

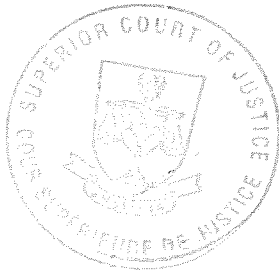
**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE
JUSTICE NEWBOULD

)
)
)

MONDAY, THE 3RD DAY
OF OCTOBER, 2016

BETWEEN:



EMMANUEL VILLAGE RESIDENCE INC.

Applicant

-and-

ATTORNEY GENERAL OF ONTARIO

Applicant / Moving Party

- and -

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

Respondent

ORDER

THIS MOTION, made on notice to all parties by the Applicant/Moving Party, Attorney General of Ontario, for leave to file an Amended Notice of Application, was heard on September 26, 2016, at the court house located at 330 University Avenue, Toronto.

ON READING the Amended Motion Record and Factum of the Attorney General, and on hearing submissions of counsel for the Attorney General,

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion and the Motion is hereby abridged and validated so that this motion is properly returnable today and hereby dispenses with further service thereof.
2. **THIS COURT ORDERS** that the Amended Notice of Application, as attached to this Order as Schedule "A", be filed with the Court.

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

OCT 18 2016



Justice of the Superior Court of Justice

PER / PAR:



Schedule "A"

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

- and -

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

Respondent

**AMENDED NOTICE OF APPLICATION
FOR A FORFEITURE ORDER UNDER THE *CIVIL REMEDIES ACT, 2001***

TO THE RESPONDENT

A LEGAL PROCEEDING HAS BEEN COMMENCED by the applicant. The claim made by the applicant appears on the following page.

THIS APPLICATION will come on for a hearing on March 30, 2017 at 10:00 a.m. at the Court House located at 330 University Avenue, 7th floor, Toronto, 85 Frederick Street, Kitchener, Ontario.

IF YOU WISH TO OPPOSE THIS APPLICATION, to receive notice of any step in the application or to be served with any documents in the application, you or an Ontario lawyer acting for you must forthwith prepare a notice of appearance in Form 38A prescribed by the Rules of Civil Procedure, serve it on the applicant's lawyer or, where the

applicant does not have a lawyer, serve it on the applicant, and file it, with proof of service, in this court office, and you or your lawyer must appear at the hearing.

IF YOU WISH TO PRESENT AFFIDAVIT OR OTHER DOCUMENTARY EVIDENCE TO THE COURT OR TO EXAMINE OR CROSS-EXAMINE WITNESSES ON THE APPLICATION, you or your lawyer must, in addition to serving your notice of appearance, serve a copy of the evidence on the applicant's lawyer or, where the applicant does not have a lawyer, serve it on the applicant, and file it, with proof of service, in the court office where the application is to be heard as soon as possible, but at least four days before the hearing.

IF YOU FAIL TO APPEAR AT THE HEARING, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO OPPOSE THIS APPLICATION BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

Date _____

Issued by: _____

Local Registrar

**Address of
court office:**

Superior Court of Justice – Commercial
Court Civil
Local Registrar
330 University Avenue
7th Floor
Toronto, ON M5G 1R7
~~85 Frederick Street~~
~~Kitchener, ON N2H 0A7~~
Tel: ~~519-741-3240~~ (416) 327-5043

TO: Emmanuel Village Residence Inc.
Director: Bryan Hunking
26 Pintail Drive
Elmira, ON N3B 3C4

Alternate Address:
212 Arthur Street South
Elmira ON N3B 2P4

AND TO: HMT Holdings Inc.
c/o Harbour Mortgage Corp.
36 Toronto Street
Suite 500
Toronto, ON M5C 2C5

AND TO: Sure Mortgage Capital Inc.
71 Simcoe Street
Unit 1804
Toronto, ON M5J 2S9

TO: **DLA PIPER (CANADA) LLP**
Barristers & Solicitors
1 First Canadian Place
100 King Street West, Suite 600
P.O. Box 367
Toronto, ON M5X 1E2

Bruce Darlington
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Jennifer A. Whincup
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Counsel for Emmanuel Village Residence Inc.

