

**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, AND SECTION 101 OF THE *COURTS OF JUSTICE ACT*, R.S.O. 1990 C. C.43, AS AMENDED**

**B E T W E E N:**

**B&M HANDELMAN INVESTMENTS LIMITED, FLORDALE HOLDINGS LIMITED,  
M. HIMEL HOLDINGS INC., 1530468 ONTARIO LTD., MAXOREN INVESTMENTS,  
and SHEILACO INVESTMENTS INC.**

Applicants

- and -

**CHRISTINE DROTOS**

Respondent

**FACTUM OF THE APPLICANTS**

October 4, 2018

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## PART I – INTRODUCTION

1. A priority dispute between a first and second mortgagee is ordinarily no contest. The first in line takes before the second. But this is no ordinary contest. In this case, the First Mortgage (hereinafter defined) secures nothing, or significantly less than claimed.

2. The Applicants move for an Order requiring Rosen Goldberg Inc., the Court-appointed receiver in this proceeding (the “**Receiver**”), to satisfy the Second Mortgage (hereinafter defined) in full from the proceeds of sale of the property municipally known as 4 Birchmount Avenue, in Toronto (the “**Property**”).

## PART II – SUMMARY OF FACTS

### Background

3. The Receiver was appointed by Order of McEwen J. dated April 13, 2018 upon application by the Applicants.<sup>1</sup>

4. Prior to the Receiver’s sale of the Property, the Applicants (collectively hereinafter referred to as the “**Second Mortgagee**”) held the second mortgage (the “**Second Mortgage**”) on the Property.<sup>2</sup>

5. Although served, the application to appoint the Receiver was not opposed by Pillar Capital Corporation (“**PCC**”), the assignee of the First Mortgage, or World Finance Corporation (“**WFC**”), the holder of an interest in the Third Mortgage (hereinafter defined). In his endorsement, McEwen J. noted that there was reason to believe that the first and third mortgagees’ statements were inflated.<sup>3</sup>

6. Pursuant to an Approval and Vesting Order of Dunphy J. dated June 1, 2018, the Receiver was authorized to complete a sale of the Property.<sup>4</sup>

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<sup>1</sup> Order of Justice McEwen dated April 13, 2018, Tab 2A of the Moving Parties’ Motion Record at pp. 23-39.

<sup>2</sup> Second Mortgage, Tab 2I of the Moving Parties’ Motion Record at pp.82-83.

<sup>3</sup> Endorsement of Justice McEwen dated April 13, 2018, Tab 2B of the Moving Parties’ Motion Record at pp. 41.

<sup>4</sup> Approval and Vesting Order of Justice Dunphy dated June 1, 2018, Tab 2C of the Moving Parties’ Motion Record at pp. 43-52.

7. The Approval and Vesting Order was made over the objections of PCC and WFC. PCC and WFC are related entities and both were (and are) represented by Brauti Thorning Zibarras LLP (“**BTZ**”) in this proceeding.

8. WFC sought to appeal the Approval and Vesting Order. On June 13, 2018, Paciocco J.A. declared that WFC did not have an appeal as of right and leave to appeal should not be granted. Paciocco J.A. further held that the Receiver’s and the Second Mortgagee’s costs of the motion before him were to be assessed by a judge of the Commercial List in the within proceeding.<sup>5</sup> In fact, those costs have not yet been assessed.

9. The transaction was completed on June 15, 2018 for a sale price of \$3.45 million.

### **Competing Claims to a Limited Pool**

10. Based on the most recent figures provided by the Receiver, \$2,955,146 was available for distribution from the sale of the Property.

11. To reduce the bleeding under the Second Mortgage, on August 31, 2018, Conway J. approved an interim distribution to the Second Mortgagee of \$350,000.

12. As of June 14, 2018, PCC claimed to be owed \$2,360,003.25 plus legal costs under the First Mortgage (“**PCC’s Claim**”).<sup>6</sup> As of June 19, 2018, the amount owing under the Second Mortgage was \$1,135,753.39, excluding legal costs. Upon receiving the \$350,000 interim distribution on August 31, 2018, the Second Mortgagee paid its lawyers Dickinson Wright LLP (“**DW**”) \$75,000 on account of legal fees in this proceeding and applied \$275,000 to reduce the indebtedness under the Second Mortgage, leaving a balance owing of \$860,753.39 as of August 31, 2018, including accrued interest since June 19, 2018.

13. The amount which remains available for distribution is \$2,605,146. Therefore, PCC’s Claim (if accepted) will result in a substantial shortfall under the Second Mortgage.

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<sup>5</sup> Decision of Justice Paciocco dated June 13, 2018, Tab 2D of the Moving Parties’ Motion Record at pp. 54-71.

<sup>6</sup> Mortgage Statement, Tab 2X of the Moving Parties’ Motion Record at pp. 183.

14. The risk of a shortfall is increasing with the passage of time. Assuming that the within Motion is decided on October 12, 2018, a further \$38,487.16 of interest will have accrued under the Second Mortgage since June 19, 2018.<sup>7</sup>

### **Overview of the Second Mortgagee's Position**

15. The Second Mortgagee submits that:

- (a) no funds are owing under the First Mortgage as the funds tendered to Home Trust Company ("**Home Trust**") were tendered in exchange for a discharge of the First Mortgage;
- (b) alternatively, if the assignment of the First Mortgage to PCC is valid, PCC's Claim is grossly inflated and PCC is estopped from recovering anything more than what it paid for the First Mortgage because of the assurances its principal, Ara Missaghi ("**Missaghi**"), gave to the Second Mortgagee. If not for Missaghi's assurances, the Second Mortgagee would have sold the Property under power of sale long ago and avoided the costs of this receivership altogether;
- (c) PCC has failed to prove the amount claimed under the First Mortgage;
- (d) in light of the conduct of PCC in this proceeding, none of PCC's legal costs should be recoverable under the First Mortgage; and,
- (e) PCC's Claim should also be reduced by the professional costs which the Receiver and the Second Mortgagee have been put to in this proceeding.

### **The Second Mortgage**

16. The Second Mortgage was registered on May 27, 2008, in the principal amount of \$900,000, with interest payable at 12% per annum.<sup>8</sup> It was fully advanced on closing.<sup>9</sup>

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<sup>7</sup> The Second Mortgagee's legal fees and disbursements since July 31, 2018 are not included in these figures.

<sup>8</sup> Second Mortgage, Tab 2I of the Moving Parties' Motion Record at pp. 82-83.

<sup>9</sup> Statement of Advance, Tab 2J of the Moving Parties' Motion Record at pp. 87-88.

### **The First Mortgage**

17. The Second Mortgage was subordinate to a first mortgage registered on September 27, 2006 in the principal amount \$1.425 million in favour of Home Trust (the “**First Mortgage**”).<sup>10</sup> At the time the Second Mortgage transaction was completed, the amount owing under the First Mortgage was \$1,392,375.98.<sup>11</sup>

### **Missaghi and the Third Mortgage**

18. The Second Mortgage was current until May 27, 2009, when payments from the mortgagor ceased altogether.<sup>12</sup>

19. In the summer of 2009, after enforcement proceedings were initiated under the Second Mortgage, Stephen Handelman (“**Handelman**”), Vice President of B & M Handelman Investments Limited (one of the Applicants), was approached by Missaghi. Handelman did not know and had never had prior dealings with Missaghi.<sup>13</sup>

20. Missaghi told Handelman that he held a small third mortgage on the Property and wished to protect his position by buying the Second Mortgage.<sup>14</sup> A third mortgage had in fact been registered on October 7, 2008 in the principal amount of \$35,000 in favour of DMS Inc. (the “**Third Mortgage**”).<sup>15</sup>

21. To avoid the aggravation of selling the Property under power of sale, Handelman agreed to sell the Second Mortgage to Missaghi for \$850,000 provided that payment was received before the end of September 2009.<sup>16</sup>

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<sup>10</sup> First Mortgage, Tab 2K of the Moving Parties’ Motion Record at pp. 90-91.

<sup>11</sup> Reporting Letter from Harvey Spring dated June 5, 2018, Tab 2J of the Moving Parties’ Motion Record at pp. 85-86.

<sup>12</sup> The Affidavit of Stephen Handelman sworn July 30, 2018 (“**Handelman Affidavit**”), Tab 2 of the Moving Parties’ Motion Record at para. 17.

<sup>13</sup> *Ibid* at para. 18.

<sup>14</sup> *Ibid* at para. 19.

<sup>15</sup> Third Mortgage, Tab 2L of the Moving Parties’ Motion Record at p. 93-94.

<sup>16</sup> Handelman Affidavit, *supra* note 12 at para. 20.

