

COURT OF APPEAL FOR ONTARIO

APPLICATION UNDER SECTION 243(1) OF THE *BANKRUPTCY AND INSOLVENCY ACT*, R.S.C. 1985, C. B-3, AS AMENDED, SECTION 101 OF THE *COURTS OF JUSTICE ACT*, R.S.O. 1990 C. C.43, AS AMENDED AND SECTION 68 OF THE *CONSTRUCTION ACT*, R.S.O. 1990, C. 30

B E T W E N:

C & K MORTGAGE SERVICES INC.

Applicant
(Respondent in Appeal)

- and -

CAMILLA COURT HOMES INC. and ELITE HOMES INC.

Respondents

**COMPENDIUM OF THE RESPONDENT,
C & K MORTGAGE SERVICES INC.**

November 27, 2020

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Barristers & Solicitors
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Commerce Court Postal Station
Toronto, Ontario, M5L 1G4

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Yong Yeow (Jeremy) Tan

AND TO: **ROSEN GOLDBERG INC.**
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North York, Ontario, M2N 5P8

BRAHM ROSEN
Email: brosen@rosengoldberg.com
Tel: 416-224-4200

Receiver

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TAB 1



RESCOM Capital
1870 Bayview Avenue, Suite 400
Toronto, Ontario M4G 3C2

T. 416.485.2838
F. 416.482.4043
www.rescomcapital.com

November 6, 2018

Camilla Court Homes Inc.
Elite Homes Inc.
Junaid Sadiq
211 Grand Vellore Crescent
Vaughan, Ontario
L4H 0N9

Dear Sir:

Re: 2371 Camilla Road, Mississauga, 180, 185 & 189 Mateo Place, Mississauga, Ontario

The following will serve as an *amendment* to our commitment of October 16, 2018. This amendment is contingent on the current second mortgagee postponing \$300,000 to the full amount of our mortgage.

Please note the following:

Loan Amount: The loan amount will be increased from FIVE MILLION, FIVE HUNDRED THOUSAND DOLLARS (\$5,500,000) to FIVE MILLION, EIGHT HUNDRED THOUSAND \$5,800,000.

Brokerage/Lender's Fee: The fee will be increased from \$275,000 to \$290,000.

Initial Advance: The initial advance will be \$4,550,000, to be distributed approximately as follows:

Repayment Firm Capital	\$2,856,440	(AB)
Reduction of Second Mortgage	\$658,000 693,000	
Interest reserve	\$300,000	
Balance of Fees	\$263,750 265,000	
Payment to trades	\$450,000 415,000	(AB)
Legal fees	\$10,000	
Miscellaneous	\$11,810	

All other terms remain the same as set out in the commitment of October 16, 2018.

Yours truly,
RESCOM CAPITAL

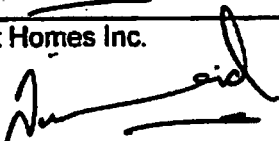
Gary Gruneir

The undersigned hereby accepts the above terms and conditions.

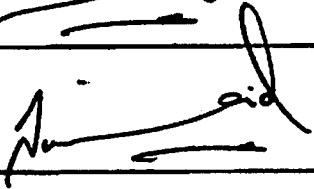
Dated this 6TH day of NOVEMBER, 2018.



Camilla Court Homes Inc.



Elite Homes Inc.



Junaid Sadiq



RESCOM Capital
1670 Bayview Avenue, Suite 400
Toronto, Ontario M4G 3C2

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October 16, 2018

Camilla Court Homes Inc.
Elite Homes Inc.
Junaid Sadiq
211 Grand Vellore Crescent
Vaughan, Ontario
L4H 0N9

Dear Sir:

Re: 2371 Camilla Road, Mississauga, 180, 185 & 189 Mateo Place, Mississauga, Ontario

We are pleased to issue our commitment to arrange first mortgage financing on the above referenced properties on the following terms and conditions.

- Loan Amount:** FIVE MILLION, FIVE HUNDRED THOUSAND DOLLARS (\$5,500,000).
- Interest Rate:** 9.5% percent per annum, calculated and payable interest only monthly.
- Term:** 1 year.
- Privileges:** The mortgage will be closed for three months and open thereafter upon receipt of one month's written notice and payment of one month's interest bonus.
- Amortization:** Interest only
- Security:**
 1. A first mortgage on the land and all existing and future improvements on the properties municipally known as 2371 Camilla Road, Mississauga and 180, 185 & 189 Mateo Place, Mississauga, Ontario.
 2. An assignment of all municipal approvals and agreements, construction contracts, project letters of credit and all architectural and mechanical drawings.
 3. An assignment and pledge of all securities posted in relation to the subject property including but not limited to, cash security posted, directly with the City/Town/Municipality. The borrower is to provide a direction to the party holding the cash security i.e., City/Town/Municipality, directing all releases/reductions in the cash security to the lender.
 4. A first general security agreement in a form satisfactory to the lender's solicitor.
 5. The personal guarantee of Junaid Sadiq.

6. The corporate guarantee of Camilla Court Homes Inc.
7. The corporate guarantee of Elite Homes Inc.
8. A first general assignment of rents in a form satisfactory to the lender's solicitor.
9. Such other reasonable documentation as the lender's solicitor may consider advisable.

