

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.**

Applicants

RESPONDING MOTION RECORD
(Returnable August 25, 2014)

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TO: SERVICE LIST

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Applicants

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AFFIDAVIT OF IMRAN JINNAH

I, Imran Jinnah, of the Town of Richmond Hill, in the Province of Ontario **MAKE OATH
AND SAY AS FOLLOWS:**

1. I am the sole officer, director and shareholder of the Applicants, Silver Streams Homes Inc. ("**Silver Streams**"), Silver Streams Homes (Puccini) Inc. ("**Puccini**"), 2148993 Ontario Inc. ("**2148993**"), 2148990 Ontario Inc. ("**2148990**"), 2147681 Ontario Inc. ("**2147681**") and 2147650 Ontario Inc. ("**2147650**"). As such, I have personal knowledge of the matters to which I dispose in this affidavit, save and except for such facts or matters which are stated to be based on information and belief and where so stated, I believe same to be true.

2. On August 25, 2014, Foremont Drywall Inc., 1382479 Ontario Inc., 1382503 Ontario Inc. and 2203579 Ontario Inc., carrying on business as Foremont Drywall Contracting ("**Foremont**") will bring a motion for an order lifting the stay of proceedings against Silver Streams Homes Inc., myself and my wife Asma Jinnah ("**Asma**", and together with myself and Silver Streams, the "**Foremont Defendants**") in these CCAA proceedings to allow Foremont to proceed with their claim against the Foremont Defendants in the Ontario Superior Court of Justice (Newmarket) bearing Court File Number CV-11-102579 (the "**Foremont Litigation**").

3. The Applicants oppose the relief sought by Foremont. I swear this affidavit in response to Foremont's motion.

BACKGROUND

4. The Applicants are affiliated companies owned by me. Silver Streams is a residential homebuilder in the Greater Toronto Area and is currently in the process of completing a project in Richmond Hill, Ontario referred to in these proceedings as the "**Puccini Project**". The Puccini Project is comprised of four phases. Title to the lands in Phases I, II and II are registered in the names of the numbered company Applicants.

5. In addition to the Puccini Project, Silver Streams to date developed three other residential housing projects.

FOREMONT

6. In or around October 2009, Silver Streams retained Foremont to provide drywall services in connection with Phase I of the Puccini Project (the "**Phase I Contract**"). Neither myself nor Asma were parties to that contract. A copy of the Phase I Contract is attached hereto as **Exhibit "A"**.

7. On January 21, 2011, Foremont commenced an action against the Foremont Defendants for recovery of monies owed to it by Silver Streams under the Phase I Contract for work performed by Foremont Drywall on Phase I of the Puccini Project. A copy of Foremont's Statement of Claim is attached hereto as **Exhibit "B"**. In its Statement of Claim, Foremont claimed breach of trust pursuant to sections 8 and 13 of the *Construction Lien Act* (Ontario) relating to the outstanding amount of \$250,321.79 owing under the Foremont Contracts.

8. The action was defended. A copy of the Statement of Defence is attached hereto as **Exhibit "C"**.

9. In or around August 2011, Foremont expressed an interest in resuming its commercial relationship with Silver Streams. As a result, on or around August 23, 2011, Silver Streams retained Foremont to provide drywall services in connection with Phase II of the Puccini Project (the “**Phase II Contract**”, and together with the Phase I Contract, the “**Foremont Contracts**”). Neither myself nor Asma were parties to that contract. A copy of the Phase II Contract is attached hereto as **Exhibit “D”**.
10. In October 2011, the Foremont Defendants and Foremont executed Minutes of Settlement attached hereto as **Exhibit “E”**.
11. Commencing in October 2011 and ending in August 2012 the Foremont Defendants complied with their obligations under the Minutes of Settlement and made total payments of approximately \$150,000. During this time period, Foremont also provided drywall services on Phase II of the Puccini Project.
12. In 2012 and 2013, the Applicants began experiencing financial difficulties with the Puccini Project which were described in detail in my affidavit sworn on December 11, 2013 in support of the Applicants CCAA application (the “**Initial Affidavit**”). A copy of the Initial Affidavit without exhibits is attached hereto as **Exhibit “F”**. As a result of these financial difficulties, Silver Streams was unable to pay a number of its trade creditors, including Foremont.
13. In December 2012, pursuant to the terms of an Escrow Agreement dated December 17, 2012 (the “**Escrow Agreement**”), Silver Streams, 2148993, 2147650 and 2148990, among others, entered into a global settlement with a number of their trade creditors, including Foremont, for payment of all of the Applicants and their related parties’ existing indebtedness to these trade creditors for the work performed on the Puccini Project and certain other projects developed by the Applicants and their affiliates. A copy of the Escrow Agreement is attached hereto as **Exhibit “G”**.
14. Contrary to the assertions at paragraphs 26 and 27 of the Montagner Affidavit, Foremont is not entitled to obtain judgment against the Foremont Defendants. The Escrow Agreement was

intended to and did replace the Minutes of Settlement. As consideration for this new global settlement, pursuant to the terms of the Escrow Agreement, the Applicants agreed, among other things, to grant Foremont preferred trade status in respect of the work to be done on Phases III and IV of the Puccini Project. The Applicants also agreed to a payment plan in respect of the total indebtedness to Foremont from the proceeds of the future homes.