### **Missaghi's Assurances to the Second Mortgagee**

22. After the \$850,000 failed to materialize by the end of September 2009, Missaghi and Handelman spoke fairly regularly. During their discussions, Missaghi assured Handelman that the funds would eventually be forthcoming at which time he would make a further proposal to buy the Second Mortgage. Missaghi also assured Handelman that in the interim, to protect his position, he would make protective payments under the Third Mortgage to keep the First Mortgage current, make monthly payments of \$8,000 to the Second Mortgagee, and that he would look after paying realty taxes.<sup>17</sup>

23. Handelman relied on Missaghi's assurances and in fact for many years the Second Mortgagee received monthly payments of \$8,000 from Missaghi's office. During that time, Missaghi and Handelman often spoke and Missaghi consistently assured Handelman that Home Trust was being kept current through payments under the Third Mortgage and that he was paying realty taxes. Handelman relied on Missaghi's assurances as payments of \$8,000 per month were consistently received under the Second Mortgage. Moreover, the Second Mortgagee never received a notice of sale under the First Mortgage, which reinforced Handelman's belief in and reliance upon Missaghi's assurances that he was servicing the First Mortgage.<sup>18</sup>

24. If not for Missaghi's assurances and the Second Mortgagee's consistent receipt of \$8,000 per month in accordance with his assurances, the Second Mortgagee would have promptly taken steps to enforce the Second Mortgage rather than allow its position to be eroded by the accrual of realty taxes, interest and bogus charges under the First Mortgage.<sup>19</sup>

25. In retrospect, it is apparent that Missaghi's assurances to Handelman were made with the deliberate intention that the Second Mortgagee would rely upon them so that Missaghi would be in a position to inflate the First Mortgage and siphon the equity out of the Property to the Second Mortgagee's detriment - precisely as PCC is now attempting to do.

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<sup>17</sup> *Ibid* at para. 21.

<sup>18</sup> *Ibid*.

<sup>19</sup> *Ibid* at para. 22.



### **The Second Mortgagee Becomes Concerned**

26. As Handelman, through B & M Handelman Investments Limited, was also an investor/participant in a number of mortgage loans associated with Missaghi which are the subject of the proceedings in *Comfort Capital Inc. et al v. Anne Yeretsian et al*, in Court File No. CV-592103-00CL, in which Rosen Goldberg Inc. is also the Court-appointed receiver, in the latter part of January of 2018, Handelman became concerned that Missaghi may have been acting dishonestly in relation to the Property. He contacted Kimberly Gabriel (“**Gabriel**”), a real estate lawyer at Garfinkle Biderman LLP, to review title to the Property.<sup>20</sup>

27. Handelman learned from Gabriel that the First Mortgage had been transferred by Home Trust to PCC on May 5, 2015.<sup>21</sup> According to the Transfer of Charge, the transfer was given for \$1,372,368.70, which Home Trust received almost nine (9) months earlier, on August 14, 2014.<sup>22</sup>

28. Handelman was aware from speaking with Missaghi previously that the First Mortgage had been transferred to PCC. Missaghi told Handelman that PCC was a mortgage lender based in Western Canada (which was a lie). He assured Handelman that he was continuing to keep the First Mortgage current under the Third Mortgage notwithstanding that it had been transferred to PCC.<sup>23</sup>

29. Through Gabriel, Handelman also learned that the Third Mortgage had been transferred to 2176506 Ontario Inc. on December 2, 2008, further transferred to WFC on April 27, 2014 and again transferred (in part) to Money Gate Mortgage Investment Corporation (“**MGMIC**”) on December 1, 2017. Missaghi had never mentioned that the Third Mortgage changed hands and Handelman had never before come across the transferees of the Third Mortgage.<sup>24</sup>

### **The Second Mortgagee Tries to Obtain a Statement from PCC**

30. To determine what was owing under the First Mortgage, on January 26, 2018, Gabriel obtained a corporation document list and corporation profile report in respect of PCC. According

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<sup>20</sup> *Ibid* at para. 23.

<sup>21</sup> *Ibid* at para. 24.

<sup>22</sup> Transfer of Charge, Tab 2M of the Moving Parties’ Motion Record at p. 96-97.

<sup>23</sup> Handelman Affidavit, *supra* note 12 at para. 24.

<sup>24</sup> *Ibid* at para. 25; Transfers of Charge, Tab 2N of the Moving Parties’ Motion Record at p. 99-102.

to it, Laila Alizadeh (“**Alizadeh**”), Missaghi’s wife, was an officer or director of PCC prior to the filing of a change notice on June 1, 2017.<sup>25</sup>

31. On January 29, 2018, Gabriel wrote to PCC at the addresses listed in the corporation profile report, including Missaghi’s residence at 133 Boake Trail in Richmond Hill, and to Anita Verma (“**Verma**”), a lawyer listed in the address for service in the Transfer of Charge to PCC. In her letter, Gabriel requested a statement under the First Mortgage.<sup>26</sup>

32. Verma responded to Gabriel on February 1, 2018: “I am in receipt of your letter. I wish to advise you I am not retained by Pillar Capital. Notably, I haven’t had contact with Pillar Capital since I last acted for them one a one-off transaction in 2014.” Verma further suggested that Gabriel contact Missaghi by email at [ara.missaghi@gmail.com](mailto:ara.missaghi@gmail.com).<sup>27</sup> In fact, no statement was delivered by PCC to the Second Mortgagee until June 5, 2018, well after the Receiver’s appointment on April 13, 2018.

### **PCC’s Statement Inflated and Not Reconcilable with WFC’s Statement**

33. Although no statement was delivered by PCC to the Second Mortgagee until June 5, 2018, on March 12, 2018, a business associate of Handelman, Gary Gruneir, President of Rescom Capital, received emails from Ben Katebian of MGMIC, attaching statements from WFC under the Third Mortgage and PCC under the First Mortgage. According to the statements, as of November 1, 2017, \$2,174,880 was owing under the First Mortgage and \$5,948,054 was owing under the Third Mortgage.<sup>28</sup>

34. Consistent with Missaghi’s assurances to Handelman, the breakdown under the Third Mortgage indicated that monthly payments had been made towards the First Mortgage and the Second Mortgage and added to the indebtedness under the Third Mortgage.<sup>29</sup>

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<sup>25</sup> Corporation Profile Report of Pillar Capital Corporation produced January 26, 2018, Tab 2O of the Moving Parties’ Motion Record at p. 104-108.

<sup>26</sup> Letter from Kimberly Gabriel (“**Gabriel**”) dated January 29, 2018, Tab 2P of the Moving Parties’ Motion Record at p. 110-111.

<sup>27</sup> Email thread between Gabriel and Anita Verma dated February 1-2, 2018 (“**Email Thread Between Gabriel and Verma**”), Tab 2Q of the Moving Parties’ Motion Record at p. 113-114.

<sup>28</sup> Email from Ben Katebian to Gary Grunier and enclosed statements dated November 1, 2017, Tab 2R of the Moving Parties’ Motion Record at p. 126-127.

<sup>29</sup> Breakdown under the Third Mortgage, Tab 2R of the Moving Parties’ Motion Record at p. 118-121.

35. However, PCC's statement under the First Mortgage made no sense at all and was irreconcilable with the WFC's statement under the Third Mortgage. According to the Transfer of Charge from Home Trust to PCC, \$1,372,368.70 was owing under the First Mortgage as at August 14, 2014. Given Missaghi's repeated assurances to Handelman that the First Mortgage was being serviced under the Third Mortgage, the amount owing to PCC in priority to the Second Mortgage should not have exceeded \$1,372,368.70.<sup>30</sup>

36. According to the parcel register in respect of the Property, \$307,981.00 was paid on behalf of PCC to the City of Toronto on November 30, 2015 to cancel a tax arrears certificate.<sup>31</sup> Given Missaghi's assurances that realty taxes were kept current under the Third Mortgage, the tax payment should have been made on behalf of WFC rather than PCC.

37. The eventual cessation of payments under the Second Mortgage, PCC's failure to provide a statement under the First Mortgage in response to Gabriel's request and the seemingly irreconcilable statements under the First Mortgage and the Third Mortgage prompted the Second Mortgagee's application to appoint the Receiver.

### **PCC's Statement Not Reconcilable with WFC's Statement for a Second Time**

38. On June 5, 2018, a new set of statements under the First Mortgage and Third Mortgage was delivered on behalf of PCC and WFC, together with accompanying breakdowns. According to these statements, as of May 29, 2018, \$2,534,582.77 was owing under the First Mortgage (instead of \$2,174,880.00 as of November 1, 2017) and as of May 14, 2018, \$6,700,916.93 was owing under the Third Mortgage (instead of \$5,948,035.00 as of November 1, 2017).<sup>32</sup>

39. Bizarrely, in the breakdown calculation which accompanied PCC's statement, the opening balance under the First Mortgage was not \$1,372,368.70, but was instead \$1,699,321.48. Moreover, PCC's breakdown was calculated over a 49 month period, notwithstanding that its statement was dated May 29, 2018, approximately 46 months following the payout of Home Trust.

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<sup>30</sup> *Ibid*; Handelman Affidavit, *supra* note 12 at para. 31.

<sup>31</sup> Cancellation Certificate, Tab 2S of the Moving Parties' Motion Record at p. 129.

<sup>32</sup> Email from Caitlin Fell ("Fell") to David Preger ("Preger") dated June 5, 2018 and enclosed statements and breakdowns under First Mortgage and Third Mortgage, Tab 2T of the Moving Parties Motion Record at p. 131-140.

PCC also purported to charge an annual rate of interest of 8.25%, notwithstanding that the annual rate under the First Mortgage was 7.5%.

40. Also, unlike in PCC's November 1, 2017 statement, in its new statement PCC purported to claim, among other things, property management fees of \$19,3679.50, property maintenance of \$33,222.00, legal fees "on account" of \$25,000 and, additionally, "legal fee & protective disbursements" of \$35,000.00.<sup>33</sup> No explanation was given for why these items were not included in the November 1, 2017 statement.

