

**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., MOXOREN INVESTMENTS,
and SHEILACO INVESTMENTS INC.**

Applicants

- and -

CHRISTINE DROTOS

Respondent

**FACTUM OF PILLAR CAPITAL CORPORATION (CAYMAN)
*ON THE PRIORITIES ISSUE***

November 14, 2018

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PART I – OVERVIEW

1. This motion arises out of a priority dispute for the proceeds of sale of the property at 4 Birchmount Avenue in Toronto, Ontario (the “**Property**”).
2. The Applicants seek to subvert the principles of insolvency law by asking that the Second Mortgage (hereinafter defined) be satisfied out of sequence to the legitimate priority of the first mortgagee, Pillar Capital Corporation (“**Pillar Cayman**”). Pillar Cayman and World Finance Corporation (“**WFC**”) are the holders of the First and Third Mortgages (hereinafter defined), respectively. Pillar Cayman submits this factum in opposition to the motion of the Applicants in these proceedings.
3. The Applicants claim that the First Mortgage was discharged and make numerous allegations of wrongdoing, including allegations of misrepresentation made by Pillar Cayman. The record reflects, in no uncertain terms, the first priority position of Pillar Cayman’s First Mortgage.

THE RESPONDING PARTIES’ POSITION

4. Pillar Cayman take the following positions on this Motion:
 - (a) the First Mortgage was unambiguously assigned from the Home Trust Company to Pillar Cayman;
 - (b) there are no representations that the Second Mortgagee could reasonably have relied upon to support its claim. In addition, the Second Mortgagee can have no estoppel claim in the circumstances;
 - (c) Money Gate does not have a legal or equitable interest in the Mortgage; and alternatively, there are no misrepresentations that Money Gate reasonably relied upon prior to the advance of its funds;
 - (d) Pillar Cayman incurred reasonable expenses that were properly added to the First Mortgage ; and

- (e) the similar fact evidence proffered by the Second Mortgagee is inadmissible, and in any event, does not disclose similar facts.

THE PARTIES

5. Pillar Cayman is a corporation incorporated on October 14, 2014, pursuant to the laws of the Cayman Islands. The sole director and officer of Pillar Cayman is Laila Alizadeh (“**Ms. Alizadeh**”).

6. On August 14, 2014, Pillar Cayman acquired a first mortgage on the Property (the “**First Mortgage**”) by way of assignment from Home Trust Company (“**Home Trust**”). That assignment was formally registered on May 5, 2015. Pillar Cayman is the current holder of the First Mortgage.

Motion Record of Pillar Cayman, Tab B, Incorporation Certificate of Pillar Cayman.

Motion Record of Pillar Cayman, Tab E, Instrument Registering the Assignment of Home Trust Mortgage to Pillar Capital Cayman, pp. 31-32.

7. World Finance Corporation is a corporation incorporated on March 14, 2005, pursuant to the laws of the Province of Ontario.

8. On April 27, 2012, WFC acquired a third mortgage on the Property (“**Third Mortgage**”) by way of an assignment of charge from 2176506 Ontario Inc. WFC is the current holder of the Third Mortgage.

Motion Record of Pillar Cayman, Tab 1, Affidavit of Ara Missaghi, p. 2, paras. 3-5.

Motion Record of Pillar Cayman, Tab C, Corporate Profile of World Finance Corporation.

9. Ara Missaghi (“**Mr. Missaghi**”) is a mortgage consultant and fund manager for Pillar Cayman, WFC, as well as other related companies.

Motion Record of Pillar Cayman, Affidavit of Ara Missaghi, Tab 1, p. 1, para 1.

10. The Applicants in these proceedings are a group of investors who collectively hold the Second Mortgage on the Property. They are hereinafter referred to as the “**Second Mortgagee**”.

Motion Record of the Applicants, Affidavit of Stephen Handelman, Tab 1, p. 1, para 1.

PART II – SUMMARY OF FACTS

11. The Property is a unique multi-million dollar luxury property located in the sought-after Scarborough Bluffs neighbourhood. Christine Drotos owned the Property until it was sold by Rosen Goldberg Inc., in its capacity as receiver of the assets, property and undertakings (the “Receiver”) of Christine Drotos. on June 13, 2018.

12. Pursuant to an Order of McEwen J. dated April 13, 2018, the Receiver was appointed over the Property on April 13, 2018 and on June 1, 2018, the Receiver was authorized to sell the Property. The Property was sold two weeks later on June 15, 2018 for \$3.45m notwithstanding the legal objections of Pillar Cayman and WFC that the offer and the marketing process were insufficient.

Motion Record of the Applicants, Tab B, Endorsement of Justice McEwen dated April 13, 2018, p. 41.

Motion Record of the Applicants, Tab C, Approval and Vesting Order of Justice Dunphy dated June 1, 2018, pp. 43-45.

Motion Record of the Applicants, Affidavit of Stephen Handelman, p. 5, para 7.

13. The amount available for distribution resulting from the sale of the Property was initially \$2,974,661.00. On August 31, 2018, Conway J. approved an interim distribution of \$350,000.00 to the Second Mortgagee, bringing the total distributable funds to **\$2,624,661.00**. It is the appropriate distribution of this figure which is the subject of this dispute.

Factum of the Applicants, p. 5, para. 13.

14. As at June 2018, the amounts outstanding under the mortgages, inclusive of legal costs, were as follows:

	Holding Parties	Amount Owing
First Mortgage	Pillar Capital Cayman	\$2,534,582.27
Second Mortgage	The Applicants	\$1,162,753.39
Third Mortgage	Total	\$6,700,916.93
	World Finance Corporation (69.9%)	(\$4,683,940.93)
	Money Gate Mortgage Investments (30.1%)	(\$2,016,976.00)

Motion Record of the Applicants, Tab G, Mortgage Statement as at June 19, 2018, p. 77.

Motion Record of the Applicants, Tab T, Statements and breakdowns under First Mortgage and Third Mortgage, pp. 132-140.

Motion Record of Pillar Cayman, Tab D, Mortgage Statement of WFC dated June 14, 2018, pp. 24-29.

15. Pillar Cayman do not dispute that a shortfall will occur if the amount owing to the First Mortgagee is paid out. What Pillar Cayman does dispute is any entitlement of the Second Mortgage to Pillar Cayman's right to payment in full as the legitimate first mortgagee.

