Court File No. 31-2303814
Estate No. 31-2303814

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

IN BANKRUPTCY AND INSOLVENCY

IN THE MATTER OF THE PROPOSAL OF 1482241 ONTARIO LIMITED, OF THE CITY OF TORONTO, IN THE PROVINCE OF ONTARIO

SECOND SUPPLEMENTARY MOTION RECORD OF THE PROPOSAL TRUSTEE

(motion returnable March 28, 2018)

Date: March 22, 2018

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IN BANKRUPTCY AND INSOLVENCY

IN THE MATTER OF THE PROPOSAL OF 1482241 ONTARIO LIMITED, OF THE CITY OF TORONTO, IN THE PROVINCE OF ONTARIO

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IN THE MATTER OF THE PROPOSAL OF 1482241 ONTARIO LIMITED, OF THE CITY OF TORONTO, IN THE PROVINCE OF ONTARIO

SECOND SUPPLEMENTAL REPORT TO THE FOURTH REPORT OF THE PROPOSAL TRUSTEE MARCH 22, 2018

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Court File No. 31-2303814
Estate No. 31-2303814

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IN BANKRUPTCY AND INSOLVENCY

IN THE MATTER OF THE PROPOSAL OF 1482241 ONTARIO LIMITED, OF THE CITY OF TORONTO, IN THE PROVINCE OF ONTARIO

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IN BANKRUPTCY AND INSOLVENCY

IN THE MATTER OF THE PROPOSAL OF 1482241 ONTARIO LIMITED, OF THE CITY OF TORONTO, IN THE PROVINCE OF ONTARIO

SECOND SUPPLEMENTAL REPORT TO THE FOURTH REPORT OF THE PROPOSAL TRUSTEE MARCH 22, 2018

INTRODUCTION

1. This report (the "**Second Supplement to the Fourth Report**") is filed by Crowe Soberman Inc. in its capacity as the Proposal Trustee for the Company. Unless otherwise noted, the defined terms used in this Second Supplement to the Fourth Report have the same meaning ascribed to them as in the Fourth Report of the Proposal Trustee dated March 7, 2018 (the "**Fourth Report**").

PURPOSE

2. The Fourth Report was filed in support of a motion brought by the Proposal Trustee returnable March 16, 2018, seeking, among other things:

a. an order approving the agreement of purchase and sale (the "**Sale Agreement**") relating to the property located at 240 Duncan Mill Road, Toronto, Ontario (the "**Duncan Mill Property**"), and vesting in the purchaser all of the Debtor's right, title and interest in and to the Purchased Assets (as defined in the Sale Agreement), free and clear of any claims and encumbrances (the "**Approval and Vesting Order**"); and

b. an order permitting the Proposal Trustee to make certain distributions from the proceeds of the sale, including, without limitation, distributions to:

   i. Dan Realty Corporation, E. Manson Investments Limited and Copperstone Investments Limited (collectively, the "**First Mortgagees**"), on account of the amounts owing to the First Mortgagees by the Debtor in accordance with the charge registered on title to the Duncan Mill Property as Instrument Nos. AT935525 and AT4236037 (the "**First Charge**"); and

   ii. Janodee Investments Ltd. and Meadowshire Investments Ltd. (together, the "**Second Mortgagees**"), on account of the amounts owing to the Second Mortgagees by the Debtor in accordance with the charge registered on title to the Duncan Mill Property as Instrument No. AT4349221 (the "**Second Charge**").

3. By order dated March 16, 2018, the Honourable Justice Hainey granted the Approval and Vesting Order, as well as some of the related relief. On consent of the parties, four discrete issues (the "**Outstanding Issues**") were adjourned to a further hearing (the "**Continued Hearing**"), to be addressed on March 28, 2018, or as may the court may direct, as reflected in the Order of the Honourable Justice Hainey dated March 16, 2018 (the "**Ancillary Order**"), and the Endorsement of the Honourable Justice Hainey dated March 16, 2018 (the "**Ancillary Endorsement**").

4. Copies of the Approval and Vesting Order, Ancillary Order and Ancillary Endorsement are attached hereto as **Appendices A, B and C**, respectively.

5. The Outstanding Issues are:

   a. the claim by the First Mortgagees for $206,250 for three months' interest pursuant to the First Charge;

   b. the issue of whether the Order of Justice Whitaker dated October 27, 2014 affects the validity and/or enforceability of the Second Charge;

   c. the issue of the interest rate under the Second Charge as raised by the Debtor; and

   d. the impact of the DSF Writ (as defined in the Supplement to the Fourth Report), if any, on the amount secured by the Second Charge.

6. The Proposal Trustee is filing this Second Supplement to the Fourth Report in accordance with the Ancillary Endorsement, and to assist the Court and the parties with addressing the Outstanding Issues.

INFORMATION PROVIDED BY THE PARTIES

7. Following the issuance of the Ancillary Order on March 16, 2018, counsel for each of the Second Mortgagee and the Debtor wrote to counsel for the Proposal Trustee to provide additional information relating to their respective clients' positions with regard to the applicable Outstanding Issues. Attached hereto as **Appendix D** is a copy of an email from counsel to the Second Mortgagee dated March 19, 2018 (the "**Margel Email**"). Attached hereto as **Appendix E** is a copy of a letter from counsel to the Debtor dated March 20, 2018 (the "**Ullmann Letter**").

FIRST MORTGAGEES' CLAIM FOR $206,250 FOR THREE MONTHS' INTEREST

8. The discharge statement provided by the First Mortgagees (a copy of which is attached as Appendix D to the Supplement to the Fourth Report) includes a charge of $206,250.00 (the "**Interest Penalty**") which is described as a "Three (3) Months Interest Penalty ($68,750 x 3)".

9. The Interest Penalty is prescribed on page 5 of the commitment letter in respect of the First Charge (the "**First Charge Commitment Letter**") (a copy of which is attached as Appendix C to the Supplement to the Fourth Report), under the heading "Additional Fees", as follows:

> "In the event that the Loan is not repaid on the maturity date, then the Lender may at its option charge an additional fee equivalent to three months interest on the then outstanding principal balance of the Loan."

10. The First Charge Commitment Letter defines the "Maturity Date" as December 1, 2017. There is no dispute that the principal amount of the First Charge loan was not repaid on December 1, 2017, and that Avison Young has continued to make interest payments on behalf of the Debtor since that date.

11. The Debtor has objected to payment of the Interest Penalty, on the following grounds (which are described in greater detail in the Ullmann Letter):

a. the First Mortgagee agreed to extend the maturity date beyond December 1, 2017; or

b. the First Mortgagee has already been paid the interest penalty, in that it has received three payments of interest since December 1, 2017, being the interest payments made on each of January 1, 2018, February 1, 2018, and March 1, 2018.

12. The evidentiary record as it currently exists does not support the conclusion proposed by the Debtor in paragraph 11(a) above. In the affidavit of Alain Checroune sworn October 26, 2017 in support of the Debtor's motion returnable November 2, 2017, Mr. Checroune swore that:

a. the First Mortgagees issued a demand letter on October 10, 2017 advising that the Debtor was in default under the First Charge (at para. 14); and

b. the Company intended to continue paying the Mortgagees during the NOI process, either through cash flow, funds available through the DIP Financing, or through directing the lenders to apply such interest reserves as they hold. Mr. Checroune intended to repay the First Charge in full (either personally or through a company that he owns) when the mortgage became due and payable on December 1, 2017 (at para. 40).

13. In Mr. Checroune's affidavit sworn December 12, 2017 in support of the Debtor's motion returnable December 18, 2017, Mr. Checroune swore as follows:

> "While the First Mortgagees have been brought current, the Company has not repaid the principal owing the First Mortgagees in full on December 1st, as it suggested it intended to do in the October 26th affidavit." (at para. 14).

14. On the current state of the evidentiary record, the Proposal Trustee is of the view that the position advanced by the Debtor is unsupportable.

15. However, as set out in the Proposal Trustee's Brief of Law filed together with this Second Supplement to the Fourth Report (the "**Brief of Law**"), the Proposal Trustee queries whether the Interest Penalty contravenes s. 8 of the *Interest Act*, R.S.C., 1985, c. I-15. Accordingly, the Proposal Trustee makes no recommendation with regard to payment of the Interest Penalty, and invites the parties to submit additional evidence and argument on this issue.

ENFORCEABILITY OF SECOND CHARGE IN LIGHT OF WHITAKER ORDER

16. In the Supplement to the Fourth Report, the Proposal Trustee identified that the order of Justice Whitaker dated October 27, 2014 (the "**Whitaker Order**"), a copy of

which is attached hereto as **Appendix F**, had not been registered on title to the Duncan Mill Property. As a result, the Whitaker Order is beyond the scope of, and is not referred to in, the security opinion referenced at paragraph 55 of the Fourth Report.

17. Counsel for the Second Mortgagee has advised the Proposal Trustee of the following facts, which are reflected in the Margel Email:

a. neither the Second Mortgagees nor their counsel had knowledge of the Whitaker Order, the CPL (which was registered on June 13, 2014), or the beneficial interest of the Property Claimants in the Duncan Mill Property; and

b. the funds advanced pursuant to the Second Charge were to be used to assist in the sale of the Duncan Mill Property.

18. The case law relating to this issue is set out at paragraphs 12-19 of the Brief of Law.

19. In the Proposal Trustee's view, the salient factual question is whether the Second Mortgagees had actual knowledge of the existence of the Whitaker Order as at the date of registration of the Second Charge, being September 21, 2016. The Proposal Trustee invites the parties to submit additional evidence on this point, and to address the potentially inconsistent case law relating to s. 93(3) of the *Land Titles Act*, R.S.O. 1990, c. L.5, described in the Brief of Law.

INTEREST RATE UNDER THE SECOND CHARGE

20. The interest rate set out in the Second Charge, as amended, is 13% per annum, or 18% per annum if the Debtor fails to provide the Second Mortgagee with a title insurance policy as referred to in the Second Charge (see the enclosures to the Margel Email attached hereto as Appendix D, together with the Second Charge documents attached as Appendix F to the Supplement to the Fourth Report).

21. The Debtor asserts that it has no knowledge of the amendment which establishes the 18% interest rate. This is a purely factual issue as between the Debtor and the Second Mortgagee. The Proposal Trustee invites each of the Debtor and the Second Mortgagee to file additional evidence as to the applicable interest rate.

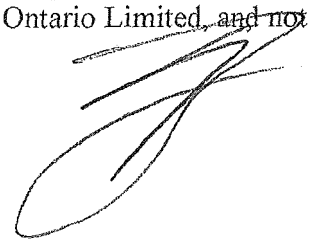
IMPACT OF DSF WRIT ON SECOND CHARGE

22. The Proposal Trustee's knowledge as it relates to the DSF Writ is set out at paragraphs 14-18 of the Supplement to the Fourth Report. As of the date of filing this Second Supplement to the Fourth Report, the Proposal Trustee has not learned of any additional relevant information.

23. The case law as it relates to the DSF Writ issue is set out at paragraphs 21-26 of the Brief of Law. The Proposal Trustee invites the parties to submit additional evidence and argument on this issue.

All of which is respectfully submitted this 22nd day of March, 2018.

CROWE SOBERMAN INC.
Trustee acting under a Notice of Intention to Make a Proposal for
1482241 Ontario Limited, and not in its personal capacity



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APPENDIX A

Court File No. 31-2303814

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

IN BANKRUPTCY AND INSOLVENCY

THE HONOURABLE	)	FRIDAY, THE 16TH
	)	
JUSTICE HAINEY	)	DAY OF MARCH, 2018

IN THE MATTER OF THE PROPOSAL OF 1482241 ONTARIO LIMITED, OF THE CITY OF TORONTO, IN THE PROVINCE OF ONTARIO

APPROVAL AND VESTING ORDER

THIS MOTION, made by Crowe Soberman Inc., in its capacity as the proposal trustee (in such capacity, the "**Proposal Trustee**") of 1482241 Ontario Limited (the "**Debtor**"), for an order, *inter alia*, approving the sale transaction (the "**Transaction**") contemplated by an agreement of purchase and sale between the Proposal Trustee, as vendor pursuant to the Order of the Honourable Mr. Justice Hainey of the Ontario Superior Court of Justice (Commercial List) (the "**Court**") made November 3, 2017 (the "**Sale Process Order**"), and 1979119 Ontario Inc. ("**197**"), as purchaser, dated February 26, 2018 (the "**Sale Agreement**"), a copy of which is attached as Confidential Appendix "4" to the Fourth Report of the Proposal Trustee dated March 7, 2018 (the "**Fourth Report**"), as such Sale Agreement is to be assigned by 197 to AZDM Inc. (the "**Purchaser**") in accordance with the terms of the Sale Agreement, and vesting in the Purchaser the Debtor's right, title and interest in and to the Purchased Assets (as defined in the Sale Agreement), was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Fourth Report and appendices thereto, the affidavit of Alain Checroune sworn March 13, 2018 and the appendices thereto, the affidavit of Ivan Mitchell Merrow sworn March 14, 2018 and the appendices thereto, and the Supplement to the Fourth Report of the Proposal Trustee dated March 15, 2018 and the appendices thereto, and on hearing the submissions of counsel for the Proposal Trustee, counsel for the Debtor and such other counsel as were present, no one appearing for any other person on the service list, although properly served as appears from the affidavits of service of Diana Saturno and Diana McMillen sworn March 8, 2018, filed,

1. **THIS COURT ORDERS AND DECLARES** that the Transaction is hereby approved, and the execution of the Sale Agreement by the Proposal Trustee is hereby authorized, ratified and approved, with such minor amendments as the Proposal Trustee may deem necessary. The Proposal Trustee is hereby authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the Transaction and for the conveyance of the Purchased Assets to the Purchaser, or as it may direct.

2. **THIS COURT ORDERS AND DECLARES** that upon the delivery of a Proposal Trustee's certificate to the Purchaser substantially in the form attached as Schedule A hereto (the "**Proposal Trustee's Certificate**"), all of the Purchased Assets, including, without limitation, the Real Property (as defined herein) listed on Schedule "B" hereto, shall vest absolutely in the Purchaser or in whomever it may direct or nominate, free and clear of and from any and all assessments or reassessments, equitable interests, preferential arrangements, rights of others, notices of lease, sub-leases, licenses, judgments, debts, liabilities, certificates of pending litigation, agreements of purchase and sale, reservation contracts, leases, title retention

(save and except for those leases forming part of the Purchased Assets)

agreements, adverse claims, exceptions, reservation easements, encroachments, servitudes, restrictions on use, title, any matter capable of registration against title, options, rights of first offer or refusal or similar right, restrictions on voting (in the case of any voting or equity interest), right or pre-emption or privilege or any contract creating any of the foregoing, and any and all security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, writs, levies, charges, or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise (collectively, the "**Claims**") including, without limiting the generality of the foregoing: (i) any encumbrances or charges created by the Sale Process Order and any other orders of the Court in these proceedings including, without limitation, the Administration Charge, the DIP Lenders' Charge and the Tax DIP Lenders' Charge (as those terms are defined in the Orders of Mr. Justice Hainey dated November 3, 2017 and December 20, 2017 made in these proceedings); (ii) all charges, security interests, leases or claims evidenced by registrations pursuant to the *Personal Property Security Act* (Ontario), the *Land Titles Act* (Ontario), or any other personal or real property registry system; (iii) those Claims listed on **Schedule "C"** hereto (all of which are collectively referred to as the "**Encumbrances**", which term shall not include the permitted encumbrances, easements and restrictive covenants listed on **Schedule "D"**); and (iv) any other claims against the Debtor or any of the Purchased Assets registered or otherwise existing, potential or contingent arising out of circumstances prior to the registration of this Order (the "**Additional Encumbrances**") and, for greater certainty, this Court orders that all of the Encumbrances and Additional Encumbrances affecting or relating to the Purchased Assets are hereby expunged and discharged as against the Purchased Assets.

3. **THIS COURT ORDERS** that upon the registration in the Land Registry Office for the appropriate Land Titles Division of an Application for Vesting Order in the form prescribed by the *Land Titles Act* and/or the *Land Registration Reform Act*, the Land Registrar is hereby directed to enter the Purchaser and/or whomever the Purchaser may nominate or direct as the owner(s) of the subject real property identified in **Schedule "B"** hereto (the "**Real Property**") in fee simple, and is hereby directed to delete and expunge from title to the Real Property all of the Claims listed in **Schedule "C"** hereto.

4. **THIS COURT ORDERS** that for the purposes of determining the nature and priority of Claims, the net proceeds from the sale of the Purchased Assets (the "**Sale Proceeds**") shall stand in the place and stead of the Purchased Assets, and that from and after the delivery of the Proposal Trustee's Certificate all Claims, Encumbrances and Additional Encumbrances shall attach to the net proceeds from the sale of the Purchased Assets with the same priority as they had with respect to the Purchased Assets immediately prior to the sale, as if the Purchased Assets had not been sold and remained in the possession or control of the person having that possession or control immediately prior to the sale.

5. **THIS COURT ORDERS** that the Proposal Trustee shall hold the Sale Proceeds in trust, pending further Order of the Court. For greater certainty, the Proposal Trustee shall not make any distributions from the Sale Proceeds except for such distributions as are expressly approved by the Court.

6. **THIS COURT ORDERS AND DIRECTS** the Proposal Trustee to file with the Court a copy of the Proposal Trustee's Certificate, forthwith after delivery thereof.

7. **THIS COURT ORDERS AND DECLARES** that no current or former tenants of the Real Property shall be entitled to withhold rental payments, set off any claim with respect to any over-payment of rent (including, without limitation, overpayment of additional rent), or claim remedies as against the Purchaser with respect to any sums that may be owing to them pursuant to their respective leases, if any, for any period prior to the Closing Date (as defined in the Sale Agreement) of the Transaction (collectively, the "**Tenant Claims**") and that the Tenant Claims shall be included as Claims subject to the provisions of paragraph 2 of this Order.

8. **THIS COURT ORDERS** that, notwithstanding:

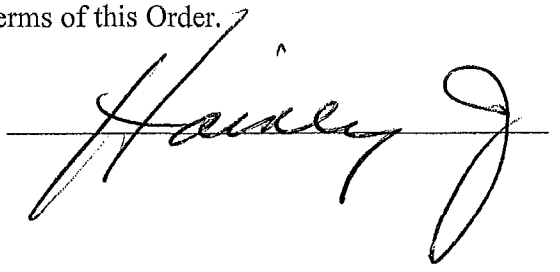
(a) the pendency of these proceedings;

(b) any applications for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act* (Canada) in respect of the Debtor and any bankruptcy order issued pursuant to any such applications; and

(c) any assignment in bankruptcy made in respect of the Debtor,

the vesting of the Purchased Assets in the Purchaser, or as it may direct, pursuant to this Order shall be binding on the Proposal Trustee and any other licensed insolvency trustee that may be appointed in respect of the Debtor and shall not be void or voidable by creditors of the Debtor, nor shall it constitute nor be deemed to be a fraudulent preference, assignment, fraudulent conveyance, transfer at undervalue or other reviewable transaction under the *Bankruptcy and Insolvency Act* (Canada) or any other applicable federal or provincial legislation, nor shall it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

9. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Proposal Trustee and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Proposal Trustee, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Proposal Trustee and its agents in carrying out the terms of this Order.



