



ROSEN GOLDBERG
INSOLVENCY & RESTRUCTURING

Court File No. CV-21-00656398-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

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

B E T W E N:

**COSA NOVA FASHIONS LTD., B & M HANDELMAN, INVESTMENTS
LIMITED, COMFORT CAPITAL INC., 693651 ONTARIO LTD., E.
MANSON INVESTMENTS LIMITED, NATME HOLDINGS LTD.,
FRANCIE STORM, BARSKY INVESTMENTS LTD., STEPHEN
HANDELMAN, ROSEWILL INVESTMENT CORPORATION, THOMAS
BOCK, THE BANK OF NOVA SCOTIA TRUST COMPANY AND
CANADA INVESTMENT CORPORATION**

Applicants

- and -

THE MIDAS INVESTMENT CORPORATION

Respondent

NINTH REPORT OF ROSEN GOLDBERG INC.

I INTRODUCTION

1. By Order of the Honourable Justice Cavanagh dated April 6, 2021 (“the **Appointment Order**”), Rosen Goldberg Inc. was appointed receiver (the “**Receiver**”) of the assets, undertakings and properties of The Midas Investment Corporation (the “**Debtor**” or “**Midas**”), including the properties municipally known as 205 Yonge Street, in Toronto (the “**Yonge Street Property**”)

and 90 Eastern Avenue, in Toronto (the “**Eastern Avenue Property**” and, collectively, with the Yonge Street Property, the “**Properties**”), pursuant to section 243(1) of the *Bankruptcy and Insolvency Act* and section 101 of the *Courts of Justice Act*. A copy of the Appointment Order is attached as **Appendix A**.

II TERMS OF REFERENCE

2. In preparing this Ninth Report, the Receiver has relied upon information from third party sources (collectively, the “**Information**”). Certain information contained in this Ninth Report may refer to, or be based on, the Information. As the Information has been provided by other parties, or obtained from documents filed with the Court in this proceeding, the Receiver has relied on this Information, and to the extent possible reviewed the Information for reasonableness. However, the Receiver has not audited or otherwise attempted to verify the accuracy and completeness of the Information in a manner that would wholly or partially comply with Canadian Auditing Standards pursuant to the *Chartered Professional Accountants of Canada Handbook* and, accordingly, the Receiver expresses no opinion or other form of assurance in respect of the Information.

III PURPOSE OF REPORT

3. The Receiver’s Ninth Report is filed to provide the Court with the followings:
- (a) Background information regarding Midas’ relationship with the Bank of Montreal (“**BMO**”); and
 - (b) The Receiver’s efforts to obtain financial information from BMO.

IV BACKGROUND

4. The Receiver is currently holding an amount of approximately 1,300,000. We attach an interim statement of receipts and disbursements as **Appendix B**. These funds are subject to a reserve for potential tax exposure and the continuing costs of the receivership administration. The secured creditors of Midas have been paid in full and on the basis of the Claims Process that was undertaken by the Receiver, the Receiver believes that all unsecured creditors have been paid in

full as well. The shareholders, therefore, appear to be entitled to the surplus funds. We understand that Thomas Farrell (“**Farrell**”) and John Kavanagh (“**Kavanagh**”) each own fifty percent of the Midas shares.

5. We understand that Kavanagh will be seeking an Order to have the net surplus funds distributed to him, with no commensurate payment to Farrell. His position is that Farrell is not entitled to any payment because he believes that Farrell owes Midas an amount of approximately \$2 million. The 2021 financial statements reflect an amount owing from shareholders of \$2.1 million.

6. Farrell, who, to date has not requested an interim distribution, does not believe that Kavanagh is entitled to any funds from Midas due to his belief that Kavanagh is not a shareholder and that he defrauded Midas of significant funds by improperly opening a bank account at the Bank of Montreal and disbursing funds from this account that did not relate to Midas, or its operations.

V. SHAREHOLDERS’ LOAN

7. According to the financial statements of Midas as of November 30, 2021, there is an amount owing by the shareholders to Midas in the amount of \$2,103,627. The issue of the loan has been addressed in previous reports of the Receiver.

8. The origin of a significant portion of the shareholders’ loan relates to the mortgage transaction with the Applicants in May 2013. Midas received net proceeds from the mortgage transaction of \$3,339,662. We attached an accounting of the mortgage advance as **Appendix C**. As a result of the fact that at this time, Midas was not maintaining proper books and records, the mortgage transaction was not accounted for. The Receiver and Midas’ external accountant, in attempting to prepare updated financial statements for the purpose of filing income tax returns, due to the lack of information available, could not determine the correct accounting for approximately \$1.8 million of the funds received from the mortgage transaction. This amount was accounted for as “Due from Shareholder” despite the fact that it could not directly be attributed to

either shareholder specifically. We therefore have not concluded that Farrell owes Midas \$2 million.

VI. MIDAS RELATIONSHIP WITH BANK OF MONTREAL

9. A bank account was opened at a BMO branch in Maple, Ontario or about November 10, 2012. The account number was 3995 998601 (“**BMO Account**”) The signing officers for the BMO Account were Kavanagh and Rocco Commisso, who is identified on the documentation as “consultant”. We attach BMO documentation on the account opening as **Appendix D**.

10. Based on selected information we received from Farrell, it appears that the net mortgage proceeds of \$3,339,662 were deposited into the BMO Account in two deposits. We attach as **Appendix E**, the deposit slips for the two transactions.

11. Farrell has stated that improper disbursements were made from the BMO Account that did not relate to Midas. From selected information the Receiver was provided by Farrell, we attach as **Appendix F**, a summary of disbursements from the BMO Account totalling \$2,911,988 and the related back up for these disbursements.

12. In reviewing the list of these disbursements, the Receiver does not know the nature of the disbursements with the exception of the \$1 500,000 paid to Vroon, which we understand was the repayment of a personal debt of Farrell. This amount was accounted for as a repayment of monies owed by Midas to Farrell.

13. Midas and Farrell brought an action against the Bank of Montreal. On or about February 7, 2014, seeking damages for BMO’s role in opening the alleged improper account and allowing the resulting disbursements. We attach the Statement of Claim as **Appendix G**. We additionally attach the Reasons of Justice Penny dated May 2, 2016 in regards to BMO’s motion for summary judgement as **Appendix H**.

14. We were advised that the action was settled and the dismissed. We attach the Order dismissing the action as **Appendix I**.

VII. COMMUNICATION WITH BMO

15. The Receiver communicated with BMO to obtain the Midas bank statements for the BMO account for the purpose of completing a full accounting of the transactions that went through the account. As the account had been closed more than seven years ago, the BMO was unable to generate and provide this information.

VIII. CONCLUSIONS.

16. Based on our review of the information available , we make the following conclusions:

- (a) Farrell is not indebted to Midas in the approximate amount of \$2 million;
- (b) There continues to be approximately \$1.8 million of disbursements from the BMO account where there is inadequate backup or explanation as to its purpose and nature., Given that Kavanagh controlled and was a signing officer of the BMO Account, he would appear to be the best resource to provide the details of the disbursements;
- (c) We will not be able to obtain any further information from the BMO relating to the BMO account.

All of which is respectfully submitted,

Dated at Toronto, Ontario, this 20th day of July, 2023

**ROSEN GOLDBERG INC., SOLELY IN ITS CAPACITY AS
COURT-APPOINTED RECEIVER OF THE ASSETS,
UNDERTAKINGS AND PROPERTIES OF
THE MIDAS INVESTMENT CORPORATION**

Rosen Goldberg Inc.

APPENDIX “A”

**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

THE HONOURABLE) TUESDAY, THE 6TH
)
JUSTICE CAVANAGH) DAY OF APRIL, 2021

B E T W E E N:

**COSA NOVA FASHIONS LTD., B & M HANDELMAN
INVESTMENTS LIMITED, COMFORT CAPITAL INC.,
693651 ONTARIO LTD., E. MANSON INVESTMENTS LIMITED,
NATME HOLDINGS LTD., FRANCIE STORM, BARSKY INVESTMENTS LTD.,
STEPHEN HANDELMAN, ROSEWILL INVESTMENT CORPORATION,
THOMAS BOCK, THE BANK OF NOVA SCOTIA TRUST COMPANY
and CANADA INVESTMENT CORPORATION**

Applicants

- and -

THE MIDAS INVESTMENT CORPORATION

Respondent

**ORDER
(Appointing Receiver)**

THIS APPLICATION made by the Applicants for an Order appointing Rosen Goldberg Inc. as receiver and manager (in such capacities, the “Receiver”), without security, of all of the

assets, undertakings and properties of the Respondent The Midas Investment Corporation (the “Debtor”), was heard this day by Zoom judicial videoconference.

ON READING the affidavit of Gary Gruneir sworn February 3, 2021 and the Exhibits thereto, the affidavit of Thomas Patrick Farrell sworn March 30, 2021 and the Exhibits thereto, the affidavit of Gary Gruneir sworn April 1, 2021 and the Exhibits thereto and on hearing the submissions of counsel for the Applicants, counsel for the Debtor, no one else appearing although duly served as appears from the affidavit of service of Janet Nairne sworn February 5, 2021, and on reading the consent of Rosen Goldberg Inc. to act as the Receiver,

SERVICE

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

APPOINTMENT

2. THIS COURT ORDERS that pursuant to section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the “BIA”), and section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended, Rosen Goldberg Inc. is hereby appointed Receiver, without security, of all of the assets, undertakings and properties of the Debtor, including the lands and premises legally described in Schedule “A” hereto, and all proceeds thereof (the “Property”).

RECEIVER’S POWERS

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

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

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

instituted with respect to the Debtor, the Property or the Receiver, and to settle or compromise any such proceedings. The authority hereby conveyed shall extend to such appeals or applications for judicial review in respect of any order or judgment pronounced in any such proceeding;

- (j) to market any or all of the Property, including advertising and soliciting offers in respect of the Property or any part or parts thereof and negotiating such terms and conditions of sale as the Receiver in its discretion may deem appropriate;
- (k) with the approval of this Court, to sell, convey, transfer, lease or assign the Property or any part or parts thereof out of the ordinary course of business, and in each such case, notice under subsection 63(4) of the Ontario *Personal Property Security Act*, or section 31 of the Ontario *Mortgages Act*, as the case may be, shall not be required;
- (l) to apply for any vesting order or other orders necessary to convey the Property or any part or parts thereof to a purchaser or purchasers thereof, free and clear of any liens or encumbrances affecting such Property;
- (m) to report to, meet with and discuss with such affected Persons (as defined below) as the Receiver deems appropriate on all matters relating to the Property and the Receiver's administration, and to share information, subject to such terms as to confidentiality as the Receiver deems advisable;
- (n) to register a copy of this Order and any other Orders in respect of the Property against title to any of the Property;
- (o) to apply for any permits, licences, approvals or permissions as may be required by any governmental authority and any renewals thereof for and on behalf of and, if thought desirable by the Receiver, in the name of the Debtor;

- (p) to exercise any shareholder, partnership, joint venture or other rights which the Debtor may have; and
- (q) to take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations.

and in each case where the Receiver takes any such actions or steps, it shall be exclusively authorized and empowered to do so, to the exclusion of all other Persons (as defined below), including the Debtor, and without interference from any other Person.

DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE RECEIVER

4. THIS COURT ORDERS that (i) the Debtor, (ii) all of its current and former directors, officers, employees, agents, accountants, legal counsel and shareholders, and all other persons acting on its instructions or behalf, and (iii) all other individuals, firms, corporations, governmental bodies or agencies, or other entities having notice of this Order (all of the foregoing, collectively, being "Persons" and each being a "Person") shall forthwith advise the Receiver of the existence of any Property in such Person's possession or control, shall grant immediate and continued access to the Property to the Receiver, and shall deliver all such Property to the Receiver upon the Receiver's request.

5. THIS COURT ORDERS that all Persons shall forthwith advise the Receiver of the existence of any books, documents, securities, contracts, orders, corporate and accounting records, and any other papers, records and information of any kind related to the business or affairs of the Debtor, and any computer programs, computer tapes, computer disks, or other data storage media containing any such information (the foregoing, collectively, the "Records") in that Person's possession or control, and shall provide to the Receiver or permit the Receiver to make, retain and take away copies thereof and grant to the Receiver unfettered access to and use of accounting, computer, software and physical facilities relating thereto, provided however that nothing in this paragraph 5 or in paragraph 6 of this Order shall require the delivery of Records, or the granting of access to Records, which may not be disclosed or provided to the Receiver due to the privilege attaching to solicitor-client communication or due to statutory provisions prohibiting such disclosure.

