

Court File No.: CV-18-00608086-00CL

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

**IN THE MATTER OF AN APPLICATION PURSUANT TO SECTION 129 OF THE
SECURITIES ACT R.S.O. 1990, c. S.5, AS AMENDED**

B E T W E E N:

ONTARIO SECURITIES COMMISSION

Applicant

- and -

MONEY GATE MORTGAGE INVESTMENT CORPORATION

Respondent

**FOURTH REPORT TO THE COURT OF GRANT THORNTON LIMITED IN ITS CAPACITY
AS RECEIVER OF THE RESPONDENT**

April 30, 2020



**Grant Thornton Limited
200 King Street West, 11th Floor
Toronto, Ontario
M5H 3T4**

TABLE OF CONTENTS

INTRODUCTION	2
PURPOSE OF THIS FOURTH REPORT	3
RESTRICTIONS AND TERMS OF REFERENCE.....	4
BACKGROUND.....	4
THE STATUS OF MGMIC'S MORTGAGES	5
The Timiskaming Property	7
The Timmins Property.....	9
The Birchmount Property	9
The Palace Pier Property	10
The Steeles Property	15
The Euclid Property	16
CLAIMS PROCEDURE	17
RECEIPTS AND DISBURSEMENTS OF THE RECEIVERSHIP	22
OTHER ACTIVITIES OF THE RECEIVER SINCE THE APPOINTMENT ORDER.....	22
PROFESSIONAL FEES	23
CONCLUSION AND RECOMMENDATION.....	25

APPENDICES

- Appendix 1** – Appointment Order dated November 6, 2018
- Appendix 2** – Second Report of the Receiver dated May 8, 2019
- Appendix 3** – Third Report of the Receiver dated October 18, 2019
- Appendix 4** – Supplement to the Third Report dated April 1, 2020
- Appendix 5** – Ontario Securities Commission's Reasons and Decisions dated December 17, 2019
- Appendix 6** – Endorsement and Distribution Order of Justice Hainey dated September 20, 2019 and October 15, 2019, respectively - Birchmount Property
- Appendix 7** – Order and Endorsement of Justice Hainey dated January 17, 2020
- Appendix 8** – Email Correspondence for Settlement of Palace Pier Property
- Appendix 9** – Draft Minutes of Settlement – Palace Pier Property
- Appendix 10** – Endorsement of Justice Penny dated October 2, 2019 – Dovercourt Property
- Appendix 11** – Reason and Decisions of Justice Gilmore dated February 5, 2020 – Dovercourt Property
- Appendix 12** – Notice of Appeal dated February 12, 2020 – Dovercourt Property
- Appendix 13** – Endorsement of Justice Penny dated October 2, 2019 – Steeles Property
- Appendix 14** – Order and Endorsement of Justice Hainey dated April 3 and April 6, 2020 – Euclid Property
- Appendix 15** – Interim Receipts and Disbursements dated April 24, 2020
- Appendix 16** – Affidavit of Jonathan Krieger sworn April 29, 2020
- Appendix 17** – Affidavit of Maya Poliak dated sworn April 29, 2020

CONFIDENTIAL APPENDICES

- Confidential Appendix 1** – Independent Appraisal of the Timiskaming Property dated July 24, 2019
- Confidential Appendix 2** – Independent Appraisal of the Timmins Property dated July 24, 2019
- Confidential Appendix 3** – Palace Pier Property Opinion of Value dated January 17, 2020

Court File No.: CV-18-00608086-00CL

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

**IN THE MATTER OF AN APPLICATION PURSUANT TO SECTION 129 OF THE
SECURITIES ACT R.S.O. 1990, c. S.5, AS AMENDED**

B E T W E E N:

ONTARIO SECURITIES COMMISSION

Applicant

- and -

MONEY GATE MORTGAGE INVESTMENT CORPORATION

Respondent

Application under Section 129 of the *Securities Act*, R.S.O. 1990, C.S.5, as amended

**FOURTH REPORT TO THE COURT OF GRANT THORNTON LIMITED
IN ITS CAPACITY AS RECEIVER OF THE RESPONDENT**

April 30, 2020

INTRODUCTION

1. This Report (the “**Fourth Report**”) is filed by Grant Thornton Limited (“**GTL**”) in its capacity as the receiver (the “**Receiver**”) over the property, assets and undertakings of Money Gate Mortgage Investment Corporation (“**MGMIC**”). GTL was appointed Receiver on November 6, 2018 on an application of the Ontario Securities Commission (the “**OSC**”) pursuant to an order of the Honourable Mr. Justice Hainey, as amended (collectively, the “**Appointment Order**”). A copy of the Appointment Order is attached to this Report as **Appendix “1”**.

PURPOSE OF THIS FOURTH REPORT

2. The purpose of this Fourth Report is to:

- (a) provide an update on the status of this Receivership Proceeding from the Receiver's last update contained in its Second Report dated May 9, 2019, (the "**Second Report**")¹;
- (b) provide the Court with information in support of the Receiver's request for an order:
 - (i) approving the Third Report dated October 18, 2019 ("**Third Report**"), a copy of which without appendices is attached as **Appendix "3"**, the Supplement to the Third Report dated January 23, 2020, a copy of which without appendices is attached as **Appendix "4"** (the "**Supplement to the Third Report**"), this Fourth Report, and the conduct and activities of the Receiver as described therein and herein;
 - (ii) authorizing the Receiver to conduct a procedure to identify and value creditors' and investors' claims against MGMIC;
 - (iii) approving the Receiver's interim statement of receipts and disbursements dated April 24, 2020 (the "**Interim R&D**");
 - (iv) approving the fees and disbursements of the Receiver and Chaitons LLP ("**Chaitons**"), legal counsel to the Receiver up to and including April 24, 2020, as described herein; and
 - (v) sealing Confidential Appendices 1 to 3 until a further order of the Court.

¹ Relevant sections of the Second Report (without appendices) are attached hereto as **Appendix "2"**

RESTRICTIONS AND TERMS OF REFERENCE

3. In preparing this Fourth Report, the Receiver has relied upon unaudited financial information, MGMIC's books and records, certain financial information, discussions with Morteza Katebian (a.k.a. Ben Katebian "**Ben**") and his son Payam Katebian ("**Payam**", and together with Ben, the "**Principals**"), their counsel and discussions with other parties. The Receiver's work does not constitute an audit or verification of such information for accuracy, completeness or compliance with Generally Accepted Accounting Principles ("**GAAP**") or International Financial Reporting Standards ("**IFRS**"). Accordingly, the Receiver expresses no opinion or other form of assurance pursuant to GAAP or IFRS with respect to such information.
4. This Fourth Report has been prepared for the purpose set out in paragraph 2 of this Report. The reader is cautioned that this Report may not be appropriate for any other purpose.
5. All references to dollars are in Canadian currency unless otherwise noted.

BACKGROUND

6. MGMIC carried on business as a mortgage investment corporation that lent money to borrowers, which loans were secured by mortgages against the borrowers' properties, and/or acquired mortgages registered against commercial and residential properties. At the time of the Receiver's appointment, MGMIC's mortgage portfolio consisted of seven mortgages registered against properties located across the province of Ontario.²

² Certain of these mortgages have been discharged either through a power of sale proceeding or by registration of a vesting order by a receiver appointed to sell these properties. As described in greater detail in the Receiver's Second Report (defined herein), GTL in its capacity as the Receiver of MGMIC asserted a security interest in the proceeds from the sale of those properties.

7. Between August 2014 and April 2017, MGMIC raised approximately \$11 million from approximately 155 investors through the sale of preferred shares of MGMIC. Those investments were subsequently pooled and used to make loans to borrowers on a secured basis or were used to acquire an interest in existing mortgages.
8. According to MGMIC's books and records, Payam, Ben and Bitra Ghaffari each hold 100 common shares of MGMIC (the "**Common Shares**").
9. Materials related to this receivership proceeding, including all of the Receiver's reports filed in this proceeding, can be found on the case website maintained by the Receiver at www.GrantThornton.ca/MGMIC.

THE STATUS OF MGMIC'S MORTGAGES

10. On the date of the Appointment Order, MGMIC's mortgage portfolio consisted of the following mortgages (the "**MGMIC Mortgages**") registered against the following seven properties (the "**Properties**")³:

Property	Municipal Address	First Mortgage	Second Mortgage	Third Mortgage
"Timiskaming Property"	1107 Lakeshore Rd S. Timiskaming Shores	\$ 435,000	\$ 3,475,000	\$ -
"Timmins Property"	5355 Highway 101 W. Timmins	2,372,500	-	-
"Birchmount Property"	4 Birchmount Rd Toronto	-	-	1,600,000
"Palace Pier Property"	2045 Lakeshore Blvd W. Toronto	765,326	665,000	-
"Dovercourt Property"	558 Dovercourt Rd Toronto	-	611,000	-
"Steeles Property"	4342 Steeles Ave West Vaughan	-	320,000	-
"Euclid Property"	293 Euclid Ave Toronto	-	282,500	-
Total		\$ 3,572,826	\$ 5,353,500	\$ 1,600,000

³ The amounts set out in the chart above represent the principal amount of the loan made by MGMIC or the amount paid by MGMIC to acquire the mortgage (excluding interest earned by MGMIC on these loans).

11. As of the date of this Fourth Report all MGMIC Mortgages on the Properties have matured and are in default.
12. At all relevant times, the MGMIC Mortgages were granted by or acquired from companies owned and/or controlled, directly or indirectly, by Arash Missaghi ("**Missaghi**"), Sai Mohammed (also known as Mo Jiwani) ("**Sai**"), Jonathane Ricci ("**Ricci**") or Payam.
13. The Receiver understands that during the time period when the majority of the MGMIC Mortgages were registered, Ricci, Sai, Missaghi and the Principals among others, carried on business from the same office location and were business partners on a number of transactions involving MGMIC and the Principals.
14. On December 17, 2019, the OSC issued Reasons and Decision in its proceeding against the Principals wherein it found, among other things, that Ben and Payam effected illegal distributions of MGMIC's securities and improperly put investors' funds at risk and ultimately caused investor losses. The OSC also found that Missaghi and Sai were undisclosed principals of MGMIC. A copy of the OSC's Reasons and Decision is attached as **Appendix "5"**.
15. In the Second Report to the Court, the Receiver provided a detailed update on the status of each of the Mortgages as at May 2019. The purpose of this Report is to provide a further update to the Court and MGMIC's stakeholders on the Receiver's enforcement and collection efforts for each of the Mortgages since May 2019. The information provided below is a general status update for each of the Properties and should be read in conjunction with the Second Report.

The Timiskaming Property

16. The Timiskaming Property consists of a 38-hectare commercial site including a vacant wood panel manufacturing plant and a historic wood waste landfill.
17. Since its appointment, the Receiver has engaged in discussions with the Ministry of Environment and Climate Change of Ontario, Uniboard Canada, and an independent environmental engineer to determine the extent of environmental remediation requirements.
18. MGMIC holds the first mortgage which was acquired by MGMIC for \$435,000⁴ and the second mortgage in the principal amount of \$3,475,000 against the Timiskaming Property.
19. As described in greater detail in the Second Report, on June 19, 2012, the owner of the Timiskaming Property, Mansteel New Liskaeard Inc. ("**Mansteel**"), a company owned and/or controlled, directly or indirectly, by Missaghi, purchased the Timiskaming Property from Uniboard Canada Inc. ("**Uniboard**") for \$1. Pursuant to the sale agreement between Uniboard and Mansteel, Mansteel agreed to, among other things, assume all environmental obligations relating to the Timiskaming Property and perform certain environmental work (the "**Environmental Work**"). Pursuant to the sale agreement, Uniboard agreed to pay to Mansteel the sum of \$6 million plus applicable taxes (the "**Environmental Fee**") for performing the Environmental Work. The Environmental Fee was comprised of a lump sum of \$3.5 million paid on closing and a sum of \$2.5 million (the "**Escrow Funds**") deposited with an escrow agent. Uniboard takes the position that Mansteel is only entitled to access the Escrowed Funds if the Environmental Work was actually performed.

⁴ The first mortgage is registered against title to the Timiskaming Property in the principal amount of \$300,000.

20. In July 2013, Ministry of Environment and Climate Change of Ontario (“**MOECC**”) conducted an inspection of the landfill on the Timiskaming Property. On October 23, 2013, the MOECC issued a Provincial Officer’s Order requiring Mansteel to perform certain environmental remediation actions and to submit certain written action plans to the MOECC. On June 23, 2016, the Ontario Court of Justice issued an order finding Mansteel guilty of the offence and ordered Mansteel to complete remediation work by November 15, 2016. The Receiver is advised by the MOECC that this work was not completed and that contamination of the Mansteel Property was continuing.
21. On December 8, 2017, on a motion made by Mansteel, this Court made an order requiring the escrow agent to pay the sum of \$1,343,054 to the Accountant of the Superior Court of Justice of Ontario. The Receiver has confirmed with the escrow agent that the Escrow Funds were paid into Court on December 15, 2017.
22. MGMIC’s mortgages have matured.
23. Before commencing any enforcement steps in respect of the mortgages, in August 2019, the Receiver commissioned an independent appraisal of the Timiskaming Property in order to determine whether it will be commercial reasonable to undertake further environmental review.
24. A copy of the independent appraisal was provided to the Receiver on July 24, 2019 and is attached as **Confidential Appendix “1”**.
25. Considering the valuation of the Timiskaming Property and the environmental liability attained to the property, the Receiver does not intend to take any enforcement steps in with respect to property at this time.

The Timmins Property

26. The Timmins Property consists of six (6) parcels of vacant land, totaling approximately 195 acres, located south-west of Timmins, Ontario. The Timmins Property is owned, by a company that is owned and/or controlled, directly or indirectly, by Missaghi. MGMIC holds a first ranking mortgage against the Timmins Property in the principal amount of \$2,375,500.
27. The Timmins Mortgage matured on March 4, 2018. To determine what enforcement steps should be taken, the Receiver sought an independent appraisal of the Timmins Property in order to determine whether it will be commercially reasonable to undertake a further environmental review.
28. A copy of the independent appraisal was provided to the Receiver on July 24, 2019 and is attached as **Confidential Appendix “2”**.
29. Considering the valuation of the Timmins Property, the Receiver at this time does not intend to take any enforcement steps with respect to this property.

The Birchmount Property

30. The Birchmount Property is a 1.93-acre residential property located in Scarborough overlooking Lake Ontario and has a partially completed 12,900 sq. ft. two-story residential home located on it. The Birchmount Property was under the control of a receiver, Rosen Goldberg Inc. (the “**Birchmount Receiver**”) at the time of the Receiver’s appointment.
31. As described in greater detail in the Second Report, MGMIC held a 30.1% interest in the third mortgage registered against title to the Birchmount Property. World Finance Corporation (“**WFC**”), a company owned and/or controlled directly or indirectly by Missaghi and his associates held the balance of the third mortgage.

32. As described in the Second Report, the Birchmount Receiver brought a Motion (the **“Distribution Motion”**) for advice and directions regarding the distribution of the balance of approximately \$1.4 million in net proceeds from the sale of the Birchmount Property (the **“Birchmount Proceeds”**). MGMIC, WFC and the fourth mortgagee (the **“Birchmount Claimants”**) each made a claim to the Birchmount Proceeds.
33. The Distribution Motion was settled by the Birchmount Claimants pursuant to the terms of the Endorsement of Justice Hailey dated September 20, 2019 and the Distribution Order of Justice Hailey dated October 15, 2019, copies of which are collectively attached as **Appendix “6”**. (the **“Distribution Order and Endorsement”**)
34. Pursuant to the terms of the Distribution Order, the Birchmount Proceeds were distributed as follows:
 - a) First to Dewart Gleason LLP in trust for Loraine and Gilbert Barlow in the amount of \$365,000 on account of the fourth mortgage against the Birchmount Property; and
 - b) The balance to be paid to Miller Thomson LLP in trust for WFC and Chaitons in trust for the Receiver on a 50/50 basis.
35. On October 17, 2019, the Receiver received MGMIC’s portion of the Birchmount Proceeds in the amount of \$467,500. The Receiver’s realization on MGMIC’s mortgage against the Birchmount Property is now complete.

The Palace Pier Property

36. The Palace Pier Property is a residential condominium located in Toronto, Ontario. The property is owned by Atlas Capital Corporation (**“Atlas”**), which is owned directly or indirectly by Sai. The Palace Pier Property is also occupied by Sai.

37. As described in the Second Report, MGMIC held two mortgages registered against the Dovercourt Property:
- a) a first ranking mortgage in the principal amount of \$725,000 (the “**Palace Pier First Mortgage**”); and
 - b) a second ranking mortgage in the principal amount of \$665,000 (the “**Palace Pier Second Mortgage**”) (collectively, the “**Palace Pier Mortgages**”)

The Second Palace Pier Mortgage is subject to a litigation dispute between MGMIC and Atlas, which disputes the validity of the Second Palace Pier Mortgage (the “**Second Mortgage Proceeding**”).

38. On October 17, 2019, MGMIC brought an application to appoint a receiver over the Palace Pier Property. On December 23, 2019, the Palace Pier First Mortgage was repaid in full (together with interest and cost of enforcement). Proceeds in the amount of \$894,122.30 were received by the Receiver settling Atlas’s obligations to MGMIC in respect of the Palace Pier First Mortgage.
39. On January 17, 2020, pursuant to an Order and Endorsement of Justice Hailey, the Second Mortgage Proceeding was transferred to this Court and a summary judgment motion was scheduled to be heard before this Court on March 17, 2020. Attached hereto collectively as **Appendix “7”** are copies of Justice Hailey’s Order and Endorsement each dated January 17, 2020.
40. In January 2020, Atlas indicated to the Receiver that they would like to settle the Second Mortgage Proceeding. In anticipation of a potential settlement, the Receiver obtained an appraisal of the Palace Pier Property dated January 17, 2020, a copy of which is attached hereto as **Confidential Appendix “3”**.

41. On March 2, 2020, Atlas and the Receiver agreed to settle the Second Mortgage Proceeding on the following terms (the “**Atlas Settlement**”):
- (a) Atlas agrees to pay to the Receiver in full satisfaction of the Palace Pier Second Mortgage the sum of \$365,000 by May 1, 2020, or, if payment is not received by May 1, 2020, the sum of \$370,000 by June 1, 2020;
 - (b) If payment is not made as required, Atlas and Ricci⁵ consent to judgment (the “**Consent to Judgment**”) in the full amount owing under the Palace Pier Second Mortgage and Atlas will consent and will allow the Receiver possession of the Palace Pier Property to enforce the Palace Pier Second Mortgage.
42. As a consequence of the Atlas Settlement, the Receiver and counsel for Atlas, Eli Karp, vacated the date scheduled for the summary judgment motion. Attached hereto as **Appendix “8”** is the email correspondence between the Court, counsel for the Receiver and counsel for Atlas.
43. On April 27, 2020, Mr. Karp on behalf of Atlas requested an extension to the date by which payment is to be made by Atlas and has agreed to pay interest on the settlement amount on a monthly basis at a rate of 8% per annum.
44. On April 28, 2020, the Receiver agreed to amend the Atlas Settlement on, among other things, the following terms:
- (a) Atlas shall pay to the Receiver in full satisfaction of the Palace Pier Second Mortgage the sum of \$370,000 on the earlier of: (i) the day that is 90 days following the date on which the State of Emergency for the City of Toronto is lifted; or (ii) October 31, 2020;

⁵ Ricci guaranteed Atlas’s obligations to MGMIC under the Palace Pier Second Mortgage.

- (b) Atlas shall pay to the Receiver interest on a monthly basis in the amount of \$2,466.67;
 - (c) If Atlas defaults on its payment obligations under the Atlas Settlement, the Receiver can act on the Consent to Judgment within the timelines prescribed in the Atlas Settlement.
45. A copy of the revised draft Minutes of Settlement substantially in the form to be executed by the parties is attached as **Appendix “9”**.
 46. The Receiver is of the opinion that the Atlas Settlement is reasonable in the circumstances and is in the best interests of all of MGMIC’s stakeholders. The settlement amount is consistent with the appraised value of the Palace Property, particularly taking into account the uncertainty of litigation, the unreliability of the evidence of the Principals, which the Receiver has to rely on in support of its motion, the costs of the Second Mortgage Proceeding and the costs of enforcement, in the event that the Receiver is successful in the Second Mortgage Proceeding.
 47. Accordingly, the Receiver recommends that the Court grant an order approving the Atlas Settlement.

The Dovercourt Property

48. The Dovercourt Property includes a multi-residential building located in Toronto, Ontario, which was under the control of a receiver, Ira Smith and Associates (the “**Dovercourt Receiver**”) at the time of the Receivership Order. The Receiver received net proceeds from the sale of the Dovercourt Property from the Dovercourt Receiver in the amount of \$556,078.73 (the “**Dovercourt Proceeds**”).
49. Prior to the sale of the Dovercourt Property by the Dovercourt Receiver, the Dovercourt Property was owned by 2546456 Ontario Inc. a company that is owned 50% by Payam

and 50% by 2496050 Ontario Inc. (“**249**”), a company owned and/or controlled by Ricci for the benefit of certain investors.

50. As the Receiver advised in its Second Report and Third Report to the Court, a number of parties asserted claims to the Dovercourt Proceeds. On October 2, 2019, consistent with the Orders of this Court made in this proceeding, the Receiver scheduled a 9:30 Chambers Appointment on notice to all parties who have asserted claims to the Dovercourt Proceeds, including 249 for the purpose of scheduling the hearing of a motion for advice and directions for the distribution of the Dovercourt Proceeds (the “**Dovercourt Claims Hearing**”).
51. The Dovercourt Claims Hearing was scheduled for January 30, 2020. Attached to this Report as **Appendix “10”** is a copy of Justice Penny’s Endorsement dated October 2, 2019, scheduling the Dovercourt Claims Hearing and setting a timetable for the delivery of materials.
52. 249 and the MGMIC Receiver were ultimately the only parties that advanced a claim to the Dovercourt Proceeds. In support of the Dovercourt Claims Hearing the Receiver filed its Third Report and the Supplement to the Third Report.
53. The Dovercourt Claims Hearing was heard on January 30, 2020. On February 5, 2020, Madam Justice Gilmore, issued Reasons, a copy of which is attached as **Appendix “11”**. Her Honour held, among other things, that MGMIC had a valid and enforceable mortgage against the Dovercourt Property.
54. On February 12, 2020, 249 and Ricci (the “**Palace Pier Respondents**”) served a Notice of Appeal in respect of Justice Gilmore’s findings. A copy of the Notice of Appeal is attached as **Appendix “12”**.

55. The Dovercourt Funds will continue to be held in trust by the Receiver until such time as the Dovercourt Claims Proceeding is finally resolved.

The Steeles Property

56. As described in the Second Report, the Steeles Property is a commercial property located in Vaughan, Ontario. MGMIC, 2381439 Ontario Inc. ("**238**") and 2399021 Ontario Inc. ("**239**"), a company owned and/or controlled, directly or indirectly by Missaghi, his wife and/or their business associate Troy Wilson ("**Troy**") each held a portion of the second mortgage registered against the Steeles Property (the "**Second Steeles Mortgage**") in the following proportions:
- (a) 25.8% was held by MGMIC;
 - (b) 60.6% was held by 238; and
 - (c) 13.4% was held by 239.
57. Prior to the acquisition of their portions of the Second Steeles Mortgage by MGMIC and 238, the mortgage was held by 239. 239 also held the first mortgage registered against the Steeles Property (the "**First Steeles Mortgage**") and the fifth mortgage. Another company owned and/or controlled by Missaghi, his wife or Troy also held the third mortgage registered against the Steeles Property.
58. In the spring of 2018, MGMIC learned that 239 was trying to sell the Steeles Property under power of sale. In April 2018, MGMIC commenced an enforcement proceeding under its portion of the Second Steeles Mortgage (the "**Steeles Enforcement Proceeding**"). Pursuant to orders of this Court made in that proceeding, \$375,000, representing the full amount owing to MGMIC under its portion of the Second Steeles Mortgage at that time was paid into Court by 239 (the "**Steeles Proceeds**"). Shortly thereafter 239 sold the Steeles Property under power of sale to a related party.

59. On October 2, 2019, the Receiver attended at a Chambers Appointment before the Court in the Steeles Enforcement Proceeding, on notice to all parties claiming an interest in the Steeles Proceeds, for the purpose of scheduling a motion for an order releasing the Steeles Proceeds to the Receiver (the “**Steeles Motion**”). Attached as **Appendix “13”** is a copy of Justice Penny’s Endorsement scheduling the Steeles Motion to be heard on December 16, 2019 and setting a time-table for delivery of materials and cross-examinations. The Steeles Motion was adjourned on consent of parties to April 7, 2020.
60. As a consequence of the COVID-19 pandemic and in accordance with the Notice to the Profession dated March 15, 2020, all commercial matters from March 17, 2020 (including the Steeles Motion) onward are suspended until further notice and will be rescheduled after June 1, 2020.
61. The Receiver will reschedule the Steeles Motion to the next available date once the Court reopens.

The Euclid Property

62. On November 25, 2019, the GTL was appointed as receiver over the Euclid Property pursuant to an Order and Endorsement of Justice Penny (the “**Euclid Receiver**”).
63. Information on the receivership of the Euclid Property can be found at www.GrantThornton.ca/Euclid.
64. On April 3, 2020, the Court granted an order approving, among other things, the sale of the Euclid Property and the distribution of proceeds from the Euclid Property. A copy of the sale approval order is attached as **Appendix “14”**.
65. The sale of the Euclid Property is scheduled to close on May 5, 2020, which will largely bring the administration of the Euclid Receiver to a close. The Receiver estimates that after payment of the first mortgage and the fees and disbursements of the Euclid Receiver,

that the Receiver will receive proceeds in the approximate amount of \$250,000 from the sale of the Euclid Property.

CLAIMS PROCEDURE

66. The Receiver anticipates that after the completion of the administration of this estate, there will be sufficient funds to make a distribution to creditors and investors of MGMIC.
67. The Receiver proposes to conduct a claims procedure to identify and quantify creditor and investor claims against MGMIC (the “**Claims Procedure**”) pursuant to the terms of the “**Claims Procedure Order**”, a draft of which is attached at Tab 3 to the Receiver’s Motion Record.
68. A summary of the proposed Claims Procedure is set out below. Terms not otherwise defined herein shall have the meaning ascribed to such terms in the Claims Procedure Order.

Creditor Claims

69. Under the Claims Procedure, within 5 business days from the date of the Claims Procedure Order, the Receiver will provide a claims package to known creditors of MGMIC and such creditors who request such a mailing prior to the “**Claims Bar Date**” (which shall be 60 days from the date of the Claims Procedure Order), which shall include an instruction letter and Proof of Claim.
70. Creditors wishing to submit a Proof of Claim shall provide all particulars of the Claim and supporting documentation that the Creditor wishes to rely upon.
71. As soon as reasonably practicable upon receiving a request from a potential creditor (provided such request is made prior to the Claims Bar Date), the Receiver will send such

creditor a claims package by ordinary mail, courier, facsimile or electronic mail.

72. In addition, the Receiver will cause notice of the Claims Procedure to be published for one day in the Globe and Mail and will make the claims package available on its website at www.GrantThornton.ca/MoneyGate.

Investor Claims

73. MGMIC's books and records disclose the number of preferred shares purchased by each investor in MGMIC. To simplify the Claims Procedure, the Receiver has prepared a reversed claims process for investor claim pursuant to which the Receiver will prepare and deliver an acknowledgement of claim to the investors (the "**Acknowledgement of Claim**"), which will include the following information:
- (a) an acknowledgement number to allow the Receiver to identify each investor claim;
 - (b) the investor's legal name and contact information; and
 - (c) the dollar amount of the investor's outstanding principal investment as reflected in MGMIC's books and records. The Receiver will calculate the interest owing on each investor claim, once such claim is deemed accepted.
74. The investors who agree with the information provided in their Acknowledgements of Claim need not take any further action for such information to be accepted by the Receiver for the purposes of the Claims Procedure.

75. It is the position of the Receiver that an Acknowledgement of Claim is the most appropriate method of identifying the claims of MGMIC's investors for the following reasons:
- (a) MGMIC generally kept accurate and up to date books and records of the amounts invested;
 - (b) the Receiver has access to such books and records; and
 - (c) the majority of the investors are individuals who are not familiar with a claims process.
76. If an investor has a claim against MGMIC in addition to and independent of the claim contained the Acknowledgement of Claim, such investor will be required to file a separate Proof of Claim by the Claims Bar Date.
77. The Receiver does not anticipate that there will be sufficient funds in the estate to pay out the claims of investors, as preferred shareholders, in full. Accordingly, at this time, the Receiver does not propose to open the Claims Procedure to the holders of the Common Shares.

Claims Bar Date

78. The Claims Procedure provides that the Claims Bar Date for all claims will be 5:00 p.m. (Toronto time) on the day that is 60 days from the date of the Claims Procedure Order as specified in the Claims Procedure Order.
79. A creditor will be required to file a Proof of Claim by the Claims Bar Date. Failure to submit a Proof of Claim by the Claims Bar Date will result in such creditor's claim being forever barred and extinguished, released and discharged.

80. If an investor, after receiving its Acknowledgment of Claim, disputes the information set out in the Acknowledgment of Claim, that investor will be required to deliver a Request for Amendment by the Claims Bar Date. Unless, an investor delivers a Request for Amendment to the Receiver by the Claims Bar Date, the investor's claim will be accepted at the value set out in the Acknowledgement of Claim (the "**Investor Accepted Claim**"). Investors who do not deliver a Request for Amendment by the Claims Bar Date, shall be forever barred from disputing or challenging the value of their Investor Accepted Claim and from making or enforcing any other claim against MGMIC.
81. For clarity, any investor that received an Acknowledgment of Claim but believes that he/she has an additional claim independent of or other than one based on the claim set out in the Acknowledgement of Claim will also be barred from asserting such a claim unless a Proof of Claim is filed with the Receiver on or before the Claims Bar Date.

Review of Proofs of Claim

82. Pursuant to the terms of the Claims Procedure Order, the Receiver will review all Requests for Amendment and Proofs of Claim that are received on or before the Claims Bar Date.
83. Pursuant to the terms of the Claims Procedure Order, the Receiver will accept or, by way of Notice of Revision or Disallowance (as defined in the proposed Claims Procedure Order), revise or disallow, in whole or in part any Request for Amendment or the classification and amount of a creditor's claim set out in the Proof of Claim.
84. At any time, the Receiver may request additional information with respect to any claim (including in respect of any Acknowledgment of Claim) and may request that a revised Request for Amendment or a revised Proof of Claim, as the case may be, is filed.

Appealing a Notice of Revision or Disallowance

85. Pursuant to the Claims Procedure, any person that intends to dispute a Notice of Revision or Disallowance shall, by no later than 5:00 p.m. on the day that is the 30th day from the date of the Notice of Revision or Disallowance:
- (a) serve the Receiver with the Notice of Appeal in the form prescribed in the Claims Procedure Order setting out the grounds for the appeal; and
 - (b) schedule a 9:30 Chambers Appointment, for a date mutually agreed to as between the disputing claimant and the Receiver, for the purpose of scheduling the appeal, which appointment shall be heard by no later than 15 days from the date the Notice of Appeal, or on such date as mutually agreed between the Receiver and the disputing claimant.
86. Pursuant to the Claims Procedure, the appeal of a Notice of Revision or Disallowance shall constitute a true appeal and not a trial de novo. The disputing party shall not be permitted to file any evidence in addition to the documents contained in the Proof of Claim without the consent of the Receiver or leave of the Court.
87. If a claimant does not appeal the Notice of Revision or Disallowance in the manner described at paragraph 85 of this Report, then the classification and quantum of the claim as set out in the Notice of Revision or Disallowance will constitute such claimant's Proven Claim.

Distributions

88. The Claims Procedure addresses only the identification and quantification of claims. It does not address entitlement to a distribution, or the priority of such claims. After the

conclusion of the Claim Procedure, the Receiver will report to the Court in respect of a proposed interim distribution to creditors and investors with accepted claims and will seek Court approval of such distribution.

RECEIPTS AND DISBURSEMENTS OF THE RECEIVERSHIP

89. Attached hereto as **Appendix “15”** is the Interim R&D from November 6, 2018 to April 24, 2020. As at April 24, 2020, the balance in the receivership account was \$1,515,316. The balance includes, amongst others, amounts held in trust from the proceeds of the Palace Pier Property, the Birchmount Property and the Dovercourt Property, as described in this Fourth Report.
90. The Receiver respectfully request that the Court approve the Interim R&D.