Schedule "A" – Form of Proposal Trustee's Certificate

Court File No. 31-2303814

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

IN BANKRUPTCY AND INSOLVENCY

IN THE MATTER OF THE PROPOSAL OF 1482241 ONTARIO LIMITED, OF THE CITY OF TORONTO, IN THE PROVINCE OF ONTARIO

PROPOSAL TRUSTEE'S CERTIFICATE

RECITALS

I. Pursuant to a notice of intention to make a proposal under the *Bankruptcy and Insolvency Act* (Canada) filed by 1482241 Ontario Limited (the "**Debtor**") on October 13, 2017, Crowe Soberman Inc. was named as the Debtor's proposal trustee (in such capacity, the "**Proposal Trustee**").

II. Pursuant to an Order of the Honourable Mr. Justice Hainey of the Ontario Superior Court of Justice (Commercial List) (the "**Court**") made November 3, 2017 (the "**Sale Process Order**"), the Court approved a sale solicitation process with respect to the assets and business of the Debtor to be conducted by the Proposal Trustee.

III. Pursuant to an Order of the Court dated [redacted], 2018, the Court approved the agreement of purchase and sale between the Proposal Trustee, as vendor pursuant to the Sale Process Order, and 1979119 Ontario Inc. ("**197**"), as purchaser, dated February 26, 2018 (the "**Sale Agreement**"), as such Sale Agreement was assigned by 197 to AZDM Inc. (the "**Purchaser**") in accordance with the terms of the Sale Agreement, and provided for the vesting in the Purchaser

of all the right, title and interest in and to the Purchased Assets (as defined in the Sale Agreement), which vesting is to be effective with respect to the Purchased Assets upon the delivery by the Proposal Trustee to the Purchaser of a certificate confirming: (i) the payment by the Purchaser of the purchase price for the Purchased Assets; (ii) that the conditions to closing as set out in the Sale Agreement have been satisfied or waived by the Proposal Trustee and the Purchaser; and (iii) that the Transaction has been completed to the satisfaction of the Proposal Trustee.

IV. Unless otherwise indicated herein, terms with initial capitals have the meanings set out in the Sale Agreement.

THE RECEIVER CERTIFIES the following:

1. The Purchaser has paid and the Proposal Trustee has received the Purchase Price for the Purchased Assets payable on the Closing Date pursuant to the Sale Agreement;

2. The conditions to Closing as set out in the Sale Agreement have been satisfied or waived by the Proposal Trustee and the Purchaser;

3. The Transaction has been completed to the satisfaction of the Proposal Trustee; and

4. This Proposal Trustee's Certificate was delivered by the Proposal Trustee at _____ [TIME] on _____ [DATE].

CROWE SOBERMAN INC., solely in its capacity as the proposal trustee of the Debtor, and not in its personal capacity or in any other capacity

Per: _____

Name: Hans Rizarri

Title: Partner

SCHEDULE "B"
LEGAL DESCRIPTION OF THE REAL PROPERTY

PIN 10088-0069 (LT)

LT 82-83 PL 7607 NORTH YORK; PT LT 84 PL 7607 NORTH YORK PT 2, RS1284; TORONTO (N YORK), CITY OF TORONTO

SCHEDULE "C"
ENCUMBRANCES

a) **Instruments to be deleted from PIN No. 10088-0069 (LT)**

Reg. No.	Registration Date	Instrument Type	Amount	Parties From	Parties To
AT935525	2005/09/29	CHARGE	$11,250,000	1482241 ONTARIO LIMITED	COMPUTERSHARE TRUST COMPANY OF CANADA
AT935526	2005/09/29	NO ASSGN RENT GEN		1482241 ONTARIO LIMITED	COMPUTERSHARE TRUST COMPANY OF CANADA
AT2418963	2010/06/21	RESTRICTIONS ORDER		ONTARIO SUPERIOR COURT OF JUSTICE	NORTH YORK FAMILY PHYSICIANS HOLDINGS INC.
AT3606967	2014/06/13	APL (GENERAL)		HUSSAINI, JAMSHID AHMADI, NEELOFAR	
AT4222577	2016/05/19	APL AMEND ORDER		ONTARIO SUPERIOR COURT OF JUSTICE	1482241 ONTARIO LIMITED
AT4225538	2016/05/25	CERTIFICATE		ALLEVIO CLINIC #1 TORONTO INC.	
AT4236037	2016/06/02	TRANSFER OF CHARGE		COMPUTERSHARE TRUST COMPANY OF CANADA	DAN REALTY LIMITED E. MANSON INVESTMENTS LIMITED COPPERSTONE INVESTMENTS LIMITED
AT4236049	2016/06/02	NO ASSGN RENT GEN		1482241 ONTARIO LIMITED	DAN REALTY LIMITED E. MANSON INVESTMENTS LIMITED COPPERSTONE INVESTMENTS LIMITED
AT4261850	2016/06/29	NO ASSGN RENT GEN		COMPUTERSHARE TRUST COMPANY OF CANADA	1482241 ONTARIO LIMITED

AT4349221	2016/09/21	CHARGE	$1,420,000	1482241 ONTARIO LIMITED	JANODEE INVESTMENTS LTD. MEADOWSHIRE INVESTMENTS LTD.
AT4349222	2016/09/21	NO ASSGN RENT GEN		1482241 ONTARIO LIMITED	JANODEE INVESTMENTS LTD. MEADOWSHIRE INVESTMENTS LTD.
AT4350034	2016/09/22	NOTICE		1482241 ONTARIO LIMITED	JANODEE INVESTMENTS LTD. MEADOWSHIRE INVESTMENTS LTD.
AT4729622	2017/11/09	APL COURT ORDER		ONTARIO SUPERIOR COURT OF JUSTICE	1482241 ONTARIO LIMITED

b) **Other Encumbrances**

(1) **PPSA**

	File No./Registration No.	Current Debtor	Current Secured Party	Current Collateral Classification	Current General Collateral Description and other Particulars
1.	717145821/ 20160531 1146 1862 7560 20160531 1235 1862 7580	1482241 Ontario Limited	Dan Realty Corporation 1120 Finch Avenue West Suite 100 Toronto, ON M3J 3H7 E. Manson Investments Limited 620 Wilson Avenue, Suite 401 Toronto, ON M5N 1S4 Copperstone Investments Limited 620 Wilson Avenue, Suite 401 Toronto, ON M5N 1S4	Inventory, Equipment, Accounts, Other, Motor Vehicle Included	**Expiry Date: May 31, 2019** An amendment was registered on May 31, 2016 to amend the address of the debtor.
2.	697416678/ 20140625 1012 1862 4827	1482241 Ontario Limited	Mann Engineering Ltd. 101 - 150 Bridgeland Avenue Toronto, ON M6A 1Z5	Inventory, Equipment, Accounts, Other No Fixed Maturity Date	**Expiry Date: June 25, 2019** General Collateral Description: General security agreement

(2) Writs of Execution

Execution No.	Debtor Name
15-0007457* in favour of Devry Smith Frank LLP	1482241 Ontario Limited Alain Checroune A. Checroune Realty Corporation

* writ of execution registered at land titles

(3) Judgments

	Case Number	Case Opened Date	Case Status	Plaintiff/Appellant	Defendant/Respondent	Case Type	Amount	Last Event Result Information
1.	CV04CV2799730000	December 1, 2004	Inactive	Omni Facility Services Canada Corp.	1482241 Ontario Limited 1428203 Ontario Limited Checroune, Alaine	Contract law	500.01	April 26, 2005 - Motion - Dismiss Action
2.	CV05CV2816110000	January 5, 2005	Inactive	Cvitak, Katica Cvitak, Lilly Cvitak, Slavik Cvitak, Steve	1482241 Ontario Ltd. Chechroune, Alain Truserve Groundscare Inc.	Other	500.01	May 2, 2008 - Order Dismissing Action No SCFiled
3.	CV06CV3231050000	November 28, 2006	Inactive	4047257 Canada Inc.	1482241 Ontario Limited	Real Property (incl. Leases; excl mortgage/charge)	500.01	May 31, 2007 - Order - Dismissing Action
4.	CV07CV3283000000	February 23, 2007	Active	4047257 Canada Inc.	1482241 Ontario Limited	Contract Law	N/A	February 28, 2007 - Case conference
5.	CV10003991110000	March 15, 2010	Inactive	DTZ Barnicke Limited (formerly JJ Barnicke Limited)	1482241 Ontario Limited	Contract Law	94,000.00	June 27, 2011 - Order case dismissed (on

	Case Number	Case Opened Date	Case Status	Plaintiff/Appellant	Defendant/Respondent	Case Type	Amount	Last Event Result Information
								consent)
6.	CV10004010 730000	April 14, 2010	Inactive	North York Family Health Team Inc.	1482241 Ontario Limited	Real Property (incl. Leases, excl mortgage/charge)	0	November 29, 2012 - Order case dismissed
7.	CV10004030 670000	May 13, 2010	Inactive	North York Family Physicians Holdings Inc.	1482241 Ontario Limited	Real Property (incl. Leases, excl mortgage/charge)	0	March 22, 2011 - Judgment
8.	CV10004103 300000	Sept. 13, 2010	Active	7063580 Canada Inc.	1482241 Ontario Limited	Construction Lien NN	43,223.50	September 20, 2016 - Motion (unopposed consent)
9.	CV10004163 530000	December 13, 2010	Inactive	Constellation NewEnergy Canada Inc.	1482241 Ontario Limited	Contract law	439,109.51	May 9, 2016 - order case dismissed
10.	CV10004165 170000	December 15, 2010	Active	2144688 Ontario Ltd.	1482241 Ontario Limited	Contract law	1.00	January 3, 2018 - motion on notice January 3, 2018 - order
11.	CV12004625 420000	August 30, 2012	Active	North York Family Physicians Holdings Inc.	1482241 Ontario Limited	Real Property (incl. Leases; excl. mortgage/charge)	0	January 3, 2018 - Motion on notice January 3, 2018 - Order
12.	CV14005063 050000	June 13, 2014	Active	Homelife Dreams Realty Inc.	1482241 Ontario Limited	Real Property (incl. Leases; excl.	5.00	January 3, 2018 - Motion on

	Case Number	Case Opened Date	Case Status	Plaintiff/Appellant	Defendant/Respondent	Case Type	Amount	Last Event Result Information
				Ahmadi, Neelofar Hussaini, Jamshid	Checroune, Alain	mortgage/charge)		notice January 3, 2018 - order
13.	CV14005129 060000	September 26, 2014	Inactive	Mann Engineering Ltd.	1482241 Ontario Limited	Construction lien NN	0	September 26, 2016 - order
14.	CV15005258 090000	April 10, 2015	Active	Allevio Inc.	1482241 Ontario Limited	Real Property (incl. Leases, excl. mortgage/charge)	0	April 13, 2015 - case conference
15.	CV15005295 200000	June 3, 2015	Active	Yoo, Chang-Soon	1482241 Ontario Limited Husky Landscaping Services Inc. North York Family Physicians Holdings Inc.	Contract Law	800,000.00	June 8, 2017 - Order
16.	CV15005309 730000	June 23, 2015	Inactive	Hudson Energy Canada Corp.	1482241 Ontario Limited	Collection of liquidated debt	137,179.00	April 24, 2017 - Order case dismissed (on consent)
17.	CV15005334 110000	July 30, 2015	Active	Devry Smith Frank LLP	1482241 Ontario Limited A. Checroune Realty Corporation Checroune, Alain	Solicitors Act (solicitor/client assessment) NN	0	January 25, 2016 - Preliminary Assessment Appointment (Tor SCJ only)
18.	CV15005377 080000	October 2, 2015	Active	Allevio Clinic #1 Toronto Inc. O/A Allevio Pain Management	1482241 Ontario Limited Checroune, Alan	Real Property (incl. Leases, excl. mortgage/charg	11,000,000.00	January 3, 2018 - motion on notice

	Case Number	Case Opened Date	Case Status	Plaintiff/Appellant	Defendant/Respondent	Case Type	Amount	Last Event Result Information
						e)		January 3, 2018 - Order
19.	CV15005400640000	November 9, 2015	Inactive	Holesh, Sharron	1482241 Ontario Limited Husky Landscaping Service Inc.	Tort personal injury (other than from MVA)	100,000.00	December 2, 2016 - Order case dismissed (on consent)
20.	CV16005471020000	February 22, 2016	Inactive	Hudson Energy Canada Corp.	1482241 Ontario Limited	Collection of liquidated debt	137,179.74	April 24, 2017 - Order case dismissed (on consent)
21.	CV16005532830000	May 20, 2016	Inactive	Royal Bank of Canada	1482241 Ontario Limited 2144688 Ontario Ltd. 7063580 Canada Inc. Allevio Clinic #1 Toronto Inc. o/a Allevio Pain Management Mann Engineering Ltd. Ahmadi, Neelofar Checroune, Alain Hussaini, Jamshid YYZ Plumbing Inc.	Real Property (incl. Leases, excl. mortgage/charge)	0	N/A
22.	CV16005604100000	September 13, 2016	Inactive	Himelfarb Proszanski	1482241 Ontario Limited Checroune, Alain	Contract Law	55,438.00	October 26, 2016 - Order case dismissed (on consent)

	Case Number	Case Opened Date	Case Status	Plaintiff/Appellant	Defendant/Respondent	Case Type	Amount	Last Event Result Information
23.	CV16005608150000	September 20, 2016	Active	YYZ Plumbing Inc.	1482241 Ontario Limited	Construction lien NN	0	September 20, 2016 - Motion (unopposed consent)
24.	CV18005900390000	January 15, 2018	Active	Steinberg, Daniel	1482241 Ontario Limited Husky Landscaping	Tort personal injury (other than from MVA)	150,000.00	N/A
25.	CV18005916750000	February 7, 2018	Active	Gowling WLG (Canada) LLP	1482241 Ontario Limited	Solicitors Act (solicitor/client assessment) NN	0	July 16, 2018 - Preliminary Assessment Appointment (Tor SCJ only)

(4) **Other Interests:**

(a) All outstanding municipal taxes, fines, interest and penalties.

(b) Trust Declaration dated September 21, 2005 between 1482241 Ontario Limited and Alain Checroune

(c) Agreement of Purchase and Sale dated June 6, 2012 between Jamshid Hussaini and Neelofar Ahmadi, and Alain Checroune, as amended by an Amendment to Agreement dated June 18, 2012

(d) Amended Trust Declaration dated June 22, 2012 between 1482241 Ontario Limited, Alain Checroune, Jamshid Hussaini and Neelofar Ahmadi

(e) Order of Justice Whitaker dated October 27, 2014 in the proceedings having Court File No. CV-14-506305.

(f) Agreement of Purchase and Sale dated August 24, 2017 between Torgan Properties Inc and 1482241 Ontario Limited.

SCHEDULE "D"
PERMITTED ENCUMBRANCES, EASEMENTS AND RESTRICTIVE COVENANTS

a) **Assumed Encumbrances from PIN 10088-0069 (LT)**

Reg. No.	Registration Date	Instrument Type	Parties From	Parties To
NY522733Z	1967/10/20	REST COV APPL ANNEX		
NY579166	1970/07/20	BYLAW EX PART LOT		
RS1284	1970/11/17	PLAN REFERENCE		
64BA1088	1977/11/10	PLAN BOUNDRIES ACT		
AT2448796	2010/07/16	NOTICE OF LEASE	NORTH YORK FAMILY PHYSICIANS HOLDINGS INC.	NORTH YORK FAMILY PHYSICIANS HOLDINGS INC.

IN THE MATTER OF THE PROPOSAL OF 1482241 ONTARIO LIMITED, OF THE CITY OF TORONTO, IN THE PROVINCE OF ONTARIO

Court File No. 31-2303814

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

IN BANKRUPTCY AND INSOLVENCY
Proceedings commenced at Toronto

APPROVAL AND VESTING ORDER

AIRD & BERLIS LLP
Barristers and Solicitors
Brookfield Place
181 Bay Street, Suite 1800
Toronto, ON M5J 2T9

Steven L. Graff (LSUC # 31871V)
Tel: (416) 865-7726
Fax: (416) 863-1515
Email: sgraff@airdberlis.com

Miranda Spence (LSUC # 60621M)
Tel: (416) 865-3414
Fax: (416) 863-1515
Email: mspence@airdberlis.com

APPENDIX B

Court File No. 31-2303814

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

IN BANKRUPTCY AND INSOLVENCY

THE HONOURABLE	)	FRIDAY, THE 16TH
	)	
JUSTICE HAINEY	)	DAY OF MARCH, 2018

IN THE MATTER OF THE PROPOSAL OF 1482241 ONTARIO LIMITED, OF THE CITY OF TORONTO, IN THE PROVINCE OF ONTARIO

ANCILLARY ORDER

THIS MOTION, made by Crowe Soberman Inc., in its capacity as the proposal trustee (in such capacity, the "**Proposal Trustee**") of 1482241 Ontario Limited (the "**Debtor**"), for an order, *inter alia*, approving: (a) the first report of the Proposal Trustee dated October 27, 2017 (the "**First Report**"); (b) the supplemental report to the First Report of the Proposal Trustee dated November 2, 2017 (the "**Supplemental Report**"); (c) the second report of the Proposal Trustee dated December 13, 2017 (the "**Second Report**"); (d) the third report of the Proposal Trustee dated February 1, 2018 (the "**Third Report**"); (e) the fourth report of the Proposal Trustee dated March 7, 2018 (the "**Fourth Report**"), (f) the supplement to the Fourth Report dated March 15, 2018 (the "**Supplement to the Fourth Report**" and, collectively with the other reports of the Proposal Trustee referred to herein, the "**Reports**"); (g) the fees and disbursements of the Proposal Trustee's counsel as reported in the Fourth Report; (h) the distribution of proceeds from the sale of the property located at 240 Duncan Mill Road, Toronto, Ontario (the "**Duncan Mill Property**") to certain secured creditors; and (i) sealing confidential appendices 1-

5 to the Fourth Report (the "**Confidential Appendices**"), was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Reports and the appendices thereto, the fee affidavit of Steven L. Graff sworn March 7, 2018 (the "**Fee Affidavit**"), the affidavit of Alain Checroune sworn March 13, 2018, the affidavit of Ivan Mitchell Merrow sworn March 14, 2018, and on hearing the submissions of counsel for the Proposal Trustee, counsel for the Debtor and such other counsel as were present, no one appearing for any other person on the service list, although properly served as appears from the affidavits of service of Diana Saturno and Diana McMillen sworn March 8, 2018, filed,

1. **THIS COURT ORDERS** that the time for service of the notice of motion and the motion record 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 First Report and the activities of the Proposal Trustee described therein be and are hereby approved.

3. **THIS COURT ORDERS** that the Supplemental Report and the activities of the Proposal Trustee described therein be and are hereby approved.

4. **THIS COURT ORDERS** that the Second Report and the activities of the Proposal Trustee described therein be and are hereby approved.

5. **THIS COURT ORDERS** that the Third Report and the activities of the Proposal Trustee described therein be and are hereby approved.

6. **THIS COURT ORDERS** that the Fourth Report and the activities of the Proposal Trustee described therein be and are hereby approved.