AND TO: Emmanuel Village Homes (Kitchener) Inc.
Director, Bryan Hunking
Joyceville Institution
Highway 15, Kingston, ON K7L 4X9

AND TO: **BENNETT JONES LLP**
3400 One First Canadian Place
P.O. Box 130
Toronto, ON M5X 1A4

Jonathan Bell
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F: 416-863-1716
E: bellj@bennettjones.com

Joseph N. Blinick
T: 416-777-4828
F: 416-863-1716
E: blinickj@bennettjones.com

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

AND TO: Judith Hunking
212 Arthur Street South
Elmira, Ontario
N3B 2P1

APPLICATION

1. The applicant makes application for:

- ~~a. An order for forfeiture to the Crown in right of Ontario of the real property known municipally as 1250 Weber Street East, Kitchener, Ontario with a PIN of 22565-0352 (LT) or the proceeds of the sale of that real property ("the subject property"), pursuant to section 3 of the *Civil Remedies Act, 2001* (the "*Civil Remedies Act*").~~
- a) An order pursuant to section 3 of the *Civil Remedies Act, 2001* (the "*Civil Remedies Act*") for forfeiture to the Crown in right of Ontario of the real property and assets of Emmanuel Village Residence Inc. or the proceeds of sale of the real property and assets of Emmanuel Village Residence Inc. sold pursuant to an Agreement of Purchase and Sale approved by the court under court file No. CV-16-11424-00CL on August 26, 2016, including:
- i. The Real Property located at 1250 Weber Street East, Kitchener, Ontario with a PIN of 22565-0352 (LT).
 - ii. The systems;
 - iii. The pre-paid rents and expenses;
 - iv. The resident Trust Funds;
 - v. The Assumed Contracts;
 - vi. The Warranties;
 - vii. The Books and Records;
 - viii. The Transferred Information;
 - ix. The Inventories;
 - x. The Personal property including the vehicle and all computer equipment and non-proprietary computer software Related to the Business;

- xi. The Intellectual Property;
 - xii. The Licences;
 - xiii. All goodwill Related to the Business;
 - xiv. All rights, causes of action or rights of set-off against third persons Related to the Business or relating to the Assets, including all rights and interests under or pursuant to all warranties, representations and guarantees, express, implied or otherwise, of or made by suppliers or others in connection with the Assets or otherwise Related to the Business, to the extent that the forgoing are, by the terms thereof, assignable; and
 - xv. Any other assets and undertaking of the Business;
- b. An order pursuant to section 3 of the *Civil Remedies Act* for forfeiture to the Crown in right of Ontario of the real property known municipally as 1250 Weber Street East, Kitchener, Ontario with PIN number 22565-0351(LT) and 22565-0349(LT) or the proceeds of the sale of that real property (the Emmanuel Village Homes (Kitchener) Inc. property), pursuant to section 3 of the *Civil Remedies Act*;
- c. An order pursuant to section 3 of the *Civil Remedies Act* for forfeiture to the Crown in right of Ontario of any payment made to Judith Hunking under the Agreement of Purchase and Sale, approved by the Commercial Court on August 26, 2016 in this matter;
- d. An order for costs; and
- e. Such further and other order as to this Honourable Court may deem just.

2. The grounds for the application are:

- a. Pursuant to subsections 3(1) of the *Civil Remedies Act* the court shall, except where it would clearly not be in the interests of justice, make an order forfeiting property that is in Ontario to the Crown in right of Ontario if the Court finds, on a balance of probabilities, that the property is proceeds of unlawful activity.
- b. Proceeds of unlawful activity are defined in the *Civil Remedies Act* as property acquired, directly or indirectly, in whole or in part, as a result of unlawful activity.
- c. Pursuant to Rule 14.02 of the Rules of Civil Procedure and subsection 3(2) of the *Civil Remedies Act* this matter shall proceed by application.
- d. Under the circumstances of this case, there are grounds for the court to find, on a balance of probabilities, that the property set out in paragraphs 1(a), 1(b) and 1(c) is the proceeds of unlawful activity within the meaning of the *Civil Remedies Act*.
 - i. Between 2000 and 2003 Bryan Hunking collaborated with ~~three partners~~ associates including, Inderpal Singh Bajaj, Ajindrapal Singh, Rajesh Chowdhry and Judith Hunking in a fraudulent investment scheme.
 - ii. Bryan Hunking entered a guilty plea to one count of Fraud Over \$5000, and was found by the sentencing judge to be the directing and controlling mind in the scheme.
 - iii. In total, at least ~~sixty-eight~~ seventy-nine investors were defrauded of approximately \$8.87 million;
 - iv. Investors were told their money was invested in safe off-shore investments, various start-up companies and/or a charity known as Help for Humanity which was run by Judith Hunking.
 - v. Investors' money was paid to a number of accounts including accounts for Netbusmodel Inc., Alcorp Financial Services Inc. and 1482042

Ontario Inc.; companies not licensed to trade securities or to invest capital in the securities market. Investors' money was also paid to an account for Help for Humanity (a registered charity subsequently de-registered).