6. THIS COURT ORDERS that if any Records are stored or otherwise contained on a computer or other electronic system of information storage, whether by independent service provider or otherwise, all Persons in possession or control of such Records shall forthwith give unfettered access to the Receiver for the purpose of allowing the Receiver to recover and fully copy all of the information contained therein whether by way of printing the information onto paper or making copies of computer disks or such other manner of retrieving and copying the information as the Receiver in its discretion deems expedient, and shall not alter, erase or destroy any Records without the prior written consent of the Receiver. Further, for the purposes of this paragraph, all Persons shall provide the Receiver with all such assistance in gaining immediate access to the information in the Records as the Receiver may in its discretion require including providing the Receiver with instructions on the use of any computer or other system and providing the Receiver with any and all access codes, account names and account numbers that may be required to gain access to the information.

NO PROCEEDINGS AGAINST THE RECEIVER

7. THIS COURT ORDERS that no proceeding or enforcement process in any court or tribunal (each, a “Proceeding”), shall be commenced or continued against the Receiver except with the written consent of the Receiver or with leave of this Court.

NO PROCEEDINGS AGAINST THE DEBTOR OR THE PROPERTY

8. THIS COURT ORDERS that no Proceeding against or in respect of the Debtor or the Property shall be commenced or continued except with the written consent of the Receiver or with leave of this Court and any and all Proceedings currently under way against or in respect of the Debtor or the Property are hereby stayed and suspended pending further Order of this Court.

NO EXERCISE OF RIGHTS OR REMEDIES

9. THIS COURT ORDERS that all rights and remedies against the Debtor, Receiver, or affecting the Property, are hereby stayed and suspended except with the written consent of the Receiver or leave of this Court, provided however that this stay and suspension does not apply in respect of any “eligible financial contract” as defined in the BIA, and further provided that nothing in this paragraph shall (i) empower the Receiver or the Debtor to carry on any business

which the Debtor is not lawfully entitled to carry on, (ii) exempt the Receiver or the Debtor from compliance with statutory or regulatory provisions relating to health, safety or the environment, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien.

NO INTERFERENCE WITH THE RECEIVER

10. THIS COURT ORDERS that no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the Debtor, without written consent of the Receiver or leave of this Court.

CONTINUATION OF SERVICES

11. THIS COURT ORDERS that all Persons having oral or written agreements with the Debtor or statutory or regulatory mandates for the supply of goods and/or services, including without limitation, all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation services, utility or other services to the Debtor are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Receiver, and that the Receiver shall be entitled to the continued use of the Debtor's current telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Receiver in accordance with normal payment practices of the Debtor or such other practices as may be agreed upon by the supplier or service provider and the Receiver, or as may be ordered by this Court.

RECEIVER TO HOLD FUNDS

12. THIS COURT ORDERS that all funds, monies, cheques, instruments, and other forms of payments received or collected by the Receiver from and after the making of this Order from any source whatsoever, including without limitation the sale of all or any of the Property and the collection of any accounts receivable in whole or in part, whether in existence on the date of this Order or hereafter coming into existence, shall be deposited into one or more new accounts to be opened by the Receiver (the "Post Appointment Accounts") and the monies standing to the credit

of such Post Appointment Accounts from time to time, net of any disbursements provided for herein, shall be held by the Receiver to be paid in accordance with the terms of this Order or any further Order of this Court.

EMPLOYEES

13. THIS COURT ORDERS that all employees of the Debtor shall remain the employees of the Debtor until such time as the Receiver, on the Debtor's behalf, may terminate the employment of such employees. The Receiver shall not be liable for any employee-related liabilities, including any successor employer liabilities as provided for in section 14.06(1.2) of the BIA, other than such amounts as the Receiver may specifically agree in writing to pay, or in respect of its obligations under sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*.

LIMITATION ON ENVIRONMENTAL LIABILITIES

14. THIS COURT ORDERS that nothing herein contained shall require the Receiver to occupy or to take control, care, charge, possession or management (separately and/or collectively, "Possession") of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, the *Ontario Environmental Protection Act*, the *Ontario Water Resources Act*, or the *Ontario Occupational Health and Safety Act* and regulations thereunder (the "Environmental Legislation"), provided however that nothing herein shall exempt the Receiver from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Receiver shall not, as a result of this Order or anything done in pursuance of the Receiver's duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

LIMITATION ON THE RECEIVER'S LIABILITY

15. THIS COURT ORDERS that the Receiver shall incur no liability or obligation as a result of its appointment or the carrying out the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part, or in respect of its obligations under sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*. Nothing in this Order shall derogate from the protections afforded the Receiver by section 14.06 of the BIA or by any other applicable legislation.

RECEIVER'S ACCOUNTS

16. THIS COURT ORDERS that the Receiver and counsel to the Receiver shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges unless otherwise ordered by the Court on the passing of accounts, and that the Receiver and counsel to the Receiver shall be entitled to and are hereby granted a charge (the "Receiver's Charge") on the Property, as security for such fees and disbursements, both before and after the making of this Order in respect of these proceedings, and that the Receiver's Charge shall form a first charge on the Property in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subject to sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

17. THIS COURT ORDERS that the Receiver and its legal counsel shall pass their accounts from time to time, and for this purpose the accounts of the Receiver and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

18. THIS COURT ORDERS that prior to the passing of its accounts, the Receiver shall be at liberty from time to time to apply reasonable amounts, out of the monies in its hands, against its fees and disbursements, including legal fees and disbursements, incurred at the standard rates and charges of the Receiver or its counsel, and such amounts shall constitute advances against its remuneration and disbursements when and as approved by this Court.

FUNDING OF THE RECEIVERSHIP

19. THIS COURT ORDERS that the Receiver be at liberty and it is hereby empowered to borrow by way of a revolving credit or otherwise, such monies from time to time as it may

consider necessary or desirable, provided that the outstanding principal amount does not exceed \$500,000.00 (or such greater amount as this Court may by further Order authorize) at any time, at such rate or rates of interest as it deems advisable for such period or periods of time as it may arrange, for the purpose of funding the exercise of the powers and duties conferred upon the Receiver by this Order, including interim expenditures. The whole of the Property shall be and is hereby charged by way of a fixed and specific charge (the “Receiver’s Borrowings Charge”) as security for the payment of the monies borrowed, together with interest and charges thereon, in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subordinate in priority to the Receiver’s Charge and the charges as set out in sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

20. THIS COURT ORDERS that neither the Receiver’s Borrowings Charge nor any other security granted by the Receiver in connection with its borrowings under this Order shall be enforced without leave of this Court.

21. THIS COURT ORDERS that the Receiver is at liberty and authorized to issue certificates substantially in the form annexed as Schedule “B” hereto (the “Receiver’s Certificates”) for any amount borrowed by it pursuant to this Order.

22. THIS COURT ORDERS that the monies from time to time borrowed by the Receiver pursuant to this Order or any further order of this Court and any and all Receiver’s Certificates evidencing the same or any part thereof shall rank on a *pari passu* basis, unless otherwise agreed to by the holders of any prior issued Receiver’s Certificates.

SERVICE AND NOTICE

23. THIS COURT ORDERS that the E-Service Protocol of the Commercial List (the “**Protocol**”) is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Protocol (which can be found on the Commercial List website at <http://www.ontariocourts.ca/scj/practice/practice-directions/toronto/e-service-protocol/>) shall be valid and effective service. Subject to Rule 17.05 this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the Rules of Civil Procedure. Subject to Rule 3.01(d) of the Rules of Civil Procedure and paragraph 21 of the Protocol, service of documents in accordance with the Protocol will be effective on transmission. This Court further

orders that a Case Website shall be established in accordance with the Protocol with the following URL:
http://www.rosengoldberg.com/www.rosengoldberg.com/admin/companyview.php?company_id=52.

24. THIS COURT ORDERS that if the service or distribution of documents in accordance with the Protocol is not practicable, the Receiver is at liberty to serve or distribute this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery or facsimile transmission to the Debtor's creditors or other interested parties at their respective addresses as last shown on the records of the Debtor and that any such service or distribution by courier, personal delivery or facsimile transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

GENERAL

25. THIS COURT ORDERS that the Receiver may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

26. THIS COURT ORDERS that nothing in this Order shall prevent the Receiver from acting as a trustee in bankruptcy of the Debtor.

27. THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.

28. THIS COURT ORDERS that the Receiver be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and

that the Receiver is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

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

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

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

SCHEDULE "A"

LANDS AND PREMISES

PIN: 21078-0144 (LT)

PT LT 19 N/S SOUTH PARK ST W/S SUMACH ST PL 108 TORONTO; PT LT 20 N/S SOUTH PARK ST W/S SUMACH ST PL 108 TORONTO AS IN ES61367 & CT627853 EXCEPT PT 1 RD162; CITY OF TORONTO

Municipal Address: 90 Eastern Avenue

PIN: 21098-0085 (LT)

PT PARKLT 8 CON 1 FTB TWP OF YORK PT 5 63R4643 T/W CA797973; CITY OF TORONTO; SUBJECT TO AN EASEMENT OVER PART 5 PLAN 63R-4643 IN FAVOUR OF PARTS 6 & 7 ON PLAN 66R-15815 AS IN AT3757274; SUBJECT TO AN EASEMENT OVER PART 5 PLAN 63R-4643 IN FAVOUR OF PARTS 1, 2 & 8 PLAN 66R-15815 AS IN AT3757274; SUBJECT TO AN EASEMENT OVER PART 5 PLAN 63R-4643 IN FAVOUR OF PARTS 11, 12, 19M 20, 21, 22, 23, 24, 32, 34, 35, 37, 38, 40, 41, 52, 53, 57, 58, 59, 60, 61 & 62 ON PLAN 66R-27069 AS IN AT3757274; CITY OF TORONTO

Municipal Address: 205 Yonge Street

SCHEDULE "B"

RECEIVER CERTIFICATE

CERTIFICATE NO. _____

AMOUNT \$ _____

1. THIS IS TO CERTIFY that Rosen Goldberg Inc., the Receiver (the "Receiver") of all of the assets, undertakings and properties of The Midas Investment Corporation (the "Debtor"), including the lands and premises municipally known as 205 Yonge Street, in Toronto and 90 Eastern Avenue, in Toronto, and all proceeds thereof (the "Property") appointed by Order of the Ontario Superior Court of Justice (Commercial List) (the "Court") dated the [DATE] (the "Order") made in an application having Court file number CV-21_____, has received as such Receiver from the holder of this certificate (the "Lender") the principal sum of \$_____, being part of the total principal sum of \$_____ which the Receiver is authorized to borrow under and pursuant to the Order.

2. The principal sum evidenced by this certificate is payable on demand by the Lender with interest thereon calculated and compounded monthly not in advance on the _____ day of each month after the date hereof at a notional rate per annum equal to the rate of _____ per cent.

3. Such principal sum with interest thereon is, by the terms of the Order, together with the principal sums and interest thereon of all other certificates issued by the Receiver pursuant to the Order or to any further order of the Court, a charge upon the whole of the Property, in priority to the security interests of any other person, but subject to the priority of the charges set out in the Order and in the *Bankruptcy and Insolvency Act*, and the right of the Receiver to indemnify itself out of such Property in respect of its remuneration and expenses.

4. All sums payable in respect of principal and interest under this certificate are payable at the main office of the Lender at Toronto, Ontario.

5. Until all liability in respect of this certificate has been terminated, no certificates creating charges ranking or purporting to rank in priority to this certificate shall be issued by the Receiver to any person other than the holder of this certificate without the prior written consent of the holder of this certificate.

6. The charge securing this certificate shall operate so as to permit the Receiver to deal with the Property as authorized by the Order and as authorized by any further or other order of the Court.

7. The Receiver does not undertake, and it is not under any personal liability, to pay any sum in respect of which it may issue certificates under the terms of the Order.

DATED the ____ day of _____, 2021.