Advance of Funds:

The advance of funds will be made when the lender's solicitor can provide their certificate(s) of title and when all other conditions precedent to such advance as stated herein are satisfied. Advance of funds will be subject to the following conditions:

Conditions:

1. Satisfactory real estate appraisal by a real estate appraiser approved by the lender indicating a completed collective value of not less than \$8,400,000. It is a further condition for the making of this loan that the report be addressed to the lender or that the lender is authorized by the appraiser that he can rely on the reports for lending purposes.
2. Satisfactory evidence that 185 Mateo Place has been sold for \$2,006,000.
3. Satisfactory evidence that the properties are zoned to permit the current and proposed use.
4. Satisfactory evidence that the total cost to complete the four houses is not more than \$1,400,000.
5. All local improvement charges, realty taxes and other charges affecting the property shall have been paid to the date of the advance of funds. The charge shall include a provision for the collection of property taxes by the lender, at the lender's option. Payment of taxes by the lender can be waived or asked for at any time during the term of the mortgage.
6. The borrower shall provide on a best effort's basis the lender with existing surveys of the property by an Ontario Land Surveyor. Said surveys are to be satisfactory to the lender's solicitor, acting reasonably.
7. The borrower shall provide the lender with a complete set of plans and a construction budget., which is o include the value of all work in place and the cost to complete for each house.
8. All reasonable engineering, inspections, title, survey and legal customary expenses of the lender are for the account of and shall be paid by the borrower.
9. Satisfactory physical site inspection.

10. Title and all security must be satisfactory to the lender's solicitor.
11. Title insurance in a form satisfactory to the lender's solicitor.
12. In the event that any payment is returned to the lenders for any cause whatsoever, including there being insufficient funds in the borrower's account to cover same, the lender will be entitled to reimbursement for all bank charges related to the dishonoured cheque in addition, the lender or administrator's time for collection will be charged at a rate of \$300 per hour and all time will be docketed and charged to the borrower's account. These charges will apply to all administration costs related to any default under the mortgage including but not limited to collection costs related to late payments, insurance cancellation and work orders affecting the property. All payments must be received no later than 1:00 P.M. or they shall be deemed earned the following business day.
13. The lender shall be provided with original or certified copies of a builder all risk insurance policy, terms and insurance company must be satisfactory to the lender. Fire insurance should include extended coverage with full replacement value for all structures and the interests of the lender, noting the lender as additional named insured. In addition, liability insurance coverage is to be in an amount not less than \$2,000,000. Such insurance policy to provide a notation that it cannot be cancelled prior to the lender receiving thirty days written notice of said cancellation.
14. The borrower will provide a series of post-dated cheques at the time of closing. In the event the loan is syndicated to more than one investor, it will be at the lender's option to direct that mortgage payments be made in proportion to the individual investor's proportionate share.
15. The borrower and guarantors shall provide financial and supporting information as the lender may require, including the following: Unaudited Financial Statements; and Net Worth Statement of the guarantors. All borrowers and guarantors will complete an application on the lenders standard form and upon execution of this commitment will provide photo identification.
16. In the event of the borrower selling, transferring or conveying title to the lands, or if there is a change in the beneficial ownership, the mortgage will become due and payable, save and except the transfer from the current owner to a corporation of which the corporation shall have as its officer, director and majority shareholder, the borrower's shareholders with satisfactory evidence to the mortgagee. It is understood and agreed that such a transfer shall not relieve the borrower from its obligations.
17. 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

A handwritten signature in blue ink, consisting of a stylized name and a horizontal line underneath. To the left of the signature is a circular stamp containing the initials 'NB'.

payment of the principal monies without receiving three months interest bonus in advance of the principal monies.

18. If at any time before or after the advance, there is or has been any material discrepancy or inaccuracy in any written information, statements or representations therefore made or furnished by or on behalf of the borrower, then the lender shall be entitled forthwith to cancel the lender's obligations hereunder or declare any monies therefore advanced with interest to be forthwith due and payable and retain all fees provided by the borrower.

19. Any payment (other than payment of the regular payments of interest) that is made after 1:00 p.m. on any date or 11:00 a.m. on a Friday or the business day preceding a statutory holiday, shall be deemed for the purpose of calculation of interest, to have been made and received on the next bank business day. For greater certainty, if funds are received (or deemed received) on a Friday after 11:00 a.m. or the day preceding a statutory holiday, interest will be payable to the next bank business day.

20. Has the borrower or any of the principals of the borrower (directors, officers, owners, partners or majority shareholders) been involved in any of the following:

(a) Been convicted, found guilty of or currently charged with any criminal or regulatory offence under any law of any province, territory, state or country Yes/ No/?

(b) Currently the subject of any civil proceedings or any unsatisfied judgements imposed by a civil court in Canada or elsewhere, against the developer, against the principals personally, or against a business in which they have an interest in at least ten percent of the equity shares or ownership shares of the business? Yes/ No/

(c) Within the five years before the date of this form, bankrupt, made a proposal under any legislation relating to bankruptcy or insolvency or been subject to or instituted any proceedings, arrangement, or compromise with creditors or had a receiver, receiver manager or trustee appointed to hold the assets of that person. Yes/ No/

(d) Been the subject of a regulatory investigation or proceeding, or has otherwise been subject to regulatory sanctions Yes/ No/

These questions must be asked and answered to comply with the new regulations of the Financial Services Commission of Ontario (FSCO), that went into effect on July 1, 2018.

20

10. In the event of default, Rescom Capital will be appointed as the lender's manager and will be entitled to a fee of \$300 per hour for its services and such fee will be charged to the borrower's account.

22. This commitment is open for acceptance until 5:00 PM on October 19th, 2018.

22. The first advance must be drawn down and qualified for by November 9th, 2018, failing which this letter of proposal will be terminated.

Advances:

The initial advance will be \$4,100,000. Funds will be used to repay the first and second mortgages and to establish a new construction lien holdback fund based on 10% of the value of all work in place, prior to funding. In addition, brokerage and lender's fees as well as the lender's legal fees and any outstanding charges affecting the property will be paid at the time of the initial advance.

② to pay approx \$440,000.00 in accounts receivable to trades for work that has been completed

\$300,000 will be set aside as an interested reserve to be drawn upon monthly for interest owed on advanced funds. All subsequent advances will be made from time to time in accordance to the progress inspection reports to be provided by Jason Lee of Maker Real Estate Appraisals Inc. Each advance will be made on a cost to complete basis.