OTHER ACTIVITIES OF THE RECEIVER SINCE THE APPOINTMENT ORDER

91. Since the date of its Second Report, the activities of the Receiver and its counsel have included:
 - (a) corresponding with the Birchmount Receiver and Dovercourt Receiver regarding these properties;
 - (b) corresponding with legal counsel regarding various litigation matters;
 - (c) corresponding with counsel for MGMIC, Ben and Payam to obtain an electronic backup of all company documents, and review information related to MGMIC Mortgages;
 - (d) completing various analysis on the source and use of funds with respect to the Properties;
 - (e) engaging in various settlement negotiations with various counterparties with respect to the MGMIC Mortgages;

- (f) corresponding with the OSC in respect of these Receivership Proceedings;
- (g) corresponding with MGMIC's former counsel to obtain documents related to enforcement litigation;
- (h) advancing enforcement or recovery proceedings for mortgages registered against the Steeles Property, the Dovercourt Property, the Birchmount Property, the Palace Pier Property and the Euclid Property;
- (i) liaising with consultants regarding environmental remediation orders;
- (j) responding to numerous email and phone inquiries and requests for general updates or information from investors and other stakeholders of MGMIC;
- (k) conducting settlement discussions with other mortgagees and stakeholders;
- (l) maintaining a public website for these Receivership Proceedings in accordance with the Commercial List E-Service Protocol including, copies of motion materials, reports, orders, and notices; and,
- (m) preparing the Third Report, the Supplement to the Third Report and this Fourth Report.

PROFESSIONAL FEES

92. Pursuant to paragraph 19 of the Appointment Order, the Receiver and its counsel are to be paid their reasonable fees and disbursements at their standard rates and charges, incurred both before and after the making of the Appointment Order. Pursuant to paragraph 20 of the Appointment Order, the Receiver and its counsel shall pass their accounts.
93. The Receiver seeks to have its fees and disbursements, including those of its legal counsel, approved by the Court for the period beginning April 1, 2019 and ending April 24,

2020. The Receiver and its counsel have maintained detailed records of their professional time and costs.

94. The total fees for the Receiver for the period April 1, 2019 and ending April 24, 2020 amount to \$118,295.12, plus disbursements of \$42.36, and HST of \$15,383.88, for a total of \$133,721.36. The time spent by the Receiver is more particularly described in the Affidavit of Jonathan Krieger sworn April 29, 2020 (the “**Krieger Affidavit**”), which is attached hereto as **Appendix “16”** and contains copies of invoices that set out the services provided during this time period.
95. The total fees of Chaitons, as counsel to the Receiver, for the period of April 1, 2019 and ending April 24, 2020 amount to \$220,964.50, plus disbursements of \$8,119.35 and HST of \$29,449.15 for a total of \$258,533.00. The time spent by Chaitons is more particularly described in the Affidavit of Maya Poliak sworn April 29, 2020 (the “**Poliak Affidavit**”), which is attached hereto as **Appendix “17”** and contains, among other things, copies of invoices that set out the services provided during this period of time.
96. The fees and disbursements of GTL in its capacity as the Euclid Receiver have been separately docketed and approved by the Court pursuant to the aforementioned Order dated April 6, 2020 in the Euclid Receivership.
97. It is the Receiver’s opinion that the fees and disbursements of the Receiver and Chaitons accurately reflect the work done by the Receiver and on behalf of the Receiver by Chaitons in connection with the receivership and the administration of the Property of MGMIC from April 1, 2019 and ending April 24, 2020.

CONCLUSION AND RECOMMENDATION

98. In light of their being proceeds available for distribution to creditors, and in particular, investors, the Receiver is seeking certain of the relief as set out in this Fourth Report as a key step to facilitate a distribution at a later date. The Receiver is of the view that the relief requested is reasonable and appropriate in the circumstances and respectfully recommends that this Court make the order granting the Receiver's requested relief.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 30th day of April 2020.

GRANT THORNTON LIMITED,

*solely in its capacity as the Court-appointed receiver and
manager of Money Gate Mortgage Investment Corporation
and not in its personal or corporate capacity*

A handwritten signature in black ink, appearing to be 'Jonathan Krieger', written over a horizontal line.

Per:

Jonathan Krieger, CPA, CA, CIRP, LIT
Senior Vice-President

APPENDIX 1

Court File No. CV-18-00608086-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE

)

TUESDAY, THE 6THJUSTICE **HAINES**

)

DAY OF NOVEMBER, 2018

)

ONTARIO SECURITIES COMMISSION

Applicant

- and -

MONEY GATE MORTGAGE INVESTMENT CORPORATION

Respondent



APPLICATION UNDER

Sections 126 and 129 of the *Securities Act*, R.S.O. 1990, c. S.5, as amended

ORDER

(Appointing Receiver)

THIS APPLICATION made by the Ontario Securities Commission (the "**Commission**") for an Order pursuant to section 129 of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "*Securities Act*") appointing Grant Thornton Limited ("**GTL**") as receiver and manager (in such capacities, the "**Receiver**") without security, of all of the assets, undertakings and properties of Money Gate Mortgage Investment Corporation (the "**Debtor**") acquired for, or used in relation to a business carried on by the Debtor, was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the affidavit of Louisa Fiorini sworn November 1, 2018 and the Exhibits thereto and on hearing the submissions of counsel for the Commission and counsel for the Debtor, and on reading the consent of GTL to act as the Receiver,

SERVICE

1. **THIS COURT ORDERS** that the time for service of the Notice of Application and the Application is hereby abridged and validated so that this application is properly returnable today and hereby dispenses with further service thereof.

APPOINTMENT

2. **THIS COURT ORDERS** that pursuant to section 129 of the *Securities Act*, GTL is hereby appointed Receiver, without security, of all of the assets, undertakings and properties of the Debtor acquired for, or used in relation to a business carried on by the Debtor, including all proceeds thereof (the "**Property**"), which for greater certainty includes any and all real property charges in favour of the Debtor (the "**Real Property Charges**"), and any and all monies held by any Persons for interest reserves or prepaid interest in connection with the Real Property Charges.

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 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 and the placement of such insurance coverage as may be necessary or desirable;
- (c) to manage, operate, and carry on the business of the Debtor, 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 cease to perform any contracts of the Debtor, including, without limitation, the Lender Servicing Agreement dated August 16, 2014 between the Debtor and Money Gate Corp. (the “**Lender Servicing Agreement**”);

- (d) to engage consultants, appraisers, agents, experts, auditors, accountants, managers, 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 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 Debtor or any part or parts thereof;
- (f) to receive and collect all monies and accounts now owed or hereafter owing to the Debtor and to exercise all remedies of the Debtor in collecting such monies, including, without limitation, to enforce any security held by the Debtor, including without limitation, the Real Property Charges;
- (g) to settle, extend or compromise any indebtedness owing to the Debtor;
- (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 Debtor, 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 Debtor, 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;
- (k) to sell, convey, transfer, lease or assign the Property or any part or parts thereof out of the ordinary course of business,
 - (i) without the approval of this Court in respect of any transaction not exceeding \$250,000, provided that the aggregate consideration for all such transactions does not exceed \$1,000,000; 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) without limiting the generality of clause 3(m) above, to share information (including personal information of identifiable individuals), meet with and discuss with any regulatory bodies and their advisors, including without limitation the Commission and any other regulatory authorities as the Receiver deems appropriate, on all matters relating to the Property, the

affairs of the Debtor, and the receivership of the Debtor, subject to such terms as to confidentiality as the Receiver deems advisable.

- (o) To administer the Real Property Charges notwithstanding the Lender Servicing Agreement;
- (p) To register a copy of this Order and any other Orders in respect of the Property against title to any of the Property and to discharge any Order registered by the Receiver in respect of the Property against title to any of the Property;
- (q) 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 Debtor;
- (r) to enter into agreements with any trustee in bankruptcy appointed in respect of the Debtor, including, without limiting the generality of the foregoing, the ability to enter into occupation agreements for any property owned or leased by the Debtor;
- (s) to exercise any shareholder, partnership, joint venture or other rights which the Debtor may have; and
- (t) to examine under oath any person the Receiver reasonably considers to have knowledge of the Property and affairs of the Debtor, including, without limitation, any present or former director, officer, employee or person registered or previously registered with the Commission or Financial Services Commission of Ontario ("FSCO") or subject to or formerly subject to the jurisdiction of the Commission, FSCO or any other regulatory body, respecting the Property and the affairs of the Debtor;
- (u) 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 (as defined below), including the Debtor, and without interference from any other Person.

4. ~~THIS COURT ORDERS that the Receiver may engage as its legal counsel Chaitons LLP, notwithstanding that Chaitons LLP has had an advisory role for the Commission in connection with this proceeding.~~



DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE RECEIVER

5. **THIS COURT ORDERS** that (i) the Debtor, (ii) all of its current and former directors, officers, employees, agents, accountants, legal counsel and shareholders, and all other persons acting on its 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 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.

6. **THIS COURT ORDERS** that, pursuant to and without limiting the generality of paragraph 5 of this Order, all Persons shall, unless otherwise instructed by the Receiver: (i) deliver to the Receiver all monies held in trust for or on behalf of any of the Debtor or in relation to its business (collectively, the "**Trust Funds**"), which for greater certainty include any and all monies that are purported to be held in trust for pooled or syndicated mortgage investors in or beneficiaries under any of the Real Property Charges, including, without limitation, all monies held by way of interest reserves or prepaid interest in connection with the Real Property Charges, which Trust Funds are to be held or used by the Receiver in accordance with the terms of this Order and any further Order of this Court; and (ii) upon the Receiver's request, to provide an accounting of all funds received from or on behalf of the Debtor or its associated businesses.

7. **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 or affairs of the Debtor, 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 7 or in paragraph 8 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. For greater certainty, law firm trust ledgers requested by the Receiver pursuant to this Order are not subject to solicitor-client privilege and shall be produced to the Receiver.

8. **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 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.

NO PROCEEDINGS AGAINST THE RECEIVER

9. **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 DEBTOR OR THE PROPERTY

10. **THIS COURT ORDERS** that no Proceeding against or in respect of the Debtor 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 the Debtor or the Property are hereby stayed and suspended pending further Order of this Court, provided that nothing herein shall prevent the commencement or continuation of any investigation or proceedings against the Debtor by or before any regulatory body including, without limitation, the Commission or the Enforcement Staff of the Commission.

NO EXERCISE OF RIGHTS OR REMEDIES

11. **THIS COURT ORDERS** that all rights and remedies against the Debtor, 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 *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the "**BIA**"), and further provided that nothing in this paragraph shall (i) empower the Receiver or the Debtor to carry on any business which the Debtor is not lawfully entitled to carry on, (ii) exempt the Receiver or the Debtor 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

12. **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 Debtor, without written consent of the Receiver or leave of this Court.

CONTINUATION OF SERVICES

13. **THIS COURT ORDERS** that all Persons having oral or written agreements with the Debtor 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 the Debtor 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 Debtor's 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 Debtor 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

14. **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

15. **THIS COURT ORDERS** that all employees of the Debtor shall remain the employees of the Debtor until such time as the Receiver, on the Debtor's behalf, may terminate the employment of such employees. The Receiver shall not be liable for any 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

16. **THIS COURT ORDERS** that, pursuant to clause 7(3)(c) of the Canada *Personal Information Protection and Electronic Documents Act*, the Receiver shall 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 Debtor, and shall return all other personal information to the Receiver, or ensure that all other personal information is destroyed.

LIMITATION ON ENVIRONMENTAL LIABILITIES

17. **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 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

18. **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. 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

19. **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 Property, 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.

20. **THIS COURT ORDERS** that the Receiver and its legal counsel shall pass its 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.

21. **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

22. **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, provided that the outstanding principal amount does not exceed \$200,000 (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. 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 monies borrowed, together with interest and charges thereon, in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person.

23. **THIS COURT ORDERS** that neither the Receiver's Borrowings Charge nor any other security granted by the Receiver in connection with its borrowings under this Order shall be enforced without leave of this Court.

24. **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 amount borrowed by it pursuant to this Order.

25. **THIS COURT ORDERS** that the monies 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.

FREEZE DIRECTION

26. **THIS COURT ORDERS** that all institutions holding funds on deposit to the credit of the Debtor which are subject to the Freeze Direction issued by the Commission with respect to the Debtor on October 29, 2018 are directed to pay all such funds to the Receiver or as the Receiver may otherwise direct in writing. Upon receipt of the funds, the Freeze Direction shall

be vacated pursuant to section 126(1.1) of the *Securities Act* without the need to take any further steps.

SERVICE AND NOTICE

27. **THIS COURT ORDERS** that the E-Service Protocol of the Commercial List (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 <http://www.ontariocourts.ca/scj/practice/practice-directions/toronto/e-service-protocol/>) shall be valid and effective service. Subject to Rule 17.05 of the Rules of Civil Procedure (the “**Rules**”) this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the Rules. Subject to Rule 3.01(d) of the Rules 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.granthornton.ca/moneygate.

28. **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 prepaid ordinary mail, courier, personal delivery or facsimile transmission to the Debtor's creditors or other interested parties at their respective addresses as last shown on the records of the Debtor 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

29. **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.

30. **THIS COURT ORDERS** that nothing in this Order shall prevent the Receiver from acting as a trustee in bankruptcy of the Debtor or as an officer of the Court in any other capacity.

31. **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 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.

32. **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.

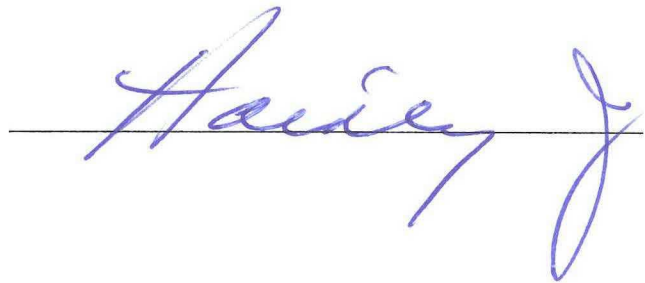
33. **THIS COURT ORDERS** that any interested party may apply to this Court to vary or amend this Order on not less than seven (7) days' notice to the Receiver and to any other party likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

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

NOV 06 2018



PER / PAR:



SCHEDULE "A"

RECEIVER CERTIFICATE

CERTIFICATE NO. _____

AMOUNT \$ _____

1. THIS IS TO CERTIFY that [RECEIVER'S NAME], the receiver (the "Receiver") of the assets, undertakings and properties [DEBTOR'S NAME] acquired for, or used in relation to a business carried on by the Debtor, including all proceeds thereof (collectively, the "Property") appointed by Order of the Ontario Superior Court of Justice (Commercial List) (the "Court") dated the ____ day of _____, 20__ (the "Order") made in an action having Court file number ____-CL-_____, 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 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 _____, 20__.

[RECEIVER'S NAME], solely in its capacity
as Receiver of the Property, and not in its
personal capacity

Per: _____

Name:

Title:

ONTARIO SECURITIES COMMISSION
Applicant

- AND -

MONEY GATE MORTGAGE
INVESTMENT CORPORATION
Respondent
Court File No. CV-18-00608086-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

ORDER
(Application under Sections 126 and 129 of
the *Securities Act*)

Ontario Securities Commission
20 Queen Street West
22nd Floor
Toronto, ON M5H 3S8

Jamie Gibson (LSO 62858O)
Tel: 416-263-3783

Dihim Emami (LSO 57402S)
Tel: 416-596-4253
Fax: 416-593-2319

Counsel for the Ontario Securities
Commission

Court File No. CV-18-00608086-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE MR.

)

Now DAY, THE

JUSTICE HAINEY

)

)

19th DAY OF NOVEMBER, 2018

ONTARIO SECURITIES COMMISSION

Applicant

- and -



MONEY GATE MORTGAGE INVESTMENT CORPORATION

Respondent

APPLICATION UNDER

Sections 126 and 129 of the *Securities Act*, R.S.O. 1990, c. S.5, as amended**ORDER**

(Amending the Receivership Order)

THIS MOTION made by Grant Thornton Limited for an Order amending the Receivership Order of Justice Haineey dated November 6, 2018 (the "**Receivership Order**") was read this day at 330 University Avenue, Toronto, Ontario.

ON READING the consent of counsel for the principals of the Respondent, counsel for certain investors and counsel for the Ontario Securities Commission, filed,

1. **THIS COURT ORDERS** that the Receivership Order is amended by inserting the following paragraph as paragraph 4:

THIS COURT ORDERS that the Receiver may engage as its legal counsel Chaitons LLP, notwithstanding that Chaitons LLP has had an advisory role for the Commission in connection with this proceeding.

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

NOV 19 2018

Doc#4334435v1

PER / PAR:

Court File No. CV-18-00608086-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

ONTARIO SECURITIES COMMISSION

Applicant

- and -

MONEY GATE MORTGAGE INVESTMENT CORPORATION

Respondent

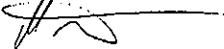
C O N S E N T

THE PARTIES HERETO, by their lawyers, hereby consent to an Order in the form attached hereto.

AND THE PARTIES HERETO, by their lawyers, hereby certify that no party affected by the Order sought is under a disability.

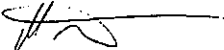
Dated at Toronto, this 15th day of November 2018.

**ONTARIO SECURITIES
COMMISSION**

Per: 

Dated at Toronto, this 15th day of November 2018.

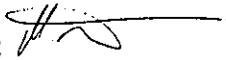
**MORTEZA KATEBIAN and PAYAM
KATEBIAN by their lawyers, GROIA &
COMPANY**

Per: 

Groia & Company

Dated at Toronto, this 15th day of November 2018.

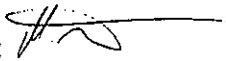
**MORTEZA KATEBIAN and PAYAM
KATEBIAN by their lawyers, BERKOW
YOUSSEF LEV-FARRELL DAS LLP**

Per: 

Berkow Youssef Lev-Farrell Das LLP

Dated at Toronto, this 15th day of November 2018.

**ROMAN TORLO ET. AL. by their
lawyers, LEVINE SHERKIN
BOUSSIDAN LLP**

Per: 

Levine Sherkin Boussidan LLP

ONTARIO SECURITIES COMMISSION

Applicant

- and -

MONEY GATE MORTGAGE INVESTMENT CORPORATION
Respondent
Court File No. CV-18-00608086-00CL

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

Proceedings commenced at TORONTO

CONSENT

CHAITONS LLP
Barristers and Solicitors
5000 Yonge Street, 10th Floor
Toronto, ON M2N 7E9

Harvey Chaiton (LSO #21592F)
Tel: (416) 218-1129
Fax: (416) 218-1849
Email: Harvey@chaitons.com

Maya Poliak (LSO # 54100A)
Tel: (416) 218-1161
Fax: (416) 218-1844
Email: maya@chaitons.com

**Lawyers for the Court-appointed
Receiver, Grant Thornton Limited**

ONTARIO SECURITIES COMMISSION

Applicant

- and -

MONEY GATE MORTGAGE INVESTMENT CORPORATION

Respondent

Court File No. CV-18-00608086-00CL

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

Proceedings commenced at TORONTO

ORDER**CHAITONS LLP**Barristers and Solicitors
5000 Yonge Street, 10th Floor
Toronto, ON M2N 7E9**Harvey Chaiton (LSO #21592F)**Tel: (416) 218-1129
Fax: (416) 218-1849
Email: Harvey@chaitons.com**Maya Poliak (LSO #54100A)**Tel: (416) 218-1161
Fax: (416) 218-1844
Email: maya@chaitons.com**Lawyers for the Court-appointed
Receiver, Grant Thornton Limited**

APPENDIX 2

Court File No.: CV-18-00608086-00CL

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

**IN THE MATTER OF AN APPLICATION PURSUANT TO SECTION 129 OF THE
SECURITIES ACT R.S.O. 1990, c. S.5, AS AMENDED**

B E T W E E N:

ONTARIO SECURITIES COMMISSION

Applicant

- and -

MONEY GATE MORTGAGE INVESTMENT CORPORATION

Respondent

**SECOND REPORT TO THE COURT OF GRANT THORNTON LIMITED IN ITS CAPACITY AS
RECEIVER OF THE RESPONDENTS**

May 9, 2019



Grant Thornton

**Grant Thornton Limited
200 King Street West, 11th Floor
Toronto, Ontario
M5H 3T4**

Court File No.: CV-18-00608086-00CL

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

**IN THE MATTER OF AN APPLICATION PURSUANT TO SECTION 129 OF THE
SECURITIES ACT R.S.O. 1990, c. S.5, AS AMENDED**

B E T W E E N:

ONTARIO SECURITIES COMMISSION

Applicant

- and -

MONEY GATE MORTGAGE INVESTMENT CORPORATION

Respondent

Application under Section 129 of the *Securities Act*, R.S.O. 1990, C.S.5, as amended

**SECOND REPORT TO THE COURT OF GRANT THORNTON LIMITED
IN ITS CAPACITY AS RECEIVER OF THE RESPONDENT**

May 9, 2019

INTRODUCTION

1. This Report is filed by Grant Thornton Limited ("**GTL**") in its capacity as the receiver (the "**Receiver**") over the property, assets and undertakings of Money Gate Mortgage Investment Corporation ("**MGMIC**"). GTL was appointed Receiver on November 6, 2018 on an application of the Ontario Securities Commission (the "**OSC**") pursuant to an order of the Honourable Mr. Justice Hailey, as amended (collectively, the "**Appointment Order**"). as **Appendix "A"**.

2. MGMIC is a mortgage investment corporation that lends money to borrowers, which loans are secured by mortgages, and/or acquires mortgages registered against commercial and residential properties. The current mortgage portfolio of MGMIC involves seven mortgages registered against properties located in the province of Ontario.¹
3. Between August 2014 and April 2017, MGMIC raised approximately \$11 million from approximately 155 investors through the sale of preferred shares of MGMIC. Those investments were pooled and loaned to borrowers on secured basis or were used to acquire an interest in existing mortgages.
4. Another related company, Money Gate Corporation ("**MGC**") operated as a mortgage administrator for MGMIC, servicing the MGMIC mortgages and received a fee in exchange for its services.
5. Morteza Katebian, also known as Ben Katebian ("**Ben**") and Payam Katebian ("**Payam**", and together with Ben, the "**Principals**") were each a director, officer and directing mind of MGMIC and MGC.
6. Detailed background information pertaining to MGMIC's business operations, including the circumstances leading to the appointment of the Receiver, are contained in the affidavit of Louisa Fiorini sworn November 2, 2018 (the "**Fiorini Affidavit**"), filed in support of the receivership application. A copy of the Fiorini Affidavit, without exhibits, is attached hereto as **Appendix "B"**.
7. On November 19, 2018, on an *ex parte* motion made by the Receiver, the Court issued an order (the "**November 19th Order**"), among other things:

¹ A number of these mortgages have been discharged either through a power of sale proceeding or by registration of a vesting order by a receiver appointed to sell these properties. As described in greater detail herein, GTL in its capacity as the Receiver of MGMIC continues to assert a security interest in the proceeds from the sale of those properties.

- (a) compelling Toronto-Dominion Bank and TD Canada Trust (collectively, "**TD**") to freeze and prevent the removal or transfer of monies or assets from accounts held by Ben and 2399029 Ontario Inc. ("**239 Ontario**"), a company owned, directly or indirectly, and controlled by Ben (the "**Principals' Bank Accounts**");
- (b) ordering Ben and 239 Ontario to provide the Receiver with all books, records, documents, papers, and information of any kind whatsoever (the "**Records**") pertaining to the \$1.2 million received with respect to the Birchmount Mortgage (as defined herein); and
- (c) ordering TD to disclose and deliver to the Receiver all Records in the Banks' power, possession or control relating to the Principals' Bank Accounts for the period from and after November 28, 2017.

Copies of the November 19th Order and the corresponding endorsement of Justice Hainey are collectively attached hereto as **Appendix "C"**.

8. In support of the November 19th Order, the Receiver filed its First Report to the Court dated November 18, 2018 (the "**First Report**"), which provided the evidentiary basis for the issuance of the November 19th Order. A copy of the First Report, without appendices, is attached hereto as **Appendix "D"**.

PURPOSE OF THIS SECOND REPORT

9. The purpose of this Second Report is to provide an update on the status of this Receivership Proceeding and to provide the Court with information to support the Receiver's request for an order:
 - (a) approving the First Report, this Second Report, and the conduct and activities of the Receiver, as described therein;

- (b) compelling TD and Royal Bank of Canada (collectively, the "**Banks**") to provide to the Receiver the account statements, and any other documents, cheques or information required by the Receiver pertaining to the bank accounts now and previously held in the name of MGMIC (the "**MGMIC Bank Accounts**") and the Principals' Bank Accounts (collectively, the "**Bank Accounts**"), for the period from and including May 1, 2014;
 - (c) compelling TD to provide to the Receiver the bank account statements of 2546456 Ontario Inc. (the "**Dovercourt Owner**"), the registered owner of the Dovercourt Property (as defined below), together with any other documents, cheques or information required by the Receiver pertaining to the bank account statements of the Dovercourt Owner (the "**Dovercourt Bank Statements**") for the time period from and including November 16, 2016;
 - (d) approving the Receiver's Interim Statement of Receipts and Disbursements for the period from November 5, 2018 to March 31, 2019, attached hereto as **Appendix "E"**;
 - (e) approving the fees and disbursements of the Receiver and Chaitons LLP, legal counsel to the Receiver ("**Chaitons**"), as described herein; and
 - (f) any other relief requested that this Court deems appropriate.
10. The Receiver's activities since its appointment are detailed throughout this Second Report, with specific details of particular activities being described at paragraph 81 of this Report.

RESTRICTIONS AND TERMS OF REFERENCE

11. In preparing this Second Report, the Receiver has relied upon unaudited financial information, MGMIC's books and records, certain financial information, discussions with

the Principals, their counsel, and, and discussions with other parties. The Receiver's work does not constitute an audit or verification of such information for accuracy, completeness or compliance with Generally Accepted Accounting Principles ("**GAAP**") or International Financial Reporting Standards ("**IFRS**"). Accordingly, the Receiver expresses no opinion or other form of assurance pursuant to GAAP or IFRS with respect to such information.

12. This Second Report has been prepared for the use of this Court to provide general information and an update relating to these Receivership Proceedings. Accordingly, the reader is cautioned that this report may not be appropriate for any other purpose.
13. All references to dollars are in Canadian currency unless otherwise noted.
14. Copies of materials filed in these Receivership Proceedings are available on the Receiver's case website at: www.GrantThornton.ca/MoneyGate.

MGMIC MORTGAGE PORTFOLIO

15. As at the date of the Appointment Order, MGMIC held a registered mortgage in the following properties (collectively, the "**Properties**") or a security interest in the proceeds from the sale of some of these properties, (collectively, the "**MGMIC Mortgages**"), all located in Ontario:

Property	Address	First Mortgage	Second Mortgage	Third Mortgage
Timiskaming Property	1107 Lakeshore Rd S. Timiskaming Shores	\$ 435,000	\$ 3,475,000	\$ -
Timmins Property	5355 Highway 101 W. Timmins	2,372,500	-	-
Birchmount Property	4 Birchmount Rd Toronto	-	-	1,600,000
Palace Pier Property	2045 Lakeshore Blvd W. Toronto	765,326	665,000	-
Dovercourt Property	558 Dovercourt Rd Toronto	-	611,000	-

Steeles Property ²	4342 Steeles Ave West Vaughan	-	320,000	-
Euclid Property	293 Euclid Ave Toronto	-	282,500	-
Total		\$ 3,572,826	\$ 5,353,500	\$ 1,600,000

16. With the exception of the mortgage registered against the Euclid Property, the balance of the MGMIC Mortgages matured prior to the date of the Appointment Order.
17. The Receiver understands that the Timiskaming Property, the Timmins Property and the Steeles Property are owned by companies that are owned and/or controlled directly or indirectly by Arash Missaghi ("**Missaghi**"). MGMIC's portion of the Birchmount Mortgage was acquired by it from a company owned and/or controlled, directly or indirectly, by Missaghi.
18. The Palace Pier Property is owned by a company that is owned and/or controlled directly or indirectly by Jonathan Ricci ("**Ricci**") and/or Sai Mohammed whose real name is Mo Jiwani ("**Sai**"). Based on the information reviewed by the Receiver and its counsel in this proceeding, including transcripts from the examination of Ricci in related proceedings, the Receiver understands that during the time period when the majority of the MGMIC Mortgages were obtained, Ricci, Sai, Missaghi and MGMIC, among others, carried on business from the same office location at 25 Mallard Road, Toronto, Ontario and were business partners on a number of transactions involving MGMIC and the Principals.
19. The Euclid Property is owned by companies that are owned and/or controlled directly or indirectly by the Principals. The Dovercourt Property is owned indirectly by Payam and Ricci.

² As described in greater detail herein, the Steeles Property was sold under power of sale prior to the appointment of the Receiver. The transfer is the subject matter of a fraudulent preference or conveyance action commenced by another creditor which held a security interest against the Steeles Property.

THE MGMIC MORTGAGES

The Timiskaming Property

20. The Timiskaming Property consists of a 38-hectare commercial site including a vacant wood panel manufacturing plant and a historic wood waste landfill. On June 19, 2012, Mansteel New Liskeard Inc. ("**Mansteel**"), a company owned and/or controlled directly or indirectly by Missaghi, purchased the Timiskaming Property from Uniboard Canada Inc. ("**Uniboard**") for \$1. Pursuant to the sale agreement between Uniboard and Mansteel, Mansteel agreed to, among other things, assume all environmental obligations relating to the Timiskaming Property and perform certain environmental work (the "**Environmental Work**"). Pursuant to the sale agreement, Uniboard agreed to pay to Mansteel a sum of \$6 million plus applicable taxes (the "**Environmental Fee**") for performing the Environmental Work. The Environmental Fee was comprised of a lump sum of \$3.5 million paid on closing and a sum of \$2.5 million (the "**Escrow Funds**") deposited with an escrow agent. Uniboard takes the position that Mansteel would only be entitled to access the Escrowed Funds if and as Environmental Work was actually performed.
21. In July 2013, Ministry of Environment and Climate Change of Ontario ("**MOECC**") conducted an inspection of the landfill on the Timiskaming Property. On October 23, 2013, the MOECC issued a Provincial Officer's Order requiring Mansteel to perform certain environmental remediation actions and to submit certain written action plans to the MOECC (the "**MOE Order**"). On June 23, 2016, the Ontario Court of Justice issued an order finding Mansteel guilty of the offence and ordered Mansteel to complete remediation work by November 15, 2016. The Receiver is advised by the MOECC that this work was not completed and that contamination of the Mansteel Property is continuing.
22. On December 8, 2017, on a motion made by Mansteel, this Court made an order requiring the escrow agent to pay the sum of \$1,343,054. The Receiver is not aware if the escrow

agent continues to hold the balance of the Escrow Funds and is in the process of investigating same.

23. On July 13, 2016, MGMIC made a loan to Mansteel in the principal amount of \$3,475,000, secured by a second mortgage registered on title against the Timiskaming Property in the principal amount of \$3,475,000 (the "**Second Timiskaming Mortgage**").
24. On August 24, 2016, MGMIC also took an assignment from Canada Capital Corporation ("**CCC**") of the first mortgage registered against title to the Timiskaming Property in the principal amount of \$300,000 (the "**First Timiskaming Mortgage**" and together with the Second Timiskaming Mortgage, the "**Timiskaming Mortgages**") by paying to CCC the sum of \$435,000. The Receiver understands that CCC is also a company owned and/or controlled by Missaghi.
25. A construction lien was registered by James Lathem Excavating Limited against the Timiskaming Property in 2015, prior to the registration of the Second Timiskaming Mortgage, in the amount of \$229,290. A copy of the parcel search in respect of the Timiskaming Property is attached to this Report as **Appendix "F"**.
26. On August 14, 2018, MGMIC commenced a proceeding against, among others, Mansteel for an order appointing a Receiver over, among others, Mansteel by issuing a Notice of Application. MGMIC did not advance its application further prior to the appointment of the Receiver.

Status of the Timiskaming Mortgages

27. The Timiskaming Mortgages have matured and are in default. MGMIC has not received a mortgage payment from Mansteel since July 4, 2017.

28. Since its appointment, the Receiver has engaged in discussions the MOE, Uniboard Canada, and an independent environmental engineer to determine the extent of environmental remediation requirements.
29. As MGMIC holds a mortgage secured by the Timiskaming Property, the Receiver commissioned an independent appraisal of the Timiskaming Property in order to determine whether it will be commercial to undertake further environmental review. The appraisal of the Timiskaming Property has been delayed due to difficulties in physically accessing the property as a result of heavy snowfall since the Receiver's appointment. The Receiver is advised that the appraisal on the Timiskaming Property will be provided in June 2019. The Receiver will provide an update on its course of action with respect to this property after the appraisal has been received and reviewed.

