the Trustee and/or the Receiver may seek a determination from the Court regarding such misrepresentation. In the event the Court determines that there was a material misrepresentation in the Declarations, the release will be immediately revocable at the option of the Trustee and the Receiver without any obligation to repay the Settlement Funds. The Settlement Agreement provides that the Trustee and the Receiver are to keep confidential the Declarations and all information provided in the Declarations.
4. Under the Settlement Agreement, the Receiver and the Trustee also preserve all claims, rights and remedies they have as against all the Non-Settling Defendants in the Litigation and otherwise. If the Court awards damages or any other monetary relief ("Monetary Relief") to the Receiver or the Trustee against the Non-Settling Defendants and finds that the Non-Settling Defendants have the right to pass any liability for such relief onto the Singh Defendants, the Trustee and the Receiver have agreed to waive their right to recover such Monetary Relief with respect to such portion attributable to the Singh Defendants. In other words, the Trustee and the Receiver shall be entitled to recover from the Non-Settling Defendants only such claims for Monetary Relief attributable to the aggregate of the several liability of the Non-Settling Defendants. The Settlement contemplates a bar order with respect to the potential exposure of the Non-Settling Defendants to claims of joint responsibility with the Settling Defendants, thereby leaving the Non-Settling Defendants responsible only for the losses they are proved to have caused.

5. Pursuant to the terms of the Settlement Agreement, the Singh Defendants will also cooperate with the Trustee and the Receiver in relation to their claims and proceedings against the Non-Settling Defendants. The cooperation will include providing an account of the facts known to the Singh Defendants that are relevant to such claims and proceedings and producing relevant non-privileged documents and records and information over which the Singh Defendants have possession, power and/or control. This cooperation is an important feature of the Settlement from the Receiver's perspective.
6. The terms of the Settlement are fully set out in the Settlement Agreement attached as Appendix "H".

4.1 Recommendation

1. The Receiver recommends that the Court issue an order approving the Settlement Agreement for the following reasons:
 - a) it generates immediate proceeds of \$2.1 million. The Trustee and the Receiver have examined the Declarations, as well the supporting documentation (including books and records) and are reasonably satisfied that the Singh Defendants have disclosed their assets and liabilities and that the Settlement represents a significant portion of the Singh Defendants' net worth. Further, these assets would likely be eroded by virtue of the Settling Defendants' defence costs and, therefore be largely inaccessible if the Litigation was to continue as against the Singh Defendants;
 - b) it allows for the release in respect of the Settlement to be revocable, and the Litigation as against the Singh Defendants to be reinstated, in the event of a finding of any material misrepresentation in the Declarations, with no reversion of the Settlement Funds to the Singh Defendants in such event;
 - c) the Settlement avoids protracted, complex and costly litigation with the Singh Defendants in respect of the settled matters. Pursuant to the Settlement Agreement, all the claims the Receiver and Trustee have as against the Singh Defendants will be fully and finally resolved. The Settlement therefore provides a degree of certainty regarding the costs, benefits, and timing that cannot be expeditiously achieved otherwise;
 - d) the Settlement allows the Receiver to focus on other actors in the SMI scheme in the Litigation, which will increase the efficiency and efficacy with which the Litigation can be advanced, thereby resulting in further costs savings, timing efficiencies and benefits. In that respect, the Singh Defendants will be providing the Receiver and the Trustee with cooperation in connection with the Litigation, including a statement or statements regarding the participation of the Non-Settling Defendants in the SMI scheme;
 - e) the Singh Defendants will provide the Receiver and the Trustee with a broad full and final release of all claims they may have against the Receivership Companies and the Trustee Corporations, providing a further degree of certainty and closure with respect to any disputes as between these parties;

- f) the Settlement Agreement is fair and reasonable, in the circumstances, as it represents a commercially reasonable compromise in respect of the claims against the Singh Defendants and it is in the best interests of the Receivership Companies, the Trustee Corporations and their respective stakeholders; and
- g) the Trustee has performed its own procedures and undertaken its own due diligence to consider the reasonableness of the Settlement and has reached conclusions similar to those of the Receiver. The Trustee has agreed to the Settlement Agreement and is seeking an Order of the Court approving it. The Trustee has filed a separate report recommending that the Court approve the Settlement.

5.0 Conclusion and Recommendation

1. Based on the foregoing, the Receiver respectfully recommends that this Court make an Order granting the relief detailed in Section 1.2(1)(c) of this Report.

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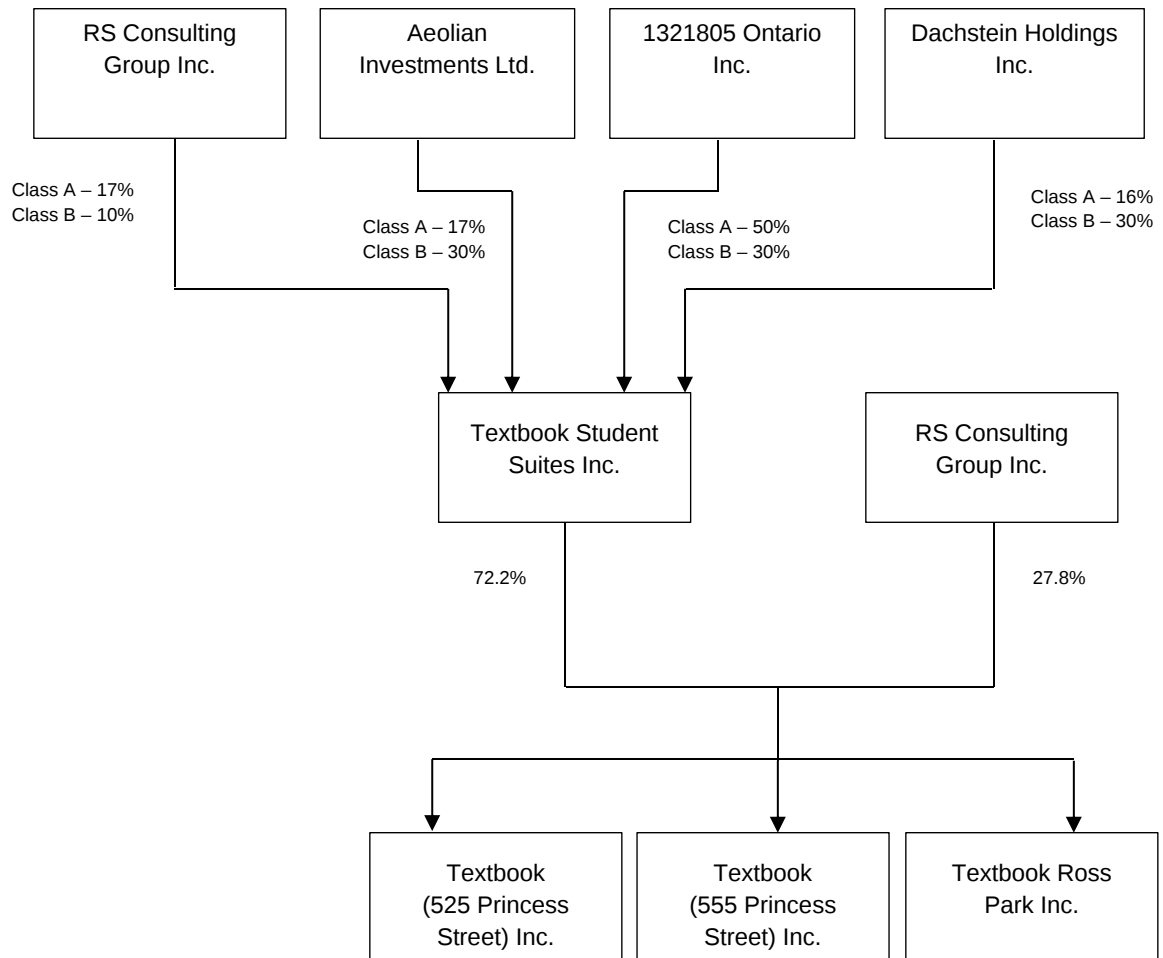
All of which is respectfully submitted,



**KSV KOFMAN INC.,
SOLELY IN ITS CAPACITY AS RECEIVER OF
CERTAIN PROPERTY OF SCOLLARD DEVELOPMENT CORPORATION, MEMORY CARE
INVESTMENTS (KITCHENER) LTD., MEMORY CARE INVESTMENTS (OAKVILLE) LTD.,
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AND MCMURRAY STREET INVESTMENTS INC.**

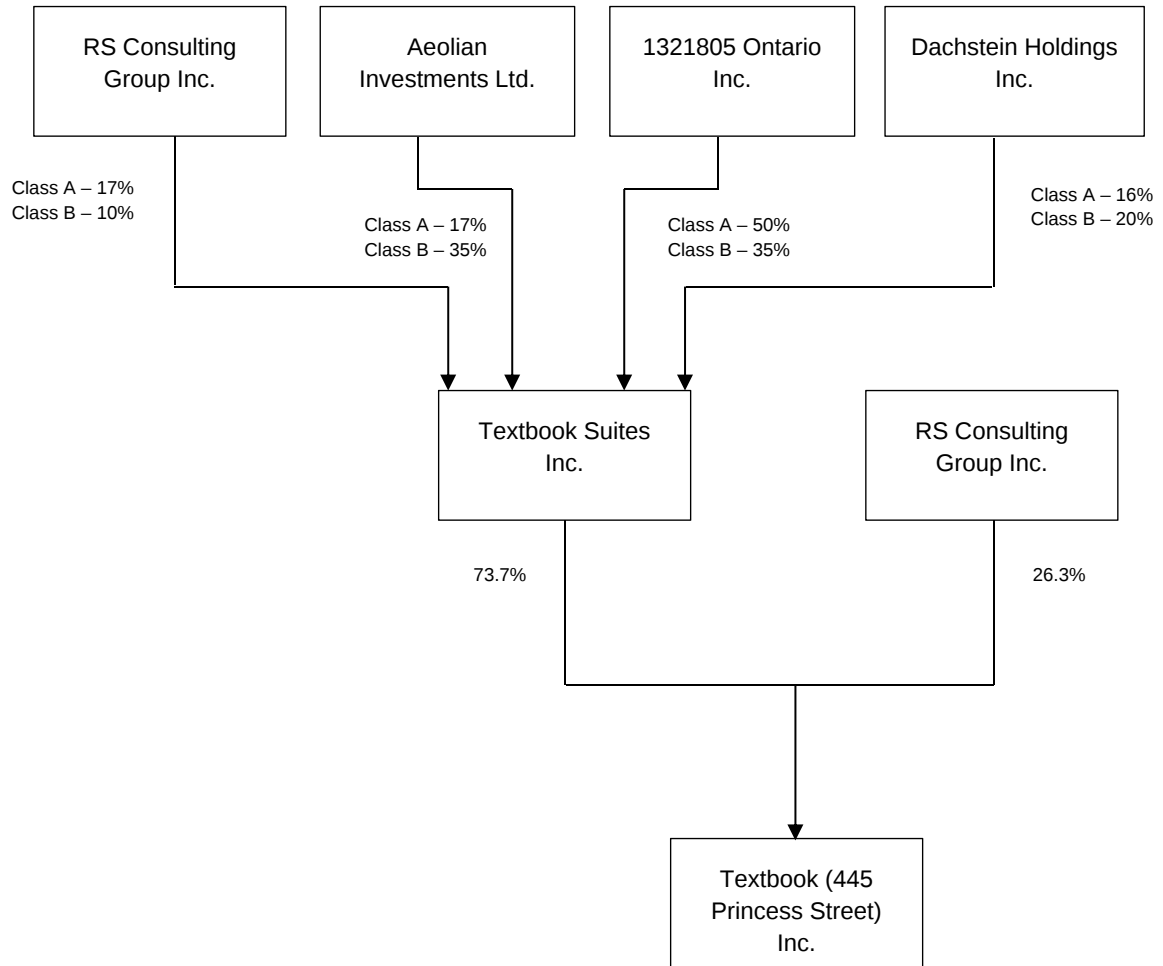
Appendix “A”

Textbook (525 Princess Street) Inc.¹
Textbook (555 Princess Street) Inc.
Textbook Ross Park Inc.



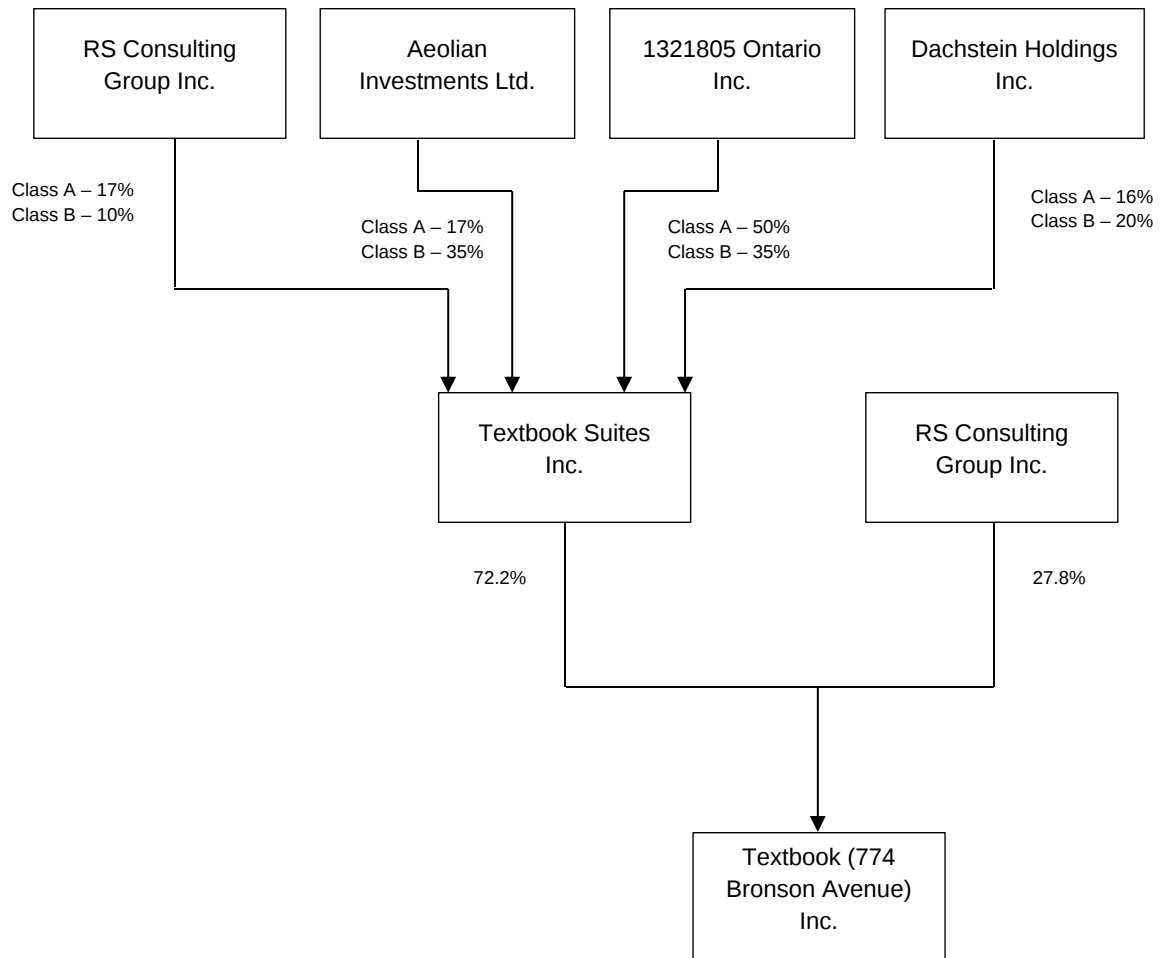
¹ Sourced from the Affidavit of John Davies sworn December 6, 2016 filed in support of the Davies Developers' application for protection under the *Companies' Creditors Arrangement Act*.

Textbook (445 Princess Street) Inc.¹



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Textbook (774 Bronson Avenue) Inc.¹

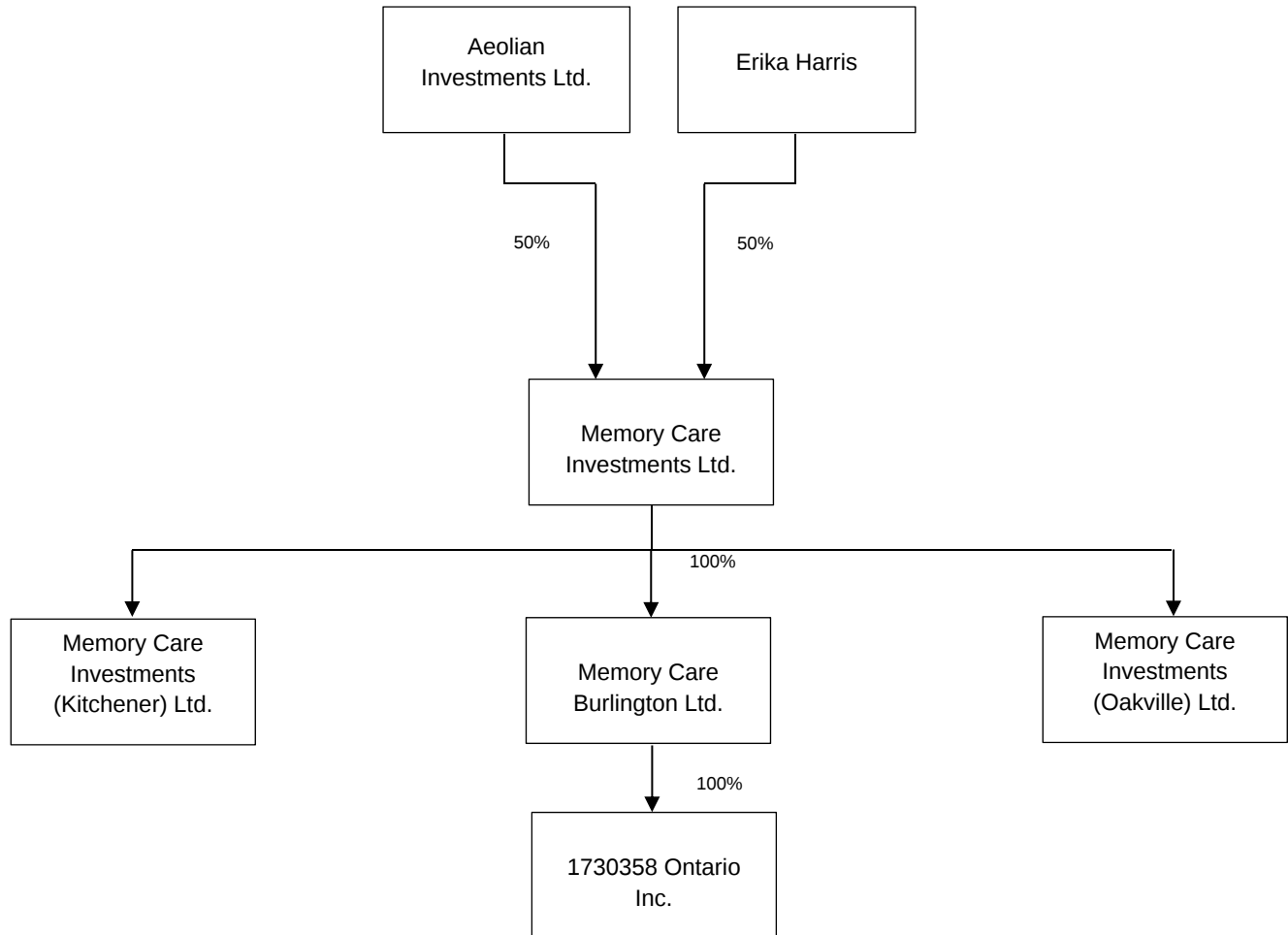


¹ Sourced from the Affidavit of John Davies sworn December 6, 2016 filed in support of the Davies Developers' application for protection under the *Companies' Creditors Arrangement Act*.

Memory Care Investments (Kitchener) Ltd. ¹

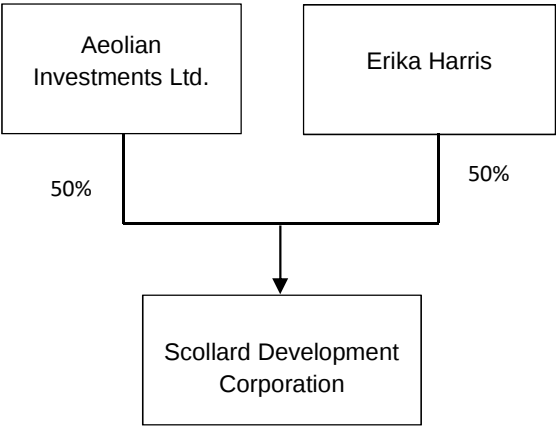
17303858 Ontario Inc.

Memory Care Investments (Oakville) Ltd.

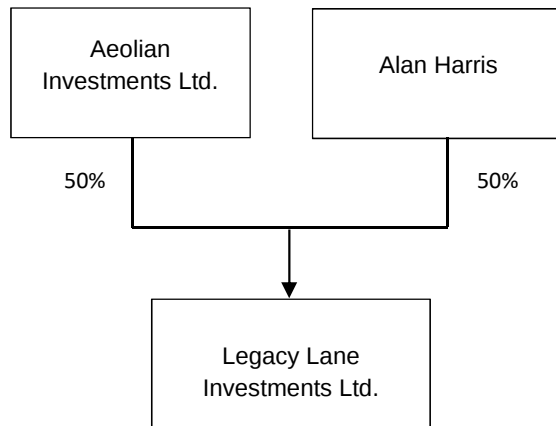


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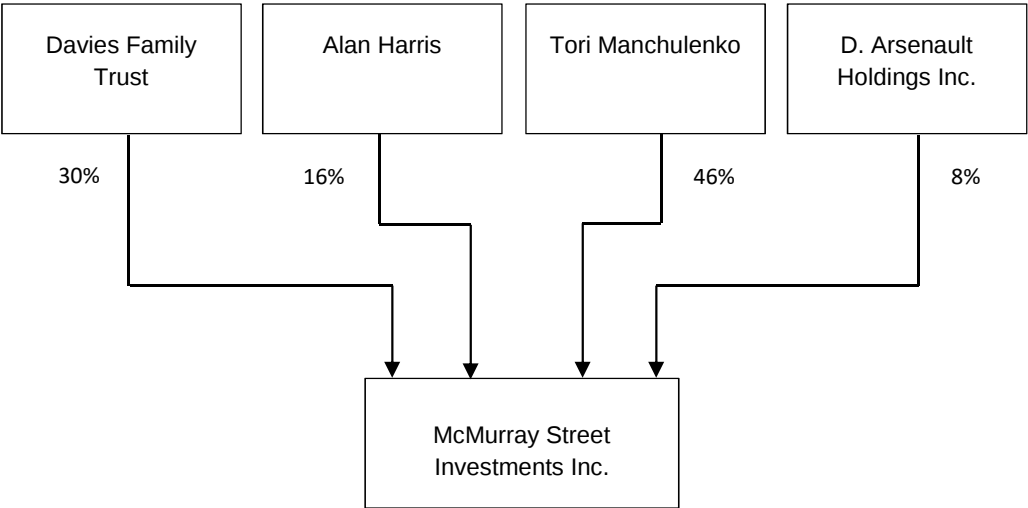
Scollard Development Corporation



Legacy Lane Investments Ltd.



McMurray Street Investments Inc.



Appendix “B”

AMENDED THIS
MODIFIÉ CE

PURSUANT TO
CONFORMÉMENT À

☐ RULE/LA RÈGLE 26.02

☒ THE ORDER OF

L'ORDONNANCE DU

DATED / FAIT LE

May 29/19
Justice Haney
May 29/19

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

REGISTRAR
SUPERIOR COURT OF JUSTICE

REGISTRAR
SUPERIEURE DE JUSTICE

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

B E T W E E N:

GRANT THORNTON LIMITED, IN ITS CAPACITY AS THE COURT-APPOINTED TRUSTEE OF TEXTBOOK STUDENT SUITES (525 PRINCESS STREET) TRUSTEE CORPORATION, TEXTBOOK STUDENT SUITES (555 PRINCESS STREET) TRUSTEE CORPORATION, TEXTBOOK STUDENT SUITES (ROSS PARK) TRUSTEE CORPORATION, 2223947 ONTARIO LIMITED, MC TRUSTEE (KITCHENER) LTD., SCOLLARD TRUSTEE CORPORATION, TEXTBOOK STUDENT SUITES (774 BRONSON AVENUE) TRUSTEE CORPORATION, 7743718 CANADA INC., KEELE MEDICAL TRUSTEE CORPORATION, TEXTBOOK STUDENT SUITES (445 PRINCESS STREET) TRUSTEE CORPORATION AND HAZELTON 4070 DIXIE ROAD TRUSTEE CORPORATION, AND KSV KOFMAN INC., IN ITS CAPACITY AS THE COURT-APPOINTED RECEIVER AND MANAGER OF CERTAIN PROPERTY OF SCOLLARD DEVELOPMENT CORPORATION, MEMORY CARE INVESTMENTS (KITCHENER) LTD., MEMORY CARE INVESTMENTS (OAKVILLE) LTD., 1703858 ONTARIO LTD., LEGACY LANE INVESTMENTS LTD., TEXTBOOK (525 PRINCESS STREET) INC., TEXTBOOK (555 PRINCESS STREET) INC., TEXTBOOK (445 PRINCESS STREET) INC., MCMURRAY STREET INVESTMENTS INC., TEXTBOOK (774 BRONSON AVENUE) INC. AND TEXTBOOK ROSS PARK INC.

