

- 2.2.5 For the reasons above, the Receiver supports LCX's request for an order authorizing the Receiver to cause Versitec Canada to make an assignment in bankruptcy; and, if such order is granted, shall appoint a trustee satisfactory to LCX (which for greater certainty, may include BDO Canada Limited), once such trustee confirms to the Receiver that it accepts the appointment.
- 2.2.6 In the event that Versitec Canada makes an assignment in bankruptcy, the HST Claim will be unsecured and will not be paid in priority to LCX.
- 2.3 Distribution to LCX
- 2.3.1 The Receiver distributed the sum of USD\$81,000 to LCX on June 23, 2021 in accordance with the June 22nd Order.
- 2.4 Obtaining U.S. Bank Statements
- 2.4.1 As reported by the Prior Receiver in the Prior Receiver's Report, Versitec USA maintained bank accounts at Bank of America (the "BOA Account") and BB&T (the "BB&T Account") branches in Boca Raton, Florida. The Prior Receiver advised this Court that customer payments continued to be received into the BOA Account after March 9, 2020 and these funds were being swept into the BB&T Account to prevent subordinate creditors from obtaining payments in priority to LCX.
- 2.4.2 The Receiver became aware that certain customer payments continued to be made to the BOA Account on or around the time that the Receiver was appointed. The Receiver put both Bank of America and BB&T on notice of its appointment and requested that the accounts be frozen in an effort to obtain the funds. The Receiver, directly and through counsel, requested statements from the US banks. Bank of America and BB&T did not comply with the Receiver's requests to freeze the account, nor to provide statements.
- 2.4.3 The Receiver, with the assistance of the U.S. Court, obtained copies of bank statements from Bank of America and BB&T for the period of these receivership proceedings. The assistance of the U.S. Court was required as Bank of America and BB&T would not recognize the Receiver's status in the United States.
- 2.4.4 The Receiver brought an application (the "U.S. Application") for an *ex parte* order pursuant to 28 U.S.C. §1782 to conduct discovery for use in a foreign proceeding in the United States District Court - Southern District of Florida on August 16, 2021. The purpose of this was to obtain subpoenas to compel Bank of America and BB&T to release bank statements to the Receiver.
- 2.4.5 The subpoenas were issued by the U.S. Court on September 18, 2021 but were effectively delayed because of an objection filed by Reuben Byrd ("Mr. Byrd") - a respondent in these proceedings and the former CEO of Versitec and former contractor with the Prior Receiver.
- 2.4.6 Mr. Byrd's objection was vague and was dismissed when Mr. Byrd failed, in response to a request from the presiding judge, to file materials to substantiate his objection.

2.4.7 Bank of America and BB&T then complied with the subpoenas and produced the requested bank statements.

2.5 Review of Versitec USA Bank Transactions

2.5.1 The Receiver has reviewed the bank statements of the BOA Account and the BB&T Account for the period March 9, 2020 to April 30, 2021.

2.5.2 The BB&T Account appears to have been opened on or about April 3, 2020 and used until February 19, 2021. The Prior Receiver has stated that the BB&T Account was “solely controlled by the (Prior) Receiver.”¹

2.5.3 The BOA Account was in use prior to March 9, 2020 and appeared to be used until April 30, 2021.

2.5.4 Global Marine Engineering Inc. (“Global”) is a company believed to be owned and operated Mr. Byrd, Versitec’s former chief executive officer.

2.5.5 Mr. Byrd had entered into a management consulting agreement with the Prior Receiver in his personal capacity but issued invoices for his services through Global.

2.5.6 The Receiver has prepared a detailed analysis of the banking activity between Versitec USA and Global during the period of these receivership proceedings. A summary of this analysis is attached hereto as Appendix “I”. The Receiver has found that:

- A total of \$1,127,020.91 USD was received from Versitec customers into the BOA Account during the receivership proceedings;
- Numerous transactions took place in both the BOA Account and the BB&T Account with Global. Transfers of funds were being made to and from Global on a regular basis; and
- In summary, Global appears to be indebted to the Estate in the amount of \$293,122 USD.
- Further payments of \$170,741.59 were made to three creditors of Versitec USA (the “Creditor Payees”) which may have been made to the prejudice of LCX.

2.5.7 The Receiver is not funded to pursue collection of the aforementioned amounts. Moreover, given the shortfall suffered by LCX, LCX appears to be the only party with an economic interest in potentially pursuing claims in respect of the transfer of funds out of the BOA Account and BB&T Account.

2.5.8 Accordingly, the Receiver proposes to assign and transfer to LCX, any claim, right, title and interest of the Debtors or the Receiver (if any), against any person, in respect of or connected with the transfer of funds out of the BOA Account and BB&T Account to Global and/or the Creditor Payees (as all claims being the “Outstanding Claims”), on the condition that LCX account back to the Debtors or any trustee or

¹ Paragraph 28 of the Prior Receiver’s Report dated February 5, 2021

administrator of the Debtors' estate in respect of any recoveries receiver in excess of the shortfall on its security.

2.6 Receipts & Disbursements

- 2.6.1 Attached hereto as Appendix "J" is the Receiver's Interim Statement of Receipts and Disbursements for the period February 12, 2021 to November 10, 2021. At this time, the Receiver has a total of \$59,967 CAD equivalent (\$1,057 CAD and \$48,905 USD) in its estate trust accounts.

3.0 PROPOSED FINAL DISTRIBUTION

3.1 Introduction

3.1.1 The Receiver has provided information on the creditors of Versitec in its Third Report.

3.1.2 At this time, the only secured creditors with entitlement to the remaining funds in these receivership proceedings are the Receiver and its legal counsel, and LCX.

3.1.3 Canada Revenue Agency remains a priority creditor in respect of the H.S.T. Claim.

3.2 LCX

3.2.1 The amount owing to LCX and subject to security granted by Versitec in favour of LCX (the "LCX Indebtedness") as at June 16, 2021, as per the Third Report, was \$764,695.04.

3.2.2 LCX has received three (3) distributions in these proceedings thus far:

- \$50,000 CAD from the Prior Receiver on June 25, 2020
- \$10,000 CAD from the Prior Receiver on August 4, 2020; and
- \$81,000 USD from the Receiver on June 23, 2021.

A summary of the outstanding current balances is as follows:

AC #	Currency	Net Funds Employed	Penalty for funds misdirected	Accrued Fees	Enforcement Costs (1)	Total Balance owing
4822	CDN	255,319.88	24,471.00	135,110.14	89,179.93	\$504,080.95
			-			
4821	US	28,224.77	2,953.00	32,390.38		63,568.15
			-			
4820U	US	79,405.50	14,449.00	58,875.03		152,729.53
Memo: FX rate US to CDN \$		1.26	FX rate Nov 11	Total Stated in CDN		<u>\$776,616.03</u>

3.3 Proposed Final Distribution

- 3.3.1 After providing for the unpaid professional fees of the Receiver and its legal counsel to discharge, subject to Court approval, and causing Versitec Canada to make an assignment in bankruptcy (assuming the Receiver is so authorized), the Receiver will distribute remaining proceeds in its trust accounts to LCX as the June 22nd Order authorized the Receiver to make such further distributions to LCX.²

² In the event that the bankruptcy of Versitec Canada is not authorized, the Receiver shall pay the HST Claim in priority to the final distribution to LCX or hold funds on account of such claim pending further order of the Court.

4.0 PROFESSIONAL FEES

- 4.1 Professional Fees of the Receiver and its legal counsel
- 4.1.1 As set out in the affidavit of Peter Crawley of BDO sworn November 18, 2021 and attached hereto as Appendix "K", professional fees of the Receiver incurred from June 1, 2021 to November 15, 2021 amount to 94.1 total hours, fees of \$37,982.50 (at an average hourly rate of \$403.64) (before H.S.T.), with a fee accrual not to exceed \$5,000, excluding taxes and disbursements, to complete the remaining activities in its administration (the "Receiver Accrual").
- 4.1.2 As set out in the affidavit of Sarah White of Loopstra sworn November 16, 2021 and attached hereto as Appendix "L", professional fees of the Receiver's counsel incurred from June 1, 2021 to October 12, 2021 amount to 44.9 total hours, fees of \$19,672.50 (at an average hourly rate of \$438.14) and disbursements of \$1,716.44 (before H.S.T.), with a free accrual not to exceed \$5,000, excluding taxes and disbursements, to assist the Receiver in with the remaining activities in its administration (the "Loopstra Accrual"; and, together with the Receiver Accrual, the "Fee Accrual").
- 4.1.3 The Receiver has reviewed the accounts of Loopstra and believes them to be appropriate and reasonable in the circumstances.
- 4.1.4 Accordingly, the Receiver respectfully requests that this Court approve the fees and disbursements of the BDO and Loopstra.

5.0 DISCHARGE OF THE RECEIVER

5.1.1 The Receiver requests at this time that the Court approve the termination of these Receivership Proceedings and the discharge of the Receiver, subject to the Receiver completing the final remaining tasks related to the administration of this Receivership (the "Final Activities") and filing the Receiver's Discharge Certificate with this Honourable Court in accordance with the proposed Discharge Order.

5.1.2 The Final Activities that remain for the Receiver to complete are:

- Recovery of any HST refunds in respect of the Receiver's activities;
- Attending to the payment of Court approved professional fees of the Receiver and its legal counsel;
- Subject to Court approval, causing Versitec Canada to make an assignment in bankruptcy;
- Subject to Court approval, completing the assignment of the Outstanding Claims to LCX;
- Payment of remaining residual funds to LCX;
- Completing any statutory and administrative duties and filings required of the Receiver; and
- Completing steps necessary to terminate these Receivership Proceedings and the discharge of the Receiver and matters ancillary thereto.

6.0 CONCLUSION

6.1.1 For the reasons set out above, the Receiver respectfully requests that the Court issue an order:

- a) approving this Fourth Report and the actions of the Receiver described herein;
- b) approving the professional fees and disbursements of the Receiver and its legal counsel;
- c) authorizing the Receiver to cause Versitec Canada to make an assignment in bankruptcy;
- d) upon completion of Final Activities and filing of the Receiver's Discharge Certificate, discharging the Receiver as Court-appointed receiver of Versitec and releasing the Receiver from any and all liability; and
- e) such other relief as this Court deems appropriate.

All of which is respectfully submitted this 18th day of November, 2021.

BDO CANADA LIMITED, solely in its capacity as Court-appointed Receiver of 1635536 Ontario Inc. o/a Versitec Marine & Industrial and Versitec Marine USA Inc. and not in its corporate or personal capacity.



Per: _____
Peter Crawley, MBA, CPA, CA, CIRP, LIT
Vice President

This is Exhibit " L" to the Affidavit of
JONATHAN BRINDLEY
sworn before me on January 18, 2022

A handwritten signature in black ink, consisting of stylized initials and a long horizontal stroke extending to the right.

Court File No. CV-20-00637427-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE)	WEDNESDAY, THE 24 TH
)	
JUSTICE PENNY)	DAY OF NOVEMBER, 2021

B E T W E E N:



LIQUID CAPITAL EXCHANGE CORP.

Applicant

-and-

1635536 ONTARIO INC. O/A VERSITEC MARINE & INDUSTRIAL,
 VERSITEC MARINE HOLDINGS INC., VERSITEC MARINE USA INC.,
 DAVID TAYLOR, REUBEN KARY BYRD and DAVID CARPENTER

Respondents

*APPLICATION UNDER SECTION 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*

JUDGMENT

THIS MOTION, made by the Applicant, Liquid Capital Exchange Corp. (“**LCX**”), for judgment against the Respondent parties, was heard this day by video conference.

ON READING the Motion Record of the Moving Party, the Affidavit of Jonathan Brindley sworn November 18, 2021, The Fourth Report of the Receiver BDO Canada Limited, in its capacity as receiver of the assets and property of 1635536 Ontario Inc. O/A Versitec Marine & Industrial and Versitec Marine Holdings Inc. and Versitec Marine USA Inc. (the “**Receiver**”), dated November 18, 2021, and on hearing the submissions of counsel for LCX and the Receiver,

1. THIS COURT ORDERS AND ADJUDGES that that the Respondents 1635536 Ontario Inc. O/A Versitec Marine & Industrial, Versitec Marine Holdings Inc., Versitec Marine USA Inc., David Taylor, and David Carpenter are jointly and severally liable to pay, and are hereby ordered to pay to LCX, the sum of \$776,616.03 (the “**Judgment Amount**”).

2. THIS COURT ORDERS AND ADJUDGES that that the Respondents 1635536 Ontario Inc. O/A Versitec Marine & Industrial, Versitec Marine Holdings Inc., Versitec Marine USA Inc., David Taylor, and David Carpenter are jointly and severally liable to pay, and are hereby ordered to pay to LCX, prejudgment interest on the judgment amount from November 11, 2021, to November 23, 2021, in the amount of \$9,319.39.

THIS JUDGMENT BEARS INTEREST on the Judgment Amount at the rate of 36.5% per cent per annum commencing on November 24, 2021.



(Signature of Court Officer)

RCP-E 59B (September 1, 2020)

LIQUID CAPITAL EXCHANGE CORP.

Applicant

-and- 1635536 ONTARIO INC. O/A VERSITEC MARINE &
INDUSTRIAL et al.
Respondents

Court File No. CV-20-00637427-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

PROCEEDING COMMENCED AT
TORONTO

JUDGMENT

TORKIN MANES LLP

Barristers & Solicitors
151 Yonge Street, Suite 1500
Toronto ON M5C 2W7

Stewart Thom (55695C)

sthom@torkinmanes.com

Tel: 416-777-5197

Lawyers for the Applicant, Liquid Capital Exchange Corp.

RCP-F 4C (September 1, 2020)

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

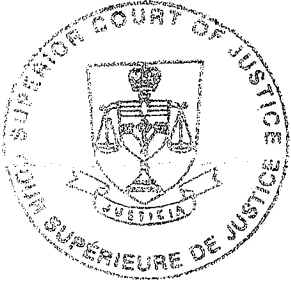
LIQUID CAPITAL EXCHANGE CORP.

Applicant

-and-

635536 ONTARIO INC. O/A VERSITEC MARINE & INDUSTRIAL,
VERSITEC MARINE HOLDINGS INC., VERSITEC MARINE USA INC.,
DAVID TAYLOR, REUBEN KARY BYRD and DAVID CARPENTER

Respondents



WRIT OF SEIZURE AND SALE

TO: The Sheriff of the Regional Municipality of Niagara at Welland

Under a Judgment of this Court made on November 24, 2021, in favour of Liquid Capital Exchange Corp., YOU ARE DIRECTED to seize and sell the real and personal property within your county or district of the Regional Municipality of Niagara at Welland of:

<i>Surname of individual or name of corporation/firm, etc.</i> 1635536 ONTARIO INC. O/A VERSITEC MARINE & INDUSTRIAL		
<i>First given name</i>	<i>Second given name</i>	<i>Third given name</i>

and the persons/corporations set out on Schedule "A" and to realize from the seizure and sale the following sums:

- (a) \$776,616.03 plus interest calculated at 36.5 per cent per year commencing on November 24, 2021;
- (b) Pre-judgment interest in the amount of \$9,319.39; and
- (c) your fees and expenses in enforcing this Writ.

YOU ARE DIRECTED to pay out the proceeds according to law and to report on the execution of this Writ if required by the party or lawyer who filed it.

Dated at Toronto

Issued by

V. Smithson

Victoria Smithson
Registrar, Superior Court of Justice

Registrar

on November 25, 2021

Address of Court office

³²⁶
~~393~~ University Avenue, ^{9th} ~~10th~~ Floor
 Toronto, Ontario
 M5G 1E6 ^{vs} 1R7

Schedule "A"

<i>Surname of individual or name of corporation/firm, etc.</i> VERSITEC MARINE HOLDINGS INC.		
<i>First given name</i>	<i>Second given name</i>	<i>Third given name</i>

<i>Surname of individual or name of corporation/firm, etc.</i> VERSITEC MARINE USA INC.		
<i>First given name</i>	<i>Second given name</i>	<i>Third given name</i>

<i>Surname of individual or name of corporation/firm, etc.</i> TAYLOR		
<i>First given name</i> DAVID	<i>Second given name</i>	<i>Third given name</i>

<i>Surname of individual or name of corporation/firm, etc.</i> CARPENTER		
<i>First given name</i> DAVID	<i>Second given name</i>	<i>Third given name</i>

21-496

LIQUID CAPITAL EXCHANGE CORP.
-and- 1635536 ONTARIO INC. O/A VERSITEC MARINE &
INDUSTRIAL et al.
Respondents

Applicant

Court File No. CV-20-00637427-00CL

FEES		Officer
Fee	Item	Officer
\$73.00	Paid for this Writ	US
\$50.00	Lawyer's fee for issuing Writ	
	First Renewal	
	Second Renewal	
	Third Renewal	
	RENEWAL	
Date	Officer	

Sheriff's Office
Municipality of Niagara
at Welland
RECEIVED
NOV 30 2021
Bureau du Sheriff
Municipalité régionale de Niagara
à Welland
RECU

ONTARIO
SUPERIOR COURT OF JUSTICE
PROCEEDING COMMENCED AT
TORONTO

WRIT OF SEIZURE AND SALE

Creditor's Name: Liquid Capital Exchange Corp.

Lawyer's name: Stewart Thom (55695C)

Lawyer's address and telephone no.:

TORKIN MANES LLP
Barristers & Solicitors
151 Yonge Street, Suite 1500
Toronto ON M5C 2W7
Tel: 416-777-5197
Fax: 1-888-789-3872
sthom@torkinmanes.com

RCP-E 60A (July 1, 2007)

This is Exhibit "M" to the Affidavit of
JONATHAN BRINDLEY
sworn before me on January 18, 2022

A handwritten signature in black ink, appearing to be 'J. Brindley', written over a horizontal line.

Court File No. CV-20-00637427-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE) WEDNESDAY, THE 24TH
 JUSTICE PENNY) DAY OF NOVEMBER, 2021

B E T W E E N:

LIQUID CAPITAL EXCHANGE CORP.

Applicant

-and-

1635536 ONTARIO INC. O/A VERSITEC MARINE & INDUSTRIAL,
 VERSITEC MARINE HOLDINGS INC., VERSITEC MARINE USA INC.,
 DAVID TAYLOR, REUBEN KARY BYRD and DAVID CARPENTER

Respondents

APPLICATION UNDER SECTION 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

DISCHARGE ORDER

THIS MOTION, made by Liquid Capital Exchange Corp. (“**LCX**”) on behalf of BDO Canada Limited (“**BDO**”) in its capacity as the Court-appointed receiver (the “**Receiver**”) of the undertaking, property and assets of all the Property of 1635536 Ontario Inc. o/a Versitec Marine & Industrial (“**Versitec Canada**”) and Versitec Marine USA Inc. (“**Versitec USA**”, and collectively the “**Debtor**”), for an Order:

1. approving the activities of the Receiver as set out in the Fourth Report of the Receiver dated November 18, 2021 (the “**Fourth Report**”);
2. approving the fees and disbursements of the Receiver and its counsel;



3. approving the distribution of the remaining proceeds available in the estate of the Debtor;
4. discharging BDO Canada Limited as Receiver of the undertaking, property and assets of the Debtor; and
5. releasing BDO Canada Limited from any and all liability, as set out in paragraph 5 of this Order,

was heard this day by zoom videoconference on November 24, 2021.

ON READING the Motion Record of the moving Party, the Fourth Report, the Affidavit of Jonathan Brindley sworn November 18, 2021, the affidavits of the Receiver and its counsel as to fees (the “**Fee Affidavits**”), and on hearing the submissions of counsel for those parties in attendance,

1. THIS COURT ORDERS that the Fourth Report and the activities of the Receiver as set out therein, are hereby approved.
2. THIS COURT ORDERS that the Receiver is hereby authorized and directed to:
 - (a) upon the Receiver being satisfied that provision has been made for the funding of the same, cause Versitec Canada to make an assignment in bankruptcy and, as necessary, execute all necessary documents on behalf of Versitec Canada to effect the same and to appoint BDO Canada Limited as its trustee in bankruptcy;
 - (b) assign the Outstanding Claims, as defined in the Fourth Report, to LCX, on the condition that LCX undertake to account back to the Debtor or any trustee or

administrator of the Debtor's estate(s) in respect of any recoveries received in excess of the shortfall on its security; and

(c) complete the Final Activities, as defined in the Fourth Report.

3. THIS COURT ORDERS that the fees and disbursements of the Receiver and its counsel, as set out in the Fourth Report and the Fee Affidavits, are hereby approved.

4. THIS COURT ORDERS that, after payment of the fees and disbursements herein approved and being satisfied that provision has been made for the funding of the bankruptcy of Versitec Canada, the Receiver shall pay the monies remaining in its hands to LCX.

5. THIS COURT ORDERS that upon payment of the amounts set out in paragraph 3 hereof and upon the Receiver filing a certificate certifying that it has completed the other activities described in the Fourth Report, the Receiver shall be discharged as Receiver of the undertaking, property and assets of the Debtor, provided however that notwithstanding its discharge herein (a) the Receiver shall remain Receiver for the performance of such incidental duties as may be required to complete the administration of the receivership herein, and (b) the Receiver shall continue to have the benefit of the provisions of all Orders made in this proceeding, including all approvals, protections and stays of proceedings in favour of BDO in its capacity as Receiver.

6. THIS COURT ORDERS AND DECLARES that BDO is hereby released and discharged from any and all liability that BDO now has or may hereafter have by reason of, or in any way arising out of, the acts or omissions of BDO while acting in its capacity as Receiver herein, save and except for any gross negligence or wilful misconduct on the Receiver's part. Without limiting the generality of the foregoing, BDO is hereby forever released and discharged from any and all

liability relating to matters that were raised, or which could have been raised, in the within receivership proceedings, save and except for any gross negligence or wilful misconduct on the Receiver's part.

7. THIS COURT ORDERS that this order is effective from today's date and is enforceable without the need for entry and filing.



LIQUID CAPITAL EXCHANGE CORP.

Applicant

-and- 1635536 ONTARIO INC. O/A VERSITEC MARINE &
INDUSTRIAL et al.
Respondents

Court File No. CV-20-00637427-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

PROCEEDING COMMENCED AT
TORONTO

DISCHARGE ORDER

TORKIN MANES LLP
Barristers & Solicitors
151 Yonge Street, Suite 1500
Toronto ON M5C 2W7

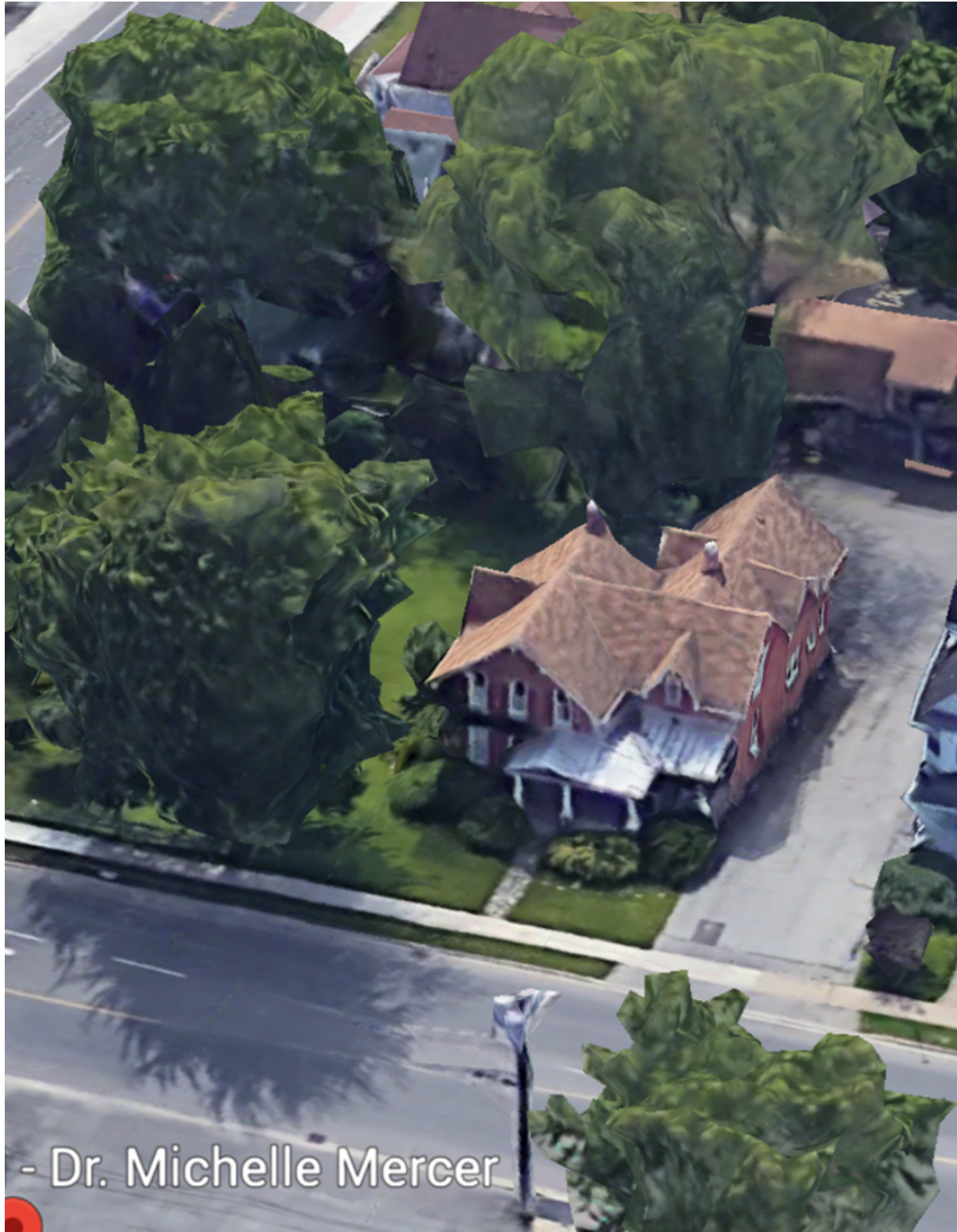
Stewart Thom (55695C)
sthom@torkinmanes.com
Tel: 416-777-5197

Lawyers for the Applicant, Liquid Capital Exchange Corp.

