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immigration frauds and related scams and real estate frauds and scams, which the principals of 2283942 Ontario Inc. (hereinafter #942) were very well aware of, and involved in, either directly or indirectly.

3. #591 denies that Instrument #AT3075439 should be deleted from the Property.
4. #591 states that despite #942 obtaining a Certificate of Pending Litigation against the subject property in about 2014, the Plaintiff has not therefore in good faith forthwith, and expeditiously, moved this lawsuit forward.
5. #591 does not dispute that Plaintiff (#942) may be entitled to an accounting the Plaintiff's expense of the proceeds of sale of the subject property.
6. #591 denies that the Plaintiff is entitled to damages against #591. #591 states that the Plaintiff (originally #942), was the victim of its own mortgage default, its own lack of due diligence, its own negligence and poor management, and particularly its own lack of timelines in paying the mortgage payments when due, and lack of timelines in respect of the Notice of Sale.
7. There is no logical or juristic reason for the Plaintiff, if given any relief, if any, not to pay full interest and costs accruing on the subject mortgage, including after September 18, 2014, as otherwise the Plaintiff would be unjustly enriched.
8. #591 does not agree that Kuang is the "controlling mind" of #591 or of #982.
9. #591 denies that this is an appropriate or proper case for the Plaintiff to be awarded any damages against #591, and particularly to be awarded any punitive, or exemplary, or aggravated

damages. The Plaintiff was the victim of the default by #942 on the mortgage, and there is no liability of #591 to #942.

10. #591 states that the sale to #982 was legal, proper, and reasonable in the circumstances both in fact and in law, and procedurally. In any event, if the sale was in any way defective (which is denied and not admitted), #591 seeks an Order or Declaration retroactively validating the said sale if required. #591 denies that the sale breaches any requirements in law, including the *Conveyancing and Law of Property Act*, the *Mortgages Act*, or the *Bankruptcy Act*.

11. #591 states that the mortgage for which Shiu Kwan Lo and Sons Ltd. was the mortgagee and #942 was the mortgagor, was properly, legally, and effectively assigned to #591, and #942 in fact received actual Notice of the Assignment of the said mortgage.

12. #591 states, and the fact is, that it received a proper assignment of the subject mortgage, of which #942 received notice.

13. #591 states, and the fact is, that #942 did not in fact make the payments on the mortgage on time, or pay off the mortgage when it went into default, or put the mortgage in good standing or pay the arrears on or before September 15, 2014.

14. By September 18, 2014, it was too late for the Plaintiff to have redeemed the mortgage, and by September 18, 2014 the time to redeem the mortgager had expired.

15. #591 denies that the sale to #982 was done in bad faith or fraudulently, or in any way improperly or prematurely, as #591 was trying to mitigate its damages and any losses under the defaulted mortgage, #591 states that the purchase by #982 was bona fide, arm's length, and an independent purchase for value without any notice of any adverse claims. #591 states that it is

not even directly or indirectly related to #982, and denies that knowledge of either of them is the knowledge of the other.

16. #591 states that any right of #942 to redeem the subject mortgage had expired, and was not exercised diligently or properly in the circumstances. Any said right to redeem was lost by the negligence or recklessness of #942. #591 denies that it was party to any conspiracy or plan to extort money from the Plaintiff.

17. #591 denies the Plaintiff is entitled to damages for any amount claimed, or for any amount whatsoever, and puts the Plaintiff to strict proof thereof, and especially in regards to the fraud allegation. Any right of #942 to redeem was not interfered with improperly by #591. In any event, any technical or perceived defect by #591 or any party regarding the sale did not prejudice the Plaintiff, and the subject sale should be decided valid, binding, and final.

18. Any technical or perceived defect, if any, in the sale proceedings was inadvertent and not intentional or fraudulent, and not part of any conspiracy.

19. #591 denies that there were any surplus funds arising from the power of sale, and therefore the Plaintiff is not entitled to any monies or damages arising from the sale.

20. #591 denies that it was part of any plot or conspiracy to extract monies from, or to defraud #492.

21. #591 denies that it particularly has any joint and/or several liability with any of the other defendants herein.