Plaintiffs

- and -

AEOLIAN INVESTMENTS LTD., JOHN DAVIES IN HIS PERSONAL CAPACITY AND IN HIS CAPACITY AS TRUSTEE OF BOTH THE DAVIES ARIZONA TRUST AND THE DAVIES FAMILY TRUST, JUDITH DAVIES IN HER PERSONAL CAPACITY AND IN HER CAPACITY AS TRUSTEE OF THE DAVIES FAMILY TRUST, GREGORY HARRIS IN HIS PERSONAL CAPACITY AND IN HIS CAPACITY AS TRUSTEE OF THE DAVIES FAMILY TRUST, HARRIS + HARRIS LLP, NANCY ELLIOT, ELLIOT LAW PROFESSIONAL CORPORATION, WALTER THOMPSON, 1321805 ONTARIO INC., BRUCE STEWART, THE TRADITIONS DEVELOPMENT COMPANY LTD., DAVID ARSENAULT, JAMES GRACE, BHAKTRAJ SINGH A.K.A. RAJ SINGH, RS CONSULTING GROUP INC., TIER 1 TRANSACTION ADVISORY SERVICES INC., JUDE CASSIMY, FIRST COMMONWEALTH MORTGAGE CORPORATION, MEMORY CARE INVESTMENTS LTD., TEXTBOOK SUITES INC., TEXTBOOK STUDENT SUITES INC. AND MICHAEL CANE

Defendants

AMENDED STATEMENT OF CLAIM

TO THE DEFENDANTS

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

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

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

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

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

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

DATE: October 3, 2018

Issued by:

"M. Sawka"

Local Registrar

Address of Court Office:

330 University Avenue

9th Floor

Toronto, Ontario

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

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

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

- and -

95 Loch Erne Lane
Nobleton, ON L0G 1N0

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

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

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

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

- and -

1248 Atkins Drive
Newmarket, ON L3X 0C3

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

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

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

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

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

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

- and -

20 Damian Drive
Richmond Hill, ON L4B 3Z9

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

- and -

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

- and -

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

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

- and -

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

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

- and -

337 Castlemore Ave.
Markham, ON L6C 2Y1

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

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

- and -

24 Country Club Drive
King City, ON L7B 1M5

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

- and -

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

- and -

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

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

- and -

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

- and -

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

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

CLAIM

Definitions

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

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

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

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

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

(lll) “**SMIs**” means syndicated mortgage investments, specifically in respect of the Tier 1 Trust Companies;

(mmm) “**Stewart Co.**” means the defendant Traditions Development Company Ltd.;

(nnn) “**Stewart Defendants**” means Mr. Stewart and Stewart Co.;

(ooo) “**Thompson Co.**” means the defendant 1321805 Ontario Inc.;

(ppp) “**Thompson Defendants**” means Mr. Thompson and Thompson Co.;

(qqq) “**Tier 1 Advisory**” means the defendant Tier 1 Transaction Advisory Services Inc.;

(rrr) “**Tier 1 Mortgage**” means Tier 1 Mortgage Corporation;

(sss) “**Tier 1 Trust Companies**” means 445 Trust Co., 525 Trust Co., 555 Trust Co., Bronson Trust Co., Hazelton Trust Co., Keele Medical Trust Co., Kitchener Trust Co., McMurray Trust Co., Oakville/Burlington/Guildwood/Legacy Lane Trust Co., Ross Park Trust Co, and Scollard/Vaughan Crossings/Silver Seven Trust Co.;

(ttt) “**Trust Companies**” means 445 Trust Co., 525 Trust Co., 555 Trust Co., Bronson Trust Co., Kitchener Trust Co., McMurray Trust Co., Oakville/Burlington/Guildwood/Legacy Lane Trust Co. (solely in its capacity as lender to Oakville, Burlington and Legacy Lane), Ross Park Trust Co, and Scollard/Vaughan Crossings/Silver Seven Trust Co. (solely in its capacity as lender to Scollard);

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

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

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

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

Relief Sought

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

(a) As against the Singh Defendants:

- (i) a constructive trust and/or damages in the sum of \$106 million or, in the alternative, damages in an amount to be assessed or determined by this Honourable Court for fraud, deceit, conspiracy, conversion and/or unjust enrichment, and, additionally, as against Mr. Singh, for breach of fiduciary duty, knowing assistance in breach of fiduciary duty and/or negligence;
- (ii) a declaration that the liability of Mr. Singh in his personal capacity arises out of fraud, embezzlement, misappropriation and/or defalcation while acting in a fiduciary capacity; and/or that the liability of the Singh Defendants arises from obtaining property or services by false pretenses or fraudulent misrepresentation, for purposes of sections 178(1)(d) and/or

178(1)(e) of the *Bankruptcy and Insolvency Act*, RSC, 1985, c B-3, as amended;

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

(b) As against the Davies Defendants:

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

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

- (ii) a declaration that the liability of Mr. Davies in his personal capacity arises out of fraud, embezzlement, misappropriation and/or defalcation while acting in a fiduciary capacity; and/or that the liability of the Davies Defendants arises from obtaining property or services by false pretenses or fraudulent misrepresentation, for purposes of sections 178(1)(d) and/or 178(1)(e) of the *Bankruptcy and Insolvency Act*, RSC, 1985, c B-3, as amended;
- (iii) orders for restitution, an accounting, and disgorgement of all assets, properties, and funds belonging to the Tier 1 Trust Companies and the Receivership Companies, and improperly diverted by or to any of the Davies Defendants or any person, corporation or other entity on any of their behalf;
- (iv) a declaration that the plaintiffs are entitled to trace the assets, properties and funds of the Tier 1 Trust Companies and the Receivership Companies into the hands of the Davies Defendants, and a declaration that the Davies Defendants hold those assets, properties, and funds as constructive trustees for the plaintiffs; and
- (v) a constructive trust and tracing or following order in respect of all assets, properties, and funds belonging to the Tier 1 Trust Companies and the Receivership Companies, and improperly diverted by or to any of the

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

~~(vi) an interim, interlocutory and permanent order, in the form of a worldwide *Mareva* injunction, restraining the Davies Defendants, and, as applicable, their respective servants, employees, agents, assigns, officers, directors and anyone else acting on their behalf or in conjunction with any of them, whether directly or indirectly, from selling, liquidating, removing, dissipating, alienating, transferring, assigning, encumbering, or similarly dealing with any of their assets, wherever situated.~~

(c) As against the Stewart Defendants:

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

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

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

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

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

(f) As against Mr. Grace:

- (i) a constructive trust and/or damages in the sum of \$8.4 million or, in the alternative, damages in an amount to be assessed or determined by this Honourable Court for breach of fiduciary duty, knowing assistance in breach of fiduciary duty, negligence and/or unjust enrichment;
- (ii) orders for restitution, an accounting, and disgorgement of all assets, properties, and funds belonging to the Tier 1 Trust Companies and the Receivership Companies, and improperly diverted by or to Mr. Grace or any person, corporation or other entity on his behalf;
- (iii) a declaration that the plaintiffs are entitled to trace the assets, properties and funds of the Tier 1 Trust Companies and the Receivership Companies into the hands of Mr. Grace, and a declaration that Mr. Grace holds those assets, properties, and funds as a constructive trustee for the plaintiffs; and

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

(g) As against Mr. Cassimy:

- (i) a constructive trust and/or damages in the sum of \$8.4 million or, in the alternative, damages in an amount to be assessed or determined by this Honourable Court for, breach of fiduciary duty, knowing assistance in breach of fiduciary duty, negligence and/or unjust enrichment;
- (ii) orders for restitution, an accounting, and disgorgement of all assets, properties, and funds belonging to the Tier 1 Trust Companies, and improperly diverted by or to Mr. Cassimy or any person, corporation or other entity on his behalf;
- (iii) a declaration that the Trustee is entitled to trace the assets, properties and funds of the Tier 1 Trust Companies into the hands of Mr. Cassimy, and a declaration that Mr. Cassimy holds those assets, properties, and funds as a constructive trustee for the Trustee; and
- (iv) a constructive trust and tracing or following order in respect of all assets, properties, and funds belonging to the Tier 1 Trust Companies, and

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

(h) As against FCMC:

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

(i) As against each of the Harris Defendants:

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

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

- (iii) pre-judgment and post-judgment interest on a compound basis or, alternatively, pursuant to the *Courts of Justice Act*, RSO 1990, c C 43, as amended;
- (iv) costs of this action, including the costs of any and all interim and interlocutory motions, on a full indemnity or other appropriate scale, including all applicable taxes; and
- (v) such further and other relief, including equitable relief and constructive trusts in favour of the plaintiffs, as this Honourable Court deems just.

Overview

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

The Receivership Projects

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

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

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

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

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

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

The Non-Receivership Projects

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

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

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

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

Parties

(a) Plaintiffs

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

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

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

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

(b) Davies Defendants

17. The defendant, Mr. Davies, is an individual residing in King City, Ontario. He was, at all material times, a director and officer of the Receivership Companies. He was also, at all material times, the trustee and/or representative of the Davies Family Trust, together with Ms. Davies and Mr. Harris (further identified below), and the sole trustee and/or representative of the Davies Arizona Trust.

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

19. The Davies Family Trust and the Davies Arizona Trust are trusts that were established by, or at the direction of, Mr. Davies in or around 2003 and 2013, respectively. The beneficiaries of the Davies Family Trust are Mr. Davies, Ms. Davies and the Davies Children, as well as any future children and issue of Mr. Davies. The beneficiaries of the Davies Arizona Trust are the Davies Children.

20. The defendant, Aeolian, is a company incorporated pursuant to the laws of Ontario. Aeolian's mailing address is Mr. and Ms. Davies' personal residence in King City, Ontario.

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

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

23. Aeolian is also a shareholder of:

- (a) MCIL, which is a shareholder of Kitchener, Oakville and MC Burlington. MC Burlington is the sole shareholder of Burlington;
- (b) TSSI, which is a shareholder of 525 Princess, 555 Princess and Ross Park; and
- (c) TSI, which is a shareholder of 445 Princess and Bronson.

(c) Thompson Defendants

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

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

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

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

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

(d) Stewart Defendants

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

30. Mr. Stewart previously had an indirect ownership interest in MCIL and Legacy Lane.
31. He was formerly a director and officer of certain Receivership Companies, including Legacy Lane, Kitchener, Burlington and Oakville.
32. The defendant, Stewart Co., is a company incorporated pursuant to the laws of Ontario. Mr. Stewart is a director and officer of Stewart Co.
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(e) Singh Defendants

33. The defendant, Mr. Singh, is an individual residing in Richmond Hill, Ontario.
34. He is the sole director, officer and shareholder of each of the Tier 1 Trust Companies (other than 445 Trust Co. and Hazelton Trust Co., for both of which Mr. Cassidy is the sole registered director and officer, although Mr. Singh was a de facto director and officer of these entities).
35. Mr. Singh was also the sole director and officer of three of the five Non-Receivership Development Companies, being Keele Medical, Guildwood and Hazelton.
36. Mr. Singh was also a director and the sole officer of Tier 1 Mortgage, which was a licensed mortgage brokerage firm that promoted and sold the SMIs to public investors.
37. Mr. Singh was also previously a licensed mortgage broker with FCMC, which was also a licensed mortgage brokerage firm that promoted and sold the SMIs to public investors.
38. Mr. Singh's and Tier 1 Mortgage's mortgage brokerage licenses were ultimately revoked by the Financial Services Commission of Ontario in connection with its investigation into the SMIs that form the subject matter of this litigation.

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

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

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

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

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

(f) The defendant Jude Cassimy

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

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

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

47. Mr. Cassimy's and FCMC's licenses were also ultimately revoked by the Financial Services Commission of Ontario in connection with its investigation into the SMIs that form the subject matter of this litigation.

(g) The defendant FCMC

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

(h) The defendant David Arsenault

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

(i) The defendant James Grace

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

(j) Harris Defendants

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

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

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

Trust engaged in any fraudulent, deceitful or other misconduct relating to the Davies Family Trust. Nevertheless, given that the Davies Family Trust improperly received and retained funds that were initially sourced from SMI monies advanced to the Receivership Companies, one or more of the trustees of the Family Trust caused, directed and/or had knowledge of such improper transfers. The role that each of the trustees played (or did not play) in these improper transfers is known only to the Davies Defendants. In any event, each of the trustees of the Family Trust must be named as a defendant to allow the Receiver to obtain the sought after relief regarding the assets improperly funneled to the Davies Family Trust.

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

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

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

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

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

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

(k) Elliott Defendants

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

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

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

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

(l) The defendant MCIL

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

(m) The defendant TSI

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

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

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

(n) The defendant TSSI

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

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

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

(o) The defendant Michael Cane

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

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

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

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

Capital Raised Through SMIs

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

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

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

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

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

Mortgages by the Tier 1 Trust Companies to the Development Companies

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

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

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

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

Faulty and Misleading Appraisals

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

83. The appraisals were based on several other assumptions, including: (i) development costs, as estimated by the applicable Development Company and as set out in the applicable Project pro forma, remaining consistent with the budget; (ii) the necessary planning approvals being obtained in a timely manner; and (iii) the development being commenced, and completed, in a timely manner.

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

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

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

- (c) did not reflect the payment of dividends, which, as described in more detail below, were paid from the initial SMI advances for each of 525 Princess, 555 Princess, Bronson and Ross Park.

85. Further, certain appraisals were based on unrealistic and unattainable development plans that could never come to fruition given, among other things, zoning, planning and other restrictions.

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

SMIs Under Secured

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

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

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

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

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

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

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

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

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

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

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

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

98. Had there not been new financings in other projects that raised additional funds from new investors, which funds were loaned to and among the Receivership Companies to fund pre-existing liabilities and future costs, the Receivership Companies would have been unable much earlier to service interest and other obligations they were required to pay. Accordingly, the scheme as among the Receivership Companies had the hallmarks of a Ponzi scheme as its continuance was dependent upon the raising of ever-increasing sums of new money.

Restrictions on Use of Advanced Funds under the Loan Agreements

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

100. Under the Loan Agreements, the Development Companies covenanted that they would not, without the consent of the applicable Tier 1 Trust Company (subject to certain limited exceptions), “use the proceeds of any Loan Instalment for any purposes other than the development and construction of the project on the Property”.

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

(a) Prohibited Management Fees

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

103. Pursuant to Section 7.02(c) of the Loan Agreements with 525 Princess, 555 Princess, 445 Princess, Ross Park, Bronson and Keele Medical, ordinary course payments to shareholders for amounts related to the management, development and operation of the property are permitted, but

only if such payments are reasonable in relation to the services rendered, unless the written consent of the applicable Tier 1 Trust Company is obtained.

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

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

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

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

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

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

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

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

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

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

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

(b) Improper Transfers to TSI, TSSI and MCIL

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

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

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

114. Of the approximately \$5.5 million transferred to TSI, TSSI and MCIL, approximately \$4.1 million was transferred by cheque. The memo line on each of the cheques indicated that payment was a "loan", notwithstanding that:

(a) none of these "loans" were documented;

(b) no interest has been received by any of the applicable Receivership Companies on account of any such "loan"; and

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

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

(c) Improper Dividends

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

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

117. While the payment of dividends is permitted under the Loan Agreements in certain circumstances, dividends are only to be paid from the "excess proceeds after the [real estate development property] has been acquired". In each instance, Mr. Davies caused, and Mr. Thompson allowed, the dividends to be paid to Aeolian, Thompson Co. and Singh Co. immediately after 525 Princess, 555 Princess, Bronson and Ross Park received the funds from the applicable Trust Company at a time when each of 525 Princess, 555 Princess, Bronson and Ross Park had no profits and insufficient cash to develop their respective Projects. As a result of the payment of

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

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

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

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

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

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

122. Mr. Davies caused, and/or Messrs. Thompson, Stewart and/or Singh allowed, such intercompany transfers to be made as the Receivership Companies' Projects were facing a liquidity

crisis, which necessitated the making of intercompany loans to perpetuate the scheme and avoid defaulting on the loans from the Trust Companies and the Receivership Companies' other obligations. This has the hallmarks of a Ponzi scheme.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

134. Mr. Davies also caused certain of the Receivership Companies to make further payments, totaling approximately \$423,000 to Ms. Davies and certain Davies Children for services purportedly rendered by them in connection with the Projects. To the extent these services were

not provided, or the payments in respect of any services that were provided are unreasonable, these payments are prohibited under the applicable Loan Agreements and constitute a breach of the Loan Agreements.

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

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

(h) The Arizona Property

136. Mr. Davies, in his capacity as sole trustee of the Davies Arizona Trust, owns, among other things, real property municipally described as 35411 N. 66th Place in Carefree, Arizona, United States (the "**Arizona Property**"), that was acquired with funds from Aeolian, which were initially sourced from SMI monies advanced to the Receivership Companies.

137. The Arizona Property was purchased by the Davies Arizona Trust for US\$1.2 million. The funds used to purchase the Arizona Property came from Aeolian, with the BofI Federal Bank having a US\$600,000 mortgage on the Arizona Property. Almost US\$2 million was spent to renovate the Arizona Property following its acquisition.

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

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

(i) Aeolian and Ms. Davies

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

141. At all material times, Aeolian and Ms. Davies knowingly acted as a conduit for Mr. Davies to improperly divert and funnel millions of dollars from the Receivership Companies to himself and his family members for their own personal use and benefit.

(j) Repayment of Purported Loan to Mr. Singh

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

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

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

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

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

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

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

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

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

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

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

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

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

Causes of Action

(a) Causes of Action Asserted by the Receiver Alone

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

150. By virtue of the positions Messrs. Davies, Thompson and Stewart respectively held, Mr. Davies was a fiduciary of each of the Receivership Companies, Mr. Thompson was a fiduciary of 525 Princess, 555 Princess, 445 Princess, Bronson and Ross Park and Mr. Stewart was a fiduciary of Legacy Lane, Kitchener, Burlington and Oakville, and they respectively owed the applicable Receivership Companies fiduciary duties, contractual duties, statutory duties (including pursuant to sections 71 and 134 of the *Business Corporations Act*, RSO 1990, c B 16, as amended) and a duty of care to, among other things:

- (a) act honestly and in good faith with a view to their best interests;

- (b) avoid improper self-dealing;
- (c) avoid conflicts of interest; and
- (d) exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances.

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

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

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

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

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

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

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

157. As an officer of McMurray, Mr. Arsenault was a fiduciary of McMurray and owed it fiduciary duties, contractual duties, statutory duties (including pursuant to sections 71 and 134 of the *Business Corporations Act*, RSO 1990, c B 16, as amended) and a common law duty of care to, among other things, act competently, diligently and in its best interests. In particular, Mr. Arsenault was, at a minimum, required to have a rudimentary knowledge of McMurray's business and exercise a degree of monitoring in order to keep himself appraised of and familiar with the general affairs of the company, including the financial status of the company.

158. Mr. Arsenault failed to act in a competent or diligent manner, or in the company's best interests, as he preferred the interests of management, including Mr. Davies, over the interests of the company itself, in contravention of his duties owed to McMurray. Mr. Arsenault allowed Mr. Davies to engage in gross misconduct and treat McMurray as his own personal fiefdom, without due regard for transparency, disclosure, the avoidance of self-dealing and conflicts of interest, or corporate separateness, amongst other things. Mr. Arsenault's conduct breached the standard of care required of him and he was negligent in the performance of his duties as an officer of McMurray. Mr. Arsenault also assisted Mr. Davies' breach of fiduciary and other legal duties owed to McMurray, and the wider group of Receivership Companies.

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

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

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

161. As an officer of 445 Princess, Mr. Grace was a fiduciary of 445 Princess and owed it fiduciary duties, contractual duties, statutory duties (including pursuant to sections 71 and 134 of the *Business Corporations Act*, RSO 1990, c B 16, as amended) and a common law duty of care to, among other things, act competently, diligently and in its best interests. In particular, Mr. Grace was, at a minimum, required to have a rudimentary knowledge of 445 Princess' business and exercise a degree of monitoring in order to keep himself apprised of and familiar with the general affairs of the company, including the financial status of the company.

162. Mr. Grace failed to act in a competent or diligent manner, or in the company's best interests, as he preferred the interests of management, including Mr. Davies, over the interests of the company itself, in contravention of his duties owed to 445 Princess. Mr. Grace allowed Mr. Davies to engage in gross misconduct and treat 445 Princess as his own personal fiefdom, without due regard for transparency, disclosure, the avoidance of self-dealing and conflicts of interest, or corporate separateness, amongst other things. Mr. Grace's conduct breached the standard of care required of him and he was negligent in the performance of his duties as an officer of 445 Princess. Mr. Grace also assisted Messrs. Davies' and Thompson's breach of their fiduciary and other legal duties owed to 445 Princess, and the wider group of Receivership Companies.

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

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

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

Fraud and Deceit

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

- (a) intentionally and knowingly/recklessly creating, facilitating and/or allowing the creation of Project pro formas containing false information that in no way reflected commercial reality to obtain artificially inflated appraisals that were used in connection with the SMI offerings and the raising of funds from investors;
- (b) intentionally and knowingly/recklessly creating, using and/or allowing inaccurate and/or misleading appraisals containing false information to be created and/or used to raise funds from investors;

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

transfers for which no goods or services, or no goods or services of any material value, were provided;

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

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

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

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

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

Conspiracy

169. The Davies Defendants and Singh Defendants acted in combination or in concert, by agreement or with a common design, to perpetrate the scheme described herein. The full particulars of the agreement or common design are only fully known to these Defendants at this time, but further particulars will be provided in advance of trial.

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

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

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

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

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

Conversion

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

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

Unjust Enrichment

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

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

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

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

Constructive Trust(s)

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

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

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

Mr. Cane's Professional Negligence and Breach of Contract

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

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

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

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

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

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

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

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

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

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

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

187. Further particulars may be provided prior to trial.

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

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

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

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

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

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

193. Section 2.01 of the Loan Agreements provide that:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Improper Legal Fees Paid to the Harris Defendants

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

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

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

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

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

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

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

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

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

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

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

220. Instead of fulfilling their duties, Mr. Singh and Mr. Cassimy, solicited and/or knowingly obtained appraisal reports that did not reflect the as-is value of the applicable real properties at the time of the SMIs but, rather, reflected the hypothetical value of the fully developed Projects (premised on the successful completion of the proposed developments), such that the Tier 1 Trust Companies and their investors were presented a false and/or misleading appraisal value that failed to disclose to the Tier 1 Trust Companies and their investors that the true values of the properties and corresponding security were inadequate to cover the respective SMIs.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Knowing Assistance in Breach of Fiduciary Duty

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Improper Legal Fees Paid to the Elliot Defendants

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

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

Losses and Harm

252. The conduct of the Defendants as described above has caused, and is continuing to cause, reasonably foreseeable and proximate damage to the Tier 1 Trust Companies, the Receivership Companies and their respective creditors, including financial losses and loss of profitable business opportunities, the full extent of which has not yet fully materialized and is not yet fully known to the plaintiffs at this time.

253. Specifically:

(a) Scollard/Vaughan Crossings/Silver Seven Trust Co.:

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

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

(iii) held an SMI in the principal amount of approximately \$6 million over Silver Seven's real property, which was registered on title behind encumbrances in excess of \$15 million. The Court approved a settlement transaction pursuant to which Silver Seven paid approximately \$2.9 million to the Trustee in exchange for certain conditional releases and an assignment.

(b) Kitchener Trust Co. holds an SMI in the principal amount of approximately \$10.6 million over Kitchener's real property, which is registered on title behind encumbrances of approximately \$1.5 million. No transaction has resulted to date from the Receiver's thorough marketing and sale process for Kitchener's real property, which real property was purchased by Kitchener in 2014 for \$3.95 million.

(c) Oakville/Burlington/Guildwood/Legacy Lane Trust Co.:

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

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

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

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

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

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

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

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

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

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

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

259. Some or all of the Defendants not only stripped the Receivership Companies of millions of dollars and preferred their own interests over those of the Receivership Companies and their creditors (including the investing public), but they also deprived the Receivership Companies of the opportunity to pursue legitimate and profitable real estate development and other revenue-generating business opportunities, causing considerable additional losses and damages to the Receivership Companies.

260. The plaintiffs have incurred, and are continuing to incur, costs and out-of-pocket expenses relating to investigations into the Defendants' acts and omissions, which special damages shall be particularized prior to trial.

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

Punitive Damages

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

Mareva Injunction

~~263. Following their improper conduct as described above, and after the commencement of the initial receivership proceeding for Scollard in February 2017, Mr. and Ms. Davies embarked on a~~

~~course of conduct designed to liquidate their assets and put them beyond the reach of the Receivership Companies and their creditors. Among other things, on April 25, 2017, Mr. Davies sold his family cottage located in Gravenhurst, Ontario for approximately \$3 million.~~

264. — ~~Mr. and Ms. Davies also attempted, and continue to attempt, to sell their personal residence located in King City, Ontario, which they jointly own in their capacities as trustees of the Davies Family Trust, as well as their personal belongings, such as art, jewelry and other assets.~~

265. — ~~Given the duplicitous and deceitful manner in which Mr. Davies, Ms. Davies and Aeolian have acted, together with all the surrounding circumstances, including Mr. Davies' sale of the family cottage and Mr. and Ms. Davies' attempted sale of their personal residence as well as their sale and transferring of other personal assets, there is a real and demonstrated risk that Mr. and Ms. Davies as well as Aeolian, the Davies Family Trust and the Davies Arizona Trust (all three of which are controlled by Mr. Davies and/or Ms. Davies) will dissipate assets and/or permanently abscond with the Receivership Companies' funds to avoid enforcement of any judgment the plaintiffs may ultimately obtain. In all the circumstances, interim, interlocutory and permanent injunctive relief, *inter alia*, enjoining these Defendants from accessing, liquidating, dissipating, alienating or otherwise dealing with their assets is necessary, just and appropriate.~~

266. — ~~The conduct of the Davies Defendants as described above has also caused, and is continuing to cause, irreparable harm to the Receivership Companies and their creditors. In the absence of relief from this Honourable Court, the Davies Defendants will be able to liquidate and alienate assets, and/or continue to liquidate and alienate assets, thereby causing the Receivership Companies and their creditors further harm which would not be compensable in damages alone.~~

Legislation

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

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

Place of Trial

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

October 3, 2018
May 29, 2019

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

v.