The Birchmount Property

30. The Birchmount Property is a 1.93 acre residential property located in Scarborough overlooking Lake Ontario and has a partially completed 12,900 sq. ft. two-story residential home located on it.
31. On December 1, 2017, MGMIC took an assignment of a 30.1% interest in the third mortgage registered against title to the Birchmount Property in favour of World Finance Corporation ("**WFC**"), a company owned and/or controlled by Missaghi (the "**Birchmount Mortgage**"). At the time of MGMIC's acquisition of a portion of the Birchmount Mortgage, the following mortgages were registered against the Birchmount Property in the following order:
 - (a) a mortgage in favour of Pillar Capital Corporation (another company owned and/or controlled by Missaghi) ("**Pillar**") in the principal amount of \$1.4 million which, until May 5, 2015 was held by Home Trust Company ("**Home Trust**");

- (b) a mortgage in favour of B&M Handelman Investments Ltd. et. al. in the principal amount of \$900,000; ("**B&M Handelman**")
- (c) the Birchmount Mortgage, in the principal amount of \$35,000; and
- (d) a mortgage in favour of Lorraine Barlow and Gilber Barlow (collectively, the "**Barlows**"), who the Receiver understands are the borrower's parents, in the principal amount of \$500,000.

A copy of the parcel search in respect of the Birchmount Property is attached to this Report as **Appendix "G"**.

32. Although the principal amount of the Birchmount Mortgage as reflected by the Birchmount Property title search is \$35,000, at the time of MGMIC's acquisition of the Birchmount Mortgage, it was advised by WFC that the amount owing under the Birchmount Mortgage as at the date of the assignment was approximately \$5.4 million. Approximately \$1.6 million was advanced by MGMIC to WFC for the acquisition of its portion of the Birchmount Mortgage

Status of the Birchmount Mortgage

33. On April 13, 2018, Rosen Goldberg Inc. (the "**Birchmount Receiver**") was appointed as the receiver of the Birchmount Property on an application of B&M Handelman. In June 2018, the Birchmount Receiver sold the Birchmount Property for \$3,450,000 with the approval of the Court.
34. On November 26, 2018, the Birchmount Receiver brought a motion for advice and directions with respect to the distribution of the proceeds from the sale of the Birchmount Property. B&M Handelman took the position on this motion that it was entitled to recover the proceeds ahead of Pillar because the first mortgage against the Birchmount Property had been paid out in full.

35. On November 26, 2018, Justice Dunphy issued Reasons for Decision wherein his Honour concluded that the first mortgage was paid out in full on August 15, 2014 and that the transfer of charge dated May 5, 2015 is a nullity. Accordingly, the Court authorized the Birchmount Receiver to distribute the net proceeds to B&M Handelman up to the full value of the amounts owing to it under its mortgage. Copies of Justice Dunphy's Reasons dated November 26, 2018 and Order dated November 27, 2018 are collectively attached to this Report as **Appendix "H"**.
36. The Birchmount Receiver continues to hold approximately \$1.4 million in net proceeds from the sale of the Birchmount Property (the "**Birchmount Proceeds**").
37. The Birchmount Receiver brought a motion for advice and directions concerning the distribution of the balance of the Birchmount Proceeds.
38. The assignment documents provided to the Receiver by the Principals indicate that MGMIC may have the first right of recovery on its portion of the Birchmount Mortgage ahead of WFC. Counsel for WFC advised the Receiver that some of the documents in its possession are fraudulent and provided alternative copies of these documents which, if authentic, could entitle WFC and MGMIC to share the proceeds payable in connection with the Birchmount Mortgage on *pari passu* basis. In addition, counsel for WFC has advised counsel for the Receiver that it intends to challenge the assignment of a portion of the mortgage to MGMIC.
39. The Receiver also understands that the Barlows intend to challenge the validity of the Birchmount Mortgage and amounts secured by the Birchmount Mortgage.
40. At a case conference before this Court which took place on May 2, 2019, a time table was set for delivery of materials and scheduling of the Birchmount Receiver's motion for advice

and direction. A copy of the Endorsement dated May 2, 2019 is attached as **Appendix "I"**. It is anticipated that this motion will be heard in September 2018.

41. The Receiver engaged in settlement discussions with WFC with respect to the apportionment of the proceeds, if any, payable under the Birchmount Mortgage. These settlement discussions have been put on hold for now until the validity of and the amounts secured by the Birchmount Mortgage is determined by the Court in the receivership of the Birchmount Property.

The Timmins Property

42. The Timmins Property consists of six (6) parcels of vacant land, totaling approximately 195 acres, located south-west of Timmins, Ontario. The Timmins Property is owned by Canadian Land Corporation ("**CLC**"), which the Receiver understands is a company owned and/or controlled directly or indirectly by Missaghi.
43. On March 4, 2016, MGMIC registered a first ranking mortgage in the principal amount of \$2,375,500 against the Timmins Property (the "**Timmins Mortgage**").

Status of the Timmins Mortgage

44. The Timmins Mortgage is currently in default as it matured on March 4, 2018 and MGMIC has not received a mortgage payment from CLC since July 4, 2017.
45. To determine what actions should be undertaken, if any, the Receiver has sought an independent appraisal of the Timmins Property in order to determine whether it will be commercially reasonable to undertake further environmental review.
46. The appraisal of the Timmins Property has been delayed due to difficulties in physically accessing the property as a result of heavy snowfall since the Receiver's appointment. The Receiver has engaged an appraiser who has confirmed that the appraisal on the

Timmins Property will be provided in June 2019. The Receiver will provide an update on its course of action with respect to this property after the appraisal has been received and reviewed.

The Palace Pier Property

47. The Palace Pier Property is a residential condominium located in Toronto, Ontario. On February 10, 2014, the Palace Pier Property was purchased by Atlas Capital Corporation (2013) ("**Atlas**").
48. On August 12, 2015, registered a second mortgage against the Palace Pier Property in the principal amount of \$665,000 (the "**Second Palace Pier Mortgage**"). In September 2018, MGMIC also took an assignment of the first mortgage in the amount of \$765,326 (the "**First Palace Pier Mortgage**" and together with the Second Palace Pier Mortgage, the "**Palace Pier Mortgages**"). Attached as **Appendix "J"** to this Report is the parcel search in respect of the Palace Pier Property.

Status of the Palace Pier Mortgages

49. As at the date of this Second Report, both of the Palace Pier Mortgages have matured.
50. The Second Palace Pier Mortgage is subject to a litigation dispute between MGMIC and the registered owner of the Palace Pier Property (the "**Palace Pier Action**"). Prior to the appointment of the Receiver, MGMIC, as plaintiff brought a summary judgment motion. The motion was adjourned following the appointment of the Receiver to July 18, 2019.

The Dovercourt Property

51. The Dovercourt Property includes a multi-residential building located in Toronto, Ontario. The Dovercourt Property was purchased in 2011 by the Dovercourt Owner, an entity that is 50% owned by Payam and 50% owned by 2496050 Ontario Inc. ("**249**"), a company

owned and/or controlled by Ricci. Based on the transcripts of examination of Ricci and Payam in the Palace Pier Action, the Receiver understands that Ricci has previously acted as legal counsel for MGMIC, the Principals and other related parties. Based on the materials filed by Atlas, the Receiver understands that Ricci is also a shareholder and/or director of Atlas.

52. On June 5, 2017, MGMIC registered a second ranking mortgage against the Dovercourt Property in the principal amount of \$611,000 (the "**Dovercourt Mortgage**"). As at the date of this Report, \$802,791.20 remains owing to MGMIC under the Dovercourt Mortgage.

Status of the Dovercourt Mortgage

53. On July 30, 2018, on application by MGMIC, Ira Smith Trustee & Receiver Inc. (the "**Dovercourt Receiver**") was appointed as receiver over the Dovercourt Property. The Dovercourt Receiver brought a motion before this Court returnable in January 2019 for an order, among other things, approving: (i) the sale of the Dovercourt Property; (ii) a distribution of the net sale proceeds to the first mortgagee up to the full amount owing under the first mortgage; and (iii) distributing the balance of the net sale proceeds to the Receiver.
54. On January 7, 2019, prior to the return of the sale approval motion, counsel for the Dovercourt Receiver and counsel for the Receiver received correspondence from Brian Shiller ("**Shiller**"), 249's and Ricci's counsel, wherein Shiller advised that 249 claims priority over MGMIC to the net proceeds from the sale of the Dovercourt Property for the following reasons:
 - (a) Ricci purchased 50% of the shares in the Dovercourt Owner from Payam pursuant to a share purchase agreement dated May 16, 2017;

- (b) On May 15, 2017, prior to the execution of the shareholder agreement, Payam, in his capacity as the sole shareholder of the Dovercourt Owner allegedly executed a shareholder resolution amending the articles of incorporation of the Dovercourt Owner to restrict its ability to, among other things, encumber the Dovercourt Property without the consent of all shareholders;
- (c) Ricci claims that MGMIC's mortgage was granted without his knowledge and in contravention of the Dovercourt Owner's articles of incorporation.

A copy of Shiller's correspondence is attached to this Report as **Appendix "K"**.

- 55. On January 23, 2019, the Court approved the sale of the Dovercourt Property and a distribution to the first mortgagee up to the full amount owing under their mortgage. The Court also ordered that the balance of the net sale proceeds be paid to the Receiver to be held in trust pending a distribution motion to be brought in this proceeding. Attached to this Report as **Appendix "L"** are copies of the order and endorsement dated January 23, 2019.
- 56. On February 6, 2019, the Receiver received \$391,027 (the "**Dovercourt Funds**") from the Dovercourt Receiver, which represented the first distribution from the proceeds available from the sale of the Dovercourt Property after payment of the fees and disbursements of the Dovercourt Receiver and the amounts owing under the first mortgage. The Receiver anticipates the receipt of a second distribution following the conclusion of the administration by the Dovercourt Receiver, which the Receiver expects will be nominal.
- 57. Counsel for the Receiver is in the process of conducting an investigation with respect to the claims raised by Ricci. To aid the Receiver in its review, the Receiver requires the Dovercourt Bank Statements, to assist it in understanding how the funds advanced by MGMIC were used and disbursed by the Dovercourt Owner.

58. Counsel for the Receiver was advised by the Dovercourt Receiver that they do not have a fulsome record of the Dovercourt Bank Statements. To avoid the duplicate cost of the Dovercourt Receiver taking steps to obtain this information, the Receiver seeks an order of this Court authorizing TD to release the Dovercourt Bank Statements to the Receiver.
59. Once the Receiver completes its investigation into 249's claims, it will bring a motion in this proceeding, on notice to 249, for advice and direction with respect to the distribution of the Dovercourt Funds.
60. Even if the Court finds that MGMIC's mortgage is valid and enforceable and that MGMIC is entitled to the Dovercourt Funds, MGMIC will still suffer a substantial shortfall on its loan to the Dovercourt Owner.

The Steeles Property

61. The Steeles Property includes of a commercial building located in Vaughan, Ontario which was purchased by Enigma Land Ltd. ("**Enigma**"), a company owned and/or controlled directly or indirectly by Missaghi. A copy of the parcel search in respect of the Steeles Property is attached to this Report as **Appendix "M"**.
62. On November 27, 2015, MGMIC and Curah Capital Corporation ("**Curah**") registered a transfer of 86.4% of the second ranking mortgage registered against title to the Steeles Property (the "**Second Steeles Mortgage**"). Pursuant to the transfer, MGMIC acquired 25.8% of the Second Steeles Mortgage. To acquire its portion of the Second Steeles Mortgage, MGMIC advanced \$320,000 to the assignor, which was also a company owned and/or controlled directly or indirectly by Missaghi. \$406,534.93 remains owing to MGMIC under its portion of the Second Steeles Mortgage.
63. Curah's portion of the Second Steeles Mortgage was transferred on October 27, 2016 to 2381438 Ontario Corporation ("**238**").

Status of the Steeles Mortgage

64. In April 2018, MGMIC commenced an enforcement proceeding (the "**MGMIC Steeles Proceeding**") to recover the funds owing under its portion of the Second Steeles Mortgage. Shortly thereafter MGMIC learned that the first mortgagee is trying to sell the Steeles Property under power of sale. Pursuant to an order of this Court dated May 8, 2018, the borrower was required to pay the sum of \$375,000 into Court. A copy of the May 8, 2018 order is attached to this Report as **Appendix "N"**.
65. On August 28, 2018, Justice Hainey made an Endorsement in the MGMIC Steeles Proceeding requiring the first mortgagee, among other things, to pay into Court the full amount of MGMIC's mortgage, plus interest, if the Steeles Property is sold before the return of MGMIC's receivership application on August 20, 2018. A copy of Justice Hainey's Endorsement is attached to this Report as **Appendix "O"**.
66. On September 24, 2018, the Steeles Property was sold by the first under power of sale to another company owned and/or controlled directly or indirectly by Missaghi and \$375,000 was paid into Court in accordance with the Endorsement of Justice Hainey. Shortly after the Steeles Property was sold under power of sale, 238 commenced a new proceeding for an order, among other things, setting aside the sale as a fraudulent preference or conveyance.
67. The Receiver intends to bring a motion for an order releasing the funds paid into Court to it in satisfaction of MGMIC's portion of the Second Steeles Mortgage. The following claims have been asserted to date in connection with these proceeds:
- (a) WFC filed responding materials in MGMIC's enforcement proceeding claiming that MGMIC's portion of the Second Steeles Mortgage was assigned to it; and

(b) In 238's proceeding, the former owner of the Steeles Property filed materials disputing the validity of the assignment of the portions of the Second Steeles Mortgage taken by MGMIC and 238.

68. There is substantial litigation risk in connection with recovery of the funds paid into Court. Even if the Receiver is ultimately successful in having the funds held in Court released to it, due to the expected legal costs associated with litigating these claims, the Receiver anticipates that MGMIC will suffer a shortfall on this loan.

The Euclid Property

69. The Euclid Property is a multi-residential building located in Toronto, Ontario that was purchased by 2450531 Ontario Inc. ("**2450 Ontario**"), an entity owned by Payam Katebian, on March 13, 2015.
70. On September 27, 2016, pursuant to a residential second mortgage agreement between MGMIC and 2450 Ontario dated September 20, 2016, 2450 Ontario granted a second mortgage (the "**Euclid Mortgage**") in favour of MGMIC against the Euclid Property in the amount of \$282,500. The Euclid Mortgage ranks second behind a first mortgage in the amount of approximately \$1,120,000 held by Home Trust Company (the "**Home Trust Mortgage**"). A copy of the parcel search in respect of the Euclid Property is attached to this Report as **Appendix "P"**.

Status of the Euclid Mortgage

71. The Receiver has confirmed that the Home Trust Mortgage is current and in good standing. Prior to the Appointment Order, the Euclid Mortgage was renewed for a six-month period with a maturity date of April 30, 2019. Under the Euclid Mortgage, 2450 Ontario has made the required monthly interest payments for the months of November 2018 through to April 2019.

72. In April 2019, the Receiver was in communication with Payam who has indicated 2450 Ontario's intention to pay out the Euclid Mortgage upon maturity.
73. The Euclid Mortgage matured on April 30, 2019. As at the date of this report, the Euclid Mortgage has not been repaid.
74. The Receiver intends to issue a formal demand to 2450 Ontario requiring full repayment of its loan to 2450 Ontario. In the absence of a full payout, it is the Receiver's intention to commence power of sale proceedings to enforce its mortgage against the Euclid Property.

TRANSACTION REVIEW AND REQUEST FOR BANK ACCOUNT INFORMATION

75. From the review of MGMIC's books and records, the OSC's application record and the examinations of Ricci and the Principals in the Palace Pier Action the Receiver has learned that in a number of cases involving loans to Ricci, Sai, Missaghi and the Principals, the funds advanced by MGMIC and interest and principal payments owing to MGMIC were re-directed to one or more of the Principals' Bank Accounts.
76. Pursuant to the terms of the November 19th Order, this Court ordered TD to release to the Receiver the Principals' Bank Accounts for the time period from and after November 28, 2017. To allow the Receiver to carry out its mandate in this proceeding, the Receiver requires access to MGMIC's and the Principals' Bank Accounts for the time period from and after May 1, 2014, the date on which MGMIC was incorporated.
77. MGMIC opened its bank account with TD on September 7, 2016. Prior to this time period, MGMIC had a bank account with Royal Bank of Canada, which account was closed effective September 22, 2016. The Receiver seeks an order of this Court requiring Royal Bank of Canada to disclose and produce to the Receiver copies of MGMIC's bank account statements together with any other documents, cheques or information required by the Receiver pertaining to these bank accounts.

APPENDIX 3

Court File No.: CV-18-00608086-00CL

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

**IN THE MATTER OF AN APPLICATION PURSUANT TO SECTION 129 OF THE
SECURITIES ACT R.S.O. 1990, c. S.5, AS AMENDED**

B E T W E E N:

ONTARIO SECURITIES COMMISSION

Applicant

- and -

MONEY GATE MORTGAGE INVESTMENT CORPORATION

Respondent

Application under Section 129 of the *Securities Act*, R.S.O. 1990, C.S.5, as amended

**THIRD REPORT TO THE COURT OF GRANT THORNTON LIMITED
IN ITS CAPACITY AS RECEIVER OF THE RESPONDENT**

October 18, 2019

INTRODUCTION

1. This Report is filed by Grant Thornton Limited (“**GTL**”) in its capacity as the Court-appointed receiver (the “**Receiver**”) over the property, assets and undertakings of Money Gate Mortgage Investment Corporation (“**MGMIC**”). GTL was appointed Receiver on November 6, 2018 pursuant to an order of the Honourable Mr. Justice Hainey, as amended (collectively, the “**Appointment Order**”), which was obtained on an application of the Ontario Securities Commission (“**OSC**”) pursuant to section 129 of the *Securities*

Act (Ontario). The circumstances which gave rise to the Receiver's appointment were set out in detail in the Affidavit of Louisa Fiorini sworn November 2, 2018 (the "**Fiorini Affidavit**"). A copy of the Fiorini Affidavit, without exhibits, is attached hereto as **Appendix "A"**.

2. MGMIC carried on business as a mortgage investment corporation that lent money to borrowers, which loans were secured by mortgages, and/or acquired mortgages registered against commercial and residential properties.
3. Between August 2014 and April 2017, MGMIC raised approximately \$11 million from approximately 155 investors through the sale of preferred shares of MGMIC. Those investments were pooled and loaned to borrowers on a secured basis or were used to acquire an interest in existing mortgages. The mortgage portfolio of MGMIC as at the date of the Appointment Order consisted of seven mortgages registered against properties located in the province of Ontario.¹
4. Another related company, Money Gate Corporation ("**MGC**") operated as a mortgage administrator for MGMIC, servicing the MGMIC mortgages and received a fee in exchange for its services.
5. Morteza Katebian, also known as Ben Katebian ("**Ben**") and Payam Katebian ("**Payam**", and together with Ben, the "**Principals**") were each a director, officer and directing mind of MGMIC and MGC.
6. Copies of all materials filed in this receivership proceeding are available on the Receiver's case website at: www.GrantThornton.ca/MoneyGate.

¹ A number of these mortgages have been discharged either through a power of sale proceeding or by registration of a vesting order by a receiver appointed to sell these properties. As previously report to the Court, GTL in its capacity as the Receiver of MGMIC continues to assert a security interest in the proceeds from the sale of those properties.

7. On May 9, 2019, the Receiver filed its second report with the Court (the “**Second Report**”) in support of the Receiver’s motion for, among other things, a Court order compelling certain financial institutions to provide account statements to the Receiver. A copy of the Second Report, without appendices, is attached hereto as **Appendix “B”**.
8. Paragraphs 53 through 60 of the Second Report detail matters related to the Dovercourt Property (as defined below) and the MGMIC Mortgage (as defined below). As set out therein, the Receiver was investigating claims to the Dovercourt Funds (as defined below) and intended to bring a motion for advice and direction with respect to the distribution of the Dovercourt Funds.
9. Pursuant to the endorsement of Justice Penny dated October 2, 2019, the Receiver’s motion for advice and direction is scheduled for January 30, 2020.

PURPOSE OF THIS THIRD REPORT

10. The purpose of this third report to the Court (the “**Third Report**”) is to provide information in connection with the Receiver’s motion for advice and direction with respect to the distribution of the Dovercourt Funds.

RESTRICTIONS AND TERMS OF REFERENCE

11. In preparing this Third Report, the Receiver has relied upon unaudited financial information, MGMIC’s books and records, certain financial information, discussions with the Principals, their counsel, and discussions with other parties. The Receiver’s work does not constitute an audit or verification of such information for accuracy, completeness or compliance with Generally Accepted Accounting Principles (“**GAAP**”) or International Financial Reporting Standards (“**IFRS**”). Accordingly, the Receiver expresses no opinion or other form of assurance pursuant to GAAP or IFRS with respect to such information.
12. All references to dollars are in Canadian currency unless otherwise noted.

254 AND THE DOVERCOURT PROPERTY

13. 2546456 Ontario Inc. ("**254**") is a corporation governed by the laws of the Province of Ontario. 254 was incorporated on November 16, 2016. Payam was the incorporator and first director of 254 based on its articles of incorporation, a copy of which is attached hereto and marked as **Appendix "C"**.
14. Payam was the sole officer and director of 254 when it purchased real property municipally known as 558 Dovercourt Road, Toronto (the "**Dovercourt Property**") on April 3, 2017.
15. 254 financed the purchase of the Dovercourt Property by obtaining \$1.45 million from B&M Handelman Investments Limited *et al* (collectively, the "**First Mortgagee**"), which was secured by a first mortgage registered on title to the Dovercourt Property.

MGMIC MORTGAGE

16. MGMIC and 254 entered into a commitment letter dated May 25, 2017 (the "**Commitment Letter**") whereby MGMIC agreed to loan \$611,000 to 254 to be secured by a second mortgage over the Dovercourt Property. A copy of the Commitment Letter is attached hereto as **Appendix "D"**.
17. The Commitment Letter provides that MGMIC was entitled to a lender fee of 2.00%, which equals \$12,200, and that 254 would have to pay MGMIC its legal and appraisal fees with respect to the loan.
18. On June 5, 2017, a charge/mortgage was registered on title to the Dovercourt Property in the principal amount of \$611,000 in favour of MGMIC as instrument number AT4588484 (the "**MGMIC Mortgage**"). A copy of the MGMIC Mortgage is attached hereto as **Appendix "E"**.
19. Mentis Law Professional Corporation ("**Mentis Law**") represented 254 in connection with the MGMIC Mortgage. On May 29, 2017, MGMIC transferred \$611,000 from its bank

account to the bank account of Mentis Law. A copy of a receipt evidencing the transfer is attached hereto as **Appendix “F”**.

20. As part of this receivership proceeding, the Receiver obtained copies of the bank account statements for MGMIC, 254 and 2399029 Ontario Inc. (“**239**”). The Receiver was advised by Payam that Ben is the sole shareholder of 239. The Receiver also understands that in a different proceeding not involving MGMIC, Arash Missaghi, or parties related to him, are claiming that they are in fact the shareholders or beneficial owners of 239.
21. In a cross examination in a proceeding involving an enforcement of another MGMIC mortgage, Payam gave evidence that for transactions involving Ricci and Sai (each term as defined below), funds to and from MGMIC would flow through 239. Copies of the relevant excerpts from Payam’s cross-examination are attached hereto as **Appendix “G”**.
22. The MGMIC statement confirms that on May 29, 2017 \$611,000 was transferred out of MGMIC’s account. The 254 statement confirms that 254 received \$595,741.26 on May 31, 2017. Additionally, based on a review of the 254 statement and the 239 statement, it appears that 254 transferred the sum of \$475,000 to 239 by June 27, 2017. Copies of the statements for MGMIC, 254 and 239 are respectively attached hereto as **Appendices “H”, “I” and “J”**.
23. The Receiver has not completed a forensic review of the bank account statements or the source of funds. However, it is of the view that the \$595,741.26 was likely transferred by Mentis Law to 254 from the \$611,000 Mentis Law received from MGMIC. The reduced amount is likely on account of the \$12,200 lender fee payable to MGMIC, and payment of MGMIC’s legal and appraisal fees.

DOVERCOURT RECEIVER AND DOVERCOURT FUNDS

24. On July 4, 2018, MGMIC commenced an application for the appointment of a receiver over the Dovercourt Property. On July 30, 2018, Ira Smith Trustee & Receiver Inc. (the **"Dovercourt Receiver"**) was appointed as receiver over the Dovercourt Property pursuant to the Order of the Honourable Mr. Justice Dunphy.
25. On December 21, 2018, the Dovercourt Receiver served a motion record originally returnable January 10, 2019 for, among other things, approval of a sale of the Dovercourt Property and distribution of the net sale proceeds to the First Mortgagee and MGMIC.
26. On January 7, 2019, prior to the return of the sale approval motion, Brian Shiller (**"Shiller"**), as counsel to A13MG and Ricci (each term as defined below) advised in writing that A13MG was advancing a claim to the net proceeds from the sale of the Dovercourt Property in priority to MGMIC. A copy of Shiller's correspondence is attached hereto as **Appendix "K"**.
27. On January 23, 2019, the Court approved the sale of the Dovercourt Property and a distribution to the First Mortgagee up to the full amount owing under their mortgage. The Court also ordered that the balance of the net sale proceeds was to be paid to the Receiver to be held in trust pending a distribution motion to be brought in this proceeding. Copies of the order and endorsement dated January 23, 2019 are collectively attached hereto as **Appendix "L"**.
28. On February 6, 2019, the Receiver received \$391,027 (the **"Dovercourt Funds"**) from the Dovercourt Receiver, which represented the first distribution from the proceeds available from the sale of the Dovercourt Property after payment of the fees and disbursements of the Dovercourt Receiver and the amounts owing under the first mortgage. The Receiver

anticipates the receipt of a second distribution following the conclusion of the administration by the Dovercourt Receiver, which the Receiver expects will be nominal.

29. Based on the Receiver's review of MGMIC's books and records, the Receiver provided a payout statement to the Dovercourt Receiver dated December 12, 2018, claiming \$768,161.45. As a result, even if the Court finds that the MGMIC Mortgage is valid and enforceable and that MGMIC is entitled to the Dovercourt Funds, MGMIC will still suffer a substantial shortfall on its loan to 254.

CLAIMS TO THE DOVERCOURT FUNDS

30. In addition to the claim of MGMIC to the Dovercourt Funds, the Receiver has heard from two additional parties that claim entitlement to the Dovercourt Funds: 2496050 Ontario Corp. doing business as A13MG ("**A13MG**") and Hazelton Homes Inc. ("**Hazelton Homes**").

A13MG

31. A13MG is a corporation governed by the laws of the Province of Ontario that was incorporated on December 14, 2015. The sole director of the company is Jonathane M. Ricci ("**Ricci**"). Based on a Business Name Report, A13MG carried on business as a provider of management consulting services. Copies of the Corporation Profile Report and Business Name Report for A13MG are collectively attached hereto as **Appendix "M"**.
32. As has previously been disclosed to the Court, Ricci is a lawyer and previously represented the Principals, MGMIC and other related parties.
33. A13MG has alleged that it is the owner of 50% of the shares of 254, with Payam owing the other 50% of the shares. The Dovercourt Receiver previously reported to the Court that, based on its review of 254's books and records, Payam was the sole shareholder of 254.

34. On January 28, 2019, A13MG commenced a claim in Toronto against 254, Payam, GTL and Rouzbeh Behrouz² seeking, among other things, a declaration that the MGMIC Mortgage is/was invalid and an order that any funds received by MGMIC with respect to the Dovercourt Property be returned to 254. A copy of the claim is attached hereto as **Appendix “N”**.
35. As set out in the claim, as well as an affidavit sworn by Ricci on February 5, 2019 (the **“Ricci Affidavit”**), A13MG claims that:
- (a) on May 16, 2017, A13MG purchased 50% of the shares from Payam for \$375,000 pursuant to a share purchase agreement (the **“Share Purchase Agreement”**);
 - (b) on May 15, 2017, prior to the execution of the Share Purchase Agreement, Payam, in his capacity as the sole shareholder of 254, executed a shareholder resolution (the **“Resolution”**), amending the articles of incorporation of 254 to restrict its ability to, among other things, borrow money and encumber the Dovercourt Property without the consent of all shareholders; and
 - (c) 254 borrowed funds from MGMIC and granted the MGMIC Mortgage without the consent of A13MG.

Copies of the Ricci Affidavit (without exhibits), the Share Purchase Agreement, and the Resolution are respectively attached hereto as **Appendices “O”, “P”, and “Q”**. Additionally, attached as **Appendix “R”** is a copy of a share certificate issued by 254 in favour of A13MG.

36. A13MG provided a wire activity report dated May 24, 2017 that shows that \$375,000 was transferred from a A13MG bank account to an account in the name of 239.

² Rouzbeh Behrouz is currently the sole office and director of 254 based on the information contained in the records of the Ministry of Government and Consumer Services.

37. A13MG has also provided an Acknowledgement and Direction re Funds dated May 18, 2017 from Curah Capital Corporation ("**Curah**") to A13MG, directing it to use its funds held by A13MG for the \$375,000 share purchase price.
38. In the Ricci Affidavit, Ricci claimed that Curah is a former client of his. Curah is a corporation incorporated under the laws of the Province of Ontario. Its directors are Glenn Estrabillo ("**Glenn**") and Dominik Kawa ("**Dominik**"). A Corporation Profile Report for Curah is attached hereto as **Appendix "S"**.
39. Counsel to Payam has informed the Receiver's counsel in writing that Payam acknowledges that 50% of 254's shares were sold to A13MG and that the \$375,000 was received by Payam. Payam has alleged, through his counsel, that he does not recall signing the Resolution. However, the Receiver has been provided a copy of an e-mail dated May 23, 2017 (the "**E-Mail**") from Payam to Ricci, Ben, Glenn, Sai Mohammad ("**Sai**") and James Destephanis ("**James**") that attached a copy of the Resolution. A copy of the E-mail is attached hereto as **Appendix "T"**.
40. Based on the documentation provided, it appears to the Receiver that A13MG is the 50% shareholder of 254, and the Resolution amending 254's articles of incorporation was signed by Payam.
41. The issue that remains to be determined is whether A13MG had knowledge of and consented to the granting of the MGMIC Mortgage by 254 to MGMIC.
42. The E-Mail attached as **Appendix "R"** contains a trail of e-mails sent from May 1 and 23, 2017. The individuals that were party to the exchanges were the Principals, Ricci, James, Glenn, and Sai.
43. The Receiver understands that Ricci, James, Glenn, Sai, and Dominik, along with Arash Missaghi, are affiliated with 1 Plus 12 Corporation ("**1 Plus 12**"), an international

investment training company. On April 5, 2019, the Financial Services Commission of Ontario (“FSCO”) set out a warning to consumers that 1 Plus 12 was not a licensed mortgage broker and that the individuals were not licensed to conduct mortgage business in Ontario. The warning also notes that the Peel Regional Police were investigating the matter. A copy of the FSCO warning is attached hereto as **Appendix “U”**. A copy of a Corporation Profile Report for 1 Plus 12 Corporation is attached hereto as **Appendix “V”**.

44. Based on a review of the e-mails, it appears that 1 Plus 12 / Curah funded A13MG’s share purchase and potentially may be the direct or beneficial owner of A13MG.
45. In an email dated May 19, 2017, James proposed that after the investment of \$375,000, 254 would apply for a second mortgage, and a portion of the financing would be used to repay 1 Plus 12 its \$375,000 investment in 254. In a subsequent e-mail, Ricci asked Payam to confirm that this was acceptable, and on that same day Payam confirmed this by reply e-mail.
46. In a subsequent e-mail dated May 23, 2017, Ricci asked Payam to provide details on the second mortgage, and who would be representing the lender on the mortgage. Payam replied that Fred Yack from Yack and Associates would be representing the lender.
47. In e-mails dated June 1, 2017, which were provided to the Receiver by Payam’s counsel, James raised the issue of getting the second mortgage and Payam informed the parties that “I’ll get working on the 2nd”. Copies of the e-mails are collectively attached hereto as **Appendix “W”**.
48. Payam’s counsel also provided an e-mail dated September 7, 2017 from Ricci to the parties that included an email and text messages about the possibility of 254 granting a third mortgage over the Dovercourt Property. A copy of the email is attached hereto as **Appendix “X”**.

49. Based on its review of the above-noted emails, it appears to the Receiver that Ricci and A13MG were aware of and supported 254 borrowing funds and granting a second mortgage over the Dovercourt Property.

