Court File No. CV-24-00715321-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

B E T W E E N:

CONSTANTINE ENTERPRISES INC.

Applicant

- and -

MIZRAHI (128 HAZELTON) INC. and
MIZRAHI 128 HAZELTON RETAIL INC.

Respondents

IN THE MATTER OF AN APPLICATION UNDER SUBSECTION 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

FACTUM OF THE RECEIVER RE DISCLAIMER MOTION

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Lawyers for the Receiver

TO: **THE SERVICE LIST**

FACTUM OF THE RECEIVER RE DISCLAIMER MOTION

PART I - INTRODUCTION

1. The Receiver seeks an order authorizing it to disclaim the Agreement of Purchase and Sale and related agreements between David Berry and Mizrahi (128 Hazelton) Inc. **("Hazelton").** Mr. Berry agreed to purchase Unit 901 in the condominium project Hazelton was constructing at 128 Hazelton Avenue in Toronto.

2. Construction of Unit 901 is not complete and title to the unit was never transferred to Mr. Berry. The cost to complete the unit is estimated to be approximately $3,215,000. The Receiver does not have the funds necessary to complete the unit. Mr. Berry proposes that title to Unit 901 be transferred to him for no further consideration, and that he become an unsecured creditor of Hazelton in respect of any deficiencies with the unit.

3. The Receiver has obtained an appraisal of Unit 901 and has considered the situation. In its view, Hazelton's creditors are better off if Mr. Berry's APS is disclaimed and Unit 901 is marketed for sale. This approach is expected to generate funds for the estate in the approximate amount of $7.7 million to $9.0 million.

4. Disclaimer of the APS is preferable for the estate at large. Mr. Berry would be an unsecured creditor of Hazelton as a result. He paid a deposit of $1.25 million, paid $800,000 in respect of finishings for the unit, and transferred shares with an agreed value of $2 million in respect of the unit (although the shares are essentially worthless today). Mr. Berry may be able to recover certain amounts he paid from Tarion and/or deposit insurance that was maintained by Hazelton.

5. Such an outcome is not uncommon in insolvencies. Mr. Berry is an unsecured creditor of Hazelton and, in the Receiver's view, does not have a legitimate claim for specific performance of the APS. If the Receiver were to comply with Mr. Berry's request to transfer title to Unit 901 as

is, this would rewrite the APS in order to prioritize Mr. Berry's claim over those of the secured creditors and other unsecured creditors. The Receiver does not recommend such a course of action.

6. Mr. Berry relies on statements made by the Applicant and its principal in the leadup to the Receiver's appointment as part of his argument. Mr. Berry's evidence is that the Applicant represented that a receivership would allow for the completion of units, including Unit 901, and that disclaimer would be improper in light of such representations.

7. To the extent that Mr. Berry relied on representations by the Applicant, the Receiver believes that is a separate issue as between those two parties. The order appointing the Receiver does not direct it to complete any units or otherwise modify the Receiver's obligation to maximize the assets of the estate at large, which is best served through disclaimer of the APS.

PART II - SUMMARY OF FACTS

i) The Project

8. Hazelton is the registered owner of certain remaining real property located at 126 and 128 Hazelton Avenue in Toronto, which is the site of a nine story, 20 unit luxury condominium. The project was nearly complete when the Receiver was appointed on June 4, 2024. The only unfinished residential units were Units 801, 802 and 901. There were additional unsold units, as well as an unfinished ground floor unit.

Third Report of the Receiver, paras 1.1 – 1.4 **(Motion Record, Tab 2, pp. 10-11)**

9. 50% of the shares in Hazelton are held by Mizrahi Developments Inc., with the other 50% held by the Applicant, Constantine Enterprises Inc. (**"CEI"**). Mizrahi Developments is controlled by Sam Mizrahi, who was also one of Hazelton's two directors. Hazelton's other director was

Robert Hiscox, CEI's CEO. Prior to the receivership, Mizrahi Inc. (another company controlled by Sam Mizrahi) was managing both development and construction of the Hazelton project.

