

2025 01G 0491

IN THE SUPREME COURT OF NEWFOUNDLAND AND LABRADOR  
IN BANKRUPTCY AND INSOLVENCY

IN THE MATTER OF the *Companies*  
*Creditors Arrangement Act*, R.S.C., 1985  
c. C-36 as Amended (the "CCAA")

AND IN THE MATTER OF an  
application of Karwood Contracting Ltd.,  
Karwood Engineering Ltd., Karwood  
Design Group Ltd., and Karwood  
Ontario Ltd. (the "Applicants")

SUBMISSIONS OF KENT BUILDING SUPPLIES, A DIVISION OF J.D. IRVING, LIMITED

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SUBMISSIONS OF KENT BUILDING SUPPLIES, A DIVISION OF J.D. IRVING, LIMITED  
 (“KENT”)

1. On pages 12-16 of the Monitor’s seventh report dated September 29, 2025, the Monitor discusses the Asset Purchase Agreement, the Revised Binding Offer from the Private Investor and related matters.
2. Kent received the Confidential Supplement to the seventh report after signing a Confidentiality and Non Disclosure Agreement, which prevents Kent from referring to the contents of the Confidential Supplement in these submissions.
3. Therefore, any direct references to the Asset Purchase Agreement and the Revised Binding Offer will be restricted to the information contained in the Monitor’s seventh report, and information obtained from sources other than the Confidential Supplement.
4. The role of the Monitor was considered by the Supreme Court of Canada in paragraph [52] of *Quebec Inc. v. Callidus Capital Corp.* [2020] 1 SCR 521:

[52] We pause to note that supervising judges are assisted in their oversight role by a court appointed monitor whose qualifications and duties are set out in the *CCAA* (see ss. 11.7, 11.8 and 23 to 25). The monitor is an independent and impartial expert, acting as “the eyes and the ears of the court” throughout the proceedings (*Essar*, at para. 109). The core of the monitor’s role includes providing an advisory opinion to the court as to the fairness of any proposed plan of arrangement and on orders sought by parties, including the sale of assets and requests for interim

financing (see *CCAA*, s.23 (1)(d) and (i); Sarra, *Rescue! The Companies' Creditors Arrangement Act*, at pp. 566 and 569).

5. Paragraph 30 of the seventh report states that by the Revised Binding Offer, the Private Investor proposes "to acquire all or substantially all assets and undertakings of the Companies".
6. In presenting the proposed transaction, the Monitor is required, as part of its core role, to provide the Court and interested parties with a complete list of all the assets and undertakings and a reliable estimate of values of the assets and undertakings covered by the proposed transaction. This is required in order to enable the Court and interested parties to make a proper evaluation of the proposed transaction. The Monitor has not done so, which diminishes the weight that should be placed on its advisory opinion.
7. The obligation and onus is on the Monitor to make full disclosure. The interested parties should not be expected to ferret out this information from the Monitor by way of interrogatories.
8. There are other specific problems with the information contained in the seventh report of the Monitor, which will be discussed below.

#### **Assumption of Liabilities by Private Investor**

9. In paragraph 31. c. of the seventh report, the Monitor states that in the proposed transaction, the Private Investor would assume liabilities for "landscaping and paving obligations owed to 33 homeowners...", "honouring all existing Karwood warranty obligations...", and "vacation pay obligations of Karwood Contracting's former employees".
10. If the liabilities for these "obligations" were not assumed, the cash component of the purchase price would be significantly increased.
11. These "obligations" are unsecured claims that would surely be beneficial to Messrs. Hussey and Oram, from a public relations point of view, in operating a future residential development business. Nevertheless, how can it be these "obligations" could be allowed to divert funds away from and take priority to the DIP lender charge or the claims of other secured creditors?
12. It is nonsensical to expect that the DIP lender or the secured creditors should be generous benefactors of Messrs. Hussey and Oram in their future business ventures.

### Expropriation

13. On at least 2 occasions, Thomas W. Fraize KC has appeared in this proceeding on behalf of Patrick Street Holdings with respect to an expropriation by the provincial government of property on Ladysmith Drive in the Kenmount Terrace area. Karwood's claim for compensation against the expropriation fund and any reconveyance of property that may be pending are assets of the estate. How can it be that these assets could be conveyed to the Private Investor in the proposed transactions for insufficient consideration and without regard to the DIP financing and the claims of the secured creditors?

### Transfer at Undervalue – 166 Park Avenue, Mount Pearl

14. On February 17, 2025, Kent requested the Monitor to investigate the transfer of property at 166 Park Avenue, Mount Pearl under the powers contained in section 36(1) of the CCAA, on the basis that the transfer of property was a non-arms' length "transfer at undervalue". Reminders of this request were sent to the Monitor's counsel on May 22, 2025 and September 16, 2025. (TAB 1). This request was also mentioned on 2 occasions in hearings before this Court.
15. A transfer at undervalue:
- a) reduces the value of a debtor's estate and diminishes the value of the creditors' realizable claims;
  - b) frustrates the purpose of the CCAA;
  - c) undermines the integrity of the CCAA process.

Reference: **Aquino v. Bondfield Construction Co.**, 2024 SCC 31, at paragraphs 31-37 (TAB 2)

16. The failure of the Monitor to investigate and report its findings on this matter is difficult to understand, and should be of concern to the Court in assessing the proposed transaction.

### Administrative Charge

17. At present, an administrative charge of \$125,000 takes priority to Kent's claim. Kent opposes any application to increase this administrative charge.

### Conclusion

18. The Court should reject the proposed transaction, and should accept the application of the Bank of Montreal under the **Bankruptcy and Insolvency Act** to appoint MNP

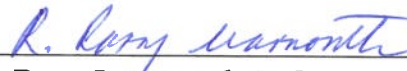
4.

Ltd. as the Court appointed receiver of the property, assets and undertaking of the Companies.

19. This approach has the potential to improve Kent's chance of recovering at least part of its claims.

**ALL OF WHICH IS RESPECTFULLY SUBMITTED.**

**DATED** at St. John's, in the Province of Newfoundland and Labrador, this 10<sup>th</sup> day of October, 2025.



**R. Barry Learmonth, K.C.**

Learmonth, Boulos & Fitzgerald

Solicitors for Kent

Suite 804, 140 Water Street

P. O. Box 700

St. John's, NL A1C 5L4

# TAB 1

---

**Fw: Karwood CCAA application: Our Client: Kent Building Supplies 166 Park Avenue Mount Pearl**

---

**From** R. Barry Learmonth, K.C. <barry@lbflegal.com>  
**Date** Tue 9/16/2025 9:10 AM  
**To** Joshua Santimaw <jsantimaw@boyneclarke.ca>

 3 attachments (1 MB)

Registration No. 1137912.pdf; Registration No. 1111674.pdf; Registration No. 1122247.pdf;

Josh,

Please advise me of the status of this.

Thanks,

Barry

---

**From:** R. Barry Learmonth, K.C.  
**Sent:** Thursday, May 22, 2025 1:52 PM  
**To:** JSantimaw@boyneclarke.ca <JSantimaw@boyneclarke.ca>  
**Subject:** FW: Karwood CCAA application: Our Client: Kent Building Supplies 166 Park Avenue Mount Pearl

Josh,

Please provide me with an update on the request below re 166 Park Avenue, Mount Pearl

**From:** R. Barry Learmonth, K.C. <barry@lbflegal.com>  
**Sent:** February 17, 2025 10:36 AM  
**To:** Joshua Santimaw <jsantimaw@boyneclarke.ca>; 'Jones, Neil' <nejones@bdo.ca>; pkouadio@bdo.ca; Darren O'Keefe <dokeefe@okeefesullivan.com>; Joe Thorne <joethorne@stewartmckelvey.com>  
**Subject:** Re: Karwood CCAA application: Our Client: Kent Building Supplies

Josh,

Further to my email of February 15, I attach copies of the 2 mortgages I referred to (registration # 1111674 and #1122247), together with a copy of the conveyance to 77592 (registration # 1137912).