At all times will the lender be holding back enough funds to complete the project. All advances will be subject to a 10% construction lien holdback which will be advanced 45 days following substantial completion and publication in the appropriate trade magazine or newspaper.

Inspection Fees:

\$350 for each inspection prior to each advance.

Partial Discharges:

Partial discharges will be provided for individual house sales, on the condition the lender receive 100% of the net proceeds of a sale, less the borrower's reasonable real estate commissions, legal fees and HST payable, but not less than \$1,750,000 per house.

This commitment is issued on the understanding that your acceptance will be accompanied by a cheque payable to Rescom Capital in Trust for \$25,000 which shall be deemed earned as a standby fee upon acceptance hereof and which will be credited toward the commission payable when the proceeds of the loan are advanced. The fee shall be forfeited if the loan is not proceeded with, due to any cause whatsoever other than the lender's default. Notwithstanding such retention, you shall remain liable for all fees and costs as referred to herein.

The \$25,000 standby fee shall be credited towards the legal fees, disbursements and HST of the lender's lawyer payable on closing and the balance thereof to be applied towards the broker/lender fee as set out in the letter dated October 16, 2018 from Rescom Capital to Camilla Court Homes Inc, Elite Homes Inc, and Junaid Sadiq

②

[Handwritten signature]

① *[Handwritten signature]*

②

③

[Handwritten signature]

Yours truly,

RESCOM CAPITAL

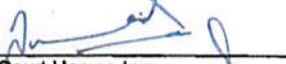


Handwritten signature of Gary Grunair in black ink, written over the printed name.

Gary Grunair

The undersigned hereby accepts the above terms and conditions.

Dated this 18th day of October, 2018.



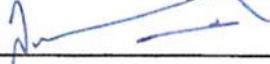
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Camilla Court Homes Inc.



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Elite Homes Inc.



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Junaid Sadiq



RESCOM Capital
1670 Bayview Avenue, Suite 400
Toronto, Ontario M4G 3C2

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October 16, 2018

Camilla Court Homes Inc.
Elite Homes Inc.
Junaid Sadiq
211 Grand Vellore Crescent
Vaughan, Ontario
L4H 0N9

Dear Sir:

Re: 2371 Camilla Road, Mississauga, 180, 185 & 189 Mateo Place, Mississauga, Ontario

Further to our letter of proposal dated October 16, 2018, this letter forms part of the conditions thereof. Your costs in obtaining the loan shall be \$275,000. Legal costs, inspection fees and disbursements are additional and such fees will be deducted from the first advance of funds. If the loan is not proceeded with, due to any cause whatsoever other than the lender's default, you shall remain liable for all fees and costs as referred to herein.

which shall comprise the lender and broker fee

Any fees earned as a result of acceptance of this Commitment Letter, together with any expenses or costs incurred by Rescom Capital, including but not limited to, appraisal, re-appraisal, inspections, re-inspections, title searches, plan review, soil tests, survey, environmental assessments and legal costs on a solicitor and its client basis, are deemed to be a charge on the Subject Property referred to herein and Rescom Capital may file and maintain a caveat on the title to the Subject Property to protect that charge and the Borrower(s) and Guarantor(s) do hereby mortgage to Rescom Capital the amount necessary to pay all fees and expenses as detailed herein as a charge against the Subject Property.

Yours truly,

RESCOM CAPITAL

[Signature]
Gary Gruneir

" It is agreed that the above fee of \$275,000 shall be paid in part from the standby fee in accordance with page 6 of the commitment letter, with the balance to be paid at the time of the sale of a 2nd property (185 Mateo Place being the 1st sold property). "

OMIT


[Signature]

The undersigned hereby accepts the above terms and conditions.

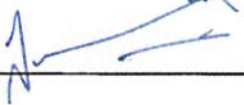
Dated this 18th day of October, 2018.



Camilla Court Homes Inc.



Elite Homes Inc.

- 

Junaid Sadiq

TAB 2

1 A. No.

2 54 Q. If I suggest to you that
3 you probably did speak to him before signing this
4 because, obviously, it's a big thing to buy a
5 house -- it's a major investment, so you must have
6 spoken to him about the contract before you signed
7 it; is that fair?

8 A. I cannot recall, but I
9 remember I did send the contract to him to check.

10 55 Q. So you sent the contract
11 to him to check, and what did he tell you?

12 REF MR. MACKLIN: Well, we can't
13 -- sorry, stop.

14 We're not waiving privilege.
15 You've got all you get.

16 MR. PREGER: I understand.

17 MR. MACKLIN: And I dare say,
18 of course with the greatest respect, you've got to
19 be careful about that. We know as counsel that
20 we're supposed to tread carefully on any question
21 that implicates solicitor-client privilege.

22 MR. PREGER: I understand.

23 56 Q. Did you also have
24 discussions with Kevin Le about the contract
25 before you signed it?

TAB 3

- (h) Notwithstanding that the Purchase Price stipulated in this Purchase Agreement is inclusive of HST, the Purchaser shall at the Purchaser's own cost and expense, be responsible for payment of HST on all closing adjustments, amounts payable for extras, amounts payable for any other item in this Purchase Agreement and any increase in the rate of HST after the date herein. The Vendor shall, however, be entitled to include in the calculation of the HST Rebate all HST payable, including those for extras and closing adjustments.
- (i) Notwithstanding anything contained in this Purchase Agreement to the contrary, the Vendor, in its sole and unfettered discretion, may require that the Purchaser apply directly for the HST Rebate after Closing and in such event the Purchaser shall pay to the Vendor by certified cheque or bank draft on Closing the amount of the HST Rebate in addition to the amount otherwise payable and the HST Rebate shall not be assigned by the Purchaser to the Vendor on Closing.
- (j) At the option of the Vendor, the Vendor shall be solely responsible for the payment of Net HST to the appropriate governmental authority.
- (k) The provisions of this paragraph supersede any provisions with respect to HST to the contrary contained in this Purchase Agreement.