Rosen Goldberg Inc., solely in its capacity
as Receiver of the Property, and not in its
personal capacity

Per: _____

Name:

Title:

COSA NOVA FASHIONS LTD., et al
Applicants

-and- THE MIDAS INVESTMENT CORPORATION
Respondent

Court File No. CV-21-00656398-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

PROCEEDING COMMENCED AT
TORONTO

ORDER
(Appointing Receiver)

DICKINSON WRIGHT LLP

Barristers & Solicitors
199 Bay Street
Suite 2200, Box 447
Commerce Court Postal Station
Toronto, ON M5L 1G4

David P. Preger (36870L)

dpreger@dickinsonwright.com
Tel: (416) 646-4606

David Z. Seifer (77474F)

Email: DSeifer@dickinsonwright.com
Tel: 416-646-6867

Lawyers for the Applicants

APPENDIX “B”

The Midas Investment Corporation
Statement of Receipts and Disbursements
For the period April 6, 2021 to July 20, 2023

Receipts

Proceeds on sale of real properties	14,818,000
Funds received from Accountant of Superior Court of Ontario	448,588
Receiver's borrowings	100,000
Interest	27,094
Cash in bank	17,883
Rental Income	3,295
	<hr/>
	15,414,860

Disbursements

Receiver's fees	298,500
Real estate commission	285,540
Legal fees	241,667
HST paid	159,149
Repayment of receiver's borrowings	100,000
Repairs and maintenance	53,038
Accounting fees	26,110
Appraisal costs	15,750
Advertising	4,921
Interest on receiver's borrowings	3,161
Lender's fee	2,000
Realty taxes	1,799
Filing fee	73
	<hr/>
	1,191,708

Excess of receipts over disbursements before the undernoted 14,223,152

Payment to first mortgagee	10,095,736
Payment to FCT	1,744,360
Payment Claims Process payments	651,764
Payment of third party costs awards	423,186
	<hr/>
	12,915,046

Cash on hand 1,308,106

The schedule has been prepared on the cash basis and does not include the obligations of the Receiver.

APPENDIX “C”

Rosen Goldberg Inc.; Receiver and Manager of
The Midas Investment Corporation
Schedule of Mortgage Advance
Prepared April 11, 2022

Mortgage Proceeds 5,000,000.00

Disbursed as follows:

Repayment of existing mortgage	805,147.38
Lender's fee	170,000.00
Prepaid taxes	49,500.00
Prepaid interest	250,000.02
Payment of writ (paid to Colina King)	68,808.00
Payment of writ (Dominion of Insurance)	100,868.18
Legal fees-lenders	7,627.50
Title insurance	4,374.00
Insurance	4,012.20
Payment to Midas Investment Corporation	<u>3,339,662.72</u>
	4,800,000.00

Balance held in trust by Grafinkle Biderman 200,000.00

Disbursed as follows:

Insurance Premiums	149,785.20
Appraisal costs	18,306.00
Legal fees	<u>21,171.64</u>
	189,262.84

Amount held in trust 10,737.16

APPENDIX “D”

AGREEMENT FOR BUSINESS BANKING: EXECUTION AND ACCOUNT INFORMATION

Please read this document carefully - it applies to all Account(s) of the Customer (as defined in Part A) with Bank of Montreal (the "Bank"). Capitalized terms used herein will have the meanings ascribed to them in the Bank's Agreement for Business Banking (as amended, substituted or replaced from time to time the "ABB") unless otherwise defined below. This Agreement, once Part E has been signed by/on behalf of the Customer, forms part of the ABB between the Customer and the Bank (together, the "Agreement").

PART A PARTICULARS OF BUSINESS ACCOUNTS

Account# 1 3995 1998-601
Transit AccountNumber

THE MIDAS INVESTMENT CORPORATION
Legal Name (the "Customer")

Trade Name (Operating As)

C/O or ATTN.

Business Address

67 WOODBRIDGE CIR
Street Number Street Name
PORT PERRY ONTARIO L9L2B3
City Prov/State Postal/Zip Code
Apt./Suite *

Country (if other than Canada)

(416)710-1356
Business Telephone No. * Fax No. *

Corporation - Holding Company - Provincial

Business Type (e.g. Sole Proprietorship)

(Federal) Business Number *(required for interest-bearing accounts)

Building and General Real Estate Developer Industries - Commercial Building

Nature of Business

THIRD PARTY DETERMINATION.

Is this a trust account or trust accounts opened by a lawyer, accountant, or a real estate broker or sales representative on behalf of their client(s)?

Yes No If Yes, proceed directly to "Authorized Signatory and Identification" section

Will this deposit account or these deposit accounts only be used by your business and only for your business transactions?

Yes No Note: Complete Third Party Determination Form 3391 if answer is No.

AUTHORIZED SIGNATORY AND IDENTIFICATION Note: 2 pieces of personal identification must be recorded for all new Authorized Signatory (ies) (up to a maximum of 3).

Authorized Signatory 1

MR JOHN MARTIN KAVANAGH
Name

Secretary/Treasurer
(Company) Position e.g. Treasurer *

10/DEC/1969
Date of Birth (DD/MMM/YYYY)

Foreign Passport
1. Type of Identification e.g. Driver's License

PB3335200
Identification Number

Ireland
Place of Issue (Province/State/Country)

Name of Issuer e.g. BMO, AMEX, etc. *

Foreign Birth Certificate
2. Type of Identification e.g. Driver's License

3068997
Identification Number

Ireland
Place of Issue (Province/State/Country)

Name of Issuer e.g. BMO, AMEX, etc. *

Completed can change updated.

Authorized Signatory 2

MR ROCCO REMO COMMISSO

Name

CONSULTANT

(Company) Position e.g. Treasurer *

11/JUL/1959

Date of Birth (DD/MMM/YYYY)

Canadian Driver's License

1. Type of Identification e.g. Driver's License

C6357-66075-90711

Identification Number

Ontario

Place of Issue (Province/State/Country)

Name of Issuer e.g. BMO, AMEX, etc. *

Credit Card

2. Type of Identification e.g. Driver's License

4538-0158-2137-9105

Identification Number

Ontario

Place of Issue (Province/State/Country)

SCOTIABANK VISA

Name of Issuer e.g. BMO, AMEX, etc. *

Authorized Signatory 3

Name

(Company) Position e.g. Treasurer *

Date of Birth (DD/MMM/YYYY)

1. Type of Identification e.g. Driver's License

Identification Number

Place of Issue (Province/State/Country)

Name of Issuer e.g. BMO, AMEX, etc. *

2. Type of Identification e.g. Driver's License

Identification Number

Place of Issue (Province/State/Country)

Name of Issuer e.g. BMO, AMEX, etc. *

ACCOUNT(S) INFORMATION

Signature Requirements: Single Either Both Multiple Official Language: English French Additional Information: Braille

Account

1998-601

Each Authorized Signatory below, in his/her personal capacity, acknowledges and consents to (i) the disclosure of such Authorized Signatory's personal information as set out in, or provided in connection with, this Agreement ("Personal Information") to each Authorized Signatory below and to the Customer or as may be required by law; and (ii) the use of this Agreement, and of each Authorized Signatory's Personal Information, in opening or maintaining one or more account(s) with the Bank, if applicable. Each Authorized Signatory below further acknowledges, as an individual, receipt of and agrees to the Privacy Disclosure and Consent provisions contained in the Agreement for Business Banking.

Signature of Authorized Signatory 1

Name: MR JOHN MARTIN KAVANAGH

Position: Secretary/Treasurer

Signature of Authorized Signatory 2

Name: MR ROCCO REMO COMMISSO

Position: CONSULTANT

Signature of Authorized Signatory 3

Name:

Position:

PART B: SELECTION OF EVERYDAY BANKING FOR BUSINESS PLAN

*Please select one of the following - see the Better Banking Guide for Business for further details.

The Customer hereby selects the following EBB Plan:

Lead Account number with EBB Plan

3995

Transit number

1998-601

Account number

Value Plan

Plan Number

- 1
- 2
- 3
- 4
- 5
- 6

Small Business Banking Plan

- More Cash
- More Cheques

ValueAssistSM Plan

Plan Number

- 1
- 2
- 3
- 4
- 5
- 6

No Plan

PART C: ACKNOWLEDGEMENT OF RECEIPT OF BMO DEBIT CARDS FOR BUSINESS

The Customer acknowledges receipt of the BMO Debit Card(s) for Business described below:

5007-6690-2817-5515
 Card Number # 1
 NEW ACCOUNT - 2 DAY HOLD FUNDS (65)
 Limit Class
 STARTER CUSTOMER
 Rationale for Limit Class

3995 1998-601
 Prime Chequing Account Number
 Account Status

1
 Prime Savings Account Number
 Account Status

ACCOUNT STATUS		
1. Normal Processing	6. Transfer FROM not allowed	A. No POS Purchase
2. Mech. Validation	7. Bill Payment - ABM not allowed	B. No POS Pre-Authorized Purchase Request
3. No Withdrawal	8. Inquiry not allowed	C. No POS Purchase with Cashback
4. No Deposit	9. View Account History/Statement not allowed	D. No Bill Payment - Online/Telephone Banking
5. Transfer TO not allowed		E. No POS Merchandise Return
		F. No POS Merchant Debit Reversal
		G. No POS Merchant Credit Reversal

PART D: TELEPHONE BANKING/ONLINE BANKING REGISTRATION

The Customer hereby requests Telephone Banking/Online Banking access for the BMO Debit Card(s) for Business indicated below:

Card Number # _____

PART E: ENTERING INTO AGREEMENT FOR BUSINESS BANKING

1. For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Customer:

- (a) agrees to be bound by the terms and conditions of the ABB including the terms and conditions set out in this Agreement, copies of which have been received by the Customer;
- (b) certifies and agrees that the attached Certificate and Authorization as completed by the Customer is true and correct and that the Certificate and Authorization and any documentation provided to the Bank to support the existence of the business entity (including, without limitation, articles of incorporation, amalgamation or continuance, by-laws, partnership agreements and directors resolutions) are in full force and effect, unamended and that any branch of the Bank with which any dealings are had by the Customer may act or rely upon them until each such branch is notified in writing to the contrary.
- (c) In addition to the ABB, the Customer acknowledges receipt of the Better Banking Guide for Business and agrees to the applicable fees set out in the Better Banking Guide for Business, as it may be amended, substituted or replaced from time to time.

The Customer represents that each individual signing this document on behalf of the Customer is an Authorized Signatory of the Customer and has been authorized to sign on the Customer's behalf. The Customer declares that the information provided herein is true and correct.

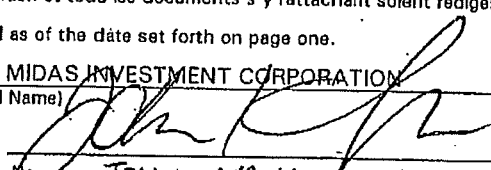
2. Check box if applicable -

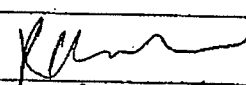
- Money Service Businesses - the Customer acknowledges receipt of the Money Services Business (MSB) - Disclosure form and agrees to be bound by the terms and conditions set out therein.


It is the express wish of the parties that this Agreement and any related documents be drawn up and executed in English. Les parties conviennent que la présente convention et tous les documents s'y rattachant soient rédigés et signés en anglais.

Dated as of the date set forth on page one.

THE MIDAS INVESTMENT CORPORATION
 (Legal Name)

BY: 
 Name: JOHN KAVANAGH
 Position: SECRETARY / TREASURER

BY: 
 Name: Rocco Remo Comarico
 Position: Consultant

Branch Use Only A/C: 1998-601 Hold Funds Waived * <input type="checkbox"/>		I acknowledge that I have been presented with the identification documents, original, valid and in good condition, as recorded above. For existing customers, I confirm that identification particulars are on file.
RM Code 09837	AM Code * IK	Interviewed & Opened by 
		Print Name and Phone Number: Amanda Coppola 905-832-6516

All Parts of this Agreement have been reviewed and approved by Branch Manager or delegate

Name:
Title:



Bernie Fern
Branch Mgr

ONLY for BMO Debit Card for Business; if Approving Manager is not the Branch Manager or delegate, the Approving Manager must sign below

Name:
Title:

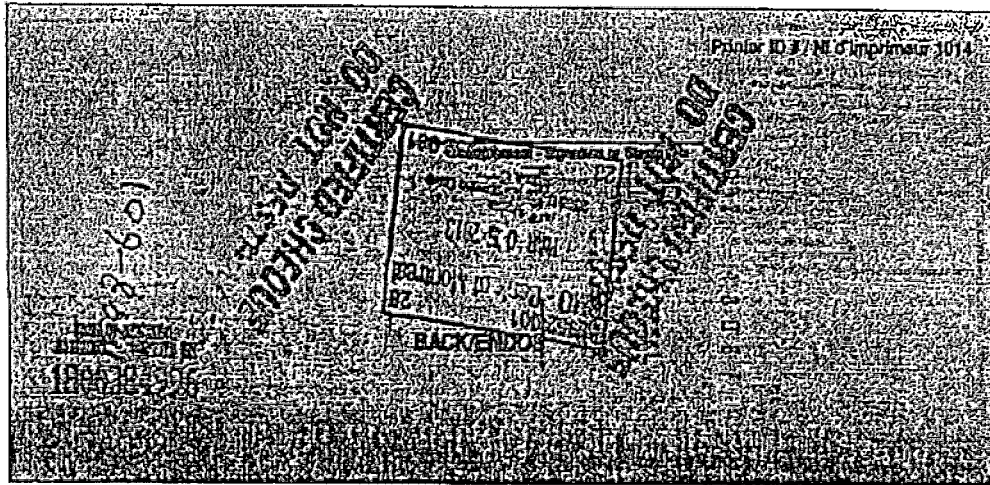
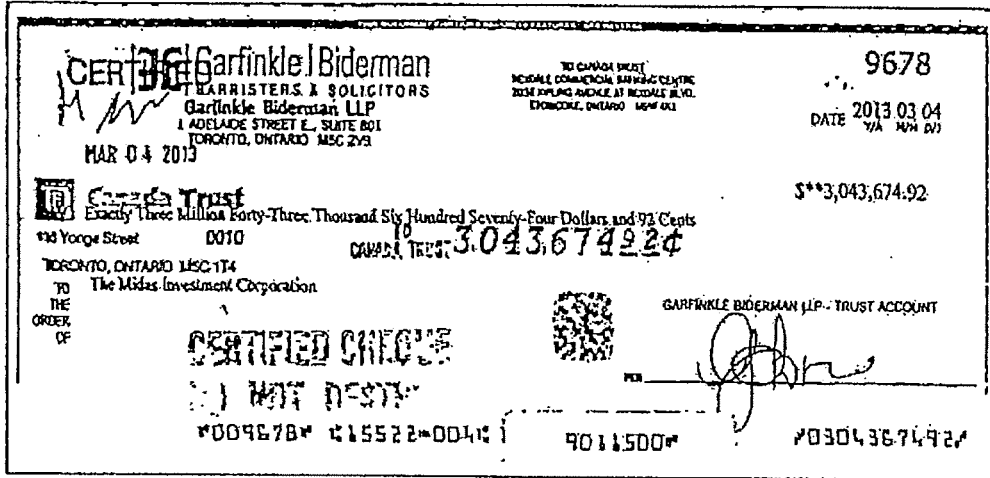
® Registered trade-mark of Bank of Montreal

APPENDIX “E”

Cheque Item Image

User: MARIA P A ANGELUCCI

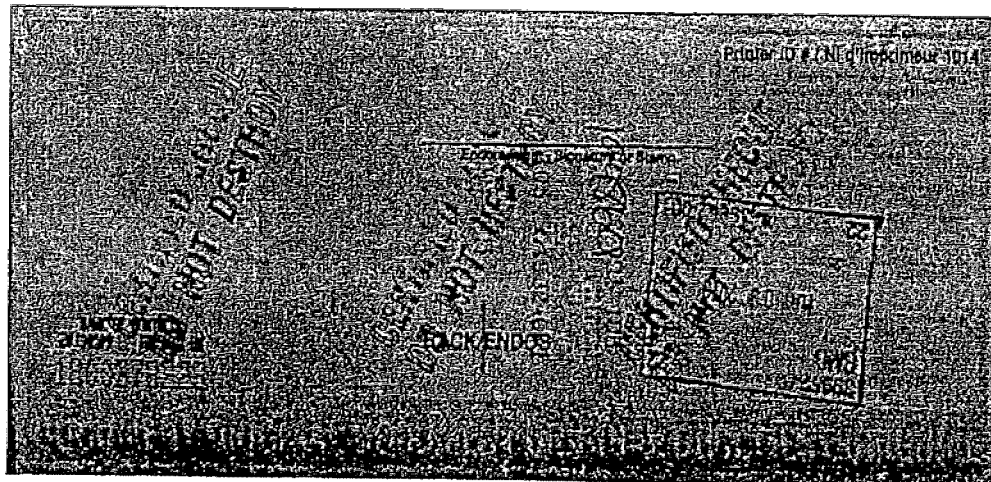
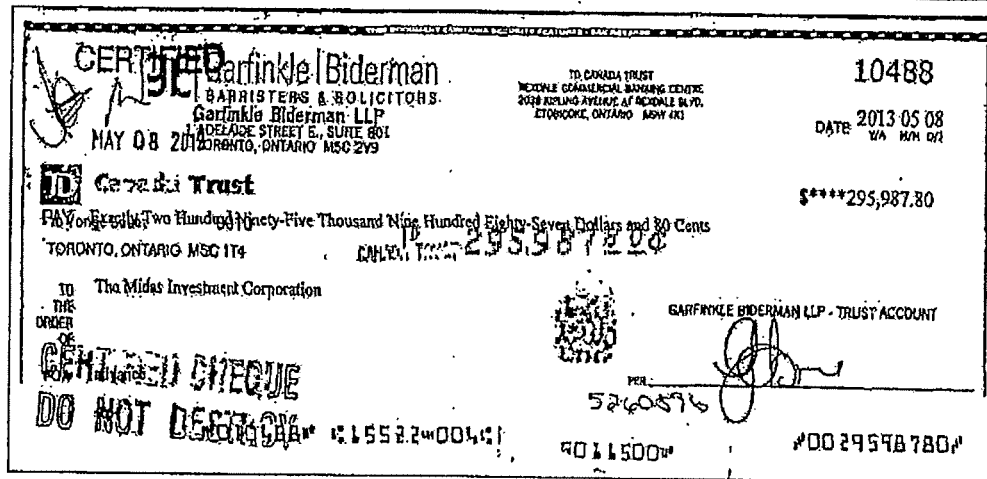
Request #:	4013524	Request Desc:	
Transit - FI #:	15522-004	Account #:	9011500
Sequence #:	1800384996	Amount:	\$3,043,674.92 CAD
Date:	03/05/2013		



Cheque Item Image

User: Jessica Chiappetta

Request #:	-1	Request Desc:	
Transit - FI #:	15522-004	Account #:	0000000
Sequence #:	1800378223	Amount:	\$295,987.80 CAD
Date:	05/09/2013		



print close

APPENDIX “F”

Rosen Goldberg Inc.,; Court Appointed Receiver and Manager of
The Midas Investment Corporation
Payments made from Bank of Montreal Accounts as Provided by Thomas Farrell
Prepared July 19, 2023

Datre	Payee	Amount
05-Mar-13	Margaret Pastore	202,750.00
15-Mar-13	2364788 Ontario Ltd.	150,000.00
15-Mar-13	2364798 Ontario Ltd.	150,000.00
15-Mar-13	Grace Comisso	202,750.00
15-Mar-13	1870461 Pontario Ltd.	189,243.90
15-Mar-23	P.W. Vroon	1,500,000.00
15-Mar-13	Ciudad Equipment Sales	405,500.00
05-Mar-13	Ciudad Equipment Sales	10,000.00
15-May-13	2364789 Ontario Inc.	101,743.90
		<u>2,911,987.80</u>

Cheque Item Image

User: Jessica Chiappetta

Request #:	4014360	Request Desc:	
Transit - FI #:	06952-001	Account #:	3995021666343
Sequence #:	5100281029	Amount:	\$202,750.00 CAD
Date:	03/18/2013		

BMO Bank of Montreal • Banque de Montréal CANADIAN \$ DRAFT / TRAITE EN DOLLARS CANADIENS

MAPLE BRANCH
2535 MAJOR MACKENZIE DRIVE
MAPLE, ONTARIO, CANADA L6A 1G6

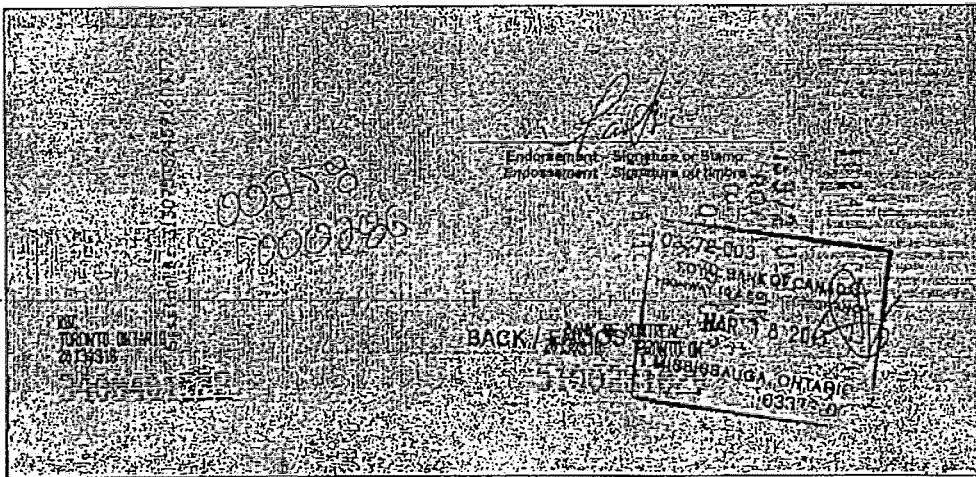
166634 DATE 20130315
Y6 M4 04

Pay to the order of / Payez à l'ordre de Margaret Pastore \$202,750.00

for Bank of Montreal/pour la Banque de Montréal 100 Canadian Dollars Canadiens

Endorsed / Signatures of Bank / Endorsé / Signatures de la Banque

100952001 3995021666343 90 0020275000



print close

Cheque Item Image User: Jessica Chappetta

Request #:	4056584	Request Desc:	
Transit - FI #:	06862-001	Account #:	3995021868334
Sequence #:	6100282117	Amount:	\$202,750.00 CAD
Date:	03/18/2013		

BMO Bank of Montreal - Banque de Montreal
 2535 MAJOR MACKENZIE DRIVE
 MAPLE BRANCH
 MAPLE, ONTARIO, CANADA L6A 1G6
 166633

DATE: 03 18 2013

Pay to the order of: **Grace Comisso**

\$ 202,750.00

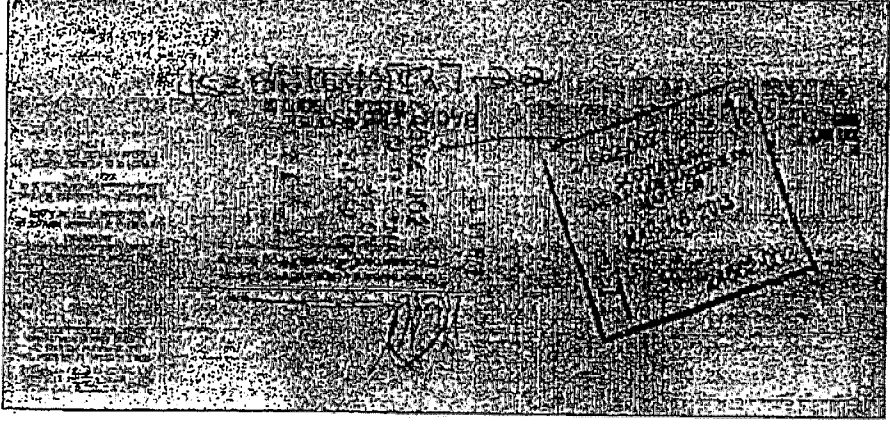
202750

For Bank of Montreal/Banque de Montreal
 100 Canadian Dollars / Centauros

By: *[Signature]*
 Grace Comisso

Account Order / Compte

00952-001: 3995021868334 90 / 00202750007



close print

Cheque Item Image

User: Jessica Chiappetta

Request #:	4014344	Request Desc:	
Transit - FI #:	06952-001	Account #:	3995021666381
Sequence #:	5100281911	Amount:	\$150,000.00 CAD
Date:	03/18/2013		

BMO Bank of Montreal • Banque de Montréal • CANADIAN \$ DRAFT / TRAITE EN DOLLARS CANADIENS

MAPLE BRANCH
2535 MAJOR MACKENZIE DRIVE
MAPLE, ONTARIO, CANADA L6A 1G6

166638
DATE 20130315
Y/A MM DU

[CTI]