Our client's claim under the Fraudulent Conveyancing Act is stayed against Karwood Contracting Ltd., and I confirm that we will not attempt to overturn the transfer of 166 Park Avenue in the CCAA proceeding based on the statement of claim in that proceeding. However, our client requests that the monitor proceed to investigate this transfer under the powers contained in section 36 (1) of the CCAA, on the basis that the transfer of 166 Park

Avenue was a non-arms' length "transfer at undervalue" and should be declared void. In the opinion of our client, this would be for the benefit the estate.

In particular, please refer to section 96 (1) (b) (i) of the Bankruptcy and Insolvency Act, which indicates that a transfer for less than fair market value within 1 year prior to o the date of the insolvency between non-arms' length parties will be considered to be a " transfer at undervalue", without any requirement of proving intent or insolvency.

If you require further clarification or particulars, please let me know.

Thanks,

Barry

---

**From:** Maria Sooley <[maria@lbfllegal.com](mailto:maria@lbfllegal.com)>  
**Sent:** Monday, February 17, 2025 9:09 AM  
**To:** R. Barry Learmonth, K.C. <[barry@lbfllegal.com](mailto:barry@lbfllegal.com)>  
**Subject:**

LEARMONTH,  
BOULOS &  
FITZGERALD

BANKRUPTCY | SOLVENCY | INSOLVENCY

**Maria Sooley, Assistant**

T: (709) 739-8585, ext. 0

F: (709) 739-8151

Suite 804, 140 Water Street

P.O. Box 700

St. John's, NL A1C 5L4



**REGISTRY OF DEEDS  
CERTIFICATE OF REGISTRATION**

**Registration Date:** MAY 10, 2024

**Registration Time:** 09:40 AM

**Registration Number:** 1111674

*Teri Toyl*

**Registrar of Deeds**

**Confirmation Date:** MAY 30, 2024

**Receipt Number:** 5905LLH1

**Consideration:** 1.00

**Document Type:** NOTICE OF MORTGAGE

**Filed By:** O'KEEFE & SULLIVAN

**From Parties:**

Karwood Contracting Ltd.

**To Parties:**

Moskowitz Capital Mortgage Fund II Inc.

**Location:**

Civic 166 Park Avenue, Mount Pearl

B100

**THIS MORTGAGE AMENDMENT** made at the City of St. John's, in the Province of Newfoundland and Labrador, this 22 day of April, 2024.

**BETWEEN:**

**KARWOOD CONTRACTING LTD.**, a body corporate, duly incorporated under the laws of the Province of Newfoundland and Labrador  
(the "Mortgagor")

**AND:**

**MOSKOWITZ CAPITAL MORTGAGE FUND II INC.**, a body corporate, duly incorporated under the laws of the Province of Ontario  
(the "Lender")

**WHEREAS** by a Mortgage dated the 21<sup>st</sup> day of November, 2023, and made between the Parties hereto and registered in the Registry of Deeds for Newfoundland and Labrador as Registration Number 1098210 (the "Mortgage"), the Mortgagor did grant and mortgage unto the Lender the lands and premises therein described to secure payment of funds loaned by the Lender to the Mortgagor and secured by the Mortgage;

**AND WHEREAS** the Lender has agreed to limit the consideration secured by the Mortgage over the lands and premises known as 166 Park Avenue, in the City of Mount Pearl, Province of Newfoundland and Labrador, and being more particularly described in the Schedule "A" attached hereto, to the sum of Four Hundred and Fifty Thousand Dollars (\$450,000.00);

**NOW THEREFORE THIS INDENTURE WITNESSETH** that in consideration of the sum of One Dollar (\$1.00) now paid by the Mortgagor to the Lender, and other good and valuable consideration (the receipt and sufficiency of which is hereby acknowledged by the Borrower), the Lender agrees that the consideration secured by the Mortgage related to 166 Park Avenue, in the City of Mount Pearl, Province of Newfoundland and Labrador is hereby limited to the sum of Four Hundred and Fifty Thousand Dollars (\$450,000.00).

**IN WITNESS WHEREOF** the Lender has hereunto affixed its corporate seal duly attested by the hand(s) of its proper officer(s) in that behalf, on the day and year first before written.

**SIGNED, SEALED AND DELIVERED**  
in the presence of:

Stephen Maharaj

**STEPHEN MAHARAJ**,  
Notary Public, Province of Ontario,  
limited to the attestation of instruments and  
the taking of affidavits,  
for Moskowitz Capital Management Inc.  
and its associated companies.  
Expires March 13, 2027.

**MOSKOWITZ CAPITAL  
MORTGAGE FUND II INC.**

Per: [Signature]  
Name: Brian Moskowitz  
Title: President

**BOUNDARY DESCRIPTION**

Prepared on behalf of Karwood Contracting

Civic # 166 Park Avenue, Mount Pearl, in the province of Newfoundland and Labrador, Canada

**BEGINNING** at a point, said point having the following NAD83 coordinates in Zone 1, central meridian 53° west longitude, of the Transverse Mercator Projection as modified for the Province of Newfoundland and Labrador

N 5 264 499.834  
E 319 980.686

with reference to Monument number 80G2162 with Co-ordinates N 5 264 488.245 metres and E 320 013.464 metres and Monument number 80G2164 with Co-ordinates N 5 264 486.138 metres and E 320 553.867 metres;

**THENCE** turning and running along land of Dwayne H. Brown, Civic #170 Park Avenue north ten degrees twenty three minutes thirty three seconds west (N10°23'33"W) for a distance of nineteen decimal four three six (19.436) metres; thence north zero nine degrees twenty three minutes thirty eight seconds west (N09°23'38"W) for a distance of thirty four decimal six seven six (34.676) metres; thence south eighty two degrees zero six minutes twenty three seconds west (S82°06'23"W) for a distance of twenty decimal eight six one (20.861) metres;

**THENCE** turning and running along land of Dwayne H. Brown, Civic #172 Park Avenue north zero nine degrees eleven minutes twenty four seconds west (N09°11'24"W) for a distance of fifteen decimal four four one (15.441) metres;

**THENCE** turning and running along land of Wayne G. and Jacqueline E. Rosa, Civic #14 Riverview Avenue north zero nine degrees twenty minutes zero zero seconds west (N09°20'00"W) for a distance of forty three decimal three seven six (43.376) metres;

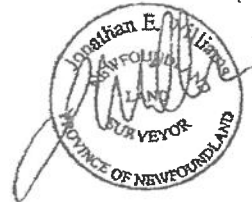
**THENCE** turning and running along the southern limit of Riverview Avenue north seventy nine degrees ten minutes eleven seconds east (N79°10'11"E) for a distance of fifty four decimal one three zero (54.130) metres;

**THENCE** turning and running along land of Terry D. and Sharon A. Kelloway, Civic #16 Riverview Avenue and Peter and Deborah Halliday, Civic # 5 Winston Avenue south eleven degrees zero zero minutes forty one seconds east (S11°00'41"E) for a distance of thirty nine decimal three four five (39.345) metres;

**THENCE** turning and running along lots fronting onto Winston Avenue south zero five degrees thirteen minutes zero zero seconds east (S05°13'00"E) for a distance of sixteen decimal two seven two (16.272) metres; thence south zero eight degrees twenty five minutes fifty two seconds east (S08°25'52"E) for a distance of thirteen decimal seven nine three (13.793) metres; thence south zero nine degrees zero two minutes ten seconds east (S09°02'10"E) for a distance of nineteen decimal nine six four (19.964) metres;

**THENCE** turning and running along land of Dennis and Geriann McArthur, Civic # 164 Park Avenue south zero seven degrees thirty three minutes forty six seconds east (S07°33'46"E) for a distance of forty one decimal one three nine (41.139) metres;

**THENCE** turning and running along the northern boundary of Park Avenue north seventy two degrees fifty three minutes zero zero seconds west (N72°53'00"W) for a distance of thirty four decimal nine five one (34.951) metres, more or less, to the Point of Beginning.