NO REGISTRATION

27. The Purchaser acknowledges that this Purchase Agreement does not create an interest in the Real Property and that until a Transfer/Deed of Land is registered in favour of the Purchaser, he shall have no interest in the Real Property. The Purchaser further covenants and agrees that he will not register or cause or permit this Purchase Agreement to be registered on title to the Land and that no reference to it, or notice of it or any caution or any certificate of pending litigation, Purchaser's lien or any other notice or document of any type shall be registered on title whether or not the Vendor is in default hereunder. In the event that the Purchaser creates any encumbrance or makes any registration or causes or permits any encumbrance or registration to be made on title to the Land on or before Closing, any such action will constitute an event of default under this Purchase Agreement and the provisions of Section 30 shall apply.

Should the Purchaser be in default of his obligations under this section, the Vendor may, in accordance with the provisions of Section 32 herein, as agent and attorney of the Purchaser, cause removal of any such registration from the title to the Land or the Dwelling. In addition, should the Purchaser be in default of his obligations under this section, the Vendor, at its option, shall have the right to declare this Purchase Agreement at an end, subject to the provisions of Section 30 herein. The Purchaser hereby irrevocably consents to a court order removing any notice of this Purchase Agreement, any caution, any certificate of pending litigation, any Purchaser's lien or any other notice or document of any sort whatsoever from title to the Land or the Dwelling and the Purchaser agrees to pay all of the Vendor's costs and expenses in obtaining and registering such order (including the Vendor's Solicitors' fees and disbursements on a full indemnity basis).

SUCCESSION

28. This Purchase Agreement shall be binding upon heirs, executors, administrators, legal representatives, successors and permitted assigns of each party.

NOTICE

29.

- (a) General: Any notice required to be given pursuant to this Purchase Agreement shall be in accordance with section 15 of the Addendum.
- (b) Closing Documents: The Purchaser acknowledges and agrees that documentation pertaining to the Closing may be delivered to the Purchaser or Purchaser's Solicitors by way of making such documents available for download and/or viewing on an internet website designated by the Vendor or the Vendor's Solicitors. Should such documentation be delivered via website, the Purchaser or the Purchaser's Solicitors shall be deemed to have received such documentation on the next Business Day after notice that such documents were published on the website was received by the Purchaser or the Purchaser's Solicitors. The Purchaser and/or the Purchaser's Solicitors shall be provided with a password to be used to download and/or view such documents. The Purchaser acknowledges and agrees that the Vendor is not required to deliver "hard" or "paper" copies of any executed documents to the Purchaser or the Purchaser's Solicitors.

PS:



ownership of the condominium corporation. The condominium corporation shall be responsible for regular maintenance, repair and upkeep of the Private Works, and such Private Works are and form part of the common elements comprising the condominium. The City is not responsible in any manner whatsoever with respect to the maintenance, repair or upkeep of such Private Works. All costs and expenses associated with the construction, establishment, maintenance, repair and upkeep of such Private Works are the responsibility of the condominium corporation and the POTL owners. The private nature of the Private Works and the responsibilities of the condominium corporation have been agreed to within the context of the required servicing agreements between the Developer and the City which servicing agreements will be assigned to and fully assumed by the condominium corporation including assumption by the condominium corporation of all obligations, liabilities and covenants on the part of the Developer with respect to the private nature of such Private Works.

GENERAL

37. No waiver by the Vendor of any breach of covenant or default in the performance of any obligation hereunder or any failure by the Vendor to enforce its rights herein shall constitute any further waiver of the Vendor's rights herein, nor shall any waiver constitute a continuing waiver unless otherwise provided.
38. Each agreement and obligation of the Purchaser in Purchase Agreement, even where it is not expressed as a covenant, is considered for all purposes to be a covenant. The Purchaser will execute such other documents and assurances to carry out the intention of Purchase Agreement as may be required by the Vendor, and will deliver same to the Vendor, prior to, on or after Closing.
39. The Vendor shall have the right to assign Purchase Agreement, provided that any such assignee shall be bound by all of the covenants made by the Vendor herein, in which event the Vendor shall thereupon be released from all of its obligations hereunder.
40. The Purchaser acknowledges having been notified by the Vendor that a consumer report containing credit and/or personal information may be applied for, obtained or referred to in connection with this transaction and the Purchaser hereby consents to same and agrees to forthwith execute any documents and authorizations required by the Vendor in this regard.
41. The Purchaser agrees that this Purchase Agreement shall be, and is hereby, subordinated to and postponed to any mortgage(s) arranged by the Vendor and any advances made thereunder from time to time or liabilities secured thereunder and to any agreements, easements, licenses, rights covenants and restrictions referred to herein to which title to the Real Property may be subject. The Purchaser agrees to execute all necessary documents and assurances to give effect to the foregoing as requested by the Vendor. The Purchaser further agrees that if any cheque delivered by the Purchaser to the Vendor or the Vendor's Solicitors is not honoured, the Purchaser shall supply the Vendor or the Vendor's Solicitors with a sum (either in cash or by certified cheque) equal to the amount of such dishonoured cheque, plus the administrative fee of One Hundred and Fifty Dollars (\$150.00) plus HST within seven (7) Days of the Vendor's request for a replacement cheque.
42. The Purchaser acknowledges and agrees that keys may be released to the Purchaser at the construction site or sales office upon completion of this transaction, unless otherwise determined by the Vendor at its sole and unfettered discretion. The Vendor's communication to the Purchaser or the Purchaser's Solicitors that keys are available for release to the Purchaser constitutes a valid tender of keys on the Purchaser.
43. The Purchaser acknowledges and agrees that the Vendor shall be entitled to use any unsold dwellings as models for display and sale purposes and shall erect signs for advertising or marketing purposes at its sole discretion.
44. If any covenant, obligation or provision contained in Purchase Agreement, or the application thereof to any person or circumstance, shall, to any extent, be illegal, invalid or unenforceable, the remainder of Purchase Agreement or the application of such covenant, obligation or provision to person or circumstances other than those as to which it is held invalid or unenforceable shall not be affected thereby and each covenant, obligation or provision of Purchase Agreement shall be separately valid and enforceable to the fullest extent permitted by law.