JOHN DAVIES et al.

Plaintiffs

Defendants

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

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

PROCEEDING COMMENCED AT TORONTO

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Appendix “C”



**Fourth 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.**

June 6, 2017

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COURT FILE NO: CV-17-11689-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

IN THE MATTER OF THE RECEIVERSHIP OF SCOLLARD DEVELOPMENT CORPORATION, MEMORY CARE INVESTMENTS (KITCHENER) LTD., MEMORY CARE INVESTMENTS (OAKVILLE) LTD., 1703858 ONTARIO INC., LEGACY LANE INVESTMENTS LTD., TEXTBOOK (525 PRINCESS STREET) INC. AND TEXTBOOK (555 PRINCESS STREET) INC.

AND IN THE MATTER OF A MOTION PURSUANT TO SUBSECTION 243(1) OF THE BANKRUPTCY AND INSOLVENCY ACT, R.S.C. 1985, C. B-3, AS AMENDED, AND SECTION 101 OF THE COURTS OF JUSTICE ACT, R.S.O. 1990, C. C.43, AS AMENDED

FOURTH REPORT OF
KSV KOFMAN INC.
AS RECEIVER AND MANAGER

JUNE 6, 2017

1.0 Introduction

1. This report ("Report") is filed by KSV Kofman Inc. ("KSV") as receiver and manager of the real property ("Real Property") registered on title as being owned by, and of all of the assets, undertakings and properties acquired for or used in relation to the Real Property (together with the Real Property, the "Property"), of the following entities:
 - a) Scollard Development Corporation ("Scollard");
 - b) Memory Care Investments (Kitchener) Ltd. ("Kitchener");
 - c) Memory Care Investments (Oakville) Ltd. ("Oakville");
 - d) 1703858 Ontario Inc. ("Burlington")¹;
 - e) Legacy Lane Investments Ltd. ("Legacy Lane");
 - f) Textbook (555 Princess Street) Inc. ("555 Princess"); and
 - g) Textbook (525 Princess Street) Inc. ("525 Princess").

Collectively the above entities are referred to as the "Companies".

¹ This entity owns the real property on which the development known as "Memory Care (Burlington)" was to be developed. Burlington's shares are owned by Memory Care Investments (Burlington) Ltd., which is defined below as MC Burlington.

2. Pursuant to an order of the Ontario Superior Court of Justice (“Court”) dated October 27, 2016, Grant Thornton Limited was appointed Trustee (“Trustee”) of eleven entities² which raised monies from investors (“Investors”) through syndicated mortgage investments (collectively, the “Trustee Corporations”)³. Eight of the Trustee Corporations then advanced these monies on a secured basis pursuant to loan agreements (“Loan Agreements”) between the Trustee Corporation and one or more “Davies Developer”. The Davies Developers is a defined term used throughout this Report and includes the Companies and the following entities, none of which is in receivership:
 - a) Textbook Ross Park Inc. (“Ross Park”);
 - b) Textbook (445 Princess Street) Inc. (“445 Princess”);
 - c) Textbook (774 Bronson Avenue) Inc. (“Bronson”); and
 - d) McMurray Street Investments Inc. (“McMurray”).
3. A copy of each Loan Agreement and each Davies Developer’s corporate profile report is attached as Appendix “A”.
4. On January 21, 2017, the Trustee brought a motion for an order (“Receivership Order”) appointing KSV as receiver and manager (“Receiver”) of the Property owned by Scollard. On February 2, 2017, the Court made the Receivership Order.
5. Following its appointment as the Receiver of Scollard, the Receiver reviewed Scollard’s books and records and identified transactions between Scollard and certain of the other Davies Developers and other related parties, including shareholders of the Davies Developers, John Davies (“Davies”), Walter Thompson (“Thompson”), Raj Singh (“Singh”) and Greg Harris (“Harris”), and/or corporations and individuals related to each of them.
6. On April 18, 2017, the Trustee brought a motion, *inter alia*, seeking orders:
 - a) amending and restating the Receivership Order to add the Property owned by the Companies (except for Scollard, which was already in receivership) (the “Amended and Restated Receivership Order”); and
 - b) compelling Davies to immediately deliver to the Trustee all of the bank statements for the Davies Developers (the “Production Order”).
7. On April 28, 2017, the Court made the Amended and Restated Receivership Order and the Production Order.

² 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

³ Individuals who hold their mortgage investment in a Registered Retirement Savings Plan have a mortgage with Olympia Trust instead of the applicable Trustee Corporation.

8. The Amended and Restated Receivership Order was further amended and restated by a Court order made on May 2, 2017 to rectify certain clerical errors.
9. Following the issuance of the Amended and Restated Receivership Order, the Receiver commenced a review of the receipts and disbursements of the Companies (except for Scollard, which review was already underway). Additionally, at the request of the Trustee, the Receiver reviewed the receipts and disbursements of Ross Park, 445 Princess, Bronson and McMurray. The review of the books and records, Loan Agreements and other materials discussed in this Report is defined as the “Review”.
10. The Receiver has learned that Davies recently sold his cottage and his house. The sale of the cottage closed on April 25, 2017. As of June 5, 2017, the sale of the house does not appear to have closed.

1.1 Purposes of this Report

1. The purposes of this Report are to:
 - a) provide the Court with the Receiver’s findings concerning the Review; and
 - b) recommend that the Court issue orders:
 - granting an interim Mareva injunction against Davies and Aeolian Investments Ltd., (“Aeolian”), an entity owned by Davies’ wife and daughters, such that both are restrained from disposing of their property; and
 - compelling Textbook Suites Inc. (“TSI”) and Textbook Student Suites Inc. (“TSSI”), the shareholders of the Textbook Entities (as defined in Section 2.1), Memory Care Investments Ltd (“MCIL”), the shareholder of the Memory Care Entities (as defined in Section 2.2) and Aeolian to forthwith provide the Receiver with a copy of their books and records.

1.2 Restrictions

1. In preparing this Report, the Receiver has reviewed the following information:
 - a) all of the materials filed in this proceeding, the proceeding appointing the Trustee, and the failed application of the Davies Developers under the *Companies’ Creditors Arrangement Act* (“CCAA”);
 - b) unaudited financial information of the Companies;
 - c) accounting records and bank statements for the Companies, which were provided to the Receiver by Davies;
 - d) accounting records and bank statements for Memory Care Investments Burlington Ltd. (“MC Burlington”), a non-receivership entity which owns the shares of Burlington, which were provided to the Receiver by Davies; and
 - e) bank statements for Ross Park, 445 Princess, Bronson and McMurray, which were provided to the Trustee pursuant to the Production Order, and which were subsequently provided by the Trustee to the Receiver.

2. The Receiver has not performed an audit of the financial information addressed in this Report. The findings discussed herein remain subject to further review. The Receiver expresses no opinion or other form of assurance with respect to the financial information presented in this Report.
3. The Receiver has had a small number of discussions with, and corresponded on a limited basis with, Davies and Harris regarding certain of the matters addressed in this Report. The Receiver has not spoken to or communicated with Singh or Thompson regarding the matters addressed in this Report. None of Davies, Thompson, Singh, Harris or any other person or entity referenced herein has had the opportunity to respond to this Report.
4. The Receiver has neither had access to the books, records and bank statements of Aeolian, TSI, TSSI or MCIL, nor the books and records of Ross Park, 445 Princess, Bronson and McMurray.
5. The Receiver has no knowledge of the business interests and activities of Aeolian other than those discussed in this Report.
6. The Davies Developers poorly documented their transactions and their books and records do not appear to be well maintained. Examples include, but are not limited to:
 - a) Burlington's accounting records appear to be inaccurate and/or incomplete. Burlington's balance sheet does not reflect any debt owing to a Trustee Corporation or the real property owned by Burlington. A copy of Burlington's balance sheet as at May 2, 2017 is attached as Appendix "B"; and
 - b) the Davies Developers paid millions of dollars in management fees and transferred millions of dollars – purportedly by way of loans - to related parties but appear to have never entered into any management services agreements or to have documented the terms of the loans.
7. **No party has contested or disputed any of the findings in the Receiver's First Report dated April 5, 2017, which addressed issues similar to those discussed in this Report.** A copy of the First Report (without appendices) is attached as Appendix "C".

1.3 Currency

1. All currency references in this Report are to Canadian dollars.

2.0 Background⁴

1. The Davies Developers are developers of student residences, accommodations for people suffering from various forms of cognitive impairment and low-rise condominiums. All but one of the Davies Developers' projects (collectively the "Projects") are in pre-construction⁵.
2. The amounts borrowed by the Davies Developers total approximately \$119.940 million⁶, including approximately \$93.675 million in secured debt owing to the Trustee Corporations (being monies raised by the Trustee Corporations from Investors) and \$23.675 million owing to other mortgage lenders (the "Other Lenders"). The Receiver understands that all of the obligations owing to Other Lenders rank in priority to the Trustee Corporations.
3. The funds advanced from the Trustee Corporations to the Davies Developers were to be used to purchase real property and to pay the soft costs associated with the development of the Projects.
4. In raising monies from Investors:
 - a) the Davies Developers covenanted that they would not, without the consent of the applicable Trustee Corporation, "use the proceeds of any Loan Instalment for any purposes other than the development and construction of the project on the Property" (Section 7.02 (g) of the various Loan Agreements);⁷
 - b) all of the Trustee Corporations were to have a first ranking security interest against the applicable Davies Developer's property (Section 5.01 of the various Loan Agreements), with the exception of Ross Park, Bronson and 445 Princess, in which case the Trustee Corporations were to have a second ranking security interest behind existing mortgages; and
 - c) the security interests granted to the Trustee Corporations would only be subordinated in certain defined circumstances, such as to construction financing of certain specified maximum amounts and to Tarion warranty bond mortgage security (Section 5.01 of the various Loan Agreements). This was also noted on certain of the advertising materials, as evidenced by the Kitchener brochure attached as Appendix "D".

⁴ Unless otherwise noted, the background information in this section is sourced from the Affidavit of John Davies sworn December 6, 2016 filed in support of the Davies Developers' application for CCAA protection.

⁵ Footings and foundations have been laid down at the Project owned by Burlington.

⁶ Represents the principal amounts owed, excluding interest and fees.

⁷ The Loan Agreements for 445 Princess, 525 Princess, 555 Princess, Ross Park, Scollard and Bronson contain a carve-out allowing the Davies Developer to earn interest income on funds not immediately required to be expended.

2.1 Textbook Entities

1. The entities in the table below are defined in this Report as the “Textbook Entities”. The Textbook Entities were intended to develop student residences. The table below provides the purchase price for each property and a summary of the Textbook Entities’ secured obligations (principal only).

(unaudited; \$000) Textbook Entity	Purchase Price	Trustee Corporation	Other Lenders	Mortgagee	Total Secured Obligations
555 Princess	2,000	7,927	-	-	7,927
525 Princess	2,400	6,387	-	-	6,387
445 Princess	9,300	8,397	7,000	Kingsett Mortgage Corporation	15,397
Bronson	10,250	10,806	5,700	Vector Financial Services Ltd.	16,506
Ross Park	7,000	11,617	3,500	2377358 Ontario Ltd. and Creek Crest Holdings Inc.	15,117

2. Davies and Thompson are the sole officers and directors of the Textbook Entities⁸.
3. The shareholders of the Textbook Entities are:
 - a) TSI;
 - b) TSSI; and
 - c) RS Consulting Group Inc. (“RSCG”).
4. TSI and TSSI are owned (in different proportions) by Aeolian, RSCG, 1321805 Ontario Inc. (“132”) and Dachstein Holdings Inc. (“Dachstein”). The Receiver understands that:
 - a) Aeolian is owned by Davies’ wife and children;
 - b) RSCG is owned by Singh;
 - c) Singh is also:
 - the sole director, officer and shareholder of the Trustee Corporations⁹;
 - the sole director, officer and shareholder of Tier 1 Transaction Advisory Services Inc. (“Tier 1 Advisory”); and

⁸ As at the date of this Report. Certain of the Davies Developers may have had different or additional officers and directors at different points in time. This footnote applies throughout this Report.

⁹ Except for Textbook Student Suites (445 Princess Street) Trustee Corporation.

- a director and sole officer of Tier 1 Mortgage Corporation (“Tier 1 Mortgage”) and a licensed mortgage agent with First Commonwealth Mortgage Corporation (“FCMC”, and together with Tier 1 Mortgage, the “Brokers”). The Brokers and Tier 1 Advisory promoted and sold the syndicated mortgage investments to Investors;¹⁰
- d) 132 holds its equity interest on behalf of a trust, of which Thompson, among others, is a beneficiary; and
 - e) The equity interest in Dachstein is held on behalf of family members of Harris, a partner at Harris + Harris LLP, legal counsel to the Davies Developers.
5. A corporate chart for the Textbook Entities is attached as Appendix “E”.

2.2 Memory Care Entities

1. The entities in the table below are defined as the “Memory Care Entities”. The Memory Care Entities were intended to develop residences for people suffering from various forms of cognitive impairment. The table below provides the purchase price for each property and a summary of the Memory Care Entities’ present secured obligations (principal only).

(unaudited; \$000) Memory Care Entity	Purchase Price	Trustee Corporation	Other Lenders	Mortgagee	Total Secured Obligations
Kitchener	3,950	10,577	950	2174217 Ontario Inc.	11,527
Burlington	2,500	8,303	1,250	2174217 Ontario Inc.	9,553
Oakville	1,945	9,063	1,250	2174217 Ontario Inc.	10,313

2. Pursuant to the Amended and Restated Receivership Order, MarshallZehr Group Inc. (“MZG”) made loans to the Receiver of \$1.475 million, \$1.775 million and \$1.662 million, and was granted a Court-ordered super-priority charge for these amounts on the properties owned by Kitchener, Burlington and Oakville, respectively. The MZG loans were used to repay the mortgages referenced in the table as owing to 2174217 Ontario Inc. (including principal, interest and fees) and to fund the fees and costs of the Kitchener, Burlington and Oakville receivership proceedings.
3. Davies is the sole director and officer of the Memory Care Entities.
4. MCIL is the shareholder of Kitchener and Oakville¹¹.
5. Burlington is a wholly owned subsidiary of MC Burlington. MCIL is the sole shareholder of MC Burlington.

¹⁰ The information concerning the Brokers and Tier 1 Advisory is sourced from the Affidavit of Mohammed Ali Marfatia sworn October, 20 2016 filed in support of the application by the Superintendent of Financial Services (“FSCO”) for an order appointing a receiver and manager over the property of the Trustee Corporations.

¹¹ The Class “B” shares of Oakville are owned by MCIL. The Class “A” preferred shares are owned by investors in the syndicated mortgage investment for Oakville.

6. MCIL is owned by Aeolian (50%) and Erika Harris (50%). Ms. Harris is the mother of Harris.
7. The Kitchener, Burlington and Oakville Loan Agreements prohibited each of them from granting a first ranking security interest in its real property to any lender other than the applicable Trustee Corporations, except in connection with construction financing.
8. A corporate chart for the Memory Care Entities is provided in Appendix "F".

2.3 Scollard

1. The real property owned by Scollard was purchased for \$9 million. Scollard was intended to develop a condominium project known as "Boathaus".
2. Scollard borrowed \$13.596 million from Investors.
3. Pursuant to the Receivership Order, Downing Street Financial Inc. ("Downing") made a \$3.5 million loan to the Receiver and was granted a super-priority Court ordered charge on the Property owned by Scollard. The Downing facility repaid a mortgage owing to Firm Capital Mortgage Corporation in the approximate amount of \$2.5 million and the balance is being used to fund the fees and costs of Scollard's receivership proceedings.
4. Three liens totalling approximately \$800,000 have been registered on title against the Scollard Real Property. The Receiver's counsel is reviewing the lien claims to determine their validity and priority.
5. Davies is the sole director and officer of Scollard.
6. The shareholders of Scollard are Aeolian (50%) and Erika Harris (50%).
7. The Scollard Loan Agreement prohibits it from granting a first ranking security interest in its real property to any lender other than the applicable Trustee Corporation, except in connection with construction financing.

2.4 Legacy Lane

1. Legacy Lane's real property was purchased for \$650,000. Legacy Lane was intended to develop a low-rise condominium building consisting of 33 townhomes.
2. Legacy Lane borrowed \$3.478 million from Investors. Legacy Lane has no other secured obligations.
3. Davies is the sole director and officer of Legacy Lane.
4. The shareholders of Legacy Lane are Aeolian (50%) and Alan Harris (50%). Alan Harris is the father of Harris.

2.5 McMurray

1. The real property owned by McMurray was purchased for \$650,000. McMurray was intended to develop 88 residential condominiums and lofts.
2. McMurray borrowed \$3.5 million from Investors.
3. McMurray has a mortgage owing in the amount of \$2 million to Pillar Financial Services Inc. ("Pillar"). The Receiver has not been able to trace the mortgage proceeds received from Pillar into McMurray's bank statements.
4. The sole directors and officers of McMurray are Davies and Harris. The officers of McMurray are Davies, Harris and David Arsenault.
5. The shareholders of McMurray are the Davies Family Trust (30%), Alan Harris (16%), Tori Manchulenko (46%) and D. Arsenault Holdings Inc. (8%). The latter two shareholders appear to be unrelated to any of the other Davies Developers' shareholders.
6. The McMurray Loan Agreement prohibits it from granting a first ranking security interest in its real property to any lender other than the applicable Trustee Corporation, except in connection with construction financing.

3.0 Review of Receipts and Disbursements

1. The table below provides a summary of the Review.¹²

(unaudited; \$000)	Amount	% Receipts / Disbursements
Receipts		
Loan proceeds		
Trustee Corporations	93,675	74.4%
Other loans	26,265	20.8%
	119,940	95.2%
Preference shares (Oakville)	1,000	0.8%
Sales tax refunds	1,717	1.4%
Other related parties	345	0.3%
Sundry and unknown	2,913	2.3%
Total receipts	125,915	100%
Disbursements		
Property related costs		
Purchase of Real Property	48,935	38.9%
Development costs	12,354	9.8%
Subtotal	61,289	48.7%
Payments to Shareholders ¹³ and entities related to Shareholders ¹⁴		
TSSI/TSI	4,384	3.5%
MCIL	1,124	0.9%
Davies and entities related to Davies	6,763	5.4%
Singh and entities related to Singh, including broker commissions	9,407	7.5%
Thompson and entities related to Thompson	1,947	1.5%
Harris and entities related to Harris, excluding professional fees	1,000	0.8%
Textbook (256 Rideau Street) Inc.	3,700	2.9%
Advances to Affiliates	339	0.3%
Subtotal	28,664	22.8%
Interest and fees	14,529	11.5%
FCMC broker commissions ¹⁵	9,988	7.9%
Professional fees	3,357	2.7%
Traditions Development Company	1,487	1.2%
Other related parties	156	0.1%
Other and unknown	6,440	5.1%
Subtotal	35,957	28.5%
Total disbursements	125,910	100.0%
Ending balance	5	

¹² Includes MC Burlington transactions, i.e. the shareholder of Burlington.

¹³ Defined in Section 3.2 below.

¹⁴ Reflects net payments to shareholders.

¹⁵ Of this amount, \$219,000 was paid to third party brokers.

2. The discussion in Section 3.1 to 3.6 below addresses each line item in the table, in the order presented in the table.
3. The table reflects that the Davies Developers had:
 - a) receipts of approximately \$125.915 million, including loans from Trustee Corporations of \$93.675 million and loans of \$26.265 million from Other Lenders; and
 - b) disbursements of approximately \$125.910 million, including:
 - \$48.935 million to purchase Real Property;
 - \$28.664 million to Shareholders and entities related to Shareholders¹⁶;
 - \$14.529 million in interest paid and fees;
 - \$12.354 million in development costs; and
 - \$9.988 million in broker fees paid to FCMC.
4. Schedules of the receipts and disbursements for each Davies Developer are attached as Appendices “G” to “Q”.
5. The table above excludes monies transferred among the Davies Developers, which transfers exceed \$17.2 million. A summary of those transactions is provided in Section 4.0 below.

3.1 Property Related Costs

3.1.1 Real Property Transactions

1. The Davies Developers own eleven properties which were purchased for a total of approximately \$48.935 million.¹⁷ All of the property transactions appear to be at arm’s length, except for the property owned by Kitchener, as discussed in the immediately following section.

3.1.2 Kitchener Property Purchase

1. On June 4, 2013, 2375219 Ontario Ltd. (“237”), an entity in which Singh and Harris have an ownership interest, purchased, in the context of a receivership, a retirement home located at 169 Borden Avenue, Kitchener (the “Kitchener Property”) for \$1.585 million.

¹⁶ Defined in Section 3.2 below.

¹⁷ Excludes the purchase price of the real property owned by McMurray which was purchased for \$650,000 in January 2010.

2. MCIL incorporated Lafontaine Terrace Management Corporation (“Lafontaine”) to discontinue the business of the retirement facility which was operating on the Kitchener property¹⁸. Davies is the sole officer and director of Lafontaine. Further information regarding Lafontaine and 237 is provided in Section 3.2 below.
3. On February 25, 2014, approximately nine months after the retirement home was purchased, the Kitchener Property was sold by 237 to Kitchener for \$3.950 million, apparently netting a gain for 237 in the amount of approximately \$2.365 million. The Kitchener Property was purchased from 237 with funds advanced by Investors to Kitchener.
4. Harris has provided the Receiver with a copy of an Acknowledgement and Direction (the “Acknowledgement”), which Harris has advised was provided to all Kitchener syndicated mortgage investors. The Acknowledgement is attached as Appendix “R”. The Acknowledgement discloses that:
 - a) the Kitchener Property would be acquired from 237;
 - b) the shareholders of 237 would earn a gain on the transaction;¹⁹ and
 - c) Harris and Singh are the shareholders of 237.
5. The Receiver has asked Harris for further details regarding the sale to Kitchener, including confirmation of the amount of the gain earned by 237 and the ownership structure of 237. As of the date of this Report, the Receiver has not received this information.

3.1.3 Development Costs

1. A summary of the development costs paid by the Davies Developers is provided below.

(unaudited; \$000) Davies Developer	Development Costs	Total Disbursements	% of Total Disbursements
McMurray	3,353	8,797	38.1%
Scollard	2,737	20,493	13.4%
Burlington	2,402	9,495	25.3%
Oakville	1,478	11,236	13.2%
Kitchener	762	10,069	7.6%
Ross Park	705	16,963	4.2%
Legacy Lane	502	4,318	11.6%
Bronson	239	15,844	1.5%
555 Princess	74	8,047	0.9%
525 Princess	73	6,548	1.1%
445 Princess	29	14,100	0.2%
Total	12,354	125,910	9.8%

¹⁸ Sourced from the Affidavit of John Davies sworn December 6, 2016 filed in support of the Davies Developers’ application for protection under the *Companies’ Creditors Arrangement Act*.

¹⁹ The Acknowledgement states that 237 funded operating shortfalls. Information is not available to the Receiver so that it can confirm this statement.

2. The table reflects:
 - a) Of the nearly \$126 million that was raised, \$12.354 million (or 9.8% of the total raised) was spent on development costs. Of this amount, \$8.4 million (or 68.7%) of the development costs were spent on the McMurray, Scollard and Burlington Projects.
 - b) Less than \$250,000 was spent on development costs for each of Bronson, 445 Princess, 555 Princess and 525 Princess.

3.2 Payments to Shareholders and Affiliates

1. A summary of the net amounts paid to Davies Developers' shareholders and entities related to and affiliated with the shareholders referenced in the table (collectively, the "Shareholders") is provided in the table below.

(unaudited; \$000)								
Davies Developer	TSI/TSSI	MCIL	Davies Entities	Singh Entities	Thompson Entities	Harris Entities	Other	Total
Oakville	(35)	305	1,231	2,142	-	-	2	3,645
Ross Park	1,554	2	499	434	749	250	1,267	4,755
Kitchener	(48)	128	510	2,579	-	-	111	3,280
525 Princess	880	4	340	483	340	250	16	2,313
555 Princess	786	3	408	401	408	250	1,478	3,734
Burlington	(145)	199	602	1,444	-	-	110	2,210
Scollard	(27)	181	1,310	286	-	-	75	1,825
Bronson	576	-	127	524	250	250	56	1,783
445 Princess	843	48	-	264	200	-	767	2,122
Legacy Lane	-	44	363	556	-	-	207	1,170
McMurray	-	210	1,373	294	-	-	(50)	1,827
Total	4,384	1,124	6,763	9,407	1,947	1,000	4,039	28,664

2. A summary of these payments, including whether they were disclosed in the Loan Agreements, is provided in the table below.

