

**ONTARIO
SUPERIOR COURT OF JUSTICE
(IN BANKRUPTCY AND INSOLVENCY)**

IN THE MATTER OF THE BANKRUPTCY OF
IAN ROSS MCSEVNEY, an individual residing in the
Town of Ancaster in the Province of Ontario

RESPONDING MOTION RECORD

Date: April 11, 2023

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Oakville, ON L6J 6N2

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INDEX

Tab	Item Description	Page No.
1	Affidavit of Elaine McSevney sworn April 11, 2023	3
	Exhibit A: Real Estate Purchase Contract dated July 17, 2020	7
	Exhibit B: Email dated April 21, 2022	12

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AFFIDAVIT OF ELAINE MCSEVNEY
(motion returnable June 2, 2023)

I, Elaine McSevney, of the City of Hamilton, Province of Ontario, MAKE OATH AND SAY AS FOLLOWS:

1. I am the sister of the bankrupt herein, Ian Ross McSevney ("Ian"), and also the sole shareholder, officer and director of 12195585 Canada Inc. ("12195585"), which purchased a property municipally known as 81 Valridge Drive, Unit 9, Ancaster, Ontario (the "Property") from Ian on August 4, 2020 (the "Purchase"). As such, I have knowledge of the matters to which I hereinafter depose. Attached hereto and marked as Exhibit "A" is a true copy of the Real Estate Purchase Contract, by which 12195585 purchased the Property from Ian on August 4, 2020.

2. Ian was declared a bankrupt on November 18, 2021. I believe his discharge hearing was set for November 22, 2022, but I do not know if he was in fact discharged on that day.

3. On or about February 10, 2023, I was served with a notice of motion and a substantial volume of documentation, by which the Trustee (referring to 12195585 Canada Inc. as "ElaineCo") sought to impugn the Purchase on the grounds that:

(a) Ian McSevney was insolvent or was rendered insolvent by the ElaineCo Purchase;

(b) Ian McSevney intended to defraud, defeat or delay one or more of his creditors.

4. At that time of the Purchase, Ian and his wife, Christy Ward-McSevney ("Christy"), owned two units at 81 Valridge Drive, Ancaster: Unit 9 and Unit 17. They rented out Unit 17 and lived in Unit 9, with their three daughters.

5. In the summer of 2020, Ian was experiencing headwinds in the development of his start-up mortgage investment business, Altmore Mortgage Investment Corporation ("Altmore"), which I had supported for many years, by way of personal loans to him, totalling approximately \$100,000 and, as a result, I offered to buy one of the said units, refinance it and make a further investment into his business. Rather than attempting to sell the rented unit over the objections of its tenants, Ian and Christy elected to sell their matrimonial home (the "Property") to me, in order to reduce their personal expenses, while Ian focussed on developing Altmore.

6. At the time, I offered to buy one of the Valridge Drive units, Ian was not insolvent, and the proposed purchase would not have rendered him insolvent; indeed, it would have had the exact opposite effect. My motivation for making the offer was to secure the advances I had already made to Ian and to put myself in the real estate investment market. In the result, I purchased the Property, refinanced it and advanced another \$40,000.00 for the benefit of Altmore, which I believed at the time to be a worthwhile and viable enterprise.

7. While my offer to buy the Property was motivated by my own self-interest and was by no means an altruistic gesture to help Ian, it was never intended by me or Ian to cause him to be "rendered insolvent" or to "defraud, defeat or delay one or more of his creditors", as alleged by the Trustee.

8. In closing the proposed transaction, I instructed my lawyer to declare the fair market value of the Property on my Land Transfer Tax statement and pay all applicable taxes related to the Purchase; and pay any surplus proceeds from the Purchase to Ian for the benefit of Altmore. My lawyer carried out my instructions, as he has confirmed by an email dated April 21, 2022, sent by him to the Trustee, a true copy of which is annexed hereto as Exhibit "B".