Third Report of the Receiver, paras 2.1 – 2.2 **(Motion Record, Tab 2, p. 12)**

10. CEI is, and has always been, Hazelton's major secured creditor. In 2015, CEI advanced to Hazelton a non-revolving loan facility in the amount of $21 million, which was secured against Hazelton's real property and other assets. CEI's advances to Hazelton were always in the form of debt and not equity. In 2017, CEI agreed to subordinate its revolving loan facility to DUCA Financial Services Credit Union, which advanced credit facilities to Hazelton in the approximate amount of $33.5 million. CEI took an assignment of DUCA's debt in February 2024, after DUCA had commenced a receivership application against Hazelton.

First Report of the Receiver, s. 3.0, pp. 4-5, Appendix C to the Third Report of the Receiver **(Motion Record, Tab 2C, pp. 56-57)**

11. As of February 29, 2024, Hazelton owed CEI approximately $31 million under the original 2015 loan facility and approximately $13 million under the facility assigned to CEI by DUCA. The $13 million debt has been reduced during the Receivership through closings of condominium units.

First Report of the Receiver, s. 3.0, pp. 4-5, Appendix C to the Third Report of the Receiver **(Motion Record, Tab 2C, p. 57)**

ii) The Original APS

12. Mr. Berry originally agreed to purchase Units 901 and 802 together as a single unit, for a purchase price of $13,250,000. He signed an APS for Units 901 and 802 on April 21, 2016, and paid a deposit of $2,650,000 toward the purchase price.

Third Report of the Receiver, para 2.1.1 **(Motion Record, Tab 2, p. 12)**

iii) The Berry/Mizrahi Developments Loan

13. On June 6, 2016, Mr. Berry agreed to loan $10 million to Mizrahi Developments through two loans of $6 million and $4 million. The loan was to be used in connection with the construction of a condominium project on Wellington Street in Ottawa, which project is now subject to proceedings pursuant to the *Companies' Creditors Arrangement Act*. Mr. Berry and Mizrahi Developments signed a Term Sheet in relation to this loan. Mr. Mizrahi signed as a guarantor of the loan.

> Third Report of the Receiver, paras 2.2.2 – 2.2.3 **(Motion Record, Tab 2, p. 13)**

14. At s. 19 of the Term Sheet, Mr. Mizrahi agreed that if the closing of the Unit 901/802 APS occurred before Mizrahi Developments had repaid the $6 million loan from Mr. Berry, then Mr. Mizrahi would pay the balance owing under the Unit 901/802 APS to a maximum of the principal and interest outstanding on the $6 million loan.

> June 6, 2016 Term Sheet, s. 19, Appendix "L" to Third Report of the Receiver **(Motion Record, Tab 2L, p. 203)**

15. Subsequent to this Term Sheet, on June 28, 2016, Mr. Berry, Mr. Mizrahi and Hazelton entered into a Supplementary Agreement. In that agreement, Mr. Mizrahi agreed, "as a director and officer of Hazelton", that for so long as any amounts remained owing to Mr. Berry under either the $6 million or $4 million loans, Hazelton would seek any amounts owing by Mr. Berry for the closing of the Unit 901/802 APS from Mr. Mizrahi and would close the sale to Mr. Berry even if Mr. Mizrahi failed to pay those amounts.

> Third Report of the Receiver, para 2.2.5 **(Motion Record, Tab 2, p. 14)**
>
> June 28, 2016 Supplementary Agreement, Articles 2 and 5, Appendix "M" to Third Report of the Receiver **(Motion Record, Tab 2M, pp. 208-209)**

16. On the same day, Mr. Berry and Mr. Mizrahi signed a Confidentiality Agreement in which the parties agreed that the Supplementary Agreement was intended to be confidential, and that if Mr. Berry was found by a court to have disclosed the agreement to a third party, he would forfeit repayment of any amounts still owing under the $6 million and $4 million loans.