(unaudited; \$'000)	TSI/TSSI	MCIL	Davies	Singh	Thompson	Harris	Other	Amount	Disclosed
Referral and broker fees	-	-	-	5,861	-	-	-	5,861	Yes
Dividends	-	-	875	1,125	1,000	1,000	-	4,000	Yes
	-	-	875	6,986	1,000	1,000	-	9,861	
Moscowitz (section 3.2)	-	-	935	-	-	-	-	935	No
Management Fees	-	-	4,069	-	-	-	-	4,069	No
Loans to Shareholders	3,512	602	-	-	-	-	-	4,114	No
Rideau	-	-	-	-	-	-	3,700	3,700	No
Advances to affiliates	-	-	-	-	-	-	339	339	No
	3,512	602	5,004	-	-	-	4,039	13,157	
Other management fees	-	-	500	-	947	-	-	1,447	Note
Consulting	-	-	-	1,485	-	-	-	1,485	Note
Repayment of loan	-	-	-	650	-	-	-	650	Note
Notary fees	-	-	-	330	-	-	-	330	Note
Family members	-	-	422	-	-	-	-	423	Note
Other	872	522	55	306	-	-	-	1,755	Note
	872	522	977	2,771	947	-	-	6,089	
Less: receipts	-	-	(93)	(350)	-	-	-	(443)	
Total	4,384	1,124	6,763	9,407	1,947	1,000	4,039	28,664	

Note: The Receiver is unable to determine if these transactions are permitted under the Loan Agreements. More information is required.

3. The Receiver's counsel has reviewed the Loan Agreements and other documents provided to Investors ("Ancillary Documents") to determine whether the payments to the Shareholders were disclosed and/or are prohibited. A list of the Ancillary Documents reviewed by the Receiver's counsel is attached as Appendix "S".

Disclosure

- a) **Referral and broker fees (\$5.861 million):** These amounts were disclosed in the Loan Agreements; however, the referral fees paid to Tier 1 Advisory were approximately \$69,000 greater than permitted (discussed in section 3.4 below).
- b) **Dividends (\$4 million):** Entities related to Davies, Thompson, Singh and Harris received \$4 million in dividends. These are disclosed in the Loan Agreements. They were to be paid from the "excess proceeds after the Property has been acquired". In each instance, the dividends were paid immediately after the applicable Davies Developer received the funds from the Trustee Corporation, and after the dividend was paid and related party transactions, the applicable Davies Developer had essentially no further monies to advance its project. These payments contributed to or may have caused each such Davies Developer to become insolvent, if they were not already insolvent at the time of payment. Additionally, the Receiver questions why dividends would be payable from a fundraising, particularly because the Shareholders had not created value for the Investors, no profits were generated (which is typically the source of

dividends) and all of the Davies Developers which paid dividends had negligible or no equity either prior to or shortly following the payment of the dividends.

Prohibited Payments

- c) **Payments to Moscowitz Capital Mortgage Fund II (“Moscowitz”) (\$935,000):** Moscowitz is not a mortgagee on the property owned by McMurray; however, it is a mortgagee on Davies' home. A copy of a title search for Davies' home reflecting the mortgage owing to Moscowitz is attached as Appendix “T”. The McMurray Loan Agreement prohibits these payments.
- d) **Management fees (\$4.069 million):** These amounts were paid to Aeolian from Oakville, Kitchener, Burlington, Scollard, McMurray and Legacy Lane. These payments are prohibited under the Loan Agreements with each of these entities.
- e) **Loans to TSI, TSSI and MCIL (\$4.114 million):** The Davies Developers made loans of approximately \$4.114 million to TSI, TSSI and MCIL, the parent companies of the Textbook Entities and the Memory Care Entities. Each loan was made by cheque and the memo line on each of the cheques indicated that payment was a “loan”. The Loan Agreements do not permit the Davies Developers to make loans. The Receiver is unaware of the terms of these loans and whether they were documented, but the Receiver notes that no interest was received by any Davies Development in respect of any loan.
- f) **Textbook (256 Rideau Street) Inc. (“Rideau”) (\$3.7 million):** The Davies Developers made payments of \$3.7 million to Rideau. The Loan Agreements do not permit the Davies Developers to make these payments and these amounts were not used by the applicable Davies Developer to advance the Project for which the funds were raised.
- g) **Advances to affiliates (\$339,000):** These amounts are comprised of \$324,000 to Lafontaine and \$15,000 to Memory Care Investments (Victoria) Ltd. (“MC Victoria”). Davies is the sole director and officer of Lafontaine and MC Victoria (the shareholders of these entities are not known to the Receiver).
 - Lafontaine: The Receiver understands that Lafontaine was incorporated to discontinue the operations of the retirement facility on the Kitchener Property at the time it was purchased by 237. The payments to Lafontaine were made by Scollard, Legacy Lane, Burlington and Oakville. These payments contravene these entities' Loan Agreements as the payments do not relate to their Projects.
 - MC Victoria: Davies has advised the Receiver that MC Victoria was considering a project in Victoria, British Columbia. The payments to MC Victoria were made by Legacy Lane. This payment contravenes Legacy Lane's Loan Agreement as it did not relate to the Legacy Lane project.

Payments for which Additional Information is Required

- h) **Other management fees (\$1.447 million):** Pursuant to Section 7.02(c) of the Loan Agreements with Bronson, 445 Princess, 525 Princess, 555 Princess and Ross Park, 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. The amounts paid by these entities to their indirect shareholders were \$500,477 (to Aeolian) and \$947,200 (to 132). Davies has advised the Receiver that none of the Davies Developers entered into a management agreement with any party, including with him or any of the Shareholders.
- i) **Consulting and diligence fees (\$1.485 million):** All consulting and diligence fees were paid to Tier 1 Advisory or RSCG. These amounts do not appear to be referenced or disclosed in the Loan Agreements or Ancillary Documents reviewed by the Receiver and its counsel. The consulting fees that were referenced and disclosed in the Ancillary Documents were exhausted by the payment of the referral and broker fees (i.e. 15% to 16% of amounts raised from Investors).
- j) **Repayment of loan to Singh (\$650,000):** The Receiver has no information concerning this loan, including whether a loan was made. The Receiver has asked Harris for information concerning this loan, but it has not been provided as of the date of this Report.
- k) **Notary fees (\$330,000):** These amounts were paid to Tier 1 Advisory by the Davies Developers to have each investor's loan documents notarized. The Receiver has no knowledge of the documents that were notarized and whether these fees are reasonable in the circumstances.
- l) **Payments to Davies' family members (\$423,000):** The permissibility of these payments depends on the services provided, if any, by these individuals. The Receiver has no knowledge of the services provided.
- m) **Other (\$1.755 million):** This amount is largely comprised of payments to TSSI and TSI (\$872,000) and MCIL (\$522,000). The purpose of these payments cannot be determined by the Receiver based on the available books and records. Their permissibility would likely depend on the services provided and the reasonableness of the amounts charged. Given the general prohibition in the Loan Agreements with respect to payments to shareholders, the Receiver and its counsel have concerns regarding these payments.

3.2.1 Textbook and MCIL

1. TSI and TSSI are shareholders of the Textbook Entities. TSI and TSSI received a net amount of \$4.384 million from the entities listed in the table below. Of the amount advanced to TSI and TSSI, \$3.512 million was advanced by way of a loan, which is prohibited, as noted in 3(e) above.

(unaudited; \$000)	Amount
Ross Park	1,554
525 Princess	1,080
445 Princess	843
555 Princess	786
Other	122
	<u>4,384</u>

2. MCIL is the direct shareholder of Oakville and Kitchener, and the indirect shareholder of Burlington. MCIL received a net amount of \$1.124 million from the entities listed in the table below. Of the amount advanced to MCIL, \$602,000 was advanced by way of a loan, which is prohibited as noted in 3(e) above.

(unaudited; \$000)	Amount
Entities owned by MCIL	
Kitchener	128
Burlington	199
Oakville	305
	<u>632</u>
Entities not owned by MCIL	
McMurray	210
Scollard	181
Legacy Lane	44
445 Princess	48
Other	9
	<u>492</u>
Total	<u>1,124</u>

3. TSI, TSSI and MCIL are not subject to insolvency proceedings, and neither the Receiver nor the Trustee has access to their bank statements and/or accounting records. Accordingly, the Receiver is unable to confirm whether the amounts advanced to them were used for development purposes for any of the Davies Developers. As part of the relief sought by the Receiver, the Receiver is seeking an order compelling TSI, TSSI and MCIL to make their books and records available to the Receiver.

3.2.2 Davies Entities

1. The Davies Entities received a net amount of \$6.763 million from the Davies Developers. A summary of the funds received by the Davies Entities is provided below.

(unaudited; \$000)	Amount
Management fees paid to Aeolian	
Scollard	1,244
Oakville	1,112
Kitchener	506
Burlington	592
Legacy Lane	341
McMurray	274
	<u>4,069</u>
Ross Park	249
Other entities	251
	<u>500</u>
	4,569
Dividends paid to Aeolian	
525 Princess	250
555 Princess	250
Ross Park	250
Bronson	125
	<u>875</u>
Payments to family members	
Judith Davies	365
Sarah Davies	29
Y2 Media Group Ltd. (owned by son of John Davies)	14
Jessica Davies	14
	<u>422</u>
Payments to Moscowitz	935
Payments to Davies	55
Less: receipts from Aeolian	<u>(93)</u>
Total	<u>6,763</u>

2. The table reflects that:
 - a) Aeolian received management fees of \$4.569 million, of which \$4.069 million is prohibited under the Scollard, Oakville, Kitchener, McMurray and Burlington Loan Agreements. As noted, Davies has advised the Receiver that there are no management agreements between Aeolian and any of the Davies Developers;
 - b) Aeolian received dividends of \$875,000 from 525 Princess, 555 Princess, Bronson and Ross Park;

- c) Davies' family members and entities related to Davies' family members received approximately \$422,000, including \$365,000 by Judith Davies, Davies' wife; and
- d) McMurray paid \$935,000 to Moscowitz. Moscowitz is not a registered mortgagee on McMurray's real property or any of the other of the Davies Developers' real property. It is a registered mortgagee on Davies' personal residence.

3.2.3 Singh Entities

1. Singh and entities related to Singh (the "Singh Entities") received a net amount of \$9.407 million from the Davies Developers. A summary of the funds received by the Singh Entities is provided below.

(unaudited; \$000)	RSCG	Tier 1 Advisory	Raj Singh	Total
Broker and referral fees	-	5,861	-	5,861
Due diligence and consulting				
Scollard	113	217	-	330
Kitchener	-	116	-	116
Burlington	-	78	-	78
Oakville	158	138	-	296
525 Princess	113	-	-	113
555 Princess	113	-	-	113
445 Princess	226	-	-	226
Bronson	100	-	-	100
Ross Park	113	-	-	113
	936	549	-	1,485
Dividends				
525 Princess	250	-	-	250
555 Princess	250	-	-	250
Ross Park	250	-	-	250
Bronson	375	-	-	375
	1,125	-	-	1,125
Loan payments (Kitchener)	-	-	650	650
Notary fees	-	330	-	330
Unknown	56	250	-	306
Less: receipts	-	(250)	(100)	(350)
Total	2,118	6,740	550	9,407

2. The table reflects:
 - a) Tier 1 Advisory received broker and referral fees of approximately \$5.861 million. (This is discussed in Section 3.4 below);
 - b) RSCG and Tier 1 Transaction received \$1.485 million in due diligence and consulting fees;
 - c) RSCG received \$1.125 million in "dividends" from 525 Princess, 555 Princess, Bronson and Ross Park;

- d) Singh received \$650,000 from Kitchener, which is characterized in the books and records as a loan repayment;
 - e) Tier 1 Advisory received \$330,000 as a reimbursement of notary fees from several Davies Developers (as discussed in Section 3.2 above).
3. Additionally, as a shareholder of 237, Singh participated in the gain on the sale of Kitchener. This transaction is not reflected in the table above. The gain appears to be approximately \$2.365 million; however, the Receiver has asked Harris to provide an accounting for this transaction.

3.2.4 Thompson Entities

- 1. 132 received \$1.947 million from the Davies Developers, comprised of a total of \$1 million in dividends from 525 Princess, 555 Princess, Bronson and Ross Park (\$250,000 from each entity) and \$947,000 in management fees from 525 Princess, 555 Princess, 445 Princess and Ross Park. The Loan Agreements for 525 Princess, 555 Princess, 445 Princess and Ross Park permit the payment of management fees; albeit such amounts are required to be reasonable. Davies has advised that none of the Davies Developers had a management services agreement with any party, including Thompson and entities controlled by Thompson.

3.2.5 Harris Entities

- 1. Dachstein received \$1 million in "dividends" from 525 Princess, 555 Princess, Bronson and Ross Park (\$250,000 from each entity). This is in addition to \$2.4 million in legal fees paid to Harris, which is discussed in Section 3.5 below.
- 2. As a shareholder of 237, Harris participated in the gain on the sale of Kitchener.

3.2.6 Rideau

- 1. Rideau is neither subject to these receivership proceedings nor is it a Davies Developer. Rideau is the registered owner of real properties municipally described as 256 Rideau Street, Ottawa and 211 Besserer Street, Ottawa (jointly, the "Ottawa Property").
- 2. The officers and directors of Rideau are Davies and Thompson.
- 3. According to title searches, the Ottawa Property was purchased by Rideau for \$11 million on or around November 6, 2015. Kingsett has two mortgages totalling \$8.25 million (before interest and fees, which continue to accrue) registered on title to the Ottawa Property.
- 4. The Receiver identified payments of \$3.7 million by the Davies Developers to Rideau, including \$2.75 million paid on October 27, 2015 by 555 Princess (\$1.39 million), Kitchener (\$111,000) and Ross Park (\$1.25 million).
- 5. As set out in the Receiver's Third Report to Court dated May 16, 2017 (the "Third Report"), it appears that monies transferred to Rideau from 555 Princess, Kitchener and Ross Park were used to finance the acquisition of the Ottawa Property. These payments contravene the Loan Agreements of 555 Princess, Kitchener and Ross Park as they are not related to the development of their Projects.

6. On May 16, 2017, the Receiver sought an order that the registrar issue and register Certificates of Pending Litigation (“CPLs”) on and against title to the real property owned by Rideau. On May 17 2017, the Court made the order and the CPLs were subsequently registered (the “May 17 Order”). A copy of the May 17 Order and the Third Report (without appendices) are attached as Appendix “U”, together with the Court’s endorsement. No party has contested the May 17 Order or the Receiver’s Third Report in support of the May 17 Order.

3.3 Interest and fees

1. The Davies Developers paid interest and fees of \$14.529 million, comprised of \$12.191 million in interest paid to the Trustee Corporations and \$2.338 million in interest and fees paid to the Other Lenders.
2. The interest payments to the Trustee Corporations were disclosed in the Loan Agreements.

3.4 Brokers

1. The Brokers and Tier 1 Advisory promoted and sold the syndicated mortgage investments to Investors. The Brokers sold the mortgages through other brokers, who would receive a fee for doing so. The Receiver is not aware of the sharing arrangement between the individual brokers and Tier 1 Mortgage/FCMC.
2. Each of the Loan Agreements includes a provision requiring the Davies Developer to pay:
 - a) 1% of the amounts raised by the relevant Trustee Corporation as a brokerage fee to the Brokers; and
 - b) 15% to 16%²⁰ of the amounts raised by the Trustee Corporation as a referral fee to an entity directed by the Brokers (collectively, the “Broker and Referral Fees”).
3. Broker and Referral Fees totalling \$15.848 million were paid by the Davies Developers, comprised of \$5.861 million to Tier 1 Advisory, \$9.768 million to FCMC and \$219,000 to other referring brokers. Based on the Receiver’s review, the broker and referral fees paid in connection with Kitchener, Burlington and McMurray are \$113,915 greater than permitted under the Loan Agreements, as reflected below.

(unaudited; \$000)		Permitted	Actual	
	Paid to	Referral Fees	Referral Fees	Variance
Kitchener	Tier 1	1,692,288	1,733,088	(40,800)
Burlington	Tier 1	1,328,416	1,356,231	(27,815)
McMurray	Various brokers	480,000	525,300	(45,300)
		3,500,704	3,614,619	(113,915)

4. The remaining referral fees appear to be consistent with the referral fees set out in the various Loan Agreements.

²⁰ Except the McMurray Loan Agreement, which provides fixed referral fees of \$445,000 (12.7% of the funds raised).

3.5 Professional fees

1. A summary of the professional fees paid by the Davies Developers is reflected in the table below.

(unaudited; \$000)	Elliot			
Davies Developer	Harris	Law Firm	Other	Total
Kitchener	189	49	32	270
Oakville	402	68	48	518
Bronson	160	23	61	244
445 Princess	255	29	186	470
Burlington	168	49	42	259
Scollard	308	32	107	447
555 Princess	181	26	11	218
525 Princess	188	26	11	225
Legacy Lane	96	26	27	149
Ross Park	274	26	11	311
McMurray	185	-	62	247
Total	2,406	354	598	3,357

2. The table reflects that:
 - a) \$2.406 million was paid to Harris. The Loan Agreements provide a combined estimate for Harris' legal fees of \$748,060, plus disbursements and HST. Pursuant to the Loan Agreements, Harris was to charge fees ranging \$25,000 to \$35,000 on the first advance under a Loan Agreement and \$15,000 to \$20,000 on subsequent advances. Harris has advised the Receiver that his law firm provided services to the Davies Developers in addition to those contemplated in the Loan Agreements. The Receiver is reviewing Harris' invoices, which were recently provided to it by Harris;
 - b) \$354,000 was paid to Elliot Law Firm ("Elliot"), counsel to the Trustee Corporations. The Loan Agreements provide a combined estimate for Elliot's legal fees of \$287,020, plus disbursements and HST; and
 - c) \$598,000 was paid in other professional fees.

3.6 Traditions Development Company

1. The Memory Care Entities and Legacy Lane made payments to Traditions Development Company ("Traditions") totaling \$1.487 million.
2. Davies has advised the Receiver that:
 - a) the fees paid to Traditions were development management fees relating to the Memory Care Entities and Legacy Lane Projects;

- b) there is no consulting or other agreement between Traditions and either the Memory Care Entities or Legacy Lane; and
 - c) the principal of Traditions, Bruce Stewart, was formerly a director and officer of the Memory Care Entities and Legacy Lane.
3. Harris has provided the Receiver with copies of the directors', officers' and shareholders' registers for each of the Memory Care Entities and Legacy Lane. A copy of the registers is attached as Appendix "V".
4. The Legacy Lane Loan Agreement prohibits the payment of management and consulting fees to Legacy Lane's directors and officers.

4.0 Davies Developer Transactions

1. The table below illustrates that the Davies Developers routinely transferred monies between entities in contravention of the Loan Agreements. The Loan Agreements require that funds advanced from Investors are to be used solely for the Project for which the funds were raised. A summary of the transactions between Davies Developers is provided in the table below.

(unaudited, \$000) Davies Developer	Amounts Received from Other Davies Developers	Amounts Advanced to Other Davies Developers	Net Received/ (Advanced)
McMurray	4,137	401	3,736
Scollard	5,980	2,906	3,074
Legacy Lane	1,023	773	250
Ross Park	838	247	591
555 Princess Street	55	24	31
525 Princess Street	57	80	(23)
Burlington	2,178	2,571	(393)
Bronson	281	1,087	(806)
Kitchener	1,225	2,943	(1,718)
445 Princess	61	1,732	(1,671)
Oakville	1,368	4,439	(3,071)
	17,203	17,203	-

2. The details of the transactions among the Davies Developers is provided in Appendices "G" to "Q".

5.0 Disposition by Davies of His Cottage and a Home

1. The Receiver understands that Davies recently sold his cottage and is in the process of selling his house. In this regard:
 - a) on April 25, 2017, Davies sold his cottage for \$3 million. A copy of the title search for the cottage is attached as Appendix “W”; and
 - b) Davies has sold his home, which is jointly owned with his wife; however, based on the title search, it appears that the transaction has not yet closed. The listing price for the house was \$1.6 million.²¹ The Receiver does not know the current balance of the mortgage (Moscowitz is the registered mortgagee) and whether there is any equity in the house.
2. The Receiver has also been advised that Davies and/or his family, either directly or indirectly, own a property in Arizona in the United States. The Receiver has no other information regarding this property.

6.0 Conclusion and Recommendation

1. Based on the Receiver’s findings as detailed throughout this Report, the Receiver recommends that the Court issue orders: (i) granting an interim Mareva injunction against Davies and Aeolian, and (ii) compelling TSI, TSSI and MCIL to forthwith provide a copy of its books and records to the Receiver. Certain of the Receiver’s critical findings are summarized below:
 - a) The Davies Developers raised a total of approximately \$125 million to develop eleven Projects, including approximately \$93.975 million from Investors. Notwithstanding the substantial monies raised, each of the Projects is in the early stages of development and none has any capital to further develop its Project. Each is insolvent.
 - b) Millions of dollars were paid by the Davies Developers to the Shareholders in respect of management fees, consulting fees, dividends, loans and other amounts. A substantial portion of these payments contravenes the Loan Agreements.
 - c) Davies and entities or individuals related to him received a net amount of \$6.763 million from the Davies Developers, including at least \$4.069 million in prohibited management fees, \$875,000 in dividends, over \$900,000 in payments to Moscovitz, and over \$422,000 paid to family members. This does not consider any amounts that he may have received from TSI, TSSI and MCIL, which, on a combined basis, received over \$5.5 million from the Davies Developers. The Receiver believes it is appropriate to investigate further, *inter alia*, the use of the monies by TSI, TSSI and MCIL.
 - d) Of the amounts paid to Davies and parties related to Davies, Aeolian received \$5.444 million, including the prohibited management fees and dividends. Aeolian is also a shareholder of TSI, TSSI and MCIL.

²¹ The selling price is not known to the Receiver.

- e) Moscowitz is the mortgagee on Davies' personal residence. Moscowitz is not the mortgagee on any of the Davies Developers' real estate, including McMurray, which is the entity from which these payments were sourced.
- f) Entities related to the Shareholders received \$4 million in dividends. Although the intention to pay these dividends was disclosed in the applicable Davies Developer Loan Agreements, no value was created to justify the payment of the dividends and each entity had no or negligible equity after related party transactions and the payment of dividends. It is possible that the entities were insolvent at the time these amounts were paid, or that the payment of them contributed to their insolvency.
- g) The Davies Developers' transactions are poorly documented and their books and records are incomplete.
- h) There are numerous other breaches of the Loan Agreements, including: i) in the case of the Memory Care Entities, Scollard and McMurray, the granting of security interests on their real estate in priority to the security interests granted to the applicable Trustee Corporations; and ii) the routine transfer of dollars among the Davies Developers.
- i) Davies recently closed the sale of his cottage. His house has been sold and to the Receiver's knowledge, has not yet closed. In light of those dispositions and Davies' other conduct described in this Report, the Receiver is concerned that Davies is attempting to dissipate assets so that they are out of reach of creditors.

* * *

All of which is respectfully submitted,



KSV KOFMAN INC.

**SOLELY IN ITS CAPACITY AS RECEIVER AND MANAGER OF
CERTAIN PROPERTY OF SCOLLARD DEVELOPMENT CORPORATION, MEMORY CARE
INVESTMENTS (KITCHENER) LTD., MEMORY CARE INVESTMENTS (OAKVILLE) LTD.,
1703858 ONTARIO INC., LEGACY LANE INVESTMENTS LTD., TEXTBOOK (525 PRINCESS
STREET) INC. AND TEXTBOOK (555 PRINCESS STREET) INC.
AND NOT IN ITS PERSONAL OR IN ANY OTHER CAPACITY**

Appendix “D”



**Sixth 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.**

July 12, 2017

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COURT FILE NO: CV-17-11689-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

IN THE MATTER OF THE RECEIVERSHIP OF SCOLLARD DEVELOPMENT CORPORATION, MEMORY CARE INVESTMENTS (KITCHENER) LTD., MEMORY CARE INVESTMENTS (OAKVILLE) LTD., 1703858 ONTARIO INC., LEGACY LANE INVESTMENTS LTD., TEXTBOOK (525 PRINCESS STREET) INC. AND TEXTBOOK (555 PRINCESS STREET) INC.

AND IN THE MATTER OF A MOTION PURSUANT TO SUBSECTION 243(1) OF THE BANKRUPTCY AND INSOLVENCY ACT, R.S.C. 1985, C. B-3, AS AMENDED, AND SECTION 101 OF THE COURTS OF JUSTICE ACT, R.S.O. 1990, C. C.43, AS AMENDED

SIXTH REPORT OF
KSV KOFMAN INC.
AS RECEIVER AND MANAGER

JULY 12, 2017

1.0 Introduction

1. This report ("Report") is filed by KSV Kofman Inc. ("KSV") as receiver and manager of the 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 (555 Princess Street) Inc. ("555 Princess") and Textbook (525 Princess Street) Inc. ("525 Princess") (collectively the "Companies", and each a "Company"), and of all of their assets, undertakings and properties acquired for or used in relation to their real property (the "Property").
2. Pursuant to an order of the Ontario Superior Court of Justice ("Court") dated October 27, 2016, Grant Thornton Limited was appointed Trustee ("Trustee") of eleven entities¹ which raised monies from investors ("Investors") through syndicated mortgage investments (collectively, the "Trustee Corporations")². Eight of the Trustee Corporations then advanced these monies on a secured basis pursuant to loan agreements ("Loan Agreements") between the Trustee Corporation and the Companies and four related entities, Textbook Ross Park Inc. ("Ross Park"), Textbook (445 Princess Street) Inc. ("445 Princess"), Textbook (774 Bronson Avenue) Inc. ("Bronson") and McMurray Street Investments Inc. ("McMurray") (collectively, including the Companies, the "Davies Developers").