9. To determine the fair market value of the Property, I made enquiries with realtors and others and satisfied myself that \$530,000.00 was equal to or greater than its fair market value on August 4, 2020. More recently, on April 6, 2023, I asked Bruce Rae, C.R.A. ("Mr. Rae"), to conduct an informal appraisal of the Property, as of the closing date of the Purchase, being August 4, 2020. Mr. Rae, on a preliminary basis, has advised that:

- a. I paid the equivalent of \$427.00 per sq. ft. for the Property;
- b. The closest comparable transaction to the Purchase, both in time and location, was Unit 35 in the same complex, which was sold in June 2020, at \$341.00 per sq. ft.

10. I note that the Trustee has calculated that the actual amount I laid out for the purchase of the Property was \$398,469.10, which, while it ignores other minor expenses, I accept as a valid calculation.

11. The difference between the figures \$398,469.10 and \$530,000.00 represents the \$100,000.00 already advanced by me to Ian prior to closing and the additional \$40,000.00 advanced to him on the day of closing.

12. As stated by the Honourable Madam Justice Kimmel in her endorsement of March 22, 2023:

The Trustee seeks a declaration that the sale of certain property located at Unit 9 at 81 Valridge Drive (the "Unit 9 Property") by the Debtor, Ian Ross McSevney, to a company owned by his sister Elaine McSevney on August 4, 2020 was a transfer

at undervalue within the meaning of s. 96 of the Bankruptcy and Insolvency Act, R.S.C. 1985, c. B-3 (the "BIA"), and an order for payment of the purchase price differential among other relief.

13. The trustee appears to base his case on the fact that I was fortunate enough to sell the Property on December 20, 2021, for \$700,000.00. That fortuitous outcome had nothing whatsoever to do with the alleged undervaluation of the Property on August 4, 2020, which allegation is refuted by me and by Mr. Rae's informal appraisal of April 6, 2023, and everything to do with the extraordinary increase in property values in the suburban areas surrounding Toronto, between the summer of 2020 and the fall of 2021, when many residents of Toronto decided to move out of that fine city to places which they considered to be a safer place to live.

14. To confirm my belief in this connection, I asked Mr. Rae to give me an informal appraisal on the Sale price obtained by me on December 20, 2021.

15. I have been advised by Mr. Rae that the price for which I sold the Property on December 20, 2021, was \$522.00 per sq. ft., and that the best comparable transactions to that sale were two units in the same complex, one immediately before, and the other immediately after my sale, as follows: in October 2021, Unit 15 sold at \$578.00 per sq. ft. and in January 2022, Unit 30 sold for \$637.00 per sq. ft.

16. In other words, the increase in value of the Property between August 4, 2020, and December 20, 2021, had absolutely nothing to do with the Trustee's groundless allegation that the Purchase represented an undervaluation.

17. As further stated by the Honourable Madam Justice Kimmel in her endorsement of March 22, 2023:

The value of the Unit 9 Property is expected to be the primary point of dispute on this motion. It is anticipated that the Trustee may include some additional evidence

as to the value of the Unit 9 Property as at the date of its transfer to Ms. McSevney in the Trustee's Supplemental Report/Reply Motion Record.

18. Pending the trustee's confirmation of the foregoing informal appraisal figures, I have decided to conserve my limited resources, by not ordering a formal appraisal. Nevertheless, I am willing to make that additional expenditure, if it should become necessary to do so.

19. With respect to the Trustee's allegation that I was not acting at arm's length to Ian and Christy on the purchase, I understand that, in the absence of evidence to the contrary, I could be deemed to have not been dealing with Ian and Christy at arm's length, on the basis that I am Ian's sister. Accordingly, I shall attempt to satisfy the Trustee and the Court, in the following paragraphs, that my relationship with Ian has been very much arm's length for a great many years and my relationship with Christy has always been arm's length.

