

THE HONOURABLE
JUSTICE PATTILLO

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

WEDNESDAY, THE 27TH
DAY OF JULY, 2016

BETWEEN:



EMMANUEL VILLAGE RESIDENCE INC.

Applicant

and

ATTORNEY GENERAL OF ONTARIO

Applicant

and

1250 WEBER STREET EAST, KITCHENER, ONTARIO OR THE PROCEEDS OF
THE SALE THEREOF (IN REM)

Respondent

ORDER

THIS MOTION, by the Attorney General of Ontario, for a Preservation Order under the *Civil Remedies Act, 2001* (the "Civil Remedies Act"), was heard this day at the Court House located at 330 University Avenue, Toronto, Ontario.

ON CONSENT OF COUNSEL for all parties,

1. THIS COURT ORDERS preservation, pursuant to section 4(1) of the Civil Remedies Act, of:
 - a. that Real Property registered in Land Registry Office No. 58

described as Property Identification No. 22565-0352(LT) and legally described as: LT 75-81 PL 322 TWP OF WATERLOO; PT LT 38-43, 51-56, 74, 82-85 PL 322 TWP OF WATERLOO; PT LT 2 PL 963 KITCHENER; PT LT 141 STREETS & LANES KITCHENER; PT LT 142 STREETS & LANES KITCHENER (FORMERLY PT HERMAN AV & PT AUBURN AV PL 322, CLOSED BY 210008) PT 1, 2, 3, 4, 5, 6, 7, 58R13759; S/T & TW 1566343; S/T 1404828, 1559347, 1563157; KITCHENER ("Real Property"), being parts of the lands known municipally as 1250 Weber Street East, Kitchener, Ontario, shall be preserved and shall not be disposed of or encumbered in any way save and accept to the extent permitted by paragraphs 1(b), 3 and 4 of this Order or a further order of the court, pending the disposition of the forfeiture application commenced by the Attorney General of Ontario formerly bearing court file no. C-636-16.

and now consolidated in this proceeding ("Forfeiture Application"); and/or

- b. In the event the Real Property is sold by the Receiver under a sale process contemplated by and pursuant to the Order of Justice Penny dated June 24, 2016 (the "Appointment Order") and paragraph 3 below, the proceeds of sale or transfer, including any and all consideration paid or payable in connection with, the sale or transfer of all or any portion of the Real Property, which consideration shall form and be the gross proceeds from such sale or transfer shall be paid into and maintained in the Receiver's account as provided for in

paragraph 17 below until further order of the court.

2. **THIS COURT ORDERS** that the registered owner of the Real Property, Emmanuel Village Residence Inc. (the "Registered Owner"), or any person acting on its behalf, or anyone else claiming any interest in the Real Property shall not have any dealings with, sell, lease, assign, transfer with or without consideration, convey or further encumber, borrow against or otherwise use as security or commence any proceedings pursuant to the terms of any mortgage or lien or encumbrance of any kind dealing with or in any way related to the Real Property other than as expressly permitted in paragraphs 1, 3 and 4 of this Order or any further order of this court.

3. **THIS COURT ORDERS** that notwithstanding paragraph 2, the Real Property may be sold in accordance with the Appointment Order.

4. **THIS COURT ORDERS** that, notwithstanding the order set out in paragraph 2, an encumbrance may be placed on title by the Receiver to the Real Property with priority, to a maximum principal amount of \$350,000.00, for the purpose of securing professional fees and disbursements incurred in relation to Court File No. CV-16-11424-00CL, in accordance with the Appointment Order.

5. **THIS COURT ORDERS** that notwithstanding paragraph 4 of the order of Justice D.A. Broad dated June 23, 2016 and paragraph 3 of the order of Justice J.A. Milanetti dated July 14, 2016, each of which order pertains to the entirety of the real property municipally known as 1250 Weber Street East, Kitchener, the encumbrance in the amount of \$350,000 referred to in paragraph 4 of this Order and each of the aforementioned orders shall only be registered on title to the Real Property (described in Parcel Identifier No. 22565-0352 (LT)) and not on those portions of 1250 Weber Street East, Kitchener, in Parcel Identifier Nos. 22565-0351 (LT) and 22565-0349 (LT).

6. **THIS COURT ORDERS** that a copy of this Order shall be registered on title to the Real Property and the Land Registrar is directed to place a "No Dealings" indicator on title to the Real Property.

7. **THIS COURT ORDERS** that the Registered Owner preserve and maintain the Real Property in a state of good repair and order, and that any bills and/or expenses related to the maintenance and repair of the Real Property be paid by the applicable due date.

8. **THIS COURT ORDERS** that the Registered Owner maintain the utility services related to the Real Property and pay all regular bills and/or expenses for the Real Property, including, but not limited to, property taxes, mortgage payments, electricity, water, gas, and any other utility accounts that are outstanding for the Real Property, by the applicable due date.

9. **THIS COURT ORDERS** that the Registered Owner shall continue to duly and punctually collect any and all rental and/or other occupancy fees and payments due and owing from all residents and/or occupants of the Real Property, and continue to pursue any and all arrears of any such fees and payments as would a prudent owner and/or operator of property similar to the Real Property.

