Court File No. CV-20-00649154-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

B E T W E E N:

CLEARFLOW COMMERCIAL FINANCE CORP.

Applicant

\- and -

TRIGGER WHOLESALE INC., THE EN CADRE GROUP INC., MARK GDAK, JAIMEE LYNN GDAK and JAIMAK REAL PROPERTIES INC.

Respondents

APPLICATION UNDER Sections 243(1) and 47(1) of the *Bankruptcy and Insolvency Act*, R.S.C.1985, c. B-3, Section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43 and Rule 40.01 of the *Rules of Civil Procedure*

MOTION RECORD

(To remove certain real property from the Receivership – returnable March 17, 2021)

February 26, 2021

COHEN HIGHLEY LLP
Lawyers
One London Place
255 Queens Avenue, 11th Floor
London ON N6A 5R8
Benjamin G. Blay (62688Q)
blay@cohenhighley.com
Tel: 519-672-9330
Fax: 519-672-5960
Lawyers for the Respondent
Jaimee Lynn Gdak

TO: **SERVICE LIST**

Court File No. CV-20-00649154-00CL

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TABLE OF CONTENTS

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NOTICE OF MOTION

The Respondent, Jaimee Lynn Gdak, will make a Motion to a Judge presiding over the Commercial List on Wednesday, March 17, 2021 at 10:00 a.m. in the forenoon, or as soon after that time as the Motion can be heard at the court house, 330 University Avenue, 9th Floor, Toronto, Ontario, M5G 1R7.

PROPOSED METHOD OF HEARING: The Motion is to be heard (choose appropriate option)

[ ] in writing under subrule 37.12.1(1) because it is *(insert one of)* on consent, unopposed *or* made without notice;

[ ] in writing as an opposed motion under subrule 37.12.1(4);

[ ] In person;

[ ] By telephone conference;

[X] By video Conference.

Zoom Video Link to be determined, or such other link as the court may direct.

THE MOTION IS FOR:

1. An Order that the Order of the Honourable Justice McEwen made on October 22, 2020 in these proceedings (the "Receivership Order") no longer applies to the property municipally known as 250 Lions Court, Waterloo, Ontario (the "Matrimonial Home");

2. An Order that all and any reference to the Matrimonial Home in Schedule "A" to the Receivership Order be deleted; and

3. Such further and other relief as to this Honourable Court may seem just.

THE GROUNDS FOR THE MOTION ARE:

1. The substance of the allegations made against the Respondents in these proceedings date from 2015 forward.

2. The Matrimonial Home was purchased by the individual Respondents in 2005, which predates these allegations by 10 years.

3. The Respondents have made regular payments against the conventional first mortgage held by the Bank of Montreal.

4. Judgment against the Respondents has not been rendered by this Honourable Court, nor have the allegations against them, and in particular those made against Jaimee Gdak, been tested.

5. Jaimee Gdak denies having knowledge of or being a party to any of the fraudulent conduct that is alleged in the Application.

6. The Applicant does not hold security over the Matrimonial Home.

7. Jaimee Gdak obtained no benefit from and did not have any hand in arranging a second mortgage that was placed against the property in 2015, which mortgage was subsequently discharged.

8. The sale of the Matrimonial Home would cause undue hardship on Jaimee Gdak, who is raising two school-age children without any income and would have nowhere to go in event the Receiver sold the Matrimonial Home.

9. Such further and other grounds as the Counsel may advise.

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

1. The Affidavit of Jaimee Lynn Gdak sworn February 26, 2021, filed herewith.

2. The Affidavit of Jaimee Lynn Gdak sworn November 13, 2020 (filed in "Responding Application Record of Jaimee Lynn Gdak – only on the issue of individual liability," dated November 13, 2020).

3. The Affidavit of Jaimee Lynn Gdak sworn February 2, 2021 (filed in "Supplementary Responding Application Record – Re: Individual Liability of Jaimee Lynn Gdak, presently returnable March 17, 2021," dated February 3, 2021).