### **The First Mortgage Should Have Been Discharged**

41. To compound the confusion, shortly after the new set of statements was delivered, the Second Mortgagee received documents from the Receiver in relation to the payout of Home Trust.<sup>34</sup>

42. According to the documents (which consist of lawyers' letters), in late July of 2014, Gowlings, who acted for Home Trust, repeatedly notified Rasik Mehta ("**Mehta**"), a lawyer, and Verma, both of whom acted for the payor of the First Mortgage, that in order to assign the First Mortgage, Home Trust required a direction pursuant to section 2 of the *Mortgages Act* from a party with an equity of redemption in the Property.<sup>35</sup> Moreover, it is clear from the letter Verma delivered to Gowlings on August 15, 2014, that payment was tendered to Home Trust with the payor's intention that the First Mortgage be discharged.<sup>36</sup>

### **The Second Mortgagee Raises Concerns with PCC and WFC; Responses Unsatisfactory**

43. On June 18, 2018, DW emailed BTZ to lay out the Second Mortgagee's concerns. BTZ responded on June 19, 2018. Its responses are highlighted in yellow in the thread below.

My clients' concerns are as follows:

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<sup>33</sup> *Ibid.*

<sup>34</sup> Correspondence from William Walker and Anita Verma in relation to the payout of Home Trust ("**Correspondence re Home Trust Payout**"), Tab 2U of the Moving Parties' Motion Record at p. 142-146.

<sup>35</sup> PCC had no equity of redemption when Home Trust was paid out, as it was not a mortgagee of the Property.

<sup>36</sup> Letter from Anita Verma to Home Trust dated August 15, 2014, Tab 2U of the Moving Parties' Motion Record at p. 146.

(a) The Transfer may be invalid as the First Mortgage should have been discharged when Home Trust was paid out. Gowlings repeatedly notified Mr. Mehta and Ms. Verma that in order to assign the First Mortgage they required a direction pursuant to section 2 of the Mortgages Act from a party with an interest in the equity of redemption. Pillar had no equity of redemption, as it was not a mortgagee of the Birchmount property when Home Trust was paid out. Moreover, it is clear from Ms. Verma's letter of August 15, 2014 that payment was tendered to Home Trust in exchange for a discharge of the First Mortgage. It is not clear from the correspondence who Mr. Mehta and Ms. Verma were representing when Home Trust was paid out. That begs the question as to who paid Home Trust. It is also suspicious that although Home Trust was paid in full on August 15, 2014, the Transfer was not registered until May 5, 2015. As you may be aware, Rasik Mehta is subject to serious allegations by the Law Society for knowingly assisting fraud in connection with acting in real estate transactions involving numerous properties, including Malmo and Toronto Street, in Barrie (see <https://lawsocietytribunal.ca/Current%20Proceedings/Mehta18H-010NOA.pdf>);

(b) Assuming the Transfer is valid, Pillar purports to charge an annual rate of interest of 8.25% under its statement. That cannot be correct. The annual rate chargeable under the Mortgage is 7.5%. There is no amending agreement registered on title evidencing a rate increase. Moreover, as you will note from the reporting letter my clients received, it was their understanding that the annual rate under the First Mortgage was 7.5%. If a rate increase was negotiated between Christine Drotos and Home Trust, my clients did not have actual notice of it and are, therefore, not subject to it; That is fine we will agree to a 7.5% interest rate instead of 8.25% Even so Home Trust did charge the rate of 8.25 %

(c) Assuming the Transfer is valid, it is clear that the balance owing under the First Mortgage on August 15, 2014 was \$1,372,368.70. August 15, 2014 was approximately 46 months ago. The opening balance under the Pillar statement is \$1,699,321.48. That cannot be right. It should be \$1,372,368.70. Also, the Pillar statement appears to be calculated over 49 months. That must also be wrong. As of today, we are 3 days past the 46th month anniversary of the Home Trust payout; Sure thats fine too we will adjust the 49 months to 46 months . The additional \$307,981.00 to the mortgage amount is because of the tax lien in place when we received the mortgage assignment. We paid those taxes and added them to the mortgage amount.

(d) Assuming the Transfer is valid, the accrual of interest under the Pillar statement must be seriously inflated. If necessary, Mr. Handelman will swear an affidavit deposing that after the Second Mortgage matured, Mr. Missaghi consistently assured him that the First Mortgage was being kept current. It was in reliance on these assurances that my clients agreed to continue to allow the Second Mortgage to remain outstanding (until they ceased receiving payments). The accrual of interest under the Pillar statement is also belied by the ballooning debt under the Word Finance statement. Surely the reason the World Finance statement is so high is because payments were being made under third mortgage in order to keep the First Mortgage and the Second Mortgage in good standing; Payment by WFC was only paid to Handleman for the 2nd mortgage. No payments were ever made to Pillar since the purchase assignment for the Home Trust mortgage. If Handleman wanted to confirm same he should have communicated with Pillar's council Verma at any

point in time to verify same. He did not so, it's not for Pillar to validate any good standing if it was not contacted by Handleman.

(e) The property management fees of \$19,379.50 and property maintenance amount of \$33,222.00 claimed in the Pillar statement are mystifying. I will separately email to you photographs of the Birchmount residence that were emailed to me after the Receiver was appointed. They tell thousands of words. The property was neither managed nor maintained by Pillar. On the contrary, it was grossly neglected by your client; and The amounts are correct based on the updated figures the , \$19,379.50 is fees related to a person hired just to pass by the property to ensure the property is not being broken into. The Management and maintenance was for the past 4 years of grass cutting of almost 2 acres of grass, , cleaning snow and removing garbage and tree cutting due to broken branches and managing the property to its caring. Any damage caused by winter or roof was done during the winter of this year and would have been repaired in Spring but the appointment of a Receiver stopped the repairs.

(f) The legal fees and protective disbursements claimed by Pillar are not supported. Please provide an accounting and backup.<sup>37</sup>

#### **No Cogent Explanation for Why First Mortgage Assigned Rather Than Discharged**

44. It is glaring from the email exchange that the question of how the First Mortgage was assigned to PCC approximately 9 months after Home Trust was repaid, instead of discharged, was not answered.

45. There is also no cogent explanation in Missaghi's responding Affidavit for how the payment in exchange for a discharge on August 14, 2014 transmogrified into an assignment on May 5, 2015. Although Missaghi deposes that: "[o]n August 14, 2014, Pillar Capital Cayman acquired the First Mortgage by way of assignment from Home Trust", in fact Pillar Capital Cayman was not incorporated until October 20, 2014.<sup>38</sup> When he was cross-examined on September 14, 2018, Missaghi testified that the funds to pay Home Trust came from Pillar Capital Cayman's shareholders. Although he undertook to produce the records of Pillar Capital Cayman, which presumably would show a shareholder loan of \$1,372,368.70, nothing has been produced.<sup>39</sup>

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<sup>37</sup> Email thread between Fell, Preger and others dated June 18-19, 2018 ("**Email Thread of June 18-19, 2018**"), Tab 2V of the Moving Parties' Motion Record at p. 148-156.

<sup>38</sup> The Affidavit of Ara Missaghi sworn September 5, 2015 ("**Missaghi Affidavit**"), Tab 1 of the Motion Record of the Responding Party, Pillar Capital Corporation (Caymen) (the "**Respondent's Motion Record**") at para. 15; Certificate of Incorporation, Tab 1N of the Respondent's Motion Record at p. 81.

<sup>39</sup> Transcript of Cross-Examination of Ara Missaghi dated September 14, 2018 ("**Missaghi Transcript**") at p. 101, q. 343-345.

46. Missaghi deposes that the timing of the assignment of the First Mortgage was delayed by the bankruptcy of the mortgagor, a certificate of pending litigation which was registered against the Property, and because the consent of the mortgagor's trustee-in-bankruptcy was required to assign the First Mortgage from Home Trust to PCC.<sup>40</sup> That is fatuous. None of these issues could possibly have delayed or precluded the First Mortgage from being assigned. Before it was paid out, Home Trust's position was unequivocal. It would only assign the First Mortgage to a party with an equity of redemption. Not only did Pillar Capital Cayman not hold an equity of redemption in the Property, it did not exist when Home Trust was paid out.

47. As of this date, the manner in which the First Mortgage was ultimately assigned to PCC, when it is unequivocally clear from the record that the funds were expressly tendered for a discharge, remains unexplained. Something is seriously amiss.

**Claim that Protective Payments to Keep First Mortgage Current Stopped After Home Trust Was Paid Out Not Reconcilable with the Evidence**

48. PCC and WFC's assertion for the first time, in the email thread of June 18-19, 2018 between DW and BTZ, that no payments were made to keep the First Mortgage in good standing after Home Trust was paid out under the First Mortgage is belied by WFC's statement of November 1, 2017 and its statement of May 14, 2018, both of which show consistent monthly accruals of \$25,882.<sup>41</sup>

49. The assertion that no payments were made to keep the First Mortgage in good standing after Home Trust was paid out is also antithetical to Missaghi's consistent assurances to Handelman that the First Mortgage was being serviced under the Third Mortgage. If payments under the Third Mortgage on account of the First Mortgage stopped when Home Trust was paid out, Missaghi is a consummate liar.

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<sup>40</sup> Missaghi Affidavit, *supra* note 38 at para. 17.

<sup>41</sup> Mortgage Statement under the Third Mortgage dated November 1, 2017, Tab 2R of the Moving Parties' Motion Record at p. 117-121; Mortgage Statement under the Third Mortgage dated May 14, 2018, Tab 2S of the Moving Parties' Motion Record at p. 136-140.

50. On June 20, 2018, DW was forwarded an email exchange between Payam Katebian (“**Payam**”) of MGMIC and Missaghi relating to MGMIC’s purchase of an interest in the Third Mortgage.

