

**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:

**COMFORT CAPITAL INC., THE BANK OF NOVA SCOTIA TRUST  
COMPANY,  
E. MANSON INVESTMENTS LTD., FENFAM HOLDINGS INC., 593651  
ONTARIO LTD., 1031436 ONTARIO INC., ALRAE INVESTMENTS INC.,  
BARRY SPIEGEL, SHARON NIGHTINGALE, DA YID SUGAR, PHYLLIS  
SUGAR, NATIONAL TIRE LTD., 1119778 ONTARIO LIMITED, 1415976  
ONTARIO LIMITED, ALRAE INVESTMENTS INC., BAMBURGH HOLDINGS  
LTD., BEVERLEY GORDON, DIANE GRAFSTEIN, RICHARD GRUNEIR, B.  
&M. HANDELMAN INVESTMENTS LTD., RIDGEWAY OCCUPATIONAL  
CONSULTANTS INC., YER USHA INVESTMENTS INC., MIHAL TYLMAN, A.  
ELIEZER KIRSHBLUM, 593651 ONTARIO LIMITED, THE BANK OF NOV A  
SCOTIA TRUST COMPANY IN TRUST FOR BAILEY LEVENSON, THE BANK  
OF NOVA TRUST COMPANY IN TRUST FOR ROSEMONDE KELLY, ANNE  
HANDELMAN, YERUSHA INVESTMENTS INC., CELMAR INVESTMENTS  
CORP., BEVERLEY GORDON, PHILGOR INVESTMENTS LTD., BRILLIANT  
INVESTCORP INC., MAXOREN INVESTMENTS, 2227046 ONTARIO  
LIMITED, DAST PROPERTIES LIMITED, TOVA MARKOVZKI, JOSEPH  
SUCKONIC and B. &M. HANDELMAN INVESTMENTS LIMITED**

Applicants

- and -

**ANNIE YERETSIAN, 2399029 ONTARIO INC.,  
2457674 ONTARIO INC., MOSS DEVELOPMENT LTD. and  
TERRY WILSON**

Respondents

**RESPONDING MOTION RECORD OF PAYAM KATEBIAN**

September 12, 2018

**BERKOW YOUD LEV-FARRELL DAS LLP**  
Barristers  
400-141 Adelaide Street West  
Toronto, ON M5H 3L5

**Adam J. Wygodny** (54183J) [awygodny@byldlaw.com](mailto:awygodny@byldlaw.com)

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**Lawyers for Payam Katebian**

TO: SERVICE LIST

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IN THE MATTER of section 243(1) of the *Bankruptcy And Insolvency Act*, R.S.C. 1985, as amended, and section 101 of the *Courts Of Justice Act*, R.S.O. 1990, C. C.43, as amended


**AFFIDAVIT OF PAYAM KATEBIAN  
(AFFIRMED SEPTEMBER 12, 2018)**

I, PAYAM KATEBIAN, of the City of Toronto, AFFIRM:

1. I am a manager and 50% shareholder of 2450531 Ontario Limited (“245”). As such I have knowledge of the matters deposed to hereinbelow, except for those matters for which I rely upon information and believe, in which case I identify the source of my information and hereby confirm that I verily believe it to be true.
2. On January 25, 2017, I caused 245 to write a bank draft in the amount of \$400,000 to C and K Mortgage Services, to be applied to the first mortgage against the property municipally located at 7 High Point Road in the City of Toronto (the “**High Point Property**”). A true copy of this bank draft is attached hereto and marked as **Exhibit “A”**.
3. On August 21, 2018, I was advised by George Cvetkovski of Rescom Capital that this bank draft was processed on January 26, 2017, and the full amount was applied to the first mortgage against the High Point Property. A true copy of Mr. Cvetkovski’s email is attached hereto and marked as **Exhibit “B”**.
4. I therefore claim that 245 stands in the shoes of the first mortgagee for the aforesaid amount paid, and, in any event, the first mortgagee has failed to account for said payment.

5. I swear this Affidavit in response to the motion by the Receiver for directions in relation to the distribution of the proceeds of the sale of the Property and for no other or improper purpose.


