

Court File No.: CV-16-11578-00CL

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

**B E T W E E N:**

**COMTECH FIRE CREDIT UNION LIMITED**

**Applicant**

**-and-**

**MARK EUGENE GAUTHIER**

**Respondent**

**APPLICATION UNDER** Subsection 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985 c. B-3, as amended, Section 101 of the *Courts of Justice Act*, R.S.O. 1990 c. C.43, as amended, and Rule 14.05(3)(g) and (h) of the *Rules of Civil Procedure*

**SUPPLEMENTAL MOTION RECORD  
(Motion Returnable April 29, 2019)**

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**TO: SERVICE LIST**

## SERVICE LIST

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Court File No. CV-16-11578-00CL

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

**BETWEEN:**

**COMTECH FIRE CREDIT UNION LIMITED**

**Applicant**

**-AND-**

**MARK EUGENE GAUTHIER**

**Respondent**

**SUPPLEMENT TO THE SECOND REPORT OF THE RECEIVER  
BDO CANADA LIMITED**

**APRIL 25, 2019**

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- Appendix “C” - Draft Ancillary Order



## **INTRODUCTION**

1. This report is provided to supplement the Second Report of the Receiver dated March 29, 2019 (the “**Second Report**”), to update the court with respect to the actions of Mark Eugene Gauthier (“**Gauthier**”) since the service of the Receiver’s motion returnable on April 29, 2019. Capitalized terms not otherwise defined in this supplement shall have the meaning ascribed in the Second Report.

## **HARRASSMENT OF PURCHASER**

2. Gauthier has been persistently harassing the Purchaser. Attached collectively as **Appendix “A”** are copies of e-mail messages send by Gauthier to Joel Mixa, lawyer for the Purchaser, on April 23, 2019, as well as an e-mail message from the principal of the Purchaser, Zain Valani, dated April 24, 2019, and setting out Gauthier’s various attempts to contact him.
3. As a consequence of Gauthier’s harassment of the Purchaser, the Receiver requests that Gauthier be specifically restrained from contacting the Purchaser or its representatives pending the completion of the Transaction.

## **DISCLOSURE OF CONFIDENTIAL INFORMATION**

4. On April 24, 2019, the Receiver (and not the Receiver’s lawyer) was served by Gauthier’s lawyer, Brent Balmer (“**Mr. Balmer**”), with Gauthier’s motion record (the “**2019 Gauthier Motion Record**”), containing a notice of motion erroneously dated April 23, 2019, and an affidavit of Gauthier sworn April 23, 2019 (the “**2019 Gauthier Affidavit**”).
5. The 2019 Gauthier Affidavit mentions, at paragraph 13, that Gauthier had received copies of certain appraisals of the Properties, and attaches copies of those appraisals as Exhibit “E” to the 2019 Gauthier Affidavit (the “**Appraisals**”).
6. The Appraisals had been provided to Mr. Balmer and Gauthier by the Receiver subject to the terms of a confidentiality agreement dated April 6, 2017 (the “**Confidentiality Agreement**”). The Confidentiality Agreement is expressly binding on Gauthier, Mr. Balmer, and Mr. Balmer’s firm. A copy of the Confidentiality Agreement is attached as **Appendix “B”**.

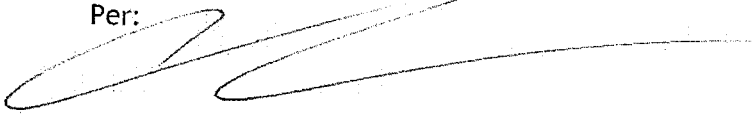
7. The Appraisals were also expressly sealed by the Court in the Second Order, which remains in full force and effect.
8. The inclusion of the Appraisals in the 2019 Gauthier Affidavit is a clear breach of both the Confidentiality Agreement and the Second Order. Consequently, the Receiver requests that, at a minimum, the 2019 Gauthier Motion Record be struck out and expunged from the court record.
9. A revised draft ancillary order is attached to this supplement as **Appendix "C"**.

All of which is respectfully submitted this 25<sup>th</sup> day of April, 2019.

**BDO CANADA LIMITED**

in its capacity as Court-appointed Receiver of  
the properties municipally known as  
36, 38, 40, and 42 University Avenue East, Waterloo, Ontario  
and not in its personal or corporate capacity

Per:



Christopher J. Mazur, CIRP, LIT  
Senior Vice President

TAB A

**From:** Joel Mixa <Joel@mixalaw.com>  
**Sent:** Wednesday, April 24, 2019 9:00 AM  
**To:** Ross Macfarlane <jrmacfar@flettbeccario.com>  
**Subject:** Fwd: 36/42 University

Good Morning Ross,

I don't know what, if anything, can be done to address this, but please see the vaguely threatening email below I received from the current owner of the property.

JOEL MIXA  
Barrister & Solicitor

t 647 499 8848 f 647 498 1330

10 King Street East, Suite 1400, Toronto, ON M5C 1C3

[joel@mixalaw.com](mailto:joel@mixalaw.com) | mixalaw.com

This message is private and confidential. If you have received this message in error, please notify the sender and delete the message immediately.