JON E. WILLIAMS SURVEYS LIMITED  
JOB# 12-6339  
DATED: 22 05 2012

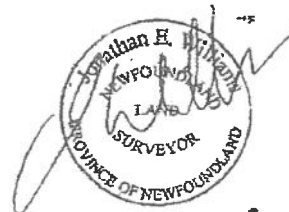
All bearings are Grid North NAD83 in Zone 1 of the Transverse Mercator Projection as modified for the Province of Newfoundland;

NOTE: There is area overhead wires and poles erected on the property as shown on the attached plan.

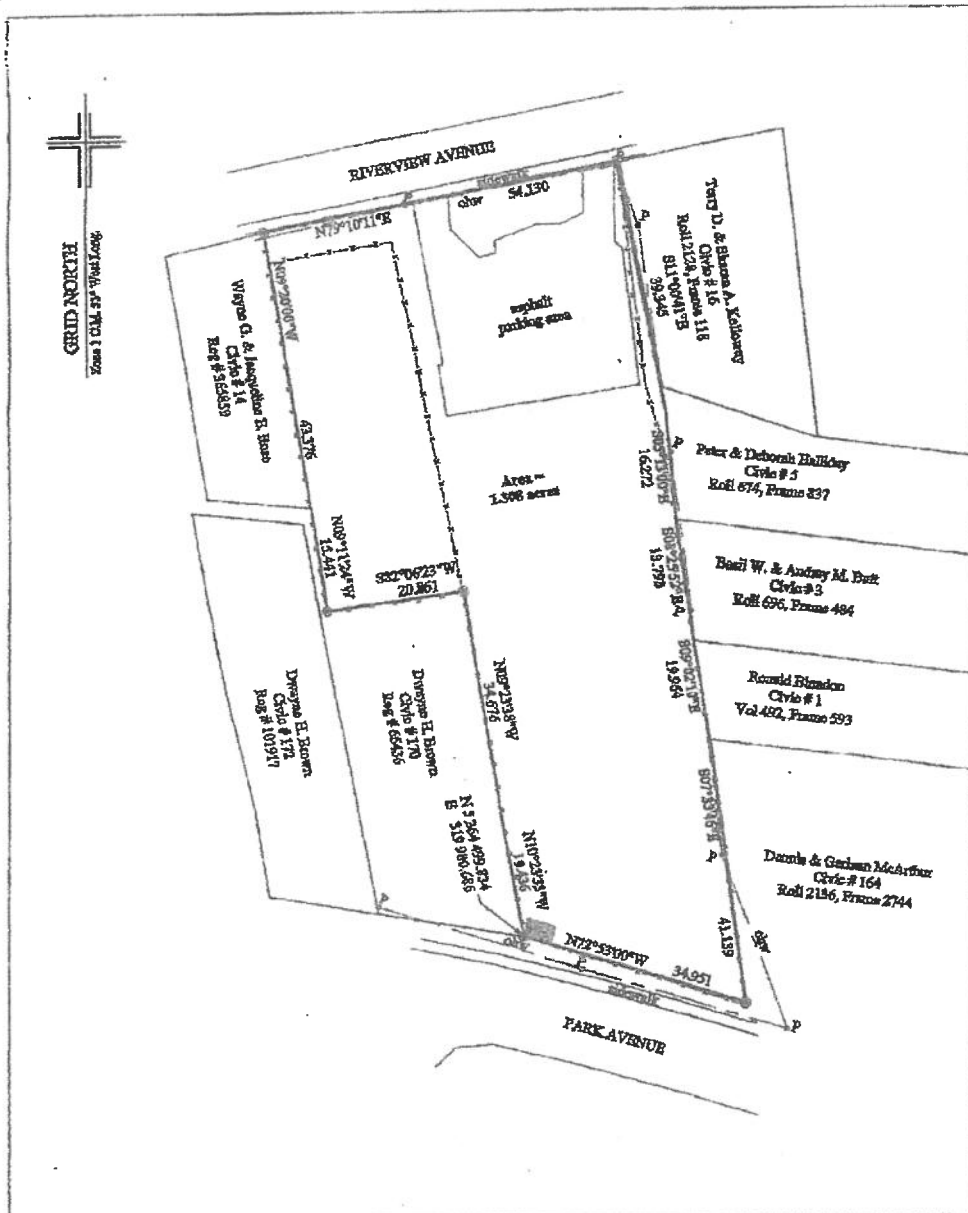
The above described piece or parcel of land contains an area of 1.308 acres, more or less, and is more particularly shown on the drawing hereto attached dated 22.05.2012.

This description and accompanying plan are integral parts necessary to adequately reflect the legal boundary of the subject property and therefore invalid if separated.

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JON E. WILLIAMS SURVEYS LIMITED  
JOB# 12-0328  
DATED: 22.05.2012



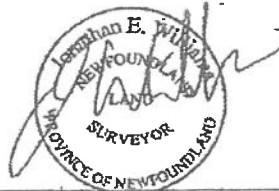
NOTE: - This plan conforms to the instructions as of the date shown and only as of this date. All distances are Metric. Jonathan Williams, Newfoundland Land Surveyor, 2012. Unrestricted use, alteration or reproduction of this survey document is prohibited by law as defined in the "Copyright Act". The authoring surveyor hereby authorizes the use of this survey document for the limited defined intended purpose only. Further use is strictly prohibited.

LEGEND:  
 A. = anchor  
 ⊙ = capped iron pin  
 o.h.w. = overhead wire  
 P. = pole  
 f.h. = fire hydrant



Newfoundland Land Surveyors  
 72 NAVAJO PLACE  
 ST. JOHN'S, NF, A1A 0B9  
 Phone/Fax: 1-709-793-0180  
 CELL: 1-709-699-5340  
 email: j.williams@newfoundland.com

MONUMENTS USED (NAD 83)  
 80C2162 5 264 488.245 328 013.464  
 80C2164 5 264 488.130 320 533.887  
 Scale Factor = 0.999885



Boundary Survey  
**Karwood Contracting**  
 Civil # 166 Park Avenue, Mount Pearl, in the Province of Newfoundland and Labrador, Canada


Date: 22 05 2012	Scale: 1:750	JOB #: 12-0339	Surveyed: J.W. & B.N.	Approved by: J.W.
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REGISTRY OF DEEDS  
CERTIFICATE OF REGISTRATION

Registration Date: JULY 24, 2024

Registration Time: 12:40 PM

Registration Number: 1122247



Registrar of Deeds

Confirmation Date: SEPTEMBER 05, 2024

Receipt Number:

5905M1ZT

Consideration:

230,000.00

Document Type: NOTICE OF MORTGAGE

Filed By: O'KEEFE & SULLIVAN

From Parties:

Karwood Contracting Ltd.

To Parties:

Canadian Western Trust Company

Location:

Civic 166 Park Avenue, Mount Pearl

**THIS MORTGAGE AMENDMENT** made at the City of St. John's, in the Province of Newfoundland and Labrador, this 5 day of July, 2024.

**BETWEEN:**

**KARWOOD CONTRACTING LTD.**, a body corporate, duly incorporated under the laws of the Province of Newfoundland and Labrador  
(the "Mortgagor")

**AND:**

**CANADIAN WESTERN TRUST COMPANY**  
(Incorporation NO. A46845)  
300-750 Cambie St., Vancouver, BC V6B 0A2  
In Trust for RRSP Account #114369 to **HEATHER McMULLIN**,  
a resident of the City of Mount Pearl, in the Province of  
Newfoundland and Labrador

(hereinafter called the "Mortgagee") (the "Lender")

**WHEREAS** by a Mortgage dated the 26<sup>th</sup> day of April, 2024, and made between the Parties hereto and registered in the Registry of Deeds for Newfoundland and Labrador as Registration Number 1111675 (the "Mortgage"), the Mortgagor did grant and mortgage unto the Lender the lands and premises therein described to secure payment of funds loaned by the Lender to the Mortgagor and secured by the Mortgage;


**AND WHEREAS** the Lender has agreed to increase the consideration secured by the Mortgage over the lands and premises known as 166 Park Avenue, in the City of Mount Pearl, Province of Newfoundland and Labrador, and being more particularly described in the Schedule "A" attached hereto, to the sum of Three Hundred and Thirty Thousand Dollars and Zero Cents (\$230,000.00);

**NOW THEREFORE THIS INDENTURE WITNESSETH** that in consideration of the sum of One Dollar (\$1.00) now paid by the Lender to the Mortgagor, and other good and valuable consideration (the receipt and sufficiency of which is hereby acknowledged by the Mortgagor), the Lender agrees that the consideration secured by the Mortgage related to 166 Park Avenue, in the City of Mount Pearl, Province of Newfoundland and Labrador is hereby increased to the sum of Two Hundred and Thirty Thousand Dollars and Zero Cents (\$230,000.00).