¹ 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

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

3. On January 21, 2017, the Trustee brought a motion for an order (the “Receivership Order”) appointing KSV as receiver and manager (“Receiver”) of the Property owned by Scollard. On February 2, 2017, the Court made the Receivership Order.
4. On April 18, 2017, the Trustee brought a motion, *inter alia*, seeking orders:
 - a) amending and restating the Receivership Order to add the Property owned by the Companies (except for Scollard, which was already in receivership) (the “Amended and Restated Receivership Order”); and
 - b) compelling John Davies (“Davies”), a director and officer of each of the Davies Developers, to immediately deliver to the Trustee all of the bank statements for the Davies Developers (the “Production Order”).
5. On April 28, 2017, the Court made the Amended and Restated Receivership Order and the Production Order.
6. The Amended and Restated Receivership Order was further amended and restated pursuant to a Court order made on May 2, 2017 to rectify certain clerical errors.
7. Following the issuance of the Amended and Restated Receivership Order, the Receiver commenced a review of the receipts and disbursements of the Companies (except for Scollard, which review was already underway). Additionally, at the request of the Trustee, the Receiver reviewed the receipts and disbursements of Ross Park, 445 Princess, Bronson and McMurray.
8. On June 6, 2017, the Receiver filed its Fourth Report to Court (the “Fourth Report”). The Fourth Report recommended, *inter alia*, that the Court issue an order restraining Davies and Aeolian Investments Ltd. (“Aeolian” and together with Davies, the “Defendants”) from disposing of their assets (the “Mareva Order”). Aeolian is owned by Davies’ wife, Judith, and his children. Its sole director and officer is Davies. Aeolian is an indirect or direct shareholder of each of the Davies Developers.³ A copy of the Fourth Report is attached as Appendix “A”, without appendices.
9. On June 7, 2017, the Court made the Mareva Order on an interim basis. In addition to restraining the Defendants from disposing of their assets, the Mareva Order required:
 - a) Davies and Aeolian to provide sworn statements describing the nature, value and location of their worldwide assets (the “Asset Summaries”);
 - b) Davies and Aeolian’s authorized representative (being Davies) to submit to examinations regarding the Asset Summaries (the “Examination”); and
 - c) the Receiver to apply for an extension of the Mareva Order within ten days, failing which the Mareva Order would terminate.

³ Other than McMurray which is partially owned by the Davies Family Trust.

10. On June 12, 2017, the Receiver brought a motion to compel Textbook Suites Inc. ("TSI"), Textbook Student Suites Inc. ("TSSI"), Memory Care Investments Ltd ("MCIL") and Aeolian, each being shareholders of Davies Developers, to forthwith provide the Receiver with a copy of their books and records (the "Second Production Order").
11. On June 16, 2017, on the consent of the Defendants, the Court extended the Mareva Order until July 17, 2017.
12. Also on June 16, 2017, the Court made the Second Production Order. Davies has provided the Receiver with bank statements and financial information for TSI, TSSI, MCIL and Aeolian. The Defendants' legal counsel has also provided select emails which had been reviewed by their legal counsel; however, the Receiver is seeking production of all non-privileged emails, which has still not occurred as at the date hereof.
13. On June 23 and 27, 2017, the Defendants' legal counsel also produced several binders containing, among other things, email correspondence between Greg Harris ("Harris"), Raj Singh ("Singh"), Walter Thompson ("Thompson"), Bruce Stewart ("Stewart") and Davies relating to intercompany loans, development management fees, Davies' family members' work for the Davies Developers and various other issues; the pro formas for the Davies Developers that were provided to Tier 1 Transaction Advisory Inc. ("Tier 1") and the Trustee Corporations; and limited email correspondence to and from Tier 1/the Trustee Corporations.
14. On June 30, 2017, the Defendants' legal counsel produced answers to all of the undertakings given at the Examination (the "Undertakings").

1.1 Purposes of this Report

1. The purposes of this Report are to:
 - a) provide a summary of:
 - i. the Examination;
 - ii. Davies' and Judith Davies' re-listing of their jointly owned personal residence for sale (on the day that the Mareva Order was granted) and their subsequent conduct;
 - iii. the Receiver's review of Aeolian's receipts and disbursements for the period October 1, 2012 to May 29, 2017; and
 - b) recommend that the Court issue an order:
 - o extending the Mareva Order to apply to Davies and Aeolian on an interlocutory basis (until a final disposition of the proceeding); and
 - o expanding the Mareva Order to include the trustees (in such capacity) of the Davies Family Trust and the Davies Arizona Trust (jointly, the "Trusts"), and Judith Davies.

1.2 Restrictions

1. In preparing this Report, the Receiver has reviewed the information noted in Section 1.2 of the Fourth Report, as well as the following information:
 - a) Aeolian's accounting records and bank statements;
 - b) Aeolian's unaudited financial information;
 - c) the transcript of the Examination; and
 - d) the Undertakings.
2. A representative of the Receiver attended at the Examination.
3. The Receiver has not performed an audit of the financial information addressed in this Report. The findings discussed herein remain subject to further review. The Receiver expresses no opinion or other form of assurance with respect to the financial information presented in this Report.
4. The Receiver has not discussed this Report with Davies, Judith Davies or any other person, nor has Davies or Judith Davies had an opportunity to review the Report in advance of it being served.
5. To date, no party has refuted any of the findings in any of the reports filed by the Receiver, with the exception of Raj Singh and Tier 1, which claim that no unauthorized payments were made to Mr. Singh or entities related to Mr. Singh. Additionally, Mr. Davies, through his counsel, Dentons Canada LLP ("Dentons"), has advised that management fees paid to him and others were disclosed to Mr. Singh and were referenced in project forecasts provided by Davies and others to Mr. Singh. A copy of a document in this regard was included in documents provided on June 27, 2017 by Dentons to Bennett Jones LLP, the Receiver's legal counsel, and is attached as Appendix "B".

1.3 Currency

1. All references to currency in this Report are in Canadian dollars, unless otherwise noted.

2.0 Background

1. The Davies Developers are developers of student residences, accommodations for people suffering from various forms of cognitive impairment and low-rise condominiums. All but one of the Davies Developers' projects are in pre-construction⁴ (collectively the "Projects").

⁴ Footings and foundations have been laid down at the Project owned by Burlington.

2. The amounts borrowed by the Davies Developers total approximately \$119.940 million⁵, including approximately \$93.675 million in secured debt owing to the Trustee Corporations (being monies raised by the Trustee Corporations from Investors) and \$23.675 million owing to other mortgage lenders (the “Other Lenders”). The Receiver understands that all of the obligations owing to Other Lenders rank in priority to the Trustee Corporations.
3. The funds advanced from the Trustee Corporations to the Davies Developers were to be used to purchase real property and to pay the soft costs associated with the development of the Projects.

2.1 The Fourth Report

1. The Receiver’s findings detailed in the Fourth Report include the following:
 - a) only a small percentage of the monies raised from Investors appear to have been used for their intended purpose;
 - b) each of the Projects is in the early stages of development and none of the Davies Developers has any capital to further develop their respective Projects;
 - c) millions of dollars were paid by the Davies Developers to their shareholders, including corporations relating to Davies, Thompson, Singh, Harris and Stewart, in respect of management fees, consulting fees, dividends, loans and other amounts. A substantial portion of these payments contravene the Loan Agreements;
 - d) Aeolian received approximately \$5.4 million from the Davies Developers, including at least \$4.1 million in prohibited management fees and \$875,000 in dividends;⁶
 - e) Davies and his family members received more than \$1.322 million from the Davies Developers, including \$900,000 in payments made from McMurray towards mortgages on Davies’ personal residence and cottage and more than \$422,000 paid to family members;
 - f) entities related to the Davies Developers’ shareholders (other than Aeolian) received \$3.125 million in dividends. The Receiver advised in the Fourth Report that it is its view that no value was created to justify the payment of the dividends. Each entity had no or negligible equity after related party transactions and the payment of the dividends; and

⁵ Represents the principal amounts owed, excluding interest and fees.

⁶ These amounts are based on the Davies Developers’ financial records. Aeolian’s financial records reflect that Aeolian received approximately \$5.6 million from the Davies Developers, including \$3.9 million in prohibited management fees and \$625,000 in dividends. A reconciliation of the differences is provided in Appendix “C”.

- g) there appear to be numerous other breaches of the Loan Agreements, including: i) the granting of security interests on certain of the Davies Developers' real estate in priority to the security interests granted to the applicable Trustee Corporations;⁷ and ii) the routine transfer of monies among the Davies Developers.

3.0 Asset Summaries

1. Davies provided the Receiver with the Asset Summaries on June 14, 2017. Copies of Davies' Asset Summary and Aeolian's Asset Summary provided on that date are found in Appendix "D" and "E", respectively.
2. The Asset Summaries reflect that:
 - a) Davies has assets of approximately \$1.7 million (excluding the Davies Arizona Trust, which he has not quantified) and liabilities of \$2.0 million; and
 - b) Aeolian has shareholdings in six companies of no value or of an "unknown" value, and liabilities of approximately \$200,000.
3. Following the Examination, on June 30, 2017, in an answer to an undertaking, Davies provided the Receiver with revised Asset Summaries for him and Aeolian. Copies of Davies' revised Asset Summary and Aeolian's revised Asset Summary are attached at Appendix "F" and "G", respectively.
4. The revised Asset Summaries reflect that:
 - a) Davies has assets of approximately \$1.7 million (excluding the Davies Arizona Trust, which he has not quantified) and liabilities of approximately \$2.1 million; and
 - b) Aeolian has shareholdings in eight companies of no value or of an "unknown" value, and liabilities of approximately \$170,000.

4.0 Examination

1. The Receiver and its counsel, Bennett Jones LLP, conducted the Examination on June 16, 2017. A copy of the transcript from the Examination is attached as Appendix "H". Key items identified in the Examination are detailed in the sections below.

⁷ All of the Trustee Corporations were to have a first ranking security interest against the applicable Davies Developers' property, with the exception of Ross Park, Bronson and 445 Princess, in which case the Trustee Corporations were to have a second ranking security interest behind existing mortgages. In certain circumstances, the relevant Loan Agreements provide that the Trustee Corporation may be subordinated in limited situations, such as to grant a security interest to Tarion Warranty Corporation.

4.1 The Davies Family Trust

1. During the Examination, Davies testified that, in or around 2002 or 2003, he established the Davies Family Trust.⁸ He further testified that the beneficiaries of the Davies Family Trust are Judith Davies and his four children: Jessica Deborah Davies, Sarah Ramona Davies, Andrew John Davies and Walter Robert Jackson Davies (collectively, the “Davies Children”).⁹
2. Following the Examination, in an answer to an undertaking, Davies produced the Declaration of Trust for the Davies Family Trust, which indicates that the Davies Family Trust was established in December 2000 and the beneficiaries of the Davies Family Trust include not only Judith Davies and the Davies Children, but also Davies himself and any future children and issue of Davies. A copy of the Declaration of Trust for the Davies Family Trust is attached as Appendix “I”.
3. Davies testified that the Davies Family Trust owns no property, has no assets and no bank account, though he subsequently admitted that the trust has an ownership interest in McMurray.¹⁰
4. Davies also testified that the Davies Family Trust received over \$300,000 from Aeolian, all of which was used to help fund part of a renovation on the Arizona Property (as defined in, and discussed in, Section 5.2.2 below).¹¹
5. The trustees of the Davies Family Trust are Davies, Judith Davies and Harris.¹² Harris is related to corporations that have ownership interests in several of the Davies Developers and has also acted as legal counsel to some or all of the Davies Developers.

4.2 The Davies Arizona Trust

1. During the Examination, Davies testified that, in or around 2013, the Davies Arizona Trust was established.¹³ He further testified that the beneficiaries of the Davies Arizona Trust are himself, Judith Davies, the Davies Children, Judith Davies’ parents and siblings, as well as certain other family members.¹⁴

⁸ Qs. 137-138, p 31, lines 12-15.

⁹ Q. 141, p 31, lines 20-21.

¹⁰ Qs. 142-148, p 31, lines 22-25, p 32, lines 1-13.

¹¹ Qs. 401-402, p 101, lines 7-23.

¹² Qs. 139-140, p 31, lines 16-19; Declaration of Trust for the Davies Family Trust attached as Appendix “I”.

¹³ Q. 150, p 32, lines 23-25.

¹⁴ Qs. 157-159, p 34, lines 4-14.

2. Following the Examination, in an answer to an undertaking, Davies produced the Irrevocable Trust Agreement for the Davies Arizona Trust, which indicates that the Davies Arizona Trust was established in December 2013 and the beneficiaries include only the Davies Children, though as the sole trustee, Davies may, among other things, distribute trust property to other persons and entities for the use and benefit of a beneficiary. As sole trustee, Davies also has broad powers under the Irrevocable Trust Agreement, including the power to, among other things, sell or convey real property in the manner and on the terms and conditions he, as sole trustee, deems appropriate. A copy of the Irrevocable Trust Agreement, along with the Certification of Trust, for the Davies Arizona Trust is attached as Appendix “J”.

4.3 The Davies Arizona Trust’s Arizona Property and Bank Account with JP Morgan Chase¹⁵

1. During the Examination, Davies testified that when the Davies Arizona Trust was first established in December 2013, it immediately purchased a house located at 35410 North 66th Place, Carefree, Arizona, 85377 (the “Arizona Property”).¹⁶ Davies further testified that:
 - a) the Arizona Property was purchased for US\$1.2 million;¹⁷
 - b) the funds used to purchase the Arizona Property came from Aeolian,¹⁸ with the Bank of Internet having a US\$600,000 mortgage on the Arizona Property;^{19,20}
 - c) there are no other liens on the Arizona Property;²¹
 - d) almost US\$2 million was spent to renovate the Arizona Property following its acquisition;²² and
 - e) Aeolian funded all the costs to purchase and renovate the home, in part through the Trusts.
2. Davies testified that, notwithstanding the US\$1.2 million purchase price and the US\$2 million spent on renovations for the Arizona Property, it is currently worth US\$1.795 million given the depressed market for real estate in Arizona.²³

¹⁵ The amounts reflected in this section do not necessarily reconcile to the results of the Receiver’s investigation.

¹⁶ Qs. 153-154 and 161, p. 33, lines 17-21, and p. 35, lines 15-20.

¹⁷ Q. 170, p 36, lines 18-19.

¹⁸ Q. 155, p 33, lines 22-24.

¹⁹ Qs. 171-172, p 36, lines 20-23.

²⁰ The Receiver has since obtained a Deed of Trust for the Arizona Property, which reflects that the lender is BOFI Federal Bank.

²¹ Q. 173, p 36, lines 24-25 and p 37, line 1.

²² Qs. 356-357, p 91, lines 5-9.

²³ Qs. 464-466, p 115, lines 17-24.

3. Following the Examination, in an answer to an undertaking, Davies produced an “as is” appraisal for the Arizona Property, a copy of which is attached as Appendix “K” (the “Appraisal”). The Appraisal states that the market value of the Arizona Property, as of December 9, 2015, is \$1,740,000; however, the Appraisal appears to have been performed before additional funds were spent on the Arizona Property. Davies has recently advised the Receiver that further renovations are required in order to complete the house and the house may be worth less than \$1,740,000.
4. Davies also testified that the Davies Arizona Trust has a bank account with the Chase Bank in Arizona (“Chase”) over which he has control.²⁴ The Receiver's legal counsel notified the Chase Bank about the Mareva Order, but received a response that Chase would not freeze the account in the US or provide information about the account until the Order is domesticated and recognized in the US. Davies' counsel recently advised that the current account balance of the Chase account is \$62.67 (chequing) and \$2.30 (savings).
5. On June 21, 2017, legal counsel for the Receiver sent a letter to legal counsel for Davies advising of the Receiver's position that the Arizona Property (and any other property of the Davies Arizona Trust) is caught by the terms of the Mareva Order and that Davies is accordingly precluded from, among other things, selling and encumbering the Arizona Property. A copy of the letter from the Receiver's counsel is attached as Appendix “L”.
6. On June 26, 2017, legal counsel for Davies responded by letter that it disagreed with the Receiver's position that the Arizona Property is subject to the terms of the Mareva Order, but confirmed that Davies will take no steps to sell or encumber the Arizona Property. A copy of the letter from Davies' counsel is attached as Appendix “M”.

4.4 Judith Davies

1. During the Examination, Davies acknowledged that funds flowed from Aeolian to his spouse Judith Davies.²⁵ Davies further testified that Judith Davies only recently began working part-time (and not for Aeolian or any Davies Developer) as a result of the activities involving the Davies Developers over the last eight or nine months. Prior to that, she did not work. During the Examination, Davies admitted that Judith Davies never worked for any of the Davies Developers²⁶; however, management fees were paid to her, through Aeolian, in any event.

²⁴ Qs. 164-165, p 36, lines 2-5.

²⁵ Qs. 391-393, p 98, lines 9-25 and p 99, lines 1-12.

²⁶ Q. 301, p 77, lines 10-13.

2. During the Examination, Davies testified that, over the last five years, he funded his living expenses by receiving development fees from the various Projects through Aeolian, and this has been his only employment over the last five years.²⁷ Davies testified that he does not have a personal bank account and has not had one for seven or eight years.²⁸ He testified that, in order to pay for living expenses, he either uses an Aeolian debit card or Judith Davies pays the expenses.²⁹ ³⁰ During the Examination, Davies further testified that funds flowed from Aeolian to Judith Davies for “income splitting” purposes.^{31, 32}
3. Davies also testified that Judith Davies has a bank account with Toronto-Dominion Bank.³³ The Receiver has no information concerning this account.

4.5 The Davies Children

1. During the Examination, Davies testified that certain Davies Children had limited involvement in some of the Davies Developers’ projects. He testified that his daughter, Sarah Davies, was employed by the Davies Developers as a marketing director at a starting salary of \$3,300/month (in 2013), which was subsequently raised to \$3,600/month with a \$400 car allowance.³⁴ He testified that another daughter, Jessica Davies, was the receptionist for the McMurray sales centre for one summer.³⁵ He further testified that his son, Andrew Davies, and his company, Y2 Media, made recommendations on advertising rates and suggestions about the advertising for various companies, specifically McMurray and Scollard.³⁶
2. During the Examination, Davies testified that Aeolian has been making payments to Auto One to cover lease payments for certain of his children’s vehicles, including a Range Rover Evoque and Ford Escape for two of his daughters.³⁷
3. Davies also testified that in the last eight months he has been selling assets belonging to his children, including artwork (which Aeolian purchased) to fund his living expenses.³⁸

²⁷ Qs. 36-37, p 10, lines 22-25 and p 11, lines 1-6.

²⁸ Qs. 17-22, p 8, lines 7-25.

²⁹ Q. 23, p 9, lines 1-4.

³⁰ The Receiver’s investigation has revealed that Davies also used his Amex to pay for personal expenses.

³¹ Qs. 391-394, p 98, lines 9-25 and p 99, lines 1-14.

³² During the examination, Davies was asked to undertake to produce copies of his income tax returns for the last five years. This request was taken under advisement by Davies’ legal counsel and, to date, the tax returns have not been provided. On June 30, 2017, Davies’ legal counsel did, however, advise that “[t]his question was taken under advisement in order to agree upon terms for production. Mr. Davies and Aeolian are prepared to produce income statements and capital gains statements from their tax returns over the last five years.”

³³ Qs. 63-64, p 15, lines 2-5.

³⁴ Qs. 293-297, p 75, lines 3-25 and p 76, lines 1-2.

³⁵ Q. 298, p 76, lines 3-8.

³⁶ Q. 299, p 76, lines 9-25 and p 77, lines 1-3.

³⁷ Qs. 416-418, p 107, lines 6-17.

³⁸ Qs. 53-57, p 13, lines 16-25, p 14, lines 1-6.

4.6 The Mortgage on Davies' and Judith Davies' Personal Residence

1. During the Examination, Davies testified that the mortgage on his and Judith Davies' personal residence located at 24 Country Club Drive, King City, Ontario in favour of Moskowitz Capital Mortgage Fund II (the "Moskowitz") has not been, and is not being, serviced and is in arrears.³⁹
2. On June 12, 2016, legal counsel to Moskowitz wrote to the Receiver's counsel to advise that the mortgage is in default and that Moskowitz had commenced power of sale proceedings. The Notice of Sale under Mortgage was enclosed with the letter, which advised that the redemption date under the power of sale proceedings is July 22, 2017.
3. On July 4, 2017, the Receiver's legal counsel wrote to Moskowitz's legal counsel to request a detailed breakdown of the amounts claimed under the Notice of Sale, including evidence of advances made under the mortgage and that the funds were used in connection with Davies' house. A copy of the letter is attached as Appendix "N". As of the date of this Report, Moskowitz has not provided the information.

4.7 The Recent Listing for Sale of Davies' and Judith Davies' Personal Residence

1. During the Examination, when asked whether his and Judith Davies' personal residence is currently listed for sale, Davies testified that the house "has not been re-listed".⁴⁰ However, the Receiver has recently learned that this is not true. Davies' and Judith Davies' personal residence is currently listed for sale on the MLS. The listing agreement with the real estate agent was entered into on June 7, 2017 (the date that the Mareva Order was first granted). An open house was held on July 8, 2017.
2. On July 10, 2017, immediately after learning about the listing and the open house, the Receiver's counsel contacted Davies' counsel and made inquiries regarding these developments. Davies' counsel confirmed that the residence is currently listed for sale and that Davies and Judith Davies are making active attempts to sell the residence due to concerns that if the residence is sold in a power of sale proceeding, it will sell at a lower price.
3. In light of this conduct, and the other conduct described in this Report, the Receiver is concerned that Davies is attempting to alienate and dissipate assets to put them beyond the reach of creditors, in direct contravention of the Mareva Order, and Judith Davies is assisting him in doing so, which is also in direct contravention of the Mareva Order.

³⁹ Q. 113, p 25, lines 23-25 and p 26, line 1.

⁴⁰ Q. 135, p 30, lines 11-13.

5.0 Review of Aeolian's Receipts and Disbursements

1. The Receiver prepared the financial information in this section based on information provided by Davies under the Second Production Order and bank statements provided by Royal Bank of Canada under the Mareva Order.
2. Aeolian's receipts and disbursements for the period October 1, 2012 to May 29, 2017 (the "Period") are provided in the table below.

(unaudited; \$000)	Amount	% Receipts / Disbursements
Receipts		
Advances from Related Parties		
Davies Developers	5,592	65.2%
TSSI, TSI and MCIL	1,160	13.5%
Other related parties	249	2.9%
	7,001	81.6%
 Raj Singh and entities related to Mr. Singh	646	7.5%
Other	230	2.7%
Unidentified	695	8.1%
Total receipts	8,572	100%
Disbursements		
Personal		
Judith Davies	2,509	29.3%
Arizona Property	1,841	21.5%
AMEX	1,346	15.7%
Other	1,387	16.2%
	7,084	82.6%
 Other and unidentified	1,488	17.4%
Total disbursements	8,572	100.0%
Ending balance	-	

3. The table reflects that Aeolian had:
 - a) receipts of \$8.572 million, including advances from related parties of \$7.001 million; and
 - b) disbursements of approximately \$8.572 million, including Davies' and/or his family's personal expenses of \$7.084 million.
4. A discussion of certain of the line items in the table is provided below. Appendix "O" provides Aeolian's detailed Statement of Receipts and Disbursements (the "R&D").

5.1 Receipts

5.1.1 Amounts Received by Aeolian from Davies Developers

1. According to Aeolian's books and records, a summary of the amounts received by Aeolian from the Davies Developers is provided in the table below.

(unaudited; \$000)	Amount
Management fees	
Scollard	1,248
Oakville	1,137
Kitchener	481
Burlington	433
Legacy Lane	316
McMurray	272
	<u>3,887</u>
Other entities	<u>500</u>
	4,387
Dividends paid to Aeolian	
555 Princess	250
Ross Park	250
Bronson	125
	<u>625</u>
Other	
Reimbursement of costs – McMurray	236
Profit from the sale of Kitchener	344
	<u>580</u>
Total	<u>5,592</u>

2. The table reflects that:
 - a) Aeolian received management fees of \$4.387 million, of which \$3.887 million is prohibited under the Scollard, Oakville, Kitchener, McMurray and Burlington Loan Agreements. As discussed in the Fourth Report, Davies has advised the Receiver that there are no management agreements between Aeolian and any of the Davies Developers;
 - b) Aeolian received dividends of \$625,000 from 555 Princess, Bronson and Ross Park. According to the books and records of 525 Princess, Aeolian also received a \$250,000 dividend from 525 Princess. These funds do not appear to have been deposited into Aeolian's bank account; they were used to repay a loan owing to RS Consulting Group Inc., an entity controlled by Singh. The payment was made directly from Harris & Harris LLP to RS Consulting Group Inc.; and
 - c) Aeolian received \$344,000 in profit from the sale of the Kitchener property. Further details regarding this transaction are provided in Section 3.1.2 of the Fourth Report.

5.1.2 TSI, TSSI and MCIL

1. Approximately \$1.160 million was paid to Aeolian by TSI, TSSI and MCIL, consisting of management fees in the amount of approximately \$887,000, with the balance recorded as a reimbursement of costs. The Receiver tied the source of the majority of these payments to the general ledgers of TSI, TSSI and MCIL. For the most part, the source of these monies was the Davies Developers.

5.2 Disbursements

5.2.1 Judith Davies

1. Judith Davies received approximately \$2.509 million from Aeolian.
2. The payments to Judith Davies are recorded in Aeolian's financial statements as management fees. During the Examination, Davies testified that Judith Davies provided no services to the Davies Developers or Aeolian, but management fees were paid to her in any event.
3. Davies has advised that Judith Davies did not have any other source of income during the Period.