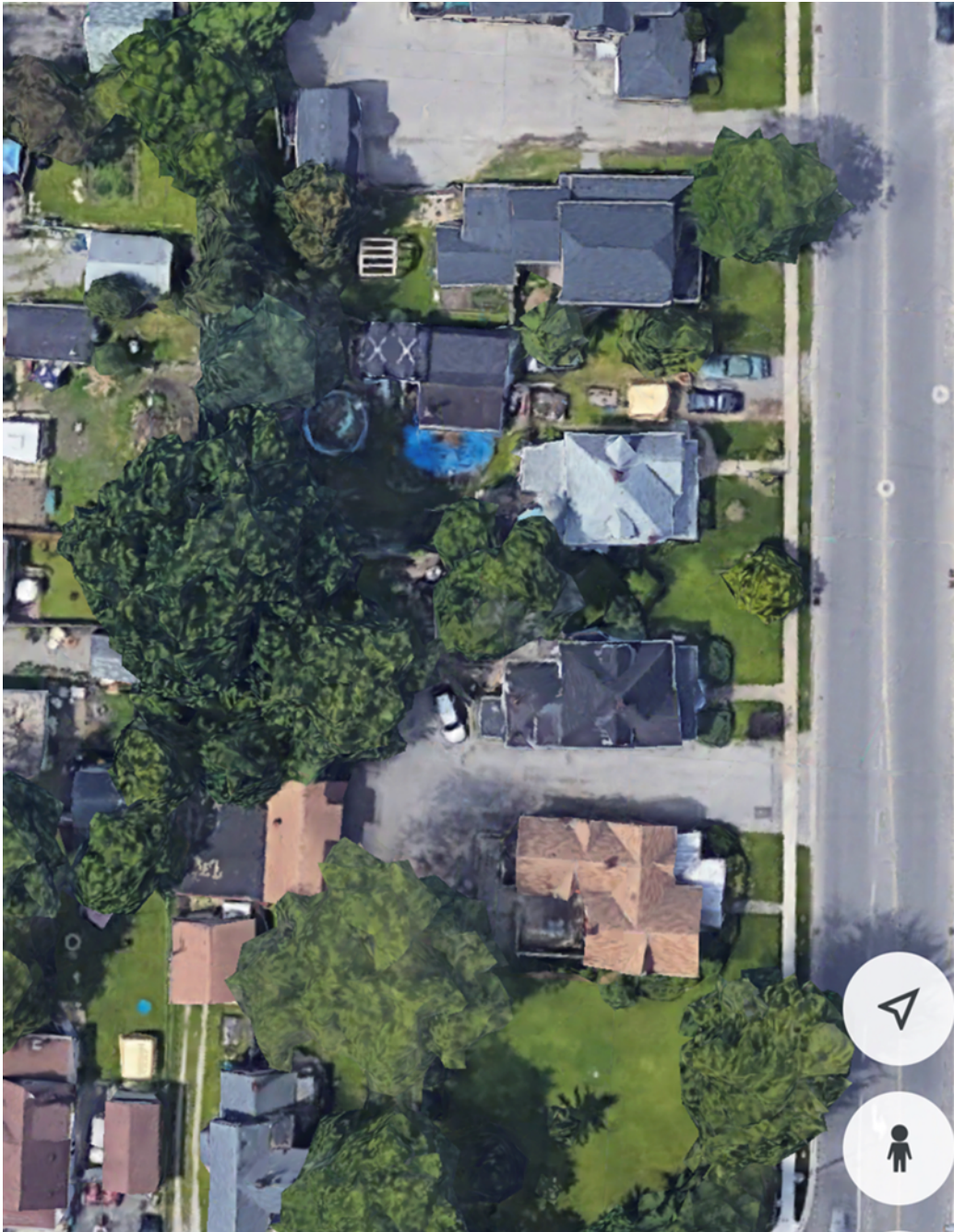
RCP-F 4C (September 1, 2020)

This is Exhibit "N" to the Affidavit of
JONATHAN BRINDLEY
sworn before me on January 18, 2022

A handwritten signature in black ink, appearing to be 'J. Brindley', written over a horizontal line.



- Dr. Michelle Mercer



This is Exhibit "O" to the Affidavit of
JONATHAN BRINDLEY
sworn before me on January 18, 2022

A handwritten signature in black ink, appearing to be 'J. Brindley', with a long horizontal line extending to the right.

PRINTED ON 17 JAN, 2022 AT 14:38:47
FOR SHALAN01

SCALE



PROPERTY INDEX MAP

NIAGARA SOUTH(No. 59)

LEGEND

- FREEHOLD PROPERTY
- LEASEHOLD PROPERTY
- LIMITED INTEREST PROPERTY
- CONDOMINIUM PROPERTY
- RETIRED PIN (MAP UPDATE PENDING)
- PROPERTY NUMBER 0449
- BLOCK NUMBER 08050
- GEOGRAPHIC FABRIC
- EASEMENT

THIS IS NOT A PLAN OF SURVEY

NOTES

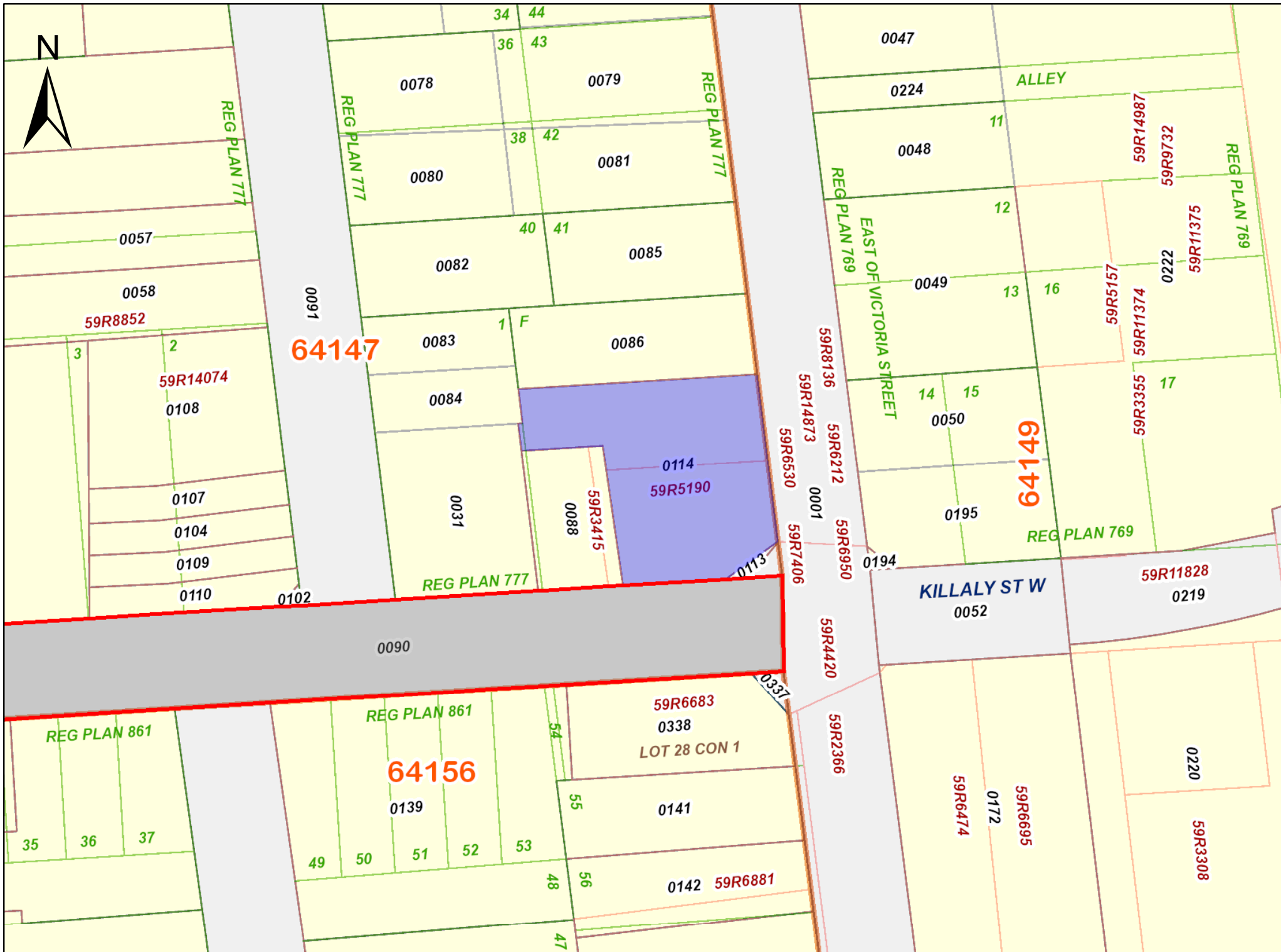
REVIEW THE TITLE RECORDS FOR COMPLETE PROPERTY INFORMATION AS THIS MAP MAY NOT REFLECT RECENT REGISTRATIONS

THIS MAP WAS COMPILED FROM PLANS AND DOCUMENTS RECORDED IN THE LAND REGISTRATION SYSTEM AND HAS BEEN PREPARED FOR PROPERTY INDEXING PURPOSES ONLY

FOR DIMENSIONS OF PROPERTIES BOUNDARIES SEE RECORDED PLANS AND DOCUMENTS

ONLY MAJOR EASEMENTS ARE SHOWN

REFERENCE PLANS UNDERLYING MORE RECENT REFERENCE PLANS ARE NOT ILLUSTRATED



This is Exhibit " P " to the Affidavit of
JONATHAN BRINDLEY
sworn before me on January 18, 2022

A handwritten signature in black ink, appearing to be 'J. Brindley', with a long horizontal line extending to the right.

Private Sale Port Colborne Beautiful Heritage Home

\$599,000 CAD

(/properties/7441-private-sale-port-colborne-beautiful-heritage-home#)

(/properties/7441-priv

Address: 518 King Street, Port Colborne, Ontario, Canada

Property type: House

Rental: No

For sale by: Owner

Date listed: October 15, 2017

Description

PRIVATE SALE

PORT COLBORNE

BEAUTIFUL HERITAGE HOME FOR SALE

APPROXIMATELY 2600 SQFT

4 BEDROOMS

4 PIECE BATHROOM UPSTAIRS AND 2 PIECE DOWN

MAIN LEVEL DINING ROOM, LIVING ROOM, FAMILY ROOM, AND LAUNDRY ROOM

NEW FRIDGE, STOVE, DISHWASHER AND MICROWAVE

CENTRAL AIR

NEW ON DEMAND HOT WATER HEAT

100 AMP BREAKER PANEL

UPDATED PLUMBING

THERMO PANE WINDOWS



Ads by Google

Stop seeing this ad

Why this ad?

\$599,000.00 FIRM

FOR MORE INFORMATION OR FOR SHOWINGS

CONTACT BRIAN AT 905-328-1439

SERIOUS INQUIRES ONLY.

Details

MLS® (REALTOR.ca) number: **X3970226**

Building type: **Detached**

Bedrooms: **4**

Bathrooms: **2**

Finished square feet: **2,600 sqft**

Lot dimensions **139 ft x 256 ft**

Lot area: **17,408.21 sqft**

Year built: **1874**

Basement: **Partially finished**

Garage: **Triple+**

Primary heating fuel: **Natural gas**

Storeys: **2**

Water source: **City water**



(https://maps.google.com/maps?ll=42.892066,-79.252125&z=14&t=m&hPaSt=0&mapOn=0&api=1) (https://maps.google.com/maps/@42.8920663,-79.2521247,14z/data=!10m1!1e1!12b1?source=ap&hl=en&gl=ca)

Contact Info

J Jennifer Stehlik

Phone number: click to show (/properties/7441-private-sale-port-colborne-besutiful-heritage-home/show-contact-number)





Ads by Google

Stop seeing this ad

Why this ad?



This is Exhibit " Q " to the Affidavit of
JONATHAN BRINDLEY
sworn before me on January 18, 2022

A handwritten signature in black ink, consisting of stylized initials and a long horizontal stroke extending to the right.

Properties

PIN 64147 – 0114 LT *Interest/Estate* Fee Simple
Description PT BLK F PL 775 W/S VICTORIA ST & PT LT 1 PL 777, PTS 1 & 2 59R5190 EXCEPT PT
 1, 59R11601 & PT 1, 59R14873; T/W RO525634; CITY OF PORT COLBORNE
Address 518 KING STREET
 PORT COLBORNE

Chargor(s)

The chargor(s) hereby charges the land to the chargee(s). The chargor(s) acknowledges the receipt of the charge and the standard charge terms, if any.

Name TAYLOR, DAVID
Address for Service 518 King Street
 Port Colborne, ON L3K 4H6

I am at least 18 years of age.

I am not a spouse

This document is not authorized under Power of Attorney by this party.

Chargee(s)*Capacity**Share*

Name GOLDEN HORSESHOE INVESTMENT INC
Address for Service 1234 Highway #8
 Stoney Creek, ON

Statements

Schedule: See Schedules

Provisions

Principal \$235,000.00 *Currency* CDN
Calculation Period Semi-Annually not in advance
Balance Due Date 2016/12/01
Interest Rate 7.25%
Payments \$1,652.41
Interest Adjustment Date 2015 12 01
Payment Date 1st day of every month
First Payment Date 2016 01 01
Last Payment Date 2016 12 01
Standard Charge Terms 200033
Insurance Amount full insurable value
Guarantor

Signed By

Paul Davis Leon 149 West Main Street, P.O. Box 366 acting for Chargor Signed 2015 11 24
 Welland (s)
 L3B 5P7

Tel 905-735-2921

Fax 905-735-4519

I have the authority to sign and register the document on behalf of the Chargor(s).

Submitted By

Blackadder Leon Marion + Fazari LLP 149 West Main Street, P.O. Box 366 2015 11 24
 Welland
 L3B 5P7

Tel 905-735-2921

Fax 905-735-4519

The applicant(s) hereby applies to the Land Registrar.

Fees/Taxes/Payment

Statutory Registration Fee	\$62.85
Total Paid	\$62.85

SCHEDULE "A"**Additional Provisions****PENALTY:**

This mortgage is open to pre-payment at any time without notice, subject to payment of a two month interest penalty on any amount pre-paid.

NON-TRANSFERRABLE

PROVIDED FURTHER that in the event the Mortgagor sells, transfers or otherwise disposes of the charged property or any portion thereof or any interest therein, the principal sum hereby secured shall immediately become due and payable, together with any penalties set out herein.

POST-DATED CHEQUE / PRE-AUTHORIZED PAYMENT

PROVIDED FURTHER that the Mortgagor shall provide to the mortgagee twelve (12) post-dated cheques at the time of the first advance hereunder

INSURANCE COVERAGE

The Mortgagor agrees that the insurance coverage on the subject property shall be sufficient to cover the mortgages on the property, guaranteed replacement cost.

N.S.F. CHEQUES / LATE PAYMENT

In the event that a mortgage payment or any other payment or cost which becomes due under the mortgage is dishonoured by the mortgagor's bank, in the event of late payment or non-payment of any of the above, the Mortgagee shall immediately be entitled to a fee of \$200.00 (as pre-agreed liquidated administrative costs and not as penalty) in addition to any other amounts payable or collectible under the mortgage and all of the rights and remedies of the Mortgagee for payments in arrears shall apply to late payment or non-payment of this fee.

DEFAULT PROCEEDINGS

In the event of the institution of any legal proceedings by the mortgagee, the fee of \$500.00 shall be payable to the mortgagee by the mortgagor.

STATEMENTS

\$50.00 fee payable for Statements prepared by the Mortgagee at the request of the Mortgagor or the Mortgagors agent.

DATE DUE

This mortgage is due and payable on the date due. Should there be no agreement by both parties to renew, or failing that, payment in full is not received within five (5) business days of the date due, the three month interest penalty shall be re-invoked

Renewal

This mortgage may be renewed at the sole discretion of the Mortgagee at the end of the term, with rates and terms to be agreed upon by all parties. A renewal fee payable to the Mortgagee in the amount of \$200.00 at the time of renewal shall apply.



This is Exhibit "R" to the Affidavit of
JONATHAN BRINDLEY
sworn before me on January 18, 2022

A handwritten signature in black ink, appearing to be 'J. Brindley', written over a horizontal line.

The applicant(s) hereby applies to the Land Registrar.

yyyy mm dd Page 1 of 5

Properties

PIN 64147 - 0114 LT *Interest/Estate* Fee Simple
Description PT BLK F PL 775 W/S VICTORIA ST & PT LT 1 PL 777, PTS 1 & 2 59R5190 EXCEPT PT
 1, 59R11601 & PT 1, 59R14873; T/W RO525634; CITY OF PORT COLBORNE
Address 518 KING STREET
 PORT COLBORNE

Chargor(s)

The chargor(s) hereby charges the land to the chargee(s). The chargor(s) acknowledges the receipt of the charge and the standard charge terms, if any.

Name TAYLOR, DAVID
Address for Service 518 King, Port Colborne, Ontario L3K
 4H6

I am at least 18 years of age.

I am not a spouse

This document is not authorized under Power of Attorney by this party.

Chargee(s)*Capacity**Share*

Name ORVITZ, STEVAN
Address for Service 18 Port Royal Crescent
 St. Catharines, Ontario
 L2N 7K1

Statements

Schedule: See Schedules

Provisions

<i>Principal</i>	\$125,000.00	<i>Currency</i>	Cdn\$
<i>Calculation Period</i>	Interest Only Monthly		
<i>Balance Due Date</i>	2019/12/01		
<i>Interest Rate</i>	12.0%		
<i>Payments</i>	\$1,250.00		
<i>Interest Adjustment Date</i>	2018 12 01		
<i>Payment Date</i>	1st day of each and every month		
<i>First Payment Date</i>	2019 01 01		
<i>Last Payment Date</i>	2019 12 01		
<i>Standard Charge Terms</i>	200033		
<i>Insurance Amount</i>	Full insurable value		
<i>Guarantor</i>			

Additional Provisions

This is an interest only mortgage.

The Chargor, when not in default, shall have the privilege of paying the whole or any amount of the principal sum secured at any time or times without notice or bonus, with 3 months interest penalty.

Signed By

Raeann M. Lethby 4 Centre Street PO Box 30 acting for Signed 2018 11 15
 St. Catharines Chargor(s)
 L2R 6V9

Tel 905-688-8811

Fax 9056888933

I have the authority to sign and register the document on behalf of the Chargor(s).

The applicant(s) hereby applies to the Land Registrar.

Submitted By

FREDERICK CAPLAN LAW FIRM

4 Centre Street PO Box 30
St. Catharines
L2R 6V9

2018 11 21

Tel 905-688-8811

Fax 9056888933

Fees/Taxes/Payment

Statutory Registration Fee \$64.40

Total Paid \$64.40

File Number

Chargee Client File Number : 18FCR236

SCHEDULE "A"ADDITIONAL PROVISIONS

The Chargor when not in default under this Charge, may, on the due date of any instalment, prepay the whole or part of the unpaid principal upon payment on each occasion of prepayment, of an indemnity equal to three months interest calculated at the rate provided for in the Charge Herein upon the amount of the prepayment then being made.

Provided that prepayment of principal may only be made when all interest accruing to the date of such prepayment of principal has been paid, and provided further that if such prepayment is in part only, the amount prepaid shall be equal to the sum of the principal portions of a number of successive monthly instalments of principal and interest which would otherwise fall due and become payable hereunder and upon the making of such prepayment the maturity dates of all remaining instalments of principal and interest falling due hereunder shall be accelerated with intent and to the effect that the aforesaid monthly instalments of principal and interest shall become payable in each and every month during the term hereof so long as any part of the principal sum remains unpaid.

The Mortgagors agree to provide the mortgagee with a series of post dated cheques on or before the closing date of the mortgage and a further series of post dated cheques on or before each anniversary date of the within mortgage. Failure to provide such cheques shall at the mortgagee's option constitute default under the mortgage.

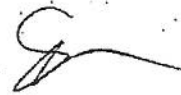
Provided further that in the event of the Chargor selling, conveying or transferring title of the property hereby charged to a purchaser, grantee or transferee, whether the conveyance or agreement be registered or not, the said principal sum together with interest to the date of payment, shall immediately become due and payable without any notice being given or any action being taken by the Chargee and in default of payment the chargee may exercise any of the remedies available hereunder to enforce payment including the powers of entering upon and leasing or selling the said lands.

In the event the loan is not repaid at the time or times provided within the charge, the lender will not be required to accept payment of the principal monies without first receiving three (3) months notice in writing or receiving three (3) months interest bonus in advance of the principal monies.

ADMINISTRATION AND SERVICING FEES

<u>FEE</u>	<u>AMOUNT</u>
MISSED PAYMENT FEE: payable for each missed or late Installment and for processing each NSF cheque or other Returned payment;	\$200.00
INSURANCE: payable for dealing with each cancellation, Premium payment or other non-compliance with insurance Requirements;	\$200.00
DEFAULT PROCEEDINGS: payable for each action or Proceeding instituted (Plus legal fees)	\$500.00
MORTGAGE STATEMENTS: for preparation of each statement;	\$100.00
POSSESSION: for attending to take possession following default;	\$500.00
MAINTENANCE: for administering maintenance and security Of the property in our possession, per day;	\$150.00

DT



TERMS AND CONDITIONS

Early Discharge: The Borrower(s) shall have the privilege of early discharge of the whole principal amount owing at any time, with 3 months interest penalty.

Marketable Title: The Borrower(s) represent and warrant to the Lender that they have a good and marketable title to the property to be mortgaged. Satisfactory title includes compliance with all municipal zoning and building bylaws and work orders.

Independent Legal Advice: If there is any party who is acting as Guarantor of this mortgage, the Lender will require a certificate of independent legal advice, to be provided by the Guarantor's own Solicitor.

Title Insurance: The Lender shall require Title Insurance for the above mortgage(s), from First Canadian Title Co. or equivalent company.

Property Tax / Water: Taxes and water must be up to date and paid regularly.

Owner Occupied: Property is not to be rented or leased to other parties unless otherwise disclosed in the mortgage application.

Fire/Property Insurance: The Lender shall require evidence of insurance coverage, acceptable to the Lender, in the amount of full replacement value of the property. Such policy must contain the standard Insurance Bureau of Canada clauses, and must indicate the Lender's interest as mortgagee.

Payments: Void cheque or bank debit form must be supplied for preauthorized withdrawal, or, postdated cheques (\$1250.00) for cash mortgages commencing from the first payment date until the end of the term are required at closing.

Renewal: This mortgage shall be fully due and payable on the balance due date unless the lender and borrower have agreed in writing in advance that the mortgage will be renewed. A renewal fee will be negotiated and charged upon each renewal and added to the mortgage.

Cancellation: The Lender reserves the right to cancel this Loan Agreement if the information provided by the Borrower(s) and Guarantor(s), to which this loan agreement is based on, is found to be misleading, inaccurate or false.

Documentation: The form and substance of all documentation are to be acceptable to the Lender's Solicitors prior to any funds being advanced.

Standard Charge Terms: The Lender shall require that the Borrower(s) will sign and acknowledge receipt of a copy of Standard Charge Terms #200033 on closing.

Environmental Concerns: If the Lender (or Lender's agents) have reason to believe that the property is not in conformity with any federal, provincial or municipal law or regulation respecting the environment, the Borrower(s) agree that the Lender (or the Lender's agents) may, at any time, before or after default, enter and inspect the Borrower(s) property and conduct any environmental testing, site assessment, investigation or study which the Lender consider necessary. The reasonable cost of such testing, assessment, investigation or study, with interest at the mortgage rate, shall be immediately payable by the Borrower(s) and shall be a charge upon the Borrower(s) property. The Lender shall not become a mortgagee in possession, management or control by exercising these rights.

Loan Agreement Prevails: Where the terms of the loan agreement vary from the terms of the mortgage delivered pursuant thereto, the terms of the loan agreement shall prevail.

Non Assignment: This loan agreement is not transferrable by the Borrower(s), and the Borrower(s) thereof may not assign the benefit.

Assignment of Rents: If this mortgage is on a rental property, this clause entitles the lender to collect rents from the mortgaged premises in the event of default by the borrower. This clause provides that during such default, all rents and incomes from the secured property will be paid to the lender to help reduce the outstanding loan balance.