7. **THIS COURT ORDERS** that the Supplement to the Fourth Report and the activities of the Proposal Trustee described therein be and are hereby approved.

8. **THIS COURT ORDERS** that the fees and disbursements of the Proposal Trustee's counsel as described in the Fourth Report and as set out in the Fee Affidavit, be and are hereby approved.

9. **THIS COURT ORDERS** that the Proposal Trustee be and is hereby authorized, without further Order of this Court, to distribute amounts received pursuant to the APS (as defined in the Fourth Report), as follows:

(a) to Dan Realty Corporation, E. Manson Investments Limited and Copperstone Investments Limited (collectively, the "**First Mortgagees**"), on account of the amounts owing to the First Mortgagees by the Debtor in accordance with the charge registered on title to the Duncan Mill Property as Instrument Nos. AT935525 and AT4236037 (the "**First Charge**"), up to the amounts listed in the statement attached as Exhibit D to the Supplement to the Fourth Report, less the amount of $206,250 for three months interest which shall be withheld by the Proposal Trustee to be dealt with based on the Court's determination of that claim in accordance with paragraph 11 below, provided that the First Mortgagees may seek to recover additional fees in connection with the claim for $206,250; and

(b) to the First Mortgagees, on account of the amounts owing to the First Mortgagees by the Debtor in accordance with the Property Tax Dip Loan (as defined in the Fourth Report), as secured by the Tax Dip Lender's Charge (as defined in the Fourth Report), up to the amount of the Debtor's secured indebtedness owing to the First Mortgagees for principal and interest, as secured by the Tax Dip Lender's Charge.

10. **THIS COURT ORDERS** that the Confidential Appendices be, and are hereby, sealed pending the closing of the Transaction (as defined in the Fourth Report) or until further Order of the Court.

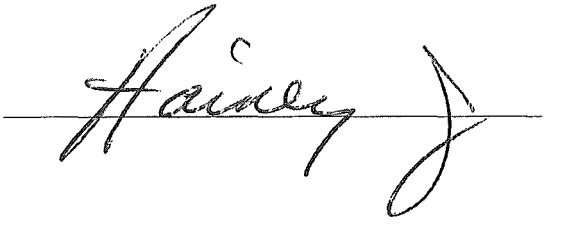
11. **THIS COURT ORDERS** that the following issues shall be determined by way of oral argument on March 28, 2018 or as further directed by the Court:

(a) the claim by the First Mortgagees for $206,250 for three months' interest;

(b) the issue of whether the Order of Justice Whitaker dated October 27, 2014 affects the validity and/or enforceability of the Second Charge;

(c) the issue of the interest rate under the Second Charge as raised by the Debtor; and

(d) the impact of the DSF Writ (as defined in the Supplement to the Fourth Report), if any, on the amount secured by the Second Charge.



IN THE MATTER OF THE PROPOSAL OF 1482241 ONTARIO LIMITED, OF THE CITY OF TORONTO, IN THE PROVINCE OF ONTARIO

Court File No. 31-2303814

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

IN BANKRUPTCY AND INSOLVENCY
Proceedings commenced at Toronto

ANCILLARY ORDER

AIRD & BERLIS LLP
Barristers and Solicitors
Brookfield Place
181 Bay Street, Suite 1800
Toronto, ON M5J 2T9

Steven L. Graff (LSUC # 31871V)
Tel: (416) 865-7726
Fax: (416) 863-1515
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Miranda Spence (LSUC # 60621M)
Tel: (416) 865-3414
Fax: (416) 863-1515
Email: mspence@airdberlis.com

APPENDIX C

Endorsement

The Ancillary Order is granted, as amended, in the form signed today.

The approval of the Proposal Trustee's counsel's fees as set out at paragraph 8 of the Ancillary Order is without prejudice to such fees being taken into consideration as part of the totality of professional fees incurred on any future motion for fee approval.

Confidential Appendices to be sealed as per paragraph 10 of the Ancillary Order.

Hearing scheduled for March 28, 2018 for one hour as per paragraph 11 of the Ancillary Order.

Proposal Trustee to file supplementary report addressing issues to be argued at March 28 hearing.

Penny J

March 16/18

10:00 A.M.

COUNSEL SLIP

H

COURT FILE NO 31-2303814 DATE MAR 16, 2018

NO ON LIST 6 & 8

TITLE OF PROCEEDING

1482241 ONTARIO LIMITED

COUNSEL FOR:	PHONE & FAX NOS
PLAINTIFF(S) Miranda Spence for Proposed Trustee	T. 416-865-3414 F. 416-863-1515 E. mspence@airdberlis.com
DEFENDANT(S) RESPONDENT(S) G. Benchetrit	T – (4)218-1141 F – (4)218-1841 E – george@chaitons.com
C. Mills for N. Ahmadi, J. Ithussiani and Homelife	T 416 595-8596 F 416 595-8695
M. Brzezinski for NYFPH Inc. (Tenant)	T - 416-777-2394 F - 416 865-1398
D. Chochla for 1979119 Ontario Inc. (Purchaser)	T. 416-868-3425 F. 416-364-7813 E. dchochla@fasken.com
D. Ullmann for 1482241 Ontario Ltd. (Debtor)	T 416 596-4289 416 593-2437

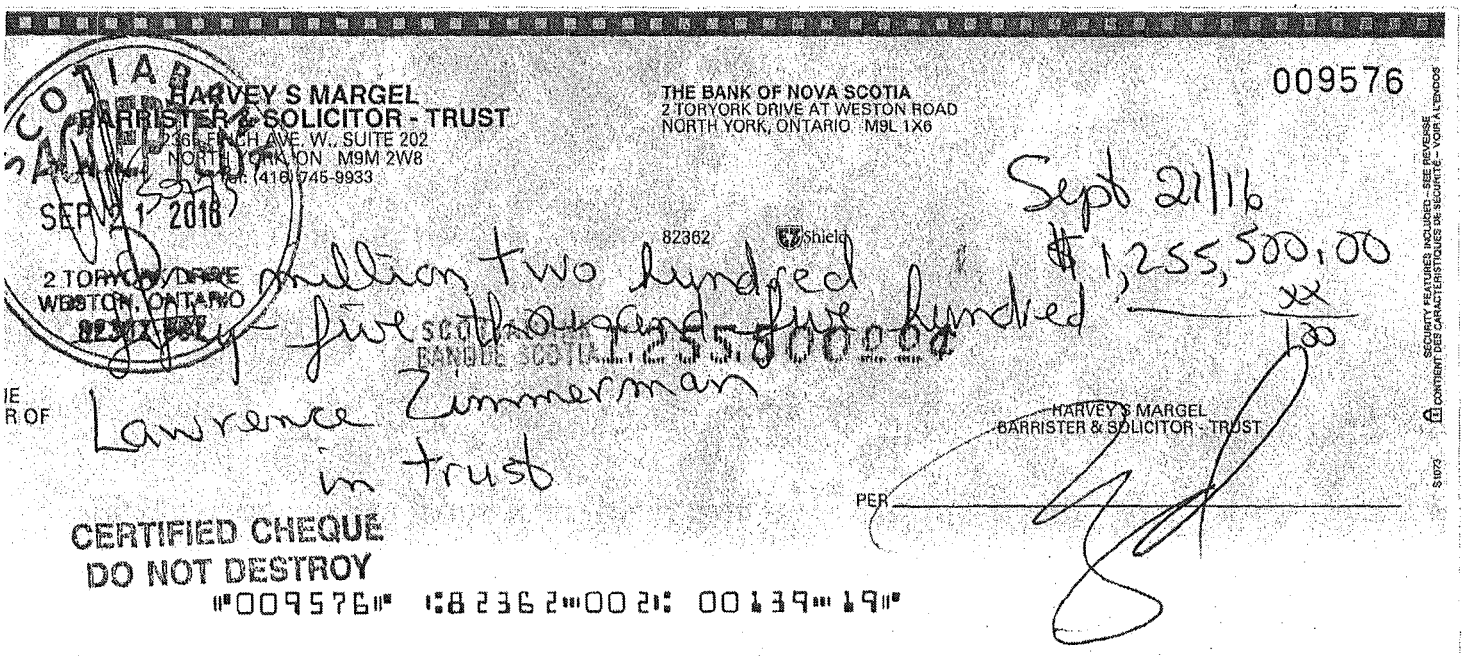
APPENDIX D

Miranda Spence

From: Harvey Margel <harveymargel@rogers.com>
Sent: March-19-18 10:21 AM
To: Craig Mills
Cc: Miranda Spence
Attachments: duncanmills.pdf

Good morning Craig
I enclose the following:
1) copy of certified cheque to Larry Zimmerman in trust in the amount of $ 1,255,500.00 being the net advance to his clients
2) copy of the commitment, I could not locate a signed copy for this amount but this is the commitment
3) copy of mortgage
4) copy of notice amending mortgage
This letter will confirm that I nor my clients had knowledge of the CPL, the "Whitaker Order" or the beneficial interest of your clients. We believed that all funds were being provided to the building to assist in the sale of the building

HARVEY S. MARGEL
Barrister & Solicitor
2365 Finch Ave. W., Ste. 202
Toronto, Ontario M9M 2W8
tel: 416 745-9933 fax: 416 745-9290



HARVEY S MARGEL
BARRISTER & SOLICITOR - TRUST
2365 FINCH AVE. W., SUITE 202
NORTH YORK, ON M9M 2W8
Tel: (416) 745-9933

THE BANK OF NOVA SCOTIA
2 TORYORK DRIVE AT WESTON ROAD
NORTH YORK, ONTARIO M9L 1X6

009576

SEP 21 2018

2 TORYORK DRIVE
WESTON, ONTARIO

82362

Shield

Sept 21/16

$1,255,500.00

one million two hundred fifty five thousand five hundred

xx

100

Lawrence Zimmerman in Trust

HARVEY S MARGEL
BARRISTER & SOLICITOR - TRUST

PER

CERTIFIED CHEQUE
DO NOT DESTROY

⑈009576⑈ ⑆82362⑈002⑆ 00139⑈19⑈

SECURITY FEATURES INCLUDED - SEE REVERSE
CONTIENT DES CARACTÉRISTIQUES DE SÉCURITÉ – VOIR À L'ENVERS

S1073

Lender Direct Capital Corporation

September 16, 2016

1482241 Ontario Ltd.
c/o 240 Duncan Mill Rd

RE: New second mortgage

Dear Sirs;

I am pleased to advise that Lender Direct Capital Corporation has a lender who will provide you with the financing of the above noted property on the terms and conditions outlined herein.

LOAN AMOUNT $1,420,000.00 as a new second mortgage

INTEREST: 13%

SECURITY:

- New second mortgage 240 Duncan Mill Rd Toronto being a 192,000 square foot office building sold for $16,750,00 and subject to an existing first mortgage of $7,500,000.00 and subject to existing title registrations. The closing is scheduled for September 21,2016.
- The personal Guarantee of all parties for the full indebtedness
- Title Insurance
- Assignment of fire and liability insurance relative to the risk involved, satisfactory to us. Assignment of leases.

TERM: Six months

PAYMENT: Interest only, calculated and payable monthly in the sum of ~~$13,866.67~~ 15 383 .33. The parties acknowledge that the first 4 months interest shall be due and payable in advance from the mortgage advance.

PRIVILEGES:

a) closed for 3 months and open thereafter on payment of month's bonus
b) Due on a sale of property
c) deleted
d) $500.00 charge for any NSF or late payment or statement request

CONDITIONS: Prior to any advance of funds the lender shall be in receipt of the following.

1. Satisfactory inspection of the property and satisfactory appraisal.
2. Executed Mortgage Loan Application of ALL Mortgagor(s) and Guarantor.
3. Prior to funding, delivery of evidence that a valid title insurance policy subject to existing registrations for each property

LENDER FEE ARRANGING FEE: [redacted]

LENDER'S LEGAL FEE: [redacted] **(estimated) plus legal disbursements and HST.**

COVENANTOR: 1482241 Ontario Ltd.

GUARANTOR: Alain Checroune, Max Warner, Andy Degan

TITLE: The loan is conditional upon the solicitor for the lender being satisfied as to Title, and all documentation.

CLOSING: **On or before September 21, 2016**

If at any time prior to release of funds by the mortgagee, the mortgagee learns of any material change in information or misrepresentation made by the mortgagor, the mortgagee reserves the right to withhold the funds, which would otherwise be transferred to the mortgagor.

COSTS: All costs relative to the borrowing are for the borrowers account, including but not limited to lender, broker, legal and appraisal fees etc.

Note: **THIS SERVES AS A COMMITMENT TO FUND** and shall be open for acceptance until September 19, 2016 Should you find the Terms and Conditions acceptable please sign a copy of this letter. A $5,000 deposit will be required on acceptance.

Yours truly,
Per:
Mark Lapedus License#M08008925
LENDER DIRECT CAPITAL CORPORATION Lic.#10138
162 Cumberland St #300 Toronto On M5R 3N5 (416) 928-4876

I (We), accept the above-noted on the terms and conditions set out and agree to be bound by the aforesaid terms and conditions.

Dated this _____ day of _____, 2016

1482241 Ontario Ltd.

Per:_____
Alain Checroune

_____
Max Warner (Guarantor)

_____
Alain Checroune (Guarantor)

_____
Any Degan (Guarantor)

I the Lender, acknowledge, agree and commit to fund the above noted Loan/ mortgage in accordance with the terms & conditions set out herein.

_____ _____
Date **Investor**

Properties

PIN	10088 - 0069 LT	*Interest/Estate*	Fee Simple
Description	LT 82-83 PL 7607 NORTH YORK; PT LT 84 PL 7607 NORTH YORK PT 2, RS1284; TORONTO (N YORK) , CITY OF TORONTO		
Address	240 DUNCAN MILL ROAD NORTH YORK		

Chargor(s)

The chargor(s) hereby charges the land to the chargee(s). The chargor(s) acknowledges the receipt of the charge and the standard charge terms, if any.

Name	1482241 ONTARIO LIMITED
Address for Service	240 Duncan Mills Road Suite 800 Toronto, Ontario M3B 3S6

I, Alain Checroune, President, have the authority to bind the corporation.

This document is not authorized under Power of Attorney by this party.

Chargee(s) *Capacity* *Share*

Name	JANODEE INVESTMENTS LTD.	56.34%
Address for Service	c/o 2365 Finch Ave West Suite 202 Toronto, Ontario M9M 2W8	
Name	MEADOWSHIRE INVESTMENTS LTD.	43.66%
Address for Service	c/o 2365 Finch Ave West Suite 202 Toronto, Ontario M9M 2W8	

Statements

Schedule: See Schedules

The registration of this document is not prohibited by registration AT2418963 registered on 2010/06/21 .

Provisions

Principal	$ 1,420,000.00	*Currency*	CDN
Calculation Period	interest only, monthly		
Balance Due Date	2017/03/21		
Interest Rate	13.0%		

Signed By

Harvey Samuel Margel	202-2365 Finch Ave. W. Toronto M9M2W8	acting for Chargor(s)	Signed	2016 09 21

Tel 416-745-9933

Fax 4167459290

I have the authority to sign and register the document on behalf of the Chargor(s).

Submitted By

HARVEY S MARGEL LAW OFFICE	202-2365 Finch Ave. W. Toronto M9M2W8	2016 09 21

Tel 416-745-9933

Fax 4167459290

Fees/Taxes/Payment

Statutory Registration Fee	$62.85
Total Paid	$62.85

File Number

Chargor Client File Number : 16-1129 (CHECROUNE)

SCHEDULE "A"

(10) Additional Provisions

PREPAYMENT PROVISIONS

PROVIDED that the Chargor, when not in default herein shall have the privilege of prepaying all or any part of the principal sum hereby secured after three month anniversary at any time or times upon payment of one month's bonus interest.

ADMINISTRATION FEE
The Chargor shall pay to the Chargee an Administration Fee of $500.00 for each occurrence of any of the following events:

1. Late payment; nonpayment;
2. Cheque Dishonoured for any reason;
3. Failure to provide proof of payment of realty taxes;
4. Failure to provide proof of insurance coverage on an annual basis;
5. Failure to provide postdated cheques;
6. Failure to notify charge of registration of lien by the Condominium Corporation for common maintenance arrears;
7. Request for Mortgage Statement;
8. Request for Discharge Statement;
9. Default under prior mortgagae, chare or encumbrance.

Such Administration Fee to be paid within five (5) days of demand for payment of same.

If the said Administration Fee is not paid within the said five (5) days then at the option of the chargee the administration fee will either be added to the principal amount outstanding or this will be a default enabling the chargee to institute collection or power of sale proceedings.

In the event of a further occurrence as set out herein the penalty shall increase by a further sum of $50.00 and this shall be on a cumulative basis.

DISPOSITION OF THE MORTGAGED LANDS
Provided that if the Chargor sells, transfers, conveys or otherwise disposes of the subject property, or any interest therein, then all amounts, whether principal, interest or otherwise that may be owing hereunder, including Administration Fees and bonuses, shall be immediately due and payable, at the sole option of the Chargee.

POSTDATED CHEQUES
The Chargor agrees to provide the Chargee with a series of 12 post-dated cheques on orbefore the Closing date of the Charge and a further series of 12 postdated cheques on or before each anniversary date of the within Charge. Failure to provide such cheques shall constitute a default under Charge at the sole option of the Chargee.

DISCHARGE
Provided that when a Discharge of this Charge is required, then the Chargee's solicitor will prepare the Discharge documentation for execution by the Chargee, the costs of which shall be at the Chargor's expense.

TIME OF PAYMENT

that may be owing hereunder, including Administration Fees and bonuses, shall be immediately due and payable at the sole option of the Chargee.

If any amount of money is claimed in priority over this Charge pursuant to the Construction Lien Act (Ontario) and if the Chargee is obliged to pay any amounts owing under the said Act, same may be added to the principal amount outstanding under the Charge.

INSULATION
The subject property is not, and has never been insulated with urea formaldehyde foam insulation, and the Chargor will not permit such insulation to be used in the construction or renovation of any future improvement to the property. In the event that the Chargee determines that any portion of the subject property is, or has been so insulated, then all amounts whether principal, interest or otherwise that may be owing hereunder, including Administration Fees and bonuses, shall be immediately due and payable at the sole option of the Chargee.

BANKRUPTCY AND INSOLVENCY ACT
The Chargor/Guarantor represents and warrants that she/he is not an "undischarged bankrupt" as defined in the Bankruptcy and Insolvency Act. In the event that the Chargor/Guarantor is an "undischarged bankrupt", then all amounts, whether principal, interest or otherwise that may be owing hereunder including Administration Fees and bonuses together with a one (1) month interest payment thereon shall be immediately due and payable at the sole option of the Chargee.

SERVICING FEE
In the event tat the Chargee is called upon to pay any payment in order to protect its security position, including but not limited to the payment of Realty Taxes, Insurance Premiums, Condominium common expenses, principal, interest or costs under a prior mortgage, it is agreed that such payment shall bear interest at eighteen (18%) percent per annum, calculated and compounded monthly and that there shall be a service charge of not less than $250.00 for making each such payment or payments.

ADDITIONAL FEES
The Chargor agrees that should the Chargee issue either a Notice of Sale or Statement of Claim, that the Charges, at its option, shall be entitled to charge an additional fee equivalent to three (3) months interest. The Chargor agrees that should the charge not be renewed or discharged on the maturity date, that the Chargee, at its option, shall be entitled to charge an additional fee equivalent to three (3) months interest.

