

Court File No.: CV-16-11424-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

BETWEEN:

EMMANUEL VILLAGE RESIDENCE INC.

Applicant

and

ATTORNEY GENERAL OF ONTARIO

Applicant / Responding Party

- and -

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

Respondent

**SUPPLEMENTARY RESPONDING MOTION RECORD
OF THE ATTORNEY GENERAL OF ONTARIO**

**ON THE MOTIONS OF EMMANUEL VILLAGE RESIDENCE INC. AND THE RECEIVER
TO APPROVE FEES AND DISBURSEMENTS**

Motion Returnable:
February 8, 2017

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

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Plaintiffs in Court File No. CV-10-8597-00CL

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Court File No.: CV-16-11424-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

BETWEEN:

EMMANUEL VILLAGE RESIDENCE INC.

Applicant

and

ATTORNEY GENERAL OF ONTARIO

Applicant / Responding Party

- and -

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

Respondent

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A	Exhibit "A" - Order of Justice Newbould, dated September 26, 2016
B	Exhibit "B" - Endorsement of Justice Newbould, dated September 29, 2016
C	Exhibit "C" - Order of Justice Newbould, dated January 11, 2017

Tab 1

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL COURT**

BETWEEN:

EMMANUEL VILLAGE RESIDENCE INC.

Applicant

and

ATTORNEY GENERAL OF ONTARIO

Applicant / Responding Party

and

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

Respondent

**SUPPLEMENTARY AFFIDAVIT OF LORI BLASKAVITCH
Sworn February 5, 2017**

I, Lori Blaskavitch, Law Clerk at the Civil Remedies for Illicit Activities Office ("CRIA"), Ministry of the Attorney General, of the City of Toronto, in the Province of Ontario, MAKE OATH AND SAY:

1. I am a Law Clerk with CRIA at the Ministry of the Attorney General. CRIA is responsible for implementing the *Civil Remedies Act, 2001* ("*Civil Remedies Act*"). This office represents the Applicant, the Attorney General of Ontario ("Attorney General") in this matter.
2. Gary Valiquette and Jennifer Malabar, counsel for CRIA, have carriage of this file.

3. I have reviewed this file and have knowledge of the facts and matters deposed to herein, except where my knowledge is stated to be based upon information and belief.
4. Where I make statements in the context of this affidavit that are not within my personal knowledge, I identify the source of the information and belief, all of which I do verily believe to be true. Where I have not identified the source of my information and belief that information is within my personal knowledge.
5. This Affidavit is supplementary to my Affidavit sworn on January 5, 2017.

Payment of Creditors

6. I have been advised by Ms. Malabar and do verily believe that the Order of Justice Newbould, dated September 26, 2016, was on consent of the AGO. The AGO consented to the full payment of all secured creditors immediately upon the closing of the sale in the following amounts:
 1. Bank of Nova Scotia - Loan principal, interest and counsel fees totalling \$19,300.63.
 2. Durham Capital Management – Loan, interest and fees totalling \$131,894.43.
 3. Harbour Mortgage Corporation – Loan, interest and fees totalling \$13,436,376.85.

Attached to this Affidavit and marked **as Exhibit "A"** is a true copy of the Order of Justice Newbould, dated September 26, 2016. The Receiver's Statement of Receipts and Disbursements, is attached to my previous Affidavit, sworn January 5, 2017, as Exhibit "F".

7. I have been advised by Ms. Malabar and do verily believe that the AGO consented to the payment of Brokerage fees and negotiated the legal fees of counsel for the broker. These fees were not contested by the Receiver. The AGO was able to obtain a reduction in the

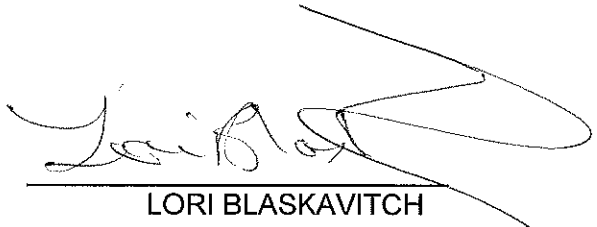
legal fees to be paid from the proceeds of sale and to preserve those funds for victim compensation. Attached to this Affidavit and marked as **Exhibit "B"** is a true copy of the Endorsement of Justice Newbould, dated September 29, 2016.