DT



I / We the undersigned applicants understand and accept the terms of this mortgage as stated herein, and agree to fulfill the conditions of approval to the Lender's satisfaction. I / We further certify that the information herein, as given on the Mortgage Application is true and correct.

Date: _____

Witness: _____

Date: _____

Witness: _____

Date: _____

Witness: _____

Mortgagee

SIDNEY ORVITZ

Steven

Mortgagee

HELEN ORVITZ

Mortgagor

DAVID TAYLOR

David Taylor

This is Exhibit " S " to the Affidavit of
JONATHAN BRINDLEY
sworn before me on January 18, 2022

A handwritten signature in black ink, appearing to be 'JB', with a long horizontal line extending to the right.

The applicant(s) hereby applies to the Land Registrar.

yyyy mm dd Page 1 of 2

Properties

PIN 64147 - 0114 LT
Description PT BLK F PL 775 W/S VICTORIA ST & PT LT 1 PL 777, PTS 1 & 2 59R5190 EXCEPT PT 1, 59R11601 & PT 1, 59R14873; T/W RO525634; CITY OF PORT COLBORNE
Address 518 KING STREET
 PORT COLBORNE

Claimant(s)

Name HER MAJESTY THE QUEEN IN RIGHT OF CANADA AS REPRESENTED BY THE MINISTER OF NATIONAL REVENUE
Address for Service CANADA REVENUE AGENCY
 5800 HURONTARIO STREET
 MISSISSAUGA, ONTARIO
 L5R 4B4

This document is not authorized under Power of Attorney by this party.

This document is being authorized by a representative of the Crown.

Statements

Schedule: See Schedules

Signed By

Jagtar Plaha	5800 Hurontario Street Mississauga L5A 4E9	acting for Applicant(s)	Signed	2019 07 02
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Tel 905-566-6157

Fax 905-615-2349

I have the authority to sign and register the document on behalf of the Applicant(s).

Submitted By

CANADA REVENUE AGENCY	5800 Hurontario Street Mississauga L5A 4E9	2019 07 02
-----------------------	--	------------

Tel 905-566-6157

Fax 905-615-2349

Fees/Taxes/Payment

<i>Statutory Registration Fee</i>	\$64.40
<i>Total Paid</i>	\$64.40

File Number

Claimant Client File Number : ITA-3434-19

NOTICE OF LIEN PURSUANT TO SUBSECTION 223(5) AND (6) OF THE INCOME TAX ACT

CONSIDERATION:\$65,392.45

WHEREAS pursuant to subsection 223(2) and (3) of the Income Tax Act, any amount payable or any part of the amount payable by a tax debtor (the amount) and that amount remains unpaid the amount may be certified by the Minister of National Revenue and registered in the Federal Court of Canada (the Court) at which point the certificate is deemed to be a judgment against the tax debtor;

WHEREAS pursuant to subsection 223(5) and (6) of the Income Tax Act, a document which the Court has issued, and which evidences a certificate of that Court upon registration on title or otherwise recorded creates a charge, lien or priority on, or a binding interest in property that the tax debtor holds;

AND WHEREAS DAVID TAYLOR is indebted to the Minister of National Revenue for income taxes and other amounts totalling \$65,392.45 at the date of issuance of the Certificate in Court File Number ITA-3434-19 by the Court, together with interest at such rate or rates as determined from time to time by Section 161 of the Income Tax Act;

AND WHEREAS DAVID TAYLOR has an interest in the lands described in this notice.

NOW THEREFORE TAKE NOTICE that HER MAJESTY THE QUEEN IN RIGHT OF CANADA AS REPRESENTED BY THE MINISTER OF NATIONAL REVENUE claims a lien and charge against the interest of DAVID TAYLOR in the lands described in this notice.

Such lien charges have priority over all encumbrances or claims registered or attaching to the subject property subsequent to the registration of this notice.

This is Exhibit " T" to the Affidavit of
JONATHAN BRINDLEY
sworn before me on January 18, 2022

A handwritten signature in black ink, appearing to be 'J. Brindley', written over a horizontal line.

JEFFREY GREENHOW, LL.B.
BARRISTER & SOLICITOR

274 MAIN STREET EAST, 3RD FLOOR
GRIMSBY, ONTARIO
L3M 1P8

TELEPHONE: 905-945-5401
FACSIMILE: 905-945-5286

November 21, 2019

Mr. David Taylor
518 King Street
Port Colborne, ON
L2K 4H6

Dear Mr. Taylor:

RE: Your mortgage to Golden Horseshoe Investments Inc., 518 King St., Pt. Colborne

Last for Golden Horseshoe Investments Inc.

The mortgage falls due on December 1, 2019. My client is not prepared to renew or extend, and expects payment on Monday, December 2, 2019.

Monthly payments under the mortgage are \$1,652.41. They are due on the first of each month. The payments that fell due on October 1 and November 1 have not been made. Overdue payments, interest on overdue payments (including interest to December 2, 2019), late payment fees, and legal costs are as follows:

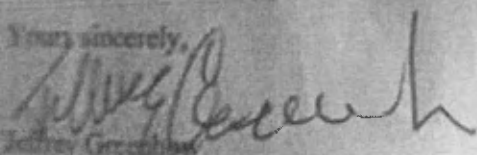
Payment due October 1, 2019	\$ 1,652.41
Interest on arrears to November 1 (31 days @ \$0.3282)	10.37
Payment due November 1, 2019	1,652.41
Interest on arrears to December 2 (32 days @ \$0.65845)	21.07
Late payment fee (2 @ \$200)	400.00
Legal fees	500.00
Examine title	45.73
HST	70.95
	<hr/>
TOTAL ARREARS	4,352.72
PRINCIPAL	221,957.72
PRINCIPAL, ARREARS and INTEREST ON DECEMBER 2, 2019	226,310.44
DISCHARGE FEE	350.00
REGISTRATION OF DISCHARGE	77.31
HST	55.55
	<hr/>
TOTAL ON DECEMBER 2, 2019	\$226,478.30

Daily interest after December 2, 2019 (on \$226,310.44) is \$44.95.

The amount owing on December 2, 2019 is \$226,478.30. Please deliver certified funds payable to Golden Horseshoe Investments Inc. to this office no later than 4:59 pm on Monday, December 2, 2019.

Failing payment, my client will take enforcement proceedings against you, including a claim in Superior Court for judgment for all monies due under the mortgage and for possession of the property (i.e. eviction), and sale of the property under power of sale.

Yours sincerely,



Jeffrey Green

Encl.

This is Exhibit "U" to the Affidavit of
JONATHAN BRINDLEY
sworn before me on January 18, 2022

A handwritten signature in black ink, consisting of stylized initials and a long horizontal stroke extending to the right.

NOTICE OF SALE UNDER MORTGAGE**TO: SEE SCHEDULE "A"**

TAKE NOTICE that default has been made in payment of the monies due under a certain charge/mortgage of land registered on the 21st day of November, 2018, in the Land Registry Office for the Land Titles Division of Niagara South (No. 59) at St. Catharines as Instrument Number SN572732 made between:

DAVID TAYLOR

As Mortgagor

AND

STEVAN ORVITZ

As Mortgagee

On the security of:

PIN 64147-0114 (LT)
 Being Part Blk F Plan 775 W/S Victoria St & Pt Lt 1, Plan
 777, Pts 1 & 2 59R5190, except Pt 1, 59R11601 7 Pt 1 59R14873
 T/w RO525634, in the City of Port Colborne, Region of Niagara
 and known municipally as
 518 King Street
 Port Colborne, Ontario L3K 4H6

AND I hereby give you notice that the amount now due on the mortgage for principal money, interest, late payment charges and costs, realty tax payments (debit), insurance premiums, and protective disbursements, respectively, is \$133,260.00 made up as follows:

\$125,000.00	for principal
\$4,110.00	for interest
\$150.00	for insufficient funds cheques fee (bank charges for three cheques)
\$500.00	for Power of Sale Proceeding costs
\$3,500.00	for costs (such amount for costs being up to and including the service of this notice only, and thereafter such further costs and disbursements will be charged as may be proper), together with interest at the rate of 12.00% percent, calculated monthly on the principal and interest hereinbefore mentioned from the 25th day of January, 2020, to the date of payment.

AND unless the said sums are paid on or before the 25th day of January, 2020, the Mortgagee shall sell the property covered by the said mortgage under the provisions contained in it.

Page 2

THIS notice is given to you as you appear to have an interest in the mortgaged property and may be entitled to redeem the same.

DATED the 11th day of December, 2019.



FREDERICK CAPLAN
Barrister & Solicitor
4 Centre Street
St. Catharines, Ontario
L2R 3A7
(905) 688 8811

Solicitor and Agent for the Mortgagee, Stevan Orvitz

SCHEDULE "A"

1. DAVID TAYLOR
518 King St
Port Colborne, Ontario
L3K 4H6
2. SPOUSE OF DAVID TAYLOR
518 King St.
Port Colborne, Ontario
L3K 4H6
3. LIQUID CAPITAL EXCHANGE CORP.
5734 Yonge St., Suite 400
Toronto, Ontario
M2M 4E7
4. HER MAJESTY THE QUEEN IN RIGHT OF CANADA
AS REPRESENTED BY THE MINISTER OF NATIONAL REVENUE
Canada Revenue Agency
5800 Hurontario Street
Mississauga, Ontario
L5R 4B4
6. OFFICE OF THE SUPERINTENDENT
OF BANKRUPTCY CANADA
25 St. Clair Avenue E, 6th Floor
Toronto, Ontario
M4T 1M2

This is Exhibit " V" to the Affidavit of
JONATHAN BRINDLEY
sworn before me on January 18, 2022

A handwritten signature in black ink, consisting of stylized initials and a long horizontal stroke extending to the right.

CV-20-00637427-00CL

Court File No.

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

BETWEEN:

LIQUID CAPITAL EXCHANGE CORP.

Applicant

-and-



1635536 ONTARIO INC. O/A VERSITEC MARINE & INDUSTRIAL,
VERSITEC MARINE HOLDINGS INC., VERSITEC MARINE USA INC.,
DAVID TAYLOR, REUBEN BYRD and DAVID CARPENTER

APPLICATION UNDER SECTION 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

NOTICE OF APPLICATION

TO THE RESPONDENT(S)

A LEGAL PROCEEDING HAS BEEN COMMENCED by the Applicant. The claim made by the Applicant appears on the following page.

THIS APPLICATION will come on for a hearing on Monday, March 9, 2020, at 10:00 a.m., before a judge presiding over the Commercial List at 330 University Avenue, 9th Floor, Toronto ON M5G 1R7.

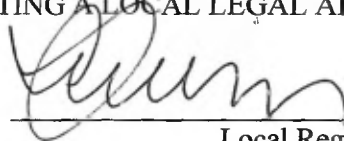
IF YOU WISH TO OPPOSE THIS APPLICATION, to receive notice of any step in the application or to be served with any documents in the application you or an Ontario lawyer acting for you must forthwith prepare a notice of appearance in Form 38A prescribed by the *Rules of Civil Procedure*, serve it on the Applicant's lawyer or, where the Applicant does not have a lawyer, serve it on the Applicant, and file it, with proof of service, in this court office, and you or your lawyer must appear at the hearing.

IF YOU WISH TO PRESENT AFFIDAVIT OR OTHER DOCUMENTARY EVIDENCE TO THE COURT OR TO EXAMINE OR CROSS-EXAMINE WITNESSES ON THE APPLICATION, you or your lawyer must, in addition to serving your notice of appearance, serve a copy of the evidence on the Applicant's lawyer or, where the Applicant does not have a lawyer,

serve it on the Applicant, and file it, with proof of service, in the court office where the application is to be heard as soon as possible, but at least four days before the hearing.

IF YOU FAIL TO APPEAR AT THE HEARING, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO OPPOSE THIS APPLICATION BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

Date March 4, 2020 Issued by



Local Registrar

C. Irwin

Registrar

Address of court office: Superior Court of Justice
330 University Avenue, 9th Floor
Toronto ON M5G 1R7

TO: 1635536 ONTARIO INC. O/A VERSITEC MARINE & INDUSTRIAL
4 Stonebridge Drive, Unit 4
Port Colborne ON L3K 5V4

AND TO: VERSITEC MARINE HOLDINGS INC.

E-mail: info@versitecgb.com

AND TO: VERSITEC MARINE USA INC.
1623 Military Road, #283
Niagara Falls New York 14304

AND TO: DAVID TAYLOR
518 King Street
Port Colborne ON L3K 4H6

AND TO: REUBEN KARY BYRD
19480 Saturina Lakes Drive
Boca Raton, Florida 33498

AND TO: DAVID CARPENTER
50 Dufferin Street
Welland ON L3C 4K4

APPLICATION

1. The Applicant, Liquid Capital Exchange Corp. (“**LCX**”), makes application for:
 - (a) An Order:
 - (i) If necessary, abridging the time for service, validating service and dispensing with further service of the Notice of Application and Application Record;
 - (ii) Substantially in the form as that attached hereto as Appendix “A” appointing Morgan & Partners Inc. as receiver (in such capacity, the “**Receiver**”) over:
 - (1) In respect of 1635536 Ontario Inc. o/a Versitec Marine & Industrial (“**Versitec Canada**”) the Versitec Canada Assets (as herein defined); and
 - (2) the assets and property of Versitec Marine USA Inc. (“**Versitec USA**”);
 - (iii) Granting judgment against the Respondents, on a joint and several basis, in the amount of :
 - (1) \$284,491.88 Canadian dollars; and
 - (2) An amount of Canadian currency sufficient to purchase the sum of \$199,344.33 as at the date of judgment; plus

- (iv) Pre and post judgment interest in accordance the terms of the agreements between the parties or, alternatively,
 - (1) pre judgment interest in accordance with section 128 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended;
 - (2) post judgment interest in accordance with section 129 of the *Courts of Justice Act*;
 - (b) authorizing the Applicant to take possession of the real property municipally known as 518 King Street, Port Colborne, Ontario, Canada (the “**Taylor Property**”) pursuant to those rights granted to the Applicant under the mortgage and charge registered on title to the Taylor Property as Instrument No. SN587591 (the “**Taylor Mortgage**”) or, alternatively, appointing the Receiver as receiver over the Taylor Property and authorizing the Receiver to list and sell same;
 - (c) the costs of this proceeding, plus all applicable taxes; and
 - (d) Such further and other Relief as to this Honourable Court may seem just.
2. The grounds for the application are:

Parties

- (a) LCX is an Ontario corporation which provides various financial services to its customers, including accounts receivable factoring, asset based lending, working capital advances, purchase order and equipment financing and leasing services;

- (b) Versitec Canada is an Ontario corporation with a head office and manufacturing plant located in Port Colborne, Ontario. Versitec Canada operates as an equipment manufacturer and service supplier to the marine stern tube seal market. Versitec Canada supplies and installs seals for a variety of ship owners and shipyards across the globe with key customers in US, Greece, Germany, Hong Kong, Singapore;
- (c) Versitec USA is a corporation incorporated pursuant to the laws of Delaware. Versitec USA lists as its address on its corporation profile report the address of 874 Walker Road, suite C, Delaware, USA, although the Versitec website lists as its contact address a post office box located on Military Road, Niagara Falls, USA;
- (d) David Taylor is a resident of Ontario and was the founder of Versitec Canada and Versitec USA. Mr. Taylor is listed on the current corporate profile report of Versitec as being a director and the president of Versitec Canada;
- (e) David Carpenter is a resident of Ontario and is listed as an officer of Versitec Canada on its corporation profile report. LCX has been advised by Versitec Canada that Mr. Carpenter is no longer employed by Versitec Canada or Versitec USA;
- (f) Reuben Byrd is a resident of Florida and is the current Chief Executive Officer of Versitec USA and Versitec Canada;
- (g) Versitec Marine Holdings Inc. ("**Holdings**") is an Bahamian company which is believed to be a holding company which owns or owned shares of Versitec USA;

Agreements

- (h) On June 21, 2017, Versitec Canada, Versitec USA (collectively, the “**Debtors**”) and LCX executed a Purchase and Sale Agreement (the “**Agreement**”) setting out terms pursuant to which LCX agreed to purchase, or factor, accounts receivable of the Debtors;

Security and Guarantees

- (i) As security for performance of the Debtors’ obligations under the Agreement, LCX was granted the following additional security:
- (i) A general security agreement (“**GSA**”) over all present and after acquired assets of Versitec Canada dated June 21, 2017 and registered pursuant to the Personal Property Security Act as Registration No. 20170616 1601 1793 7011; and
 - (ii) A general security agreement over all present and after acquired assets of Versitec USA dated June 21, 2017 and registered pursuant to the UCC as Financing Statement 20174120736;
- (j) As additional security for performance of the Debtors’ obligations under the Agreements, the following persons (each, a “**Guarantor**”) have granted guarantees (each, a “**Guarantee**”) of the indebtedness of the Debtors:
- (i) An unlimited personal guarantee granted by David Taylor in respect of the Debtors’ indebtedness to LCX, dated June 21, 2017 (the “**Taylor**

Guarantee”), supported by a demand collateral third mortgage in the amount of \$300,000 (the “**Taylor Mortgage**”) granted over the property having the municipal address of 518 King Street, Port Colbourne, Ontario (the “Taylor Property”) and registered on title to the Taylor Property on May 3, 2019 as Instrument No. SN587591;

- (ii) An unlimited personal guarantee granted by Reuben Byrd in respect of the Debtors’ indebtedness to LCX, dated April 26, 2019 (the “**Byrd Guarantee**”), supported by a demand collateral mortgage in the amount of \$300,000 (the “**Byrd Mortgage**”) granted over the property having the municipal address of 19480 Saturnia Lakes Drive, Boca Raton, Florida, USA;
- (iii) An unlimited personal guarantee granted by David Carpenter (the “**Carpenter Guarantee**”) in respect of the Debtors’ indebtedness to LCX, dated June 21, 2017;
- (iv) An unlimited guarantee granted by Holdings in respect of the Debtors’ indebtedness to LCX, dated June 21, 2017 (the “**Holdings Guarantee**”);
- (v) An unlimited guarantee granted by Versitec USA in respect of Versitec Canada’s indebtedness to LCX, dated June 21, 2017 (the “**Versitec USA Guarantee**”);

- (vi) An unlimited guarantee granted by Versitec Canada in respect of Versitec USA's indebtedness to LCX, dated June 21, 2017 (the "**Versitec Canada Guarantee**");

History

- (k) Since June 2017, Liquid Capital has factored the accounts receivable of the Debtors on more than 50 separate occasions, with factoring volume in excess of CDN\$1,600,000 and US\$1,300,000;
- (l) Between approximately June 2017 and July 2018, LCX was satisfied with its business relationship and dealings with the Debtors. During this period, the key interfaces at the Debtors for LCX were David Carpenter (controller) and David Swindells (Chief Executive Officer). It appeared to LCX that David Taylor, the president of Versitec Canada, was less involved in the day-to-day management of the business and spent much of his time overseas;
- (m) In or around June 2018, Reuben Byrd joined Versitec Canada and Versitec USA in the stated role of new CEO;

Default and Demands 2018

- (n) In or around July 2018 to October 2018, collections on LCX-factored accounts receivable slowed down dramatically, with an unacceptable amount of accounts receivable becoming aged;

- (o) Furthermore, in or around November 2018, LCX became aware that the Debtors had breached the terms of the Agreement with LCX. In particular, and without limitation:
- (i) LCX learned that certain accounts receivable factored by LCX had been paid to the Debtors and not remitted to LCX; and
 - (ii) LCX learned that the Debtors had recently missed payroll for their employees and, as such, the Debtors appeared to be unable to service their debts generally as they became due and insolvent;
- (p) On November 16, 2018, LCX made demand upon the Debtors and Guarantors for payment of all amounts outstanding and owed to it on account of moneys advanced to the Debtors. Together with notice of default and demand for repayment, LCX delivered Notice of Intention to Enforce Security (“NITES”) pursuant to s.244 of the *Bankruptcy and Insolvency Act*;

Forbearance Agreement

- (q) In March 2019, Representatives of LCX met with Taylor and Byrd to discuss the outstanding debt to LCX as well as potential terms of forbearance that would:
- (i) facilitate repayment in full of LCX; and
 - (ii) allow the relationship between the Debtors and LCX to continue during the forbearance period while the Debtors sought replacement financing;

- (r) Terms were reached and a forbearance agreement dated April 25, 2019 was executed (the “**Forbearance Agreement**”) by each of Versitec Canada, Versitec, USA, Holdings, Byrd, Taylor and LCX. In broad strokes, the Forbearance Agreement provided a forbearance period from April 26, 2019 to December 31, 2019, during which:
- (i) LCX would continue to purchase receivable of the Debtors on certain additional terms as set out in the Forbearance Agreement; and
 - (ii) The Debtors were required to obtain replacement financing and repay all amounts owing to LCX prior to the end of the forbearance period;
- (s) Additionally, the Forbearance Agreement also provided for the engagement of Newhouse Partners Inc. (the “**Consultant**”) as consultant on the terms and conditions set out in an engagement letter dated March 29, 2020 (the “**Engagement Letter**”);
- (t) Pursuant to the Engagement letter, the Debtors and Guarantors (excepting Mr. Carpenter) agreed to the retainer of the Consultant a consultant to Liquid Capital to conduct a review and to advise with respect to all aspects of the Debtors’ financial affairs and operations, LCX’s security over invoices from the Debtors and all matters related thereto and in connection therewith;
- (u) The Debtors and the Guarantors (excepting Mr. Carpenter) agreed and acknowledged, by the Engagement letter:

- (i) that they would fully cooperate with the Consultant and give the Consultant complete access at all times to the Debtor's books of account, records and other documents of all kinds and to all of the Debtor's premises and properties; and
- (ii) that the principals and management of the Debtors and Guarantors would make themselves available to assist and furnish any information required, including directing the Debtor's accountants to assist the Consultant where necessary;

Breach of Agreements

- (v) From May to October 2019, LCX factored approximately CDN \$1,000,000 and US\$500,000 of the Debtors' accounts receivable. During this period, LCX was satisfied with the collection of factored accounts receivable and the Consultant made regular visits with the Debtors to monitor the Debtors' operations;
- (w) Beginning in or around October of 2019, LCX again began to encounter serious difficulties in its dealings with the Debtors, which difficulties have persisted since that time. In particular, without limitation:
 - (i) In October 2019, Byrd refused to grant the Consultant any further access to books and records of the Debtors;
 - (ii) In November and December 2019, the timely collection of accounts receivable decreased dramatically, in a manner consistent with that

encountered in the period prior to the issuance of the November 16, 2018 demands and NITES;

- (iii) On November 21, 2019, the first mortgagee on the Taylor Property issued notice of default and demand under its first charge on the Taylor Property;
- (iv) On December 11, 2019, the second mortgagee on the Taylor Property issued notice of default and demand under its second charge on the Taylor Property;
- (v) No replacement financing was obtained by the Debtors, as contemplated by the Forbearance Agreement, and LCX was not repaid in full all amounts owing to it on December 31, 2019;
- (vi) LCX has written to its customers and directed them not to make payments to LCX but to direct payment of accounts receivable, included LCX factored account receivable into US bank accounts;
- (vii) LCX is aware of multiple instances in which funds payable to LCX on account of factored receivables were redirected by the Debtors over notice to the account debtors of the assignment of same and not remitted to LCX;

January, 2020 Demands and NITES

- (x) On January 16, 2020, LCX issued further demands and NITES demanding payment of all outstanding amounts owed to LCX;

- (y) Throughout January 2020, LCX attempted to work with the Debtors on resolving these issues. However, despite numerous promises to pay, no funds were received by LCX on account of the outstanding obligations of the Debtors;

Current Indebtedness

- (z) The current balances owed to LCX by the Debtors, as at February 28, 2020, non-inclusive of legal costs to date, is as follows:

	AC #	Currency	AR Balance	Net Funds Employed (NFE)	Accrued Fees	Total Balance owing	Per Diem
1635536 Ontario Inc. o/a Versitec Marine	4822	CDN	251,526.78	261,215.59	35,727.02	296,942.61	251.53
1635536 Ontario Inc. o/a Versitec Marine	4821	US	95,073.79	78,058.56	15,095.00	93,153.56	95.07
Versitec Marine USA Inc.	4820U	US	75,614.67	93,494.50	11,842.72	105,337.22	75.61
				Net Funds	Acc Fees	Total Bal Due	Per Diem
			Total CDN	261,215.59	35,727.02	296,942.61	251.53
			Total US	171,553.06	26,937.72	198,490.78	170.69

Secured Creditors

Versitec Canada

- (aa) According to a current Personal Property Security Act (“PPSA”) registry search, the following are the senior ranking general secured creditors of Versitec Canada, listed by date of registration:
- (i) BUSINESS DEVELOPMENT BANK OF CANADA (“BDC”) by Registration No. 20140611 1625 2611 6669;
 - (ii) LIQUID CAPITAL EXCHANGE CORP. by Registration No. 20170616 1601 1793 7011;

- (iii) PREMIUM CAPITAL GROUP, INC. by Registration No. 20180629 1744
6083 3900;
 - (iv) MERCHANT ADVANCE CAPITAL by Registration No. 20181114 0950
6083 7346;
- (bb) Pursuant to a Postponement and Priorities Agreement entered into between LCX, BDC and Versitec Canada, it was agreed that the LCX's security interest in the assets of Versitec Canada shall have priority over the security interest of BDC in respect of the following:
- (i) All of Versitec Canada's present and future accounts receivable and inventory;
 - (ii) All contract rights, instruments, documents, chattel paper and general intangibles related to any of the foregoing, including all of Versitec Canada's rights as a seller of goods;
 - (iii) All collateral held by Versitec Canada securing any of the foregoing;
 - (iv) All cash and non cash proceeds of any of the foregoing, in whatever form, including without limitation any balances maintained in any reserve account with LCX and any returned or repossessed goods;
 - (v) All books and records relating to the foregoing;
- (collectively, the "**Versitec Canada Assets**")

Versitec USA

- (cc) According to a UCC and Federal Tax Liens search conducted in respect of Versitec USA, the following are the senior ranking general secured creditors of Versitec USA, listed by date of registration:
- (i) LIQUID CAPITAL EXCHANGE CORP by Financing Statement 20174120736;
 - (ii) BANK OF AMERICA, N.A., by Financing Statement 20188822906;
 - (iii) FIRST CORPORATE SOLUTIONS, AS REPRESENTATIVE, by Financing Statement 20201438326;

Request for the appointment of a Receiver

- (dd) LCX requests the appointment of a Receiver in respect of Versitec USA and the Versitec Canada Secured Assets as a result of the repeated and numerous breaches of the terms of their agreements with LCX, which breaches include, but are not limited to:
- (i) Failure to remit funds received in payment of factored accounts as required under the terms of the Agreement;
 - (ii) Failure to assist LCX in obtaining the redirection of payments on LCX factored accounts to LCX upon LCX's request for same;

- (iii) Failure to provide the Consultant with full access to the books and records of the Debtors as required under the terms of the Engagement Letter, Agreement and Forbearance Agreement;
 - (iv) Failure to repay LCX in full by December 31, 2019, as required under the terms of the Forbearance Agreement;
 - (v) Failure to repay LCX upon demand for payment being made; and
 - (vi) Breach of trust;
- (ee) As a result of the numerous defaults of the terms of their agreements with LCX, the appointment of a receiver is warranted as:
- (i) Each of the Agreement, Versitec Canada GSA, Versitec USA GSA, and Forbearance Agreement provide that a receiver may be appointed upon an event of default under any of these agreements, which default has occurred;
 - (ii) The Debtors and Guarantors have, by the Forbearance Agreement, consented to the appointment of a Receiver on default under the terms of same, which default has occurred;
 - (iii) Versitec believes that it is likely that further account debtors of the Debtors have been similarly instructed by the Debtors to deposit payments into US accounts, controlled by Mr. Byrd, in an attempt to frustrate the ability of LCX to recover such payments; and

(iv) There is good reason to believe that the security of LCX and its ability to recover accounts receivable of the Debtors is at risk if immediate action is not taken;

(ff) Morgan & Partners Inc. has consented to act as receiver;

Judgment on Guarantees

(gg) LCX further requests that judgment be granted as against each of the Guarantors in respect of the Guarantees granted by them, as set out herein;

Possession of Taylor Residence

(hh) LCX seeks to enforce the Taylor Mortgage and requests, should this be necessary, an order granting it possession of the Taylor Property for the purpose of listing and selling same or, alternatively, that the Receiver be appointed over the Taylor Property for this purpose;

(ii) Such further and other grounds as the lawyers may advise;

3. The following documentary evidence will be used at the hearing of the application:

(a) The affidavit of Jonathan Brindley;

(b) Such further and other evidence as the lawyers may advise and this Honourable Court may permit.