4. The Second Report of the Receiver (in particular Appendix 23 thereto).

5. Such further and other evidence as counsel may advise and this Honourable Court may permit.

February 26, 2021

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PROCEEDING COMMENCED AT TORONTO

NOTICE OF MOTION

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Email for parties served:
To The Service List

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AFFIDAVIT

I, Jaimee Lynn Gdak, of the City of Waterloo, in the Regional Municipality of Waterloo, **AFFIRM AND SAY**:

1. I am one of the Respondents in this proceeding. Where statements are made on information and belief, or where from the context it appears that I rely upon the information provided by others, I verily believe such statements to be true.

2. I have reviewed the Receiver's Motion record returnable on March 17, 2021.

3. In particular, I note that the Receiver has referred to a mortgage registered against our matrimonial home at 250 Lion's Ct., granted in favour of Pedro Cuesta on May 22, 2015 (the "Cuesta Mortgage"). A copy of this charge is attached hereto as Exhibit "A".

4. As indicated in the parcel register appearing at Appendix 23 of the Second Report of the Receiver, Mark and I purchased the matrimonial home in 2005, well before the events set out in the Application Record. We have made regular monthly mortgage payments to the first mortgagee, the Bank of Montreal, since the date the property was purchased.

5. I did not have anything to do with the Cuesta Mortgage. I have therefore made inquiries of Mark Gdak, which have informed what I set out below.

6. The Cuesta Mortgage was arranged by Mark and was solely for the benefit of Trigger Wholesale Inc. ("Trigger"). That is, as a term of the 2015 refinancing provided by ClearFlow Commercial Finance Corp. ("ClearFlow"), ClearFlow required that Mark assist in paying out Trigger's prior financier, Bridging Factor Inc. One of the understandings memorialized in the 2015 financing provided by ClearFlow was that

ClearFlow understood that "… settlement with Bridging Factor Inc., will be funded partially from [ClearFlow's] proposed facilities and certain other monies from various third parties. [ClearFlow's] Offer is subject to the participation of all parties and satisfactory documentation to ClearFlow being executed." (See Exhibit "A" to the Affidavit of Jaimee Gdak, sworn February 2, 2020 [sic].)

7. My understanding is that the face value of the mortgage ($132,000.00) was advanced when the charge was registered. I further understand that $20,000.00 of the funds advanced under the Cuesta Mortgage were paid to ClearFlow and the remainder went into Trigger's operations.

8. No monies were paid to me out of these mortgage proceeds.

9. Mr. Cuesta eventually made demand on the mortgage and it was paid out as described in the Second Report of the Receiver.

10. If the matrimonial home is sold, I will have nowhere to go. I have no current source of income. I have two school-age children at home, one of whom has a significant medical condition, which I described in greater detail in my Affidavit of November 13, 2020.

11. I make this Affidavit in support of a motion to remove the matrimonial home from the receivership herein and for no other or improper purpose.

AFFIRMED by Jaimee Lynn Gdak of the City of Waterloo, in the Regional Municipality of Waterloo, before me at the City of London, in the Province of Ontario, on February 26, 2021 in accordance with O. Reg. 431/20, *Administering Oath or Declaration Remotely.*

Commissioner for Taking Affidavits
(or as may be)

BENJAMIN G. BLAY

(Signature of deponent)

This is Exhibit "A" referred to in the Affidavit of Jaimee Lynn Gdak affirmed by Jaimee Lynn Gdak of the City of Waterloo, in the Regional Municipality of Waterloo, before me at the City of London, in the Province of Ontario, on February 26, 2021 in accordance with O. Reg. 431/20, *Administering Oath or Declaration Remotely.*

Commissioner for Taking Affidavits (or as may be)

BENJAMIN G. BLAY

Properties

PIN	22389 − 0593 LT *Interest/Estate* Fee Simple
Description	LOT 46, PLAN 58M−166; SUBJECT TO EASEMENT NO. LT52777 IN FAVOR OF THE CORPORATION OF THE CITY OF WATERLOO AND UNION GAS LIMITED OVER PT 46 ON 58R−12696; TOGETHER WITH RIGHT OF WAY NO. 443531 OVER PTS 4 AND 5 ON 58R−12488; WATERLOO.
Address	250 LION'S COURT WATERLOO

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 GDAK, JAIMEE

Address for Service 250 Lions Court
Waterloo, Ontario
N2L 6M8

I am at least 18 years of age.