10. **THIS COURT ORDERS** that the Registered Owner shall take all steps reasonably necessary to ensure that the Real Property is insured against all common perils; and the Registered Owner shall pay all insurance premiums with respect to any policies of insurance issued in respect of the Real Property and shall provide proof of payment within seven days of a demand by the Attorney General for Ontario.

11. **THIS COURT ORDERS** that the Director of Asset Management - Civil (the "Director") or such person as may be designated or as may be required to assist the Director, be permitted on forty-eight (48) hours' notice to the Registered Owner or any mortgagee in possession and control of the Real Property, or any person occupying the Real Property, or any portion or portions thereof, to enter upon the Real Property, inspect and photograph

the Real Property to ensure compliance with this Order and to determine the value and condition of the Real Property, as the case may be.

12. **THIS COURT ORDERS** that the Registered Owner provide to counsel for the Attorney General of Ontario, copies of all insurance policies with respect to the Real Property. If the Registered Owner fails to provide copies of all insurance policies with respect to the Real Property to counsel for the Attorney General of Ontario, the insurance companies shall comply with requests for information with respect to these policies within ten (10) days of a request by counsel for the Attorney General of Ontario.

13. **THIS COURT ORDERS** that the Registered Owner shall, subject to the terms of this Order, amend all insurance policies in effect on the Real Property to add the Attorney General of Ontario as a party to whom loss is payable and to provide proof to the Director that all such insurance policies have been so amended. Failing compliance by the Registered Owner, the Director shall have the right to directly instruct the insurance company to amend the loss payable provision on all insurance policies in effect on the Real Property into the name of the Attorney General of Ontario in accordance with the above

14. **THIS COURT ORDERS** that the Registered Owner shall within 7 days of any of the following occurrences:
 - i. any increase in material risk;

- ii. increased hazard; or
- iii. vacancy or non occupancy of the Real Property, or any part or parts thereof, extending beyond 30 days

advise all parties to this proceeding and the relevant insurance companies of same.

15. **THIS COURT ORDERS** that if the Registered Owner fails to comply with the order in paragraph 14, the Director may notify the the insurer directly of these changes.
16. **THIS COURT ORDERS** that the Director may, from time to time and at any time, request information on the mortgage(s) on the Real Property including the amount required to pay out the mortgages or bring same into good standing, and all parties who receive such a request shall comply within fifteen (15) days.
17. **THIS COURT ORDERS** that the proceeds of any sale or transfer of all or any portion of the Real Property be deposited into an interest bearing account with the Receiver in accordance with paragraph 19 of the Appointment Order.
18. **THIS COURT ORDERS** that if the Real Property, or any part or parts thereof, is the subject of an executed agreement of purchase and sale (an "APS") pursuant to which all or any portion of the Real Property is to be sold

to a purchaser: (i) the Registered Owner shall forthwith advise the Attorney General by notifying the office of Civil Remedies for Illicit Activity of the existence of any such APS and any amendments thereto as such amendments are executed; (ii) the Registered Owner shall, within three (3) days of the date of the execution of an APS and/or any amendment thereto, deliver to the Attorney General, by sending it to the office of Civil Remedies for Illicit Activity, a true and complete copy of the APS and/or true and complete copies of any and all amendments to such APS; and (iii) the Attorney General shall deliver to the purchaser under the APS, within five (5) days of receipt of a copy of the APS and/or amendments thereto from the Registered Owner, a true and complete copy of this Order.

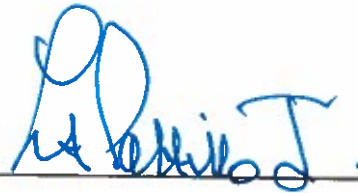
19. **THIS COURT ORDERS** that the Attorney General's use of the APS is restricted to use solely for the purposes of this proceeding and that no person within the Attorney General's office or employ will release the terms of the APS except with a further order of the court or as otherwise compelled by law, or as agreed by the parties.

20. **THIS COURT ORDERS** that the Receiver will not complete any sale transaction with respect to all or any portion of the Real Property without court approval in Court File No.: CV-16-11424-00CL. and notwithstanding any term or condition of any APS or any amendment thereto, the Director shall have the opportunity to make submissions on the motion to approve any such sale transaction, including with respect to any further measures

that ought to be taken to preserve rights in respect of the forfeiture application.

HMT Holdings Inc.

21. Notwithstanding anything in this Order, HMT Holdings Inc. ("HMT"), the first-ranking mortgage and secured creditor in respect of the Real Property, shall be at liberty to commence its own receivership, enforcement or recovery proceedings with respect to the Real Property and this Order shall be without prejudice to HMT's right to commence or continue any such proceedings in accordance with the Order of Justice Penny dated June 24, 2016, Court File No. CV-16-11424-00CL.



Justice of the Superior Court of Justice

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

JUL 27 2016

PER / PAR: 

**EMMANUEL VILLAGE RESIDENCE INC. AND
ATTORNEY GENERAL OF ONTARIO**

- and -

**1250 WEBER STREET EAST, KITCHENER, ONTARIO, OR THE
PROCEEDS OF THE SALE THEREOF (IN REM)**

Respondent / Responding Party

Applicants / Moving Party

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

Proceedings commenced at TORONTO

ORDER

Gary Valiquette, LSUC # 34925M
Jennifer Malabar, LSUC # 49358M

Ministry of the Attorney General
Civil Law Division
Civil Remedies for Illicit Activities Office (CRIA)

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