51. The email exchange, which the Second Mortgagee submits is a ‘smoking gun’, shows that at 2:07 pm on November 9, 2017, Payam was attempting to reconcile how much was owing under the Third Mortgage, based on WFC’s November 1, 2017 statement of \$5,948,035.<sup>42</sup> At 2:12 pm on November 9, 2017, Missaghi responded that: “[t]he mortgage calculator we have is based on monthly injections of \$25,882 each months [sic] for mortgage payments for 1st and 2nd mortgage and taxes.”<sup>43</sup> In other words, Missaghi’s advice to Payam was precisely the same as the longstanding assurances Missaghi gave to Handelman that payments on account of the First Mortgage, the Second Mortgage and taxes were being made under the Third Mortgage.

52. In paragraph 11 of his responding Affidavit, Missaghi baldly deposes that PCC’s statements of November 1, 2017 and May 29, 2018 “were made in error” but gives no explanation as to how such error occurred.<sup>44</sup>

53. In cross-examination, Missaghi at first insisted that WFC’s November 1, 2017 statement was prepared by Payam in connection with MGMIC preparing to acquire an interest in the Third Mortgage.<sup>45</sup> But that is not plausible. In his email to Missaghi at 2:07 pm, Payam wrote: “[h]ere is your old statement” thereby clearly evidencing that Payam received the statement from Missaghi, rather than that Payam prepared it for Missaghi.<sup>46</sup> When pressed, Missaghi eventually admitted that the figure of \$5,948,035 in WFC’s November 1, 2017 statement was calculated by him on a website, [www.thecalculatorsite.com](http://www.thecalculatorsite.com):

Q. So you will agree with me: The compound interest at pages 213 to 216 was something that came from World Finance Corporation? In other words, you prepared it, or you had plugged these numbers

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<sup>42</sup> Email from Payam Katebian (“**Payam**”) to Ara Missaghi (“**Missaghi**”) dated November 9, 2017 (2:07 pm) and enclosed documents (“**Email from Payam to Missaghi dated November 9, 2017 (2:07 pm)**”), Tab 2AA of the Moving Parties’ Motion Record at p. 211-223.

<sup>43</sup> Email from Missaghi to Payam dated November 9, 2017 (2:12 pm), Tab 2BB of the Moving Parties’ Motion Record at p. 225.

<sup>44</sup> Missaghi Affidavit, *supra* note 38 at para. 11.

<sup>45</sup> Missaghi Transcript, *supra* note 39 at p. 90-91, q. 305-308.

<sup>46</sup> Email from Payam to Missaghi dated November 9, 2017 (2:07 pm), *supra* note 42 at p. 211.



A. It is possible.

Q. -- into the screen on your computer?

A. Yes.

Q. And he [Payam] was comparing your calculation from your screen with his calculation in Excel; right?

A. Okay.

Q. And it is just coincidence, I take it you say, that the mortgage statement at page 212, the number in that statement is exactly the same as the number on page 216 of your calculation

A. What was your question again?

Q. It is just a coincidence that the number on page 212 is the same as the number on page 216?

A. Is it a coincidence? Probably no, it is not a coincidence, because I don't believe in coincidences.<sup>47</sup>

54. Putting aside that a mortgage lender would use a website to calculate that it is owed almost \$6,000,000 rather than its own accounting system, the Second Mortgagee submits that Missaghi's attempt to resile from his assurances to Handelman and to accrue interest and realty taxes under the First Mortgage from the time that Home Trust was repaid is utterly scurrilous and must not be permitted to stand.

#### **Claim that PCC Would Have Provided an Accurate Statement if Requested is Specious**

55. In the email thread between DW and BTZ of June 18-19, 2018, in connection with BTZ's advice that WFC ceased to keep the First Mortgage in good standing after paying Home Trust, BTZ suggested that it was open to the Second Mortgagee to contact Verma at any time to determine whether the First Mortgage was in good standing.<sup>48</sup> That is specious. According to Verma's email to Gabriel dated February 1, 2018, Verma only acted for PCC on one occasion in 2014 and had no ongoing lawyer-client relationship with PCC thereafter. Moreover, when Gabriel asked Verma for a statement under the First Mortgage on January 29, 2018, Verma suggested that Gabriel contact

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<sup>47</sup> Missaghi Transcript, *supra* note 39 at p. 97-98, q. 332-336.

<sup>48</sup> Email Thread of June 18-19, 2018, *supra* note 37 at p. 152.

Missaghi by email.<sup>49</sup> It is utterly disingenuous for PCC to suggest that the Second Mortgagee would have obtained an accurate statement from PCC at any time had one been requested.

### **Failure to Produce Financial Records to Support Calculation of Indebtedness Under First Mortgage and Third Mortgage**

56. Missaghi was cross-examined extensively on the financial records that exist to support the calculation of the indebtedness alleged under the First Mortgage and the Third Mortgage. He undertook to produce all records that evidence payments under the Third Mortgage to PCC, including the source of such payments, the books and records of WFC in which payments were recorded and the bank statements and cancelled cheques or bank drafts, which would presumably evidence such payments.<sup>50</sup> He has failed to produce a shred of paper in response to these undertakings. One would expect that a mortgage lender who claims to have made protective payments to a prior encumbrancer would be readily able to produce basic financial records to support having made such payments. In failing to comply with his undertakings, Missaghi has made it impossible for the Second Mortgagee to test the veracity of his assertion that protective payments under the Third Mortgage to the First Mortgage ceased when Home Trust was paid out.

### **Inability to Produce Accurate Statement under First Mortgage**

57. In the email thread between DW and BTZ of June 18-19, 2018, BTZ purported to explain that the reason the opening balance under PCC's mortgage statement was \$1,699,321.48 (as opposed to \$1,372,368.70) was because PCC paid \$307,981 to cancel the realty tax lien.<sup>51</sup> That cannot be correct. Home Trust was paid \$1,372,368.70 on August 14, 2014. According to the Tax Arrears Certificate, the City of Toronto was paid \$307,981.81 on November 30, 2015.<sup>52</sup> Those figures add up to \$1,680,350.51 rather than \$1,699,321.48.

58. If the tax payment is properly chargeable as a protective payment under the First Mortgage (which the Second Mortgagee denies by virtue of Missaghi's assurances that taxes were being paid under the Third Mortgage), the only appropriate manner to reflect the indebtedness payable under

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<sup>49</sup> Email Thread Between Gabriel and Verma, *supra* note 27 at p. 113.

<sup>50</sup> Missaghi Transcript, *supra* note 39 at p. 51-55, q. 191-201 and p.125-126, q. 417.

<sup>51</sup> Email Thread of June 18-19, 2018, *supra* note 37 at p. 152.

<sup>52</sup> Cancellation Certificate, *supra* note 31 at p. 129.

the First Mortgage would be to record an opening balance of \$1,372,368.70 on August 14, 2014 and a subsequent payment of \$307,981 as a protective payment on November 30, 2015. It is telling that PCC was repeatedly incapable of generating an accurate statement to reflect such rudimentary entries and calculations from its accounting system. A mortgage lender should be able to produce an accurate statement by simply pressing a few buttons. The only reasonable inference is that no contemporaneous entries were made by PCC in connection with the First Mortgage and no accounting journals exist from which to generate an accurate statement. Instead, Missaghi just makes things up as he goes along.

### **Bogus Property Management and Maintenance Charges**

59. Lastly, in the email thread between DW and BTZ of June 18-19, 2018, BTZ purported to justify the property management fees charged under PCC's statement of March 29, 2018 on the basis that \$19,379.50 "related to a person hired to just pass by the property to ensure the property is not being broken into." Similarly, the maintenance fees were "for the past 4 years of grass cutting... cleaning snow and removing and tree cutting due to broken branches..."<sup>53</sup>

60. On June 18, 2018, DW emailed BTZ photographs of the Property taken at the time of the Receiver's appointment. The photographs evidence the deplorable state and gross neglect of the Property. The photographs are irreconcilable with the magnitude of the fees purportedly incurred by PCC to manage and maintain the Property.<sup>54</sup>

### **PCC's Statement Inflated for a Third Time**

61. On June 20, 2018, BTZ emailed to DW a third iteration of a statement under the First Mortgage in which PCC purported to be owed \$2,360,003.15 as of June 14, 2018 (instead of \$2,534,582.77 as of May 29, 2018, or \$2,174,880.00 as of November 1, 2017).<sup>55</sup>

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<sup>53</sup> Email Thread of June 18-19, 2018, *supra* note 37 at p.153.

<sup>54</sup> Email from Preger to Fell dated June 18, 2018 and enclosed photographs, Tab 2W of the Moving Parties' Motion Record at p. 158-180.

<sup>55</sup> Email from Fell to Preger dated June 20, 2018 and enclosed mortgage statement and supporting documents ("**Fell Email dated June 20, 2018**"), Tab 2X of the Moving Parties' Motion Record at p. 182-202.

62. Adding to the confusion, in the third statement PCC was for the first time identified as a “Cayman Islands Registered Corporation”.<sup>56</sup> In cross-examination Missaghi could not give any cogent explanation for why, on one hand, a company named Pillar Capital Corporation was incorporated in Ontario on October 16, 2014 and, on the other hand, a company with precisely the same name was incorporated 4 days later in the Cayman Islands.<sup>57</sup> When questioned about why Pillar Capital Cayman was first introduced as the holder of the First Mortgage in the third iteration of PCC’s statement, he could give no cogent answer.<sup>58</sup> Missaghi admitted that in holding the First Mortgage, Pillar Capital Cayman carries on business in Ontario. He undertook to produce the business licence that Pillar Capital Cayman has to carry on business in Ontario.<sup>59</sup> In fact, no licence has been produced. Presumably, none exists and Pillar Capital Cayman is non-compliant with the *Extra-Provincial Corporations Act*.<sup>60</sup> Alternatively, Missaghi’s evidence that Pillar Capital Cayman owns the First Mortgage is a lie.

