

Ground Rules for Claims Process (Comfort Capital v. Yeretsian et al)

1. the Claim Process relates only to the surplus proceeds of sale available for distribution for each of the six properties that are the subject matter of Court File No. CV-18-592103-00CL (the "SurplusProceeds");
2. anyone making a claim to the Surplus Proceeds must be able to prove on a balance of probabilities a direct claim against CCCI (Yeretsian funds), CIC (Caldwell funds), Terry Wilson (Loyalist and Barrie), 2457674 Ontario Inc. (Bridge) and/or 2399029 Ontario Inc. (Malmo). Furthermore, proving such a direct claim only entitles that claimant to a pro rata unsecured claim to the Surplus Proceeds relating to the entity(ies) successfully claimed against (eg. proving a direct claim against CCCI only results in an unsecured pro rata claim to the Yeretsian High Point funds). By way of example, a claim against Arash Missaghi in and of itself is not a "direct claim" to any of the funds. However, a proven claim against CCCI itself, or against Missaghi as the alter ego of CCCI, would be considered a "direct claim";
3. a claimant does not need to prove a tracing remedy in respect of any of the Surplus Proceeds;
4. the process to prove one's claim is by affidavit evidence (as provided for in the attached timetable of Justice Dunphy made Aug 3, 2018, as amended by the Conway J. Endorsement made Aug 31, 2018), and the Endorsements of Justice Hainey made October 18 and November 1, 2018, and cross-examinations on those affidavits (or examinations of witnesses) that were scheduled to take place between October 1 and 10, 2018, and will now be conducted between Nov. 16 and Dec. 7, 2018;
5. the Receiver's second report (following the exchange of facts) will evaluate the various claims, and make recommendations to the Court;
6. there is to be no viva voce evidence on the Claims Process hearing, however to the extent the judge on the hearing determines viva voce evidence is required, that is of course his or her prerogative;
7. this Claims Process, and participation in it, is without prejudice to the right(s) of any claimants in the Claims Process ("the Claims Process Claimants") to issue or continue any proceedings (collectively, the "Proceedings") against any of Missaghi, Alizadeh, Troy Wilson, CCCI, CIC, Terry Wilson, 2457674 Ontario Inc. and/or 2399029 Ontario Inc. (collectively the "Claims Process Responding Parties"), and does not affect, truncate or waive any substantive or procedural rights and/or remedies that the Claims Process Claimants may have in the Proceedings against the Claims Process Responding Parties. Notwithstanding the above, the Claims Process also does not affect any substantive or procedural rights that the Claims Process Responding Parties may have to defend the Proceedings, save and except that the Claims Process Responding Parties may not assert in the Proceedings that the claims of any Claims Process Claimant ought to be dismissed or stayed on grounds of Res Judicata (issue estoppel, and/or cause of action estoppel) and/or abuse of process, by virtue of the Claims Process Claimants asserting any claims in the Claims Process, and further that this Endorsement shall be a complete bar to any such assertions; and

8. Furthermore, participation in the Claims Process does not preclude any participant from moving to freeze distribution of any of the surplus funds in these Receivership proceedings by way of a Mareva Injunction or similar proceeding, as long as such steps are taken prior to any such Court-authorized distribution.

Malmo

Finally, with respect to Malmo, Chaitons and BTZ wish to adjourn to a separate date the hearing (the "Malmo Priority Hearing") regarding the priority of the Chaitons CPL over the three remaining Malmo mortgages (the "Three Malmo Mortgages") registered behind the Applicants' mortgage and in front of the CPL. As a result, on the initial Claims Process hearing dates, all that will be dealt with re: Malmo are any issues regarding the amount owing under the Three Malmo Mortgages (assuming there is any disagreement on the quantum of their mortgage claims with the Receiver and/or any stakeholders), and any claims made by parties other than Chaitons to any Malmo surplus proceeds available for distribution if there are any such proceeds (because based on the current mortgage claims against Malmo, there will be no Malmo surplus proceeds).

However, if the Malmo Priority Hearing has not been resolved, or determined by the Court by the time the Claims Process relating to the remaining properties has been determined by the Court, the holders of the Three Malmo mortgages can bring a motion or any other form of proceeding to compel payment to them by the Receiver of the amounts owing under their mortgages (up to the amount available for distribution by the Receiver), or the Receiver can bring a motion for its discharge and pay the surplus Malmo funds into court, in advance of the Malmo Priority Hearing.