5.2.2 Arizona Property

1. The Davies Arizona Trust owns the Arizona Property.
2. Notwithstanding that the Receiver identified \$1.841 million being paid by Aeolian in respect of the Arizona Property, Davies testified during the Examination that:
 - a) approximately US\$3.2 million was spent to purchase and renovate the Arizona Property;
 - b) there is a US\$600,000 mortgage on the Arizona Property; and
 - c) Aeolian provided all of the funds used to purchase and renovate the Arizona Property.

5.2.3 Amex and Other Personal Payments

1. Other personal payments include:
 - a) approximately \$1.3 million to American Express - on July 4, 2017, the Receiver's legal counsel requested that Davies provide copies of the relevant American Express statements. Davies has provided statements for the period December 28, 2016 to June 27, 2017. Davies' legal counsel advised that the remaining statements have been requested from American Express;
 - b) \$160,000 paid to the Oshawa Generals Hockey Team – Davies or entities related to Davies had an ownership interest in the team;

- c) approximately \$105,000 for art purchases; and
 - d) approximately \$50,000 for jewellery.
2. Further details on these payments are provided in the R&D.

6.0 Conclusion

1. For the reasons detailed in this Report, the Receiver recommends that the Court issue an order (1) extending the Mareva Order to apply to Davies and Aeolian on an interlocutory basis (until a final disposition of the proceeding); and (2) expanding the Mareva Order to include the trustees (in such capacity) of the Trusts and Judith Davies.
2. Based on the currently available evidence, it would appear that Davies has transferred misappropriated assets to the Trusts and to Judith Davies in a transparent attempt to put such assets beyond the reach of the Companies to which he owed fiduciary duties. Further, it appears that Davies and Judith Davies are actively attempting to sell their personal residence and to dissipate assets in contravention of the Mareva Order. Given this pattern of conduct, there are concerns that the already depleted misappropriated assets may well continue to be further transferred to frustrate recovery efforts. The expansion of the Mareva Order is directly targeted at combatting that risk.

* * *

All of which is respectfully submitted,



**KSV KOFMAN INC.
SOLELY IN ITS CAPACITY AS RECEIVER AND MANAGER OF
CERTAIN PROPERTY OF SCOLLARD DEVELOPMENT CORPORATION, MEMORY CARE
INVESTMENTS (KITCHENER) LTD., MEMORY CARE INVESTMENTS (OAKVILLE) LTD.,
1703858 ONTARIO INC., LEGACY LANE INVESTMENTS LTD., TEXTBOOK (525 PRINCESS
STREET) INC. AND TEXTBOOK (555 PRINCESS STREET) INC.
AND NOT IN ITS PERSONAL OR IN ANY OTHER CAPACITY**

Appendix “E”



**Supplement to the Sixth 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.**

August 8, 2017

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COURT FILE NO: CV-17-11689-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

IN THE MATTER OF THE RECEIVERSHIP OF SCOLLARD DEVELOPMENT CORPORATION, MEMORY CARE INVESTMENTS (KITCHENER) LTD., MEMORY CARE INVESTMENTS (OAKVILLE) LTD., 1703858 ONTARIO INC., LEGACY LANE INVESTMENTS LTD., TEXTBOOK (525 PRINCESS STREET) INC. AND TEXTBOOK (555 PRINCESS STREET) INC.

AND IN THE MATTER OF A MOTION PURSUANT TO SUBSECTION 243(1) OF THE BANKRUPTCY AND INSOLVENCY ACT, R.S.C. 1985, C. B-3, AS AMENDED, AND SECTION 101 OF THE COURTS OF JUSTICE ACT, R.S.O. 1990, C. C.43, AS AMENDED

SUPPLEMENT TO THE SIXTH REPORT OF
KSV KOFMAN INC.
AS RECEIVER AND MANAGER

AUGUST 8, 2017

1.0 Introduction

1. This supplemental report ("Report") is filed by KSV.
2. This Report supplements the Receiver's Sixth Report dated July 12, 2017 (the "Sixth Report").
3. Unless otherwise stated, capitalized terms used in this Report have the meanings provided to them in the Sixth Report.

1.1 Restrictions

1. This Report is subject to the restrictions set out in the Sixth Report.

2.0 Background

1. On July 14, 2017, Davies swore and produced an affidavit in response to the Receiver's Reports and in opposition to the Receiver's motion seeking, among other things, interlocutory injunctive relief as against him and Aeolian.

2. Davies and Aeolian subsequently consented to a further but temporary continuation of the Mareva Order, on a without prejudice basis, to allow for a scheduled hearing process for the Receiver's motion for interlocutory injunctive relief as against Davies and Aeolian.
3. On July 17, 2017, on the consent of the parties, the Court granted an order extending the Mareva Order as against Davies in his personal capacity and Aeolian (the "July 17th Order"). On that day, the Court also granted a Mareva Order as against Davies in his capacity as the trustee of both the Davies Family Trust and the Davies Arizona Trust, Judith Davies, in her personal capacity and in her capacity as trustee of the Davies Family Trust, and Harris, solely in his capacity as trustee of the Davies Family Trust. Copies of the July 17th Order and the endorsement are attached as Appendix "A".
4. In accordance with the terms of the July 17th Order, Davies, in his capacity as the trustee of both the Davies Family Trust and the Davies Arizona Trust, Judith Davies, in her personal capacity and in her capacity as trustee of the Davies Family Trust, and Harris, in his capacity as trustee of the Davies Family Trust, produced asset and liability statements, copies of which are collectively attached as Appendix "B".
5. On July 27, 2017, Davies swore and produced an affidavit to supplement the affidavit he swore on July 14, 2017 in opposition to the Receiver's motion seeking injunctive relief (the "Davies Affidavit" and, collectively with the affidavit sworn by Davies on July 14, 2017, the "Davies Affidavits").

2.1 Purpose of this Report

1. The purpose of this Report is to reply to the Davies Affidavits, including with respect to the following:
 - a) the overall nature of the Davies Developers' syndicated mortgage investment ("SMI") scheme;
 - b) the development management fees paid by the Davies Developers to affiliates of Davies and others;
 - c) the intercompany loans among the Davies Developers;
 - d) the statements which Davies alleges in the Davies Affidavit were made to him by representatives of KSV;
 - e) additional conduct by Davies and related parties; and
 - f) the necessity of continuing the Mareva injunction, on an interlocutory basis, until a final disposition of the proceeding as against Davies in his personal capacity and in his capacity as trustee of both the Davies Family Trust and the Davies Arizona Trust, Aeolian, Judith Davies in her personal capacity and in her capacity as trustee of the Davies Family Trust, and Harris in his capacity as trustee of the Davies Family Trust.

2. This Report does not, for reasons of practicality, address every issue in the Davies Affidavits and the Receiver should not be taken to agree with statements in the Davies Affidavits simply because the Receiver has not replied to each issue or statement raised by Davies in the Davies Affidavits.
3. The Receiver repeats and relies on its Fourth Report and Sixth Report. Nothing in the Davies Affidavits changes any of the Receiver's findings, conclusions or recommendations set out therein. In many respects, the Davies Affidavits, including the emails and memoranda he appends, reinforce the prior findings of the Receiver.

3.0 The Syndicated Mortgage Investment Scheme

1. There are seven projects that are subject to these receivership proceedings - and four others for which Davies raised monies from SMI Investors but are too distressed to be placed into an insolvency process by the Trustee because the value of these entities' assets appear to be insufficient to repay first-ranking third party mortgages owing on those properties. Because the Investors rank behind these mortgagees, any recovery for the Investors of the non-receivership Davies Developers is likely to be nominal, at best¹.
2. The Fourth Report and the Sixth Report provide an overview of the structure of the SMI loans and focus on the flow of funds from the Investors to the Davies Developers, among the Davies Developers and from the Davies Developers to their parent companies, indirect shareholders and other related parties. This section of the Report provides further details about the SMI scheme.
3. For each of the Davies Developers' projects, the applicable Davies Developer raised monies from Investors through SMIs which were sourced by Tier 1 Transaction Advisory Inc. or entities related to Tier 1 (collectively, "Tier 1"). Of the SMI monies raised, approximately 30% was used to pay fees to Tier 1, amounts due to agents who sold the SMI product to Investors, professional costs and to fund a one-year interest reserve (the "Initial Costs").
4. To support the amounts raised, the Davies Developers retained an appraiser, Michael Cane Consultants ("Cane"), to provide an "estimated hypothetical market value of the subject site, assuming it could be developed" [emphasis added]. These appraisals were based on several assumptions, such as: (i) development costs, as estimated by the applicable Davies Developer and as set out in the applicable project pro forma, remaining consistent with the budget; (ii) the necessary planning approvals being obtained in a timely manner; and (iii) the development being commenced in a timely manner.

¹ The Investors were to have a first ranking security interest on the real property of the Davies Developers, subject only to construction financing. There are a few exceptions to this, but not in respect of any of the Receivership Companies (defined in paragraph 5 below).

5. Investors were led to believe that the advances would be fully secured against the real property, including in presentations prepared by Tier 1 which can be viewed on YouTube² and in marketing materials for the projects. As reflected in the table below, each initial SMI fundraise for the Davies Developers that is subject to these receivership proceedings (the "Receivership Companies") significantly exceeded the purchase price of the real property, reflecting that the loans were undersecured from the day they were made. The table reflects that Investor monies were used to acquire the land, as the initial SMI advance and the purchase price are on the same date, in all but one case. None of these projects had any equity from the principals of the applicable Davies Developer.

(unaudited,\$000s) Entity	Purchase Price	Date Property Purchased	SMI Initial Advance	Date of SMI Initial Advance	Loan to Purchase Price Ratio
525 Princess	2,400	Dec 16, 15	5,854	Dec 16, 15	244%
555 Princess	2,000	Oct 20, 15	6,615	Oct 20, 15	331%
Scollard	9,000	Dec 8, 14	11,956	Dec 8, 14	133%
Kitchener	3,950	Feb 25, 14	4,918	Feb 25, 14	125%
Oakville	1,945	Oct 29, 12	2,550	Oct 29, 12	131%
Burlington	2,500	May 17, 13	5,499	May 17, 13	220%
Legacy Lane	650	Oct 2, 12	2,315	Apr 2, 13	356%
	<u>22,445</u>		<u>39,707</u>		<u>177%</u>

6. Attached as Appendix "C" are marketing materials for the Receivership Companies. In promoting the SMIs, the marketing materials indicated that the SMIs were to have first ranking security on the real property, which would only be subordinated to construction financing. Notwithstanding this representation to the public, after raising the SMIs, several of the Receivership Companies³ borrowed funds on a first ranking secured basis against the Receivership Companies' real property. The Trustee Corporations would have been required to subordinate to these mortgages – notwithstanding this representation. Singh is the primary representative of Trustee Corporations.
7. It appears from the Davies Affidavit that in several instances when the Davies Developers faced liquidity problems, Davies would request a fresh appraisal from Cane, which appraisal would then be provided by Davies to Tier 1 to raise more money from Investors. In some instances, the increases in appraised value appear to have been justified by, *inter alia*, spending money on development activities. The marketing materials note that such increases would be "certified by independent quantitative surveys". The Receiver is uncertain if these certifications were obtained, and if so, whether these were consistently obtained. The Receiver has seen no evidence that such certifications were obtained. The Receiver is unaware if Cane has these credentials, but typically these would be provided by a cost consultant who reviews the costs incurred and determines whether they are consistent with budget. To the extent further monies were raised by a Davies Developer based on a fresh

² <https://www.youtube.com/watch?v=09Yt90Afklo>. This video, a Tier 1 promotion, compares a SMI to a traditional bank mortgage secured by real estate. The video highlights, among others, Singh and Davies.

³ Scollard, Kitchener, Burlington and Oakville each have a mortgage ranking in priority to the SMIs.

Cane appraisal, the Davies Developer appears to have routinely advanced such monies to other Davies Developers. Examples of this are provided in the email correspondence between Davies and others provided in Appendix “D” and Appendix “K”.

8. The Receiver believes that the development projects undertaken by the Davies Developers had no prospect of success due to, among other things, a lack of equity capital, the significant Initial Costs and the amounts paid to related parties out of the SMI advances, including to affiliates of Davies, persons related to Davies and others.
9. Davies asserts in the Davies Affidavit that he believes the projects would have been successfully completed and each loan would have been repaid had Tier 1 Mortgage Corporation not been replaced as trustee of the Trustee Corporations by the Trustee. However, at the time the Trustee was appointed, each of the projects was significantly over-levered as the value of the debt substantially exceeded the value of the real property and none of the Receivership Companies had any capital to further advance its project. The cash balance of each of the Receivership Companies on the date the Trustee was appointed is provided below:

(unaudited; \$)	
Entity	Bank Balance
525 Princess	7,657
555 Princess	7,663
Scollard	1,868
Kitchener	233
Oakville	359
Burlington	83
Legacy Lane	25
Total	17,888

10. Certain (and perhaps all) of the Davies Developers were insolvent from the date of the first SMI advance. An example of this is 525 Princess.
11. 525 Princess raised \$6.387 million from Investors, comprised of \$5.854 million on December 16, 2015 and \$533,000 on January 22, 2016. This amount was 263% greater than the purchase price of the real property. By January 28, 2016, 525 Princess had a cash balance of approximately \$111,000 and had not spent any money on development activity. Notwithstanding that it could not advance the project, 525 Princess managed to pay from the SMI proceeds a \$1 million dividend to entities related to Singh, Thompson, Harris and Davies (see Appendix “E”, which discusses this dividend and other matters concerning the illiquidity of the various projects).

12. A summarized Statement of Receipts and Disbursements for 525 Princess for the period December 16, 2015 to January 28, 2016 is provided below.

(unaudited; \$000s)	Amount
Receipts	
Syndicated Mortgage Investment	6,387
Other	14
Total	6,401
Disbursements	
Land	2,131
Broker Commissions	1,086
Interest holdback	511
Professional fees	225
Payments to shareholders	
Dividends	1,000
Other	1,337
Development costs	-
Total	6,290
Cash balance, January 28, 2016	111

4.0 Pro Formas Prepared by John Davies

- Davies claims that the pro formas attached as Exhibit “B” to the Davies Affidavit reflect a genuine estimate of the costs that would be incurred and the fees that would be earned during the development process. The Receiver notes the following issues with the pro formas appended to the Davies Affidavit and therefore questions the extent to which they can and should be relied upon:
 - many of the pro formas reflect an equity injection by the respective Davies Developer. In no case did a Davies Developer make an equity injection⁴;
 - certain of the pro formas fail to account for a significant portion of the Initial Costs, including the pro formas for 525 Princess, 555 Princess and Burlington;
 - the pro formas for 525 Princess and 555 Princess do not appear to reflect the payment of dividends, which were paid from the initial SMI advance for each of these projects;
 - the 555 Princess pro forma reflects mortgage obligations (other than construction financing) ranking in priority to the syndicated mortgage investments even though such senior ranking debt was prohibited under the applicable Loan Agreements;

⁴ Other than Oakville which raised \$1 million from the sale of preferred shares. These shares were sold to individuals who are also Investors.

- the pro forma for 555 Princess contains cells with “#VALUE!”, which means there are errors in the Excel formulas used by Davies. A copy of the pro forma for 555 Princess is attached as Appendix “F”; and
 - Davies had previously provided the Receiver with pro formas. Certain of the pro formas in the Davies Affidavit are different than the ones previously provided. The Receiver is uncertain which pro formas should be relied upon, if any. Certain of the pro formas previously provided have different profit projections due to different revenue and cost assumptions.
2. The Receiver has not retained a consultant to assess the reasonableness of the revenue and costs assumptions used in the pro formas attached to the Davies Affidavit.
 3. On August 1, 2017, the Receiver sent an email to Cane requiring that he provide the Receiver with copies of all appraisals and valuation reports that he prepared in respect of the Receivership Companies and all correspondence with the Receivership Companies and their principals. Cane provided the Receiver with some appraisals (and related pro formas) on August 4, 2017. An initial review of certain of the pro formas provided by Cane indicates that they are not consistent with the ones attached to the Davies Affidavit or the ones Davies previously provided. Additionally, the Receiver has not received any of the requested correspondence from Cane. If this correspondence is not provided forthwith, the Receiver intends to bring a motion in this regard. The Receiver’s email advised Cane of this intention.

5.0 Improper Development Management Fees

1. Davies takes the position that the development management fees paid by the Davies Developers were reasonable and earned. As detailed below, the Receiver has the following issues with these fees:
 - a) the amounts paid do not appear to have been earned or reasonable as they were disproportionate to the development progress of the Davies Developers’ projects; and
 - b) absent the written consent of the Trustee, development management fees are not permitted under the Loan Agreements for Oakville, Kitchener, Burlington, Scollard and Legacy Lane. Development management fees appear to be permissible in respect of the two Princess projects, provided they are reasonable and made in the ordinary course.

2. At paragraph 17 of the Davies Affidavit, Davies states that 57% of the budgeted development management fees across all projects have been paid - notwithstanding that construction has not commenced on any of the Receivership Companies⁵ nor has construction financing been secured⁶. Many of the projects require changes in zoning. For example, the project contemplated to be developed by 525 Princess was intended to be a 12-storey building. It is presently zoned to be no more than four storeys. In the best-case scenario, each of these projects is years from completion, including Burlington, Oakville and Kitchener, which are at the most advanced stages of the development process. Based on the stage of development of the Receivership Companies, the Receiver sees no basis on which nearly 60% of the development management fees should have been paid to date.

3. Davies states in the Davies Affidavit that the development management fees as a percentage of total project costs ranged from 2% (e.g. for Scollard) to 6% (e.g. for Burlington and Kitchener). Development management fees appear to have been paid to affiliates of Davies and others on an accelerated basis, prior to being earned. An example is reflected below in the context of the Scollard development, which had total anticipated project costs of approximately \$73.2 million and total anticipated development management fees of approximately \$1.8 million. Of the total capital raised to-date by Scollard (\$15.946 million), \$846,000 was, according to Davies, used to pay development management fees.⁷ Assuming a correlation between the rate at which project costs are incurred and management fees earned, the Receiver estimates that the earned management fees should have been approximately \$395,000, as reflected below.

	(unaudited, \$000s)
Total estimated project cost	73,159
Project costs to-date	15,946
Costs to-date as a percentage of total estimated project costs	21.8%
 Total estimated management fees over project	 1,803
Percentage of earned management fees	21.8%
Expected management fees to-date	393
Actual management fees paid	846
Estimated unearned management fees	453

4. Attached as Appendix "G" is a chart setting out, among other things, the total estimated project costs, the total estimated development management fees, the total amount spent on the projects to-date (including as a percentage of total estimated project costs) and the total amount spent on development management fees to date (including as a percentage of total estimated development management fees) for each of the Receivership Companies. The chart reflects that the Receivership Companies have total anticipated project costs of approximately \$248 million and total projected development management fees of \$11.119 million (4.5% of total project costs). Of the \$68.721 million to-date raised by Receivership Companies, \$6.466 million of development management fees has already been paid (9.4% of project costs to-date).

⁵ With the exception of footings and foundations on Burlington.

⁶ With the exception of Scollard, which had signed a Letter of Commitment with Centurion Mortgage Capital Corporation to provide construction financing.

⁷ According to Scollard's books and records, Scollard paid Aeolian \$1.244 million, approximately \$400,000 more than the development management fees reflected in the Davies Affidavit. If the amount in the Davies Affidavit is correct, it is unclear to what the additional \$400,000 paid to Aeolian relates.

Assuming that there is a correlation between project costs and development management fees earned, the Receiver estimates that the management fees earned would be approximately \$3.3 million, meaning that development management fees have been overpaid by approximately \$3.1 million.

5. The issue of the premature (or unearned) payment of development management fees was raised by Singh in an email to Davies dated March 19, 2013, a copy of which is attached as Appendix “H”. Singh states:

“I am not concerned about the quantum of the development fee (I am assuming this is fair market rates and will take your word for it). What I am concerned about [is] my complete reliance on you that construction financing will be successfully raised and the projects will be successful. The development fees being paid out prior to this is an extreme worry and makes me very uncomfortable. This allows \$3.2M of development fees to be withdrawn ahead of even knowing if construction financing can be arranged at all (a discussion that has come up several times)”.

6. Under certain of the Loan Agreements, development management fees are also only permitted to be paid to shareholders with the prior written consent of the Trustee. Based on the currently available evidence reviewed by the Receiver, it does not appear that Singh or the Trustee Corporations consented to such payments in writing, in accordance with the terms of the applicable Loan Agreements. Even if Singh agreed in writing to some of these fees, or if he implicitly agreed to some of these fees, it is not clear that he agreed to all of them, and even if he did so, it is unclear if he permitted them to be paid at a rate greater than the development of the project. It is also unclear that he would allow development management fees in respect of one Davies Developer to be paid by another Davies Developer. Even if Singh or the Trustee Corporations did provide written consent, which is not supported by the evidence provided by Davies, such consent would only increase the Receiver's serious concerns regarding Singh's conduct and his participation in this scheme.

6.0 Improper Intercompany Loans

1. As described in more detail in the Fourth Report, over \$17 million was transferred among the Davies Developers. In the Davies Affidavit⁸, Davies attempts to justify the intercompany loans by suggesting that all intercompany loans stayed within the “umbrella” of the organization. For instance, at paragraph 31 of the Davies Affidavit, Davies states that:

“the umbrella nature of the [enterprise] allowed available cash to be deployed through intercompany loans to projects which were short on funds”.

⁸ Including a memorandum he appears to have prepared found in Appendix “Q” of the Davies Affidavit which acknowledges the movement of monies.

2. The Receiver has no knowledge of which entities are included in Davies' alleged "umbrella". For example, the Receiver notes that \$3.7 million was advanced from various Davies Developers (including some that are not Receivership Companies) to Rideau, which did not have an SMI and which is owned indirectly by Davies, Thompson, Singh and Harris or individuals related to them. Additionally, loans were made by Davies Developers to TSI, TSSI and/or MCIL, which are parent companies of the Davies Developers and against which the Trustee Corporations have no direct connection or recourse.⁹
3. As discussed in more detail below, such intercompany loans are not permitted under the Loan Agreements and the Receiver is aware of no legitimate or reasonable commercial basis for such intercompany loans. Davies also appears to have been aware of the inappropriate nature of such intercompany loans, yet he continued to cause such loans to be made. For instance, on May 24, 2016, Harris, of Harris + Harris LLP ("Harris LLP"), legal counsel to the Davies Developers, sent an email to Davies wherein he expressly advised Davies that:

"you don't want to be obtaining financing from [Scollard] and then using it to further fund interest payments for other projects."

4. In response to this correspondence, Davies advised Harris that:

"[Scollard] is a good story. Lots of sales. Investors will want this loan. The net \$1.7 million from a \$2.4 million [Scollard] raise will fund 6 months of interest on all projects. I don't see an alternative and time will soon become a factor given the summer slowdown".

A copy of this email correspondence is attached as Appendix "I".

5. Contrary to Davies' assertion in his examination, Harris LLP was counsel to the Davies Developers, not counsel to Singh or to the Trustee Corporations. Under section 2.01 of the Loan Agreements, "Borrower's Solicitors" (i.e. the Davies Developers' solicitors) is defined to mean "Harris + Harris LLP, or such other solicitors that the Borrower may in writing designate". While "Lender's Solicitors" (i.e. the Trustee Corporations' solicitors) is defined to mean "Nancy Elliot, Barrister & Solicitor, or such other solicitors that the Lender may in writing designate", pursuant to delegation agreements between Harris LLP and Nancy Elliot ("Elliot"), certain mortgage administration and facilitation responsibilities were delegated by Elliot to Harris LLP. Collectively, attached as Appendix "J" are copies of the delegation agreements between Harris LLP and Elliot.
6. The Loan Agreements require that funds advanced from Investors be used solely for the project for which the funds were raised. Under the Loan Agreements, intercompany loans would only be permitted with the written consent of the trustee of the Trustee Corporations (i.e. Singh). While Davies has produced email correspondence at Exhibit "P" to the Davies Affidavit which allegedly reflects that Singh and the Trustee Corporations were aware of and consented to the making of intercompany loans, he has failed to include other relevant correspondence relating to this issue. For example, Appendix "K" includes email correspondence between Messrs. Davies and Singh and others, which reflect, among other things, that the

⁹ TSI and TSSI are owned by Aeolian (Davies), 132 (Thompson), RSCG (Singh) and Dachstein (Harris). MCIL is owned by Aeolian and Erika Harris.

Davies Developers were facing a liquidity crisis and they were “*completely tapped out of cash*”¹⁰ on some projects, which necessitated the making of intercompany loans to perpetuate the scheme and avoid defaulting on the loans from the Trustee Corporations. It was paramount to Singh that all interest payments be made, as there would be a confidence crisis among the Investors if that did not happen. This would impact some or all of the Davies Developers and the ability of Tier 1 to continue to raise monies through SMLs.

7. Further, based on the currently available evidence that the Receiver has reviewed, it does not appear that Singh or the Trustee Corporations formally consented to such intercompany loans in writing, in accordance with the terms of the applicable Loan Agreements. Even if Singh or the Trustee Corporations did provide written consent, which is not supported by the evidence provided by Davies, such consent would only increase the Receiver's concerns regarding Singh's conduct and his participation in this scheme.