ALTERATIONS
The Chargor will not make or permit to be made any structural alterations or additions to the land or to any building or structure thereon or change or permit to be changed the use of the premises without the written consent of the Chargee.

WELL WATER ANALYSIS
In the event that the subject property is not on municipal water supply, the mortgagee requires satisfactory Bacteriological analysis of well water by the Ministry of Health.

FARM DEBT MEDIATION ACT
Provided further that the Chargor represents and warrants that she/he is not a "Farmer" as defined in the Farm Debt Mediation Act and the Chargor further covenants and agrees that during the currency of the within Charge he will not engage in any activity which would have the effect of deeming her/him a Farmer within the meaning of the Farm Debt Mediation Act. In the event that the Chargor fails to comply with

due and payable should the within described premises be converted from the personal residence of the mortgagor to a rental property.

Provided that the mortgagor when not in default hereunder shall have the privilege of paying the whole or any part of the principal sum herein secured on any payment date upon payment of a bonus of three (3) month's interest.

Provided that the mortgagor shall pay to the mortgagee a fee of $250.00 for each and every dishonoured cheque.

Provided that the mortgagor shall pay to the mortgagee a fee of $1,500.00 for each and every action or proceeding instituted and a fee of $100.00 for administering maintenance and security to the property each day it is in possession of the mortgagee.

Provided that the mortgagor shall provide the mortgagee with a series of 12 post-dated cheques at the commencement of the within mortgage.

Provided that in the event the mortgagor sells or transfers the subject property, the whole or principal balance hereby secured together with accrued interest shall become immediately due and payable at the option of the mortgagee.

Properties

PIN	10088 - 0069 LT
Description	LT 82-83 PL 7607 NORTH YORK; PT LT 84 PL 7607 NORTH YORK PT 2, RS1284; TORONTO (N YORK) , CITY OF TORONTO
Address	240 DUNCAN MILL ROAD NORTH YORK

Consideration

Consideration $0.00

Applicant(s)

The notice is based on or affects a valid and existing estate, right, interest or equity in land

Name 1482241 ONTARIO LIMITED

Address for Service 240 Duncan Mill Road
Suite 800
Toronto, Ontario
M3B3S6

I, Alain Checroune, President, have the authority to bind the corporation.

This document is not authorized under Power of Attorney by this party.

Party To(s)	Capacity	Share
Name	JANODEE INVESTMENTS LTD.	56.43%
Address for Service	c/o 2365 Finch Avenue West Suite 202 Toronto, Ontario M9M 2W8	

I, Stanley Cash, have the authority to bind the corporation

This document is not authorized under Power of Attorney by this party.

Name	MEADOWSHIRE INVESTMENTS LTD.	43.66%
Address for Service	c/o 2365 Finch Avenue West Suite 202 Toronto, Ontario M9M 2W8	

I, Norman Rosenberg, have the authority to bind the corporation

This document is not authorized under Power of Attorney by this party.

Statements

This notice is pursuant to Section 71 of the Land Titles Act.

This notice may be deleted by the Land Registrar when the registered instrument, AT4349221 registered on 2016/09/21 to which this notice relates is deleted

Schedule: See Schedules

This document relates to registration no.(s)AT4349221

The registration of this document is not prohibited by registration AT2418963 registered on 2010/06/21 .

Signed By

Harvey Samuel Margel	202-2365 Finch Ave. W. Toronto M9M2W8	acting for Applicant(s)	Signed 2016 09 22

Tel 416-745-9933

Fax 4167459290

I have the authority to sign and register the document on behalf of the Applicant(s).

Submitted By

HARVEY S MARGEL LAW OFFICE
202-2365 Finch Ave. W.
Toronto
M9M2W8
2016 09 22

Tel 416-745-9933
Fax 4167459290

Fees/Taxes/Payment

Statutory Registration Fee	$62.85
Total Paid	$62.85

File Number

Applicant Client File Number : 16-1129 (CHECROUNE)

SCHEDULE

AGREEMENT AMENDING CHARGE/MORTGAGE

WHEREAS by a Charge/Mortgage of Land registered in the Land Registry Office for the Land Titles Division for Toronto (No. 80) on the 21st day of September, 2016, as Instrument No. **AT4349221**, **1482241 ONTARIO LIMITED** as Chargor, gave a Charge/Mortgage upon the lands described herein in favour of **JANODEE INVESTMENTS LTD. and MEADOWSHIRE INVESTMENTS LTD.**, as Chargee to secure the payment of the principal sum of One Million, Four Hundred and Twenty Thousand Dollars ($1,420,000.00) with interest as therein set out upon the terms therein mentioned.

AND WHEREAS the Chargor is the present registered owner of the equity of redemption in the Lands.

AND WHEREAS the principal sum of One Million, Four Hundred and Twenty Thousand Dollars ($1,420,000.00) secured by the said Charge/Mortgage and interest as therein set out still remains due and owing to the Chargee.

AND WHEREAS the parties hereto have agreed to amend the Charge upon and subject to the terms and conditions hereinafter set forth.

NOW THEREFORE, THIS AGREEMENT WITNESSETH that, in consideration of these presents, the covenants and agreements herein contained and the sum of TWO DOLLARS ($2.00) now paid by each of the parties hereto to each of the others (the receipt and sufficiency whereof are hereby acknowledged by each of the parties hereto), the parties hereto hereby agree as follows:

1. **TITLE INSURANCE**

The Chargor hereby undertakes to provide the Chargee with a title insurance policy, subject to such exceptions required by the title insurance provider, within forty five (45) days of the date of advance of funds hereof. Failure to provide the Chargee with a title insurance policy as set out herein shall be deemed an act of default. In such event, the Chargor hereby waives Notice of Default and the Chargee may proceed to issue a Notice of Sale under the Power of Sale provisions.

2. **INTEREST RATE**

a) Thirteen (13) percent per annum, calculated interest only, monthly. The first three months of interest shall be paid in advance and deducted from the advance of funds;

b) In the event the Chargor fails to provide the Chargee with a title insurance policy as set out above, the interest rate shall be deemed to be eighteen (18) percent per annum, calculated interest only, monthly from the date of the advance of funds.

3. **PREPAYMENT**

The parties acknowledge that one (1) month interest bonus is payable for early prepayment. In anticipation of early thereof, the Chargee is hereby authorized to deduct a further one month's interest from the advance of funds.

In all other respects, the terms of the said Charge/Mortgage continue unamended.

The provisions of this document shall enure to and be binding upon the executors, administrators, successors and assigns of each party and all covenants, liabilities and obligations shall be joint and several.

Properties

PIN 10088 - 0069 LT

Description LT 82-83 PL 7607 NORTH YORK; PT LT 84 PL 7607 NORTH YORK PT 2, RS1284; TORONTO (N YORK) , CITY OF TORONTO

Address 240 DUNCAN MILL ROAD
NORTH YORK

Applicant(s)

The assignor(s) hereby assigns their interest in the rents of the above described land. The notice is based on or affects a valid and existing estate, right, interest or equity in land.

Name 1482241 ONTARIO LIMITED

Address for Service 240 Duncan Mills Road
Suite 800
Toronto, Ontario
M3B 3S6

I, Alain Checroune, President, have the authority to bind the corporation.

This document is not authorized under Power of Attorney by this party.

Party To(s) *Capacity* *Share*

Name JANODEE INVESTMENTS LTD.

Address for Service c/o 2365 Finch Avenue West
Suite 202
Toronto, Ontario
M9M 2W8

Name MEADOWSHIRE INVESTMENTS LTD.

Address for Service c/o 2365 Finch Avenue West
Suite 202
Toronto, Ontario
M9M 2W8

Statements

The applicant applies for the entry of a notice of general assignment of rents.

This notice may be deleted by the Land Registrar when the registered instrument, AT4349221 registered on 2016/09/21 to which this notice relates is deleted

Schedule: See Schedules

This document relates to registration no.(s)CHARGE 1

The registration of this document is not prohibited by registration AT2418963 registered on 2010/06/21 .

Signed By

[illegible] 202-2365 Finch Ave W acting for Signed 2016 09 21

Signed By

Harvey Samuel Margel	202-2365 Finch Ave. W. Toronto M9M2W8	acting for Party To(s)	Signed	2016 09 21

Tel 416-745-9933

Fax 4167459290

I have the authority to sign and register the document on behalf of all parties to the document.

Submitted By

HARVEY S MARGEL LAW OFFICE	202-2365 Finch Ave. W. Toronto M9M2W8	2016 09 21

Tel 416-745-9933

Fax 4167459290

Fees/Taxes/Payment

Statutory Registration Fee	$62.85
Total Paid	$62.85

File Number

Applicant Client File Number : 16-1129 (CHECROUNE

ASSIGNMENT OF RENTS

THIS INDENTURE made on the 21st day of September, 2016.

B E T W E E N :

1482241 Ontario Limited

hereinafter called the "Mortgagor",

OF THE FIRST PART

- and -

Janodee Investments Ltd. and Meadowshire Investments Ltd.

hereinafter collectively called the "Mortgagee",

OF THE SECOND PART

WHEREAS

(1) The Mortgagee is advancing to the Mortgagor the sum of ONE MILLION TWO HUNDRED AND FORTY THOUSAND DOLLARS ($1,240,000.00) upon the security of a Charge/Mortgage ("Mortgage"), as set out on the registration page to which this agreement is a schedule, upon the property as known as 240 Duncan Mills Drive, Toronto, Ontario and registered in the Land Registry Office for the Land Registry Office for the Land Registry Division of Toronto, No. 80, the Instrument Number of which is set forth on the registration pages of the registered document to which this Schedule is attached, and made by the Mortgagor in favour of the Mortgagee on the security of the lands and premises owned by the Mortgagor as set out on the registration pages of the registered document to which this Schedule is attached, which lands and all buildings at any time thereon during the existence of the Mortgage are herein referred to as the Mortgaged Premises;

(2) As a condition precedent of making the aforesaid mortgage loan, the Mortgagee has required an assignment to the Mortgagee, its heirs, executors, administrators, successors and assigns as additional security for the observance and performance by the Mortgagor of its covenants and agreements contained in the Mortgage, of rents and other monies due or accruing due or at any time hereafter to become due and payable and all of the other rights of the Mortgagor under:

(a) all present and future leases, agreements to lease and subleases of any part of the Mortgaged Premises and all tenancies, present or future licences affording any person a right to use or occupy any part of the Mortgaged Premises, in such case for the time being in effect, and all revisions, alterations, modifications, amendments, changes, extensions, renewals, replacements, or substitutions thereof or therefore which are now or may hereafter be affected or entered into (hereinafter collectively referred to as the "Leases");

(b) all present and future (i) guarantees of any or all of the obligations of any tenant (which term means any person who now hereafter is a party to a Lease for the time being in effect and has any right of use or occupancy of all or any part of the Mortgaged Premises under a Lease)under any Lease; (ii) indemnities in respect of all or any of the obligations of any Tenant under any Lease and (iii) arrangements with a similar person for any other person to take over all or part of balance of the term of any tenant under any Lease, and all revisions, alterations, modifications, amendments, changes, extensions, renewals, replacements and substitutions thereof or therefore which may hereafter be effected or entered into (hereinafter collectively referred to as the "Guarantee of Leases").

NOW THEREFORE this Indenture witnesseth that in consideration of the premises and the sum of Two ($2.00) DOLLARS now paid by the Mortgagee to the Mortgagor (the receipt and sufficiency whereof is hereby acknowledged);-

1. Subject to paragraph 2 hereof, the Mortgagor hereby assigns, transfers and sets over unto the Mortgagee, its heirs, executors, administrators, successors and assigns, (a) The Leases and Guarantees of Leases; and (b) all rents and other monies now due or accruing due or at any time hereafter to become due and payable under each and every Lease and Guarantee of Leases, all other obligations of the other parties thereto and all benefits, advantages and powers to be derived therefrom; with full power and authority in each case to demand, sue for, recover, receive and give receipts for all rents and other moneys payable thereunder; to have and to hold unto the Mortgagee until all moneys

owing and all obligations of the Mortgagor in respect of the Mortgage have been fully paid and fulfilled and after the Mortgage has been fully released and discharged this Agreement shall be void and of no further effect.

2. It is the intention of the parties hereto that this instrument shall be a present assignment provided that the Mortgagee shall not exercise any rights or remedies herein given to it until the Mortgagor is in default under any of the terms and provisions of the Mortgage or of this assignment. Until such default, the Mortgagor shall be permitted to collect, take, retain and use or permit the collection, taking, retention and use of the rents and revenues from the Mortgaged Premises. Default under this Indenture shall constitute default under the Mortgage.

3. (a) At any time, whether or not the Mortgagor is in default hereunder and whether or not the Mortgagee has determined to enforce the security hereof, upon request by the Mortgagee, the Mortgagor will promptly deliver, to the extent that the same have not been previously delivered, to the Mortgagee a copy of any or all of the Leases and any Guarantees of Leases;

(b) The Mortgagor covenants and agrees that all the obligations of the Lessor or Licensor under each of the Leases will be observed and performed except to the extent that such observance or performance may be waived by the obligees;

(c) The Mortgagor covenants and agrees that it will, from time to time, on request by the Mortgagee, execute or join in the execution of and deliver to the Mortgagee any one or more the following which shall be subject to this Indenture:

(i) A Specific Assignment of all of the rights, title and interest of the Mortgagor as Lessor or Licensor in, to, under, or in respect of all rents and other moneys now due and payable under any one or more of the Leases and any Guarantees of Leases;

(ii) A Specific Assignment of all the right, title and interest of the Mortgagors as Lessor or Licensor in, to, under or in respect of any of the Leases, all rent or other moneys now due and payable or hereafter to become due and payable thereunder, all other obligations of the other parties thereunder and all the benefits, advantages and powers to be derived therefrom and each and every Guarantee of Lease, with full power and authority to demand, sue for, recover, receive and give receipts for all rents and other moneys payable thereunder and otherwise to enforce the rights of the Mortgagor thereunder in the name of the Mortgagor.

4. Whenever the Mortgagor is in default under any of the terms or provisions of the Mortgage, the Mortgagee shall be entitled to enter into possession of the Mortgaged premises and collect the rents and revenues thereof, distrain in the name of the Mortgagor for the same and appoint its agents to manage the Mortgaged Premises and pay such agents reasonable charges for their services and charge the same to the account of Mortgagor; and that any agents so appointed by the Mortgagee shall have the authority and power:-

(a) to make any Lease or Leases of the Mortgaged premises or any part of thereof at such rent and on such terms as the Mortgagee in its discretion may consider proper and to cancel or surrender existing Leases, to alter or amend the terms of existing Leases, to renew existing Leases, or to make concessions to Tenants as the Mortgagee in its discretion may consider proper;

(b) to manage generally the Mortgaged Premises to the same extent as the Mortgagor could do, and

(i) to collect the rents and revenues and give good and sufficient receipts and discharges therefore, and in their discretion, distrain in the name of the Mortgagor for such rents and revenues;

(ii) to pay all insurance premiums, taxes, necessary repairs, renovations and upkeep, carrying charges, rent or lease commissions, salary of any janitor or caretaker, cost of heating, and any and all payments due on the Mortgage to the Mortgagee;

(iii) to accumulate the rents and revenues in such agent's hands in a reasonable amount to make provision for maturing payment of interest and principal on the Mortgage, and for the payments of taxes, insurance, heating, repairs, renovations and upkeep, costs and expenses of collection of rents and revenues, and other expenses or carrying charges connected with the Mortgaged Premises.

5. Where any discretionary powers hereunder are vested in the Mortgagee or its agents, the same may be exercised by any officer, investment manager or manager of the Mortgagee or its appointed agents, as the case may be.

6. Any entry upon the Mortgaged Premises under the terms of this indenture shall not constitute the Mortgagee a "Mortgagee in Possession" in contemplation of law and that the Mortgagee shall not become liable to account to the Mortgagor or credit the Mortgagor with any moneys on account of the Mortgage except those which shall come into its hands or into the hands of any agents appointed by its pursuant hereto; the Mortgagee shall not be liable for failure to collect rents or revenues and shall be under no obligation to take any action or proceeding or exercise any remedy for the collection or recovery of the said rents and revenues, or any part thereof, and then, subject to all deductions and payments made out of the rents and revenues received from the Mortgaged Premises as herein provided.

7. That whenever any and all default under the Mortgage has been cured, and all taxes and insurance on the Mortgaged Premises have been paid to date, and all moneys which the Mortgagee or its agent may have expended or become liable for in connection with the Mortgaged Premises have been fully repaid, then the Mortgagee, within one month after demand in writing, shall redeliver possession of the Mortgaged Premises to the Mortgagor and the Mortgagor shall resume collection of the rents or revenues on the Mortgaged Premises until further default has occurred as aforesaid, and shall thereupon also be entitled to receive any remaining balance of the rents and revenues realized from the Mortgaged Premises.

8. That the Mortgagor warrants that with the exception of the previous mortgage, it has not , and covenants that it shall not, at any time during the existence of the Mortgage, assign, pledge or hypothecate any Lease or Leases now or hereafter existing in respect of the Mortgaged Premises or the rents and revenues due or to become due thereunder, or any part thereof, other than to the Mortgagee; and the Mortgagor shall not, at any time during the existence of the Mortgage, commit, either by act or omission, any breach of covenant on the part of the Lessor under any of the Leases to be observed and performed, terminate, accept a surrender of, or amend in any manner, any Lease or Leases now or hereafter existing in respect of the Mortgaged Premises, or receive or permit the payment of any rents or revenues by anticipation in respect thereof, except as provided in the Leases, without the consent in writing of the Mortgagee, which consent shall not be arbitrarily or unreasonably withheld.

9. That this assignment is taken by way of additional security only and neither the taking of this assignment nor anything done in pursuance hereof shall make the Mortgagee liable in any way, as landlord or otherwise, for the performance or any covenants, obligations or liabilities under the Leases or any of them.