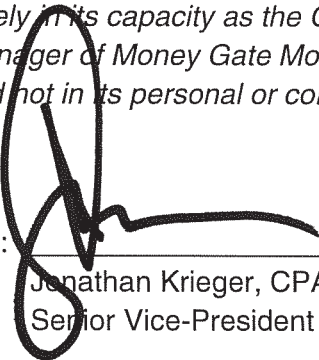
Hazelton Homes

50. The Receiver's counsel has been informed by James Zibarras that he represents Hazelton Homes, and that it intends to make a claim to the Dovercourt Funds. Notwithstanding multiple requests for information regarding the claim, Mr. Zibarras has not provided any description of the claim, nor any documentation, to date. Mr. Zibarras has confirmed that Hazelton Homes will be filing materials in connection with the Receiver's motion for advice and direction.
51. As a result, the Receiver is not in a position at this time to comment on any claim Hazelton Homes may be asserting to the Dovercourt Funds.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 18th day of October 2019.

GRANT THORNTON LIMITED,

*solely in its capacity as the Court-appointed receiver and
manager of Money Gate Mortgage Investment Corporation
and not in its personal or corporate capacity*

Per: 

Jonathan Krieger, CPA, CA, CIRP, LIT
Senior Vice-President

APPENDIX 4

Court File No.: CV-18-00608086-00CL

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

**IN THE MATTER OF AN APPLICATION PURSUANT TO SECTION 129 OF THE
SECURITIES ACT R.S.O. 1990, c. S.5, AS AMENDED**

B E T W E E N:

ONTARIO SECURITIES COMMISSION

Applicant

- and -

MONEY GATE MORTGAGE INVESTMENT CORPORATION

Respondent

Application under Section 129 of the *Securities Act*, R.S.O. 1990, C.S.5, as amended

**SUPPLEMENT TO THE THIRD REPORT TO THE COURT OF GRANT THORNTON LIMITED
IN ITS CAPACITY AS RECEIVER OF THE RESPONDENT**

January 23, 2020

INTRODUCTION AND PURPOSE OF THIS REPORT

1. This Report is filed by Grant Thornton Limited in its capacity as the Court-appointed receiver over the property, assets and undertakings of Money Gate Mortgage Investment Corporation. This report is a supplement to the Third Report of the Receiver dated October 28, 2019 (the “**Third Report**”). Capitalized terms used and not otherwise defined herein shall have the meanings ascribed to such terms in the Third Report.

2. The purpose of this supplement to the Third Report (the “**Supplemental Report**”) is to provide additional information in connection with the Receiver’s motion for advice and direction with respect to the distribution of the Dovercourt Funds.

RESTRICTIONS AND TERMS OF REFERENCE

3. In preparing this Supplemental Report, the Receiver has relied upon unaudited financial information, MGMIC’s books and records, certain financial information, discussions with the Principals, their counsel, and discussions with other parties. The Receiver’s work does not constitute an audit or verification of such information for accuracy, completeness or compliance with GAAP or IFRS. Accordingly, the Receiver expresses no opinion or other form of assurance pursuant to GAAP or IFRS with respect to such information.
4. All references to dollars are in Canadian currency unless otherwise noted.

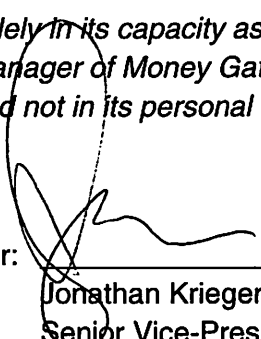
DOVERCOURT FUNDS

5. As noted in paragraph 28 of the Third Report, the Receiver had received \$391,027 from the Dovercourt Receiver as a first distribution with respect to the sale of the Dovercourt Property.
6. The Receiver understood from the Dovercourt Receiver that the second distribution could be nominal as the Dovercourt Receiver was holding back significant proceeds as a complete reconciliation was not finalized at the time of the first distribution.
7. The Receiver received \$165,051.59 from the Dovercourt Receiver as a final distribution pursuant to a Court order dated June 12, 2019. The Receiver understands that the Dovercourt Receiver has been discharged. As a result, as of the date hereof, the Receiver has received \$556,078.73 with respect to the sale of the Dovercourt Property.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 23rd day of January, 2020.

GRANT THORNTON LIMITED,

*solely in its capacity as the Court-appointed receiver and
manager of Money Gate Mortgage Investment Corporation
and not in its personal or corporate capacity*

Per: 

Jonathan Krieger, CPA, CA, CIRP, LIT
Senior Vice-President

APPENDIX 5



Ontario
Securities
Commission

Commission des
valeurs mobilières
de l'Ontario

22nd Floor
20 Queen Street West
Toronto ON M5H 3S8

22e étage
20, rue Queen Ouest
Toronto ON M5H 3S8

Citation: Money Gate Mortgage Investment Corporation (Re), 2019 ONSEC 40
Date: 2019-12-17
File No. 2017-79

**IN THE MATTER OF
MONEY GATE MORTGAGE INVESTMENT CORPORATION,
MONEY GATE CORP., MORTEZA KATEBIAN
and PAYAM KATEBIAN**

**REASONS AND DECISION
(Subsection 127(1) of the *Securities Act*, RSO 1990, c S.5)**

Hearing: January 7, 9, 10, 11, 14, 15, 16; February 25; March 4, 6, 7, 8; May 10, 14, 15; June 27, 28, 2019

Decision: December 17, 2019

Panel:	Timothy Moseley M. Cecilia Williams Lawrence P. Haber	Vice-Chair and Chair of the Panel Commissioner Commissioner
---------------	---	---

Appearances:	Jamie Gibson Dihim Emami	For Staff of the Commission
	James Camp Anisah Hassan	For Money Gate Corp., Morteza Katebian and Payam Katebian
	No one appearing for Money Gate Mortgage Investment Corporation	

TABLE OF CONTENTS

I.	OVERVIEW	1
II.	BACKGROUND.....	1
	A. MGC.....	1
	B. MGMIC	2
	C. Ben Katebian.....	2
	D. Payam Katebian.....	3
	E. 1PLUS12 and Undisclosed Principals.....	3
III.	PRELIMINARY MATTERS	4
	A. Temporary orders	4
	B. The respondents' participation in this proceeding	4
	C. Motion for adjournment of the merits hearing	4
	1. Overview of the adjournment motion.....	4
	2. History of the proceeding.....	5
	3. Analysis	7
IV.	ANALYSIS.....	8
	A. Issues	8
	B. Evidentiary Matters	9
	1. Standard of proof	9
	2. Hearsay	9
	3. Adverse inference against Ben.....	9
	4. Witnesses' credibility and reliability	10
	(a) Introduction	10
	(b) Ms. Ghaffari's involvement in approving loans	11
	(c) Whether Messrs. Missaghi and Mohammed exercised some control over MGMIC	13
	(d) Conclusion as to Ms. Ghaffari's and Payam's credibility and reliability.....	15
	(e) Investors	15
	5. Weight to be attributed to Payam's undisclosed evidence.....	16
	(a) Introduction	16
	(b) Analysis of the general principles.....	17
	6. Staff's expert witness, Mr. Philippe Hébert.....	18
	C. Did the respondents engage in, or hold themselves out as engaging in, the business of trading in securities?.....	19
	1. Introduction.....	19
	2. Business trigger	19
	(a) The test.....	19
	(b) Trading with repetition, regularity, continuity	20
	(c) Directly and indirectly soliciting securities transactions	21

(d)	Being, or expecting to be, remunerated or compensated for trading	22
(e)	Engaging in activities similar to those of a registrant	22
3.	Overall nature of MGMIC's business.....	23
4.	Conclusion as to whether MGMIC, Ben and Payam engaged in the business of trading in securities	23
D.	In distributing the preferred shares of MGMIC without a prospectus, were the respondents entitled to rely on an exemption from the prospectus requirement? In particular, can they rely on the (i) private issuer, (ii) minimum amount, (iii) accredited investor, and/or (iv) friends, family and business associates exemptions?	24
1.	Introduction.....	24
2.	Private issuer exemption.....	25
3.	Friends, family and business associates exemption	25
4.	Accredited investor exemption.....	27
5.	Minimum amount exemption	27
6.	Legal advice defence	28
7.	Conclusion as to distributions without a prospectus	28
E.	Did the respondents engage in or participate in acts, practices, or courses of conduct relating to securities that they knew or reasonably ought to have known perpetrated a fraud?	28
1.	Introduction.....	28
2.	Need for expert evidence	30
3.	Analysis	31
(a)	Law regarding fraud.....	31
(b)	Fraud effected by way of false or misleading statements in promotional materials and in MGMIC's offering memoranda	32
(c)	Failure to disclose the true nature of MGMIC's operations, controls and processes.....	34
i.	Failure to fulfill the mandate of MGMIC's Credit Committee	34
ii.	Failure to fulfill the mandate of MGMIC's Investment Committee.....	35
iii.	Failure to qualify as a MIC under the Income Tax Act	37
iv.	Failure to properly disclose who had control of MGMIC	37
(d)	Failure to abide by MGMIC's lending parameters, policies and restrictions.....	38
i.	Undisclosed investments in third mortgages.....	38
ii.	Investments in mortgages that exceeded the self-imposed limitations on size and concentration ..	39
iii.	Investing in imprudent mortgages, including mortgages in excess of appraised values, and loan-to-value ratios exceeding maxima	40
(e)	Diverting loan advances to the benefit of the respondents or companies under their control	44

- i. The Temiskaming property: Diversion of \$435,196 to Ben’s Numbered Company44
 - ii. The Birchmount property: Diversion of \$1.1 million to Ben.....45
 - 4. Conclusion regarding Staff’s fraud allegations46
- V. CONCLUSION.....47

REASONS AND DECISION

I. OVERVIEW

- [1] From August 2014 to December 2017 (the **Material Time**), Morteza (“Ben”) Katebian (**Ben**) and his son Payam Katebian (**Payam**)¹ raised over \$10 million from more than 150 investors, by continuously selling preferred shares in Money Gate Mortgage Investment Corporation (**MGMIC**).
- [2] Staff of the Commission (**Staff**) alleges that through these activities, among other things:
 - a. MGMIC, Ben and Payam, along with Money Gate Corporation (**MGC**), a related mortgage brokerage firm, engaged in the business of trading in MGMIC’s securities, without being registered to do so;
 - b. all four respondents (MGMIC, Ben, Payam and MGC) effected illegal distributions of those securities, since MGMIC did not file a prospectus, and MGMIC was not entitled to any exemption from the prospectus requirements; and
 - c. all four respondents defrauded MGMIC’s investors, by knowingly deploying the raised funds in a manner that was inconsistent with the commitments MGMIC had made to those investors, and by diverting some of those funds instead to Ben, Payam, or entities controlled by or associated with them.
- [3] For the reasons set out below, we find that MGMIC, Ben and Payam were engaged in the business of trading in securities, and that they effected illegal distributions of MGMIC’s securities. We also find that all four respondents improperly put investors’ funds at risk and ultimately caused investor losses by, among other things:
 - a. failing to disclose the considerable influence of two individuals over MGMIC’s business;
 - b. failing to comply with promised procedures regarding the management of conflicts of interest;
 - c. failing to comply with promised lending criteria, and making lending decisions that were imprudent for other reasons; and
 - d. improperly diverting loan advances.

II. BACKGROUND

A. MGC

- [4] MGC was founded by Bita Ghaffari, who is not a respondent in this proceeding and whom Staff called as a witness.
- [5] MGC was federally incorporated in 2007. MGC was licensed as a mortgage brokerage firm in 2008. At that time, Ms. Ghaffari operated the brokerage on her own and acted as its principal broker.

¹ Throughout these reasons, we refer to Messrs. Katebian by their first names, solely for convenience in distinguishing between them. We mean no disrespect in doing so.

- [6] The primary business of MGC was mortgage origination, which included soliciting borrowers and helping them obtain mortgages, usually from a financial institution such as a bank. MGC also brokered mortgages for its own pool of private lenders. Under this model, the private lender remained in control of their own funds and made their own investment and loan decisions with MGC's advice.
- [7] In 2011, Ms. Ghaffari and Ben, who at the time was operating his own mortgage brokerage business, agreed to conduct business together, as co-brokerages. In 2012, they decided to merge the brokerages, operating the combined business under the MGC name. Ben became a director of MGC. Ms. Ghaffari remained the principal broker until she left MGC in 2016.
- [8] MGC has never been registered with the Commission.

B. MGMIC

- [9] MGMIC was incorporated in Ontario in May 2014 with Ben, Payam and Ms. Ghaffari as its directors. Ben was appointed as president, with Payam as secretary, and Ms. Ghaffari as treasurer.
- [10] MGMIC has never been registered with the Commission and is not a reporting issuer.
- [11] Beginning in August 2014, MGMIC acted as a private lender, using a pool of funds generated by sales of its preferred shares. MGMIC issued offering memoranda in which MGMIC committed to invest the funds in a portfolio of residential and commercial mortgage loans to borrowers in market segments that were typically underserved by large financial institutions.
- [12] MGMIC operated out of the same office space as MGC. MGC acted as the broker for every mortgage loan advanced by MGMIC, and it provided related services to MGMIC. MGC also paid most of MGMIC's operating expenses.

C. Ben Katebian

- [13] Ben was present for portions of the merits hearing, but he did not testify.
- [14] Ben became a director of MGC when the brokerages merged in 2012. In 2014, he became MGC's chief executive officer (**CEO**). He was a licensed mortgage broker of MGC. When Ms. Ghaffari left MGC in 2016, Ben became MGC's principal broker.
- [15] When MGMIC was incorporated in 2014, Ben became one of its directors as well as its president and CEO. He was involved in investor relations, he met with potential investors and sources who could refer investors, he produced promotional materials for MGMIC, and he made lending decisions on behalf of MGMIC.
- [16] MGMIC's offering memoranda stated that Ben was a member of MGMIC's Credit Committee and its Investment Committee throughout the Material Time.
- [17] Apart from his involvement with MGC and MGMIC, Ben also owned 2399029 Ontario Inc. (**Ben's Numbered Company**).
- [18] Ben has never been registered with the Commission.

D. Payam Katebian

- [19] Payam is Ben's son. Payam graduated from York University's Business Administration program and Seneca College's Financial Services Underwriting program. He completed additional education in order to become a licensed mortgage agent.
- [20] In the summer of 2012, Payam began working at MGC as Ms. Ghaffari's assistant. At the time, he had no experience in mortgage lending.
- [21] When MGMIC was incorporated in 2014, Payam was appointed as its secretary and as a director. According to MGMIC's offering memoranda, he was also MGMIC's chief operating officer and operations manager for the administration division of MGC.
- [22] By 2015, Payam was no longer acting as Ms. Ghaffari's assistant. By no later than May 2016, Payam was MGMIC's treasurer (according to a government filing) and a member of its Credit Committee and Investment Committee (according to MGMIC's offering memorandum).
- [23] In addition to his roles at MGC and MGMIC, Payam was associated with two numbered companies:
 - a. 2450531 Ontario Ltd. (**245 Ltd.**), of which Payam was the manager and a 50% shareholder; and
 - b. 2546456 Ontario Inc. (**254 Inc.**), of which Payam was a director and the president, treasurer and secretary.
- [24] Payam has never been registered with the Commission.

E. 1PLUS12 and Undisclosed Principals

- [25] Staff alleges that over the Material Time, two individuals became undisclosed principals of MGMIC.
- [26] The first is Arash Missaghi, whose connection to MGMIC originated as a result of Ben's prior business relationship with Mr. Missaghi's father beginning in 1989.
- [27] Mr. Missaghi has been an undischarged bankrupt since April 2000. He is therefore disqualified from being a director of an Ontario corporation.² Notwithstanding that disqualification, Mr. Missaghi was a registered director of many corporations, including many of MGMIC's borrowers.
- [28] Mr. Missaghi had office space in a building, some of which he sublet to MGC and MGMIC.
- [29] The second alleged undisclosed principal is Mohamed Moshin Jiwani, who has used the alias Sai Mohammed since 2001, around the time that he became an undischarged bankrupt.
- [30] Ben and Payam met Mr. Mohammed through an organization known as 1PLUS12. The formal structure of 1PLUS12, if it had one, was not clear, but the evidence establishes that 1PLUS12 brought together individuals who were interested in investing in real estate. The organization's name appears to derive from the fact that it was a collection of investment groups, each of which had twelve investors

² *Business Corporations Act*, RSO 1990, c B.16, s 118(1)4

and one “influencer”. Payam testified that about 75% of MGMIC’s investors came from 1PLUS12.

III. PRELIMINARY MATTERS

[31] Before we begin our analysis of the issues in this proceeding, we address three preliminary matters:

- a. a temporary order issued in April 2017;
- b. the respondents’ participation in the merits hearing; and
- c. a motion brought by Ben, Payam and MGC for an adjournment of the merits hearing, which motion we dismissed with reasons to follow.

A. Temporary orders

[32] On April 27, 2017, the Commission issued a temporary order (the **Temporary Order**), which provided that all trading in securities of MGMIC cease, and that any exemptions contained in Ontario securities law would not apply to any of the four respondents, except that Ben and Payam could rely on exemptions in order to purchase securities in their personal capacities.

[33] The portion of the Temporary Order that denied the use of exemptions expired on July 4, 2017.

[34] The portion of the Temporary Order that cease traded securities of MGMIC was extended several times, with the last extension being on January 11, 2018, until the conclusion of the merits hearing. Staff did not seek a further extension. Therefore, as this decision and these reasons conclude the merits hearing, the Temporary Order expires on its own terms, effective the date of issuance of these reasons (*i.e.*, December 17, 2019).

B. The respondents’ participation in this proceeding

[35] On November 6, 2018, while this proceeding was underway but before the merits hearing began, the Superior Court of Justice issued an order appointing a receiver over MGMIC. As of December 3, 2018, MGMIC withdrew from active participation in this proceeding. It did so having been advised by Staff that Staff did not intend to seek any monetary sanctions against MGMIC.

[36] The three remaining respondents (Ben, Payam and MGC) appeared at the merits hearing with counsel. We refer to them as the **Remaining Respondents**.

C. Motion for adjournment of the merits hearing

1. Overview of the adjournment motion

[37] The merits hearing was scheduled to begin on January 7, 2019. On January 3, 2019, two business days before the hearing, the Remaining Respondents filed a motion seeking an adjournment. They asked that the merits hearing begin on February 25, 2019, seven weeks after its scheduled start, because they had recently retained new counsel.

[38] After hearing submissions from Staff and from the Remaining Respondents, we dismissed the motion. We advised that our reasons for that decision would be included in our reasons at the conclusion of the merits hearing. The following are our reasons.

2. History of the proceeding

- [39] Staff filed its original Statement of Allegations on December 19, 2017. A Notice of Hearing was issued on December 21, 2017, fixing January 11, 2018, as the date for the first attendance. At that hearing, and at second and third attendances on May 9 and July 6, 2018, counsel from the firm of Groia & Company appeared on behalf of all four respondents. At the third attendance, on consent of all parties the Commission ordered that the merits hearing would begin on November 15, 2018, and would conclude on January 11, 2019.
- [40] On September 5, 2018, Mr. Richard of Groia & Company, counsel for the four respondents, wrote to the Registrar to advise that at the time the merits hearing dates were set, he had been unaware that one of the individual respondents would be out of the country in November. The respondents therefore requested that the merits hearing be adjourned to accommodate that absence. With Staff's consent, the Commission granted the requested adjournment. The revised schedule contemplated 23 hearing days, and called for the hearing to begin on December 3, 2018, and to conclude on January 30, 2019.
- [41] The next preliminary attendance took place on October 16, 2018. At that time, Staff advised the Commission that the previous day it had served the respondents with proposed amendments to the Statement of Allegations. The Commission ordered that a motion be heard on October 31, 2018, at which time consideration would be given as to whether the proposed amendments would necessitate an adjournment of the merits hearing.
- [42] At the hearing of the motion on October 31, 2018, the respondents did not object to Staff's proposed amendments to the Statement of Allegations. Staff advised, however, that:
- a. it had obtained a direction under s. 126(1) of the *Securities Act*³ (the **Act**), freezing the bank account held by MGMIC, and that Staff would apply to the Superior Court of Justice for a continuation of that freeze direction;
 - b. it had brought an application in the Superior Court of Justice for the appointment of a receiver over the respondent MGMIC; and
 - c. Staff had not yet provided full disclosure to the respondents, since Staff was still awaiting the production from a third party of banking documents that might be relevant to the new allegations, and Staff was uncertain as to when those documents would be produced.
- [43] Counsel for the respondents advised that he had been planning to ask for an adjournment of the hearing on the merits from December 3, 2018, to January 7, 2019, as a result of Staff's amendments to the Statement of Allegations. As he correctly observed, though, he would be unlikely to continue as counsel for MGMIC if Staff were to be successful in having a receiver appointed. In his submission, the uncertainty regarding who would be able to speak on behalf of MGMIC, and the freezing of MGMIC's funds, also warranted an adjournment of the hearing.

³ RSO 1990, c S.5

- [44] After hearing submissions, the Commission ordered that the hearing take place over 25 hearing days beginning on January 7, 2019, and concluding on May 10, 2019. The Commission also ordered that an interlocutory attendance be held on December 3, 2018.
- [45] At the interlocutory attendance on December 3, 2018, the parties advised that on November 6, 2018, the Superior Court of Justice had appointed a receiver over MGMIC. The receiver's counsel, who was present at the hearing, advised that in light of Staff's representation that Staff would not be seeking monetary sanctions or costs against MGMIC, the receiver would not further participate in the proceeding. The Remaining Respondents continued to be represented by Mr. Richard of Groia & Company.
- [46] Staff confirmed at that time that it had completed disclosure, and that it was ready to proceed with the hearing on January 7, 2019, as scheduled.
- [47] Staff also advised that on December 2, 2018, the day before the interlocutory attendance, Staff had received an email from Mr. Richard, advising that his firm may be withdrawing as counsel of record. In addressing this issue at the interlocutory attendance, Mr. Richard advised that "we are not retained to do the hearing." Mr. Richard identified several possible scenarios, one of which was that the Remaining Respondents would be self-represented during the hearing but that some counsel, possibly but not necessarily Mr. Richard's firm, would have a limited retainer to assist with part of the hearing.
- [48] Staff acknowledged that it had no direct interest in the question of whether the Remaining Respondents would be represented, and if so, by whom. Staff's primary concern was that the hearing should proceed as scheduled.
- [49] On December 5, 2018, two days following that attendance, the Remaining Respondents formally advised that they no longer had counsel and that they would be self-represented, with Ben representing MGC.
- [50] On December 28, 2018, the Remaining Respondents formally advised that they would be represented by new counsel, Mr. Camp. In the afternoon of Thursday, January 3, 2019, with the merits hearing scheduled to begin on the following Monday, the Remaining Respondents filed a motion requesting that the hearing be adjourned and that it commence on February 25, 2019.
- [51] In bringing the motion, the Remaining Respondents cited the complexity of this matter, the extensive evidentiary record, and the potentially serious consequences. The Remaining Respondents relied on Payam's affidavit, which:
- a. requested the adjournment "to allow our newly retained lawyer time to prepare so that we can fairly respond to Staff's allegations"; and
 - b. indicated that the Remaining Respondents had decided as of December 5, 2018, to represent themselves, believing that they could do so adequately, but then in mid-December came to the realization that they required the assistance of legal counsel.

3. Analysis

- [52] Rule 29(1) of the *Ontario Securities Commission Rules of Procedure (Rules)*⁴ provides that every merits hearing shall proceed on the scheduled date unless the party requesting an adjournment “satisfies the Panel that there are exceptional circumstances requiring an adjournment.”
- [53] The requirement for “exceptional circumstances” was introduced in the new Rules in 2017. The former rules of procedure⁵ set out, in Rule 9, the procedure for requesting an adjournment and factors to be considered by a Panel in making its decision. The former rule did not prescribe a standard that a requesting party had to meet.
- [54] As the Commission has previously held, the new standard is a “high bar”⁶ that reflects the important objective set out in current Rule 1, that Commission proceedings be “conducted in a just, expeditious and cost-effective manner.” This objective must be balanced against parties’ ability to participate meaningfully in the hearing and to present their case. A determination as to whether an adjournment should be granted is necessarily fact-based, and will include consideration of, among other things, how the requesting parties have conducted themselves in the case.⁷
- [55] We begin our analysis of the circumstances in this case by noting that the merits hearing had already been adjourned twice. The first adjournment was for two and a half weeks due to miscommunication between the respondents and their prior counsel. The second adjournment was for approximately one month due primarily to the appointment of a receiver over MGMIC.
- [56] In our view, both of these adjournments are neutral factors with respect to the Remaining Respondents’ current adjournment request. While the first adjournment was attributable entirely to the respondents, it was for a relatively short time, and its effects were rendered moot by the second adjournment. The second adjournment was attributable to the appointment of a receiver, the freezing of funds, and the amendment of the Statement of Allegations. All of those were actions taken by Staff, so the second adjournment ought not to be held against the Remaining Respondents when their current adjournment request is considered.
- [57] The firm of Groia & Company was counsel of record for the respondents from the first appearance in January 2018. It was not until December 2018 that there was any suggestion that the firm might not appear for the Remaining Respondents at the merits hearing. At the interlocutory attendance on December 3, 2018, Mr. Richard held open the possibility that his firm might appear but in a limited capacity.
- [58] The Remaining Respondents have offered no reason for their decision, effected two days later, to appear on their own behalf. Similarly, they have offered no reason for their decision, once they changed their mind and realized they needed legal assistance after all, to retain new counsel instead of reappointing Groia & Company. While a party’s relationship with its counsel is generally protected by

⁴ (2017) 40 OSCB 8988 (the **Rules**)

⁵ (2014) 37 OSCB 4168

⁶ *Pro-Financial Asset Management Inc (Re)*, 2018 ONSEC 18, (2018) 41 OSCB 3512 at para 28

⁷ *Cheng (Re)*, 2018 ONSEC 13, (2018) 41 OSCB 2359 at paras 5-6

solicitor-client privilege, and while a party is generally entitled to choose its counsel without any obligation to explain its choice, that rule cannot apply when the party seeks to rely on a change of counsel to justify an adjournment request. In those circumstances, the party opens itself to inquiry as to the reason for its choice and as to why that reason constitutes exceptional circumstances.

- [59] In this case, it is reasonable to assume, absent any evidence to the contrary, that if the Remaining Respondents had reappointed Groia & Company in mid-December when they realized they needed counsel (no more than two weeks after they decided to appear on their own behalf), no adjournment would have been required. Groia & Company had carriage of the matter from the beginning, and it was the change in counsel that the Remaining Respondents submitted was the reason they needed an adjournment.
- [60] These circumstances therefore cried out for an explanation. The Remaining Respondents did not offer an explanation; nor did they explain why none was offered.
- [61] We acknowledge the possibility that even if the Remaining Respondents had wanted to reappoint Groia & Company at that time, Groia & Company might not have been prepared to act, for any number of reasons. However, the Remaining Respondents made no such suggestion, and we therefore have no basis to conclude that the Remaining Respondents were unable to continue with their previous counsel.
- [62] We accept that because of the timing of Mr. Camp's retainer, he found himself in a difficult situation due to circumstances beyond his control. We accept that he had less time to prepare for the hearing than he and the Remaining Respondents would have preferred. However, we reject the Remaining Respondents' submission that denying them the requested adjournment would prevent them from meaningfully exercising their right to counsel. They had the counsel of their choosing throughout the proceeding. They appointed new counsel, without explaining why that was necessary, or even if it was necessary. That is their choice, but having made that choice they cannot complain that the cause of their new counsel's difficulties lies elsewhere.
- [63] It is important that proceedings such as this one advance expeditiously. To accede to the Remaining Respondents' position would permit respondents to manipulate the process by delaying hearings without having to justify doing so. Such a result is precisely what Rule 29 seeks to avoid and would be contrary to the public interest.
- [64] In our view, the Remaining Respondents failed to demonstrate any "exceptional circumstances" that might warrant a further adjournment of the merits hearing. For that reason, we dismissed their request.

IV. ANALYSIS

A. Issues

- [65] Staff's allegations present the following three principal issues:
 - a. Did the respondents engage in, or hold themselves out as engaging in, the business of trading in securities?

- b. In distributing the preferred shares of MGMIC without a prospectus, were the respondents entitled to rely on an exemption from the prospectus requirement? In particular, can they rely on the (i) private issuer, (ii) minimum amount, (iii) accredited investor, and/or (iv) friends, family and business associates exemptions?
 - c. Did the respondents engage in or participate in acts, practices, or courses of conduct relating to securities that they knew or reasonably ought to have known perpetrated a fraud?
- [66] Before turning to our analysis of each of those issues, we consider several evidentiary questions that apply to our analysis generally.

B. Evidentiary Matters

1. Standard of proof

- [67] The standard of proof applicable to Commission proceedings is the balance of probabilities. Staff must prove, based on clear, convincing and cogent evidence, that it is more likely than not that the alleged events occurred.⁸

2. Hearsay

- [68] Section 15 of the *Statutory Powers Procedure Act (SPPA)*,⁹ which applies to proceedings before the Commission, provides that a panel may admit as evidence any relevant oral testimony or document, even if not given under oath or affirmation, or admissible in court. This extends to hearsay evidence.
- [69] As with all evidence, we must determine what weight to give to admissible hearsay evidence. Hearsay evidence is not necessarily less reliable than direct evidence, but we must avoid placing undue weight on uncorroborated hearsay evidence that does not sufficiently support a conclusion that it is reliable.¹⁰

3. Adverse inference against Ben

- [70] Staff submits that because Ben did not testify at the hearing, we ought to draw the adverse inference that his evidence would not have been helpful to him.
- [71] A panel may draw such an inference in respect of a party who does not testify, if the opposite party has made out a *prima facie* case against that party, and if there is no sufficient explanation for the party not testifying. If both those conditions are satisfied, then the party's failure to testify amounts to an implied admission that the party's evidence would not have been helpful to that party.¹¹
- [72] We conclude that Staff has made out a *prima facie* case against Ben. As we explain more fully below in our analysis of the substantive issues, Staff led evidence that, if believed, would establish wrongdoing on his part. Such evidence includes the oral testimony of Ms. Ghaffari, certain admissions made by Payam

⁸ *FH v McDougall*, 2008 SCC 53 at paras 40, 46, 49; *Meharchand (Re)*, 2018 ONSEC 51, (2018) 41 OSCB 8434 (**Meharchand**) at paras 28-29

⁹ RSO 1990, c S.22

¹⁰ *Rex Diamond Mining Corp v Ontario (Securities Commission)*, 2010 ONSC 3926 (Div Ct) at para 4; *Meharchand* at para 52

¹¹ Sidney N Lederman, Alan W Bryant & Michelle K Fuerst, *Sopinka, Lederman & Bryant: The Law of Evidence in Canada*, 5th ed (Toronto: LexisNexis Canada, 2018) (**Lederman**), at 406-407

during his oral testimony, statements made by Ben himself when he was interviewed by Staff in 2016, and various documents.

- [73] We must therefore consider whether there are circumstances that justify Ben's decision not to testify and that would therefore preclude us from drawing the adverse inference.
- [74] While re-examining Payam during the hearing, the Remaining Respondents' counsel noted that Ben had been in attendance for parts of the hearing but not for the entire hearing. Counsel asked Payam whether that fact was connected to Ben's health problems. Payam stated that it was. When asked whether Ben had received any doctor's advice regarding his attendance at the hearing, Payam said: "It was I guess more general advice regarding stressful situations, heart issues, concerns. He's been in and out of the hospital a little bit."¹²
- [75] That was the extent of the explanation. It is insufficient. Even on Payam's description, the medical advice was general and unrelated specifically to this hearing, to litigation generally, or to what Ben's role at a hearing might be (e.g., as a witness, or as a non-testifying party). Payam's testimony was unsupported by any document or by any mention of a particular medical professional, and it was completely vague as to time. We cannot accept his testimony as a reason not to draw an adverse inference.
- [76] In closing written submissions delivered five weeks after the conclusion of the evidentiary portion of the hearing, the Remaining Respondents offered to provide documentary evidence, such as a doctor's letter, if necessary. No reason was given as to why this step was not taken earlier. It was not in the public interest to re-open the evidence at that late stage. We declined to do so.
- [77] We conclude that an adverse inference against Ben is justified. We return to this finding below as appropriate, in the context of specific questions of fact.