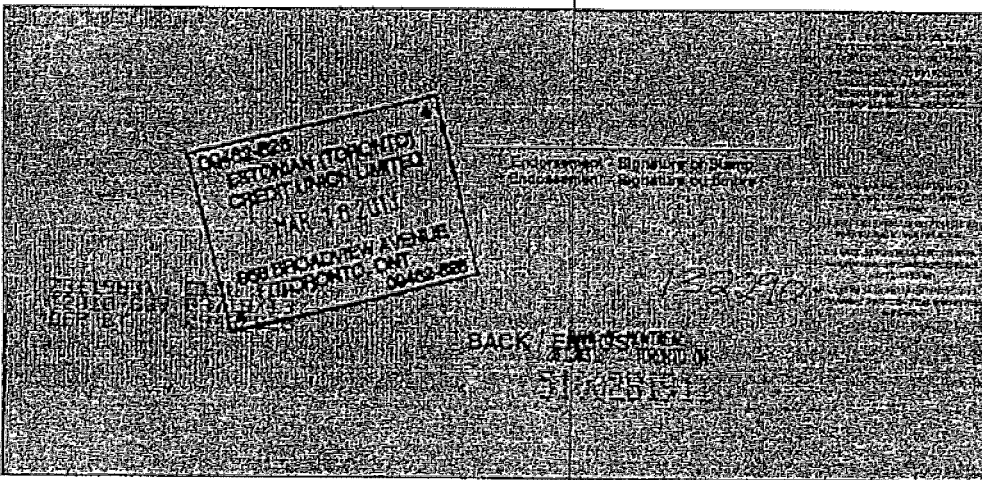
Pay to the order of / Payez à l'ordre de 2364798 Ontario Ltd. \$ 150,000.00

100 Canadian Dollars / 100 Dollars Canadiens

for Bank of Montreal / pour la Banque de Montréal

Signing Officer / Signataire
Special Officer / Spécial

⑆06952⑆001⑆ 399502166638⑆ 90 ⑆001500000⑆



print close

Cheque Item Image

User: Jessica Chiappetta

Request #:	4014378	Request Desc:	
Transit - FI #:	06952-001	Account #:	3995029152037
Sequence #:	5100413809	Amount:	\$101,743.90 CAD
Date:	05/15/2013		

BMO Bank of Montreal • Banque de Montréal CANADIAN \$ DRAFT / TRAITE EN DOLLARS CANADIENS

MAPLE BRANCH
2535 MAJOR MACKENZIE DRIVE
MAPLE, ONTARIO, CANADA L6A 1C6

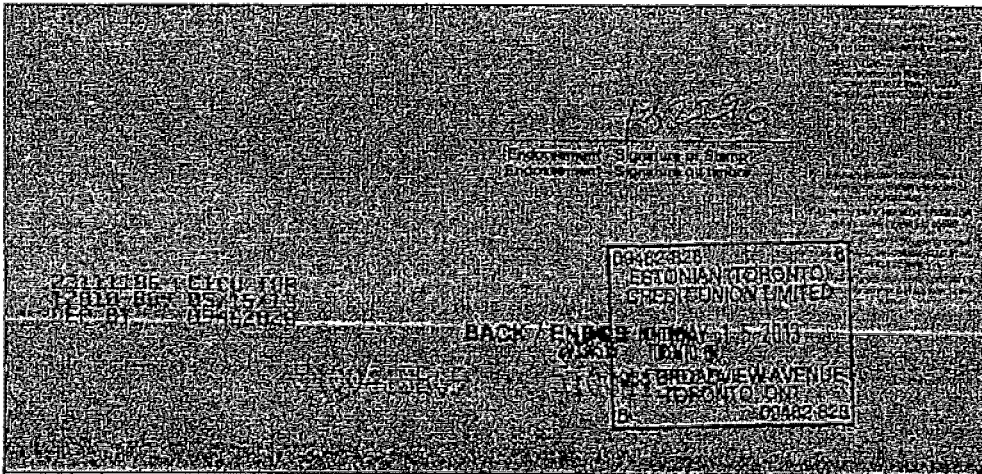
915203 DATE 20130515
Y/A MM DJ

CTI

Pay to the order of / Payez à l'ordre de 2364789 Ontario Inc. \$ 101743.90

100 Canadian Dollars / 100 Dollars Canadien

⑆06952⑆001⑆ 3995029152037⑆ 90 ⑆0010174390⑆



print close

Cheque Item Image

User: Jessica Chiappetta

Request #:	4014381	Request Desc:	
Transit - FI #:	06952-001	Account #:	3995029152046
Sequence #:	5100551121	Amount:	\$189,243.90 CAD
Date:	05/16/2013		

BMO Bank of Montreal - Banque de Montréal CANADIAN \$ DRAFT / TRAITE EN DOLLARS CANADIENS

MAPLE BRANCH
2535 MAJOR MACKENZIE DRIVE
MAPLE, ONTARIO, CANADA L6A 1G6

915284 DATE 20130515
YR MM DD

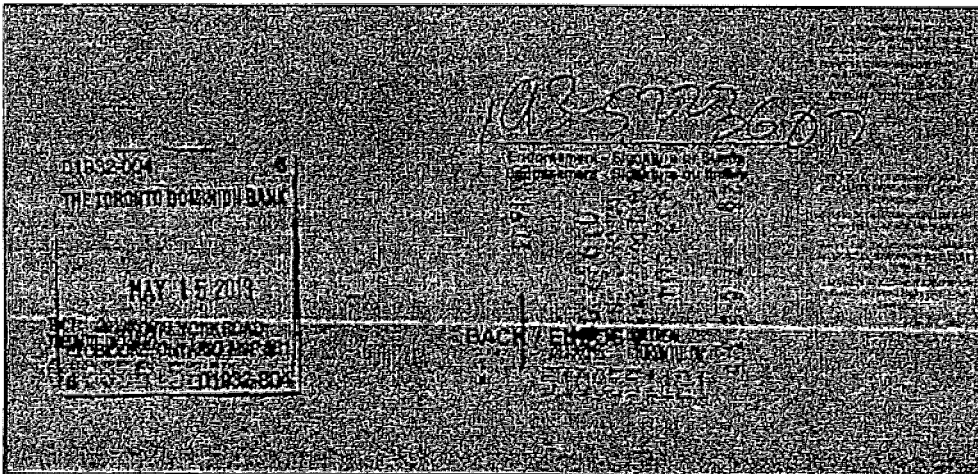
CTI

Pay to the order of / Payez à l'ordre de 1870561 Ontario Inc. \$ 189 243.90

1870561 915284
for Bank of Montreal / pour la Banque de Montréal 100 Canadian Dollars / Centiers Canadiens

Signing Officer / Signataire
Signing Officer / Signataire

⑆06952⑆⑆001⑆ 3995029152046⑆ 90 ⑆0018924390⑆



print close

Serial Number 399509691 Posting Date 15/MAR/2013 Amount CAD 1,500,000.00

ORDERING CUSTOMER

Name THE MIDAS INVESTMENT CORPORATION

Address 67 WOODBRIDGE CIR

City PORT PERRY

Province ONTARIO

Postal Code L9L 2B3

Country CANADA

Source of Funds ACCOUNT 3995 1998-601

QUOTED RATE & EXCHANGE

N/A

SOURCE OF WIRE REQUEST

Source of Wire Request IN PERSON

Message Agreement (verified) NO

Callback Details N/A

BENEFICIARY

Name P.W. VROON

Address RESIDENCE DE WULPEN PROMENADE 3-11

City 4511 RB BRESKENS

Region

Postal Code

Country NETHERLANDS

BENEFICIARY BANK

Bank Name ABN AMRO BANK BRESKENS

Address

City BRESKENS

Region BRESKENS

Postal Code

Country NETHERLANDS

Bank ID SWIFT ABNANL2A

CORRESPONDENT BANK

Bank Name ING BANK

Code 5160007

DETAILS OF PAYMENT

Notify by Phone NO Regular Number

Credit Account YES Account 469786787

Pay on Application & Identification NO

Remittance Information IBAN NL54ABNA0469786787

WIRE TRANSFER AGREEMENT

In consideration of the Bank of Montreal (the "Bank") processing and receiving wire transfers ("Transfers") from time to time for our account, we agree as follows:

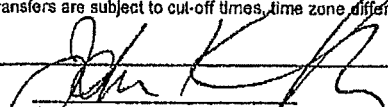
We acknowledge that the Bank is not responsible for and we agree to indemnify and save the Bank harmless from and against any and all charges, expenses, losses, errors, damages, penalties, costs or inconvenience resulting to us or any other person arising from any delay or failure of performance due to causes beyond the control of the Bank, including, without limitation, the acts or omissions of or the insolvency or bankruptcy of other financial institutions or systems failures respecting the processing and receipt of Transfers. The Bank is not liable to us or any other person for incorrect or improper payment to or from us or any person arising out of the processing of any Transfer, unless caused solely by the negligence or willful misconduct of the Bank.


We acknowledge that the Bank may delay the sending of a Transfer in the event that any restrictions applicable to the Bank in any clearing system used to effect the Transfer, including, without limitation, insufficient credit or other limits delay the Bank from sending the Transfer. We acknowledge that the Bank and other financial institutions involved in processing Transfers may rely solely on any account or identification number (s) provided and will not seek to confirm whether the number (s) specified correspond with the name of the payee or the payee's financial institution provided in the payment order and are not obliged in any other way to verify the information contained in the payment order. The payee may be required to provide identification to the satisfaction of the paying financial institution.

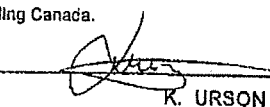
Transfers executed by the Bank are irrevocable. While the Bank shall use its best efforts to request a return of funds upon our instructions, the Bank cannot guarantee a return of funds or a return of funds without charge or fee to us. If the Bank is able to obtain a return of funds, the Bank will credit our account less any applicable charges or fees, at the bank's quoted rate of exchange (where foreign currency exchange is requested by us) on the date such credit is made. The funding account number information may be provided to the beneficiary's financial institution as part of processing this Transfer.

We agree to pay any Bank charges or fees and to reimburse the Bank for any fees or deductions charged by other financial institutions, including but not limited to withholding or other taxes, interest and penalties that may be paid by the Bank, in connection with any Transfers. We acknowledge that other financial institutions may charge or deduct a fee for processing Transfers (including fees for refund requests and corrections) and that the Bank may receive remuneration from the other financial institutions.

Transfers are subject to cut-off times, time zone differences and local laws and regulations of the destination country, including Canada.


Customer Signature


A. BELTRAN


K. URSON

March 15, 2013 3:35:51 PM
Branch Transit: 3995
Operator: 022
Business Date: March 15, 2013
Card Number: 5007 6690 2817 5515
Authentication: Manual

Transaction Record
Branch Copy

Customer To Customer Wire Transfer
Sequence Number(s): 099
Serial Number: 3995030611
Amount: *1,300* \$1,300,000.00
Source of Funds: 3995 1998 601 (CHK)
Handling Charge: \$125.00
Telecommunication Fee: \$10.00

March 15, 2013 3:37:38 PM
Branch Transit: 3995
Operator: 022
Business Date: March 15, 2013
Card Number: 5007 6690 2817 2355
Authentication: Manual

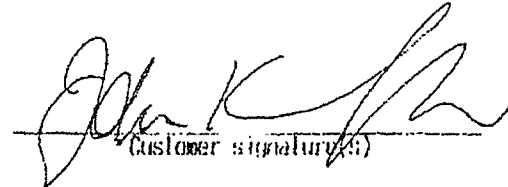
Canadian Draft
Sequence Number(s): 100
Serial Number: 0216563161
Source of Funds: 3995 1998 601 (CHK)
Amount: \$150,000.00
Fee: \$7.50

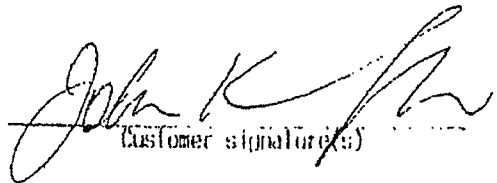
Transfer
Sequence Number(s): 104
From Account: 3995 1998 601
Amount Deducted: \$175,000.00

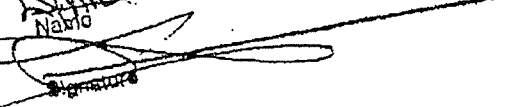
Canadian Draft
Sequence Number(s): 101
Serial Number: 021656325
Source of Funds: 3995 1998 601 (CHK)
Amount: \$150,000.00
Fee: \$7.50

To Account: 3995 1998 601 (CHK)
Amount Added: \$175,000.00

Debit Memorandum
Sequence Number(s): 102
TRANSFER
Account: 3995 1998 601 (CHK)
Amount: \$175,000.00


(Customer signature(s))


(Customer signature(s))

Computer printout is hereby certified to be
a true & correct copy thereof
John Viscanti 3/14/13
Name Date

Signature

Transaction Record
Branch Copy

March 15, 2013 3:35:51 PM
Branch Transit: 3995
Operator: 022
Business Date: March 15, 2013
Card Number: 5007 6000 2017 5515
Authentication: Manual