History of Mortgage Holdings

16. The following figures represent the registration and transfer of charges encumbering the Property since the original mortgage was registered in 2006:

First Mortgage:

	Home Trust Company	Pillar Capital Cayman
Mode of Acquisition	Registration	Assignment
Date	September 27, 2006	August 14, 2014
Amount	\$1,425,000.00 (at 7.5%)	\$1,372,368.70 (at 7.5%)

Second Mortgage:

	The Applicants
Mode of Acquisition	Registration
Date	May 27, 2008
Amount	\$900,000.00 (at 12%)

Third Mortgage:

	DMS Inc.	2176506 Ontario Inc.	World Finance Corporation	World Finance Corporation (69.9%) Money Gate Mortgage Investments (30.1%)
Mode of Acquisition	Registration	Assignment	Assignment	Assignment of 30.1%
Date	October 7, 2008	December 2, 2008	April 27, 2012	December 1, 2017
Amount	\$35,000.00	\$1,372,368.70	\$1,700,000.00	\$1,850,000 (unpaid or incomplete)

Default and Payments from the Third Mortgagee

17. In 2008, Christine Drotos defaulted on her mortgages and from and after such date, ceased paying the mortgages altogether. As a result of these defaults, the Third Mortgagee, WFC, began in 2008 until 2014 to service the interest payments and other expenses on the First and Second mortgages. These payments involved servicing the First Mortgage, taking care of realty taxes, and importantly, paying \$8,000.00 a month to the Second Mortgagee. WFC made these protective payments voluntarily, and without contractual obligation, in order to safeguard its interest by preventing the First Mortgagee from enforcing on the Property. These payments were added to the quantum outstanding under the Third Mortgage. They are reflected in the mortgage statement of WFC.

Motion Record of Pillar Cayman, Affidavit of Ara Missaghi, p. 3, paras 7-8.

Motion Record of Pillar Cayman, Tab D, Mortgage Statement of WFC dated June 14, 2018, pp. 24-29.

18. WFC ceased making the above payments in May 2014 – on or about the time that Pillar Cayman acquired the First Mortgage. However, it did continue to service the second mortgage by paying \$8,000.00 a month to the Applicants on account of interest on the Second Mortgage. WFC ceased making interest payments on account of the First Mortgage as an affiliated entity.

Pillar Cayman now owned the First Mortgage and accordingly, and accordingly there was no longer any risk that the First Mortgagee would enforce on the Property.

19. The affidavit of Stephen Handelman sworn July 30, 2018 notes that prior mortgage statements of WFC included payments by WFC to the First Mortgage continuing into 2017 and 2018. However, these statements were made mistakenly. As a matter of fact, payments to the First Mortgage ceased in May 2014, while the payments to the Second Mortgage continued to be made. WFC's mortgage statement has since been corrected to reflect that fact.

Motion Record of Pillar Cayman, Affidavit of Ara Missaghi, pg. 4, para 11.

Motion Record of Pillar Cayman, Tab D, Mortgage Statement of WFC dated June 14, 2018 pp. 24-29.

20. At no time between 2008 and 2018 did WFC ever represent to the Applicants that it would continue indefinitely to keep the First or Second Mortgages in good standing. Nor were the payments to the First or Second Mortgages required by law or contractually between WFC and the Applicants. The payments that were made, were made voluntarily. At any point between May 2014 and January 2018 the Applicants could have: (i) entered into a contractual arrangement with WFC that the First and Second Mortgage interest payments would continue to be made; or (ii) if it believed that the mortgage interest would continue to be serviced, sent any written correspondence to WFC in order to ask whether the First and Second Mortgages were being kept in good standing. In addition, the Applicants, at any time between 2008 and 2018, could have requested mortgage statements from WFC and Pillar Cayman. They failed to all of the above.

Motion Record of Pillar Cayman, Affidavit of Ara Missaghi, p. 5, paras 11-13.

Home Trust Assigns the First Mortgage to Pillar Cayman

21. On August 14, 2014, the First Mortgage was purchased and transferred to Pillar Cayman by way of assignment in consideration for the payment of \$1,372,368.70, representing 100 cents on the dollar for the purchase by Pillar Cayman of this debt.

Motion Record of Pillar Cayman, Tab E, Instrument Registering the Assignment of Home Trust Mortgage to Pillar Capital Cayman, pp. 31-32.

Motion Record of Pillar Cayman, Tab F, Home Trust mortgage Statement as of July 25, 2014, p. 34.

Motion Record of Pillar Cayman, Affidavit of Ara Missaghi, p. 5, paras. 15-16.

22. It is worth noting that the assignment of the First Mortgage to Pillar Cayman was not registered until May 5, 2015. This delay occurred for two reasons. First, Ms. Drotos was subject to bankruptcy proceedings involving litigation within those proceedings concerning the Property, and second, a certificate of pending litigation was registered on title to the Property. At that time, Sheriff & Sole, in its capacity as bankruptcy trustee took the position that their consent, as trustee in bankruptcy, was required before the assignment of the mortgage from Home Trust to Pillar Cayman was registered.

Motion Record of Pillar Cayman, Tab G, Correspondence between counsel to Pillar Capital Cayman and Sheriff & Sole as Bankruptcy Trustee, pp. 36-41.

Transcript of the Cross-examination of Ara Missaghi, dated September 20, 2018, p. 103-104, Q. 349.

23. Following the decision of Master Jean in the bankruptcy proceeding and after the bankruptcy trustee acquired a legal opinion as to the Home Trust First Mortgage and its assignment, the bankruptcy trustee consented to the registration of the assignment of the Home Trust mortgage to Pillar Cayman. The transfer of charge was issued on May 5, 2015 as is evidenced by its registration on title.

Motion Record of Pillar Cayman, Tab E, Instrument Registering the Assignment of Home Trust Mortgage to Pillar Capital Cayman, pp. 31-32.

Motion Record of Pillar Cayman, Tab I, Legal Opinion Obtained by Bankruptcy Trustee, pp. 48-49.

Motion Record of Pillar Cayman, Affidavit of Ara Missaghi, p. 6, para. 19.

The First Mortgage Was Never Discharged

24. At all times, Pillar Cayman intended to acquire the First Mortgage by way of assignment.

25. The assignment of the First Mortgage went undisputed for years, notwithstanding that the Applicants would have been aware of such assignment since 2014. At no time did the Applicants object to the assignment of the Home Trust mortgage. Nor did they object in the years following the assignment. It was not until the commencement of these proceedings that the Applicants took the position that the assignment was invalid.