4. Witnesses' credibility and reliability

(a) Introduction

- [78] In assessing the credibility and reliability of the witnesses who testified at the hearing, we are guided by the decision of the Ontario Superior Court of Justice in *Springer v Aird & Berlis LLP*,¹³ in which Newbould J. adopted the following words from a British Columbia Court of Appeal decision:

The most satisfactory judicial test of truth lies in its harmony or lack of harmony with the preponderance of probabilities disclosed by the facts and circumstances in the conditions of the particular case.¹⁴

- [79] We need not necessarily come to one overarching conclusion about a witness's credibility or reliability. It is open to us to find that a witness was credible in some respects but not in others. We may conclude that some aspects of a witness's testimony are reliable, but that other aspects are not.¹⁵

¹² Hearing Transcript, Money Gate Mortgage Investment Corporation (Re) (*Hearing Transcript*), May 15, 2019, at 121

¹³ (2009) 96 OR (3d) 325 (*Springer*)

¹⁴ *R v Pressley*, [1949] 1 WWR 692 (BCCA) at para 12, cited in *Springer* at para 14

¹⁵ *Meharchand* at para 62

- [80] In this case, the oral evidence of Ms. Ghaffari and of Payam features prominently. Their evidence conflicts in material respects. Therefore, to assist our assessment of their credibility and reliability, we will review the most significant evidentiary contradictions, which arise in the context of two issues:
- a. the extent of Ms. Ghaffari's involvement in approving loans, including certain loans made by MGMIC to parties alleged by Staff to have been related to MGMIC (the **Related Party Loans**, which are more particularly described beginning at paragraph [236] below); and
 - b. whether Messrs. Missaghi and Mohammed exercised some control over MGMIC.

(b) Ms. Ghaffari's involvement in approving loans

- [81] Staff and the Remaining Respondents take opposing positions regarding Ms. Ghaffari's involvement in approving loans, including the Related Party Loans. The Remaining Respondents submit that she was fully involved. Staff contends that she was not. The parties offered conflicting evidence in support of their positions.
- [82] In a transcribed interview in July 2016, Ben told Staff that Ms. Ghaffari "was never being active in" and "never took a serious role in" MGMIC.¹⁶ He stated that because Ms. Ghaffari was busy "on the broker side [MGC]", dealing with financial institutions, she did not take part in MGMIC's private lending decisions, other than "one or two deals".¹⁷ According to Ben, it was Payam who did the underwriting on MGMIC's private deals.
- [83] Payam gave a similar description in Staff's 2016 interview of him. When asked what Ms. Ghaffari's role was at MGMIC, Payam stated that "[s]he didn't really have an active role."¹⁸
- [84] In her testimony before us, Ms. Ghaffari gave different reasons for her limited role, but her characterization was largely consistent with Ben's and Payam's prior evidence.
- [85] Ben and Payam now take a position that is inconsistent with their 2016 statements. They, and MGC, rely on Payam's evidence at the hearing that Ms. Ghaffari was fully involved. They also rely on documents and information regarding some specific loans.
- [86] One such loan was to Payam, in the amount of \$82,500 and secured by a second mortgage on the residential property at 26 Heron Hollow Avenue in Richmond Hill (**Heron Hollow**). Ms. Ghaffari testified that she believed that Carlo Esposito, who owned a real estate appraisal company, was the original owner of Heron Hollow. She testified that Ben and Payam told her that Mr. Esposito lived there when MGMIC made the loan. Mr. Esposito used the Heron Hollow address as his address on appraisal reports that he issued.

¹⁶ Exhibit 228, List of read-ins for Ben Katebian, Tab 6 at 36 lines 2-3 and Tab 20 at 206 line 25

¹⁷ Exhibit 228, List of read-ins for Ben Katebian, Tab 15 at 169 lines 4-5 and Tab 23 at 238

¹⁸ Exhibit 253, Excerpt from transcript of voluntary interview of Payam Katebian, September 13, 2016, at 43 lines 15-16

- [87] Payam testified that he purchased Heron Hollow in 2015 and sold it in 2016, and that during that time, the home was rented by a Russian couple. Payam denied that Mr. Esposito lived at Heron Hollow. He was unable to explain why Mr. Esposito used Heron Hollow as his business address. Payam testified that he didn't "have that close of a relationship with Mr. Esposito."¹⁹
- [88] On direct examination, Ms. Ghaffari testified that she became aware of the mortgage loan on Heron Hollow only after it had been made. On cross-examination, however, when confronted with a disclosure statement relating to Heron Hollow and bearing her signature, she agreed that she had been aware of the proposed loan before it was made. She said that initially, she was opposed to MGMIC making the loan, but that she was satisfied after receiving answers from Ben and Payam.
- [89] Ms. Ghaffari also testified regarding a loan of \$665,000 made by MGMIC and secured by a second mortgage on a condominium unit at 2045 Lakeshore Boulevard West in Toronto (**Palace Pier**). The borrower was Atlas Capital Corporation, whose principal was Jonathane Ricci, a lawyer whose office was in the same premises as those of the respondents.
- [90] When shown a disclosure document relating to Palace Pier and purporting to bear her signature, Ms. Ghaffari testified that she had not seen the document before her interview by Staff during the investigation. However, she agreed that the document bore her signature. She testified that she must have been given the document to sign, and that she did so because she trusted that Payam had made the required disclosure to Mr. Ricci.
- [91] The conflict between Ms. Ghaffari's statement that she had not seen the document at the time of the loan and her explanation as to why she signed it was not resolved.
- [92] We decline the Remaining Respondents' invitation for us to conclude from the presence of Ms. Ghaffari's signature on various documents, and from Ms. Ghaffari's testimony that she was "very, very particular"²⁰ about transaction documents (a sentiment echoed by Payam),²¹ that Ms. Ghaffari was fully involved in MGMIC's lending decisions.
- [93] We believe Ms. Ghaffari's description of the usual process, when she says that as the broker of record for MGC she signed disclosure certifications based on a representation to her from an agent (whether Payam or someone else) that the agent had made the necessary disclosure to the borrower.²² In our view, such a practice is not inconsistent with her being particular about the documents, since that description could refer to a number of things, including the completeness of the documents, and/or the safeguard of the documents and the filing of documents as necessary.
- [94] The Remaining Respondents sought to bolster their submission about Ms. Ghaffari's level of involvement by relying on some transaction documents (e.g., mortgage applications) that showed her name. However, we accept Ms. Ghaffari's testimony that for a time, the mortgage application software

¹⁹ *Hearing Transcript*, May 10, 2019, at 31 line 9

²⁰ *Hearing Transcript*, January 11, 2019, at 116 line 1

²¹ *Hearing Transcript*, March 7, 2019, at 58 line 8

²² *Hearing Transcript*, January 9, 2019, at 122

automatically identified her as the agent, whether or not she was in fact the agent. Her evidence is corroborated by a mortgage application that showed her name but that was printed months after she had left the company.

- [95] The Remaining Respondents are correct in noting that on occasion, Ms. Ghaffari gave unclear and sometimes conflicting evidence about the point at which she was aware of an intended or completed loan. However, in our view, the Remaining Respondents conflate Ms. Ghaffari's compliance role for MGC with the activities of MGMIC. We do not accept that Ms. Ghaffari's unclear recollection or lack of precision about some loans indicates that she was being untruthful.
- [96] Further, and significantly in our view, Ms. Ghaffari's description of her role is corroborated by Ben's and Payam's statements to Staff in 2016. We prefer that evidence to Payam's testimony at the hearing.
- [97] We conclude that Ms. Ghaffari was involved to some extent in lending decisions for some of the Related Party Loans, but we cannot conclude that she was fully involved in approving all loans on behalf of MGMIC. It is clear that by no later than early March of 2016, she felt that there was a lack of integrity in the business and she "took a back seat" and "just watched but did not do anything."²³

(c) Whether Messrs. Missaghi and Mohammed exercised some control over MGMIC

- [98] Ms. Ghaffari testified that Mr. Missaghi was involved in MGMIC's affairs. She stated that he set mortgage rates and interest payments, and that he chose MGMIC's lawyers and appraisers. Her testimony to that effect was not challenged on cross-examination.
- [99] Further, her evidence is consistent with an email that Ben wrote to Ms. Ghaffari in March 2016, in which Ben said: "[MGMIC] is no longer a business that we control. Its [*sic*] a company that now has 3 main Players. Myself, Sai [Mohammed] and Ara [Missaghi]. There is no real say in my opinion alone, except when the decisions are made collectively between the 3 Key players."²⁴
- [100] The Remaining Respondents submit that we should attribute little or no weight to Ben's email, for four reasons.
- a. First, the Remaining Respondents question the completeness and accuracy of the document, tendered into evidence, that includes the email. Their concern relates to page numbers and blank spaces between emails. In our view, the page numbers and footers simply suggest that the emails are excerpted from search results. Without more, the blank spaces do not suggest that the content is inaccurate. Further, Ms. Ghaffari testified that she specifically recalled receiving this email. If Ben believed that the apparent content of the email was inaccurate or misleading, it was open to him to testify to that effect. He did not.
 - b. Second, the Remaining Respondents submit that the email is hearsay. While this is true, the statements in the email were made in circumstances that are consistent with their reliability. They are contained

²³ Exhibit 22, Email correspondence between Ben and Ms. Ghaffari

²⁴ Exhibit 22, Email correspondence between Ben and Ms. Ghaffari

in a communication from Ben to Ms. Ghaffari, with no apparent reason for Ben to be untruthful at the time.

- c. Third, the Remaining Respondents say that because English is not Ben's first language, Ben may not have intended "control" to have its ordinary meaning, and Staff is placing undue and extreme emphasis on the word "control". We do not accept that submission. The record contains numerous emails written by Ben, and there is nothing about those emails that causes us to doubt his ability to express himself clearly in English. Further, the portion quoted above is consistent throughout, with its references to the three individuals and to the fact that Ben's opinion alone was insufficient. Staff's position does not depend on the word "control" alone.
- d. Finally, the Remaining Respondents submit that Staff's suggested conclusion is inconsistent with Ms. Ghaffari's and Payam's oral evidence. However, as noted above in paragraph [98], Ms. Ghaffari did testify that Mr. Missaghi made decisions for MGMIC. We characterize those decisions as being of a kind that one would expect from someone with some measure of control. Further, we disagree with the Remaining Respondents' description of other evidence given by Ms. Ghaffari and cited by the Remaining Respondents. In those excerpts, Ms. Ghaffari describes disagreements between Ben and Messrs. Missaghi and Mohammed, and she testifies that Ben wanted control and that Mr. Mohammed and 1PLUS12 also wanted control. None of these facts is inconsistent with Messrs. Missaghi and Mohammed having some control.

[101] In addition, we note that over the Material Time, an increasing and ultimately significant proportion of the MGMIC loan portfolio was invested in properties in which one or both of Messrs. Missaghi and Mohammed, and/or entities related to them, had some financial interest. While this fact is not determinative of the control issue, it is consistent with Staff's allegation.

[102] Finally, the Remaining Respondents submit that when we consider Staff's allegation regarding Mr. Missaghi's and Mr. Mohammed's control over the respondents' business, we ought to draw an adverse inference against Staff due to Staff's failure to call either of them as a witness.

[103] We reject that submission. Staff relies on evidence that is in the record in support of the allegation regarding Messrs. Missaghi's and Mohammed's involvement. Staff's choice not to call them is unsurprising, given various concerns about their reliability and about whether it was likely that their evidence would assist in proving Staff's case. Those concerns include Mr. Mohammed's use of an alias, and may be borne out by a 2018 finding in the Superior Court of Justice that Mr. Missaghi was "careless with his words and consequently unreliable."²⁵

[104] We repeat the caution referred to above in paragraph [72]. An adverse inference ought to be drawn only where the missing evidence would be superior to that

²⁵ *B&M Handelman Investments Limited v Christine Drotos*, 2018 ONSC 7124 at para 30

called. Further, it ought to apply only where the witness would be assumed to be willing to assist the party who fails to call the witness.²⁶

- [105] Staff is entitled to call the evidence that it wishes in support of its contention that Messrs. Missaghi and Mohammed were undisclosed principals. Staff's success in proving that fact will depend on the evidence called, not on Staff's tactical decisions.
- [106] Taking all of the above into account, we have no difficulty concluding that Messrs. Missaghi and Mohammed exercised increasing and considerable control over the affairs of MGMIC during the Material Time. Ms. Ghaffari's evidence in support of that conclusion was not successfully challenged on cross-examination. Payam's evidence to the contrary is self-serving and uncorroborated, and it conflicts with Ben's own statements made in circumstances that suggest that Ben's statements are reliable. To the extent that Payam's evidence conflicts with that of Ms. Ghaffari on this point, we reject it.

(d) Conclusion as to Ms. Ghaffari's and Payam's credibility and reliability

- [107] In general, Ms. Ghaffari's evidence is better corroborated, is more consistent with both documentary evidence and Ben's own evidence, and is inherently more believable, than Payam's evidence. However, each of Payam and Ms. Ghaffari gave us reasons to approach their evidence with some skepticism.
- [108] While we are more likely to prefer Ms. Ghaffari's evidence to Payam's in the event of a conflict, we choose to abide by the caution described in paragraphs [78] and [79] above. We will comment further on this topic as appropriate in our analysis below.

(e) Investors

- [109] Staff called four MGMIC investors as witnesses.
- [110] S.B. described his investment knowledge as below average. He became aware of MGMIC through a co-worker who was involved in 1PLUS12 and who had previously invested. He invested in MGMIC in December 2015 and recalls seeing the offering memorandum at that time, as well as a revised offering memorandum in January 2017. His account statement dated February 2017 shows him holding approximately \$103,000 worth of MGMIC shares. He has requested the return of his investment but has received only \$24,000.
- [111] J.A. described his investment knowledge as average. He invested more than \$110,000 in MGMIC from July 2015 to November 2016. He has received none of his original investment.
- [112] A.P. testified that he knew "basically nothing" about investing. He learned of MGMIC through a connection of his daughter's. He invested in MGMIC beginning in February 2016 after seeing some promotional materials he received from his connection. His most recent account statement, dated October 2017, shows him holding approximately \$110,000 worth of MGMIC shares. He has requested a return of his funds but has received nothing.

²⁶ Lederman at 406

- [113] R.P. described his investment knowledge as average. He became aware of MGMIC through an acquaintance who identified himself as a representative of MGMIC. He invested \$11,710.
- [114] Of the four investor witnesses, J.A. was the only one who was cross-examined. The cross-examination did not undermine his original testimony.
- [115] None of the four investor witnesses' testimony was contradicted in any way. We found all of them to be credible and their testimony to be reliable. We accept it.

5. Weight to be attributed to Payam's undisclosed evidence

(a) Introduction

- [116] Staff submits that we should give some of Payam's evidence diminished weight because it was not disclosed to Staff as required prior to the hearing. Staff's concern arises primarily with respect to Payam's evidence regarding the relationship between Mr. Missaghi, 1PLUS12 and MGMIC, and the allegations that the respondents improperly diverted funds. We accept Staff's submission as it applies to some elements of Payam's evidence, for the following reasons.
- [117] The Rules require that each party serve on the other parties, prior to the hearing, a summary of the evidence that each witness is expected to give at the hearing, including by identifying any document to which the witness is expected to refer.²⁷ A party may not rely on evidence that was not disclosed as required, without the permission of a panel.²⁸
- [118] The Remaining Respondents served a witness statement regarding Payam's anticipated evidence. The statement said simply that Payam would testify in accordance with the transcripts of the examinations that Staff had conducted of him during the investigation.
- [119] After the Remaining Respondents retained new counsel, Staff agreed to extend the deadline for delivery of revised witness statements, to February 15, 2019. Despite this, the Remaining Respondents did not deliver any revised statements prior to the hearing.
- [120] During his testimony at the merits hearing, Payam began to give evidence that Staff submitted was outside the bounds of Payam's examination transcripts and had therefore not been properly disclosed. Because this issue was likely to recur, the parties agreed to note Staff's blanket objection to previously undisclosed evidence and to have Payam continue to testify. Staff would raise any such issues in written submissions, following which we would take the parties' submissions into account in determining the weight to be given to the evidence.
- [121] The parties also agreed that the Remaining Respondents could be taken to have properly disclosed evidence contained in an affidavit sworn by Payam in a civil proceeding that overlaps with this proceeding,²⁹ which affidavit had been included in Staff's hearing brief served prior to the hearing.

²⁷ *Rules*, r 27(3)

²⁸ *Rules*, r 27(8)

²⁹ *Estrabillo et al. v Katebian et al.*, Ontario Superior Court File No. CV-18-589395-00CL; affidavit sworn September 13, 2018.

(b) Analysis of the general principles

- [122] Staff submits that it is important to respect the policy underlying the disclosure obligation, and that we should attach little or no weight to uncorroborated evidence that was not previously disclosed. The failure to disclose evidence before the hearing deprives the opposite party of the opportunity to test the evidence through further investigation. We agree with this submission.
- [123] Staff further submits that Payam had the advantage of hearing Staff's entire case in chief and could therefore tailor his evidence. While there is some truth to that, the fact that Staff disclosed its witnesses' anticipated evidence prior to the hearing minimizes the extent of that advantage.
- [124] The Remaining Respondents explain that any failure on their part to provide pre-hearing disclosure in as formal a way as Staff would like is attributable in part to their late change of counsel. Even if that explanation is factually accurate, we reject it for the same reasons for which we declined the Remaining Respondents' request to adjourn the merits hearing.
- [125] The Remaining Respondents also note that Staff's Amended Statement of Allegations does not mention a number of the topics that are the subject of Staff's objection, and that it does not mention 1PLUS12 or Mr. Missaghi. We reject that response as well. There is no logical connection between the scope of the Amended Statement of Allegations and Staff's objection to Payam's evidence. It was Payam who first introduced the impugned topics during his examination-in-chief by his counsel. Staff objected at that time. Staff's objection was well-founded, given that Payam was putting forward this evidence for the first time without having previously disclosed it.
- [126] For all these reasons, we place no weight on Payam's evidence with respect to two topics. The Remaining Respondents concede that neither topic was the subject of any pre-hearing disclosure by them. Those topics are:
- a. a supposed relationship between Ms. Ghaffari and Mr. Missaghi that pre-dated the events at issue in this proceeding; and
 - b. Staff's allegations that the respondents improperly diverted funds in connection with a property at 4 Birchmount Road in Toronto, which allegations we review in detail beginning at paragraph [288] below.
- [127] The other areas of evidence about which Staff objects are more difficult to resolve, because the Remaining Respondents do not concede that the evidence was not properly disclosed. They submit that these areas, including the involvement of Mr. Missaghi and 1PLUS12, "are more complicated",³⁰ in that Payam's affidavit speaks generally about how loans were approved.
- [128] Staff responds that it "can advise that the affidavit does not disclose much of Payam's new evidence, including evidence on, among other things [four specified areas]..."³¹ Staff's description is insufficiently precise for us to use it as a basis to resolve Staff's objection.
- [129] We are therefore unable to be certain about the extent to which the affidavit gave Staff notice of Payam's evidence on this topic, because the parties chose

³⁰ *Hearing Transcript*, June 28, 2019, at 4 line 27

³¹ Reply Submissions of Staff dated June 25, 2019, at para 19

not to enter that affidavit into the record. This was so despite the panel's warning during the hearing that if we were asked to resolve this objection, we might need to review documents that were not then in evidence.

- [130] Staff seeks to lay responsibility for this choice at the feet of the Remaining Respondents. Staff submits that on cross-examination, Staff suggested to Payam that his evidence was a fabrication. According to Staff, the Remaining Respondents' failure to adduce the affidavit in response to that suggestion deprives them of the ability to argue that proper pre-hearing disclosure was made.
- [131] We disagree. There is no logical connection between the issue of pre-hearing disclosure and a suggestion that Payam was fabricating evidence.
- [132] We conclude by finding that where Staff seeks to exclude, or to minimize weight given to, testimony given by a respondent, because of an alleged failure to make proper pre-hearing disclosure, the onus lies on Staff to provide the panel with such documents and information as is necessary to enable the panel to compare the testimony to the disclosure. Where, as in this case, Staff fails to do so, it runs the risk that its objection will not be sustained. In our view, that is the appropriate result in this case, except for the two areas conceded by the Remaining Respondents, referred to in paragraph [126] above.
- [133] As it turns out, our decision on that point is inconsequential for Staff, because we prefer Ms. Ghaffari's evidence over that of Payam with respect to the role played by Mr. Missaghi and 1PLUS12. Accordingly, while Payam's evidence on the point is admissible, we give it no weight.

6. Staff's expert witness, Mr. Philippe Hébert

- [134] Staff called Mr. Philippe Hébert, an expert in real estate appraisals, as a witness. Mr. Hébert gave opinion evidence about two properties in northern Ontario on which MGMIC made significant loans (the Timmins property and the Temiskaming property) and about the methodology underlying the appraisals that MGMIC obtained regarding those properties. Mr. Hébert also gave his opinion regarding the market value of each property as of the date of the appraisal obtained by MGMIC. In both cases, Mr. Hébert's ascribed value was a fraction of the value shown in the MGMIC's appraisals.
- [135] In closing submissions, the Remaining Respondents contended that some of Mr. Hébert's opinion evidence was outside the scope of the issue for which he was qualified as an expert, and that we must therefore ignore his evidence. We disagree, but little turns on it. In closing submissions, Staff chose not to rely on any aspect of Mr. Hébert's evidence other than the retrospective value of the two properties. When we asked Staff whether it submitted that the respondents ought to have been aware of the deficiencies identified by Mr. Hébert, Staff advised that it was not taking that position.
- [136] For reasons we explain below beginning at paragraph [272], we find that it was inappropriate for MGMIC to rely on the appraisals it obtained with respect to the two properties. We reach that conclusion based on conditions that are evident on the face of the appraisals, and without reference to Mr. Hébert's evidence regarding the value of the properties at the relevant time.

[137] As a result, while we found Mr. Hébert to be a professional, candid and careful witness, and while we have no reason to discount any of his evidence, we need not and do not rely on it in coming to our conclusions.

C. Did the respondents engage in, or hold themselves out as engaging in, the business of trading in securities?

1. Introduction

[138] We now turn to consider Staff's three principal allegations against the respondents.

[139] The first relates to s. 25(1) of the Act, which provides that no person or company shall engage in, or hold themselves out as engaging in, the business of trading in securities, unless the person or company is registered to do so. None of the respondents was ever registered.

[140] The registration requirement is a cornerstone of the securities regulatory framework. It is an important gate-keeping mechanism that protects investors and the capital markets by imposing obligations of proficiency, integrity and solvency on those who seek to be engaged in the business of trading in securities with or on behalf of the public.³²

[141] While the respondents suggested, in 2015 correspondence with Staff, that MGMIC could offer and sell shares "under an exemption",³³ that correspondence did not specify the applicable exemption(s). In closing submissions, the Remaining Respondents did not assert that they were entitled to an exemption from the registration requirement.

[142] Accordingly, we must determine whether the respondents engaged in "the business of trading in securities" or held themselves out as doing so.

2. Business trigger

(a) The test

[143] For the registration requirement to apply to a person or company, the business of trading in securities need not be the only business in which that person or company is engaged.³⁴ As the Commission has previously held, we "must determine whether the activities in this case cross the line between permissible solicitation and the business of trading."³⁵

[144] The Commission has adopted Companion Policy 31-103CP *Registration Requirements, Exemptions and Ongoing Registrant Obligations (31-103CP)*, which, among other things, sets out criteria to be considered in determining whether a person or company is engaged in a business when trading or advising in securities.

[145] While 31-103CP is not part of Ontario securities law, and therefore is not directly binding on the respondents, the "business purpose" test in s. 1.3 (also referred to as the "business trigger") includes the following factors, on which Staff relies

³² *Al-Tar Energy Corp (Re)*, 2010 ONSC 11, (2010) 33 OSCB 5535 (**Al-Tar**) at para 81

³³ Exhibit 60, Letter from MGMIC to Staff Re: Money Gate MIC Questions

³⁴ *Momentas Corp (Re)*, 2006 ONSC 15, (2006) 29 OSCB 7408 (**Momentas**) at para 56

³⁵ *Blue Gold Holdings Ltd (Re)*, 2016 ONSC 24, (2016) 39 OSCB 6947 (**Blue Gold**) at para 20

and which the Commission has adopted in other proceedings.³⁶ We consider it appropriate to apply these factors in assessing the respondents' conduct in this case:

- a. trading with repetition, regularity or continuity, whether or not that activity is the sole or even primary endeavour;
- b. directly or indirectly soliciting securities transactions;
- c. receiving or expecting to receive compensation for trading; and
- d. engaging in activities similar to those of a registrant, including by setting up a company to sell securities, or by promoting the sale of securities.

[146] We now review each of these factors in turn.

(b) Trading with repetition, regularity, continuity

[147] In the first 33 months of the Material Time,³⁷ the respondents raised approximately \$11 million through about 228 separate distributions to 150 investors. There were almost seven distributions per month during that time, and they occurred in all but six of the 33 months.

[148] As Staff notes, the distributions in this case continued over a similar or longer time period than that found in numerous previous Commission decisions in which the business trigger test was found to have been met:

- a. 37 months in *Moncasa Capital Corp. (Re)*, in which the issuer raised over \$1.2 million;³⁸
- b. 26 months in *Majestic Supply Co. (Re)*, in which the issuer raised \$2.1 million;³⁹
- c. 19 months in each of *McCarthy (Re)*⁴⁰ and *MRS Sciences Inc (Re)*,⁴¹ in which the issuers raised \$360,000 and almost \$840,000, respectively; and
- d. 17 months in *Richvale Resource Corp. (Re)*,⁴² in which the issuer raised approximately \$750,000.

[149] The frequency and regularity of distributions in this case, combined with the extended time over which the distributions were made, amply meet this component of the business trigger test. We reject the Remaining Respondents' submission that the above facts are not useful indicators.

³⁶ See, e.g., *Momentas* at paras 52-56; *Meharchand* at para 111

³⁷ The Material Time for all allegations is approximately 40 months, from August 2014 to December 2017 (*Amended Statement of Allegations*, para 6). However, the allegation relating to the raising of capital is confined to the period from August 2014 to April 2017 (*Amended Statement of Allegations* at para 4)

³⁸ 2013 ONSEC 20, (2013) 36 OSCB 5320 at paras 2, 32, 55, 57

³⁹ 2013 ONSEC 5, (2013) 36 OSCB 2104 at paras 2, 41, 46, 145

⁴⁰ 2014 ONSEC 1, (2014) 37 OSCB 510 at paras 18, 25

⁴¹ 2011 ONSEC 5, (2011) 34 OSCB 1547 (***MRS Sciences***) at paras 3, 161-164

⁴² 2012 ONSEC 13, (2012) 35 OSCB 4286 at paras 5, 39

(c) Directly and indirectly soliciting securities transactions

[150] Staff submits, and it is not disputed, that MGMIC actively solicited the sale of its preferred shares through the following means, among others:

- a. promotional events and seminars hosted at MGMIC's offices, to which existing and potential investors were invited;
- b. participation in training sessions held by 1PLUS12, at which Ben and Payam talked about how individuals could obtain funds (including by borrowing against home equity) to invest in MICs generally and MGMIC in particular;
- c. MGMIC's website, which included an "Investing" page that promoted the sale of MGMIC shares;
- d. the use of various promotional materials, including fliers and videos, and the distribution of these materials through social media and other methods; and
- e. attendance at trade shows to promote MGMIC's business.

[151] Ben's active participation in MGMIC's solicitation efforts is confirmed by:

- a. his own description of his role as CEO ("mostly to coach people to see what is really good for them... [and if] it suitable for them, I introduce them to our own company");⁴³
- b. his statement that twice he gave presentations in Ottawa to promote MGMIC to existing or potential investors;⁴⁴ and
- c. the uncontradicted evidence of Payam and Ms. Ghaffari that Ben, among other things:
 - i. was responsible for investor relations;⁴⁵
 - ii. called individuals who had previously invested through MGC and solicited their investment in MGMIC;⁴⁶
 - iii. created one or more of the offering memoranda;⁴⁷
 - iv. was involved in the 1PLUS12 presentations referred to in paragraph [150] above;⁴⁸ and
 - v. was responsible for the content of promotional videos, at least one of which featured him.

⁴³ Exhibit 228, List of read-ins for Ben Katebian, Tab 3 at 27 lines 23-25

⁴⁴ Exhibit 228, List of read-ins for Ben Katebian, Tab 12 at 112

⁴⁵ *Hearing Transcript*, January 7, 2019, at 78 line 3; March 4, 2019 at 67 lines 23-24

⁴⁶ *Hearing Transcript*, January 9, 2019, at 15 lines 7-13

⁴⁷ *Hearing Transcript*, January 9, 2019, at 43 line 23

⁴⁸ *Hearing Transcript*, January 9, 2019, at 49 line 13

- [152] Payam, whose employment agreement described him as MGMIC's "Business Development Manager", was also central to MGMIC's solicitation efforts. Among other things, he:
- a. called individuals who had previously invested through MGC and solicited their investment in MGMIC;
 - b. created investment fliers to promote the sale of MGMIC's shares;
 - c. prepared a slide deck that was used to market to existing and potential investors;
 - d. was involved in the 1PLUS12 presentations referred to in paragraph [150] above; and
 - e. reviewed the content of promotional videos.
- [153] The evidence clearly establishes that each of MGMIC, Ben and Payam was actively involved in soliciting investment in shares of MGMIC.

(d) Being, or expecting to be, remunerated or compensated for trading

- [154] Payam testified that he received an annual salary of \$60,000 from MGMIC beginning in 2015. Given his title and his activities as described above, we have no hesitation in finding that he was remunerated at least in part, if not entirely, in respect of MGMIC's trading activities.
- [155] We cannot accept Payam's submission that because the amount of his compensation was not tied directly to the amount of capital raised, he neither received nor expected to receive compensation for those activities.
- [156] Further, even if we were to accept Payam's submission that he devoted the majority of his efforts to the management of MGMIC's lending business and not to the raising of capital (and we do not accept that submission), the fact remains that at least a portion of Payam's time was devoted to raising capital, an activity for which a corresponding portion of his salary would be attributable.
- [157] Staff submits that Ben was indirectly compensated for MGMIC's trading activities, because MGC earned its fee based on the size of MGMIC's portfolio, and Ben shared in MGC's profits. We accept that submission.

(e) Engaging in activities similar to those of a registrant

- [158] Staff submits, and we agree, that the respondents' activities were similar to those of an exempt market dealer and its principals. Specifically, the respondents:
- a. promoted the sale of MGMIC's preferred shares;
 - b. met with potential investors to discuss details of the investment and the offering memoranda; and
 - c. discussed subscription documents with investors, filled in information on those documents, and signed as a witness.

3. Overall nature of MGMIC's business

- [159] The Remaining Respondents submit that they did not breach s. 25(1), because the capital raising was incidental to MGMIC's business of operating a mortgage investment corporation.
- [160] It is true that, as the Remaining Respondents submit and the Commission has previously held, our role is to "take a holistic view" of the capital-raising and other activities of MGMIC.⁴⁹ However, as we have explained above at paragraph [143], such a view does not preclude a finding that MGMIC was simultaneously engaged in the business of trading in securities and the business of investing the proceeds in mortgages.
- [161] Indeed, Payam's employment agreement with MGMIC recited that MGMIC was "in the business of raising capital for mortgage investments".⁵⁰ These are compelling facts in support of the conclusion that MGMIC was engaged in the business of trading in securities.⁵¹ The fact that the capital was being deployed for uses that did not involve securities does not diminish that conclusion.
- [162] Further, we do not agree with the Remaining Respondents that we should apply previous findings of this Commission to the effect that any business seeking equity financing must of necessity trade in its own securities, and that any new corporation seeking capital must solicit trades.⁵² Those findings merely confirm that by trading in its own shares, an issuer is not necessarily engaged in the business of trading those securities; a full analysis of all relevant factors is necessary.
- [163] Finally, MGMIC's capital-raising activities were not confined to a start-up phase pending the establishment of a revenue-generating business. MGMIC had reached its steady state, with continuous raising of capital, early in the Material Time. MGMIC's failure to be profitable in the several years that it operated cannot be used as a basis for saying that MGMIC was in a start-up phase until it became profitable.

4. Conclusion as to whether MGMIC, Ben and Payam engaged in the business of trading in securities

- [164] From its inception and throughout its existence, MGMIC traded in its securities repeatedly, regularly and continuously. Through its principals Ben and Payam, it directly and indirectly solicited those trades, and compensated Ben and Payam for doing so. MGMIC's activities related to the trades were similar to those of a registrant.
- [165] MGMIC, Ben and Payam were therefore engaged in the business of trading in securities, as contemplated by s. 25(1) of the Act. While MGC played a role in the overall business, as the broker for all of MGMIC's loans, it does not follow that MGC itself was engaged in the business of trading shares of MGMIC. That allegation is dismissed.
- [166] Staff did not submit, and we do not find, that all MICs are necessarily engaged in the business of trading in securities, simply because of the nature of a MIC. The

⁴⁹ *Future Solar Developments Inc (Re)*, 2016 ONSC 17, (2016) 39 OSCB 4495 at para 45

⁵⁰ Exhibit 67, Employment Agreement between MCMIC and Payam Katebian at 2

⁵¹ *Momentas* at para 61

⁵² *Meharchand (Re)*, 2015 ONSC 43, (2015) 38 OSCB 10761 at para 44; *Blue Gold* at para 20

question of whether a particular business, including a MIC, is engaged in the business of trading in securities remains one that must be resolved in light of all the relevant facts.