NS
[Handwritten signature]

TAB 4

Court File No. CV-20-00643021-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

**IN THE MATTER OF SECTION 243(1) OF THE *BANKRUPTCY AND INSOLVENCY ACT*,
R.S.C. 1985, C. B-3, AS AMENDED, SECTION 101 OF THE *COURTS OF JUSTICE ACT*, R.S.O.
1990 C. C.43, AS AMENDED AND SECTION 68 OF THE *CONSTRUCTION ACT*, R.S.O. 1990, C.
30**

B E T W E E N:

C & K MORTGAGE SERVICES INC.

Applicant

- and -

CAMILLA COURT HOMES INC. and ELITE HOMES INC.

Respondents

AFFIDAVIT OF YONG YEOW (JEREEMY) TAN

I, Yong Yeow (Jeremy) Tan, of Ho Chi Minh City, in the country of Vietnam,

MAKE OATH AND SAY:

1. I am a party to the Agreement of Purchase and Sale with the Respondent, Elite Homes Inc. ("**Elite Homes**"), and, as such, have knowledge of the matters contained in this affidavit.

2. I am 54 years old and originally from Singapore. My spouse, Melissa, is a Canadian citizen who resides with me in Vietnam. Ever since we married in 2015, we have resided either at Melissa's brother's house in Vietnam, or at Melissa's mother's house in Canada.

Melissa and I have never owned a house together in Vietnam, Canada, or anywhere else. It is our dream to live in Canada together in our first home as a married couple, and to build a life around it. I have visited Canada many times and Melissa and I love this country.

3. I applied to immigrate to Canada in 2018. When I was approved in 2019, we were so excited. We began looking for the perfect house in January 2020. That is when we found the property at 180 Mateo Place in Mississauga, Ontario (**the "Property" or "180 Mateo"**) and made an offer.

4. On or about February 12, 2020, I signed an Agreement of Purchase and Sale to purchase 180 Mateo from Elite Homes for the price of \$1,758,000 (**the "APS"**). I provided Elite Homes with a total deposit of \$500,000. Of the total deposit, I paid \$400,000 to Elite Homes directly, and \$100,000 to the listing agent in trust. The balance of the purchase price was to be paid on closing, which was initially set to take place on April 30, 2020. A copy of the APS is attached as **Exhibit A**. Copies of the deposit cheques are attached as **Exhibit B**.

5. Elite Homes advised us that paying a larger deposit to it directly would allow us to speed up the closing on the Property. I agreed to pay the substantial deposit because Melissa and I wanted to move to Canada as soon as possible.

6. Although the deposit is a large amount, I was able to pay it because of my many years of savings and a substantial retirement gift paid to me by my current employer. The gift was given to me because I helped found the company that I currently work for, and because I worked for them diligently for 18 years.

7. Our plan was to move to the Greater Toronto Area, where I could open my own logistics business (I currently work as a logistics consultant in Vietnam). Affording a house in the Greater Toronto Area is very challenging. If we lose our deposit on 180 Mateo, it will take us many years to be able to save up to buy a new home. I am already 54 years old. A loss of hundreds of thousands of dollars will put my plans to move to Canada and start a business on hold.

8. Because of the pandemic, the closing did not take place on April 30. The closing date was extended a number of times, with the final closing date set for June 26, 2020. A copy of correspondence between my real estate lawyer and Elite Homes' lawyer confirming the extension of closing to June 26 is attached as **Exhibit C**.

9. We spent many hours working with Elite Homes to customize the Property to our liking. Because we wanted more space, we asked Elite Homes to tear down the wall dividing the master bedroom and the second bedroom. We also asked for customizations to be made to the foyer, the kitchen, and the shower. We also asked Elite Homes to install a security camera system. We were excited and proud to be moving to Canada to our dream home. Melissa and I both have extended families and children from previous marriages. 180 Mateo has five bedrooms and six bathrooms, so our families can visit us.

10. At the time of the events described below, the construction of the Property was nearly complete. I have been and continue to be ready, willing, and able to complete the APS. I have confirmed this in correspondence from our lawyers, dated July 10, 2020. Attached as **Exhibit D** is a copy of the letter from my lawyer, Yolanda Song, to the Receiver.

TAB 5

Court File No. CV-20-00643021-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

IN THE MATTER OF SECTION 243(1) OF THE *BANKRUPTCY AND INSOLVENCY ACT*, R.S.C. 1985, C. B-3, AS AMENDED, SECTION 101 OF THE *COURTS OF JUSTICE ACT*, R.S.O. 1990 C. C.43, AS AMENDED AND SECTION 68 OF THE *CONSTRUCTION ACT*, R.S.O. 1990, C. C30

B E T W E E N:

C & K MORTGAGE SERVICES INC.

Applicant

- and -

CAMILLA COURT HOMES INC. and ELITE HOMES INC.

Respondents

AFFIDAVIT OF GARY GRUNEIR
(Sworn August 11, 2020)

I, GARY GRUNEIR, of the Town of Markham, in the Province of Ontario, **MAKE OATH AND SAY:**

1. I am the President of C & K Mortgage Services Inc., a licensed mortgage broker which carries on business as Rescom Capital ("**Rescom**"). I have personal knowledge of the matters to which I hereinafter depose.

construction as necessary and then market and sell the Properties. Her Honour expressly addressed her sympathy for the purchasers, including Tan, but remarked that “they are caught in a situation created by the respondent who independently used the deposit money to fund the construction.” A copy of Her Honour’s endorsement is attached as **Exhibit D**.