10. The Mortgagor covenants and agrees with the Mortgagee:

(a) that the Leases shall remain in full force and effect irrespective of any merger of the interest of the Lessor and Lessee thereunder; and that it will not transfer or convey the fee title to the said premises to any of the Lessees without requiring such Lessees, in writing, to assume and agree to pay the debt secured hereby in accordance with the Mortgage;

(b) that if the Leases provide for the abatement of rent during the repair of the demised premises by reason of fire or other casualty, the Mortgagor shall furnish rental insurance to the Mortgagee, the policies to be in an amount and form and written by such insurance companies as shall be satisfactory to the Mortgagee;

(c) not to terminate, modify or amend said Leases or any of the terms thereof, or grant any concessions in connection therewith, either orally or in writing, or to accept a surrender thereof without the written consent of the Mortgagee and that any attempted termination, modification or amendments of said Leases without such written consent shall be null and void;

(d) not to collect any of the rent, income and profits arising or accruing under said Leases in advance of the time when the same become due under the terms thereof;

(e) not to discount any future accruing rents;

(f) not to execute any other assignments of said Leases or any interest therein or any of the rents thereunder;

(g) to perform all of the Mortgagor's covenants and agreements as Lessor under the said Leases and not to suffer or permit to occur any release of liability of the Lessees, or any rights to the Lessees to withhold payment of rent; and to give prompt notices to the Mortgagee of any notice of default on the part of the Mortgagor with respect to the said Leases received from the Lessees thereunder, and to furnish the Mortgagee with complete copies of the said notices;

(h) that all offers to lease and Leases shall be bona fide, the terms of which are to be approved by the Mortgagee prior to execution, and shall be at rental rates and terms consistent with comparable space in the area of the lands and premises described herein;

(i) if so requested by the Mortgagee, to enforce the said Leases and all remedies available to the Mortgagor against the Lessees, in case of default under the said Leases by the Lessee;

(j) that none of the rights or remedies of the Mortgagee under the mortgage shall be delayed or in any way prejudiced by this assignment;

(k) that notwithstanding any variation of the terms of the mortgage or any extension of time for payment thereunder, the Leases and benefits hereby assigned shall continue as additional security in accordance with the terms hereof;

(l) Not to alter, modify or change the terms of any guarantees without the prior written consent of the mortgagee;

(m) not to consent to any assignment of the said Leases, or any subletting thereunder, whether or not in accordance with their terms, without the prior written consent of the Mortgagee;

(n) not to request, consent to, agree to or accept subordination of the said Leases to any mortgage or other encumbrance now or hereafter affecting the premises;

(o) not to exercise any right of election, whether specifically set forth in any such Leases or otherwise which would in any way diminish the tenant's liability or have the effect of shortening the stated term of the Lease; and

(p) to pay the costs, charges and expenses of and incidental to the taking, preparation and filing of this Agreement or any notice hereof which may be required and of every renewal related thereto.

11. Upon any vesting of title to the properties secured under the Mortgage in the Mortgagee or other party by Court Order, operation of law, or otherwise and upon delivery of a deed or deeds pursuant to the Mortgagee's exercise of remedies under the Mortgage, all right, title and interest of the Mortgagor in and to the Lease shall be virtue of this instrument, thereupon vest in and become the absolute property of the party vested with such title or the grantee or grantees in such deed or deeds without any further act or assignment by the Mortgagor. The Mortgagor hereby irrevocably appoints the Mortgagee and its successors and assigns, as its agent and attorney in fact, to execute all instruments of assignment or further assurances in favour of such party vested with title or the grantee or grantees.

12. In the event that the Chargee collects any payments of rent due to the Chargor's default, the Chargee shall be entitled to receive from such rent a management fee of ten percent (10%) of all the gross receipts from such rent, it being understood for greater certainty that the Chargor and Chargee have agreed that in the circumstances a management fee equal to ten percent (10%) of gross receipts received by the Chargee in the collection of such rents is a just and equitable fee having regard to the circumstances.

13. In the exercise of the powers herein granted to the Mortgagee, no liability shall be asserted or enforced against the Mortgagee, all such liability being hereby expressly waived and released by the Mortgagor. The Mortgagee shall not be obligated to perform or discharge any obligation, duty or

liability under the Lease, or under or by reason of this assignment, and the Mortgagor shall and does hereby agree to indemnify the Mortgagee for, and to save and hold it harmless of and form, any and all liability, loss or damage which it may or might incur under the lease of under or by reason of this assignment and of and from any and all claims and demands whatsoever which may be asserted against it by reason of any obligations or undertakings on its part to perform or discharge any of the terms, covenants or agreements contained in the Lease. Should the Mortgagee incur any such liability, loss or damage under the Lease or under or by reason of this assignment, or in the defence of any such claims or demands, the amount thereof, including costs, expenses and reasonable attorney's fees, shall be secured hereby, and the Mortgagor shall reimburse the Mortgagee therefore immediately upon demand.

14. This assignment is intended to be additional to and not in substitution for or in derogation of any assignment of rents contained in the mortgage or in any other document.

15. That the rights or remedies given to the Mortgagee hereunder shall be cumulative of and not substituted or any rights or remedies to which the Mortgagee may be entitled under the Mortgage or at Law.

16. That the terms and conditions hereof shall be binding upon and endure to the benefit of the heirs, executors, administrators, successors and assigns of the parties hereof as the case may be, and that all covenants and liabilities of the Mortgagor shall be joint and several.

17. A discharge of the Mortgage in favour of the Mortgagee shall operate as a reassignment of this Assignment of Rentals, and upon the happening of such event, the assignment herein shall automatically be void and of no further force or effect, and the Land Registrar is hereby authorized and directed to delete reference to this assignment agreement from title to the Mortgaged Premises.

18. PROVIDED that it is hereby agreed that in construing this Indenture the words "Mortgagor" or "Mortgagors" or "Mortgagee" or "Mortgagees", and "he", "she", "they" or "it", "his", "her", "their", or "its", respectively, as the number and gender of the parties referred to in each case require, and the number of the verb agreeing therewith shall be construed as agreeing with the said word or pronoun so substituted. And that all rights, advantages, privileges, immunities, power and things hereby secured to the Mortgagor or Mortgagors, Mortgagee or Mortgagees, shall be equally secured to and exercisable by his, her, their or its heirs, executors, administrators and assigns, or successors and assigns, as the case may be. And that all covenants, liabilities and obligations entered into or imposed hereunder upon the Mortgagor or Mortgagors, Mortgagee or Mortgagees, shall be equally binding upon his, her, their or its heirs, executors, administrators and assigns, or successors and assigns, as the case may be, and that all such covenants and liabilities and obligations shall be joint and several.

19. In the event of any conflict between the terms contained in this schedule and those contained in the Charge or the Standard Charge Terms, the prevailing document shall be at the option of the Mortgagee.

Dated as at the dated first written above

1482241 Ontario Limited

Per: _____
Name: Alain Chevroune
Office: president
I have the authority to bind the Corporation

APPENDIX E

Blaney McMurtry LLP

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March 20, 2018

VIA EMAIL

Ms. Miranda Spence
Aird & Berlis LLP
181 Bay Street, Suite 1800
Toronto, ON M5J 2T9

Dear Ms. Spence,

Re: In the Matter of the Proposal of 1482241 Ontario Limited ("148")

Further to our conversation in court, it is the company's position that the Proposal Trustee (the "**Trustee**") is obliged to advise the creditors and the court as to the appropriate amounts payable to each of the First and Second Mortgagees and Mr. Keown, from the sale proceeds which are expected to arise from the pending sale of the property (absent an agreement between the Trustee, the company and the respective lender and Mr. Keown (in the case of the second mortgage). For clarity, the following sets out the company's issues with these potential payouts.

First Mortgagee (the "First Mortgagee")

You refer to an opinion you have given with respect to this mortgage in your report. Can you please provide that opinion for our review?

We refer to the payout statement generated by the First Mortgagee and the related Loan Agreement (which were in your report). We wish to draw your attention to the interest penalty provision in the payout statement, which totals approximately $206,000. The company objects to the payment of this amount. The company is of the view that this penalty is both inappropriate and unenforceable. In this regard we would ask the Trustee to consider the following points in its analysis:

1) Wording of the Loan Agreement: The Loan Agreement contemplates the payment of a penalty of three (3) months of interest if payment is not made upon the maturity of the loan. However, you will note that the language of this penalty provision (which is in the second paragraph under the heading "Additional Fees" in the Loan Agreement) does not use the defined term "Maturity Date". There is a defined capitalized term "Maturity Date" elsewhere in the agreement and it refers to December 1, 2017. However, you will note that in the penalty paragraph, the term is not capitalized. You will also note that the penalty is not automatic, but may be elected by the lender at their discretion. We believe that the effect of these two provisions is that the lender can elect to change the maturity date to any date (which is why no capitalized term was used here) and that the lender

recognized that it would not, in all cases, be entitled to a fee depending on the terms related to the maturity of the loan.

We believe in the context of this matter, the lender clearly agreed to extend the maturity date in its agreement and to participate in this process and to continue to accept interest rate payments after December 1st. We note that the lender did not highlight its requirement to be paid this penalty amount at any point in this process, including when the company declined to payout the mortgage by December 1st and when the parties extended the sale process (thereby delaying the date upon which the mortgage would be repaid). Rather the lender merely required that they continue to be paid their interest during the period of the process, which was done. This constitutes an explicit extension of the maturity date under the loan agreement and as such, the borrower did not, in fact, fail to pay the loan by the maturity date and therefore no penalty is due.

2) Penalty Already Paid: In the event that the Trustee does not accept the argument in point one that the maturity date has not occurred and no penalty is due, the Trustee should note that the lender has already received the three month interest penalty. The lender has received 3 months of interest since December 1st.

3) Case Law: We leave it to the Trustee to conduct its own research, but we would ask the Trustee to consider the case law as it relates to "make whole payments" and the concept that while, in certain circumstances a lender is entitled to an additional payment in the event the borrower repays the loan at an inconvenient time (in this case after the agreed to date of December 1st) the courts have considered such payments in the context of the matter and the intention of the parties in deciding whether or not such a payment is appropriate, given its impact on other stakeholders. We attach a paper recently given at this year's ARIL conference which addresses this concept.

We have no other comment on the proposed payment to the First Mortgagee.

Second Mortgagee (the "Second Mortgagee")

You refer to an opinion you have given with respect to this mortgage in your report. Can you please provide that opinion for our review?

As per the Trustee's report, we note that the second mortgage appears to have been registered without consideration to the provisions of the Whitaker Order identified in your report. We also note, as per your report, that the Whitaker Order was not registered on title to the property, although a CPL was. It may be, therefore, that the lender had notice of this order at the time of their dealings related to lending these funds. The company has not decided whether or not it will take a position on this issue. However, to the extent it is not already resolved in the security opinion of the Trustee which we have asked you to provide, we would ask the Trustee to advise as to whether or not, in its opinion, the Whitaker Order renders the Second Mortgage unsecured and or unenforceable.

As highlighted in our materials served last week, there is a dispute, known to the Second Mortgagee, with respect to the interest charged by the Second Mortgagee. We see that there were two registered documents included in the Trustee's report which related to this document. One indicates a mortgage of 13% and one indicates a mortgage of 18% in certain circumstances. Our client has advised me that it has no knowledge of the document which allegedly creates the 18% obligation. We would ask the Trustee to investigate the circumstances under which the mortgage was registered. In particular, we would recommend that you

communicate with the counsel who registered these instruments. We would also ask the trustee to confirm the flow of funds from the lender to counsel and to the borrower.

We also do not have the itemized payout statement for the Second Mortgagee. Please send that to us at your convenience. We reserve the right to make further comments once we have reviewed that statement. We will get those comments to you quickly once we receive the statement.

Payment Larry Keown

We await the Trustee's opinion on whether or not the registration by Mr. Keown ranks as a secured claim in these proceedings.

We are available to discuss any or all of the above at your convenience.

Yours truly,
Blaney McMurtry LLP

David Ullmann
DU/ab
Encl.
c.c. Alain Checroune
Craig Mills

The Enforceability of Make-Whole Clauses in Insolvency Proceedings

*Wael Rostom and Kourtney Rylands**

I. INTRODUCTION

When a lender makes an interest-bearing loan to a borrower for a fixed term, the contract may provide that the borrower cannot repay the loan before the stated maturity date. This is often referred to as a "no call" provision. This provision protects the lender's expected rate of return on its investment over the term of the loan by ensuring that the contractual interest payments will be paid to the lender over the term. If a lender receives repayment of the loan early, it may not be able to reinvest its funds in a new investment that achieves the same rate of return over the same period of time and with the same level of risk; thus the lender's desire to include a no-call feature in the loan agreement.

Borrowers, however, may wish to bargain for freedom of choice to repay the loan prior to its stated maturity date to take advantage of cheaper sources of capital that may become available in the future. For example, the borrow may wish to take advantage of a future decrease in market interest rates or an improvement to its risk profile and credit rating that may allow it to borrow funds and refinance the existing loan at a lower risk premium and interest rate.

In exchange for a borrower's request to repay the loan early, a lender may bargain for a provision in the fixed term loan agreement or note indenture that compensates the lender for the reinvestment risk associated with an early return of its capital. This protection should be designed to compensate the lender for the reinvestment risk it will take from early repayment or to put the lender in approximately the same place it would have been had the loan not been prepaid prior to the maturity date. There are different types of provisions intended to mitigate lenders' losses, including make-whole clauses, prepayment premiums and redemption premiums. For the purposes of this paper, we will refer to "Early Repayment Clauses" as an umbrella term for provisions in debt instruments that compensate lenders if a debt instrument is repaid before its stated maturity date.

II. OVERVIEW

This paper will explore various types of Early Repayment Clauses to shed light on some of the factors that may influence interpretation and application of Early Repayment Clauses in insolvency proceedings. These factors include:

- whether an Early Repayment Clause is only enforceable if a borrower voluntarily elects to prepay all or some its debt before the original maturity date or whether a court will enforce an Early Repayment Clause when the borrower is involuntarily

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forced to repay the debt so long as the language relating to the applicable triggering event of the Early Repayment Clause is clear and unambiguous;

- whether a payment made after the acceleration of the maturity date pursuant to an insolvency filing is still considered a "prepayment" that would trigger the requirement to pay a prepayment premium under an Early Repayment Clause;

- whether courts might interpret a "prepayment premium" and a "redemption premium" differently;

- whether a claim for payment pursuant to an Early Repayment Clause constitutes a claim for post-filing or un-matured interest, which may conflict with the interest stops rule that generally applies to unsecured or undersecured claims in insolvency proceedings or is it a claim relating to liquidated damages;

- whether the amount of the prepayment premium claimed pursuant to an Early Repayment Clause is a reasonable estimate of liquidated damages or is a penalty; and

- whether a prepayment premium paid pursuant to an Early Repayment Clause will, with all other interest and fees, constitute a criminal rate of interest and be unenforceable.

We will also explore drafting considerations for lenders and their counsel when including an Early Repayment Clause in future note indentures or fixed term loan agreements.

III. TYPES OF EARLY REPAYMENT CLAUSES

There are various ways to draft Early Repayment Clauses in an indenture or a fixed term loan agreement to compensate a lender for early repayment of debt. As discussed above, these provisions are often referred to as make-whole clauses in bond indentures, but can also be referred to as prepayment fees or premiums, or redemption fees or premiums. These terms are often used interchangeably but there is little authority to distinguish each provision. Thus, the definitions of these terms are instructive.

A "prepayment premium" may be based on a fixed fee or a formula to approximate the lender's damages if the Early Repayment Clause is triggered.[1] This latter formula is commonly referred to as a make-whole clause or a yield maintenance formula.[2] The Farlex Legal Dictionary defines a make-whole clause as, "a provision in some bond agreements allowing the issuer to redeem the bond before maturity if it gives bondholders a lump-sum payment".[3] The term "redemption premium" is substantively equivalent to a prepayment premium but is more often

[1] Scott K. Charles & Emil A. Kleinhaus, "Prepayment Clauses in Bankruptcy" (2007) 15:2 Am Bankr Inst L Rev 537.
[2] *Ibid.*
[3] *The Farlex Legal Dictionary* (online), sub *verbo* "make-whole clause." Note the Farlex Legal Dictionary is commonly used by the American Bankruptcy Institute.

included in redeemable notes or bonds. A "prepayment penalty" is also described as "a fee that a lender may assess if a borrower repays a loan before the scheduled maturity."[4]

It is instructive to provide examples of the most common types of prepayment premiums. A typical fixed prepayment premium or redemption premium is often found in note indentures. For example, a five year note indenture may provide for a no call period in year 1 and a redemption premium of 1.05% in year 2, 1.03% in year 3, 1.02% in year 4 and no premium in year 5.

On the other hand, make-whole clauses and some prepayment premiums can be constructed as yield maintenance protections. The calculation of such a yield maintenance protection might be determined by obtaining the sum of: (a) the principal amount of the bond or loan; plus (b) accrued and unpaid interest to the date the bond or loan is repaid; and (c) a make-whole premium based on the net present value of the interest payments remaining to the end of the stated maturity date at the time of the prepayment determined using a discount rate that is typically tied to a risk free invest such as government issued treasury bills.

IV. EARLY REPAYMENT CLAUSES AND ACCELERATION OF DEBT INSTRUMENTS

1. Contract Interpretation

Outside of insolvency and bankruptcy proceedings, courts should generally uphold the sanctity of contracts and enforce the Early Repayment Clauses in accordance with their terms. Accordingly, as a starting point to maximize the likelihood that an Early Redemption Clause will be upheld by a court in insolvency proceedings, the contract must clearly capture the intention of the parties as it relates to the circumstances under which the Early Repayment Clause will be triggered.

The enforceability of an Early Repayment Clause after acceleration was explored outside of the insolvency context in a recent British Columbia Court of Appeal case, *Maxam Opportunities Fund Limited Partnership v Greenscape Capital Group Inc*[5] In *Maxam*, a lender provided loans to a borrower for up to $7 million. The applicable credit agreement contained a provision that would allow the lender to accelerate the entire principal of the loan upon an event of default. The acceleration clause in the credit agreement read as follows:

> ***10.02(1) Acceleration and Enforcement***
>
> If any Event of Default occurs, the Lender will have no further obligation hereunder, and the outstanding principal amount of the Credit Facility and all other Obligations will, at the option of the Lender, become immediately due and payable with interest thereon, at the rate determined as herein provided, to the date of actual payment thereof, all without notice, presentment, protest, demand, notice of dishonour or any other demand or notice whatsoever, all of which are hereby expressly waived by each Restricted Party and each

[4] *Ibid,* sub *verbo* "prepayment penalty".
[5] *Maxam Opportunities Fund Limited Partnership v Greenscape Capital Group Inc*, 2013 BCCA 460 [*Maxam*].

> Limited Guarantor; provided, if any Event of Default described in Section 10.01(i) or (j) [bankruptcy or insolvency] with respect to the Borrower shall occur, the outstanding principal amount of the Credit Facility and all other Obligations shall automatically be and become immediately due and payable. In such event but subject to the terms of the Letter Agreement, the Lender may, in its discretion, exercise any right or recourse and proceed by any action, suit, remedy or proceeding against any Restricted Party or Limited Guarantor authorized or permitted by law for the recovery of all the Obligations to the Lender and proceed to exercise any and all rights hereunder and under the Security.[6]

The credit agreement in *Maxam* also specifically provided for voluntary repayment of the debt as follows:

> **5.*02 Voluntary Prepayments and Reductions***
>
> If the Lender has received a Repayment Notice from the Borrower not less than five Business Days prior to a proposed prepayment date, the Borrower may from time to time **prepay** all or any part of the principal outstanding under the Credit Facility, together with all accrued and unpaid interest thereon and payment of the **Prepayment Fee** [emphasis added].[7]

The "Pre-Payment Fee" was defined as:

> an amount equal to the lesser of:
>
> > (i) the amount of interest that the Borrower would otherwise be obligated to pay hereunder **from the date of such prepayment based on the principal outstanding** (and which will account for a reduction in the principal outstanding based upon the assumed prepayment) **to the Maturity Date**; and
> >
> > (ii) twenty-four months' interest at the Applicable Margin [16% per annum] on the principal outstanding [emphasis in original].