D. In distributing the preferred shares of MGMIC without a prospectus, were the respondents entitled to rely on an exemption from the prospectus requirement? In particular, can they rely on the (i) private issuer, (ii) minimum amount, (iii) accredited investor, and/or (iv) friends, family and business associates exemptions?

1. Introduction

- [167] Subsection 53(1) of the Act provides that unless a prospectus has been properly filed and receipted, no person or company shall trade in a security on their own account or on behalf of any other person or company if the trade would be a distribution of the security.
- [168] Like the registration requirement discussed above, the prospectus requirement is a cornerstone of Ontario's securities regulatory regime. The requirement is an important one because it seeks to ensure that investors are properly equipped to assess the risks of an investment and to make an informed investment decision.⁵³
- [169] It is undisputed in this proceeding that:
- a. MGMIC traded in its own securities;
 - b. the trades were in previously unissued securities, and were therefore distributions (as defined in s. 1(1) of the Act);
 - c. no prospectus was filed or receipted; and
 - d. Ben and Payam, through their activities, engaged in acts in furtherance of the trades (including as set out in paragraphs [151] to [153] above), and would therefore be equally subject to this provision.
- [170] Each of the essential elements of a contravention of s. 53(1) of the Act has therefore been established. It remains to be determined whether MGMIC was entitled to an exemption.
- [171] An issuer that purports to make an exempt distribution is required to file with the Commission a Form 45-106F1 *Report of Exempt Distribution*. When properly completed, that form discloses details of any exempt distribution, including the exemption on which the issuer relies. MGMIC filed some reports of exempt distribution, although none was filed before April 1, 2015.
- [172] In closing submissions, the Remaining Respondents assert four possible exemptions, which we will address in turn. Before doing so, we note that an issuer that purports to rely on an exemption bears the burden of demonstrating that it is entitled to the claimed exemption.⁵⁴

⁵³ *Limelight Entertainment Inc (Re)*, 2008 ONSC 4, (2008) 31 OSCB 1727 at para 139

⁵⁴ *Meharchand* at para 95

2. Private issuer exemption

- [173] For its first two distributions during the Material Time (in August 2014),⁵⁵ MGMIC purported to rely on the “private issuer exemption” provided for in s. 73.4(2) of the Act. In order to qualify for that exemption, MGMIC had to meet the definition of “private issuer” set out in s. 2.4(1) of National Instrument 45-106 *Prospectus Exempt Distributions* (**NI 45-106**). Specifically, MGMIC had to have distributed its securities only to persons listed in s. 2.4(2.1) of NI 45-106 (e.g., a director, officer, employee, founder or control person of the issuer, or persons who are related to any of those, or who are close personal friends or close business associates of any of those).
- [174] For MGMIC’s third distribution during the Material Time (in October 2014), MGMIC purported to rely on a different exemption. Staff submitted, and the Remaining Respondents did not contend otherwise, that once an issuer that previously relied on the private issuer exemption distributes its securities to a person not listed in s. 2.4(2.1) of NI 45-106, that issuer becomes disentitled to the private issuer exemption for future distributions. This is so even if the subsequent distributions are made in reliance on another exemption. In this respect, we agree with and adopt the language to this effect contained in s. 3.6(5) of the Companion Policy to NI 45-106 (**45-106CP**).
- [175] Despite the fact that MGMIC was no longer entitled to the private issuer exemption, it made 25 subsequent distributions in respect of which it purported to rely on that exemption. These distributions, which raised more than \$1.1 million, included two distributions in December 2014, one in February 2015, and the remaining 22 between March 2015 and June 2015. That last group of 22 distributions came after a total of ten distributions during the Material Time that purported to rely on other exemptions.
- [176] Even if MGMIC was still entitled to the private issuer exemption in respect of the above-mentioned distributions, Staff submitted, and again the Remaining Respondents did not dispute, that MGMIC failed to adduce any evidence that the investors to whom the distributions were made were included in the list set out in s. 2.4(2.1) of NI 45-106. We therefore conclude that MGMIC failed to meet the burden of demonstrating that it is entitled to the private issuer exemption.

3. Friends, family and business associates exemption

- [177] For 170 distributions from July 2015 to April 2017, totaling more than \$7.1 million, MGMIC claimed entitlement to the “friends, family and business associates” exemption (**FFBA exemption**) provided for in s. 2.5(1) of NI 45-106. That exemption is available when the distribution is to a person listed in that subsection (e.g., specified family members, close personal friends, and close business associates). None of the impugned distributions was to a specified family member; accordingly, the relevant elements of that list are a close personal friend, or a close business associate, of a director, executive officer or control person of MGMIC.
- [178] Staff submits that few or none of the investors to whom distributions were made in reliance on the FFBA exemption qualified as close personal friends or close business associates.

⁵⁵ Exhibit 91, List of distributions

- [179] The Remaining Respondents' only submission in response is that the majority of MGMIC's investors qualified for the purposes of the exemption because they "were drawn from Ben's friends made through his membership in Landmark [Education]".⁵⁶
- [180] According to Ms. Ghaffari, Ben was "heavily involved" in Landmark Education, an organization that provides motivational seminars.⁵⁷ Payam testified that Ben's role with Landmark Education "led him to have a huge number of people he's done business with and became friends with."⁵⁸
- [181] For the purposes of the FFBA exemption, it is not enough merely to have done business with someone, or to call someone a friend.
- [182] Staff submits, and we agree, that we should adopt the guidance set out in s. 2.7 and 2.8 of 45-106CP, which provide, respectively, that:
- a. for an individual to qualify as a "close personal friend", that person must know the director, executive officer or control person well enough, and must have known them for long enough, to be able "to assess their capabilities and trustworthiness and to obtain information from them with respect to the investment"; and
 - b. for an individual to qualify as a "close business associate", that individual must have had sufficient prior business dealings with the director, executive officer or control person, to make the same assessment as described above.
- [183] Staff further submits, and we agree, that we should adopt the guidance set out in s. 3.7 of 45-106CP, which explains that while there is no absolute limit on the number of investors in respect of whom an issuer may rely on the FFBA exemption, a larger number of such persons will be more likely to give rise to a presumption that not all of the investors qualify. In this regard, we recall Payam's description of the "huge number" of people with whom Ben had done business, and whom Ben called friends.
- [184] In our view, the number of investors in this case in respect of whom the FFBA exemption is claimed, when combined with Ms. Ghaffari's and Payam's evidence about the connection between the investors and Ben, is sufficient to raise the presumption that many of the investors did not qualify as close personal friends or close business associates.
- [185] Even if that presumption did not apply, we cannot accept the Remaining Respondents' assertion that all of the individuals qualified. Payam gave no specific evidence in support of that assertion, beyond the general statement quoted above. The Remaining Respondents neither called any investors as witnesses, nor adduced any other evidence in support of the assertion.
- [186] Further, two of the four investor witnesses who testified at the hearing (S.B. and A.P.), and in respect of whom the FFBA was claimed, said that they had never met either Ben or Payam before investing. The evidence was not clear as to which exemption the Remaining Respondents relied on in respect of investor

⁵⁶ Remaining Respondents' Closing Submissions dated June 19, 2019, at para 159

⁵⁷ *Hearing Transcript*, January 7, 2019, at 93

⁵⁸ *Hearing Transcript*, March 4, 2019, at 120, beginning at line 26

R.P., who also testified that he had never met Ben or Payam before investing. As we noted above, the investors' evidence was credible and was not challenged on cross-examination. We accept it.

- [187] We therefore conclude that each of the distributions made in reliance on the FFBA exemption was made without the benefit of that exemption.

4. Accredited investor exemption

- [188] For seventeen distributions between December 2014 and January 2017, which raised over \$1.7 million, MGMIC purported to rely on the "accredited investor exemption" provided for in s. 73.3(2) of the Act. In order for an issuer to claim the benefit of that exemption in respect of a distribution, the investor must qualify as an "accredited investor" as that term is defined in s. 1.1 of NI 45-106. For the purposes of this proceeding, the relevant elements of that definition are clauses (j) through (m), which set out various income and asset tests.
- [189] The Remaining Respondents submit that with respect to these seventeen distributions, it was appropriate for MGMIC to rely, as Payam testified that it did, on the declarations of the investor that she/he was an accredited investor. The Commission has rejected this position on numerous occasions, holding that the burden lies on the issuer to ensure that its distributions comply with applicable law, and that the issuer cannot simply rely on an investor's certification without further investigation:

Reasonable diligence demands that the seller conduct a serious factual inquiry in good faith before accepting a prospective subscription, which includes a duty to look behind the boilerplate language of a subscription agreement.⁵⁹

- [190] Staff submitted, and the Remaining Respondents did not seriously dispute, that MGMIC adduced no evidence to demonstrate that it satisfied this obligation. We accept Staff's submission. We conclude that MGMIC has failed to establish that it was entitled to the benefit of the accredited investor exemption in respect of any of the distributions.

5. Minimum amount exemption

- [191] Staff's evidence regarding MGMIC's purported exempt distributions establishes that five distributions were made in reliance on the "minimum amount exemption" set out in s. 2.10 of NI 45-106. For an issuer to be entitled to that exemption, the distribution cannot be to an individual, and must be in an amount not less than \$150,000, paid in cash at the time of the distribution.
- [192] Three of the five distributions were in amounts less than \$150,000. Payam explained that at the time, he misunderstood the requirement. Nonetheless, we conclude that MGMIC was not entitled to the benefit of the minimum amount exemption in respect of those three distributions.

⁵⁹ *York Rio Resources Inc (Re)*, 2013 ONSC 10, (2013) 36 OSCB 3499 at paras 109-110; *MRS Sciences* at para 189; *Meharchand* at para 101

6. Legal advice defence

[193] Payam testified that in relying on the various exemptions, MGMIC sought legal advice from three law firms.

[194] Staff submits that this fact cannot assist the respondents, because:

- a. legal advice can be relevant to the determination of whether a breach has occurred only where a due diligence defence is available; no such defence is available in response to an allegation that a respondent has distributed securities without a prospectus;⁶⁰ and
- b. in any event, such legal advice as there may have been was given to MGMIC, which did not participate in this hearing and which has never waived privilege over legal advice it received; accordingly, there was no admissible evidence as to the content of that advice.

[195] We agree. Therefore, for the purposes of the merits hearing and this decision, we must disregard the Remaining Respondents' assertion with respect to legal advice sought by MGMIC.

7. Conclusion as to distributions without a prospectus

[196] For the above reasons, we conclude that all distributions of shares by MGMIC during the Material Time were effected in violation of s. 53(1) of the Act, except for:

- a. the two distributions in August 2014, made in reliance on the private issuer exemption;
- b. one distribution made in reliance on the minimum amount exemption, where the distribution was to a person other than an individual, and the amount of the distribution was at least \$150,000; and
- c. one distribution made in reliance on the minimum amount exemption, about which there was no clear evidence as to the amount of the distribution.

[197] As we noted in paragraph [169] above, Ben and Payam engaged in acts in furtherance of these trades. Accordingly, all of MGMIC's illegal distributions represent contraventions of s. 53(1) of the Act by Ben and Payam as well.

[198] With respect to MGC, we reach the same conclusion as we did regarding the allegations of trading without being registered. While MGC played a role in the overall business, as the broker for all of MGMIC's loans, it does not follow that MGC was distributing shares of MGMIC. That allegation is dismissed.

E. Did the respondents engage in or participate in acts, practices, or courses of conduct relating to securities that they knew or reasonably ought to have known perpetrated a fraud?

1. Introduction

[199] We turn now to Staff's third principal allegation. Staff alleges that during the Material Time, the respondents engaged in various conduct relating to securities

⁶⁰ *Rezwealth Financial Services Inc (Re)*, 2013 ONSC 28, (2013) 36 OSCB 7446 at para 236

that they knew perpetrated a fraud on existing and potential investors in MGMIC, contrary to s. 126.1(1)(b) of the Act.

[200] The Commission has consistently held that fraud is “one of the most egregious securities regulatory violations.”⁶¹ Fraud causes direct harm to investors and undermines confidence in the capital markets.

[201] In this case, Staff alleges the following fraudulent misconduct by all of the respondents:

- a. a failure to disclose the true nature of MGMIC’s operations, controls and processes, including in particular a failure to:
 - i. fulfill the mandate of MGMIC’s Credit Committee;
 - ii. fulfill the mandate of MGMIC’s Investment Committee;
 - iii. qualify as a MIC under the *Income Tax Act*; and
 - iv. properly disclose who had control of MGMIC;
- b. a failure to abide by MGMIC’s lending parameters, policies and restrictions, by:
 - i. making undisclosed investments in third mortgages;
 - ii. investing in mortgages that exceeded the self-imposed limitations on size and concentration; and
 - iii. investing in imprudent mortgages, including mortgages in excess of appraised values; and
- c. diverting loan advances to the benefit of the respondents or companies under their control.

[202] The alleged frauds took place against a backdrop of MGMIC and MGC experiencing financial difficulty. MGMIC’s financial statements for the years ending May 31, 2015, and May 31, 2016, showed net losses of \$184,048 and \$101,951, respectively. MGC’s financial statements for the year ending December 31, 2016, showed a net loss of \$29,165. In an email to Ms. Ghaffari on February 29, 2016, Ben said: “I don’t know how [we] are going to pay our bills this month unless [there is] money... coming [in] that I am not aware [of].” Ms. Ghaffari testified at the hearing that MGMIC and MGC were in crisis, in that they were unable to pay their expenses on a day-to-day basis.

[203] At the time that the receiver was appointed over MGMIC, the company had approximately \$164,000 in its bank accounts, and had approximately \$11.2 million in preferred shares outstanding. At that time, most of the loans in MGMIC’s portfolio were in default.

⁶¹ *Al-Tar* at para 214, quoting David Johnston & Kathleen D Rockwell, *Canadian Securities Regulation*, 4th ed (Markham: LexisNexis, 2007) at 420

2. Need for expert evidence

- [204] Before we consider the specific fraud allegations, we review the Remaining Respondents' submission that without expert evidence (which Staff did not lead on these points), we do not have the ability to assess:
- a. whether MGMIC's business was conducted in a manner that was riskier to investors than was represented to them;
 - b. even if so, whether the respondents should have known that certain loans were high-risk; or
 - c. whether MGMIC conducted appropriate due diligence regarding the loans on the Temiskaming property and the Birchmount property.
- [205] The Remaining Respondents rely on the decision of the Ontario Superior Court of Justice (Divisional Court) in *Hanif v College of Veterinarians of Ontario (Hanif)*, in which the Court held that "[e]xpert evidence is generally required in order to establish the relevant standard of practice of the profession".⁶² However, the issue in *Hanif* was not whether the panel could make a decision without the benefit of expert evidence; rather, the Court's comment was in response to the appellant veterinarian's complaint that the Discipline Committee panel did in fact use an expert. The Court upheld the panel's ability to rely on an expert and to determine what weight to assign to the expert's opinion.⁶³
- [206] The Remaining Respondents also rely on a decision by the Divisional Court that a Discipline Committee of the Association of Professional Engineers of Ontario, not all of whose members were engineers, was not entitled to consider whether the standard of practice had been met by a professional engineer regarding structural engineering in the agricultural sector.⁶⁴ As in *Hanif*, the issue was whether an individual met a professional standard of practice. We agree with Staff's submission that no such issue arises in this proceeding.
- [207] The Remaining Respondents further rely on a decision by the Divisional Court that a hearing officer of the Ontario Civilian Commission on Police Services erred in purporting to take judicial notice of the combined effects of alcohol and Percocet.⁶⁵ That case is of no assistance here. The decision followed explicit authority from the Court of Appeal that while judicial notice may be taken of the fact that alcoholic spirits can be intoxicating, a similar conclusion cannot be reached with respect to various pills or narcotic substances.
- [208] In summary, none of these authorities supports the Remaining Respondents' submission that expert evidence was needed to support Staff's fraud allegations.
- [209] Specialized tribunals such as the Commission may draw on their own expertise. As a general matter, it is for a tribunal to determine whether it needs the assistance of an expert.⁶⁶ Concerns about the need for expert evidence typically arise in the context of a criminal trial with a jury, or in other cases where the decision-maker is unable to formulate the necessary inference. Where, on

⁶² 2017 ONSC 497 at para 88

⁶³ *Hanif* at para 91

⁶⁴ *Katsoulakos v Association of Professional Engineers of Ontario*, 2014 ONSC 5440

⁶⁵ *McCormick v Greater Sudbury Police Services*, 2010 ONSC 270 at paras 129-132

⁶⁶ *Sutton (Re)*, 2018 ONSC 42, (2018) 41 OSCB 6675 at para 153

proven facts, the decision-maker can reach its own conclusions without assistance, no expert opinion is necessary.⁶⁷

[210] Staff's allegations that the respondents failed to disclose the true nature of MGMIC's operations, controls and processes require us to examine the respondents' statements from the perspective of an investor. We are not measuring the respondents' conduct against a professional standard; rather, we are considering whether a reasonable investor would have been misled, and whether the respondents complied with their own promises. Those issues are squarely within the expertise of this tribunal.

3. Analysis

[211] We will address each of Staff's fraud allegations in turn below, following a review of the relevant law.

(a) Law regarding fraud

[212] It is well established that the elements of fraud under the Act are:

- a. the *actus reus*, or objective element, which must consist of:
 - i. an act of deceit, falsehood, or some other fraudulent means; and
 - ii. deprivation caused by that act; and
- b. the *mens rea*, or subjective element, which must consist of:
 - i. subjective knowledge of the act referred to above; and
 - ii. subjective knowledge that the act could have as a consequence the deprivation of another.⁶⁸

[213] Clause 126.1(1)(b) of the Act prohibits acts "of deceit, a falsehood or some other fraudulent means". An act is of deceit or is a falsehood if the person who committed it "as a matter of fact, represented that a situation was of a certain character, when, in reality it was not." The third category, "other fraudulent means", includes acts that a reasonable person would consider to be dishonest, such as "non-disclosure of important facts,... unauthorized diversion of funds, and unauthorized arrogation of funds or property."⁶⁹

[214] The second component of the *actus reus*, deprivation, is satisfied on proof of actual loss to one or more investors, actual prejudice to investors' economic interests, or even the risk of prejudice to those interests.⁷⁰ Given that a mere risk of prejudice is sufficient to establish a fraud allegation, then as long as there is a sufficient causal connection between the fraudulent act and the risk of deprivation,⁷¹ Staff need not prove that investors actually relied on the misleading statements. In this regard, we reject the Remaining Respondents' submission that reliance is an essential element of the *actus reus* of fraud.

⁶⁷ *R v Abbey*, [1982] 2 SCR 24 at 42

⁶⁸ *R v Thérout*, [1993] 2 SCR 5 at 27 (**Thérout**), cited in *Richvale Resource Corp (Re)*, 2012 ONSEC 13, (2012) 35 OSCB 4286 at para 102; *Meharchand* at para 119

⁶⁹ *Thérout* at para 18; *Meharchand* at para 120

⁷⁰ *Thérout* at para 16-17; *Quadrex Hedge Capital Management Ltd. (Re)*, 2017 ONSEC 3, (2017) 40 OSCB 1308 at para 21; *Meharchand* at para 121

⁷¹ *R v Riesberry*, 2015 SCC 65 at para 22

- [215] In order to establish *mens rea* (i.e., the necessary subjective element) for a finding under clause 126.1(1)(b) of the Act, Staff must show that the respondent who has allegedly committed the offence “knows or ought reasonably to know” that the conduct involved perpetrates a fraud. As the Supreme Court of Canada has held in the context of a criminal case, the “accused must have subjective awareness, at the very least, that his or her conduct will put the property or economic expectations at risk.”⁷²
- [216] The Court further stated that “where the accused tells a lie knowing others will act on it and thereby puts their property at risk, the inference of subjective knowledge that the property of another would be put at risk is clear.”⁷³
- [217] It is no answer for a person accused of fraud to maintain that they did not think the acts were wrong, or that they hoped that no deprivation would occur.⁷⁴

(b) Fraud effected by way of false or misleading statements in promotional materials and in MGMIC’s offering memoranda

- [218] Before turning to consider the specific fraud allegations, some general comments are in order.
- [219] Full, true and plain disclosure of all material facts has long been held to be a cornerstone of securities regulation.⁷⁵ In *Philip Services Corp. (Re)*, the Commission stated:
- Disclosure is the cornerstone principle of securities regulation. All persons investing in securities should have equal access to information that may affect their investment decisions.⁷⁶
- [220] Disclosure is fundamental to the fairness of Ontario’s capital markets and to the protective mandate of the Act. However, that disclosure must be accurate and complete to be meaningful.⁷⁷ Accurate and complete public disclosure allows investors to assess the risks involved with making an investment, and serves to level the playing field between investors.⁷⁸
- [221] In *Rex Diamond Mining Corp. (Re)*, the Commission held that the burden rests on the company to broadly disclose information to the public. It should not be necessary for individual shareholders to make specific inquiries in order to find out information that should be disclosed.⁷⁹ The policy of equal access to

⁷² *Théroux* at para 29; *Meharchand* at para 122

⁷³ *Théroux* at para 29; *Meharchand* at para 123

⁷⁴ *R v Drabinsky*, [2009] 242 CCC (3d) 449 (ON SC) at para 473, cited in *Meharchand* at para 124

⁷⁵ *Cornish v Ontario (Securities Commission)*, 2013 ONSC 1310 (CanLII) (Div Ct) (**Cornish**) citing *Ontario Securities Commission and Brigadoon Scotch Distributors (Canada) Ltd. (Re)*, [1970] 3 OR 714 (HCJ) at 717. This language was adopted by the majority in *Pacific Coast Coin Exchange of Canada Ltd. v. Ontario (Securities Commission)*, [1978] 2 SCR 112 at 126.

⁷⁶ *Philip Services Corp. (Re)* (2006), 29 OSCB 3971 (**Philip Services**) at para 7

⁷⁷ *Cornish* at para 38 citing *Philip Services* at para 7

⁷⁸ *Sino-Forest Corporation (Re)*, 2017 ONSEC 27, (2017) 40 OSCB 6291 at para 1124, citing *AIT Advanced Technologies Corp (Re)*, 2008 ONSEC 3, (2008) 31 OSCB 712 at para 198

⁷⁹ *Rex Diamond Mining Corp. (Re)*, 2008 ONSEC 18, (2008) 31 OSCB 8337 at para 263

information that is reflected in the disclosure requirements under the Act has been characterized as the “most fundamental principle of securities regulation.”⁸⁰

- [222] When an issuer tells prospective and actual investors how funds raised will be invested, the issuer has considerable latitude in deciding what constraints to subject itself to, unless such constraints are specifically prescribed by applicable law. Subject to any prescribed legal constraints, an issuer may reserve for itself the ability to exercise wide discretion as to how funds will be deployed. Alternatively, the issuer may explicitly impose strict limitations on the use of funds.
- [223] Once the issuer makes that choice, however, the choice is binding. The disclosure must be true; it must also not be misleading. Non-disclosure of material facts is sufficient to satisfy the *actus reus* element of fraud.⁸¹
- [224] The Remaining Respondents submit that they were not required to comply strictly with representations and commitments made in MGMIC’s offering memoranda. In making this submission, the Remaining Respondents contend that the offering memoranda contain two types of representations: (i) MGMIC’s “investment policies, practices and restrictions”, and (ii) general descriptions of MGMIC’s business. We consider each of these in turn.
- [225] The section of the offering memoranda that is headed “Investment Policies, Practices and Restrictions” includes the following:
- a. MGMIC would maintain “at least 50% of its portfolio in mortgages secured on Canadian residential real estate and in short term deposits”;
 - b. “investments are made only when recommended by the Manager and approved by the Credit Committee”;
 - c. MGMIC “does not invest in any mortgage or make any investment that would result in its failure to qualify as a Mortgage Investment Corporation as defined in the Income Tax Act”;
 - d. MGMIC “does not loan money to... non-arm’s length parties”; and
 - e. MGMIC’s “investment policies, practices and restrictions set out above may be amended... from time to time by unanimous approval of [MGMIC’s] Board of Directors.”⁸²
- [226] Even though the Remaining Respondents described MGMIC’s investment policies, practices and restrictions set out above as “mandatory”,⁸³ the Remaining Respondents rely on the language quoted in paragraph [225](e) above in support of their submission that the investment policies, practices and restrictions were subject to change at MGMIC’s discretion and without limitation. We do not accept this submission. The quoted language merely describes the authority to make a change. It does not relieve MGMIC of its disclosure obligations to investors, including the obligation to give investors proper notice of planned changes.

⁸⁰ Cornish at para 40, citing *Cartaway Resources Corp. (Re)*, [2000] BCSCD No 92 (BCSC) at para 216

⁸¹ Thérout at para 18

⁸² Exhibit 5, Offering Memorandum dated August 1, 2014, at 11

⁸³ *Hearing Transcript*, June 27, 2019, at 131

- [227] Similarly, we cannot accept the Remaining Respondents' submission that representations that were contained in the offering memoranda but that were outside the "Investment Policies, Practices and Restrictions" section, merely constituted a description of how the business was to be operated, were "not mandatory", and therefore allowed "more scope for change"⁸⁴ without notice to investors.
- [228] For example, the explicit statement that "approximately 85% [of MGMIC's investments] will be secured by second mortgages with the balance by first mortgages" is outside the investment policies, practices and restrictions section, but it unambiguously excludes the possibility that MGMIC will invest in third mortgages. No reasonable investor would see that statement as a casual and non-binding description of how the business was to be operated. In our view, that commitment is no less "mandatory" than those listed in paragraph [225] above.
- [229] In summary, we do not distinguish between those commitments that are found within the investment policies, practices and restrictions section, and those that are elsewhere in the offering memoranda. The conclusions proposed by the Remaining Respondents would be fundamentally at odds with the nature of an offering document.
- [230] Finally, we reject the Remaining Respondents' invitation to give significant weight to warnings contained in the offering memoranda to the effect that investment in MGMIC was speculative and risky. Such warnings do not absolve an issuer from complying with representations and commitments it makes in those offering memoranda.
- [231] We will now examine each of the alleged failures to comply with statements made in the offering memoranda, as well as in MGMIC's promotional materials.

(c) Failure to disclose the true nature of MGMIC's operations, controls and processes

i. Failure to fulfill the mandate of MGMIC's Credit Committee

- [232] Staff alleges that the respondents represented to investors that MGMIC would make investment decisions (including decisions relating to loans, borrowings, acquisitions and dispositions) only if recommended by MGC and approved by MGMIC's Credit Committee. That committee was to meet as required and no less frequently than quarterly.
- [233] Staff alleges that the Credit Committee did not meet as required and that it did not review and approve many of MGMIC's investments. Staff submits that MGMIC made numerous investment decisions without the involvement of Ms. Ghaffari, who was the head of the Credit Committee.
- [234] The Remaining Respondents submit, and we agree, that as a practical matter, the Credit Committee "met" frequently. Its only members were Ben and Ms. Ghaffari, and there is no dispute that the two of them spoke very often, typically one or more times daily. While better practice would include minutes that record the required discussions and approvals, and while in this case there

⁸⁴ *Hearing Transcript*, June 27, 2019, at 131

are no such minutes, we do not find that the non-existence of any minutes requires the conclusion that the Credit Committee did not meet.

- [235] However, even if it could be said that the Credit Committee met frequently, we are unable to find that Ms. Ghaffari was involved in approving all of MGMIC's lending decisions, as we explained above, concluding at paragraph [97]. We therefore accept Staff's submission that at least in some instances, the Credit Committee did not operate in the way that was set out in the offering memoranda. As a result, there was no proper substantive review of some of the loan applications.

ii. Failure to fulfill the mandate of MGMIC's Investment Committee

- [236] The respondents represented to investors that MGMIC established an Investment Committee to, among other things, adjudicate and advise on transactions involving potential conflicts of interest, and approve or reject investments in mortgages that might adversely affect MGMIC's status as a MIC. The Investment Committee's two members were Ben and Ms. Ghaffari.

- [237] Staff alleges that the following transactions (the Related Party Loans) were non-arm's length, either because they were loans to Ben or Payam, or because they were loans to other individuals or corporations related to MGMIC:

- a. *to Payam* – in January 2015, a loan of \$82,500 regarding Heron Hollow (referred to beginning at paragraph [86] above);
- b. *to Ben* – in April 2015, \$500,000 secured by a third mortgage on 133 Boake Trail and a collateral mortgage on 11 King High Drive;
- c. *to Atlas Capital Corporation*, of which Mr. Ricci was a director and officer – in August 2015, a loan of \$665,000 regarding Palace Pier (see paragraph [89] above), which Ben listed in court filings as Mr. Mohammed's address;
- d. *to Alijan Alijanpour* – in October 2015, a loan of \$650,000 secured by a second mortgage on 23 Thornridge Drive, a property that Ben advised Ms. Ghaffari was being held for Mr. Missaghi so that Mr. Missaghi could carry out a power of sale and recover funds owing to him;
- e. *to Enigma Land Ltd.*, of which Payam was a director – in November 2015, a loan of \$320,000 secured by a second mortgage on 4342 Steeles Avenue, which was owned by Mr. Missaghi;
- f. *to World Properties Corporation*, which was controlled by Mr. Mohammed (according to Ben's statement to Staff) or Mr. Missaghi (according to Ben's statement to Ms. Ghaffari) – in December 2015, a loan of \$700,000 secured by a second mortgage on a retail commercial plaza;
- g. *to Canadian Land Corporation*, which MGMIC has stated was controlled by what it described as "the Missaghi gang", and of which Mr. Missaghi was a director – in February 2016, a loan of approximately \$2.7 million secured by a first mortgage on a property in Timmins;
- h. *to Mansteel New Liskeard Inc. (Mansteel)*, of which Ben's father-in-law was a director – in June and July 2016, loans totalling approximately \$3.9 million, which were guaranteed by Ben's father-in-law, and which were

secured by first and second mortgages over a property in Temiskaming that Payam testified Messrs. Missaghi and Mohammed and another individual were “in charge of”;⁸⁵

- i. *to 245 Ltd.*, one of Payam’s numbered companies (see paragraph [23] above) – in September 2016, a loan of \$282,500 secured by a second mortgage on 293 Euclid Avenue, a residential property in Toronto;
- j. *to Ben* – in March 2017, a loan of \$1 million secured in the same fashion as the April 2015 loan in (b) above, *i.e.*, a third mortgage on 133 Boake Trail and a collateral mortgage on 11 King High Drive;
- k. *to 254 Inc.*, one of Payam’s numbered companies (see paragraph [23] above) – in May 2017, a loan of \$611,000 secured by a second mortgage on 558 Dovercourt Road, a residential property in Toronto; and
- l. *to World Finance Corporation (World Finance)*, Mr. Missaghi’s company – in November 2017, a loan of \$1.6 million secured by an interest in a third mortgage on the Birchmount property.

[238] Each of these loans was to Ben, Payam, Mr. Missaghi or Mr. Mohammed, or to corporations controlled by them. Given our finding that Messrs. Missaghi and Mohammed exercised considerable control over MGMIC, it follows that each of these Related Party Loans presented a conflict of interest.

[239] With respect to the two instances where Staff submits that Ben had a conflict of interest (*i.e.*, the loans identified in (b) and (j) above), Payam testified that in his view, as long as the offering memoranda disclosed that MGMIC directors could borrow funds from MGMIC, and as long as such transactions were later disclosed in MGMIC’s financial statements, no conflict of interest existed. We disagree. The conflict existed, whether it was disclosed or not.

[240] Staff alleges that the failures to comply with the commitment regarding the Investment Committee arose in one of two ways: (i) where Ms. Ghaffari did not approve a Related Party Loan, or (ii) where Ben approved a Related Party Loan in respect of which he was in a conflict of interest.

[241] As was the case with the Credit Committee, we accept the Remaining Respondents’ submission that because Ben and Ms. Ghaffari spoke so frequently, we cannot find that the Investment Committee did not meet. However, there are no minutes or other evidence to show that the committee considered everything it was required to. We repeat our conclusion, stated above, that Ms. Ghaffari was not involved in approving all of the Related Party Loans. We therefore accept Staff’s submission that at least in those instances, the Investment Committee did not operate in the way that was set out in the offering memoranda.

[242] The Remaining Respondents submit that because the offering memoranda contemplated that conflicts might not always be resolved in favour of investors, it cannot be said that the respondents failed to comply with their obligations in this regard. We disagree. MGMIC’s by-laws explicitly prohibited directors or officers who had a material interest in a transaction from voting on any resolution to approve the transaction. Both Ben (in his statements to Staff) and

⁸⁵ *Hearing Transcript*, March 8, 2019, at 11-12

Ms. Ghaffari (in her testimony before us) stated that the Investment Committee did nothing at any time.

