

Court File No. 13-10362-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
DIVISIONAL COURT**

IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGMENT ACT,
R.S.C. 1985, c. c-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGMENT OF
SILVER STREAMS HOMES INC., SILVER STREAMS HOMES (PUCCINI) INC.,
2148993 ONTARIO INC., 2148990 ONTARIO INC., 2147681 ONTARIO INC.
AND 2147650 ONTARIO INC.

And in the matter of a reference under the *Construction Lien Act*, R.S.O. c. C. 30 as amended
And in the matter of R. 54, *Ontario Rules of Civil Procedure*

NOTICE OF APPEAL

THE APPELLANT, Bank of Montreal appeals to the Divisional Court from the Final Report/Award of Duncan Glaholt dated September 28, 2016 (the "Final Report") made at Toronto, Ontario.

THE APPELLANT ASKS that paragraph 2 of the Final Report be set aside and in its place Bank of Montreal be awarded the sum of \$426,125.72 by this Honourable Court for costs of the Reference conducted by Duncan Glaholt pursuant to the Order of the Honourable Mr. Justice Newbould made January 8, 2015 (the "Newbould Order"), and that the ruling on priorities in subparagraph 4(c) of the Final Report be made subject to Bank of Montreal being entitled to seek and receive payment of any of its costs that are not related to the Reference (defined below as the "Non-Reference Dockets"), as may be assessed and ordered by the Court

in this matter, from the security (the “Security”) held by the Monitor before the Private Mortgagees identified in the Final Report receive any portion of the Security on account of their mortgages.

THE GROUNDS OF APPEAL ARE AS FOLLOWS:

1. Pursuant to the Order of The Honourable Mr. Justice Newbould made January 8, 2015 (the “Judgment of Reference”), a reference was convened under the *Construction Lien Act* appointing Duncan Glaholt as Referee.
2. Bank of Montreal is the first mortgagee in relation to the residential housing development(s) that are the subject of this proceeding.
3. Bank of Montreal’s mortgage security is in priority to the Private Mortgagees’ mortgages, and the Private Mortgagees have postponed to Bank of Montreal.
4. Bank of Montreal had been paid in full on its mortgage security prior to the Reference being ordered, such that most of its legal counsel’s work performed after the Judgment of Reference was made has been in relation to the Reference, and not generally with respect to other aspects of this *Companies’ Creditors Arrangement Act* (“CCAA”) proceeding.
5. Bank of Montreal submitted a Bill of Costs of \$426,125.72 for its costs of the Reference, and Duncan Glaholt awarded costs to Bank of Montreal in the total amount of \$50,000.00

with respect to the Reference, to be paid from the Security being held by the Monitor, in priority to the Private Mortgagees' mortgages. This \$50,000.00 amounted to about 20% of the said Bill of Costs of Bank of Montreal, on a partial indemnity scale, according to Duncan Glaholt.

6. Duncan Glaholt made a palpable and overriding error of fact and he made an error of law in the Final Report noted above as follows:
 - a) calculating that only 20% of Bank of Montreal's dockets submitted for his review during cost submissions on the Reference related to the Reference was a palpable and overriding error of fact; and,
 - b) in relation to the other 80% of Bank of Montreal's dockets submitted to Duncan Glaholt (the "Non-Reference Dockets"), and that Duncan Glaholt ruled do not relate to the Reference, ordering that the Private Mortgagees were entitled to the balance of the Security after Bank of Montreal receives \$50,000.00 for its costs of this Reference, without making the Private Mortgagees' entitlement to the said Security subject to Bank of Montreal's right to move before the Court in this matter for an order for costs in relation to the Non-Reference Dockets and that these costs be paid from the Security in priority to the Private Mortgagees' entitlement is an error of law.
7. In addition to making an error of law, Duncan Glaholt also exceeded his jurisdiction in subparagraph 4(c) of the Final Report by granting the Private Mortgagees priority over

Bank of Montreal to the Security prior to Bank of Montreal being able to seek compensation in full and be compensated in full for its Non-Reference Dockets from the said Security in priority to the Private Mortgagees. Duncan Glaholt should have ruled that before the Private Mortgagees may receive any portion of the said Security pursuant to the Final Report, Bank of Montreal is entitled to move before this Court to seek that it be compensated for its Non-Reference Costs from the Security pursuant to its mortgage security.