The borrower's revenues declined and it was unable to make the payments as required by the credit agreement. The lender granted several payment deferrals but the borrower later defaulted on a debt-service coverage ratio, which was an event of default under the credit agreement. As a result of the borrower's default, the lender "elected to accelerate the loan, including 'the full amount of the principal, interest, fees and other monies outstanding under the credit agreement.'"[8] The lender claimed the principal of $6,500,000, various overdue interest payments and royalty fees amounting to over $1,500,000, per diem interest at a rate of $3,890.21 per day, and a prepayment fee of $2,265,913.12.[9] A chambers judge ordered that the lender's entitlement to the prepayment fee be tried in a summary trial. Both parties appealed and the British Columbia Court of Appeal agreed to decide the issue without a summary trial.

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[6] *Ibid.*
[7] *Ibid* at para 5.
[8] *Ibid* at para 7.
[9] *Ibid.*

On appeal, the borrower took the position that the term "prepayment" referred to a payment made *prior to the maturity* of a loan and *at the borrower's election*, as indicated by inclusion of "voluntary" in Article 5.02 above.[10] In contrast, the lender took the position that a prepayment included any:

> act resulting in a receipt of the principal in advance of the Maturity Date [i.e., January 18, 2016] (for example resulting in enforcement of the security, a *voluntary* refinancing after acceleration or, redemption of the security), and not merely a voluntary prepayment made while the loan is in good standing.[11]

Counsel and the Court could not find any Canadian authority on the definition of "prepayment." The Court therefore adopted American authorities for the proposition that "payment after acceleration is not prepayment."[12] The Court ultimately found that the ordinary meaning of the term "prepayment" must be used to interpret the meaning of the "Prepayment Fee" in the credit agreement.[13] It held that a commercially reasonable interpretation meant that "prepayment" could not refer to a payment made after the loan was accelerated or otherwise due, unless the credit agreement specifically provides that such a fee is payable upon acceleration.[14] Accordingly, the *Maxam* decision highlights the importance of clear and unambiguous drafting.

The decision in *Maxam* is consistent with the decisions relating to Early Repayment Clauses in Canadian insolvency cases, in which the starting point for an analysis of the enforceability of an Early Repayment Clause is the interpretation of the applicable bond indenture or fixed term loan agreement. For example, in *Re Alliance Credit Corp*, the trustee for a group of noteholders issued a notice of default to a borrower. The trustee proceeded to enforce on its security and claimed amounts owing to it, including the principal, interest, and a premium for the premature redemption of the notes.[15] A receiving order was subsequently granted against the borrower and a dispute arose with respect to the entitlement of the noteholders to the claimed "premium". In examining the trust deed in relation to the notes, the Court found in *obiter* that while the trust deed contemplated the payment of the premium in certain cases, it did not provide that the premium would be payable in all cases. The Court noted that the trust deed did not contain specific language indicating a "premium" would be payable in the case of premature redemption as a result of default.[16]

The principles of contractual interpretation set out in *Maxam* outside of the bankruptcy context also appear to have been applied in the case of *Re Auberge Gray Rocks Ltée*[17], which dealt with a dispute between a lender and a trustee in bankruptcy as to the lender's entitlement to an early repayment penalty. In this case the applicable loan agreement contained both a no-call provision and a provision which allowed the lender to claim its principal, interest and costs upon the bankruptcy of the borrower. After filing an initial proof of claim for principal, interest and costs in the bankruptcy, the lender, relying on the no-call provision in the loan agreement,

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[10] *Ibid* at paras 20-21.
[11] *Ibid.*
[12] *Ibid* at para 46.
[13] *Ibid* at para 49.
[14] *Ibid* at paras 46-49.
[15] *Re Alliance Credit Corp* (1971), 17 CBR (NS) 136 (QB Sup Ct, in Bankr) [*Alliance*].
[16] *Ibid* at paras 15-17.
[17] *Re Auberge Gray Rocks Ltée*, 1995 CarswellQue 224, (1995) 1 CBR (4th) 91, JE 95-833.

amended its claim to add an additional $126,000 as a penalty for the early repayment of the loan. Amongst the equitable considerations discussed by the Québec Court in this case, the Court also found that there was no specific provision in the loan agreement which provided that a penalty was payable in the circumstances.

Finally, the Alberta Court of Queen's Bench in *Re Cage Logistics, Inc*[18] emphasized the importance of clear and unambiguous drafting of Early Repayment Clauses. In *Cage*, the Court addressed the issue of breakage fees in a *CCAA* proceeding. The credit agreement in question provided for a voluntary prepayment clause. After an event of default by the borrower, the lender delivered demands for accelerated repayment and notices of intention to enforce security. The borrower took the position that if a creditor takes steps to compel full payment of a debt or realize on its security to satisfy that debt, it must accept full payment of the whole amount of principal and interest in satisfaction of that debt, even where the debt has not yet matured.

Upon reviewing the credit agreement, the Court found that the language of the agreement did not provide that a breakage fee would be payable if the lender accelerated the loan. The Court held that the provision the lender sought to rely on to enforce payment of the breakage fee was a general clause dealing with the lender's right to be indemnified for its costs upon a default by the borrower. The general clause was not broad enough to compel payment of the breakage fee in all events of prepayment. Moreover, it did not specifically contemplate that the breakage fee would be payable when the prepayment was caused by acceleration by the lender.

The Court distinguished this case from a similar American case which involved an indenture with a specific provision regarding the payment of a prepayment premium upon the acceleration of the debt.[19] In contrast, *Cage* confirms that very specific drafting will be required to ensure Early Repayment Clauses are effective in repayment scenarios involving voluntary prepayment by a borrower or prepayment predicated on a default and subsequent acceleration by a lender.

Cases such as *Maxam* and *Cage* demonstrate that express language in an Early Repayment Clause is required to ensure a prepayment premium is payable by a borrower upon acceleration at the election of the lender, upon automatic acceleration following a corporate bankruptcy or receivership, as well as upon voluntary prepayment by the borrower. These cases should cause both lenders and borrowers to consider more closely the interplay between Early Repayment Clauses in their debt instruments and acceleration and default provisions in same.

2. Automatic Acceleration

Acceleration clauses are often a fundamental component of debt instruments. They become operative when a triggering event occurs and collapses the entire principal of the loan.[20] These clauses are often drafted in such a way that they are automatically triggered by insolvency or a voluntary filing under insolvency laws. They generally state that the agreement will be terminated and all obligations owing will accelerate in the event a borrower commences insolvency proceedings. US courts have generally deemed that an automatic acceleration

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[18] *Re Cage Logistics, Inc* (2002), 50 CBR (4th) 169 (Alta QB), leave to appeal to CA refused, 2003 ABCA 36 [*Cage*].
[19] *In re Hidden Lake Ltd Partnership*, 247 BR 722 (Bankr SD Ohio 2000) [*Hidden Lake*].
[20] David Hahn, "The Roles of Acceleration" (2010) 8:3 DePaul Bus & Com LJ 229.

provision triggered by a bankruptcy operates automatically to mature the loan and thus an Early Repayment Clause framed as a prepayment fee may become unenforceable. Where an automatic acceleration has occurred, US courts have found, there can be no "prepayment".[21] For example, in the US case of *In re Solutia, Inc*[22] the indenture in question contained an acceleration clause that declared that the notes would become immediately due and payable upon the filing of a case for reorganization under any applicable law.[23] The Court ruled that, absent express language to the contrary, the lenders relinquished their entitlement to a make-whole premium for the immediate right to collect the entire debt when the lenders agreed to an automatic acceleration clause in the indenture.[24]

The issue of automatic acceleration was further explored in the recent US case of *In re AMR Corp*[25] which involved the issue of whether a make-whole payment was payable in the event of an automatic acceleration of an indenture. In this case the indenture provided that a voluntary bankruptcy filing by the borrower constituted an event of default which had the result of automatically accelerating the maturity of the notes without any action on the part of the loan trustee. The indenture also specifically provided that the debtors would not be required to pay a make-whole premium in these circumstances. As a result the lender was in the position of having to argue that the acceleration clause in its own indenture was an unenforceable *ipso facto* clause under US law and therefore no acceleration had occurred. While the US Court in this case found that an *ipso facto* clause in an indenture is not *per se* unenforceable under US law dealing with such clauses, this case highlights possible issues that may arise with respect to the interaction of acceleration clauses and Early Repayment Clauses in insolvency. As will be discussed further below, the application of the common law and the provisions in the *Bankruptcy and Insolvency Act (BIA)*[26] and the *Companies' Creditors Arrangement Act (CCAA)*[27] relating to *ipso facto* clauses may make the analysis of the interaction between acceleration clauses and Early Repayment Clauses in insolvency even less straightforward in Canada.

3. *Ipso Facto* Clauses in Canadian Insolvency Proceedings

The 2009 amendments to the *BIA* and the *CCAA* codified, at least in part, some of the general common law prohibitions with respect to *ipso facto* clauses.[28] For example, section 65.1(1) of the *BIA* provides that:

> If a notice of intention or a proposal has been filed in respect of an insolvent person, no person may terminate or amend any agreement, including a security agreement, with the insolvent person, or claim an accelerated payment, or a forfeiture of the term, under any agreement, including a security agreement, with the insolvent person, by reason only that

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[21] *In re Solutia, Inc*, 379 BR 473 at 478 (Bankr SDNY 2007) [*Solutia*].
[22] *Ibid.*
[23] *Ibid.*
[24] *Ibid.*
[25] *In re AMR Corp*, 485 BR 279 (Bankr SDNY 2013) [*AMR Corp*].
[26] *Bankruptcy and Insolvency Act*, RSC 1985, c B-3 [*BIA*].
[27] *Companies' Creditors Arrangement Act*, RSC 1985, c C-36 [*CCAA*].
[28] *An Act to amend the Bankruptcy and Insolvency Act, the Companies' Creditors Arrangement Act, the Wage Earner Protection Program Act and chapter 47 of the Statutes of Canada, 2005*, SC 2007, c 36, amending *CCAA* RSC 1985, c C-36, s 34(1).

(a) the insolvent person is insolvent; or

(b) a notice of intention or a proposal has been filed in respect of the insolvent person.[29]

Similarly, section 34(1) of the *CCAA* reads:

No person may terminate or amend, or claim an accelerated payment or forfeiture of the term under, any agreement, including a security agreement, with a debtor company by reason only that proceedings commenced under this Act or that the company is insolvent [emphasis added].[30]

However, section 34(6) of the *CCAA* provides that a court has the discretion to override the prohibition noted in section 34(1):

On application by a party to an agreement or by a public utility, the court may declare that this section does not apply — or applies only to the extent declared by the court — if the applicant satisfies the court that the operation of this section would likely cause the applicant significant financial hardship.[31]

Similarly, section 65.1(6) of the *BIA* grants the court the power to override the prohibition found in section 65.1(1) of the *BIA*:

The court may, on application by a party to an agreement or by a public utility, declare that subsections (1) to (3) do not apply, or apply only to the extent declared by the court, where the applicant satisfies the court that the operation of those subsections would likely cause it significant financial hardship.[32]

The authors could find no cases considering section 65.1(1) of the *BIA* or section 34(1) of the *CCAA* in the context of acceleration of the maturity of a loan pursuant to an *ipso facto* clause in an indenture or fixed term loan agreement. While the general case law citing these sections of the *BIA* and *CCAA* often relates to issues such as the termination of leases and other forms of executory contracts, these provisions appear to be sufficiently broad to prevent a claim for accelerated payment under an indenture or fixed term loan agreement. If these sections operate with respect to automatic acceleration clauses in debt instruments, disputes may arise as to whether such an acceleration clause has been triggered by insolvency. If there are disputes as to whether the acceleration clause has been triggered, it may be unclear whether an Early Repayment Clause contained in the debt instrument is triggered solely as a result of such insolvency event of default.

The absence of relevant case law regarding to the operation of section 65.1(1) of the *BIA* and section 34(1) of the *CCAA* in connection with loan agreements and note indentures gives rise to some interesting questions. For example, if it is clear that the borrower has no intention of reinstating the debt instrument upon its emergence from restructuring proceedings, why should

[29] *BIA*, *supra* note 26 s 65.1(1).
[30] *CCAA*, *supra* note 27 s 34(1).
[31] *Ibid*, s 34(6).
[32] *BIA*, *supra* note 26 s 65.1(6).

the lender be barred from a claim for accelerated payment of the entire amount of the obligations due under the debt instrument upon the occurrence of an insolvency event of default, including any properly claimable amounts under an Early Repayment Clause, solely as a result of these sections? If the automatic acceleration itself is rendered inoperative by these sections of the *BIA* or *CCAA*, as applicable, will any distribution made on the debt instrument be a voluntary early repayment? If the applicable debt instrument is not well drafted as it relates to the payment of a prepayment premium on an acceleration of the debt could we see instances, such as in the US case discussed above, where a lender actually argues that the debt was not automatically accelerated by operation of these sections and such that there is no "involuntary" requirement for the debtor to repay the debt assisting the lender's arguments around the enforceability of a prepayment premium?

One argument that could be advanced by borrowers is that these provisions prevent *ipso facto* clauses from being used as swords by creditors. These provisions may therefore not prevent *ipso facto* clauses from being used as shields by borrowers if enforcement of such a provision would lead to an unenforceable Early Repayment Clause. It is also interesting to note that these *ipso facto* clauses under the *BIA* and *CCAA* do not apply in the case of a bankruptcy or receivership.

This discussion highlights potential areas of dispute regarding the specific mechanics of Early Repayment Clauses in debt instruments. It also underscores possible differences between restructurings under the *BIA* and the *CCAA* and restructurings under corporate statues such as the *Canada Business Corporations Act (CBCA)*, as a *CBCA* filing [33] may not result in the automatic acceleration of the maturity of the loan if the *ipso facto* clause in the debt instrument is not triggered upon a reorganization under a corporate statute. As a result of the uncertainty with respect to the operation of acceleration clauses in Canadian insolvency proceedings, drafters of debt instruments should direct their attention to the interplay between Early Repayment Clauses and other standard terms in their agreements.

4. Acceleration upon an Intentional Act of the Borrower

We could find no Canadian cases that directly engaged with the concept of a borrower-caused acceleration, whether by intentional default or a voluntary restructuring that causes a note indenture or fixed term loan agreement to be automatically accelerated. A review of US cases with respect to intentional acts by debtors in an effort to avoid the operation of an Early Repayment Clause may therefore be instructive.

In *Sharon Steel Corp v Chase Manhattan Bank, NA*, the Court held that where either a debtor or issuer voluntarily triggers a default and allows a debt to accelerate, they cannot escape the requirement to pay a prepayment premium.[34] This principle was echoed in *Wilmington Savings Fund Society, FSB v Cash America International.* In that case, the Court found the spin-off of a portion of the debtor's assets, which was prohibited by the terms of the debt, constituted

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[33] *Canada Business Corporations Act*, RSC 1985, c C-44 [*CBCA*].

[34] *Sharon Steel Corp v Chase Manhattan Bank, NA*, 691 F 2d 1039 at 1053 (2nd Cir 1982) [*Sharon Steel*]; declined to extend *Bank of New York Trust Co, NA v Franklin Advisers, Inc*, 726 F 3d 269 (2nd Cir 2013).

a voluntary breach of the debt and thus resulted in acceleration of same.[35] Because the breach was intentional, the debtor was deemed liable to pay the premium.[36]

The authors see no reason why Canadian courts should not follow these US cases. That is, Canadian courts should adopt a general rule that a debtor should not be able to get out of its contractual commitment to pay a prepayment premium by voluntarily manufacturing a default that enables it to make a self-serving argument that its early repayment of the loan was "involuntary" and therefore the Early Repayment Clause should be unenforceable.

Given the ongoing uncertainty regarding the treatment of Early Repayment Clauses in debt instruments by Canadian courts, debtors should take care when structuring restructuring proceedings and filings that appear to be designed to permit voluntary prepayment while avoiding prepayment fees

In addition to the open questions that remain with respect to the enforceability of Early Repayment Clauses under acceleration at the election of the lender or acceleration pursuant to an insolvency filing, there remain several issues that may still impact whether an Early Repayment Clause is enforceable in insolvency proceedings.

III. PREPAYMENT PREMIUMS AND REDEMPTION PREMIUMS

Two recent US cases illustrate that US courts continue to be divided on the interpretation and application of Early Repayment Clauses in insolvency proceedings.

The first case is *US Bank NA v Wilmington Savings Fund Society, FSB (In re MPM Silicones, LLC)*.[37] In *Momentive*, the company issued senior notes governed by an indenture that provided that the borrower would be required to pay a make-whole premium if the senior notes were redeemed prior to the maturity date of the notes. The issue in the case is whether the applicable make-whole premium was due upon the automatic acceleration of the notes as a result of the voluntary Chapter 11 filing by the debtors.

The indenture specifically provided that the notes could be redeemed by the debtor from time to time, subject to the redemption prices set out therein, and read:

> except as set forth in the following two paragraphs, the Notes shall not be **redeemable** at the option of MPM prior to October 15, 2005. Thereafter, the Notes shall be **redeemable at the option of MPM**, in whole at any time or in part from time to time [emphasis added]".[38]

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[35] *Wilmington Savings Fund Society, FSB v Cash America International, Inc*, 2016 WL 5092594 at 6 (SDNY) [*Wilmington Savings*].
[36] *Ibid.*
[37] *US Bank NA v Wilmington Savings Fund Society, FSB (In re MPM Silicones, LLC)*, 531 BR 321 (Bankr SDNY 2015) [*Momentive*].
[38] *In re MPM Silicones, LLC, et al, Debtors*, 2014 WL 4436335 at 11 (Bankr SDNY).

The indenture stated that if the borrower voluntarily filed for bankruptcy, the notes would be automatically accelerated and "principal, premium if any, and interest" would become immediately due and payable.[39]

The Court cited a well-established New York precedent that assumes a lender forfeits the right to a redemption premium if the lender accelerates the balance of the loan, which corresponds to the principles set out in Canadian cases such as *Re Auberge Gray Rocks Ltée* and *Cage*, absent clear language to the contrary. The Court in *Momentive* also noted that by accelerating the debt and advancing the maturity of the loan, the lender chose to be paid early, waiving any right it may have had to enforce a no-call provision in the debt instrument. The Bankruptcy Court also noted that a lender forfeits the right to demand a redemption premium if the lender has accelerated the loan unless: (i) the debtor has intentionally defaulted to trigger acceleration; or (ii) the debt documents contain a clear and unambiguous clause that requires the payment of the redemption premium notwithstanding acceleration.

In *Momentive*, the Bankruptcy Court ruled that the automatic acceleration of the maturity of the notes meant that the borrower could not prepay the debt and thus the redemption premium was not payable. The wording in the debt instrument was unclear and ambiguous, thus it was not clear if it provided for payment of the redemption premium notwithstanding the acceleration. Similar to the reasoning used by the Court in *Maxam,* the Court in *Momentive* did not distinguish between "prepayment" and "redemption." Here, redemption of the notes was required *before* maturity for the redemption premium to be payable. The decision of the Bankruptcy Court was affirmed at the District Court level. The noteholders filed an appeal to the Second Circuit on 1 June 2015.[40] The Second Circuit has not yet issued its decision.[41]

Following the District Court's decision in *Momentive*, the Third Circuit Court in *Delaware Trust Co v Energy Future Intermediate Holding Co LLC*[42] came to a conflicting result, which demonstrates that the interpretation of Early Repayment Clauses in insolvency may be evolving. Delineations may be emerging between the various forms of Early Repayment Clauses that were previously applied interchangeably and *Energy Future* may provide further guidance for lenders in effective drafting of Early Repayment Clauses and prove persuasive for Canadian courts considering their application. Specifically, is there a difference between the potential treatment of "prepayment fees" versus "redemption fees"?