4. This Application is served outside of Ontario pursuant to Rule 17.02(f) (i), (ii) and (iii) in that the Agreement, security documents, Guarantees and Forbearance Agreement referenced, each

of which was made in Ontario, each provide that they are governed by the law of the Province of Ontario and designate the Province of Ontario as the forum for any disputes thereunder. (Where the notice of application is to be served outside Ontario without a court order, state the facts and the specific provisions of Rule 17 relied on in support of such service).

March 4, 2020

TORKIN MANES LLP
Barristers & Solicitors
151 Yonge Street, Suite 1500
Toronto ON M5C 2W7

Stewart Thom (55695C)
sthom@torkinmanes.com
Tel: 416-777-5197
Fax: 1-877-689-3872

Lawyers for the Applicant, Liquid Capital
Exchange Corp.

This is Exhibit "W" to the Affidavit of
JONATHAN BRINDLEY
sworn before me on January 18, 2022

A handwritten signature in black ink, appearing to be 'J. Brindley', written over a horizontal line.

The applicant(s) hereby applies to the Land Registrar.

yyyy mm dd Page 1 of 6

Properties

PIN 64147 - 0114 LT
Description PT BLK F PL 775 W/S VICTORIA ST & PT LT 1 PL 777, PTS 1 & 2 59R5190 EXCEPT PT 1, 59R11601 & PT 1, 59R14873; T/W RO525634; CITY OF PORT COLBORNE
Address 518 KING STREET
 PORT COLBORNE

Source Instruments

Registration No.	Date	Type of Instrument
SN453043	2015 11 24	Charge/Mortgage
SN661075	2021 02 10	Transfer Of Charge
SN572732	2018 11 21	Charge/Mortgage

Transferor(s)

This transfer of charge affects all lands that the charge is against which are outstanding.

Name ORVITZ, STEVAN
Address for Service 18 Port Royal Crescent
 St. Catharines, Ontario
 L2N 7K1

This document is not authorized under Power of Attorney by this party.

Transferee(s)*Capacity**Share*

Name RA-TECH CAD SERVICES INC.
Address for Service c/o Paul D. Leon
 Barrister & Solicitor
 149 West Main Street, P.O Box 366
 Welland, Ontario, L3B 5P7

Statements

The chargee transfers the selected charge for \$401,827.99

Schedule: See Schedules

Signed By

Raeann M. Lethby	4 Centre Street PO Box 30 St. Catharines L2R 6V9	acting for Transferor(s)	Signed	2021 04 16
------------------	--	-----------------------------	--------	------------

Tel 905-688-8811

Fax 905-688-8933

I have the authority to sign and register the document on behalf of the Transferor(s).

Paul Davis Leon	149 West Main Street, P.O. Box 366 Welland L3B 5P7	acting for Transferee(s)	Signed	2021 04 16
-----------------	---	-----------------------------	--------	------------

Tel 905-735-2921

Fax 905-735-4519

I have the authority to sign and register the document on behalf of the Transferee(s).

Submitted By

Blackadder Leon Marion + Fazari LLP	149 West Main Street, P.O. Box 366 Welland L3B 5P7	2021 04 16
-------------------------------------	--	------------

Tel 905-735-2921

Fax 905-735-4519

Fees/Taxes/Payment

Statutory Registration Fee	\$65.30
Total Paid	\$65.30

The applicant(s) hereby applies to the Land Registrar.

File Number

Transferor Client File Number : 21FCR063

ASSIGNMENT AGREEMENT

THIS AGREEMENT is made on the 30th day of March, 2021

B E T W E E N:

STEVAN ORVITZ

(Hereinafter referred to as the "Assignor")

A N D

RA-TECH CAD SERVICES INC.

(Hereinafter referred to as the "Assignee")

1. **WHEREAS** David Taylor is the registered owner of certain lands municipally known as 518 King Street, City of Port Colborne, Regional Municipality of Niagara and legally described as PIN 64147-0114 (LT) being Part Blk F Pl 775 W/S Victoria St & Pt Lt 1, Pl 777, Pts 1 & 2 59R5190 Except 1, 59R11601 & Pt 1, 59R14873; T/W RO525634; City of Port Colborne, Regional Municipality of Niagara;
2. **AND WHEREAS** on title to the property is a first Charge/Mortgage which was originally registered as Instrument No. SN453043 on the 24th day of November, 2015 in favour of Golden Horseshoe Investment Inc. securing the sum of \$235,000.00. This Charge/Mortgage was transferred to the said Stevan Orvitz, on the 10th day of February, 2021 by Instrument No.: SN661075;
3. **AND WHEREAS** on title to the property is a second Charge/Mortgage which was registered by Instrument No. SN572732 on the 21st day of November, 2018 in favour of Stevan Orvitz securing the principal sum of \$125,000.00.
4. **AND WHEREAS** David Taylor fell into arrears of the payment of the second Charge/Mortgage of Land. By January 7, 2021, the amount owing on the second mortgage totaled \$149,427.64. Stevan Orvitz was given notice that the first mortgage was also in arrears, therefore in order for him to protect the amount owing on the second Charge/Mortgage of Land, the said Stevan Orvitz purchased an assignment of the first Charge/Mortgage of Land for \$232,286.79 which was the amount owing on the first Charge/Mortgage of Land and costs at the time it was purchased on the 10th day of February, 2021;

5. **AND WHEREAS** Stevan Orvitz issued a Notice of Sale Under his Second Mortgage on the 7th day of January, 2021. The said Notice of Sale having expired on the 18th day of February, 2021. After the expiry of the said Notice period on the 1st day of March, 2021 Stevan Orvitz issued a Statement of Claim in the Ontario Superior Court of Justice at St. Catharines as Court File Number CV-21-00060052-0000. As of the present time the Statement of Claim is in default and Default Judgement can be signed.
6. **AND WHEREAS**, the Assignor has agreed to transfer the first and second Charge/Mortgage to the Assignee herein for the sum of \$401,827.99 which is the balance owing (inclusive of legal fees) as at March 30, 2021 on both mortgages;

The ASSIGNEE has entered into an agreement with the Assignor for the purchase of the Assignor's interest in the first and second mortgages. As of the date hereof the amount owing to Stevan Orvitz with regard to the first and second mortgages, including interest and costs is \$401,827.99. Upon payment of that said amount together with per diem (\$45.52 for 1st mortgage & \$46.19 for the 2nd mortgage) from the 30th day of March, 2021 to the date of payment, by the within document the Assignor, Stevan Orvitz assigns to the Assignee, Ra-Tech Cad Services Inc. the following:

1. First Charge/Mortgage registered on the 24th day of November, 2015 in favour of Golden Horseshoe Investment Inc. as Instrument number SN453043, which was assigned/transferred to Stevan Orvitz on the 10th day of February, 2021 as Instrument Number SN661075;
2. Second Charge/Mortgage registered on the 21st day of November, 2018 as Instrument number SN572732;
3. Any right, title or interest in the Notice of Sale issued on the 7th day of January, 2021 and grants to the Assignee all and any right that he has or had in that said Notice of Sale and the mortgage under which it was issued.
4. All and any rights in the Statement of Claim issued in the Ontario Superior Court of Justice at St. Catharines on the 1st day of March, 2021 as Court File Number CV-21-00060052-0000 and is granted the right to appoint his own counsel with regard to the said Statement of Claim, such assignment of the said Statement of Claim under the term and condition that the Assignee shall be responsible for any costs that may arise out of the Statement of Claim or any other matters associated therewith. The Assignee hereby acknowledges responsibility to deal reasonably with the said Statement of Claim.

NOW THEREFORE, in consideration of the premises and the covenants contained in the original Charge/Mortgage and for such other good and valuable consideration, the sufficiency of which is hereby acknowledged, by executing below and upon the registration of the Transfer of Charge, the parties hereto agree to the term of this Agreement.

THE PARTIES HEREBY ACKNOWLEDGES receipt of a fully executed copy of this Agreement and any attachments/amendments/additions in relation thereto.

DATED AT THE CITY OF ST. CATHARINES THIS 15 DAY OF ^{April} MARCH, 2021.

WITNESS:

R Douglas
Witness

Stevan Orvitz
STEVAN ORVITZ

DATED AT THE

THIS 16 DAY OF ~~xxxxxxx~~ April 2021

RA-TECH CAD SERVICES INC.

Witness

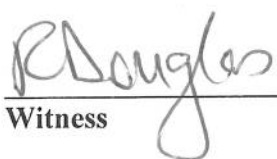
Joe Livi
Name:
President
I have the authority to bind the Corporation.

NOW THEREFORE, in consideration of the premises and the covenants contained in the original Charge/Mortgage and for such other good and valuable consideration, the sufficiency of which is hereby acknowledged, by executing below and upon the registration of the Transfer of Charge, the parties hereto agree to the term of this Agreement.

THE PARTIES HEREBY ACKNOWLEDGES receipt of a fully executed copy of this Agreement and any attachments/amendments/additions in relation thereto.

DATED AT THE CITY OF ST. CATHARINES THIS 15 DAY OF ^{April} MARCH, 2021.

WITNESS:



Witness



STEVAN ORVITZ

DATED AT THE

THIS DAY OF MARCH, 2021.

RA-TECH CAD SERVICES INC.

Witness

Name:
President
I have the authority to bind the Corporation.

This is Exhibit " X" to the Affidavit of
JONATHAN BRINDLEY
sworn before me on January 18, 2022

A handwritten signature in black ink, appearing to be 'J. Brindley', written over a horizontal line.

Ministry of Government and
Consumer Services

Profile Report

RA-TECH CAD SERVICES INC. as of January 13, 2022

Act	Business Corporations Act
Type	Ontario Business Corporation
Name	RA-TECH CAD SERVICES INC.
Ontario Corporation Number (OCN)	2852631
Governing Jurisdiction	Canada - Ontario
Status	Active
Date of Incorporation	July 08, 2021
Registered or Head Office Address	4668 St. Clair Avenue, Box 710, Niagara Falls, Ontario, Canada, L2E 6V5

Certified a true copy of the record of the Ministry of Government and Consumer Services.

A handwritten signature in cursive script that reads "Barbara Duckitt".

Director/Registrar

This report sets out the most recent information filed on or after June 27, 1992 in respect of corporations and April 1, 1994 in respect of Business Names Act and Limited Partnerships Act filings and recorded in the electronic records maintained by the Ministry as of the date and time the report is generated, unless the report is generated for a previous date. If this report is generated for a previous date, the report sets out the most recent information filed and recorded in the electronic records maintained by the Ministry up to the "as of" date indicated on the report. Additional historical information may exist in paper or microfiche format.

Active Director(s)

Minimum Number of Directors 1
Maximum Number of Directors 7

Name Andrew FERRI
Address for Service 4668 St. Clair Avenue, Box 710, Niagara Falls, Ontario,
Canada, L2E 6V5
Resident Canadian Yes
Date Began July 08, 2021

Certified a true copy of the record of the Ministry of Government and Consumer Services.

Barbara Duckitt

Director/Registrar

This report sets out the most recent information filed on or after June 27, 1992 in respect of corporations and April 1, 1994 in respect of Business Names Act and Limited Partnerships Act filings and recorded in the electronic records maintained by the Ministry as of the date and time the report is generated, unless the report is generated for a previous date. If this report is generated for a previous date, the report sets out the most recent information filed and recorded in the electronic records maintained by the Ministry up to the "as of" date indicated on the report. Additional historical information may exist in paper or microfiche format.

Active Officer(s)

There are no active Officers currently on file for this corporation.

Certified a true copy of the record of the Ministry of Government and Consumer Services.

Barbara Duckitt

Director/Registrar

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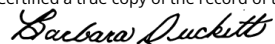
Corporate Name History**Name**

RA-TECH CAD SERVICES INC.

Effective Date

July 08, 2021

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Active Business Names

This corporation does not have any active business names registered under the Business Names Act in Ontario.

Certified a true copy of the record of the Ministry of Government and Consumer Services.

Barbara Duckitt

Director/Registrar

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Expired or Cancelled Business Names

This corporation does not have any expired or cancelled business names registered under the Business Names Act in Ontario.

Certified a true copy of the record of the Ministry of Government and Consumer Services.

Barbara Duckitt

Director/Registrar

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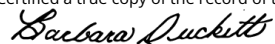
Document List**Filing Name**

BCA - Articles of Incorporation

Effective Date

July 08, 2021

Certified a true copy of the record of the Ministry of Government and Consumer Services.



Director/Registrar

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This is Exhibit "Y" to the Affidavit of
JONATHAN BRINDLEY
sworn before me on January 18, 2022

A handwritten signature in black ink, appearing to be 'J. Brindley', with a long horizontal line extending to the right.

----- Forwarded message -----

From: **Andy Ferri** <Andyferri@outlook.com>

Date: Mon, Aug 17, 2020 at 3:38 PM

Subject: FW: Jonathon Brindley Contact detail

To: jbrindley@liquidcapitalcorp.com <jbrindley@liquidcapitalcorp.com>

Cc: David Taylor <davidtaylormarine@outlook.com>

Dear Sir:

I was referred to by David Taylor. I am good friends with Paul Leon who is David's lawyer. I am prepared to consider refinancing David's company and dispense with the receivership.

Would you like to schedule a call to discuss this option moving forward.

Andrew Ferri

905 325 0663

From: David Taylor <davidtaylormarine@outlook.com>

Sent: Saturday, August 15, 2020 10:38 AM

To: Andyferri@outlook.com

Subject: Jonathon Brindley Contact detail

Regards

Jonathan Brindley CPA CA
Liquid Capital Advance Corp.

Tel: 416-727-4521

Toll Free: 1-800-778-0133

Fax: 289-201-0178

Email: jbrindley@liquidcapitalcorp.com

www.liquidcapitaladvancecorp.com

From: **Andy Ferri** <Andyferri@outlook.com>
Date: Fri, Nov 20, 2020 at 3:51 PM
Subject: RE: Versitec YTD Aug 2020 Reporting
To: Jonathan Brindley <jbrindley@liquidcapitalcorp.com>, David Taylor <davidtaylormarine@outlook.com>

Jonathan,

It is still my intention to move forward on purchasing your position.

What is the amount necessary to assume your position along with the collateral security.

I think we need to pick a cut off date with an accompanying statement of affairs.

I would like to complete this before the end of the year.

Let me know what you think.

Andy

From: Jonathan Brindley <jbrindley@liquidcapitalcorp.com>
Sent: Wednesday, October 21, 2020 5:58 PM
To: David Taylor <davidtaylormarine@outlook.com>; Andy Ferri <Andyferri@outlook.com>
Subject: Versitec YTD Aug 2020 Reporting

Hi David

Thanks for your call today.

As requested attached is the Versitec YTD Aug 2020 reporting package and cc'd Andy

Based on our earlier conversations I understood that you were considering buying out Liquid Capital but I haven't heard anything further since I sent you and Andy the July reporting package back on Sept 4th.

Please advise on status or intentions to buy out Liquid Capital.

Regards

Jonathan Brindley CPA CA
Liquid Capital Advance Corp.
Tel: 416-727-4521
Toll Free: 1-800-778-0133

Fax: 289-201-0178

Email: jbrindley@liquidcapitalcorp.com
www.liquidcapitaladvancecorp.com

Stewart Thom

From: Crawley, Peter <pcrawley@bdo.ca>
Sent: January 14, 2022 12:29 PM
To: Stewart Thom
Cc: Phoenix, Graham
Subject: FW: [EXT] Re: David Taylor - request for documentation from Versitec

This is an external email.

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From: David Taylor
Sent: January 13, 2022 7:58 PM
To: Crawley, Peter <pcrawley@bdo.ca>
Subject: [EXT] Re: David Taylor - request for documentation from Versitec

FYI

From: Kevin Jackson <kjackson@krjlaw.com>
Sent: Monday, December 14, 2020 1:44 PM
To: Paul Leon <PDLeon@leonlaw.ca>
Cc: David Taylor <davidtaylormarine@outlook.com>
Subject: Re: David Taylor - request for documentation from Versitec

Thank you. Please let us know if you need anything else.

Kevin

On Mon, Dec 14, 2020 at 1:42 PM Paul Leon <PDLeon@leonlaw.ca> wrote:

Thank you for your email Mr. Jackson,
We believe your client is deliberately blocking our client. However, we will let the cards fall where they may. Glad Mr. Byrd has separate counsel.

Regards,
Paul

Paul D. Leon
Blackadder Leon Marion & Fazari LLP
Barristers and Solicitors
149 West Main St.,
P.O. Box 366,
Welland, Ontario L3B 5P7

Tel: 905 735-2921
Fax: 905 735-4519
Email: pdleon@leonlaw.ca

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|

From: Kevin Jackson <kjackson@krjlaw.com>
Sent: December 14, 2020 11:07 AM
To: Paul Leon <PDLeon@leonlaw.ca>; johnmorgan@morgantrustees.com; William Salgado <will@wsalgadolaw.com>
Cc: Reuben Byrd <rbyrd@versitecmarine.com>
Subject: David Taylor - request for documentation from Versitec

Good morning Mr. Leon. Please be advised that this firm represents Reuben Byrd related to any issues pertaining to David Taylor and/or Versitec Marine USA, Inc or any of its Canadian affiliates. Mr. Byrd has forwarded, to our office, an email dated December 11, 2020 wherein your office, on behalf of Mr. Taylor, has requested that Mr. Byrd provide you with documentation related to Versitec (i.e, bank statements, accounts payable records, accounts receivable records, etc..). From a review of the file and from speaking to Mr. Byrd and Mr. Morgan it is my understanding that a Court has appointed Mr. Morgan as Versitec's receiver for the purposes of receiving funds and making payments on behalf of Versitec. It is further my understanding that Mr. Byrd has been hired by the receiver as a consultant for Versitec. As the receiver is making decisions related to the day to day operations of Veristec and Mr. Byrd is simply a hired consultant for the receiver, Mr. Byrd does not have the ability or authority to provide you with any of the documentation that you have requested of him. It is my understanding that if you would like to receive said documentation, you have the right to go before the Court that issued the receivership order and request said documentation. However, without Court approval allowing for such, Mr. Byrd is not in any position to provide you with any documentation. If you have any questions in this regard please do not contact Mr. Byrd but, instead, please contact our office and we will be glad to speak to you about this matter.

Thank you,

--

Kevin Jackson
Law Offices of Kevin Jackson, P.A.
1136 SE 3rd Ave.
Ft. Lauderdale, FL 33316
(954) 779-2272- telephone
(954) 463-2301 - fax
kjackson@krjlaw.com



Sent Via email

August 24, 2020

1635536 Ontario Inc. O/A Versitec Marine &
 Versitec Marine USA Inc.
 4 Stonebridge Drive, Unit 4
 Port Colborne, Ontario
 L4K 5V5
Attention: David Taylor (President),

4668 St. Clair Ave.
 P.O. Box 710 STN Main,
 Niagara Falls, Ontario,
 L2E 6V5
Attention: Andrew Ferri

Re: Factoring Facility for 1635536 Ontario Inc. O/A Versitec Marine and Versitec Marine USA Inc. ("Versitec")

Dear David Taylor and Andrew Ferri:

Further to Mr. Taylor's recent instructions, we have spoken with Andrew Ferri about the potential acquisition or payout of the Liquid Capital Exchange Corp. ("LCX") debt and security in relation to Versitec (the "**Buyout**").

We understand that Andrew Ferri may be providing funding in connection with the Buyout. We further understand that in connection with the potential Buyout Mr. Ferri has requested certain additional information be provided to him in advance of proceeding with same (the "**Confidential Information**"). Such information includes but is not limited to:

- Latest statement of affairs including P&L + Balance Sheet
 - Latest AR reports
 - Buyout amount for Liquid Capital
1. In consideration of LCX or its agents providing David Taylor and/or Andrew Ferri, or their agents or representatives (all, the "**Releasing Parties**"), with Confidential Information, the Releasing Parties agree that they and their representatives:
 - (a) will keep the Confidential Information in strict confidence;
 - (b) will not use the Confidential Information in any manner whatsoever, in whole or in part, other than in connection with the purposes set out above; and
 - (c) will not disclose to any person any Confidential Information, that the Confidential Information has been made available to them.
 2. The Releasing Parties agree that the Confidential Information will only be disclosed, to the extent required by law, and used by those of their representatives who need to know the Confidential Information for the purposes set out above, and that they will advise each of such representatives



of this agreement and of its terms. In any event, the Releasing parties will be responsible for any breach of this agreement by their representatives.

3. The Releasing Parties acknowledge and confirm that LCX did not author the Confidential Information and has not independently evaluated the accuracy of any of the statements or other information contained in the Confidential Information. The Releasing Parties acknowledge that neither LCX nor any of LCX's agents or representatives makes any express or implied representations or warranties as to the accuracy or completeness of the Confidential Information, and that each of the LCX and its agents or representatives expressly disclaims any and all liability that may be based on the Confidential Information, or any errors therein or omissions therefrom.
4. The Releasing Parties will indemnify and hold harmless the LCX and its respective affiliates, directors, partners, officers, employees, agents, professional advisors and consultants from any and all losses or damages (including, without limitation, legal costs) which are incurred directly or indirectly as a result of unauthorized disclosure or use of the Confidential Information by the Releasing Parties or their representatives.
5. The Releasing Parties agree that neither LCX nor its agents or representatives shall be liable for any errors or omission in the Confidential Information and release LCX and its agents and representatives from any and all claims, actions, suits or liabilities of any kind whatsoever which may or could arise in connection with the provision to them of any Confidential Information or from their reliance on any part of the Confidential Information.
6. The Releasing Parties agree that 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 and shall remain in full force for a period of two years from the date hereof.