8. The question as to who is entitled to priority over the Security is a legal question, and who may rule on this issue is a question of jurisdiction.
9. Neither the Judgment of Reference nor the List of Issues for the Reference agreed to by the parties (as set out in the 9th Procedural Order of Duncan Glaholt) granted jurisdiction to Duncan Glaholt to grant the Private Mortgagees any priority over Bank of Montreal.
10. Such further and other grounds as counsel may suggest and this Honourable Court may find acceptable.

THE BASIS OF THE APPELLATE COURT'S JURISDICTION IS: Subsections 71(1) and 71(2) of the *Construction Lien Act*, and paragraph 3 of the Order of The Honourable Mr. Justice Newbould made January 8, 2015 setting out a right of appeal from any Final Report of Duncan Glaholt to the Divisional Court pursuant to the *Construction Lien Act*. Leave to appeal

is not required as the Final Report is effective when completed without further confirmation required.

THE APPELLANT requires that this appeal be heard at Toronto, Ontario.

Date: October 12, 2016

AGUECI & CALABRETTA

Barristers & Solicitors
5700 Yonge Street
Suite 1110
Toronto, Ontario
M2M 4K2

Att: Jeffrey Spiegelman
LSUC# 312990

Tel: (416) 250-5700
Fax: (416) 250-5797

Lawyers for the Defendant,
Bank of Montreal

TO: SEE SERVICE LIST ATTACHED
AS SCHEDULE "A" HERETO

Schedule A

Court File No.: 13-10362-00-CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT,
R.S.C. 1985, C. C-36, AS AMENDED

IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF SILVER
STREAMS HOMES INC., SILVER STREAMS HOMES (PUCCINI) INC., 2148993 ONTARIO
INC., 2148990 ONTARIO INC., 2147681 ONTARIO INC. AND 2147650 ONTARIO INC.

SERVICE LIST

CHAITONS LLP

5000 Yonge Street, 10th Floor
Toronto, ON M2N 7E9

Harvey Chaiton

Tel: (416) 218-1129

Fax: (416) 218-1866

Email: Harvey@chaitons.com

Stephen Schwartz

Tel: (416) 218-1132

Fax: (416) 218-1832

Email: Stephen@chaitons.com

Maya Poliak

Tel: (416) 218-1161

Fax: (416) 218-1844

Email: maya@chaitons.com

Lawyers for the Applicants

GRANT THORNTON LIMITED

Royal Bank Plaza
200 Bay Street, 19th Floor
Toronto, ON M5J 2P9

Jonathan Kreiger

Tel: (416) 360-5055

Fax: (416) 360-4949

Email: jonathan.kreiger@ca.gt.com

Daniel Sobel

Tel: (416) 369-7033

Fax: (416) 360-4949

Email: daniel.sobel@ca.gt.com

Court appointed monitor

AIRD & BERLIS LLP

Brookfield Place, 181 Bay Street
Suite #1800, Box 754
Toronto, ON M5J 2T9

Steven Graff

Tel: (416) 865-7726

Fax: (416) 863-1515

Email: sgraff@airdberlis.com

Ian Aversa

Tel: (416) 865-3082

Fax: (416) 863-1515

Email: iaversa@airdberlis.com

Lawyers for the monitor

KLEIN & ASSOCIATES PROFESSIONAL CORPORATION

390 Bay Street, Suite #1101
Toronto, ON M5H 2Y2

James Klein

Tel: (416) 366-9494

Fax: (416) 366-9442

Email: jklein@kalaw.ca

Lawyers for Pilbro III Inc., Medi Group Incorporated, Cardell Flooring Ltd., Foremont Drywall Inc., et al., Canadian Concrete Forming Limited, Pave Plumbing & Heating Inc., E.D. Carpenters Limited, Solo Electric Ltd., 1865721 Ontario Inc., GM Exteriors Inc., Giancola Aluminum Contractors Inc.