12. A copy of the Receivership Order is attached as **Exhibit E**. Pursuant to paragraph 34, it was declared that Rescom’s security over the Properties ranks in priority to the interests, if any, of the purchasers under the agreement of purchase and sale between Elite and Tan dated February 11, 2020 and the agreement of purchase and sale between Elite and Sukhdeep Sandhu dated December 13, 2020. Pursuant to subparagraph 3(c), the Receiver was authorized to, among other things, disclaim or cease to perform any contracts of the Debtors, including agreements of purchase and sale entered into by the Debtors with respect to the Properties.

Tan’s Motion

13. Tan seeks to attack the terms of the Receivership Order despite being represented by counsel on the return of the application and seeks an Order directing the Receiver to complete the agreement of purchase and sale between Elite and Tan in respect of the Mateo Property (the “**Tan APS**”).

14. I was not informed of the Tan APS until on or about June 11, 2020 when I received it from Sadiq. Had Rescom been asked to approve the Tan APS before it was signed, we would not have approved of it because the deposit was not secured. In fact, we were shocked that Tan had tendered the deposit directly to Elite. Rescom did not make any further advances under the Loan after learning of the Tan APS.

TAB 6

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

From: Conway, Madam Justice Barbara (SCJ) <Barbara.Conway@scj-csj.ca>
Sent: Thursday, July 2, 2020 11:50 AM
To: David P. Preger <DPreger@dickinson-wright.com>; jdavies@alloway.net; dsazant@bianchipresta.com; spoquiz@poquizlaw.com; 'brosen@rosengoldberg.com' <brosen@rosengoldberg.com>; Lisa S. Corne <LCorne@dickinson-wright.com>; Janet C. Nairne <JNairne@dickinson-wright.com>
Cc: JUS-G-MAG-CSD-Toronto-SCJ Commercial List <MAG.CSD.To.SCJCom@ontario.ca>
Subject: EXTERNAL: RE: C & K Mortgage Services Inc. v. Camilla Court Homes Inc. et al., Court File No. CV-20-00643021-00CL
Importance: High

This is the return of the receivership application that I adjourned on June 18, 2020 to today's date. It proceeded by Zoom videoconference. The participants on the call are listed in the attached counsel slip.

The debtors did not file any responding materials but made submissions in opposition to the receivership, saying the record did not establish that it was just and convenient to appoint a receiver. Counsel (and the real estate agent) for the purchasers also attended and expressed their clients' upset and frustration with the pending sale. Counsel for one of the lien claimants attended to observe the hearing.

The Applicant is owed over \$2.5 million on its mortgage from the developer of two properties. The properties secured under the mortgage are under construction. One is almost complete and the other is not. On the affidavit evidence before me (which is not disputed) one of the debtors, Elite, entered into agreements to sell the properties but used the deposit funds to fund the construction and development of the properties. This has created the situation where the mortgage cannot be fully repaid from the sale proceeds. The situation is further complicated by the presence of various construction liens registered on title.

Overall, I consider it just and convenient for a receiver to be appointed to take possession and control of the properties, finance the remaining construction as necessary and then market and sell the properties, all taking into account the interests of the various stakeholders. While I am sympathetic to the concerns of the purchasers, unfortunately they are caught in a situation created by the respondent who independently used the deposit money to fund the construction.

Order to go as signed by me. This order is effective from today's date and is enforceable without the need for entry and filing.

A handwritten signature in blue ink, appearing to read "Conway J.", with a stylized flourish at the end.

Superior Court of Justice (Toronto)

TAB 7

Court File No. CV-20-00643021-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

IN THE MATTER OF SECTION 243(1) OF THE *BANKRUPTCY AND INSOLVENCY ACT*, R.S.C. 1985, C. B-3, AS AMENDED, SECTION 101 OF THE *COURTS OF JUSTICE ACT*, R.S.O. 1990 C. C.43, AS AMENDED AND SECTION 68 OF THE *CONSTRUCTION ACT*, R.S.O. 1990, C. C30

THE HONOURABLE MADAM)	THURSDAY, THE 2 nd
)	
JUSTICE CONWAY)	DAY OF JULY, 2020

B E T W E E N:

C & K MORTGAGE SERVICES INC.

Applicant

- and -

CAMILLA COURT HOMES INC. and ELITE HOMES INC.

Respondents

**ORDER
(Appointing Receiver)**

THIS APPLICATION made by the Applicant for an Order appointing Rosen Goldberg Inc. as Receiver of the assets, property and undertakings of the Respondents acquired for, or used in relation to a business carried on by the Debtors, pursuant to section 243 of the *Bankruptcy and Insolvency Act*, RSC 1985, c.B-3 (the “BIA”) and section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C-43 (the “CJA”), and as Trustee pursuant to section 68 of the *Construction Act*,

R.S.O. 1990, C. C30 (the “CA”), was heard this day by videoconference due to the COVID-19 crisis.

ON READING the Affidavit of Gary Gruneir sworn June 12, 2020 and the Exhibits thereto and on hearing the submissions of counsel for the Applicant, counsel for the Debtors, counsel for Via Trim & Doors Inc., counsel for Jeremy Tan, no one else on the service list appearing, although served as appears from the Affidavit of Service of Jennifer Samuels sworn June 15, 2020 and on reading the consent of Rosen Goldberg Inc. to act as the Receiver,

SERVICE

1. THIS COURT ORDERS that the time for service of the Notice of Application and Application Record is hereby abridged and validated so that this application is properly returnable today and hereby dispenses with further service thereof.

APPOINTMENT

2. THIS COURT ORDERS that pursuant to section 243(1) of the BIA and section 101 of the CJA, Rosen Goldberg Inc. is hereby appointed as receiver, and as trustee pursuant to section 68 of the CA (collectively, the “Receiver”), without security, of all of the assets, undertakings and properties of the Debtors acquired for, or used in relation to a business carried on by the Debtors, including the lands and premises legally described in Schedule “A” hereto, and all proceeds thereof (the “Property”).