> Third Report of the Receiver, para 2.2.7 **(Motion Record, Tab 2, p. 14)**
>
> June 28, 2016 Confidentiality Agreement, Appendix "N" to Third Report of the Receiver **(Motion Record, Tab 2N, pp. 213-214)**

17. CEI has advised the Receiver that it was not aware of the Supplementary Agreement, Confidentiality Agreement or any related agreement prior to Mr. Berry disclosing them to the Receiver in the course of the receivership.

> Third Report of the Receiver, para 2.2.11 **(Motion Record, Tab 2, p. 14)**

iv) The Yappn Shares

18. On May 15, 2017, Mr. Berry agreed to transfer shares in Yappn Corp. to Hazelton as an advance against the purchase price under the combined APS. Mr. Berry and Hazelton agreed to ascribe a value of $2 million to the shares, subject to changes if the trading value of the shares had increased or decreased by a certain amount as of October 31, 2018. Mr. Berry and Hazelton signed an amending agreement to reflect this agreement.

> Third Report of the Receiver, para 2.1.2 **(Motion Record, Tab 2, p. 12)**

v) Unit 901/802 APS Terminated; Replaced by Unit 901 APS

19. Mr. Berry ultimately decided to purchase only Unit 901 and to assign the right to purchase Unit 802 to a third party. Mr. Berry and Hazelton executed a Mutual Release and Termination

Agreement dated August 16, 2019, which terminated the Unit 901/802 APS. The deposit monies were split between Units 901 and 802, with $1.25 million allocated towards Unit 901.

> Third Report of the Receiver, para 2.1.3 **(Motion Record, Tab 2, p. 13)**
>
> Mutual Release and Termination Agreement, ss. 1-2, Appendix F to Third Report of the Receiver **(Motion Record, Tab 2F, p. 127)**

20. Also on August 16, 2019, Mr. Berry and Hazelton entered into a new APS specifically for Unit 901. The purchase price was agreed to be $6.25 million. The Yappn Share agreement continued to apply solely to the Unit 901 APS. Section 33 of the Unit 901 APS provided that there was "no representation, warranty, collateral agreement or condition affecting this Agreement or the Property or supported hereby other than as expressed herein in writing." The Unit 901 APS made no reference to the Supplementary Agreement.

> Third Report of the Receiver, para 2.1.3 **(Motion Record, Tab 2, p. 13)**
>
> Unit 901 APS, ss. 1 and 33, Appendix G to Third Report of the Receiver **(Motion Record, Tab 2G, pp. 130, 140)**

vi) Subsequent Amendments to Unit 901 APS

21. On April 13, 2020, Mr. Berry and Hazelton agreed to increase the purchase price of Unit 901 from $6.25 million to $7,142,244.

> Third Report of the Receiver, para 2.1.4 **(Motion Record, Tab 2, p. 13)**

22. On October 2, 2022, Hazelton invoiced Mr. Berry for extras and finishes to Unit 901 in the amount of $800,000, including HST. Mr. Berry paid this invoice.

> Third Report of the Receiver, para 2.1.5 **(Motion Record, Tab 2, p. 13)**

23. In his affidavit, Mr. Berry describes the $800,000 as an advance against the total purchase price to assist Hazelton in completing Unit 901, rather than an additional sum paid for changes to

the Unit. Mr. Berry's account is inconsistent with the invoice, which describes the $800,000 as being the price for "extras and finishes installed in accordance with revised and final plans… submitted by Hudson Kruse on September 21, 2022." Unlike the Yappn share agreement, the invoice does not describe the $800,000 as an advance against the purchase price.

> Affidavit of David Berry, paras. 40-41 **(Responding Record, Tab 1, p. 23)**

24. Notably, Mr. Berry wrote an email on February 7, 2024 in which he provided a chronology of the Unit 901 transaction, in which he acknowledged that he had "agree[d] to pay 800k in upgrades" after Mr. Mizrahi had claimed the new design for Unit 901 would cost an additional $2.5 million to build. That description is consistent with the invoice and further suggests that Mr. Berry's affidavit is not accurate on this point.