63. Confoundingly, whereas PCC’s second statement included a charge of \$33,222 for property maintenance, in the third statement \$81,360 was claimed for property maintenance. According to invoices of CMDF Landscaping and Property Maintenance Inc. produced in connection with the third statement, PCC incurred quarterly charges of \$4,800.00 plus HST on account of maintaining and managing the Property.<sup>61</sup> In cross-examination, Missaghi undertook to produce evidence of payment in respect of these charges, including cheques and bank statements against which to reconcile the payments.<sup>62</sup> He has delivered nothing. The Second Mortgagee submits that the property management of \$81,360 and the property maintenance fee charge of \$33,222 are totally bogus and represent fraudulent inflations of the indebtedness under the First Mortgage.

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<sup>56</sup> Pillar Capital Corporation Mortgage Statement dated June 14, 2018, Tab 2X of the Moving Parties’ Motion Record at p. 183.

<sup>57</sup> Missaghi Transcript, *supra* note 39 at p. 23-26, q. 94-105.

<sup>58</sup> *Ibid* at p. 128-130, q. 418-428.

<sup>59</sup> *Ibid* at p. 27-28, q. 107-109.

<sup>60</sup> R.S.O. 1990, c. E.27.

<sup>61</sup> Fell Email dated June 20, 2018, *supra* note 55.

<sup>62</sup> Missaghi Transcript, *supra* note 39 at p. 138-139, q. 462-466 and p. 143-145, q. 477-486.

### **Missaghi Delivers Forged Statement Under Second Mortgage to MGMIC**

64. On June 20, 2018, DW was also forwarded an email that Missaghi sent to Payam at 2:48 pm on November 2, 2017.<sup>63</sup> Attached to the email was a statement purportedly from the Second Mortgagee dated November 1, 2017. In fact, that statement was forged; Handelman's name is misspelled and his office address is incorrect.<sup>64</sup> The statement was forged presumably in furtherance of Missaghi's efforts to fraudulently entice MGMIC to invest in the Third Mortgage.<sup>65</sup> By minimizing the quantum owing under the Second Mortgage, Missaghi presumably intended to show that MGMIC's investment in the Third Mortgage would be better secured. Although Missaghi insists that the forged statement was prepared by Payam, that is not plausible. Missaghi emailed the forged statement to Payam, rather than vice-versa. It strains credulity that Payam would forge a statement under the Second Mortgage when MGMIC was working on acquiring an interest in the Third Mortgage.

### **Findings in Other Civil and Administrative Proceedings**

65. Missaghi has employed the strategy of inflating mortgage amounts to harm subsequent encumbrancers over other properties. In *HJLJ Investments Limited v. 2305106 Ontario Inc.*, Fitzpatrick J. wrote:

The Pickering Property had been the subject of two previous actions. Allegations were made in those two actions that the property was sold under power of sale to a related party with the first mortgage debt inflated by design to absorb the proceeds otherwise available to subsequent encumbrancers and creditors.

Two weeks after taking the assignment of the mortgage, 229 sold the property by way of a power off sale to a related company [230]...229 and 230 are managed and controlled by the same principal, Arash Missaghi.

In the course of its power of sale proceeding, 229 delivered a discharge statement alleging that the \$49,900.00 mortgage assigned to it 15 days prior secured the sum of \$441,493.32...<sup>66</sup>

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<sup>63</sup> Email thread between Adam Wygodny and Preger and enclosed email dated November 2, 2017 and mortgage statement from Missaghi to Ben Katebian, Tab 2CC of the Moving Parties' Motion Record at p. 227-229.

<sup>64</sup> Handelman Affidavit, *supra* note 12 at para. 43; Transcript of Cross-Examination of Stephen Handelman dated September 20, 2018 at p. 16-18, q. 57-60.

<sup>65</sup> Handelman Affidavit, *supra* note 12 at para. 43.

<sup>66</sup> Reasons of Justice Fitzpatrick dated October 13, 2015 ("**Reasons of Justice Fitzpatrick**"), Tab 2DD of the Moving Parties Motion Record at p. 231-244.

66. According to the decision of Matheson J. in *Stanbarr Services et al. v. Metropolis Properties et al.*, Missaghi appears to have employed the same strategy in connection with a property on Scollard Street, in Toronto (“**Scollard**”) through another corporation, Canada Investment Corporation (“**CIC**”). Missaghi’s father was a director of CIC at the relevant time. Scollard was owned by Metropolis Properties Inc. (“**Metropolis**”). Missaghi and Alizadeh were principals of Metropolis.<sup>67</sup>

67. CIC obtained an assignment of a first mortgage on Scollard in August of 2013. At the time of assignment, the amount outstanding under the first mortgage was \$779,720.86. In November of 2013, CIC issued a notice of sale under the first mortgage in which it claimed that the amount owing was \$3,271,947.36. CIC proceeded to sell Scollard under power of sale for \$5,875,000. Upon the completion of the sale, CIC delivered a discharge statement in which it claimed that approximately \$6.01 million was owing under the first mortgage.<sup>68</sup>

68. Matheson J. wrote:

[41] The evidentiary record before me does not provide an adequate foundation to conclude that the pre-assignment amounts were properly included by CIC as amounts due under the mortgage. There is no satisfactory explanation for why, if they were proper expenditures under the mortgage, they were not included in the amount outstanding at the time of the assignment of the mortgage to CIC. Mr. Safarian’s affidavit offers no explanation, nor does he purport to have personal knowledge or any belief in that regard.<sup>69</sup>

69. Her Honour concluded that the purchaser of Scollard had notice of the defect in the notice of sale, and that the sale should therefore be set aside.<sup>70</sup>

70. The purchaser of Scollard appealed. The Court of Appeal granted the purchaser’s appeal, and held that the purchaser did not have actual notice of the defect in the notice of sale. Accordingly, the sale was not set aside. The appeal, however, did not relate to the findings of Justice Matheson concerning the inflated amount claimed by CIC under the first mortgage.<sup>71</sup>

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<sup>67</sup> Decision of Justice Matheson dated August 21, 2015 (“**Reasons of Justice Matheson**”), Tab 2EE of the Moving Parties’ Motion Record at p. 246-267.

<sup>68</sup> *Ibid.*

<sup>69</sup> *Ibid.*

<sup>70</sup> *Ibid.*

<sup>71</sup> *Ibid.*

71. Mehta's license was suspended by the Law Society indefinitely on an interim interlocutory basis, largely arising from his dealings with Missaghi.<sup>72</sup> In its Reasons for Decision, the Tribunal noted that the Law Society asserted that Mehta was involved in four real estate transactions involving "questionable powers of sale with hallmarks of fraud."<sup>73</sup>

72. In the motion material in support of Mehta's interlocutory suspension, the Law Society investigator swore an affidavit, in which she deposed, among other things, that the Law Society warned Mehta about continuing to act for Missaghi based on the Law Society's concern about Missaghi having participated in "allegedly fraudulent transactions, which also involved the use of problematic power of sale proceedings."<sup>74</sup>

73. Norman Silver, a lawyer, was disciplined by the Law Society as a result of acting in 6 mortgage transactions that appear to be have been part of a large, complex mortgage fraud scheme orchestrated by Missaghi and his associates.<sup>75</sup>

74. More recently, Barry Polisuk, another lawyer, was disciplined by the Law Society in connection with providing legal services in mortgage transactions involving Missaghi.<sup>76</sup>

### **Criminal Charges**

75. Alizadeh was charged on June 20, 2018 with four counts of fraud over \$5,000, four counts of possession of proceeds of crime and one count of money laundering.<sup>77</sup>

76. According to an article published in *The Globe and Mail* on March 6, 2018, Missaghi was arrested and charged with fraud over \$5000, conspiracy to commit an indictable offence, accessory after the fact to an indictable offence and uttering forged documents.<sup>78</sup>

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<sup>72</sup> *Law Society of Upper Canada v. Mehta*, 2017 ONLSTH 15, Reasons dated January 25, 2017 ("**LSUC v. Mehta**"), Tab 2NN of the Moving Parties' Motion Record at p. 394-404.

<sup>73</sup> *Ibid* at p. 396.

<sup>74</sup> Affidavit of Mary Ann Lord (without exhibits) sworn June 17, 2016, Tab 2OO of the Moving Parties' Motion Record at p. 406-433; Letter from Mary Ann Lord to Rasik Mehta dated May 5, 2014, Tab 2PP of the Moving Parties' Motion Record at p. 435-437.

<sup>75</sup> *Law Society of Upper Canada v. Silver*, 2016 ONLSTH 82, Reasons dated May 10, 2016 ("**LSUC v. Silver**"), Tab 2QQ of the Moving Parties' Motion Record at p. 439-445.

<sup>76</sup> *Law Society of Ontario v. Polisuk*, 2018 ONLSTH 114, Reasons dated August 16, 2018.

<sup>77</sup> Charges and Bail Conditions imposed on Laila Alizadeh, Tab 2GG of the Moving Parties' Motion Record at p. 297-306.

<sup>78</sup> The Globe and Mail Article entitled, "Toronto Police lay charges in Bridle Path mortgage-fraud scheme" ("**The Globe and Mail Article**"), Tab 2HH of the Moving Parties' Motion Record at p. 308-310.