RECEIVER’S POWERS

3. THIS COURT ORDERS that the Receiver is hereby empowered and authorized, but not obligated, to act at once in respect of the Property and, without in any way limiting the generality of the foregoing, the Receiver is hereby expressly empowered and authorized to do any of the following where the Receiver considers it necessary or desirable:

- (a) to take possession of and exercise control over the Property and any and all proceeds, receipts and disbursements arising out of or from the Property;

- (b) to receive, preserve, and protect the Property, or any part or parts thereof, including, but not limited to, the changing of locks and security codes, the relocating of Property to safeguard it, the engaging of independent security personnel, the taking of physical inventories and the placement of such insurance coverage as may be necessary or desirable;
- (c) to manage, operate, and carry on the business of the Debtors, including the powers to enter into any agreements, incur any obligations in the ordinary course of business, cease to carry on all or any part of the business, or disclaim or cease to perform any contracts of the Debtors, including, without limitation, agreements of purchase and sale entered into by the Debtors with respect to the Property ;
- (d) to engage consultants, appraisers, agents, experts, auditors, accountants, managers, counsel and such other persons from time to time and on whatever basis, including on a temporary basis, to assist with the exercise of the Receiver's powers and duties, including without limitation those conferred by this Order;
- (e) to purchase or lease such machinery, equipment, inventories, supplies, premises or other assets to continue the business of the Debtors or any part or parts thereof;
- (f) to receive and collect all monies and accounts now owed or hereafter owing to the Debtors and to exercise all remedies of the Debtors in collecting such monies, including, without limitation, to enforce any security held by the Debtors;
- (g) to settle, extend or compromise any indebtedness owing to the Debtors;
- (h) to execute, assign, issue and endorse documents of whatever nature in respect of any of the Property, whether in the Receiver's name or in the name and on behalf of the Debtors, for any purpose pursuant to this Order;

proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

31. THIS COURT ORDERS that the Applicant shall have its costs of this application, up to and including entry and service of this Order, provided for by the terms of the Applicant's security or, if not so provided by the Applicant's security, then on a substantial indemnity basis to be paid by the Receiver from the Debtors' estates with such priority and at such time as this Court may determine.

32. THIS COURT ORDERS that any interested party may apply to this Court to vary or amend this Order on not less than seven (7) days' notice to the Receiver and to any other party likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

33. THIS COURT ORDERS that this Order is effective from today's date and is not required to be entered.

PRIORITY OVER EXISTING AGREEMENTS OF PURCHASE AND SALE

34. THIS COURT DECLARES that the Applicant's security over the Property ranks in priority to the interests, if any, of the purchasers under the agreement of purchase and sale between Elite Homes Inc. and Yong Yeow Tan, aka Jeremy Tan dated February 11, 2020, and the agreement of purchase and sale between Elite Homes Inc. and Sukhdeep Sandhu dated December 13, 2019.

Conway J.

TAB 8



STEVENSON WHELTON LLP
15 Toronto Street
Suite 200
Toronto ON M5C 2E3
416.599.7900

Yolanda Song
Direct Dial: 647.847.3826
ysong@swlawyers.ca

August 18, 2020

SENT BY EMAIL

Lisa Corne
David Preger
Dickinson Wright LLP
199 Bay Street
Suite 2200
Toronto, ON M5I 1G4

Dear Counsel:

**Re: 180 Mateo Place, Court File No. CV-20-00643021-00CL
File No. 13200147**

Please find enclosed our answers to undertakings arising from Jeremy Tan's cross-examination on August 14.

Undertaking #1: This question was answered by counsel at the cross-examination. We confirm that the use of the word "may" does not indicate that we will be challenging Jeremy's eligibility for Tarion deposit protection if the Property is not transferred to him. It simply reflects that Jeremy has not and cannot yet apply for Tarion deposit protection and therefore his eligibility has not yet been finally determined.

Under Advisement #3: There were no communications between Jeremy, Melissa, and/or Kevin relating to the payment of the deposit prior to the signing of the APS.


Under Advisement #4: Please see the attached PDF for emails between Melissa and Jeremy and Kevin relating to their concerns about the deposit and the status of construction of the property.

Under Advisement #5: Communications with Elite Homes relating to customizations and upgrades began prior to the signing of the APS and continued afterwards. The communications began February 10 and continued until June 11. The communications occurred between Jeremy, Melissa, Kevin, Junaid Sadiq, and Usman Malik.

Under Advisement #7: Please see the attached PDF for emails from Junaid Sadiq to Jeremy, Melissa, and Kevin relating to closing the transaction following the delivery of the Notice of Application in these proceedings.

Yours truly,


Stevenson Whelton LLP


per. Yolanda Song

YS/amo
Enclosure

INDEX

Tab	Description
1	Emails dated June 22, 2020
2	Emails dated June 16, 2020
3	Email dated June 13, 2020
4	Email dated May 29, 2020



From: Junaid Sadiq [mailto:junaid@elitehomesinc.ca]
Sent: Monday, June 22, 2020 11:04 PM
To: Melissa Le
Cc: Kevin Le; Junaid Sadiq; Usman Malik; Jereemy Tan; Stephen Poquiz
Subject: Re: 180 mateo closing?

Dear Melissa,

Hope you are keeping well. I'm working in every capacity to get the discharge from the lender for this Property. I have retained one of the best lawyers to have this matter sorted ASAP but we can't do anything until July 2nd. Further, my lawyer is in touch with your lawyer.

As soon as I hear anything further I'll get back to you.

Thank you for your patience and cooperation.

Regards,
Junaid Sadiq

On Jun 22, 2020, at 6:39 AM, Melissa Le <melissa.le@glevietnam.com.vn> wrote:

Dear Junaid

Please advised how are you are going settle this matter?