> February 7, 2024 email from David Berry to Nitin Kawale, attached as Exhibit "X" to the Affidavit of David Berry **(Responding Record, Tab 1X, pp. 281-282)**

vii) Status and Value of Unit 901

25. The Receiver retained a third party to estimate the cost to complete Unit 901 as per the contractual specifications. The estimated cost to complete Unit 901 is approximately $3,215,000, excluding HST and certain other expenses. The Receiver does not have funding to complete Unit 901.

> Third Report of the Receiver, para 2.3.1 – 2.3.2 and 3.2 **(Motion Record, Tab 2, pp. 15-16)**

26. The Receiver retained a third party to appraise the value of Unit 901, both as is and if finished as per the contractual specifications. The appraised value of Unit 901 is $7,685,000 as is and $12,165,000 if completed to Mr. Berry's specifications. As there are a very small number

of comparables for high-end luxury condominium units such as Unit 901 (which is a penthouse suite in the Yorkville district), the actual value may be higher than these estimates.

> Third Report of the Receiver, para 2.4.1 – 2.4.3 **(Motion Record, Tab 2, p. 16)**

27. If the Unit 901 APS with Mr. Berry was completed, there would be a balance of $3,892,244[1] owing by Mr. Berry. If the Supplementary Agreement entitled Mr. Berry to close the Unit 901 APS without paying anything further (leaving the obligation to Mr. Mizrahi), then Mr. Berry would receive Unit 901 without paying anything.

> Third Report of the Receiver, para 2.3.3 **(Motion Record, Tab 2, p. 15)**

viii) The "As Is, Where Is" Offer

28. Mr. Berry's evidence is that on or about January 11, 2024, he had a phone call with Mr. Hiscox, during which Mr. Hiscox "offered to simply close the transfer of Unit 901 on an as-is, where-is basis", with the estimated cost to complete the unit to be deducted from the purchase price. At 7:18 a.m. on January 11, 2024, Mr. Mizrahi sent Mr. Berry a text on the same subject, writing:

> … what CEI is suggesting is that we deduct the amount to finish from your closing and you keep that money and finish it yourself with Denbosh. You are not paying the project to finish it you are deducting the amount and closing. Let me know if this works for you, so I can advise.
>
> Affidavit of David Berry, para. 46 **(Responding Record, Tab 1, pp. 24-25)**
>
> January 11, 2024 text message from Sam Mizrahi, attached as Exhibit "W" to the Affidavit of David Berry **(Responding Record, Tab 1W, p. 276)**

[1] Total sale price of $7,142,244 less deposit of $1,250,000 and agreed Yappn Share value of $2,000,000 (although Yappn Shares actually effectively worthless).

29. Mr. Berry's affidavit is slightly inconsistent with his email chronology of February 7, 2024, in which he said that it was Mr. Mizrahi who first made the proposal. In that email, Mr. Berry explains that he said no to Mr. Mizrahi, following which Mr. Hiscox called him to discuss the matter and Mr. Berry explained to Mr. Hiscox why he had rejected the offer.

> February 7, 2024 email from David Berry to Nitin Kawale, attached as Exhibit "X" to the Affidavit of David Berry **(Responding Record, Tab 1X, p. 282)**

30. While Mr. Berry's affidavit does not disclose that he rejected this offer on the spot, he concedes that he did not accept it at the time. Thereafter, by March 2024 at the latest, Mr. Berry knew that CEI was planning to seek the appointment of a receiver over Hazelton.