### **Others in Missaghi's Circle Involved in Mortgage Frauds**

77. A corporation profile report of WFC indicates that Troy Wilson (“**Wilson**”) is the sole director and officer of WFC.<sup>79</sup> Wilson has been linked to Missaghi and was arrested as a result of the same investigation involving Missaghi which was reported in March of 2018.<sup>80</sup>

78. As noted in *The Globe and Mail* article, the charges against Missaghi relate to a multi-million dollar fraud perpetrated with the assistance of a lawyer named Golnaz Vakili (“**Vakili**”). Vakili pleaded guilty to obstruction of justice and uttering forged documents and was sentenced to two years less a day to be served in the community.<sup>81</sup> In connection with her sentencing, Justice Brown of the Ontario Court of Justice delivered oral reasons, in which he stated:

The total amount of money defrauded from the lenders in Exhibit 1 was estimated to be about \$14 million. Some of the money defrauded was recovered, but as indicated in Exhibit 1 the exact amount is unknown. (page 9)

Extensive investigation indicates that none of the fraudulent funds went to the benefit of Ms. Vakili, but rather, went to Mr. Missaghi and others. Ms. Vakili, indeed, later found out that the various borrowers' accounts were accounts linked to Missaghi or his wife...<sup>82</sup>

### **PART III – STATEMENT OF ISSUES, LAW AND AUTHORITIES**

79. The issues for determination on this Motion are as follows:

- (a) Whether the First Mortgage should be treated as discharged?
- (b) If not, whether PCC is estopped from recovering any funds in excess of what Home Trust was paid for the First Mortgage because of Missaghi's assurances to Handelman?
- (c) Whether PCC has failed to prove its claim of what is owing under the First Mortgage?

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<sup>79</sup> World Finance Corporation Corporation Profile Report, Tab 2JJ of the Moving Parties Motion Record at p. 323-327.

<sup>80</sup> CTV News Report entitled, “Toronto Police: 4 arrested in ‘sophisticated’ mortgage fraud investigation” (“**CTV News Report**”), Tab 2KK of the Moving Parties' Motion Record at p. 329-330.

<sup>81</sup> The Globe and Mail Article, *supra* note 78 at p. 308-310.

<sup>82</sup> Transcript of the Oral Reasons of Justice Brown dated February 9, 2018, Tab 2LL of the Moving Parties' Motion Record at p. 332-386.



- (d) Whether PCC's legal costs should be recoverable under the First Mortgage?
- (e) Whether PCC's Claim should be reduced by the professional costs which the Receiver and the Second Mortgagee have been put to?
- (f) Whether similar fact evidence regarding Missaghi's conduct is admissible?

**(a) The First Mortgage was Discharged**

80. According to the lawyers' correspondence exchanged in connection with the payout of the First Mortgage, Home Trust's position was unequivocal:<sup>83</sup>

This statement is provided to you without prejudice to the letter of demand dated June 6, 2014:

We understand you have requested an assignment of this charge in lieu of discharge. Our client is prepared to provide an assignment on receipt of payment as noted above provided that it receives a Direction in accordance with Section 2 of the *Mortgages Act*. This Direction must come from a party who has an interest in the equity of redemption which in your case we understand is one of the subsequent mortgagees. The party must be identified. Please confirm how title is to be held.

81. Likewise, Verma's letter on behalf of the payor was unequivocally clear:<sup>84</sup>

Further to previous correspondence with you in connection with the above-mentioned mortgage, a certified cheque payable to your order is enclosed in the amount of \$1,372,368.70, which amount represents the principal and interest to August 15, 2014.

It is confirmed that you have advised that upon receipt of the above, you would attend to the registration of the discharge of the mortgage.

Would you kindly forward the following to this office:

1. A copy of the registered Discharge of Charge/Mortgage.
2. Release of interest in the mortgagor's insurance policy.

The undersigned trusts you will find the enclosed to be satisfactory.

82. There is no documentation in the record to suggest that Verma's request for a discharge was mistaken or countermanded and no cogent explanation as to how the request for discharge transmogrified into an assignment of the First Mortgage to PCC 9 months later. On the contrary,

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<sup>83</sup> Correspondence re Home Trust Payout, *supra* note 34 at p. 142.

<sup>84</sup> *Ibid* at p. 146.

the reasons Missaghi gives for the 9 month delay could not possibly have prevented Home Trust from assigning the First Mortgage immediately upon being paid out.

83. Section 2 of the *Mortgages Act* entitles a mortgagee whose mortgage a mortgagor is entitled to redeem to refuse to assign its mortgage to anyone who is not an existing encumbrancer or the mortgagor:

Obligation on mortgagee to transfer instead of reconveying

2 (1) Despite any stipulation to the contrary, where a mortgagor is entitled to redeem the mortgagor may require the mortgagee, instead of giving a certificate of payment or reconveying and on the terms on which the mortgagee would be bound to reconvey, to assign the mortgage debt and convey the mortgaged property to any third person as the mortgagor directs, and the mortgagee is bound to assign and convey accordingly.

Idem

(2) The right of the mortgagor to require an assignment belongs to and is capable of being enforced by each encumbrancer or by the mortgagor, despite any intermediate encumbrance; but a requisition of an encumbrancer prevails over that of the mortgagor, and as between encumbrancers a requisition of a prior encumbrancer prevails over that of a subsequent encumbrancer.<sup>85</sup>

84. It is a maxim of equity that equity considers done that which ought to have been done. In *Grant Forest Products Inc., Re*, Newbould J. stated:

The principle is well known and of some antiquity. It was explained in *Bliss v. Doyle* (1983), 44 O.R. (2d) 129 (Ont. H.C.) by Krever J. (as he then was) by the following:

In *Snell's Principles of Equity*, 27th ed. (1973), one finds the following explanation of the maxim at p. 40:

This maxim has its most frequent application in the case of contracts. Equity treats a contract to do a thing as if the thing were already done, though only in favour of persons entitled to enforce the contract specifically and not in favour of volunteers. Agreements for value are thus often treated as if they had been performed at the time when they ought to have been performed, with the same consequences as if they had then been completely performed. For example, a person who enters into possession of land under a specifically enforceable agreement for a lease is regarded in any court which has jurisdiction to enforce the agreement as being in the same position as

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<sup>85</sup> *Mortgages Act*, [R.S.O. 1990, c. M.40](#) at s. 2.

between himself and the other party to the agreement as if the lease had actually been granted to him.

Other examples of the maxim will be found in the enforcement of an imperfect trust made for value, the qualified trust for a purchaser imposed by equity upon the vendor, the rule in *Howe v. Earl of Dartmouth*, and the doctrine of conversion.<sup>86</sup>

85. Newbould J.'s reasons were upheld on appeal. S.T. Goudge J.A. wrote:

Thus, the maxim can clearly be applied if: (i) the contract, properly interpreted, imposes an obligation on a contracting party to do something that it has not done; (ii) the contract is one that can be specifically enforced; and (iii) the maxim is invoked not by a stranger, but by a party who would be entitled to specifically enforce the contract.

Where the time for performance required by the contract has passed, the application of the maxim allows the court to give recognition to the obligation from the time it ought to have been performed. This can be compared to the remedy of specific performance which typically carries only prospective effect.<sup>87</sup>

86. Insofar as there has been an abject failure on the part of PCC to explain why the First Mortgage was not discharged when payment was clearly tendered in exchange for a discharge, the Second Mortgagee respectfully submits that the First Mortgage should be treated as discharged. The Property, and the proceeds thereof, are now effectively in the hands of the Court by virtue of the appointment of the Receiver. The issue of whether the Second Mortgagee is a stranger to the First Mortgage and has standing to seek such order is a red herring. The Court is clearly in a position to declare that the First Mortgage has been discharged when the proceeds of the Property are in the hands of its officer, the Receiver.

**(b) PCC is Estopped from Recovering Any More Than What It Paid for the First Mortgage**

87. It is trite that as an equitable remedy, estoppel has evolved into a flexible doctrine to preclude unconscionable conduct or an injustice.<sup>88</sup>

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<sup>86</sup> [2009 CanLII 42046 \(ON SC\)](#) [Commercial List] at para. 39.

<sup>87</sup> [2010 ONCA 355](#) at paras. 16-17.

<sup>88</sup> *Dunn v. Vicars*, [2009 BCCA 477](#) at para. 61, quoting *Amalgamated Investment & Property Co. v. Texas Commerce International Bank*, [1982] Q.B. 84, [1981] 3 W.L.R. 565, [1981] 3 All E.R. 577 (C.A.) at p. 122.

88. As the Supreme Court of Canada stated in *Ryan v. Moore*:

Estoppel by representation requires a positive representation made by the party whom it is sought to bind, with the intention that it shall be acted on by the party with whom he or she is dealing, the latter having so acted upon it as to make it inequitable that the party making the representation should be permitted to dispute its truth, or do anything inconsistent with it.<sup>89</sup>

89. Similarly, in *Feather v. Bradford West Gwillimbury (Town)*, Rouleau J.A. wrote:

[A] person who makes an unambiguous representation, by words, or by conduct, or by silence, of an existing fact, and causes another party to act to his detriment in reliance on the representation will not be permitted subsequently to act inconsistently with that representation.<sup>90</sup>

90. Deliberate silence or passive acquiescence can constitute conduct amounting to a representation.<sup>91</sup>

91. In *Amendola v. Carelli*,<sup>92</sup> a third mortgagee inquired as to the state of the prior mortgages before advancing funds. The mortgagees confirmed that their mortgages were in good standing. In fact, the second mortgage was not in good standing as an interest payment had not been made. Morgan J. held that the actions of the second mortgagee gave rise to an equitable estoppel such that the third mortgagee was given priority over interest payments ordinarily due to the second mortgagee from the date of default onwards because the second mortgagee had made a representation intended to induce a course of conduct and the third mortgagee had relied upon the second mortgagee's representation to his detriment.