- [243] The investors were promised, and were entitled to assume, that the Investment Committee would abide by its obligations and follow its process, by which unconflicted members of the committee would turn their mind to the relevant issues. In our view, it is at least misleading, if not bad faith, to ignore the process completely.
- [244] We conclude that in all of these instances, the Investment Committee failed to operate as required.

iii. Failure to qualify as a MIC under the Income Tax Act

- [245] In the offering memoranda, MGMIC represented to investors that it would at all times conduct its affairs so as to qualify as a MIC. While MGMIC did warn that there could be no assurance that it would be able to meet the MIC qualifications at all material times, MGMIC represented that its directors would use their best efforts in this regard.
- [246] This was an important selling point for MGMIC. Maintaining status as a MIC would ensure that shares of MGMIC would be qualified investments for the purpose of registered retirement savings plans, deferred profit-sharing plans, registered retirement income funds and registered education savings plans. MGMIC also represented that it operated as a tax-free flow-through conduit of profit to its preferred shareholders, most of whom invested through registered accounts.
- [247] MGMIC did not qualify as a MIC until mid-2016 at the earliest. MGMIC's audited financial statements for the years ending as at May 31, 2015, and May 31, 2016, disclosed this fact. MGMIC did not produce audited financial statements for the following year, despite the requirement that such statements be produced in order to qualify as a MIC.
- [248] The failure to qualify jeopardized MGMIC's ability to pay returns to its investors and exposed them to adverse tax consequences.
- [249] The fact that MGMIC did not qualify as a MIC was noted in the financial statements. However, the statements for the year ending and as at May 31, 2015, were not issued until June 28, 2016, and the May 31, 2016, statements were not issued until September 30, 2016. As a result, the disclosure was not timely.
- [250] While we have concerns about the timeliness and effectiveness of the disclosure, the record on this point is insufficient for us to conclude that the respondents committed fraud, either through a failure to take adequate steps to ensure MGMIC's status, or through inadequate disclosure, or both.

iv. Failure to properly disclose who had control of MGMIC

- [251] Staff alleges that until May 30, 2016, the respondents represented to investors that Ben, Payam and Ms. Ghaffari were the directors and senior officers of MGMIC. The revised offering memoranda disclosed beginning May 30, 2016, after Ms. Ghaffari had left MGMIC, that Ben and Payam were the sole directors and senior officers.

- [252] Staff alleges that this disclosure was false, in that by no later than March 2016, MGMIC was controlled by Ben, Mr. Missaghi, and Mr. Mohammed. As we have explained above, we agree.
- [253] As Staff alleges, no disclosure was ever made to investors, through revised offering memoranda or otherwise, regarding this change in control. Accordingly, investors had no way of evaluating the management experience or qualifications of Messrs. Missaghi or Mohammed, and were therefore unable to make fully informed decisions about the potential risks of investing in MGMIC.

(d) Failure to abide by MGMIC's lending parameters, policies and restrictions

i. Undisclosed investments in third mortgages

- [254] Staff alleges that until January 2017, the respondents represented to investors that loans by MGMIC would be limited to certain specified types of mortgages. These permitted loans included first and second mortgages but did not include third mortgages. The offering memoranda stated that approximately 85% of MGMIC's investments would be secured by second mortgages, with the balance secured by first mortgages.
- [255] A revised offering memorandum dated January 31, 2017, contemplated investment in third mortgages "where the equity in a property, relative to amounts owing under prior mortgages, and/or additional collateral provided are sufficient security for the Corporation's mortgage investment."⁸⁶ However, Staff alleges, and the Remaining Respondents concede, that before that change, MGMIC did invest in a third mortgage loan to Ben on 133 Boake Trail (see paragraph [237](b) above).
- [256] Staff alleges that by investing in third mortgages, MGMIC used investor funds in a manner contrary to the limitations set out in the offering memoranda and thereby exposed the investors to greater risk.
- [257] On cross-examination, Payam testified that the risk is greater where the lender is the second or third mortgagee, and another lender holds the higher priority mortgage(s). We agree. Indeed, it is evident from the limiting language quoted in paragraph [255] above that MGMIC had that view at the time.
- [258] We find that MGMIC, by investing in the third mortgage, failed to abide by the lending parameters, policies and restrictions set out in the offering memoranda in effect at the time.
- [259] We note also that, as Staff submits, the third mortgage granted on the Richmond Hill Property brought the total mortgages on that property to almost \$2.3 million, thereby causing the loan-to-value ratio for that property to exceed 100%, given the property's appraised value of \$2.15 million. While MGMIC purported to take additional collateral for this mortgage, in the form of security on a property owned by Ben in Vaughan, Staff alleges that this collateral was of no value to MGMIC, since the property was already funded by mortgages totalling approximately \$1.75 million, which exceeded its appraised value. We agree.

⁸⁶ Exhibit 49, Offering Memorandum revised January 31, 2017, at 10

ii. *Investments in mortgages that exceeded the self-imposed limitations on size and concentration*

- [260] Until January 2017, MGMIC represented in its offering memoranda that a “typical loan size” for MGMIC would range up to \$2 million. Promotional materials distributed by MGMIC stated that mortgage loans would range up to \$1 million.
- [261] MGMIC also promised that there would be concentration limits for its loans. In particular, a maximum of 35% of MGMIC’s assets would consist of mortgages on commercial and industrial properties, and at least half of MGMIC’s assets would consist of mortgages on “new, existing, proposed or in construction” residential properties.⁸⁷
- [262] The offering memoranda also represented to investors that MGMIC had “established a policy that limits its credit exposure to any one borrowing group.”⁸⁸ Ms. Ghaffari testified that there was no such policy, and the respondents did not adduce evidence of the existence of such a policy.
- [263] Staff alleges that MGMIC did not abide by these representations to investors. In particular, MGMIC exceeded the stated maxima:
- a. in early 2016, by advancing \$2,372,500 on the industrial property in Timmins referred to in paragraph [237](g) above; and
 - b. in June and July 2016, by lending approximately \$3.9 million on the industrial Temiskaming property referred to in paragraph [237](h) above.
- [264] By March 2017, those two loans alone made up over 60% of MGMIC’s portfolio, thereby exceeding the 35% limit for commercial and industrial properties. We cannot accept the Remaining Respondents’ submission that at least some portion of, if not all of, the Timmins and the Temiskaming properties were residential properties. The Remaining Respondents say this is so because when the loans were made there was a residential development planned, thereby bringing the properties within the word “proposed” referred to in the offering memoranda and in paragraph [261] above.
- [265] The only evidence in this respect was Payam’s assertion that a substantial portion of the Timmins property was “designated for residential development” because that is what Troy Wilson, a close associate of Mr. Missaghi’s, and the 1PLUS12 group were planning to do.⁸⁹ Payam’s hearsay evidence about Mr. Wilson’s untested hope does not rise to the necessary level to establish that any portion of the Timmins property was “proposed” to be residential. A reasonable investor would not include, within “residential property”, an industrial property that was not zoned to be residential and in respect of which there was not at least a formal application to allow the property to be used for that purpose.
- [266] With respect to the Temiskaming property, there was no evidence to support the Remaining Respondents’ submission that there were plans for a residential development there, let alone a formal proposal. The portion of Payam’s testimony that the Remaining Respondents cite in this regard relates only to the

⁸⁷ See, e.g., Offering Memorandum dated August 1, 2014, (Exhibit 5) at 8

⁸⁸ See, e.g., Offering Memorandum dated August 1, 2014, (Exhibit 5) at 10

⁸⁹ Hearing Transcript, March 8, 2019, at 61 lines 20-26

Timmins property and not to the Temiskaming property. Further, the appraisal obtained by MGMIC from Mr. Esposito describes the property type as “industrial manufacturing facility”, the zoning as “Legal, Non-Conforming Industrial Use (Rural)”, and the highest and best use of the property to be continuation “of its current industrial use until the site becomes economically feasible for redevelopment in accordance with the governing land use regulations.”⁹⁰

- [267] In addition, Staff alleges, and we agree, that these two loans of \$2.4 million and \$3.9 million were inconsistent with MGMIC’s description of the “typical” loan size being less than \$1 million (according to MGMIC’s promotional materials) or less than \$2 million (according to the offering memoranda). We reject the Remaining Respondents’ submission that because two loans represented a small fraction of the number of loans (*i.e.*, by counting the number of loans rather than focusing on the dollar amount of the loans), the representation regarding typical loans was complied with. While the representation was arguably true in a strictly literal sense, we find that it was substantively misleading to investors, in that it conveyed an inaccurate picture of the overall portfolio (*i.e.*, the two loans represented 60% of the portfolio) and fundamentally undermined what the investors bargained for.
- [268] Further, approximately 75% of the portfolio consisted of loans made to borrowers related to Mr. Missaghi. While MGMIC failed to establish a policy regarding concentration, as it had promised to do, we have no difficulty concluding that this level of concentration was inconsistent with what the reasonable expectations of investors would have been, given the promise to limit MGMIC’s exposure to any one borrowing group. The representation promised investors a diversified portfolio. MGMIC’s portfolio was not diversified.
- [269] We find that by making the two loans, MGMIC knowingly breached the promised limit regarding commercial and industrial properties and misled investors regarding typical loans. Those two loans, together with other loans in the portfolio, constituted a deliberate contravention by MGMIC of its representation regarding borrowing group concentration. In all these ways, MGMIC exposed investors to greater risk than had been disclosed and that they had agreed to assume in making their investment in preferred shares of MGMIC.

iii. Investing in imprudent mortgages, including mortgages in excess of appraised values, and loan-to-value ratios exceeding maxima

- [270] In the offering memoranda, MGMIC represented to investors that it would attempt “to minimize risk by being prudent in both its credit decisions and in assessing the value of the underlying real property offered as security.”⁹¹ In promotional materials that MGMIC prepared for potential investors, MGMIC explicitly set out “lending parameters”, including a maximum loan-to-value ratio of 85% on second mortgages, or 90% on bundled first and second mortgages, and a maximum mortgage amount of \$1 million.

⁹⁰ Exhibit 111, Appraisal re: 1107 Lakeshore Road South (Temiskaming Property) (***Temiskaming Appraisal***) at 4

⁹¹ See, *e.g.*, Offering Memorandum dated August 1, 2014, (Exhibit 5) at 9

[271] Staff cites five instances in which it alleges that MGMIC did not conduct appropriate due diligence, and/or where MGMIC made imprudent lending decisions.

(a) Timmins property

[272] The first instance is the Timmins property. Staff's concerns, which we address in turn, are as follows.

[273] First, MGMIC did not obtain any information about the ability of the borrower (Canadian Land Corporation) to pay the monthly interest payments of over \$24,000, or to repay the principal; nor did MGMIC obtain information about the creditworthiness of Mr. Wilson, who was the guarantor. We accept the Remaining Respondents' submission that for mortgages of this nature, the necessary comfort may be derived from the value of the property, rather than the borrower's creditworthiness. As we discuss below, however, we find that MGMIC had no reasonable basis to assess the value of the property.

[274] Second, Staff raised a concern regarding a condition contained in MGMIC's commitment letter to Canadian Land Corporation. That condition required that there be an appraisal reflecting a minimum value of \$3.65 million based on a maximum "marketing time" of 60 to 90 days. Staff submits, and we agree, that the appraisal that MGMIC obtained from Mr. Esposito did not meet this condition. In reaching that conclusion, we considered the following evidence:

- a. Ms. Ghaffari's testimony that marketing time is the time required, in the event of a default by the mortgagor, for a lender to sell the property and to recover the lender's investment; and
- b. the statement in Mr. Esposito's appraisal that "reasonable exposure time" (which the context makes clear is synonymous with "marketing time") is the:

estimated length of time the property interest being appraised would have been offered on the market prior to the hypothetical consummation of a sale at market value on the effective date of the appraisal.⁹²

[275] We accept that evidence, and we reject Payam's contrary suggestion that marketing time merely means the period during which a particular listing agreement would be valid. The logical connection between the appraised value of a property and the time that would be required to obtain that value is obvious. There is no logical connection between an appraised value and the length of one particular listing agreement, especially given that a listing agreement can be either renewed or extended indefinitely.

[276] We find that marketing time in the context of the MGMIC commitment letter means the time required to expose the property to market in order to sell it for close to its fair market value.

[277] Mr. Esposito's appraisal of the Timmins property concluded that the exposure time for that property would be "in the order of five years, assuming that the property is not sold as part of a portfolio and marketed in a professional

⁹² Exhibit 111, *Temiskaming Appraisal* at 8

manner.”⁹³ This qualification on the appraised value falls well short of the 60-to-90-day condition set out in the commitment letter. It renders the appraised value worthless for MGMIC’s immediate-term lending decisions, especially given MGMIC’s stated reliance on asset value for lending purposes. The respondents ought not to have relied on the appraisal.

- [278] Staff’s third concern regarding the Timmins property is that the appraisal obtained by MGMIC recommended an environmental audit, but none was obtained by MGMIC. We agree with Staff’s submission that it was imprudent to make the loan without doing so.
- [279] Fourth, in its promotional materials, MGMIC committed to make mortgage loans only where the loan-to-value ratio was no more than 85% on second mortgages and no more than 90% on bundled first and second mortgages. On cross-examination, Payam agreed that as the loan-to-value ratio increases, so does the risk. As discussed above, we find that the respondents were not entitled to rely on the appraisal obtained by MGMIC, which suggested a value of \$3,650,000. They therefore had no basis to conclude that they complied with their promised maximum loan-to-value ratio.
- [280] In summary, by lending on the Timmins Property, MGMIC violated its promise to follow prudent lending practices, because MGMIC failed to obtain an environmental audit, and because MGMIC relied on an appraisal that had as an essential underlying assumption a marketing time of five years, a period that is unsupportable, and that is significantly longer than the 60-90 day maximum called for in the commitment letter.

(b) Temiskaming Property

- [281] The second instance that Staff cites as being imprudent is the loan on the Temiskaming property. Staff identifies the following concerns.
- [282] First, Ben and Payam knew, before MGMIC took an assignment of the first mortgage, that the borrower Mansteel had defaulted on that mortgage, not having made any interest payments for nearly three years. MGMIC did not obtain any information about Mansteel’s ability to pay the monthly interest payments of over \$36,000, or to repay the principal; nor did MGMIC obtain information about the creditworthiness of Ben’s father-in-law, who was the guarantor but who had no economic interest in the property. Rather, Payam testified that he had relied on “new structures of individual shareholders”;⁹⁴ however, there was no evidence as to what these new structures were.
- [283] Once again, even if we accept the Remaining Respondents’ submission that for loans of this kind, the lender’s comfort as to the value of the property may obviate the need to be confident about the borrower’s ability to repay, the fact is that MGMIC had no reasonable basis to assess the value of the property. MGMIC’s commitment letter to Mansteel required that there be an appraisal reflecting a minimum value of \$4.63 million that could be achieved with a 365-day maximum marketing time. The appraisal that was delivered indicated that the property needed a marketing time of five years to sell at that price. For

⁹³ Exhibit 111, *Temiskaming Appraisal* at 8

⁹⁴ *Hearing Transcript*, May 14, 2019, at 132 lines 12-15

the same reasons as discussed above, this assumption easily disqualifies the appraisal as a basis for determining value for a prudent lender.

- [284] Payam also testified that he relied on an additional \$4 million, referring to funds held by the Ministry of the Environment and funds paid into court relating to environmental work performed by Mansteel. Staff submits that these funds were not available as security for repayment of Mansteel's debt to MGMIC. We agree.
- [285] Further, the appraisal recommended an environmental audit, but none was obtained by MGMIC. This is of particular concern with respect to Temiskaming, since Mansteel had been fined \$9,000 for environmental violations in connection with the property. We agree with Staff's submission that MGMIC's failure to obtain an environmental audit was inconsistent with the position that MGMIC followed prudent lending practices.
- [286] Finally, Staff notes that Payam did not visit the property. We do not regard this as requiring the conclusion that the loan was therefore imprudent.
- [287] In summary, by lending on the Temiskaming property, MGMIC violated its promise to follow prudent lending practices, because MGMIC failed to obtain an environmental audit, and because MGMIC relied on an appraisal that had as an essential underlying assumption a marketing time of five years, a period that is unsupportable, and that is significantly longer than the 365 day maximum called for in the commitment letter.

(c) Birchmount property

- [288] The third instance of imprudent lending cited by Staff is the Birchmount property.
- [289] By November 2017, Payam and Ben had advised Staff of their desire to wind up MGMIC, and MGMIC's shareholders had approved of a wind-up. Despite that, soon afterwards MGMIC committed to purchase an interest in a third mortgage on the Birchmount property, which mortgage was held by World Finance. As Payam acknowledged he knew at the time, Mr. Missaghi controlled World Finance.
- [290] MGMIC agreed to lend \$1.85 million to World Finance in return for a 30% interest in the third mortgage. Under this agreement, World Finance was to be responsible for all mortgage payments and fees.
- [291] By December 11, 2017, MGMIC had advanced \$1.6 million to World Finance. It did so even though:
 - a. the underlying security for the agreement was a third mortgage that had been in default for nine years and that had been granted by an owner who was bankrupt;
 - b. MGMIC did not require any personal guarantees to support the loan;
 - c. MGMIC did not obtain any evidence to support its reliance on World Finance to make the mortgage payments; and
 - d. MGMIC relied on an appraisal valuing the property at \$9.25 million, based on a condition that the property could be developed to include a senior citizens' apartment, a use that was not permitted by existing zoning restrictions.

- [292] As Staff notes, it subsequently became clear that the appraisal significantly overvalued the property, as is evidenced by the June 2018 approval of a sale of the property by a receiver, for \$3.45 million (about one third of the “appraised” value of \$9.25 million). As of the conclusion of the evidence portion of the merits hearing, MGMIC had not received any funds from the sale or recovered any amounts under its agreement with World Finance. Some proceeds remained following the disqualification of the first mortgagee and payment to the second mortgagee, but World Finance and a fourth mortgagee dispute MGMIC’s entitlement to any share of the proceeds.
- [293] The deficiencies cited above are serious. We find that they combine to require the conclusion that by making this loan, MGMIC violated its promise to follow prudent lending practices.
- [294] In reaching that conclusion, we reject Payam’s evidence that MGMIC was appropriately comfortable with the risk associated with the loan. Payam sought to explain that by advancing the funds to World Finance, MGMIC was enabling the 1PLUS12 investors to repay approximately \$1 million they owed to Ben in respect of other properties. Staff submits that we ought not to give any weight to Payam’s testimony on this point, because of his failure to make proper pre-hearing disclosure of his evidence (see the analysis beginning at paragraph [116] above). We do not find it necessary to resolve that issue, because we would reach the same conclusions even if we were to take Payam’s testimony into account.
- [295] With or without Payam’s testimony, it is clear to us that the loan had no legitimate economic purpose that was in the interests of all MGMIC shareholders. The loan may have served the interests of Ben and Payam, but it was imprudent for MGMIC.

(d) Loan-to-value ratios exceeding maxima on two properties

- [296] Finally, Staff notes that MGMIC exceeded the promised maximum loan-to-value ratio on the Heron Hollow property and on 293 Euclid Avenue. The actual loan-to-value ratios were 90% and 91% respectively, on second mortgages alone, without any bundled first mortgage. The ratios therefore exceeded the promised maximum of 85%.

(e) *Diverting loan advances to the benefit of the respondents or companies under their control*

- [297] Staff’s final fraud allegation is that the respondents improperly diverted MGMIC loan advances relating to two properties.

i. The Temiskaming property: Diversion of \$435,196 to Ben’s Numbered Company

- [298] Staff alleges that in January 2017, Ben arranged for the diversion of \$435,196 from the final \$445,000 advance to Mansteel regarding the Temiskaming property to go instead to his numbered company. Staff led the following evidence, which was not challenged, and which we accept:
- a. MGMIC advanced \$445,000 to its own solicitor;
 - b. MGMIC’s solicitor deducted fees and remitted the balance to Mansteel’s solicitor;

- c. Mansteel's solicitor remitted \$435,196 to Ben's Numbered Company; and
- d. both Ben and Payam took steps to effect these transfers.

[299] Payam testified that the funds were remitted to Ben's Numbered Company because Mansteel did not have a bank account.

[300] After Ben's Numbered Company received the funds, it made the following payments:

- a. \$100,007 to Canada Capital Corporation, a company related to Mr. Missaghi;
- b. two payments totaling \$208,874 to 245 Ltd. (which was 50% owned by Payam, and over which company's account both Ben and Payam had signing authority);
- c. \$13,326 to Ben in cash; and
- d. \$116,007 to C&K Mortgage Services, with a notation saying "High Point Missaghi".

[301] Payam attempted to justify these payments, including by explaining that Ben's father-in-law guaranteed the loan and was added as a director of Mansteel, to ensure that payments on the mortgage were made as required. Payam's testimony on this point was not cogent, and we were left with no convincing explanation as to how the significant payments to the parties mentioned above were made for legitimate reasons in the interests of MGMIC's shareholders. We were similarly unconvinced by the Remaining Respondents' submission that the funds were available to be paid back to MGMIC, and that therefore it could not be said that the funds were not diverted.

[302] Accordingly, we find that MGMIC deliberately diverted these funds to Ben and Payam, and to entities in which they or the 1PLUS12 investors had a significant or controlling interest. We reject the Remaining Respondents' submission that Staff's choice not to call Messrs. Missaghi or Mohammed as witnesses precludes this finding. The uncontroverted evidence shows the flow of funds as described, and makes it more likely than not that MGMIC diverted the funds to the Remaining Respondents' benefit. The respondents failed to rebut that conclusion.

ii. The Birchmount property: Diversion of \$1.1 million to Ben

[303] Staff alleges that in December 2017, Ben diverted approximately \$1.1 million to himself from the \$1.6 million that MGMIC advanced regarding the Birchmount property. Staff led unchallenged evidence, which we accept, that establishes that on each of November 28, December 5 and December 6, 2017:

- a. MGMIC advanced \$400,000 to its solicitor;
- b. MGMIC's solicitor deducted the firm's fees and remitted the balance to World Finance's solicitor;
- c. World Finance's solicitor deducted that firm's fees and remitted the balance to a corporation of which Mr. Wilson (Mr. Missaghi's associate, referred to in paragraph [265] above) was the sole registered director and officer;

- d. that corporation transferred the funds to Ben's Numbered Company; and
- e. Ben's Numbered Company transferred part or all of the funds to Ben's personal account.

[304] As a result of the above transactions, Ben received \$1,115,000 into his personal account. Ben used the funds to repay his personal indebtedness to MGMIC in respect of the mortgages on Boake Trail and King High Drive referred to in paragraphs [237](b) and (j) above.

[305] In his testimony, Payam attempted to explain these transactions as a "solution" advanced by the 1PLUS12 group to repay an alleged \$1 million debt owed to Ben by the 1PLUS12 group. Once again, Payam's explanation was not cogent, and in any event it was not disclosed to Staff before the hearing, as a result of which we give it no weight, for the reasons set out in paragraphs [122] to [126] above.

4. Conclusion regarding Staff's fraud allegations

[306] In summary, we find that in circumstances when the respondents were experiencing significant financial pressure, MGMIC perpetrated frauds on MGMIC's investors, and thereby contravened s. 126.1(1)(b) of the Act when it:

- a. knowingly engaged in acts of deceit by failing to:
 - i. disclose that MGMIC's Credit Committee did not operate as promised in the offering memoranda;
 - ii. disclose that MGMIC's Investment Committee did not properly review and advise regarding transactions in which MGMIC had a conflict of interest;
 - iii. disclose that Messrs. Missaghi and Mohammed exercised considerable control over MGMIC;
 - iv. comply with MGMIC's commitment not to invest in third mortgages;
 - v. comply with the \$1 million maximum loan amount set out in MGMIC's promotional materials and the maximum "typical" loan amount of \$2 million specified in MGMIC's offering memoranda;
 - vi. establish and comply with a policy to limit MGMIC's exposure to one borrowing group; and
 - vii. comply with MGMIC's commitment to be prudent in its credit decisions and in assessing the value of underlying real property offered as security;

all of which were facts that would, as the respondents knew, have been material to investors; and
- b. thereby caused a deprivation to MGMIC's investors, in that they exposed the investors to greater risk than the investors had agreed to assume; and
- c. did so knowing that their conduct could result in the MGMIC suffering that deprivation.

- [307] We also find that MGMIC perpetrated frauds on its investors when, without proper authority, MGMIC deliberately diverted to Ben's and Payam's benefit portions of the advances on the Temiskaming property and the Birchmount property. We reject the Remaining Respondents' submission that the payments were not a "course of conduct relating to securities", and that they therefore fall outside the scope of s. 126.1 of the Act.
- [308] The diversion frauds consist of two inextricably intertwined elements: (i) the sale of securities to MGMIC shareholders on the strength of promises that the investors' funds would be used for a particular purpose; and (ii) the diversion, instead, of those funds to the benefit of Ben, Payam, and their related entities.
- [309] Finally, we find that Ben, Payam and MGC were inextricably wound up in all of MGMIC's frauds, and that Ben and Payam were fully knowledgeable about the extent of MGMIC's misconduct described above. They knew that by failing to comply with their disclosure and risk management obligations, they were exposing investors to greater risk than those investors had bargained for. Therefore, all three of the Remaining Respondents (*i.e.*, Ben, Payam and MGC) contravened s. 126.1(1)(b) of the Act, which brings within its scope those who "directly or indirectly... participate in" any conduct prohibited by that section.
- [310] Given these findings, it is unnecessary to address Staff's allegations that the respondents breached s. 122(1)(b) of the Act by making misleading or untrue statements in the offering memoranda. That conduct is subsumed within our findings with respect to the fraud allegations.

V. CONCLUSION

- [311] The full extent of the relationships among the four respondents, Messrs. Missaghi and Mohammed, 1PLUS12 and others was not made clear by the evidence in this hearing. However, that evidence did establish a mosaic that includes:
- a. the close relationships between the respondents and Messrs. Missaghi and Mohammed;
 - b. the considerable influence that Messrs. Missaghi and Mohammed exercised over MGMIC;
 - c. the large and late-in-the-day Related Party Loans; and
 - d. the various conflicts that were neither properly disclosed nor properly managed by Ben and Payam.
- [312] All of that led to investors in MGMIC making an investment that in material respects was different than what they had bargained for, and that led ultimately to the destruction of MGMIC's portfolio at the expense of the investors and for the benefit of Ben and Payam. The conduct shows a profound disregard by MGMIC for its investors, and a profound disregard by Ben and Payam of their duties as directors and officers of MGMIC.
- [313] Staff has established that:
- a. MGMIC, Ben and Payam were engaged in the business of trading in securities, contrary to s. 25(1) of the Act;
 - b. MGMIC, Ben and Payam contravened s. 53(1) of the Act as a result of their conduct associated with all of MGMIC's distributions of shares during

the Material Time, except for the four distributions referred to in paragraph [196] above; and

- c. contrary to s. 126.1(1)(b) of the Act, all four respondents perpetrated frauds on MGMIC's investors as described in paragraphs [306] and [307] above.

[314] Given our findings that Ben and Payam directly contravened the Act as described in the preceding paragraph, we need not address Staff's request that we find that Ben and Payam "authorized, permitted or acquiesced in" MGMIC's and MGC's misconduct, as contemplated by s. 129.2 of the Act.

[315] The parties shall contact the Registrar on or before January 10, 2020, to arrange a first attendance in respect of a hearing regarding sanctions and costs. That first attendance is to take place on a date that is mutually convenient, that is fixed by the Secretary, and that is no later than January 31, 2020.

[316] If the parties are unable to present a mutually convenient date to the Registrar, then each of Staff and the Respondents may submit to the Registrar, for consideration by a panel of the Commission, a one-page written submission regarding a date for the first attendance. Any such submission shall be submitted on or before January 10, 2020.

Dated at Toronto this 17th day of December, 2019.

"Timothy Moseley"

Timothy Moseley

"M. Cecilia Williams"

M. Cecilia Williams

"Lawrence P. Haber"

Lawrence P. Haber

APPENDIX 6

ENDORSEMENT OF THE HONOURABLE MR. JUSTICE HAINEY
Dated: September 20, 2019

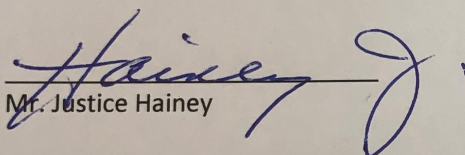
B&M Handelman Investments Limited et. al. and Christine Drotos (Court File No. CV-18-594590-00CL)

The motion of Rosen Goldberg Inc., in its capacity as the court-appointed receiver (the "**Receiver**") of the property municipally known as 4 Birchmount Road, Toronto, Ontario (the "**Birchmount Property**") for advice and directions with respect to the distribution of the net proceeds from the sale of the Birchmount Property is resolved on the following terms.

The net proceeds from the sale of the Birchmount Property, after payment of the fees and disbursements of the Receiver and its legal counsel, shall be distributed as follows:

- 1) First to Dewart Gleason LLP in trust for Loraine and Gilbert Barlow in the amount of \$365,000 in connection with their mortgage registered against the Birchmount Property; and
- 2) The balance to Miller Thomson LLP in trust for World Finance Corporation and Chaitons LLP in trust for Grant Thornton Limited in its capacity as court-appointed receiver of Money Gate Mortgage Investment Corporation on 50/50 basis in connection with their mortgage registered against the Birchmount Property.

This Endorsement shall be kept in abeyance until September 30, 2019.


Mr. Justice Hailey

Court File No. CV-18-594590-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE MR.

)

TUESDAY, THE 15TH

JUSTICE HAINEY

)

DAY OF OCTOBER, 2019

**B&M HANDELMAN INVESTMETNS LIMITED, FLOORDALE HOLDINGS
LIMITED, M. HIMEL HOLDINGS INC., 1530468 ONTARIO LTD., MAXOREN
INVESTMENTS and SHEILACO INVESTMETNS INC.**

Applicants**- and -****CHRISTINE DROTOS****Respondents**

**DISTRIBUTION ORDER
(October 15, 2019)**

THIS MOTION made by Rosen Goldberg Inc., in its capacity as the Court-appointed receiver (the “**Receiver**”), without security, over the lands and premises registered in the name of the Respondent, Christine Drotos, municipally known as 4 Birchmount Road, Toronto, Ontario (the “**Birchmount Property**”) initially returnable May 2, 2019, for, *inter alia*, advice and directions regarding the distribution of remaining net proceeds from the sale of the Birchmount Property (the “**Surplus Proceeds**”), and an Order approving (i) the activities and proposed activities described in the Receiver’s Fifth Report dated April 29, 2019 (the “**Fifth Report**”), and in the Supplement to its Fourth Report dated November 26, 2018, (ii) the Receiver’s Interim Statement of Receipts and Disbursements for the period from July 9, 2018, to April 29, 2019, as set out in Appendix “S” to the Fifth Report, (iii) the fees and disbursements of the Receiver for the period from November 17, 2018, to March 13, 2019, and the fees and disbursements of Blaney McMurtry LLP (“**Blaneys**”) for the period from November 6, 2018, to April 28, 2019, was heard on September 13 and 20, 2019 at 330 University Avenue, Toronto, Ontario.