15. The Applicants would not have entered into the Escrow Agreement or continued to work with Foremont had the terms of the Minutes of Settlement continued to be in force and effect.

16. Pursuant to the terms of the Escrow Agreement, commencing in December 2012 and until December 2013, net proceeds from the sale of the homes from the Puccini Project were directed to the escrow agent who in turn administered the sale net proceeds in accordance with the terms of the Escrow Agreement to the extent it was applicable thereto. As a result, the Foremont Defendants were not required to make any further payments under the Minutes of Settlement.

17. On November 7, 2013, Foremont caused to be registered in the Land Registry Office (No.65) a claim for construction lien against the Puccini homes.

18. On November 14, 2013, Foremont also commenced an action against the Applicants and a number of the Applicants' secured creditors for recovery of \$434,577.93 allegedly owing by the Applicants to Foremont. A copy of Foremont's statement of claim issued on November 14, 2013 is attached hereto as **Exhibit "H"**. In this statement of claim, Foremont claims a priority over the mortgages and charges of the secured creditors named as defendants in this action. Asma and I are not parties to this proceeding.

19. I have reviewed the amounts claimed by Foremont in its statement of claim dated November 14, 2013 and believe those amounts to be overstated. As a result of these CCAA proceedings, the lien claim was not defended by the Applicants.

THE CCAA PROCEEDINGS

20. On December 17, 2013, the Applicants obtained protection from their creditors under the *Companies' Creditors Arrangement Act* ("CCAA") pursuant to the Initial Order. A copy of the Initial Order is attached hereto as **Exhibit "I"**.
21. The Initial Order appointed Grant Thornton Limited as monitor of the Applicants in these proceedings (the "**Monitor**"). Pursuant to paragraph 17(k) of the Initial Order, the Monitor was directed and empowered to exercise control over the receipts, disbursements and bank accounts of the Applicants and to receive and collect all monies and accounts of the Applicants in respect of the Applicants' property. Accordingly, pursuant to the terms of the Initial Order, the Applicants were unable to comply with the terms of the Escrow Agreement.
22. The Initial Order also granted a stay of proceedings as against the Applicants and their directors and officers until and including January 16, 2014 or such later date as the Court may order. The stay of proceedings has been extended by previous orders of this Court to September 26, 2014.
23. At the time of the CCAA filing, there were 10 remaining homes in Phases II and III of the Puccini Project that were in various stages of completion. As was described in my affidavits previously filed in these proceedings, the objective of the Applicants' CCAA proceedings is to complete and sell the Puccini Homes and to pay the net sale proceeds, after payment of operating costs and the costs of these proceedings, to satisfy their creditors' claims in the priority to be determined by the Court. As at the date of this Affidavit, 8 out of the 10 homes have been sold with the approval of the Court.
24. The unusually cold winter of 2014 resulted in significant slowdown of the Toronto real estate market from January to April of this year. The Applicants saw a substantial increase in interest in the Puccini homes in April 2014 and have sold 6 homes between April 2014 and July 2014.

25. On January 16, 2014, this Court granted, among other things, an order (the “**Claims Process Order**”) approving a claims process for the purpose of determining the validity, quantum and priority of claims against the Applicants’ Property (each as defined in the Claims Process Order) (the “**Claims Process**”). A copy of the Claims Process Order is attached hereto as **Exhibit “J”**.

26. The Claims Process Order established a claims filing deadline of 5:00 pm on February 14, 2014. I am advised by the Applicants’ legal counsel, Chaitons LLP, that Foremont filed a proof of claim against the Applicants in the Claims Process. A copy of Foremont’s claim is attached hereto as **Exhibit “K”**.

27. I have reviewed Foremont’s claim filed in the Claims Process and believe that the claim filed by Foremont in the Claims Process and the claim that it seeks leave to advance on August 25, 2014 is one and the same.

28. Pursuant to the Claims Process Order, the Claims Process is being administered by the Monitor with the assistance of the Vetting Committee (as defined in the Claims Process Order).

29. On June 24, 2014, the Monitor served and filed with the Court its Third Report which, among other things, summarized the status of the Claims Process. With respect to the claims of construction lien holders, the Monitor recommended that the construction lien claims be determined in the context of a binding arbitration by a claims adjudicator. A copy of the Third Report without appendices is attached hereto as **Exhibit “L”**.

30. Foremont should not be granted leave to commence or continue an action against the Foremont Defendants. If it is determined by the adjudicator in the Claims Process that Foremont’s claim should be allowed, Foremont may be paid in full. If Foremont is successful in proving its claim in the CCAA proceedings, it will have recovered fully on its claim rendering any proceeding against the Foremont Defendants moot.

31. It is preferable for the benefit of all of the Applicants' stakeholders to have all of the construction lien and trust claims litigated in these CCAA proceedings rather than have the Applicants defend multiple construction lien and trust claims in various courts.

32. I swear this affidavit in support of the Applicants' motion for the relief set out herein and for no improper purpose.

SWORN before me at the City
of Toronto, Province of
Ontario, this ^{12th} day
of August, 2014


A Commissioner, Etc.

Maya Velich

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Imran Jinnah