> Affidavit of David Berry, paras. 49, 60(a) **(Responding Record, Tab 1, pp. 25-26, 28)**

31. Mr. Berry's evidence is that on May 30, 2024, he had a phone conversation with Mr. Mizrahi. During the call, Mr. Mizrahi told Mr. Berry that CEI planned to terminate the Unit 901 APS after a receiver was appointed. Mr. Berry says he responded by "accepting" the proposal made by Mr. Mizrahi on January 11, 2024. He then sent Mr. Mizrahi a text message as follows:

> Sam, subject to an accurate estimate on completion and other incurred costs I accept. Do I need to email Robert as well? He made the offer over the phone.
>
> January 11, 2024 text message from David Berry, attached as Exhibit "W" to the Affidavit of David Berry **(Responding Record, Tab 1W, p. 276)**

32. Mr. Mizrahi responded that Mr. Berry would have to speak with Mr. Hiscox, as Mr. Mizrahi no longer had authority to transact for Hazelton. Mr. Berry called Mr. Hiscox, but Mr. Hiscox responded that Mr. Berry could not close on Unit 901 now and would have to wait for a receiver to be appointed before taking any further steps related to closing.

> Affidavit of David Berry, paras. 65, 68-69 **(Responding Record, Tab 1, pp. 30-31)**

PART III - STATEMENT OF ISSUES, LAW & AUTHORITIES

33. The sole issue to be decided in this case is whether the Receiver ought to be authorized to disclaim Mr. Berry's APS and related agreements with Hazelton. In substance, it is a dispute about priorities in insolvency. Mr. Berry is an unsecured creditor. Hazelton has more than $50 million in secured debt plus millions of dollars of unsecured debt. Do the facts related to Unit 901 provide a basis to prioritize Mr. Berry's claim over that of the other creditors?

i) Authority of a Receiver to Disclaim Contracts

34. A court-appointed receiver has a duty to maximize recovery of assets under its jurisdiction. This mandate provides a receiver with the authority to affirm or disclaim contracts, based on its assessment of what will maximize assets. Courts specifically have authority to disclaim pre-sale purchase contracts in the context of a receivership.

> *KingSett Mortgage Corporation et al. v. Vandyk-Uptowns Limited,* 2024 ONSC 6205, at para 25
>
> *In the Matter of a Plan of Compromise or Arrangement of 2039882 Ontario Limited*, 2024 ONSC 5541, at para 19

35. In determining whether to authorize a recommended disclaimer, the court considers:

(a) the respective legal priorities of the competing interests;

(b) whether the disclaimer would enhance the value of the assets and, relatedly, whether a failure to disclaim would result in a preference in favour of a particular party; and

(c) whether a party seeking to avoid disclaimer has established that the equities support its position.

KingSett Mortgage Corporation et al. v. Vandyk-Uptowns Limited, 2024 ONSC 6205, at para 26

Forjay Management Ltd. v 0981478 B.C. Ltd., 2018 BCSC 527, at para 44

ii) First Factor: Respective Legal Priorities

36. Hazelton has tens of millions of dollars in secured debt, and a range of unsecured creditors. Mr. Berry is not a secured creditor. He has no greater claim to Hazelton's assets than any other unsecured creditor. He may have recourse to deposit insurance, at least for a portion of the amounts he has paid to-date. Unfortunately, there is unlikely to be any distribution to unsecured creditors.

37. Mr. Berry cannot alter this priority scheme through a claim in equity for specific performance. The case law is clear that specific performance is not available if it would require a receiver or manager to perform further work or services. Performance of the Unit 901 APS would require the Receiver to complete construction of the unit, at an estimated cost of approximately $3,215,000. Even if it was appropriate as a matter of law to order a court-appointed receiver to complete construction work, the Receiver does not have funding available to perform the APS in any event.

Forjay Management Ltd. v 0981478 B.C. Ltd., 2018 BCSC 527, at paras 73-75

38. Perhaps in recognition of this law, Mr. Berry does not seek specific performance of the Unit 901 APS. Instead, he appears to seek performance of the "as is, where is" offer. But for three reasons, the record demonstrates that there was no enforceable agreement to that effect.

