

Court File No. CV-22-00692309-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

*IN THE MATTER OF Section 101 of the Courts of Justice Act, R.S.O. 1990 c. C.43, as amended,
and in the matter of Section 243(1) of the Bankruptcy and Insolvency Act, R.S.C. 1985, c. B-3, as
amended*

B E T W E E N:

PRICEWATERHOUSECOOPERS INC.
(solely in its capacity as court-appointed receiver and manager of Bridging Finance Inc. and
certain related entities and investment funds)

Applicant

- and -

2305145 ONTARIO INC. and MERK INVESTMENTS LTD.

Respondents

MOTION RECORD
(Motion for Partial Compliance with Production Order)
(Returnable February 22, 2024)

February 16, 2024

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Lawyers for the Moving Parties

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TO: THE SERVICE LIST

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ONTARIO
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*IN THE MATTER OF Section 101 of the Courts of Justice Act, R.S.O. 1990 c. C.43, as amended,
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TAB 1

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ONTARIO
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B E T W E E N:

PRICEWATERHOUSECOOPERS INC.
(solely in its capacity as court-appointed receiver and manager of Bridging Finance Inc. and
certain related entities and investment funds)

Applicant

- and -

2305145 ONTARIO INC. and MERK INVESTMENTS LTD.

Respondents

NOTICE OF MOTION
(Motion for Partial Compliance with Production Order)
(Returnable February 22, 2024)

7539088 Canada Inc. and 1989474 Ontario Inc. (together, the “Orr Plaintiffs”) will make a motion, on consent of Alvarez & Marsal Canada Inc., solely in its capacity as court-appointed receiver and manager (in such capacity, the “Receiver”), without security, of all of the assets, undertakings, and properties of each of 2305145 Ontario Inc. (formerly known as Skymark Finance Corporation and defined herein as “Skymark”) and Merk Investments Ltd. (“Merk”), to a Judge presiding over the Commercial List, on a date to be fixed, at the Courthouse at 330

University Avenue, Toronto, Ontario.

PROPOSED METHOD OF HEARING: The motion is to be heard in person or by video conference, with the location or video conference details to be provided.

THE MOTION IS FOR:

- (a) An order substantially in the form attached as Schedule “A” to this notice of motion.
- (b) Such other relief as counsel may advise and this Honourable Court may deem just.

THE GROUNDS FOR THE MOTION ARE:

Background

- (a) On August 29, 2022, the Orr Plaintiffs commenced the Ontario Superior Court of Justice (Commercial List) action bearing court file number CV-22-00686234-00CL against Merk, Skymark and Michael Slattery (the “Orr Action”). At all relevant times, Mr. Slattery was the Chief Executive Officer and a director of Merk and Skymark.
- (b) In the Orr Action, the Orr Plaintiffs claim that Merk, Skymark and Mr. Slattery perpetrated a fraudulent scheme against the Orr Plaintiffs. The Orr Plaintiffs allege that Mr. Slattery caused Merk and Skymark to act in breach of trust and misappropriate the principal amounts of loans advanced by the Orr Plaintiffs that were to be secured by mortgages registered in the names of, and held in trust by, Merk and Skymark.
- (c) In response to the Orr Action, Merk, Skymark and Mr. Slattery admitted that Merk and Skymark held the principal amounts advanced by the Orr Plaintiffs, and the

corresponding mortgages registered in their names, in trust for the Orr Plaintiffs, who were therefore the beneficiaries of the various trusts.

- (d) After commencing the Orr Action, the Orr Plaintiffs moved for an order requiring Merk and Skymark to disclose documents relating to the principal amounts they had advanced and the corresponding mortgages held in trust by Merk and Skymark. The basis of the motion was the Orr Plaintiffs' proprietary right as beneficiaries.
- (e) On December 6, 2022, Justice Osborne agreed with the Orr Plaintiffs and rendered an order (the "Production Order") that, among other things, required Merk and Skymark to produce all documents and information relating to the Orr Plaintiffs' investments with and through Merk and Skymark in mortgages.
- (f) The disclosure required by the Production Order included "all bank statements, cheque copies, wire confirmations, and/or other financial documents or records" evidencing relevant amounts received or paid by Merk or Skymark in connection with the principal amounts invested and the corresponding mortgages.
- (g) The Production Order required Merk and Skymark to produce the documents and information "by no later than January 6, 2023".
- (h) Merk and Skymark did not comply with the Production Order by January 6, 2023 or subsequently. At no time have Merk and Skymark produced to the Orr Plaintiffs the "bank statements, cheque copies, wire confirmations and/or other financial documents or records" as required by the Production Order.

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- (i) The Orr Plaintiffs sought to compel compliance with the Production Order. In response, however, Merk and Skymark advised for the first time that there was a motion returnable to petition Merk and Skymark into receivership.
- (j) On March 6, 2023, Justice Penny rendered an order appointing the Receiver, without security, of all of the assets, undertakings and properties of Merk and Skymark (the “Receivership Order”). The Receivership Order also stayed the Orr Action.
- (k) Since the Receivership Order was rendered, none of Merk, Skymark, Mr. Slattery nor the Receiver have provided any further documents or information to the Orr Plaintiffs that are responsive to the Production Order.

Compliance with the Production Order

- (l) The Orr Plaintiffs are entitled as beneficiaries to the documents and information identified in the Production Order, and they require compliance with the Production Order for the purpose of making productions in and litigating the Orr Action.
- (m) Justice Osborne previously concluded: “The request ought to be straightforward and there is no reason, even if some documents are required to be obtained from third parties such as accountants, banks or financial institutions, that they cannot be delivered by [Merk and Skymark] to the [Orr] Plaintiffs promptly.”
- (n) The Orr Plaintiffs have worked collaboratively with the Receiver to narrow, for the time being, the documents and information to which they are entitled that are most

critical to their status as beneficiaries and to the Orr Action, namely bank statements showing what happened to the principal amounts invested by the Orr Plaintiffs.

- (o) The Receiver has consented to the relief sought by the Orr Plaintiffs, with the only point of disagreement being whether the Orr Plaintiffs should be responsible for the Receiver's costs of this motion and compliance with the order sought on this motion.
- (p) The Orr Plaintiffs' position is that the Receiver's costs of this motion and compliance with the order sought on this motion should be paid from the "Property" of Merk and Skymark, as defined in the Receivership Order. The basis for the Orr Plaintiffs' position includes their status as beneficiaries (previously admitted by Merk and Skymark) and the non-compliance with the Production Order by Merk and Skymark prior to the rendering of the Receivership Order, which was in further breach of trust.

Legislative Provisions and Other Grounds

- (q) The provisions of the *Bankruptcy and Insolvency Act* (Canada).
- (r) Rules 1.04, 1.05, 37 and 39 of the *Rules of Civil Procedure* (Ontario).
- (s) Section 101 of the *Courts of Justice Act* (Ontario).
- (t) The inherent and equitable jurisdiction of this Honourable Court.
- (u) Such other grounds as counsel may advise and this Honourable Court may permit.

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

- (a) The affidavit of Andrew Sahai, sworn February 16, 2024.
- (b) Such other evidence as counsel may advise and this Honourable Court may permit.

February 16, 2024

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Lawyers for the Moving Parties

TO: THE SERVICE LIST

IN THE MATTER OF Section 101 of the Courts of Justice Act, R.S.O. 1990 C. C.43, as amended, and in the matter of Section 243(1) of the Bankruptcy and Insolvency Act, R.S.C. 1985, C. B-3, as amended

PRICEWATERHOUSECOOPERS INC.
(solely in its capacity as court-appointed receiver and manager of Bridging Finance Inc. and certain related entities and investment funds)

Applicant

-and-

SKYMARK FINANCE CORPORATION and MERK INVESTMENTS LTD.

Respondents

Court File No. CV-22-00692309-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)
PROCEEDING COMMENCED AT TORONTO

NOTICE OF MOTION
(Motion for Partial Compliance with Production Order)
(Returnable February 22, 2024)

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Lawyers for the Moving Parties

SCHEDULE A

Court File No. CV-22-00692309-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

*IN THE MATTER OF Section 101 of the Courts of Justice Act, R.S.O. 1990 c. C.43, as amended,
and in the matter of Section 243(1) of the Bankruptcy and Insolvency Act, R.S.C. 1985, c. B-3, as
amended*

THE HONOURABLE)	MONDAY, THE ____ DAY
)	
JUSTICE _____)	OF _____, 2024

B E T W E E N:

PRICEWATERHOUSECOOPERS INC.
(solely in its capacity as court-appointed receiver and manager of Bridging Finance Inc. and
certain related entities and investment funds)

Applicant

- and -

2305145 ONTARIO INC. and MERK INVESTMENTS LTD.

Respondents

ORDER

THIS MOTION, made by 7539088 Canada Inc. and 1989474 Ontario Inc. (together, the “Orr Plaintiffs”), on consent of Alvarez & Marsal Canada Inc., solely in its capacity as court-appointed receiver and manager (in such capacity, the “Receiver”), without security, of all of the assets, undertakings, and properties of each of 2305145 Ontario Inc. (formerly known as Skymark Finance Corporation and defined herein as “Skymark”) and Merk Investments Ltd. (“Merk”), for an order lifting the stay of proceedings provided for in paragraphs 9 and 10 of the order Justice Penny dated March 6, 2023 made in this proceeding (the “Appointment Order”) as it applies to the

Orr Plaintiffs, for the limited purpose set out below and subject to the terms and conditions set forth herein, was heard this day at 330 University Avenue, Toronto, Ontario by judicial videoconference.

ON READING the Consent of the Receiver and the materials filed by the Orr Plaintiffs, including the order of Justice Osborne dated December 2, 2022 (the “Production Order”) in the Ontario Superior Court of Justice (Commercial List) action bearing court file number CV-22-00686234-00CL (the “Orr Action”) attached as Appendix “A”, and on hearing the submissions of counsel for the Receiver and the Orr Plaintiffs and counsel for the other parties listed on the counsel slip, no one appearing for any other person on the service list although duly served as appears from the affidavit of service of [] sworn [], filed:

1. THIS COURT ORDERS that the stay of proceedings provided for in paragraphs 9 and 10 of the Appointment Order is hereby lifted for the limited purpose of permitting the relief provided in this order, including the terms and conditions set forth herein.
2. THIS COURT ORDERS that the Receiver, on a best-efforts basis, will provide to the Orr Plaintiffs copies of all Merk and Skymark bank statements available to the Receiver for the period beginning December 1, 2014 and ending August 31, 2022 which are responsive to subparagraph 1(c) or 1(d) of the Production Order.
3. THIS COURT ORDERS that this Order is without prejudice to the Receiver’s or the Orr Plaintiffs’ right or ability to seek further directions in respect of the provision of additional Skymark or Merk records to the Orr Plaintiffs, including, but not limited to, those records detailed in the Production Order, or to take any other steps to obtain records relevant to the Orr Action or any other proceeding.

4. THIS COURT ORDERS that the Receiver will use best efforts to comply with paragraph 2 of this Order by [] and, if unable to do so, will so advise the Orr Plaintiffs and, in that case, will comply with paragraph 2 as soon as possible thereafter, taking into account the Receiver's obligations to the other stakeholders in this proceeding.
5. THIS COURT ORDERS that the Orr Plaintiffs' use or reliance on any records produced by the Receiver in connection with this Order shall be in strict compliance with the deemed undertaking rule set forth in Rule 30.1 of the Rules of Civil Procedure, and, without limiting the generality of the foregoing, shall be limited to use or reliance in this proceeding, the Orr Action and the Commercial List action related to the Orr Action bearing Court File No. CV-23-00702641-00CL (the "Related Action").
6. THIS COURT ORDERS that nothing in this Order will result in the Receiver being deemed a party in the Orr Action or the Related Action, or becoming subject to any obligation that ordinarily applies to a party to litigation, including, without limitation, oral or documentary discovery obligations. For clarity, the Receiver will have no obligation arising from this Order except as expressly set forth herein.
7. THIS COURT ORDERS that the Receiver and its affiliates, partners, directors, employees, advisors, agents, counsel, and controlling persons (collectively, the "Assistants") shall have no liability with respect to any and all losses, claims, damages, or liabilities of any nature or kind to any person in connection with or as a result of performing their obligations under this Order, except to the extent that such losses, claims, damages, or liabilities are a direct result of the gross negligence or willful misconduct of the Receiver as determined by this

Court, and nothing in this Order shall modify or derogate from the protections provided to the Receiver in the Appointment Order or any other order made in this proceeding.

The Receiver and the Orr Plaintiffs are not in agreement in respect of paragraph 8 of this Order, with their respective positions on that paragraph being as follows:

8. [Receiver] THIS COURT ORDERS that the Receiver's fees and expenses (including, without limitation, the fees and expenses of its legal counsel Fasken Martineau DuMoulin LLP ("Fasken")) reasonably incurred in connection with this motion and compliance with this Order shall be paid by the Orr Plaintiffs who shall be jointly and severally liable for all such fees and expenses. The Receiver and Fasken may, in connection with this paragraph, render their respective accounts on a monthly basis or from time to time as they deem appropriate, and the Orr Plaintiffs shall, upon receipt of such accounts, remit payment in full to the Receiver or Fasken (as applicable) within five (5) business days of such receipt.
8. [The Orr Plaintiffs] THIS COURT ORDERS that the Receiver's fees and expenses (including, without limitation, the fees and expenses of its legal counsel Fasken Martineau DuMoulin LLP) reasonably incurred in connection with this motion and compliance with this Order shall be paid from the Property as defined in paragraph 2 of the Appointment Order and secured by the Receiver's Charge as defined in paragraph 18 of the Appointment Order.
9. THIS COURT ORDERS that, pursuant to clause 7(3)(c) of the *Personal Information Protection and Electronic Documents Act*, S.C. 2000, c. 5, the Receiver and its Assistants are hereby authorized and permitted to disclose and transfer to the Orr Plaintiffs and their advisors personal information of identifiable individuals that may be contained in the

records produced to comply with paragraph 2 of this Order, but only to the extent desirable or required to comply with this Order. The Orr Plaintiffs shall maintain and protect the privacy of such information and limit the use of such information as set out above in paragraph 5 of this Order.

10. THIS COURT ORDERS that the Receiver may from time to time apply to this Court to amend, vary, or supplement this Order or to seek advice or directions regarding the discharge of its powers and duties under this Order.
-

IN THE MATTER OF Section 101 of the Courts of Justice Act, R.S.O. 1990 C. C.43, as amended, and in the matter of Section 243(1) of the Bankruptcy and Insolvency Act, R.S.C. 1985, C. B-3, as amended

PRICEWATERHOUSECOOPERS INC.
(solely in its capacity as court-appointed receiver and manager of
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-and-

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INVESTMENTS LTD.

Applicant

Respondents

Court File No. CV-22-00692309-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
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PROCEEDING COMMENCED AT TORONTO

ORDER

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Lawyers for the Moving Parties

TAB 2

Court File No. CV-22-00692309-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

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2305145 ONTARIO INC. and MERK INVESTMENTS LTD.

Respondents

AFFIDAVIT OF ANDREW SAHAI
(Sworn February 16, 2024)

I, Andrew Sahai, of the City of Toronto, in the Province of Ontario, MAKE OATH AND
SAY:

1. I am a lawyer at Bennett Jones LLP (“Bennett Jones”), counsel to the plaintiffs 7539088
Canada Inc. and 1989474 Ontario Inc. (the “Orr Plaintiffs”) in the Ontario Superior Court of
Justice (Commercial List) action bearing court file number CV-22-00686234-00CL (the “Orr

Action”). I am counsel of record to the Orr Plaintiffs and personally involved in the Orr Action. I have knowledge of the matters to which I hereinafter depose, all of which I believe to be true.

The Orr Action

2. On August 29, 2022, the Orr Plaintiffs caused the Orr Action to be commenced against 2305145 Ontario Inc., which was formerly known as Skymark Finance Corporation (“Skymark”), Merk Investments Ltd. (“Merk”) and Michael Slattery. A copy of the original statement of claim as issued on August 29, 2022 is attached as Exhibit “A”. The statement of claim in the Orr Action has been amended to add both allegations and parties. A copy of the current version of the statement of claim is attached as Exhibit “B”.

3. In the Orr Action, the Orr Plaintiffs allege that, among other things, Mr. Slattery caused Merk and Skymark to act in breach of trust, and that Mr. Slattery, Merk and Skymark misappropriated the principal amounts of loans advanced by the Orr Plaintiffs that were to be secured by mortgages registered in the names of, and held in trust by, Merk and Skymark.

The Production Order

4. After commencing the Orr Action, the Orr Plaintiffs moved for an order requiring Merk and Skymark to disclose documents and information relating to the principal amounts they had advanced and the corresponding mortgages held in trust by Merk and Skymark (the “Production Motion”). The basis of the Production Motion was the Orr Plaintiffs’ proprietary right to such documents and information as beneficiaries of the principal amounts and interests in the mortgages held in trust by Merk and Skymark.

5. The Production Motion was heard on December 5, 2022 by Justice Osborne. The following day, Justice Osborne released his endorsement wherein he agreed with the Orr Plaintiffs and

ordered Merk and Skymark to produce all documents and information relating to the Orr Plaintiffs' investments with and through Merk and Skymark in mortgages. Copies of Justice Osborne's endorsement and corresponding order are attached as Exhibits "C" and "D".

6. The Production Order required Merk and Skymark to produce to the Orr Plaintiffs by no later than January 6, 2023, among other things, "all bank statements, cheque copies, wire confirmations, and/or other financial documents or records" evidencing relevant amounts received or paid by Merk or Skymark in connection with the principal amounts invested by the Orr Plaintiffs and the corresponding mortgages.

Merk and Skymark's Non-Compliance with the Production Order

7. Merk and Skymark did not, and have never, complied with the Production Order.

8. On January 30, 2023, Bennett Jones wrote to counsel for Merk and Skymark addressing Merk's and Skymark's non-compliance with the Production Order. A copy of the letter is attached as Exhibit "E". Based on my review and familiarity with the documents that have been produced by Merk and Skymark, I can confirm that Bennett Jones' letter of January 30, 2023 accurately describes Merk's and Skymark's non-compliance with the Production Order.

9. Based on my review and familiarity with the documents that have been produced by Merk and Skymark, I can also confirm that, whether in response to the Production Order or otherwise, Merk and Skymark failed to produce the "bank statements, cheque copies, wire confirmations, and/or financial documents or records" that are critical to determining what actually happened to the principal amounts that were to be held in trust for the Orr Plaintiffs.

10. In light of the foregoing, Bennett Jones arranged a case conference to be proceed before Justice Osborne on February 28, 2023. The purpose of the case conference was for the Orr Plaintiffs to seek compliance with the Production Order or, alternatively, to schedule a further motion at which the Orr Plaintiffs would seek to compel compliance with the Production Order.

11. In connection with the February 28, 2023 case conference, the Orr Plaintiffs delivered an aide memoire addressing the non-compliance with the Production Order, and addressing the need for such compliance with reference to the limited documents that had been produced by Merk and Skymark. A copy of the Orr Plaintiff's aide memoire is attached as Exhibit "F".

The Receivership Order

12. The case conference ultimately proceeded before Justice Osborne on February 28, 2023 and continued on March 2, 2023. At the case conference, counsel for Merk and Skymark (and Mr. Slattery) disclosed, for the first time, that there was a pending receivership motion returnable before Justice McEwen on March 6, 2023 in respect of Merk and Skymark.

13. As a result, the issue of Merk's and Skymark's non-compliance with the Production Order was not addressed on its merits. Instead, Justice Osborne concluded that:

- (a) "It makes good common sense and will maximize efficiency to have some cooperation and coordination between the receiver if appointed and the Plaintiffs in this action as to documents and production so as to minimize work duplication."
- (b) "[I]t may be that the Plaintiffs in this action seek a partial lift stay in the receivership application to at least allow production and discoveries in this action. That is for the parties and the Court in the receivership application."

14. A copy of Justice Osborne's endorsement is attached as Exhibit "G".

15. On March 6, 2023, Justice Penny rendered an order (the "Receivership Order") appointing Alvarez Marsal Canada Inc. as receiver and manager of Merk and Skymark (the "Receiver"). A copy of the Receivership Order is attached as Exhibit "H". Importantly for this motion, the Receivership Order also stayed the claims against Merk and Skymark in the Orr Action.

16. Since the Receivership Order was rendered, none of Merk, Skymark, Mr. Slattery nor the Receiver have provided any further documents or information to the Orr Plaintiffs that are responsive to the Production Order.

Relief Sought on this Motion

17. In light of the foregoing, the Orr Plaintiffs now seek an order substantially in the form attached as Schedule "A" to the notice of motion, the purpose of which is to lift the stay resulting from the Receivership Order for the limited purpose of permitting the Receiver to produce certain documents responsive to the Production Order to the Orr Plaintiffs.

18. Bennett Jones has worked collaboratively with the Receiver's lawyers to narrow the documents to which the Orr Plaintiffs are entitled under the Production Order that the Receiver would produce to the Orr Plaintiffs at this time. Those documents are limited to bank statements critical to determining what actually happened to the principal amounts that were to be held in trust by Merk and Skymark for the Orr Plaintiffs.

19. The Orr Plaintiffs and the Receiver are in agreement regarding the relief sought, and the Receiver has consented to the order sought by the Orr Plaintiff, with the only point of disagreement

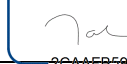
- 6 -

being whether the Orr Plaintiffs should be responsible for the Receiver's costs of this motion and compliance with the order sought on this motion.

20. The Orr Plaintiffs' position is that the Receiver's costs of this motion and compliance with the order sought should be paid from the "Property" of Merk and Skymark, as defined in the Receivership Order. The Receiver's position is that such costs should be borne by the Orr Plaintiffs.

SWORN remotely by Andrew Sahai at the City of Toronto, in the Province of Ontario, before me on February 16, 2024 in accordance with O Reg 431/20, Adminstrating Oath or Declaration Remotely.

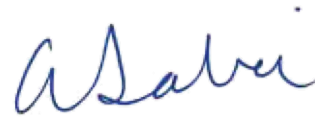
DocuSigned by:



2CAAFB598866461...


NATHAN SHAHEEN

Commissioner for Taking Affidavits
(or as may be)



ANDREW SAHAI

**This is Exhibit “A” referred to in the Affidavit of Andrew Sahai
sworn February 16, 2024.**

DocuSigned by:

2CAAFB598666461...

Commissioner for Taking Affidavits (or as may be)



Court File No.

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

B E T W E E N:

7539088 CANADA INC. and 1989474 ONTARIO INC.

Plaintiffs

- and -

MICHAEL SLATTERY, MERK INVESTMENTS LTD.
and SKYMARK FINANCE CORPORATION

Defendants

STATEMENT OF CLAIM

TO THE DEFENDANTS:

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the plaintiffs.
The claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or an Ontario lawyer acting for you must prepare a Statement of Defence in Form 18A prescribed by the Rules of Civil Procedure, serve it on the plaintiffs' lawyer or, where the plaintiff does not have a lawyer, serve it on the plaintiffs, and file it, with proof of service in this court office, WITHIN TWENTY DAYS after this Statement of Claim is served on you, if you are served in Ontario.

If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your Statement of Defence is forty days. If you are served outside Canada and the United States of America, the period is sixty days.

Instead of serving and filing a Statement of Defence, you may serve and file a Notice of Intent to Defend in Form 18B prescribed by the Rules of Civil Procedure. This will entitle you to ten more days within which to serve and file your Statement of Defence.

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IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

TAKE NOTICE: THIS ACTION WILL AUTOMATICALLY BE DISMISSED if it has not been set down for trial or terminated by any means within five years after the action was commenced unless otherwise ordered by the court.

Date	_____	Issued by	_____
			Local Registrar
		Address of court office:	330 University Avenue 8th Floor Toronto ON M5G 1R8

TO: MICHAEL SLATTERY
c/o Merk Investments Ltd.
300-46 Village Centre Place
Mississauga, ON
L4Z 1V9

AND TO: MERK INVESTMENTS LTD.
300-46 Village Centre Place
Mississauga, ON
L4Z 1V9

AND TO: SKYMARK FINANCE CORPORATION
300-46 Village Centre Place
Mississauga, ON
L4Z 1V9

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CLAIM

1. The plaintiffs, 7539088 Canada Inc. (“753 Canada”) and 1989474 Ontario Inc. (“198 Ontario”), claim against Michael Slattery (“Slattery”), Merk Investments Ltd. (“Merk”) and Skymark Finance Corporation (“Skymark”):

- (a) A declaration that Slattery, Merk and Skymark have acted, and continue to act, in a manner that is oppressive or unfairly prejudicial to, or that unfairly disregards, the interests of the plaintiffs, all contrary to section 248 of the *Business Corporations Act* (Ontario) (the “OBCA”).
- (b) An order pursuant to section 248 of the OBCA restraining the conduct of Slattery, Merk and Skymark that is oppressive or unfairly prejudicial to, or that unfairly disregards, the interests of the plaintiffs.
- (c) An order pursuant to section 248 of the OBCA, and/or pursuant to section 101 of the *Courts of Justice Act* (Ontario) and rule 41 of the *Rules of Civil Procedure* (Ontario), appointing a receiver or receiver-manager in respect of Slattery, Merk and Skymark, and, wherever possible, over the particular mortgages that Slattery has caused Merk and Skymark to hold in trust for the benefit of the plaintiffs.
- (d) An order pursuant to section 248 of the OBCA requiring the production to the plaintiffs of all documents, records and communications relating to the plaintiffs’ investments with and through Merk and Skymark in mortgages including, without limitation, the documents, records and communications identified in the plaintiffs’ demand letter dated August 15, 2022, which has gone unanswered.

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- (e) An order pursuant to section 248 of the OBCA compensating the plaintiffs for all damages, losses or other harm caused by the conduct of Slattery, Merk and Skymark that is oppressive or unfairly prejudicial to, or that unfairly disregards, the interests of the plaintiffs.
- (f) Damages in an amount of at least \$16,000,000, and further amounts to be particularized prior to trial, for fraud, misappropriation and unjust enrichment.
- (g) An order pursuant to rule 45 of the *Rules of Civil Procedure* (Ontario) for the preservation of all mortgages, funds or property held by or for the benefit of Slattery, Merk or Skymark relating to or arising from the plaintiffs' interests in mortgages held by Merk and Skymark.
- (h) An interim and interlocutory order in the form of an injunction restraining Slattery, Merk or Skymark – and their employees, agents, assigns, officers, directors or anyone else acting on their behalf or in conjunction with them – from directly or indirectly, in any manner, causing the discharge or alteration of any remaining mortgages in which the plaintiffs have an interest, without the express written consent of the plaintiffs and/or a further court order.
- (i) An interim and interlocutory order in the form of a Mareva injunction restraining Slattery, Merk and Skymark – and their employees, agents, assigns, officers, directors or anyone else acting on their behalf or in conjunction with them – from directly or indirectly, in any manner, disposing of, selling, removing, dissipating, alienating, transferring, assigning, encumbering or similarly dealing with any assets held by or for the benefit of Slattery, Merk or Skymark, wherever located.

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- (j) An order directing all financial institutions or other third parties having notice of the order contemplated in the preceding paragraph to forthwith freeze and prevent the removal or transfer of any monies or assets held by or for the benefit of Slattery, Merk or Skymark, wherever located.
- (k) An accounting for, and order permitting the tracing and location of, all funds or assets improperly defrauded, misappropriated or otherwise diverted from the plaintiffs, including into and through any assets purchased by Slattery, Merk or Skymark – and their employees, agents, assigns, officers, directors or anyone else acting on their behalf or in conjunction with them – and to recover the same.
- (l) A declaration that all funds or assets improperly defrauded, misappropriated or otherwise diverted from the plaintiffs, including into and through any assets purchased by Slattery, Merk or Skymark – and their employees, agents, assigns, officers, directors or anyone else acting on their behalf or in conjunction with them – are impressed with a constructive trust for the benefit of the plaintiffs.
- (m) A declaration that the plaintiffs' claims, including the breach of trust claim below, shall survive any act of bankruptcy on the part of any of Slattery, Merk or Skymark pursuant to section 178(1) of the *Bankruptcy and Insolvency Act* (Canada).
- (n) If necessary, a declaration that the plaintiffs are entitled to pierce the corporate veil of Merk and Skymark including, without limitation, to advance and enforce their claims and seek damages against Slattery.

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- (o) Prejudgment and post-judgment interest in accordance with the terms of the relevant mortgages in which the plaintiffs have invested or, alternatively, in accordance with sections 128 and 129 of the *Courts of Justice Act* (Ontario).
 - (p) Aggravated, exemplary and/or punitive damages in the amount of \$100,000.
 - (q) The costs of this proceeding, plus all applicable taxes.
 - (r) Such further and other relief as to this Honourable Court may seem just.
2. The plaintiffs, 753 Canada and 198 Ontario, claim against Merk and Skymark:
- (a) A declaration that Merk or Skymark held or hold the plaintiffs' interests in mortgages in which the plaintiffs invested with and through Merk and Skymark – and in subsequent mortgages arising from or related to those investments – in trust for the plaintiffs.
 - (b) An order requiring Merk and Skymark, as trustees, to produce to the plaintiffs all documents, records and communications relating to the plaintiffs' investments with and through Merk and Skymark in mortgages including, without limitation, the documents, records and communications identified in the plaintiffs' demand letter dated August 15, 2022, which has gone unanswered.
 - (c) An order pursuant to this Court's inherent jurisdiction or section 5 of the *Trustee Act* (Ontario) replacing Merk and Skymark as trustees in respect of the plaintiffs' interests in any remaining mortgages that Merk or Skymark hold in trust for the

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plaintiffs, and requiring Merk and Skymark to transfer the plaintiffs' interests in those mortgages to the new trustee.

- (d) An order requiring Merk, Skymark, or the mortgagors of any remaining mortgages held in trust by Merk or Skymark, and in which the plaintiffs have an interest, to make all outstanding or future interest payments owing in respect of the plaintiffs' interests in those mortgages to the plaintiffs until Merk and Skymark are replaced as trustees in respect of those interests, and thereafter to the new trustee.
- (e) A declaration that Merk and Skymark have breached their obligations as trustees to the plaintiffs including without limitation by failing to pay the principal and interest amounts owing to the plaintiffs under the interests in the mortgages that Merk and Skymark held or hold in trust for the plaintiffs.
- (f) Damages in an amount of at least \$16,000,000, and further amounts to be particularized prior to trial, for breach of trust and breach of contract.

The Parties

(a) The Plaintiffs

3. 753 Canada is a corporation headquartered in Toronto, Ontario and incorporated under the *Canada Business Corporations Act*. Its sole officer and director is Michael Orr ("Orr").

4. 198 Ontario is a corporation headquartered in Toronto, Ontario and incorporated under the OBCA. Its sole officer and director is also Orr.

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5. 753 Canada and 198 Ontario are the corporate vehicles through which Orr from time to time makes investments on behalf of his family office, which most regularly maintains holdings in the financial services, media, technology and wine sectors.

(b) The Defendants

6. Slattery is an individual resident in Mississauga, Ontario. He publicly holds himself out as a mortgage broker, and is closely affiliated with and exerts control over Merk and Skymark.

7. Merk is a corporation headquartered in Mississauga, Ontario and incorporated under the OBCA. Slattery is Merk's CEO, and one of its shareholders and directors. The purported business of Merk includes providing mortgages in respect of residential and commercial properties.

8. Skymark is a corporation headquartered in Mississauga, Ontario and incorporated under the OBCA. Slattery is also Skymark's CEO, and one of its shareholders and directors. The purported business of Skymark also includes providing mortgages in respect of residential and commercial properties.

The Plaintiffs' Investments in Mortgages

9. This action concerns mortgages in which 753 Canada and 198 Ontario have invested through Merk and Skymark. The mortgages relate to at least 26 different properties, the majority of which are in Ontario. The properties are described in Schedule "A" to this statement of claim.

10. Orr caused 753 Canada and 198 Ontario to make their respective investments in the mortgages through Merk and Skymark. Orr did so on the basis of representations made by, and agreements reached with, Slattery. Prior to the events giving rise to this action, Orr and Slattery were longstanding friends, and Orr placed considerable trust in Slattery, as Slattery was aware.

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11. Slattery was responsible for identifying potential customers that sought mortgages in respect of residential and commercial properties, and negotiating the terms of any potential mortgages with those customers. In doing so, Slattery relied on the façade of Merk and Skymark, which outwardly appear to be credible and legitimate participants in the mortgage industry.

12. Having identified a potential customer and negotiated the terms of a potential mortgage, Slattery presented the mortgage as a potential investment opportunity to Orr. In particular, Slattery proposed to Orr that one of 753 Canada or 198 Ontario would fund some or all of the principal amount of the mortgage, in exchange for receiving the monthly interest payments consistent with the terms of the mortgage that Slattery had negotiated with the customers.

13. Over the course of many years, Orr regularly agreed to cause 753 Canada or 198 Ontario to make investments by way of funding some or all of the principal amount of mortgages proposed by Slattery. He did so based on the representations made by Slattery regarding those investments, and based on the considerable trust that he had in Slattery due to their longstanding friendship.

14. Orr also caused 753 Canada or 198 Ontario to fund the principal amount of additional mortgages proposed by Slattery based on the regular monthly statements jointly provided by Merk and Skymark that purported to show existing, registered mortgages in respect of prior investments made by 753 Canada and 198 Ontario, and corresponding monthly payments that Merk and Skymark represented to be monthly interest payments derived from those mortgages.

15. In each instance where Orr caused 753 Canada or 198 Ontario to fund some or all of the principal amount of the mortgages proposed by Slattery, the mortgage was issued to the customer by Merk or Skymark, and the mortgage was initially registered on title to the property subject to the mortgage in the name of Merk or Skymark, which were paid a “finder’s fee”.

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16. In all such cases, Merk or Skymark executed a "Trust Declaration" that expressly acknowledged the investment and interest of 753 Canada or 198 Ontario in the mortgage, and that Merk or Skymark therefore holds the interest of 753 Canada or 198 Ontario in trust. Each of the Trust Documents was substantially the same, but for the details of the particular mortgage and the particular resulting trust relationship. For example, one of the three Trust Declaration for the 155 Adams Boulevard, Brantford, Ontario provides as follows:

TRUST DECLARATION

BETWEEN

MERK INVESTMENTS LTD.

Trustee

- and -

1989474 ONTARIO INC.

Beneficiaries

WHEREAS Merk Investments Ltd. holds a \$1,000,000.00 interest in a mortgage registered on the title to the property municipally known as 155 Adams Blvd., Brantford;

AND WHEREAS Merk Investments Ltd. holds a \$1,000,000.00 interest in the mortgage in trust for 1989474 Ontario Inc..

NOW THEREFORE the Trustee hereby declares:

1. Merk Investments Ltd. holds the mortgage wholly in trust for the aforesaid beneficiaries;
2. The recitals are true;
3. Merk Investments Ltd. agrees to do such things and execute such documents as may be required to carry out the intent of the trust.

DECLARED at Mississauga, this 22nd day of June, 2015.

MERK INVESTMENTS LTD.

Per: _____

Michael Slattery

17. The use of a trustee-beneficiary relationship, and the Trust Declarations used to confirm and record that relationship, was consistent with standard practices in the mortgage industry. The use of this standard practice provided 753 Canada and 198 Ontario the benefit of investing in and

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beneficially holding the mortgages, including by investing in portions of the mortgages, but without dealing with the day-to-day management of the mortgages.

18. Consistent with the Trust Declarations, in respect of each mortgage in which 753 Canada or 198 Ontario invested, the agreement reached by Orr and Slattery was that Merk or Skymark, as the case may be, would pay to 753 Canada or 198 Ontario monthly interest amounts proportionate to their interest in the mortgage, and would re-pay the principal amount invested by 753 Canada or 198 Ontario at the end of the mortgage term (as may be renewed).

19. Although the mortgages tended to have short terms, based on Slattery's representations and the regularly monthly statements, 753 Canada and 198 Ontario were led to believe and agreed that the terms of the mortgages were regularly renewed, and that their interest in those mortgages was maintained upon any renewal. At no time did Slattery, Merk or Skymark advise 753 Canada or 198 Ontario that the terms of the mortgages shown on the regularly monthly statements had terminated, or that those mortgages had been discharged from title to the underlying properties.

20. In addition, certain of the mortgages were subject to additional agreements intended by Slattery to further the appearance that 753 Canada or 198 Ontario would be re-paid the principal amounts they had invested in those particular mortgages. For example, in respect of the 155 Adams Boulevard, Brantford, Ontario property, Slattery executed a guarantee stating that if the mortgages went into default, "Skymark Finance Corporation will pay off the mortgage."

The Defendants' Fraudulent Scheme

21. Having made their respective investments in the various mortgages, 753 Canada and 198 Ontario received regularly monthly statements provided by Merk and Skymark purporting to show each of the existing mortgages registered on title to the underlying properties, and received

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corresponding monthly payments that Merk and Skymark represented to be monthly interest payments derived from those mortgages.

22. A monthly statement provided jointly by Merk and Skymark to 753 Canada as recently as late June 2022, and which shows monthly payments that Merk and Skymark represented to be monthly interest payments derived from 753 Canada's mortgage investments, appeared as follows:

7539088 Canada Inc									
PROPERTY	DATE	Principal	INT.	MTHLY	AST CHQ		Holds-Amex	Chqs sending	
	INVESTED	Amount	RATE	PM	DATE				
Azzarello	Jul 24/13	25,000.00	10.00%	208.33	Jun 24/22		16.04	192.29	
Vlassova	Jul 24/13	45,000.00	10.00%	375.00	Jun 24/22			375.00	
Hopkins	Dec 18/13	300,000.00	10.00%	2,500.00	Jun 18/22		2,500.00	0.00	
Millar	Dec 18/13	850,000.00	5.50%	3,895.83	Jun 18/22				
Millar (1.375 mil)	Dec 18/13	1,375,000.00	5.50%	6,302.08	Jun 18/22				
Millar	Oct 31/14	250,000.00	5.50%	1,145.83	Jun 18/22				
Millar	Dec 17/14	250,000.00	5.50%	1,145.83	Jun 18/22	12,480.68	12,480.68	0.00	
1455 Dufferin St.	Feb 25/14	250,000.00	10.00%	2,083.33	Jun 1/22				
1455 Dufferin St.	May 9/14	98,500.00	10.00%	820.83	Jun 1/22				
1455 Dufferin St.	Feb 11/15	100,000.00	10.00%	833.33	Jun 1/22				
1455 Dufferin St.	Oct 19/16	80,000.00	10.00%	666.67	Jun 1/22	4,404.17		4404.17	
Clayton	Sep 16/14	75,000.00	10.00%	625.00	Jun 16/22			625.00	
Anderson	Mar 10/15	135,000.00	10.00%	1,125.00	Jun 11/22			1125.00	
Baycetch	Mar 20/15	265,000.00	10.00%	2,208.33	Jun 20/22			2208.33	
Hopkins	May 21/15	160,000.00	10.00%	1333.33	Jun 21/22				
Nikiforov	May 21/15	100,000.00	10.00%	833.33	Jun 21/22				
Pegg's Mountain	May 21/15	53,000.00	10.00%	441.67	Jun 21/22	2608.33		2608.33	
Ivings	Sep 24/15	150,000.00	10.00%	1,250.00	Jun 15/22				
Ivings	Feb 12/16	200,000.00	10.00%	1,666.67	Jun 15/22				
Ivings	Mar 10/16	50,000.00	10.00%	416.67	Jun 15/22	3,333.33		3333.33	
Davidson	Oct 19/15	280,000.00	10.00%	2,333.33	Jun 1/22		2,333.33	0.00	
Walker	Nov 3/15	450,000.00	10.00%	3,750.00	Jun 3/22			3750.00	
Walker	Oct 17/16	125,000.00	10.00%	1,041.67	Jun 17/22			1041.67	
Renaud	Nov 11/15	215,000.00	9.75%	1,746.88	Jun 1/22			1746.88	
Smith, Garin	Jan 15/16	270,000.00	9.75%	2,193.75	Jun 1/22		2,193.75	0.00	
Millar	Feb 12/16	250,000.00	5.50%	1,145.83	Jun 15/22				
Millar	Jun 23/16	75,000.00	5.50%	343.75	Jun 15/22				
Millar	Oct 6/16	85,000.00	5.50%	389.58	Jun 15/22				
Millar	Mar 28/17	15,000.00	5.50%	68.75	Jun 15/22	1,947.92		1947.92	
Westlake	April 8/16	135,000.00	10%	1,125.00	Jun 15/22			1125.00	
Brown	Apr 14/16	77,000.00	10%	641.67	Jun 15/22			641.67	
2297217 Ont (Pegg's)	May 13/16	80,000.00	10%	666.67	Jun 19/22				
2297217 Ont (Pegg's)	May 19/16	60,000.00	10%	500.00	Jun 19/22	1,166.67		1166.67	
Nikiforov	Oct 12/16	70,000.00	10%	583.33	Jun 12/22				
Nikiforov (Pays down)	Nov 22/16	11,000.00	10%	91.67					
Nikiforov (Pays down)	Nov 22/16	26,000.00	10%	216.67		275.00		275.00	
Millar (UK)	June 7/18	500,000.00	10%	4,166.67	Jun 7/22			4166.67	
2296217 Ont.(718 Queenway)	Oct	91,000.00	10%	758.33	Jun 17/22			758.33	
LaFramboise	Sep 8/21	425,000.00	8%	2,833.33	Jun 29/22			2833.33	
Aquapark (USD)	Nov 9/17	500,000.00	9%	3,750.00	Jun 9/22				
Aquapark (USD)	Dec 21/17	500,000.00	9%	3,750.00	Jun 9/22	7,500.00		7500.00	
Jun 24, 2022		8,977,500.00		61,357.29			19,532.70	34,324.59	CDN
					Amex- ending Jun 17/22		19,532.70	7,500.00	USD
								34,324.59	CDN
								7,500.00	USD

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23. The monthly statements and corresponding monthly payments created the appearance that Slattery, Merk and Skymark were engaged in the legitimate provision of mortgages, and were adhering to the terms of their various agreements and Trust Declarations with 753 Canada and 198 Ontario. In reality, however, those monthly statements and corresponding monthly payments were part and parcel of the defendants' fraudulent scheme.

24. For example, the mortgages in respect of at least 17 of the 25 properties referenced in the above-noted June 2022 statement provided to 753 Canada had in fact been discharged between December 2014 and March 2022. Those discharges occurred without notice having been provided to 753 Canada or any principal amounts having been repaid by Merk or Skymark, which instead, through Slattery, falsely led 753 Canada and 198 Ontario to believe that the original or renewed terms of those mortgages were ongoing.