Mark Gdak and I are spouses of one another and are both parties to this document

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

Name GDAK, MARK

Address for Service 250 Lions Court
Waterloo, Ontario
N2L 6M8

I am at least 18 years of age.

Jaimee Gdak and I are spouses of one another and are both parties to this document

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

Chargee(s) *Capacity* *Share*

Name CUESTA, PEDRO

Address for Service 114 Moccasin Drive
Waterloo, Ontario
N2L 4C3

Statements

Schedule: See Schedules

Provisions

Principal	$132,000.00	*Currency*	CDN
Calculation Period	monthly		
Balance Due Date	2016/05/22		
Interest Rate	12.0%		
Payments	$1,320.00		
Interest Adjustment Date	2015 05 22		
Payment Date	22nd day of each and every month		
First Payment Date	2015 06 22		
Last Payment Date	2016 05 22		
Standard Charge Terms	200033		
Insurance Amount	full insurable value		
Guarantor			

Signed By

Jean Phillippe Levesque	5B−490 Dutton Drive Waterloo N2L 6H7	acting for Chargor (s)	Signed	2015 05 22

Tel 519−725−2929

Fax 519−725−2920

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

Submitted By

LEVESQUE & DEANE	5B−490 Dutton Drive Waterloo N2L 6H7	2015 05 22

Tel 519−725−2929

Fax 519−725−2920

Fees/Taxes/Payment

Statutory Registration Fee	$60.00
Total Paid	$60.00

File Number

Chargee Client File Number : 15−0248

ADDITIONAL PROVISIONS:

1. **POST-DATED CHEQUES:** The Borrower shall deliver to the Lender a series of post-dated cheques, date for the specified day of each month, prior to the closing of the mortgage herein and before each anniversary date from said closing date.

2. **PRE-PAYMENT:** The Borrower, at any time and when not in default hereunder, shall have the privilege of paying the whole or any art of the principal sum on any payment date, upon a payment of three (3) month interest bonus.

3. **TITLE:** Title must be in a form satisfactory to Lender's Counsel.

4. **TITLE INSURANCE:** The Borrower shall provide Title Insurance.

5. **NON-TRANSFERRABLE:** In the event of the Borrower selling, conveying or assigning the lands herein secured *at any time* during the term of this mortgage, the whole principal sum shall forthwith become due and payable together with any interest and other charges set out herein.

6. **INSURANCE:** The Borrower is to provide to the Lender a certified copy of the insurance evidencing fire and extended coverage insurance to the extent of the value of the buildings on a replacement cost basis, as well as satisfactory evidence that all premiums for the required coverage have been paid in full. Loss under the insurance policy shall be payable to the Lender subject to the Standard Mortgage clause approved by the Insurance Bureau of Canada which shall be attached to and form part of the insurance policy. The Lender shall receive thirty (30) days notice of the cancellation of the policy. Co-Insurance is not acceptable.

7. **CONSTRUCTION:** The Borrower certifies that there are no construction liens registered against the mortgaged lands nor any claims for which the such liens could be registered as all such have been paid in full. The Borrower further certifies that there is not as of the date hereof and there has not been during the 90 days preceding the date hereof, any construction, renovations or home improvements carried on, on the Borrower's behalf, at the mortgaged premises.

8. **TAXES:** All realty taxes are to be paid in full as they fall due. The Lender is to be provided with an up-to-date tax certificate on closing, and by March 1st of each mortgage year.