Upon receipt of your written acceptance of the forgoing terms, LCX agrees to provide such Confidential Information as may be reasonably requested in connection with the Buyout, but reserves the right to discontinue provision of any further Confidential Information should LCX, in its sole opinion, deem it appropriate to do so and in which case such discontinuance shall not affect the validity of this agreement.

The foregoing is ACCEPTED & AGREED:

 (Signature)

David Taylor
 President

1635536 Ontaio Inc. O/A Versitec Marine and Versitec Marine USA Inc.

Andrew Ferri

(Signature)

Andrew Ferri

This is Exhibit "Z " to the Affidavit of
JONATHAN BRINDLEY
sworn before me on January 18, 2022

A handwritten signature in black ink, appearing to be 'JB', with a long horizontal line extending to the right.

Stewart Thom

From: Stewart Thom
Sent: November 25, 2021 11:08 AM
To: pdleon@leonlaw.ca
Subject: 518 King St. Port Colborne: mortgage in favour of Ra-Tech

Paul,

I act for a subsequent mortgagee on this property and it looks like your client acquired the prior ranking charges formerly held by other parties. I know that enforcement proceedings had been initiated by you client's predecessors. Are you able to advise as to whether these have been discontinued or whether these are ongoing and , if the latter, the status of same?

As a subsequent mortgagee we would expect to have heard of any steps taking place if any indeed were, but this has been quiet for quite some time now.

Please let me know. I left a message with your assistant a couple of weeks ago but did not hear back.

Stewart Thom

Tel: 416-777-5197

Fax: 1-877-689-3872

sthom@orkinmanes.com[VCard](#)**Torkin Manes LLP**

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Stewart Thom

From: Crawley, Peter <pcrawley@bdo.ca>
Sent: January 13, 2022 5:09 PM
To: Stewart Thom
Subject: 518 King St Port Colborne

This is an external email.

Stewart

As you know, I have been called by 2 parties now to tell me that 518 King Street, Port Colborne is in the process of being sold.

December 17, 2021: Normand Loubier, minority shareholder of Versitec Marine, called me to advise that:

- i) David Taylor has been evicted from the home and is living with his daughter;
- ii) Lenders have foreclosed on the property;
- iii) The lot is severed into 2 pieces - part with buildings, and vacant lot on corner;
- iv) House is sold; lender holding onto the vacant lot;
- v) Norm understood the house to have already been sold.

January 12, 2022: David Taylor called me in response to the bankrupting of 1635536 Ontario Inc., and advised:

- i) Andy Ferri is selling 518 King St., but the sale was not yet closed. The offer came in November and was to close on December 2nd but did not for an unknown reason;
- ii) David was evicted from the property and has not been allowed to obtain his personal belongings;
- iii) The buyer is known to David as a local resident - James Smith, and James is living in the house now.
- iv) I asked David how he was removed from the home. He said he was in the hospital for a period of time with a spinal injury and when he came home James Smith was occupying his house and would not let him in. Since Smith had his kids in the house, David didn't push the issue.
- v) David says he wasn't served any eviction notices or anything else in writing.
- vi) This is all very odd.

Peter Crawley, MBA, CA, CPA, CIRP, LIT
 Vice President, Business Restructuring & Turnaround Services
 Financial Advisory Services
 Direct: 289.678.0243
 BDO Canada Limited
 305-25 Main Street West
 Hamilton, ON L8P 1H1

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Stewart Thom

From: Stewart Thom
Sent: December 17, 2021 2:46 PM
To: pdleon@leonlaw.ca
Subject: 518 King Street, Port Colbourne - David Taylor

Mr. Leon,

When we last spoke a few weeks ago, you indicated to me that matters concerning the mortgage on title to the above property were being transferred to another lawyer, and that you would provide me with their contact information. I have yet to receive your advice on whom I may contact concerning this property.

I also confirm that you advised that I would be provided notice of any dealings with the property and were furthermore told that the indebtedness owed to my client, liquid capital exchange corp. exceeds \$700,000. We are of the strong view that there is likely equity in this property in excess of all mortgages registered on title, and that there should be sufficient proceeds realized upon and sale of the property to discharge my clients mortgage in full and recover further funds on account of the writ we have filed with the county sheriff.

I have been recounted a distressing rumour that Mr. Taylor is no longer living in the Property but has been "evicted" (the word relayed to me) and that Ra Tech has "foreclosed" on the property. I put these in quotations as I do not believe that either of these things could have legally occurred. We have had no notice of any foreclosure proceedings or any notice of intended dealings with the property, and it does not appear that any corresponding change has occurred on title. I am not sure how Mr. Taylor could ever be "evicted" from a property held in this name unless an order for possession has been obtained and the sheriff taken possession. We have similarly not received notice of any such legal proceeding by which possession could have been obtained.

If possession has been surrendered to Ra Tech we wish to know what Ra Tech's intentions are with respect to the property and would expect to be provided with advise as to any proposed dealings with the property before these occur.

Please confirm receipt. Please forward this to the lawyer for a Tech and ask that they call me, if you are yourself no longer the lawyer. Please also confirm the lawyer and their contact information.

Thanks,

Stewart

Stewart Thom

Tel: 416-777-5197

Fax: 1-877-689-3872

sthom@torkinmanes.com

[VCard](#)

Torkin Manes LLP

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Ranked the #1 Ontario Regional Law Firm by Canadian Lawyer

151 Yonge Street, Suite 1500
Toronto ON M5C 2W7

Stewart Thom

From: Paul Leon <PDLeon@leonlaw.ca>
Sent: December 17, 2021 3:03 PM
To: Stewart Thom
Cc: Andy Ferri (andyferri@outlook.com)
Subject: RE: 518 King Street, Port Colbourne - David Taylor

This is an external email.

Hi Stewart,

The file has been returned to this office and I have not even had one minute to look at it. I have been asked to answer a title question and I required the search in order to do so.

To my knowledge, there is no foreclosure and we received notice that Mr. Taylor is bankrupt. He owes us a small amount.

I do not know if he is living on the property or has vacated.

I conveyed to my client your threat "which was not a threat," as you so articulately emphasized, that you would not tolerate foreclosure. My client was amused as he had abandoned long before your concern, any desire to proceed in that fashion.

I am racing, as often happens in a smalltown law practice, numerous corporate commercial matters that must be completed before year-end.

I will not have an opportunity to review that file before my office closes Christmas Eve and it will not open until after New Year's. I have one more December 31 deal to move because of our closure. In the last 4 1/2 years I've had a total of four days outside this office not including Sundays and Christmas breaks.

I will ask my client if he has somehow secured possession but it certainly has not been done by this office.

Regards,
Paul

Paul D. Leon
Blackadder Leon Marion & Fazari LLP
Barristers and Solicitors
149 West Main St.,
P.O. Box 366,
Welland, Ontario L3B 5P7
Tel: 905 735-2921
Fax: 905 735-4519
Email: pdleon@leonlaw.ca

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Stewart Thom

From: Stewart Thom
Sent: December 17, 2021 3:21 PM
To: Paul Leon
Cc: Andy Ferri (andyferri@outlook.com)
Subject: RE: 518 King Street, Port Colbourne - David Taylor

Thanks Paul,

We have no desire to be in a position where we would need to get into litigation with your client. As long as we are kept in the loop as to any intended dealings with the property, there is no reason why that should take happen. It will obviously be a lot easier to deal with the issue of the propriety of any dealings before, rather than after, they occur.

Stewart Thom

Tel: 416-777-5197
Fax: 1-877-689-3872

Torkin Manes LLP

Barristers & Solicitors

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From: Paul Leon <PDLeon@leonlaw.ca>
Sent: December 17, 2021 3:03 PM
To: Stewart Thom <sthom@torkinmanes.com>
Cc: Andy Ferri (andyferri@outlook.com) <andyferri@outlook.com>
Subject: RE: 518 King Street, Port Colbourne - David Taylor

This is an external email.

Hi Stewart,

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Stewart Thom

From: Stewart Thom
Sent: December 20, 2021 9:37 AM
To: Paul Leon
Cc: Andy Ferri (andyferri@outlook.com)
Subject: Re: 518 King Street, Port Colbourne - David Taylor

Thanks Paul. To clarify, when you say "the file has been returned to our office" do you mean to say that you are continuing to act for Ra Tech and that Ra Tech does not have a new lawyer (or no lawyer).

In other words, may I communicate with Mr. Ferri directly or are these communications to be directed to you.

Sent from my iPhone

On Dec 17, 2021, at 3:03 PM, Paul Leon <PDLeon@leonlaw.ca> wrote:

This is an external email.

Hi Stewart,

The file has been returned to this office and I have not even had one minute to look at it. I have been asked to answer a title question and I required the search in order to do so.

To my knowledge, there is no foreclosure and we received notice that Mr. Taylor is bankrupt. He owes us a small amount.

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I will ask my client if he has somehow secured possession but it certainly has not been done by this office.

Regards,
Paul

Stewart Thom

From: Paul Leon <PDLeon@leonlaw.ca>
Sent: December 20, 2021 10:22 AM
To: Stewart Thom
Cc: Andy Ferri (andyferri@outlook.com)
Subject: King St. Port

This is an external email.

Hello Mr. Thom,

For the time being, my client would prefer you deal with me directly . I am to receive instructions from him concerning this file.

I will advise of the departure or occupation of Mr. Taylor when I know.

Paul

Paul D. Leon

Blackadder Leon Marion & Fazari LLP

Barristers and Solicitors

149 West Main St.,

P.O. Box 366,

Welland, Ontario L3B 5P7

Tel: 905 735-2921

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Email: pdleon@leonlaw.ca

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Stewart Thom

From: Stewart Thom
Sent: December 20, 2021 11:44 AM
To: Paul Leon
Cc: Andy Ferri (andyferri@outlook.com)
Subject: Re: King St. Port

Thanks Paul,

My understanding is that unconfirmed rumours which have made their way to my client are that Ra Tech has taken possession of the property and that there is an intention to sever the lot and sell one or more of the parcels.

This would be a little unconventional of course as to accomplish severance I believe Ra Tech would need to be either the owner registered on title or have the cooperation of Mr Taylor in completing the necessary application. We would want to be satisfied, in any case, by an opinion from a qualified realtor that no such activities would negatively impact my client's interest in the property. If any dealings with the property are planned, my assumption is that these would be undertaken to enhance its overall value, and would not have the opposite effect.

The indebtedness owed to my client exceeds \$700,000. On any sale, we will be claiming not only the value of the third mortgage in favour of LCX but any proceeds otherwise payable to Mr. Taylor. Our claim will eclipse all equity in the property, without question, and as such we are directly interested in ensuring that the sale value is maximized as LCX will suffer the direct financial consequences if it is not.

If there is any such intent to sever and/or sell, or any other intended dealings, we would like to know what specifically is intended and the means by which any of the relevant processes are being completed.

LCX would likely be content to assume control of marketing and sale of the property at its own expense, thereby saving your client the trouble, as would like to proceed with listing and selling the property as soon as possible. If your client is in possession, please confirm this and whether your client would agree to LCX performing these functions. We are similarly prepared to take the lead on court proceedings to obtain possession if this is required.

We would also appreciate being provided with a current statement of the indebtedness under the mortgages in favour of Ra Tech, broken down.

If your client is intending to proceed with power of sale proceedings, be advised that we have not received notice of this, but are happy to discuss and would like to know the name of the intended realtor who will be listing on MLS, listing price, staging to be performed or any work to be completed prior to listing, as well as the timelines for sale. We would of course be very concerned about any private sale or dealings which did not adequately expose the property to the market and are obtaining a valuation for the property in any event.

Please let me know re all of the above and thanks in advance.

Sent from my iPhone

Stewart Thom
Tel: 416-777-5197
Fax: 1-877-689-3872
sthom@torkinmanes.com
[VCard](#)

Torkin Manes LLP

Stewart Thom

From: Paul Leon <PDLeon@leonlaw.ca>
Sent: December 20, 2021 3:12 PM
To: Stewart Thom
Cc: Andy Ferri (andyferri@outlook.com)
Subject: RE: King St. Port

This is an external email.

Hi Steward,

I have forwarded your email to Mr. Ferri for a response. I believe I was told by my bookkeeper she received a notice of Mr. Taylor's bankruptcy. I did not see the notice. I am not aware if the Trustee registered on title.

This just adds to the mess.

Best regards,

Paul

Paul D. Leon
Blackadder Leon Marion & Fazari LLP
Barristers and Solicitors
149 West Main St.,
P.O. Box 366,
Welland, Ontario L3B 5P7
Tel: 905 735-2921
Fax: 905 735-4519
Email: pdleon@leonlaw.ca

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From: Stewart Thom <sthom@torkinmanes.com>
Sent: December 20, 2021 11:44 AM
To: Paul Leon <PDLeon@leonlaw.ca>
Cc: Andy Ferri (andyferri@outlook.com) <andyferri@outlook.com>
Subject: Re: King St. Port

Thanks Paul,

My understanding is that unconfirmed rumours which have made their way to my client are that Ra Tech has taken possession of the property and that there is an intention to sever the lot and sell one or more of the parcels.

Stewart Thom

From: Stewart Thom
Sent: January 12, 2022 5:23 PM
To: Paul Leon
Cc: Andy Ferri (andyferri@outlook.com)
Subject: RE: King St. Port
Attachments: David Taylor - Bankruptcy.PDF

Paul,

David Taylor has apparently contacted the receiver and advised that your client is in possession of the house, that he is not permitted inside, and that the house has been sold to a man named James Smith, but he does not know the price.

I find all of this quite distressing if it is true given the lack of information coming from your office.

My client has registered a no dealings indicator on the property and if disclosure of information is not forthcoming we will take legal action to block the sale, unless you can provide me with all listing details, time of exposure on MLS and offers received. A private sale, you must understand, would be a major concern. I have been monitoring MLS and I do not believe it was ever listed.

Similarly, if none of the above is true, I would appreciate advice from you or Mr. Ferri as to the present status, which I have now been asking for for more than two months.

Are you accepting service for Ra Tech or should I serve in the ordinary course?

I find your comments about Mr. Taylor's bankruptcy below confusing as he is not bankrupt. The company is bankrupt, but he is not.

Please advise as to the status of the property. We are preparing to bring injunctive relief, which we will seek costs against you in respect of if no satisfactory response is received. It is either the case that we are being fed misinformation either by various other sources, or by your client. In either case, your client has this chance now to set the record straight. As mortgagee, we are entitled to this information and if it is not provided, or if it is inaccurately provided, from this point forward we are going to be looking for recovery of costs expended by my client in protecting its interest.

Thanks and I look forward to your quick reply.

Stewart Thom
Tel: 416-777-5197
Fax: 1-877-689-3872

Torkin Manes LLP
Barristers & Solicitors

This email message, and any attachments, is intended only for the named recipient(s) above and may contain content that is privileged, confidential and/or exempt from disclosure under applicable law. If you have received this message in error, please notify the sender and delete this email message. Thank you.

From: Paul Leon <PDLeon@leonlaw.ca>
Sent: December 20, 2021 3:12 PM

Stewart Thom

From: Stewart Thom
Sent: January 13, 2022 2:59 PM
To: Paul Leon
Cc: Andy Ferri (andyferri@outlook.com)
Subject: RE: King St. Port

Paul,

Please provide me with a payout statement for your client's mortgages. Subject to review of same, my client intends to redeem. Please also confirm that there are currently no agreements in place with respect to the sale or transfer of the property.

Stewart Thom
Tel: 416-777-5197
Fax: 1-877-689-3872

Torkin Manes LLP
Barristers & Solicitors

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From: Stewart Thom
Sent: January 12, 2022 5:23 PM
To: Paul Leon <PDLeon@leonlaw.ca>
Cc: Andy Ferri (andyferri@outlook.com) <andyferri@outlook.com>
Subject: RE: King St. Port

Paul,

David Taylor has apparently contacted the receiver and advised that your client is in possession of the house, that he is not permitted inside, and that the house has been sold to a man named James Smith, but he does not know the price.

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Are you accepting service for Ra Tech or should I serve in the ordinary course?

I find your comments about Mr. Taylor's bankruptcy below confusing as he is not bankrupt. The company is bankrupt, but he is not.

Stewart Thom

From: Paul Leon <PDLeon@leonlaw.ca>
Sent: January 17, 2022 10:00 AM
To: Stewart Thom
Cc: Andy Ferri (andyferri@outlook.com)
Subject: King St. Property

This is an external email.

Good morrow, Stewart,
I am snow bound here at home. My office is closed.

It would appear that both of us have responded to unfounded rumours.

My client confirms that it is in possession of the property and that there is no intention to sever the property. We would like information from you. Would you provide us with the breakdown of your clients' outstanding loan and all collateral which it holds. I understand your client holds a mortgage on a home in Florida .

My client has advised that the property is not sold to James Smith.

My client intends to sell the property pursuant to its power of sale.
I have forwarded a copy of your last email to me to him.

Regards,
Paul

Paul D. Leon
Blackadder Leon Marion & Fazari LLP
Barristers and Solicitors
149 West Main St.,
P.O. Box 366,
Welland, Ontario L3B 5P7
Tel: 905 735-2921
Tel: 905 835-1664 (home)
Fax: 905 735-4519
Email: pdleon@leonlaw.ca

This e-mail contains information from the law firm of Blackadder Leon Marion & Fazari LLP which may be confidential or privileged. This e-mail is intended initially for the information of only the person to whom it is addressed. Be aware that any disclosure, copying, distribution or use of the contents of this e-mail, without the consent of such person, is prohibited.

WARNING: From time to time, our spam filters may eliminate legitimate emails from clients and law firms. Your confirmation of delivery of an email to us does not mean we have read your email. If your email contains important instructions, please ensure that we have acknowledged receipt of those instructions.

Stewart Thom

From: Stewart Thom
Sent: January 17, 2022 3:17 PM
To: Paul Leon
Cc: Andy Ferri (andyferri@outlook.com)
Subject: King St. Property
Attachments: Smith Ltr dd Jan 14-2022.PDF; Judgment (revised) November 24 2021.PDF; writ637427filed21-496.PDF

Paul,

Thank you for your advice. Could you please advise as to a couple of matters in that case:

- I note that the property has not been listed on MLS or advertised for sale. Can you advise as to what your client's specific intentions were for the sale of the property?
- Pursuant to what arrangements is James Smith presently occupying the property? IS there an agreement in place with Mr. Smith governing his occupancy and/or what is the understanding in place between your client and Mr. Smith?
- How was possession obtained by your client? My client would presumably have been on notice of any motion for a writ of possession, but we received no such notice.

My client, as I indicated, wishes to redeem. Presumably there are updated numbers to those from the 2019 Notices of Sale by the prior mortgagees. Please provide the amount needed to redeem the 1st and 2nd mortgage held by Ra Tech.

We have obtained a date from the court for a motion for the appointment of a receiver in respect of the property. There are a number of circumstances surrounding this property which my client regards as concerning, and it would seem that each person connected with the property tells a different story as to its status, which is not comforting. If your client will not cooperate my client is of the view that a receiver is necessary to ensure a fair sale process for the property is employed and maximum realization obtained.

Pursuant to your request I am attaching the following:

- Original Application record for appointment of Receiver from March 2020;
- <https://www.bdo.ca/en-ca/extranets/versitecmarine/> (;link to receiver reports and orders from Receivership)
- Copy of judgment against David Taylor;
- Issued writ of seizure and sale with respect to David Taylor.

Details as to the security in favour of LCX can be found in the Application Record. Judgment has not yet been obtained against Mr. Byrd, and a three-day hearing has been scheduled for June 27-29, 2022 for this purpose. My client does have a collateral mortgage registered on title to Mr. Byrd's residential property in Florida in the amount of \$300,000. I not that my client's shortfall after the receiver is close to \$800,000, with interest and legal expenses continuing to accrue thereon.

Please provide me with answers to the questions posed herein ASAP. We will be serving our receiver appointment materials tomorrow and I would like to indicate therein your client's position on redemption as the 1st (and 2nd) mortgagee. If we could complete redemption this week and take assignment of these mortgages, the receiver appointment would likely be unnecessary.

Would it be possible to schedule a call for tomorrow?

Yours truly,

Stewart Thom

Tel: 416-777-5197
Fax: 1-877-689-3872

Torkin Manes LLP

Barristers & Solicitors

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From: Paul Leon <PDLeon@leonlaw.ca>
Sent: January 17, 2022 10:00 AM
To: Stewart Thom <sthom@torkinmanes.com>
Cc: Andy Ferri (andyferri@outlook.com) <andyferri@outlook.com>
Subject: King St. Property

This is an external email.

Good morning, Stewart,
I am snow bound here at home. My office is closed.

It would appear that both of us have responded to unfounded rumours.

My client confirms that it is in possession of the property and that there is no intention to sever the property. We would like information from you. Would you provide us with the breakdown of your clients' outstanding loan and all collateral which it holds. I understand your client holds a mortgage on a home in Florida .

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149 West Main St.,
P.O. Box 366,
Welland, Ontario L3B 5P7
Tel: 905 735-2921
Tel: 905 835-1664 (home)
Fax: 905 735-4519
Email: pdleon@leonlaw.ca

This e-mail contains information from the law firm of Blackadder Leon Marion & Fazari LLP

This is Exhibit "A" to the Affidavit of
JONATHAN BRINDLEY
sworn before me on January 18, 2022

A handwritten signature in black ink, appearing to be 'J. Brindley', written over a horizontal line.

Andrew Adam Ferri: Summary, as Published in *CheckMark*

Andrew Adam Ferri, of Welland, was found guilty by the discipline committee of a charge of professional misconduct, laid by the professional conduct committee, under Rule of Professional Conduct 201, of failing to conduct himself in a manner which maintains the good reputation of the profession and its ability to serve the public interest.

Mr. Ferri appealed the discipline committee's order to the appeal committee. The appeal committee confirmed the discipline committee's order that Mr. Ferri

- be assessed costs of \$650, to be paid within a specified time; and
- be expelled from membership in the Institute.

CHARGE(S) LAID re Andrew Adam Ferri

The Professional Conduct Committee hereby makes the following charges against Andrew Adam Ferri, a member of the Institute.

1. THAT, the said Andrew Adam Ferri failed to conduct himself at all times in a manner which will maintain the good reputation of the profession and its ability to serve the public interest in that, on or about July 12, 1984, he was convicted of a criminal offence, to wit that, between January 1st, 1972 and July 1st, 1980 at the City of Niagara Falls, in the Judicial District of Niagara South, and elsewhere in the Province of Ontario, and elsewhere in Canada, he unlawfully did by deceit, falsehood or other fraudulent means defraud of money or other valuable securities of a value in excess of \$200 members of the public who were induced into investing money or other valuable securities in various investment funds operated by Astra Trust Company, contrary to the Criminal Code of Canada: all of which is contrary to Rule 201 of the rules of professional conduct approved June 11, 1973.

DATED at Toronto this 6th day of March, 1987

J.R. BONES, FCA - CHAIRMAN
PROFESSIONAL CONDUCT COMMITTEE

DISCIPLINE COMMITTEE re ANDREW ADAM FERRI

DECISION AND ORDER IN A MATTER OF: Charges against ANDREW ADAM FERRI, CA, a member of the Institute, under Rule 201 of the Rules of Professional Conduct, approved June 1, 1973.

DECISION AND REASONS FOR DECISION

This hearing was convened before the discipline committee of the Institute of Chartered Accountants of Ontario on June 26, 1987. The professional conduct committee laid one charge of professional misconduct against Mr. Ferri. Mr. Ferri pleaded guilty to the charge. The discipline committee found Mr. Ferri guilty as charged.

The committee heard submissions with respect to the appropriate sanction and after deliberation decided that Mr. Ferri should be assessed costs of \$650, to be paid within 60 days, that he should be expelled from membership in the Institute, and that notice of the Decision and order, which is to be published in Check Mark, to the Public Accountants Council for the Province of Ontario and to the Canadian Institute of Chartered Accountants, should disclose Mr. Ferri's name. At the conclusion of the hearing, after Mr. Ferri was told of the sanctions imposed, Mr. Ferri asked that the committee give its reasons for its decision, with respect to the sanctions, in writing. The reasons are stated below.

The committee, in referring to the Agreed Statement of Facts (filed as Exhibit 4), noted on page 4, paragraph 7, that "on the 12th day of July, 1984, Mr. Ferri was convicted after trial ... of a charge that he did unlawfully by deceit, falsehood or other fraudulent means defraud, of money or other valuable securities of a value in excess of \$200, members of the public who were induced into investing money or other valuable securities in various investment funds operated by Astra Trust Company, contrary to the Criminal Code of Canada."

The committee also noted on page 1 of Exhibit 4, paragraph 2, that "Mr. Montemurro was using Mr. Ferri's credibility to maintain the favorable public perception of Astra Trust since Mr. Ferri was a chartered accountant".

In determining the sanctions, the committee gave consideration to the issues of general deterrence, specific deterrence and rehabilitation.

While the committee gave due regard to Mr. Ferri's letters of reference (filed as Exhibit 5), it could not ignore the moral turpitude involved in the events leading to Mr. Ferri's conviction. Any question of leniency for Mr. Ferri had to be weighed against the need to protect the integrity of the profession.