**IN WITNESS WHEREOF** the Mortgagor has hereunto affixed its corporate seal duly attested by the hand(s) of its proper officer(s) in that behalf, on the day and year first before written.

**SIGNED, SEALED AND DELIVERED**

in the presence of:

  
\_\_\_\_\_  
Barrister, NL

**KARWOOD CONTRACTING LTD.**

Per:   
Name: Gregory Hussey  
Title: Director

# SCHEDULE "A"

## BOUNDARY DESCRIPTION

Prepared on behalf of Karwood Contracting  
Civic # 166 Park Avenue, Mount Pearl, in the province of Newfoundland and Labrador, Canada

BEGINNING at a point, said point having the following NAD83 coordinates in Zone 1, central meridian 53° west longitude, of the Transverse Mercator Projection as modified for the Province of Newfoundland and Labrador

N 5 264 499.834  
E 319 980.686

with reference to Monument number 80G2162 with Co-ordinates N 5 264 488.245 metres and E 320 013.464 metres and Monument number 80G2164 with Co-ordinates N 5 264 486.138 metres and E 320 553.867 metres;

THENCE turning and running along land of Dwayne H. Brown, Civic #170 Park Avenue north ten degrees twenty three minutes thirty three seconds west ( $N10^{\circ}23'33''W$ ) for a distance of nineteen decimal four three six (19.436) metres; thence north zero nine degrees twenty three minutes thirty eight seconds west ( $N09^{\circ}23'38''W$ ) for a distance of thirty four decimal six seven six (34.676) metres; thence south eighty two degrees zero six minutes twenty three seconds west ( $S82^{\circ}06'23''W$ ) for a distance of twenty decimal eight six one (20.861) metres;

THENCE turning and running along land of Dwayne H. Brown, Civic #172 Park Avenue north zero nine degrees eleven minutes twenty four seconds west ( $N09^{\circ}11'24''W$ ) for a distance of fifteen decimal four four one (15.441) metres;

THENCE turning and running along land of Wayne G. and Jacqueline E. Rose, Civic #14 Riverview Avenue north zero nine degrees twenty minutes zero zero seconds west ( $N09^{\circ}20'00''W$ ) for a distance of forty three decimal three seven six (43.376) metres;

THENCE turning and running along the northern limit of Riverview Avenue north seventy nine degrees ten minutes eleven seconds east ( $N79^{\circ}10'11''E$ ) for a distance of fifty four decimal one three zero (54.130) metres;

THENCE turning and running along land of Terry D. and Sharon A. Kelloway, Civic #16 Riverview Avenue and Peter and Deborah Halliday, Civic # 3 Winston Avenue south eleven degrees zero zero minutes forty one seconds east ( $S11^{\circ}00'41''E$ ) for a distance of thirty nine decimal three four five (39.345) metres;

THENCE turning and running along lots fronting onto Winston Avenue south zero five degrees thirteen minutes zero zero seconds east ( $S05^{\circ}13'00''E$ ) for a distance of sixteen decimal two seven two (16.272) metres; thence south zero eight degrees twenty five minutes fifty two seconds east ( $S08^{\circ}25'52''E$ ) for a distance of thirteen decimal seven nine three (13.793) metres; thence south zero nine degrees zero two minutes two seconds east ( $S09^{\circ}02'10''E$ ) for a distance of nineteen decimal nine six four (19.964) metres;

THENCE turning and running along land of Dennis and Gerlam McArthur, Civic # 164 Park Avenue south zero seven degrees thirty three minutes forty six seconds east ( $S07^{\circ}33'46''E$ ) for a distance of forty one decimal one three nine (41.139) metres;

THENCE turning and running along the northern boundary of Park Avenue north seventy two degrees fifty three minutes zero zero seconds west ( $N72^{\circ}53'00''W$ ) for a distance of thirty four decimal nine five one (34.951) metres, more or less, to the Point of Beginning.



JON E. WILLIAMS SURVEYS LIMITED  
1008-12-0338  
DATED: 22 05 2012

# SCHEDULE "A"

All bearings are Grid North NAD83 in Zone 1 of the Transverse Mercator Projection as modified for the Province of Newfoundland;

**NOTE:** There is area overhead wires and poles erected on the property as shown on the attached plan.

The above described piece or parcel of land contains an area of 1.308 acres, more or less, and is more particularly shown on the drawing hereto attached dated 22 05 2012.

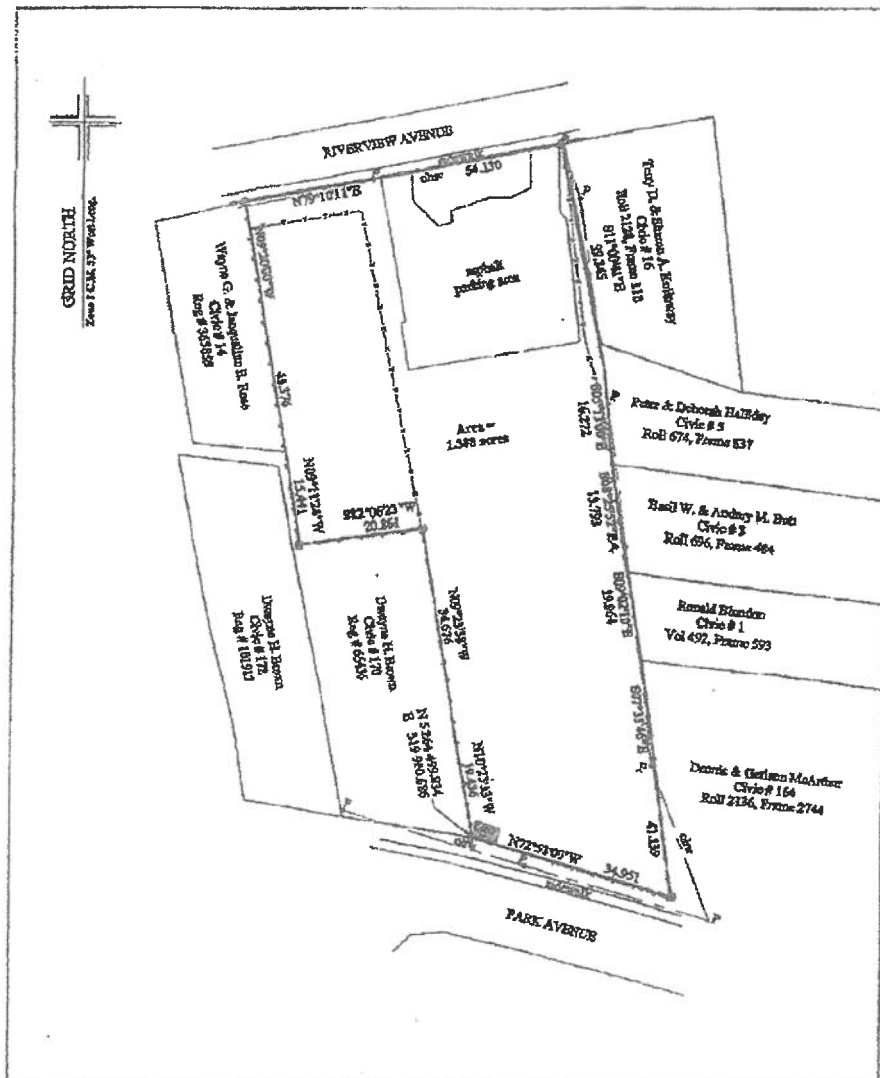
This description and accompanying plan are integral parts necessary to adequately reflect the legal boundary of the subject property and therefore invalid if separated.