20. Ian and I have carried on very independent lives since achieving adulthood over thirty years ago.

21. Ian has been self-employed in the financial services industry for the past 20 years, while I have been self-employed in the health and wellness services industry for the past 22 years.


22. In the subject Purchase, I was not influenced in my bargaining with Ian and Christy by anything other than my own self-interest and there was not then, and are not now, any bond of dependence, control or influence between me, on the one hand, and Ian and/or Christy on the other hand.

23. In addition, there was certainly never a common mind directing the bargaining between me, on the one hand, and Ian and Christy, on the other hand, in respect of the Purchase or any other interaction between us.

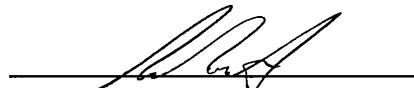
24. Ian and I have never acted in concert, without separate interests, since we were children growing up in our parents' home, and there was never any *de facto* control by either one of us over the other.

SWORN before me at the Town of
Oakville, in the Province of Ontario
this 11th day of April, 2023

)
)
)
)



Elaine McSevney



A Commissioner, etc.

Exhibit

A

This is Exhibit A referred to in the affidavit of Elaine McSevney sworn before me, this 11 day of April, 2023


A COMMISSIONER, ETC.

REAL ESTATE PURCHASE CONTRACT*

This Contract is between:

BUYER 1:
Name: 12195585 Canada Inc

SELLER 1:
Name: Ian Ross McSevney

BUYER 2:
Name: _____

SELLER 2:
Name: _____

Hereinafter the "Buyer"

Hereinafter the "Seller"

Read this document carefully. All provisions apply unless crossed out and initialed.


1. PROPERTY

1.1 The property is the land, buildings, attached goods (unless excluded) and included unattached goods located at (hereinafter the "Property"):

DESCRIPTION OF THE PROPERTY:

Municipal Address: 81 Valridge Drive, Unit 9, Ancaster Ontario, L9G 5B7
(number, street, city, province, postal code)

Legal Description of Property: TBA

Unattached goods (chattels) included in contract: Wahser, Dryer, Fridge Stove, Dishwasher, Over Counter Microwave, BBQ 


Attached goods (fixtures) excluded from contract: N/A

1.2 Unless otherwise agreed in writing, title to the Property on Completion Day will be free and clear of all financial encumbrances, financial registrations and financial obligations, except those implied by law, and those beyond the control of the Seller.

2. TRANSACTION

2.1 The Seller and Buyer agree to act co-operatively, reasonably, diligently and in good faith.

2.2 Other than the deposits, the Buyer shall pay the purchase price by certified cheque, lawyer's trust cheque, bank draft or other agreed value as follows:

Deposit:	\$ <u>500.00</u>
Buyer's new mortgage:	\$ <u>424,000.00</u>
Assumption of Seller's mortgage (if applicable):	\$ <u>N/A</u>
Balance owing:	\$ <u>106,000.00</u>
Total purchase price (including GST where applicable):	\$ <u>530,000.00</u> 

2.3 **DEPOSITS:** All deposits will be delivered to the **Seller's lawyer in trust**. For further clarity, ComFree Commonsense Network brokerage is not responsible for holding any deposit, in trust or otherwise. There will be no interest payable on deposits.

*This model document is for reference purposes only; it can be modified by the parties, especially, without limitation, with respect to the provided conditions and time periods. In each case, we advise you to consult a lawyer. ComFree Commonsense Network disclaims any and all liability with respect to the accuracy, sufficiency and relevance of this document.

3. CONDITIONS

ONLY THE CONDITIONS WHICH ARE CHECKED FORM AN INTEGRAL PART OF THIS CONTRACT.

3.1 BUYER'S CONDITIONS (Check all applicable conditions)

- a) New financing obtained by the Buyer;
- b) Property inspection satisfactory to the Buyer;
- c) Approval of the Buyer's lawyer;
- d) Review of Condominium Documents (if the Property is a condominium);
- e) Other Buyer's conditions: Subject to Mortgage Approval
Subject to Appraisal Approval } *END*

CONDITION DAY: All of the above conditions are to be satisfied by the _____ of _____, 20____.