Customer To Customer Wire Transfer

Sequence Number(s): 099
Serial Number: 399509691
Amount: \$1,500,000.00
Source of Funds: 3995 1998 601 (Chq)
Handling Charge: \$125.00
Telecommunication Fee: \$10.00

Canadian Draft

Sequence Number(s): 101
Serial Number: 021666361
Source of Funds: 3995 1998 601 (Chq)
Amount: \$150,000.00
Fee: \$7.50

Canadian Draft

Sequence Number(s): 101
Serial Number: 021666325
Source of Funds: 3995 1998 601 (Chq)
Amount: \$150,000.00
Fee: \$7.50

Debit Memorandum

Sequence Number(s): 102
TRANSFER
Account: 3995 1998 601 (Chq)
Amount: \$175,000.00


Customer signature(s)

Serial Number 399509693 Posting Date 15/MAR/2013 Amount CAD 405,500.00

ORDERING CUSTOMER
 Name THE MIDAS INVESTMENT CORPORATION
 Address 67 WOODBRIDGE CIR
 City PORT PERRY
 Province ONTARIO Postal Code L9L 2B3
 Country CANADA
 Source of Funds ACCOUNT 3995 1998-601
 QUOTED RATE & EXCHANGE
 N/A

SOURCE OF WIRE REQUEST
 Source of Wire Request IN PERSON Message Agreement (verified) NO
 Callback Details N/A

BENEFICIARY
 Name CIUDAD EQUIPMENT SALES
 Address 219 GRACEFIELD AVENUE
 City TORONTO
 Province ONTARIO Postal Code M6L 1L7
 Country CANADA

BENEFICIARY BANK
 Bank Name CIBC TRUST CORPORATION
 Address 2866 DUFFERIN STREET
 City TORONTO
 Province ONTARIO Postal Code M6B 3S6
 Country CANADA Bank ID CC 054800000

CORRESPONDENT BANK
 Bank Name CANADIAN FINANCIAL INSTITUTIONS Code 9500000

DETAILS OF PAYMENT
 Notify by Phone NO Regular Number
 Credit Account YES Account 8741115 Pay on Application & Identification YES
 Remittance Information TRANSIT 00312

WIRE TRANSFER AGREEMENT

In consideration of the Bank of Montreal (the "Bank") processing and receiving wire transfers ("Transfers") from time to time for our account, we agree as follows:

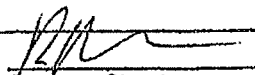


We acknowledge that the Bank is not responsible for and we agree to indemnify and save the Bank harmless from and against any and all charges, expenses, losses, errors, damages, penalties, costs or inconvenience resulting to us or any other person arising from any delay or failure of performance due to causes beyond the control of the Bank, including, without limitation, the acts or omissions of or the insolvency or bankruptcy of other financial institutions or systems failures respecting the processing and receipt of Transfers. The Bank is not liable to us or any other person for incorrect or improper payment to or from us or any person arising out of the processing of any Transfer, unless caused solely by the negligence or willful misconduct of the Bank.

We acknowledge that the Bank may delay the sending of a Transfer in the event that any restrictions applicable to the Bank in any clearing system used to effect the Transfer, including, without limitation, insufficient credit or other limits delay the Bank from sending the Transfer. We acknowledge that the Bank and other financial institutions involved in processing Transfers may rely solely on any account or identification number (s) provided and will not seek to confirm whether the number (s) specified correspond with the name of the payee or the payee's financial institution provided in the payment order and are not obliged in any other way to verify the information contained in the payment order. The payee may be required to provide identification to the satisfaction of the paying financial institution.

Transfers executed by the Bank are irrevocable. While the Bank shall use its best efforts to request a return of funds upon our instructions, the Bank cannot guarantee a return of funds or a return of funds without charge or fee to us. If the Bank is able to obtain a return of funds, the Bank will credit our account less any applicable charges or fees, at the bank's quoted rate of exchange (where foreign currency exchange is requested by us) on the date such credit is made. The funding account number information may be provided to the beneficiary's financial institution as part of processing this Transfer.

We agree to pay any Bank charges or fees and to reimburse the Bank for any fees or deductions charged by other financial institutions, including but not limited to withholding or other taxes, interest and penalties that may be paid by the Bank, in connection with any Transfers. We acknowledge that other financial institutions may charge or deduct a fee for processing Transfers (including fees for refund requests and corrections) and that the Bank may receive remuneration from the other financial institutions.

Transfers are subject to cut-off times, time zone differences and local laws and regulations of the destination country, including Canada.

  
 Customer Signature, .. Completed by Authorized by

Transaction Record
Branch Copy

March 15, 2013 3:57:09 PM
Branch Transit: 3995
Operator: 022
Business Date: March 15, 2013
Card Number: No Card
Authentication: Manual

Customer To Customer Wire Transfer

Sequence Number(s): 108
Serial Number: 399509693
Amount: *CIURAO* \$405,500.00
Source of Funds: 3995 1998-601
Handling Charge: \$125.00
Telecommunication Fee: \$10.00

Canadian Draft

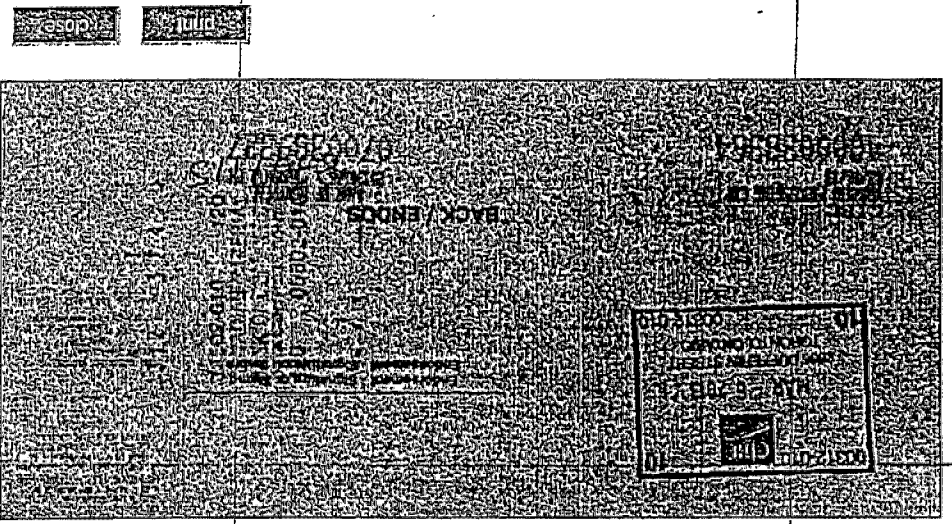
Sequence Number(s): 109
Serial Number: 021666334
Source of Funds: 3995 1998-601
Amount: \$202,750.00
Fee: \$7.50

Canadian Draft

Sequence Number(s): 110
Serial Number: 021666343
Source of Funds: 3995 1998-601
Amount: \$202,750.00
Fee: \$7.50



Customer signature(s)



Bank of Montreal - Banque de Montréal
 2535 MAJOR MACKENZIE DRIVE
 MAPLE BRANCH
 MAPLE, ONTARIO, CANADA L5A 1G6
 166603
 DATE 03/06/2013
 C.I.U.D. \$10,000.00
 1100 Canadian Dollars
 3995021666036
 06952-001
 700389327
 03/06/2013

Request #:	4056569
Transit - FI #:	06952-001
Sequence #:	700389327
Date:	03/06/2013
Request Desc:	Account #:
	3995021666036
	Amount:
	\$10,000.00 CAD

User: Jessica Chiappetta

Cheque Item Image

APPENDIX “G”

CV-14-498016

Court File No.

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:

THE MIDAS INVESTMENT CORPORATION

Plaintiff

- and -

BANK OF MONTREAL

Defendant

STATEMENT OF CLAIM

TO THE DEFENDANT

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the plaintiffs. The claim against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or an Ontario lawyer acting for you must prepare a statement of defence in Form 18A prescribed by the Rules of Civil Procedure, serve it on the plaintiff's lawyer or, where the plaintiff does not have a lawyer, serve it on the plaintiff, and file it, with proof of service, in this court office, **WITHIN TWENTY DAYS** after this statement of claim is served on you, if you are served in Ontario.

If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your statement of defence is forty days. If you are served outside Canada and the United States of America, the period is sixty days.

Instead of serving and filing a statement of defence, you may serve and file a notice of intent to defend in Form 18B prescribed by the Rules of Civil Procedure. This will entitle you to ten more days within which to serve and file your statement of defence.

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

IF YOU PAY THE PLAINTIFF'S CLAIM, and \$500.00 for costs, within the time for serving and filing your statement of defence, you may move to have this proceeding dismissed by the court. If you believe the amount claimed for costs is excessive, you may pay the plaintiff's claim and \$100.00 for costs and have the costs assessed by the court.

Date: February 7th, 2014

Issued by S. Turbaker
Local registrar

Address of court office:

393 University Avenue
Toronto, Ontario
M5G 1E6

TO: **BANK OF MONTREAL**
2535 Major Mackenzie Drive
Maple, Ontario
L6A 1C6

CLAIM

1. The Plaintiff's claims are against the Defendant for the following:
 - (a) \$5,000,000.00 in damages for conversion or, alternatively, negligence;
 - (b) \$1,000,000.00 in aggravated or exemplary damages;
 - (c) \$1,000,000.00 in punitive damages;
 - (d) Pre-judgment interest pursuant to Section 128 of the Courts of Justice Act, as amended;
 - (e) Post-Judgment interest pursuant to Section 129 of the Courts of Justice Act, as amended;
 - (f) Its costs of this Action on a substantial indemnity basis or, alternatively, on a partial indemnity basis, together with HST hereon; and,
 - (g) Such further and other relief as the Court may deem just and allow.
2. The Plaintiff is a duly incorporated limited corporation which carries on business in Ontario.
3. The Defendant is a chartered bank with offices and branches throughout Ontario including in Maple, Ontario.
4. At a point in time before April, 2013, which is unknown to the Plaintiff but known to the Defendant, the Defendant negligently allowed one or more persons to open and then use

(i) a bank account that was in the same name as the Plaintiff (ii) at the Defendant's branch at 2535 Major Mackenzie Drive, Maple, Ontario ("the bank account"). One of those individuals was John Kavanagh ("Kavanagh") but the others are unknown to the Plaintiff.

5. The Plaintiff states and pleads that neither Kavanagh nor anyone else ever had any authority or right to open (i) the bank account for the Plaintiff or, (ii) for that matter, in the name of "The Midas Investment Corporation" or otherwise.

6. The Plaintiff states and pleads that the bank account with the Defendant was never (i) a bank account of the Plaintiff or (ii) a bank account which the Defendant was authorized or had any right to open and/or operate for the Plaintiff or otherwise.

7. The Plaintiff states and pleads that the Defendant owed a duty of care to the Plaintiff and was negligent in and with respect to the manner in which the Defendant allowed the bank account to be opened including by reason of, *inter alia*, the following:

(a) the Defendant's failures (i) to exercise care when opening the bank account to ensure that all authorities required or likely to be required for the opening of that account were taken and correctly completed and (ii) to have all required forms for the opening of the bank account signed by the person or persons authorized to do so and to sign cheques for the account, in all cases contrary to the Defendant's own head office memorandum for the opening of bank accounts such as the bank account;

(b) the Defendant's negligence in opening the bank account without (i) obtaining evidence or adequate evidence and/or (ii) confirming or taking adequate steps to

confirm that those attempting to open the bank account, including Kavanagh, had authority or right to do so and, at that, (i) when those individuals, including Kavanagh, had no authority or right to open the bank account and (ii) when the Defendant knew, should have known or should have ascertained that fact;

(c) Active or passive complicity on the part of employees of the Defendant with respect to the opening and use of the bank account.

8. The Plaintiff pleads that, but for the Defendant's aforesaid negligence, the bank account would not have been opened and used.
9. The Plaintiff pleads that there was never a (i) contractual or (ii) other banker/customer relationship between the Plaintiff and the Defendant.
10. The Plaintiff pleads that the Defendant therefore did not have and never had any authority or right to accept cheques or bank drafts that were payable to the Plaintiff, for deposit into the bank account.
11. The Plaintiff states and pleads that, both (a) in or about early March, 2013, (b) as well as at other points in time both before and after April, 2013, (i) which are unknown to the Plaintiff, (ii) which are known to the Defendant but (iii) which the Defendant has wrongfully refused or failed to disclose to the Plaintiff, Kavanagh and/or others on his behalf fraudulently, unlawfully and wrongfully deposited cheques and/or bank drafts payable to the Plaintiff into the bank account, for the purpose of and in fact defrauding the Plaintiff of the cheques and bank drafts along with the amounts of those cheques and bank drafts.