© Jonathan E. Williams, Newfoundland Land Surveyor, 2012. Unauthorized use, alteration or reproduction of this survey document is prohibited by law as defined by the "Copyright Act". The authoring surveyor hereby authorizes the reproduction of this survey document for matters related to the herein-defined intended purpose only. Any further use is strictly prohibited.



JON E. WILLIAMS SURVEYS LIMITED  
JOB# 12-0528  
DATED: 22 05 2012

# SCHEDULE "A"



<p><b>NOTE:</b> This plan certifies the correctness of the data thereon and only as set forth hereon. All distances are in feet. Jonathan Williams, Newfoundland Land Surveyor, 2012. Unauthorized use, alteration or reproduction of this survey document is prohibited by law as outlined in the Copyright Act. The authorizing surveyor hereby certifies the reproduction of this survey document for the levels defined (intended) purpose only. Further use is strictly prohibited.</p>		<p><b>MONUMENTS USED (NAD 83)</b></p> <p>8032182 17.64 488.245 228 015 854          8032264 5.254 486.126 228 553.817</p> <p>Scale Factor = 0.999825</p>		
<p><b>LEGEND:</b></p> <p>A — anchor          ⊙ — capped iron pin          o.h.w. — overhead wire          P. — pole          Eb. — fire hydrant</p>	<p>Jonathan E. Williams          Newfoundland Land Surveyors          72 NAVARD PLACE          ST. JOHN'S, NF, A1A 0B9          Phone/Fax 1-709-738-0180          CELL 1-709-699-5540          email: Jwilliamsurveyors@gmail.com</p>			
<p align="center">Boundary Survey  <b>Karwood Contracting</b>          Civic # 166 Park Avenue, Mount Pearl, in the Province of Newfoundland and Labrador, Canada</p>				
<p>Date: 22 05 2012</p>	<p>Scale: 1:750</p>	<p>JOB #: 12-0339</p>	<p>Surveyed: J.W. &amp; B.N.</p>	<p>Approved by: J.W.</p>

**IN THE MATTER OF** the *Family Law Act* R.S.N. 1990, c. F-2, as amended

**AND**

**IN THE MATTER OF** the Mortgage of a parcel of land known as Civic 166 Park Ave., Mount Pearl, in the Province of Newfoundland and Labrador.

- to wit -

### **AFFIDAVIT OF STATUS**

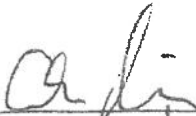
I, Gregory Hussey, of the Town of Paradise, in the Province of Newfoundland and Labrador, make oath and say as follows:


1. THAT I am a Director/Officer of Karwood Contracting Ltd. (the "Corporation"), owner of real property known as 166 Park Ave., City of Mount Pearl, in the Province of Newfoundland and Labrador, as described in the attached Indenture of Mortgage, and as such I have full knowledge of the facts herein deposed to except where otherwise stated.
2. THAT the Corporation is and will continue to be, at least until the registration of this instrument, a resident of Canada within the intent and meaning of the *Income Tax Act*, R.S.C. 1985 (5th Supp.), c.1, and all amendments thereto.
3. THAT the property described in the within Indenture has never been occupied by me or any director, officer or shareholder of the Corporation or by the spouse of any director, officer or shareholder of the Corporation as a matrimonial home.
4. THAT for further clarification, the property described in the within Indenture does not constitute matrimonial assets or a matrimonial home as defined by the *Family Law Act*, R.S.N.L. 1990, c. F-2, (the "Act"), and the said property is not held for the benefit of any officer, director or shareholder of the Corporation and no spouse of any officer, director or shareholder of the Corporation has a right to possession of the said property by reason of the *Family Law Act*, a Separation Agreement or a Marriage Contract.
5. THAT the ownership of a share or an interest in a share of the capital stock of the Corporation does not entitle the shareholder thereof, or his or her spouse, to the occupation of or constitute an interest in the property described in the foregoing Indenture.
6. THAT no other person is entitled to any interest in this property by virtue of any law of the Province of Newfoundland and Labrador.
7. THAT I am over the age of nineteen years at the time of the making of this my Affidavit.
8. THAT upon execution of the attached instrument the Corporation was not and will not be liable for any tax imposed under the *Retail Sales Tax Act*, R.S.N.L. 1990, c. R-15.



9. THAT the Corporation is an employer as defined under either the *Workplace Health, Safety and Compensation Act*, R.S.N.L. 1990, c. W-11, the *Labour Standards Act*, R.S.N.L. 1990, c. L-2, as amended, or the *Health and Post Secondary Education Act*, R.S.N.L. 1990, c. H-1, and I hereby confirm that there are no monies owing under the legislation which would constitute a lien on the subject property.
10. THAT to the best of my personal knowledge at this date, there are no statutory liens of any kind whatsoever charging or encumbering the property more particularly described in the within Indenture.
11. THAT the Corporation has not made an Assignment in Bankruptcy pursuant to the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended.
12. THAT I swear this Affidavit knowing that it is a criminal offence to give false information in an Affidavit.

**SWORN TO** at the City of St. John's  
in the Province of Newfoundland and Labrador,  
this 8 day of July, 2024  
before me:

  
\_\_\_\_\_  
Notary, NL

  
\_\_\_\_\_  
Gregory Hussey

CANADA

NEWFOUNDLAND AND LABRADOR

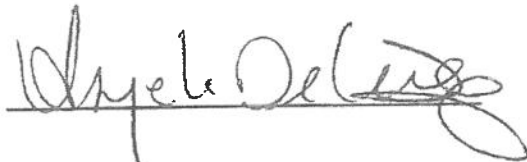
ST. JOHN'S

TO WIT:

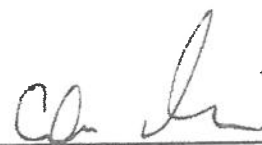
**AFFIDAVIT OF VALUE**

I, **Colin P. Sullivan**, of the City of St. John's in the Province of Newfoundland and Labrador, make oath and say that this Mortgage was used to increase a previous Mortgage with a principal balance of \$117,000.00 owing to Canadian Western Trust Company registered as Registration No. 1111675, and that the face value of the new Mortgage is \$230,000.00 and therefore the registration of this Mortgage will be based on a figure of \$113,000.00.

**SWORN TO** before me at St. John's,  
in the Province of Newfoundland and  
Labrador, this \_\_\_ day of July, 2024.



**ANGELA De CARIA**  
A Commissioner for Oaths in and for  
the Province of Newfoundland and Labrador.  
My commission expires on December 31, 2025

  
\_\_\_\_\_  
**COLIN P. SULLIVAN**

**REGISTRY OF DEEDS**  
**CERTIFICATE OF REGISTRATION**

**Registration Date:** NOVEMBER 19, 2024  
**Registration Time:** 04:25 PM  
**Registration Number:** 1137912



Registrar of Deeds

**Confirmation Date:** DECEMBER 11, 2024

**Receipt Number:**

5905MQSH

**Consideration:**

1.00

**Document Type:** CONVEYANCE

**Filed By:** BENSON BUFFETT

**From Parties:**

Karwood Contracting Ltd.

**To Parties:**

77592 Newfoundland & Labrador Inc.

**Location:**

166 Park Aveune, Mount Pearl

**THIS INDENTURE** made at the City of St. John's, in the Province of Newfoundland and Labrador, Canada, this 12 day of September, 2024.