- vi. Investors were told the off-shore investments would yield annual returns of 20-30%.
- vii. None of the money paid by investors was invested off-shore.
- viii. None of the funds were invested in the manner investors were told. Instead, investor funds were diverted into a project known as Emmanuel Village Homes, ~~a retirement home located at 1250 Weber Street East, Kitchener, Ontario.~~
- ix. The project known as Emmanuel Village Homes began when Emmanuel Village Homes (Kitchener) Inc. ("EVH") was purchased by Brian Hunking and his associates in October 2001; EVH owned all the real property located at 1250 Weber Street East, Kitchener, Ontario. The property was subsequently severed in December of 2002 into three parcels; Emmanuel Village Residence Inc. ("EVR") purchased PIN 22565-0352 (LT) while Emmanuel Village Homes (Kitchener) Inc. retained ownership over PIN number 22565-0351(LT) and 22565-0349(LT).
- x. A retirement home, which is owned and operated by EVR, was built on PIN 22565-0352 in large part using funds from the defrauded investors.
- xi. Investor money was improperly moved from accounts for Netbusmodel Inc., Alcorp Financial Services Inc., 1482042 Ontario Inc. and Help for Humanity into the Emmanuel Village Homes account. Investors' cheques were also improperly endorsed and deposited into the Emmanuel Village Homes account.

- xii. In fall of 2002 investors were invited to provide short term loans to Emmanuel Village Homes. The loans were to be for a maximum of 180 days and yield an interest rate of 14-18%. Investors issued cheques to Commonwealth Capital Corporation for this purpose.
- xiii. Investor money was improperly moved from the Commonwealth Capital Corporation account into the Emmanuel Village Homes account.
- xiv. Between June 2000 and March 2003 the fraudulent schemes diverted approximately at least four million dollars of investors money without investor knowledge, into Emmanuel Village Homes.
- xv. All but one investor in Commonwealth Capital Corporation never saw the return of their principal or any interest thereon.
- xvi. Only \$128,680 of investor funds was paid back to some investors in the form of interest payments. Other than the one investor noted above, no other funds were returned.
- xvii. A civil suit by investors led to a negotiated resolution with a civil judgment for \$1.3 million with a further 1.2 million to be paid upon the sale or transfer of Emmanuel Village Residence Inc.
- xviii. Once operational Bryan and Judith Hunking managed the retirement home, built with the fraudulent funds, throughout the relevant times.
- xix. Judith Hunking has been paid a management fee for managing the retirement home which was built with the fraudulent funds.
- xx. Judith Hunking was intimately involved in and had knowledge of the investment schemes.

The *Criminal Code*

- d. Pursuant to section 380(1) of the *Criminal Code of Canada* every one who, by deceit, falsehood or other fraudulent means defrauds any person of money valued at more than \$5,000 is guilty of an indictable offence and liable to a term of imprisonment not exceeding fourteen years.
- e. Pursuant to section 354(1) of the *Criminal Code*, it is an offence to possess property obtained by crime or the proceeds of crime.
- f. Pursuant to section 462.31(1) of the *Criminal Code*, it is an offence to launder the proceeds of crime.
- g. Such further and other grounds as counsel may advise and this Honourable Court may permit.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the application hearing ~~of the motion~~:

- a. Application Record of the Attorney General of Ontario.
- b. Such further and other evidence as counsel may advise and this Honourable Court may permit.

Dated in Kitchener this 40th day of ~~June~~ September, 2016.

Gary Valiquette
LSUC# 34925M

Jennifer Malabar
LSUC# 49358M

Ministry of the Attorney General
Civil Law Division
Civil Remedies for Illicit Activities Office (CRIA)
Tel: 416-314-5881 / 416-327-2932
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