12. The Plaintiff states and pleads that the aforesaid cheques and bank drafts payable to the Plaintiff were the sole property of the Plaintiff and included (i) a certified cheque in the amount of \$3,043,674.92 dated March 4, 2013, and (ii) a subsequent cheque in the amount or approximate amount of \$300,000.00. The Plaintiff states that the Defendant has knowledge and particulars of all of the other cheques and bank drafts that were payable to the Plaintiff and deposited into the bank account by Kavanagh and/or others for the purpose of defrauding the Plaintiff of those cheques and bank drafts along with their amounts.

13. The Plaintiff repeats all of the allegations already more particularly set out above and both states and pleads the following:

(a) that the Defendant accepted the aforesaid cheques and bank drafts that were payable to and the sole property of the Plaintiff, including the aforesaid cheques in the amounts of \$3,043,674.92 and of about \$300,000.00, that were drawn on other financial institutions;

(b) that the Defendant thereafter presented the aforesaid cheques and bank drafts in question to the drawee financial institutions for payment and received the amounts of the said cheques and bank drafts pursuant to the order contained in the said cheques and bank drafts but that the Defendant did not pay the said funds to the Plaintiff and instead credited those funds to the bank account;

(c) that Kavanagh and/or his associates thereafter completed the fraudulent misappropriation of the funds which had been deposited into the bank account by

the Defendant by then withdrawing the funds from the bank account for their wrongful benefit and to the Plaintiff's further detriment;

- (d) that the Defendant therefore wrongfully converted the aforesaid cheques and bank drafts that were payable to and the sole property of the Plaintiff along with the amounts of same, including the aforesaid cheques for \$3,043,674.92 and for about \$300,000.00, to the Plaintiff's loss and that the Defendant is absolutely liable and responsible to the Plaintiff for the full amounts of the said cheques and bank drafts that were payable to and the sole property of the Plaintiff, by reason of their said conversion;
- (e) that, alternatively to the plea and claim in sub-paragraph (d) above but again for the same reasons as those already alleged, the Defendant's aforesaid negligence caused or permitted Kavanagh and his associates to defraud the Plaintiff of the amounts of all of the aforesaid cheques and bank drafts that were payable to and the sole property of the Plaintiff including, more particularly, the aforesaid cheques for \$3,04,674.92 and for about \$300,000.00.

14. The Plaintiff states and pleads that, upon becoming aware of the facts set out above, the Plaintiff approached and notified the Defendant of those facts and requested that the Defendant provide the Plaintiff with all pertinent and relevant information and documentation relating thereto including with respect to, *inter alia*, (i) the opening of the bank account, (ii) how the bank account came to be opened and who was involved, (iii) the Defendant's dealings with those who caused the bank account to be opened including their names, (iv) the involvement of the Defendant's employees with the opening of the bank account, (v) what happened to the monies that came to be deposited into the bank

account from the aforesaid cheques and bank drafts payable to the Plaintiff, (vi) the bank statements relating to the bank account, (vii) particulars of the withdrawals from the bank account including particulars of the amounts of the withdrawals and by whom, the payees of the withdrawals and the banks and branches to which any such withdrawals were directed or deposited and (viii) the cancelled cheques or bank drafts drawn on the bank account.


15. The Plaintiff states and pleads (a) that the aforesaid inquiries of the Defendant set out in paragraph 14 above were more than reasonable in all of the circumstances and (b) that the Defendant owed the Plaintiff a duty to reasonably and adequately respond to those inquiries so that the Plaintiff could inform itself of where it stood and take appropriate steps against those who were involved with and responsible for the fraud to recover the amounts defrauded from the Plaintiff but (c) that the Defendant instead wrongfully (i) refused to respond to any of the Plaintiff's inquiries, (ii) disclosed nothing to the Plaintiff with respect to what occurred and (iii) thereby effectively assisted, abetted and/or aggravated the fraud which had been perpetrated upon the Plaintiff by preventing the Plaintiff from determining what had occurred and from locating the monies which were defrauded from the Plaintiff including, *inter alia*, the aforesaid \$3,043,674.92 and the aforesaid \$300,000.00.

16. The Plaintiff therefore states and pleads that the Defendant is or should be held liable and responsible to the Plaintiff for all of the amounts forming the subject matter of this Action, by reason alone of the Defendant's willful, wrongful and/or negligent refusal to disclose to the Plaintiff all or any of its information with respect to its involvement and knowledge of the opening of the bank account, the operation of the bank account, the

names of those involved, the location of monies withdrawn from the bank account and generally with respect to the aforesaid fraud which has been perpetrated upon the Plaintiff.

17. The Plaintiff further specifically pleads that, upon being notified of the aforesaid fraudulent use of the bank account and of the fraud which has been perpetrated upon the Plaintiff in relation thereto, the Defendant owed the Plaintiff a duty of care to assist the Plaintiff in recovering its losses but that the Defendant willfully, deliberately and/or negligently refused to comply with or discharge that duty of care in a self-serving, but unjustifiable, attempt to shield itself from its liability to the Plaintiff on account of the Defendant's aforesaid wrongful conduct.
18. The Plaintiff further pleads that the Defendant's aforesaid wrongful and negligent conduct in not only refusing to assist the Plaintiff but in obstructing the Plaintiff from pursuing its rights and thereby effectively aggravating the fraud perpetrated against the Plaintiff and, at that, for the reasons which are unjustifiable, was abusive, malicious, reckless, unlawful, callous, contrary to and in violation of the Defendant's duties to the public as a chartered bank and contrary to law and order.
19. The Plaintiff therefore pleads that it is entitled to and should be awarded substantial (i) aggravated and exemplary damages and (ii) punitive damages from the Defendant.

The Plaintiffs propose that this Action be tried in the City of Toronto.

Date: February 3, 2014 

MAURICE J. NEIRINCK & ASSOCIATES

Barristers & Solicitors
20 Adelaide Street East
Suite 1100
Toronto, Ontario
M5C 2T6

MAURICE J. NEIRINCK (14910B)

Tel: (416) 361-2400
Fax: (416) 361-1560

Lawyers for the Plaintiff

THE MIDAS INVESTMENT CORPORATION - and - BANK OF MONTREAL

Court File No. *CV-14-498016*

ONTARIO
SUPERIOR COURT OF JUSTICE

Proceeding commenced at Toronto

Statement of Claim

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Barristers & Solicitors
20 Adelaide Street East
Suite 1100
Toronto, ON M5C 2T6

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Fax: (416) 361-1560

Lawyers for the Plaintiff

APPENDIX “H”

CITATION: The Midas Investment Corporation v. Bank of Montreal, 2016 ONSC 3003
COURT FILE NO.: 15-CL-11159
DATE: 20160511

SUPERIOR COURT OF JUSTICE - ONTARIO

RE: The Midas Investment Corporation, Plaintiff

AND:

Bank of Montreal, Defendant

BEFORE: Penny J.

COUNSEL: *Jeremy Devereux and Nicole Marcus* for the moving party, Bank of Montreal

Maurice J. Neirinck for the responding party, The Midas Investment Corporation

HEARD: May 2, 2016

REASONS

Overview and Issues

[1] In this action, the plaintiff, Midas, alleges that it was defrauded of over \$3 million by two men, Kavanaugh and Commisso. Kavanaugh was an officer and shareholder of Midas.

[2] Midas sues the Bank on the allegation that the Bank was negligent in allowing Kavanaugh and/or Commisso to open, and use, an account in the name of Midas. This account was used to deposit, and then distribute, funds which were derived from an alleged mortgage fraud committed by Kavanaugh and Commisso against Midas. There is a separate action, not involving the Bank, in which Midas is seeking to set aside the fraudulent mortgage on its property. That action is not yet resolved.

[3] The Bank moves for summary judgment dismissing the action against it. The Bank relies on the principle of agency known as the “indoor management rule.”

[4] The indoor management rule originated in the English case of *Royal British Bank v. Turquand* (1856), 119 E.R. 886 (Eng. Exch.). The principle is that if a corporation holds someone out as a director, officer or agent to third parties, the corporation cannot deny that the person is duly appointed or that he or she has the authority customary or usual for such a director, officer or agent. A person dealing in good faith with a corporation is entitled to assume that the corporation’s internal procedures have been followed. The outsider is not required to conduct an inquiry into compliance with those procedures unless that person has actual knowledge to the contrary or where the person ought to have had knowledge to that effect. The rule is based on the assumption that the company, which has hired and supervises its officers and

holds them out as its agents, should bear the burden of their unauthorized activity, as opposed to the outsider dealing with the company in good faith who has no opportunity to investigate compliance with the company's internal procedures.

[5] This principle has been codified in the Ontario *Business Corporations Act*, s. 19. Section 19 provides, in relevant part:

A corporation or a guarantor of an obligation of a corporation may not assert against a person dealing with the corporation or with any person who has acquired rights from the corporation that...

(d) a person held out by the corporation as a director, officer or agent of the corporation has not been duly appointed or does not have authority to exercise the powers and perform the duties that are customary in the business of the corporation or usual for such director, officer or agent;

(e) the document issued by any director, officer or agent of a corporation with actual or usual authority to issue the document is not valid or not genuine;

except where the person has or ought to have, by virtue of his position with or relationship to the corporation, knowledge to that effect.

[6] The Bank says, and it is not in dispute, that Kavanaugh was the Secretary Treasurer of Midas. He was also a 50% shareholder. A third party would reasonably assume that the Secretary Treasurer of a corporation has authority to open bank accounts and certify corporate documents such as banking resolutions and changes in the composition of the corporation's board and officers. The Bank reasonably relied on Kavanaugh's instructions in this regard and was not required to conduct an inquiry into the nature of Kavanaugh's actual authority as now claimed by Midas.

[7] Midas responds by arguing that the Bank owes a duty to use reasonable care in the opening and operation of its customers' accounts. In this case, the Bank was not entitled to rely on the indoor management rule because it knew, or ought to have known, of irregularities in Kavanaugh's representations to the Bank which put (or ought to have put) the Bank on notice that Kavanaugh's apparent authority was not safely to be relied upon without further enquiry. Midas says that because no further enquiries were made, the account was opened, the proceeds of the fraud were flowed through the account and Midas has been robbed of over \$3 million.

[8] The substantive governing law is not in dispute. Nor is the law of summary judgment as set out by the Supreme Court of Canada in *Hyrniak v. Mauldin*, 2014 SCC 7.

[9] The sole issue is whether the evidence presented on this motion gives rise to a disputed issue of material fact the resolution of which requires the forensic machinery of a trial. That issue is whether the Bank was put on inquiry by the information it had at the time the account was opened and operated, sufficient to disentitle the Bank from reliance on the indoor management rule. Neither party filed expert evidence on the standard of care of a banker in

connection with the opening of a corporate account and whether the account opening procedures, in this case, met that standard.

Summary Judgment

[10] A defendant may after delivering a statement of defence move with supporting evidence for summary judgment dismissing all or part of the claim. The court shall grant summary judgment if the court is satisfied that there is no genuine issue requiring a trial with respect to that claim.

[11] There will be no genuine issue requiring a trial when the judge, on a motion, is able to reach a fair and just determination on the merits. This will be the case when the motions process allows the judge: 1) to make the necessary findings of fact; 2) allows the judge to apply the law to the facts; and, 3) is a proportionate, expeditious and less expensive means to achieve a just result in all the circumstances. In this regard, where a motion will allow the judge to find the necessary facts and resolve the dispute, proceeding to trial would not be proportionate, timely or cost-effective.

[12] Both parties agree that the second step of the two-step process outlined by the Supreme Court of Canada (by which the new fact-finding powers set out in Rule 20.02(2.1) are engaged) is not necessary here. Neither party asks me to weigh the evidence, evaluate credibility or draw inferences on this motion. The Bank says it is not necessary; Midas says that a fair disposition of the central issue requires a trial and that the new fact-finding powers are insufficient to meet the fundamental standard of a “fair and just determination on the merits.”

The Evidence

Background

[13] Midas owned two commercial properties in the City of Toronto, 205 Young St. and 90 Eastern Ave. Thomas Farrell loaned Midas the money necessary to acquire these properties. Kavanaugh advanced no funds to Midas. Farrell is a 50% shareholder and the President and a director of Midas. According to Farrell, only he had the authority to open and operate a bank account for Midas. Farrell resides in Ireland. Alex Papastamos is the other director. He is a Canadian resident.