9 **INSULATION:** The Borrower hereby warrants that the mortgaged property is insulated neither with Urea Formaldehyde Foam Insulation (UFFI) nor with Zonolite or Vermiculite. This warranty will survive and will not merge on closing. Should the Mortgaged Property be found to be insulated with UFFI or with Zonolite or Vermiculite, this Commitment will become null and void.

10. **MORTGAGE/CHARGE TO ACT AS SECURITY FOR ALL OTHER MONEYS AND LIABILITIES OWING IN ADDITION TO PRINCIPAL OF MORTGAGE:** The mortgage also secures, in addition to the amount noted on the face of the mortgage, all monies and liabilities whether direct or contingent, now and hereafter owning or incurred by the mortgagors including, but not limited to; further advances, renewal fees, property taxes paid, legal costs, and payments made on behalf of the mortgagors on both prior and subsequent mortgages.

11. **GUARANTOR:** The Guarantor promises, covenants and agrees with the Lender that the Borrower will duly pay and satisfy the mortgage amount and will duly perform and observe all covenants and other obligations in the mortgage and acknowledge that they shall be primarily responsible for the payment of the mortgage amount and for the performing and observing of all covenants and obligations contained in the mortgage. The Guarantor(s) further acknowledge that all provisions of the mortgage will bind them.

12. **ACCESS TO THE PROPERTY BY THE LENDER:** The Lender shall have the right at any reasonable time to inspect the property, whether this mortgage is in default or not, including the building to be held as security for the mortgage as long as any monies remain outstanding under the mortgage. Access shall be on a 24 hours notice to the borrower.

13. **REGULATIONS:** The mortgaged property must comply with all municipal, provincial and federal statutes, regulations and requirements. Current use, location and occupancy of the property must be legally conforming to all municipal laws and by-laws.

14. **SUBSEQUENT MORTGAGES:** Any default under a subsequent mortgage, shall be a default under this mortgage.

15. **MORTGAGE RENEWAL:** The mortgage shall be fully due and payable on the maturity date unless the Borrower and Lender have agreed in writing in advance that the mortgage shall be renewed. If the mortgage has not been renewed in advance, and is not paid in full on the due date, then the Borrower shall be liable to pay a penalty of three (3) months interest plus and administration fee of $500.00 and such penalty shall be paid whether or not the Lender takes mortgage action or requests payment.

16. **LIFE INSURANCE COVERAGE:** The Borrower shall provide the Lender with proof of life insurance, satisfactory to the Lender, no later than 30 days from the date of the commitment, failing which, at the option of the Lender, the mortgage/charge shall immediately become due and payable.

Borrower Initials

17. CHARGES:

MISSED PAYMENT FEE: A fee of $200.00 is payable for each missed or late installment and for processing each NSF cheque or other returned payment.

INSURANCE: A fee of $200.00 is payable for dealing with each cancellation, premium payment or other noncompliance with insurance requirement.

DEFAULT PROCEEDINGS: A fee of $1,000.00 is payable for each action or proceeding instituted.

DEFAULT PERIOD: Provided further, the Borrower hereby covenants and agrees to pay the Lender a compensating damage of $200.00 for each fifteen (15) day period this charge is in arrears covering the time periods both before and after the maturity date.

POSSESION: A fee of $3,000.00 is payable for each action or proceeding instituted and/or for attending to take possession following default.

MAINTENANCE: A fee of $50.00 for administering maintenance and security of the property in the Lender's possession per day.

LEGAL FEES: All legal fees incurred in connection with this mortgage (whether incurred by the mortgagor or the mortgagee) are for the sole account of the mortgagor.

DISCHARGE STATEMENT: For the preparation of each discharge statement, a service charge is payable, however one statement will be provided gratis during the term of the mortgage. The current charge is $250.00 for each statement.

INTEREST CALCULATION: Interest will be calculated as of the mortgage closing date requested by the Borrower.

COMMITMENT FEE: A non-refundable commitment fee will be deducted from the gross funds advance.

GENERAL: The lender reserves the right to charge reasonable fee for other administration services.

Borrower Initials

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