CAVALLUSSO SHILTON MCINTYRE CORNISH LLP

474 Bathurst Street, Suite #300
Toronto, ON M5T 2S6

Carrie Clynick

Tel: (416) 964-5515

Fax: (416) 964-5895

Email: cclynick@cavallusso.com

Lawyers for Trustees of the Labourers' Union of North America Local 183 Members' Benefit Trust Fund

BERKOW, COHEN LLP

141 Adelaide Street West
Suite #400
Toronto, ON M5H 3L5

Alexandra Lev-Farrell

Tel: (416) 364-4900 x. 205

Fax: (416) 364-3865

Email: alev-farrell@berkowcohen.com

Scott Crocco

Tel: (416) 364-4900 x. 209

Fax: (416) 364-3865

Email: scrocco@berkowcohen.com

Lawyers for the Corporation of the Town of Richmond Hill

KOSKIE MINSKY LLP

#900 - 20 Queen Street West
Toronto, ON M5H 3R3

Jeffrey Long

Tel: (416) 595-2125

Fax: (416) 204-2892

Email: jlong@kmlaw.ca

Lawyers for Con-Drain Company (1983) Limited

HARVEY MANDEL

#203 - 55 Queen Street East
Toronto, ON M5C 1R6

Tel: (416) 364-7717 x. 302

Fax: (416) 364-4813

Email: Harvey@harvey-mandel.com

Lawyer for Foremost Mortgage Holding Corporation

DRUDI ALEXIOU KUCHAR LLP 7050 Weston Road Suite #610 Vaughan, ON L4L 8G7 Marco Drudi Tel: (416) 850-6116 x. 225 Fax: (416) 850-9146 Email: mdrudi@dakilp.com Lawyers for Castle Lane Design Group Inc., 53 Puccini Mortgage Corp., Puccini Mortgage Corp., Nastell Investments Limited, Dapaul Management Limited, 388242 Ontario Inc., Sandall Investments Limited, proposed DIP Lender	CANADA REVENUE AGENCY c/o DEPARTMENT OF JUSTICE Ontario Regional Office The Exchange Tower, Box 36 130 King Street West, Suite #3400 Toronto, ON M5X 1K6 Diane Winters Tel: (416) 973-3172 Fax: (416) 973-0810 Email: diane.winters@justice.gc.ca Christopher Lee Tel: (416) 954-8247 Fax: (416) 973-0810 Email: christopher.lee@justice.gc.ca
GOODMAN, SOLOMON & GOLD 439 University Avenue, Suite #1500 Toronto, ON M5G 1Y8 David M. Goodman Tel: (416) 595-5555 Fax: (416) 595-7020 Email: dmg@goodmansolomon.com Lawyers for King-Don Corporation	GOLDMAN SLOAN NASH & HABER LLP 480 University Avenue, Suite #1600 Toronto, ON M5G 1V2 Leonard Finegold Tel: (416) 597-3376 Fax: (416) 597-3370 Email: finegold@gsnh.com Lawyers for The Sanderson-Harold Company (Paris Kitchens)
RICHARD J. MAZAR PROFESSIONAL CORPORATION 115 King Avenue West Newcastle, ON L1B 1L3 Richard J. Mazar Email: rmazar@mazarlaw.com Lawyers for 669857 Ontario Inc. o/a Alma Mechanical	AGUECI & CALABRETTA 5700 Yonge Street, Suite 1110 Toronto, ON M2M 4K2 Jeffrey Spiegelman Tel: (416) 250-5700 Fax: (416) 250-5797 Email: JSpiegelman@aqlaw.ca Lawyers for Bank of Montreal

**IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, c. c-36, AS AMENDED
AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF SILVER STREAMS HOMES INC., SILVER STREAMS HOMES (PUCCINI)
INC., 2148993 ONTARIO INC., 2148990 ONTARIO INC., 2147681 ONTARIO INC. AND 2147650 ONTARIO INC.**

Court File No. 13-10362-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE,
DIVISIONAL COURT**

Proceeding commenced at TORONTO

NOTICE OF APPEAL

AGUECI & CALABRETTA
Barristers & Solicitors
5700 Yonge Street, Suite 1110
Toronto, Ontario
M2M 4K2

Attn: Jeffrey Spiegelman
Law Society of Upper Canada
Member # 312990

Tel. (416) 250-5700
Fax. (416) 250-5797

Lawyers for the Appellant, Bank of Montreal