25. Slattery, Merk and Skymark were therefore not acting legitimately, and were not adhering to the terms of their agreements and Trust Declarations with 753 Canada and 198 Ontario. They were instead knowingly taking advantage of Orr's trust based on his longstanding friendship with Slattery, and over the course of several years were engaged in a scheme to defraud and misappropriate funds from 753 Canada and 198 Ontario, and to unjustly enrich themselves, all while acting in breaches of the trusts established by the Trust Declarations.

26. To perpetrate their fraudulent scheme, upon receiving repayment of the principal amounts of the mortgages, Slattery, Merk and Skymark discharged the mortgages from title to the underlying properties but concealed those facts from 753 Canada and 198 Ontario. The properties with discharged mortgages are described in Schedule "B" to this statement of claim.

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27. Having been repaid the principal amounts and discharged the mortgages from title, Slattery, Merk and Skymark then knowingly failed to repay the principal amounts owing to 753 Canada and 198 Ontario as required under the terms of the applicable agreements and the Trust Declarations, and failed to advise 753 Canada and 198 Ontario of those discharges. Instead, Slattery, Merk and Skymark continued to provide regularly monthly statements in respect of those mortgages to 753 Canada and 198 Ontario, and continued to make monthly payments that Merk and Skymark falsely represented to be monthly interest payments derived from those mortgages.

28. Slattery, Merk and Skymark continued to provide regular monthly statements and make monthly payments in order to conceal their scheme to defraud and misappropriate funds from 753 Canada and 198 Ontario, and to unjustly enrich themselves, all while acting in breaches of the trusts established by the Trust Declarations. In other words, the monthly statements and monthly payments were part and parcel of the fraudulent scheme.

29. By engaging in the scheme, Slattery, Merk and Skymark fraudulently avoided repaying 753 Canada and 198 Ontario the significant principal amounts to which they were entitled at the end of the term of those mortgages, as required under the terms of the applicable agreements and the Trust Declarations in respect of 753 Canada's and 198 Ontario's interests in those mortgages.

30. Had Slattery, Merk and Skymark been acting legitimately, they would have immediately notified 753 Canada and 198 Ontario that the terms of those mortgages had concluded and that the registration of those mortgages had been discharged (which in normal course could occur only upon repayment of the principal by the mortgagor), and would have promptly repaid the principal amount owing to 753 Canada or 198 Ontario in connection with that mortgage.

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The Plaintiffs Discovered the Fraudulent Scheme

31. In July 2022, 753 Canada and 198 Ontario discovered the fraudulent scheme. The discovery of the scheme occurred when Orr learned that the majority of the mortgages in which 753 Canada and 198 Ontario had invested had been long-ago discharged from title, but that no notice of such discharges had been provided by Merk or Skymark, and the corresponding principal amounts of those mortgages had not been repaid to 753 Canada or 198 Ontario.

32. In light of the foregoing, Orr immediately confronted Slattery regarding the fact that the discharged mortgages. At that time, Orr demanded that Slattery provide an explanation for the discharged mortgages and demanded repayment of the corresponding principal amounts.

33. In response, Slattery did not provide any explanation for the discharged mortgages or the current status of the investments that 753 Canada or 198 Ontario had made with Merk and Skymark, and Merk and Skymark did not repay any principal amounts. To the contrary, in response to being confronted by Orr, without any explanation or legitimate justification, Slattery instead caused Merk and Skymark to stop making monthly interest payments in connection with all mortgages in which 753 Canada and 198 Ontario had invested, including the mortgages that had not been discharged.

34. As a result, 753 Canada and 198 Ontario have received no interest payments in connection with any mortgage in which they have invested with Merk and Skymark since June 2022. This is the case both in respect of the discharged mortgages, and in respect of the small number of mortgages that continue to be held on title to relevant properties. A description of the mortgages that continue to be held on title to those properties is in Schedule “C” to this statement of claim.

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35. Following their unsuccessful attempt to confront Slattery, Merk and Skymark and the foregoing demands, 753 Canada and 198 Ontario retained counsel to represent their interests. As a result, on August 15, 2022, counsel to 753 Canada and 198 Ontario sent a detailed letter that demanded as immediately and by no later than August 22, 2022, among other things:

- (a) The “production of all records held by Merk or Skymark relating to each of the Trust Declarations and the trusts created by the Trust Declarations”, including in respect of the terms, registration, deregistration, renewals, payment history and other details of each of the mortgages.
- (b) The repayment of the principal amounts of all discharged mortgages, and the payment of all outstanding interest payments in respect of all of the mortgages in which 753 Canada and 198 Ontario invested.
- (c) The transfer of the respective interests of 735 Canada and 198 Ontario for all mortgages that continue to be held on title to relevant properties to a new trustee or, alternatively, the repayment of the principal amounts of those mortgages.

36. As was the case when previously confronted by Orr, none of Slattery, Merk or Skymark have provided any response to the detailed letter sent by counsel to 753 Canada and 198 Ontario, nor have they provided any of the records, repayments or other payments demanded in that letter. The total amount owing to 753 Canada and 198 Ontario is at least \$16,000,000.

37. While the full details of the fraudulent scheme of Slattery, Merk and Skymark is within their knowledge, the secretly discharged mortgages, falsified monthly statements, failures to repay

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principal amounts and the refusals to respond to confrontations and demands except to stop making monthly interest payments confirm the existence and impropriety of the scheme.

Liability Under the OBCA

38. By virtue of their relationships with Merk and Skymark, 753 Canada and 198 Ontario are “complainants” under the OBCA, which is the statute under which both Merk and Skymark are incorporated. In light of the foregoing, the conduct of Slattery, Merk and Skymark has been and continues to be oppressive and unfairly prejudicial to, and unfairly disregards the interests of, 753 Canada and 198 Ontario, which are therefore entitled to relief under section 248 of the OBCA.

39. The relief to which 753 Canada and 198 Ontario are entitled under section 248 of the OBCA is pleaded previously in this statement of claim but includes an order restraining the conduct of Slattery, Merk and Skymark, ordering the production of records sought in the August 15, 2022 letter of counsel to 753 Canada and 198 Ontario, and an order compensating 753 Canada and 198 Ontario for their damages, losses or other harm caused by the defendants’ misconduct, which is in the amount of at least \$16,000,000.

Liability for Damages

40. Given the foregoing, Slattery, Merk and Skymark are liable to 753 Canada and 198 Ontario for damages in an amount of at least \$16,000,000, and further amounts to be particularized prior to trial.

41. Slattery, in his personal capacity and on behalf of Merk and Skymark, has made a series of false representations or deliberately deceived 753 Canada and 198 Ontario through his omissions. He did so knowing the falsity of those representations and the deception that would result from his

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omissions. Those false representations and deliberate deceptions caused 753 Canada and 198 Ontario to make and maintain investments in mortgages with Merk and Skymark, the result of which has been the losses in the amount of at least \$16,000,000. Slattery, Merk and Skymark are therefore liable in fraud and misappropriation.

42. Slattery, Merk and Skymark have also been unjustly enriched. They have received amounts and benefits from 753 Canada and 198 Ontario in the absence of any juristic reasons for any such enrichment, and are therefore liable for those amounts and benefits, and hold such amounts and benefits in a constructive trust. The amount of the defendants' unjust enrichment is at least \$16,000,000.

43. Merk and Skymark are also liable for breach of trust. The Trust Declarations – and the circumstances giving rise to the Trust Declarations – have the requisite certainty of intention, subject-matter and objects to create trusts. Merk and Skymark have continuously and repeatedly breached their responsibilities as trustees, including most obviously by misappropriating or otherwise refusing to return the funds invested by 753 Canada and 198 Ontario that are the subject of the trusts. The amount of the defendants' liability for breach of trust is at least \$16,000,000.

44. Merk and Skymark are also liable for breach of contract. In respect of all investments in relevant mortgages, the terms of the agreements between, on one hand, 753 Canada and 198 Ontario and, on the other hand, Merk and Skymark, included that 753 Canada and 198 Ontario would receive monthly interest payments and would be repaid their principal amount invested in respect of each mortgage. In breach of those contracts, Merk and Skymark have failed to make monthly interest payments or repay principal amounts owing. They have also failed to adhere to

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the terms of all additional agreements for the protection of investments by 753 Canada and 198 Ontario. The amount of the defendants' liability for breach of contract is at least \$16,000,000.

45. By virtue of the misconduct pleaded herein, an award of aggravated, exemplary and/or punitive damages against Slattery, Merk and Skymark in the amount of \$100,000 is also appropriate.

Preservation and Tracing of Assets

46. The conduct pleaded herein warrants the relief sought to preserve, freeze, trace and account for funds or assets improperly defrauded, misappropriated or otherwise diverted from 753 Canada and 198 Ontario, including into and through any assets purchased by Slattery, Merk or Skymark – and their employees, agents, assigns, officers, directors or anyone else acting on their behalf or in conjunction with them – and to recover the same, including on the basis that such funds or assets are held in a constructive trust for 753 Canada and 198 Ontario.

Replacement of Trustees

47. The breaches of trust pleaded herein demonstrate a want of honesty and proper conduct by Merk and Skymark. As a result, their continuation as trustees jeopardizes the proper and efficient administration of the respective trusts of which 753 Canada and 198 Ontario are the beneficiaries. 753 Canada and 198 Ontario have also lost faith in the ability of Merk and Skymark to act as trustees with respect to any mortgages that remain registered on title to relevant properties.

48. 753 Canada and 198 Ontario therefore seek an order pursuant to this Court's inherent jurisdiction or section 5 of the *Trustee Act* (Ontario) replacing Merk and Skymark as trustees in respect of the plaintiffs' interests in any remaining mortgages that Merk or Skymark hold in trust

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for the plaintiffs, and requiring Merk and Skymark to transfer the plaintiffs' interests in those mortgages to the new trustee. Such an order is necessary and expedient to protect the interests of the plaintiffs.

49. 735 Canada and 198 Ontario also seek an order requiring Merk, Skymark, or the mortgagors of any remaining mortgages held in trust by Merk or Skymark, and in which the plaintiffs have an interest, to make all outstanding or future interest payments owing in respect of the plaintiffs' interests in those mortgages to the plaintiffs until Merk and Skymark are replaced as trustees in respect of those interests, and thereafter to the new trustee. Such an order is also necessary and expedient to protect the interests of the plaintiffs.

Piercing the Corporate Veil

50. If necessary, the plaintiffs are entitled to pierce the corporate veil of Skymark and Merk and obtain damages against Slattery on the basis that:

- (a) At all material times, Slattery caused Skymark and Merk to undertake the misconduct described above.
- (b) At all material times, Slattery wholly or partly owned Skymark and Merk, directly or indirectly, and exercised absolute control over Skymark and Merk, using them as his alter ego, front or sham for his own benefit;
- (c) Merk and Skymark have been, and are being, used as a shield for the wrongful conduct of Slattery.
- (d) To permit Slattery to avoid liability would result in flagrant injustice.

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Place of Trial

51. The plaintiffs request that the trial of this action be held in Toronto, Ontario.

August 29, 2022

BENNETT JONES LLP
3400 One First Canadian Place
P.O. Box 130
Toronto ON M5X 1A4

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Lawyers for the plaintiffs

SCHEDULE "A"

The list of the municipal addresses of the properties that are the subject matter of the Trust Declarations are as follows:

Ontario Properties

- 1393 Graham's Lane, Burlington, Ontario
- 1455 Dufferin Street, Toronto, Ontario
- 150 George Street, Brantford, Ontario
- 151 Prospect Street, Port Dover, Ontario
- 1534 Dranoel Road, Bethany, Ontario
- 155 Adams Boulevard, Brantford, Ontario
- 155208 7th Line, R.R. #2, Markdale, Ontario
- 160 Burnet Street, Oakville, Ontario
- 1705 Pegg's Mountain Road, Parry Sound
- 187 King Street East, Toronto, Ontario
- 190 Harding Boulevard West, Unit 158, Richmond Hill, Ontario
- 27 Farm Lane, Britt, Ontario
- 28 Stowe Terrace, Brantford Ontario
- 275 Richmond Street West, Toronto, Ontario
- 30 Roser Crescent, Clarington, Ontario
- 310 Towanda Boulevard, Blenheim, Ontario
- 560 Ivings Boulevard, Units 2-4, Port Elgin, Ontario
- 6 Dryden Court, Markham, Ontario
- 65 George Street, Toronto, Ontario
- 6780 Formentera Avenue, Mississauga, Ontario
- 77 Still River Road, Britt, Ontario

- 718 The Queensway, Etobicoke, Ontario
- 81 River Street, Parry Sound, Ontario
- 855 Centre Road, Hamilton, Ontario

United Kingdom Properties

- 2 Weardale Close, United Kingdom

United States Properties

- 6820 Crystal Hill Road, North Little Rock, Arkansas

SCHEDULE "B"

Merk and Skymark no longer hold mortgages registered on title to the properties with the following municipal addresses:

Ontario Properties

- 1393 Graham's Lane, Burlington, Ontario
- 1455 Dufferin Street, Toronto, Ontario
- 150 George Street, Brantford, Ontario
- 151 Prospect Street, Port Dover, Ontario
- 1534 Dranoel Road, Bethany, Ontario
- 155 Adams Boulevard, Brantford, Ontario
- 155208 7th Line, R.R. #2, Markdale, Ontario
- 160 Burnet Street, Oakville, Ontario
- 1705 Pegg's Mountain Road, Parry Sound
- 190 Harding Boulevard West, Unit 158, Richmond Hill, Ontario
- 27 Farm Lane, Britt, Ontario
- 28 Stowe Terrace, Brantford Ontario
- 30 Roser Crescent, Clarington, Ontario
- 310 Towanda Boulevard, Blenheim, Ontario
- 6780 Formentera Avenue, Mississauga, Ontario
- 77 Still River Road, Britt, Ontario
- 81 River Street, Parry Sound, Ontario
- 855 Centre Road, Hamilton, Ontario

United Kingdom Properties

- 2 Weardale Close, United Kingdom

United States Properties

- 6820 Crystal Hill Road, North Little Rock, Arkansas

SCHEDULE "C"

- AT4959217. The \$91,000 mortgage registered on title to the property known municipally as 718 The Queensway, Etobicoke on September 17, 2018.
- AT5389407. The \$5,650,000 mortgage registered on title to the property known municipally as 187 King Street East, Toronto on March 17, 2020.
- AT5389414. The \$5,650,000 mortgage registered on title to the property known municipally as 275 Richmond Street West, Toronto on March 17, 2020.
- AT5926797. The \$2,500,000 mortgage registered on the title to the property known municipally as 65 George Street, Toronto on December 1, 2021.
- BR112309. The \$3,000,000 mortgage registered on title to the property known municipally as 560 Ivings Boulevard, Units 2-4, Port Elgin on October 11, 2016.
- YR2373756. The \$420,000 mortgage registered on title to the property known municipally as 6 Dryden Court, Markham on October 19, 2015.

7539088 CANADA INC. AND 1989474 ONTARIO INC.

-and-

MICHAEL SLATTERY ET. AL.

Plaintiffs

Defendants

Court File No.

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

PROCEEDING COMMENCED AT
TORONTO

STATEMENT OF CLAIM

BENNETT JONES LLP
3400 One First Canadian Place
P.O. Box 130
Toronto ON M5X 1A4


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Lawyers for the plaintiffs

**This is Exhibit “B” referred to in the Affidavit of Andrew Sahai
sworn February 16, 2024.**

DocuSigned by:

2CAAFB598666461...

Commissioner for Taking Affidavits (or as may be)

AMENDED FRESH AS AMENDED STATEMENT OF CLAIM
MODIFIÉ CONFORMÉMENT À L'ORDONNANCE DU
DATED/FAIT LE
REGISTRAR GREFFIER
SUPERIOR COURT OF JUSTICE COUR SUPÉRIEURE DE JUSTICE

Sep-2023
justice

Court File No./N° du dossier du greffe : CV-22-00686234-00CL

49

Court File No. CV-22-00686234-00CL

ONTARIO

SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

REGISTRAR GREFFIER
SUPERIOR COURT OF JUSTICE COUR SUPÉRIEURE DE JUSTICE

B E T W E E N:

7539088 CANADA INC. and 1989474 ONTARIO INC.

Plaintiffs

- and -

MICHAEL SLATTERY, MERK INVESTMENTS LTD., SKYMARK
FINANCE CORPORATION, PAUL MILLAR, 1266845 ONTARIO LIMITED,
1690682 ONTARIO INC. and, 1429458 ONTARIO LIMITED,
SKYLARK HOLDINGS LTD., and DINA NGUYEN

Defendants

AMENDED FRESH AS AMENDED STATEMENT OF CLAIM

TO THE DEFENDANTS:

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the plaintiffs.
The claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or an Ontario lawyer acting for you must prepare a Statement of Defence in Form 18A prescribed by the Rules of Civil Procedure, serve it on the plaintiffs' lawyer or, where the plaintiff does not have a lawyer, serve it on the plaintiffs, and file it, with proof of service in this court office, WITHIN TWENTY DAYS after this Statement of Claim is served on you, if you are served in Ontario.

If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your Statement of Defence is forty days. If you are served outside Canada and the United States of America, the period is sixty days.

Instead of serving and filing a Statement of Defence, you may serve and file a Notice of Intent to Defend in Form 18B prescribed by the Rules of Civil Procedure. This will entitle you to ten more days within which to serve and file your Statement of Defence.

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IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

TAKE NOTICE: THIS ACTION WILL AUTOMATICALLY BE DISMISSED if it has not been set down for trial or terminated by any means within five years after the action was commenced unless otherwise ordered by the court.

Date _____ Issued by _____
Local Registrar

Address of
court office: 330 University Avenue
8th Floor
Toronto ON M5G 1R8

TO: MICHAEL SLATTERY
c/o Merk Investments Ltd.
300-46 Village Centre Place
Mississauga, ON
L4Z 1V9

AND TO: MERK INVESTMENTS LTD.
300-46 Village Centre Place
Mississauga, ON
L4Z 1V9

AND TO: SKYMARK FINANCE CORPORATION
300-46 Village Centre Place
Mississauga, ON
L4Z 1V9

AND TO: PAUL MILLAR
31 Baby Point Crescent
Toronto, ON
M6S 2B7

AND TO: 1266845 ONTARIO LIMITED
275 Richmond Street West, Third Floor
Toronto, ON
M5V 1X1

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AND TO: 1690682 ONTARIO INC.
275 Richmond Street West, Third Floor
Toronto, ON
M5V 1X1

AND TO: 1429458 ONTARIO LIMITED
275 Richmond Street West
Toronto, ON
M5V 1X1

AND TO: SKYLARK HOLDINGS LIMITED
300-46 Village Centre Place
Mississauga, ON
L4Z 1V9

AND TO: DINA NGUYEN
c/o Skylark Holdings Limited
300-46 Village Centre Place
Mississauga, ON
L4Z 1V9

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CLAIM

1. The plaintiffs, 7539088 Canada Inc. (“753 Canada”) and 1989474 Ontario Inc. (“198 Ontario”), claim against Michael Slattery (“Slattery”), Dina Nguyen (“Nguyen”), Merk Investments Ltd. (“Merk”)-and, Skymark Finance Corporation (“Skymark”) and Skylark Holdings Limited (“Skylark”):

- (a) A declaration that Slattery, Nguyen, Merk-and, Skymark and Skylark have acted, and continue to act, in a manner that is oppressive or unfairly prejudicial to, or that unfairly disregards, the interests of the plaintiffs, all contrary to section 248 of the *Business Corporations Act* (Ontario) (the “OBCA”).
- (b) An order pursuant to section 248 of the OBCA restraining the conduct of Slattery, Nguyen, Merk-and, Skymark and Skylark that is oppressive or unfairly prejudicial to, or that unfairly disregards, the interests of the plaintiffs.
- (c) An order pursuant to section 248 of the OBCA, and/or pursuant to section 101 of the *Courts of Justice Act* (Ontario) and rule 41 of the *Rules of Civil Procedure* (Ontario), appointing a receiver or receiver-manager in respect of Slattery, Merk ~~and, Skymark,~~ and Skylark and, wherever possible, over the particular mortgages that Slattery has caused Merk and Skymark to hold in trust for the benefit of the plaintiffs.
- (d) An order pursuant to section 248 of the OBCA requiring the production to the plaintiffs of all documents, records and communications relating to the plaintiffs’ investments with and through Merk and Skymark, as facilitated by Skylark, in mortgages including, without limitation, the documents, records and

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communications identified in the plaintiffs' demand letter dated August 15, 2022, which has gone unanswered.

- (e) An order pursuant to section 248 of the OBCA compensating the plaintiffs for all damages, losses or other harm caused by the conduct of Slattery, Nguyen, Merk ~~and~~, Skymark and Skylark that is oppressive or unfairly prejudicial to, or that unfairly disregards, the interests of the plaintiffs.
- (f) Damages from Slattery, Merk, Skymark and Skylark in an amount of at least ~~\$16,000,000~~ \$7,500,000, and further amounts to be particularized prior to trial, for fraud, misappropriation, and unjust enrichment ~~and~~.
- (g) Damages from Nguyen in the case an amount of at least \$7,500,000, and further amounts to be particularized prior to trial, for fraud and misappropriation.
- (h) Damages from Slattery, Nguyen and Skylark in amount of at least \$7,500,000, and further amounts to be particularized prior to trial, for knowing assistance in breach of trust.
- (i) ~~(g)~~-An order pursuant to rule 45 of the *Rules of Civil Procedure* (Ontario) for the preservation of all mortgages, funds or property held by or for the benefit of Slattery, Merk or Skymark relating to or arising from the plaintiffs' interests in mortgages held by Merk and Skymark.
- (j) ~~(h)~~-An interim and interlocutory order in the form of an injunction restraining Slattery, Merk or Skymark– and their employees, agents, assigns, officers, directors or anyone else acting on their behalf or in conjunction with them – from

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directly or indirectly, in any manner, causing the discharge or alteration of any remaining mortgages in which the plaintiffs have an interest, without the express written consent of the plaintiffs and/or a further court order.

(k) ~~(i)~~—An interim and interlocutory order in the form of a Mareva injunction restraining Slattery, Merk and Skymark – and their employees, agents, assigns, officers, directors or anyone else acting on their behalf or in conjunction with them – from directly or indirectly, in any manner, disposing of, selling, removing, dissipating, alienating, transferring, assigning, encumbering or similarly dealing with any assets held by or for the benefit of Slattery, Merk or Skymark wherever located.

(l) ~~(j)~~—An order directing all financial institutions or other third parties having notice of the order contemplated in the preceding paragraph to forthwith freeze and prevent the removal or transfer of any monies or assets held by or for the benefit of Slattery, Merk or Skymark wherever located.

(m) ~~(k)~~—An accounting for, and order permitting the tracing and location of, all funds or assets improperly defrauded, misappropriated or otherwise diverted from the plaintiffs, including into and through any assets purchased by Slattery, Nguyen, Merk or Skymark or Skylark – and their employees, agents, assigns, officers, directors or anyone else acting on their behalf or in conjunction with them – and to recover the same.

(n) ~~(l)~~—A declaration that all funds or assets improperly defrauded, misappropriated or otherwise diverted from the plaintiffs, including into and through any assets

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purchased by Slattery, Nguyen, Merk-~~or~~, Skymark or Skylark – and their employees, agents, assigns, officers, directors or anyone else acting on their behalf or in conjunction with them – are impressed with a constructive trust for the benefit of the plaintiffs.

- (o) ~~(m)~~ A declaration that the plaintiffs' claims, including the breach of trust claim below, shall survive any act of bankruptcy on the part of any of Slattery, Nguyen, Merk-~~or~~, Skymark or Skylark pursuant to section 178(1) of the *Bankruptcy and Insolvency Act* (Canada).

2. The plaintiffs, 753 Canada and 198 Ontario, claim against Merk and Skymark:

- (a) A declaration that Merk or Skymark held or hold the plaintiffs' interests in mortgages in which the plaintiffs invested with and through Merk and Skymark – and in subsequent mortgages arising from or related to those investments – in trust for the plaintiffs.
- (b) An order requiring Merk and Skymark, as trustees, to produce to the plaintiffs all documents, records and communications relating to the plaintiffs' investments with and through Merk and Skymark in mortgages including, without limitation, the documents, records and communications identified in the plaintiffs' demand letter dated August 15, 2022, which has gone unanswered.
- (c) An order pursuant to this Court's inherent jurisdiction or section 5 of the *Trustee Act* (Ontario) replacing Merk and Skymark as trustees in respect of the plaintiffs' interests in any remaining mortgages that Merk or Skymark hold in trust for the

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plaintiffs, and requiring Merk and Skymark to transfer the plaintiffs' interests in those mortgages to the new trustee.

- (d) An order requiring Merk, Skymark, or the mortgagors of any remaining mortgages held in trust by Merk or Skymark, and in which the plaintiffs have an interest, to make all outstanding or future interest payments owing in respect of the plaintiffs' interests in those mortgages to the plaintiffs until Merk and Skymark are replaced as trustees in respect of those interests, and thereafter to the new trustee.
- (e) A declaration that Merk and Skymark have breached their obligations as trustees to the plaintiffs including without limitation by failing to pay the principal and interest amounts owing to the plaintiffs under the interests in the mortgages that Merk and Skymark held or hold in trust for the plaintiffs.
- (f) Damages in an amount of at least ~~\$16,000,000~~ \$7,500,000, and further amounts to be particularized prior to trial, for breach of trust and breach of contract.

3. The plaintiffs, 753 Canada and 198 Ontario, claim against the defendants Slattery, Paul Millar ("Millar"), Merk and 1429458 Ontario Limited ("142 Ontario") a declaration that Slattery, Millar, Merk and 142 Ontario wrongfully and without the consent of, or notice to, the plaintiffs agreed to and did cause the discharge of the mortgage securing the plaintiffs' investment in the total principal amount of \$5,650,000 in respect of the property municipally known as 65 George Street, Toronto, Ontario, M5A 4L8 ("65 George Street").

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4. The plaintiffs, 753 Canada and 198 Ontario, claim against the defendants Slattery, Millar, Merk and 1266845 Ontario Limited (“126 Ontario”) and 1690682 Ontario Inc. (“169 Ontario”) a declaration that Slattery, Millar, Merk, 126 Ontario and 169 Ontario wrongfully and without the consent of, or notice to, the plaintiffs agreed to and did cause the renewal of the mortgage securing the plaintiffs’ investment in the total principal amount of \$5,650,000 in respect of the properties municipally known as 187 King Street East, Toronto, Ontario M5A 4M5 (“187 King Street”) and 275 Richmond Street West, Toronto, Ontario, M5V 1X1 (“275 Richmond Street”).

5. The plaintiffs, 753 Canada and 198 Ontario, claim against the defendants Slattery, Millar, Merk, 142 Ontario, 126 Ontario and 169 Ontario:

- (a) An order requiring Slattery, Millar, Merk, 142 Ontario, 126 Ontario and 169 Ontario to repay the plaintiffs’ investment in the total principal amount of \$5,650,000 that was to be secured by a mortgage held in trust by Merk and registered on title to 65 George Street, 187 King Street and 275 Richmond Street.
- (b) Damages in the amount equal to the difference between the interest payments received by the plaintiffs in connection with 187 King Street and 275 Richmond Street since April 1, 2021 and the higher interest payments the plaintiffs could have received had the mortgage not been wrongfully renewed on April 1, 2021.
- (c) An order that security in the form of a mortgage or similar charge in the total amount of \$5,650,000 in favour of 753 Canada and 198 Ontario be registered on title to 65 George Street until such time as the amounts or damages pleaded at paragraph 5(a)-(c) are paid to 753 Canada and 198 Ontario.

- (d) An order pursuant to section 103 of the Courts of Justice Act (Ontario) and rule 42 of the Rules of Civil Procedure (Ontario) granting 753 Canada and 198 Ontario leave to have issued and register certificates of pending litigation in respect of their interest in 65 George Street, the legal title to which is PART OF TOWN LOTS 19 AND 20 ON THE SOUTH SIDE OF KING STREET TOWN OF YORK PLAN, DESIGNATED AS PART 1 ON PLAN 66R-32882; CITY OF TORONTO (21094-0257 (LT)).
6. The plaintiff, 198 Ontario, claims against Slattery, Millar, Merk and Skymark:
 - (a) A declaration that Slattery, Millar, Merk and Skymark wrongfully and without the consent of, or notice to, 198 Ontario, agreed to and did cause the first-ranking mortgage in which 198 Ontario invested the principal amount of \$3,000,000 in respect of the property municipally known as 155 Adams Boulevard, Brantford, Ontario, N3S 7V8 (“155 Adams Boulevard”) that was to be held in trust by Merk to be improperly subordinated to subsequent mortgages in favour of Skymark.
 - (b) Damages in the amount of \$3,000,000, and further amounts to be particularized prior to trial, for breach of trust and knowing assistance in breach of trust in connection with 155 Adams Boulevard.
7. The plaintiff, 753 Canada, claims against Slattery, Millar and Merk:
 - (a) A declaration that Slattery, Millar and Merk wrongfully and without the consent of, or notice to, 753 Canada, permitted the complete loss of, and failed to seek to maintain or recover (whether reasonably or at all), 753 Canada’s investment of the

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principal amount of USD \$1,000,000 in respect of the property municipally known as 6820 Crystal Hill Road, North Little Rock, Arkansas (known and defined herein as “Aquapark”) that was to be held in trust by Merk.

- (b) Damages in the Canadian dollars required to purchase USD \$1,000,000, and further amounts to be particularized prior to trial, for breach of trust and knowing assistance in breach of trust in connection with Aquapark.

8. The plaintiffs, 753 Canada and 198 Ontario, claim against Slattery, Millar, Merk and Skymark, if necessary, a declaration that the plaintiffs are entitled to pierce the corporate veil of Merk and Skymark including, without limitation, to advance and enforce their claims and seek damages against Slattery and Millar.

9. The plaintiffs, 753 Canada and 198 Ontario, claim against Slattery, Nguyen and Skylark, if necessary, a declaration that the plaintiffs are entitled to pierce the corporate veil of Skylark including, without limitation, to advance and enforce their claims and seek damages against Slattery and Nguyen.

10. ~~9.~~The plaintiffs, 753 Canada and 198 Ontario, claim against Millar, 142 Ontario, 126 Ontario and 169 Ontario, if necessary, a declaration that the plaintiffs are entitled to pierce the corporate veils of 142 Ontario, 126 Ontario and 169 Ontario including, without limitation, to advance and enforce their claims and seek damages against Millar.

11. ~~10.~~The plaintiffs, 753 Canada and 198 Ontario, claim against Slattery, Millar, Nguyen, Merk, Skymark, 142 Ontario, 126 Ontario ~~and~~, 169 Ontario and Skylark:

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- (a) Prejudgment and post-judgment interest in accordance with the terms of the relevant mortgages in which the plaintiffs have invested or, alternatively, in accordance with sections 128 and 129 of the *Courts of Justice Act* (Ontario).
- (b) Aggravated, exemplary and/or punitive damages in the amount of \$100,000.
- (c) The costs of this proceeding, plus all applicable taxes.
- (d) Such further and other relief as to this Honourable Court may seem just.

The Parties

(a) The Plaintiffs

12. ~~11.~~ 753 Canada is a corporation headquartered in Toronto, Ontario and incorporated under the *Canada Business Corporations Act*. Its sole officer and director is Michael Orr (“Orr”), who manages the business of 753 Canada on behalf of the shareholders of that corporation.

13. ~~12.~~ 198 Ontario is a corporation headquartered in Toronto, Ontario and incorporated under the OBCA. Its sole officer and director is also Orr. 198 Ontario is the corporate vehicle through which Orr from time to time makes investments on behalf of his family office, which most regularly maintains holdings in the financial services, media, technology and wine sectors,

(b) The Defendants

14. ~~13.~~ Slaterry is an individual resident in Mississauga, Ontario. He ~~publicly holds himself out as~~ is a licensed mortgage broker, ~~and. As detailed herein, Slaterry~~ is closely affiliated with and exerts control over Merk ~~and~~, Skymark and Skylark.

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15. 14. Merk is a corporation headquartered in Mississauga, Ontario and incorporated under the OBCA. Slattery is Merk's CEO, and one of its shareholders and directors. The purported business of Merk includes providing mortgages in respect of residential and commercial properties. At all material times, Merk (and Skymark) managed and administered mortgages arranged by Skylark.

16. 15. Skymark is a corporation headquartered in Mississauga, Ontario and incorporated under the OBCA. Millar is the founder, President, Treasurer and Secretary of Skymark, and one of its two directors. Slattery is also Skymark's CEO, and its other director. Millar and Slattery are also Skymark shareholders. The purported business of Skymark also includes providing mortgages in respect of residential and commercial properties, including as arranged by Skylark.

17. Skylark is a corporation headquartered in Mississauga, Ontario and incorporated under the OBCA. It operates as "Skylark Mortgages". Slattery is the sole officer, director and sole or primary shareholder of Skylark. Skylark is a licensed mortgage brokerage and Slattery is its principal broker.

18. Merk, Skymark and Skylark are closely associated, operate from the same office and, at the direction of Slattery and Nguyen (and others), undertake their business in a highly integrated and coordinated fashion in furtherance of the same improper ends. Since this action was commenced, Merk and Skymark have been placed into receivership, but Skylark continues to operate in the normal course at the continued direction of Slattery and Nguyen.

19. Nguyen is an individual resident in Ontario. She is Skylark's Financial Controller and Bookkeeper. As detailed herein, Nguyen is a long-time close associate of Slattery and at relevant times has acted together with Slattery on behalf of Merk, Skymark and Skylark.

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20. ~~16.~~ Millar is an individual resident in Toronto, Ontario. In addition to his roles with Skymark described above, Millar is a director, officer and shareholder of 142 Ontario, 126 Ontario and 169 Ontario, all of which are corporate entities with which he is closely affiliated and exerts control. Prior to the events giving rise to this action, Orr considered both Millar and Slattery to be his close friends in whom he placed considerable trust. They were both aware of this as the three of them socialized together over many years and often discussed their businesses together, which included the plaintiffs' investments with Merk and Skymark.

21. ~~17.~~ 142 Ontario is a corporation headquartered in Toronto, Ontario and incorporated under the OBCA. Millar is 142 Ontario's President, Secretary and a director and shareholder. The business of 142 Ontario is the ownership of the property municipally known as 65 George Street.

22. ~~18.~~ 126 Ontario is a corporation headquartered in Toronto, Ontario and incorporated under the OBCA. Millar is 126 Ontario's President and a director and shareholder. The business of 126 Ontario is the ownership of the property municipally known as 187 King Street.

23. ~~19.~~ 169 Ontario is a corporate headquartered in Toronto, Ontario and incorporated under the OBCA. Millar is 169 Ontario's President, Secretary, sole director and a shareholder. The business of 169 Ontario is the ownership of the property municipally known as 275 Richmond Street.

24. ~~20.~~ Consistent with Millar's relationship with each of such corporation, 142 Ontario, 126 Ontario and 169 Ontario are together herein described as the "Millar Corporate Defendants".

The Plaintiffs' Investments in Mortgages

25. ~~21.~~ This action concerns mortgages in which 753 Canada and 198 Ontario have invested through Merk and Skymark. The mortgages relate to at least 26 different properties, the majority of which are in Ontario. The properties are described in Schedule "A" to this statement of claim.

26. ~~22.~~ Orr caused 753 Canada and 198 Ontario to make their respective investments in the mortgages through Merk and Skymark. Orr initially did so on the basis of representations made by, and agreements reached with, Slattery.

27. ~~23.~~ Slattery was responsible for identifying potential customers that sought mortgages in respect of residential and commercial properties, and negotiating the terms of any potential mortgages with those customers. In doing so, Slattery did so by and through Skylark, which is the mortgage brokerage that Slattery owns and for which Slattery is the principal broker.

28. In identifying customers and negotiating mortgage terms with those customers, Slattery and, in turn, Skylark promoted and relied on their respective status as mortgage broker and brokerage, and on the façade that they are credible and legitimate participants in the mortgage industry. For example, Slattery caused Skylark to publicly promote, among other things, that Skylark has "a breadth of experience and expertise in the mortgage and lending industry."

29. At the same time, Slattery and Skylark also relied on the façade of Merk and Skymark, which also outwardly appear to be credible and legitimate participants in the mortgage industry, including due to the involvement with Skymark of Millar, who holds himself out as Skymark's founder and having "a well credentialed reputation in both international financial and real estate."

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30. ~~24.~~ Having identified a potential customer and negotiated the terms of a potential mortgage, Slattery and Skylark presented the mortgage as a potential investment opportunity to Orr. Slattery and Skylark proposed to Orr that one of 753 Canada or 198 Ontario would fund some or all of the principal amount of the mortgage, in exchange for receiving the monthly interest payments consistent with the terms of the mortgage that Slattery and Skylark had negotiated with the customers.

31. ~~25.~~ More specifically, Slattery, in his personal capacity and on behalf of Skylark, proposed and represented, and it was agreed that:

- (a) One of 753 Canada or 198 Ontario would fund some or all of the principal amount of the mortgage, in exchange for receiving a proportionate share of the monthly interest payments consistent with the terms of the mortgage that Slattery and Skylark had negotiated with the customers. For example, if 753 Canada invested 100% of the principal amount, it would be entitled to receive 100% of the monthly interest payments.
- (b) An initial “finder’s fee” would be payable by the corporation that funded the principal amount (i.e., 753 Canada or 198 Ontario) to the corporation that issued the corresponding mortgage to the underlying customer (i.e., Merk or Skymark). Separately, Skylark would be entitled to (and was paid) a fee from the customer for brokering the mortgage that 753 Canada or 198 Ontario had agreed to fund.
- (c) The monthly payments of interest would remain payable for as long as the term of the underlying mortgage continued, whether under the original term of that mortgage or as that term may be renewed from time-to-time.

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- (d) At the conclusion of the term, the corporation that funded the principal amount (i.e. 753 Canada or 198 Ontario) would be entitled to be repaid that principal amount in full, plus any outstanding interest payable (typically for the final month of the term). The repayment would be made by Merk, Skymark or Skylark, as appropriate.
- (e) Although Slattery and Skylark brokered the mortgages, the principal amounts funded by 753 Canada or 198 Ontario were advanced to the underlying borrowers by and through Merk or Skymark, and Merk and Skymark were the holders of the corresponding mortgages registered on title to the borrowers' properties. This approach reflected that the business of Merk and Skymark included managing and administering the mortgages arranged by Skylark.
- (f) (e) The corporation that issued the mortgage to the underlying customer (i.e., Merk or Skymark) would hold the investment of the corporation that funded the principal amount (i.e. 753 Canada or 198 Ontario) in trust, and would serve as the trustee in respect of that investment under a written trust declaration (a "Trust Declaration"). Under a Trust Declaration, 753 Canada or 198 Ontario would be the beneficiary.
- (g) (f) 753 Canada and 198 Ontario were entitled to be repaid the principal amount of their investment in respect of any mortgage in which they had invested at any time and without issue. In that case, Merk or Skymark – in coordination with Skylark, as broker – would be responsible for arranging an alternative source of funding in respect of that mortgage.

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32. While in response to the claims advanced in this action Slattery has claimed that Orr knowingly caused 753 Canada and 198 Ontario to invest the principal amounts of “high-risk mortgages” (and therefore ought not to complain about 753 Canada’s and 198 Ontario’s losses), Slattery’s claim is false, and contrary to his statements made to Orr and the public promotions that he caused Skylark to make, including the express statement on the section of Skylark’s website directed towards investors in mortgages: “Mortgages are a low-risk, high reward investment.”

33. 26.—Over the course of many years and in every instance on the terms described immediately above, Orr regularly agreed to cause 753 Canada or 198 Ontario to make investments by way of funding some or all of the principal amount of mortgages proposed by Slattery and Skylark. He did so based on the representations made by Slattery and Skylark regarding those investments, and based on the considerable trust that he had in Slattery due to their longstanding friendship.

34. 27.—In respect of every investment that Orr caused 753 Canada and 198 Ontario to make, he did so having discussed the foregoing terms with Slattery (and therefore with Skylark), or having agreed that the terms would be “the same”, at a time in the days immediately preceding when the investment was made. The timing of the investments is particularized in the table at paragraph ~~64~~69 below.

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35. ~~28.~~ Orr also caused 753 Canada or 198 Ontario to fund the principal amount of additional mortgages proposed by Slattery and Skylark based on the regular monthly statements ~~jointly that Slattery and Nguyen caused to be provided by or on behalf of Merk and, Skymark that and Skylark.~~ The monthly statements purported to show existing, registered mortgages in respect of prior investments made by 753 Canada and 198 Ontario, and corresponding monthly payments that Merk ~~and, Skymark~~ or Skylark represented to be monthly interest payments derived from those mortgages.

36. ~~29.~~ In each instance where Orr caused 753 Canada or 198 Ontario to fund some or all of the principal amount of the mortgages proposed by Slattery and Skylark, the mortgage was issued to the customer by Merk or Skymark, and the mortgage was initially registered on title to the property subject to the mortgage in the name of Merk or Skymark, which were paid a “finder’s fee” (on top of the brokerage fee paid to Skylark).

37. ~~30.~~ In all such cases, Merk or Skymark executed a “Trust Declaration” that expressly acknowledged the investment and interest of 753 Canada or 198 Ontario in the mortgage, and that Merk or Skymark therefore holds the interest of 753 Canada or 198 Ontario in trust. Each of the Trust Documents was substantially the same, but for the details of the particular mortgage and the particular resulting trust relationship. For example, one of the three Trust Declaration for the 155 Adams Boulevard, Brantford, Ontario provides as follows:

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TRUST DECLARATION

BETWEEN

MERK INVESTMENTS LTD.

Trustee

- and -

1989474 ONTARIO INC.

Beneficiaries

WHEREAS Merk Investments Ltd. holds a \$1,000,000.00 interest in a mortgage registered on the title to the property municipally known as 155 Adams Blvd., Brantford;

AND WHEREAS Merk Investments Ltd. holds a \$1,000,000.00 interest in the mortgage in trust for 1989474 Ontario Inc..

NOW THEREFORE the Trustee hereby declares:

1. Merk Investments Ltd. holds the mortgage wholly in trust for the aforesaid beneficiaries;
2. The recitals are true;
3. Merk Investments Ltd. agrees to do such things and execute such documents as may be required to carry out the intent of the trust.

DECLARED at Mississauga, this 22nd day of June, 2015.

MERK INVESTMENTS LTD.