26. The Applicants dispute the assignment on the basis that on one occasion, on August 15, 2014, counsel for Pillar Cayman, Ms. Verma, sent a letter to Home Trust colloquially referring to the “discharge” of the mortgage. Ms. Verma was mistaken in her use of that term and was promptly corrected. This mistake was promptly pointed out to her by Mr. Missaghi, who explained to her and to Home Trust that Pillar Cayman was obtaining an *assignment* of the First Mortgage on the Property.

Motion Record of the Applicants, Tab U, Home Trust Payout documents related under the First Mortgage, p. 146.

Transcript of the Cross-examinations of Ara Missaghi, p. 71, Q. 241.

27. The record overwhelmingly supports Mr. Missaghi’s version of events for the following reasons:

- (a) First, the Mortgage Statement of Home Trust to Pillar Cayman is titled “Mortgage Assignment Statement”;
- (b) Second, numerous emails and letters from Ms. Verma and Mr. Missaghi refer to the transaction as a “transfer of charge” and an “mortgage assignment”;
- (c) Third, the registration of the instrument itself is a “transfer of charge” instrument from Home trust to Pillar Cayman. Notwithstanding Ms. Verma’s mistaken email, the First Mortgage was, as a matter of fact, transferred by way of assignment to Pillar Cayman; and
- (d) Pillar Cayman was purchasing the First Mortgage in order to take the benefit of the assignment of such First Mortgage.

Motion Record of the Applicants, Tab F, Pillar Capital Corporation Statement as at November 1, 2017, p. 34.

Motion Record of the Applicants, Tab L, Third Mortgage Registered October 7, 2008, pp. 67-68.

Motion Record of the Applicants, Tab N, Various Transfers of Charge, p. 79.

Pillar Cayman's Expenses for Taxes and Property Upkeep

28. Since assuming the First Mortgage, Pillar Cayman has incurred a number of expenses over the five-year period. These expenses have been properly charged on the First Mortgage.

29. On December 21, 2015, Pillar Cayman paid a tax lien registered on the Property of \$307,981.00 and added that amount to the First Mortgage. That amount of the outstanding property tax arrears was reflected on the Property parcel registry.

Motion Record of Pillar Cayman, Tab A, Order of Justice McEwen dated April 13, 2018, p. 14.

30. The First Mortgage also includes the amount of \$19,379.50 added on account of payment by the First Mortgagee for five years of property management, as well as \$81,360.00 for property maintenance for the last five years by CMDF Landscaping. The property maintenance involved snow plowing and lawn maintenance. These fees were all properly incurred in the period between 2014 and 2018.

Motion Record of Pillar Cayman, Affidavit of Ara Missaghi, p. 7, para. 24.

31. Pillar Cayman was not required to make improvements on the house dwelling itself.

World Finance Corporation's Partial Assignment to Money Gate

32. On December 1, 2017, WFC assigned 30.1% of its Third Mortgage position to Money Gate Mortgage Investment Company ("**Money Gate**"), leaving WFC with a 69.9% interest in the Third Mortgage. Money Gate had hired Fred Yack as counsel to act on its behalf in the assignment process.

33. On behalf of Money Gate, Payam Katebian signed an authorization acknowledging that, notwithstanding Mr. Yack's legal advice to the contrary, no due diligence was to be conducted, and Mr. Yack was not to seek to obtain mortgage payout statements for the First or Second Mortgage, and waived any opportunity to obtain an appraisal for the Property.

Motion Record of Money Gate, p. 159.

34. Accordingly, at the time of purchasing the 30.1% interest in the Third Mortgage, Money Gate waived any due diligence, including obtaining any appraisal of the Birchmount property, notwithstanding legal advice to the contrary.

PART III – STATEMENT OF ISSUES AND LAW

35. There are six primary issues to be determined on this Motion:

- (a) whether the First Mortgage was assigned or discharged;
- (b) whether or not Pillar Cayman's claim is limited because the Second Mortgagee relied on alleged misrepresentations to its detriment;
- (c) whether or not Pillar Cayman's claim is limited because Money Gate relied on alleged misrepresentations to its detriment;
- (d) whether or not Pillar Cayman has proved its claims; and
- (e) whether similar fact evidence regarding Mr. Missaghi is admissible.

ISSUE 1: The First Mortgage was Assigned

i. The Record Demonstrates a Valid Assignment

36. The Home Trust mortgage was unambiguously assigned to Pillar Cayman.

37. The assignment was obtained and paid for on August 14, 2014. After a delay, the transfer instrument was registered on May 15, 2015. As a matter of fact, the assignment is reflected in the

correspondence, the instrument of transfer, the mortgage assignment statement, and the Property title.

Motion Record of the Applicants, Tab F, Pillar Capital Corporation Statement as at

November 1, 2017, p. 34.

Motion Record of the Applicants, Tab L, Third Mortgage Registered October 7, 2008, pp.

67-68.

Motion Record of the Applicants, Tab N, Various Transfers of Charge, p. 79.

38. Notwithstanding the above evidence, the Applicants suggest that Pillar Cayman paid \$1.327m in order to discharge the mortgage, for which they would get nothing in return. This position has no merit.

39. The Applicants make their discharge argument on the basis that Pillar Cayman's counsel sent an email that used the word "discharge". They suggest that Ms. Verma's email is enough to offset the overwhelming evidence supporting an assignment. The Applicants' factum argues that no explanation is provided for the Ms. Verma's mistake, and in doing so it disingenuously ignores the overwhelming contextual evidence in the record supporting an assignment of the First Mortgage.

Motion Record of the Applicants, Tab U, Home Trust Payout documents related under the First Mortgage, p. 146.

Transcript of the Cross-examination of Ara Missaghi, dated September 20, 2018, p. 71, Q. 241.

Motion Record of Pillar Cayman, Tab F, Home Trust Mortgage Statement as of July 25, 2014, p. 34.

Motion Record of Pillar Cayman, Tab L, Correspondence Between Counsel and Gowlings Re: Registration of the Assignment of the First Mortgage, p. 67-68.