8. The AGO consented to the vast majority of legal fees sought by Harbour Mortgage Corporation, however, the AGO contested a small amount of those fees as unreasonable and inappropriate.
9. I have been advised by Ms. Malabar, and do verily believe that the Receiver did not contest any portion of Harbour Mortgage Corporation's fees. The AGO undertook negotiations, without the assistance of the Receiver, to resolve that issue again in an attempt to preserve funds for victim compensation.
10. The AGO also consented to the payment of 1.2 million dollars to satisfy a civil court order for payment of certain victims of the fraud. I have been advised by Ms. Malabar and do verily believe that the Receiver did not assist in the resolution of that issue as between victims counsel and the AGO. Attached to this Affidavit and marked as **Exhibit "C"** is a true copy of the Order of Justice Newbould, dated January 11, 2017.
11. This Affidavit is in support of interim motions related to the Attorney General's application for forfeiture, and for no improper purpose.

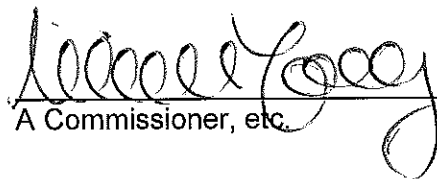
SWORN BEFORE ME at the City)
of Toronto, in the Province of Ontario)
this 5th day of February, 2017)


Commissioner for Taking Affidavits

MIRIAM YOUNG


LORI BLASKAVITCH

This is **Exhibit "A"** to the Affidavit of
Lori Blaskavitch, sworn February 5,
2017.


A Commissioner, etc.

MIRIAM YOUNG

ONTARIO
**SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE MR.) MONDAY, THE 26TH
)
JUSTICE NEWBOULD) DAY OF SEPTEMBER, 2016

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 made by BDO Canada Limited, in its capacity as Court-appointed receiver (the “**Receiver**”) of the assets, undertakings and properties of Emmanuel Village Residence Inc. (“**EVR**”), was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Notice of Motion herein, the Fifth Report of the Receiver dated September 20, 2016 (the “**Fifth Report**”), and on hearing the submissions of counsel for the Receiver, counsel for EVR, counsel for the Attorney General of Ontario and all other parties

listed on the Counsel Slip, no one else appearing, although duly served as it appears from the Affidavit of Service of Roxana G. Manea sworn on September 22, 2016,

INTERPRETATION

Terms not otherwise defined herein shall have the meanings ascribed to them in the Fifth Report.

SERVICE

1. **THIS COURT ORDERS** that the time for service of this Motion Record is validated such that this motion is properly returnable today and hereby dispenses with further service thereof.

DISTRIBUTION TO SECURED CREDITORS

2. **THIS COURT AUTHORIZES AND DIRECTS** the Receiver, subject to paragraphs 3 and 4 of this Order, to distribute funds to each of the Secured Creditors from the proceeds of the Transaction in amounts as are sufficient to permanently and fully repay the indebtedness of EVR to each of the Secured Creditors.

✓
principal and interest ✓
25.

3. **THIS COURT ORDERS** that each Secured Creditor shall provide to the Receiver a final calculation of the indebtedness owing to such Secured Creditor as at the closing date of the Transaction (a "**Payout Statement**") contemporaneously with or immediately after the closing of the Transaction.

4. **THIS COURT ORDERS** that the Receiver may, if it deems appropriate, apply to this Court to seek advice and direction in respect of the distribution to a Secured Creditor if EVR's total indebtedness to such Secured Creditor as set out in the Payout Statement is, solely in the

Receiver's opinion, materially different than as described in the Fifth Report on account of interest and costs.

PROFESSIONAL GROUP

5. **THIS COURT AUTHORIZES AND DIRECTS** the Receiver to pay, in accordance with the Receivership Order and the Order of Justice Newbould dated August 19, 2016 (the "**Representative Counsel Order**"), from the proceeds of the Transaction the outstanding and ongoing fees and disbursements incurred by:

- (a) the Receiver and its counsel; Thornton Grout Finnigan LLP;
- (b) counsel to EVR, being Madorin Snyder LLP and DLA Piper (Canada) LLP; and
- (c) Oldfield, Greaves, D'Agostino LLP solely with respect to fees and disbursements incurred in connection with its appointment as Representative Counsel of the Representative (each as defined in the Representative Counsel Order).