3.2 SELLER'S CONDITIONS (Check all applicable conditions)

- a) Seller's conditions: N/A

*** ON or BEFORE ***
CONDITION DAY: All of the above conditions are to be satisfied by the 27 of July, 2020. *END*

3.3 The Buyer's Conditions are for their sole benefit and the Seller's conditions are for their sole benefit. The Buyer and Seller must use reasonable efforts to satisfy their respective conditions. The Buyer and Seller must waive their conditions by giving a **written notice to the other party on or before 8:00 p.m. on the dates specified above**. Failure to do so, or failure for both parties to agree to extend the Condition Removal Deadline, in writing, will result in termination of this Contract. If the Contract is terminated in accordance with the terms of this Contract, then any Deposit will be returned to the Buyer by the Seller's lawyer as soon as reasonably possible.

4. CLOSING

4.1 *END* **COMPLETION DAY:** The parties undertake to complete this transaction on or before 12:00 noon on July 31st, 2020 (the "Completion Day"), on which date the purchase price shall be paid in full and the Buyer shall have vacant possession.

4.2 **CONDITION:** When the Buyer obtains possession, the Property will be in substantially the same condition as it was when the Buyer last inspected the Property.

4.3 **ADJUSTMENTS:** Items usually adjusted for, including real estate taxes, amortized local improvement levies, utilities, rents, security deposits, statutory interest on security deposits, mortgage interest and homeowners' association fees will be assumed by the Buyer and will be adjusted as of the Completion Day. All adjustable items are the Seller's responsibility for the entire Completion Day.

4.4 **BUSINESS DAY:** Unless otherwise agreed to in writing, if the Completion Day is not a Business Day, then conveyancing matters and payment of the Purchase Price will be completed by 12:00 noon on the preceding Business Day. Possession will be available on and adjustments will be made as of the Completion Day. Business Day means a day when both the Land Titles Office and Chartered Banks are open for business.

4.5 **CLOSING DOCUMENTS:** The Seller and the Seller's lawyer will deliver normal closing documents to the Buyer upon reasonable conditions consistent with the terms of this Contract. The Buyer must have a reasonable period of time before the Completion Day to confirm registration of documents at the Land Titles Office and to obtain the advance of proceeds for any new financing and other funds. If the Seller fails to deliver the closing documents according to the terms of this Contract, then payment of the Purchase Price and interest will be postponed until the Buyer has received the closing documents and has had a reasonable time period to deal with them, in which case the interest rate payable shall be reduced to the mortgage rate on the cash to close.

4.6 **INTEREST:** If the Seller agrees in writing to accept late payment of the Purchase Price, then the Buyer will pay interest to the Seller calculated daily from and including the Completion Day but excluding the day the Seller is paid in full. Payment received after 12:00 noon on any day will be received as payment on the next Business Day. Interest means the prime lending rate of the Province of Alberta Treasury Branches at the Completion Day plus three (3) percent. If the Buyer has not paid all of the Purchase Price, then the Seller may give the Buyer possession upon reasonable terms.

4.7 **DISCHARGE:** The Seller's lawyer may use the Purchase Price to pay out all mortgages, registrations and other financial obligations that are the Seller's obligation to discharge. Within a reasonable period of time after the Completion Day, the Seller's lawyer will provide the Buyer with evidence of all discharges including where required, a certified copy of the certificate of title.