Motion Record of Pillar Cayman, Tab N, Correspondence with Articles of Incorporation and Certificate of Incorporation of Pillar Capital Cayman to Mr. Missaghi, forwarded to Ms. Verma to Register Assignment of the Home Trust Mortgage to Pillar Capital Cayman, p. 79.

40. The Applicants also argue that the delay between payment in August 2014 and registration of the assignment in May 2015 is determinative of a discharge. On the contrary, the

Responding Motion Record provides a thorough accounting for this delay. First, Ms. Drotos was subject to bankruptcy proceedings at the time These proceedings did not conclude until April 24, 2015

Factum of the Applicants, pp. 25-26, para. 82.

Factum of Pillar Cayman, p. 5-6, paras. 17-18.

Motion Record of Pillar Cayman, Tab H, Decision of Master Jean in Bankruptcy Proceedings of Christine Drotos, p. 43.

41. Second, there was a certificate of pending litigation registered on the title to the Property. The litigation surrounded a preferential mortgage given by Ms. Drotos, and it necessitated resolution before the assignment could be registered.

42. Third, the bankruptcy trustee, Sheriff & Sole, took the position that its consent was required for an assignment to take place. Sheriff & Sole took time to obtain a legal opinion as to the Home Trust mortgage and the assignment thereof. That legal opinion was received on January 16, 2015, and the trustee thereafter consented to the registration of the transfer of charge of the Home Trust mortgage to Pillar Cayman.

Motion Record of Pillar Cayman, Tab G, Correspondence between counsel to Pillar Capital Cayman and Sheriff & Sole as Bankruptcy Trustee, pp. 35-41.

Motion Record of Pillar Cayman, Tab I, Legal Opinion Obtained by Bankruptcy Trustee, pp. 48-49.

43. Whether or not the Applicants accept the reasons for these delays is irrelevant. No amount of delay in registration is capable of invalidating the assignment or its eventual registration on title to the Property.

ii. Section 2 of the Mortgages Act is not Applicable to the Assignment

44. Section 2 of the *Mortgages Act* does not apply in these circumstances. The Applicants suggest that equity should retroactively nullify the assignment as a result of section 2 of the *Mortgages Act*. However, it is unclear from their factum how exactly section 2 could be prohibitive of Home Trust's assignment to Pillar Cayman. The relevant provision of the *Mortgages Act* reads as follows:

2.--(1) *Despite any stipulation to the contrary, where a mortgagor is entitled to redeem the mortgage 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.*

(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.*

Mortgages Act, RSO 1990, c. M.40, at s. 2.

45. The above does not apply to the assignment of the First Mortgage for two reasons. First, section 2 is not applicable to the circumstances of the case. Section\2 only applies where a mortgagor (or someone holding the equity of redemption) is seeking to redeem the mortgage. In such cases, the mortgagor is able to require a mortgagee to assign the mortgage debt and convey the property to a third party. Accordingly, it is a permissive, rather than a mandatory provision which requires a mortgagor to invoke it to be operable. That is simply not the case here. Ms. Drotos was not in a position to redeem the mortgage when it was assigned. Nor was any other subsequent mortgagor seeking to acquire or pay out the mortgage at that time. There is no positive consent element contained in the provision, and as such, the Applicants cannot rely on s. 2 to invalidate the assignment of the Home Trust First Mortgage.

Scotia Mortgage Corp v Davidson Estate, 2009 CarswellOnt 2297.

Resolute Development Inc v Juravinski, 2013 ONSC 885, at para 110.

46. Even if the provision applied to this case, it certainly does not permit a party to retroactively nullify an assignment in favour of a discharge. The Applicants would have been required to assert their right to acquire or payout Home Trust for control over the First Mortgage at the time of default or shortly thereafter.

47. Second, although section 2 of the *Mortgages Act* does not require consent of a mortgagor, WFC provided its consent to the assignment as a subsequent encumbrancer under the meaning of the *Act*, satisfying any consent requirement.

Motion Record of Pillar Cayman, Tab K, Letter from Gowlings dated July 23rd and 25th, p. 54.

Transcript of the Cross-examination of Ara Missaghi, dated September 20, 2018, p. 149-150, Q. 496.

48. Thirdly, the Second Mortgagee received interest payments on its mortgage continuously from 2017 until this Receivership, without objection. Accordingly, its conduct constitutes consent as a subsequent encumbrancer.

49. Section 1 defines a mortgagor as “any person deriving title under the original mortgagor or who is entitled to redeem a mortgage, according to the person’s estate, interest or right in the mortgaged property”. At the time of the assignment in 2014, WFC was the sole holder of the Third Mortgage on the Property. As such, it had an equitable interest in the Property, and was a capable party to give direction for an assignment under s. 2 and WFC provided such consent as a mortgagor.

***Mortgages Act*, RSO 1990, c. M.40 at s. 1.**

***Scotia Mortgage Corp v Davidson Estate*, 2009 CarswellOnt 2297, at para 28.**

Transcript of the Cross-examination of Ara Missaghi, dated September 20, 2018, pp. 149-150, Q. 496.

50. The Applicants have purposefully misunderstood the application of s. 2 of the *Mortgages Act*. It does not act to prohibit the valid assignment of the Home Trust mortgage to Pillar Cayman. However, even under their own interpretation of the provision, any consent requirement was satisfied by WFC’s correspondence with Home Trust and Gowlings. Home Trust then executed the assignment to Pillar Cayman. The Second Mortgagee never objected to the assignment.

Transcript of the Cross-examination of Ara Missaghi, dated September 20, 2018, pp. 149-150, Q. 496.

iii. *The Applicants Effectively Acquiesced to the Assignment*

51. The Applicants have known that the Home Trust mortgage was assigned to Pillar Cayman since August 2014. Nevertheless, they did not object to that assignment until the property was sold under power of sale in June 2018.

52. From 2014 to 2018, the Applicants continued to accept \$8,000.00 monthly from the Third Mortgagee for interest payments on the Second Mortgage. The reality is that the Applicants were content to receive these monthly payments for years, and they only seek to invalidate the assignment now because there is a shortfall from the Receiver's sale of the Property.

ISSUE 2: There is No Detrimental Reliance to Limit the Claims by Pillar Cayman

53. The Applicants contend that they relied on representations made by Mr. Missaghi, on or about November 2017, and reliance on these representations prevented them from enforcing their mortgage and commencing power of sale proceedings. The Applicants assert that Mr. Missaghi continually represented to them that the First and Second Mortgage were being kept in good standing. The Applicants have not provided any evidence that these representations were made or that they relied on them to their detriment.