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**From:** Mark Gauthier <[mkgauth@sympatico.ca](mailto:mkgauth@sympatico.ca)>

**Sent:** Tuesday, April 23, 2019 9:32 PM

**To:** Joel Mixa

**Subject:** Fwd: 36/42 University

Forgive me Joel. Was meant to be sent tomorrow morning.

You should receive my Motion tomorrow from my lawyer.

I had asked several times of Comtech if they had alerted the potential purchaser of my intent to contest, but I believe my efforts were ignored. I have copies of those emails if you would like.

**Mark Gauthier**

519-580-4359

Begin forwarded message:

**From:** Mark Gauthier <[mkgauth@sympatico.ca](mailto:mkgauth@sympatico.ca)>

**Date:** April 23, 2019 at 9:28:27 PM EDT

**To:** Joel Mixa <[joel@mixalaw.com](mailto:joel@mixalaw.com)>

**Subject:** 36/42 University

Good morning Joel:

I am the owner of University.

I've had a difficult set of circumstances that have led to this point.

I realize this is of no interest to you or your client, however it may be pertinent.

I will be contesting the Receiver's proposed sale on April 29th, 2019. I will continue to do so as long as I live and breathe.

I've owned the site since 2004, and my children have literally bled for that property while performing clean up.

I live in the area and will never let that property go mentally or physically. I will let everyone know in the Community what transpired. I have your client's name.

Your client may legally win, but he will never beat me or the court of opinion which I am experienced in.

Respectfully,

Mark

**Mark Gauthier**

519-580-4359

**From:** Zain Valani <zvalani2@gmail.com>  
**Sent:** Wednesday, April 24, 2019 6:26 PM  
**To:** Lansink, Lisa <lisa.lansink@colliers.com>  
**Cc:** Burrowes, Stephanie <sburrowes@bdo.ca>; Kirwin, Chris <Chris.Kirwin@colliers.com>  
**Subject:** [EXT] Re: Leasing

FYI, I have also received 7 emails and messages from Mark Gauthier. He has left his phone number and email address, and sent copies of some AGM related info, and also his motions, and some 271 Lester sales info from 2017.

I do not know why he is appealing to me to contact him. I have nothing to do with his situation. I do feel bad for him, but I imagine everyone who falls into receivership does not go into it voluntarily. Nevertheless, I hope this can be resolved. We have obviously spent lots of money and time for building inspections, legal costs, showings, etc, so we will be out of pocket materially if this does not proceed.

Thanks.  
Zain

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The information contained in this communication is confidential and intended only for the use of those to whom it is addressed. If you have received this communication in error, please notify me by telephone (where it is necessary) and do not to or disseminate any part of it. Thank you.

BDO Canada LLP (and its affiliates), a Canadian limited liability partnership, is a member of the BDO International Limited company limited by guarantee, and forms part of the international BDO network of independent member firms.

BDO is the brand name for the BDO network and for each of the BDO member firms.

Le contenu de ce courriel est confidentiel et à l'intention du (des) destinataire(s) seulement. Si vous recevez cette communication par erreur, veuillez m'aviser immédiatement par téléphone en utilisant le numéro mentionné ci-haut (à trois chiffres si possible). Veuillez effacer ou détruire toutes copies de ce courriel reçues. Merci de votre collaboration.

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**TAB B**



April 6, 2017

**To: BDO Canada Limited ("Receiver")**

**Re: Confidentiality and Non-Disclosure Agreement  
36, 38, 40 and 42 University Avenue East, Waterloo, Ontario (the "Properties")**

In connection with the Receiver's motion returnable on April 11, 2017, the undersigned confirms that we have requested Receiver to disclose certain confidential information pertaining to the proposed listing for sale of the Properties, which confidential information includes and extends to, without limitation, the Confidential Appendices A through G to the first report of the Receiver dated March 22, 2017, the confidential information contained therein and all documents, materials and information (whether oral, written or otherwise) relating to the proposed listing for sale of the Properties (hereinafter collectively referred to as the "Confidential Information").

In consideration of your furnishing the Confidential Information to us and as a condition to such disclosure, the undersigned party (the "Respondent") agrees as follows:

1. Unless the context otherwise requires, the word "Respondent" includes the undersigned, his affiliated corporations and their respective directors, officers, employees, agents, representatives and advisers, expressly including but not limited to Brent C. Balmer and Kosky Balmer LLP.

2. The Respondent will not disclose or release any of the Confidential Information to any third party, without the prior written consent of the Receiver.

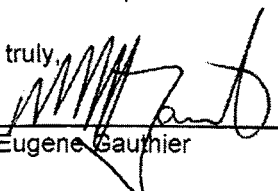
3. Without the prior written consent of the Receiver, the Respondent will not disclose to any third party either the fact that discussions or negotiations are taking place with respect to the listing or sale of the Properties, or any facts with respect to any such possible transaction, including the status thereof.