Per: _____

Michael Slattery

38. ~~34.~~ The use of a trustee-beneficiary relationship, and the Trust Declarations used to confirm and record that relationship, was consistent with standard practices in the mortgage industry. The use of this standard practice provided 753 Canada and 198 Ontario the benefit of investing in and beneficially holding the mortgages, including by investing in portions of the mortgages, but without dealing with the day-to-day management of the mortgages.

39. ~~32.~~ Consistent with the Trust Declarations, in respect of each mortgage in which 753 Canada or 198 Ontario invested, the agreement reached by Orr and Slattery and Skylark was that Merk or Skymark or Skylark, as the case may be, would pay to 753 Canada or 198 Ontario monthly interest amounts proportionate to their interest in the mortgage, and would re-pay the principal

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To the contrary, MerkSlattery and Nguyen caused Merk, Skymark ~~continued~~ or Skylark to continue to make payments that purported to be monthly interest payments corresponding to the mortgages listed in the monthly statements.

44. ~~37.~~ The mortgage registered on title to 155 Adams Boulevard was also subject to additional agreements intended by Slattery to further the appearance that 198 Ontario would be re-paid the principal amounts it had invested in those particular mortgages.

45. ~~38.~~ In respect of 155 Adams Boulevard, Slattery executed a guarantee dated June 13, 2018 stating that if the mortgages went into default, “Skymark Finance Corporation will pay off the mortgage.” Slattery and Millar also both executed personal guarantees in respect of 155 Adams Boulevard, dated December 14, 2018, which provided that “if Mike Orr requires his funds from the above mortgage investment on April 30, 2019, and if the mortgage has not already been paid off, Michael Slattery and Paul Millar will hereby guarantee to pay Mike Orr his funds due under the above mortgage.”

The Fraudulent Scheme

46. ~~39.~~ Having made their respective investments in the various mortgages, 753 Canada and 198 Ontario received regularly monthly statements that Slattery and Nguyen caused to be provided by Merk and, Skymark ~~purporting~~ and Skylark. Those monthly statements purported to show each of the existing mortgages registered on title to the underlying properties. In addition, 753 Canada and 198 Ontario received corresponding monthly payments that MerkSlattery and Nguyen caused Merk, Skymark ~~represented~~ or Skylark to represent to be monthly interest payments derived from those mortgages. Slattery and Nguyen also made statements directly to 753 and 198 Ontario confirming the contents of the monthly statements and the reasons for the monthly payments,

namely receipt of interest payments derived from the mortgages purportedly registered on title to
the underlying properties.

47. ~~40.~~ A monthly statement provided jointly by Merk and Skymark to 753 Canada as recently as late June 2022, and which shows monthly payments that Merk ~~and~~ Skymark or Skylark represented to be monthly interest payments derived from 753 Canada's mortgage investments, appeared as follows:

7539088 Canada Inc PROPERTY		DATE INVESTED	Principal Amount	INT. RATE	MTHLY PM	LAST CHQ DATE		Holds-Amex	Chqs sending	
Azzarello Vlassova	Jul 24/13 Jul 24/13	25,000.00 45,000.00	10.00% 10.00%	208.33 375.00	Jun 24/22 Jun 24/22			16.04	192.29 375.00	
Hopkins	Dec 18/13	300,000.00	10.00%	2,500.00	Jun 18/22			2,500.00	0.00	
Millar	Dec 18/13	850,000.00	5.50%	3,895.83	Jun 18/22					
Millar (1.375 mil)	Dec 18/13	1,375,000.00	5.50%	6,302.08	Jun 18/22					
Millar	Oct 31/14	250,000.00	5.50%	1,145.83	Jun 18/22					
Millar	Dec 17/14	250,000.00	5.50%	1,145.83	Jun 18/22	12,489.58	12,489.58		0.00	
1455 Dufferin St.	Feb 25/14	260,000.00	10.00%	2,083.33	Jun 1/22					
1455 Dufferin St.	May 9/14	98,500.00	10.00%	820.83	Jun 1/22					
1455 Dufferin St.	Feb 11/15	100,000.00	10.00%	833.33	Jun 1/22					
1455 Dufferin St.	Oct 19/16	80,000.00	10.00%	666.67	Jun 1/22	4,404.17			4404.17	
Clayton	Sep 16/14	75,000.00	10.00%	625.00	Jun 16/22				625.00	
Anderson	Mar 10/15	135,000.00	10.00%	1,125.00	Jun 11/22				1125.00	
Baycetch	Mar 20/15	265,000.00	10.00%	2,208.33	Jun 20/22				2208.33	
Hopkins Nikiforov	May 21/15 May 21/15	160,000.00 100,000.00	10.00% 10.00%	1333.33 833.33	Jun 21/22 Jun 21/22					
Pegg's Mountain	May 21/15	53,000.00	10.00%	441.67	Jun 21/22	2608.33			2608.33	
Ivings	Sep 24/15	150,000.00	10.00%	1,250.00	Jun 15/22					
Ivings	Feb 12/16	200,000.00	10.00%	1,666.67	Jun 15/22					
Ivings	Mar 10/16	50,000.00	10.00%	416.67	Jun 15/22	3,333.33			3333.33	
Davidson	Oct 19/15	280,000.00	10.00%	2,333.33	Jun 1/22		2,333.33		0.00	
Walker Walker	Nov 3/15 Oct 17/16	450,000.00 125,000.00	10.00% 10.00%	3,750.00 1,041.67	Jun 3/22 Jun 17/22				3750.00 1041.67	
Renaud	Nov 11/15	215,000.00	9.75%	1,746.88	Jun 1/22				1746.88	
Smith, Garin	Jan 15/16	270,000.00	9.75%	2,193.75	Jun 1/22		2,193.75		0.00	
Millar	Feb 12/16	250,000.00	5.50%	1,145.83	Jun 15/22					
Millar	Jun 23/16	75,000.00	5.50%	343.75	Jun 15/22					
Millar	Oct 6/16	85,000.00	5.50%	389.58	Jun 15/22					
Millar	Mar 28/17	15,000.00	5.50%	68.75	Jun 15/22	1,947.92			1947.92	
Westlake	April 8/16	135,000.00	10%	1,125.00	Jun 15/22				1125.00	
Brown	Apr 14/16	77,000.00	10%	641.67	Jun 15/22				641.67	
2297217 Ont (Pegg's)	May 13/16	80,000.00	10%	666.67	Jun 19/22					
2297217 Ont (Pegg's)	May 19/16	60,000.00	10%	500.00	Jun 19/22	1,166.67			1166.67	
Nikiforov	Oct 12/16	70,000.00	10%	583.33	Jun 12/22					
Nikiforov (Pays down)	Nov 22/16	11,000.00	10%	91.67						
Nikiforov (Pays down)	Nov 22/16	26,000.00	10%	216.67		275.00			275.00	
Millar (UK)	June 7/18	500,000.00	10%	4,166.67	Jun 7/22				4166.67	
2296217 Ont.(718 Queenway)	Oct	91,000.00	10%	758.33	Jun 17/22				758.33	
LaFramboise	Sep 8/21	425,000.00	8%	2,833.33	Jun 29/22				2833.33	
Aquapark (USD)	Nov 9/17	500,000.00	9%	3,750.00	Jun 9/22					
Aquapark (USD)	Dec 21/17	500,000.00	9%	3,750.00	Jun 9/22	7,500.00			7500.00	
Jun 24, 2022		8,977,500.00		61,357.29				19,532.70	34,324.59	CDF
					Amex- ending Jun 17/22			19,532.70	7,500.00	USD
									34,324.59	CDF
									7,500.00	USD

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48. ~~41.~~ Similarly, the monthly statement provided by ~~Merk and Skymark~~ to 198 Ontario in June 2022 provides:

1989474 Ontario Inc.					
PROPERTY	DATE	Principal	INT.	MTHLY	LAST CHQ
	INVESTED	Amount	RATE	PM	DATE
Millar	Dec 18/13	2,000,000.00	5.50%	9,166.67	Jun 18/22
Mahal Venture	Jun 22/15	1,000,000.00	10.00%	8,333.33	Jun 22/22
Millar (UK)	Mar 20/19	1,000,000.00	7.00%		
	May 10/21 -	200,000.00			
	Jun 3/21 -	225,000.00			
	Jun 21/21 -	200,000.00		2,187.50	Jun 21/22
Mahal	June 13/18	1,000,000.00	10%	8,333.33	Jun 13/22
Mahal	Dec 17/18	1,000,000.00	10%	8,333.33	Jun 13/22
Total		5,375,000.00		36,354.17	
Note: Starting Sep 27/21 As per Michael Direct payment to 7539088 Canada Inc.					

49. ~~42.~~ The monthly statements and corresponding monthly payments created the appearance that Slattery, Nguyen, ~~Merk and~~ Skymark and Skylark were engaged in the legitimate provision of mortgages, and were adhering to the terms of their various agreements and Trust Declarations with 753 Canada and 198 Ontario. The plaintiffs relied on these monthly statements, and the corresponding statements made by Slattery and Nguyen, in agreeing to make, in coordination with Skylark, additional investments through Merk and Skymark, and in accepting the purported renewals of existing investments. In reality, however, those monthly statements and corresponding monthly payments were part and parcel of the fraudulent scheme.

50. ~~43.~~ For example, the mortgages in respect of at least 17 of the 25 properties referenced in the above-noted June 2022 statement provided to 753 Canada had in fact been discharged between

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December 2014 and March 2022. Those discharges occurred without notice having been provided to 753 Canada or any principal amounts having been repaid by ~~Merk-or~~, Skymark or Skylark, which instead, through Slattery and Nguyen, falsely led 753 Canada and 198 Ontario to believe that the original or renewed terms of those mortgages were ongoing.

51. ~~44.~~ Slattery, Nguyen, Merk-and, Skymark and Skylark were therefore not acting legitimately, and were not adhering to the terms of their agreements ~~and/or~~ Trust Declarations with 753 Canada and 198 Ontario. They were instead knowingly taking advantage of Orr's trust based on his longstanding friendship with Slattery, and over the course of several years were engaged in a scheme to defraud and misappropriate funds from 753 Canada and 198 Ontario, and to unjustly enrich themselves, all while acting in breaches of the trusts established by the Trust Declarations.

52. ~~45.~~ To perpetrate their fraudulent scheme, upon receiving repayment of the principal amounts of the mortgages, Slattery, Nguyen, Merk-and, Skymark and Skylark discharged the mortgages from title to the underlying properties but concealed those facts from 753 Canada and 198 Ontario. The properties with discharged mortgages are described in Schedule "B" to this statement of claim.

53. ~~46.~~ Having been repaid the principal amounts and discharged the mortgages from title, Slattery, Nguyen, Merk-and, Skymark and Skylark then knowingly failed to repay the principal amounts owing to 753 Canada and 198 Ontario as required under the terms of the applicable agreements and the Trust Declarations, and failed to advise 753 Canada and 198 Ontario of those discharges.

54. Instead, Slattery, and Nguyen continued to cause Merk-and, Skymark continued and Skylark to provide regularly monthly statements in respect of those mortgages to 753 Canada and

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198 Ontario, and continued to ~~make~~cause the monthly payments that Merk~~and~~, Skymark or Skylark falsely represented to be monthly interest payments derived from those mortgages.

55. ~~47.~~ Slattery, and Nguyen continued to cause Merk~~and~~, Skymark ~~continued~~ and Skylark to provide regular monthly statements and make monthly payments in order to conceal their scheme to defraud and misappropriate funds from 753 Canada and 198 Ontario, and to unjustly enrich themselves, all while acting in breaches of the trusts established by the Trust Declarations. In other words, the monthly statements and monthly payments were part and parcel of the fraudulent scheme.

56. ~~48.~~ By engaging in the scheme, Slattery, Nguyen, Merk~~and~~, Skymark and Skylark fraudulently avoided repaying 753 Canada and 198 Ontario the significant principal amounts to which they were entitled at the end of the term of those mortgages, as required under the terms of the applicable agreements and the Trust Declarations in respect of 753 Canada's and 198 Ontario's interests in those mortgages.

57. ~~49.~~ Had Slattery, Nguyen, Merk~~and~~, Skymark and Skylark been acting legitimately, they would have immediately notified 753 Canada and 198 Ontario that the terms of those mortgages had concluded and that the registration of those mortgages had been discharged (which in normal course could occur only upon repayment of the principal by the mortgagor), and would have promptly repaid the principal amount owing to 753 Canada or 198 Ontario in connection with that mortgage.

The Plaintiffs Discovered the Fraudulent Scheme

58. ~~50.~~ In July 2022, 753 Canada and 198 Ontario discovered the fraudulent scheme. The discovery of the scheme occurred when Orr learned that the majority of the mortgages in which

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753 Canada and 198 Ontario had invested had been long-ago discharged from title or subordinated to subsequently-registered mortgages, but that no notice of such discharges or subordination had been provided by any of Slattery, Nguyen, Merk-ør, Skymark or Skylark, and the corresponding principal amounts of those mortgages had not been repaid to 753 Canada or 198 Ontario.

59. ~~51.~~ In light of the foregoing, Orr immediately confronted Slattery regarding the discharged and subordinated mortgages. At that time, Orr demanded that Slattery provide an explanation for those mortgages and demanded repayment of the corresponding principal amounts. Orr also confronted Millar, who acted in concert with Slattery as described herein.

60. ~~52.~~ The confrontations primarily took place over the telephone although Millar visited Orr's house on one occasion, and Orr and Millar exchanged a limited number of text messages. At those times, Orr was in Toronto and understood that Millar was in Toronto or perhaps Colorado.

61. ~~53.~~ During the confrontations, Orr initially raised his discovery that mortgages securing the plaintiffs' investments had been discharged and his conclusion that Slattery was lying to him about those investments. In response, given that Millar was aware of the investments through Merk and Skymark and his role with Skymark, Millar initially tried to meet with Slattery to attempt to resolve their dispute, but was unsuccessful.

62. ~~54.~~ Later, Orr raised with Millar his subsequent discovery that the mortgage securing 198 Ontario's investment in 155 Adams Boulevard had been discharged without any repayment of the investment. In response, Millar advised Orr that the mortgage had been subordinated in any event, which was the first that Orr learned of the improper subordination (described below). Millar also admitted that he should have advised Orr that the "Aquapark" property in which 753 Canada had

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invested had been sold (without any return of 753 Canada's USD \$1,000,000 investment), but that he failed to do so.

63. ~~55.~~ In response to the confrontations, neither Slattery nor Millar provided any explanation for the discharged or subordinated mortgages or the current status of the investments that 753 Canada or 198 Ontario had made with and through Merk and Skymark, and none of Merk ~~and~~, Skymark ~~did not repay~~, Skylark or any other individual or entity repaid any principal amounts.

64. ~~56.~~ To the contrary, in response to being confronted by Orr, without any explanation or legitimate justification, Slattery ~~and~~, Millar and Nguyen instead caused Merk ~~and~~, Skymark and Skylark to stop making monthly interest payments in connection with all mortgages in which 753 Canada and 198 Ontario had invested, including the mortgages that had not been discharged. The mortgages for which payments were stopped in response the confrontation included the existing mortgage in favour of 753 Canada and 198 Ontario securing a \$5,650,000 investment brokered by Skylark and made through Merk with the Millar Corporate Defendants (as described below), and the existing mortgage in favour of 198 Ontario securing a \$1,000,000 investment made through Skymark to Millar (and his wife) personally.

65. ~~57.~~ As a result, except as a result of this action, 753 Canada and 198 Ontario have received no interest payments in connection with any mortgage in which they have invested with Merk and Skymark since June 2022. This is the case both in respect of the discharged and subordinated mortgages, and in respect of the small number of mortgages that continued to be held on title to relevant properties. A description of the mortgages registered on those properties at the time this action was commenced is in Schedule "C" to this statement of claim. ~~A mortgage also continued~~

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~~to be registered on title to a property with the municipal address 2 Weardale Close, United Kingdom ("Weardale").~~

66. ~~58.~~ Following their unsuccessful attempt to confront Slattery, Millar, Merk ~~and~~ Skymark and Skylark, and following the foregoing demands, 753 Canada and 198 Ontario retained counsel to represent their interests. As a result, on August 15, 2022, counsel to 753 Canada and 198 Ontario sent a detailed letter that demanded as immediately and by no later than August 22, 2022, among other things:

- (a) The “production of all records held by Merk or Skymark relating to each of the Trust Declarations and the trusts created by the Trust Declarations”, including in respect of the terms, registration, deregistration, renewals, payment history and other details of each of the mortgages.
- (b) The repayment of the principal amounts of all discharged mortgages, and the payment of all outstanding interest payments in respect of all of the mortgages in which 753 Canada and 198 Ontario invested.
- (c) The transfer of the respective interests of 735 Canada and 198 Ontario for all mortgages that continue to be held on title to relevant properties to a new trustee or, alternatively, the repayment of the principal amounts of those mortgages.

67. ~~59.~~ As was the case when previously confronted by Orr, none of Slattery, Millar, Merk ~~or~~ nor Skymark have provided any response to the detailed letter sent by counsel to 753 Canada and 198 Ontario, nor have they provided any of the records, repayments or other payments demanded in that letter except in response to this action or as ordered by the court.

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68. ~~60.~~ While the full details of the fraudulent scheme are within the defendants' knowledge, the secretly discharged and subordinated mortgages, falsified monthly statements, failures to repay principal amounts and the refusals to respond to confrontations and demands except to stop making monthly interest payments confirm the existence and impropriety of the scheme.

69. ~~61.~~ The following table summarizes the investments made by 753 Canada and 198 Ontario in respect of each of the properties referenced in the June 2022 monthly statement provided by Merk ~~and~~, Skymark and Skylark, as those investments existed at the time this action was originally commenced:

Property	Date of Investment	Trustee	Beneficiary	Amount Invested (\$)	The Plaintiffs' Estimate of when the Mortgages were Discharged
Discharged Mortgages					
28 Stowe Terrace, Brantford, Ontario ("Azzarello")	July 24, 2013	Merk	753 Canada	CAD 25,000	December 18, 2014
190 Harding Boulevard West, Unit 158, Richmond Hill, Ontario ("Anderson")	March 10, 2015	Merk	753 Canada	CAD 135,000	March 16, 2016
855 Centre Road, Hamilton, Ontario ("Renaud")	November 11, 2015	Merk	753 Canada	CAD 215,000	April 5, 2016
1705 Pegg's Mountain Road, Parry Sound, Ontario	May 21, 2015	Merk	753 Canada	53,000	December 6, 2016
	May 13, 2016	Merk	753 Canada	80,000	
	May 19, 2016	Merk	753 Canada	60,000	
310 Towanda Boulevard, Blenheim, Ontario	September 16, 2014	Merk	753 Canada	75,000	December 9, 2016
160 Burnet Street, Oakville, Ontario	July 24, 2013	Merk	753 Canada	45,000	December 14, 2016
1534 Dranoel Road, Bethany, Ontario	April 8, 2016	Merk	753 Canada	135,000	June 22, 2017
30 Roser Crescent, Clarington, Ontario	April 14, 2016	Merk	753 Canada	77,000	July 10, 2017
1393 Graham's Lane, Burlington, Ontario	November 3, 2015	Merk	753 Canada	450,000	January 29, 2018
	October 17, 2016	Merk	753 Canada	125,000	
81 River Street, Parry Sound, Ontario	May 21, 2015	Merk	753 Canada	100,000	November 15, 2018
	October 12, 2016	Merk	753 Canada	70,000 (- \$37,000)	

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Property	Date of Investment	Trustee	Beneficiary	Amount Invested (\$)	The Plaintiffs' Estimate of when the Mortgages were Discharged
65 George Street, Toronto, Ontario	December 18, 2013	Merk	198 Ontario	2,000,000	March 17, 2020
	December 18, 2013	Merk	753 Canada	850,000	
	December 18, 2013	Merk	753 Canada	1,375,000	
	October 31, 2014	Merk	753 Canada	250,000	
	December 17, 2014	Merk	753 Canada	250,000	
	February 12, 2016	Merk	753 Canada	250,000	
	June 23, 2016	Merk	753 Canada	75,000	
	October 6, 2016	Merk	753 Canada	85,000	
	March 28, 2017	Merk	753 Canada	15,000	
	June 7, 2018	Merk	753 Canada	500,000	
155208 7 th line, R.R. #2, Markdale, Ontario	December 18, 2013	Merk	753 Canada	300,000	March 27, 2020
	May 21, 2015	Merk	753 Canada	160,000	March 18, 2019
1455 Dufferin Street, Toronto, Ontario	February 25, 2014	Merk	753 Canada	250,000	June 19, 2020
	May 9, 2014	Merk	753 Canada	98,500	
	February 11, 2015	Merk	753 Canada	100,000	
	October 19, 2016	Merk	753 Canada	80,000	
150 George Street, Brantford, Ontario	March 20, 2015	Merk	753 Canada	265,000	October 1, 2021
151 Prospect Street, Port Dover, Ontario	January 15, 2016	Merk	753 Canada	270,000	December 7, 2021
27 Farm Lane, Britt, Ontario	September 8, 2021	Merk	753 Canada	425,000	March 3, 2022
77 Still River, Road, Britt, Ontario	September 8, 2021	Merk	753 Canada	425,000	March 3, 2022
155 Adams Boulevard, Brantford, Ontario	June 22, 2015	Merk	198 Ontario	1,000,000	May 18, 2022
	June 13, 2018	Merk	198 Ontario	1,000,000	
	December 17, 2018	Merk	198 Ontario	1,000,000	
6820 Crystal Hill Road, North Little Rock, Arkansas	November 9, 2017	Merk	753 Canada	USD 1,000,000	2021 or 2022
Existing Mortgages					
187 King Street East, Toronto, Ontario	December 18, 2013	Merk	198 Ontario	2,000,000	N/A
	December 18, 2013	Merk	753 Canada	850,000	

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Property	Date of Investment	Trustee	Beneficiary	Amount Invested (\$)	The Plaintiffs' Estimate of when the Mortgages were Discharged
	December 18, 2013	Merk	753 Canada	1,375,000	
	October 31, 2014	Merk	753 Canada	250,000	
	December 17, 2014	Merk	753 Canada	250,000	
	February 12, 2016	Merk	753 Canada	250,000	
	June 23, 2016	Merk	753 Canada	75,000	
	October 6, 2016	Merk	753 Canada	85,000	
	March 28, 2017	Merk	753 Canada	15,000	
	June 7, 2018	Merk	753 Canada	500,000	
275 Richmond Street West, Toronto, Ontario	December 18, 2013	Merk	198 Ontario	2,000,000	N/A
	December 18, 2013	Merk	753 Canada	850,000	
	December 18, 2013	Merk	753 Canada	1,375,000	
	October 31, 2014	Merk	753 Canada	250,000	
	December 17, 2014	Merk	753 Canada	250,000	
	February 12, 2016	Merk	753 Canada	250,000	
	June 23, 2016	Merk	753 Canada	75,000	
	October 6, 2016	Merk	753 Canada	85,000	
	March 28, 2017	Merk	753 Canada	15,000	
	December 18, 2013	Merk	198 Ontario	2,000,000	

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Property	Date of Investment	Trustee	Beneficiary	Amount Invested (\$)	The Plaintiffs' Estimate of when the Mortgages were Discharged
6 Dryden Court, Markham, Ontario	October 15, 2015	Merk	753 Canada	280,000	N/A
718 The Queensway, Etobicoke, Ontario	October 17, 2018	Merk	753 Canada	91,000	N/A
560 Ivings Boulevard, Units 2-4, Port Elgin, Ontario	September 24, 2015	Merk	753 Canada	150,000	N/A
	February 12, 2016	Merk	753 Canada	200,000	
	March 10, 2016	Merk	753 Canada	50,000	
2 Weardale Close, United Kingdom	March 20, 2019	Skymark	198 Ontario	1,000,000 (-\$625,000)	N/A

70. ~~62.~~ While the mortgage registered on title to the properties with municipal addresses 27 Farm Lane, Britt, Ontario and 77 Still River, Road, Britt, Ontario has been discharged, the principal amount remains secured by a mortgage registered on title to a property municipally known as 730 Chemin Pierre Laporte L'Ange Garden, Quebec (the "Quebec Mortgage").

71. ~~63.~~ After this action was commenced, the plaintiffs obtained the repayment of the principal amounts invested in respect of 2 Weardale Close, United Kingdom and the property with municipal address, 6 Dryden Court, Markham, Ontario ("Dryden"). The plaintiffs also obtained an order requiring Merk to transfer the mortgages registered on title to the properties listed in Schedule "C" (with the exception of the mortgage registered on title to Dryden) as well as the Quebec Mortgage to a new trustee, after which the principal amount invested in respect of 560 Ivings Boulevard, Port Elgin, Ontario, was also repaid.

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72. ~~64.~~ Accordingly, based on the information currently available to the plaintiffs, the amount misappropriated or misapplied is approximately \$7,500,000.

Millar and the Millar Corporate Defendants

73. ~~65.~~ Millar and the Millar Corporate Defendants engaged in conduct that amounted to knowingly participating in, or assisting, the breaches of trust pleaded in paragraphs ~~66-92~~74-100 and ~~101-108~~125-132 below. Millar and the Millar Corporate Defendants should be liable along with Slattery, Merk~~and~~, Skymark, Skylark and Nguyen for such conduct.

(a) 65 George Street, 187 King Street and 275 Richmond Street

74. ~~66.~~ On the invitation of Slattery, Skylark and Millar, Orr caused an investment in the total principal amount of \$5,650,000 to be made with the Millar Corporate Defendants. Skylark, acting through Slattery, brokered the investment and received a significant fee for doing so. The invitation was subject of numerous discussions between Orr, Millar and Slattery regarding an investment in 65 George Street, 187 King Street and 275 Richmond Street that took place at various times in and around 2010 and continued until at least in or around 2017.

75. ~~67.~~ As part of the invitation, Millar~~and~~, Slattery and Skylark explained and encouraged the investment, including by detailing Millar's purported plans for the development of 65 George Street and 187 King Street, and advising Orr that, until the principal amounts were repaid, the investment would be secured by first ranking mortgages on each of 65 George Street, 187 King Street and 275 Richmond Street. Millar~~and~~, Slattery and Skylark advised Orr that each of the subsequent investments by the plaintiffs in those properties (as secured by corresponding mortgages) reflected the increased valuations of the properties, and Millar's desire to leverage such

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increased valuations to obtain additional funds for the development of the properties and for his other purposes. Skylark brokered and received a fee for each such subsequent investment.

76. ~~68.~~ At material times, Slattery, Skylark, Millar, Merk and the Millar Corporate Defendants knew that the \$5,650,000 investment was secured by a \$5,650,000 mortgage that was registered on title to each of 65 George Street, 187 King Street and 275 Richmond Street, which are respectively owned by the Millar Corporate Defendants, and that the investment and corresponding mortgage were held in trust by Merk for 753 Canada (\$3,650,000) and 198 Ontario (\$2,000,000). As detailed herein, 753 Canada and 198 Ontario therefore had, and continue to have, an interest in each 65 George Street, 187 King Street and 275 Richmond Street.

77. ~~69.~~ In breach of trust and in knowing assistance of breach of trust, on or about March 17, 2020, Slattery, Skylark, Millar, Merk and 142 Ontario agreed to cause and did cause the mortgage that Merk held in trust for 753 Ontario and 198 Ontario to be discharged from title to 65 George Street. They did so without the consent of, or notice to, 753 Canada or 198 Ontario.

78. ~~70.~~ To the contrary, at or around the same time, Slattery executed, and caused to be provided to 753 Canada and 198 Ontario, new Trust Declarations that expressly referred to 65 George Street (as did the existing Trust Declarations). At the same time, Slattery, Skylark, Merk and Millar caused to be executed a new mortgage document in respect of the \$5,650,000 mortgage that also expressly referred to 65 George Street. Such new Trust Declarations and mortgage document were intended to, and did, conceal the secret discharge of the mortgage from title to 65 George Street. The secret discharge was significant because 65 George is far and away the most valuable of the three properties that was to provide security for the \$5,650,000 mortgage.

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79. ~~71.~~ In further breach of trust and in knowing assistance of breach of trust, on April 21, 2021, Slattery, Skylark, Millar, Merk, 126 Ontario and 169 Ontario agreed to and did cause the \$5,650,000 mortgage that Merk held in trust for 753 Ontario and 198 Ontario to be renewed for an additional three year term in respect of the two less valuable properties, 187 King Street and 275 Richmond Street. They again did so without the consent of, or notice to, 753 Canada or 198 Ontario of the renewal or the fact that the same mortgage had been discharged from title to the more valuable property, 65 George Street.

80. ~~72.~~ The discharge of the mortgage from title to 65 George Street, and the renewal of the mortgage on title to 187 King Street and 275 Richmond Street, was undertaken in breach of trust for the clear benefit and self-interest of Slattery, Skylark, Millar, Merk and the Millar Corporate Defendants, and to the detriment of 753 Canada and 198 Ontario. Among other things:

- (a) Neither 753 Canada nor 198 Ontario agreed to diminish the security in respect of their \$5,650,000 investment by discharging the mortgage from title to 65 George Street for no consideration, and neither 753 Canada nor 198 Ontario (nor any other reasonable business) would have agreed to do so under any circumstances. The secret discharge of the mortgage was purely for the wrongful benefit and self-interest of Slattery, Skylark, Millar, Merk and the Millar Corporate Defendants.
- (b) While Slattery has stated that the mortgage was discharged from title “because the George Street property was to be development [sic] and would be institutionally financed” (which itself would be to the benefit of Slattery, Skylark, Millar, Merk and the Millar Corporate Defendants), in reality the only mortgages subsequently registered on title to 65 George Street are in favour of Merk (and those associated

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with Merk), and do not secure any of the \$5,650,000 held in trust for 753 Canada or 198 Ontario. As recently as October 3, 2022 (and therefore in the face of this action), Slattery, Skylark, Millar, Merk and 142 Ontario caused Merk to advance additional funds to 142 Ontario that are secured by a mortgage in favour of Merk registered on title to 65 George Street. On December 2, 2022, Slattery, Skylark and Merk caused that same mortgage to be transferred to third parties, all for the further wrongful benefit and self-interest of Slattery, Skylark, Millar, Merk and the Millar Corporate Defendants, and to the detriment of the plaintiffs.

- (c) Neither 753 Canada nor 198 Ontario agreed to the renewal of the mortgages secured by 187 King Street and 275 Richmond Street, and neither 753 Canada nor 198 Ontario (nor any other reasonable business) would have agreed to do in the circumstances, which included the same mortgage having been secretly discharged from title to the more valuable property, 65 George Street, and the renewal being made on the same lending terms despite the materially lessened security (and therefore higher risk). The secret renewal was purely for the wrongful benefit and self interest of Slattery, Skylark, Millar, Merk and the Millar Corporate Defendants.

81. ~~73.~~ All such wrongful conduct was undertaken by Slattery, Skylark, Millar, Merk and the Millar Corporate Defendants despite their knowledge of trust relationships in place with 753 Canada and 198 Ontario, and their knowledge of the detriment to 753 Canada and 198 Ontario that would flow from, and has in fact flowed from, their misconduct.

(b) 155 Adams Boulevard

82. ~~74.~~ Merk held a \$3,000,000 principal amount of a first-ranking mortgage in respect of 155 Adams Boulevard in trust for 198 Ontario. The principal amount had been invested by way of three \$1,000,000 investments made between June 2015 and December 2018, each of which was the subject of an express Trust Declaration signed by Slattery on behalf of Merk. 198 Ontario would not have made any of those investments if the mortgage was not first-ranking. Like all other mortgages that are the subject of this action, the mortgage in respect of 155 Adams Boulevard was brokered by Skylark, which received fees for its services.

83. ~~75.~~ Despite Merk's status as trustee required to act for 198 Ontario's benefit, Slattery, Skylark, Millar, Merk and Skymark secretly, deliberately and knowingly engaged in misconduct, the result of which is that 198 Ontario's \$3,000,000 investment in respect of 155 Adams Boulevard is understood to be worthless. They did so in breach of trust for their own clear benefit and self-interest, and to the detriment of 198 Ontario.

84. ~~76.~~ In breach of trust and in knowing assistance of breach of trust, on August 9, 2017, Slattery, Skylark, Millar, Merk and Skymark agreed to and did cause Skymark to advance an additional principal amount in connection with 155 Adams Boulevard, and agreed to secure such amount with a mortgage that ranked ahead of the existing mortgage held by Merk for the benefit of 198 Ontario, which was therefore subordinated. They did so wrongfully and without the consent of, or notice to, 198 Ontario.

85. ~~77.~~ In further breach of trust and in knowing assistance of breach of trust, on August 7, 2018, Slattery, Skylark, Millar, Merk and Skymark again agreed to and did cause Skymark to advance an additional principal amount in connection with 155 Adams Boulevard, and again

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agreed to secure such amount with a mortgage that ranked ahead of the existing mortgage held by Merk for the benefit of 198 Ontario, which was therefore further subordinated. They again did so wrongfully and without the consent of, or notice to, 198 Ontario.

86. ~~78.~~ The deliberate and wrongful subordination of the previously first-ranking mortgage held by Merk for 198 Ontario's benefit has proven significant because, among other things, the borrower in respect of 155 Adams Boulevard, a corporate entity called Mahal Venture Capital Inc. ("Mahal"), is now in receivership. The receiver was appointed over Mahal on October 1, 2021 as a result of a receivership application made by Skymark (at the direction of Slattery and Millar), and which relied on affidavits sworn by Millar in support of the receivership application.

87. ~~79.~~ In further breach of trust and in knowing assistance of breach of trust, after the October 1, 2021 appointment of the Mahal receiver, the monthly statements delivered to 198 Ontario through to June 2022 continued to indicate that interest payments were made by Mahal. In reality, no such interest payments were made by Mahal after the appointment of the receiver (or presumably for the months leading up to the appointment of the receiver), and the monthly statements delivered to 198 Ontario were therefore clearly false and part of the scheme to conceal the breaches of trust.

88. ~~80.~~ In addition, consistent with their wrongful subordination and reliance on false monthly statements delivered to 198 Ontario, none of Slattery, Skylark, Millar, Merk or Skymark have taken any steps to assert 198 Ontario's interest in the receivership. They have instead asserted in the receivership only Skymark's interests in the mortgages that they wrongfully caused to be registered on title in priority to the mortgage in which 198 Ontario invested.

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89. ~~81.~~ It is the plaintiffs' understanding that, had the mortgage held in trust by Merk remained first-ranking, 198 Ontario's \$3,000,000 investment would be repaid in full in the receivership. However, due to the deliberate and wrongful subordination of that mortgage by Slattery, Skylark, Millar, Merk and Skymark, 198 Ontario is unlikely to recover its \$3,000,000 investment in the receivership.

90. ~~82.~~ In contrast, and again due to the deliberate and wrongful subordination of that mortgage by Slattery, Skylark, Millar, Merk and Skymark, the amounts subsequently invested by Skymark and secured by the mortgages registered in priority on title to 155 Adams Boulevard in favour of Skymark are likely to be repaid in full, all to the detriment of 198 Ontario.

(c) Aquapark

91. ~~83.~~ On the basis of representations by Slattery, in his personal capacity and on behalf of Skylark, and Millar, 753 Canada invested the principal amount of USD \$1,000,000 that was secured by a mortgage registered on title to Aquapark, a property municipally known as 6820 Crystal Hill Road, North Little Rock, Arkansas, on which at material times existed a large waterpark. The representations included those made by Slattery and Millar about the strength of, and their direct personal involvement with, the investment. 753 Canada's resulting investment and corresponding mortgage was held in trust by Merk, including pursuant to a Trust Declaration executed by Slattery on or around December 21, 2017.

92. ~~84.~~ More specifically, the representations were that Millar was personally involved in operating the business conducted on the property, and that Merk had made its own \$1 million investment in the property. The representations were made orally by Millar and Slattery to Orr in

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and around Toronto in the period just prior to 7539088 Canada Inc.'s investment in the "Aquapark" property.

93. ~~85.~~ Slattery and Millar had direct personal involvement with Aquapark and with 753 Canada's investment in it. As Slattery was aware, Millar was the manager of the property. Millar and Slattery had made their own investments in Aquapark, whether directly or indirectly. They knew of the trust relationship between Merk and 753 Canada, and knew of the detriment to 753 Canada that would flow from any misconduct relating to the trust relationship and 753 Canada's investment.

94. ~~86.~~ In breach of trust and in knowing assistance of breach of trust, Slattery, Skylark, Millar and Merk permitted the complete loss of, and failed to seek to maintain or recover (whether reasonably or at all), 753 Canada's investment of the principal amount of USD \$1,000,000 in respect of Aquapark. They did so wrongfully and without the consent of, or notice to, 753 Canada in respect of the deteriorating state of 753 Canada's investment.

95. ~~87.~~ To the contrary, the June 2022 monthly statement delivered to 753 Canada (excerpted above at paragraph ~~374~~7 and similar to the monthly statements for the months preceding June 2022) states that interest payments were made by the Aquapark borrowers on June 9, 2022, which was clearly false and part of the scheme to conceal the breaches of trust. In addition, when 753 Canada discovered and confronted Slattery about the fact that Aquapark had sold without any return of its USD \$1,000,000 principal investment, Slattery stated in response "We are still involved" (which was untrue) and stated "Michael I am making you whole" (which thus far is also untrue).

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96. ~~88.~~ The failure of Slattery, Skylark, Millar and Merk to advise 753 Canada in respect of the deteriorating state of its investment, and to advise 753 Canada of the ultimate loss of its investment, were deliberate acts undertaken in breach of trust for the clear benefit and self-interest of Slattery, Skylark, Millar and Merk, who sought to conceal the inaccuracies of their representations regarding Aquapark, and to extract their own investments in Aquapark while failing to do the same for 753 Canada.

Millar's Knowledge

97. ~~89.~~ At all material times, Millar, and therefore the Millar Corporate Defendants, knew of the plaintiffs' trust arrangements with Merk and Skymark in respect of 65 George Street, 187 King Street and 275 Richmond Street, 155 Adams Boulevard and Aquapark.

98. ~~90.~~ Millar knew of the trust arrangements as a result of, among other things, Millar's friendship with both Orr and Slattery, Millar's discussions with Slattery and Orr regarding the investments, Millar's role with Skymark, and more generally, his personal involvement with the respective properties and his knowledge that the funds invested in the properties through Merk and Skymark were invested at Orr's direction by the plaintiffs.

99. ~~91.~~ Millar also knew of the respective trust arrangements because:

- (a) Millar (and Slattery) invited Orr to cause 753 Canada and 198 Ontario to invest in the mortgage registered on title to 65 George Street, 187 King Street and 275 Richmond Street through Merk;

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- (b) Millar (and Slattery) executed personal guarantees dated December 14, 2018 in respect of the mortgage registered on title to 155 Adams Boulevard, which 198 Ontario invested in through Merk and Skymark;
- (c) Millar (and Slattery), through the representations described above, induced Orr to cause 753 Canada to invest in the mortgage registered on title to Aquapark through Merk; and
- (d) As pleaded above at paragraph ~~62~~, when confronted by Orr in June 2021, Millar admitted that he should have advised Orr that Aquapark had been sold (without any return of 753 Canada's \$1,000,000 investment, which he knew had been made through Merk), but that he failed to do so.

100. ~~92.~~ Accordingly, Millar Defendants' knew that the investments by Merk and Skymark were funded by the plaintiffs, held in trust for their benefit, and that their conduct and participation in the conduct of Slattery, Merk and Skymark, was to the plaintiffs' detriment as beneficiaries and ultimately to the Millar Defendants' benefit (as well as the benefit of Slattery, Skylark, Merk and Skymark), and therefore constituted breaches of trust.

The Role of Skylark in the Fraudulent Scheme

101. At all material times, Skylark directly, extensively and knowingly participated and assisted in conduct that was part and parcel of the fraudulent scheme perpetrated against 753 Canada and 198 Ontario. Skylark's participation and assistance in the fraudulent scheme was the result of the conduct of Slattery and Nguyen (and potentially others) acting on behalf of Skylark. Such conduct was critical to the perpetration of the fraudulent scheme and renders Skylark liable to the plaintiffs for the scheme.

102. The critical involvement of Skylark in the fraudulent scheme included utilizing Skylark's status as a registered mortgage broker to identify customers that sought mortgages, and negotiating the terms of any potential mortgages with those customers. In the absence of such customers and the mortgages, there would been no basis for 753 Canada or 198 Ontario to fund the principal amounts of mortgages, and no ability of relevant defendants to perpetrate the fraudulent scheme. At all material times, Skylark knew that its conduct was facilitating the misappropriation of the plaintiffs' investments.

103. The critical involvement of Skylark in the fraudulent scheme also included various other steps in connection with the mortgages securing the amounts invested by 753 Canada and 198 Ontario. Such steps included receiving and processing mortgage applications from the underlying customers, issuing mortgage commitments to those customers, directing the resulting mortgages into the names of Merk and Skymark, issuing (along with Merk and Skymark) the monthly statements to 753 Canada and 198 Ontario, and causing the discharge of the mortgages relevant to this action. For taking such steps, Skylark received significant brokerage fees.

104. The foregoing conduct of Skylark was undertaken to perpetrate and conceal the fraudulent scheme. Skylark knowingly participated in the breaches of trust by Merk and Skymark, and otherwise knowingly participated in the fraudulent scheme. Among other things:

(a) Along with Merk and Skymark, Skylark knew of, participated in and caused, the discharges of mortgages securing the plaintiffs' investments knowing that those discharges were not consented to, known by, or ever disclosed to, the plaintiffs.

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106. As a result, Slattery, Nguyen, Merk, Skymark and Skylark are jointly and severally liable for all damages and costs owing to the plaintiffs arising from their scheme.

The Role of Dina Nguyen in the Fraudulent Scheme

107. At all material times, Nguyen directly, extensively and knowingly participated and assisted in conduct that was part and parcel of the fraudulent scheme perpetrated against 753 Canada and 198 Ontario. Nguyen undertook fraudulent and improper conduct on behalf of Merk, Skymark and Skylark. Such conduct was critical to the perpetration of the fraudulent scheme and renders Nguyen personally liable to the plaintiffs for the scheme.

108. Although Nguyen was at all material times employed by Skylark, Nguyen's conduct giving rise to her liability in this action was undertaken on behalf of, and in coordination with, each of Merk, Skymark and Skylark. Such conduct was also undertaken in coordination with Slattery. All such conduct is consistent with Merk, Skymark and Skylark being operated without regard for their separate corporate identities, as detailed above.