7.0 Alleged Statement made by Representatives of KSV to Davies

1. In the latter part of 2016, certain of the Davies Developers were considering filing for protection under the *Companies' Creditors Arrangement Act* (“CCAA”) and seeking the appointment of KSV as the court-appointed monitor.
2. Davies alleges in the Davies Affidavit that in late 2016, Mr. Kofman of KSV expressed the view that intercompany loans were permissible if they stayed within the “enterprise” and were made with the consent of the Trustee Corporations. Mr. Kofman never expressed any such view nor made any such comment.
3. At time of the comments attributed to Mr. Kofman, Mr. Kofman had no knowledge of the prior movement of monies among the Davies Developers, all of which occurred before KSV had any involvement with the Davies Developers. Mr. Kofman did not have the requisite information to comment on any of the past activities of the Davies Developers and he did not do so.
4. Given that Mr. Kofman expressed no views about the Davies Developers' past activities, there was nothing for Mr. Goldstein to confirm in the subsequent meeting that took place on February 3, 2017.
5. As the prospective filing entities had no cash, there was a need to secure debtor-in-possession (“DIP”) funding for the CCAA proceedings. As part of structuring the DIP facility, consideration was given to seeking the Court's approval of an intercompany charge to secure any amounts funded by one entity to another. The proposed DIP facility and its attributes would have been subject to secured charges and to Court approval. It is possible that this is the discussion referenced in the Davies Affidavit. In any event, the Davies Developers' application for creditor protection was denied.

¹⁰ Email from Davies to Singh dated August 25, 2014.

8.0 Additional Improper Conduct by Davies and Related Parties

1. Notwithstanding the Mareva Order, Davies and Judith Davies continue to list and market for sale their personal residence. Further to these efforts, on July 18, 2017, they received an offer to purchase the residence. Although the Receiver understands that the offer has not yet been accepted, given all of Davies' and Judith Davies' efforts to date, there are concerns that they may sell the property and further deplete any assets that may be able to satisfy a judgment in this matter. The Receiver also has questions concerning the mortgage on the property.
2. Further, counsel for the Receiver has requested that Davies consent to the Mareva Order being registered on title to the Arizona Property; however, Davies refused to do so. While Davies did maintain his previously given undertaking not to sell or encumber the Arizona Property pending the return hearing for the motion, based on his refusal to consent to the registration of the Mareva Order, and all the other conduct of Davies as described herein and in the Fourth and Sixth Reports, there are concerns that the already depleted misappropriated assets may well continue to be further transferred to frustrate recovery efforts.

9.0 The Necessity of Continuing the Mareva Injunction on an Interlocutory Basis

1. Based on the above and all the other circumstances, including the reasons detailed in the Fourth and Sixth Reports, the Receiver recommends that the Court continue the Mareva Order as against Davies, in his personal capacity and in his capacity as trustee of both the Davies Family Trust and the Davies Arizona Trust, and Aeolian, as well as Judith Davies, in her personal capacity and in her capacity as trustee of the Davies Family Trust, and Harris, solely in his capacity as trustee of the Davies Family Trust, on an interlocutory basis until a final disposition of the proceeding.
2. Davies asserts in the Davies Affidavit that the effect of the receivership and the Receiver's purportedly unwarranted allegations against the Davies Developers and him personally have been harmful and caused him to lose virtually all of his assets; however, as detailed in the Sixth Report, Davies' asset and liability statement reflects that he has no assets and that he has not had any assets since prior to the commencement of the receivership proceeding.

* * *

All of which is respectfully submitted,



KSV KOFMAN INC.

**SOLELY IN ITS CAPACITY AS RECEIVER AND MANAGER OF
CERTAIN PROPERTY OF SCOLLARD DEVELOPMENT CORPORATION, MEMORY CARE
INVESTMENTS (KITCHENER) LTD., MEMORY CARE INVESTMENTS (OAKVILLE) LTD.,
1703858 ONTARIO INC., LEGACY LANE INVESTMENTS LTD., TEXTBOOK (525 PRINCESS
STREET) INC. AND TEXTBOOK (555 PRINCESS STREET) INC.
AND NOT IN ITS PERSONAL CAPACITY**

Appendix “F”

**Seventeenth Report of
KSV Kofman Inc.**

March 18, 2019

**as the Court-appointed Receiver and Manager
of Certain Property of Scollard Development
Corporation, Memory Care Investments
(Kitchener) Ltd., Memory Care Investments
(Oakville) Ltd., 1703858 Ontario Inc., Legacy
Lane Investments Ltd., Textbook (525 Princess
Street) Inc. and Textbook (555 Princess Street)
Inc.**

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COURT FILE NO: CV-17-11689-00CL
COURT FILE NO. CV-17-11822-00CL
DIVISIONAL COURT FILE NO.: 533/77

**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.

**SEVENTEETH REPORT OF KSV KOFMAN INC.
AS COURT-APPOINTED 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.**

MARCH 18, 2019

1.0 Introduction

1. This report ("Report") is filed by KSV Kofman Inc. ("KSV") as Court-appointed receiver and manager (the "Receiver") of the companies listed below (the "Receivership Companies") pursuant to the following orders of the Ontario Superior Court of Justice (the "Court"):
 - a) Scollard Development Corporation, pursuant to an order dated February 2, 2017; and
 - b) Memory Care Investments (Kitchener) Ltd., Memory Care Investments (Oakville) Ltd., 1703858 Ontario Inc., Legacy Lane Investments Ltd., Textbook (525 Princess Street) Inc. and Textbook (555 Princess Street) Inc., pursuant to an order dated April 28, 2017.
2. Pursuant to an order of the Court dated October 27, 2016, Grant Thornton Limited was appointed Trustee of eleven entities (collectively, the "Trustee Corporations"), which raised monies from investors ("Investors") through syndicated mortgage investments. Eight of the Trustee Corporations then advanced these monies on a secured basis pursuant to loan agreements between the Trustee Corporations and the Receivership Companies, as well as to other entities now in receivership in respect of which KSV is also the Receiver.

1.1 Purpose of this Report

1. The purpose of this Report is to summarize the conduct of John Davies (“Davies”) following the granting of the interlocutory Mareva order on August 30, 2017 (the “Mareva Order”). The Mareva Order enjoins the following parties from selling, removing, dissipating, alienating, transferring, assigning, encumbering, or similarly dealing with any of their assets, wherever situate worldwide, including but not limited to the assets and accounts listed in Schedule “A” to the Mareva Order and, in particular (but not limited to), the real estate owned by the Arizona Trust located at 35410 North 66th Place, Carefree, Arizona, 85377 (the “Arizona Real Property”):
 - a) Davies, in his personal capacity, and in his capacity as the trustee of both the Davies Family Trust (the “Family Trust”) and the Davies Arizona Trust (the “Arizona Trust”);
 - b) Aeolian Investments Ltd. (“Aeolian”);
 - c) Judith Davies in her personal capacity and in her capacity as trustee of the Family Trust; and
 - d) Gregory Harris solely in his capacity as trustee of the Family Trust.
2. This Report is filed by the Receiver in the context of the Receiver’s motion before the Divisional Court of Ontario (the “Divisional Court”) to adduce fresh evidence on Davies’ and Aeolian’s appeal of the Mareva Order, which appeal is currently returnable April 3, 2019.

1.2 Background

1. The Background to this Report is set out in the Receiver’s previous reports to Court, including its Fourth Report, Sixth Report and Supplement to the Sixth Report, all of which were before the Judge of first instance who granted the Mareva Order and all of which form part of the appeal record already before the Divisional Court. Strictly for ease of reference, copies of the Fourth Report, Sixth Report and Supplement to the Sixth Report, all without appendices, are respectively attached hereto as Appendices “A”, “B” and “C”.

2.0 The Arizona Real Property

1. The Receiver and its counsel, Bennett Jones LLP, had an ongoing dialogue with Davies, through his and Aeolian’s counsel, Dentons Canada LLP (“Dentons”), regarding the Arizona Real Property from the time the Mareva Order was granted through to the sale of the Arizona Real Property on November 7, 2018.
2. Following the granting of the Mareva Order, the Receiver regularly inquired with Dentons about the status of the Arizona Real Property. In response to those inquiries, the Receiver learned that the sole mortgage on the property from the Bank of Internet (“BOI”) was in arrears, property taxes were also in arrears and the property was not being maintained. The Receiver raised concerns with Dentons that BOI may commence power of sale proceedings; however, Dentons advised the Receiver that Davies was negotiating with BOI to avoid that outcome, including by trying to find a rent-paying tenant to lease the premises.

3. On October 10, 2018, to the surprise of the Receiver in light of the ongoing discussions with Davies and Dentons concerning the Arizona Real Property, Dentons advised the Receiver that BOI had taken steps to sell the Arizona Real Property through a power of sale process, with a public auction to take place on December 27, 2018, likely one of the worst days of the year for such a sale, it being two days after Christmas. The power of sale notice (the "Notice") was dated September 27, 2018, approximately two weeks before Davies advised the Receiver of the Notice. A copy of the Notice is attached as Appendix "D", along with the cover email from Dentons dated October 10, 2018, which appended the Notice.
4. In order to attempt to deal with BOI's power of sale process, the Receiver discussed possible solutions with Davies, through Dentons. These discussions included having the Receiver bring current the BOI mortgage and funding the costs to maintain the Arizona Real Property in the context of an agreed upon sale process for the Arizona Real Property run collaboratively by Davies and the Receiver.
5. On October 12, 2018, unbeknownst to the Receiver at the time, the Arizona Trust, through Davies, entered into an agreement of purchase and sale ("APS") under which it agreed to sell the Arizona Real Property for US\$1.65 million along with the furnishings in the property for a further US\$150,000 (the two sales are referred to herein as the "Transaction", with the Arizona Real Property and the furnishings in the property referred to as the "Arizona Property"). The APS was not conditional on the Receiver's approval, on Court approval or on any other express condition that would allow Davies to terminate the APS. A copy of the APS is attached as Appendix "E".
6. The Receiver was not notified of the Transaction until October 20, 2018 despite being in a frequent dialogue with Dentons in the days immediately prior to and after the Arizona Trust entered into the Transaction. The discussions following the date the APS was signed (October 12, 2018), are summarized as follows:
 - a) on October 16, 2018, being four days after the APS was executed, Dentons advised the Receiver that Davies was reviewing refinancing options for the Arizona Real Property and that Davies had also spoken to a realtor about finding potential buyers for the property to avoid a sale through an auction process; however, there was no mention that the APS had already been signed by Davies; and
 - b) on October 18, 2018, being six days after the APS was executed, and after being questioned extensively by the Receiver, Dentons provided further details concerning the realtor, advising the Receiver that Davies had "been in touch" with a real estate agent who had previously brought him "unsolicited offers". Dentons further advised the Receiver that Davies had asked the agent to "follow up with those prior parties". Although purportedly "not formally retained", Davies advised the agent he would pay him "a commission of roughly 6%" if the agent could find a buyer willing to pay at least \$1.5 million for the property before the public auction. Once again, there was no mention that the APS had already been signed by Davies.

Copies of these emails, with redactions where necessary, are provided in Appendix "F".

7. The Receiver believes that the Transaction contravenes Davies' obligations under the Mareva Order, which restricted him, and the Arizona Trust, from selling, dissipating, alienating, transferring, assigning, encumbering, or similarly dealing with any assets, including the Arizona Property. Despite an ongoing dialogue with the Receiver and Davies' counsel, Davies did not, before signing the APS: i) disclose to the Receiver his informal retention of an agent to sell the Arizona Property; ii) seek the Receiver's consent to the Transaction; or iii) incorporate a provision in the APS requiring an exemption from the Mareva Order. Additionally, Davies misled the Receiver after the APS was signed and did not disclose that he had executed the APS until October 20, 2018, being 8 days after he executed it.
8. After considering the terms of the APS, reviewing comparable sales, the amount of time that the comparable and other properties had been listed for sale and the challenges associated with registering the Mareva Order on title to the Arizona Real Property (which was not possible absent an order from the Arizona court, which could not be easily obtained, or unless Davies consented to its registration, which he refused to do), the Receiver consented to the Transaction provided that: (i) the net proceeds from the Transaction be held in trust by Dentons; and (ii) Dentons provide an undertaking to the Receiver that it would not distribute the net proceeds absent a Court order authorizing it to do so. Davies ultimately agreed to these conditions.
9. The Transaction closed on November 7, 2018. The proceeds of the Transaction were used to pay the BOI mortgage, a lien on the property and realtor commissions, with the majority of the balance (the balance being US\$862,568) (the "Proceeds") deposited into a trust account at Dentons. A portion of the balance, US\$247,500, is currently being held by the United States Internal Revenue Service in respect of a potential withholding tax obligation. Based on information provided to the Receiver by Dentons, the Receiver understands that Davies expects that the withholding tax holdback will eventually be released in full and, if released, it is also to be held by Dentons in trust.
10. At this time, the Proceeds represent most of Davies' assets known to the Receiver.

2.1 Davies Requests for Exemption from the Mareva Order

1. Pursuant to an order of the Court dated September 18, 2018, Davies has been receiving \$7,500 per month as a living allowance since October 1, 2018. This amount is currently being paid from the Proceeds.
2. Davies has made further requests for funding, including for fees for criminal counsel and other legal representation, as well as for tuition and residence costs for his son to attend a music college in the United States. In this regard, on December 14, 2018, Davies brought an urgent motion for an exemption under the Mareva Order so that Davies could pay his son's tuition and residence costs totaling US\$31,205.90. The motion was brought on virtually no notice to the Receiver despite Davies' son applying to the school in March 2018, interviewing with the school in May 2018 and being admitted to the school at that time or shortly thereafter. According to Davies, tuition had to be paid just six days later, by December 20, 2018, for his son to attend the college immediately thereafter. On December 14, 2018, Justice Myers issued an endorsement rejecting the urgency of the motion and requiring counsel to set a schedule in connection with the motion. A copy of Justice Myers' endorsement is attached as Appendix "G" along with an unofficial transcript of the endorsement. On December 21, 2018, counsel for Davies advised the Receiver he was abandoning the tuition motion.

3.0 Conclusion

1. The Receiver submits that the foregoing meets the test for adducing fresh evidence for the reasons noted below, among others.
 - a) None of the foregoing (excluding the evidence in the Introduction and Background sections, which is referenced strictly for context and already forms part of the appeal record) was available at the time of the hearing for the Mareva Order.
 - b) The foregoing is relevant and necessary to the hearing of the appeal of the Mareva Order where Davies takes the position that the lower Court erred in finding that there was a risk of dissipation of assets and that there would be irreparable harm suffered by the Receiver in the absence of a protective order as the foregoing establishes that Davies, in the face of the Mareva Order, without any notice to, or consultation with, the Receiver:
 - i. took steps to market the Arizona Real Property for sale by informally retaining an agent;
 - ii. entered into the APS;
 - iii. did not make the APS subject to the Receiver's consent or Court approval;
 - iv. advised the Receiver that he was looking at refinancing options for the Arizona Real Property - even after he had already entered into the APS; and
 - v. did not disclose that he had entered into the APS until 8 days after it had been executed notwithstanding there was an ongoing dialogue with the Receiver and Davies' counsel at the time.
2. Declining to admit the fresh evidence could lead to a substantial injustice in result as the Divisional Court may hear the issues under appeal on the basis of an incomplete record.

* * *

All of which is respectfully submitted,



KSV KOFMAN INC.

SOLELY IN ITS CAPACITY AS THE COURT-APPOINTED RECEIVER AND MANAGER OF CERTAIN PROPERTY OF SCOLLARD DEVELOPMENT CORPORATION, MEMORY CARE INVESTMENTS (KITCHENER) LTD., MEMORY CARE INVESTMENTS (OAKVILLE) LTD., 1703858 ONTARIO INC., LEGACY LANE INVESTMENTS LTD., TEXTBOOK (525 PRINCESS STREET) INC. AND TEXTBOOK (555 PRINCESS STREET) INC., AND NOT IN ITS PERSONAL OR IN ANY OTHER CAPACITY

Appendix “G”

**Eighteenth Report of
KSV Kofman Inc.**

April 24, 2019

**as Receiver and Manager of Certain Property
of Scollard Development Corporation, Memory
Care Investments (Kitchener) Ltd., Memory
Care Investments (Oakville) Ltd., 1703858
Ontario Inc., Legacy Lane Investments Ltd.,
Textbook (525 Princess Street) Inc. and
Textbook (555 Princess Street) Inc.**

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

and

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

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

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

IN THE MATTER OF THE RECEIVERSHIP OF SCOLLARD DEVELOPMENT CORPORATION, MEMORY CARE INVESTMENTS (KITCHENER) LTD., MEMORY CARE INVESTMENTS (OAKVILLE) LTD., 1703858 ONTARIO INC., LEGACY LANE INVESTMENTS LTD., TEXTBOOK (525 PRINCESS STREET) INC. AND TEXTBOOK (555 PRINCESS STREET) INC.

AND IN THE MATTER OF THE RECEIVERSHIP OF TEXTBOOK (445 PRINCESS STREET) INC.

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

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

AND

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

AND

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

APRIL 24, 2019

1.0 Introduction

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

- a) Scollard Development Corporation, pursuant to an order of the Court dated February 2, 2017;
 - b) Memory Care Investments (Kitchener) Ltd., Memory Care Investments (Oakville) Ltd., 1703858 Ontario Inc., Legacy Lane Investments Ltd., Textbook (525 Princess Street) Inc. and Textbook (555 Princess Street) Inc., pursuant to an order of the Court dated April 28, 2017;
 - c) Textbook (445 Princess Street) Inc., pursuant to an order of the Court dated January 9, 2018; and
 - d) Textbook Ross Park Inc., Textbook (774 Bronson Avenue) Inc. and McMurray Street Investments Inc., pursuant to an order of the Court dated May 30, 2018.
2. Pursuant to an order of the Court dated October 27, 2016, Grant Thornton Limited was appointed trustee (the "Trustee") of eleven entities (collectively, the "Trustee Corporations"), which raised monies from investors through syndicated mortgage investments. Eight of the Trustee Corporations then advanced these monies on a secured basis pursuant to loan agreements between the Trustee Corporations and the Receivership Companies.
 3. On August 30, 2017, the Honourable Justice Myers issued an order (the "Mareva Order") in the civil litigation bearing Court File No. CV-17-11822-00CL (the "Action") against the defendants, John Davies in his personal capacity and in his capacity as trustee of the Davies Family Trust (the "Family Trust") and the Davies Arizona Trust (the "Arizona Trust") (in all such capacities, "Mr. Davies"), Judith Davies in her personal capacity and in her capacity as trustee of the Family Trust (in all such capacities, "Ms. Davies"), Aeolian Investments Ltd. ("Aeolian", and together with Mr. Davies and Ms. Davies, the "Mareva Defendants") and Gregory Harris solely in his capacity as trustee of the Family Trust (in such capacity, "Mr. Harris").
 4. The Mareva Order restricts the Mareva Defendants and Mr. Harris from selling, removing, dissipating, alienating, transferring, assigning, encumbering, or similarly dealing with any of their assets, wherever situate worldwide, including but not limited to the assets and accounts listed in Schedule "A" to the Mareva Order and, in particular (but not limited to) the real estate that was owned by the Arizona Trust located at 35410 North 66th Place, Carefree, Arizona, 85377 (the "Arizona Real Property").

1.1 Purposes of this Report

1. The purposes of this Report are to:
 - a) provide background information with respect to these receivership proceedings;
 - b) summarize the terms of a settlement agreement between the Receiver and the Trustee, on the one hand, and the Mareva Defendants, on the other hand, solely in respect of the Mareva Order (the "Settlement Agreement"); and

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

2.0 Background

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

3.0 The Settlement Agreement

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

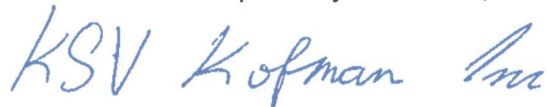
8. Additionally, going forward, the Mareva Defendants will be required to report to the Receiver and the Trustee on a quarterly basis regarding all their respective direct and indirect earnings for the previous quarter. Should any of their earnings, on an individual basis, exceed CAD\$50,000 for any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

4.0 Conclusion and Recommendation

1. Based on the foregoing, the Receiver respectfully recommends that this Court make an Order granting the relief detailed in Section 1.1 (1)(c) of this Report.

* * *

All of which is respectfully submitted,



**KSV KOFMAN INC.,
SOLELY IN ITS CAPACITY AS RECEIVER AND MANAGER OF
CERTAIN PROPERTY OF SCOLLARD DEVELOPMENT CORPORATION, MEMORY CARE
INVESTMENTS (KITCHENER) LTD., MEMORY CARE INVESTMENTS (OAKVILLE) LTD.,
1703858 ONTARIO INC., LEGACY LANE INVESTMENTS LTD., TEXTBOOK (525 PRINCESS
STREET) INC., TEXTBOOK (555 PRINCESS STREET) INC., TEXTBOOK (445 PRINCESS
STREET) INC., TEXTBOOK ROSS PARK INC., TEXTBOOK (774 BRONSON AVENUE) INC.
AND MCMURRAY STREET INVESTMENTS INC.**

Appendix “H”

SETTLEMENT AGREEMENT, DECLARATIONS AND FULL AND FINAL RELEASE

THIS AGREEMENT, effective this 8th day of October, 2019,

AMONGST:

KSV KOFMAN INC., IN ITS CAPACITY AS THE COURT-APPOINTED RECEIVER AND MANAGER OF CERTAIN PROPERTY OF SCOLLARD DEVELOPMENT CORPORATION, MEMORY CARE INVESTMENTS (KITCHENER) LTD., MEMORY CARE INVESTMENTS (OAKVILLE) LTD., 1703858 ONTARIO INC., LEGACY LANE INVESTMENTS LTD., TEXTBOOK (525 PRINCESS STREET) INC., TEXTBOOK (555 PRINCESS STREET) INC., TEXTBOOK (445 PRINCESS STREET) INC., MCMURRAY STREET INVESTMENTS INC., TEXTBOOK (774 BRONSON AVENUE) INC., AND TEXTBOOK ROSS PARK INC.

(in such capacity, the “**Receiver**”)

-and-

GRANT THORNTON LIMITED, IN ITS CAPACITY AS THE COURT-APPOINTED TRUSTEE OF TEXTBOOK STUDENT SUITES (525 PRINCESS STREET) TRUSTEE CORPORATION, TEXTBOOK STUDENT SUITES (555 PRINCESS STREET) TRUSTEE CORPORATION, TEXTBOOK STUDENT SUITES (ROSS PARK) TRUSTEE CORPORATION, 2223947 ONTARIO LIMITED, MC TRUSTEE (KITCHENER) LTD., SCOLLARD TRUSTEE CORPORATION, TEXTBOOK STUDENT SUITES (774 BRONSON AVENUE) TRUSTEE CORPORATION, 7743718 CANADA INC., KEELE MEDICAL TRUSTEE CORPORATION, TEXTBOOK STUDENT SUITES (445 PRINCESS STREET) TRUSTEE CORPORATION AND HAZELTON 4070 DIXIE ROAD TRUSTEE CORPORATION

(in such capacity, the “**Trustee**”)

-and-

BHAKTRAJ SINGH A.K.A RAJ SINGH

(“**Mr. Singh**”)

-and-

RS CONSULTING GROUP INC.

(“**RSCG**”)

-and-

TIER 1 TRANSACTION ADVISORY SERVICES INC.

(“**Tier 1 Advisory**”, and together with Mr. Singh and RSCG, the “**Settling Defendants**”)

WHEREAS:

- A. Grant Thornton Limited was appointed as the Trustee pursuant to an Order of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) issued on October 27, 2016 (the “**Trustee Proceedings**”);
- B. KSV Kofman Inc. was appointed as the Receiver pursuant to Orders of the Court issued on February 2, 2017, April 28, 2017, May 2, 2017, January 9, 2018 and May 30, 2018 (the “**Receiver Proceedings**”);
- C. The Trustee and the Receiver commenced an action in the Court by the issuance of a Statement of Claim dated October 3, 2018 in Court File No. CV-18-606314-00CL (the “**Action**”) against the Settling Defendants and the following parties: Aeolian Investments Ltd., John Davies in his personal capacity and in his capacity as trustee of both the Davies Arizona Trust and the Davies Family Trust, Judith Davies in her personal capacity and in her capacity as trustee of the Davies Family Trust, Gregory Harris in his personal capacity and in his capacity as trustee of the Davies Family Trust, Harris + Harris LLP, Nancy Elliot, Elliot Law Professional Corporation, Walter Thompson, 1321805 Ontario Inc., Bruce Stewart, the Traditions Development Company Ltd., David Arsenault, James Grace, Jude Cassimy, First Commonwealth Mortgage Corporation, Memory Care Investments Ltd., Textbook Suites Inc., Textbook Student Suites Inc. and Michael Cane (collectively, in any and all capacities, and together with any and all other parties or potential parties in the Action and in any other claims and proceedings commenced, continued or pursued by the Trustee or the Receiver, but excluding the Settling Defendants in any and all capacities, the “**Non-Settling Defendants**”);
- D. The Trustee and the Receiver intend to continue the Action against the Non-Settling Defendants and potentially commence, continue and pursue other claims and proceedings against the Non-Settling Defendants;
- E. The Trustee and the Receiver, on the one hand, and the Settling Defendants, on the other hand, wish to resolve all of the known and unknown facts and issues in dispute amongst them and all of the known and unknown claims that have been or could be commenced or asserted by the Trustee or the Receiver against the Settling Defendants, whether in the Action or in a separate claim or proceeding, which arise from or relate to the facts alleged or issues raised, or which could have been alleged or raised, in the Action;
- F. In that regard, the Settling Defendants have agreed to, among other things (and subject to and in accordance with the terms, conditions and exceptions provided in this Agreement, including the Schedules attached hereto), pay the Trustee and the Receiver, or as they may direct, the all-inclusive sum of two million, one hundred thousand dollars in lawful Canadian currency (CDN \$2,100,000.00) allocated as two million dollars (CDN\$2,000,000.00) to damages and one hundred thousand dollars (CDN\$100,000.00) to costs (the “**Settlement Funds**”), and provide ongoing cooperation to the Trustee and the Receiver in connection with the Action and any of their other claims and proceedings against the Non-Settling Defendants;

- G. In turn, the Trustee and the Receiver have agreed to, among other things (and subject to and in accordance with the terms, conditions and exceptions provided in this Agreement, including the Schedules attached hereto):
- i. accept the Settlement Funds in full and final satisfaction of the Action and any other potential claims and proceedings against the Settling Defendants;
 - ii. discontinue the Action as against the Settling Defendants on a strictly with prejudice, without costs basis;
 - iii. refrain from commencing or continuing claims or proceedings against the Settling Defendants; and
 - iv. fully and finally release the Settling Defendants; and
- L. The Trustee and the Receiver intend to preserve all of their rights and remedies, and all claims they have in the Action or otherwise, against the Non-Settling Defendants, continue the Action against the Non-Settling Defendants and possibly continue, commence and pursue further claims and proceedings against all or some of the Non-Settling Defendants, subject to and in accordance with the terms, conditions and exceptions provided in this Agreement, including the Schedules attached hereto.