39. First, based on Mr. Berry's evidence, the parties failed to ever agree on all essential terms. According to Mr. Berry, the offer was to close the Unit 901 APS and reduce the purchase price by an amount equal to the cost to complete the unit. The parties never agreed what that cost was. Indeed, Mr. Berry's "acceptance" is explicit on this point: his acceptance was conditional on an accurate estimate of the cost to complete. No such estimate was prepared or agreed upon. Without a meeting of the minds on that essential term, there can be no enforceable agreement – even if Mr. Berry had unconditionally accepted the offer. Even now, the terms of the agreement Mr. Berry seeks to enforce are unknown.

> *Bawitko Investments Ltd. v. Kernels Popcorn Ltd.*, 1991 CanLII 2734 (Ont. C.A.), at pp. 13-14

40. Second, Mr. Berry rejected any offer that was made. His email chronology of the events indicate that he rejected it both to Mr. Mizrahi and to Mr. Hiscox. Under common law, once an offer has been rejected, it is no longer open for acceptance. Mr. Berry had no legal right to "accept" the offer months after rejecting it.

> *Smith v. Smith*, 2007 CanLII 17205 (ON SC), at para 2

41. Third, even if Mr. Berry had not rejected the offer, offers at common law do not remain open for acceptance indefinitely. They may be accepted only within a reasonable period of time, determined by reference to all surrounding circumstances. Mr. Berry purported to "accept" the offer when he knew that CEI was seeking to appoint a receiver over Hazelton's assets. Indeed, Mr. Berry transmitted his acceptance 17 days *after* the application to appoint the Receiver, and only four days before the Receivership Order was granted. Circumstances had plainly changed since January 2024.

> *Gillevet v. Crawford and Co. Insurance Adjusters Ltd.* (Ont. Dist. Ct.), 1988 CanLII 4765

42. Even if the “as is, where is” agreement was binding and enforceable, it remains subject to the authority of the Receiver to disclaim that agreement. For all of the reasons that disclaimer of the Unit 901 APS is appropriate, disclaimer of any “as is, where is” agreement is also appropriate.

43. Given the above, Mr. Berry has no valid specific performance claim and is simply an unsecured creditor of Hazelton.

ii) Second Factor: Whether Disclaimer will Enhance Assets

44. Based on the appraisal obtained by the Receiver, disclaimer will enhance the assets of the estate. Sale of Unit 901 on the open market on an “as is basis” is estimated to generate proceeds of approximately $7,685,000. By contrast, Mr. Berry seeks title to Unit 901 without paying anything further. If the APS is not disclaimed, Unit 901 would transfer without any recoveries being generated for creditors.

45. Even if the Unit 901 APS was performed – which does not appear to be Mr. Berry’s position – asset recovery would still be worse than if the contract was disclaimed. If Mr. Berry paid the full amount that appears to be owing under the Unit 901 APS, Hazelton would receive $3,892,244. This is less than the anticipated proceeds if Unit 901 was marketed for sale to the public.

46. The Receiver does not agree that the Supplementary Agreement is enforceable. It was entered into when the Unit 901/802 APS was still in force. After that APS was terminated, the Unit 901 APS made no reference to the Supplementary Agreement and contained an Entire Agreement clause, preventing the Supplementary Agreement from applying. The Supplementary Agreement did not survive the termination of the Unit 901/802 APS.

47. Mr. Berry relies on s. 6.8 of the Supplementary Agreement, which states that it will apply “notwithstanding any ‘entire agreement’ or similar clause which may be contained in any Loan Transaction document.” While there is a potentially interesting argument to be had over whether

such a clause could take priority over a *subsequent* entire agreement clause, that argument need not be resolved, because s. 6.8 has no application. The Unit 901 APS is not a "Loan Transaction document", and so s. 6.8 does not even purport to override its entire agreement provision.