109. While the full details of the fraudulent scheme, including certain details of Nguyen's conduct, are within the defendants' knowledge, Nguyen was directly and personally involved with the secretly discharged and subordinated mortgages, falsified monthly statements, failures to repay principal amounts to the plaintiffs, and the other conduct described at paragraph 104 above.

110. In particular, as Skylark's Financial Controller and Bookkeeper – and with complete insight into and knowledge of the financial affairs of Merk, Skymark and Skylark – Nguyen knew that:

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(a) The principal amounts received upon the discharge of mortgages relevant to this action were not returned or repaid to the plaintiffs but instead misappropriated by Slattery, Merk, Skymark and/or Skylark.

(b) Several of the principal amounts invested by the plaintiffs that are the subject of this action were never advanced as loans to customers, but were instead immediately misappropriated by Slattery, Merk, Skymark and/or Skylark.

(c) Several of the mortgages securing amounts invested by the plaintiffs were improperly transferred, assigned or subordinated, and all without the consent or knowledge of, or disclosure to, the plaintiffs.

111. Notwithstanding her insight into and knowledge of the financial affairs of Merk, Skymark and Skylark, in coordination with Slattery, Nguyen prepared and personally issued to the plaintiffs the fraudulent monthly statements. Nguyen's intention and purpose in preparing and issuing those statements was to conceal the fraudulent scheme and thereby permit the continued misappropriation of the plaintiffs' investments, including by attracting additional investments by the plaintiffs, which were then also misappropriated.

112. In preparing and issuing the fraudulent monthly statements to the plaintiffs, Nguyen used her Skylark email address and acted in her capacity as Skylark's Financial Controller and Bookkeeper. At the same time, consistent with the intermingling of the affairs of Skylark, Merk and Skymark, Nguyen was acting on behalf of Merk and Skymark, including by issuing the fraudulent monthly statements that purported to reflect the status of the plaintiffs' investments held in trust by Merk and Skymark.

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113. By preparing and issuing the fraudulent monthly statements to the plaintiffs while having complete insight into and knowledge of the financial affairs of Merk, Skymark and Skylark, Nguyen deliberately and knowingly participated and assisted in the fraudulent scheme, including by knowingly making false statements to the plaintiffs in furtherance of the scheme. Nguyen knew and intended that the plaintiffs would rely on the fraudulent monthly statements, which they did.

114. In addition, and consistent with her status as Skylark's Financial Controller and Bookkeeper, and also acting on behalf of Merk and Skymark, Nguyen personally caused or undertook the transfers of funds to the plaintiffs purporting to be monthly interest payments derived from mortgages in which the plaintiffs had invested, despite the fact that many of those mortgages had been discharged, and therefore were not generating any interest paid by customers that Merk, Skymark or Skylark could pay to the plaintiffs. In doing so, Nguyen knew that the amounts being paid to the plaintiffs did not reflect interest paid by customers, because there was obviously no such interest received in connection with the previously-discharged mortgages.

115. In turn, Nguyen personally caused the transfers of funds to the plaintiffs purporting to be monthly interest payments knowing that those payments were not legitimate, but instead were in furtherance of the efforts of Slattery, Nguyen, Merk, Skymark and Skylark to conceal the fraudulent scheme.

116. In these circumstances, Nguyen is jointly and severally liable with Slattery, Merk, Skymark and Skylark for all damages and costs owing to the plaintiffs arising from their scheme.

Liability Under the OBCA

117. ~~93.~~ By virtue of their relationships with Merk ~~and~~, Skymark and Skylark, 753 Canada and 198 Ontario are “complainants” under the OBCA, which is the statute under which ~~both Merk and~~, Skymark and Skylark are incorporated. In light of the foregoing, the conduct of Slattery, Nguyen, Merk ~~and~~, Skymark and Skylark has been and continues to be oppressive and unfairly prejudicial to, and unfairly disregards the interests of, 753 Canada and 198 Ontario, which are therefore entitled to relief under section 248 of the OBCA.

118. ~~94.~~ The relief to which 753 Canada and 198 Ontario are entitled under section 248 of the OBCA is pleaded previously in this statement of claim but includes an order restraining the conduct of Slattery, Nguyen, Merk ~~and~~, Skymark and Skylark, including but not limited to the misconduct pleaded above as well as other misconduct undertaken by, and within the knowledge of Slattery, Nguyen, Merk ~~and~~, Skymark and Skylark, ordering the production of records sought in the August 15, 2022 letter of counsel to 753 Canada and 198 Ontario, and an order compensating 753 Canada and 198 Ontario for their damages, losses or other harm caused by the defendants’ misconduct, which is in the amount of at least \$~~16,000,000~~7,500,000.

Liability for Damages

119. ~~95.~~ Given the foregoing, Slattery, Nguyen, Merk ~~and~~, Skymark and Skylark are liable to 753 Canada and 198 Ontario for damages in an amount of at least \$~~16,000,000~~7,500,000, and further amounts to be particularized prior to trial.

120. ~~96.~~ Slattery and Nguyen, in ~~his~~their personal capacity~~ies~~ and on behalf of Merk ~~and~~, Skymark and Skylark, ~~has~~have made a series of false representations or deliberately deceived 753 Canada and 198 Ontario through ~~his~~their omissions. ~~He~~They did so knowing the falsity of those

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representations and the deception that would result from ~~his~~their omissions. Those false representations and deliberate deceptions caused 753 Canada and 198 Ontario to make and maintain investments in mortgages brokered by Skylark with Merk and Skymark, the result of which has been the losses in the amount of at least ~~\$16,000,000~~\$7,500,000. Slattery, Nguyen, Merk ~~and~~, Skymark and Skylark are therefore liable in fraud and misappropriation, and Slattery ~~is~~, Nguyen and Skylark are liable for knowing assistance in breach of trust.

121. ~~97.~~ Slattery, Merk ~~and~~, Skymark and Skylark have also been unjustly enriched. They have received amounts and benefits from 753 Canada and 198 Ontario in the absence of any juristic reasons for any such enrichment, and are therefore liable for those amounts and benefits, and hold such amounts and benefits in a constructive trust. The amount of the unjust enrichment of Slattery, Merk ~~and~~, Skymark and Skylark is at least ~~\$16,000,000~~\$7,500,000.

122. ~~98.~~ Merk and Skymark are also liable for breach of trust. The Trust Declarations – and the circumstances giving rise to the Trust Declarations – have the requisite certainty of intention, subject-matter and objects to create trusts. Merk and Skymark have continuously and repeatedly breached their responsibilities as trustees, including most obviously by misappropriating or otherwise refusing to return the funds invested by 753 Canada and 198 Ontario that are the subject of the trusts. The amount of Merk's and Skymark's liability for breach of trust, and in the case of Slattery and Nguyen, knowing assistance in breach of trust, is at least ~~\$16,000,000~~\$7,500,000.

123. ~~99.~~ Merk and Skymark are also liable for breach of contract. In respect of all investments in relevant mortgages, the terms of the agreements between, on one hand, 753 Canada and 198 Ontario and, on the other hand, Merk and Skymark, included that 753 Canada and 198 Ontario would receive monthly interest payments and would be repaid their principal amount invested in

respect of each mortgage. In breach of those contracts, Merk and Skymark have failed to make monthly interest payments or repay principal amounts owing, whether directly or through Skylark. They have also failed to adhere to the terms of all additional agreements for the protection of investments by 753 Canada and 198 Ontario. The amount of Merk's and Skymark's liability for breach of contract is at least ~~\$16,000,000~~7,500,000.

124. ~~100.~~—While as a result of 753 Canada and 198 Ontario commencing and pursuing this action, certain limited payments have been made and the court has rendered orders requiring the transfer of the existing mortgages, the extent to which the plaintiffs' damages have been mitigated remains to be determined and significant amounts remain owing in any event.

125. ~~101.~~ Given the foregoing, 753 Canada and 198 Ontario are entitled to an order requiring Slattery, Millar, Merk, 142 Ontario, 126 Ontario and 169 Ontario to immediately repay the plaintiffs' respective investments in the total principal amount of \$5,650,000 in connection with 65 George Street, 187 King Street and 275 Richmond Street, including due to their knowing assistance in breach of trust in connection with those properties.

126. 402-753 Canada and 198 are beneficiaries of the trust relationships with Merk, which has acted in breach of trust as described herein. Each of Slattery, Millar, 142 Ontario, 126 Ontario and 169 Ontario knew of the trust relationships and of the conduct of Merk amounting to the breach of trust. Having such knowledge, each of Slattery, Millar, 142 Ontario, 126 Ontario and 169 Ontario respectively assisted in the breach of trust in connection with 65 George Street, 187 King Street and 275 Richmond Street, as described herein.

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127. ~~403.~~ Given the foregoing, 753 Canada and 198 Ontario have an interest in 65 George Street and are entitled to an order that security in the form of a mortgage or similar charge in the total amount of \$5,650,000 in their favour be registered on title to 65 George Street. They are also entitled to have issued and register certificates of pending litigation in respect of 65 George Street.

128. ~~404.~~ 198 Ontario is also entitled to damages from Slattery, Millar and Skymark in the amount of \$3,000,000, and further amounts to be particularized prior to trial, including for knowing assistance in breach of trust in connection with 155 Adams Boulevard.

129. ~~405.~~ 198 Ontario is the beneficiary of a trust relationship with Merk, which has acted in breach of trust as described herein. Each of Slattery, Millar and Skymark knew of the trust relationship and of the conduct of Merk amounting to the breach of trust. Having such knowledge, each of Slattery, Millar and Skymark assisted in the breach of trust in connection with 155 Adams Boulevard, as described herein.

130. ~~406.~~ 753 Canada is also entitled to damages from Slattery, Millar and Merk in the amount of Canadian dollars required to purchase USD \$1,000,000, and further amounts to be particularized prior to trial, including in the case of Slattery and Millar for knowing assistance in breach of trust in connection with Aquapark.

131. ~~407.~~ 753 Canada is the beneficiary of a trust relationship with Merk, which has acted in breach of trust as described herein. Each of Slattery, and Millar ~~and Merk~~ knew of the trust relationship and of the conduct of Merk amounting to the breach of trust. Having such knowledge, each of Slattery and Millar assisted in the breach of trust in connection with Aquapark.

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mortgages to the new trustee. Such an order is necessary and expedient to protect the interests of the plaintiffs.

136. ~~112.~~ 735 Canada and 198 Ontario also seek an order requiring Merk, Skymark, or the mortgagors of any remaining mortgages held in trust by Merk or Skymark, and in which the plaintiffs have an interest, to make all outstanding or future interest payments owing in respect of the plaintiffs' interests in those mortgages to the plaintiffs until Merk and Skymark are replaced as trustees in respect of those interests, and thereafter to the new trustee. Such an order is also necessary and expedient to protect the interests of the plaintiffs.

137. ~~113.~~ As a result of the steps taken by the plaintiffs in this action and resulting orders of the court, Merk and Skymark have been, or will be, replaced as trustees in respect of all of the existing mortgages.

Piercing the Corporate Veil

138. ~~114.~~ If necessary, the plaintiffs are entitled to pierce the corporate veil of Skymark, Merk and MerkSkylark, and obtain damages against Slattery and Nguyen on the basis that:

- (a) At all material times, Slattery and Nguyen caused Skymark, Merk and MerkSkylark to undertake the misconduct described above.
- (b) At all material times, Slattery wholly or partly owned Skymark, Merk and MerkSkylark, directly or indirectly, and Slattery and Nguyen (who at all material times worked as a close associate of Slattery) exercised absolute control over Skymark, Merk and MerkSkylark, using them as ~~his~~their alter egos, fronts or shams for ~~his~~their own benefit.

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(c) ~~Merk-and~~, Skymark and Skylark have been, and are being, used as a shield for the wrongful conduct of Slattery and Nguyen.

(e) To permit Slattery or Nguyen to avoid liability would result in flagrant injustice.

139. ~~115.~~ The plaintiffs are also entitled to pierce the corporate veil of Skymark and the Millar Corporate Defendants and obtain damages against Millar on the basis that:

(a) At material times, Millar caused Skymark and the Millar Corporate Defendants to undertake the misconduct pleaded above in respect of Millar.

(b) At material times, Millar wholly or partly owned Skymark and the Millar Corporate Defendants, directly or indirectly, and exercised absolute control over them, using them as his alter ego, front or sham for his own benefit.

(c) Skymark and the Millar Corporate Defendants have been, and are being, used as a shield for the wrongful conduct of Millar.

(d) To permit Millar to avoid liability would result in flagrant injustice.

Place of Trial

140. ~~116.~~ The plaintiffs request that the trial of this action be held in Toronto, Ontario.

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August 29, 2022

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Telephone: 416.777.6249

Lawyers for the plaintiffs

The list of the municipal addresses of the properties that are the subject matter of the Trust Declarations are as follows:

Ontario Properties

- 1393 Graham's Lane, Burlington, Ontario
- 1455 Dufferin Street, Toronto, Ontario
- 150 George Street, Brantford, Ontario
- 151 Prospect Street, Port Dover, Ontario
- 1534 Dranoel Road, Bethany, Ontario
- 155 Adams Boulevard, Brantford, Ontario
- 155208 7th Line, R.R. #2, Markdale, Ontario
- 160 Burnet Street, Oakville, Ontario
- 1705 Pegg's Mountain Road, Parry Sound
- 187 King Street East, Toronto, Ontario
- 190 Harding Boulevard West, Unit 158, Richmond Hill, Ontario
- 27 Farm Lane, Britt, Ontario
- 28 Stowe Terrace, Brantford Ontario
- 275 Richmond Street West, Toronto, Ontario
- 30 Roser Crescent, Clarington, Ontario
- 310 Towanda Boulevard, Blenheim, Ontario
- 560 Ivings Boulevard, Units 2-4, Port Elgin, Ontario
- 6 Dryden Court, Markham, Ontario
- 65 George Street, Toronto, Ontario
- 6780 Formentera Avenue, Mississauga, Ontario
- 77 Still River Road, Britt, Ontario

- 718 The Queensway, Etobicoke, Ontario
- 81 River Street, Parry Sound, Ontario
- 855 Centre Road, Hamilton, Ontario

United Kingdom Properties

- 2 Weardale Close, United Kingdom

United States Properties

- 6820 Crystal Hill Road, North Little Rock, Arkansas

SCHEDULE "B"

Merk and Skymark no longer hold mortgages registered on title to the properties with the following municipal addresses:

Ontario Properties

- 1393 Graham's Lane, Burlington, Ontario
- 1455 Dufferin Street, Toronto, Ontario
- 150 George Street, Brantford, Ontario
- 151 Prospect Street, Port Dover, Ontario
- 1534 Dranoel Road, Bethany, Ontario
- 155 Adams Boulevard, Brantford, Ontario
- 155208 7th Line, R.R. #2, Markdale, Ontario
- 160 Burnet Street, Oakville, Ontario
- 1705 Pegg's Mountain Road, Parry Sound, Ontario
- 190 Harding Boulevard West, Unit 158, Richmond Hill, Ontario
- 27 Farm Lane, Britt, Ontario
- 28 Stowe Terrace, Brantford, Ontario
- 30 Roser Crescent, Clarington, Ontario
- 310 Towanda Boulevard, Blenheim, Ontario
- 65 George Street, Toronto, Ontario
- 6780 Formentera Avenue, Mississauga, Ontario
- 77 Still River Road, Britt, Ontario
- 81 River Street, Parry Sound, Ontario
- 855 Centre Road, Hamilton, Ontario

United States Properties

- 6820 Crystal Hill Road, North Little Rock, Arkansas

- AT4959217. The \$91,000 mortgage registered on title to the property known municipally as 718 The Queensway, Etobicoke on September 17, 2018.
- AT5389407. The \$5,650,000 mortgage registered on title to the property known municipally as 187 King Street East, Toronto on March 17, 2020.
- AT5389414. The \$5,650,000 mortgage registered on title to the property known municipally as 275 Richmond Street West, Toronto on March 17, 2020.
- BR112309. The \$3,000,000 mortgage registered on title to the property known municipally as 560 Ivings Boulevard, Units 2-4, Port Elgin on October 11, 2016.
- YR2373756. The \$420,000 mortgage registered on title to the property known municipally as 6 Dryden Court, Markham on October 19, 2015.

7539088 CANADA INC. AND 1989474 ONTARIO INC.

-and-

MICHAEL SLATTERY ET. AL.

Plaintiffs

Defendants

Court File No. CV-22-00686234-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

PROCEEDING COMMENCED AT
TORONTO

**AMENDED FRESH AS AMENDED
STATEMENT OF CLAIM**

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Lawyers for the plaintiffs

**This is Exhibit “C” referred to in the Affidavit of Andrew Sahai
sworn February 16, 2024.**

DocuSigned by:

2CAAFB598666461...

Commissioner for Taking Affidavits (or as may be)

Court File No. CV-22-00686234-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

THE HONOURABLE)	FRIDAY, THE 2 nd
)	
JUSTICE OSBORNE)	DAY OF DECEMBER, 2022

B E T W E E N:

7539088 CANADA INC. and 1989474 ONTARIO INC.

Plaintiffs

and

MICHAEL SLATTERY, MERK INVESTMENTS LTD.
and SKYMARK FINANCE CORPORATION

Defendants

ORDER

THIS MOTION for an Order requiring the defendants to disclose records and information, and for certain other relief, was heard this day at 330 University Avenue, Toronto, Ontario, M5G 1R7.

ON READING the plaintiffs' notice of motion, the affidavits of Michael Orr sworn September 9, 2022 and November 15, 2022, the affidavit of Andrew Sahai sworn November 28, 2022, the affidavits of Michael Slattery sworn November 11 and 22, 2022, and the affidavit of Betty Lau sworn November 30, 2022, and on reading and hearing the submissions of counsel for the plaintiffs and the defendants,

1. **THIS COURT ORDERS** that Merk Investments Ltd. ("Merk") and Skymark Finance Corporation ("Skymark"), in accordance with their obligations as trustees and as required by this Order, shall by no later than January 6, 2023 provide to the plaintiffs all of the following documents, records, communications and information relating to mortgages in respect of the particular properties listed at Schedule "A" to this Order (the "Mortgages"):

- 2 -

- (a) the timing of, circumstances giving rise to, reason for, fact of and all details relating to any discharge of any of the Mortgages or any deregistration of any of the Mortgages from title to the properties listed at Schedule "A" to this Order, and any communication, notice or agreement regarding any such discharge or deregistration that was provided to or made with the plaintiffs or Michael Orr;
- (b) without limiting the foregoing, the timing of, circumstances giving rise to, reasons for, fact of and all details relating to any discharge of any of the Mortgages or any deregistration of any of the Mortgages from title to the properties listed at Schedule "A" to this Order arising or resulting from any power of sale, insolvency, receivership or similar process, and any communication, notice or agreement regarding any such discharge or deregistration that was provided to or made with the plaintiffs or Michael Orr;
- (c) all payments of principal amounts made to Merk or Skymark by borrowers, whether voluntarily or otherwise, in connection with the Mortgages including, without limitation, all bank statements, cheque copies, wire confirmations and/or other financial documents or records evidencing or recording any such payments, and any communication, notice or agreement regarding any such payments that was provided to or made with the plaintiffs or Michael Orr;
- (d) all repayments or applications of principal amounts made by Merk or Skymark to or for the benefit of the plaintiffs or Michael Orr in connection with the Mortgages, all bank statements, cheque copies, wire confirmations and/or other financial documents or records evidencing or recording any such repayments or applications, and any communication, notice or agreement regarding any such payments or applications that was provided to or made with the plaintiffs or Michael Orr;
- (e) the timing of, circumstances giving rise to, reason for, fact of and all details relating to any subordination, modification or change of any kind in respect of the interest or priority of any of the Mortgages, and any communication, notice or agreement regarding any such subordination, modification or change that was provided to or made with the plaintiffs or Michael Orr; and
- (f) in the event of any subordination, modification or change of any kind in respect of the interest or priority of the Mortgages, any agreement, contract, commitment or loan document detailing the parties to and details, including the term, amount and applicable interest rate, of any mortgage that came to rank higher than or stood in priority to the Mortgages as a result of such subordination, modification or change.

2. **THIS COURT ORDERS** that, although all documents, records, communications and information to be produced to the plaintiffs in accordance with paragraph 1 herein shall be produced by the defendants by no later than January 6, 2023, the defendants are to make such productions earlier if they can and, where appropriate, on a piecemeal basis.

3. **THIS COURT ORDERS** that the documents, records, communications and information to be produced to the plaintiffs in accordance with paragraph 1 herein shall be produced by the defendants in a manner that is organized and readily-usable in an accessible and usable format such that they can be, if produced electronically, readily identified and located.

4. **THIS COURT ORDERS** that, to the extent that any document, record, communication or information to be produced to the plaintiffs in accordance with paragraph 1 herein does not exist or cannot be located, the defendants shall provide clear and unequivocal confirmation of that fact to the plaintiffs and provide to the plaintiffs the particulars of the information the defendants have as to whether the document, record, communication or information ever existed and, if so, what became of it, by no later than January 6, 2023.

. **THIS COURT ORDERS** that, as beneficiaries of the trust relationships in respect of the Mortgages and as otherwise entitled by this Order, the plaintiffs shall be permitted to make reasonable inquiries of the defendants concerning the plaintiffs' investments in the Mortgages, and the defendants shall respond to such inquiries within 21 days of thereof.

6. **THIS COURT ORDERS** that, to the extent that Merk or Skymark (or anyone acting on their behalf) are currently holding or receive outstanding or future interest or principal payments from borrowers in connection with the Mortgages, Merk and Skymark shall forthwith remit such amounts to the plaintiffs' new trustee in respect of those investments, The Equity Shoppe Inc.

7. **THIS COURT ORDERS** that the entitlement to and quantum of costs of this motion are deferred to the trial judge.

SCHEDULE "A"

1. 28 Stowe Terrace, Brantford, Ontario
2. 160 Burnet Street, Oakville, Ontario
3. 1455 Dufferin Street, Toronto, Ontario
4. 81 River Street, Parry Sound, Ontario
5. 1705 Pegg's Mountain Road, Parry Sound, Ontario
6. 1393 Graham's Lane, Burlington, Ontario
7. 155 Adams Boulevard, Brantford, Ontario
8. 6820 Crystal Hill Road, North Little Rock, Arkansas
9. 190 Harding Boulevard West, Unit 158, Richmond Hill, Ontario
10. 855 Centre Road, Hamilton, Ontario
11. 310 Towanda Boulevard, Blenheim, Ontario
12. 1534 Dranoel Road, Bethany, Ontario
13. 30 Roser Crescent, Clarington, Ontario
14. 155208 7th Line, R.R. #2, Markdale, Ontario
15. 150 George Street, Brantford, Ontario
16. 151 Prospect Street, Port Dover, Ontario
17. 27 Farm Lane, Britt, Ontario
18. 77 Still River Road, Britt, Ontario
19. 65 George Street, Toronto, Ontario

7539088 CANADA INC. AND 1989474 ONTARIO INC.
Plaintiffs

- and -

MICHAEL SLATTERY ET AL.
Defendants

Court File No. CV-22-00686234-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

PROCEEDING COMMENCED AT TORONTO

ORDER

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Telephone: 416.777.6249

Lawyers for the Plaintiffs

**This is Exhibit “D” referred to in the Affidavit of Andrew Sahai
sworn February 16, 2024.**

DocuSigned by:

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Commissioner for Taking Affidavits (or as may be)



SUPERIOR COURT OF JUSTICE

COUNSEL SLIP / ENDORSEMENTCOURT FILE NO.: CV-22-00686234-00CL DATE: 2 December 2022NO. ON LIST: 1TITLE OF PROCEEDING: **7539088 CANADA INC. et al v. SLATTERY et al**BEFORE JUSTICE: **JUSTICE OSBORNE****PARTICIPANT INFORMATION****For Plaintiff, Applicant, Moving Party, Crown:**

Name of Person Appearing	Name of Party	Contact Info
SHAHEEN, NATHAN	7539088 CANADA INC. 1989474 ONTARIO INC.	shaheenn@bennettjones.com
SAHAI, ANDREW	7539088 CANADA INC. 1989474 ONTARIO INC.	sahaia@bennettjones.com
CAYLOR, LINCOLN		caylorL@bennettjones.com

For Defendant, Respondent, Responding Party, Defence:

Name of Person Appearing	Name of Party	Contact Info
DAVIS, MILTON DAVIS, RONALD	SLATTERY, MICHAEL MERK INVESTMENTS LID. SKYMARK FINANCE CORPORATION	mdavis@foglers.com rdavis@foglers.com
SIDLAR, NATALIA	SLATTERY, MICHAEL MERK INVESTMENTS LID. SKYMARK FINANCE CORPORATION	nsidlar@foglers.com

For Other, Self-Represented:

Name of Person Appearing	Name of Party	Contact Info

ENDORSEMENT OF JUSTICE OSBORNE:


1. The Plaintiffs seek an order compelling production of documents [primarily financial records] that relate to mortgages held by the Defendants in trust for the Plaintiffs, and an order compelling the Defendants to comply with my order made in this proceeding on October 31, 2022 [on consent] directing the transfer of certain mortgages, including a Québec mortgage and a UK mortgage, to a new trustee.
2. In this action, the Plaintiffs allege that the Defendants have perpetrated a fraudulent scheme to misappropriate funds advanced by the Plaintiffs for the investment in a series of private mortgages to be secured against title to various properties.
3. The Plaintiffs commenced this action in August, 2022 following their alleged discovery the month before of the fraudulent scheme. On this motion, they initially sought an order for the interim preservation of property and a *Mareva* injunction. Today, however, the Plaintiffs seek relief in accordance with the draft order filed which contemplates declaratory relief relating to the trust interests pursuant to which the Plaintiffs allege the Defendants held the relevant mortgages, and the production of documents and records relating to those mortgages on an expedited [14 day] basis.
4. As became clear during submissions of both the Plaintiffs and the Defendants, the Defendants do not seriously contest the relevancy of the documents sought nor of their obligation to produce same. However, the Defendants submit that some of the documents do not exist, others have already been produced, and the balance ought to be produced in accordance with the ordinary course exchange of affidavits of documents and Schedule A productions in this action.
5. The principal of the Plaintiffs, Michael Orr [Orr], and the individual defendant Michael Slattery [Slattery] were once friends. To say there has been a breakdown in the friendship and trust relationship would be an understatement.
6. The Plaintiffs allege that Orr caused the Plaintiffs to make investments over a number of years through the funding of the principal amounts of numerous mortgages issued to customers and clients of the corporate defendants relating to approximately 26 different properties. In respect of each mortgage, Slattery executed a Trust Declaration on behalf of one or other of the corporate Defendants expressly acknowledging the mortgage investment, the interest of one or other of the Plaintiffs, and the fact that the relevant corporate Defendant held the interest in trust for the relevant Plaintiff. Monthly statements with respect to the principal outstanding and repayments received by the relevant purchaser were generated and produced.
7. The Plaintiffs allege that the Defendants received repayment of the principal amounts pursuant to the mortgages, and discharged the corresponding mortgages, but concealed these facts from the Plaintiffs, generated fraudulent statements purportedly showing that the amounts remained outstanding, and misappropriated the funds.
8. The Defendants deny any misappropriation and submit that all funds can and will be accounted for.
9. When the Plaintiffs discovered the allegedly fraudulent scheme in July, 2022, they demanded explanations from the Defendants and when such were not forthcoming, they commenced this action and sought to schedule a motion for interim relief.
10. On October 31, 2022, when the motion returnable today was already pending, the parties appeared before me to address various matters of compliance with Terms of Adjournment previously agreed to and as referenced in the earlier endorsement of Justice Cavanagh. On consent, I made an order directing the transfer of those mortgages that remained outstanding to a new trustee.

11. The Plaintiffs allege in the action that they advanced approximately \$13.5 million over the years to the Defendants. Approximately \$7 million of that amount is represented by the mortgages apparently still outstanding and transferred to the new trustee pursuant to the October 31 order. That leaves, according to the Plaintiffs, approximately \$6.5 million of funds unaccounted for. It is these remaining funds and the related mortgages to which the documents now sought by the Plaintiffs are relevant.
12. The Plaintiffs submit that beneficiaries of a trust have a proprietary right to records relevant to an accounting for the trust property, and are entitled to production immediately. The Defendants submit that it is telling that the Plaintiffs are not pursuing today any relief related to interim preservation of property or a *Mareva* injunction. They also submit, as noted above, that many records have already been produced and others can be produced in the normal course of this action. There is a dispute about the extent to which a database of documents acknowledged by all parties to have already been produced and which was prepared by prior counsel to the Defendants is in a usable format given the organization and document coding.
13. I agree with the Plaintiffs that trustees have an obligation to provide “full explanations of all their dealings, and the causes why outstanding assets were not collected or property of the estate has disappeared”, and also that beneficiaries have a right in the nature of a proprietary right to records necessary to understand “the mode in which the trust property or their share of it has been invested or otherwise dealt with, and as to where it is and full accounts respecting” [see *Maintemp Heating & Air Conditioning Inc. v. Momat Developments Inc.*, 59 O.R. (3d) 270 and *Ballard Estate, Re*, 1994 CanLII 7307, quoting with approval from *O’Rourke v. Darbishire*, [1920] A.C. 581 at pp. 626-7].
14. To be clear, the right of a beneficiary to such production by a trustee is a proprietary right separate and apart from the right of any plaintiff to production of relevant and otherwise properly producible documents in the course of a proceeding and as provided for in the *Rules*. The proprietary right flows from the beneficial ownership of the beneficiary in the trust property and the derivative right to records relevant to the accounting for such property.
15. Accordingly, it is not an answer to a request for such documents to say that they will be produced in the ordinary course of litigation. A beneficiary is entitled to such documents when requested, and whether or not the documents might otherwise be producible in the course of litigation by another party. Those documents might be more limited in scope or indeed might be documents of a defendant over which a plaintiff had no proprietary right flowing from a trust.
16. The demand for the documents that are the subject of this motion was made approximately four months ago, and the Plaintiffs are entitled to them now. The categories of the documents requested are set out in paragraphs 2 (a) through and including (f) of the draft order submitted. I am satisfied that they relate to the particulars of the discharge of any relevant mortgages and related documents and events, all payments of principal amounts made to the Defendants or any of them by borrowers under the relevant mortgages, repayments or application of principal amounts by the Defendants to or for the benefit of the Plaintiffs, any relevant subordination or modification of such mortgages, and the relative priority of such mortgages.
17. All of those documents appear to be plainly relevant to the issues in the action and, as noted above, relevancy is not seriously contested by the Defendants.
18. The requested relief in the form of an order directing the production of the documents in a manner that is organized and readily usable, including for greater certainty those produced electronically, is appropriate and in any event is consistent with the obligations that the Commercial List expects from all parties litigating in this Court.
19. The Defendants maintain that certain documents to which the Plaintiffs have a proprietary right and that have been requested do not exist. That may well be so, but the Plaintiffs are entitled to confirmation from the Defendants that such documents do not exist and the particulars of such information as the Defendants do have as to whether the documents ever existed and if so, what became of them.
20. The request for these documents was made approximately four months ago. The request ought to be straightforward and there is no reason, even if some documents are required to be obtained from third parties such as accountants, banks or financial institutions, that they cannot be delivered by the Defendants to the Plaintiffs promptly.

21. Accordingly, the Defendants shall produce the documents set out in the above-noted paragraphs of the draft order, or clear and unequivocal confirmation that such documents do not exist, no later than the close of business on Friday, January 6, 2023 and earlier if they can [even if on a piecemeal basis; the Defendants should not wait until they have exhausted every line of inquiry in respect of every document to produce what they have got].
22. The documents are to be produced in an accessible and usable format such that they can be, particularly if produced electronically, readily identified and located. To the extent that cooperation from former counsel for the Defendants, which law firm apparently produced the database of some 8,000 documents delivered already, is required, such cooperation is expected.
23. It follows that in respect of the same documents over which the Plaintiffs have a proprietary right, the Plaintiffs are entitled to make reasonable inquiries and the Defendants have the corresponding obligation to respond [since such requests could and presumably would otherwise be the subject of a subsequent motion for productions to which the Plaintiffs have a right in any event].
24. Given the acknowledgement and agreement of all parties that there were trust relationships, the relief sought by the Plaintiffs in the form of an order that if the Defendants or anyone acting on their behalf currently possess or receive in the future outstanding payments on account of interest or principal from borrowers in connection with the mortgages that are the subject of this action, such funds shall be remitted forthwith to the new trustee appointed under my order of October 31, 2022.
25. Finally, with respect to the mortgages that were the subject of my earlier order directing the transfer to the new trustee, it appears today that to such mortgages, one in the Province of Québec and one in the United Kingdom, have yet to be transferred.
26. Counsel for the Defendants submits today that there is no issue about the requirement that they be transferred and indeed the Defendants have taken all reasonable steps to effect compliance with the earlier order, but that there have been procedural hiccups or delays in those respective jurisdictions which have either been remedied or will be remedied within the next few days and the mortgages transferred. If that is so, no further relief is warranted. If those remaining mortgages are not transferred forthwith, however, the Plaintiffs may seek another attendance before me to seek such directions as may be appropriate to ensure compliance with my earlier order relating to the transfer of the outstanding mortgages to the new trustee.
27. That leaves the issue of costs of the motion today. The Plaintiffs have submitted a cost outline and seek approximately \$84,000 on a full indemnity basis, \$76,000 on a substantial indemnity basis and \$51,000 on a partial indemnity basis. The Defendants have also submitted a cost outline and seek substantial indemnity costs of approximate \$326,000 and partial indemnity costs of approximate \$245,000, noting that some of the costs related to preparation for the defence of a motion for *Mareva* relief, which the Plaintiffs advised only shortly prior to today's hearing that they were not pursuing today.
28. The quantum sought by each side is significant, but so too are the issues at stake and the scope of the dispute. The Plaintiffs allege a fraudulent scheme and the misappropriation of funds. The Defendants deny any fraud or misconduct, but in any event say that many if not most of the documents that are the subject of the motion today have already been produced. That may be so, and if it is, there are production obligations flowing from my disposition of this motion today will be brief and narrow.
29. For all of these reasons, in my view it is appropriate to defer a decision on entitlement to, and quantum of, costs, to the trial judge, who will be in a position to assess whether the documents had already been produced and the relevance of all documents. The trial judge will also be in a better position to assess the relative positions of the parties with respect to the appropriateness of relief in the nature of a preservation order or *Mareva* injunction and any other steps that will by then have transpired prior to trial.
30. Order to go in a form consistent with this Endorsement. Counsel for the Plaintiffs is directed to prepare a draft order for review by counsel for the Defendants and thereafter and forward it to the Commercial List Office for review and signing by me as soon as possible.



**This is Exhibit “E” referred to in the Affidavit of Andrew Sahai
sworn February 16, 2024.**

DocuSigned by:

2CAAFB598666461...

Commissioner for Taking Affidavits (or as may be)



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Our File No.: 94254.1

January 30, 2023

By Email

Milton Davis and Natalia Sidlar
Fogler Rubinoff LLP
77 King Street West
Suite 3000, PO Box 95
Toronto, ON M5K 1G8

Dear Counsel:

Re: 7539088 Canada Inc. et al. v. Michael Slattery et al., CV-22-00686234-00CL

We write in respect of the order of Osborne J. dated December 22, 2022 (the “Osborne Order”).

Your Clients’ Response to the Osborne Order

By your firm’s emails dated January 6 and 17, 2023, your clients: (i) re-produced the same documents previously produced through their prior counsel only with certain additional coding, (ii) provided certain limited documents purportedly obtained from the Kormans law firm, and (iii) provided a total of 8 additional documents, the source of which was not identified.

Your carefully-worded covering email under which the foregoing documents were provided advised that those are the documents that had been “provided to us as of today’s date” and otherwise referred to documents that were known or available *to your firm*. To be clear, the Osborne Order mandates disclosure *by your clients*. Your clients’ failure to make documents available to your firm is no excuse.

On the plain language of your covering email, your clients have provided at most a total of 8 additional documents in response to the Osborne Order (and perhaps less, if any) and otherwise rely exclusively on the limited documents provided to your firm by Kormans.

Your clients have not identified “any document, record, communication or information” that is required to be provided by the Osborne Order “that does not exist or that cannot be located”, nor have they provided “the particulars of the information the defendants have as to whether the document, record, communication or information ever existed and, if so, what became of it”, all despite the express requirement of paragraph 4 of the Osborne Order that your clients do so.

January 30, 2023

Page 2

Failure to Comply with the Osborne Order

Your clients have failed to comply with the Osborne Order.

Paragraph 1 of the Osborne Order detailed and required production of “documents, records, communications and information relating to the mortgages in respect of the 19 properties listed at Schedule ‘A’ to this Order” by January 6, 2023.

Your clients have failed to provide documents required by paragraph 1 of the Osborne Order that are clearly available to them. For instance, subparagraphs 1(c) and 1(d) of the Osborne Order required your clients to provide “documents, records, communications and information” relating to:

(c) all payments of principal amounts made to Merk or Skymark by borrowers, whether voluntarily or otherwise, in connection with the Mortgages including, without limitation, all bank statements, cheque copies, wire confirmations and/or other financial documents or records evidencing or recording any such payments, and any communication, notice or agreement regarding any such payments that was provided to or made with the plaintiffs or Michael Orr;

(d) all repayments or applications of principal amounts made by Merk or Skymark to or for the benefit of the plaintiffs or Michael Orr in connection with the Mortgages, all bank statements, cheque copies, wire confirmations and/or other financial documents or records evidencing or recording any such repayments or applications, and any communication, notice or agreement regarding any such payments or applications that was provided to or made with the plaintiffs or Michael Orr;

The required “bank statements, cheque copies, wire confirmations and/or other financial documents or records evidencing or recording such payments” relating to payments made to your clients, or by your clients to or for the benefit of the plaintiffs, have not been provided.

Your clients have therefore failed to comply with the Osborne Order and, in doing so, have also failed to provide a “full explanations of all their dealings, and the causes why outstanding assets were not collected or property of the estate has disappeared”, as Osborne J. concluded was required.¹

The documents, records, communications and information not provided, including the foregoing financial records, are critical to determining what happened to the plaintiffs’ investments and to determining your clients’ conduct as trustees in connection with those investments.

¹ Endorsement of Osborne J. dated December 2, 2022, ¶13.

January 30, 2023

Page 3

Further, as Osborne J. concluded, the plaintiffs' request for such financial records "ought to be straightforward and there is no reason, even if some documents are required to be obtained from third parties such as accountants, banks or financial institutions, that they cannot be delivered by the Defendants to the Plaintiffs promptly."² Your clients have failed to provide those documents at all, and have failed to identify or explain such failure, as required by paragraph 4 of the Osborne Order. This is true even of documents that are obviously held directly by, and readily available to, your clients, such as the Merk and Skymark financial statements and accounting files (e.g., from Quickbooks).

We will therefore schedule an appointment before Osborne J. to address your clients' failure to comply with the Osborne Order. The Commercial List has advised that an appointment before Osborne J. is available on each of February 21-24 and 27-28, 2023 and March 1-3, 2023. Please advise any of these dates on which you are not available by no later than the end of the day on January 31, 2023.

Given your clients' ongoing failure to comply with the Osborne Order, the plaintiffs reserve their rights to rely on rule 60.12 of the *Rules of Civil Procedure* and insist on compliance with the Osborne Order in priority to any steps sought to be taken by your clients.

Inquiries Concerning the Plaintiffs' Investments

While your clients have failed to comply with the Osborne Order, even the limited documents provided are further evidence that your clients acted fraudulently and in breaches of trust. Among other things, such documents raise serious questions as to whether various investments to be held in trust by your clients were ever secured by mortgages or were instead immediately misappropriated by your clients, who then sought to conceal their misappropriation with false monthly statements.

Accordingly, and in addition to confirming the need for the documents required to be provided by your clients by the Osborne Order (including the financial records discussed above), the plaintiffs request and require the following information regarding their investments in the mortgages listed at Schedule 'A' to the Osborne Order in accordance with paragraph 5 of the Osborne Order:

1. The mortgage (with legal description) in which with the plaintiffs invested.
2. The date on which the mortgage securing the plaintiffs' investment was registered on title.
3. The amount of the plaintiffs' investment secured by the mortgage.
4. If any amount of the plaintiffs' investment was not secured by the mortgage, why not.
5. The ranking or priority of the mortgage at the time the plaintiffs' investment was made.
6. The initial terms of the mortgage securing the plaintiffs' investment.
7. The initial duration of the mortgage securing the plaintiffs' investment.
8. The date of any renewal(s) of the mortgage securing the plaintiffs' investment.

² Endorsement of Osborne J. dated December 2, 2022, ¶20.

January 30, 2023

Page 4

9. The terms of any renewal(s) of the mortgage securing the plaintiffs' investment.
10. The duration of any renewal(s) of the mortgages securing the plaintiffs' investment.
11. Whether the mortgage in which the plaintiffs invested was transferred by Merk or Skymark to another mortgagee.
12. If the answer to 11 is "yes":
 - a. The date of the transfer of any mortgage by Merk or Skymark.
 - b. The reason for any transfer of the mortgage by Merk or Skymark.
 - c. Whether notice was provided to the plaintiffs of the transfer.
 - d. If notice of the transfer was provided to the plaintiffs, why and how.
 - e. If notice of the transfer was not provided to the plaintiffs, why not.
 - f. The details any benefits received by Merk or Skymark in connection with the transfer.
 - g. The details of amounts paid to the plaintiffs in connection with the transfer.
 - h. The identity and involvement of any party that received payment of any interest, principal or other amounts in connection with the transferred mortgage.
13. Whether the mortgage in which the plaintiffs invested was subordinated by Merk or Skymark.
14. If the answer to 13 is "yes":
 - a. The date of the subordination of any mortgage by Merk or Skymark.
 - b. The reason for any subordination of the mortgage by Merk or Skymark.
 - c. Whether notice was provided to the plaintiffs of the subordination.
 - d. If notice of the subordination was provided to the plaintiffs, why and how.
 - e. If notice of the subordination was not provided to the plaintiffs, why not.
 - f. The details any received by Merk or Skymark in connection with the subordination.
 - g. The details of the amounts paid to the plaintiffs in connection with the subordination.
15. The date on which the mortgage in which the plaintiffs invested was deregistered from title.
16. The ranking or priority of the mortgage at the time of deregistration.