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

1. The above recitals are true and accurate, and form part of this Agreement together with the Schedules attached hereto.
2. The Trustee and the Receiver shall apply to the Court for, and recommend, an order approving and giving full effect to this Agreement, including all of the Schedules attached hereto (the "**Order**"). The Order shall include language substantially in the form of the draft language attached hereto as **Schedule "E"**. In the event the Court declines to issue the Order, this Agreement, including the Schedules attached hereto, shall be null and void and of no further force or effect.
3. Prior to the issuance of the Order:
 - (a) the Settling Defendants shall each provide the Trustee and the Receiver with a sworn declaration, substantially in the forms attached hereto as **Schedules "A", "B", and "C"**, respectively (the "**Declarations**"), which shall be held in escrow by counsel to the Trustee and counsel to the Receiver, and not released, unless and until the Order is issued by the Court; and
 - (b) the Trustee and the Receiver shall each provide the Settling Defendants with an executed full and final release substantially in the form attached hereto as **Schedule "D"** (the "**Full and Final Release**"), which shall be held in escrow by counsel to the Settling Defendants, and not released, unless and until the Order is issued by the Court.

4. The Trustee and the Receiver each agree to keep the Schedules to the Declarations and the information set out in such Schedules confidential and to not disclose such Schedules or such information except if such disclosure is required by law. To the extent disclosure of any of the Schedules and/or any of the information set out in the Schedules is required of the Trustee and/or the Receiver by law, to the extent possible, the Trustee and Receiver shall redact all personal and financial information set out therein, in which case the Trustee and Receiver shall disclose only the minimum portions of the Schedules and the information set out in such Schedules that is required to be disclosed by law.
5. The Settling Defendants shall pay, or cause to be paid, the Settlement Funds to the Trustee and the Receiver, or as they may direct, on the following schedule, which Settlement Funds shall be held in escrow in a non-interest bearing account by counsel to the Trustee until the Order is issued by the Court, and only returned to the Settling Defendants (without interest) in the event that the Court refuses to issue the Order:
 - (a) \$2,100,000 payable within 24 hours of delivery by the Settling Defendants of a fully executed copy of this Agreement.
6. In the event there is any material failure by the Settling Defendants to pay any of the Settlement Funds in accordance with the terms of this Agreement, the Full and Final Release will be immediately revocable at the option of the Trustee and the Receiver and, upon revocation, of no further force or effect.
7. In the event that the Trustee and the Receiver believe there was a material misrepresentation in the Declarations, the Trustee and the Receiver may seek a determination from the Court regarding whether there was a material misrepresentation in the Declarations. In the event the Court determines that there was a material misrepresentation in the Declarations, the Full and Final Release will be immediately revocable at the option of the Trustee and the Receiver and, upon such revocation, of no further force or effect.
8. As soon as reasonably possible following the issuance of the Order, the Trustee and the Receiver shall discontinue the Action as against the Settling Defendants on a strictly with prejudice and without costs basis, and shall amend their statement of claim in the Action so as to continue the Action against the Non-Settling Defendants only.
9. In accordance with the terms, conditions and exceptions provided in this Agreement, including the Schedules attached hereto, the Receiver and Trustee shall not be entitled to recover from the Non-Settling Defendants any damages, restitution, an accounting, disgorgement, interest, costs, or any other monetary relief ("**Monetary Relief**") that corresponds to the proportion of any judgment that, had the Settling Defendants not settled, the Court would have apportioned to them. The Receiver and Trustee shall be entitled to recover from the Non-Settling Defendants only such claims for Monetary Relief attributable to the aggregate of the several liability of the Non-Settling Defendants. For greater certainty, if the Court ultimately awards Monetary Relief to the Receiver or the Trustee against the Non-Settling Defendants and finds, holds, orders, or declares that the Non-Settling Defendants have the right or ability to pass any liability for such Monetary Relief or a portion thereof onto the Settling

Defendants, or the right or ability to seek or claim contribution or indemnity for such Monetary Relief or a portion thereof from the Settling Defendants, the Trustee and the Receiver waive their right to recover such Monetary Relief with respect to such portion attributable to the Settling Defendants and this paragraph and Agreement shall act as a complete estoppel of any recovery sought by the Receiver or Trustee against any person on such basis.

10. In accordance with the terms, conditions and exceptions provided in this Agreement, including the Schedules attached hereto, the Receiver and the Trustee shall not be entitled to claim or recover from Camalita Singh, Susanna Solowiej, Prem Singh, Jacqueline Hoysted, Deorani Dyal or Sonita Nauth any relief against such persons to the extent any such claim is based on a claim that the Settling Defendants or any one of them sold, gifted, conveyed or otherwise transferred to such persons any of the Property (as that term is defined in the Settling Defendants' respective Declarations) listed in the Schedules to the Settling Defendants' respective Declarations in an undervalued, non-arm's length, fraudulent, improvident or otherwise wrongful manner. The Receiver and the Trustee acknowledge and agree that such persons are third party beneficiaries of this paragraph and that this paragraph and this Agreement shall, in accordance with the terms, conditions and exceptions provided in this Agreement, including the Schedules attached hereto, act as a complete estoppel of any such claim brought by the Receiver or the Trustee against such persons on such basis.
11. The Settling Defendants shall fully and reasonably cooperate with the Trustee and the Receiver in relation to their claims and proceedings against the Non-Settling Defendants, including, but not limited to, in the Action. Such cooperation shall include but not be limited to providing an account of the facts known to the Settling Defendants that are relevant to such claims and proceedings, producing relevant non-privileged documents, records and information over which the Settling Defendants have possession, power or control and using best efforts to make themselves and any entities over which the Settling Defendants exercise control reasonably available to the Trustee and the Receiver at the Trustee's or Receiver's request. The Trustee and the Receiver acknowledge that the Settling Defendants' cooperation will include providing testimony subject to the Settling Defendants being compelled to do so by way of summons or other legal process. The Settling Defendants shall be compensated for their cooperation in accordance with the relevant provisions of the *Rules of Civil Procedure* (Ontario). In no way is this paragraph or this Agreement intended to be, nor is it, a waiver of any privilege that the Settling Defendants have over such information, documents and records, and the Receiver and the Trustee are not entitled to receive any privileged information of the Settling Defendants by virtue of this paragraph or this Agreement. Given the Trustee's and the Receiver's desire to limit costs and maximize recovery for stakeholders, the Settling Defendants' agreement to cooperate is a material factor influencing the Trustee's and the Receiver's respective decisions to enter into and execute this Agreement and compromise their claims against the Settling Defendants.
12. The parties to this Agreement hereby declare, represent and warrant that they have consulted with and been advised by independent legal counsel with respect to the terms of the settlement set forth herein, that they have read and fully understand all of the terms and consequences of this Agreement, including all of the Schedules attached hereto, and that they enter into this Agreement freely and voluntarily, without coercion

or duress, and without reliance upon any representation, warranty, condition or agreement, whether written or oral, other than as expressly set out or referred to herein.

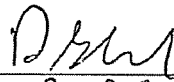
13. The parties to this Agreement shall execute all documents and take all steps as are necessary and reasonable to accomplish the objectives of this Agreement, including its Schedules, and give effect thereto.
14. This Agreement may not be altered, amended or modified except by written agreement of the parties to this Agreement. This Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein. Any dispute arising out of or in connection with this Agreement shall be exclusively and finally determined by the Court.
15. The terms of this Agreement shall enure to the benefit of, and be binding upon, the parties hereto and their respective heirs, successors and assigns, as applicable.
16. This Agreement, including the Schedules attached hereto, constitutes the entire agreement among the parties, and supersedes all other prior agreements and understandings, both written and oral, between the parties with respect to the subject matter hereof.
17. This Agreement, including the Schedules attached hereto, may be executed in counterparts, all of which taken together shall be deemed to constitute one and the same instrument, and a facsimile, email or electronically transmitted signature shall be deemed an original signature and of equally binding force and effect.

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement effective this 8th day of October, 2019, notwithstanding the actual date of execution:

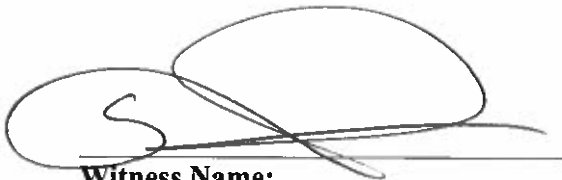
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GRANT THORNTON LIMITED,
IN ITS CAPACITY AS THE
COURT-APPOINTED TRUSTEE
OF TEXTBOOK STUDENT
SUITES (525 PRINCESS
STREET) TRUSTEE
CORPORATION, TEXTBOOK
STUDENT SUITES (555
PRINCESS STREET) TRUSTEE
CORPORATION, TEXTBOOK
STUDENT SUITES (ROSS
PARK) TRUSTEE
CORPORATION, 2223947
ONTARIO LIMITED, MC
TRUSTEE (KITCHENER) LTD.,
SCOLLARD TRUSTEE
CORPORATION, TEXTBOOK
STUDENT SUITES (774
BRONSON AVENUE) TRUSTEE
CORPORATION, 7743718
CANADA INC., KEELE
MEDICAL TRUSTEE
CORPORATION, TEXTBOOK
STUDENT SUITES (445
PRINCESS STREET) TRUSTEE
CORPORATION AND
HAZELTON 4070 DIXIE ROAD
TRUSTEE CORPORATION


Witness Name: Rob Stelzer


Name: DAVID GOLDBAND
Title: Vice President

KSV KOFMAN INC., IN ITS
CAPACITY AS THE COURT-
APPOINTED RECEIVER AND
MANAGER OF CERTAIN PROPERTY
OF SCOLLARD DEVELOPMENT
CORPORATION, MEMORY CARE
INVESTMENTS (KITCHENER) LTD.,
MEMORY CARE INVESTMENTS
(OAKVILLE) LTD., 1703858 ONTARIO
INC., LEGACY LANE INVESTMENTS
LTD., TEXTBOOK (525 PRINCESS
STREET) INC. AND TEXTBOOK (555
PRINCESS STREET) INC.,
TEXTBOOK (445 PRINCESS STREET)
INC., MCMURRAY STREET
INVESTMENTS INC., TEXTBOOK (774
BRONSON AVENUE) INC., AND
TEXTBOOK ROSS PARK INC.



Witness Name:
David S. Gray

Witness Name:

Witness Name:

Witness Name:



Name: Noah Goldstein
Title: Managing Director

BHAKTRAJ SINGH

RS CONSULTING GROUP INC.

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

TIER 1 TRANSACTION ADVISORY
SERVICES INC.

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

KSV KOFMAN INC., IN ITS
CAPACITY AS THE COURT-
APPOINTED RECEIVER AND
MANAGER OF CERTAIN PROPERTY
OF SCOLLARD DEVELOPMENT
CORPORATION, MEMORY CARE
INVESTMENTS (KITCHENER) LTD.,
MEMORY CARE INVESTMENTS
(OAKVILLE) LTD., 1703858 ONTARIO
INC., LEGACY LANE INVESTMENTS
LTD., TEXTBOOK (525 PRINCESS
STREET) INC. AND TEXTBOOK (555
PRINCESS STREET) INC.,
TEXTBOOK (445 PRINCESS STREET)
INC., MCMURRAY STREET
INVESTMENTS INC., TEXTBOOK (774
BRONSON AVENUE) INC., AND
TEXTBOOK ROSS PARK INC.

Witness Name:

Witness Name:

Witness Name:

Witness Name:

Name:
Title:

BHAKTRAJ SINGH

RS CONSULTING GROUP INC.

Name: BHAKTRAJ SINGH
Title: President
I have authority to bind the corporation.

TIER 1 TRANSACTION ADVISORY
SERVICES INC.

Name: BHAKTRAJ SINGH
Title: President
I have authority to bind the corporation.

SCHEDULE "D"

FORM OF FULL AND FINAL RELEASE

WHEREAS this is a mutual Full and Final Release between:

Grant Thornton Limited, in its capacity as the court-appointed Trustee of Textbook Student Suites (525 Princess Street) Trustee Corporation, Textbook Student Suites (555 Princess Street) Trustee Corporation, Textbook Student Suites (Ross Park) Trustee Corporation, 2223947 Ontario Limited, MC Trustee (Kitchener) Ltd., Scollard Trustee Corporation, Textbook Student Suites (774 Bronson Avenue) Trustee Corporation, 7743718 Canada Inc., Keele Medical Trustee Corporation, Textbook Student Suites (445 Princess Street) Trustee Corporation and Hazelton 4070 Dixie Road Trustee Corporation (the "**Trustee**") and KSV Kofman Inc., in its capacity as the court-appointed Receiver and Manager of certain property of Scollard Development Corporation, Memory Care Investments (Kitchener) Ltd., Memory Care Investments (Oakville) Ltd., 1703858 Ontario 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. (the "**Receiver**")

-and-

Bhaktraj Singh a.k.a. Raj Singh, RS Consulting Group Inc. and Tier 1 Transaction Advisory Services Inc. (collectively, the "**Settling Defendants**"), together with the Receiver and the Trustee, the "**Parties**" and, individually, a "**Party**")

relating to: (1) the proceedings in the Ontario Superior Court of Justice (Commercial List) in Toronto bearing Court File No. CV-18-606314-00CL (the "**Action**"); (2) all of the known and unknown facts and issues in dispute amongst the Parties and all of the known and unknown claims that have been or could be commenced or asserted by the Trustee or the Receiver against the Settling Defendants, whether in the Action or in a separate claim or proceeding, which arise from or relate to the facts alleged or issues raised, or which could have been alleged or raised, in the Action, and (3) facts and issues arising from or relating to: (i) the syndicated mortgage investments with 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 (collectively, the "**Trustee Companies**"); and (ii) the real estate development projects 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. (collectively, the "**Development Companies**") (collectively, the "**Released Matters**");

AND WHEREAS the Trustee and the Receiver, on the one hand, and the Settling Defendants, on the other hand, wish to fully and finally resolve and settle the Released Matters and have

agreed to release each other from any and all manners of Claims (as defined below) relating to the Released Matters, subject to the terms and conditions of the Settlement Agreement to which this Full and Final Release is attached as **Schedule "D"**,

NOW THEREFORE in consideration of the mutual covenants contained in this Full and Final Release and the terms set out in the Settlement Agreement to which this Full and Final Release is attached as **Schedule "D"**, and for other good and valuable consideration, the receipt and sufficiency of which is hereby irrevocably acknowledged by the Parties:

1. The recitals set out above are true and accurate, and form part of this Full and Final Release.
2. The Receiver and the Trustee, on the one hand, and the Settling Defendants, on the other, hereby fully and forever release, remise, acquit and discharge each other and, as applicable, their respective predecessors, successors and heirs (collectively, the **"Released Parties"**), from any and all manners of action, causes of action, suits, claims, proceedings, debts, covenants, obligations, penalties, indemnities, demands, issues, damages, restitution, an accounting, disgorgement, interest, costs, or any other monetary relief, losses, injuries and liabilities of any and every nature whatsoever, whether in law or in equity (each a **"Claim"**, and collectively, the **"Claims"**) arising out of or in any way relating to the Released Matters (the **"Released Claims"**), provided, however, that nothing in this Full and Final Release shall in any way release or affect, or shall be considered, construed or deemed to release or affect any of the Parties' rights or obligations under the Settlement Agreement, including but not limited to the Trustee's and the Receiver's rights to revoke this Full and Final Release in accordance with the terms of the Settlement Agreement.
3. Without limiting the generality of the foregoing, the Parties declare that the intent of this Full and Final Release is to conclude all issues in respect of, relating to or arising out of the Released Claims and it is understood and agreed that this Full and Final Release is intended to cover, and does cover, not only all known injuries, losses and damages in respect of the Released Claims, but also injuries, losses and damages in respect of the Released Claims not now known or anticipated but which may later be discovered, including all the effects and consequences thereof. For greater clarity, the releases provided in paragraph 2 hereof shall in no way be considered, construed or deemed in any way to release or affect any claim arising from future events, or any claim based on past events that the Trustee or the Receiver have against any persons, corporations, or entities other than the Released Parties.
4. The Parties each covenant and agree that this Full and Final Release shall be binding upon and shall enure to the benefit of the respective successors, assigns and legal or personal representatives of the Parties, as applicable.
5. The Parties understand, acknowledge and agree that this Full and Final Release shall be immediately, unconditionally, and irrevocably effective upon the issuance of a court order approving the settlement as contemplated under the terms of the Settlement Agreement.
6. The Parties agree that this Full and Final Release shall be governed by and construed and interpreted in accordance with the laws of the Province of Ontario and the laws of

Canada as applicable therein. Any dispute arising from or relating to the interpretation, application or enforcement of this Full and Final Release shall be exclusively within the jurisdiction of the Ontario Superior Court of Justice (Commercial List), and the Parties hereby irrevocably attorn to the exclusive jurisdiction of such Court with respect to any and all matters covered by, or in any way relating to, this Full and Final Release.

7. The Parties each covenant and agree that each part and provision of this Full and Final Release is distinct and severable and if, in any jurisdiction, any part or provision of this Full and Final Release or its application to any Party or circumstance is restricted, prohibited or unenforceable, for public policy reasons or otherwise, that that part or provision shall be interpreted in a manner so as to not make it unenforceable at law, but if such interpretation is not possible, the Parties agree that the part or provision shall, as to such jurisdiction, be ineffective only to the extent of such restriction, prohibition or unenforceability without invalidating the remaining parts and provisions hereof and without affecting the validity or enforceability of such part or provision in any other jurisdiction or its application to other parties or circumstances.
8. The Parties each hereby expressly acknowledge, declare and agree that they have had an opportunity to fully review this Full and Final Release and they have consulted with independent legal counsel. The Parties each acknowledge, declare and agree that they fully understand the meaning and effect of each paragraph of this Full and Final Release and freely and voluntarily agree to its terms for the purpose of making full and final compromise, adjustment and settlement of the Released Matters. The Parties each further expressly acknowledge, declare and agree that there is no condition, express or implied, or collateral agreement affecting their respective abilities to enter into this Full and Final Release, other than those set out in the Settlement Agreement to which this Full and Final Release is attached. The Parties further acknowledge and agree that any statute, case law, or rule of interpretation or construction that would or might cause any part or provision of this Full and Final Release to be construed against the drafters of this Full and Final Release shall be of no force or effect.
9. The Parties each agree that this Full and Final Release may be executed in any number of counterparts, all of which taken together shall be deemed to constitute one and the same instrument, and a facsimile, email or electronically transmitted signature shall be deemed an original signature and of equally binding force and effect.

The parties hereto have duly executed this Full and Final Release effective this 8th day of October, 2019, notwithstanding the actual date of execution:

[Remainder of Page Intentionally Left Blank]

SCHEDULE “E”

FORM OF DRAFT LANGUAGE TO BE INCORPORATED INTO DRAFT ORDER

1. **THIS COURT ORDERS AND DECLARES** that Bhaktraj Singh a.k.a. Raj Singh, RS Consulting Group Inc. and Tier 1 Transaction Advisory Services Inc. (the “**Settling Defendants**”) and their respective predecessors, successors and heirs (collectively, the “**Released Parties**”) are hereby fully and finally released and discharged (subject to and in accordance with the terms, conditions and exceptions provided in the Settlement Agreement, Declarations and Full and Final Release dated May ■, 2019, including the schedules attached thereto (the “**Agreement**”) from any and all manners of action, causes of action, suits, claims, proceedings, debts, covenants, obligations, penalties, indemnities, demands, issues, damages, restitution, an accounting, disgorgement, interest, costs, or any other monetary relief, losses, injuries and liabilities of any and every nature whatsoever, whether in law or in equity (each a “**Claim**”, and collectively, the “**Claims**”) that the Trustee (as defined in the Agreement) and/or the Receiver (as defined in the Agreement) has or may have against them arising out of or in any way relating to the Released Matters (as defined below).

2. **THIS COURT ORDERS AND DECLARES** that the Released Parties are hereby fully and finally released and discharged (subject to and in accordance with the terms, conditions and exceptions provided in the Agreement, including the schedules attached thereto) from any Claim or Claims that the Non-Settling Defendants (as defined in the Agreement) or any one of them, including Aeolian Investments Ltd., John Davies in his personal capacity and in his capacity as trustee of both the Davies Arizona Trust and the Davies Family Trust, Judith Davies in her personal capacity and in her capacity as trustee of the Davies Family Trust, Gregory Harris in his personal capacity and in his capacity as trustee of the Davies Family Trust, Harris + Harris LLP, Nancy Elliot, Elliot Law Professional Corporation, Walter Thompson, 1321805 Ontario Inc., Bruce Stewart, the Traditions Development Company Ltd., David Arsenault, James Grace, Jude Cassimy, First Commonwealth Mortgage Corporation, Memory Care Investments Ltd., Textbook Suites Inc., Textbook Student Suites Inc., and/or Michael Cane, has or may have against them for contribution or indemnity in the Action or in a separate claim or proceeding commenced by the Trustee or the Receiver, which arise from or relate to the facts alleged or issues raised, or which could have been alleged or raised, in the Action or which in any way relate to the Released Matters (as defined below).

3. **THIS COURT ORDERS AND DECLARES** that the Receiver and the Trustee shall not be entitled to recover from the Non-Settling Defendants (subject to and in accordance with the terms, conditions and exceptions provided in the Agreement, including the schedules attached thereto) any damages, restitution, an accounting, disgorgement, interest, costs, or any other monetary relief (“**Monetary Relief**”) that corresponds to the proportion of any judgment that, had the Settling Defendants not settled, the Court would have apportioned to the Settling Defendants. The Receiver and the Trustee shall (subject to and in accordance with the terms, conditions and exceptions provided in the Agreement, including the schedules attached thereto) only be entitled to recover from the Non-Settling Defendants such claims for Monetary Relief attributable to the aggregate of the several liability of the Non-Settling Defendants. For greater certainty, if the Court ultimately awards Monetary Relief to the Receiver or the Trustee against the Non-Settling Defendants, the Trustee and the Receiver shall (subject to and in accordance with the terms, conditions and exceptions provided in the Agreement, including the schedules attached thereto) have no right to recover any such portion of such Monetary Relief attributable to the Settling Defendants.

4. **THIS COURT ORDERS AND DECLARES** that, for the purposes of this Order, the “**Released Matters**” means: (1) the proceedings in the Ontario Superior Court of Justice (Commercial List) in Toronto bearing Court File No. CV-18-606314-00CL (the “**Action**”); (2) all of the known and unknown facts and issues in dispute amongst the Trustee (as defined in the Agreement) and the Receiver (as defined in the Agreement), on the one hand, and the Released Parties, on the other hand, and all of the known and unknown Claims that have been or could be commenced or asserted by the Trustee or the Receiver against the Settling Defendants, whether in the Action or in a separate claim or proceeding, which arise from or relate to the facts alleged or issues raised, or which could have been alleged or raised, in the Action; and (3) facts and issues arising from or relating to: (i) the syndicated mortgage investments with 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 (collectively, the “**Trustee Companies**”); and (ii) the real estate development projects 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. (collectively, the “**Development Companies**”) (collectively, the “**Released Matters**”).

5. **THIS COURT ORDERS** that, notwithstanding:

- (a) the pendency of the Trustee Proceedings (as defined in the Agreement);
- (b) the pendency of the Receiver Proceedings (as defined in the Agreement);
- (c) the pendency of the Action;
- (d) any applications for any bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act* (Canada) in respect of one or more of any of the Settling Defendants, the Non-Settling Defendants, the Trustee Companies, the Development Companies or any of their respective predecessors, successors or heirs (collectively, the “**Identified Parties**”), and any bankruptcy order issued pursuant to any such applications; and
- (e) any assignment in bankruptcy made in respect of any of the Identified Parties.

the payment to the Trustee and the Receiver, or as they may direct, of the Settlement Funds (as defined in the Agreement) shall be binding on any trustee in bankruptcy that is now or that may be appointed in respect of any of the Identified Parties and shall not be void or voidable by creditors of any of the Identified Parties, nor shall it constitute nor be deemed to be a fraudulent preference, assignment, fraudulent conveyance, transfer at undervalue or other reviewable transaction under the *Bankruptcy and Insolvency Act* (Canada) at any other applicable federal or provincial legislation, nor shall it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

6. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Trustee, the Receiver and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Trustee and the Receiver, as officers of this Court, as may be necessary or desirable to give effect to this order or to assist the Trustee, the Receiver and their respective agents in carrying out the terms of this Order.