There is evidence to suggest that in terms of specific deterrence and rehabilitation, Mr. Ferri is unlikely to become involved again in the kind of activities which led to his criminal conviction. However, the committee noted that in the past the appropriate sanction for cases involving fraud has been' expulsion from membership. The issue of general deterrence, as it applies to the protection of the public interest through the observance by all chartered accountants of professional and ethical standards and the maintenance of the good reputation and integrity of the profession, warranted Mr. Ferris expulsion from membership.

E.W. SLAVENS, FCA - DEPUTY CHAIRMAN
THE DISCIPLINE COMMITTEE

APPEAL COMMITTEE re Andrew A. Ferri

REASONS FOR THE DECISION AND ORDER OF THE APPEAL COMMITTEE IN THE MATTER OF: An appeal lodged by Andrew A. Ferri, CA, a member of the Institute against the decision and order of the discipline committee made on June 26, 1987.

This matter came before a panel of the appeal committee of the Institute of Chartered Accountants of Ontario on January 20, 1989, in the presence of counsel for the professional conduct committee, and counsel for Mr. Ferri the appellant.

DECISION

The committee, after reading the evidence and hearing the submissions of both counsel upheld the decision and order of the discipline committee made on June 26, 1987.

ORDER

The appeal committee hereby orders that the appeal of Mr. Andrew Ferri be dismissed and the discipline committee's decision and order be upheld in its entirety.

The appeal committee recognized that because of the seriousness of the matter, it was not unreasonable for Mr. Ferri to appeal and therefore, no additional costs or penalties have been imposed as a result of this hearing.

REASONS

The appeal filed by Mr. Ferri was based solely on the sanction of expulsion. The relief requested by Mr. Ferri was that a term of suspension be ordered instead of expulsion.

The appeal committee considered whether the order of the discipline committee was appropriate, given both the facts before it, and the weight of the arguments presented by Mr. Ferri's counsel. The committee also had to consider that fraud was involved with moral turpitude in respect to Mr. Ferri's participation in a public company.

The appeal committee agreed with the reasons of the discipline committee in particular, where it stated:

"In determining the sanctions, the committee gave consideration to the issues of general deterrence, specific deterrence and rehabilitation.

While the committee gave due regard to Mr. Ferri's letters of reference (filed as Exhibit 5), it could not ignore the moral turpitude involved in the events leading to Mr. Ferri's conviction. Any question of leniency for Mr. Ferri had to be weighed against the need to protect the integrity of the profession.

There is evidence to suggest that the terms of specific deterrence and rehabilitation, Mr. Ferri is unlikely to become involved again in the kind of activities which led to his criminal conviction. However, the committee noted that in the past the appropriate sanction for cases involving fraud has been expulsion from membership. The issue of general deterrence, as it applies to the

protection of the public interest through the observance by all chartered accountants of professional and ethical standards and the maintenance of the good reputation and integrity of the profession, warranted Mr. Ferri's expulsion from membership.”

Accordingly, the appeal committee dismissed Mr. Ferri's appeal and upheld the order of the discipline committee.

Dated at Toronto this 24th day of April, 1989 .

W.R. WALKER, FCA
CHAIRMAN - APPEAL COMMITTEE

W.G. BROWN, FCA
PANEL MEMBER - APPEAL COMMITTEE

R CLARK, FCA
PANEL MEMBER - APPEAL COMMITTEE

Bank of Montreal v. Ferri

Ontario Judgments

Ontario Superior Court of Justice

Welland, Ontario

T. Maddalena J.

Heard: July 4, 2011.

Judgment: September 30, 2011.

Court File No. 2612/11

[2011] O.J. No. 4284 | 2011 ONSC 5803 | 2011 CarswellOnt 10299

Between Bank of Montreal, Plaintiff, and Kimberly Ferri and 1736106 Ontario Inc., Defendants

(45 paras.)

Case Summary

Real property law — Registration of documents — Lis pendens or certificates of pending litigation — When available — Motion by plaintiff, BMO, for order entitling registration of seven certificates of pending litigation (CPLs) allowed — BMO obtained \$850,000 judgment against Ferri on personal guarantees of loans to two companies — Judgment remained unpaid in full — BMO sought to file CPLs against seven properties owned by Ferri — Ferri transferred properties to family-held company for normal consideration, contending that properties were subject of prior trust declaration stating she owned lands as bare trustee — Land registry and transfer documents did not support existence of trust — BMO established sufficiently reasonable claim to interest in lands.

Motion by the plaintiff, the Bank of Montreal (BMO), for an order entitling it to register certificates of pending litigation (CPLs) against the title of seven properties. In November 2009, BMO obtained a judgment against the defendant, Ferri, in the amount of \$851,251. No monies had been paid in satisfaction of the judgment. The judgment arose from guarantees executed by Ferri for loans made by BMO to two companies, 1372656 Ontario ("137") and Great Lakes International Carriers (GLIC). Ferri was the principal of 137 and a signing officer for GLIC. In 2007, BMO had commenced receivership and bankruptcy proceedings against both companies and subsequently sought enforcement of the Ferri guarantees. In January 2008, Ferri transferred the properties at issue from herself to 1736106 Ontario, a company in which her father and an uncle were president and directors. The transfer was for normal consideration. The land transfer statements stated that the transfers were from trustee to trustee. Ferri produced a declaration of trust document, dated November 2002, which stated that Ferri owned the lands as bare trustee for her father's nominee. The properties were either

Bank of Montreal v. Ferri

bequeathed to Ferri, or transferred to her under a power of sale. Ferri submitted that the properties were subject to the trust and BMO knew of the trust since 2007, and its claim was thus statute-barred.

HELD: Motion allowed.

The claim was not statute-barred, as BMO's status as an execution creditor arose on the date of the judgment, November 2009. The statement of claim was issued in March 2011, within the two-year period. There was no mention in the registered transfers or will bequeathing the properties to Ferri reflecting acquisition of the properties as a trustee. Nothing in the registry system disclosed the existence of any trust and all relevant documents showed Ferri as absolute owner in fee simple of the lands in question. There was no evidence presented by Ferri to corroborate the existence of a trust. There was evidence indicating otherwise, as Ferri had reported income from the properties in the past and encumbered one of the properties purportedly covered by the trust declaration. BMO established a sufficiently reasonable claim to an interest in the lands. There was sufficient evidence of fraud to justify registration of the CPLs sought.

Statutes, Regulations and Rules Cited:

Courts of Justice Act, R.S.O. 1990, c. 43, s. 103, s. 103(6)(a) (ii)

Limitations Act, 2002 S.O.,

Ontario Rules of Civil Procedure, Rule 42.01

Court Summary:

Issues dealt with as identified by the Judge releasing the decision:

- * The issue for the court on this motion is whether certificates of pending litigation should issue on seven properties.
- * The seven properties were registered to Kimberly Ferri, one of the defendants.
- * She transferred all seven properties to 1736106 Ontario Inc., a corporation largely controlled by her father Andrew Ferri and her uncle Gordon Tellier
- * She also transferred these properties at a time when she was insolvent, unable to pay her debts and on the eve of bankruptcy.
- * She claimed all the properties were subject to a trust agreement.
- * I found that the plaintiff Bank of Montreal had established a sufficient interest in the lands in question and that certificates of pending litigation should issue against all the properties.

Counsel

Bank of Montreal v. Ferri

Tony Van Klink, for the Plaintiff.

Luigi De Lisio, for the Defendants.

MOTION ENDORSEMENT**T. MADDALENA J.**

1 I heard this long motion argued at Welland on July 4, 2011.

2 The issue for the court on this motion is whether the plaintiff, Bank of Montreal, (hereinafter referred to as "BMO") is entitled to register certificates of pending litigation on the seven properties described in Schedule "A" attached hereto.

Background Facts

3 BMO currently holds a judgment dated November 3, 2009, in the principal amount of \$851,251.75 against the defendant Kimberly Ferri. No monies have been paid on this judgment.

4 The judgment arises from guarantees executed by Kimberly Ferri for loans made by BMO to two corporations, namely, 1372656 Ontario Inc. and Great Lakes International Carriers Inc. The defendant Kimberly Ferri, was an officer, director, and principal of 1372656 Ontario Inc., as well as a signing officer for Great Lakes International Carriers Inc. in its dealings with BMO.

5 In November 2007, BMO demanded payment of its loans from 1372656 Ontario Inc. and Great Lakes International Carriers Inc. as well as Kimberly Ferri as guarantor.

6 In December 2007, BMO commenced receivership and bankruptcy proceedings against 1372656 Ontario Inc. and Great Lakes International Carriers Inc.

7 On the 21st of December 2007, a receivership order was made by the court against 1372656 Ontario Inc. and Great Lakes International Carriers Inc.

8 On the 28th of December 2007, BMO commenced an action against Kimberly Ferri personally for payment under the guarantees.

9 On January 9, 2008, bankruptcy orders were made by the court against 1372656 Ontario Inc. and Great Lakes International Carriers Inc.

Bank of Montreal v. Ferri

10 On January 8, 2008 and January 10, 2008, Kimberly Ferri transferred the properties in Schedule "A" from herself to 1736106 Ontario Inc. Kimberly Ferri's father, Andrew Ferri, is an officer, director, and manager of 1736106 Ontario Inc. Also, Gordon Tellier, Kimberly Ferri's uncle, is president and director of 1736106 Ontario Inc.

11 The registry office records confirm that all transfers from Kimberly Ferri to 1736106 Ontario Inc. were for nominal consideration.

12 On November 3, 2009, BMO obtained its default judgment against Kimberly Ferri in the principal amount of \$851,251.75.

The Lands in Question

13 The land transfer statements attached to the transfers on January 8, 2008 and January 10, 2008 state that the transfers were from "Trustee to Trustee".

14 The defendant Kimberly Ferri has produced a document entitled "Declaration of Trust", dated November 11, 2002 between Kimberly Ferri and Andrew Ferri, wherein Kimberly Ferri submits that she owns certain lands in Schedule "A" as "bare trustee" for her father's nominee.

15 The Declaration of Trust reads in part as follows:-

KIMBERLY LYNN FERRI DOTH HEREBY ACKNOWLEDGE AND DECLARE
THAT SHE HOLDS THE LANDS DESCRIBED IN SCHEDULE "A" hereto
in trust as bare trustee for ANDREW FERRI'S Nominee. ...

16 All properties which are the subject of this motion are covered in the Schedule in the Declaration of Trust document.

17 The properties in question in Schedule "A" consist of the following:-

- (i) Five residential subdivision building lots in the Township of Wainfleet, Ontario.
- (ii) One vacant lot on Marshall Road, Niagara Falls, Ontario.
- (iii) One vacant lot on Houck Crescent, Fort Erie, Ontario.

18 The five subdivision lots were bequeathed to Kimberly Ferri pursuant to the will of Lelia Mae Tellier, a relative, in November 1990.

Bank of Montreal v. Ferri

19 The Marshall Road property was transferred to Kimberly Ferri in June 1997 by Guardian Inter-funding Inc. under power of sale.

20 The Houck Crescent property was transferred to Kimberly Ferri in January 1998 from Niagara Credit Union pursuant to a power of sale.

21 None of the registered transfers or any registry office documents reflect that Kimberly Ferri was acquiring the seven properties as trustee for Andrew Ferri or his nominee.

22 Parcel registers do not disclose the existence of any trust or transfer of trust from beneficial owner to trustee.

23 Further, the subdivision lots were bequeathed to Kimberly Ferri by will from a relative. There is no mention in the last will and testament of Ms. Tellier that Kimberly Ferri was to hold those lands as trustee for Andrew Ferri or his nominee.

24 In fact, the evidence is that the public land registry office documents all show Kimberly Ferri as the absolute owner of the properties. Nothing in the registry system discloses the existence of any trust and all show Kimberly Ferri as the absolute owner in fee simple of the lands in question.

The Defendants' Position

25 Kimberly Ferri submits that she does not own the properties in question. She submits that title was put in her name to simply preserve a "checkerboard" scheme so as not to allow lands to merge. Further, she submits that all properties are subject to the trust declaration dated November 11, 2002. She states the land is not hers, but was held in trust by her for her father or his nominee pursuant to the trust agreement.

26 Kimberly Ferri further submits that BMO knew of the trust agreement since December 2007 and its claim commenced March 31, 2011 is now statute-barred, thus preventing the issuance of certificates of pending litigation against the lands in question. (*The Limitations Act*, 2002 S.O. - two years limitations)

The Limitation Defence

27 Firstly, I do not accept the defendants' submission that the claim of BMO is statute-barred.

28 The status of BMO as execution creditor arose on November 3, 2009 when it obtained its judgment against the defendant. The Statement of Claim was issued March 31, 2011 and is within the two-year period.

29 The defendants further submit that the plaintiff knew of the trust document in 2007 and did nothing and,

Bank of Montreal v. Ferri

thus, cannot now pursue a claim. However, I accept the position of BMO that at the time they were in receipt of the trust document, to their knowledge, all property was in the name of the defendant Kimberly Ferri and it was only upon their investigation in aid of execution that revealed the transfers by the defendant Kimberly Ferri to 1736106 Ontario Inc.

Analysis

30 Firstly, the court notes that there has been no evidence presented by Kimberly Ferri in this motion to corroborate the existence of a trust. For example, there have been no agreements of purchase and sale produced confirming that the properties were indeed purchased in trust, nor have lawyers' reporting letters been produced to confirm the properties were required to be held in trust.

31 Further, there is some additional evidence that causes concern to the court. Some examples are:-

- * The defendant Kimberly Ferri listed some of the properties purported to be part of the lands under the trust declaration on her own personal net worth statement as at May 1, 2007.
- * In 2004 Kimberly Ferri obtained a mortgage from HSBC Canada on one of the properties she alleges is covered by the trust declaration.
- * Kimberly Ferri reported income on her personal income tax return from one of the properties listed in the trust document without reference to her holding the property in trust.
- * Kimberly Ferri did not report on her income tax return the disposition of the subdivision lands from herself to the trust.
- * The transfers of the properties in question from Kimberly Ferri to 1736106 Ontario Inc. were made at a time when Kimberly Ferri was insolvent, unable to pay her debts, and on the eve of bankruptcy. Further, the transfers were made by her at a time when she knew that the plaintiff was taking steps to recover its outstanding loan.

32 I find, and the evidence corroborates, that all seven properties were acquired by Kimberly Ferri before the Declaration of Trust was executed. Five of the seven properties were bequeathed in a will in November 1990. The will and codicil make no reference to a trust. The conveyance was an absolute fee simple conveyance to Kimberly Ferri. Therefore, I find that she owned the five subdivision lots absolutely in fee simple since 1990.

33 The Houck Crescent property was conveyed under power of sale in 1998 with no mention of a trust. The Marshall Road property was conveyed to Kimberly Ferri in 1997 under power of sale and, again, with no mention of a trust.

34 The defendants' position that these properties are now all subject to the trust declaration is wholly inconsistent with the evidence presented to the court.

Bank of Montreal v. Ferri

The Law

35 Rule 42.01 of the *Rules of Civil Procedure* permits the issuance of a certificate of pending litigation under an order of the court.

36 Section 103 of the *Courts of Justice Act* R.S.O. 1990 c.43 permits the issuance of a certificate of pending litigation where an "interest in land" is "in question".

37 The Ontario Court of Appeal held in *Chilian, Metalore Resources Ltd. et al v. Augdome Corporation Ltd. et al* (1991), 2 O.R. (3d) 696 (C.A.), that:-

"... what is required is that "an interest in land" be "in question" in the proceeding ..."

38 The test enunciated by the Court of Appeal in the *Chilian* case was further expanded in the case of *G.P.I. Greenfield Pioneer Inc. v. Moore*, [2002] O.J. No. 282 (C.A.), at para. 18 where the Court stated:-

"... this court stated that a certificate of lis pendens should not be discharged where 'there is a triable issue as between the parties as to an interest in the lands in question ...'"

The Court stated at para. 22 that additionally the test to discharge a lien pursuant to s. 103(6)(a)(ii) is "... namely, whether there is a triable issue as to the reasonableness of the registrant's claim to an interest in the land. ..."

39 In the case of *Xerox Canada v. Sterling*, [2006] O.J. No. 5670 (S.C.J.) at para. 17 the court refers to "several badges of fraud" which ultimately persuaded the court that a certificate of pending litigation was appropriate. Paragraph 17 states as follows:-

... Some of the badges of fraud identified by Professor Dunlop, as culled from cases reviewed by him, include: "the donor continued in possession and used the goods as his own, including selling them"; "the transfer was made pending the writ"; "the deed contains false statements as to the consideration"; "the deed consideration is grossly inadequate"; "some benefit is retained under the settlement by the settler"; and, "a close relationship exists between the parties to the conveyance".

40 The court concluded that the existence of several of the badges of fraud are sufficient to justify a registration of a certificate of pending litigation.

41 Similar to the case of *Xerox Canada v. Sterling*, I conclude that there are sufficient "badges of fraud" in this case sufficient to justify the registration of certificates of pending litigation with respect to the properties in question. I find that BMO has established a sufficiently reasonable claim to an interest in the lands on Schedule "A" attached hereto.

42 While the defendants suggest that the transfers were not done to defeat the claim of the plaintiff, I find a

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complete lack of corroborating evidence in this regard, as well as no evidence whatsoever to show that the properties in question were to be held in trust.

43 Accordingly, I find that the plaintiff has indeed established that an interest in land is in question.

Order

44 Accordingly, my order is that the plaintiff is permitted to register certificates of pending litigation on title to all of those properties shown in Schedule "A" attached hereto.

45 On the issue of costs, it is appropriate that the plaintiff have its costs of the motion. The costs are fixed at \$2,500.00 all inclusive payable by the defendants to the plaintiff within 30 days.

T. MADDALENA J.

* * * * *

SCHEDULE "A"

- (a) Part Block 3, Plan 452 Bertie amended by AA66881, Parts 1, 2, 3, 4 and 5, 59R-7124, Fort Erie, being those lands comprised by Property Identifier No. 64234-0044 in the Niagara (59) Welland Land Registry Office;
- (b) Part Lot 13, Concession 1, Willoughby Part 13, 59R-2506 except Part 3, 59R-12746, Niagara Falls, being the lands comprised by Property Identifier No. 64253-0330 in the Niagara (59) Welland Land Registry Office;
- (c) Part Lot 12, Concession 5, Township of Wainfleet, in the Regional Municipality of Niagara being Part 8, 59R7314 as previously described in Deed No. RO597335 being the lands comprised by Property Identifier No. 64026-0216 (R) in the Niagara (30) St. Catharines Land Registry Office;
- (d) Part Lot 12, Concession 5, in the Township of Wainfleet, in the Regional Municipality of Niagara being Part 10, 59R-7314 being the lands comprised by Property Identifier No. 64026-0217 (R) in the Niagara (30) St. Catharines Land Registry Office;
- (e) Part Lot 12, Concession 5, Part Road Allowance between Concession 5 and 6, in the Township of Wainfleet, in the Regional Municipality of Niagara being Part 20, 59R-7314 being the lands comprised by Property Identifier No. 64026-0219 (R) in the Niagara (30) St. Catharines Land Registry Office;
- (f) Part Lot 12, Concession 5 and 6, Part Road Allowance between Concession 5 and 6, in the Township of Wainfleet, in the Regional Municipality of Niagara being Part 14, 59R-7314 being the lands comprised by Property Identifier No. 64026-0221 (R) in the Niagara (30) St. Catharines Land Registry Office;

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- (g) Part Lot 12, Concession 5 and 6, Part Road Allowance between Concession 5 and 6, in the Township of Wainfleet, in the Regional Municipality of Niagara being Part 22, 59R-7314 being the lands comprised by Property Identifier No. 64026-0222 (R) in the Niagara (30) St. Catharines Land Registry Office.

End of Document

Pollard Windows Inc. v. 1736106 Ontario Inc.

Ontario Judgments

Ontario Superior Court of Justice

Divisional Court - Hamilton, Ontario

F.L. Myers, D.L. Corbett and F.B. Fitzpatrick JJ.

Heard: June 3, 2019.

Judgment: August 19, 2019.

Divisional Court File Nos.: DC-18-930,

DC-18-937, DC-18-944, DC-18-989,

DC-19-993 and DC-19-004

[2019] O.J. No. 4262 | 2019 ONSC 4859 | 91 C.L.R. (4th) 58 | 2019 CarswellOnt 13133

IN THE MATTER OF the Construction Lien Act Between Pollard Windows Inc., Plaintiff / Responding Party, and 1736106 Ontario Inc., Andrew Ferri, Niagara Home Builders Inc. carrying on business as Niagara Heritage Homes and Steveco Enterprises Inc., Defendants

(87 paras.)

Case Summary

Civil Litigation — Civil procedure — Appeals — Leave to appeal — Grounds for review — Misapprehension of or failure to consider evidence — Fresh evidence — Appeals by 1746878 Ontario Inc. (174) from six decisions and motion to admit fresh evidence dismissed — Appeals related to decisions finding lien held by supplier of windows to build at property had priority over mortgage held by 174 — In effort to defeat supplier's rights, 174 incurred substantial costs awards and was subject to orders for contempt of court — Proposed fresh evidence on appeals was irrelevant — 174 had admitted liability and apologized for contempt and could not now challenge contempt findings — Refusal of adjournment and decision finding lien claim had priority over mortgage were correctly decided — Apology Act, ss. 1, 2, 2(1)(c) — Construction Act, ss. 57, 71(1), 78, 78(1), 78(3), 78(3)(b), 78(3)(b)(i), 78(4), 84 — Courts of Justice Act, ss. 19(1)(a), 133(b) — Mortgages Act, ss. 24, 26, 27 — Rules of Civil Procedure, Rules 2.01(1)(a), 2.03, 61.09, 61.09(1)(a), 61.09(4), 61.13, 61.13(3).

Appeal by 1746878 Ontario Inc. (174) from six decisions. Motion by 174 to admit fresh evidence. In 2008, 1736106 Ontario Inc. (173) was building a house as part of a subdivision development. The principal of 173, Andrew Ferri., contracted with Pollard Windows Inc. (Pollard) for the supply of windows. A different company

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controlled by Ferri paid Pollard \$2,500, leaving \$10,313 due and owing. When 173 failed to pay the rest of its account, Pollard sued and was granted judgment for \$10,313. Pollard also obtained a valid lien against the property. Rather than paying the judgment, Ferri embarked on a decade long effort to defeat the rights of Pollard. As a result, Pollard now had costs awards approaching \$200,000 enforceable against the property under its lien in addition to its judgment. 174 was also controlled by Ferri. It was the assignee of a mortgage on the property and a statutory party to the proceedings. A Judicial sale of the property was ordered in the lien proceedings. Following the sale, \$358,000 remained for distribution. 174 sought priority to the funds over Pollard, as mortgagee on the property. Despite the judicial sale which was underway, 174 took steps to enforce its mortgage and was found in contempt of court. In a priority hearing, Pollard was found to have priority to the proceeds of sale. The lien was held to have priority over the mortgage and the mortgage was found to be a sham to defeat creditors. 174 appealed from the multiple decisions and sought to admit fresh evidence of charges accruing on the mortgage.

HELD: Appeals and motion dismissed.

The proposed fresh evidence was irrelevant. The Mortgages Act did not apply to the proceedings. Three of the appeals related to orders for contempt of court requiring 174 to pay a fine and costs. In the contempt proceedings, 174 admitted liability and gave a full and unreserved apology to the court to purge its contempt. Having admitted liability formally, including admitting the facts on which liability was based, it was not open to 174 to withdraw its admission without leave to now argue that the judge erred in finding it liable for contempt. Given the clear basis for the finding of contempt, there was no serious basis to contest the fine imposed. 174 did not properly seek leave to appeal from the denial of a stay of the contempt order and had no right to appeal. The decision to grant or refuse an adjournment was a discretionary decision. The judge considered the arguments made by 174 and found that they lacked merit. The interests of justice did not require an adjournment in the circumstances. The decision that Pollard's lien had priority over the mortgage was upheld. Absent proof of advances under the mortgage held by 174, it had no priority ahead of the lien of Pollard.

Statutes, Regulations and Rules Cited:

Apology Act, 2009, [S.O. 2009, c. 3, s. 1](#), s. 2, s. 2(1)(c)

Construction Act, [R.S.O. 1990, c. C.30, s. 57](#), s. 71(1), s. 78, s. 78(1), s. 78(3), s. 78(3)(b), s. 78(3)(b)(i), s. 78(4), s. 84

Courts of Justice Act, [R.S.O. 1990, c. C.43, s. 19](#)(1)(a), s. 133(b)

Criminal Code, [R.S.C. 1985, c. C-46](#),

Fraudulent Conveyances Act, [R.S.O. 1990, c. F.29](#),

Mortgages Act, [R.S.O. 1990, c. M.40, s. 24](#), s. 26, s. 27

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Provincial Offences Act, [R.S.O. 1990, c. P.33](#),

Rules of Civil Procedure, *R.R.O. 1990, Reg. 194, Rule 2.01(1) (a)*, Rule 2.03, Rule 61.09, Rule 61.09(1)(a), Rule 61.09(4), Rule 61.13, Rule 61.13(3)

Counsel

Santiago H. Costa, for the Respondent.