54. The three-pronged test for promissory estoppel is laid out by Lord Tomlin in *Greenwood v Martins Bank, Ltd.*, and adopted in Canada in *Canadian Pacific Hotels Ltd. v Bank of Montreal*. The test requires:

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

***Canadian Pacific Hotels Ltd. v Bank of Montreal*, [1987] 1 SCR 711 at para 32.**

55. In *Central London Property Trust Ltd v High Trees House Ltd*, Lord Denning clarified the test for reliance-based estoppel, holding that it requires:

- i. *An unequivocal promise by words or conduct;*
- ii. *Evidence that there is a change in position of the promisee as a result of the promise;*
- iii. *Inequity if the promisor were to go back on the promise.*

Central London Property Trust Ltd v High Trees House Ltd, [1947] KB 130.

56. The applicants have failed to establish the essential elements required for the success of an estoppel argument as laid out in *Greenwood* and *High Trees*.

i. No Representations Were Made After Assignment of First Mortgage in 2014

57. Mr. Missaghi made no representations that WFC would continue to service the First Mortgage after August of 2014. In fact, all payments on the First Mortgage ceased after the First Mortgage was acquired by Pillar Cayman in August 2014. The reality is that the Applicants have proffered no evidence that any promises or assurances were made by Mr. Missaghi after that date, nor that Mr. Missaghi intended to induce any conduct from the Second Mortgagee. Mr. Missaghi denies that any oral representations were made.

Motion Record of the Responding Parties, Affidavit of Ara Missaghi, p. 5, para 13.

58. WFC was under no obligation to keep the mortgages in good standing. All payments were made voluntarily, not subject to any contract or agreement with the Second Mortgagee. The Applicants suggest that Mr. Missaghi made regular oral representations that the First and Second Mortgage were being kept in good standing. Mr. Missaghi denies making any assurances or representations that WFC would continue to keep the First or Second Mortgages in good standing. The Second Mortgagee is a sophisticated investor in high risk mortgages and was well aware of its rights at all times during this course of dealings with WFC.

Motion Record of the Responding Parties, Affidavit of Ara Missaghi, p. 5, para 13.

59. A prudent and sophisticated mortgagee would have written to request regular mortgage statements in order ensure that the First Mortgage was in good standing. However, the Applicants failed to do so for at least six years. By his own admission, Handelman could have checked on the state of the mortgage at any point in time on behalf of the Applicants, yet he

neglected to do so. At no time between April 2012 and January 2018 did the Applicants request a mortgage statement from any of Home Trust, WFC, or from Pillar Cayman.

Motion Record of the Responding Parties, Affidavit of Ara Missaghi, p. 5, para 13.

Transcript of the Cross-examination of Stephen Handelman dated September 20, 2018, p. 14, Q. 47.

ii. The Applicants Could Not Have Relied on the November 1, 2017 Statement

60. The Applicants claim that it relied on mortgage statements showing WFC making ongoing payments to the First and Second Mortgage after August 14, 2018. The statement in question is dated November 1, 2017, and the Respondents have been clear that the statement was issued in error.

Motion Record of the Applicants, Tab R, Emails, statements dated November 1, 2017 and breakdown under Third Mortgage, pp. 116-127.

61. In any case, the Second Mortgagee could not possibly have reasonably relied on the erroneous November 1, 2017 statement because they were not aware of its existence until March 2018, after the Receiver was appointed and provided them with the November 2017 statement. The Applicants cannot claim reasonable reliance on a statement they were never in possession of.

62. In the alternative, if this Court decides the Second Mortgagee could have reasonably relied on the erroneous statement, the First Mortgagee is still entitled to collect all expenses up until November 1, 2017 – the date when the statement was issued.

Motion Record of the Applicants, Tab R, Emails, statements dated November 1, 2017 and breakdown under Third Mortgage, pp. 116-127.

iii. No Reasonable Reliance on Monthly Payments to Second Mortgagee

63. Between 2012 and 2014, WFC made monthly mortgage payments to both Home Trust and the Second Mortgagee in order to protect its interest. As noted above, the payments to Home

Trust ceased in August 2014 when Pillar Cayman acquired the First Mortgage, and no further payments were made on the First Mortgage.

Motion Record of Pillar Cayman, Tab D, Mortgage Statement from World Finance Corporation as of June 14, 2018, pp. 24-29.

64. WFC continued making \$8,000.00 monthly payments to the Second Mortgagee in respect of interest charges only.

65. The Second Mortgagee alleges that these \$8,000.00 monthly payments were a representation from WFC that it was continuing to keep the First and Second Mortgages in good standing. Pillar Cayman rejects this proposition.

66. The Second Mortgagee could not have relied on the monthly payments to keep the Second Mortgage in good standing because the Second Mortgage was, as a matter of fact, in default the whole time. In fact, the Applicants were in a position to enforce their mortgage at all times between 2012 and this Receivership.

67. The principal amount of the Second Mortgage is \$900,000.00, with an interest rate of 12%. This requires a total monthly interest of \$9,000.00. WFC's \$8,000.00 monthly payment was deficient to satisfy the full interest payments due under the Second Mortgage. In cross-examination, Handelman admitted that WFC's payments did not put the Second Mortgage in good standing and that the Applicants were always in a position to enforce the mortgage and commence a notice of sale under mortgage. Mr. Handelman testified to that extent in cross-examinations with Mr. Dizgun:

Q: Did you think that the \$8,000.00 a month was paying the interest on an \$850,000.00 mortgage?

A: I just took the payment as on account. As again, it was supposed to be 30 days or 60 days

Q: Right. But ultimately, you did keep on receiving those payments; did you not?

A: Correct

Q: Until – I forget – but just November or December 2017?

A: Correct

Q: Right. So you were receiving them on account?

A: We were receiving them and distributing and to the various participants.

Q: I understand, but was what was the principal amount of the mortgage while you were receiving those payments? Was it 900,000 or less?

A: Always \$900,000.

Q: Right, so that, in fact, wasn't the total interest outstanding month to month; correct?

A: Correct.

Q: Right. So you really weren't being put in good standing; were you?

A: Based on the \$900,000 principal amount, no.