In *Energy Future*, the borrow obtained $4 billion in loans at a 10% interest rate by issuing notes secured by a first-priority lien on their assets and due in 2020 (the "**First Lien Notes**"). Energy Future borrowed funds again in 2011 and 2012 by issuing two sets of notes secured by a second-priority lien on its assets (the "**Second Lien Notes**"). Each of the note indentures for the First Lien Notes and Second Lien Notes contained make-whole provisions. The applicable provisions of the first lien indenture read as follows:

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[39] *Momentive, supra* note 33.
[40] *Ibid.*
[41] NTD:To be updated pursuant to status of *Momentive* appeal record during revision process.
[42] *Delaware Trust Co v Energy Future Intermediate Holding Co LLC (In re Energy Future Holdings Corp)*, 842 F 3d 247 (3rd Cir 2016) [*Energy Future*].

> At any time prior to December 1, 2015, the Issuer **may redeem** all or a part of the Notes at a **redemption price** equal to 100% of the principal amount of the Notes redeemed plus the Applicable Premium as of, and accrued and unpaid interest to, the **date of redemption** (the "Redemption Date")...[emphasis added][43]

When market interest rates decreased, the borrower considered refinancing the notes. However, refinancing outside of bankruptcy would have required it to pay the redemption premium. By filing for bankruptcy, the borrower believed it might avoid the premium. Once in bankruptcy, the borrower sought to "take advantage of highly favorable debt market conditions to refinance" beginning with the First Lien Notes.[44] The borrower asked the Bankruptcy Court for leave to borrow funds to pay them off and to offer a settlement to any of its First Lien noteholders who agreed to waive their right to the redemption premium.

The borrower's bankruptcy filing caused the First Lien Notes to mature under the First Lien indenture, subject to the right of their holders to rescind acceleration. Given the amounts at stake, the trustee requested a declaration that it could rescind the First Lien Notes' acceleration without violating the automatic stay.[45] When the Bankruptcy Court did not act, the holders of a majority of the principal amount of the First Lien Notes sent a notice to the borrower rescinding the acceleration of the Notes, contingent on relief from the automatic stay. Two days later, the Bankruptcy Court granted the borrower's motion to refinance but noted that the refinancing would not prejudice the First Lien noteholders' rights in the pending proceeding with respect to the redemption premium.

On June 19, 2014, the borrower paid off the First Lien Notes and refinanced the debt at a much lower interest rate, saving approximately $13 million in interest per month. This necessarily disadvantaged the First Lien noteholders, who were contractually guaranteed 10% interest until the notes' full maturity in 2020. Energy Future did not compensate the loss set by the indenture as the redemption premium would have amounted to approximately $431 million.[46]

At the lower Court, the judge adopted the reasoning from the *Momentive* case and the borrower was not required to pay the redemption premium. On appeal, the Third Circuit Court for the District of Delaware drew an important distinction between a "prepayment premium" and a "redemption premium" in Early Repayment Clauses.

The Third Circuit Court noted that a prepayment premium results from an option to voluntarily prepay the loan and terminate the mortgage *prior to maturity*. Unlike a prepayment, a redemption can occur *at or prior to maturity*. Accordingly, a premium that is tied to a redemption would be unaffected by the acceleration of the debt's maturity. The Court ultimately concluded that "[b]y avoiding the word 'prepayment' and using the term 'redemption,' [the parties] decided that the make-whole would apply without regard to the notes' maturity".[47] In other words, the payment of the redemption premium was tied to whether the repayment was made before a specified redemption date and did not specify that acceleration would nullify the

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[43] *Ibid.*
[44] *Ibid* at 182, 189.
[45] *US Bankruptcy Code*, 11 USC § 362 [*Bankruptcy Code*].
[46] *Energy Future*, *supra* note 38 at 182, 189 (3rd Cir 2016) [*Energy Future*].
[47] *Ibid.*

availability of this premium.[48] The Third Circuit Court came to this conclusion by focusing on whether: (i) the refinancing in the Chapter 11 proceeding was a redemption and (ii) whether the redemption was optional.

The Third Circuit Court held the Chapter 11 refinancing to be a redemption, which was optional in the circumstances notwithstanding that the debt was due and payable as a result of the acceleration. When the borrower voluntarily filed for Chapter 11 protection, it had the option to reinstate the notes under the Bankruptcy Code rather than paying them off immediately. The borrower chose to pay off the notes rather than reinstate. The Court was clear that, in these circumstances, an acceleration clause and a make-whole clause can and should be interpreted together. As the acceleration of the maturity date through the Chapter 11 filing was voluntary, the redemption was also voluntary and therefore payable.

The borrower petitioned the Third Circuit Court for a rehearing or *en banc* review of the panel's decision. Prior to a rehearing, it announced it had reached a settlement in principle with the First Lien noteholders that called for termination of all further appeals and challenges to the claims for the redemption premium, in exchange for certain discounts on the redemption premium owed.

The differing results in *Momentive* and *Energy Future* illustrate that drafting of the debt instrument, the facts and circumstances of the case, and the jurisdiction of the bankruptcy filing may continue to have a significant impact on whether a prepayment premium will be payable in insolvency. *Energy Future* further illustrates a possible growing distinction between the interpretation of a "prepayment premium" and a "redemption premium" in Early Repayment Clauses.

Although Canada has yet to see the same volume of cases on Early Repayment Clauses in insolvency as in the US, and there do not appear to be any cases that distinguish a "prepayment premium" from a "redemption premium", the recent case of *Re Tervita Corp*[49] suggests that this issue may come to the forefront in Canada in the near future. In 2016, Tervita Corporation was servicing a number of debt obligations under a note indenture, a revolving credit facility and a term loan agreement, among others. In May 2016, the company failed to make a USD $18.3 million interest payment on certain of its indebtedness, which ultimately resulted in events of default under the subordinated notes, the revolving credit facility and the term loan facility. These defaults would have given each of Tervita Corporation's creditors the right to accelerate their respective indebtedness. However, the company negotiated waivers from the revolving credit lenders and the term loan lenders and entered into a forbearance agreement with the subordinated noteholders. The forbearance agreement was due to expire on 15 September 2016. On 14 September 2016, Tervita Corporation obtained a preliminary interim order that granted a stay of enforcement on the basis of its intention to proceed with a plan of arrangement.[50]

Tervita Corporation negotiated a transaction term sheet with certain holders of a material portion of the term loan facility debt, the secured notes, the unsecured notes and the subordinated

[48] *Ibid.*
[49] *Re Tervita Corp.*, 2016 ABQB 662 (Alta QB) [*Tervita*].
[50] *Ibid* at paras 10-11.

debt. The company subsequently applied to the Alberta Court of Queen's Bench for approval of an interim order relating to a plan of arrangement pursuant to section 192 of the *CBCA* and sought recognition of the *CBCA* proceedings in the US.[51] The proposed plan of arrangement contemplated that the subordinated noteholders would be paid in full, but would not be entitled to a redemption premium in connection with such payment.

Certain noteholders opposed the non-payment of the redemption premium and challenged the application for an interim order on the grounds that it was not brought in good faith, given the borrower's intention to prevent the noteholders from voting on the plan while also depriving them of a redemption premium under the notes. In its preliminary decision, the Court approved a litigation protocol to address whether the noteholders were entitled to vote on the plan of arrangement and to receive the redemption premium pursuant to the note indenture, which was governed by New York law.

The indenture in *Tervita* provided that the notes could be redeemed prior to the scheduled maturity date. However, it did not contain a specific clause indicating that the redemption premium was payable even after an automatic acceleration of the notes following a bankruptcy filing. Before a court could hear argument on whether the redemption premium was payable, the parties entered into a settlement agreement which provided for a partial payment of the redemption premium in exchange for note-holder support of the plan of arrangement.

The court-approved settlement agreement provided for payment of a portion of the total amount of the redemption premium owed to the noteholders. The settlement in *Tervita* was concluded prior to the release of the Third Circuit decision in *Energy Future*. Although the parties settled the matter, the issues for determination at the court would have included: (i) whether a filing for *CBCA* proceedings constituted an insolvency proceeding and therefore an automatic acceleration of the loan; (ii) whether the *CCAA* proceeding would have constituted a voluntary acceleration on the part of Tervita; (iii) whether the filing of the Chapter 15 proceedings constituted an insolvency proceeding; and (iv) whether the redemption premium was payable under the terms of the indenture.

Given the similarities between the voluntary nature of the restructuring proceeding and the language relating to redemption premiums in the note indentures in both *Energy Future* and *Tervita*, the decision in *Energy Future* may affect future disputes regarding redemption premiums and the interpretation of voluntary prepayment on the part of the debtor, either in a *CBCA* restructuring proceeding or a *CCAA* insolvency proceeding. Given the dearth of case law with respect to Early Repayment Clauses in insolvency, the interpretation of definition of redemption premium by US courts could be persuasive to Canadian courts with carriage of restructurings in Canada, and for Canadian debtors whose debt instruments are governed by US law.

Again, the above noted cases demonstrate that attempting to draft Early Repayment Clauses that will be enforceable in insolvency will need specific language requiring that the prepayment premium is payable upon an involuntary acceleration or other redemption and is not confined to simply a voluntary prepayment. Will the conclusion in the *Energy Future* case give drafters of loan agreements, which typically do not include the "redemption" features found in

[51] *CBCA*, *supra* note 29, s 192.

note or bond indentures, pause regarding the continued use of the terms "prepayment fees" or "prepayment premiums"?

Not only does the definition and interpretation of Early Repayment Clauses in insolvency remain an open issue in Canada, additional factors remain that may affect the enforceability of an Early Repayment Clause in insolvency proceedings. These factors include the nature of the prepayment premium and how such a payment may be calculated and quantified. As will be discussed further below, these open issues may well operate to prevent certain Early Repayment Clauses from being enforceable in the Canadian insolvency context.

IV. IS A CLAIM FOR A PREPAYMENT PREMIUM A CLAIM FOR POST-FILING INTEREST?

In Canada, the interest stops rule states that claims for interest in the liquidation of an insolvent estate can only be provable up to the date of bankruptcy or winding-up of a debtor's estate and not thereafter.[52] Any interest that accrues after the date of bankruptcy or winding-up of a debtor's estate can only be proven if it is determined that there is a surplus in the estate.[53]

The purpose of the interest stops rule stems from the need to ensure fairness for creditors and to achieve an orderly administration of a bankrupt's estate.[54] The rule levels the playing field for all creditors by disallowing only certain groups of creditors from benefitting from interest-bearing debt.[55] Moreover, the rule promotes orderly administration of a debtor's estate by providing a fixed date on which a debtor's liability to a creditor is determined and thus avoids the continual recalculation of a creditor's interest claim.[56] In Canada it is clear that the interest stops rule applies in a bankruptcy setting and likely applies in a *CCAA* proceeding, absent a number of circumstances that would render its application inappropriate.[57]

For the purposes of this paper we do not propose to undertake an exhaustive review of the interest stops rule, as previous publications have done thorough work of reviewing the concepts and case law related to same.[58] However, a review of certain decisions in *Re Nortel Networks Corp*[59] relating to the interest stops rule indicates that the application of the rule to the interpretation of Early Repayment Clauses appears to remain an open one in Canada.

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[52] *BIA*, *supra* note 26, s 122(2) [*BIA*]; *Re Nortel Networks Corp*, 2015 ONCA 681 [*Nortel* (ONCA)]
[53] *Canada (Attorney General) v Confederation Life Insurance Co* (2001), 106 ACWS (3d) 245 (Ont SCJ [Comm List]) [*Confederation Life*].
[54] *Nortel*, *supra* note 48 at para 27.
[55] *Principal Savings & Trust Co v Principal Group Ltd (Trustee of)* (1993), 109 DLR (4th) 390 (Alta CA) at 12-16 [*Principal Savings*]; *Canada (Attorney General) v Confederation Trust Co* (2003), 65 OR (3d) 519 (Ont SCJ) at 525 [*Confederation Trust*].
[56] *Principal Savings*, *supra* note 53 at 12-16; *Confederation Trust*, *supra* note 53 at 525.
[57] Jay A. Carfagnini & Caterina Costa, "Claims for Post-Filing Interest and Prepayment Premiums in a CCAA Proceeding" in Janis P Sarra, ed., *Annual Review of Insolvency Law 2011*, (Toronto: Carswell, 2012) [Claims for Post-Filing Interest].
[58] *Ibid.*
[59] *Re Nortel Networks Corp*, 2014 ONSC 4777 (Ont SCJ [Comm List]), aff'd 2015 ONCA 681, leave to appeal to SCC refused (2016), 42 CBR (6th) 3.

The application of the interest stops rule to *CCAA* proceedings was confirmed in *Nortel*[60] This particular decision involved claims by bondholders of Nortel Networks Corp for, among other things, post-filing interest that would have amounted to an additional payment to bondholders of approximately US $1.6 billion. The monitor and Canadian debtors took the position that post-filing interest is not payable pursuant to the interest stops rule in liquidating *CCAA* proceedings.

In this case Justice Newbould held that the common law interest stops rule applies in both bankruptcy and winding up proceedings, even where the legislation did not contain a specific interest stops provision, as the rule "is a fundamental tenant of insolvency law that all debts shall be paid *pari passu* and all unsecured creditors receive equal treatment".[61] Ultimately, the Court found that whether or not a *CCAA* proceeding was a liquidating proceeding or not, the interest stops rule applied based on the principle that one group of creditors should not obtain an advantage over another, as it would violate the *pari passu* rule of bankruptcy law.[62] Justice Newbould's decision concluded with the following reasoning:

> I hold and declare that holders of the crossover bond claims are not legally entitled to claim or receive any amounts under the relevant indentures above and beyond the outstanding principal debt and pre-petition interest [emphasis added].[63]

The bondholders appealed the decision to the Ontario Court of Appeal.[64] The appeal was partially based on the grounds that Justice Newbould erred by finding that bondholders were not legally entitled to "claim or receive any amounts under the relevant indentures above and beyond the outstanding principal debt and pre-petition interest".[65] The bondholders argued this finding was broader in scope than the issue of whether the interest stops rules applies to *CCAA* proceedings. The bondholders took the position that Justice Newbould's ruling might preclude bondholder claims for make-whole payments, among other things.

The Court of Appeal ruled that the issue Justice Newbould was directed to answer was "whether the holders of the crossover bond claims ... [were] legally entitled ... to claim or receive any amounts under the relevant indentures above and beyond the outstanding principal debt and pre-petition interest".[66] Given the broad nature of the issue put before Justice Newbould and the apparent lack of any argument with respect to make-whole payments at the Court below, the Court of Appeal found that the bondholders could not raise the issue of make-whole payments as a new argument on appeal.[67]

Given the lack of Canadian case law in this area, it remains to be seen whether Early Repayment Clauses constitute a claim for post-filing interest that is halted by the interest stops

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[60] *Ibid.*
[61] *Re Nortel Networks Corp*, 2014 ONSC 4777 (Ont SCJ [Comm List]) at para 12 [*Nortel* (Sup Ct)].
[62] *Ibid* at para 35 [*Nortel* (Sup Ct)].
[63] *Ibid* at para 62 [*Nortel* (Sup Ct)].
[64] *Re Nortel Networks Corp*, 2015 ONCA 681 [*Nortel* (ONCA)].
[65] *Ibid* at para 17.
[66] *Ibid* at para 96.
[67] *Ibid* at paras 97-97.

rule. As was discussed above, the Early Repayment Clause was designed to protect lenders from losses of interest due to the early repayment of debt. An argument can be made that an Early Repayment Clause constitutes an indemnification for interest that a lender would have received had its loan not been repaid which violates the interest stops rule. This may also appeal to courts on equitable grounds, as Early Repayment Clauses may offend Canadian courts on the basis that payments made pursuant to such provisions would give some creditors an advantage over others. It would have certainly been difficult for the courts in *Nortel* to forget that the bondholders were competing with pensioners and former employees for the amounts claimed as post-filing interest in this case.

Recent case law in Canada outside of the bankruptcy context may be persuasive in advancing an argument that certain types of prepayment premiums may not constitute interest.[68] In the recent British Columbia Court of Appeal case of *Sherry v CIBC Mortgages Inc,*[69] the Court was asked to interpret an Early Repayment Clause in a certification of class action proceedings which sought to challenge the enforceability of prepayment clauses in a lender's standard mortgage. The mortgage document in question provided that the prepayment amount should be calculated based on:

> (i) three months' interest on the principal amount that is subject to a Prepayment Penalty; and
>
> (ii) an amount referred to as an interest rate differential ("IRD" or "IRD amount") based on the principal amount that is subject to a Prepayment Penalty, quantified by reference to:
>
> > (a) a Rate specified or described in the Mortgage Contract (the "Contract Rate"), and
> >
> > (b) another Rate (the "Comparison Rate").[70]

Given the discretion afforded to the lender in the calculation of the prepayment premium (defined in this case as an IRD) and the formula's use of interest rates to calculate the Prepayment Penalty, the mortgagor contended that the Prepayment Penalty represented the future interest the lender would have received had the mortgage not been repaid before its original maturity date. The mortgagor further asserted that the Prepayment Penalty represented future interest and as such, the future interest should be discounted based on the present value of such interest. Therefore, the amount of the Prepayment Penalty reflected a miscalculation by the lender. The lender argued that the Early Repayment Clause constituted a contractual fee that the mortgagor was required to pay for the privilege of repaying the mortgage before its original maturity which did not require calculation of the present value of the income over the term of the mortgage.

The lower Court in *Sherry* certified the class action proceedings partially on the basis that a miscalculation of the IRD by the lender disclosed a reasonable cause of action. However, the

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[68] See e.g. *Pfeiffer v Pacific Coast Savings Credit Union,* 2003 BCCA 122 [*Pfeiffer*].
[69] *Sherry v CIBC Mortgages Inc*, 2016 BCCA 240 [*Sherry*].
[70] *Ibid* at para 12.