[14] While Kavanaugh owns the other 50% of the Midas shares, he was never a director of Midas. He did, as noted, hold the position of Secretary Treasurer.

[15] In late 2012, Midas’s bank account in Toronto was with a branch of the Toronto Dominion Bank. Unbeknownst to Farrell and Papastamos, Kavanaugh and Commisso initiated the process of opening a Midas account at a branch of the Bank at 2535 Major Mackenzie Dr. in Maple, Ontario. This process began on October 4, when Kavanaugh and Commisso met with a representative of the Bank at the Major Mackenzie branch. The process was only completed on November 14, 2012. The reasons for this delay are at the heart of the Midas negligence claim against the Bank.

[16] Kavanaugh and Commisso, perhaps assisted by unknown others, caused a fraudulent \$5 million mortgage to be registered against the Midas properties. From that mortgage, proceeds in the form of cheques for \$3,043,674.92 dated March 4, 2013 and \$295,987.80 dated May 8, 2013 were issued to Midas. The cheques were deposited into the Midas account with the Bank on March 5 and May 8 respectively. The funds were then disbursed by various wire transfers authorized by Kavanaugh in March and May 2013, shortly after the funds were deposited.

The Account Opening

[17] The evidence is that on October 4, 2012, Kavanaugh and Commisso attended at the bank. They met with Amanda Coppola, presented certain corporate documents and signed standard bank documents. The account opening was approved by the branch manager, Bernice Ferenac. Ms. Ferenac never met Kavanaugh or Commisso.

[18] A Midas corporate profile report from the Ministry of Government Services which was submitted by Kavanaugh as part of the account opening documentation showed Farrell as a Director and the President and Kavanaugh as the Secretary and Treasurer as of that date.

[19] The Bank's internal audit group sent a notice to the branch on October 12, 2012 requiring changes to the authorized signatory and general banking resolution, also called a Certificate and Authorization. The audit notice insisted that the Bank's form required from Midas must conform to the information contained in the corporate profile report. The October 4, 2012 version of the Certificate and Authorization which went to the audit branch has never been produced.

[20] Another Certificate and Authorization was signed by Kavanaugh on October 17, 2012, as Secretary Treasurer. This document purported to correct the deficiencies identified by the Bank's internal audit. It indicated that the authorized signatories for the Midas bank account were Kavanaugh and Commisso. It also indicated that Farrell was a director and the President of Midas as of October 17. By signing this resolution, Kavanaugh certified that he was a duly elected officer of the corporation authorized by Midas to certify the matters set out in the Certificate and that the banking resolution, as represented, had been duly passed by Midas.

[21] On October 23, 2012, the branch received another audit notice indicating that additional changes to the documents were still required. On October 26, 2012, another Certificate and Authorization was signed by Kavanaugh certifying that Kavanaugh and Commisso were authorized signatories for the Midas account. This Certificate also clearly stated that Farrell was a director and the President of Midas as of that date.

[22] For reasons that are not entirely clear, an additional Certificate and Authorization was executed on November 14, 2012. This coincided with Kavanaugh delivering to the Bank an updated corporation profile report. That report, also dated November 14, 2012, showed Kavanaugh as the *sole* director and officer, including President, Secretary and Treasurer, of Midas. This Report purported to show that Kavanaugh had become a director and the President of Midas on October 11, 2012. The new Certificate and Authorization executed on November 14, 2012 once again provided that Kavanaugh and Commisso were the authorized signatories for the Midas account with the Bank.

[23] In a November 14, 2012 email to Ferenac, Coppola wrote, in connection with the completion of the documentation for the opening of the Midas account:

Okay I put the docs in your office and I left you a vmail about the more confusion added to this friggin file! LOL

So they signed the docs and now have gotten the articles of incorporation amended – deleted all the other officers and directors and just have the main guy as director and officer so I will amend when I get back Saturday to ensure you can complete the audit correction before we go making a mess lol!

[24] Following the execution of the November 14, 2012 Certificate and Authorization, the account was finally opened and became operational.

Analysis

[25] The Bank says there is no genuine issue requiring a trial. Midas held out Kavanaugh as its Secretary and Treasurer. It is within the purview of a Secretary Treasurer to certify resolutions of the corporation and to open bank accounts. The Bank had no way of knowing that, as deposed by Farrell, Kavanaugh had no actual authority to open bank accounts or that he was, as it is alleged, using his position as Secretary Treasurer to commit acts which were in reality unauthorized. Any irregularities in the documentation provided to the Bank were either *des minimus*, resolved by Kavanaugh using his apparent authority or would not have caused the alleged loss in any event.

[26] I am not satisfied that the matter is as clear-cut as the Bank would have it. Although Midas argued that the indoor management rule “does not apply,” it is more accurate to say that Midas accepts that Kavanaugh had apparent authority, as Secretary Treasurer, in a general sense but relies on the exception to the application of the indoor management rule. That is, Midas argues, on the facts of this case the Bank knew, or ought to have known (because the Bank ought to have made reasonable inquiries based on inconsistencies in the documents and information provided), that Kavanaugh had no such authority.

[27] The initial affidavit of Ferenac did not tell the whole story about the Bank’s internal processes. I made a procedural order at 9:30 appointment requiring the Bank to deliver an affidavit of documents. I did so because the Bank’s procedures were in issue and the plaintiff could not otherwise be expected to know, or to be able to determine, what went on at the Bank when the account was opened. I also thought that, in the circumstances of this case, Midas ought not to have to rely on the Bank employee’s affidavit on the merits of the motion for all document production purposes.

[28] The Bank employee who actually dealt with Kavanaugh and Commisso, Coppola, filed no affidavit on the motion. Further information was requested by way of undertaking on her cross examination as a witness on a pending motion. Another Bank employee who was involved in the audit, Kristen Kennedy, also swore no affidavit but provided some information by way of undertaking as a result of someone else’s cross examination.

[29] Document production from the Bank is still, on its face, incomplete. For example, the original Certificate and Authorization prepared by the Bank on October 4, 2012 is missing. This is potentially an important document.

[30] These production issues represent one reason for doubting the Bank's claim that there is no genuine issue requiring a trial.

[31] There are still a number of questions and inconsistencies arising out of the documents that have been produced. The audit department rejected the original file opening documents of October 4, 2012. It is not entirely clear why. File opening documentation was still ruled deficient by the Bank's audit branch in connection with the October 17 and 26, 2012 documents. Again, it is not entirely clear why.

[32] Midas points to changes to the corporation's accountants and changes in mailing addresses, such as the fact that the address where the monthly statements were to be mailed did not accord with the corporation's head office address.

[33] The Bank argues that these are ordinary course changes in the conduct of a corporation's business but there is no independent opinion evidence to this effect. Ferenac purported to provide evidence of reasonable banking practice but I cannot accept this evidence because Ferenac, being a Bank employee, lacks the requisite detachment and independence to give opinion evidence.

[34] There is really no explanation at all why the Bank, having received certified documents from Kavanaugh on October 17 and 26, 2012 which certified that Farrell was the President and a director of Midas (and that Kavanaugh was not a director), asked no questions when provided with documents in November 2012 purporting to certify that, since October 11, 2012, it was *Kavanaugh* who had been both the President and the sole director of Midas.

[35] There is also evidence that many of the amounts paid out of the Midas account in March and May 2013 did not conform to the requirement that both Kavanaugh and Commisso had to authorize the payment. While this raises possible causation issues, it is evidence that could be considered relevant to the standard of care shown by the Bank in its management of this account.

[36] This is a case where Midas cannot be expected to know anything about the Bank's internal procedures and what might or might not have caused "red flags" or put the Bank on inquiry. Midas alleges it has been defrauded of over \$3 million. There is no contrary evidence on this point. Midas is, in my view, entitled to exercise full rights of discovery before being put to the test of a motion such as this which necessarily requires a detailed examination of the substantive merits of the action, including what was and was not known to the Bank and what the Bank ought reasonably to have done with that information. I am not satisfied that Midas has had that full opportunity to examine all relevant documents and obtain all of the Bank's knowledge, information and belief on these issues.

[37] Without that information, Midas is in no position to retain an expert on the specific nature of the Bank's duty of care and whether, on the facts of this case, the Bank met that duty. The

Bank, as noted above, chose not to put forward an expert either. The absence of expert evidence makes it doubly difficult for the court to be satisfied that it can dispose of this action “fairly and justly” on a motion. This is particularly the case where there are unexplained changes in addresses and accountants and a glaring inconsistency in the documents submitted over who, as between Farrell and Kavanaugh, was the President and a director of Midas from October 11 to November 14, 2012.

[38] What the Bank employees did or did not do and why in connection with all these events may well engage issues of weight, inference and credibility in respect of which the court will benefit from the *viva voce* evidence of the employees themselves.

Conclusion

[39] In conclusion, I am not satisfied that I can, by way of a motion, justly and fairly dispose of the central issue in this case. Whether there was sufficient evidence in October and November 2012 to put a reasonable bank on notice that further inquiry was required before approving the opening and operation of this corporate account requires the full exercise of discovery rights and *viva voce* evidence of those directly involved in the Bank’s communications with Kavanaugh and Commisso and the review and approval of the requisite documentation. For these reasons, the motion for summary judgment is dismissed.

Further Procedural Directions

[40] As a first step, both sides shall deal with any contemplated pleading amendments and then complete the exercise of their discovery rights. They shall have the opportunity to retain experts. The issue on which Midas’s claim turns is a relatively narrow one. It seems to me that this issue can be dealt with by way of a hybrid hearing, in which the evidence in chief of the parties is put forward by affidavit (including expert reports) and that a focused hearing, with limited examination and cross examination focused on the critical points in issue, could be accomplished within a few days.

[41] Following completion of discovery, the parties shall return at 9:30 scheduling appointment to address the completion of any other steps required for the conduct of this hybrid hearing and to map out in detail how the conduct of that hearing will proceed.

Costs

[42] Since this motion, although dealing with the merits, did not result in a final disposition of any issue in the action, this seems to me to be a case where the costs should be fixed and made payable in the cause. In any event, if the parties are unable to agree on costs, written cost submissions (not to exceed two typed double-spaced pages together with a bill of costs) of the plaintiff shall be delivered within seven days. Written submissions subject to the same page limit shall be delivered by the defendant within a further five days.

Penny J.

Date: May 11, 2016

APPENDIX “I”

**ONTARIO
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE

JUSTICE M. KOEHNEN

)
) **THURS** DAY, THE **12TH**
) DAY OF **MARCH** 2020
)

THE MIDAS INVESTMENT CORPORATION

Plaintiff

- and -

BANK OF MONTREAL

Defendant

- and -

JOHN KAVANAGH, ROCCO COMMISSO, 1812340 ONTARIO INC.,
2364788 ONTARIO LTD., 2364789 ONTARIO LTD.,
1870561 ONTARIO INC., 2364789 ONTARIO INC.,
2364798 ONTARIO LTD., P.W. VROON, GRACE COMMISSO,
MARGARET PASTORE, SOLID GENERAL CONTRACTORS INC., and
1864847 ONTARIO LTD. carrying on business as C.I.U.D.A.D. EQUIPMENT SALES

Third Parties

ORDER

THIS MOTION made by the Defendant Bank of Montreal was heard this day at the
Courthouse, 330 University Avenue, Toronto, Ontario.

ON READING the consents executed by the Plaintiff The Midas Investment Corporation,
the Defendant Bank of Montreal and the Third Parties Rocco Commisso, Grace Commisso,
Margaret Pastore, P.W. Vroon and 1864847 Ontario Ltd. carrying on business as C.I.U.D.A.D.
Equipment Sales:

- 1 THIS COURT ORDERS that the main action by the Plaintiff The Midas Investment Corporation against Bank of Montreal is dismissed without costs.

- 2 THIS COURT ORDERS that the third party claim by the Defendant Bank of Montreal is dismissed without costs as against the Third Parties Rocco Commisso, Grace Commisso, Margaret Pastore, P.W. Vroon and 1864847 Ontario Ltd. carrying on business as C.I.U.D.A.D. Equipment Sales, but not as against the remaining Third Parties.



A handwritten signature in black ink, consisting of a series of loops and a long horizontal stroke at the end, positioned above a solid horizontal line.

ENTERED AT / INSCRIT À TORONTO
ON / BOOK NO:
LE / DANS LE REGISTRE NO:

MAR 13 2020

PER / PAR: 

THE MIDAS INVESTMENT CORPORATION
Plaintiff

and
BANK OF MONTREAL
Defendant

KAVANAGH, et al
Third Parties

Court File No.: CV-15-011159-CL

**ONTARIO
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at Toronto

ORDER

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Bank of Montreal