## COUNTERCLAIM

22. The Plaintiff by Counterclaim, 2433591 Ontario Inc. (#591), claims as follows:
- a) an Order directing the Registrar of Titles to delete the instrument No. AT3711797 (Certificate of Pending Litigation) from title to the property located at 3320-330 Midland Avenue, Toronto, Ontario, and bearing PIN Number 06020-0033 (LT) (the "Property");
  - b) an order that mortgage No.AT3705440 be allowed to be paid off by the mortgagor and discharged and deleted from the Registrar of the Property;
  - c) \$6,000,000.00 as general damages;
  - d) punitive, exemplary and aggravated damages in the amount of \$4,000,000.00;
  - e) prejudgment interest in accordance with the *Courts of Justice Act*;
  - f) the costs of this action on a substantial indemnity basis; and
  - g) such further and other relief as this Honourable Court deems just and the circumstances require.
23. #591 is a company incorporated under the laws of the Province of Ontario, and is the current mortgagee of mortgage bearing instrument number AT3705440 (the "Current Mortgage") registered on the property 3320-330 Midland Avenue, Toronto (the "Property").
24. The Defendant by Counterclaim, 2283942 Ontario Inc., is a company incorporated under the Laws of the Province of Ontario, and was the former owner of the Property before October 2, 2014.

25. The Defendant by Counterclaim was formerly the mortgagor of mortgage No. AT3012559 as amended by instrument No. AR3506673 and transferred by instrument No. AT3688895, which mortgage went into default (the "Default Mortgage"). Thereafter the ownership of the Property was changed under power of sale on October 2, 2014 (the "Power of Sale Date"). As a result thereof, #591, the assignee of the mortgage sold under power of sale to #982. On the said sale, #591, the vendor under power of sale took back a vendor take back mortgage of \$4,000,000.00 from #982.

26. After the Power of Sale Date, #942 filed a Statement of Claim herein, against multiple parties including the current owner of the Property 2435982 Ontario Inc. (the "Current Owner"), and applied for and filed a Certificate of Pending Litigation against the subject property. #942 also applied for an injunction/Court Order against #591 to try, inter alia, to block the mortgage payments from #982 to #591.

27. The Current take back Mortgage from #982 to #591 was arranged as a bridge mortgage with short term and high interest rate, for the Current Owner, #982, to have enough time to complete the closing of its own regular commercial mortgage.

28. However, the Current Owner, #982, was unable to later complete the closing of its pre-approved commercial mortgage with longer term and lower interest, upon the registration of a certificate of pending litigation.

29. The Current Owner, #982, is in effect not now allowed pursuant to an interim Court Order sought by #942, to make payments to #591, partially or in full, on the current take back mortgage unless consent is obtained from the Defendant by Counterclaim.

30. #591 states that as a result of the said injunction dated January 21, 2015, and the related "Settlement Agreement" entered into by #942 and #982, that #591 has suffered substantial damages as it has not been paid it's full mortgage payments or purchase price.

31. The Plaintiff by Counterclaim, #591, is therefore unable to receive its interest and/or principal from the Current Mortgage. As a result thereof, #591 has suffered damages and lost its investment opportunities due to the unavailable fund which was expected to be received shortly after the Power of Sale Date.

32. #591, Upon communication with the Current Owner, #982, discovered that the subject property;

(1) which is a freehold property, was formerly used by #942 and its principals as condominium property fraudulently selling condominiums to investors mainly from China for large sums of money;

(2) was used by #942 as a site for fraudulent immigration projects and scams with large sums of money involved.

33. After the Power of Sale Date #942 communicated with Tenants, occupants, guests of the Property and other visitors and service providers to the Property, without permission and authorization, with untruthful information, caused difficulties and damages to the management of the Current Owner of the Property.

34. After the Power of Sale Date, #942 encouraged the Tenants not to pay rents to the Current Owner and provided forged documents to support the Tenants against the Current Owner as landlord. This resulted in the lock out of Tenants, and indirectly caused substantial loss of income streams to #591.

35. After the Power of Sale Date, #942 refused to cooperate to provide management-related documents which the Defendant by Counterclaim was supposed to do, causing difficulties, damages, and extra costs to the Current Owner, and jeopardizing the mortgage security of #591.

36. Before the Power of Sale Date, #942 failed to close the outstanding building permits within a reasonable time period; and after the Power of Sale Date, #942 failed to co-operate with the Current Owner to close these outstanding permits, The behaviour of #942 has caused substantial liabilities to the Property and Security of #591.

37. After the Power of Sale Date, #942 unreasonably interfered with the use of rents received by the current owner, thus jeopardizing the real estate security of #591.

38. The subject property is the security of the Current Mortgagee #591. #591 is suffering losses because of #942 is interfering with its security and mortgage payments. The Plaintiff is also incurring costs and legal fees to monitor the matter and the Property.

Dated at Toronto this 6<sup>th</sup> day of March, 2017.

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Court File Number: CV-14-513935

SHIU KWAN LO AND SONS LTD. et al.

Defendants

BDO CANADA LIMITED IN ITS CAPACITY  
AS TRUSTEE OF THE ESTATE OF 2283942  
ONTARIO INC., A BANKRUPT  
Plaintiff

-and-

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

**STATEMENT OF DEFENCE  
AND COUNTERCLAIM**

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