**BETWEEN:** **KARWOOD CONTRACTING LTD.**, a body corporate, duly organized, incorporated and existing under the laws of the Province of Newfoundland and Labrador

(hereinafter called the "Vendor")

OF THE ONE PART

**AND:** **77592 NEWFOUNDLAND & LABRADOR INC.**, a body corporate duly organized, incorporated and existing under the laws of the Province of Newfoundland and Labrador

(hereinafter called the "Purchaser")

OF THE OTHER PART

**WITNESSETH** that for and in consideration of the sum of **One Dollar (\$1.00)** paid by the Purchaser to the said Vendor on or before the execution of these presents (the receipt whereof on the part of the Vendor is hereby acknowledged) the Vendor, as Beneficial Owner hereby transfers and conveys unto the Purchaser **ALL THAT** piece or parcel of land known as **Civic 166 Park Avenue**, in the City of Mount Pearl, in the Province of Newfoundland and Labrador, and being more particularly described in the Schedule hereunto annexed and marked "A" (which Schedule hereby forms part and parcel of these presents) **TOGETHER WITH** all buildings and erections thereon **TO HOLD** the same unto the Purchaser **ABSOLUTELY AND FOREVER.**

**IN WITNESS WHEREOF** the Vendor has hereunto affixed its corporate seal in accordance with its rules and regulations the day and year first before written.

**THE CORPORATE SEAL** of the Vendor, was hereunto affixed, in the presence of:

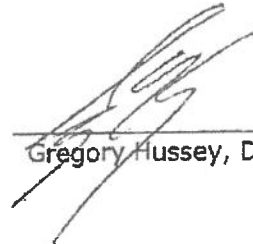


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**GARY F. PEDDLE, MBA, KC**  
Barrister of the Supreme Court of  
Newfoundland and Labrador

**KARWOOD CONTRACTING LTD.**

PER:



---

Gregory Hussey, Director

# SCHEDULE "A"

## BOUNDARY DESCRIPTION

Prepared on behalf of Karywood Contracting

Civic # 166 Park Avenue, Mount Pearl, in the province of Newfoundland and Labrador, Canada

BEGINNING at a point, said point having the following NAD83 coordinates in Zone 1, central meridian 53° west longitude, of the Transverse Mercator Projection as modified for the Province of Newfoundland and Labrador

N 5 264 469.834  
E 319 980.686

with reference to Monument number 80G2162 with Co-ordinates N 5 264 488.245 metres and E 320 013.464 metres and Monument number 80G2164 with Co-ordinates N 5 264 486.138 metres and E 320 553.867 metres;

THENCE turning and running along land of Dwayne H. Brown, Civic #170 Park Avenue north ten degrees twenty three minutes thirty three seconds west ( $N10^{\circ}23'33''W$ ) for a distance of nineteen decimal four three six (19.436) metres; thence north zero nine degrees twenty three minutes thirty eight seconds west ( $N09^{\circ}23'38''W$ ) for a distance of thirty four decimal six seven six (34.676) metres; thence south eighty two degrees zero six minutes twenty three seconds west ( $S82^{\circ}06'23''W$ ) for a distance of twenty decimal eight six one (20.861) metres;

THENCE turning and running along land of Dwayne H. Brown, Civic #172 Park Avenue north zero nine degrees eleven minutes twenty four seconds west ( $N09^{\circ}11'24''W$ ) for a distance of fifteen decimal four four one (15.441) metres;

THENCE turning and running along land of Wayne G. and Jacqueline H. Ross, Civic #14 Riverview Avenue north zero nine degrees twenty minutes zero zero seconds west ( $N09^{\circ}20'00''W$ ) for a distance of forty three decimal three seven six (43.376) metres;

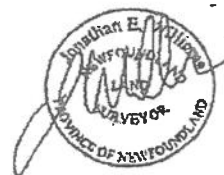
THENCE turning and running along the southern limit of Riverview Avenue north seventy nine degrees ten minutes eleven seconds east ( $N79^{\circ}10'11''E$ ) for a distance of fifty four decimal one three zero (54.130) metres;

THENCE turning and running along land of Terry D. and Sharon A. Kelloway, Civic #16 Riverview Avenue and Peter and Deborah Halliday, Civic # 3 Winston Avenue south eleven degrees zero zero minutes fifty one seconds east ( $S11^{\circ}00'41''E$ ) for a distance of thirty nine decimal three four five (39.345) metres;

THENCE turning and running along lot fronting onto Winston Avenue south zero five degrees thirteen minutes zero zero seconds east ( $S05^{\circ}13'00''E$ ) for a distance of sixteen decimal two seven two (16.272) metres; thence south zero eight degrees twenty five minutes fifty two seconds east ( $S08^{\circ}25'52''E$ ) for a distance of thirteen decimal seven nine three (13.793) metres; thence south zero nine degrees zero two minutes ten seconds east ( $S09^{\circ}02'10''E$ ) for a distance of nineteen decimal nine six four (19.964) metres;

THENCE turning and running along land of Dennis and Geraldine McArthur, Civic # 164 Park Avenue south seven degrees thirty three minutes forty six seconds east ( $S07^{\circ}33'46''E$ ) for a distance of fifty one decimal one three nine (51.139) metres;

THENCE turning and running along the northern boundary of Park Avenue north seventy two degrees fifty three minutes zero zero seconds west ( $N72^{\circ}53'00''W$ ) for a distance of thirty four decimal nine five one (34.951) metres, more or less, to the Point of Beginning.



JON E. WILLIAMS SURVEYS LIMITED  
JOB# 120334  
DATED 22 06 2012

# SCHEDULE "A"

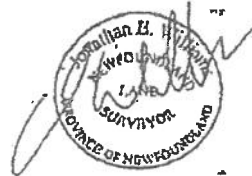
All bearings are Grid North NAD83 in Zone 1 of the Transverse Mercator Projection as modified for the Province of Newfoundland.

NOTE: There is area overhead wires and poles erected on the property as shown on the attached plan.

The above described piece or parcel of land contains an area of 1.308 acres, more or less, and is more particularly shown on the drawing hereto attached dated 22.05.2012.

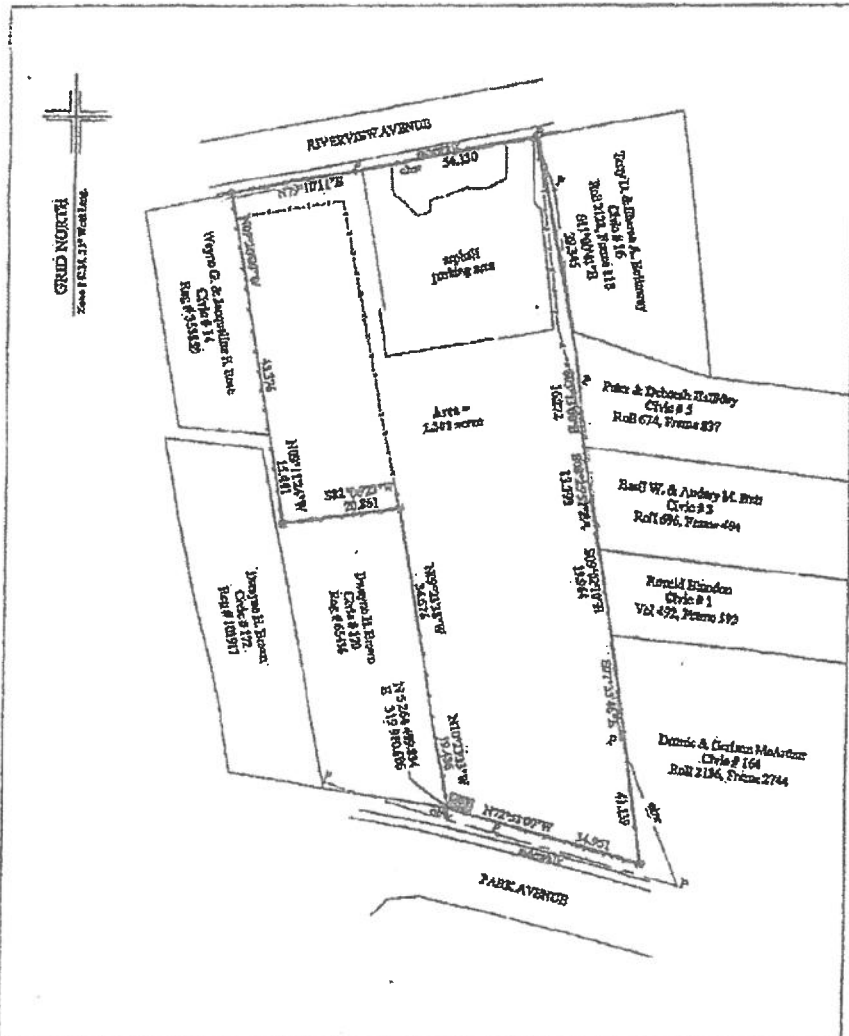
This description and accompanying plan are integral parts necessary to adequately reflect the legal boundary of the subject property and therefore invalid if separated.