- 4.8 **COSTS:** The Seller will pay the costs to prepare the closing documents, to prepare, register and discharge any Seller's caveat based on this Contract, and to provide the documents required to discharge his obligations. The Buyer will pay the costs to prepare, register and discharge any Buyer's caveat based on this Contract and to register the Transfer of Land.
- 4.9 **TENANCY:** If the Property is rented and the Buyer is not assuming the tenancy, then the Seller is responsible for all costs related to ending the tenancy and to giving vacant possession to the Buyer.
- 4.10 **REAL PROPERTY REPORT:** At least ten (10) business days prior to the Completion Day, the Seller will provide to the Buyer a current Real Property Report along with evidence of municipal compliance regarding the matters described in paragraph 6.2 below. The obligation to provide a real property report will not apply to condominium units that do not create a lot, or will not apply to any transaction where there are no improvements to the land, or where the buyer agrees, at their sole discretion, to obtain title insurance in lieu of a real property report.
- 4.11 Notwithstanding the provisions of this Contract, the parties authorize their lawyers to follow, if appropriate, the Law Society of Alberta Conveyance Protocol in the closing of this transaction.

5. INSURANCE

- 5.1 The risk of loss or damage to the Property will lie with the Seller until the Purchase Price is paid in accordance with the terms of this Contract. If loss or damage to the Property occurs before the Seller is paid the Purchase Price, then the insurance proceeds will be held in trust for the Buyer and Seller according to their interest in the Property.

6. WARRANTIES AND REPRESENTATIONS

- 6.1 The Seller warrants to the Buyer that: the Seller has the legal right to sell the Property; the Attached Goods and the included Unattached Goods are in normal working order; no G.S.T. is payable by the Buyer for this transaction unless otherwise disclosed in writing; and the Seller is a resident of Canada for the purposes of the *Income Tax Act* (Canada).
- 6.2 The Seller warrants to the Buyer that the current use of the Property complies with the existing municipal land use by-law; the buildings and other improvements on the Property are not placed partly or wholly upon any easement or utility right-of-way and are entirely on the Property and do not encroach on neighbouring lands; and the location of the buildings and other improvements on the Property complies with all relevant municipal by-laws and regulations or the buildings and other improvements on the Property are "non-conforming" buildings for the purposes of the requisite governing body and the *Municipal Government Act* (Alberta).
- 6.3 The Seller and the Buyer each acknowledge that, except as otherwise described in this Contract, there are no other warranties, representations or collateral agreements made by or with the other party about the Property, any neighbouring lands and this transaction, including any warranty, representation or collateral agreement relating to the size/measurements of the Property or buildings or the existence or non-existence of any environmental condition or problem.

7. ADDITIONAL TERMS

- 7.1 All time periods, deadlines and dates in this Contract are to be strictly followed and enforced. Time is of the essence.
- 7.2 The Contract is binding on the heirs, executors, administrators and assigns of the individual parties and the successors and assigns of the corporate parties.
- 7.3 All changes of number and gender will be implied where required.
- 7.4 Portions of this contract may be enforced even if this Contract has ended.
- 7.5 The Seller shall be allowed to continue to market the Property for sale pending removal of the Buyer's conditions. Upon receipt by the Seller of a bona fide arm's length offer from a third party and delivery of such an offer to the Buyer, the Buyer shall be required to remove all its conditions within the next 48 hours of such delivery. If the Buyer removes all of its conditions in writing, then this Contract will be enforceable and will be completed according to its terms. If the Buyer fails to remove all conditions within the 48 hours, then this Contract is ended and the Deposit will be returned to the Buyer as soon as reasonably possible and the Buyer and the Seller will have no further obligations or liabilities under this contract.

8. REMEDIES OR DISPUTES

- 8.1 If the Seller or the Buyer fails or refuses to complete this Contract according to its terms, then the other party may pursue all remedies available to it in law.
- 8.2 If the Seller must restore title to the Property, enforce a lien against the Property or regain possession of the Property due to the Buyer's default, then the Buyer will be obligated to pay the Seller's reasonable costs including legal fees on a solicitor/client basis.

9. ADVICE AND DISCLOSURE

- 9.1 This Contract is intended to create legal binding relations and obligations. Each party should read this document carefully and consult a lawyer before signing.