Q: So you could have enforced your second mortgage at any point and obtained and done a notice of sale under mortgage because in fact the payments were in default.

A: Yes.

Transcript of the Cross-examination of Stephen Handelman dated September 20, 2018, p. 7-8, Q. 16-19.

68. The Second Mortgagee could not have reasonably relied on the representation or the alleged promise when at all times they were independently in a position to enforce their rights under their mortgage. Their argument is entirely based on the allegation that the representation delayed any enforcement proceeding.

69. The Applicants have failed to establish the essential elements for the operation of estoppel, as laid out in *Greenwood* and *High Trees*. First, they failed to demonstrate that any promises or assurances were made after August 2014. Second, they could not reasonably have relied on the November 2017 statement because it was never in their possession. And third, they failed to show reasonable reliance on the monthly payment of \$8,000.00 because at all relevant times they knew the mortgage was in default. As such it cannot be said that any inequity occurred. The Applicants fail on all three prongs of the estoppel test.

70. The reality is that the Applicants did not enforce the mortgage because they were “very comfortable in [their] second mortgage position”, receiving \$8,000.00 every month. They simply chose to continue to accept the money than to enforce their rights.

Transcript of the Cross-examination of Stephen Handelman dated September 20, 2018, p. 22, Q. 70.

71. In the alternative, if the Applicants contend that they are arguing that negligent misrepresentation occurred, that argument must also fail. First, negligent misrepresentation must be specifically pleaded. In *Lysko v Braley*, the ONCA held that any pleading of misrepresentation must set out with careful particularity the elements of the misrepresentation relied upon, including:

- a) *the alleged misrepresentation itself;*
- b) *when, where, how, by whom and to whom it was made;*
- c) *its falsity;*
- d) *the inducement*
- e) *the intention that the plaintiff should rely upon it;*
- f) *the alteration by the plaintiff of his or her position relying on the misrepresentation;*
- g) *the resulting loss or damage to the plaintiff.*

The applicants have not properly pleaded negligent misrepresentation in this case.

***Lysko v Braley*, [2006] OJ No. 1137, at para. 39.**

72. Second, the substantive claim also cannot succeed. As discussed above, there is no evidence that any representations were, in fact, made, and there was no reasonable reliance on any such representations, even if they did exist. The test for negligent misrepresentation is set out by the Supreme Court in *Queen v Cognos Inc*, as follows:

- a) *there must be a duty of care based on a “special relationship” between the representor and the representee;*
- b) *the representation in question must be untrue, inaccurate, or misleading;*
- c) *the representor must have acted negligently in making said misrepresentation;*
- d) *the representee must have relied, in a reasonable manner, on said negligent misrepresentation; and*
- e) *the reliance must have been detrimental to the representee in the sense that damages resulted.*

The Applicants have not made out a claim in negligent misrepresentation under the test.

***Queen v Cognos Inc.*, [1993] SCJ No. 3, at para 33.**

iv. *The Limitations Issue*

73. The Second Mortgagee's estoppel or misrepresentation claims are statute barred under the *Limitations Act, 2002*. If the Second Mortgagee's claim had any merit, they knew or ought to have known about it in August 2014. Under s. 5(2) of the Limitations Act, the person with the claim will be presumed to have known about the claim on the date it occurred. A reasonably prudent investor would have requested mortgage statements to ensure the mortgage was in good standing. The Second Mortgagee failed to make any requests or objections until 2018, and therefore, their claim is barred by the *Limitations Act, 2002*.

Limitations Act, 2002, SO 2002, c. 24, Sched. B., ss. 4-5.

ISSUE 3: Money Gate Does Not Have Privity and Cannot Claim Reliance

74. Money Gate adopts the allegations of the Second Mortgagee, and contends that it too relied on representations made by Mr. Missaghi to its detriment concerning payment of the First and Second Mortgages. These contentions of reliance are wrong for the same reasons as applicable to the Second Mortgagee. However, Money Gate's position fails for other reasons as well.

75. First, Money Gate's interest in the Third Mortgage is uncertain because it cannot prove that it ever advanced the funds to WFC for its stake. Money Gate arranged to buy into the Third Mortgage at \$1.85m for 30.1% equity. \$1.6m was allegedly transferred to Money Gate's lawyer, Mr. Yack, but there is no evidence that it was ever advanced to WFC. Money Gate's representative, Mr. Katebian, would not confirm that the money was ever paid to WFC, and he acknowledges the possibility that it was returned to Money Gate by Mr. Yack. Mr. Katebian provided a series of undertakings to provide proof of payments made and the source of the funds, but those undertakings have not been answered. And accordingly, a negative inference should be drawn against Money Gate.

Transcript of the Cross-examination of Payam Katebian dated September 20, 2018, pp. 42-45, Q. 123-132.

Motion Record of Money Gate, Tab N, Correspondence from Berkow Youd Lev-Farrell Das LLP to the Receiver's lawyer dated June 15, 2018, along with the supporting documents thereto attached, p. 170.

76. Additionally, Mr. Katebian confirmed that the final \$250,000.00 was never paid to WFC. That being the case, Money Gate did not live up to its end of the bargain and cannot be said to hold an interest, or a senior interest, in the Third Mortgage on the Property. As such, Money Gate does may not have a secured claim in these proceedings.

Transcript of the Cross-examination of Payam Katebian dated September 20, 2018, p. 46, Q. 136.

77. Second, Mr. Katebian is not a credible witness. After explicitly adopting the allegations at paragraphs 51-58 of Stephen Handelman's affidavit, in Mr. Katebian's affidavit, Mr. Katebian later admitted that the allegations he stated were true, were, in fact, untrue. He then proceeded to refuse to answer why he had adopted these allegations for their truth in his own affidavit. Mr. Katebian cannot be believed because his only interest in these proceedings is to cause harm to Mr. Missaghi and any company with which he may be associated.

Transcript of the Cross-examination of Payam Katebian dated September 20, 2018, p. 32-35, Q. 104-113.

Motion Record of Money Gate, Affidavit of Payam Katebian, para. 27.

78. Third, Money Gate waived all due diligence in the alleged transaction with WFC. After hiring Mr. Yack, Mr. Katebian provided written instructions to Mr. Yack that he was not to obtain mortgage statements for the First or Second Mortgage, acknowledged that no appraisal had been done, and waived any such appraisal. Again, this is evidence that Money Gate did not rely on any alleged representations or alleged 'promise' by Mr. Missaghi in allegedly advancing moneys for interest in the Third Mortgage. For whatever reasons, which have not been explained by Money Gate, it allegedly advanced \$1.6m without conducting any due diligence, notwithstanding that it represented to investors that it would not invest in third mortgages at all.