© Jonathan E. Williams, Newfoundland Land Surveyor, 2012. Unauthorized use, alteration or reproduction of this survey document is prohibited by law as defined by the "Copyright Act". The authoring surveyor hereby authorizes the reproduction of this survey document for matters related to the herein-defined intended purpose only. Any further use is strictly prohibited.



JON E. WILLIAMS SURVEYS LIMITED  
JOB# 12-0339  
DATED: 22.05.2012

SCHEDULE "A"



<p><b>NOTE:</b> This plan reflects the information as of the date shown and only as of this date. All distances are in feet. Jonathan Williams, Newfoundland Land Surveyor, 2012. Unauthorized use, alteration or reproduction of this survey document is prohibited by law as outlined in the "Copyright Act". The intending surveyor hereby certifies the reproduction of this survey document for the herein defined intended purposes only. Further use is strictly prohibited.</p>	<p>Newfoundland Land Surveyor 72 HAYWARD PLACES ST. JOHN'S, N.F., A1A 4W9 Phone/Fax: 1-709-738-0100 CELL: 1-709-499-5160 email: Jon@jonesurveys.com</p>	<p><b>MONUMENTS USED (MAD #):</b> 8062182 5264 418245 320 013.454 8062164 5264 434.159 320 503.857 Scale Factor = 0.999885</p>
<p><b>LEGEND:</b> A. = marker ⊙ = capped iron pin o.h.w. = overhead wire P. = pole E.L. = five hydram</p>		
<p align="center">Boundary Survey <b>Karwood Contracting</b> Circle # 166 Park Avenue, Mount Pearl, in the Province of Newfoundland and Labrador, Canada</p> <p>Date: 22 05 2012      Scale: 1:750      JOB #: 12-0339      Surveyed: J.W. &amp; B.N.      Approved by: J.W.</p>		

CANADA

PROVINCE OF NEWFOUNDLAND AND LABRADOR

CITY OF ST. JOHN'S

TO WIT: -

AFFIDAVIT

I, Gregory Hussey, of the Town of Paradise, in the Province of Newfoundland and Labrador, Canada, make oath and say that:

1. I am a Director of Karwood Contracting Ltd. ("the Company"), the Vendor making the within Deed of Conveyance (the "Deed") and thereby conveying the property described therein, or described in the Schedule thereto annexed (the "Property") and as such, have personal knowledge of the facts herein set forth.
2. The words Matrimonial Home, Matrimonial Asset, Cohabitation Agreement, Marriage Contract, and Separation Agreement as herein used have the same meanings as defined in the Family Law Act, RSNL1990, c. F-2. At the date of execution of the Deed:
  - a) I was at least 19 years of age;
  - b) the Property does not constitute a Matrimonial Home or a Matrimonial Asset;
  - c) no director or shareholder of the Company had at any time cohabited with, or been married to, any other person who has any claim to or interest in the Property;
  - d) no director or shareholder of the Company had at any time entered into a Cohabitation Agreement, a Marriage Contract, or a Separation Agreement that involves or affects the Property;
  - e) there is no ownership of a share or an interest in a share of the Company entitling the owner to the occupation of the Property; and
  - f) no other person had any vested rights or any unregistered interest in the Property save in respect to any easements which may run with the Property.
3. The Company warrants that:
  - a) there are no leased chattels affixed to or situate in or on the Property;
  - b) any chattels included in the sale of the Property are unencumbered; and
  - c) the Property does not contain Urea Formaldehyde Foam Insulation.

Which warranties shall survive the closing of the purchase and sale of the Property and notwithstanding such closing shall continue in full force and effect for the benefit of the Purchaser.

4. The Company has not:
- a) operated a commercial venture required to collect or pay a royalty to the Province of Newfoundland and Labrador;
  - b) made an Assignment in bankruptcy pursuant to the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3.
5. At the date of execution of the Deed, the Company:
- a) was a body corporate, duly incorporated under the Laws of the Province of Newfoundland and Labrador;
  - b) was a resident of Canada within the meaning and intent of the Income Tax Act of Canada, R.S.C. 1985 (5<sup>th</sup> Supp.) and has no present intention of changing this status;
  - c) was not in arrears for any tax or other debt imposed under the *Revenue Administration Act*, SNL 2009, c.R-15.01.
6. To the best of my knowledge, information and belief at the date of execution of the Deed:
- a) there was no underground oil tank located on the Property, and I have never been aware of any oil leak or any other environmental contamination on the Property, either before or during the Company's ownership of same;
  - b) there were no statutory liens of any kind whatsoever charging or encumbering the assets of the Company or the Property; and
  - c) there are no outstanding judgments registered with the Office of the High Sheriff of Newfoundland and Labrador against the Company.
7. I make this Affidavit conscientiously believing the information contained herein to be true, and knowing that it is of the same force and effect as if made under oath, and by virtue of the Canada Evidence Act, R.S.C., c. C-5 and knowing that it is an offence to make false statements in an Affidavit. All Acts of Canada or the Province of Newfoundland and Labrador referred to herein shall be deemed to include any amendments to such Acts.

**SWORN TO** at the City of St. John's,  
in the Province of Newfoundland and Labrador,  
Canada, this 12 day of September, 2024,  
before me:



---

**GARY F. PEDDLE, MBA, KC**  
Barrister of the Supreme Court of  
Newfoundland and Labrador



---

Gregory Hussey, Director

CANADA

PROVINCE OF NEWFOUNDLAND AND LABRADOR

CITY OF ST. JOHN'S

TO WIT:

AFFIDAVIT OF VALUE

I, Gregory Hussey, of the Town of Paradise, in the Province of Newfoundland and Labrador, hereby make oath and say as follows:

1. THAT I am a Director of Kerwood Contracting Ltd. (the "Company"), the Vendor of the property situate at Civic 166 Park Avenue, in the City of Mount Pearl, in the Province of Newfoundland and Labrador, and as such, am familiar with the lands described in the within Deed of Conveyance;
2. THAT to the best of my knowledge, information and belief, <sup>and based on documents with attachments</sup> the value of the real property passing in the within Deed of Conveyance does not exceed the amount of Four Hundred Fifty Thousand Dollars (\$450,000.00); and
3. THAT this Affidavit is being filed for the purpose of establishing the appropriate fee for registration and for no other purpose whatsoever.