Kris Hutton, for the Appellant 1746878 Ontario Inc.

REASONS FOR DECISION

The following judgment was delivered by

F.L. MYERS J.

1 All this over \$10,000.

Background

Pollard Windows has a \$10,000 Lien

2 In 2008, the defendant 1736106 Ontario Inc. was building a house as part of a subdivision development. The defendant Andrew Ferri is the principal of the numbered company builder. Pollard Windows supplied windows to the builder for installation into the house. The agreed purchase price of the windows was \$12,813.61. A different company controlled by Mr. Ferri paid Pollard Windows \$2,500, leaving \$10,313.61 due and owing. When the builder failed to pay the rest of its account, Pollard Windows sued to obtain judgment for the price of goods sold and delivered. It also sought to obtain security for the judgment debt by claiming a lien against the property on which the windows had been installed under the *Construction Lien Act*, [RSO 1990, c C.30](#) ("CLA").¹

3 On September 16, 2010, Tucker J. granted judgment to Pollard Windows for \$10,313.61 plus interest and costs. The judgment also declared that Pollard Windows had a valid lien against the property.

4 Rather than paying \$10,000 for the windows used to enhance the value of the house that his company was building, Mr. Ferri embarked on a decade long effort to defeat the rights of the supplier. As a result, Pollard Windows now has costs awards approaching \$200,000 enforceable against the property under its lien in addition to its \$10,000 judgment.

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5 The appellant in this court is 1746878 Ontario Inc. It too is a company controlled by Mr. Ferri. It is the assignee of a mortgage that was originally taken out near the time when the undeveloped property was purchased in 2000 by another company associated with Mr. Ferri and his colleagues. Although it is not listed in the title of proceedings above, 1746878 Ontario Inc. was made a statutory party under s.57 of the *CLA*.

6 1746878 Ontario Inc. has been on notice of these proceedings and has participated throughout the enforcement of Pollard Window's judgment and lien rights.

The Lien Enforcement Proceedings

7 On April 10, 2014, Tucker J. ordered a judicial sale of the property and directed a referee to supervise the sale. Mr. Ferri represented the mortgagee before Tucker J. at that hearing.

8 The sale has occurred and approximately \$358,000 in proceeds are being held for distribution.

9 The appellant 1746878 Ontario Inc. claims that it is entitled to enforce its mortgage and to be paid the proceeds of sale in priority to the lien security of Pollard Windows. It purported to take steps to sell the property under its mortgage despite the judicial sale that was then underway. As a result, on March 21, 2018, Ramsay J. found 1746878 Ontario Inc. in contempt of court. He fined it \$10,000 by order dated May 23, 2018.

10 A priority hearing was then held under s.84 of the *CLA* to determine whether the lien held by Pollard Windows or the mortgage held by 1746878 Ontario Inc. was entitled to be paid first from the proceeds of sale.

11 By order dated December 19, 2018, Ramsay J. held that Pollard Window's lien takes priority ahead of the mortgage because Mr. Ferri and his company had failed to prove that any amounts were ever advanced under the mortgage. In addition, the judge held that the mortgage was a sham to defeat creditors' interests and was void against creditors, or at least Pollard Windows, under the *Fraudulent Conveyances Act*, [RSO 1990, c F.29](#).

The Appeals and Motions before this Court

12 In all, 1746878 Ontario Inc. appeals from six decisions. Five appeals were heard by this panel on June 3, 2019. The sixth appeal remains outstanding and is addressed below.

13 Prior to argument of the appeals on June 3, 2019, the parties argued two motions: 1746878 Ontario Inc. moved to admit fresh evidence on its appeals. Pollard Windows moved to review an order made by Broad J. dated January 23, 2019 in which the judge refused to dismiss three of the appeals for delay.

14 Finally, when the panel advised counsel that it would remain seized of the sixth appeal that has yet to be heard, counsel for 1746878 Ontario Inc. withdrew a request to vary the scheduling of the appeals that had been brought with the motion to admit fresh evidence.

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15 The facts are set out compendiously in multiple decisions of Ramsay J. that are the subject matter of the appeals. I will set out below only the facts needed to deal with each of the appeals and motions.

16 For the reasons that follow, all of the appeals and motions heard June 3, 2019 are dismissed. In addition, as a result of the dismissal of the appeal from the order made by Ramsay J. on December 19, 2018 granting Pollard Windows' lien priority over the mortgage of 1746878 Ontario Inc., the remaining appeal, bearing Divisional Court File No. DC-19-004, in which 1746878 Ontario Inc. appeals from the costs award made by Ramsay J. dated January 30, 2019 in relation to the priorities hearing, appears to require leave, which has been neither sought nor granted. I give directions about the future of this appeal at the end of this decision.

Motion for Fresh Evidence

17 1746878 Ontario Inc. moves to admit as fresh evidence its lawyers' invoices from and after 2017, calculations of the cost of improvements said to have been made to the property by tenants who resided there prior to the judicial sale, and a calculation of a \$50 per day penalty purportedly accruing under the mortgage for each day it remained in default.

18 In a brief handwritten endorsement, the court declined to admit the evidence as all but a very few docket entries were available to 1746878 Ontario Inc. through the exercise of reasonable diligence prior to the proceedings that are under appeal. See: *Palmer v. The Queen*, [\[1980\] 1 SCR 759](#).

19 The appellant wants to adduce evidence of costs that it says it incurred under its mortgage despite the fact that it did not prove any advances or that it was owed anything under the mortgage. It argues that under s.27 of the *Mortgages Act*, [RSO 1990, c M.40](#), its legal costs, tenant's improvement expenses, and its penalty amounts are to be paid prior to the claims of the lien claimants. As will be discussed below, s.27 of the *Mortgages Act* does not apply in these proceedings. Therefore, the proposed evidence is not relevant in any event.

Motion to Review the Order of Broad J.

20 Pollard Windows moved before Broad J. to dismiss three of the outstanding appeals brought by 1746878 Ontario Inc. At the time that Pollard Windows served its motion, the appellant had not yet perfected its appeals although the thirty day deadline for perfecting the appeals had passed months earlier.

21 While the motion to dismiss was pending, 1746878 Ontario Inc. perfected the appeals.

22 By order dated January 23, 2019, Broad J. found that the appeals had been validly perfected prior to the hearing of the motion before him. In addition, he found that he would have exercised his discretion to relieve the appellant of the time limits for perfecting the appeals if necessary. He had undoubted discretion to relieve

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the appellants from time limits under the curative provisions of Rules 2.01(1)(a), 2.03, and 61.09(4) of the *Rules of Civil Procedure*, RRO 1990, O. Reg. 194. Pollard Windows argues however, that Broad J., made an error in principle in holding that the appellant was entitled to perfect its appeals by simply filing materials late without first obtaining an order from a judge extending the deadline for perfecting the appeals.

23 The panel dismissed this motion at the hearing with a brief endorsement:

We agree with Broad J. that the appellant was entitled to perfect its appeals so long as the appeals had not been dismissed, in the absence of a prior order to the contrary. The costs below are high but the quantum was agreed, and we agree with Broad J. that this was not an indulgence. We will address costs on a global basis at the conclusion of all matters today. Motion dismissed. We reserve the possibility of delivering supplementary written reasons.

The following reasons supplement that endorsement.

The Dismissal for Delay Regime of Rules 61.09 - 61.13

24 Rule 61.09(1)(a) provides that where an appellant is not required to obtain transcripts of evidence heard in the court from which an appeal is taken, the appellant shall perfect its appeal by filing its appeal record and factum within thirty days of the date that it filed its notice of appeal with the registrar of the court. Under Rule 61.09(4) a judge may vary the filing requirements.

25 Rule 61.13 provides a process to deal with issues that arise when an appellant does not perfect an appeal within the 30 day period provided by Rule 61.09. The rule provides, in essence, that where an appellant does not perfect the appeal within 30 days, the respondent may bring a motion before the registrar on ten days' notice to dismiss the appeal for delay. In addition, if an appellant does not perfect its appeal and the respondent does not move for dismissal for delay, then after one year passes from the filing of a notice of appeal, the registrar is required to deliver to counsel for the appellant a notice advising that the registrar will dismiss the appeal for delay unless it is perfected within ten days.

26 Rule 61.13(3) then requires the registrar to dismiss the appeal if it has not been perfected before the hearing of the respondent's motion or within ten days of a registrar's notice as the case may be. It provides:

Where the appellant does not cure the default,

(a) in the case of a motion under subrule (1), before the hearing of the motion; or

(b) in the case of a notice under subrule (2) or (2.1), within ten days after service of the notice,

or within such longer period as a judge of the appellate court allows, the Registrar shall make an order in (Form 61I) dismissing the appeal for delay, with costs fixed at \$750, despite rule 58.13 and shall serve the order on the parties.

The Appellant does not need an Extension of Time to cure its Failure to Perfect

27 Pollard Windows argues, correctly, that under Rule 61.13, the registrar has no authority to extend the time

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for the appellant to perfect its appeal. The registrar simply looks to see if the appeal has been perfected or not before he or she hears a motion to dismiss for delay or within ten days of delivery of a ten-day notice. Pollard Windows argues that once the registrar delivers a ten day notice, or the respondent delivers a motion to dismiss for delay, the appellant cannot simply file its appeal material to perfect its appeal. Rather, if an appellant wants to file its late material to cure its default, it needs to bring a motion to a judge to obtain an extension of time to perfect the appeal before the registrar deals with dismissal for delay. If that is correct, then in every case when an appeal is not perfected within 30 days of the filing of the notice of appeal, the appellant will bear a burden to establish before a judge that it is entitled to an extension of time and this may require some assessment of the merits of the proposed appeal. Pollard Windows argues that this must be the correct approach because the alternative would allow frivolous appeals to obtain a free year-long extension virtually as of right. If the appellant is not required to move for an extension of time, it obtains a "free pass" from the 30 day filing deadline set out in Rule 61.09 without a judge granting an extension.

28 I do not agree with this argument. No rule provides that an appellant needs leave to perfect an appeal after the initial 30 day period has passed. Rule 61.13 allows the appellant to cure its default. It says nothing about any requirement for an order.

29 In my view, Rule 61.09 does not set a hard deadline for perfecting appeals. Rather, the passing of the 30 days simply entitles the respondent to move for dismissal for delay if it is so inclined. Requiring a motion to establish grounds for an extension of time in every case where the 30 day period is missed would lead to a plethora of motions with attendant costs for no useful purpose. In the vast majority of cases, the appellant's "delay" is readily explicable and the respondent suffers no harm by the delay. The interests of justice in allowing the appeal to be heard almost invariably dictate that an extension of time be granted.

30 By contrast, a respondent who is prejudiced by delay in the perfection of an appeal has tools available to address its concerns such as: a motion for security for costs, a motion to lift the stay pending appeal, a motion for directions, a timetable, or in an appropriate case, a case management chambers appointment, or, in the worst case, a motion to dismiss the appeal for delay.

31 Counsel for Pollard Windows advanced no beneficent purpose to support a reading of the rules to require the appellant to move for an extension of time to perfect the appeal in every single late appeal rather than allowing a respondent who is suffering actual prejudice to seek tailored relief if and when it needs to do so.

32 Rule 61.13 provides an express opportunity to the appellant to cure its default of the 30 day time limit by perfecting the appeal before the hearing of the motion to dismiss for delay or before the running of the ten days' notice provided by the registrar. If the appellant is unable to perfect in time, then the rule provides it with the option of seeking a further period of time to perfect from a judge. But the "free pass" of perfecting without a judge's order before the cure period expires is provided in the rule itself. Moreover, this has been the practice for the past several decades at least.

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33 Pollard Windows relies upon the decision of Morden JA (as he then was) in *Langer v Yorkton Securities Inc.*, [1986 CanLII 2612](#) (ON CA). In that case, an appellant (actually a cross-appellant) responded to a motion to the registrar to dismiss its cross-appeal for delay. The cross-appellant asked the registrar to extend the time available to perfect the cross-appeal. The registrar ruled that he had no authority to extend the time and dismissed the appeal accordingly. On a review of the registrar's order, the successful party argued that Morden JA lacked authority to reverse the dismissal or to extend the time for perfection of the cross-appeal. Morden JA disagreed and wrote:

I am satisfied that I do have jurisdiction under rule 61.15(5) to review the registrar's order. Clearly, while the words "forthwith after the order or decision comes to the person's attention" provide for the case where an order or decision may have been made without notice to the person affected, they do not go so far as to confine the jurisdiction conferred by the subrule to cases of this kind. Also, **while it is to be expected that a party responding to a motion under rule 61.12(4) will avail itself of the right to obtain an extension order from a judge of the Court of Appeal before the registrar hears the motion**, I think that it is too rigid an interpretation of these rules to conclude that if this is not done the party's rights are at an end. [Emphasis added.]

34 Pollard Windows argues that the highlighted words support its argument that an appellant requires an extension of time to perfect its appeal before the expiry of the cure period available under the registrar's notice or before the hearing of a motion for dismissal for delay by the registrar. That is not what Morden JA held. In that case, the cross-appellant was not able to perfect the cross-appeal during the cure period leading up to the hearing before the registrar. As I have already noted above, if an appellant cannot perfect within the cure period, it will require an extension of time that is only available from a judge. However, Morden JA was not asked to hold and he did not hold that an appellant who wishes to perfect the appeal during the cure period provided in a registrar's notice or leading up to the hearing of a motion for dismissal for delay requires leave in order to perfect the appeal. The *Langer* case does not assist Pollard Windows.

35 Moreover, even if Pollard Windows had been correct in its interpretation of the scheme of the rules, the *Langer* case, upon which it relies, confirms that a judge retains the discretionary authority to extend the time for perfection in the interests of justice. Justice Broad made it clear that, while he read the rules as I do, he would also exercise his discretion to extend the time in any event. He made no error in principle in doing so. The motion to review the orders of Justice Broad is dismissed.

Jurisdiction and Standard of Review

36 All of the appeals that follow are properly brought to this court under s.71(1) of the *CLA* and s.19(1)(a) of the *Court of Justice Act*.

37 The court will intervene on an appeal from an order of a judge only where the judge made an error of law or a palpable and overriding error of fact or mixed fact and law: *Housen v. Nikolaisen*, [2002 SCC 33](#). Where a

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judge has made an order in the exercise of judicial discretion, the court will intervene only if the exercise of the judge's discretion was based on a wrong principle, a failure to consider a relevant principle, or a misapprehension of the evidence: *Aldo Group Inc. v. Moneris Solutions Corporation*, [2013 ONCA 725](#) (CanLII), [118 O.R. \(3d\) 81](#), at para. 30.

Three Appeals from the Contempt Proceeding

38 By order dated March 21, 2018, Ramsay J. granted a number of heads of relief including holding 1746878 Ontario Inc. in contempt of court. By order dated April 9, 2018, Ramsay J. ordered 1746878 Ontario Inc. to pay costs fixed in the amount of \$9,171.05 in relation to the March 21, 2018 order. By order dated May 23, 2018, Ramsay J. sentenced 1746878 Ontario Inc. to a fine of \$10,000 and ordered it to pay costs of the sentencing hearing fixed at \$9,000.

39 1746878 Ontario Inc. has brought a separate appeal from each order. Broad J. held that, to the extent that the order of April 9, 2018 dealt with costs of the contempt proceeding, that portion of the costs award was appealable with the contempt finding as of right. Similarly, the costs order from May 23, 2018 is appealable as of right with the appeal of the contempt finding and sentence. However, no leave to appeal has been sought or granted from the costs orders otherwise. In the absence of leave to appeal having been sought and granted under s. 133(b) of the *Courts of Justice Act*, [RSO 1990, c. C.43](#), there is no appeal from the costs orders properly before this court independent of the appeals of the merits of the contempt finding and sentence. See: *Hobbs v Hobbs*, 2008 ONCA 5037, at para. 30. Therefore, the appeals in relation to the costs orders are limited to dealing with the orders as incidents of the findings on the merits that are under appeal.

40 Moreover, there should not be three separate appeals. If the first two appeals were brought to preserve time limits, the appeals ought to have been consolidated once the sentence was pronounced. The filing of three separate sets of material was duplicative, costly, and unnecessary.

The Facts of the Contempt

41 Justice Ramsay set out the background facts in relation to the contempt proceeding as follows. His recitation commences with the first hearing before the referee dealing with the judicial sale that had been ordered by Tucker J.

[4] On September 11, 2014 the referee, Mr Thomas, held a hearing. By then a couple identifying themselves as the Creightons had moved into the residence. They claimed to have bought the home. No transfer of title or new mortgage appeared on title. The mortgagee (1746878 Ontario Inc.) was proceeding with a sale under power of sale and the Creightons were the prospective buyers. The referee gave the Creightons seven days after service of notice to produce evidence of their right of possession, failing which the plaintiff would be granted possession.

[5] On October 29, 2014 a further hearing was held. The Creightons had responded that the agreement of purchase and sale is for \$290,000, with \$100 as a deposit and the rest in the form of a promissory note, and a completion date of June 9, 2014. The current mortgage, which covers six other lots in the

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subdivision, had a balance of \$959,566. The property was never appraised and no advertising was done. No salesperson was involved. The referee found that the answer was insufficient. No power of sale, mortgage statement, orders for possession or proof of insurance were provided. He found that the home had not been sold under power or sale, and the mortgagee had not complied with its duties to subsequent encumbrancers such as the plaintiff. Finally, he had serious concerns about the alleged sale being improvident. He ordered that no further steps be taken to sell the property under power of sale without court order and he gave vacant possession to the plaintiff.

[6] On November 12, 2014 another hearing was held. Counsel for the mortgagee advised that the Creightons had been living in the property and paying rent to the mortgagee for six years, Kevin Creighton had a personal relationship with one of the officers of the mortgagee and the sale under power of sale was close to closing. Counsel also questioned the jurisdiction of the referee to interfere with the power of sale. The referee then ordered further submissions and stayed removal of the Creightons on conditions.

[7] Settlement discussions ensued unsuccessfully. On June 8, 2016 the hearing reconvened. The mortgagee had failed to make basic disclosure of the documentary basis of the mortgage and facts related to the power of sale. The referee referred the matter back to the Superior Court and ordered costs of \$1,500 against 1736106 Ontario Inc. [the judgment debtor builder]. He ordered the sheriff to proceed with providing vacant possession to the plaintiff. The cost order has never been paid. Counsel has not been appointed by 1736106 and it has never appeared on this motion. According to Mr Ferri, who says that he is a consultant for the company, it has no money to pay the costs.

[8] On January 13, 2017 sale proceedings returned before me. Mr Ferri appeared. No one appeared for 1746878 but Mr Ferri said, "I'm with 174 the first mortgagee and we just want to complete the sale." No issue was taken at that time with 1746878's representation by a non-lawyer. I again gave vacant possession to the plaintiff and enjoined the exercise of any power of sale without court order.

[9] On December 6, 2017 the plaintiff got vacant possession and changed the locks. Mr Ferri wrote to all concerned maintaining his position that writ of possession was invalid. Counsel for the Creightons asked on December 8, 2017 if they could move back in. Counsel for the plaintiffs advised that they could not, and that so doing would be a trespass.

[10] The mortgagee has disclosed the agreement of purchase and sale and a promissory note from Kevin Creighton that is not signed by him. It has also provided two amendments to the agreement of purchase and sale. One calls for a closing date of May 18, 2017. It purports to have been signed by Kevin Creighton for the purchaser and Andrew Ferri on behalf of 1746878 on May 18, 2017. The second one agrees on a closing date of March 30, 2018. The amendment is not signed by Mr Creighton. It is signed by Andrew Ferri on behalf of 1746878.

[11] On January 24, 2018 counsel for 1746878 notified counsel for the plaintiff that it had registered a caution on title with respect to a notice of sale dated March 10, 2010 for a debt from Steveco Enterprises Inc. to Northguard Capital Corp. This constitutes a step taken to sell the property under

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power of sale. It was a flagrant and deliberate contempt of the order of Mr Thomas of October 29, 2014 and my order of January 13, 2017...

42 Justice Ramsay referred to his order dated January 13, 2017. It is this order that he found to have been breached by 1746878 Ontario Inc. The key terms of the January 13, 2017 order are:

3. THIS COURT ORDERS that the Order of Referee Thomas is confirmed, to wit,
 - (a) No further steps shall be taken to sell the property under power of sale without a Court Order;
 - (b) The Sheriff shall attend at [the property] and remove the Creightons from the property; and
 - (c) Possession of the property be granted to Pollard.

The Grounds of Appeal raised by 1746878 Ontario Inc.

43 Despite repeated findings by the court below, 1746878 Ontario Inc. continues to rely on a notice of sale that it says was validly delivered under its mortgage in 2010. In addition to other frailties, the notice of sale was mailed to an outdated address for the lawyers for Pollard Windows. So Pollard Windows never received it. Before Ramsay J., 1746878 Ontario Inc. argued that the notice of sale was valid and that it was entitled to proceed with its proposed sale to the Creightons despite the terms of the order dated January 13, 2017 that prohibited that very conduct.

44 1746878 Ontario Inc. argued that it was not a named party listed in the Title of Proceedings so it was not bound by the January 13, 2017 order. Ramsay J. dealt with that issue very quickly given that Mr. Ferri had appeared before him and the referee variously as a "consultant" to the builder and then to the mortgagee. Ramsay J. found:

[14] ...The mortgagee need not have been a defendant in the original proceedings. After all, it did not owe the plaintiff any money. It has, however, been given notice of the lien, the judgment and every step involved in executing on the property. It appeared before the referee and was made the subject of orders by the referee and notified of them. It is a proper respondent to these proceedings as a person who is affected by the lien and is bound by court orders made against it.

45 This was the correct process under s.57 of the *CLA*. See: *Hubert v Shinder et al.*, 1952 CarswellOnt 197 (CA) at para. 6.

46 The main argument advanced on behalf of 1746878 Ontario Inc. on this appeal from the finding of contempt against it is that Ramsay J. made a factual error in para. 11 of his reasons cited above. In that paragraph, Ramsay J. correctly found that on January 24, 2018, Mr. Hutton, counsel for 1746878 Ontario Inc., gave notice to counsel for Pollard Windows that a caution concerning the notice of sale had been registered on title to the property. However, Ramsay J. incorrectly attributed to counsel for the mortgagee a statement that the notice had been registered "by it". In fact, the caution appears to have been registered by the lawyer for the Creightons - the buyers or tenants or friends of Mr. Ferri and the mortgagee.

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47 In the sentencing hearing on May 23, 2018, 1746878 Ontario Inc. raised this issue in its evidence and argument. Justice Ramsay dealt with it in his oral sentencing endorsement as follows:

Having acted through Andrew Ferri throughout this affair, the contemnors' one registered officer has now surfaced and deposes, one, the corporation apologizes for any and all actions that were found and perceived to be contemptuous, and two, points out at paragraph 6 of her affidavit that contrary to what I said at paragraph 11 of my endorsement, counsel for 174 did not notify counsel for the plaintiff that it had registered a caution of title with respect to the notice of sale. The affidavit of Ryan Wettik (ph) of March 2nd, 2018 contains, at Exhibit 21, the correspondence in question, where Mr. Hutton for 174 sends counsel for the plaintiff the notice of caution that has been filed by Brian Lambie, purporting to act for Kevin Creighton, the trespasser. So, the way I put it is not particularly important. I did find, for example, at paragraph 17 of my endorsement that Ferri and Creighton were all acting together.

I note that on May 10th Lambie lifted the notice of caution on Mr. Creighton's instructions, and at Mr. Hutton's request, so 174 had no difficulty getting the caution lifted, just as it engineered it being placed in the first place. The director admits guilt of contempt, so perhaps this is not all that important.

1746878 Ontario Inc. is bound by its Admission of Liability

48 Pollard Windows raises a preliminary issue on the appeal and, as alluded to by Ramsay J., submits that the full admission of wrongdoing offered by 1746878 Ontario Inc. to Ramsay J. on sentencing precludes it from now contesting its liability. The question arose below, because Ramsay J. expressed concern about the evidence submitted on behalf of 1746878 Ontario Inc. that asserted that Ramsay J. had made a mistake in attributing registration of the caution on title to 1746878 Ontario Inc. The affiant for 1746878 Ontario Inc. was Ms. Connie Northdurft who is Mr. Ferri's spouse.

49 The following exchange occurred at the sentencing hearing between Ramsay J. and Mr. Hutton for 1746878 Ontario Inc.:

MR. HUTTON: ...As I'd mentioned before, my client, on behalf of 174, is here. She's taken the day off from her employment as an elementary school teacher in Niagara Falls to show the court her full and open apology to the finding of contempt made by yourself in your endorsement dated March 21, 2018. There are no ifs, ands or buts about it, we are not here to re-open the case in any form whatsoever. I would like...

THE COURT: Well, are you not?

MR. HUTTON: No.

THE COURT: Well, then what's paragraph 6 of her, of her affidavit all about?

MR. HUTTON: Paragraph 6 is her understanding, or our understanding...

THE COURT: Okay.

MR. HUTTON: ...of what the material - the facts were that were found to be in contempt by 174.

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THE COURT: so she's a...

MR. Hutton: You're reciting it so we are just apologizing for essentially stating the contempt of registering the caution on title...

THE COURT: I see.