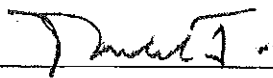
APPROVAL OF FOURTH AND FIFTH REPORT

6. **THIS COURT ORDERS** that the Fourth Report and the Fifth Report and the conduct and activities of the Receiver described therein are approved.

APPROVAL OF FEES AND DISBURSEMENTS


7. **THIS COURT ORDERS** that the fees and disbursements of the Receiver, being \$28,134.88 in fees and disbursements plus HST of \$3,657.53 totaling \$31,792.41 as set out in the Receiver's Fee Affidavit are approved.

8. **THIS COURT ORDERS** that the fees and disbursements of the Receiver's counsel, Thornton Grout Finnigan LLP, being \$64,367.60 in fees and disbursements plus HST of \$8,367.79 totaling \$72,735.39, as set out in the TGF Fee Affidavit, are approved.



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

SEP 26 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)**

Applicant

Applicant

Respondent

Court File No.: CV-16-11424-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

Proceedings commenced at Toronto

ORDER

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Lawyers for BDO Canada Limited

This is **Exhibit "B"** to the Affidavit of
Lori Blaskavitch, sworn February 5,
2017.


A Commissioner, etc.

MIRIAM GOLDBERG

Applicant

Applicant

Respondent

Court File No.: CV-16-11424-00CL

Sept 28/16

*The ASO will be detailed of the
accounts of HMT Holdings. From all
to be included in the accounts
to the ASO of the ASO records.
Whereby, the parties are to attend
at 9:30 approximately before
me on Thursday, September 29/16 to
settle the issue.*

Sweet

September 28/16

*The parties have resolved the
issue in the terms of the attached
undertstanding, which is agreed.*

Sweet

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

Proceedings commenced at Toronto

MOTION RECORD

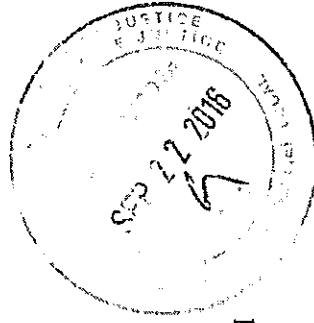
(Motion returnable on September 26, 2016)

Thornton Groat Finnigan LLP
Barristers and Solicitors
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Asim Iqbal (LSUC# 61884B)
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Fax: 416-304-1313
Email: aiqbal@tgif.ca

Lawyers for BDO Canada Limited



Approved: James T.
Ag/pen 29, 2016

(A) On the consent of the Attorney General for Ontario ("A-G") and Sure Mortgage Capital Inc. ("Sure") the claim of Sure for costs under the security granted to Sure by Emmanuel Village Residence Inc. ("EVR") shall be resolved as follows:

- 1) \$11,970.85 shall be payable pursuant to Sure's security over the assets of EVR; and
- 2) \$8,904.50, representing the portion of Sure's costs in respect of the brokerage fee issue, shall be payable as a costs award against the AG personally, but not from the estate of EVR, being the Property

within the meaning of the Appointment order and also being the property preserved under the preservation order made under the Civil Remedies Act.

(B) At the request of the A-G, which is unopposed by HMT Holdings Inc. ("HMT"), the costs claim of HMT under the security granted to HMT by EVR shall be resolved as follows:

- 1) HMT's fees to August 30 shall be paid pursuant to HMT's security over the assets of EVR to the extent of \$104,112.56 with ^{a further} \$34,000 of such fees being held and to be paid pursuant to by the receiver, ~~pending~~ further Order of the Court or consent of the parties.

2) HMT's fees after August 30 shall be paid
 out pursuant to its security over the assets
 of EVR subject to objection by the A-G,
 in which case the receiver shall seek further
 direction of the Court, ~~if necessary.~~

(c) The receiver is authorized and directed
 to pay the amounts referred to in paras.
 A(1), B(1) and B(2), above, from the sale
 proceeds.

This is **Exhibit "C"** to the Affidavit of
Lori Blaskavitch, sworn February 5,
2017.