SWORN TO before me in the City of St. John's,  
in the Province of Newfoundland and Labrador,  
this \_\_\_ day of September, 2024:



Notary Public



Gregory Hussey

# TAB 2



**SUPREME COURT OF CANADA**

**CITATION:** Aquino v. Bondfield  
Construction Co., 2024 SCC 31

**APPEAL HEARD:** December 5,  
2023

**JUDGMENT RENDERED:** October  
11, 2024

**DOCKET:** 40166

**BETWEEN:**

**John Aquino, 2304288 Ontario Inc., Marco Caruso, Giuseppe Anastasio, also  
known as Joe Ana and Lucia Coccia, also known as Lucia Canderle**  
Appellants

and

**Ernst & Young Inc., in its capacity as Court-Appointed Monitor of Bondfield  
Construction Company Limited, and KSV Kofman Inc., in its capacity as  
Trustee in Bankruptcy of 1033803 Ontario Inc. and 1087507 Ontario Limited**  
Respondents

- and -

**Attorney General of Ontario and Insolvency Institute of Canada**  
Interveners

**CORAM:** Wagner C.J. and Karakatsanis, Côté, Rowe, Martin, Jamal and  
O'Bonsawin JJ.

**REASONS FOR  
JUDGMENT:**  
(paras. 1 to 100)

Jamal J. (Wagner C.J. and Karakatsanis, Côté, Rowe, Martin  
and O'Bonsawin JJ. concurring)

defraud, defeat, or delay a creditor, and then determine whether his intent should have been attributed to Bondfield and Forma-Con. The appellants claim that the courts below erred on both points.

A. *Is a Debtor's Financial Condition Relevant or Determinative in Establishing the Debtor's Intent to Defraud, Defeat, or Delay a Creditor Under Section 96(1)(b)(ii)(B) of the BIA?*

[30] The appellants assert that the application judge made an extricable error of law by concluding that Bondfield and Forma-Con intended to defraud, defeat, or delay a creditor under s. 96(1)(b)(ii)(B) of the *BIA* because the companies were paying their creditors in full and on time and because the court found that it could not determine the companies' financial condition at the time of the transfers at undervalue. The appellants say that the application judge could not make an order under s. 96(1)(b)(ii)(B) of the *BIA* without first determining the companies' financial condition at the time of the impugned transactions.

[31] I do not accept this submission. I will first review the legal framework for transfers at undervalue under s. 96 of the *BIA* and address how a debtor's intent to defraud, defeat, or delay a creditor can be proved through the evidentiary shortcut of "badges of fraud". I will then explain why I see no reviewable error in the application judge's conclusion that the requisite intent under s. 96(1)(b)(ii)(B) was established.

(1) Transfers at Undervalue Under the *BIA*

(a) *General Principles*

[32] A “transfer at undervalue” is defined under s. 2 of the *BIA* as “a disposition of property or provision of services for which no consideration is received by the debtor or for which the consideration received by the debtor is conspicuously less than the fair market value of the consideration given by the debtor”. Transfers at undervalue reduce the value of the debtor’s estate and diminish the value of the creditors’ realizable claims (A. Duggan and T. G. W. Telfer, “Gifts and Transfers at Undervalue”, in S. Ben-Ishai and A. Duggan, eds., *Canadian Bankruptcy and Insolvency Law: Bill C-55, Statute c. 47 and Beyond* (2007), 175, at p. 191).

[33] Section 96 has been described as “a tool to address ‘asset stripping’ by a debtor” (*Urbancorp Toronto Management Inc. (Re)*, 2019 ONCA 757, 74 C.B.R. (6th) 23, at para. 40; see also *Peoples Department Stores Inc. (Trustee of) v. Wise*, 2004 SCC 68, [2004] 3 S.C.R. 461, at para. 91, on the predecessor provision, s. 100 of the *BIA*). Section 96 of the *BIA* provides a remedy to reverse transfers at undervalue that occurred within a specified period of time before the date of bankruptcy (*Urbancorp*, at para. 48; *Estate of Gavin v. Gavin*, 2023 PECA 8, 10 C.B.R. (7th) 30, at paras. 14 and 142; *Pitblado LLP v. Houde*, 2015 MBQB 85, 318 Man. R. (2d) 39, at para. 35).

[34] Section 96 of the *BIA* allows a trustee in bankruptcy to ask a court to review a suspected transfer at undervalue. When the conditions of s. 96 are met, the court may declare the transfer void as against the trustee or grant judgment against the parties or privies to the transfer for the amount of the difference between the consideration given

by the debtor and the consideration received. Section 36.1 of the *CCAA* incorporates s. 96 of the *BIA* by reference and allows a monitor to impugn a transfer at undervalue in a corporate restructuring.

[35] Because the purpose of s. 96 is to protect creditors rather than to punish debtors, the remedy is directed against the person who received the transfer of property from the debtor and others who were privy to the transfer (R. J. Wood, *Bankruptcy and Insolvency Law* (2nd ed. 2015), at p. 191). A “person who is privy” to the transfer is defined under the *BIA* as “a person who is not dealing at arm’s length with a party to a transfer and, by reason of the transfer, directly or indirectly, receives a benefit or causes a benefit to be received by another person” (s. 96(3)).

(b) *Transfers at Undervalue Undermine the Integrity of the Bankruptcy Process*

[36] The two main purposes of the *BIA* are the “equitable distribution of the bankrupt’s assets among his or her creditors and the bankrupt’s financial rehabilitation” (*Orphan Well Association v. Grant Thornton Ltd.*, 2019 SCC 5, [2019] 1 S.C.R. 150, at para. 67, quoting *Alberta (Attorney General) v. Moloney*, 2015 SCC 51, [2015] 3 S.C.R. 327, at para. 32, citing *Husky Oil Operations Ltd. v. Minister of National Revenue*, [1995] 3 S.C.R. 453, at para. 7; see also *Poonian v. British Columbia (Securities Commission)*, 2024 SCC 28, at para. 1). A bankrupt’s financial rehabilitation involves allowing “honest but unfortunate debtors to obtain a discharge of their debts and have a ‘fresh start’, free of debt” (F. Bennett, *Bennett on Bankruptcy*

[36] The two main purposes of the *BIA* are the “equitable distribution of the bankrupt’s assets among his or her creditors and the bankrupt’s financial rehabilitation” (*Orphan Well Association v. Grant Thornton Ltd.*, 2019 SCC 5, [2019] 1 S.C.R. 150, at para. 67, quoting *Alberta (Attorney General) v. Moloney*, 2015 SCC 51, [2015] 3 S.C.R. 327, at para. 32, citing *Husky Oil Operations Ltd. v. Minister of National Revenue*, 1995 CanLII 69 (SCC), [1995] 3 S.C.R. 453, at para. 7; see also *Poonian v. British Columbia (Securities Commission)*, 2024 SCC 28, at para. 1). A bankrupt’s financial rehabilitation involves allowing “honest but unfortunate debtors to obtain a discharge of their debts and have a ‘fresh start’, free of debt” (F. Bennett, *Bennett on Bankruptcy* (26th ed. 2024), at p. 37). Other objectives of the bankruptcy system include preserving and maximizing the value of a debtor’s assets and protecting the public interest (*9354-9186 Québec inc. v. Callidus Capital Corp.*, 2020 SCC 10, [2020] 1 S.C.R. 521, at para. 40).

[37] Transfers at undervalue frustrate the purposes of the *BIA*. They prejudice creditors by diminishing the value of a debtor’s estate and reducing the funds available for distribution. They can also involve fraudulent debtors abusing the bankruptcy process by seeking a fresh start after trying to place assets beyond the reach of creditors, thereby undermining the integrity of the bankruptcy process (see, generally, Wood (2015), at pp. 188 and 190-91; L. W. Houlden, G. B. Morawetz and J. Sarra, *Bankruptcy and Insolvency Law of Canada* (4th ed. rev. (loose-leaf)), vol. 2, at p. 5-959; J. D. Honsberger and V. W. DaRe, *Honsberger’s Bankruptcy in Canada* (5th ed. 2017), at pp. 8-9).

(c) *Section 96 of the BIA Establishes Three Classes of Impeachable Transactions*

[38] Section 96 of the *BIA* establishes three classes of impeachable transactions (R. J. Wood, “Transfers at Undervalue: New Wine in Old Wineskins?”, in J. P. Sarra and B. Romaine, eds., *Annual Review of Insolvency Law 2017* (2018), 1, at p. 4).

[39] The first class of impeachable transaction involves arm’s length dealing between the debtor and a party or privy to the transfer (s. 96(1)(a)). This class of transaction has the most stringent requirements to reverse a transfer. The trustee must show that the transfer at undervalue