48. Performing the Unit 901 APS – or the "as is, where is" offer – will leave Hazelton's creditors worse off and will effect a preference in favour of Mr. Berry. The Receiver seeks to disclaim on that basis.

iv) Third Factor: The Equities

49. Mr. Berry's evidence is that CEI represented to him that a receivership would lead to the completion of Unit 901 and transfer to him. He submits that disclaimer is inappropriate in light of those representations.

50. The Receiver takes no position on this issue as it is a matter as between Mr. Berry and CEI. It is outside the scope of the Receiver's mandate, which is to maximize assets. Mr. Berry's argument is that the equities are sufficient to override the general goal of maximizing assets and justify a reordering of normal creditor priorities.

51. The Receiver's only submission on this point is to note that the Receivership Order does not obligate the Receiver to complete units or close any sale agreements. To the extent CEI represented that this was the likely outcome of a receivership, it did not form part of the Order appointing the Receiver. The Receiver is not the agent of CEI and is not bound by representations made by CEI.

52. Aside from the representations issue, the Receiver submits that the equities do not support mandating the Receiver to perform the Unit 901 APS. There is no doubt that the outcome to Mr. Berry is unfortunate. He has paid significant sums and waited a long time to acquire title to Unit 901. But outcomes of this nature are typical in insolvencies.

53. This case is similar to *C & K Mortgage Services*, in which a couple used their savings to pay $500,000 towards a pre-construction condominium unit. The project was nearly completed when a receiver was appointed. The receiver sought to disclaim the sale agreement. The purchasers argued that it was unfair for their deposit to be forfeited entirely for the benefit of the secured creditor. Justice Dietrich disagreed, noting that while the outcome was unfortunate, it was consistent with the priority scheme, and there was no legal basis to prefer the interests of the purchasers.

> *C & K Mortgage Services Inc. v. Camilla Court Homes Inc.*, 2020 ONSC 5071, at paras 44-47

54. The same is true in this case. There is no dispute that the outcome is unfortunate for Mr. Berry. That alone does not warrant preferring his claim to those of the secured creditors. The Receiver submits that disclaimer is appropriate.

PART IV - ORDER REQUESTED

55. The Receiver respectfully requests authorization to disclaim any and all sale or related agreements between Hazelton and Mr. Berry for Unit 901.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 12th day of February, 2025.

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SCHEDULE "A"

LIST OF AUTHORITIES

1. *KingSett Mortgage Corporation et al. v. Vandyk-Uptowns Limited*, 2024 ONSC 6205

2. *In the Matter of a Plan of Compromise or Arrangement of 2039882 Ontario Limited*, 2024 ONSC 5541

3. *Forjay Management Ltd. v 0981478 B.C. Ltd.*, 2018 BCSC 527

4. *Bawitko Investments Ltd. v. Kernels Popcorn Ltd.*, 1991 CanLII 2734 (Ont. C.A.)

5. *Smith v. Smith*, 2007 CanLII 17205 (ON SC)

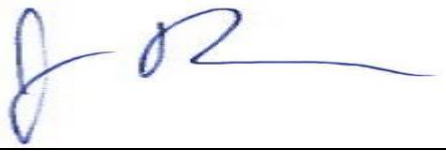
6. *Gillevet v. Crawford and Co. Insurance Adjusters Ltd.* (Ont. Dist. Ct.), 1988 CanLII 4765

7. *C & K Mortgage Services Inc. v. Camilla Court Homes Inc.*, 2020 ONSC 5071

I certify that I am satisfied as to the authenticity of every authority.

Note: Under the Rules of Civil Procedure, an authority or other document or record that is published on a government website or otherwise by a government printer, in a scholarly journal or by a commercial publisher of research on the subject of the report is presumed to be authentic, absent evidence to the contrary (rule 4.06.1(2.2)).

Date February 12, 2025



Signature

SCHEDULE “B”

TEXT OF STATUTES, REGULATIONS & BY - LAWS

1. None.

Court File No. CV-24-00715321-00CL

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PROCEEDING COMMENCED AT
TORONTO

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