92. Quoting from Lord Tomlin in *Greenwood v. Martin's Bank Ltd.*, Justice Le Dain articulated the factors giving rise to estoppel by representation in *Canadian Pacific Hotels Ltd. v. Bank of Montreal*:

The essential factors giving rise to an estoppel are I think:

- i. a representation or conduct amounting to a representation intended to induce a course of conduct on the part of the person to whom the representation is made;

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<sup>89</sup> [2005] [2 S.C.R. 53](#) at para. 5.

<sup>90</sup> [2010 ONCA 440](#) at para. 56

<sup>91</sup> Bruce MacDougall, *Estoppel* (Markham: LexisNexis Canada Inc., 2012) at s. 5.123 ("*Estoppel*"); *Amendola v. Carelli*, [2014 ONSC 3934](#) (S.C.J.) ("*Carelli*").

<sup>92</sup> *Carelli*, *supra* note 91.

- ii. an act or omission resulting from the representation, whether actual or by conduct, by the person to whom the representation is made; and,
- iii. detriment to such person as a consequence of the act or omission.<sup>93</sup>

93. In the facts at bar:

- Missaghi consistently assured Handelman that, to protect his position, he would make protective payments under the Third Mortgage to keep the First Mortgage current, make monthly payments of \$8,000 to the Second Mortgagee, and that he would look after paying realty taxes;
- Handelman relied on Missaghi's assurances and for many years the Second Mortgagee received monthly payments of \$8,000 from Missaghi's office;
- Missaghi and Handelman often spoke and Missaghi consistently assured Handelman that Home Trust was being kept current through payments under the Third Mortgage and that he was paying realty taxes;
- After the First Mortgage was transferred to PCC, Missaghi assured Handelman that he was continuing to keep the First Mortgage current under the Third Mortgage;
- The Second Mortgagee never received a notice of sale under the First Mortgage, which reinforced Handelman's belief in and reliance upon Missaghi's assurances that he was servicing the First Mortgage; and,
- If not for Missaghi's assurances and the Second Mortgagee's consistent receipt of \$8,000 per month in accordance with his assurances, the Second Mortgagee would have sold the Property under power of sale promptly rather than allow its position to be eroded by the accrual of realty taxes, interest and bogus charges under the First Mortgage and would have avoided the costs of this receivership altogether.

**(c) Failure to Properly Account for Amount Due under the First Mortgage**

94. The Second Mortgagee's concern with the quantum owing under the First Mortgage has been front and centre in this proceeding since it was launched:

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<sup>93</sup> *Canadian Pacific Hotels Ltd. v. Bank of Montreal*, [1987] [1 SCR 711](#) at para. 33.

- McEwen J. noted in his endorsement appointing the Receiver that there was reason to believe that the amount claimed under the First Mortgage was inflated;
- PCC has still failed to prove how much is owing to it. Although Missaghi gave extensive undertakings during his cross-examination to produce financial records to support the calculation of the indebtedness alleged under the First Mortgage and the Third Mortgage, he has produced nothing. If PCC's calculation of the indebtedness under the First Mortgage was *bona fide*, one would have thought that the documents which Missaghi undertook to produce at his cross-examination on September 14, 2018 would have been delivered to the Receiver long before that date;
- The three iterations of statements under the First Mortgage are irreconcilable with the evidence. They are inconsistent with Missaghi's consistent assurances to Handelman. They are inconsistent with Missaghi's written representation to Payam on November 9, 2017. They are irreconcilable with WFC's statements under the Third Mortgage; and,
- The property management and maintenance charges claimed are unsubstantiated and bogus.

**(d) Similar Fact Evidence is Admissible**

95. The degree of caution exercised by judges in Ontario in civil cases, as opposed to criminal cases, in admitting similar fact evidence is not monolithic. In *Buck v. Morris*, decided in 2013, M.L. Edwards J. applied a more lenient approach, concentrating on the probative value of the similar fact evidence sought to be adduced.<sup>94</sup> He considered that the issue of prejudice, which dominates the determination of admissibility in criminal cases, plays a significantly lesser role in civil cases.<sup>95</sup> In his view, evidence of similar facts should be admitted if logically probative to an issue in the case, not unduly oppressive and unfair to the other side, does not consume a disproportionate amount of court time and does not bear the whole burden of proving the case.<sup>96</sup>

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<sup>94</sup> [2013 ONSC 7374 \(CanLII\)](#) at para. 9.

<sup>95</sup> *Ibid* at para. 8.

<sup>96</sup> *Ibid*.

96. In *Greenhalgh v. Douro-Dummer (Township)*,<sup>97</sup> decided in 2009, Lauwers J., prior to his elevation to the Court of Appeal, adopted the analytical framework constructed by Binnie J. in *R v. Handy*.<sup>98</sup> Lauwers J. noted that the exception to the general exclusionary rule is that similar fact evidence is admissible where its probative value exceeds prejudice, because the force of similar circumstances defies coincidence or other innocent explanation.<sup>99</sup>

97. The first step in the framework is to identify the “issue in question”, which is described as an “important control”. The “issue in question” is not the general disposition of the accused but must be relevant to some other issue beyond disposition or character. The issue in question cannot simply be credibility but must be related to a component of what must be proven in order to succeed. There must be a connectedness or nexus that is established between the similar fact evidence and the acts alleged. There is a need to pay close attention to similarities in character, proximity in time and frequency in occurrence.<sup>100</sup>

98. The second step is to identify factors that connect the similar facts to the issue in question. Factors connecting these similar facts to the circumstances include: i) proximity in time of the similar acts; ii) extent to which the other acts are similar in detail to the impugned conduct; iii) number of recurrences of the similar acts; iv) circumstances surrounding or relating to the similar acts; v) any distinctive features unifying the incidents; vi) intervening events; vii) any other factor which would tend to support or rebut the underlying unity of the similar acts.<sup>101</sup>

99. The third step is to determine whether the degree of situation-specific behaviour is sufficiently compelling to safely draw the inference sought to be drawn. Cogency increases as the fact situation moves further to the specific end of the spectrum.<sup>102</sup>

100. In the case at bar:

- The similar fact evidence adduced is not central to the Second Mortgagee’s case. Rather, the Second Mortgagee’s case rests primarily upon the evidence concerning Missaghi’s

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<sup>97</sup> 2009 CanLII 57148 (ON SC) (“*Greenhalgh*”)

<sup>98</sup> [\[2002\] 2 SCR 908](#).

<sup>99</sup> *Greenhalgh*, *supra* note 97 at para. 18.

<sup>100</sup> *Ibid* at para. 20-21.

<sup>101</sup> *Ibid* at para. 22.

<sup>102</sup> *Ibid* at para. 23.

assurances to Handelman, the corroborating evidence of the email representation Missaghi made to Payam, PCC's failure to properly account for the indebtedness owing under the First Mortgage and Missaghi's failure to comply with his undertakings to produce evidence, which if he is to be believed, would support his position. The similar fact evidence is supplementary and ancillary to the Second Mortgagee's primary evidence;

- This is not a criminal case, or a case triable by jury. The trier of fact is well-equipped to accord whatever weight and probative value to the similar fact evidence, if any, he or she considers appropriate;
- The decisions of Matheson J. and Fitzpatrick J. were each recently decided in 2015. Both cases involved assignments of mortgages followed by sales under power of sale, in which the sellers' mortgage debt was significantly inflated. As such, the degree of connectedness, the proximity in time and the similarity in detail in those cases are highly similar to the facts at bar and defy coincidence;
- Between 2015 and 2018, four different lawyers were disciplined by the Law Society in connection with services performed in relation to mortgage transaction involving Missaghi; and,
- In 2018, both Missaghi and Alizadeh were criminally charged with defrauding the same people in connection with what has been described in the press as a "sophisticated series of mortgage frauds".

#### **PART IV – ORDER SOUGHT**

101. For the foregoing reasons, the Second Mortgagee respectfully seeks an Order:

- (a) declaring that no funds are owing under the First Mortgage;
- (b) alternatively, declaring that the amount secured under the First Mortgage is \$1,372,368.70;
- (c) declaring that none of PCC's legal costs in this proceeding are recoverable under the First Mortgage; and,



- (d) further declaring that the amount secured under the First Mortgage be reduced by the professional costs of the Receiver and the Second Mortgagee in this proceeding.