4. All records and other documents and all copies thereof relating to such Confidential Information, whether delivered to the Respondent by the Receiver, or copies, summaries, analyses or notes thereof made by the Respondent, shall be given to the Receiver, upon request, if a transaction of purchase and sale with respect to the Properties is not completed. Return of such documents shall in no event relieve the Respondent of any obligation of confidentiality contained herein respecting the Confidential Information.

5. Without the prior written consent of the Receiver, the Respondent shall not use, directly or indirectly, any of the Confidential Information received or obtained from the Receiver in furtherance of its business or the business of anyone else, unless such information has become public other than as a result of acts by the Respondent.

6. The Respondent accepts all Confidential Information furnished and to be furnished concerning the Properties, subject to these provisions of this letter. The Respondent understands that neither the Receiver nor any of its agents, representatives or employees makes any representation or warranty as to the accuracy or completeness of the Confidential Information. This letter agreement shall be governed by the laws of the Province of Ontario and constitutes our entire agreement with respect to the subject matter of this letter. The Respondent acknowledges that it has consulted its counsel prior to and with respect to the implications of the execution of this letter.

Yours truly,

  
\_\_\_\_\_  
Mark Eugene Gauthier

  
\_\_\_\_\_  
Witness

TAB C

Court File No. CV-16-11578-00CL

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

THE HONOURABLE ) MONDAY, THE 29<sup>TH</sup> DAY  
 )  
JUSTICE ) OF APRIL, 2019

**B E T W E E N :**

**COMTECH FIRE CREDIT UNION LIMITED**

**Applicant**

**-and-**

**MARK EUGENE GAUTHIER**

**Respondent**

**APPLICATION UNDER** Subsection 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985 c. B-3, as amended, Section 101 of the *Courts of Justice Act*, R.S.O. 1990 c. C.43, as amended, and Rule 14.05(3)(g) and (h) of the *Rules of Civil Procedure*

**ANCILLARY ORDER**

THIS MOTION, made by BDO Canada Limited in its capacity as the Court-appointed receiver (the "Receiver") of the real property of Mark Eugene Gauthier (the "Debtor") municipally known 36, 38, 40, and 42 University Avenue East, Waterloo, Ontario, and certain related personal property (collectively, the "Properties"), for an approval and vesting order and for other ancillary relief as set out in the Second Report of the Receiver dated March 29, 2019 (the "Second Report") and the Supplement to the Second Report dated April 25, 2019 (the "Supplement"), was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Second Report and the Supplement and on hearing the submissions of counsel for the Receiver, [NAMES OF OTHER PARTIES APPEARING], no one appearing for any other person on the service list, although properly served as appears from the affidavit of Kimberly Leppard sworn April 5, 2019, filed:

1. **THIS COURT ORDERS** that the Second Report and the Supplement, and the activities and conduct of the Receiver described therein, are hereby approved.
2. **THIS COURT ORDERS** that Confidential Appendices “A” through “O” to the Second Report, and the unredacted copy of the motion record, shall be sealed until the Receiver has filed a Receiver’s Certificate confirming the completion of a sale of the Properties, or further order of this court.
3. **THIS COURT ORDERS** that the professional fees and disbursements of the Receiver from March 11, 2017 to September 14, 2018 are hereby approved.
4. **THIS COURT ORDERS** that the professional fees and disbursements of the Receiver’s counsel from March 21, 2017 to September 27, 2018 are hereby approved.
5. **THIS COURT ORDERS** that the respondent, Mark Eugene Gauthier, shall refrain from directly or indirectly contacting or communicating with 2682684 Ontario Inc. and the tenants of the Properties, or any of their respective officers, directors, employees, agents, and lawyers, until such time as the Receiver has filed a Receiver’s Certificate confirming

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the completion of a sale of the Properties.

5. **THIS COURT ORDERS** that the motion record of the respondent containing a notice of motion dated April 23, 2019 and the affidavit of Mark Eugene Gauthier sworn April 23, 2019, and the exhibits thereto, be struck out and expunged from the court's records.
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**COMTECH CREDIT UNION LIMITED**  
Applicant

**MARK EUGENE GAUTHIER**  
Respondent

-and-

**Court File No.: CV-16-11578-00CL**

**ONTARIO**

**SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

Proceeding commenced at **TORONTO**

**APPLICATION UNDER** Subsection 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985 c. B-3, as amended, Section 101 of the *Courts of Justice Act*, R.S.O. 1990 c. C.43, as amended, and Rule 14.05(3)(g) and (h) of the *Rules of Civil Procedure*

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**ANCILLARY ORDER**

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**COMTECH CREDIT UNION LIMITED**  
Applicant

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**MARK EUGENE GAUTHIER**

**Court File No.: CV-16-11578-00CL**

**ONTARIO**

**SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

Proceeding commenced at **TORONTO**

**APPLICATION UNDER** Subsection 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985 c. B-3, as amended, Section 101 of the *Courts of Justice Act*, R.S.O. 1990 c. C.43, as amended, and Rule 14.05(3)(g) and (h) of the *Rules of Civil Procedure*

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**SUPPLEMENTAL MOTION RECORD**

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