January 30, 2023

Page 5

17. The circumstances leading to the deregistration of the mortgage from title including:

- a. The amount received by Merk or Skymark in connection with deregistration.
- b. Whether deregistration occurred upon repayment of the principal amount.
- c. Whether deregistration occurred upon repayment of less than the principal amount.
- d. Whether deregistration occurred in connection with a power of sale process.
- e. The amounts received by each secured party in connection with any power of sale.
- f. The amount received by Merk or Skymark in connection with any power of sale.
- g. Whether the mortgage was treated as unsecured (in whole or in part) in connection with any power of sale and, if so, the reason that the mortgage was treated in that manner.
- h. Whether the property sold under power of sale or the relevant borrower(s) had any other involvement with Merk or Skymark and, if so, the nature of that involvement.
- i. The value of the property sold under power of sale as understood by Merk or Skymark.
- j. The amount owing to the plaintiffs in connection with deregistration.
- k. The amount paid to the plaintiffs in connection with deregistration.
- l. The timing of the amount paid to the plaintiffs in connection with deregistration.

18. All principal and interest amounts received from the borrower by Merk or Skymark.

19. All fees or other compensation received by Merk and Skymark.

In accordance with paragraph 5 of the Osborne Order, the plaintiffs require the foregoing information within 21 days of this letter. In requesting the foregoing information, it remains open to the plaintiffs to request additional information or to make follow-up inquiries regarding any information provided.

Yours truly,

BENNETT JONES LLP




Lincoln Caylor

LC

Copy: Shaun Laubman and David Ionis, *Lax O'Sullivan Lisus Gottlieb LLP*
Nathan Shaheen and Andrew Sahai, *Bennett Jones LLP*

**This is Exhibit “F” referred to in the Affidavit of Andrew Sahai
sworn February 16, 2024.**

DocuSigned by:

2CAAFB598666461...

Commissioner for Taking Affidavits (or as may be)

Court File No. CV-22-00686234-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

B E T W E E N:

7539088 CANADA INC. and 1989474 ONTARIO INC.

Plaintiffs

- and -

MICHAEL SLATTERY, MERK INVESTMENTS LTD.,
SKYMARK FINANCE CORPORATION, PAUL MILLAR, 1266845 ONTARIO
LIMITED, 1690682 ONTARIO INC. and 1429458 ONTARIO LIMITED

Defendants

AIDE MEMOIRE OF THE PLAINTIFFS
(Chambers Appointment of February 28, 2023)

A. Overview

1. The defendants Merk Investments Ltd. (“Merk”) and Skymark Finance Corporation (“Skymark”) have failed to comply with the order of Osborne J. dated December 2, 2022 (the “Osborne Order”) requiring them as trustees to produce documents demonstrating what happened to the assets held for the plaintiff beneficiaries by January 6, 2023. The limited documents produced and available to date confirm the breaches of trust by Merk and Skymark, and highlight the urgent need for production of documents demonstrating what happened to those assets.
2. Merk and Skymark, along with their principal Michael Slattery, have also refused to deliver a statement of defence and instead seek particulars where clearly none are required. The new defendants – Paul Millar and his numbered companies – have similarly not delivered a defence.
3. The plaintiffs therefore seek (i) to have Merk and Skymark comply with the Osborne Order by March 7, 2023 and (ii) a comeback date set as soon as possible after March 7, 2023 to schedule a motion to address any continued non-compliance with the Osborne Order. The same comeback date can address whether it is appropriate to schedule any motions by the defendants (and, if so, the schedule for any such motions) and the deadline to deliver statements of defence.

B. Submissions

4. On December 2, 2022, the Osborne Order was rendered. It required Merk and Skymark to produce all documents relating to the plaintiffs' investments in mortgages by January 6, 2023, and to identify any documents that do not exist or cannot be located by the same date, along with an explanation as to why that is the case. A copy of the Osborne Order is at **Tab 1**.

5. The Osborne Order reflected the obligations of Merk and Skymark as trustees to provide "full explanations of all of their dealings, and the causes why outstanding assets were not collected or property of the estate has disappeared."¹ This obligation was confirmed in Osborne J.'s endorsement dated December 2, 2022 (the "Osborne Endorsement"), a copy of which is at **Tab 2**.

6. Merk and Skymark have not complied with the Osborne Order. Among other things, they have not provided any "bank statements, cheque copies, wire confirmations, and/or other financial documents or records" evidencing what actually happened to the principal amounts that were to be held in trust for the plaintiffs. Further contrary to the Osborne Order, Merk and Skymark provided no explanation for their failure to produce such documents by January 6, 2023 or at all. Copies of the letters between the parties' counsel in respect of such non-compliance are at **Tab 3**.

7. There could be no credible excuse for such non-compliance with the Osborne Order. As Osborne J. concluded: "The request for these documents was made approximately four [now more than six] months ago. The request ought to be straightforward and there is no reason, even if some documents are required to be obtained from third parties such as accountants, banks or financial institutions, that they cannot be delivered by the Defendants to the Plaintiffs promptly."²

C. Available Documents Demonstrate Breaches of Trust

8. The plaintiffs funded the principal amounts to be loaned on agreed upon terms by Merk and Skymark to the underlying borrowers. Merk and Skymark were required as trustees to hold the loans and mortgages securing those loans in trust for the plaintiff beneficiaries. They instead acted in breach of trust, in some cases immediately, by transferring the security to others, never repaying the principal amounts to the plaintiffs, and now refusing to account for their actions.

¹ Paragraph 13 of the Osborne Endorsement, a copy of which is at Tab 2.

² Paragraph 20 of the Osborne Endorsement, a copy of which is at Tab 2.

9. The following examples are based on the documents currently available to the plaintiffs, including the limited number of new documents that Merk and Skymark produced in response to the Osborne Order by January 6, 2023, which appear to have come exclusively from their real estate lawyer's office. The examples demonstrate the breaches of trust and the need for the production of documents that are required by the Osborne Order and that will demonstrate what happened to the assets held in trust for the plaintiffs.

10. While unnecessary to support the current relief sought based on the breaches of trust and non-compliance with the Osborne Order, the available documents also demonstrate the fraudulent scheme.

1. 150 George Street, Brantford, Ontario

11. The limited documents currently available to the plaintiffs indicate the following:

- (a) On March 20 2015, the plaintiff 7539088 Canada Inc. ("753 Canada") funded the principal amount of \$265,000 that was to be secured by a mortgage registered on title to 150 George Street, Brantford, Ontario.
- (b) The funding provided by 753 Canada was to be advanced to the borrower by Merk and the mortgage was to be registered in Merk's name. In turn, Merk executed a trust declaration in favour of 753 Canada dated March 20, 2015.
- (c) Merk acted in breach of trust the very day the principal amount was funded. Remarkably, it did so simultaneous with registering the mortgage that was to secure 753 Canada's investment on title to 150 George Street.
- (d) On March 20, 2015 at 8:57am, Merk registered a mortgage that was to secure 753 Canada's investment. By doing so, Merk obtained a receipted Charge/Mortgage on title to the property. Merk then provided the receipted Charge/Mortgage to 753 Canada as purported evidence that 753 Canada's investment had been secured and was held in trust by Merk as agreed.
- (e) However, also on March 20, 2015 at 8:57am – *i.e.*, at the exact same time, but registered as the next instrument on title – Merk transferred the very same registered mortgage to unrelated third parties, Aubrey and Betty Lowenstein.³ In other words, upon registering the mortgage in its favour, Merk simultaneously transferred the same mortgage to the Lowensteins.

³ To be clear, 753 Canada has no knowledge of Aubrey and Betty Lowenstein.

- (f) By proceeding in this manner, Merk obtained a receipted Charge/Mortgage that it was able to use as false evidence that 753 Canada's investment was secured when, in reality, 753 Canada's investment was never secured other than for perhaps a brief moment in time. Instead, the mortgage secured the Lowensteins' investment.
 - (g) Merk also received the \$265,000 principal amount from the Lowensteins that was to be secured by a mortgage registered on title to 150 George Street. Merk therefore obtained investments of \$265,000 from both 753 Canada and from the Lowensteins, and purported to use 150 George Street as security for both.
 - (h) On October 1, 2021, the mortgage registered on title to 150 George Street was discharged upon payment of \$271,831.32, which included the \$265,000 principal amount and certain interest and other amounts.
 - (i) According to the discharge statement, aside from \$893.50, the entirety of the \$271,831.32 was payable to the Lowensteins. A copy of a cheque dated October 1, 2021 confirms that \$271,460.54 was in fact paid to the Lowensteins.
 - (j) Merk has produced no record of what happened to the unsecured \$265,000 funded by 753 Canada, and that amount has not been repaid by Merk to 753 Canada.
 - (k) At all times after the mortgage was transferred and eventually discharged, Merk issued monthly statements to 753 Canada listing 150 George Street and indicating that monthly payments made to 753 Canada comprised of interest paid by the underlying borrowers. Merk has admitted that the monthly statements were false.
12. Copies of the available documents evidencing the foregoing are at **Tab 4**.

2. 151 Prospect Street, Port Dover, Ontario

13. The limited documents currently available to the plaintiffs indicate the following:
- (a) On January 15, 2016, 753 Canada funded the principal amount of \$270,000 that was to be secured by a mortgage that Merk had registered on title to 151 Prospect Street, Port Dover, Ontario the previous day, January 14, 2016.
 - (b) The funding provided by 753 Canada was to be advanced to the borrower by Merk and the mortgage was to be registered in Merk's name. In turn, Merk executed a trust declaration in favour of 753 Canada dated January 15, 2016.
 - (c) Within a matter of weeks, Merk acted in breach of trust. It did so in coordination with Skymark. The defendant Michael Slattery is a principal of both Merk and Skymark. The defendant Paul Millar is also a principal of Skymark.
 - (d) Upon 753 Canada advancing the principal amount, Merk provided 753 Canada a copy of the receipted Charge/Mortgage dated January 14, 2016 as purported evidence that 753 Canada's investment had been secured and was held in trust by Merk as agreed.

- (e) However, on February 16, 2016, Merk transferred the mortgage that was to secure 753 Canada's investment to Skymark. Based on 150 George Street (above), it appears likely that Skymark obtained a separate principal investment and purported to use this same property as security. Notice of the transfer was never provided to 753 Canada.
 - (f) According to the limited records produced by Merk and Skymark, the borrowers paid both monthly interest amounts and made regular principal repayments pursuant to the terms of the mortgage. The available documents include no indication of what use Merk or Skymark made of those principal repayments.
 - (g) On November 16, 2021, Skymark transferred the mortgage back to Merk. The available records include no indication of why such transfer occurred.
 - (h) On December 7, 2021, the mortgage registered on title to 151 Prospect Street was discharged upon payment of \$114,488.90. According to the discharge statement, the \$114,488.90 was comprised of the principal and interest outstanding as of November 1, 2021. The discharge statement and a cheque copy indicate that this amount was paid to Merk.
 - (i) Merk has produced no record of what happened to the unsecured \$270,000 funded by 753 Canada, and the principal amount has not been repaid by Merk to 753 Canada.
 - (j) At all times after the mortgage was transferred and eventually discharged, Merk issued monthly statements to 753 Canada listing 151 Prospect Street and indicating that monthly payments made to 753 Canada comprised of interest paid by the underlying borrowers. Merk has admitted that the monthly statements were false.
14. Copies of the available documents evidencing the foregoing are at **Tab 5**.

3. 30 Roser Crescent, Clarington, Ontario

15. The limited documents currently available to the plaintiffs indicate the following:
- (a) On April 14, 2016, 753 Canada funded the principal amount of \$77,000 that was to be secured by a mortgage registered on title to 30 Roser Crescent, Clarington, Ontario that same day.
 - (b) The funding provided by 753 Canada was to be advanced to the borrower by Merk and the mortgage was to be registered in Merk's name. In turn, Merk executed a trust declaration in favour of 753 Canada dated April 14, 2016.
 - (c) Less than a year after 753 Canada funded the principal amount, Merk acted in breach of trust. It again did so in coordination with Skymark.

- (d) Upon 753 Canada advancing the principal amount, Merk provided 753 Canada a copy of the receipted Charge/Mortgage dated April 14, 2016 as purported evidence that 753 Canada's investment had been secured and was held in trust by Merk as agreed.
- (e) However, on January 19, 2017 Merk transferred the mortgage that was to secure 753 Canada's investment to Skymark. Based on 150 George Street (above), it appears likely that Skymark obtained a separate principal investment and purported to use this same property as security. Notice of the transfer was never provided to 753 Canada.
- (f) On July 10, 2017, the mortgage registered on title to 30 Roser Crescent was discharged upon payment of \$72,837.33. According to the discharge statement, the \$72,837.33 was comprised of the principal amount (less certain prepayments) plus certain additional interest and other amounts, all of which was paid to Skymark.
- (g) Merk has produced no record of what happened to the unsecured \$77,000 funded by 753 Canada, and that amount has not been repaid to 753 Canada.
- (h) At all times after the mortgage was transferred and eventually discharged, Merk issued monthly statements to 753 Canada listing 30 Roser Crescent and indicating that monthly payments made to 753 Canada comprised of interest paid by the underlying borrowers. Merk has admitted that the monthly statements were false.

16. Copies of the available documents evidencing the foregoing are at **Tab 6**.

17. The contemporaneous records that are the basis of the foregoing examples are clearly contrary to Mr. Slattery's sworn evidence and there can be no reasonable explanation in these circumstances. Merk has not produced the key financial documents that will demonstrate where the principal amount funded by 753 Canada actually went.

D. Conclusion

18. In the event that the Osborne Order has not been complied with by March 7, 2023, the plaintiffs will move in respect of such non-compliance. A draft notice of motion that the plaintiffs will, as necessary, finalize and serve in advance of the comeback date is at **Tab 7**.

TAB 1

Court File No. CV-22-00686234-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

THE HONOURABLE

)

FRIDAY, THE 2nd

)

JUSTICE OSBORNE

)

DAY OF DECEMBER, 2022

B E T W E E N:

7539088 CANADA INC. and 1989474 ONTARIO INC.

Plaintiffs

and

MICHAEL SLATTERY, MERK INVESTMENTS LTD.
and SKYMARK FINANCE CORPORATION

Defendants

ORDER

THIS MOTION for an Order requiring the defendants to disclose records and information, and for certain other relief, was heard this day at 330 University Avenue, Toronto, Ontario, M5G 1R7.

ON READING the plaintiffs' notice of motion, the affidavits of Michael Orr sworn September 9, 2022 and November 15, 2022, the affidavit of Andrew Sahai sworn November 28, 2022, the affidavits of Michael Slattery sworn November 11 and 22, 2022, and the affidavit of Betty Lau sworn November 30, 2022, and on reading and hearing the submissions of counsel for the plaintiffs and the defendants,

1. **THIS COURT ORDERS** that Merk Investments Ltd. ("Merk") and Skymark Finance Corporation ("Skymark"), in accordance with their obligations as trustees and as required by this Order, shall by no later than January 6, 2023 provide to the plaintiffs all of the following documents, records, communications and information relating to mortgages in respect of the particular properties listed at Schedule "A" to this Order (the "Mortgages"):

- 2 -

- (a) the timing of, circumstances giving rise to, reason for, fact of and all details relating to any discharge of any of the Mortgages or any deregistration of any of the Mortgages from title to the properties listed at Schedule "A" to this Order, and any communication, notice or agreement regarding any such discharge or deregistration that was provided to or made with the plaintiffs or Michael Orr;
- (b) without limiting the foregoing, the timing of, circumstances giving rise to, reasons for, fact of and all details relating to any discharge of any of the Mortgages or any deregistration of any of the Mortgages from title to the properties listed at Schedule "A" to this Order arising or resulting from any power of sale, insolvency, receivership or similar process, and any communication, notice or agreement regarding any such discharge or deregistration that was provided to or made with the plaintiffs or Michael Orr;
- (c) all payments of principal amounts made to Merk or Skymark by borrowers, whether voluntarily or otherwise, in connection with the Mortgages including, without limitation, all bank statements, cheque copies, wire confirmations and/or other financial documents or records evidencing or recording any such payments, and any communication, notice or agreement regarding any such payments that was provided to or made with the plaintiffs or Michael Orr;
- (d) all repayments or applications of principal amounts made by Merk or Skymark to or for the benefit of the plaintiffs or Michael Orr in connection with the Mortgages, all bank statements, cheque copies, wire confirmations and/or other financial documents or records evidencing or recording any such repayments or applications, and any communication, notice or agreement regarding any such payments or applications that was provided to or made with the plaintiffs or Michael Orr;
- (e) the timing of, circumstances giving rise to, reason for, fact of and all details relating to any subordination, modification or change of any kind in respect of the interest or priority of any of the Mortgages, and any communication, notice or agreement regarding any such subordination, modification or change that was provided to or made with the plaintiffs or Michael Orr; and
- (f) in the event of any subordination, modification or change of any kind in respect of the interest or priority of the Mortgages, any agreement, contract, commitment or loan document detailing the parties to and details, including the term, amount and applicable interest rate, of any mortgage that came to rank higher than or stood in priority to the Mortgages as a result of such subordination, modification or change.

2. **THIS COURT ORDERS** that, although all documents, records, communications and information to be produced to the plaintiffs in accordance with paragraph 1 herein shall be produced by the defendants by no later than January 6, 2023, the defendants are to make such productions earlier if they can and, where appropriate, on a piecemeal basis.

3. **THIS COURT ORDERS** that the documents, records, communications and information to be produced to the plaintiffs in accordance with paragraph 1 herein shall be produced by the defendants in a manner that is organized and readily-usable in an accessible and usable format such that they can be, if produced electronically, readily identified and located.

4. **THIS COURT ORDERS** that, to the extent that any document, record, communication or information to be produced to the plaintiffs in accordance with paragraph 1 herein does not exist or cannot be located, the defendants shall provide clear and unequivocal confirmation of that fact to the plaintiffs and provide to the plaintiffs the particulars of the information the defendants have as to whether the document, record, communication or information ever existed and, if so, what became of it, by no later than January 6, 2023.

. **THIS COURT ORDERS** that, as beneficiaries of the trust relationships in respect of the Mortgages and as otherwise entitled by this Order, the plaintiffs shall be permitted to make reasonable inquiries of the defendants concerning the plaintiffs' investments in the Mortgages, and the defendants shall respond to such inquiries within 21 days of thereof.

6. **THIS COURT ORDERS** that, to the extent that Merk or Skymark (or anyone acting on their behalf) are currently holding or receive outstanding or future interest or principal payments from borrowers in connection with the Mortgages, Merk and Skymark shall forthwith remit such amounts to the plaintiffs' new trustee in respect of those investments, The Equity Shoppe Inc.

7. **THIS COURT ORDERS** that the entitlement to and quantum of costs of this motion are deferred to the trial judge.

SCHEDULE "A"

1. 28 Stowe Terrace, Brantford, Ontario
2. 160 Burnet Street, Oakville, Ontario
3. 1455 Dufferin Street, Toronto, Ontario
4. 81 River Street, Parry Sound, Ontario
5. 1705 Pegg's Mountain Road, Parry Sound, Ontario
6. 1393 Graham's Lane, Burlington, Ontario
7. 155 Adams Boulevard, Brantford, Ontario
8. 6820 Crystal Hill Road, North Little Rock, Arkansas
9. 190 Harding Boulevard West, Unit 158, Richmond Hill, Ontario
10. 855 Centre Road, Hamilton, Ontario
11. 310 Towanda Boulevard, Blenheim, Ontario
12. 1534 Dranoel Road, Bethany, Ontario
13. 30 Roser Crescent, Clarington, Ontario
14. 155208 7th Line, R.R. #2, Markdale, Ontario
15. 150 George Street, Brantford, Ontario
16. 151 Prospect Street, Port Dover, Ontario
17. 27 Farm Lane, Britt, Ontario
18. 77 Still River Road, Britt, Ontario
19. 65 George Street, Toronto, Ontario

7539088 CANADA INC. AND 1989474 ONTARIO INC.
Plaintiffs

- and -

MICHAEL SLATTERY ET AL.
Defendants

Court File No. CV-22-00686234-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

PROCEEDING COMMENCED AT TORONTO

ORDER

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

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Telephone: 416.777.6249

Lawyers for the Plaintiffs

TAB 2



SUPERIOR COURT OF JUSTICE

COUNSEL SLIP / ENDORSEMENTCOURT FILE NO.: CV-22-00686234-00CL DATE: 2 December 2022NO. ON LIST: 1TITLE OF PROCEEDING: **7539088 CANADA INC. et al v. SLATTERY et al**BEFORE JUSTICE: **JUSTICE OSBORNE****PARTICIPANT INFORMATION****For Plaintiff, Applicant, Moving Party, Crown:**

Name of Person Appearing	Name of Party	Contact Info
SHAHEEN, NATHAN	7539088 CANADA INC. 1989474 ONTARIO INC.	shaheenn@bennettjones.com
SAHAI, ANDREW	7539088 CANADA INC. 1989474 ONTARIO INC.	sahaia@bennettjones.com
CAYLOR, LINCOLN		caylorL@bennettjones.com

For Defendant, Respondent, Responding Party, Defence:

Name of Person Appearing	Name of Party	Contact Info
DAVIS, MILTON DAVIS, RONALD	SLATTERY, MICHAEL MERK INVESTMENTS LID. SKYMARK FINANCE CORPORATION	mdavis@foglers.com rdavis@foglers.com
SIDLAR, NATALIA	SLATTERY, MICHAEL MERK INVESTMENTS LID. SKYMARK FINANCE CORPORATION	nsidlar@foglers.com

For Other, Self-Represented:

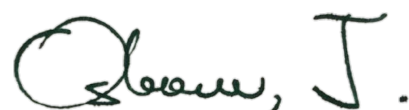
Name of Person Appearing	Name of Party	Contact Info

ENDORSEMENT OF JUSTICE OSBORNE:

1. The Plaintiffs seek an order compelling production of documents [primarily financial records] that relate to mortgages held by the Defendants in trust for the Plaintiffs, and an order compelling the Defendants to comply with my order made in this proceeding on October 31, 2022 [on consent] directing the transfer of certain mortgages, including a Québec mortgage and a UK mortgage, to a new trustee.
2. In this action, the Plaintiffs allege that the Defendants have perpetrated a fraudulent scheme to misappropriate funds advanced by the Plaintiffs for the investment in a series of private mortgages to be secured against title to various properties.
3. The Plaintiffs commenced this action in August, 2022 following their alleged discovery the month before of the fraudulent scheme. On this motion, they initially sought an order for the interim preservation of property and a *Mareva* injunction. Today, however, the Plaintiffs seek relief in accordance with the draft order filed which contemplates declaratory relief relating to the trust interests pursuant to which the Plaintiffs allege the Defendants held the relevant mortgages, and the production of documents and records relating to those mortgages on an expedited [14 day] basis.
4. As became clear during submissions of both the Plaintiffs and the Defendants, the Defendants do not seriously contest the relevancy of the documents sought nor of their obligation to produce same. However, the Defendants submit that some of the documents do not exist, others have already been produced, and the balance ought to be produced in accordance with the ordinary course exchange of affidavits of documents and Schedule A productions in this action.
5. The principal of the Plaintiffs, Michael Orr [Orr], and the individual defendant Michael Slattery [Slattery] were once friends. To say there has been a breakdown in the friendship and trust relationship would be an understatement.
6. The Plaintiffs allege that Orr caused the Plaintiffs to make investments over a number of years through the funding of the principal amounts of numerous mortgages issued to customers and clients of the corporate defendants relating to approximately 26 different properties. In respect of each mortgage, Slattery executed a Trust Declaration on behalf of one or other of the corporate Defendants expressly acknowledging the mortgage investment, the interest of one or other of the Plaintiffs, and the fact that the relevant corporate Defendant held the interest in trust for the relevant Plaintiff. Monthly statements with respect to the principal outstanding and repayments received by the relevant purchaser were generated and produced.
7. The Plaintiffs allege that the Defendants received repayment of the principal amounts pursuant to the mortgages, and discharged the corresponding mortgages, but concealed these facts from the Plaintiffs, generated fraudulent statements purportedly showing that the amounts remained outstanding, and misappropriated the funds.
8. The Defendants deny any misappropriation and submit that all funds can and will be accounted for.
9. When the Plaintiffs discovered the allegedly fraudulent scheme in July, 2022, they demanded explanations from the Defendants and when such were not forthcoming, they commenced this action and sought to schedule a motion for interim relief.
10. On October 31, 2022, when the motion returnable today was already pending, the parties appeared before me to address various matters of compliance with Terms of Adjournment previously agreed to and as referenced in the earlier endorsement of Justice Cavanagh. On consent, I made an order directing the transfer of those mortgages that remained outstanding to a new trustee.

11. The Plaintiffs allege in the action that they advanced approximately \$13.5 million over the years to the Defendants. Approximately \$7 million of that amount is represented by the mortgages apparently still outstanding and transferred to the new trustee pursuant to the October 31 order. That leaves, according to the Plaintiffs, approximately \$6.5 million of funds unaccounted for. It is these remaining funds and the related mortgages to which the documents now sought by the Plaintiffs are relevant.
12. The Plaintiffs submit that beneficiaries of a trust have a proprietary right to records relevant to an accounting for the trust property, and are entitled to production immediately. The Defendants submit that it is telling that the Plaintiffs are not pursuing today any relief related to interim preservation of property or a *Mareva* injunction. They also submit, as noted above, that many records have already been produced and others can be produced in the normal course of this action. There is a dispute about the extent to which a database of documents acknowledged by all parties to have already been produced and which was prepared by prior counsel to the Defendants is in a usable format given the organization and document coding.
13. I agree with the Plaintiffs that trustees have an obligation to provide “full explanations of all their dealings, and the causes why outstanding assets were not collected or property of the estate has disappeared”, and also that beneficiaries have a right in the nature of a proprietary right to records necessary to understand “the mode in which the trust property or their share of it has been invested or otherwise dealt with, and as to where it is and full accounts respecting” [see *Maintemp Heating & Air Conditioning Inc. v. Momat Developments Inc.*, 59 O.R. (3d) 270 and *Ballard Estate, Re*, 1994 CanLII 7307, quoting with approval from *O’Rourke v. Darbishire*, [1920] A.C. 581 at pp. 626-7].
14. To be clear, the right of a beneficiary to such production by a trustee is a proprietary right separate and apart from the right of any plaintiff to production of relevant and otherwise properly producible documents in the course of a proceeding and as provided for in the *Rules*. The proprietary right flows from the beneficial ownership of the beneficiary in the trust property and the derivative right to records relevant to the accounting for such property.
15. Accordingly, it is not an answer to a request for such documents to say that they will be produced in the ordinary course of litigation. A beneficiary is entitled to such documents when requested, and whether or not the documents might otherwise be producible in the course of litigation by another party. Those documents might be more limited in scope or indeed might be documents of a defendant over which a plaintiff had no proprietary right flowing from a trust.
16. The demand for the documents that are the subject of this motion was made approximately four months ago, and the Plaintiffs are entitled to them now. The categories of the documents requested are set out in paragraphs 2 (a) through and including (f) of the draft order submitted. I am satisfied that they relate to the particulars of the discharge of any relevant mortgages and related documents and events, all payments of principal amounts made to the Defendants or any of them by borrowers under the relevant mortgages, repayments or application of principal amounts by the Defendants to or for the benefit of the Plaintiffs, any relevant subordination or modification of such mortgages, and the relative priority of such mortgages.
17. All of those documents appear to be plainly relevant to the issues in the action and, as noted above, relevancy is not seriously contested by the Defendants.
18. The requested relief in the form of an order directing the production of the documents in a manner that is organized and readily usable, including for greater certainty those produced electronically, is appropriate and in any event is consistent with the obligations that the Commercial List expects from all parties litigating in this Court.
19. The Defendants maintain that certain documents to which the Plaintiffs have a proprietary right and that have been requested do not exist. That may well be so, but the Plaintiffs are entitled to confirmation from the Defendants that such documents do not exist and the particulars of such information as the Defendants do have as to whether the documents ever existed and if so, what became of them.
20. The request for these documents was made approximately four months ago. The request ought to be straightforward and there is no reason, even if some documents are required to be obtained from third parties such as accountants, banks or financial institutions, that they cannot be delivered by the Defendants to the Plaintiffs promptly.

21. Accordingly, the Defendants shall produce the documents set out in the above-noted paragraphs of the draft order, or clear and unequivocal confirmation that such documents do not exist, no later than the close of business on Friday, January 6, 2023 and earlier if they can [even if on a piecemeal basis; the Defendants should not wait until they have exhausted every line of inquiry in respect of every document to produce what they have got].
22. The documents are to be produced in an accessible and usable format such that they can be, particularly if produced electronically, readily identified and located. To the extent that cooperation from former counsel for the Defendants, which law firm apparently produced the database of some 8,000 documents delivered already, is required, such cooperation is expected.
23. It follows that in respect of the same documents over which the Plaintiffs have a proprietary right, the Plaintiffs are entitled to make reasonable inquiries and the Defendants have the corresponding obligation to respond [since such requests could and presumably would otherwise be the subject of a subsequent motion for productions to which the Plaintiffs have a right in any event].
24. Given the acknowledgement and agreement of all parties that there were trust relationships, the relief sought by the Plaintiffs in the form of an order that if the Defendants or anyone acting on their behalf currently possess or receive in the future outstanding payments on account of interest or principal from borrowers in connection with the mortgages that are the subject of this action, such funds shall be remitted forthwith to the new trustee appointed under my order of October 31, 2022.
25. Finally, with respect to the mortgages that were the subject of my earlier order directing the transfer to the new trustee, it appears today that to such mortgages, one in the Province of Québec and one in the United Kingdom, have yet to be transferred.
26. Counsel for the Defendants submits today that there is no issue about the requirement that they be transferred and indeed the Defendants have taken all reasonable steps to effect compliance with the earlier order, but that there have been procedural hiccups or delays in those respective jurisdictions which have either been remedied or will be remedied within the next few days and the mortgages transferred. If that is so, no further relief is warranted. If those remaining mortgages are not transferred forthwith, however, the Plaintiffs may seek another attendance before me to seek such directions as may be appropriate to ensure compliance with my earlier order relating to the transfer of the outstanding mortgages to the new trustee.
27. That leaves the issue of costs of the motion today. The Plaintiffs have submitted a cost outline and seek approximately \$84,000 on a full indemnity basis, \$76,000 on a substantial indemnity basis and \$51,000 on a partial indemnity basis. The Defendants have also submitted a cost outline and seek substantial indemnity costs of approximate \$326,000 and partial indemnity costs of approximate \$245,000, noting that some of the costs related to preparation for the defence of a motion for *Mareva* relief, which the Plaintiffs advised only shortly prior to today's hearing that they were not pursuing today.
28. The quantum sought by each side is significant, but so too are the issues at stake and the scope of the dispute. The Plaintiffs allege a fraudulent scheme and the misappropriation of funds. The Defendants deny any fraud or misconduct, but in any event say that many if not most of the documents that are the subject of the motion today have already been produced. That may be so, and if it is, there are production obligations flowing from my disposition of this motion today will be brief and narrow.
29. For all of these reasons, in my view it is appropriate to defer a decision on entitlement to, and quantum of, costs, to the trial judge, who will be in a position to assess whether the documents had already been produced and the relevance of all documents. The trial judge will also be in a better position to assess the relative positions of the parties with respect to the appropriateness of relief in the nature of a preservation order or *Mareva* injunction and any other steps that will by then have transpired prior to trial.
30. Order to go in a form consistent with this Endorsement. Counsel for the Plaintiffs is directed to prepare a draft order for review by counsel for the Defendants and thereafter and forward it to the Commercial List Office for review and signing by me as soon as possible.

A handwritten signature in black ink, appearing to read "Owen, J.", is located at the bottom right of the page.

TAB 3



Bennett Jones LLP
3400 One First Canadian Place, P.O. Box 130
Toronto, Ontario, M5X 1A4 Canada
T: 416.863.1200
F: 416.863.1716

Lincoln Caylor
Direct Line: 416.777.6121
e-mail: caylorl@bennettjones.com
Our File No.: 94254.1

January 30, 2023

By Email

Milton Davis and Natalia Sidlar
Fogler Rubinoff LLP
77 King Street West
Suite 3000, PO Box 95
Toronto, ON M5K 1G8

Dear Counsel:

Re: 7539088 Canada Inc. et al. v. Michael Slattery et al., CV-22-00686234-00CL

We write in respect of the order of Osborne J. dated December 22, 2022 (the “Osborne Order”).

Your Clients’ Response to the Osborne Order

By your firm’s emails dated January 6 and 17, 2023, your clients: (i) re-produced the same documents previously produced through their prior counsel only with certain additional coding, (ii) provided certain limited documents purportedly obtained from the Kormans law firm, and (iii) provided a total of 8 additional documents, the source of which was not identified.

Your carefully-worded covering email under which the foregoing documents were provided advised that those are the documents that had been “provided to us as of today’s date” and otherwise referred to documents that were known or available *to your firm*. To be clear, the Osborne Order mandates disclosure *by your clients*. Your clients’ failure to make documents available to your firm is no excuse.

On the plain language of your covering email, your clients have provided at most a total of 8 additional documents in response to the Osborne Order (and perhaps less, if any) and otherwise rely exclusively on the limited documents provided to your firm by Kormans.

Your clients have not identified “any document, record, communication or information” that is required to be provided by the Osborne Order “that does not exist or that cannot be located”, nor have they provided “the particulars of the information the defendants have as to whether the document, record, communication or information ever existed and, if so, what became of it”, all despite the express requirement of paragraph 4 of the Osborne Order that your clients do so.

January 30, 2023

Page 2

Failure to Comply with the Osborne Order

Your clients have failed to comply with the Osborne Order.

Paragraph 1 of the Osborne Order detailed and required production of “documents, records, communications and information relating to the mortgages in respect of the 19 properties listed at Schedule ‘A’ to this Order” by January 6, 2023.

Your clients have failed to provide documents required by paragraph 1 of the Osborne Order that are clearly available to them. For instance, subparagraphs 1(c) and 1(d) of the Osborne Order required your clients to provide “documents, records, communications and information” relating to:

(c) all payments of principal amounts made to Merk or Skymark by borrowers, whether voluntarily or otherwise, in connection with the Mortgages including, without limitation, all bank statements, cheque copies, wire confirmations and/or other financial documents or records evidencing or recording any such payments, and any communication, notice or agreement regarding any such payments that was provided to or made with the plaintiffs or Michael Orr;

(d) all repayments or applications of principal amounts made by Merk or Skymark to or for the benefit of the plaintiffs or Michael Orr in connection with the Mortgages, all bank statements, cheque copies, wire confirmations and/or other financial documents or records evidencing or recording any such repayments or applications, and any communication, notice or agreement regarding any such payments or applications that was provided to or made with the plaintiffs or Michael Orr;

The required “bank statements, cheque copies, wire confirmations and/or other financial documents or records evidencing or recording such payments” relating to payments made to your clients, or by your clients to or for the benefit of the plaintiffs, have not been provided.

Your clients have therefore failed to comply with the Osborne Order and, in doing so, have also failed to provide a “full explanations of all their dealings, and the causes why outstanding assets were not collected or property of the estate has disappeared”, as Osborne J. concluded was required.¹

The documents, records, communications and information not provided, including the foregoing financial records, are critical to determining what happened to the plaintiffs’ investments and to determining your clients’ conduct as trustees in connection with those investments.

¹ Endorsement of Osborne J. dated December 2, 2022, ¶13.

January 30, 2023

Page 3

Further, as Osborne J. concluded, the plaintiffs' request for such financial records "ought to be straightforward and there is no reason, even if some documents are required to be obtained from third parties such as accountants, banks or financial institutions, that they cannot be delivered by the Defendants to the Plaintiffs promptly."² Your clients have failed to provide those documents at all, and have failed to identify or explain such failure, as required by paragraph 4 of the Osborne Order. This is true even of documents that are obviously held directly by, and readily available to, your clients, such as the Merk and Skymark financial statements and accounting files (e.g., from Quickbooks).

We will therefore schedule an appointment before Osborne J. to address your clients' failure to comply with the Osborne Order. The Commercial List has advised that an appointment before Osborne J. is available on each of February 21-24 and 27-28, 2023 and March 1-3, 2023. Please advise any of these dates on which you are not available by no later than the end of the day on January 31, 2023.

Given your clients' ongoing failure to comply with the Osborne Order, the plaintiffs reserve their rights to rely on rule 60.12 of the *Rules of Civil Procedure* and insist on compliance with the Osborne Order in priority to any steps sought to be taken by your clients.

Inquiries Concerning the Plaintiffs' Investments

While your clients have failed to comply with the Osborne Order, even the limited documents provided are further evidence that your clients acted fraudulently and in breaches of trust. Among other things, such documents raise serious questions as to whether various investments to be held in trust by your clients were ever secured by mortgages or were instead immediately misappropriated by your clients, who then sought to conceal their misappropriation with false monthly statements.

Accordingly, and in addition to confirming the need for the documents required to be provided by your clients by the Osborne Order (including the financial records discussed above), the plaintiffs request and require the following information regarding their investments in the mortgages listed at Schedule 'A' to the Osborne Order in accordance with paragraph 5 of the Osborne Order:

1. The mortgage (with legal description) in which with the plaintiffs invested.
2. The date on which the mortgage securing the plaintiffs' investment was registered on title.
3. The amount of the plaintiffs' investment secured by the mortgage.
4. If any amount of the plaintiffs' investment was not secured by the mortgage, why not.
5. The ranking or priority of the mortgage at the time the plaintiffs' investment was made.
6. The initial terms of the mortgage securing the plaintiffs' investment.
7. The initial duration of the mortgage securing the plaintiffs' investment.
8. The date of any renewal(s) of the mortgage securing the plaintiffs' investment.

² Endorsement of Osborne J. dated December 2, 2022, ¶20.

January 30, 2023

Page 4

9. The terms of any renewal(s) of the mortgage securing the plaintiffs' investment.
10. The duration of any renewal(s) of the mortgages securing the plaintiffs' investment.
11. Whether the mortgage in which the plaintiffs invested was transferred by Merk or Skymark to another mortgagee.
12. If the answer to 11 is "yes":
 - a. The date of the transfer of any mortgage by Merk or Skymark.
 - b. The reason for any transfer of the mortgage by Merk or Skymark.
 - c. Whether notice was provided to the plaintiffs of the transfer.
 - d. If notice of the transfer was provided to the plaintiffs, why and how.
 - e. If notice of the transfer was not provided to the plaintiffs, why not.
 - f. The details any benefits received by Merk or Skymark in connection with the transfer.
 - g. The details of amounts paid to the plaintiffs in connection with the transfer.
 - h. The identity and involvement of any party that received payment of any interest, principal or other amounts in connection with the transferred mortgage.
13. Whether the mortgage in which the plaintiffs invested was subordinated by Merk or Skymark.
14. If the answer to 13 is "yes":
 - a. The date of the subordination of any mortgage by Merk or Skymark.
 - b. The reason for any subordination of the mortgage by Merk or Skymark.
 - c. Whether notice was provided to the plaintiffs of the subordination.
 - d. If notice of the subordination was provided to the plaintiffs, why and how.
 - e. If notice of the subordination was not provided to the plaintiffs, why not.
 - f. The details any received by Merk or Skymark in connection with the subordination.
 - g. The details of the amounts paid to the plaintiffs in connection with the subordination.
15. The date on which the mortgage in which the plaintiffs invested was deregistered from title.
16. The ranking or priority of the mortgage at the time of deregistration.

January 30, 2023

Page 5

17. The circumstances leading to the deregistration of the mortgage from title including:

- a. The amount received by Merk or Skymark in connection with deregistration.
- b. Whether deregistration occurred upon repayment of the principal amount.
- c. Whether deregistration occurred upon repayment of less than the principal amount.
- d. Whether deregistration occurred in connection with a power of sale process.
- e. The amounts received by each secured party in connection with any power of sale.
- f. The amount received by Merk or Skymark in connection with any power of sale.
- g. Whether the mortgage was treated as unsecured (in whole or in part) in connection with any power of sale and, if so, the reason that the mortgage was treated in that manner.
- h. Whether the property sold under power of sale or the relevant borrower(s) had any other involvement with Merk or Skymark and, if so, the nature of that involvement.
- i. The value of the property sold under power of sale as understood by Merk or Skymark.
- j. The amount owing to the plaintiffs in connection with deregistration.
- k. The amount paid to the plaintiffs in connection with deregistration.
- l. The timing of the amount paid to the plaintiffs in connection with deregistration.

18. All principal and interest amounts received from the borrower by Merk or Skymark.

19. All fees or other compensation received by Merk and Skymark.

In accordance with paragraph 5 of the Osborne Order, the plaintiffs require the foregoing information within 21 days of this letter. In requesting the foregoing information, it remains open to the plaintiffs to request additional information or to make follow-up inquiries regarding any information provided.

Yours truly,

BENNETT JONES LLP



Lincoln Caylor

LC

Copy: Shaun Laubman and David Ionis, *Lax O'Sullivan Lisus Gottlieb LLP*
Nathan Shaheen and Andrew Sahai, *Bennett Jones LLP*



Fogler, Rubinoff LLP
Lawyers

77 King Street West
Suite 3000, PO Box 95
TD Centre North Tower
Toronto, ON M5K 1G8
t: 416.864.9700 | f: 416.941.8852
foglers.com

Lawyer: Ronald D. Davis
Direct Dial: 416.347.6765
E-mail: rdavis@foglers.com

January 30, 2023

Our File No. 224686

VIA EMAIL

Lincoln Caylor, Esq.
Bennett Jones LLP
3400 First Canadian Place, P. O. Box 130
Toronto, ON M5X 1A4

Dear Mr. Caylor:

Re: Slattery et al ats 7539088 Canada Inc. et al.

We have your letter of today's date. This correspondence is not our complete response to your letter, but simply an acknowledgement of receipt and a correction of some key points that you raise. A full response will follow.

Our clients have worked diligently and continue to work to achieve full compliance with Justice Osborne's order. We reject the assertion that there is a failure to comply. The process is ongoing.

There is a significant amount of data in multiple locations with various data custodians. Our client has laboured and continues labour to gather, organize and produce the data. It goes without saying, that our client has no intention of other than fully complying with His Honour's order.

We don't see the need for an appointment before Justice Osborne to address the contents of your letter. We have noted your requests and are addressing those further requests on an expedited basis. If you insist on proceeding, however, we will be back to you tomorrow with availability among the date range you have suggested, after I have obtained instructions from our client.



Yours truly,

FOGLER, RUBINOFF LLP

A handwritten signature in blue ink, appearing to be "RD Davis", written over the printed name.