**AFFIRMED BEFORE ME** at the City of Toronto, in the Province of Ontario on September 12, 2018

  
\_\_\_\_\_  
Commissioner for Taking Affidavits  
(or as may be)  
Peter Smiley

}

  
\_\_\_\_\_  
PAYAM KATEBIAN

This is **Exhibit "A"** to the Affidavit  
of Payam Katebian affirmed  
September 12, 2018



A Commissioner, etc.



10355 (12/15)

THIS DOCUMENT IS PRINTED ON WATERMARKED PAPER - SEE BACK FOR INSTRUCTIONS

# The Toronto-Dominion Bank

79148564

1470 DON MILLS ROAD  
DON MILLS, ON M3B 2X9

DATE 2017-01-25

Transit Serial No. 1284-79148564

Pay to the Order of PLAN K MORTGAGE SERVICES INC

\$ \*\*\*\*400,000.00

Authorized Signature of the Cashier or Cashier's Representative

The Toronto-Dominion Bank  
Toronto, Ontario  
Canada M5K 1A2

*[Handwritten Signature]*  
Cashier

UNDEPOSITED CANADA NEGOTIABLE BY CORRESPONDENTS AT THEIR BUYING RATE FOR DEMAND DRAFTS ON CANADA

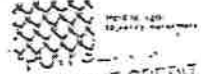
HIGH POINT - MISSISSAUGA

⑈ 79148564 ⑆ ⑆ 09612004 ⑆

⑈ 3808 ⑆

This is watermarked paper and contains invisible fibres

Printer ID#1011F-B



TO THE CREDIT OF  
PLAN MORTGAGE SERVICES INC

Endorsement - Signature or Stamp  
812 2207 214

C.I.B.C. TORONTO\_PC  
81/25/2017  
3600053764

TDCT OF1010 TOR  
20170126 JSN: 4143903303

TDCT WAR TOR  
10/20/17 JSN: 4143903303  
BACKENDUS

This is **Exhibit "B"** to the Affidavit  
of Payam Katebian affirmed  
September 12, 2018

A handwritten signature in black ink, consisting of a series of connected loops and strokes, positioned above a horizontal line.

A Commissioner, etc.

From: **George Cvetkovski** <[george@rescomcapital.com](mailto:george@rescomcapital.com)>  
Date: Tue, Aug 21, 2018 at 4:35 PM  
Subject: RE: Payam Katebian is Going To Call You  
To: Payam Katebian <[payam.ktb@moneygate.ca](mailto:payam.ktb@moneygate.ca)>

Payam, if "the above draft written Jan. 25, 2017" referred to in your e-mail below is the \$400,000.00 dated Jan.25, 2017 & processed by C & K Jan.26, 2017 then this draft was applied to the 7 HIGH POINT RD. – Missaghi mortgage.

<b>RESCOM</b> RESCOM Capital <u>1670 Bayview Avenue, Suite</u> 400 Toronto, Ontario <u>M4G 3C2</u>  <u><a href="mailto:george@rescomcapital.com">george@rescomcapital.com</a></u>  C & K Mortgage Services Inc.	<b>George Cvetkovski Controller</b> T. 416.485.2636 F. 416.482.4043  Fscs #: 10822 &11253
-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	------------------------------------------------------------------------------------------------------------------

From: Payam Katebian <[payam.ktb@moneygate.ca](mailto:payam.ktb@moneygate.ca)>  
Sent: Tuesday, August 21, 2018 4:20 PM  
To: George Cvetkovski <[george@rescomcapital.com](mailto:george@rescomcapital.com)>  
Subject: Re: Payam Katebian is Going To Call You

Hi George, could you please confirm that **the above draft written Jan 25, 2017** to C and K Mortgage Services was received by your firm and allocated to the first mortgage of 7 High Point.

On Mon, Aug 20, 2018 at 3:42 PM, Payam Katebian <[payam.ktb@moneygate.ca](mailto:payam.ktb@moneygate.ca)> wrote:

**COMFORT CAPITAL INC. *et al.***

Applicants

- and - **ANNIE YERETSIAN *et al.***

Respondents

**Court File No. CV-18-592103-00CL**

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

Proceedings commenced at **Toronto**

**AFFIDAVIT OF PAYAM KATEBIAN  
(AFFIRMED SEPTEMBER 12, 2018)**

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