Hope to hear from you soon.

Sent from my iPhone

On Jun 21, 2020, at 21:37, Kevin Le <kevin@urbanaddress.ca> wrote:

Hello Junaid,

Hope all is well just wanted to follow-up regarding the closing of 180 Mateo.

With everything that is going on, the hearing being moved to a different date are we are left thinking if we are going to be able to close?

I was also at the hearing on June 18th, seems like there is a large outstanding balances, leins that needs to be paid before your mortgage company will discharge the mortgage and allow the sale to take place.

Could you please let us know what is a plan of action moving forward, we are ready to close, I need to know when exactly so we can make sure it happens on that date.

I believe at this point your lawyer is putting together proof that funds are available to satisfy the outstanding balances.

Kindly advise. Thank you

Thanks

Kevin Le
Sales Representative
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F 416.205.0360
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From: [Junaid Sadiq](#)
To: [Melissa Le](#)
Cc: [Jeremy Tan](#); [Stephen Poquiz](#); [Kevin Le](#); [Usman Malik](#)
Subject: Re: FW: 2371 Camilla Road, and 180 Mateo Place, Mississauga
Date: Tuesday, June 16, 2020 4:06:33 PM

Dear Melissa,

Thank you for your email. My lawyer is working to resolve this matter ASAP and we will be ready to close on June 26th.

I'm working on getting the reming items done.

Regards,
Junaid Sadiq

On Tue, Jun 16, 2020 at 4:20 AM Melissa Le <melissa.le@glevietnam.com.vn> wrote:

Junaid

Can you please explain to us, what is going on?

Best Regards,

Melissa Le
Finance Director

GIA LINH LOGISTICS SERVICES CO., LTD.

(G LINK Logistics)

02nd Floor, VRG Building

177 Hai Ba Trung Street

Ward 06, District 3, Ho Chi Minh City, Vietnam

Tel: +84-28-3822 -3567 - Ext.108 Fax: +84-28-3822 -3568/69

Website: <http://glevietnam.com.vn>

Email: Melissa@glevietnam.com.vn / Cell#: +84 90 676 0288



HIỆP HỘI DOANH NGHIỆP DỊCH VỤ
LOGISTICS VIỆT NAM

From: Jeremy Tan
Sent: Tuesday, June 16, 2020 1:39 PM
To: Jennifer S. Samuels; info@poquizlaw.com
Cc: Lisa S. Corne; David P. Preger; Gary Gruneir; Stephen Poquiz (spoquiz@poquizlaw.com)
Subject: RE: 2371 Camilla Road, and 180 Mateo Place, Mississauga

Hi Jennifer,

I am currently in Vietnam and unable to return to Canada due to the COVID19 pandemic and can I have my Lawyer – Stephen Poquiz to represent me on this matter!

Best Regards

Jeremy Tan

From: Jennifer S. Samuels [<mailto:JSamuels@dickinson-wright.com>]
Sent: Saturday, June 13, 2020 4:55 AM
To: info@poquizlaw.com; Jeremy Tan
Cc: Lisa S. Corne; David P. Preger; Gary Gruneir
Subject: 2371 Camilla Road, and 180 Mateo Place, Mississauga

Please see attached correspondence with respect to the referenced matter.

Regards,

Jennifer S. Samuels Law Clerk

199 Bay Street Phone 416-646-3848
Suite 2200 Fax 844-670-6009
Commerce Court West Email JSamuels@dickinsonwright.com
Toronto ON M5L 1G4



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From: [Jereemy Tan](#)
To: [Melissa Le](#); [Kevin Le](#)
Cc: [Stephen Poquiz](#)
Subject: RE: 180 Mateo PI Update

Kevin,

The builder has agreed the closing on 1 May but due to covid19 and he take this opportunity to change to mid-May and then to mid-June.

Builder has making excuse to delay this closing date which what Melissa said is correct with our cad\$500,000 has been paid to them for too long.

Builder always do not reply our email and using difference email to reply and this is not professional or they want to confuse us!

We need to have the answer or can we comply if they cannot deliver as per their agreement and we can withdraw or they have to compensate us for the delay?

Stephen we need your advice.

Best Regards
Jeremy Tan

From: Melissa Le
Sent: Friday, May 29, 2020 12:40 PM
To: Kevin Le; Jereemy Tan
Cc: Stephen Poquiz
Subject: RE: 180 Mateo PI Update

Dear Kevin

After our telecom, I've talk to Jereemy and are our requirements needed you to work with Junaid to have the following issue done.

1. We need to have DPI as soon as possible, whether we can return to Canada or not because the builder have no right to keep our deposit way too long. When we received the actual date then I will ask uncle Buu to come for inspection.
2. What if the June 15, 2020 closing date is not already, what is our solution? Can we take back our deposit as he cannot deliver

when?

3. Advised him do not charge or do anything on upgrade that I did not asked or required. I will not responsible for it without my confirmation.

Dear Stephen

Please kindly advised if our closing date cannot confirm.

Thank you for your great assistant.

Best Regards,

Melissa Le
Finance Director

GIA LINH LOGISTICS SERVICES CO., LTD.

(G LINK Logistics)

02nd Floor, VRG Building

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Email: Melissa@glevietnam.com.vn / Cell#: +84 90 676 0288



C & K MORTGAGE SERVICES INC.
Applicant

-and- **CAMILLA COURT HOMES INC. et al**
Respondents

Court of Appeal File No. C68751
Ontario Superior Court File No. CV-20-00643021-00CL

COURT OF APPEAL FOR ONTARIO
PROCEEDING COMMENCED AT TORONTO

**COMPENDIUM OF THE RESPONDENT,
C & K MORTGAGE SERVICES INC.**

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Lawyers for the Respondent, C & K Mortgage Services Inc.