Ronald D. Davis*

*Services provided through a professional corporation

RDD/cg

cc: Shaun Laubman and David Ionis, Lax Sullivan Lisus Gottlieb LLP



Fogler, Rubinoff LLP
Lawyers

77 King Street West
Suite 3000, PO Box 95
TD Centre North Tower
Toronto, ON M5K 1G8
t: 416.864.9700 | f: 416.941.8852
foglers.com

January 30, 2023

Lawyer: Ronald D. Davis
Direct Dial: 416.347.6765
E-mail: rdavis@foglers.com
Our File No. 224686

VIA EMAIL

**LINCOLN CAYLOR, ESQ.
BENNETT JONES LLP
3400 FIRST CANADIAN PLACE, P. O. BOX 130
TORONTO, ON M5X 1A4**

Dear Mr. Caylor:

Re: Slattery et al ats 7539088 Canada Inc. et al.

This is further to our exchange of correspondence yesterday.

As I wrote yesterday, we do not accept any suggestion of noncompliance with Justice Osborne's order. Our clients have complied, are complying and will comply with His Honour's order.

Ignoring the fact that your client and your offices already have nearly all (and most likely all) the information and documents you are demanding, our clients are working to finish organizing the responsive documents.

Please note that we have recently become aware of previously unknown documents that bring the total up to 96,000. An e-discovery processing error in the data set from Oslers led to these documents not appearing in iPro. I am informed that none of the additional documents have been tagged as relevant. So, we do not expect they will be responsive. Nevertheless, we are working to have these documents organized, encoded and uploaded. Once those tasks are completed and the documents reviewed for responsiveness, we will provide same to you.

Your letter yesterday introduced a series of requests that were not previously made. We will respond to those requests as soon as possible, and in compliance with Justice Osborne's order.

That said, the ongoing posturing of your correspondence needs to come to an end. Bad enough that your client has alleged fraud where there is none, accused our clients of schemes that were in fact designed by your client, and casually abandoned an unfounded Mareva injunction motion. The fruitless tactics in which your client persists are a waste of court and client time and resources.



To put a halt once and for all to the meritless allegations and procedures, our clients have retained Cohen Hamilton Steger & Co. to prepare a forensic account detailing the activity on all the properties at issue in this litigation.

You will recall that your office and ours originally had an understanding for the accountants to undertake an exercise that would address the claims by your client and determine one way or the other the validity of client's fraud allegations. You resiled from the understanding and denied its existence. Water under the bridge.

We have advised Cohen Hamilton Steger that this matter is time sensitive. However, as you can appreciate no forensic accounting is going to be done in the limited time you have stipulated in your letter.

It goes without saying that our client will continue to respect every detail of Justice Osborne's order.

Regarding dates for an appointment before His Honour, we are available February 27 or 28, 2023.

Yours truly,

FOGLER, RUBINOFF LLP

A handwritten signature in blue ink, appearing to be "RD", written over the printed name of Ronald D. Davis.

Ronald D. Davis, JD, PhD*

*Services provided through a professional corporation

RDD/cg

cc: Matt Gottlieb, Shaun Laubman and David Ionis, Lax O'Sullivan Lisus Gottlieb LLP

TAB 4

TRUST DECLARATION

BETWEEN

MERK INVESTMENTS LTD.

Trustee

- and -

7539088 CANADA INC.

Beneficiary

WHEREAS Merk Investments Ltd. holds a \$265,000.00 mortgage registered on the title to the property municipally known as 150 George Street, Brantford;

AND WHEREAS Merk Investments Ltd. holds a \$265,000.00 interest in the mortgage in trust for 7539088 Canada Inc..

NOW THEREFORE the Trustee hereby declares:

- 1. Merk Investments Ltd. holds the mortgage wholly in trust for the aforesaid beneficiary;
- 2. The recitals are true;
- 3. Merk Investments Ltd. agrees to do such things and execute such documents as may be required to carry out the intent of the trust.

DECLARED at Mississauga, this 20th day of March, 2015

MERK INVESTMENTS LTD.

Per:  _____
Michael Slattery

LRO # Charge/Mortgage

Received as BC271700 on 2015 03 20 at 08:57

The applicant(s) hereby applies to the Land Registrar.

yyyy mm dd

Page 1 of 3

Properties			
PIN	32140 - 0154 LT	Interest/Estate	Fee Simple
Description	CONSOLIDATION OF VARIOUS PROPERTIES PART LT 5 & 6 SOUTH OF GREY ST, DESIGNATED AS PT 5 ON 2R6085, PT LT 6 NORTH OF MARLBOROUGH STREET, BEING PT 4 ON 2R6085, PART LT 6 & 7 SOUTH OF GREY ST, PART LT 7 AND 8 NORTH OF MARLBOROUGH STREET BEING PT 4 ON 2R5668; CITY OF BRANTFORD		
Address	150 GEORGE STREET BRANTFORD		

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	1325904 ONTARIO INC.
Address for Service	187 Market Street Brantford, ON N3T 3A7

I, Paul Baycetch, Director and George Milton Baycetch, Director, have the authority to bind the corporation.

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

Chargee(s)		Capacity	Share
Name	MERK INVESTMENTS LTD.		
Address for Service	c/o 46 Village Centre Place Mississauga, ON L4Z 1V9		

Statements

Schedule: See Schedules

Provisions			
Principal	\$ 265,000.00	Currency	CDN
Calculation Period	monthly, not in advance		
Balance Due Date	2016/03/20		
Interest Rate	9.0% per annum		
Payments	\$ 1,987.50		
Interest Adjustment Date	2015 03 20		
Payment Date	20th day of each and every month		
First Payment Date	2015 04 20		
Last Payment Date	2016 03 20		
Standard Charge Terms	200033		
Insurance Amount	full insurable value		
Guarantor	Paul Baycetch and George Baycetch		

LRO # Charge/Mortgage

Received as BC271700 on 2015 03 20 at 08:57

The applicant(s) hereby applies to the Land Registrar.

yyyy mm dd Page 2 of 3

Signed By

Fran Philips	46 Village Centre Place Mississauga L4Z 1V9	acting for Chargor(s)	Signed	2015 03 19
Tel 905-270-6660				
Fax 905-270-2665				


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

Submitted By

KORMANS LLP	46 Village Centre Place Mississauga L4Z 1V9	2015 03 20
Tel 905-270-6660		
Fax 905-270-2665		

Fees/Taxes/Payment

Statutory Registration Fee	\$60.00
Total Paid	\$60.00

LRO #  Transfer Of Charge

Received as BC271701 on 2015 03 20 at 08:57

The applicant(s) hereby applies to the Land Registrar.

yyyy mm dd

Page 1 of 2

Properties

PIN32140 - 0154 LT

DescriptionCONSOLIDATION OF VARIOUS PROPERTIES PART LT 5 & 6 SOUTH OF GREY ST, DESIGNATED AS PT 5 ON 2R6085, PT LT 6 NORTH OF MARLBOROUGH STREET, BEING PT 4 ON 2R6085, PART LT 6 & 7 SOUTH OF GREY ST, PART LT 7 AND 8 NORTH OF MARLBOROUGH STREET BEING PT 4 ON 2R5668; CITY OF BRANTFORD

Address150 GEORGE STREET
BRANTFORD

Source Instruments

Registration No.	Date	Type of Instrument
BC271700	2015 03 20	Charge/Mortgage

Transferor(s)

This transfer of charge affects all lands that the charge is against which are outstanding.

NameMERK INVESTMENTS LTD.

Address for Servicec/o 46 Village Centre Place
Mississauga, Ontario
L4Z 1V9

I, Michael Slattery, have the authority to bind the corporation.

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

Transferee(s)

		Capacity	Share
Name	LOWENSTEIN, AUBREY		as to an undivided 50% interest
Address for Service	38 Avenue Road Suite 511 Toronto, Ontario M5R 2G2		
Name	LOWENSTEIN, BETTY		as to an undivided 50% interest
Address for Service	38 Avenue Road Suite 511 Toronto, Ontario M5R 2G2		

Statements

The chargee transfers the selected charge for \$265,000.00

Signed By

Fran Philips	46 Village Centre Place Mississauga L4Z 1V9	acting for Transferor(s)	Signed	2015 03 19
Tel	905-270-6660			
Fax	905-270-2665			

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

LRO #  Charge/Mortgage

Received as BC271700 on 2015 03 20 at 08:57

The applicant(s) hereby applies to the Land Registrar.

yyyy mm dd Page 2 of 3

Signed By

Fran Philips	46 Village Centre Place Mississauga L4Z 1V9	acting for Chargor(s)	Signed	2015 03 19
Tel	905-270-6660			
Fax	905-270-2665			

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

Submitted By

KORMANS LLP	46 Village Centre Place Mississauga L4Z 1V9	2015 03 20
Tel	905-270-6660	
Fax	905-270-2665	

Fees/Taxes/Payment

Statutory Registration Fee	\$60.00
Total Paid	\$60.00

TOLSON, VICTOR M3J 3H7
Tel: (416) 446-1900

018295

170

MER0006021

PAY to
the order of

KORMANS LLP In Trust

DATE 2015-03-20
Y Y Y Y M M D D

\$15,000—

15000 00

BMO Bank of Montreal

877 LAWRENCE AVENUE EAST TEL: (416) 447-8576
DON MILLS, ONTARIO M3C 2T3

100 DOLLARS

Security
features
included.

GOLDLEASE LIMITED

RE

PER

PER

⑈018295⑈ ⑆03172⑈001⑆

1049⑈953⑈

GOLDLEASE LIMITED

1120 FINCH AVE. W., SUITE #103
NORTH YORK, ONTARIO M3J 3H7
Tel: (416) 446-1900

018294

DATE 2015-03-20
Y Y Y Y M M D DPAY to
the order of

KORMANS LLP In Trust

\$15,000—

15000 00

100 DOLLARS

Security
features
included.

GOLDLEASE LIMITED

BMO Bank of Montreal

877 LAWRENCE AVENUE EAST TEL: (416) 447-8576
DON MILLS, ONTARIO M3C 2T3

RE

PER

PER

⑈018294⑈ ⑆03172⑈001⑆

1049⑈953⑈

**SKYLARK
HOLDINGS
LIMITED****172****Mortgage Brokers****Licence No. 10341***46 Village Centre Place**Mississauga, Ontario L4Z 1V9**Telephone (905) 272-1900**Fax (905) 272-1905*

September 22, 2021

Hospodar Davies & Gold
Barristers & Solicitors
41 Morton Avenue East, 2nd Floor
Brantford, ON

**Re: Lowenstein mortgage to Baycetch/1325904 Ontario Inc.
150 George St., Brantford, ON**

Mortgage statement for discharge purposes:

Principal outstanding as at Sep 1, 2021	\$265,000.00
Interest from Sep 1 to 23, 2021	\$1,502.82
Outstanding NSF fee for Nov 2019	\$100.00
Outstanding NSF fee for Feb 2020	\$200.00
Outstanding NSF fee for Mar 2021	\$160.00
Two month bonus	\$3,975.00
Discharge statement & registration fee	\$893.50
Total	<u>\$271,831.32</u>

Payable to:**Aubrey & Betty Lowenstein: \$270,937.82 plus per diem \$65.34****Merk Investments Ltd.: \$893.50**

Per diem: \$65.34

Please forward certified funds to the office of Skylark Holdings Limited.

Funds received after 3:00pm must have interest calculated to the next business date.

Yours very truly,

SKYLARK HOLDINGS LIMITED

PER:


MICHAEL SLATTERY
E. & O. E.

LRO # [REDACTED] **Discharge Of Charge**

Received as **BC413854** on 2021 10 01 at 14:13

The applicant(s) hereby applies to the Land Registrar.

yyyy mm dd Page 1 of 1

Properties

PIN32140 - 0154 LT

DescriptionCONSOLIDATION OF VARIOUS PROPERTIES PART LT 5 & 6 SOUTH OF GREY ST, DESIGNATED AS PT 5 ON 2R6085, PT LT 6 NORTH OF MARLBOROUGH STREET, BEING PT 4 ON 2R6085, PART LT 6 & 7 SOUTH OF GREY ST, PART LT 7 AND 8 NORTH OF MARLBOROUGH STREET BEING PT 4 ON 2R5668; CITY OF BRANTFORD

Address150 GEORGE ST
BRANTFORD

Document to be Discharged

Registration No.	Date	Type of Instrument
BC271700	2015 03 20	Charge/Mortgage
BC271701	2015 03 20	Transfer Of Charge

Discharging Party(s)

This discharge complies with the Planning Act. This discharge discharges the charge.

NameLOWENSTEIN, AUBREY

Address for Servicec/o 46 Village Centre Place, Suite 300
Mississauga, ON
L4Z 1V9

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

The party giving this discharge is not the original chargee or is the original chargee and has changed it's name but is the party entitled to give an effective discharge

NameLOWENSTEIN, BETTY

Address for Servicec/o 46 Village Centre Place, Suite 300
Mississauga, ON
L4Z 1V9

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

The party giving this discharge is not the original chargee or is the original chargee and has changed it's name but is the party entitled to give an effective discharge

Signed By

Lindsay Anne Mallouk6645 Kitimat Road, Unit 14
Mississauga
L5N 6J3acting for
Applicant(s)Signed2021 10 01

Tel905-814-5224

Fax905-814-5227

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

Submitted By

LANGLOIS KONRAD INKSTER LLP6645 Kitimat Road, Unit 14
Mississauga
L5N 6J32021 10 01

Tel905-814-5224

Fax905-814-5227

Fees/Taxes/Payment

Statutory Registration Fee	\$65.30
Total Paid	\$65.30

LANGLOIS KONRAD INKSTER LLP
6645 KITIMAT ROAD, UNIT 14
MISSISSAUGA, ONTARIO L5N 6J3
905-814-5224

TD CANADA TRUST
MISSISSAUGA MARKET PLACE
4555 HURONTARIO ST., UNIT C-10
MISSISSAUGA, ONTARIO L4Z 3M1

12576

CERTIFIED
OCT 01 2021

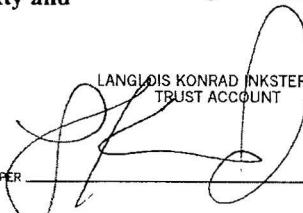
PAY TO THE ORDER OF **Canada Trust**
54/100

6760 Meadowvale Town Ctr 0159
MISSISSAUGA, ONTARIO L5N 6J3

Abby Lowenstein & Betty Lowenstein

CERTIFIED CHEQUE
DO NOT DESTROY

Notes: Discharge of Mortgage on 150 George Street, Brantford.

PER 

LANGLOIS KONRAD INKSTER LLP
TRUST ACCOUNT

01102021
DATE D D M M Y Y Y Y

S*****271,460.54

⑈0012576⑈ ⑈13092⑈004⑈ 9011500⑈ 5217661



Branch: 0159 MISSISSAUGA
MEADOWVALE
6760 MEADOWVALE TOWN
CENTR CIR
MISSISSAUGA, ON

Date: Oct 1, 2021, 03:32 PM
Ref #: 00128451/11 - ZDOD

From: Cheque Total 271,460.54

To: 1988-63***62
Deposit
LOWENSTEIN A 271,460.54

Customer Signature



Thank You for banking with TD.
For information call
EasyLine 1-866-222-3456
or visit td.com

THIS DOCUMENT CONTAINS SECURITY FEATURES - SEE REVERSE

LANGLOIS KONRAD INKSTER LLP
6645 KITIMAT ROAD, UNIT 14
MISSISSAUGA, ONTARIO L5N 6J3
T. 905-814-5224

TD CANADA TRUST
MISSISSAUGA MARKET PLACE
4555 HURONTARIO ST., UNIT C-10
MISSISSAUGA, ONTARIO L4Z 3M1

12569

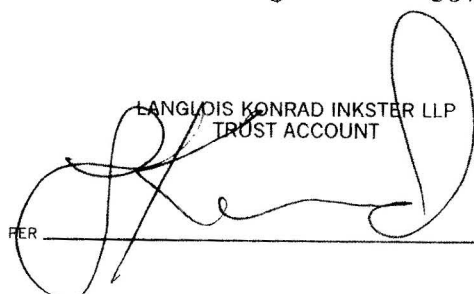
01102021
DATE D D M M Y Y Y Y

PAY ***Five Hundred Eighty Seven and 50/100**

\$***587.50**

TO THE ORDER OF Merk Investments Ltd.

Notes: Discharge of mortgage on 150 George

PER  **LANGLOIS KONRAD INKSTER LLP**
TRUST ACCOUNT

⑈0012569⑈ ⑆13092004⑆ 13095217661⑈



LAND
REGISTRY
OFFICE #2

32140-0154 (LT)

PAGE 1 OF 3
PREPARED FOR Katherine01
ON 2022/08/09 AT 15:47:49

* CERTIFIED IN ACCORDANCE WITH THE LAND TITLES ACT * SUBJECT TO RESERVATIONS IN CROWN GRANT *

PROPERTY DESCRIPTION:	CONSOLIDATION OF VARIOUS PROPERTIES PART LT 5 & 6 SOUTH OF GREY ST, DESIGNATED AS PT 5 ON 2R6085, PT LT 6 NORTH OF MARLBOROUGH STREET, BEING PT 4 ON 2R6085, PART LT 6 & 7 SOUTH OF GREY ST, PART LT 7 AND 8 NORTH OF MARLBOROUGH STREET BEING PT 4 ON 2R5668; CITY OF BRANTFORD		
PROPERTY REMARKS:	C OF A CONSENTS IN BC60129, BC60130.		
ESTATE/QUALIFIER:	RECENTLY:	PIN CREATION DATE:	
FEE SIMPLE	CONSOLIDATION FROM 32140-0050, 32140-0151, 32140-0149	2005/05/24	
LT CONVERSION QUALIFIED			
OWNERS' NAMES	CAPACITY	SHARE	
JM MARKET-GREY INC.	ROWN		

REG. NUM.	DATE	INSTRUMENT TYPE	AMOUNT	PARTIES FROM	PARTIES TO	CERT/CHKD
** PRINTOUT INCLUDES ALL DOCUMENT TYPES AND DELETED INSTRUMENTS SINCE 2005/05/24 **						
**SUBJECT, ON FIRST REGISTRATION UNDER THE LAND TITLES ACT, TO:						
** SUBSECTION 44(1) OF THE LAND TITLES ACT, EXCEPT PARAGRAPH 11, PARAGRAPH 14, PROVINCIAL SUCCESSION DUTIES *						
** AND ESCHEATS OR FORFEITURE TO THE CROWN.						
** THE RIGHTS OF ANY PERSON WHO WOULD, BUT FOR THE LAND TITLES ACT, BE ENTITLED TO THE LAND OR ANY PART OF						
** IT THROUGH LENGTH OF ADVERSE POSSESSION, PRESCRIPTION, MISDESCRIPTION OR BOUNDARIES SETTLED BY						
** CONVENTION.						
** ANY LEASE TO WHICH THE SUBSECTION 70(2) OF THE REGISTRY ACT APPLIES.						
**DATE OF CONVERSION TO LAND TITLES: 2002/03/11 **						
A117351	1970/08/10	LEASE		*** DELETED AGAINST THIS PROPERTY ***	BRANT COUNTY FORD SALES LIMITED	
A368308	1989/07/04	CHARGE		*** DELETED AGAINST THIS PROPERTY ***	THE ROYAL BANK OF CANADA	
A495920	1998/05/05	CERT TAX ARREARS		*** DELETED AGAINST THIS PROPERTY ***		
A510374	1999/12/22	TRANSFER		*** DELETED AGAINST THIS PROPERTY ***	1325904 ONTARIO INC.	
2R5668	2000/09/06	PLAN REFERENCE				C
A515054	2000/11/30	CHARGE		*** DELETED AGAINST THIS PROPERTY ***	ELTSAC INVESTMENTS LTD.	
BC55876	2005/03/09	NOTICE	\$2	CANADIAN NATIONAL RAILWAY COMPANY		C

NOTE: ADJOINING PROPERTIES SHOULD BE INVESTIGATED TO ASCERTAIN DESCRIPTIVE INCONSISTENCIES, IF ANY, WITH DESCRIPTION REPRESENTED FOR THIS PROPERTY.
NOTE: ENSURE THAT YOUR PRINTOUT STATES THE TOTAL NUMBER OF PAGES AND THAT YOU HAVE PICKED THEM ALL UP.



LAND
REGISTRY
OFFICE #2

32140-0154 (LT)

* CERTIFIED IN ACCORDANCE WITH THE LAND TITLES ACT * SUBJECT TO RESERVATIONS IN CROWN GRANT *

REG. NUM.	DATE	INSTRUMENT TYPE	AMOUNT	PARTIES FROM	PARTIES TO	CERT/ CHKD
BC59726	2005/05/12	CHARGE		*** DELETED AGAINST THIS PROPERTY *** 1325904 ONTARIO INC.	MERK INVESTMENTS LTD	
BC59727	2005/05/12	TRANSFER OF CHARGE		*** DELETED AGAINST THIS PROPERTY *** MERK INVESTMENTS LTD	LITZ, ESTHER BARATH, GERTRUDE KLEIN, SANDY	
REMARKS: RE:BC59726						
BC60129	2005/05/19	TRANSFER		*** DELETED AGAINST THIS PROPERTY *** BAY-SEA TAVERN LIMITED	1325904 ONTARIO INC.	
BC60130	2005/05/19	TRANSFER		*** DELETED AGAINST THIS PROPERTY *** BAYCETICH, GEORGE	1325904 ONTARIO INC.	
BC72127	2005/11/08	DISCH OF CHARGE		*** COMPLETELY DELETED *** ELTSAC INVESTMENTS LTD.		
REMARKS: RE: A515054						
BC164326	2009/06/12	CT TAX ARREAR CANC		*** COMPLETELY DELETED *** THE CORPORATION OF THE CITY OF BRANTFORD		
REMARKS: A495920.						
BC184971	2010/06/10	DISCH OF CHARGE		*** COMPLETELY DELETED *** THE ROYAL BANK OF CANADA		
REMARKS: A368308.						
BC185288	2010/06/15	CHARGE		*** COMPLETELY DELETED *** 1325904 ONTARIO INC.	B2B TRUST	
BC190709	2010/09/13	DISCH OF CHARGE		*** COMPLETELY DELETED *** LITZ, ESTHER BARATH, GERTRUDE KLEIN, SANDY		
REMARKS: BC59726.						
BC271700	2015/03/20	CHARGE		*** COMPLETELY DELETED *** 1325904 ONTARIO INC.	MERK INVESTMENTS LTD.	
BC271701	2015/03/20	TRANSFER OF CHARGE		*** COMPLETELY DELETED *** MERK INVESTMENTS LTD.	LOWENSTEIN, AUBREY LOWENSTEIN, BETTY	

NOTE: ADJOINING PROPERTIES SHOULD BE INVESTIGATED TO ASCERTAIN DESCRIPTIVE INCONSISTENCIES, IF ANY, WITH DESCRIPTION REPRESENTED FOR THIS PROPERTY.
NOTE: ENSURE THAT YOUR PRINTOUT STATES THE TOTAL NUMBER OF PAGES AND THAT YOU HAVE PICKED THEM ALL UP.



LAND
REGISTRY
OFFICE #2

32140-0154 (LT)

* CERTIFIED IN ACCORDANCE WITH THE LAND TITLES ACT * SUBJECT TO RESERVATIONS IN CROWN GRANT *

REG. NUM.	DATE	INSTRUMENT TYPE	AMOUNT	PARTIES FROM	PARTIES TO	CERT/ CHKD
	REMARKS: BC271700.					
BC273069	2015/04/21	DISCH OF CHARGE		*** COMPLETELY DELETED *** B2B TRUST		
	REMARKS: BC185288.					
BC366113	2019/09/26	CHARGE		*** COMPLETELY DELETED *** 1325904 ONTARIO INC.	MERK INVESTMENTS LTD.	
BC366114	2019/09/26	NO ASSGN RENT GEN		*** COMPLETELY DELETED *** 1325904 ONTARIO INC.	MERK INVESTMENTS LTD.	
	REMARKS: BC366113.					
BC366818	2019/10/04	TRANSFER OF CHARGE		*** COMPLETELY DELETED *** MERK INVESTMENTS LTD.	OLYMPIA TRUST COMPANY 1404272 ONTARIO INC.	
	REMARKS: BC366113.					
BC389133	2020/10/27	DISCH OF CHARGE		*** COMPLETELY DELETED *** OLYMPIA TRUST COMPANY 1404272 ONTARIO INC.		
	REMARKS: BC366113.					
BC413608	2021/09/29	APL (GENERAL)		*** COMPLETELY DELETED *** 1325904 ONTARIO INC.		
	REMARKS: DELETE A117351					
BC413791	2021/10/01	TRANSFER	\$850,000	1325904 ONTARIO INC.	JM MARKET-GREY INC.	C
BC413793	2021/10/01	CHARGE	\$1,750,000	JM MARKET-GREY INC.	BAYCETICH, PAUL BAYCETICH, GEORGE	C
BC413854	2021/10/01	DISCH OF CHARGE		*** COMPLETELY DELETED *** LOWENSTEIN, AUBREY LOWENSTEIN, BETTY		
	REMARKS: BC271700.					

NOTE: ADJOINING PROPERTIES SHOULD BE INVESTIGATED TO ASCERTAIN DESCRIPTIVE INCONSISTENCIES, IF ANY, WITH DESCRIPTION REPRESENTED FOR THIS PROPERTY.
NOTE: ENSURE THAT YOUR PRINTOUT STATES THE TOTAL NUMBER OF PAGES AND THAT YOU HAVE PICKED THEM ALL UP.

TAB 5

TRUST DECLARATION

BETWEEN

MERK INVESTMENTS LTD.

Trustee

- and -

7539088 CANADA INC.

Beneficiary

WHEREAS Merk Investments Ltd. holds a \$270,000.00 mortgage registered on the title to the property municipally known as 151 Prospect Street, Port Dover;

AND WHEREAS Merk Investments Ltd. holds a \$270,000.00 interest in the mortgage in trust for 7539088 Canada Inc..

NOW THEREFORE the Trustee hereby declares:

- 1. Merk Investments Ltd. holds the mortgage wholly in trust for the aforesaid beneficiary;
- 2. The recitals are true;
- 3. Merk Investments Ltd. agrees to do such things and execute such documents as may be required to carry out the intent of the trust.

DECLARED at Mississauga, this 15th day of January, 2016

MERK INVESTMENTS LTD.

Per: 
Michael Slattery

LRO # 37 Charge/Mortgage

In preparation on 2016 01 14 at 10:48
yyyy mm dd Page 1 of 2

This document has not been submitted and may be incomplete.

Properties

PIN 50253 - 0166 LT Interest/Estate Fee Simple
Description PT LT 10-11 CON 2 WOODHOUSE PT 1 37R7656; NORFOLK COUNTY
Address 151 PROSPECT STREET
PORT DOVER

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 SMITH, TRAVIS AS ~~TRUSTEE~~
Acting as an individual
Address for Service 643 Johns Road West, RR #2
Simcoe, ON
N3Y 4K1

I am at least 18 years of age.
I am not a spouse
This document is not authorized under Power of Attorney by this party.

Name SHEIKH, MOAAZ AS ~~TRUSTEE~~
Acting as an individual
Address for Service 2250 Bovaird Drive East, Suite 106
Brampton, ON
L6R 0W3

I am at least 18 years of age.
The property is not ordinarily occupied by me and my spouse, who is not separated from me, as our family residence.
This document is not authorized under Power of Attorney by this party.

Chargee(s) Capacity Share

Name MERK INVESTMENTS LTD.
Acting as a company
Address for Service 46 Village Centre Place, Suite 300
Mississauga, ON
L4Z 1V9

Statements

Schedule: See Schedules

LRO # 37 Charge/Mortgage

In preparation on 2016 01 14 at 10:48
Page 2 of 2

This document has not been submitted and may be incomplete.

yyyy mm dd

Provisions

Principal	\$ 270,000.00	Currency	CDN
Calculation Period	monthly, not in advance		
Balance Due Date	2017/02/02		
Interest Rate	9.75% annually		
Payments	\$ 2,193.75		
Interest Adjustment Date	2016 02 02		
Payment Date	1st day of each and every month		
First Payment Date	2016 03 01		
Last Payment Date	2017 02 02		
Standard Charge Terms	200033		
Insurance Amount	full insurable value		
Guarantor			

Additional Provisions

The Chargors, Travis Smith and Moaaz Sheikh are signing this charge as Family Trustees, pursuant to the written Smith Family Irrevocable Trust Agreement, dated, November 12, 2015 and not in their personal capacity.

File Number

Chargor Client File Number :	15755
Chargee Client File Number :	36396

LRO # 377-1 Transfer Of Charge

Received as NK86869 on 2016 02 16 at 13:49
yyyy mm dd Page 1 of 2

The applicant(s) hereby applies to the Land Registrar.

Properties

PIN 50253 - 0166 LT
Description PT LT 10-11 CON 2 WOODHOUSE PT 1 37R7656; NORFOLK COUNTY
Address 151 PROSPECT STREET
PORT DOVER

Source Instruments

Registration No.	Date	Type of Instrument
NK86137	2016 01 15	Charge/Mortgage

Transferor(s)

This transfer of charge affects all lands that the charge is against which are outstanding.

Name MERK INVESTMENTS LTD.
Address for Service 46 Village Centre Place, Suite 300
Mississauga, ON
L4Z 1V9

I, Michael Slattery, have the authority to bind the corporation.
This document is not authorized under Power of Attorney by this party.

Transferee(s)	Capacity	Share
---------------	----------	-------

Name	SKYMARK FINANCE CORPORATION
Address for Service	c/o 46 Village Centre Place, Suite 300 Mississauga, ON L4Z 1V9

Statements

The chargee transfers the selected charge for \$270,000.00

Signed By

Monika Dylag	46 Village Centre Place Mississauga L4Z 1V9	acting for Transferor(s)	Signed	2016 02 16
Tel	9052721900			
Fax	9052721905			

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

Monika Dylag	46 Village Centre Place Mississauga L4Z 1V9	acting for Transferee(s)	Signed	2016 02 16
Tel	9052721900			
Fax	9052721905			

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

Submitted By

MERK INVESTMENTS LTD.	46 Village Centre Place Mississauga L4Z 1V9	2016 02 16
Tel	9052721900	
Fax	9052721905	

LRO # 37 Charge/Mortgage

Received as NK86137 on 2016 01 15 at 15:20

The applicant(s) hereby applies to the Land Registrar.

yyyy mm dd Page 2 of 3

Provisions			
Principal	\$ 270,000.00	Currency	CDN
Calculation Period	monthly, not in advance		
Balance Due Date	2017/02/02		
Interest Rate	9.75% annually		
Payments	\$ 2,193.75		
Interest Adjustment Date	2016 02 02		
Payment Date	1st day of each and every month		
First Payment Date	2016 03 01		
Last Payment Date	2017 02 02		
Standard Charge Terms	200033		
Insurance Amount	full insurable value		
Guarantor			

Additional Provisions

The Chargors, Travis Smith and Moaaz Sheikh are signing this charge as Family Trustees, pursuant to the written Smith Family Irrevocable Trust Agreement, dated, November 12, 2015 and not in their personal capacity.

Signed By

Monika Dylag	46 Village Centre Place Mississauga L4Z 1V9	acting for Chargor(s)	Signed	2016 01 15
Tel	9052721900			
Fax	9052721905			

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

Submitted By

MERK INVESTMENTS LTD.	46 Village Centre Place Mississauga L4Z 1V9	2016 01 15
Tel	9052721900	
Fax	9052721905	

Fees/Taxes/Payment	
Statutory Registration Fee	\$62.85
Total Paid	\$62.85

File Number

Chargor Client File Number :	15755
Chargee Client File Number :	36396

05/30/2018	05/30/2018		Oth	\$7,900.00	\$0.00	\$0.00
06/01/2018	06/01/2018		RegPmt	\$0.00	\$2,174.92	\$18.83
07/01/2018	07/01/2018		RegPmt	\$0.00	\$2,174.77	\$18.98
08/01/2018	08/01/2018		RegPmt	\$0.00	\$2,174.61	\$19.14
09/04/2018	09/01/2018		RegPmt	\$0.00	\$2,174.46	\$19.29
09/04/2018	09/04/2018		Oth	\$10,000.00	\$0.00	\$0.00
09/04/2018	09/04/2018		Oth	\$0.00	\$0.00	\$6,931.25
10/01/2018	10/01/2018		RegPmt	\$0.00	\$2,174.30	\$19.45
10/22/2018	10/22/2018		Oth	\$10,000.00	\$0.00	\$0.00
10/22/2018	10/22/2018		Oth	\$0.00	\$0.00	\$7,806.25
11/01/2018	11/01/2018		RegPmt	\$0.00	\$2,117.83	\$75.92
11/06/2018	11/06/2018		Oth	\$5,000.00	\$0.00	\$0.00
11/06/2018	11/06/2018		Oth	\$0.00	\$0.00	\$2,806.25
12/01/2018	12/01/2018		RegPmt	\$0.00	\$2,053.78	\$139.97
01/31/2019	01/01/2019		RegPmt	\$0.00	\$2,029.84	\$163.91
01/31/2019	01/31/2019		Oth	\$10,000.00	\$0.00	\$0.00
01/31/2019	01/31/2019		Oth	\$0.00	\$0.00	\$3,418.75
02/01/2019	02/01/2019		RegPmt	\$0.00	\$2,028.51	\$165.24
03/01/2019	03/01/2019		RegPmt	\$0.00	\$2,027.17	\$166.58
03/29/2019	03/29/2019		Oth	\$10,000.00	\$0.00	\$0.00
03/29/2019	03/29/2019		Oth	\$0.00	\$0.00	\$7,806.25
04/01/2019	04/01/2019		RegPmt	\$0.00	\$1,998.04	\$195.71
04/10/2019	04/10/2019		Oth	\$5,000.00	\$0.00	\$0.00
04/10/2019	04/10/2019		Oth	\$0.00	\$0.00	\$2,806.25
05/01/2019	05/01/2019		RegPmt	\$0.00	\$1,933.02	\$260.73
05/02/2019	05/02/2019		Oth	\$5,000.00	\$0.00	\$0.00
05/02/2019	05/02/2019		Oth	\$0.00	\$0.00	\$2,806.25
06/01/2019	06/01/2019		RegPmt	\$0.00	\$1,908.10	\$285.65
06/25/2019	06/25/2019		Oth	\$10,000.00	\$0.00	\$0.00
06/25/2019	06/25/2019		Oth	\$0.00	\$0.00	\$5,612.50
07/01/2019	07/01/2019		RegPmt	\$0.00	\$1,882.98	\$310.77
08/01/2019	08/01/2019		RegPmt	\$0.00	\$1,880.46	\$313.29
09/01/2019	09/01/2019		RegPmt	\$0.00	\$1,832.31	\$361.44
10/01/2019	10/01/2019		RegPmt	\$0.00	\$1,829.37	\$364.38
11/01/2019	11/01/2019		RegPmt	\$0.00	\$1,826.41	\$367.34
11/09/2019	11/09/2019		Oth	\$10,000.00	\$0.00	\$0.00
12/01/2019	12/01/2019		RegPmt	\$0.00	\$1,823.43	\$370.32
12/05/2019	12/05/2019		Oth	\$10,000.00	\$0.00	\$0.00
12/05/2019	12/05/2019		Oth	\$0.00	\$0.00	\$11,225.00
12/18/2019	12/18/2019		Oth	\$10,000.00	\$0.00	\$0.00
12/18/2019	12/18/2019		Oth	\$0.00	\$0.00	\$5,612.50
01/01/2020	01/01/2020		RegPmt	\$0.00	\$1,739.46	\$454.29
02/01/2020	02/01/2020		RegPmt	\$0.00	\$1,725.53	\$468.22
02/18/2020	02/18/2020		Oth	\$10,000.00	\$0.00	\$0.00
02/18/2020	02/18/2020		Oth	\$0.00	\$0.00	\$7,806.25
03/01/2020	03/01/2020		RegPmt	\$0.00	\$1,676.12	\$517.63
03/02/2020	03/02/2020		Oth	\$10,000.00	\$0.00	\$0.00

02/2020	03/02/2020		Oth	\$0.00	\$0.00	\$10,000.00
03/23/2020	03/23/2020		Oth	\$10,000.00	\$0.00	\$0.00
03/23/2020	03/23/2020		Oth	\$0.00	\$0.00	\$1,225.00
04/01/2020	04/01/2020		RegPmt	\$0.00	\$1,528.35	\$665.40
05/01/2020	05/01/2020		RegPmt	\$0.00	\$1,521.83	\$671.92
06/01/2020	06/01/2020		RegPmt	\$0.00	\$1,516.37	\$677.38
07/01/2020	07/01/2020		RegPmt	\$0.00	\$1,510.87	\$682.88
07/02/2020	07/02/2020		Oth	\$5,000.00	\$0.00	\$0.00
07/02/2020	07/02/2020		Oth	\$0.00	\$0.00	\$5,000.00
07/17/2020	07/17/2020		Oth	\$5,000.00	\$0.00	\$0.00
07/17/2020	07/17/2020		Oth	\$0.00	\$0.00	\$5,000.00
07/24/2020	07/24/2020		Oth	\$5,000.00	\$0.00	\$0.00
07/24/2020	07/24/2020		Oth	\$0.00	\$0.00	\$2,806.25
08/01/2020	08/01/2020		RegPmt	\$0.00	\$1,435.27	\$758.48
08/06/2020	08/06/2020		Oth	\$5,000.00	\$0.00	\$0.00
08/06/2020	08/06/2020		Oth	\$0.00	\$0.00	\$2,806.25
09/01/2020	09/01/2020		RegPmt	\$0.00	\$1,385.15	\$808.60
09/23/2020	09/23/2020		Oth	\$5,000.00	\$0.00	\$0.00
09/23/2020	09/23/2020		Oth	\$0.00	\$0.00	\$2,806.25
10/01/2020	10/01/2020		RegPmt	\$0.00	\$1,355.78	\$837.97
10/23/2020	10/23/2020		Oth	\$10,000.00	\$0.00	\$0.00
10/23/2020	10/23/2020		Oth	\$0.00	\$0.00	\$3,418.75
11/01/2020	11/01/2020		RegPmt	\$0.00	\$1,326.17	\$867.58
12/01/2020	12/01/2020		RegPmt	\$0.00	\$1,319.12	\$874.63
01/01/2021	01/01/2021		RegPmt	\$0.00	\$1,312.02	\$881.73
01/13/2021	01/13/2021		Oth	\$10,000.00	\$0.00	\$0.00
01/13/2021	01/13/2021		Oth	\$0.00	\$0.00	\$7,806.25
02/01/2021	02/01/2021		RegPmt	\$0.00	\$1,277.08	\$916.67
02/19/2021	02/19/2021		Oth	\$5,000.00	\$0.00	\$0.00
02/19/2021	02/19/2021		Oth	\$0.00	\$0.00	\$5,000.00
02/24/2021	02/24/2021		Oth	\$5,000.00	\$0.00	\$0.00
02/24/2021	02/24/2021		Oth	\$0.00	\$0.00	\$612.50
03/01/2021	03/01/2021		RegPmt	\$0.00	\$1,192.84	\$1,000.91
04/01/2021	04/01/2021		RegPmt	\$0.00	\$1,157.45	\$1,036.30
04/13/2021	04/13/2021		Oth	\$2,500.00	\$0.00	\$0.00
04/13/2021	04/13/2021		Oth	\$0.00	\$0.00	\$2,500.00
04/27/2021	04/27/2021		Oth	\$2,500.00	\$0.00	\$0.00
05/01/2021	05/01/2021		RegPmt	\$0.00	\$1,132.03	\$1,061.72
05/27/2021	05/27/2021		Oth	\$2,500.00	\$0.00	\$0.00
05/27/2021	05/27/2021		Oth	\$0.00	\$0.00	\$612.50
06/01/2021	06/01/2021		RegPmt	\$0.00	\$1,115.11	\$1,078.64
06/30/2021	06/30/2021		Oth	\$2,500.00	\$0.00	\$0.00
06/30/2021	06/30/2021		Oth	\$0.00	\$0.00	\$306.25
07/01/2021	07/01/2021		RegPmt	\$0.00	\$1,101.37	\$1,092.38
08/10/2021	08/01/2021		RegPmt	\$0.00	\$1,090.01	\$1,103.74
08/10/2021	08/10/2021		Oth	\$2,500.00	\$0.00	\$0.00
08/10/2021	08/10/2021		Oth	\$0.00	\$0.00	\$306.25

08/30/2021	08/30/2021		Oth	\$2,500.00	\$0.00	\$0.00
08/30/2021	08/30/2021		Oth	\$0.00	\$0.00	\$306.25
09/01/2021	09/01/2021		RegPmt	\$0.00	\$1,079.24	\$1,114.51
09/16/2021	09/16/2021		Oth	\$2,500.00	\$0.00	\$0.00
09/16/2021	09/16/2021		Oth	\$0.00	\$0.00	\$2,500.00
09/21/2021	09/21/2021		Oth	\$2,500.00	\$0.00	\$0.00
09/21/2021	09/21/2021		Oth	\$0.00	\$0.00	\$306.25
10/01/2021	10/01/2021		RegPmt	\$0.00	\$1,056.99	\$1,136.76
10/20/2021	10/20/2021		Oth	\$2,500.00	\$0.00	\$0.00
10/20/2021	10/20/2021		Oth	\$0.00	\$0.00	\$306.25
11/01/2021	11/01/2021		RegPmt	\$0.00	\$1,034.97	\$1,158.78

