

Court File Number: CV-16-1124-00CL

Superior Court of Justice  
Commercial List

FILE/DIRECTION/ORDER

EMMANUEL VILLAGE RESIDENCE INC.

Plaintiff(s)

AND

Defendant(s)

Case Management  Yes  No by Judge: \_\_\_\_\_

Counsel	Telephone No:	Facsimile No:
<i>See attached counsel slip</i>		

- Order     Direction for Registrar (No formal order need be taken out)
- Above action transferred to the Commercial List at Toronto (No formal order need be taken out)
- Adjourned to: \_\_\_\_\_
- Time Table approved (as follows):

October 3, 2016

The ASO moves to amend its article of application to add properties to the claim for forfeiture. This <sup>motion</sup> claim is not opposed & it is granted.

The ASO moves as well to add a claim for forfeiture to the Crown of any payment made to Judith Hunking under the agreement of

Date

Judge's Signature

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## Judges Endorsment Continued

purchase and sale agreement on August 26, 2016. Under that agreement, the purchaser has agreed to make a payment to Ms. Henking of \$150,000 under a non-competition agreement to be signed by her. As I understand it, the payment does not come out of the proceeds of sale.

This agreement was opposed at the hearing. The reason was that the ASO did not oppose the order approving the sale and that if the non-competition payment is not made to Ms. Henking, she will not sign a non-competition agreement which is a condition of the purchase on closing. Thus the approved sale will not close to the detriment of all concerned, especially the persons who will be looking to the proceeds of sale for compensation in the fund of Mr. Henking and allegedly

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## Judges Endorsment Continued

Ms. Hunking.

At the hearing I expressed to counsel in the AG's name concern regarding the closing of the sale and expressed the view that I would likely not grant the order to amend the notice of application because of the prejudice that might be caused to the victims.

I have concluded however that the amendment should be permitted on the proviso that it cannot be made until after the closing of the sale transaction, including the non-competition agreement to be signed by Ms. Hunking. In that way the transaction can be closed and the AGO can take whatever steps it wishes against the payment made by the purchaser to Ms. Hunking. One obvious issue will be whether the payment can be said to be the proceeds of crime. That, however,

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is for another day.

There was also a motion by the plaintiffs in the fraud action to have payment made to them from the proceeds of sale. That motion is opposed by the AGO who takes the position that any payments should be made under the proceedings taken under the Civil Remedies Act. That motion has been adjourned to see if some compromise step can be taken in the unusual situation of these joint proceedings to call for claims to be filed by those persons who have not yet done so. A compromise to avoid delay in the elderly victims and to avoid expensive litigation would appear to be desirable if it can be achieved.

West J.

10:00 A.M

N

COUNSEL SLIP

COURT FILE NO CV-16-11424-00CL

DATE SEP 26, 2016

NO ON LIST 4

TITLE OF PROCEEDING v EMMANUEL VILLAGE RESIDENCE INC et al.  
1250 WEBER ST. E et al.

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