MR. HUTTON: ...and then also your finding, and we will get to that of - I guess once a...

**THE COURT: And she's admitting that, she's
admitting that the company committed...**

MR. HUTTON: Correct.

THE COURT: ...contempt?

MR. HUTTON: Correct. We are.

THE COURT: Oh, Okay.

MR. HUTTON: Yes, we are.

THE COURT: All right.

MR. HUTTON: This is just...

THE COURT: Okay.

MR. HUTTON: Pointing for the record that...

THE COURT: Okay.

MR. HUTTON: ...this is what we found in contempt. We are opening [offering?] a full apology...

THE COURT: Yeah.

MR. HUTTON: ...for the finding of contempt. What her affidavit goes on to provide a narrative of is our steps to purge the contempt, which was the registration of the caution on title...

[Emphasis added.]

50 While Ms. Northdurft said in her affidavit that the court had mistakenly attributed the acts of the Creightons and their lawyer to 1746878 Ontario Inc., her counsel left no doubt that 1746878 Ontario Inc. admitted liability for the acts in breach of Justice Ramsay's order and gave a full and unreserved apology to the court. The apology was made as part of the sentencing submission to support the argument that 1746878 Ontario Inc. had purged its contempt. 1746878 Ontario Inc. relied on its admission and apology as mitigating factors to reduce the severity of any sentence to be imposed.

51 In my view, having admitted liability formally, including admitting the facts on which liability was based, it is not open to 1746878 Ontario Inc. to withdraw its admission before this court without leave to now argue that the judge erred in finding it liable for contempt. Mr. Hutton argued that there was no way for his client to

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apologize to the court for its contempt without an admission of liability. So, he argues, the admission should not be held against the client now. That argument denudes the admission and apology of any content. An admission of liability is not required to make an apology. It could have been worded with a reservation. That might well have limited its utility in mitigation of sentence. But one cannot admit liability and take responsibility for acts while the next day asserting that the acts were committed by others and were not the responsibility of the speaker.

52 In addition, the apology and admission were made to the court by counsel on behalf of the client. Case law is replete with recognition of the solemnity with which counsel's word is received by the court. In *Boydijian v Durham (Regional Municipality)*, [2016 ONSC 6477](#), at para. 44, C. Gilmore J. wrote, "[i]f the ostensible authority of counsel cannot be accepted by the court or by other lawyers, the result would be absurd". See also: *Szabo v Adelson*, [2007 CarswellOnt 1721](#) (ON SC) at para. 12. Mr. Hutton was dealing with the very finding of fact before Ramsay J. that he now purports to challenge before this court. Yet before Ramsay J. while acknowledging that the client pointed out the factual error, he made it abundantly clear that the client was not challenging the finding of contempt. It admitted responsibility, admitted liability, and apologized for the purpose of sentencing. Counsel's admissions are binding on the client. Absent leave to withdraw the admission or an argument of incompetent representation (to the extent that such a ground lies in civil cases), in my view, the facts and liability admitted by counsel cannot be challenged on appeal.

The Apology Act does not apply

53 1746878 Ontario Inc. argues that the *Apology Act*, [SO 2009, c 3](#), precludes the use of an apology for the purpose of establishing liability. Therefore it cannot be used by this court to deny its right to an appeal. The relevant provisions of the *Apology Act* are:

Definition

1. In this Act,

"apology" means an expression of sympathy or regret, a statement that a person is sorry or any other words or actions indicating contrition or commiseration, whether or not the words or actions admit fault or liability or imply an admission of fault or liability in connection with the matter to which the words or actions relate.

Effect of apology on liability

2. (1) An apology made by or on behalf of a person in connection with any matter,

- (a) does not, in law, constitute an express or implied admission of fault or liability by the person in connection with that matter;
- (b) does not, despite any wording to the contrary in any contract of insurance or indemnity and despite any other Act or law, void, impair or otherwise affect any insurance or indemnity coverage for any person in connection with that matter; and
- (c) shall not be taken into account in any determination of fault or liability in connection with that matter.

Exception

- (2) Clauses (1) (a) and (c) do not apply for the purposes of proceedings under the Provincial Offences Act.

Evidence of apology not admissible

- (3) Despite any other Act or law, evidence of an apology made by or on behalf of a person in connection with any matter is not admissible in any civil proceeding, administrative proceeding or arbitration as evidence of the fault or liability of any person in connection with that matter.

Exception

- (4) However, if a person makes an apology while testifying at a civil proceeding, including while testifying at an out of court examination in the context of the civil proceeding, at an administrative proceeding or at an arbitration, this section does not apply to the apology for the purposes of that proceeding or arbitration.

54 The *Apology Act* provides that non-testimonial apologies cannot be used to imply liability or as a ground to terminate a person's insurance coverage. The statute is designed to encourage apologies by those whose conduct causes harm whether by negligence or otherwise. Anecdotally, the lack of apology by professionals in particular, may have led to litigation where a well-timed and heartfelt apology might otherwise have been accepted by the victim. Yet people who cause harm, whether, for example, in motor vehicle accidents or in professional relationships, have been precluded from apologizing for fear that doing so would be seen either as an admission of liability or guilt and thereby provide a basis for an insurer to decline insurance coverage in a subsequent lawsuit. One can readily envisage people in car accidents or professionals whose clients suffered an adverse outcome, being sincerely sorry even though they resolutely believe that they committed no negligence or wrongdoing. A person whose car is hit by another, a lawyer who loses a trial, a doctor whose very best efforts could not cure the patient's condition, may all be sympathetic, empathetic, and truly sorry for the suffering of the other. An apology might be helpful for the giver and the receiver. Yet, prior to the enactment of the *Apology Act*, apologies could not be made without fear of adverse legal consequences.

55 Case law under the statute is still sparse. It seems apparent from the definition in s.1 of the statute that an apology is not be the same thing as an admission of liability. The section makes clear that a statement of regret remains an apology even if it contains or implies an admission of liability. The section therefore contemplates that some apologies may not imply any admission of fault, but says that even where they admit or imply fault, the words remain protected apologies.

56 Perell J. has discussed the need for a nuanced or contextual analysis of whether words used are an apology or an admission of liability that might be distinct and remain admissible under the statute. *Coles v Takata Corp.*, [2016 ONSC 4885](#), at para. 21. I do not need to undertake a contextual analysis however, because in my view, the statute does not apply to the admission of liability and apology in this case in any event. I say this principally due to the exception in s. 2(4) of the statute which exempts from the statute apologies made

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under oath in legal proceedings. In my view, counsel's admission before the court is a proxy or a substitute for his client's evidence under oath. All admissions are a proxy for other evidence. Just as courts frequently receive clients' undertakings in damages from counsel, when they are properly the subject of evidence, so too in this case, counsel's apology and admission was offered in place of his client's testimony. Frankly, it is probably a better practice to have the client offer the apology and any related admission from the witness box or in an affidavit under oath rather than muting the client's very personal expression of sincerity by offering the evidence through counsel. However, the exemption from the statute cannot be avoided by giving an apology through counsel rather than through the client's evidence.

57 In any event, nothing in the statute relates to the use of apologies made before the court for the purpose of mitigating sentence in a contempt proceeding. Subsection 2(1)(c) prohibits the use of an apology to establish fault or liability. Here, an accused who had already been found liable, proffered the admission and apology for the purpose of mitigating sentence. That is not a prohibited purpose under the statute. Moreover, to the extent that contempt is recognized as a quasi-criminal proceeding, I note that the statute also does not apply to such proceedings under the *Provincial Offences Act*, [RSO 1990, c P.33](#). As a matter of constitutional law, the statute cannot apply to proceedings under the federal *Criminal Code*, [RSC 1985, c C-46](#). The admission of liability made by 1746878 Ontario Inc. was not a simple expression of sympathy or regret regardless of fault. Rather, it was formally and advisedly made to the court to mitigate the contempt already found and to try to ameliorate sentencing. The admission and apology were given solemnly, intending the court to act upon them. And the court did so. They cannot be withdrawn now.²

58 In any event, there were ample bases to hold that 1746878 Ontario Inc. committed contempt by continuing to act under its notice of sale knowing that doing so had been enjoined. As discussed by Ramsay J. on May 23, 2018, Mr. Ferri was "in cahoots" with the Creightons. He signed two amendments to the purported agreement of purchase and sale and assisted the Creightons to re-take possession of the property after they had been evicted pursuant to the court's order, all purportedly under the mortgage and notice of sale of 1746878 Ontario Inc. The acts are not denied. Rather, it was Mr. Ferri's view that the order made by Ramsay J. did not apply to 1746878 Ontario Inc. because it was not named in the Title of Proceedings in the order. In this, he was sadly mistaken.

59 Finally, I note that, but for the clear admission of liability, I might have had some technical concerns with the processes utilized in the contempt proceedings. While there is no question that 1746878 Ontario Inc. was served and knew of the motion, whether there was personal service or a clear validation of a different form of service is less clear. Similarly, while the notice of motion contained the factual particulars relied upon, the grounds of the motion were ambiguous. This manifested at the outset of the first hearing at which time Mr. Hutton indicated that he believed that a contempt finding was being sought against him personally in addition to 1746878 Ontario Inc. On reading the transcript of that hearing, the discussion that ensued did not seem to resolve the ambiguities. Yet, the parties launched into the contempt hearing with seeming clarity of what was at stake and on the issues at play. I also have some concern with the lack of clarity as to whether 1746878 Ontario Inc. understood that it had the option to call live evidence in court and to cross-examine witnesses

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before the court. Ramsay J. denied an adjournment request at the outset of the first hearing. However the adjournment was not sought for the purposes of cross-examination.

60 In all, in view of the special solicitude afforded to contempt proceedings, I might have been inclined to find procedural errors. However, several facts weigh against doing so. First, the clear admission of liability precludes 1746878 Ontario Inc. from contesting liability now. Second, the facts that amounted to the contempt were not in issue. Most are proven by unassailable documents. On the record, the contempt is clearly established.

61 Given the clear bases for the finding of contempt, there is no serious basis to contest the fine imposed in this case. Moreover, with the dismissal of the appeal on the contempt finding, there is no basis to question the costs decision. All three related appeals are therefore dismissed.

The Appeal from the Motion to Stay the Contempt Finding

62 After the contempt proceedings were completed, the parties commenced final preparation for the priority hearing that would determine which of them would have first priority over the sale proceeds. As 1746878 Ontario Inc. appealed the contempt proceedings, its fine was stayed automatically. Nevertheless, it brought a motion to stay the contempt holding as distinct from the fine. It argued that it needed to have a stay imposed on the finding that it had committed contempt to avoid any stigma from that finding being held against it in the priority hearing.

63 By order dated January 4, 2019, Maddalena J. denied the stay pending appeal. She held that a stay of execution is not available against a bare finding of contempt. With the fine automatically stayed, there was nothing left for her to stay. Maddalena J. also relied upon the admission of contempt made by 1746878 Ontario Inc. to conclude that the mortgagee could not show that it had a serious issue to be tried on its appeal to underpin a stay in any event.

64 At the hearing on June 3, 2019, the panel ruled that the decision to deny a stay the bare holding of contempt was an interlocutory order. Nothing was finally determined by Justice Maddalena. 1746878 Ontario Inc. argues that everything decided in a proceeding after judgment has been granted is final for the purposes of appeal. No case supports that argument and I reject it.

65 1746878 Ontario Inc. did not seek leave to appeal from the denial of a stay ordered by Maddalena J. and therefore it has no right to appeal the order to this court. Further and in any event, Maddalena J.'s decision was correct.

The Priority Decision

The Role of Mr. Ferri

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66 In deciding the contempt and other issues that were before him in March, 2018, Ramsay J. also dealt with the role of Mr. Ferri in the proceedings. By that time, Mr. Hutton was lawyer of record for 1746878 Ontario Inc. In his Endorsement dated March 21, 2018, Justice Ramsay discussed Mr. Ferri's role as follows:

[15] I digress at this point to deal with a curious but important issue. Mr Ferri is a named defendant in the action. He is not, however, a judgment debtor. Judgment was never obtained against him. While Mr Hutton was obviously under the impression at the outset of the hearing that the developer and the mortgagee are "Mr Ferri's companies" Mr Ferri maintains that he is only a consultant. He says that he is "working for them" with respect to the issues in these proceedings. What he says is supported by the corporate documents, which do not mention him as a director, officer or shareholder. That does not give him a right to represent the corporations without leave of the court, and he should not have done so in January of 2017. I do not understand why he should be here. To be fair to him, he was served with notice, so I do not criticize him for coming. I just think that his presence is a distraction. The case should proceed with the parties who do have an interest, namely the plaintiff, the developer and the mortgagee. I direct that Mr Ferri shall take no further part in these proceedings.

67 As a result, paragraph 3 of the order made by Ramsay J. dated March 21, 2018 provides:

THIS COURT FURTHER ORDERS that Andrew Ferri has no standing in these proceedings and shall take no further part.

68 After Mr. Ferri was denied status to continue appearing as a "consultant" in the proceedings, Mr. Ferri's spouse appeared before Ramsay J. in May as the sole director of the mortgagee. As discussed above, she ostensibly made the admission of liability and apology for the corporation that were recited by Mr. Hutton.

69 The hearing before Maddalena J. on the motion to stay the contempt finding was held on December 11, 2018. Mr. Ferri emerged for that motion as the sole director of 1746878 Ontario Inc. He swore an affidavit before Maddalena J to support the request for a stay. In his affidavit, Mr. Ferri testified that he had become director, president, and secretary of the corporation on May 10, 2018, replacing his spouse Connie Northdurft as the sole director. Mr. Hutton later characterized Mr. Ferri's spouse as having testified as a "bare representative" of Mr. Ferri or the corporation.

70 During the hearing before Maddalena J., counsel for Pollard Windows referred to the prohibition against Mr. Ferri taking part in the proceeding contained in para. 3 of the March 21, 2018 order. During oral argument, Mr. Costa alleged that by delivering an affidavit on the stay motion, Mr. Ferri was in contempt of the March 21, 2018 order.

71 In her decision dated January 4, 2019, Maddalena J. found that Mr. Ferri had not committed contempt of the March 21, 2018 order. She found that the order did not preclude Mr. Ferri from acting as a director of the mortgagee and participating in that capacity. However, before Maddalena J. released her decision early in the

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New Year, the parties appeared before Ramsay J on December 17, 2018 for the hearing of the motion to determine who had the better priority claim to the proceeds of sale.

Ramsay J. Refuses an Adjournment Request

72 At the commencement of the priorities hearing, Mr. Hutton sought an adjournment of the motion pending the release of Justice Maddalena's decision concerning the allegation of contempt that had been levelled against Mr. Ferri. As he had argued before Maddalena J., Mr. Hutton argued that unless the bare contempt holding was stayed, his client would suffer decreased credibility before the court while the contempt motion remained under appeal. He also argued that until there was clarity as to whether Mr. Ferri was entitled to adduce evidence in the proceeding, he was unwilling to take the risk of compounding a contempt by filing an affidavit on the priorities motion. Instead, 1746878 Ontario Inc. filed a further affidavit from Mr. Ferri's spouse Ms. Northdurft. That affidavit was almost entirely based on evidence provided to Ms. Northdurft by Mr. Ferri that she repeated in her affidavit on information and belief as provided by the *Rules of Civil Procedure*.

73 In his endorsement dated December 19, 2018, Ramsay J. reports that he resolved the motion for an adjournment "*séance tenante*" (from the bench). The transcript of the hearing on December 17, 2018 records that Ramsay J. found that whatever Maddalena J. may decide on the stay request, his view on the credibility of Mr. Ferri will not be affected. He said that he had made findings of fact that remain in place unless reversed on appeal. Moreover, he did not see how Mr. Ferri could be in contempt of the March 21, 2018 order that was made before he had proper status for his company. He did not accept that Mr. Ferri reasonably believed that he would be in contempt either. Moreover, Ramsay J. found that the affidavit of Ms. Northdurft contained Mr. Ferri's evidence and protected him from cross-examination. While Ramsay J. acknowledged that he had issues with Mr. Ferri's credibility, they were not related to the fact that his evidence on this motion was provided through his spouse. Accordingly, he denied the adjournment request.

74 The mortgagee argues that it was denied procedural fairness by being denied the opportunity to deliver the best evidence, being that of Mr. Ferri, for the priorities motion. It is worth noting in passing that when Mr. Ferri initially appeared as consultant, or when he put forward his spouse to make the formal admission that the his corporation had committed contempt of court, Mr. Ferri felt no compulsion to admit his true role and provide his evidence to the court. After a decade of shadowboxing, it hardly lies in his mouth to claim that there is a lack of procedural fairness in the absence of his sworn evidence.

75 The decision to grant or refuse an adjournment is a discretionary decision that is accorded significant deference on appeal. Justice Ramsay considered the arguments made by 1746878 Ontario Inc. and found that they lacked merit. The interests of justice did not require an adjournment in the circumstances. I see no error in principle in the decision to refuse the adjournment request.

Pollard Window's Lien has Priority over a Mortgage with no Proven Advances

76 Section 84 of the *CLA* provides that after a judicial sale is held under the statute, the proceeds "shall be distributed in accordance with the priorities set out in this Part".

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77 As mentioned at the outset of these Reasons, Mr. Hutton argues that the priority of the mortgage held by 1746878 Ontario Inc. is to be assessed under s. 27 of the *Mortgages Act*. Section 24 of the *Mortgages Act* provides mortgagees with an implied power of sale. Section 26 of the statute requires that prior to exercising a power of sale, the mortgagee must serve a notice of sale. Section 27, that is relied upon by 1746878 Ontario Inc., provides that the "money arising from the sale shall be applied by the person receiving the same as follows". [Emphasis added.] In my view, the section applies to the distribution of proceeds of sale realized on the exercise of a power of sale by a mortgagee under its mortgage. The costs and expenses recognized under that section are premised upon a mortgagee having properly exercised its power of sale. Implicitly, this includes proving that there was a loan advanced and repayment had come due. Despite the repeated arguments of 1746878 Ontario Inc. to the contrary, that is not what happened in this case. As discussed at the outset of these reasons, the referee and then Ramsay J. rejected the efforts of 1746878 Ontario Inc. to sell the property under its notice of sale, enjoined all steps aimed at doing so, and ordered that a judicially supervised sale proceed under the construction lien regime.

78 Accordingly, Ramsay J. correctly looked to s. 78 of the *Construction Act* (which is identical to the same section in the *CLA*) to assess priorities in accordance with the mandatory process set out in s.84 cited above. Subsections 78(1) and (3) provide:

78 (1) Except as provided in this section, the liens arising from an improvement have priority over all conveyances, mortgages or other agreements affecting the owner's interest in the premises.

* * *

- (3) Subject to subsection (2), and without limiting the effect of subsection (4), all conveyances, mortgages or other agreements affecting the owner's interest in the premises that were registered prior to the time when the first lien arose in respect of an improvement have priority over the liens arising from the improvement to the extent of the lesser of,
- (a) the actual value of the premises at the time when the first lien arose; and
- (b) the total of all amounts that prior to that time were,
- (i) advanced in the case of a mortgage, and
- (ii) advanced or secured in the case of a conveyance or other agreement.
- (4) Subject to subsection (2), a conveyance, mortgage or other agreement affecting the owner's interest in the premises that was registered prior to the time when the first lien arose in respect of an improvement, has priority, in addition to the priority to which it is entitled under subsection (3), over the liens arising from the improvement, to the extent of any advance made in respect of that conveyance, mortgage or other agreement after the time when the first lien arose, unless,
- (a) at the time when the advance was made, there was a preserved or perfected lien against the premises; or

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- (b) prior to the time when the advance was made, the person making the advance had received written notice of a lien.

79 The mortgage relied upon by 1746878 Ontario Inc. was first registered long before Pollard Window's lien rights arose. Therefore, the claims of 1746878 Ontario Inc. under the mortgage are entitled to priority payment of the proceeds of sale to the extent provided in subsections 78(3) and (4). Both subsections limit the priority however, to the amount advanced under the mortgage prior to the lien arising. Justice Ramsay found that 1746878 Ontario Inc. had not proven on the balance of probabilities that any amounts had ever been advanced under the mortgage prior to Pollard Window's lien arising in 2008. Therefore, he found that under the applicable priority regime, the lien rights of Pollard Windows have priority to the proceeds of sale of the property.³

80 Mr. Hutton argues that Ramsay J. made a palpable and overriding error of fact in holding that there were no advances made under the mortgage being enforced by 1746878 Ontario Inc. Lawrence Beam, who was a principal of the original buyer of the land swore that there was an advance of \$400,000 under the mortgage. Ramsay J. did not believe Mr. Beam's evidence.

81 Mr. Beam testified that when the initial buyer of the land ran into financial problems in 2000, he had another of his companies buy the land under power of sale. He gave the mortgage that is the subject of this proceeding to one of Mr. Ferri's companies on that transaction. Ramsay J. found this explanation to lack common sense. He found that Messrs. Beam and Ferri had been working together for years to defeat creditors. If Beam's company had financial problems, there was no legitimate reason given for him to enforce a mortgage against himself and then grant a new mortgage to a related company. If he was putting fresh money into the project, one would expect a simple refinancing of the existing mortgage to preserve its priority.

82 Ramsay J. also noted that there was no documentation disclosed to support Mr. Beam's bald assertion that there had been an advance. Mr. Hutton points to a claim that the Ferris had lost all documentation in a fire. But the lawyers for the companies testified. They produced no relevant documents from their files to support an advance. There was no trust statement showing an advance. There was no reporting letter on the mortgage transaction. There were no bank records produced. There was just a bald statement by Mr. Beam about a transaction that did not appear to be consistent with common sense. The lawyers who testified confirmed that they had no firsthand knowledge of any advance and were relying on information provided to them by Mr. Ferri.

83 There was substantial evidence before Ramsay J. that the mortgage was not an arm's length transaction and that Messrs. Beam and Ferri and their assorted corporations acted in concert to defeat creditors. Paragraphs 43 to 46 of the factum of Pollard Windows on this appeal and the references in the related footnotes list evidence that was properly before the court that supports the findings made by the judge. There was ample evidence for him to make the credibility findings that he made and to support the finding of fact that 1746878 Ontario Inc. had not proven that there were any advances made under the mortgage on which it

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relies. As such, no palpable and overriding error can be found and there is therefore no basis for this court to intervene.

84 Whether the holding that the mortgage was also void as against creditors under the *Fraudulent Conveyances Act* was available on a priorities hearing under the *CLA* or whether the holding was just meant as support for the findings among these parties ultimately makes no difference. Absent proof of advances under the mortgage held by 1746878 Ontario Inc., it has no priority ahead of the lien of Pollard Windows.

Should the Remaining Appeal of the Costs Order date January 30, 2019 be quashed?

85 1746878 Ontario Inc. appealed the costs order made by Ramsay J. on January 30, 2019 in relation to the priorities hearing. As 1746878 Ontario Inc. did not seek leave to appeal under s.133(b) of the *Courts of Justice Act*, it is not entitled to appeal the costs order independent of the merits. With the dismissal of the appeal from the priorities order above, there is no proper appeal of the costs order remaining, it appears that the appeal ought to be quashed. 1746878 Ontario Inc. may deliver no more than three pages of submissions within ten days of the release of these reasons if it opposes the quashing of the last appeal. If 1746878 Ontario Inc. delivers submissions, Pollard Windows may respond within a further ten days with no more than three pages of submissions.

Outcome

86 All of the appeals and motions are dismissed.

87 Pollard Windows may deliver no more than five pages of costs submissions within ten days of the release of these Reasons taking into account its success on all of the appeals and motions other than its efforts to review the order of Justice Broad. 1746878 Ontario Inc. may deliver five pages of costs submissions within ten days of receipt of the submissions of Pollard Windows. Both parties shall also file Costs Outlines. Both may also file copies of any offers to settle on which they rely.

F.L. MYERS J.

D.L. CORBETT J.:— I agree.

F.B. FITZPATRICK J.:— I agree.

1 All the relevant agreements in this case were entered into prior to the recent amendments to the *CLA*. This court held, in *Great Northern Insulation v. King Road Paving*, [2019 ONSC 3671](#), para. 9:

The *CLA* was substantially amended in 2017 by the *Construction Lien Amendment Act*, which changed the name of the *CLA* to the *Construction Act*. Material amendments came into force on July 1, 2018. Transitional provisions provide that the *CLA* continues to apply if "a contract for the improvement was

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entered into" before July 1, 2018. The contracts in this case were entered into around 2012 and all events in issue were completed long before July 1, 2018: the *CLA* governs as it existed before the *Construction Lien Amending Act*.

Therefore, the *CLA* also continues to apply in this case.

- 2 In my view, the facts of this case are analogous to those in *Kapaniak v MacLellan*, [2002 CarswellOnt 1309](#) (ON CA) and the discussion at para. 33 of that case is apt.
- 3 This also explains the holding at the outset of these Reasons that the fresh evidence regarding costs allegedly incurred under the mortgage many years later were simply not relevant to the assessment of the parties' relative priorities under the *Construction Act*. In any event, I would not recognize as reasonable or enforceable claims for legal fees or penalties in respect of a mortgage with no proven amounts advanced or outstanding. Nor did the mortgagee establish any basis to claim for amounts allegedly expended by tenants on the premises.

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