OR
11TH

Applied To Late Charges	Applied To Reserve	Principal Balance	Days Late	Notes
\$0.00	\$0.00	\$270,000.00	0	
\$0.00	\$7,548.90	\$270,000.00	22	
\$0.00	-\$2,193.75	\$270,000.00	0	
\$0.00	-\$2,193.75	\$270,000.00	0	
\$0.00	-\$2,193.75	\$270,000.00	0	
\$0.00	-\$2,193.75	\$270,000.00	71	June 1st 2016 Payment - LATE
\$0.00	-\$2,193.75	\$270,000.00	41	July 1st 2016 Payment - LATE
\$0.00	\$4,400.00	\$270,000.00	0	
\$0.00	-\$2,193.75	\$270,000.00	88	August 1st 2016 Payment - LATE
\$0.00	-\$2,193.75	\$270,000.00	57	September 1st 2016 Payment - LATE
\$0.00	\$4,400.00	\$270,000.00	0	
\$0.00	-\$2,193.75	\$270,000.00	67	Oct 1st 2016 - LATE PAYMENT
\$0.00	-\$2,193.75	\$270,000.00	36	Nov 1st 2016 - LATE PAYMENT
\$0.00	-\$2,193.75	\$270,000.00	6	Dec 1st 2016 - LATE PAYMENT
\$0.00	\$8,800.00	\$270,000.00	0	
\$0.00	-\$2,193.75	\$270,000.00	0	
\$0.00	-\$2,193.75	\$270,000.00	25	Feb 1st, 2017 LATE PAYMENT
\$0.00	\$2,200.00	\$270,000.00	0	
\$0.00	-\$2,193.75	\$270,000.00	7	March 1st, 2017 LATE PAYMENT
\$0.00	\$4,400.00	\$270,000.00	0	
\$0.00	-\$2,193.75	\$270,000.00	0	
\$0.00	-\$2,193.75	\$270,000.00	58	May 1st, 2017 LATE PAYMENT
\$0.00	-\$2,193.75	\$270,000.00	27	June 1st, 2017 LATE PAYMENT
\$0.00	\$6,600.00	\$270,000.00	0	
\$0.00	-\$2,193.75	\$270,000.00	0	
\$0.00	-\$2,193.75	\$270,000.00	30	August 1st, 2017 LATE PAYMENT
\$0.00	\$2,200.00	\$270,000.00	0	
\$0.00	-\$2,193.75	\$270,000.00	35	September 1st, 2017 LATE PAYMENT
\$0.00	\$2,200.00	\$270,000.00	0	
\$0.00	-\$2,193.75	\$270,000.00	87	October 1st, 2017 LATE PAYMENT
\$0.00	-\$2,193.75	\$270,000.00	56	November 1st, 2017 LATE PAYMENT
\$0.00	-\$2,193.75	\$270,000.00	26	December 1st, 2017 LATE PAYMENT
\$0.00	\$8,800.00	\$270,000.00	0	
\$0.00	-\$2,193.75	\$270,000.00	0	
\$0.00	-\$2,193.75	\$270,000.00	1	Feb 1st, 2018 LATE PAYMENT
\$0.00	\$10,000.00	\$270,000.00	0	
\$0.00	-\$2,317.65	\$267,682.35	0	
\$0.00	-\$2,193.75	\$270,000.00	0	
\$0.00	-\$2,193.75	\$270,000.00	0	
\$0.00	-\$2,193.75	\$270,000.00	0	

\$0.00	\$7,900.00	\$267,682.35	0	
\$0.00	-\$2,193.75	\$267,663.52	0	
\$0.00	-\$2,193.75	\$267,644.54	0	
\$0.00	-\$2,193.75	\$267,625.40	0	
\$0.00	-\$2,193.75	\$267,606.11	3	September 1st, 2018 LATE PAYMENT
\$0.00	\$10,000.00	\$267,625.40	0	
\$0.00	-\$6,931.25	\$260,655.41	0	
\$0.00	-\$2,193.75	\$267,586.66	0	
\$0.00	\$10,000.00	\$260,655.41	0	
\$0.00	-\$7,806.25	\$252,773.24	0	
\$0.00	-\$2,193.75	\$260,579.49	0	
\$0.00	\$5,000.00	\$252,773.24	0	
\$0.00	-\$2,806.25	\$249,827.02	0	
\$0.00	-\$2,193.75	\$252,633.27	0	
\$0.00	-\$2,193.75	\$249,663.11	30	Jan 1st, 2019 - LATE PAYMENT
\$0.00	\$10,000.00	\$249,827.02	0	
\$0.00	-\$3,418.75	\$245,912.54	0	
\$0.00	-\$2,193.75	\$249,497.87	0	
\$0.00	-\$2,193.75	\$249,331.29	0	
\$0.00	\$10,000.00	\$245,912.54	0	
\$0.00	-\$7,806.25	\$237,910.58	0	
\$0.00	-\$2,193.75	\$245,716.83	0	
\$0.00	\$5,000.00	\$237,910.58	0	
\$0.00	-\$2,806.25	\$234,843.60	0	
\$0.00	-\$2,193.75	\$237,649.85	0	
\$0.00	\$5,000.00	\$234,843.60	0	
\$0.00	-\$2,806.25	\$231,751.70	0	
\$0.00	-\$2,193.75	\$234,557.95	0	
\$0.00	\$10,000.00	\$231,751.70	0	
\$0.00	-\$5,612.50	\$225,515.14	0	
\$0.00	-\$2,193.75	\$231,440.93	0	
\$0.00	-\$2,193.75	\$231,127.64	0	
\$0.00	-\$2,193.75	\$225,153.70	0	
\$0.00	-\$2,193.75	\$224,789.32	0	
\$0.00	-\$2,193.75	\$224,421.98	0	
\$0.00	\$10,000.00	\$225,515.14	0	
\$0.00	-\$2,193.75	\$224,051.66	0	
\$0.00	\$10,000.00	\$224,051.66	0	
\$0.00	-\$11,225.00	\$212,826.66	0	
\$0.00	\$10,000.00	\$212,826.66	0	
\$0.00	-\$5,612.50	\$206,291.65	0	
\$0.00	-\$2,193.75	\$212,372.37	0	
\$0.00	-\$2,193.75	\$211,904.15	0	
\$0.00	\$10,000.00	\$206,291.65	0	
\$0.00	-\$7,806.25	\$197,967.77	0	
\$0.00	-\$2,193.75	\$205,774.02	0	
\$0.00	\$10,000.00	\$197,967.77	0	

\$0.00	-\$10,000.00	\$187,967.77	0	
\$0.00	\$10,000.00	\$187,967.77	0	
\$0.00	-\$1,225.00	\$184,045.19	0	
\$0.00	-\$2,193.75	\$187,302.37	0	
\$0.00	-\$2,193.75	\$186,630.45	0	
\$0.00	-\$2,193.75	\$185,953.07	0	
\$0.00	-\$2,193.75	\$185,270.19	0	
\$0.00	\$5,000.00	\$184,045.19	0	
\$0.00	-\$5,000.00	\$179,045.19	0	
\$0.00	\$5,000.00	\$179,045.19	0	
\$0.00	-\$5,000.00	\$174,045.19	0	
\$0.00	\$5,000.00	\$174,045.19	0	
\$0.00	-\$2,806.25	\$170,480.46	0	
\$0.00	-\$2,193.75	\$173,286.71	0	
\$0.00	\$5,000.00	\$170,480.46	0	
\$0.00	-\$2,806.25	\$166,865.61	0	
\$0.00	-\$2,193.75	\$169,671.86	0	
\$0.00	\$5,000.00	\$166,865.61	0	
\$0.00	-\$2,806.25	\$163,221.39	0	
\$0.00	-\$2,193.75	\$166,027.64	0	
\$0.00	\$10,000.00	\$163,221.39	0	
\$0.00	-\$3,418.75	\$157,178.70	0	
\$0.00	-\$2,193.75	\$162,353.81	0	
\$0.00	-\$2,193.75	\$161,479.18	0	
\$0.00	-\$2,193.75	\$160,597.45	0	
\$0.00	\$10,000.00	\$157,178.70	0	
\$0.00	-\$7,806.25	\$148,455.78	0	
\$0.00	-\$2,193.75	\$156,262.03	0	
\$0.00	\$5,000.00	\$148,455.78	0	
\$0.00	-\$5,000.00	\$143,455.78	0	
\$0.00	\$5,000.00	\$143,455.78	0	
\$0.00	-\$612.50	\$140,806.07	0	
\$0.00	-\$2,193.75	\$142,454.87	0	
\$0.00	-\$2,193.75	\$141,418.57	0	
\$0.00	\$2,500.00	\$140,806.07	0	
\$0.00	-\$2,500.00	\$138,306.07	0	
\$0.00	\$2,500.00	\$138,306.07	0	
\$0.00	-\$2,193.75	\$137,244.35	0	
\$0.00	\$2,500.00	\$137,244.35	0	
\$0.00	-\$612.50	\$135,553.21	0	
\$0.00	-\$2,193.75	\$136,165.71	0	
\$0.00	\$2,500.00	\$135,553.21	0	
\$0.00	-\$306.25	\$134,154.58	0	
\$0.00	-\$2,193.75	\$134,460.83	0	
\$0.00	-\$2,193.75	\$133,050.84	9	August 1st, 2021 - LATE PAYMENT
\$0.00	\$2,500.00	\$134,154.58	0	
\$0.00	-\$306.25	\$132,744.59	0	

	\$0.00	\$2,500.00	\$132,744.59	0	
	\$0.00	-\$306.25	\$131,323.83	0	
	\$0.00	-\$2,193.75	\$131,630.08	0	
	\$0.00	\$2,500.00	\$131,323.83	0	
	\$0.00	-\$2,500.00	\$128,823.83	0	
	\$0.00	\$2,500.00	\$128,823.83	0	
	\$0.00	-\$306.25	\$127,380.82	0	
	\$0.00	-\$2,193.75	\$127,687.07	0	
	\$0.00	\$2,500.00	\$127,380.82	0	
	\$0.00	-\$306.25	\$125,915.79	0	
	\$0.00	-\$2,193.75	\$126,550.31	0	
TODAY'S BALANCE			\$125,391.53		

LOAN HIST
TRAVIS SV

Date Received	Date Due	Reference	Payment Code	Total Amount Received	Applied To Interest	Applied To Principal
01/15/2016	01/15/2016	CLOSING	Funding	\$0.00	\$0.00	-\$270,000.00
02/23/2016	02/01/2016		RegPmt	\$8,775.00	\$1,226.10	\$0.00
03/01/2016	03/01/2016		RegPmt	\$0.00	\$2,193.75	\$0.00
04/01/2016	04/01/2016		RegPmt	\$0.00	\$2,193.75	\$0.00
05/01/2016	05/01/2016		RegPmt	\$0.00	\$2,193.75	\$0.00
08/11/2016	06/01/2016		RegPmt	\$0.00	\$2,193.75	\$0.00
08/11/2016	07/01/2016		RegPmt	\$0.00	\$2,193.75	\$0.00
08/11/2016	08/11/2016		Oth	\$4,400.00	\$0.00	\$0.00
10/28/2016	08/01/2016		RegPmt	\$0.00	\$2,193.75	\$0.00
10/28/2016	09/01/2016		RegPmt	\$0.00	\$2,193.75	\$0.00
10/28/2016	10/28/2016		Oth	\$4,400.00	\$0.00	\$0.00
12/07/2016	10/01/2016		RegPmt	\$0.00	\$2,193.75	\$0.00
12/07/2016	11/01/2016		RegPmt	\$0.00	\$2,193.75	\$0.00
12/07/2016	12/01/2016		RegPmt	\$0.00	\$2,193.75	\$0.00
12/07/2016	12/07/2016		Oth	\$8,800.00	\$0.00	\$0.00
01/01/2017	01/01/2017		RegPmt	\$0.00	\$2,193.75	\$0.00
02/26/2017	02/01/2017		RegPmt	\$0.00	\$2,193.75	\$0.00
02/26/2017	02/26/2017		Oth	\$2,200.00	\$0.00	\$0.00
03/08/2017	03/01/2017		RegPmt	\$0.00	\$2,193.75	\$0.00
03/08/2017	03/08/2017		Oth	\$4,400.00	\$0.00	\$0.00
04/01/2017	04/01/2017		RegPmt	\$0.00	\$2,193.75	\$0.00
06/28/2017	05/01/2017		RegPmt	\$0.00	\$2,193.75	\$0.00
06/28/2017	06/01/2017		RegPmt	\$0.00	\$2,193.75	\$0.00
06/28/2017	06/28/2017		Oth	\$6,600.00	\$0.00	\$0.00
07/01/2017	07/01/2017		RegPmt	\$0.00	\$2,193.75	\$0.00
08/31/2017	08/01/2017		RegPmt	\$0.00	\$2,193.75	\$0.00
08/31/2017	08/31/2017		Oth	\$2,200.00	\$0.00	\$0.00
10/06/2017	09/01/2017		RegPmt	\$0.00	\$2,193.75	\$0.00
10/06/2017	10/06/2017		Oth	\$2,200.00	\$0.00	\$0.00
12/27/2017	10/01/2017		RegPmt	\$0.00	\$2,193.75	\$0.00
12/27/2017	11/01/2017		RegPmt	\$0.00	\$2,193.75	\$0.00
12/27/2017	12/01/2017		RegPmt	\$0.00	\$2,193.75	\$0.00
12/27/2017	12/27/2017		Oth	\$8,800.00	\$0.00	\$0.00
01/01/2018	01/01/2018		RegPmt	\$0.00	\$2,193.75	\$0.00
02/02/2018	02/01/2018		RegPmt	\$0.00	\$2,193.75	\$0.00
02/02/2018	02/02/2018		Oth	\$10,000.00	\$0.00	\$0.00
02/02/2018	02/02/2018		Oth	\$0.00	\$0.00	\$2,317.65
03/01/2018	03/01/2018		RegPmt	\$0.00	\$2,193.75	\$0.00
04/01/2018	04/01/2018		RegPmt	\$0.00	\$2,193.75	\$0.00
05/01/2018	05/01/2018		RegPmt	\$0.00	\$2,193.75	\$0.00

LRO # 37 **Transfer Of Charge**

Received as NK147519 on 2021 11 16 at 14:42

The applicant(s) hereby applies to the Land Registrar.

yyyy mm dd Page 1 of 1

Properties

PIN 50253 - 0166 LT
 Description PT LT 10-11 CON 2 WOODHOUSE PT 1 37R7656; NORFOLK COUNTY
 Address 151 PROSPECT STREET
 PORT DOVER

Source Instruments

Registration No.	Date	Type of Instrument
NK86137	2016 01 15	Charge/Mortgage

Transferor(s)

This transfer of charge affects all lands that the charge is against which are outstanding.

Name SKYMARK FINANCE CORPORATION
 Address for Service 46 Village Centre Place, Suite 300
 Mississauga, ON L4Z 1V9

I, Michael Slattery, have the authority to bind the corporation.

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

Transferee(s)

Capacity

Share

Name MERK INVESTMENTS LTD.
 Address for Service 46 Village Centre Place, Suite 300
 Mississauga, ON L4Z 1V9

Statements

The chargee transfers the selected charge for \$270,000.00

This document relates to registration number(s)NK86869

Signed By

Monika Dylag	46 Village Centre Place Mississauga L4Z 1V9	acting for Transferor(s)	Signed	2021 11 16
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Tel 905-272-1900

Fax 905-272-1905

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

Monika Dylag	46 Village Centre Place Mississauga L4Z 1V9	acting for Transferee(s)	Signed	2021 11 16
--------------	---	-----------------------------	--------	------------

Tel 905-272-1900

Fax 905-272-1905

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

Submitted By

MERK INVESTMENTS LTD.	46 Village Centre Place Mississauga L4Z 1V9	2021 11 16
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Tel 905-272-1900

Fax 905-272-1905

Fees/Taxes/Payment

Statutory Registration Fee	\$66.30
Total Paid	\$66.30

**MERK
INVESTMENTS
LTD.**

46 Village Centre Place
Mississauga, Ontario L4Z 1V9
Telephone (905) 272-1900
Fax (905) 272-1905

December 6, 2021

Mr. Travis Smith & Moaaz Sheikh
151 Prospect Street
Port Dover, ON

**Re: Merk Investments Ltd. mortgage to Smith/Sheikh
151 Prospect Street, Port Dover, ON**

Mortgage statement for discharge purposes:

Principal & interest outstanding as at Nov 1, 2021	\$95,158.17
Interest from Nov 1 to Dec 6/21	\$1,127.88
Two month bonus on \$270,000.00	\$4,351.18
Late payment fees as per mtg (64 x \$200.00)	\$12,800.00
Discharge statement & registration fee	\$1,051.67
Total	<u>\$114,488.90</u>

Payable to:

Merk Investments Ltd.

— MINUS INTEREST FEE
= \$ 114,087.39

Per diem \$31.33

Please forward certified funds to the office of Skylark Holdings Limited.

Funds received after 3:00pm must have interest calculated to the next business date.

Yours very truly,

SKYLARK HOLDINGS LIMITED

PER:

MICHAEL SLATTERY
E. & O. E.

05212-004 00

TD Canada Trust

LANGLOIS KONRAD INKSTER LLP

6645 KITIMAT ROAD, UNIT 14
MISSISSAUGA, ONTARIO L5N 6J3
T. 905-814-5224

TD CANADA TRUST
MISSISSAUGA MARKET PLACE
4555 HURONTARIO ST., UNIT C-10
MISSISSAUGA, ONTARIO L4Z 3M1

12735

DEC 08 2021

STREET
168 QUEEN STREET SOUTH
MISSISSAUGA, ON L5M 1K3

05212-004

DATE 07122021
DDMMYYYY

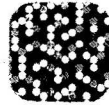
***One Hundred Fourteen Thousand Eighty Seven and 39/100

\$*****114,087.39

TO THE
ORDER
OF

Merk Investments Ltd.

CERTIFIED CHEQUE
DO NOT DESTROY



LANGLOIS KONRAD INKSTER LLP
TRUST ACCOUNT

PER

[Signature]

Notes:

Discharge of Charge on 151 Prospect St., Port Dover

⑈0012735⑈ ⑆13092⑈004⑆

9011500⑈

527661

LRO # 37 Discharge Of Charge

Received as NK148270 on 2021 12 07 at 16:36

The applicant(s) hereby applies to the Land Registrar.

yyyy mm dd Page 1 of 1

Properties

<i>PIN</i>	50253 - 0166 LT
<i>Description</i>	PT LT 10-11 CON 2 WOODHOUSE PT 1 37R7656; NORFOLK COUNTY
<i>Address</i>	151 PROSPECT STREET PORT DOVER

Document to be Discharged

Registration No.	Date	Type of Instrument
NK86137	2016 01 15	Charge/Mortgage
NK147519	2021 11 16	Transfer Of Charge

Discharging Party(s)

This discharge complies with the Planning Act. This discharge discharges the charge.

Name MERK INVESTMENTS LTD.
Address for Service 300-46 Village Centre Place,
Mississauga ON L4Z 2V9

I, Michael Slattery, have the authority to bind the corporation.

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

The party giving this discharge is the original chargee and is the party entitled to give an effective discharge

Document(s) to be Deleted

Registration No.	Date	Type of Instrument
NK119783	2019/05/13	Transfer Of Charge
NK135995	2020/12/02	Transfer Of Charge
NK86869	2016/02/16	Transfer Of Charge

Signed By

Lindsay Anne Mallouk	6645 Kitimat Road, Unit 14 Mississauga L5N 6J3	acting for Applicant(s)	Signed	2021 12 07
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Tel 905-814-5224

Fax 905-814-5227

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

Submitted By

LANGLOIS KONRAD INKSTER LLP	6645 Kitimat Road, Unit 14 Mississauga L5N 6J3	2021 12 07
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Tel 905-814-5224

Fax 905-814-5227

Fees/Taxes/Payment

Statutory Registration Fee	\$66.30
Total Paid	\$66.30



LAND
REGISTRY
OFFICE #37

50253-0166 (LT)

* CERTIFIED IN ACCORDANCE WITH THE LAND TITLES ACT * SUBJECT TO RESERVATIONS IN CROWN GRANT *

PROPERTY DESCRIPTION: PT LT 10-11 CON 2 WOODHOUSE PT 1 37R7656; NORFOLK COUNTY

PROPERTY REMARKS: PLANNING ACT CONSENT AS IN NR529645.

ESTATE/QUALIFIER:
FEE SIMPLE
LT CONVERSION QUALIFIED

RECENTLY:
FIRST CONVERSION FROM BOOK

PIN CREATION DATE:
2006/11/20

OWNERS' NAMES
SMITH, TRAVIS
SHEIKH, MOAAZ

CAPACITY SHARE
TRST
TRST

REG. NUM.	DATE	INSTRUMENT TYPE	AMOUNT	PARTIES FROM	PARTIES TO	CERT/ CHKD
** PRINTOUT INCLUDES ALL DOCUMENT TYPES AND DELETED INSTRUMENTS SINCE 2006/11/17 **						
**SUBJECT, ON FIRST REGISTRATION UNDER THE LAND TITLES ACT, TO:						
** SUBSECTION 44(1) OF THE LAND TITLES ACT, EXCEPT PARAGRAPH 11, PARAGRAPH 14, PROVINCIAL SUCCESSION DUTIES *						
** AND ESCHEATS OR FORFEITURE TO THE CROWN.						
** THE RIGHTS OF ANY PERSON WHO WOULD, BUT FOR THE LAND TITLES ACT, BE ENTITLED TO THE LAND OR ANY PART OF						
** IT THROUGH LENGTH OF ADVERSE POSSESSION, PRESCRIPTION, MISDESCRIPTION OR BOUNDARIES SETTLED BY						
** CONVENTION.						
** ANY LEASE TO WHICH THE SUBSECTION 70(2) OF THE REGISTRY ACT APPLIES.						
**DATE OF CONVERSION TO LAND TITLES: 2006/11/20 **						
NR319409	1969/04/17	BYLAW				C
37R7656	1997/12/15	PLAN REFERENCE				C
NR593195	2005/09/02	TRANSFER		*** COMPLETELY DELETED ***	SMITH, GAIRIN MITCHELL EDWARD	
NR596152	2005/12/09	CHARGE		*** COMPLETELY DELETED ***	EFFORT TRUST COMPANY	
NK11305	2008/03/20	TRANSFER		*** COMPLETELY DELETED *** SMITH, GAIRIN MITCHELL EDWARD	SMITH, GAIRIN MITCHELL EDWARD JAKIELASZEK, RICHARD MICHAEL	
NK13051	2008/05/15	CHARGE		*** COMPLETELY DELETED *** JAKIELASZEK, RICHARD MICHAEL SMITH, GAIRIN MITCHELL EDWARD	BUNBURY CANADA INC.	

NOTE: ADJOINING PROPERTIES SHOULD BE INVESTIGATED TO ASCERTAIN DESCRIPTIVE INCONSISTENCIES, IF ANY, WITH DESCRIPTION REPRESENTED FOR THIS PROPERTY.

NOTE: ENSURE THAT YOUR PRINTOUT STATES THE TOTAL NUMBER OF PAGES AND THAT YOU HAVE PICKED THEM ALL UP.



LAND
REGISTRY
OFFICE #37

50253-0166 (LT)

* CERTIFIED IN ACCORDANCE WITH THE LAND TITLES ACT * SUBJECT TO RESERVATIONS IN CROWN GRANT *

REG. NUM.	DATE	INSTRUMENT TYPE	AMOUNT	PARTIES FROM	PARTIES TO	CERT/ CHKD
NK33454	2010/05/06	DISCH OF CHARGE	\$600,000	*** COMPLETELY DELETED *** BUNBURY CANADA INC.		C
<i>REMARKS: NK13051.</i>						
NK33455	2010/05/06	CHARGE		*** COMPLETELY DELETED *** JAKIELASZEK, RICHARD MICHAEL SMITH, GAIRIN MITCHELL EDWARD	TERASKIEWICZ, EDDIE	
NK34641	2010/06/14	NOTICE		*** COMPLETELY DELETED *** JAKIELASZEK, RICHARD MICHAEL SMITH, GAIRIN MITCHELL EDWARD	TERASKIEWICZ, EDDIE	
<i>REMARKS: NK33455</i>						
NK76240	2014/12/22	TRANSFER		*** COMPLETELY DELETED *** JAKIELASZEK, RICHARD MICHAEL SMITH, GAIRIN MITCHELL EDWARD	SMITH, GAIRIN MITCHELL EDWARD	
NK85584	2015/12/21	DISCH OF CHARGE		*** COMPLETELY DELETED *** TERASKIEWICZ, EDDIE		
<i>REMARKS: NK33455.</i>						
NK86136	2016/01/15	TRANSFER		SMITH, GAIRIN MITCHELL EDWARD	SMITH, TRAVIS SHEIKH, MOAAZ	
NK86137	2016/01/15	CHARGE		*** COMPLETELY DELETED *** SMITH, TRAVIS SHEIKH, MOAAZ	MERK INVESTMENTS LTD.	
NK86869	2016/02/16	TRANSFER OF CHARGE		*** COMPLETELY DELETED *** MERK INVESTMENTS LTD.	SKYMARK FINANCE CORPORATION	
<i>REMARKS: NK86137.</i>						
NK87289	2016/03/03	DISCH OF CHARGE		*** COMPLETELY DELETED *** EFFORT TRUST COMPANY		
<i>REMARKS: NR596152.</i>						
NK119783	2019/05/13	TRANSFER OF CHARGE		*** COMPLETELY DELETED *** SKYMARK FINANCE CORPORATION	KLN HOLDINGS INC.	
<i>REMARKS: NK86137.</i>						
NK135995	2020/12/02	TRANSFER OF CHARGE		*** COMPLETELY DELETED *** KLN HOLDINGS INC.	MERK INVESTMENT LTD.	
<i>REMARKS: NK119783.</i>						

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LAND
REGISTRY
OFFICE #37

50253-0166 (LT)

* CERTIFIED IN ACCORDANCE WITH THE LAND TITLES ACT * SUBJECT TO RESERVATIONS IN CROWN GRANT *

REG. NUM.	DATE	INSTRUMENT TYPE	AMOUNT	PARTIES FROM	PARTIES TO	CERT/ CHKD
NK147519	2021/11/16	TRANSFER OF CHARGE		*** COMPLETELY DELETED *** SKYMARK FINANCE CORPORATION	MERK INVESTMENTS LTD.	
	REMARKS: NK86137. NK86869					
NK148270	2021/12/07	DISCH OF CHARGE		*** COMPLETELY DELETED *** MERK INVESTMENTS LTD.		
	REMARKS: NK86137.					

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TAB 6

TRUST DECLARATION

BETWEEN

MERK INVESTMENTS LTD.

Trustee

- and -

7539088 CANADA INC.

Beneficiaries

WHEREAS Merk Investments Ltd. holds a \$77,000.00 mortgage registered on the title to the property municipally known as 30 Roser Crescent, Clarington;

AND WHEREAS Merk Investments Ltd. holds a \$77,000.00 mortgage in trust for 7539088 Canada Inc.

NOW THEREFORE the Trustee hereby declares:

- 1. Merk Investments Ltd. holds the mortgage wholly in trust for the aforesaid beneficiaries;
- 2. The recitals are true;
- 3. Merk Investments Ltd. agrees to do such things and execute such documents as may be required to carry out the intent of the trust.

DECLARED at Mississauga, this 14th day of April, 2016.

MERK INVESTMENTS LTD.

Per:  _____
Michael Slattery

7539088 Canada Inc									
PROPERTY	DATE	Principal	INT.	MTHLY	LAST CHQ		Holds-Amex	Chqs sending	
	INVESTED	Amount	RATE	PM	DATE				
Azzarello	Jul 24/13	25,000.00	10.00%	208.33	Jun 24/22		16.04	192.29	
Vlassova	Jul 24/13	45,000.00	10.00%	375.00	Jun 24/22			375.00	
Hopkins	Dec 18/13	300,000.00	10.00%	2,500.00	Jun 18/22		2,500.00	0.00	
Millar	Dec 18/13	850,000.00	5.50%	3,895.83	Jun 18/22				
Millar (1.375 mil)	Dec 18/13	1,375,000.00	5.50%	6,302.08	Jun 18/22				
Millar	Oct 31/14	250,000.00	5.50%	1,145.83	Jun 18/22				
Millar	Dec 17/14	250,000.00	5.50%	1,145.83	Jun 18/22	12,489.58	12,489.58	0.00	
1455 Dufferin St.	Feb 25/14	250,000.00	10.00%	2,083.33	Jun 1/22				
1455 Dufferin St.	May 9/14	98,500.00	10.00%	820.83	Jun 1/22				
1455 Dufferin St.	Feb 11/15	100,000.00	10.00%	833.33	Jun 1/22				
1455 Dufferin St.	Oct 19/16	80,000.00	10.00%	666.67	Jun 1/22	4,404.17		4404.17	
Clayton	Sep 16/14	75,000.00	10.00%	625.00	Jun 16/22			625.00	
Anderson	Mar 10/15	135,000.00	10.00%	1,125.00	Jun 11/22			1125.00	
Baycetch	Mar 20/15	265,000.00	10.00%	2,208.33	Jun 20/22			2208.33	
Hopkins	May 21/15	160,000.00	10.00%	1333.33	Jun 21/22				
Nikiforov	May 21/15	100,000.00	10.00%	833.33	Jun 21/22				
Pegg's Mountain	May 21/15	53,000.00	10.00%	441.67	Jun 21/22	2608.33		2608.33	
Ivings	Sep 24/15	150,000.00	10.00%	1,250.00	Jun 15/22				
Ivings	Feb 12/16	200,000.00	10.00%	1,666.67	Jun 15/22				
Ivings	Mar 10/16	50,000.00	10.00%	416.67	Jun 15/22	3,333.33		3333.33	
Davidson	Oct 19/15	280,000.00	10.00%	2,333.33	Jun 1/22		2,333.33	0.00	
Walker	Nov 3/15	450,000.00	10.00%	3,750.00	Jun 3/22			3750.00	
Walker	Oct 17/16	125,000.00	10.00%	1,041.67	Jun 17/22			1041.67	
Renaud	Nov 11/15	215,000.00	9.75%	1,746.88	Jun 1/22			1746.88	
Smith, Garin	Jan 15/16	270,000.00	9.75%	2,193.75	Jun 1/22		2,193.75	0.00	
Millar	Feb 12/16	250,000.00	5.50%	1,145.83	Jun 15/22				
Millar	Jun 23/16	75,000.00	5.50%	343.75	Jun 15/22				
Millar	Oct 6/16	85,000.00	5.50%	389.58	Jun 15/22				
Millar	Mar 28/17	15,000.00	5.50%	68.75	Jun 15/22	1,947.92		1947.92	
Westlake	April 8/16	135,000.00	10%	1,125.00	Jun 15/22			1125.00	
Brown	Apr 14/16	77,000.00	10%	641.67	Jun 15/22			641.67	
2297217 Ont (Pegg's)	May 13/16	80,000.00	10%	666.67	Jun 19/22				
2297217 Ont (Pegg's)	May 19/16	60,000.00	10%	500.00	Jun 19/22	1,166.67		1166.67	
Nikiforov	Oct 12/16	70,000.00	10%	583.33	Jun 12/22				
Nikiforov (Pays down)	Nov 22/16 -	11,000.00	10% -	91.67					
Nikiforov (Pays down)	Nov 22/16 -	26,000.00	10% -	216.67		275.00		275.00	
Millar (UK)	June 7/18	500,000.00	10%	4,166.67	Jun 7/22			4166.67	
2296217 Ont.(718 Queenway)	Oct	91,000.00	10%	758.33	Jun 17/22			758.33	
LaFramboise	Sep 8/21	425,000.00	8%	2,833.33	Jun 29/22			2833.33	
Aquapark (USD)	Nov 9/17	500,000.00	9%	3,750.00	Jun 9/22				
Aquapark (USD)	Dec 21/17	500,000.00	9%	3,750.00	Jun 9/22	7,500.00		7500.00	
Jun 24, 2022		8,977,500.00		61,357.29			19,532.70	34,324.59	CDN
								7,500.00	USD
					Amex- ending Jun 17/22		19,532.70		
								34,324.59	CDN
								7,500.00	USD

LRO # 40 Charge/Mortgage

Registered as DR1464938 on 2016 04 14 at 15:58

The applicant(s) hereby applies to the Land Registrar.

yyyy mm dd Page 1 of 3

Properties

PIN 26643 - 0141 LT Interest/Estate Fee Simple
 Description LT 37 PL N700 ; S/T N81042; MUNICIPALITY OF CLARINGTON
 Address 30 ROSER CR
 CLARINGTON

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 BROWN, WILLIAM JOHN
 Address for Service 30 Roser Crescent
 Bowmanville, ON
 L1C 3N8

I am at least 18 years of age.

I am not a spouse

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

Chargee(s)

Capacity

Share

Name MERK INVESTMENTS LTD.
 Address for Service 46 Village Centre Place, Suite 300
 Mississauga, ON
 L4Z 1V9

Statements

Schedule: See Schedules

Provisions

Principal	\$77,000.00	Currency	CDN
Calculation Period	monthly, not in advance		
Balance Due Date	2018/04/01		
Interest Rate	10.0% annually		
Payments	\$641.67		
Interest Adjustment Date	2016 05 01		
Payment Date	1st day of each and every month		
First Payment Date	2016 05 01		
Last Payment Date	2018 04 01		
Standard Charge Terms	200033		
Insurance Amount	full insurable value		
Guarantor			

Signed By

Monika Dylag 46 Village Centre Place acting for Chargor Signed 2016 04 14
 Mississauga (s)
 L4Z 1V9

Tel 905-272-1900

Fax 905-272-1905

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

Submitted By

MERK INVESTMENTS LTD. 46 Village Centre Place 2016 04 14
 Mississauga
 L4Z 1V9

Tel 905-272-1900

LRO # 40 Charge/Mortgage

Registered as DR1464938 on 2016 04 14 at 15:58

219*The applicant(s) hereby applies to the Land Registrar.*

yyyy mm dd Page 2 of 3

Submitted By

Fax 905-272-1905

Fees/Taxes/Payment

Statutory Registration Fee \$62.85

Total Paid \$62.85

File Number

Chargee Client File Number : 36878

LRO # 40 **Transfer Of Charge**

Received as DR1559420 on 2017 01 19 at 10:00

The applicant(s) hereby applies to the Land Registrar.

yyyy mm dd Page 1 of 2

Properties

PIN 26643 - 0141 LT
Description LT 37 PL N700 ; S/T N81042; MUNICIPALITY OF CLARINGTON
Address 30 ROSER CR
CLARINGTON

Source Instruments

Registration No.	Date	Type of Instrument
DR1464938	2016 04 14	Charge/Mortgage

Transferor(s)

This transfer of charge affects all lands that the charge is against which are outstanding.

Name MERK INVESTMENTS LTD.
Address for Service 46 Village Centre Place, Suite 300
Mississauga, ON
L4Z 1V9

I, Michael Slattery, have the authority to bind the corporation.

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

Transferee(s)	Capacity	Share
---------------	----------	-------

Name SKYMARK FINANCE CORPORATION
Address for Service c/o 46 Village Centre Place, Suite 300
Mississauga, ON
L4Z 1V9

Statements

The chargee transfers the selected charge for \$77,000.00

Signed By

Monika Dylag	46 Village Centre Place Mississauga L4Z 1V9	acting for Transferor(s)	Signed	2017 01 19
Tel 905-272-1900				
Fax 905-272-1905				

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

Monika Dylag	46 Village Centre Place Mississauga L4Z 1V9	acting for Transferee(s)	Signed	2017 01 19
Tel 905-272-1900				
Fax 905-272-1905				

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

Submitted By

MERK INVESTMENTS LTD.	46 Village Centre Place Mississauga L4Z 1V9	2017 01 19
Tel 905-272-1900		
Fax 905-272-1905		

SKYLARK 223 HOLDINGS LIMITED

Mortgage Brokers

Licence No. 10341

46 Village Centre Place

Mississauga, Ontario L4Z 1V9

Telephone (905) 272-1900

Fax (905) 272-1905

June 27, 2017

SENT BY FAX: 905-270-2665

Kormans LLP
Barristers & Solicitors
46 Village Centre Place
Mississauga, ON

**Re: SKYMARK FINANCE CORP. mortgage to William Brown
30 Roser Crescent, Bowmanville, ON**

Mortgage statement for discharge purposes:

Principal outstanding as at June 14, 2017	\$77,000.00
Interest from June 14 to July 7, 2017	\$485.30
Two months bonus	\$1,283.34
Total	\$78,768.64
Credit borrower for prepaid mortgage payments	(\$5,931.31)
Total payable	\$72,837.33

Payable to:

Skymark Finance Corporation

Per diem \$21.10

Statement fee, discharge fee, and registration fee

Payable to: Skymark Finance Corporation **\$587.50**

Please forward certified funds to the office of Skylark Holdings Limited.

Funds received after 1:00pm must have interest calculated to the next business date.

Yours very truly,

SKYLARK HOLDINGS LIMITED

PER:

MICHAEL SLATTERY

E. & O. E.

LRO # 40 **Discharge Of Charge**

Received as DR1614521 on 2017 07 10 at 16:14

The applic(s) hereby applies to the Land Registrar.

yyyy mm dd Page 1 of 1

Properties

PIN 26643 - 0141 LT
Description LT 37 PL N700 ; S/T N81042; MUNICIPALITY OF CLARINGTON
Address 30 ROSER CR
 CLARINGTON

Document to be Discharged

<i>Registration No.</i>	<i>Date</i>	<i>Type of Instrument</i>
DR1464938	2016 04 14	Charge/Mortgage
DR1559420	2017 01 19	Transfer Of Charge

Discharging Party(s)

This discharge complies with the Planning Act. This discharge discharges the charge.

Name SKYMARK FINANCE CORPORATION
Address for Service 46 Village Centre Place, Suite 300
 Mississauga, ON
 L4Z 1V9

I, Michael Slattery, have the authority to bind the corporation.

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

The party giving this discharge is not the original chargee or is the original chargee and has changed it's name but is the party entitled to give an effective discharge

Signed By

Monika Dylag	46 Village Centre Place Mississauga L4Z 1V9	acting for Applicant(s)	Signed	2017 07 10
Tel 905-272-1900				
Fax 905-272-1905				

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

Submitted By

MERK INVESTMENTS LTD.	46 Village Centre Place Mississauga L4Z 1V9	2017 07 10
Tel 905-272-1900		
Fax 905-272-1905		

Fees/Taxes/Payment

<i>Statutory Registration Fee</i>	\$63.35
<i>Total Paid</i>	\$63.35



LAND
REGISTRY
OFFICE #40

26643-0141 (LT)

* CERTIFIED IN ACCORDANCE WITH THE LAND TITLES ACT * SUBJECT TO RESERVATIONS IN CROWN GRANT *

PROPERTY DESCRIPTION: LT 37 PL N700 ; S/T N81042; MUNICIPALITY OF CLARINGTON

PROPERTY REMARKS:

ESTATE/QUALIFIER:
FEE SIMPLE
LT CONVERSION QUALIFIED

RECENTLY:
FIRST CONVERSION FROM BOOK

PIN CREATION DATE:
1998/09/14

OWNERS' NAMES
ABE, KATSUICHI
ABE, JODI MAE

CAPACITY SHARE
JTEN
JTEN

REG. NUM.	DATE	INSTRUMENT TYPE	AMOUNT	PARTIES FROM	PARTIES TO	CERT/ CHKD
EFFECTIVE 2000/07/29 THE NOTATION OF THE "BLOCK IMPLEMENTATION DATE" OF 1998/09/14 ON THIS PIN						
WAS REPLACED WITH THE "PIN CREATION DATE" OF 1998/09/14						
** PRINTOUT INCLUDES ALL DOCUMENT TYPES AND DELETED INSTRUMENTS SINCE 1998/09/12 **						
**SUBJECT, ON FIRST REGISTRATION UNDER THE LAND TITLES ACT, TO:						
** SUBSECTION 44(1) OF THE LAND TITLES ACT, EXCEPT PARAGRAPH 11, PARAGRAPH 14, PROVINCIAL SUCCESSION DUTIES *						
** AND ESCHEATS OR FORFEITURE TO THE CROWN.						
** THE RIGHTS OF ANY PERSON WHO WOULD, BUT FOR THE LAND TITLES ACT, BE ENTITLED TO THE LAND OR ANY PART OF						
** IT THROUGH LENGTH OF ADVERSE POSSESSION, PRESCRIPTION, MISDESCRIPTION OR BOUNDARIES SETTLED BY						
** CONVENTION.						
** ANY LEASE TO WHICH THE SUBSECTION 70(2) OF THE REGISTRY ACT APPLIES.						
**DATE OF CONVERSION TO LAND TITLES: 1998/09/14 **						
N81042	1977/01/17	TRANSFER EASEMENT			BOWMANVILLE PUBLIC UTILITIES	C
REMARKS: SKETCH ATTACHED						
N118391	1984/08/01	TRANSFER		*** COMPLETELY DELETED ***	BROWN, RUSSELL SAMUEL BROWN, IRENE PEARL	
D517001	1998/06/19	CHARGE		*** COMPLETELY DELETED ***	LAURENTIAN BANK OF CANADA	
DR182496	2003/06/23	APL OF SURV-LAND		*** COMPLETELY DELETED *** BROWN, IRENE PEARL	BROWN, RUSSELL SAMUEL	
DR207102	2003/09/09	CHARGE		*** COMPLETELY DELETED *** BROWN, RUSSELL SAMUEL	THE TORONTO-DOMINION BANK	

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OFFICE #40

26643-0141 (LT)

PAGE 2 OF 5
PREPARED FOR Katherine01
ON 2022/08/09 AT 16:11:55

* CERTIFIED IN ACCORDANCE WITH THE LAND TITLES ACT * SUBJECT TO RESERVATIONS IN CROWN GRANT *

REG. NUM.	DATE	INSTRUMENT TYPE	AMOUNT	PARTIES FROM	PARTIES TO	CERT/ CHKD
DR227236	2003/11/13	DISCH OF CHARGE		*** COMPLETELY DELETED *** LAURENTIAN BANK OF CANADA		
	REMARKS: RE: D517001					
DR606243	2007/05/24	CHARGE		*** COMPLETELY DELETED *** BROWN, RUSSELL SAMUEL	THE TORONTO-DOMINION BANK	
DR612475	2007/06/12	DISCH OF CHARGE		*** COMPLETELY DELETED *** THE TORONTO-DOMINION BANK		
	REMARKS: RE: DR207102					
DR1148050	2012/12/20	TRANSMISSION-LAND		*** COMPLETELY DELETED *** BROWN, RUSSELL SAMUEL	BROWN, WILLIAM BROWN, RUSSELL SAMUEL-ESTATE	
DR1148052	2012/12/20	TRANS PERSONAL REP		*** COMPLETELY DELETED *** BROWN, WILLIAM	BROWN, WILLIAM JOHN	
DR1148054	2012/12/20	APL DEL EXECUTION		*** COMPLETELY DELETED *** BROWN, WILLIAM JOHN		
DR1211905	2013/09/19	CHARGE		*** COMPLETELY DELETED *** BROWN, WILLIAM JOHN	2025540 ONTARIO INC.	
DR1212709	2013/09/23	DISCH OF CHARGE		*** COMPLETELY DELETED *** THE TORONTO-DOMINION BANK		
	REMARKS: DR606243.					
DR1216016	2013/10/03	CHARGE		*** COMPLETELY DELETED *** BROWN, WILLIAM JOHN	HOME TRUST COMPANY	
DR1216017	2013/10/03	POSTPONEMENT		*** COMPLETELY DELETED *** 2025540 ONTARIO INC.	HOME TRUST COMPANY	
	REMARKS: DR1211905 TO DR1216016					
DR1355458	2015/04/22	NOTICE		*** COMPLETELY DELETED *** BROWN, WILLIAM JOHN	HOME TRUST COMPANY	
	REMARKS: LODGEMENT					
DR1378843	2015/07/08	NOTICE		*** COMPLETELY DELETED *** BROWN, WILLIAM JOHN	HOME TRUST COMPANY	

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OFFICE #40

26643-0141 (LT)

* CERTIFIED IN ACCORDANCE WITH THE LAND TITLES ACT * SUBJECT TO RESERVATIONS IN CROWN GRANT *

REG. NUM.	DATE	INSTRUMENT TYPE	AMOUNT	PARTIES FROM	PARTIES TO	CERT/ CHKD
DR1394806	2015/08/25	NOTICE		*** COMPLETELY DELETED *** BROWN, WILLIAM JOHN	HOME TRUST COMPANY	
	REMARKS: LODGEMENT					
DR1464938	2016/04/14	CHARGE		*** COMPLETELY DELETED *** BROWN, WILLIAM JOHN	MERK INVESTMENTS LTD.	
DR1465062	2016/04/15	DISCH OF CHARGE		*** COMPLETELY DELETED *** 2025540 ONTARIO INC.		
	REMARKS: DR1211905.					
DR1465064	2016/04/15	POSTPONEMENT		*** COMPLETELY DELETED *** HOME TRUST COMPANY	MERK INVESTMENTS LTD.	
	REMARKS: DR1355458 TO DR1464938					
DR1465065	2016/04/15	POSTPONEMENT		*** COMPLETELY DELETED *** HOME TRUST COMPANY	MERK INVESTMENTS LTD.	
	REMARKS: DR1378843 TO DR1464938					
DR1465073	2016/04/15	POSTPONEMENT		*** COMPLETELY DELETED *** HOME TRUST COMPANY	MERK INVESTMENTS LTD.	
	REMARKS: DR1394806 TO DR1464938					
DR1559420	2017/01/19	TRANSFER OF CHARGE		*** COMPLETELY DELETED *** MERK INVESTMENTS LTD.	SKYMARK FINANCE CORPORATION	
	REMARKS: DR1464938.					
DR1576326	2017/03/16	NO SEC INTEREST	\$14,251	ECOHOME FINANCIAL INC.		C
DR1587244	2017/04/24	DISCHARGE INTEREST		*** COMPLETELY DELETED *** HOME TRUST COMPANY		
	REMARKS: DR1355458.					
DR1598204	2017/05/29	TRANSFER OF CHARGE		*** DELETED AGAINST THIS PROPERTY *** HOME TRUST COMPANY	COMPUTERSHARE TRUST COMPANY OF CANADA	
	REMARKS: DR1216016					
DR1613460	2017/07/06	CHARGE		*** COMPLETELY DELETED *** BROWN, WILLIAM JOHN	MERK INVESTMENTS LTD.	
DR1613461	2017/07/06	TRANSFER OF CHARGE		*** COMPLETELY DELETED *** MERK INVESTMENTS LTD.	KLN HOLDINGS INC.	
	REMARKS: DR1613460.					