9.2 This Contract, if signed only by the Buyer, is to be considered an offer. Once signed by the Seller, if there are no changes, this is a binding Contract. If the Seller makes changes, this document is to be considered a counter-offer which does not become a Contract until the Buyer indicates their acceptance of the counter-offer by initialing each change in the Contract.

10. NOTICES

For the purposes of giving and receiving notices referred to in this Contract, all notices must be in writing and must be delivered or sent by facsimile or hand delivered to the parties or to their respective lawyer indicated below. A notice sent by or received by a party's lawyer is proper notice for the purpose of this Contract.

BUYER(S):
 Address: 12195585 Canada Inc Daytime Phone: 905-308-5609
C/O Elaine McSevney EMS Other Phone: _____
 Email: ekmcsevney@gmail.com Fax: _____

BUYER'S LAWYER: Alex Kyle
 Address: 16-760 Pacific Road Daytime Phone: 905-845-5000
Oakville, ON L6L 6M Other Phone: _____
 Email: wakyle@wakylelaw.com Fax: 905-845-5800

SELLER(S):
 Address: TBA Daytime Phone: _____
 Other Phone: _____
 Email: _____ Fax: _____

SELLER'S LAWYER:
 Address: _____ Daytime Phone: _____
 Other Phone: _____
 Email: _____ Fax: _____

11. SIGNATURES

This offer is open for acceptance by the Seller until _____ o'clock, on _____, 20____.

Signed at _____, on _____, at _____.

12195585 Canada Inc Elaine McSevney Clare
 Signature of Buyer 1 Authority To Bind The Corporation Signature of witness

Signature of Buyer 2 Signature of witness

The Seller accepts this offer and agrees to sell the Property for the Purchase Price and according to the terms of this Contract.

Signed at Alcove, on July 17th, at 7 pm.

Mark Long Clare
 Signature of Seller 1 Signature of witness

Signature of Seller 2 Signature of witness

Exhibit

B

From: Alex Kyle
Sent: April 21, 2022 4:41 PM
To: Crawley, Peter <pcrawley@bdo.ca>
Cc: Gregory R. Azeff <gazeff@millertthomson.com>; Faheim, Monica <mfaheim@millertthomson.com>
Subject: RE: [EXT] FW: McSevney ats Altmore

I hit the send button too early on my last e-mail. I have attached a copy of the statement of adjustments, which, quite bluntly, went out the window as the result of the deductions taken against the first and second mortgage advances for which the purchaser was to receive a credit of \$425,000. In fact the mortgage on title had been referred to counsel for enforcement. The property tax bill confirms that a tax lien was imminent (3 years of arrears). By the time the legals, and land transfer tax were paid, there simply was not \$87,000 to be paid to vendor. That is why the lesser sum of about \$40,000 was paid. I was directed to remit payment per Mr. McSevney's instructions by his sister and provided a copy of a void cheque.

W. Alex Kyle
Kyle Law Office
16-760 Pacific Road
Oakville, ON L6L 6M5

tel: 905-845-5000
fax: 905-845-5800
wakyle@wakylelaw.com

To help protect everyone, we have shifted to providing services remotely for all non-essential meetings. The health and safety of our staff and clients is our top priority. We are available by email, fax and phone. **Clients will be seen by appointment ONLY. Appointments are limited. No walk-ins.**

We kindly ask that you do not attend our office if you are experiencing flu-like symptoms, you have travelled outside of Canada in the last 14 days or you know or you suspect that you have been in close contact with someone who has been diagnosed with COVID-19 or who has travelled outside of Canada.

We apologize for any inconvenience this may cause and we thank you for your understanding and cooperation.

This is Exhibit ^B referred to in the
affidavit of Elaine McSevney
sworn before me, this 11
day of April , 20 23
.....
A COMMISSIONER, ETC.

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Sworn April 11, 2023

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jmarler@marler.ca
ssmith@marler.ca

Lawyers for Elaine McSevney

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