Transcript of the Cross-examination of Payam Katebian dated September 20, 2018, p. 13-15, Q. 43-52.

Motion Record of Money Gate, Tab N, Correspondence from Berkow Youd Lev-Farrell Das LLP to the Receiver's lawyer dated June 15, 2018, along with the supporting documents thereto attached, pg. 159.

ISSUE 4: Pillar Cayman Has Proved its Claims

79. The Applicants allege that a number of the expenses applied to the First and Mortgage are artificially inflated and fabricated.

Factum of the Applicants, paras. 33-37 and 59-60.

Transcript of the Cross-examination of Stephen Handelman dated September 20, 2018, p. 19, paras. 61-63.

80. Mr. Handelman also admitted in his cross-examination that if the expenses charged under the First Mortgage were proved, he would have no objection to those charges.

Transcript of the Cross-examination of Stephen Handelman dated September 20, 2018, p. 35, Q. 10.

81. As a matter of fact, all expenses charged under the Mortgage are properly incurred and supported by the record.

82. Mr. Handelman admits, and the fact is, that Pillar Cayman paid the principal of the First Mortgage on August 15, 2018. The amount of the principal paid was \$1,372,368.70.

Motion Record of Pillar Cayman, Tab E, Instrument Registering the Assignment of Home Trust Mortgage to Pillar Capital Cayman, pp. 31-32.

83. Mr. Handelman admits, and the fact is, that Pillar Cayman paid realty taxes in the amount of \$307,981.00 to the City of Toronto, and that that amount was properly applied to the First Mortgage on December 21, 2015.

Transcript of the Cross-examination of Stephen Handelman dated September 20, 2018, p. 19, Q. 63-65.

Motion Record of Pillar Cayman, Tab A, Parcel of Birchmount Property, p. 14.

84. The First Mortgagee is also owed the interest on the mortgage. The interest is calculated at 7.5%, compounded monthly, and runs from August 15, 2014, the date of the assignment, to November 26, 2018, the date of the hearing. That interest amounts to **\$2,263,979.02**. See Schedule “C” for interest calculations.

85. In the alternative, if the Applicants were to succeed in their estoppel claim, the interest would be calculated until November 1, 2017. Calculated at 7.5%, compounded monthly, that interest amounts to **\$2,100,882.08.00**. See Schedule “C” for interest calculations.

86. The remaining amounts of \$19,379.50 as a management fee and \$81,360.00 as a property maintenance fee are legitimate expenses incurred to ensure landscaping and yardwork was completed on the Birchmount Property over a five-year period. These expenses are evidenced by invoices and proof of payment contained in Pillar Cayman’s supplementary record.

Supplementary Record of Pillar Cayman, Tab A.

87. In conclusion, the Second Mortgagee has already conceded that, if proven, these expenses were properly added to the mortgage debt. Considering the above evidence, Pillar Cayman holds Mr. Handelman to his commitment to withdraw his objection to these expenses.

Transcript of the Cross-examination of Stephen Handelman dated September 20, 2018, p. 35, Q. 10.

ISSUE 5: The Applicants’ Similar Fact Evidence is Inadmissible

88. Canadian courts have upheld the general exclusion of character and similar fact evidence in civil cases on numerous occasions.

Petijevich v Law, [1968] SCJ No. 95, at paras. 263-264.

Ptycia v. Swetlishhnoff, [1970] SCJ No. 98, at 678-679.

89. The bar to the admissibility of such evidence remains strict. *JRIG v Tyhurst* held that any evidence of previous bad acts must be carefully assessed to ensure it has real probative value with respect to a live issue at trial that outweighs its prejudicial effect.

***JRIG v Tyhurst*, 226 DLR (4th) 447 (BCCA), [2003] SCCA No. 279 (leave to appeal to SCC refused).**

90. The Applicants seek to admit highly prejudicial information that is not factually similar enough to hold any probative value in the case at bar.

91. In their affidavit and in cross-examinations, the Applicants maintain that the First Mortgagee fabricated expenses and “wrongfully inflated mortgage amounts”. re not examples of fabricated expenses.

Transcript of the Cross-examination of Stephen Handelman dated September 20, 2018, p. 28, Q. 86.

Motion Record of the Applicants, Affidavit of Stephen Handelman, at para. 44.

92. However, neither decision cited by the Applicants involve fabricated expenses, In Fitzpatrick J’s decision, there was a positive finding that no fabrication occurred. The expense, although properly incurred, were improperly applied to the mortgage. Matheson J’s decision dealt primarily with the power of sale and proper notice. It did not make any finding of fabrication or wrongful inflation. And Matheson J made no finding as to what the applicable charges on the mortgage should be.

***HJLJ Investments Ltd. v 2305106 Ontario Ltd.*, [2015] OJ No. 5240.**

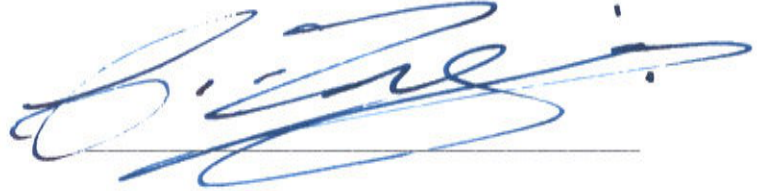
***Stanbarr Services Ltd. v Metropolis Properties Inc.*, [2016] OJ No. 983.**

93. This demonstrates the perniciousness of allegedly similar evidence. The decisions do not disclose or establish fabricated mortgage expenses. Accordingly, these allegations have a prejudicial effect. Pillar Cayman submits that a negative inference ought to be drawn as to the credibility of Mr. Handelman as a result of his proffer of alleged similar fact evidence, which is not similar.

PART IV – RELIEF REQUESTED

For the reasons set out above, Pillar Cayman respectfully request an order providing for proper payment to the First Mortgagee, in order of its priority ahead of the Second or Third Mortgagees; and Such further and other relief as this Honorable court deems just.