**ALL OF WHICH IS RESPECTFULLY SUBMITTED** this 4<sup>th</sup> day of October, 2018.



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<sup>u</sup>David P. Preger<sup>ty</sup>

**SCHEDULE “A”**

**LIST OF AUTHORITIES**

1. *Law Society of Upper Canada v. Mehta*, 2017 ONLSTH 15
2. *Law Society of Upper Canada v. Silver*, 2016 ONLSTH 82
3. *Law Society of Ontario v. Polisuk*, 2018 ONLSTH 114
4. *Grant Forest Products Inc. (Re)*, 2009 CanLII 55379 (ONSC)
5. *Grant Forest Products Inc. (Re)*, 2010 ONCA 355
6. *Dunn v. Vicars*, 2009 BCCA 477, 2009 CarswellBC 2896
7. *Ryan v. Moore*, [2005] S.C.R. 53
8. *Feather v. Bradford West Gwillimbury (Town)*, 2010 ONCA 440
9. *Amendola v. Carelli*, 2014 ONSC 3934
10. *Canadian Pacific Hotels Ltd. v. Bank of Montreal*, [1987] 1 SCR 711
11. *Buck v. Morris*, 2013 ONSC 7374
12. *Greenhalgh v. Douro-Dummer (Township)*, 2009 CanLII 57148 (ONSC)
13. *R v. Handy*, [2002] 2 SCR 908

## **SCHEDULE “B”**

### **TEXTS OF STATUTES, REGULATIONS AND BY-LAWS**

#### **Mortgages Act, R.S.O. 1990, c. M.40**

##### **Obligation on mortgagee to transfer instead of reconveying**

2 (1) Despite any stipulation to the contrary, where a mortgagor is entitled to redeem the mortgagor may require the mortgagee, instead of giving a certificate of payment or reconveying and on the terms on which the mortgagee would be bound to reconvey, to assign the mortgage debt and convey the mortgaged property to any third person as the mortgagor directs, and the mortgagee is bound to assign and convey accordingly.

##### **Idem**

(2) The right of the mortgagor to require an assignment belongs to and is capable of being enforced by each encumbrancer or by the mortgagor, despite any intermediate encumbrance; but a requisition of an encumbrancer prevails over that of the mortgagor, and as between encumbrancers a requisition of a prior encumbrancer prevails over that of a subsequent encumbrancer.

# **TAB 1**

## Dylan E. Augruso

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**From:** Dylan E. Augruso  
**Sent:** Friday, September 14, 2018 8:16 PM  
**To:** 'cfell@btzlaw.ca'; 'ldizgun@btzlaw.ca'  
**Cc:** David P. Preger; Laura Micoli; 'rdas@byldlaw.com'; 'awygodny@byldlaw.com'  
**Subject:** Undertakings, Under Advisements and Refusals from the Examination of Ara Missaghi  
**Attachments:** TORONTO-#1478081-v1-Undertakings\_\_Under\_Advisements\_and\_Refusals\_Chart.pdf;  
TORONTO-#1478081-1-Undertakings, Under Advisements and Refusals Chart.DOCX

Counsel,

Please see attached our chart of undertakings, under advisements and refusals for the examination of Mr. Missaghi today. We ask that you provide your responses as soon as possible.

Best,  
Dylan

**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, AND SECTION 101 OF THE *COURTS OF JUSTICE ACT*, R.S.O. 1990 C. C.43, AS AMENDED**

**B E T W E E N:**

**B&M HANDELMAN INVESTMENTS LIMITED, FLORDALE HOLDINGS LIMITED, M. HIMEL HOLDINGS INC.,  
1530468 ONTARIO LTD., MAXOREN INVESTMENTS, and SHEILACO INVESTMENTS INC.**

Applicants

- and -

**CHRISTINE DROTOS**

Respondent

**CHART OF UNDERTAKINGS, QUESTIONS TAKEN UNDER ADVISEMENT AND REFUSALS GIVEN AT THE CROSS  
EXAMINATION OF ARA MISSAGHI  
(ON HIS AFFIDAVIT SWORN ON SEPTEMBER 5, 2018)**

<b>List of Undertakings from the examination of Ara Missaghi on September 14, 2018</b>					
	<b>UNDERTAKING</b>	<b>PAGE NO(S).</b>	<b>QUESTIONS NO(S).</b>	<b>RESPONSE OR PRECISE REASON FOR NOT ANSWERING</b>	<b>Disposition by the Court</b>
<b>1</b>	To produce Pillar Capital Corporation (Cayman)'s ("PCC")				

	business license to carry on business in Ontario				
<b>2</b>	To produce any statements which 2176506 Ontario Inc. (“ <b>217</b> ”) provided to World Finance Corporation (“ <b>WFC</b> ”) at the time of or shortly prior to the assignment of the third mortgage (the “ <b>Third Mortgage</b> ”) on the property known as 4 Birchmount Avenue, Toronto (the “ <b>Birchmount Property</b> ”)				
<b>3</b>	To produce a copy of any reporting letters received by WFC in connection with the transfer of the Third Mortgage to it				
<b>4</b>	To produce all evidence of all payments which 217 received in connection with the transfer of the Third Mortgage to WFC				
<b>5</b>	To provide details about any other sources of consideration for the transfer of the Third Mortgage from 217 to WFC and to produce any evidence of said consideration				
<b>6</b>	To produce all evidence that WFC had of 217’s payments to keep the first and second mortgages on the Birchmount Property in good				

	standing at the time it took an assignment of the Third Mortgage of the Birchmount Property				
<b>7</b>	To confirm the source of all payments from 217 to the first and second mortgagees of the Birchmount Property and produce records of same				
<b>8</b>	To produce any books and records of WFC, including electronic copies, in which payments from WFC to the first and second mortgagees of the Birchmount Property were recorded				
<b>9</b>	To produce bank statements relating to the accounts out of which the payments referred to in paragraph 8 of Mr. Missaghi's Affidavit were made for the period in time in which WFC made payments to either the first mortgagee or second mortgagee of the Birchmount Property				
<b>10</b>	To produce the accounting records of PCC which would show a shareholder loan to PCC for the funds used to acquire the First Mortgage				



<b>11</b>	To produce all evidence of the payment history of WFC to the first or second mortgagees of the Birchmount Property, including accounting statements, copies of cheques (front and bank), cancelled cheques and banks drafts				
<b>12</b>	To produce evidence that the sum of \$81,360.00 was paid to CMDF Landscaping and Property Maintenance Inc. (“ <b>CMDF</b> ”) by PCC, including copies of any cheques (front and back) and bank account statements to reconcile the cheques				
<b>13</b>	To produce copies of all invoices from CMDF for its property management fees and evidence of payment of same, including copies of any cheques (front and back)				
<b>14</b>	To produce the legal accounts of Anita Verna and evidence of payment of said accounts				
<b>15</b>	To produce documentary evidence to corroborate the statement of Mr. Missaghi at paragraph 6 of his Affidavit that at the time WFC acquired the Third Mortgage, the amount outstanding under the				

	Third Mortgage was approximately \$1,700,000.00				
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<b>List of Under Advisements from the examination of Ara Missaghi on September 14, 2018</b>					
	<b>REFUSALS</b>	<b>PAGE NO(S).</b>	<b>QUESTION NO(S).</b>	<b>RESPONSE OR PRECISE REASON FOR NOT ANSWERING</b>	<b>Disposition by the Court</b>
<b>1</b>	To answer whether Mr. Missaghi was petitioned into bankruptcy or made a voluntary assignment in bankruptcy in Ontario				
<b>2</b>	To produce a copy of any reporting letters which 217 received with respect to its transfer of the Third Mortgage				
<b>3</b>	To confirm whether the payment from WFC to 217 in relation to the transfer of the Third Mortgage came from a trust cheque, and if so, to confirm what the source of the funds were to the lawyer's trust account which issued the trust cheque				
<b>4</b>	To produce income tax returns for WFC and any related companies that were prepared and filed in connection with payments made by WFC or on behalf of WFC by related companies in relation to the Birchmount Property				

<b>5</b>	To answer whether the Trustee in the Bankruptcy of Christine Drotos could do anything to prevent the assignment of the Third Mortgage to WFC				
<b>6</b>	To answer whether Mr. Missaghi believes the Mortgage Statement of PCC located at page 127 of B&M Handelman Investment Limited's Motion Record ("B&M's MR") is formatted in a similar form as the Mortgage Statement of PCC located at page 132 of B&M's MR				
<b>7</b>	To produce bank account records of WFC as necessary to reconcile its payment of \$81,360.00 to CMDF				
<b>8</b>	To produce income tax returns for any companies which issued cheques to CMDF in favour of WFC				
<b>9</b>	To produce Canadian and Cayman income tax returns and financial statements for PCC				

**List of Under Advisements from the examination of Ara Missaghi on September 14, 2018**

	<b>UNDER ADVISEMENT</b>	<b>PAGE NO(S).</b>	<b>QUESTION NO(S).</b>	<b>RESPONSE OR PRECISE REASON FOR NOT ANSWERING</b>	<b>Disposition by the Court</b>

<b>1</b>	To advise whether any promissory note or assignment of security provided in relation to the transfer of the Third Mortgage from 217 to WFC was satisfied				
<b>2</b>	To advise which related company of WFC made the payments referred to in paragraph 8 of Mr. Missaghi's Affidavit and the relationship between the company and WFC				
<b>3</b>	To produce the books, records and financial statements of any companies that issued cheques to CMDF in favour of WFC				
<b>4</b>	To produce a copy of any reporting letters received by 217 with respect to the transfer of the Third Mortgage to WFC				

**B&M HANDELMAN INVESTMENTS LIMITED et al.**  
Applicants

-and- **CHRISTINE DROTOS**  
Respondent

Court File No. CV-18-594590-00CL

***ONTARIO***  
**SUPERIOR COURT OF JUSTICE**  
  
PROCEEDING COMMENCED AT  
**TORONTO**

**CHART OF UNDERTAKINGS, UNDER ADVISEMENTS  
AND REFUSALS**

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-and- **CHRISTINE DROTOS**  
Respondent

Court File No. CV-18-594590-00CL

***ONTARIO***  
**SUPERIOR COURT OF JUSTICE**  
  
PROCEEDING COMMENCED AT  
**TORONTO**

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