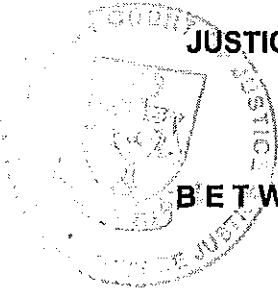

A Commissioner, etc.

MIRIAM YOUNG

Court File No. CV-16-11424-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE) WEDNESDAY, THE 11TH DAY
)
JUSTICE NEWBOULD) OF JANUARY, 2017



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

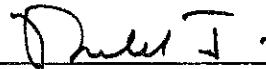
THIS MOTION, by the Plaintiffs in the action bearing court file no. CV-10-8597-00CL, for a declaration that, in accordance with the Order of the Honourable Justice Campbell dated May 17, 2013, \$1.2 million be paid to Bennett Jones LLP in trust on behalf of the Plaintiffs immediately upon sale of the retirement residence owned by Emmanuel Village Residence Inc. located at 1250 Weber St., Kitchener, Ontario (the **Residence**), was heard this day at the court house at 330 University Avenue, Toronto, Ontario, M5G 1R7.

ON CONSENT OF COUNSEL for all parties,

1. **THIS COURT ORDERS** that the Attorney General of Ontario's preservation Orders under the *Civil Remedies Act*, over the proceeds of the sale of the Residence, are varied to allow for the payment of \$1.2 million to Bennett Jones LLP in trust on behalf of the Plaintiffs immediately, in accordance with paragraph 4(a) of the Order of the Honourable Justice Campbell dated May 17, 2013.

2. **THIS COURT ORDERS** that in accordance with paragraph 4(a) of the Order of the Honourable Justice Campbell dated May 17, 2013, BDO Canada Limited, in its capacity as receiver, pay \$1.2 million to Bennett Jones LLP in trust on behalf of the Plaintiffs immediately; and

3. **THIS COURT ORDERS** that there shall be no costs of this motion.



Justice of the Superior Court of Justice

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

JAN 11 2017

PER / PAR:



EMMANUEL VILLAGE RESIDENCE
INC.

-and- ATTORNEY GENERAL OF
ONTARIO

Applicant

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

Applicant

Court File No.: CV-16-11424-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

Proceeding commenced at Toronto

ORDER

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bearing Court File No. CV-10-8597-00CL

EMMANUEL VILLAGE RESIDENCE INC. Applicant / Moving Party

- and -

ATTORNEY GENERAL OF ONTARIO Applicant / Responding Party

- and -

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

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST
Proceedings commenced at TORONTO

SUPPLEMENTARY AFFIDAVIT OF
LORI BLASKAVITCH
Sworn February 5, 2017

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

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EMMANUEL VILLAGE RESIDENCE INC. Applicant / Moving Party	- and - ATTORNEY GENERAL OF ONTARIO Applicant / Responding Party	- and - 1250 WEBER STREET EAST, KITCHENER, ONTARIO, OR THE PROCEEDS OF THE SALE THEREOF (IN REM) Respondent
<p style="text-align: center;">ONTARIO SUPERIOR COURT OF JUSTICE COMMERCIAL LIST Proceedings commenced at TORONTO</p>		
<p style="text-align: center;">SUPPLEMENTARY RESPONDING MOTION RECORD OF THE ATTORNEY GENERAL OF ONTARIO ON THE MOTIONS OF EVR AND THE RECEIVER TO APPROVE FEES AND DISBURSEMENTS</p>		
<p>Ministry of the Attorney General Civil Law Division Civil Remedies for Illicit Activities Office (CRIA)</p>		
<p>Gary Valiquette, LSUC # 34925M Jennifer Malabar, LSUC # 49358M</p>		
<p>Tel: 416-314-5881 / 416-327-2932 Fax: 416-314-3714</p>		
<p>E-mail: Gary.Valiquette@ontario.ca Jennifer.Malabar@ontario.ca</p>		
<p>Counsel for the Applicant, Responding Party Attorney General of Ontario</p>		
<p>Address for mail and courier: 77 Wellesley Street West P.O. Box 555 Toronto, ON M7A 1N3</p>		
<p>Address for service of documents: 720 Bay Street, 8th Floor Toronto ON M7A 2S9</p>		