November 14, 2018 ALL OF WHICH IS RESPECTFULLY SUBMITTED

A handwritten signature in blue ink, appearing to read 'Leslie Dizgun', is written over a horizontal line.

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SCHEDULE "A"

List of Authorities:

Limitations Act, 2002, SO 2002, c. 24, Sched. B.

Resolute Development Inc v Juravinski, 2013 ONSC 885.

Scotia Mortgage Corp v Davidson Estate, 2009 CarswellOnt 2297.

Canadian Pacific Hotels Ltd. v Bank of Montreal, [1987] 1 SCR 711.

Central London Property Trust Ltd v High Trees House Ltd, [1947] KB 130.

Queen v Cognos Inc., [1993] SCJ No. 3.

Petijevich v Law, [1968] SCJ No. 95.

Ptycia v. Swetlishhnoff, [1970] SCJ No. 98.

JRIG v Tyhurst, 226 DLR (4th) 447 (BCCA), [2003] SCCA No. 279.

HLLJ Investments Ltd. v 2305106 Ontario Ltd., [2015] OJ No. 5240.

Stanbarr Services Ltd. v Metropolis Properties Inc., [2016] OJ No. 983.

SCHEDULE “B”**Relevant Statutes:*****Mortgages Act, RSO 1990, c. M.40, at s. 2.***

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.

(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.

SCHEDULE "C"

		Interest Compounded Monthly			Annual Interest
		Principal	Interest	Additional	Rate
		\$1,372,368.70	\$8,577.30	Advances	7.50%
Date					Monthly
1	1-Sep-14	\$1,380,946.00	\$8,630.91		Interest Rate:
2	1-Oct-14	\$1,389,576.92	\$8,684.86		0.63%
3	1-Nov-14	\$1,398,261.77	\$8,739.14		
4	1-Dec-14	\$1,407,000.91	\$8,793.76		
5	1-Jan-15	\$1,415,794.66	\$8,848.72		
6	1-Feb-15	\$1,424,643.38	\$8,904.02		
7	1-Mar-15	\$1,433,547.40	\$8,959.67		
8	1-Apr-15	\$1,442,507.07	\$9,015.67		
9	1-May-15	\$1,451,522.74	\$9,072.02		
10	1-Jun-15	\$1,460,594.76	\$9,128.72		
11	1-Jul-15	\$1,469,723.48	\$9,185.77		
12	1-Aug-15	\$1,478,909.25	\$9,243.18		
13	1-Sep-15	\$1,488,152.43	\$9,300.95		
14	1-Oct-15	\$1,497,453.38	\$9,359.08		
15	1-Nov-15	\$1,506,812.47	\$9,417.58		
16	1-Dec-15	\$1,516,230.05	\$9,476.44		
17	1-Jan-16	\$1,525,706.48	\$9,535.67	\$307,981.00	
18	1-Feb-16	\$1,843,223.15	\$11,520.14		
19	1-Mar-16	\$1,854,743.29	\$11,592.15		
20	1-Apr-16	\$1,866,335.44	\$11,664.60		
21	1-May-16	\$1,878,000.04	\$11,737.50		
22	1-Jun-16	\$1,889,737.54	\$11,810.86		
23	1-Jul-16	\$1,901,548.40	\$11,884.68		
24	1-Aug-16	\$1,913,433.07	\$11,958.96		
25	1-Sep-16	\$1,925,392.03	\$12,033.70		
26	1-Oct-16	\$1,937,425.73	\$12,108.91		
27	1-Nov-16	\$1,949,534.64	\$12,184.59		
28	1-Dec-16	\$1,961,719.23	\$12,260.75		
29	1-Jan-17	\$1,973,979.98	\$12,337.37		
30	1-Feb-17	\$1,986,317.35	\$12,414.48		
31	1-Mar-17	\$1,998,731.84	\$12,492.07		
32	1-Apr-17	\$2,011,223.91	\$12,570.15		
33	1-May-17	\$2,023,794.06	\$12,648.71		
34	1-Jun-17	\$2,036,442.77	\$12,727.77		
35	1-Jul-17	\$2,049,170.54	\$12,807.32		
36	1-Aug-17	\$2,061,977.86	\$12,887.36		

37	1-Sep-17	\$2,074,865.22	\$12,967.91
38	1-Oct-17	\$2,087,833.12	\$13,048.96
39	1-Nov-17	\$2,100,882.08	\$13,130.51
40	1-Dec-17	\$2,114,012.59	\$13,212.58
41	1-Jan-18	\$2,127,225.17	\$13,295.16
42	1-Feb-18	\$2,140,520.33	\$13,378.25
43	1-Mar-18	\$2,153,898.58	\$13,461.87
44	1-Apr-18	\$2,167,360.45	\$13,546.00
45	1-May-18	\$2,180,906.45	\$13,630.67
46	1-Jun-18	\$2,194,537.12	\$13,715.86
47	1-Jul-18	\$2,208,252.97	\$13,801.58
48	1-Aug-18	\$2,222,054.56	\$13,887.84
49	1-Sep-18	\$2,235,942.40	\$13,974.64
50	1-Oct-18	\$2,249,917.04	\$14,061.98
51	1-Nov-18	\$2,263,979.02	

SCHEDULE "D"

		Interest Compounded Half-Yearly				
		Principal	Interest	Additional	Annual	
		\$		Advances	Interest Rate	7.50%
Date						
		1,372,368.70	\$51,463.83			
1	1-Nov-14	\$1,423,832.53	\$53,393.72		Bi-yearly	
2	1-May-15	\$1,477,226.25	\$55,395.98		Interest Rate:	3.75%
3	1-Nov-15	\$1,532,622.23	\$57,473.33			
4	1-May-16	\$1,590,095.56	\$59,628.58	\$307,981.00		Taxes
5	1-Nov-16	\$1,957,705.15	\$73,413.94			
6	1-May-17	\$2,031,119.09	\$76,166.97			
7	1-Nov-17	\$2,107,286.06	\$79,023.23			
8	1-May-18	\$2,186,309.28	\$81,986.60			
9	1-Nov-18	\$2,268,295.88	\$85,061.10			

B&M HANDELMAN INVESTMENTS LTD et al. -and-
Applicants

CHRISTINE DROTOS
Respondents

**ONTARIO
SUPERIOR COURT OF JUSTICE
(Commercial List)**

Proceedings commenced at Toronto

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(Returnable on November 26, 2018)

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