British Columbia Court of Appeal followed the reasoning from its decision in *Pfeiffer*, where it held that a prepayment clause did not constitute interest but rather compensation required to be paid to the lender for the right to repay a loan early.[71] The Court of Appeal in *Sherry* quoted with approval the following findings from *Pfeiffer*:

> The Prepayment Amount is not interest payable under the mortgage; it is not calculated semi-annually, not in advance, and payable monthly. It is a single amount, calculated and payable at the time the borrower wishes the mortgage to be discharged, obviously and necessarily in advance of the time that interest would be payable under the mortgages if they were not prepaid [emphasis in original].[72]

The Court of Appeal ultimately struck the cause of action based on the miscalculation of the IRD from the class action proceedings and found that:

> None of the prepayment clauses with which we are concerned contemplates the computation of interest that will be foregone over the term of the mortgage or the calculation of the present value of that interest. Rather, the clauses require the calculation of a fee or charge equal to the greater of (i) three months' interest "at your existing annual interest rate on the date of prepayment" on the amount prepaid, and (ii) the IRD...
>
> No rule of law or equity, or even logic, was cited to us that would support the notion that a prepayment clause must in law incorporate the calculation of the present value of interest that would have been payable over the term. *Pfeiffer* illustrates that it need not, and the wording of the clauses in this case shows that CIBC did not, do so. In terms of principle, the prepayment clause does not impose a penalty in the legal sense - i.e., an amount payable on default under the contract. Such clauses are generally unenforceable if they do not represent an estimate of liquidated damages [citations omitted]. When on the other hand the mortgage contract provides for a right of prepayment, there is no breach of contract, but rather the exercise of that right on payment of the stipulated charge.[73]

The reasoning in *Sherry* could support an argument that certain types of Early Repayment Clauses are not interest. This case might be used to argue that if an Early Repayment Clause is characterized as liquidated damages or a fee for a right to early repayment, the interest stops rule should not apply to prevent recovery on a claim for such amounts. Given the open issues with respect to the application of the interest stops rule to Early Repayment Clauses, Canadian courts may turn to American jurisprudence for guidance on this issue.

US courts have been split as to whether Early Repayment Clauses constitute claims for unmatured interest or liquidated damages.[74] The majority of cases have found that Early Repayment Clauses are in the nature of liquidated damages and therefore do not violate the

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[71] *Pfeiffer*, *supra* note 66.
[72] *Sherry*, *supra* note 67 at para 28.
[73] *Ibid* at paras 73-74.
[74] Claims for Post-Filing Interest, *supra* note 55.

interest stops rule in the US *Bankruptcy Code*.[75] This principle was followed in the recent US case, *In Re School Specialty, Inc*,[76] which affirmed the decision in *In re Trico Marine Services, Inc.*[77] The Court in *School Specialty* cited with approval the following reasoning from *Trico*:

> Research reveals that the substantial majority of courts considering this issue have concluded that make-whole or prepayment obligations are in the nature of liquidated damages rather than unmatured interest, whereas courts taking a contrary approach are distinctly in the minority... [T]his court is in agreement with a majority of courts that view a prepayment charge as liquidated damages, not as unmatured interest or an alternative means of paying under the contract... Prepayment amounts, although often computed as being interest that would have been received through the life of a loan, do not constitute unmatured interest because they fully mature pursuant to the provisions of the contract... [citations omitted].[78]

As the make-whole clause in this case was found to not be a claim for unmatured interest, it did not violate the interest stops rule in the Bankruptcy Code.[79] It is interesting to note, however, that the parties in both *Sherry* and *School Specialty* unsuccessfully claimed that the prepayment premium under each debt instrument represented unmatured interest on the basis that the calculation of such a premium used an interest rate based formula. Although the emerging line of American jurisprudence on this topic is informative, it remains to be seen how Canadian courts will interpret the nature of prepayment premiums in insolvency.

V. COULD A PREPAYMENT PREMIUM CONSTITUTE LIQUIDATED DAMAGES OR A PENALTY?

Per Canadian contract law, a contractual provision that seeks to predetermine recoverable damages for possible future breaches may be an unenforceable penalty, a valid predetermination of damages, or liquidated damages, depending on the circumstances and the interpretation of the contact as a whole. Generally, a contractual term will not constitute a penalty unless the payment of an amount is triggered by a breach of contract. The reasonableness of the amount to be paid upon the breach of contract is a key consideration in assessing whether such a clause constitutes a penalty. Typically, only amounts that are unconscionable or extravagant will be unenforceable penalties. In the face of an unenforceable penalty, courts will often grant the damages that have in fact been proven.

Liquidated damages are damages agreed to by the parties as an assessment of compensation for the occurrence of a specific event under a contract. Where the parties have agreed that a sum will become payable upon the happening of a particular event, the amount specified will be regarded as liquidated damages if it is reasonably commensurate with the anticipated loss arising on the happening of that event. Regardless of whether a contractual

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[75] *In re Trico Marine Services, Inc, et al*, 450 BR 474 (Bankr D Del 2011) [*Trico*].
[76] *In re School Specialty, Inc, et al*, 2013 WL 1838513 (Bankr D Del) [*School Specialty*].
[77] *Ibid* citing *In re Trico Marine Services, Inc, et al*, 450 BR 474 at 5 (Bankr D Del 2011).
[78] *Ibid.*
[79] *School Specialty, supra* note 74 at 5.

clause is a penalty or a genuine pre-estimate of liquidated damages, courts will look to the quantum of such an amount to determine the enforceability of the contractual provision.[80]

The applicable Canadian cases dealing with Early Repayment Clauses have looked at such clauses individually when deciding whether they constitute an appropriate estimation of liquidated damages or a penalty.[81] As the Court in *Sherry* noted:

> ...In terms of principle, the prepayment clause does not impose a *penalty* in the legal sense - i.e., an amount payable *on default* under the contract. Such clauses are generally unenforceable if they do not represent an estimate of liquidated damages...When on the other hand the mortgage contract provides for a *right* of prepayment, there is no breach of contract, but rather the exercise of that right on payment of the stipulated charge. [82]

In *Infinite Maintenance Systems*, the Court noted that the onus on demonstrating that a contractual term is an unenforceable penalty rests with the party looking to set aside the provision.[83] In *Maxam*, while not addressing the issue of liquidated damages for want of evidence, the Court noted that determining whether the "acceleration of the loan was a genuine pre-estimate of damages" requires evidence and findings of facts, including perhaps cross-examination.[84]

The Court in *Infinite Maintenance* further stipulated that the most important factor is the quantum specified by the clause.[85] The Court cited *Dunlop Pneumatic Tyre Co v New Garage & Motor Co* for this proposition:

> [A liquidated damage clause] will be held to be a penalty if the sum stipulated for is extravagant and unconscionable in amount in comparison with the greatest loss that could conceivably be proved to have followed from the breach.[86]

While it is not immediately clear what constitutes an extravagant and unconscionable amount, it is likely that damages for prepayment in an Early Repayment Clause would be limited to the "positive difference, in present value, between: (i) the expected rate of return had the indebtedness not been paid until the specified maturity date, and (ii) the likely rate that a lender can expect to receive from the reinvestment of its principal".[87]

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[80] *International Supply Co v Black Diamond Oil Fields Ltd* (1915), 8 WWR 475 (Alta SC).
[81] *Infinite Maintenance Systems Ltd v ORC Management Ltd*, [2001] OJ No 77 (Ont CA) [*Infinite Maintenance*].
[82] Sherry, *supra* note 67 at para 74. See also *H.F. Clarke Ltd v Thermidaire Corp*, [1976] 1 SCR 319 at 331 (SCC); *O'Shanter Development Co v Gentra Canada Investments Inc* (1995), 25 OR (3d) 188 at 195 (Ont Ct J [Div Ct]); *Cavendish Square Holding BV v Talal El Makdessi*, [2015] UKSC 67 at para 42; *CMT Financial Corp v McGee*, 2015 ONSC 3595 at para 63 (Ont SCJ); *Mastercraft Properties Ltd v EL EF Investments Inc* (1993), 14 OR (3d) 519 (Ont CA).
[83] *Infinite Maintenance*, *supra* note 79 at para 13.
[84] *Maxam*, *supra* note 5 at para 54.
[85] *Infinite Maintenance*, *supra* note 79 at para 14, citing *Dunlop Pneumatic Tyre Co v New Garage & Motor Co*, [1915] AC 79 (UK HL) at 87.
[86] *Infinite Maintenance*, *supra* note 79.
[87] Claims for Post-Filing Interest, *supra* note 55 at 12.

For the most part, the courts in the US appear to have taken the same approach as Canadian courts. In particular, US courts have generally found that Early Repayment Clauses and their associated premiums constitute a form of liquidated damages and should be upheld absent evidence that they are a penalty. In determining whether a prepayment premium is a reasonable estimate of damages, and thus not a penalty, the courts have looked to the quantum of the premium.

In *Re Schwegmann Giant Supermarkets Partnership* for instance, the Court found that a premium in excess of 10% of the principal was unreasonable because it did not accurately estimate actual damages.[88] However, some US courts have been more lenient in their analysis of what constitutes a reasonable amount and thus found Early Repayment Clauses to be liquidated damages instead of a penalty. In *Re Hidden Lake Partnership*, the Court concluded that a prepayment clause in a debt instrument was a reasonable estimate of damages. The Court arrived at this decision despite acknowledging that the prepayment amounted to overcompensation, as the:

> amount of that overcompensation, given the uncertainties accompanying the prediction of probable actual damages, was not so great that this Court could find...that the prepayment clause was intended to punish the Debtor rather than compensate [the Lender].[89]

Careful thought must be given to the formula used to calculate the amount of the prepayment premium owing under an Early Repayment Clause. Tying a prepayment premium to a default under an indenture or fixed term loan agreement may open an Early Repayment Clause up to greater scrutiny as a penalty. Lenders should be careful to turn their minds to designing a formula that accurately represents a genuine estimate of its losses, instead of an amount that might be viewed by a court as unconscionable.

VI. COULD A PREPAYMENT PREMIUM BE CONSIDERED INTEREST UNDER THE CRIMINAL CODE?

Closely tied to the question of whether the quantum of a prepayment premium is so large as to be unconscionable is the issue of whether a prepayment premium, combined with all other fees, interest and other charges falling within the definition of "interest" under section 347(1) of the *Criminal Code*, would constitute a criminal rate of interest—interest in excess of 60% per annum. It is an offence under the *Criminal Code* to enter into an agreement or arrangement to receive interest at a criminal rate or to receive payment or partial payment of interest at a criminal rate. "Criminal rate" is an effective annual rate of interest of 60%, calculated in accordance with generally accepted actuarial practices and principles. The *Criminal Code* broadly defines interest to mean:

> the aggregate of all charges and expenses, whether in the form of a fee, fine, penalty, commission or other similar charge or expense or in any other form, paid or payable for the advancing of credit under an agreement or arrangement, by or on behalf of the person to whom the credit is or is to be advanced, irrespective of

[88] *In re Schwegmann Giant Supermarkets Partnership*, 264 BR 823 (Bankr ED La 2001).
[89] *In re Hidden Lake Limited Partnership*, 247 BR 722 at 729 (Bankr SD Ohio 2000).

> the person to whom any such charges and expenses are or are to be paid or payable, but does not include any repayment of credit advanced or any insurance charge, official fee, overdraft charge, required deposit balance or, in the case of a mortgage transaction, any amount required to be paid on account of property taxes [emphasis added].[90]

Although the Supreme Court has emphasized that courts must look to the substance, rather than the form of the payment relationship when determining whether a fee constitutes interest under the *Criminal Code*,[91] an argument can be made that a payment made pursuant to an Early Repayment Clause may fall under the term "interest" because it is a charge or expense connected to repayment of a loan and is therefore a payment made as a "result of advancing of credit under an agreement".[92] The conclusion is further supported by the case of *De Wolf v Bell ExpressVu Inc*,[93] where the Ontario Court of Appeal stated:

> Where the relationship between the parties is exclusively one of lending money, any additional charges or fees are inherently connected to the lending of money or the advancing of credit, regardless of their label. Generally speaking, such fees are likely to fall within the definition of interest in s. 347.[94]

It is therefore not clear that if a court interpreted a prepayment premium as liquidated damages, which should not violate the common law interest stops rule, that such an interpretation would avoid the broad definition of interest under the *Criminal Code.*

However, whether a prepayment premium could represent a criminal rate of interest may depend on the circumstances. The usury provisions in section 347 of the *Criminal Code* specifically exempt interest payments that result from a voluntary act of the debtor if the payment was wholly in the control of the debtor, and was not compelled by the lender or the terms of the loan agreement.[95] Interestingly, the method of acceleration of indebtedness and the voluntary nature of repayment may impact whether a prepayment premium is considered a enforceable "prepayment" under the principles discussed in the cases above as well as whether such payment is exempt from the usury provisions under the *Criminal Code.*

As a practical matter, in most cases, potential issues of loan terms and pricing violating the usury provisions in the *Criminal Code* arise in expensive short term loans rather than long term loans. However, since borrowers can, and sometimes do, default on long term loans very early in the life of the loan, lenders still need to concern themselves with the possibility that the cumulative costs, expenses, interest and fees that are payable upon default and acceleration could result in a violation of section 347 of the Criminal Code. Accordingly, loan agreements must be properly drafted to attempt to address this potential risk.

VII. DRAFTING CONSIDERATIONS

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[90] *Criminal Code,* RSC 1985, C c-46, s 347(2) [*CC*].
[91] *Garland v Consumers' Gas Co*, [1998] 3 SCR 112, [1998] SCJ No. 76.
[92] *CC, supra* note 88, s 347(2).
[93] *De Wolf v Bell ExpressVu Inc*, 2009 ONCA 644, 2009 CarswellOnt 5216 [*Bell ExpressVu*].
[94] *Ibid* at para 39.
[95] *CC, supra* note 88, s 347(3).

As discussed throughout this paper, recent cases from both Canada and the US may provide guidance to lenders on drafting effective Early Repayment Clauses. These considerations include:

- if a lender wishes to receive a payment on early repayment regardless of whether an Early Repayment Clause is triggered upon a voluntary prepayment by the borrower or an acceleration caused either on the election of lender or pursuant to an automatic acceleration clause in an insolvency filing, the indenture or fixed term loan agreement should provide very specific language to that effect;

- whether uncertainty as to the enforceability of Early Repayment Clauses in insolvency may be mitigated by drafting such clauses to provide for the payment of prepayment premiums in all circumstances where a repayment of principal is made except for in very limited and specified exceptions. For example, when the borrow makes a (i) a scheduled payment, or (ii) a mandatory payment from the net proceeds of an asset sale;

- ways of drafting Early Repayment Clause which will help weigh in favour of a prepayment premium being deemed a payment of liquidated damages or some other form of compensation in insolvency rather than an amount on account of future interest;

- how the calculation of the quantum of a prepayment premium might be done to avoid claims that the amount of the compensation is unconscionable and therefore unenforceable as a penalty, or subject to a discount to be applied by the courts;

- the importance of lenders including provisions in their bond indentures or fixed term loan agreements whereby the parties agree, in the event that the interest, costs and fees in the agreement are found to be a criminal rate of interest, to reduce the rate of interest to a legal rate pursuant to a formula agreed upon by the parties and included in the bond indenture or fixed term loan agreement; and

- whether lenders should consider whether the Early Repayment Clauses in their debt instruments should be revised to address any drafting problems as amendment opportunities arise.

CONCLUSION

The party wishing to enforce an Early Repayment Clause in insolvency must ensure, at a minimum, that the applicable agreements are unequivocal and clear that the obligation to pay a prepayment premium exists in all intended circumstances, including where partial or full payment is made before the original or stated maturity date of the obligation, upon acceleration by action of the lender, or upon acceleration pursuant to an insolvency filing. Parties assessing the enforceability of such clauses may be assisted by the recent Canadian and US cases discussed above and a consideration of the interplay between each of the above noted issues. Ultimately, the enforceability of Early Repayment Clauses may well, depending on the circumstances, be subject to a multi-part assessment by Canadian courts in insolvency proceedings.

APPENDIX F

Court File No. CV-14-506305

ONTARIO
SUPERIOR COURT OF JUSTICE

THE HONOURABLE	) MONDAY, THE 27TH
	)
JUSTICE WHITAKER	) DAY OF OCTOBER, 2014

BETWEEN:

JAMSHID HUSSAINI, NEELOFAR AHMADI
and HOMELIFE DREAMS REALTY INC.

Plaintiffs

- and -

ALAIN CHECROUNE and 1462241 ONTARIO LIMITED

Defendants

ORDER

THIS MOTION, made by the Plaintiffs for, *inter alia*, an injunction and relief from forfeiture, was heard this day at 393 University Avenue, Toronto, Ontario.

ON READING the Motion Record of the Plaintiffs, including the Notice of Motion and Affidavit of Neelofar Ahmadi, sworn October 24, 2014, and the exhibits thereto, and on hearing the submissions of the lawyer for the Plaintiffs and the lawyer for the Defendants, and for oral reasons given,

1. THIS COURT ORDERS an interlocutory injunction restraining the Defendants from denying the Plaintiffs, their clients, employees and subtenants, access to the property located at 240 Duncan Mill Road, in the City of Toronto, in the Municipality of Metropolitan Toronto more particularly described as (the "Subject Property"):

> Lot 82-83 PL 7607 North York; Pt Lot 84 PL 7607 North York, Part 2 RS1284
> Toronto (N York); City of Toronto
> 240 Duncan Mills Road
> North York
> PIN 10088-0069 LT

2. THIS COURT ORDERS an interlocutory injunction restraining the Defendants from interfering with the quiet enjoyment of the Subject Property by the Plaintiffs, their employees, clients and subtenants, including, without limiting the generality of the foregoing, restraining the Defendants from:

(a) turning off the lights in the Subject Property during business hours (Monday to Sunday, 7am to 9pm);

(b) denying access to the elevator(s) during business hours (Monday to Sunday, 7am to 9pm);

(c) cancelling access cards and parking passes of the Plaintiffs, their employees, clients and subtenants;

(d) towing the cars of the Plaintiffs, their employees, clients and subtenants;

(e) posting notices that the building is closed;

(f) physically or verbally harassing, threatening or intimidating, the Plaintiffs, their employees, clients and subtenants; and

(g) in any way disrupting the business of the Plaintiffs and their subtenants;

3. THIS COURT ORDERS relief from forfeiture in respect of the Purported Lease (as defined in the Notice of Motion);

4. THIS COURT ORDERS an interlocutory injunction restraining the Defendants from selling, mortgaging, encumbering or otherwise dealing with the Subject Property without the consent of the Plaintiffs Ms. Ahmadi and Mr. Hussaini or Court Order;

5. THIS COURT ORDERS an interlocutory injunction restraining the Defendants from selling, mortgaging, encumbering or otherwise dealing with the shares in the capital of the Defendant 148224 Ontario Limited;

6. THIS COURT ORDERS that this motion return for hearing on November 3, 2014 for one (1) hour;

7. THIS COURT ORDERS that the Defendants may bring a cross motion regarding conflict of interest, if any, on November 3, 2014;

8. THIS COURT ORDERS that costs of today's attendance in the amount of $1,500 shall be paid by the Defendants to the Plaintiffs forthwith.

BOSCO MASCARENHAS

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

OCT 28 2014

PER / PAR:

HUSSAINI ET AL V. CHECROUNE ET AL

Court File No: CV-14-506305

ONTARIO
SUPERIOR COURT OF JUSTICE

Proceeding commenced at TORONTO

ORDER

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Lawyers for the Plaintiffs

IN THE MATTER OF THE PROPOSAL OF 1482241 ONTARIO LIMITED, OF THE CITY OF TORONTO, IN THE PROVINCE OF ONTARIO

Court File No. 31-2303814
Estate No. 31-2303814

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST
(IN BANKRUPTCY AND INSOLVENCY)

Proceedings commenced at Toronto

SECOND SUPPLEMENTARY MOTION RECORD OF THE PROPOSAL TRUSTEE

(motion returnable March 28, 2018)

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Lawyers for Crowe Soberman Inc. in its capacity as the proposal trustee of 1482241 Ontario Limited