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REGISTRY
OFFICE #40

26643-0141 (LT)

* CERTIFIED IN ACCORDANCE WITH THE LAND TITLES ACT * SUBJECT TO RESERVATIONS IN CROWN GRANT *

REG. NUM.	DATE	INSTRUMENT TYPE	AMOUNT	PARTIES FROM	PARTIES TO	CERT/ CHKD
DR1614516	2017/07/10	POSTPONEMENT		*** COMPLETELY DELETED *** HOME TRUST COMPANY	KLN HOLDINGS INC.	
	REMARKS: DR1394806 TO DR1613460					
DR1614518	2017/07/10	POSTPONEMENT		*** COMPLETELY DELETED *** HOME TRUST COMPANY	KLN HOLDINGS INC.	
	REMARKS: DR1378843 TO DR1613460					
DR1614521	2017/07/10	DISCH OF CHARGE		*** COMPLETELY DELETED *** SKYMARK FINANCE CORPORATION		
	REMARKS: DR1464938.					
DR1617189	2017/07/18	POSTPONEMENT		ECOHOME FINANCIAL INC.	KLN HOLDINGS INC.	C
	REMARKS: DR1673626 TO DR163460					
DR1657744	2017/11/16	NO SEC INTEREST		*** COMPLETELY DELETED *** CROWN CREST FINANCIAL CORP		
DR1665554	2017/12/11	DISCHARGE INTEREST		*** COMPLETELY DELETED *** HOME TRUST COMPANY		
	REMARKS: DR1378843.					
DR1665945	2017/12/12	DISCHARGE INTEREST		*** COMPLETELY DELETED *** HOME TRUST COMPANY		
	REMARKS: DR1394806.					
DR1703744	2018/05/17	DISCH OF CHARGE		*** COMPLETELY DELETED *** KLN HOLDINGS INC.		
	REMARKS: DR1613460.					
DR1703757	2018/05/17	TRANSFER	\$425,000	BROWN, WILLIAM JOHN	ABE, KATSUICHI ABE, JODI MAE	C
DR1703758	2018/05/17	CHARGE	\$428,832	ABE, KATSUICHI ABE, JODI MAE	ICICI BANK CANADA	C
DR1709504	2018/06/11	DISCHARGE INTEREST		*** COMPLETELY DELETED *** CROWN CREST FINANCIAL CORP		
	REMARKS: DR1657744.					
DR1713219	2018/06/25	DISCH OF CHARGE		*** COMPLETELY DELETED *** COMPUTERSHARE TRUST COMPANY OF CANADA		

NOTE: ADJOINING PROPERTIES SHOULD BE INVESTIGATED TO ASCERTAIN DESCRIPTIVE INCONSISTENCIES, IF ANY, WITH DESCRIPTION REPRESENTED FOR THIS PROPERTY.
NOTE: ENSURE THAT YOUR PRINTOUT STATES THE TOTAL NUMBER OF PAGES AND THAT YOU HAVE PICKED THEM ALL UP.



LAND
REGISTRY
OFFICE #40

26643-0141 (LT)

* CERTIFIED IN ACCORDANCE WITH THE LAND TITLES ACT * SUBJECT TO RESERVATIONS IN CROWN GRANT *

REG. NUM.	DATE	INSTRUMENT TYPE	AMOUNT	PARTIES FROM	PARTIES TO	CERT/ CHKD
REMARKS: DR1216016.						

NOTE: ADJOINING PROPERTIES SHOULD BE INVESTIGATED TO ASCERTAIN DESCRIPTIVE INCONSISTENCIES, IF ANY, WITH DESCRIPTION REPRESENTED FOR THIS PROPERTY.
NOTE: ENSURE THAT YOUR PRINTOUT STATES THE TOTAL NUMBER OF PAGES AND THAT YOU HAVE PICKED THEM ALL UP.

TAB 7

Court File No. CV-22-0686234-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

B E T W E E N:

7539088 CANADA INC. and 1989474 ONTARIO INC.

Plaintiffs/Moving Parties

- and -

MICHAEL SLATTERY, MERK INVESTMENTS LTD.,
SKYMARK FINANCE CORPORATION, PAUL MILLAR, 1266845 ONTARIO
LIMITED, 1690682 ONTARIO INC. and 1429458 ONTARIO LIMITED

Defendants/Responding Parties

NOTICE OF MOTION

The plaintiffs, 7539088 Canada Inc. (“753 Canada”) and 1989474 Ontario Inc. (“198 Ontario”), will make a motion to a Judge presiding over the Commercial List, on a date to be fixed, at the Courthouse at 330 University Avenue, Toronto, Ontario.

PROPOSED METHOD OF HEARING: The motion is to be heard in person or by video conference, with the location or video conference details to be provided.

THE MOTION IS FOR:

1. An order pursuant to rule 60.12 of the *Rules of Civil Procedure* providing that, in light of the non-compliance of the defendants Merk Investments Ltd. (“Merk”) and Skymark Finance Corporation (“Skymark”) with the interlocutory order of Osborne J. dated December 2, 2022 (the “Osborne Order”):
 - (a) The plaintiffs’ counsel shall be permitted to conduct, in accordance with summons issued and served on not less than three (3) business days’ notice, examinations concerning any and all information and details in respect of the particular properties listed at Schedule “A” to this notice of motion including, without limitation, any mortgages that secure or secured those properties (the “Mortgages”) of the following individuals: (i) Michael Slattery, (ii) Paul Millar, (iii) Dina Nguyen, (iv) Sharon McFarlane, and (v) Monika Dylag.
 - (b) Merk and Skymark are jointly and severally liable to pay or reimburse all costs reasonably incurred by the plaintiffs in conducting the examinations including their legal fees on a full indemnity basis and any costs or fees sought by any financial institution or non-party individual or entity in complying with the order.
 - (c) Merk and Skymark shall forthwith disclose to the plaintiffs the names, branches and other identifying details of all financial institutions at which Merk or Skymark have held accounts from 2013 to present.
 - (d) Any financial institution served with a copy of the order shall as soon as reasonably possible disclose to the plaintiffs copies of all documents dated from 2013 to present in their power, possession or control in respect of accounts held by Merk or

Skymark including, without limitation, all bank statements, cheque copies, wire transfer confirmations and/or other financial documents or records evidencing or recording amounts received or paid by Merk or Skymark.

- (e) Any other non-party individual or entity served with a copy of the order shall as soon as reasonably possible disclose to the plaintiffs copies of all non-privileged documents dated from 2013 to present in their power, possession or control that evidence or record any amounts paid by, held for or owing to Merk or Skymark including, without limitation, any such financial or accounting documents.
2. In the alternative, and to the extent necessary, an order pursuant to rules 60.05 and 60.11 of the *Rules of Civil Procedure* declaring that Merk and Skymark are in contempt of Osborne Order, and providing such relief in respect of such contempt as is just including, without limitation, the relief described above in respect of rule 60.12.
3. Costs of this motion on a full indemnity basis.
4. Such further relief as this Honourable Court may deem just.

THE GROUNDS FOR THE MOTION ARE:

5. On December 2, 2022, Osborne J. rendered the Osborne Order requiring Merk and Skymark as former trustees to produce all documents and information demonstrating what happened to the assets held for the plaintiff beneficiaries by January 6, 2023.
6. The Osborne Order detailed the documents to be produced, including “all bank statements, cheque copies, wire confirmations, and/or other financial documents or records” evidencing amounts received or paid by Merk and Skymark.

7. The Osborne Order also required that if any document or information “does not exist or cannot be located”, Merk and Skymark must provide “clear and unequivocal confirmation of that fact to the plaintiffs”, and provide their best explanation in respect of that fact, all by no later than January 6, 2023.
8. Merk and Skymark have failed to comply with the Osborne Order. They have neither produced the documents required, including documents clearly available to them, nor provided any credible explanation for such failure by January 6, 2023 or at all.
9. Merk and Skymark have continued to fail to comply with the Osborne Order even after such non-compliance was raised by the plaintiffs on January 30, 2023. Instead, Merk and Skymark have simply denied such non-compliance and asserted that the plaintiffs have the documents they are seeking, which is obviously not the case.
10. Given the failure of Merk and Skymark to comply with the Osborne Order, the plaintiffs seek an order pursuant to rule 60.12 of the *Rules of Civil Procedure* permitting them to directly access the documents and information that Merk and Skymark have refused to produce. Such direct access should be permitted by way of relevant financial institutions and through examinations of individuals understood to know about the plaintiffs’ assets.
11. In the alternative, and to the extent necessary, the plaintiffs seek an order pursuant to rules 60.05 and 60.11 of the *Rules of Civil Procedure* declaring that Merk and Skymark are in contempt of Osborne Order, and providing such relief in respect of such contempt as is just, including again permitting the plaintiffs to access to necessary documents and information, and any further relief available under rule 60.11 as required.

12. In addition, the limited documents produced and available to the plaintiffs to date confirm the breaches of trust by Merk and Skymark, and highlight the urgent need for production of documents and information demonstrating what happened to the plaintiffs' assets.
13. Osborne J. has already concluded that the plaintiffs are entitled to the documents and information sought. Given the failure of Merk and Skymark to comply with the Osborne Order, the only other practicable source of such documents and records is directly from financial institutions and relevant witnesses.
14. In addition to the plaintiffs' entitlement to the documents and information as beneficiaries, and in accordance with the Osborne Order, the interests of justice plainly favour ordering the disclosure sought in these circumstances.
15. Rules 1.04, 37, 39, 57 and 60 of the *Rules of Civil Procedure*.
16. The inherent and equitable jurisdiction of this Honourable Court.
17. Such further grounds as this Honourable Court may permit.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing:

- (a) The affidavit of Michael Orr, to be sworn.
- (b) Such further evidence as this Honourable Court may permit.

-6-

March 8, 2023

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Lawyers for the Defendants, Michael Slattery,
Merk Investments Ltd. and Skymark Finance
Corporation

-7-

AND TO: LAX O'SULLIVAN LISUS GOTTLIEB LLP
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Fax: 416 598 3730

Lawyers for the Defendants, Paul Millar, 1266845
Ontario Limited, 1690682 Ontario Inc, and 1429458
Ontario Limited

SCHEDULE “A”

1. 1393 Graham's Lane, Burlington, Ontario
2. 1455 Dufferin Street, Toronto, Ontario
3. 150 George Street, Brantford, Ontario
4. 151 Prospect Street, Port Dover, Ontario
5. 1534 Dranoel Road, Bethany, Ontario
6. 155 Adams Boulevard, Brantford, Ontario
7. 155208 7th Line, R.R. #2, Markdale, Ontario
8. 160 Burnet Street, Oakville, Ontario
9. 1705 Pegg's Mountain Road, Parry Sound
10. 187 King Street East, Toronto, Ontario
11. 190 Harding Boulevard West, Unit 158, Richmond Hill, Ontario
12. 27 Farm Lane, Britt, Ontario
13. 28 Stowe Terrace, Brantford Ontario
14. 275 Richmond Street West, Toronto, Ontario
15. 30 Roser Crescent, Clarington, Ontario
16. 310 Towanda Boulevard, Blenheim, Ontario
17. 560 Ivings Boulevard, Units 2-4, Port Elgin, Ontario
18. 6 Dryden Court, Markham, Ontario
19. 65 George Street, Toronto, Ontario
20. 6780 Formentera Avenue, Mississauga, Ontario
21. 77 Still River Road, Britt, Ontario
22. 718 The Queensway, Etobicoke, Ontario
23. 81 River Street, Parry Sound, Ontario
24. 855 Centre Road, Hamilton, Ontario
25. 2 Weardale Close, United Kingdom
26. 6820 Crystal Hill Road, North Little Rock, Arkansas

7539088 CANADA INC. AND 1989474
ONTARIO INC.
Plaintiffs/Moving Parties

-and-

MICHAEL SLATTERY ET. AL.
Defendants/Responding Parties

CV-22-0686234-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERICAL LIST)

NOTICE OF MOTION

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Email: sahaia@bennettjones.com
Telephone: 416.777.6249

Lawyers for the Plaintiffs/Moving Parties

**This is Exhibit “G” referred to in the Affidavit of Andrew Sahai
sworn February 16, 2024.**

DocuSigned by:

2CAAFB598666461...

Commissioner for Taking Affidavits (or as may be)



SUPERIOR COURT OF JUSTICE

COUNSEL SLIP / ENDORSEMENTCOURT FILE NO.: CV-22-00686234-00CLDATE: 3 March 2023NO. ON LIST: 2TITLE OF PROCEEDING: 7539088 Canada Inc. et al. v Slattery et al.BEFORE JUSTICE: OSBORNE**PARTICIPANT INFORMATION****For Plaintiff, Applicant, Moving Party, Crown:**

Name of Person Appearing	Name of Party	Contact Info
Counsel for Plaintiff Nathan Shaheen and Lincoln Caylor	7539088 CANADA INC. 1989474 ONTARIO INC.	shaheenn@bennettjones.com caylorl@bennettjones.com

For Defendant, Respondent, Responding Party, Defence:

Name of Person Appearing	Name of Party	Contact Info
Counsel for Defendant Milton Davis	SLATTERY, MICHAEL MERK INVESTMENTS LTD. SKYMARK FINANCE CORPORATION	mdavis@foglers.com
Counsel for Millar Defendants Shaun Laubman David Ions	126685, 1690682, 1429458	slaubman@lolg.ca Dionis@lolg.ca


ENDORSEMENT OF JUSTICE OSBORNE:

1. This case conference was conducted before me on Tuesday, February 28, 2023 and continued on Thursday, March 2, 2023.
2. It was originally requested by the Plaintiffs to address production issues of the original Defendants. The original Defendants take the position that, albeit recently, all documents have been produced. The Plaintiffs disagree and want to bring a motion. The original Defendants also seek to bring a motion for particulars.

3. At the same time, the more recently added defendants, the Millar Defendants, seek to schedule a motion to strike the claim as against them.
4. It was disclosed during submissions that there is a pending receivership motion returnable before Justice McEwen on Monday, March 6, 2023 in respect of the Defendants Merk Investments and Skymark Finance.
5. The Plaintiffs were previously unaware of this, with the result that, on the consent of all parties, I adjourned the case conference for two days in order that the parties could familiarize themselves with this new fact and reflect on whether and how that would affect this matter.
6. The continued case conference resumed before me two days later on March 2. On the consent of all parties, all three motions will be heard together or one after the other on April 4 commencing at 10 AM for a full day.
7. There will necessarily have to be some coordination with a receiver, if one is appointed by Justice McEwen on March 6. This is so for a few reasons.
8. First, the Receiver will want to understand what assets are the property of the entities that are subject to the receivership, and what assets, if any, are held by them in trust for the Plaintiffs here. It makes good common sense and will maximize efficiency to have some cooperation and coordination between the receiver if appointed and the Plaintiffs in this action as to documents and production so as to minimize work duplication.
9. Second, it may be that the Plaintiffs in this action seek a partial lift stay in the receivership application to at least allow production and discoveries in this action. That is for the parties and the Court in the receivership application.
10. If intervening events either resolve in whole or in part the pending motions scheduled for April 4, or if those motions cannot proceed for whatever reason, counsel will advise the Commercial List Office so that the date can be freed up for other matters.

Oliver, J.

**This is Exhibit “H” referred to in the Affidavit of Andrew Sahai
sworn February 16, 2024.**

DocuSigned by:

2CAAFB598666461...

Commissioner for Taking Affidavits (or as may be)

Court File No. CV-22-00692309-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

*IN THE MATTER OF Section 101 of the Courts of Justice Act, R.S.O. 1990 c.C.43, as amended,
and in the matter of Section 243(1) of the Bankruptcy and Insolvency Act, R.S.C. 1985, c. B-3,
as amended*

THE HONOURABLE MR.)	MONDAY, THE 6 TH
)	
JUSTICE MICHAEL A. PENNY)	DAY OF MARCH, 2023

B E T W E E N:

PRICEWATERHOUSECOOPERS INC.
(solely in its capacity as court-appointed receiver and manager of
Bridging Finance Inc. and certain related entities and investment funds)

Applicant

- and -

SKYMARK FINANCE CORPORATION and MERK INVESTMENTS LTD.

Respondents

**ORDER
(Appointing Receiver)**

THIS APPLICATION made by PricewaterhouseCoopers Inc., in its capacity as court-appointed receiver and manager of Bridging Finance Inc. and certain related entities and investment funds (in such capacity, the “**Applicant**”) for an Order pursuant to section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the “**BIA**”) and section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended (the “**CJA**”), appointing

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Alvarez & Marsal Canada Inc. (“**A&M**”) as receiver and manager (in such capacity, the “**Receiver**”), without security, of all of the assets, undertakings and properties of each of Skymark Finance Corporation and Merk Investments Ltd. (together, the “**Respondents**”), was heard this day by videoconference in Toronto, Ontario, in accordance with the Guidelines to Determine Mode of Proceeding in Civil Proceedings, effective April 19, 2022.

ON READING the Affidavit of Christine Sinclair sworn December 30, 2022 and the Exhibits thereto, and on hearing the submissions of counsel for the Applicant, counsel for the proposed Receiver, and such other parties listed on the counsel slip, no one else appearing although duly served as appears from the Affidavit of Service of Adam Driedger sworn March 3, 2023, and on reading the consent of A&M to act as the Receiver,

SERVICE

1. **THIS COURT ORDERS** that the time for service of the Notice of Application and the Application Record herein is hereby abridged and validated such that this Application is properly returnable today, hereby dispenses with further service thereof, and authorizes substituted service thereof via electronic mail.

APPOINTMENT

2. **THIS COURT ORDERS** that pursuant to section 243(1) of the BIA and section 101 of the CJA, A&M is hereby appointed Receiver, without security, of all of the present and future assets, undertakings, and properties of the Respondents acquired for, or used in relation to the business carried on by the Respondents and all proceeds thereof (the “**Property**”).

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RECEIVER'S POWERS

3. **THIS COURT ORDERS** that the Receiver is hereby empowered and authorized, but not obligated, to act at once in respect of the Respondents and the Property and, without in any way limiting the generality of the foregoing, the Receiver is hereby expressly empowered and authorized to do any of the following where the Receiver considers it necessary or desirable:

- (a) to take possession of and exercise control over the Property and any and all proceeds, receipts and disbursements arising out of or from the Property;
- (b) to receive, preserve, and protect the Property, or any part or parts thereof, including, but not limited to, the changing of locks and security codes, the relocating of Property to safeguard it, the engaging of independent security personnel, the taking of physical inventories of the Property, accessing and taking control of the Respondents' bank accounts and the placement of such insurance coverage as may be necessary or desirable;
- (c) to manage, operate, and carry on the business of the Respondents (the "**Business**"), including the powers to enter into any agreements, incur any obligations in the ordinary course of business, cease to carry on all or any part of the Business, or disclaim or cease to perform any contracts of the Respondents or in respect of the Property;
- (d) to engage consultants, appraisers, agents, experts, auditors, accountants, managers, insurance brokers, counsel and such other persons from time to time and on whatever basis, including on a temporary basis, to assist with the exercise of the

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Receiver's powers and duties, including without limitation those conferred by this Order;

- (e) to purchase or lease such machinery, equipment, inventories, supplies, premises or other assets to continue the Business of the Respondents or any part or parts thereof;
- (f) to receive and collect all monies and accounts now owed or hereafter owing to the Respondents and to exercise all remedies of the Respondents in collecting such monies, including, without limitation, to enforce any security held by the Respondents;
- (g) to settle, extend or compromise any indebtedness owing to the Respondents;
- (h) to execute, assign, issue and endorse documents of whatever nature in respect of any of the Property, whether in the Receiver's name or in the name and on behalf of the Respondents, for any purpose pursuant to this Order;
- (i) to initiate, prosecute and continue the prosecution of any and all proceedings and to defend all proceedings now pending or hereafter instituted with respect to the Respondents, the Property or the Receiver, and to settle or compromise any such proceedings. The authority hereby conveyed shall extend to such appeals or applications for judicial review in respect of any order or judgment pronounced in any such proceeding;
- (j) to market any or all of the Property, including advertising and soliciting offers in respect of the Property or any part or parts thereof and negotiating such terms and conditions of sale as the Receiver in its discretion may deem appropriate;

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(k) to sell, convey, transfer, lease or assign the Property or any part or parts thereof out of the ordinary course of business as follows:

- (i) without the approval of this Court in respect of any transaction not exceeding \$100,000, provided that the aggregate consideration for all such transactions does not exceed \$500,000; and
- (ii) with the approval of this Court in respect of any transaction in which the purchase price or the aggregate purchase price exceeds the applicable amount set out in the preceding clause;

and in each such case notice under subsection 63(4) of the Ontario *Personal Property Security Act*, or section 31 of the Ontario *Mortgages Act*, as the case may be, shall not be required;

- (l) to apply for any vesting order or other orders necessary to convey the Property or any part or parts thereof to a purchaser or purchasers thereof, free and clear of any liens or encumbrances affecting such Property;
- (m) to report to, meet with and discuss with such affected Persons (as defined below) as the Receiver deems appropriate on all matters relating to the Property and the receivership, and to share information, subject to such terms as to confidentiality as the Receiver deems advisable;
- (n) to register a copy of this Order and any other Orders in respect of the Property against title to any of the Property;

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- (o) to apply for any permits, licences, approvals or permissions as may be required by any governmental authority and any renewals thereof for and on behalf of and, if thought desirable by the Receiver, in the name of the Respondents;
- (p) to enter into agreements with any trustee in bankruptcy appointed in respect of the Respondents, including, without limiting the generality of the foregoing, the ability to enter into occupation agreements for any Property owned or leased by the Respondents;
- (q) to exercise any shareholder, partnership, joint venture or other rights which the Respondents may have; and
- (r) to take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations,

and in each case where the Receiver takes any such actions or steps, it shall be exclusively authorized and empowered to do so, to the exclusion of all other Persons, including the Respondents, and without interference from any other Person.

DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE RECEIVER

4. **THIS COURT ORDERS** that: (i) the Respondents; (ii) all of their current and former directors, officers, employees, agents, accountants, legal counsel, financial advisors, and shareholders, and all other persons acting on their instructions or behalf; and (iii) all other individuals, firms, corporations, governmental bodies or agencies, or other entities having notice of this Order (all of the foregoing, collectively, being “**Persons**” and each being a “**Person**”) shall forthwith advise the Receiver of the existence of any Property in such Person’s possession or

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control, shall grant immediate and continued access to the Property to the Receiver, and shall deliver all such Property to the Receiver upon the Receiver's request.

5. **THIS COURT ORDERS** that all Persons shall forthwith advise the Receiver of the existence of any books, documents, securities, contracts, orders, corporate and accounting records, and any other papers, records and information of any kind related to the Business, the Property, or the affairs of the Respondents, and any computer programs, computer tapes, computer disks, or other data storage media containing any such information (the foregoing, collectively, the "**Records**") in that Person's possession or control, and shall provide to the Receiver or permit the Receiver to make, retain and take away copies thereof and grant to the Receiver unfettered access to and use of accounting, computer, software and physical facilities relating thereto, provided however that nothing in this paragraph 5 or in paragraph 6 of this Order shall require the delivery of Records, or the granting of access to Records, which may not be disclosed or provided to the Receiver due to the privilege attaching to solicitor-client communication or due to statutory provisions prohibiting such disclosure.

6. **THIS COURT ORDERS** that if any Records are stored or otherwise contained on a computer or other electronic system of information storage, whether by independent service provider or otherwise, all Persons in possession or control of such Records shall forthwith give unfettered access to the Receiver for the purpose of allowing the Receiver to recover and fully copy all of the information contained therein whether by way of printing the information onto paper or making copies of computer disks or such other manner of retrieving and copying the information as the Receiver in its discretion deems expedient, and shall not alter, erase or destroy any Records without the prior written consent of the Receiver. Further, for the purposes of this paragraph, all Persons shall provide the Receiver with all such assistance in gaining immediate

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access to the information in the Records as the Receiver may in its discretion require including providing the Receiver with instructions on the use of any computer or other system and providing the Receiver with any and all access codes, account names and account numbers that may be required to gain access to the information.

7. **THIS COURT ORDERS** that the Receiver shall provide each of the relevant landlords with notice of the Receiver's intention to remove any fixtures from any leased premises at least seven (7) days prior to the date of the intended removal. The relevant landlord shall be entitled to have a representative present in the leased premises to observe such removal and, if the landlord disputes the Receiver's entitlement to remove any such fixture under the provisions of the lease, such fixture shall remain on the premises and shall be dealt with as agreed between any applicable secured creditors, such landlord and the Receiver, or by further Order of this Court upon application by the Receiver on at least two (2) days notice to such landlord and any such secured creditors.

NO PROCEEDINGS AGAINST THE RECEIVER

8. **THIS COURT ORDERS** that no proceeding or enforcement process in any court or tribunal (each, a "**Proceeding**"), shall be commenced or continued against the Receiver except with the written consent of the Receiver or with leave of this Court.

NO PROCEEDINGS AGAINST THE RESPONDENTS OR THE PROPERTY

9. **THIS COURT ORDERS** that no Proceeding against or in respect of the Respondents or the Property shall be commenced or continued except with the written consent of the Receiver or with leave of this Court and any and all Proceedings currently under way against or in respect of

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the Respondents or the Property are hereby stayed and suspended pending further Order of this Court.

NO EXERCISE OF RIGHTS OR REMEDIES

10. **THIS COURT ORDERS** that all rights and remedies against the Respondents, the Receiver, or affecting the Property, are hereby stayed and suspended except with the written consent of the Receiver or leave of this Court, provided however that this stay and suspension does not apply in respect of any “eligible financial contract” as defined in the BIA, and further provided that nothing in this paragraph shall: (i) empower the Receiver or the Respondents to carry on any business which the Respondents is not lawfully entitled to carry on; (ii) exempt the Receiver or the Respondents from compliance with statutory or regulatory provisions relating to health, safety, or the environment; (iii) prevent the filing of any registration to preserve or perfect a security interest; or (iv) prevent the registration of a claim for lien.

NO INTERFERENCE WITH THE RECEIVER

11. **THIS COURT ORDERS** that no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the Respondents, without written consent of the Receiver or leave of this Court.

CONTINUATION OF SERVICES

12. **THIS COURT ORDERS** that all Persons having oral or written agreements with the Respondents or statutory or regulatory mandates for the supply of goods and/or services, including without limitation, all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation services, utility or other services to

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the Respondents are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Receiver, and that the Receiver shall be entitled to the continued use of the Respondents' current telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Receiver in accordance with normal payment practices of the Respondents or such other practices as may be agreed upon by the supplier or service provider and the Receiver, or as may be ordered by this Court.

RECEIVER TO HOLD FUNDS

13. **THIS COURT ORDERS** that all funds, monies, cheques, instruments, and other forms of payments received or collected by the Receiver from and after the making of this Order from any source whatsoever, including without limitation the sale of all or any of the Property and the collection of any accounts receivable in whole or in part, whether in existence on the date of this Order or hereafter coming into existence, shall be deposited into one or more new accounts to be opened by the Receiver (the "**Post Receivership Accounts**") and the monies standing to the credit of such Post Receivership Accounts from time to time, net of any disbursements provided for herein, shall be held by the Receiver to be paid in accordance with the terms of this Order or any further Order of this Court.

EMPLOYEES

14. **THIS COURT ORDERS** that any employees of the Respondents shall remain the employees of the Respondents until such time as the Receiver, on the Respondents' behalf, may terminate the employment of any such employees. The Receiver shall not be liable for any

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employee-related liabilities, including any successor employer liabilities as provided for in section 14.06(1.2) of the BIA, other than such amounts as the Receiver may specifically agree in writing to pay, or in respect of its obligations under sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*.

PIPEDA

15. **THIS COURT ORDERS** that, pursuant to clause 7(3)(c) of the Canada *Personal Information Protection and Electronic Documents Act*, the Receiver may disclose personal information of identifiable individuals to prospective purchasers or bidders for the Property and to their advisors, but only to the extent desirable or required to negotiate and attempt to complete one or more sales of the Property (each, a “**Sale**”). Each prospective purchaser or bidder to whom such personal information is disclosed shall maintain and protect the privacy of such information and limit the use of such information to its evaluation of the Sale, and if it does not complete a Sale, shall return all such information to the Receiver, or in the alternative destroy all such information. The purchaser of any Property shall be entitled to continue to use the personal information provided to it, and related to the Property purchased, in a manner which is in all material respects identical to the prior use of such information by the Respondents, and shall return all other personal information to the Receiver, or ensure that all other personal information is destroyed.

LIMITATION ON ENVIRONMENTAL LIABILITIES

16. **THIS COURT ORDERS** that nothing herein contained shall require the Receiver to occupy or to take control, care, charge, possession or management (separately and/or collectively, “**Possession**”) of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of

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a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, the *Ontario Environmental Protection Act*, the *Ontario Water Resources Act*, or the *Ontario Occupational Health and Safety Act* and regulations thereunder (the “**Environmental Legislation**”), provided however that nothing herein shall exempt the Receiver from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Receiver shall not, as a result of this Order or anything done in pursuance of the Receiver’s duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

LIMITATION ON THE RECEIVER’S LIABILITY

17. **THIS COURT ORDERS** that the Receiver shall incur no liability or obligation as a result of its appointment or the carrying out the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part, or in respect of its obligations under sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*. Nothing in this Order shall derogate from the protections afforded the Receiver by section 14.06 of the BIA or by any other applicable legislation.

RECEIVER’S ACCOUNTS

18. **THIS COURT ORDERS** that the Receiver and counsel to the Receiver shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges, unless otherwise ordered by the Court on the passing of accounts, and that the Receiver and counsel to the Receiver shall be entitled to and are hereby granted a charge (the “**Receiver’s Charge**”) on the

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Property and any funds held by the Receiver on account of the Receiver's Borrowings (as defined below), as security for such fees and disbursements, both before and after the making of this Order in respect of these proceedings, and that the Receiver's Charge shall form a first charge on the Property in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person (collectively, "**Encumbrances**"), but subject to sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

19. **THIS COURT ORDERS** that the Receiver and its legal counsel shall pass their accounts from time to time, and for this purpose the accounts of the Receiver and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

20. **THIS COURT ORDERS** that prior to the passing of its accounts, the Receiver shall be at liberty from time to time to apply reasonable amounts, out of the monies in its hands, against its fees and disbursements, including legal fees and disbursements, incurred at the standard rates and charges of the Receiver or its counsel, and such amounts shall constitute advances against its remuneration and disbursements when and as approved by this Court.

FUNDING OF THE RECEIVERSHIP

21. **THIS COURT ORDERS** that the Receiver be at liberty and it is hereby empowered to borrow by way of a revolving credit or otherwise, such monies from time to time as it may consider necessary or desirable (the "**Receiver's Borrowings**"), provided that the outstanding principal amount does not exceed \$500,000 (or such greater amount as this Court may by further Order authorize) at any time, at such rate or rates of interest as it deems advisable for such period or periods of time as it may arrange, for the purpose of funding the exercise of the powers and duties conferred upon the Receiver by this Order, including interim expenditures and the fees and

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expenses of the Receiver and its counsel. The whole of the Property shall be and is hereby charged by way of a fixed and specific charge (the “**Receiver’s Borrowings Charge**”) as security for the payment of the Receiver’s Borrowings, together with interest and charges thereon, in priority to all Encumbrances, but subordinate in priority to the Receiver’s Charge and the charges as set out in sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

22. **THIS COURT ORDERS** that neither the Receiver’s Borrowings Charge nor any other security granted by the Receiver in connection with the Receiver’s Borrowings under this Order shall be enforced without leave of this Court.

23. **THIS COURT ORDERS** that the Receiver is at liberty and authorized to issue certificates substantially in the form annexed as **Schedule “A”** hereto (the “**Receiver’s Certificates**”) for any Receiver’s Borrowings pursuant to this Order.

24. **THIS COURT ORDERS** that the Receiver’s Borrowings from time to time borrowed by the Receiver pursuant to this Order or any further order of this Court and any and all Receiver’s Certificates evidencing the same or any part thereof shall rank on a *pari passu* basis, unless otherwise agreed to by the holders of any prior issued Receiver’s Certificates.

SERVICE AND NOTICE

25. **THIS COURT ORDERS** that the Guide Concerning Commercial List E-Service (the “**Protocol**”) is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Protocol (which can be found on the Commercial List website at <https://www.ontariocourts.ca/scj/practice/practice-directions/toronto/eservice-commercial/>) shall be valid and effective service. Subject to Rule 17.05 this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the Rules of Civil Procedure. Subject to

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Rule 3.01(d) of the Rules of Civil Procedure and paragraph 21 of the Protocol, service of documents in accordance with the Protocol will be effective on transmission. This Court further orders that a Case Website shall be established in accordance with the Protocol with the following URL: www.alvarezandmarsal.com/skymark.

26. **THIS COURT ORDERS** that if the service or distribution of documents in accordance with the Protocol is not practicable, the Receiver is at liberty to serve or distribute this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by email, ordinary mail, courier, personal delivery or facsimile transmission to the Respondents' creditors or other interested parties at their respective addresses as last shown on the records of the Respondents and that any such service or distribution by courier, personal delivery or facsimile transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

GENERAL

27. **THIS COURT ORDERS** that the Receiver may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

28. **THIS COURT ORDERS** that nothing in this Order shall prevent the Receiver from acting as a trustee in bankruptcy of the Respondents.

29. **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 Receiver and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to

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make such orders and to provide such assistance to the Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.

30. **THIS COURT ORDERS** that the Receiver be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and that the Receiver is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

31. **THIS COURT ORDERS** that the Applicant shall have its costs of this application, up to and including entry and service of this Order, provided for by the terms of the Applicant's security or, if not so provided by the Applicant's security, then on a substantial indemnity basis to be paid by the Receiver from the Respondents' estate with such priority and at such time as this Court may determine.

32. **THIS COURT ORDERS** that any interested party may apply to this Court to vary or amend this Order on not less than seven (7) days' notice to the Receiver, the Applicant, and to any other party likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

33. **THIS COURT ORDERS** that the Receiver, its counsel and counsel for the Applicant may serve or distribute this Order, or any other materials and orders as may be reasonably required in these proceedings, including any notices, or other correspondence, by forwarding true copies thereof by electronic message to the creditors or any other stakeholders or other interested parties

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of the Respondents and their advisors (if any). For greater certainty, any such distribution or service shall be deemed to be in satisfaction of a legal or juridical obligation, and notice requirements within the meaning of clause 3(c) of the *Electronic Commerce Protection Regulations*, Reg. 81000-2-175 (SOR/DORS).



A handwritten signature in blue ink, appearing to read "Ray J.", is written over a horizontal line.

SCHEDULE “A”
Receiver’s Certificate

CERTIFICATE NO. _____

AMOUNT \$_____

1. THIS IS TO CERTIFY that Alvarez & Marsal Canada Inc., the receiver and manager (the “**Receiver**”) of the assets, undertakings and properties of each of Skymark Finance Corporation and Merk Investments Ltd. (together, the “**Respondents**”), acquired for, or used in relation to a business carried on by the Respondents (the “**Property**”), appointed by Order of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) dated the 6th day of March, 2023 (the “**Order**”) made in an application having Court File No. CV-22-00692309-00CL, has received as such Receiver from the holder of this certificate (the “**Lender**”) the principal sum of \$►, being part of the total principal sum of \$► which the Receiver is authorized to borrow under and pursuant to the Order.

2. The principal sum evidenced by this certificate is payable on demand by the Lender with interest thereon calculated and compounded [daily][monthly not in advance on the _____ day of each month] after the date hereof at a notional rate per annum equal to the rate of _____ per cent above the prime commercial lending rate of Bank of _____ from time to time.

3. Such principal sum with interest thereon is, by the terms of the Order, together with the principal sums and interest thereon of all other certificates issued by the Receiver pursuant to the Order or to any further order of the Court, a charge upon the whole of the Property, in priority to the security interests of any other person, but subject to the priority of the charges set out in the

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Order and in the *Bankruptcy and Insolvency Act*, and the right of the Receiver to indemnify itself out of such Property in respect of its remuneration and expenses.

4. All sums payable in respect of principal and interest under this certificate are payable at the main office of the Lender at Toronto, Ontario.

5. Until all liability in respect of this certificate has been terminated, no certificates creating charges ranking or purporting to rank in priority to this certificate shall be issued by the Receiver to any person other than the holder of this certificate without the prior written consent of the holder of this certificate.

6. The charge securing this certificate shall operate so as to permit the Receiver to deal with the Property as authorized by the Order and as authorized by any further or other order of the Court.

7. The Receiver does not undertake, and it is not under any personal liability, to pay any sum in respect of which it may issue certificates under the terms of the Order.

DATED the _____ day of MONTH, 2023.

Alvarez & Marsal Canada Inc., solely in its capacity as
Receiver of the Property, and not in its personal
capacity

Per:

Name:

Title:

IN THE MATTER OF Section 101 of the Courts of Justice Act, R.S.O. 1990 c.C.43, as amended, and in the matter of Section 243(1) of the Bankruptcy and Insolvency Act, R.S.C. 1985, c. B-3, as amended

<p>PRICEWATERHOUSECOOPERS INC. (solely in its capacity as court-appointed receiver and manager of Bridging Finance Inc. and certain related entities and investment funds)</p> <p style="text-align: right;">Applicant</p>	<p>- and -</p>	<p>SKYMARK FINANCE CORPORATION and MERK INVESTMENTS LTD.</p> <p style="text-align: right;">Respondents</p>
	Court File No. CV-22-00692309-00CL	
	<p>ONTARIO SUPERIOR COURT OF JUSTICE (COMMERCIAL LIST)</p> <p>Proceedings commenced at Toronto, Ontario</p>	
	<p>ORDER (Appointing Receiver)</p>	
	<p>Thornton Grout Finnigan LLP TD West Tower, Toronto-Dominion Centre 3200 –100 Wellington Street West Toronto, ON M5K 1K7</p> <p>John L. Finnigan (LSO# 24040L) Email: jfinnigan@tgf.ca</p> <p>Grant B. Moffat (LSO# 32380L) Email: gmoffat@tgf.ca</p> <p>Adam Driedger (LSO# 77296F) Email: adriedger@tgf.ca</p> <p>Tel: 416-304-1616</p> <p>Lawyers for the Applicant</p>	

IN THE MATTER OF Section 101 of the Courts of Justice Act, R.S.O. 1990 C. C.43, as amended, and in the matter of Section 243(1) of the Bankruptcy and Insolvency Act, R.S.C. 1985, C. B-3, as amended

PRICEWATERHOUSECOOPERS INC.
(solely in its capacity as court-appointed receiver and manager of
Bridging Finance Inc. and certain related entities and investment funds)

-and-

SKYMARK FINANCE CORPORATION and MERK
INVESTMENTS LTD.

Applicant

Respondents

Court File No. CV-22-00692309-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)
PROCEEDING COMMENCED AT TORONTO

AFFIDAVIT OF ANDREW SAHAI
(Sworn February 16, 2024)

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Lawyers for the Moving Parties

IN THE MATTER OF Section 101 of the Courts of Justice Act, R.S.O. 1990 C. C.43, as amended, and in the matter of Section 243(1) of the Bankruptcy and Insolvency Act, R.S.C. 1985, C. B-3, as amended

PRICEWATERHOUSECOOPERS INC.
(solely in its capacity as court-appointed receiver and manager of Bridging Finance Inc. and certain related entities and investment funds)

-and-

SKYMARK FINANCE CORPORATION and MERK INVESTMENTS LTD.

Applicant

Respondents

Court File No. CV-22-00692309-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)
PROCEEDING COMMENCED AT TORONTO

MOTION RECORD
(Motion for Partial Compliance with Production Order)
(Returnable February 22, 2024)

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Lawyers for the Moving Parties