ON READING the Fifth Report of the Receiver dated April 29, 2019, the affidavit of Chad Kopach sworn April 29, 2019, the Affidavit of Brahm Rosen sworn April 23, 2019, the Affidavit of Troy Wilson sworn September 5, 2019, the Affidavit of Alla Pavlovskaja, sworn September 5, 2019 and the Affidavit of Lorraine Barlow affirmed June 26, 2019, and on reading the consent of Lorraine and Gilbert Barlow, World Finance Corporation, Grant Thornton Limited in its capacity as Court-appointed receiver of Money Gate Mortgage Investment Corporation (the “**MGMIC Receiver**”) and the Receiver, no one else appearing although properly served as set out in the affidavits of service of Eric Golden sworn April 30, 2019,

1. **THIS COURT ORDERS** that the time for service of the Receiver’s Notice of Motion originally returnable May 2, 2019 (the “**NOM**”), and related motion material filed by the Receiver in support of that NOM, including the Receiver’s Motion Record dated April 29, 2019, and the Fifth Report (collectively, the “**Motion Material**”), be and is hereby abridged, that service of the NOM and Motion Material is hereby validated, and that further service thereof is hereby dispensed with.
2. **THIS COURT ORDERS** that the Supplement to the Receiver’s Fourth Report dated November 26, 2018, and the Fifth Report, and the actions of the Receiver described therein, be and are hereby approved.
3. **THIS COURT ORDERS** that the Receiver’s Interim Statement of Receipts and Disbursements for the period from July 19, 2018 to April 29, 2019, as set out in Appendix “S” to the Fifth Report, be and is hereby accepted and approved.
4. **THIS COURT ORDERS** that the fees and disbursements of the Receiver for the period from November 17, 2018 to March 13, 2019, and the fees and disbursements of Blaneys for the period from November 6, 2018 to April 28, 2019, be and are hereby approved.
5. **THIS COURT ORDERS** that \$1,300,000.00 of the Surplus Proceeds shall be distributed as follows (the “**Distribution**”):
 - a. First to Dewart Gleason LLP in trust for Loraine and Gilbert Barlow in the amount of \$365,000 in connection with their mortgage registered against the Birchmount Property; and

- b. the balance to Miller Thomson LLP in trust for World Finance Corporation and Chaitons LLP in trust for the MGMIC Receiver, on a 50.50 basis in connection with their mortgage registered against the Birchmount Property, without the requirement of any form of direction from the World Finance Corporation, MoneyGate Investment Corporation, or any other party, parties or person(s).
6. **THIS COURT ORDERS** that approval of the distribution of the Birchmount Proceeds pursuant to paragraph 1 of this Order is not required in the receivership proceeding of Money Gate Mortgage Investment Corporation (Court File No. CV-18-00608086-00CL).
7. **THIS COURT ORDERS** that the remaining Surplus Proceeds following the Distribution, be held by the Receiver as a reserve for the outstanding and estimated future fees and expenses of the Receiver and its independent counsel Blaney McMurtry LLP up to and including the discharge of the Receiver herein.
8. **THIS COURT ORDERS** that following the discharge of the Receiver, any remaining Surplus Proceeds held by the Receiver shall be paid to Miller Thomson LLP in trust for World Finance Corporation and Chaitons LLP in trust for the MGMIC Receiver, on a 50.50 basis in connection with their mortgage registered against the Birchmount Property, without the requirement of any form of direction from the World Finance Corporation, MoneyGate Investment Corporation, or any other party, parties or person(s) (the “**Final Distribution**”).
9. **THIS COURT ORDERS** that approval of any Final Distribution of the Birchmount Proceeds pursuant to paragraph 8 of this Order is not required in the receivership proceeding of Money Gate Mortgage Investment Corporation (Court File No. CV-18-00608086-00CL).
10. **THIS COURT ORDERS** that any and all remaining claims to the Surplus Funds be and are hereby dismissed.



B&M HANDELMAN INVESTMENTS LIMITED, ET AL.

Applicants

and

CHRISTINE DROTOS

Respondent

Court File No. CV-18-594590-00CL

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

Proceeding commenced at Toronto

**DISTRIBUTION ORDER
(October 15, 2019)**

BLANEY MCMURTRY LLP

Barristers & Solicitors
2 Queen Street East, Suite 1500
Toronto ON M5C 3G5

Eric Golden LSUC #38239M

(416) 593-3927 (Tel)
(416) 593-5437 (Fax)
Email: egolden@blaney.com

Chad Kopach LSUC #48084G

(416) 593-2985 (Tel)
(416) 593-5437 (Fax)
Email: ckopach@blaney.com

Lawyers for the Receiver,
Rosen Goldberg Inc.

APPENDIX 7

Court File No. CV-17-583592

**ONTARIO
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE
JUSTICE HAINEY

)
)
)

FRIDAY, THE 17TH
DAY OF JANUARY, 2020



MONEY GATE MORTGAGE INVESTMENT CORPORATION

Plaintiff

- and -

ATLAS CAPITAL CORPORATION (2013) and JONATHANE RICCI

Defendants

ORDER

THIS MOTION, made by Grant Thornton Limited in its capacity as Court-appointed Receiver of Money Gate Mortgage Investment Corporation for an order transferring this proceeding to the Superior Court of Justice (Commercial List), was heard this day at the Court House, 330 University Avenue, Toronto, Ontario, M5G 1R7.

1. **THIS COURT ORDERS** that this proceeding be transferred to the Superior Court of Justice (Commercial List).
2. **THIS COURT ORDERS** that all further documents required to be filed in this proceeding shall be filed in the Superior Court of Justice (Commercial List).

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

JAN 17 2020

PER / PAR:

HA

Hailey J

**MONEY GATE MORTGAGE INVESTMENT
CORPORATION**

-and-

ATLAS CAPITAL CORPORATION (2013), et al.

Plaintiff

Defendants

164

Court File No. CV-17-583592

**ONTARIO
SUPERIOR COURT OF JUSTICE
PROCEEDING COMMENCED AT
TORONTO**

ORDER

CHAITONS LLP
5000 Yonge Street, 10th Floor
Toronto, Ontario M2N 7E9

Maya Poliak (LSO #54100A)
Tel: (416) 218-1137
Fax: (416) 218-1837
E-mail: maya@chaitons.com

Lawyers for Grant Thornton Limited

COUNSEL SLIPCOURT FILE
NO.:

CV-17-583592

DATE:

JANUARY 17, 2020

NO. ON LIST

TITLE OF
PROCEEDING

MONEY GATE v. ATLAS CAPITAL

COUNSEL FOR:

- ☐ PLAINTIFF(S)
☒ APPLICANT(S)
☐ PETITIONER(S)

Maya Poliak
 for Money Gate Mortgage Investment
 Corporation

PHONE
 FAX
 EMAIL

(415) 218-1161

(416) 218-1866

maya@clerk.com

COUNSEL FOR:

- ☒ DEFENDANT(S)
☐ RESPONDENT(S)

Atlas Capital (2018)

PHONE
 FAX
 EMAIL

416-769-4107

416-352-7638

atlas@clerk.com

JUDICIAL NOTES:

WYGOOD, ADAM J.
 Soc the Non-Party, Mortezza Katchian

PH: 416-364-4900

FX: 416-364-3865

awygodug@6yld.com

January 17, 2020

2 1/2 hour Motion before
 Me on Monday, 2020 at
 10 AM. The undersigned
 back statements must be
 received by January 24/20
 by Ben Katchian and he
 Harry J

Attends of his
exam at or

conference ¹⁹¹¹
February 25/20.

Has J

APPENDIX 8

From: [Eli Karp](#)
To: [Maya Poliak](#)
Cc: [Anissimova, Alsou \(MAG\)](#)
Subject: Re: Money Gate Mortgage Investment Corporation v. Atlas Capital Corporation (2013) and Jonathane Ricci
Date: Tuesday, March 10, 2020 7:05:15 PM
Attachments: [signaturelogo_0d5557d6-a1f1-4a29-8077-347e2bb1c9aa.png](#)
[thinkprint_1ce891d4-e7bd-492c-a24c-11a2636f5650.png](#)
[signaturelogo_0d5557d6-a1f1-4a29-8077-347e2bb1c9aa.png](#)

Confirmed.

On Tue., Mar. 10, 2020, 7:02 p.m. Maya Poliak, <Maya@chaitons.com> wrote:

Alsou,

We are lawyers for the Receiver of Money Gate Mortgage Investment Corporation, the plaintiff in the above referenced proceeding. We have a summary judgment motion scheduled in the above referenced matter for March 17, 2020. Please be advised that the parties have settled the action as between them and will no longer be requiring the hearing date. Please release the time scheduled for this proceeding and advise if the judge hearing this matter requires the parties to attend at a 9:30 to speak to the settlement. Counsel for the Defendants is copied on this email.

Sincerely,



Maya Poliak

Partner

Direct Tel: 416.218.1161

Direct Fax: 416.218.1844

Email: Maya@chaitons.com

5000 Yonge St, 10th Floor, Toronto, Ontario, Canada, M2N 7E9

Note: This e-mail may be privileged and/or confidential, and the sender does not waive any related rights and obligations. Any distribution, use or copying of this e-mail or the information it contains by other than an intended recipient is unauthorized. If you received this e-mail in error, please advise me (by return e-mail or otherwise) immediately.

Ce courrier électronique est confidentiel et protégé. L'expéditeur ne renonce pas aux droits et obligations qui s'y rapportent. Toute diffusion, utilisation ou copie de ce message ou des renseignements qu'il contient par une personne autre que le (les) destinataire(s) désigné(s) est interdite. Si vous recevez ce courrier électronique par erreur, veuillez m'en aviser immédiatement, par retour de courrier électronique ou par un autre moyen.



Please consider the environment before printing this email

APPENDIX 9

Court File No. CV- 17-583592

**ONTARIO
SUPERIOR COURT OF JUSTICE**

B E T W E E N:

MONEY GATE MORTGAGE INVESTMENT CORPORATION

Plaintiff

- and -

ATLAS CAPITAL CORPORATION (2013) and JONATHANE RICCI

Defendants

MINUTES OF SETTLEMENT

WHEREAS Atlas Capital Corporation (2013) (“**Atlas**”) is the registered owner of the property municipally known as 2045 Lakeshore Blvd. West, Unit 3103, Toronto, Ontario and more particularly described in **Schedule “A”** hereto (the “**Property**”);

AND WHEREAS Money Gate Mortgage Investment Corporation (“**MGMIC**”) registered a mortgage against the Property on August 20, 2015 as Instrument No. AT3984341 (the “**MGMIC Mortgage**”);

AND WHEREAS MGMIC commenced a legal proceeding against Atlas and Jonathane Ricci (“**Ricci**”, and together with Atlas, the “**Defendants**”) before the Ontario Superior Court of Justice in the City of Toronto bearing Court File Number CV-17-583592 (the “**Action**”);

AND WHEREAS, pursuant to an order of the Ontario Superior Court of Justice (Commercial List) (the “**Commercial Court**”) dated November 6, 2018, Grant Thornton Limited was appointed as Receiver over the property, assets and undertakings of MGMIC (the “**Receiver**”);

AND WHEREAS, pursuant to an Order of the Commercial Court dated January 17, 2020, the Action was transferred to the Commercial Court;

AND WHEREAS the Receiver and the Defendants (collectively, the “**Parties**”) want to fully and finally resolve the Action.

NOW THEREFORE, in consideration of the promises and covenants contained herein and for other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the Parties hereby agree as follows:

- 1) The Defendants shall pay to the Receiver the sum of Three Hundred and Seventy Thousand Dollars (\$370,000.00) (the “**Settlement Amount**”) by 4:00 p.m. on the date which is the earliest of: (i) ninety (90) days from the date on which the City of Toronto State of Emergency due to Covid 19 is lifted; or (ii) October 31, 2020 (the “**Payment Date**”), which shall be paid to Chaitons LLP in trust or as otherwise directed by the Receiver;
- 2) Commencing April 1, 2020 and until the Payment Date, the Defendants shall pay to the Receiver interest on the Settlement Amount on a monthly basis in the amount of \$2,466.67 (the “**Interest Payment**”), which interest shall be paid to the Receiver on the first day of every month by direct deposit or wire transfer the details of which are set out at **Schedule “B”** hereto. For greater clarity, interest payments shall commence on May 1, 2020 and interest owing for the month of April 2020 shall accrue at the rate of 8% per annum to be paid on the Payment Date.

- 3) The Parties shall execute a mutual full and final release in the form attached hereto as **Schedule “C”**, which shall be held in escrow and not utilized until such time as payment is made in accordance with paragraph 1 herein;
- 4) The Parties agree that after payment is made by the Defendants in the manner set out in paragraph (1) of these Minutes, the Receiver shall:
 - i. discharge the MGMIC Mortgage; and
 - ii. obtain an order of the Commercial Court on consent of the Parties dismissing the Action on a without cost basis;
- 5) The Defendants shall execute a Consent to Judgment(the “**Consent**”), in the form attached as **Schedule “D”** hereto (the “**Judgment**”).
- 6) The Parties agree that in the event that any of the payments are not made by the Defendants pursuant to paragraphs 1 or 2 herein, the Receiver may, within five (5) days of the due date for such payment, act on the Consent and the Judgment shall be issued and entered by the Receiver upon the expiration of the five (5) day period.
- 7) The Parties acknowledge and agree that these Minutes of Settlement and the accompanying documents shall be governed by the laws of the Province of Ontario.
- 8) These Minutes of Settlement and the accompanying documents shall constitute the entire agreement between the Parties with respect to the settlement of the matters raised or referred to within the Action or the MGMIC Mortgage.
- 9) These Minutes of Settlement may be executed in counterparts, each of which shall be deemed to be an original and both of which taken together shall be deemed to constitute one and the same instrument. Counterparts may be executed either in original or faxed or electronic PDF

format and any signatures received by e-mail or a receiving fax machine shall be deemed and may be treated as original signatures of the parties.

IN WITNESS WHEREOF the parties hereto have hereunto set their hands and seals, or have executed this document by their respective corporate seals and signatures of their respective officers and/or directors duly authorized to do so, _____ day of May, 2020

**GRANT THORNTON LIMITED in its capacity
as the Court-appointed Receiver of MONEY
GATE MORTGAGE INVESTMENT
CORPORATION**

By: _____

Name: _____

Title: _____

I have authority to bind the corporation.

ATLAS CAPITAL CORPORATION (2013)

By: _____

Name: _____

Title: _____

I have authority to bind the corporation

SIGNED BEFORE ME this ____ day April, 2020

Print Name:

Witness

JONATHANE RICCI

SCHEDULE A TO THE MINUTES OF SETTLEMENT

Property Description:

PIN: 11382 - 0412 LT

Description: UNIT 3, LEVEL 30, YORK CONDOMINIUM PLAN NO. 382, PT LOT 24
PLAN 1176 & PT WATER LOT IN FRONT OF LOT F BROKEN FRONT
RANGE E ON LAKE ONTARIO PTS 1
TO 3, 8, 19, 20, 29, 30, 31A, 31C, 32A, 32C, 33, 34, 35B 66R9423 AS IN
SCHEDULE 'A' OF DECLARATION B577469 AMENDED BY B807719; S/T
B995378 TO B995380; T/W B995374 TO B995377 ETOBICOKE , CITY OF
TORONTO

PIN: 11382- 0754 LT

Description: UNIT 97, LEVEL B, YORK CONDOMINIUM PLAN NO. 382, PT LOT 24
PLAN 1176 & PT WATER LOT IN FRONT OF LOT F BROKEN FRONT
RANGE EON LAKE ONTARIO PTS 1
TO 3, 8, 19, 20, 29, 30, 31A, 31C, 32A, 32C, 33, 34, 35B 66R9423 AS IN
SCHEDULE 'A' OF DECLARATION B577469 AMENDED BY B807719; S/T
B995378 TO B995380; T/W B995374 TO B995377 ETOBICOKE, CITY OF
TORONTO

PIN: 11382- 0755 LT

Description: UNIT 98; LEVEL 8, YORK CONDOMINIUM PLAN NO. 382, PT LOT 24
PLAN 1176 & PT WATER LOT IN FRONT OF LOT F BROKEN FRONT
RANGE EON LAKE ONTARIO PTS 1
TO 3, 8, 19, 20, 29, 30, 31A, 31C, 32A, 32C, 33, 34, 35B 66R9423 AS IN
SCHEDULE 'A' OF DECLARATION B577469 AMENDED BY B807719; S/T
B995378 TO B995380; T/W B995374 TO B995377 ETOBICOKE, CITY OF
TORONTO

Address: 3103 UNIT
2045 LAKESHORE BL VD. WEST
TORONTO, ONTARIO

**SCHEDULE B TO MINUTES OF SETTLEMENT
WIRE TRANSFER INSTRUCTIONS**

**SCHEDULE C TO MINUTES OF SETTLEMENT
MUTUAL RELEASE**

FULL AND FINAL MUTUAL RELEASE

IN CONSIDERATION of the mutual covenants set forth in the Minutes of Settlement dated ____ April 2020 and the payment of the amounts set out in paragraph 1 or 2 to the Minutes of Settlement by Atlas Capital Corporation (2013) (“**Atlas**”) and Jonathane Ricci (“**Ricci**”, and together with Atlas, the “**Defendants**”) to Grant Thornton Limited in its capacity as the Court-appointed receiver of Money Gate Mortgage Investment Corporation (the “**Receiver**”), the receipt and sufficiency of which is hereby acknowledged,

The Receiver and Atlas on behalf of themselves their parents, subsidiaries, affiliates and related companies and each of the respective directors, officers, shareholders, employees, agents and administrators, both present and former, and all of their administrators, successors and assigns and any party who claims a right or interest through them

and

Ricci, on behalf of himself, his heirs, administrators, executors, assigns, successors and on behalf of any party or parties who claim a right or interest through them,

do hereby irrevocably release, remise, quit claim and forever discharge each other of, from and against any and all manner of actions, causes of actions, suits, proceedings, liabilities, debts, sums of money, obligations, accounts, interest, covenants, contracts, claims, damages and demands which each other ever had, now has, can, shall or may hereafter have against each other by reason or by act, cause, matter or thing whatsoever and how so ever arising up to the present time whether known or unknown, in connection with all matters relating to or in connection with an action commenced in the Ontario Superior Court of Justice in the City of Toronto bearing Court File Number CV-17-583592 and transferred to the Ontario Superior Court of Justice (Commercial List) pursuant to an order of the Honourable Mr. Justice Hainey dated January 17, 2020 (the “**Action**”), including but not limited to any matters or issues raised in the pleadings to the Action

AND FOR THE SAID CONSIDERATION the parties represent and warrant unto each other that they have not assigned to any person or corporation, or any other entity, any of the above actions, causes of action, suits, liabilities, debts, obligations, duties, dues, accounts, bonds, covenants, contracts, claims, damages and demands whatsoever, of any kind or nature, released above and with respect to which each agrees not to make any claims or take any proceedings.

AND FOR THE SAID CONSIDERATION the parties hereby acknowledge, declare and agree that each understands the terms of this Release and each voluntarily accepts the consideration referred to above for the purpose of making full and final compromise, adjustment and settlement of all claims as aforesaid, and each represents and warrants that no party has been induced to enter into this mutual release by reason of any representation or warranty of any nature of kind whatsoever and that there is no condition, express or implied, or collateral agreement affecting the said settlement.

AND IT IS FURTHER AGREED AND UNDERSTOOD that for the consideration aforesaid, the Parties undertake and agree not to take any steps or initiate any proceedings against any person, partnership, corporation or other entity which might be entitled to claim contribution, indemnity or other relief under the provisions of any statute or otherwise with respect to any of the matters concerning which the parties agree herein not to make any claim or take any proceedings.

AND IT IS UNDERSTOOD AND AGREED that the said consideration is deemed to be no admission whatsoever of liability on the part of the person, persons, corporation or corporations discharged by this Release and that such liability is denied.

AND IT IS FURTHER AGREED AND UNDERSTOOD that for the consideration aforesaid, the parties undertake and agree not to take any steps or initiate any proceedings, commence any actions or make any claim against any person, partnership, corporation or other entity which may seek, in any manner or forum, contribution or indemnity in common law or in equity, or under the provisions of any statute or regulation, including the *Negligence Act* and the amendments thereto and/or under any successor legislation thereto, and/or under the *Rules of Civil*

Procedure, or may make any claim discharged by this Release. **IT IS AGREED AND UNDERSTOOD** that if a party commences such an action, or take such proceedings, and any of the other parties to this Release is added to such proceeding in any manner whatsoever, whether justified in law or not, the party commencing such action will immediately discontinue the proceedings and/or claims, and will be jointly and severally liable to the party(ies) named in the action for the legal costs incurred in any such proceeding, on a substantial indemnity basis. The party commencing such action further agrees to indemnify the party(ies) named in the action and hold them harmless in respect of any amounts claimed in any such proceeding, action, claim or other demand.

AND IT IS UNDERSTOOD AND AGREED that in the event that any party should hereafter make any claims or demands or commence or threaten to commence any actions against the parties for or by reason of any cause, matter or thing, this document may be raised as an estoppel to any claim, demand or action commenced in regard to the aforesaid.

THIS MUTUAL RELEASE shall enure to the benefit of the parties and their respective successors, executors, administrators, assigns, officers, agents, directors, employees, associates, servants and insurers, and shall be binding upon the undersigned and their respective successors, executors, administrators, assigns, officers, agents, directors, employees, associates, servants and insurers.

THIS RELEASE may be executed in any number of counterparts, and all such counterparts shall, for all purposes, constitute one agreement binding on the parties hereto, provided each party hereto has executed at least one counterpart, and each shall be deemed to be an original, notwithstanding that all parties are not signatory to the same counterpart.

IN WITNESS WHEREOF the parties hereto have hereunto set their hands and seals or have executed this document by their respective corporate seals and signatures of their respective officers and/or directors duly authorized to do so on the dates indicated below.

THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK

**GRANT THORNTON LIMITED in its capacity
as the Court-appointed Receiver of MONEY
GATE MORTGAGE INVESTMENT
CORPORATION**

By:

Name:

Title:

I have authority to bind the corporation.

ATLAS CAPITAL CORPORATION (2013)

By:

Name:

Title:

I have authority to bind the corporation

SIGNED BEFORE ME this ____ day April, 2020

Print Name:

Witness

} _____
JONATHANE RICCI

**SCHEDULE D TO MINUTES OF SETTLEMENT
CONSENT TO JUDGMENT**

Court File No. CV- 17-583592

**ONTARIO
SUPERIOR COURT OF JUSTICE**

B E T W E E N:

MONEY GATE MORTGAGE INVESTMENT CORPORATION

Plaintiff

- and -

ATLAS CAPITAL CORPORATION (2013) and JONATHANE RICCI

Defendants

CONSENT

The Plaintiff and the Defendants, by their respective solicitors duly authorized, hereby consent to the form and contents of the judgment attached hereto as Schedule "A" and confirm that no person or party to these proceedings is under any legal disability.

DATED at Toronto, this day of April, 2020

**GRANT THORNTON LIMITED in its capacity
as the Court-appointed Receiver of MONEY
GATE MORTGAGE INVESTMENT
CORPORATION**

by its solicitors, Chaitons LLP

Per: _____
Maya Poliak

DATED at Toronto, this day of Apri, 2020

ATLAS CAPITAL CORPORATION (2013)

by its solicitors, DJD Law Professional Corporation

Per: _____
Eli Karp

DATED at Toronto, this day of Apri, 2020

JONATHANE RICCI

by its solicitors, DJD Law Professional Corporation

Per: _____
Eli Karp

SCHEDULE "A" TO CONSENT

Court File No. CV- 17-583592

**ONTARIO
SUPERIOR COURT OF JUSTICE**

B E T W E E N:

MONEY GATE MORTGAGE INVESTMENT CORPORATION

Plaintiff

- and -

ATLAS CAPITAL CORPORATION (2013) and JONATHANE RICCI

Defendants

JUDGMENT

THIS MOTION made by Grant Thornton Limited in its capacity as Court-appointed Receiver over the property, assets and undertakings of Money Gate Mortgage Investment Corporation (the "**Receiver**") for an order granting the Receiver judgment as against the Defendants, Atlas Capital Corporation (2013) and Jonathane Ricci, was read this day at 330 University Avenue, Toronto, Ontario.

ON READING the Consent of the parties, filed,

1. **THIS COURT ORDERS AND ADJUDGES** that the Defendants pay to the Receiver the sum of \$ 1,051,784.03, plus per diem interest in the amount of \$233.16 from June 1, 2020 until the date of this Order.
2. **THIS COURT ORDERS AND ADJUDGES** that the Defendant deliver to the Receiver possession of the property municipally known as 2045 Lake Shore Boulevard West, Unit 3103, Toronto, Ontario and more particularly described in Schedule "A" attached hereto.
3. **THIS COURT ORDERS AND ADJUDGES** that the Receiver be granted leave to issue a Writ of Possession directed to the Sheriff of the Regional Municipality of Peel of the property more particularly described in Schedule "A" attached hereto.

4. **THIS COURT ORDERS** that the Defendants shall pay to the Receiver costs of this Action in the amount of \$30,000.00.

SCHEDULE A TO JUDGMENT

Property Description:

PIN: 11382 - 0412 LT

Description: UNIT 3, LEVEL 30, YORK CONDOMINIUM PLAN NO. 382, PT LOT 24
PLAN 1176 & PT WATER LOT IN FRONT OF LOT F BROKEN FRONT
RANGE E ON LAKE ONTARIO PTS 1
TO 3, 8, 19, 20, 29, 30, 31A, 31C, 32A, 32C, 33, 34, 35B 66R9423 AS IN
SCHEDULE 'A' OF DECLARATION B577469 AMENDED BY B807719; S/T
B995378 TO B995380; T/W B995374 TO B995377 ETOBICOKE, CITY OF
TORONTO

PIN: 11382- 0754 LT

Description: UNIT 97, LEVEL B, YORK CONDOMINIUM PLAN NO. 382, PT LOT 24
PLAN 1176 & PT WATER LOT IN FRONT OF LOT F BROKEN FRONT
RANGE EON LAKE ONTARIO PTS 1
TO 3, 8, 19, 20, 29, 30, 31A, 31C, 32A, 32C, 33, 34, 35B 66R9423 AS IN
SCHEDULE 'A' OF DECLARATION B577469 AMENDED BY B807719; S/T
B995378 TO B995380; T/W B995374 TO B995377 ETOBICOKE, CITY OF
TORONTO

PIN: 11382- 0755 LT

Description: UNIT 98; LEVEL 8, YORK CONDOMINIUM PLAN NO. 382, PT LOT 24
PLAN 1176 & PT WATER LOT IN FRONT OF LOT F BROKEN FRONT
RANGE EON LAKE ONTARIO PTS 1
TO 3, 8, 19, 20, 29, 30, 31A, 31C, 32A, 32C, 33, 34, 35B 66R9423 AS IN
SCHEDULE 'A' OF DECLARATION B577469 AMENDED BY B807719; S/T
B995378 TO B995380; T/W B995374 TO B995377 ETOBICOKE, CITY OF
TORONTO

Address: 3103 UNIT
2045 LAKESHORE BL VD. WEST
TORONTO, ONTARIO

APPENDIX 10

Commercial List File Number : CV-18-00608086-00CL

Date Filed: September 20, 2019

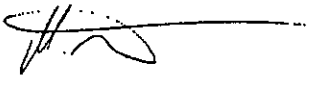
#2 189 930

10 mins

SUPERIOR COURT OF JUSTICE - COMMERCIAL LIST
9:30 A.M. HEARING REQUEST FORM

A.	PLEASE NOTE: The 9:30 hearing procedure is only for "ex parte, urgent, scheduling and consent matters which take no longer than 10 minutes" (Practice Direction, (2002), 57 O.R. (3 rd) 97; paragraph 25). This restriction will be enforced. This matter is (tick one or more); ☐ ex parte ☐ urgent ☒ scheduling ☐ consent ☐ other (explain)
B.	Short Title of Proceedings: Ontario Securities Commission v. Money Gate Mortgage Investment Corporation
C.	Date(s) Requested: October 2, 2019
D.	The following is a brief description of the matter to be considered at the 9:30 appointment; To schedule a motion for advice and direction by Court-appointed Receiver with <u>respect to funds</u> held by the Receiver from sale of 558 Dovercourt Road, Toronto
E.	The following materials will be necessary for the matter to be considered. (It is the responsibility of counsel to confirm that the proper materials are available for the Court.) This Form
F.	Is any Judge seized of these matters or any judicial conflicts? ☒ No ☐ Yes

Oct 2/19

COUNSEL FOR APPLICANT/MOVING PARTY:		COUNSEL FOR OTHER PARTIES:	
Party	Grant Thornton Limited, Court-appointed Receiver	Party	
Counsel	 Maya Poliak PRINT AND SIGN OR INITIAL	Counsel	PRINT AND SIGN OR INITIAL
Address	Chaitons LLP 5000 Yonge Street, 10th Floor Toronto, ON M2N 7E9	Address	
Phone	(416) 218-1161	Phone	
Fax	(416) 218-1844	Fax	
Email	maya@chaitons.com	Email	

(IF MORE THAN 2 PARTIES INVOLVED, ADD ADDITIONAL SIGNATURES AND PARTICULARS ON REVERSE OR SEPARATE PAGE)

To be submitted to: Commercial List Office, 393 University Avenue, 10th Floor, Toronto, Ontario Fax: to (416) 327-6228
You may also convert to PDF and email to Toronto.Commerciallist@jus.gov.on.ca

October 2, 2019

Endorsement/Disposition ☐ See attached Yellow Endorsement Form

Commercial Form A

This is an opposed distribution notice
~~of~~ Grant Thornton material
 will be served by Oct 16, 2019.

~~Court will confer~~
 Responding material by end of
 November 29

Reply if any by Dec 6.

Cross X To be completed by
 end of January 10, 2019

Factum in accordance with
 The Rules.

Hearing 2.5 hours January
 30, 2020 (chared).

[Signature]

APPENDIX 11

CITATION: Ontario Securities Commission v. Money Gate Mortgage Investment Corporation,
2020 ONSC 783

COURT FILE NO.: CV-18-00608086-00CL

DATE: 20200205

ONTARIO

SUPERIOR COURT OF JUSTICE

(COMMERCIAL LIST)

APPLICATION UNDER Sections 126 and 129 of the Securities Act, R.S.O. 1990, C.S.5, as amended

BETWEEN:

Ontario Securities Commission

Applicant

– and –

Money Gate Mortgage Investment
Corporation

Respondent

*Maya Poliak and Saneeta Tanvir, for the
Receiver, Grant Thornton Limited*

*Eli Karp, for the non-party 2496050 Ontario
Corp.*

HEARD: January 30, 2020

C. GILMORE, J.

REASONS ON MOTION

OVERVIEW

[1] Grant Thornton Limited ("GTL") is the Court-appointed receiver of the property, assets and undertakings of Money Gate Mortgage Investment Corporation ("MGMIC" and "the GMIC Receiver").

[2] Pursuant to a commitment letter dated May 25, 2017 between MGMIC and 2546456 Ontario Inc. ("254"), MGMIC agreed to loan \$611,000 to 254 to be secured by a second mortgage over property owned by 254 and municipally known as 558 Dovercourt Road, Toronto ("Dovercourt").

[3] On July 4, 2018 Ira Smith Trustee & Receiver Inc. was appointed as receiver over Dovercourt ("the Dovercourt Receiver"). In December 2018 the court approved the sale of Dovercourt. A distribution of sale proceeds was made to the first mortgagee and to the MGMIC Receiver in trust on behalf of MGMIC as second mortgagee.

[4] The MGMIC Receiver has received \$556,078.73 from the Dovercourt Receiver by way of sale proceeds from Dovercourt. The funds are being held in trust pending a court order for distribution. No additional funds will be received. The amount outstanding on the MGMIC mortgage exceeds the available proceeds which will result in a shortfall to investors.

[5] In this motion, the MGMIC Receiver seeks a declaration that the MGMIC mortgage is valid and enforceable such that there should be a distribution of funds to the MGMIC Receiver. If the mortgage is not found to be enforceable, the MGMIC Receiver seeks a declaration that MGMIC is entitled to an equitable mortgage enforceable against the Dovercourt funds.

[6] The non-party, 2496050 Ontario Corp. ("A13MG"), seeks an order lifting the stay of litigation against the MGMIC Receiver and directing that their Fraud Action (Court File no. CV-19-00613363-0000) proceed to trial. In the alternative it seeks a declaration that the MGMIC mortgage was invalidly placed against Dovercourt.

[7] A13MG takes the position that the MGMIC Receiver has "waded into the fray" and is seeking to keep for itself funds that are in dispute with A13MG.

BACKGROUND FACTS

[8] MGMIC carried on business as a mortgage investment corporation that lent money raised from individual investors to borrowers with loans secured by residential and commercial mortgages.

[9] MGMIC advanced \$611,00 as a second mortgage loan to 254. Ben Katebian ("Ben") and Payam Katebian ("Payam", and collectively "the Katebians"), were each a director and officer of MGMIC and its directing mind.

[10] MGMIC had raised over \$11 million from 155 investors for the purpose of mortgage investments. The Dovercourt mortgage was one of the investments in MGMIC's portfolio when the MGMIC Receiver was appointed on November 6, 2018.

[11] 254 was incorporated on November 16, 2016. Payam was originally its sole shareholder. On May 24, 2017, A13MG acquired 50% of 254's shares from Payam. The shares were acquired

by A13MG in trust on behalf of Curah Capital Corporation ("Curah") as Curah's funds were used for the share purchase.

[12] Jonathan Ricci ("Ricci") is the sole officer and director of A13MG. Glenn Estrabillo ("Glenn") and Dominic Kawa ("Kawa") are the directors of Curah. Sai Mohammed ("Sai") and James Destephanis ("James") are consultants to Curah.

[13] Prior to A13MG's acquisition of shares in 254, Payam executed a shareholder resolution dated May 15, 2017 ("the Resolution") which amended 254's articles to restrict its ability to borrow money and encumber Dovercourt without the written consent of all shareholders.

[14] On May 29, 2017, MGMIC transferred \$611,000 from its bank account to the bank account for 254's solicitors. On June 5, 2017 a second mortgage in the principal amount of \$611,000 was registered on title to Dovercourt in favour of MGMIC. It is unclear what happened to the MGMIC mortgage funds after they went into 254's bank account. It appears that some funds were transferred to 2399029 Ontario Inc. ("239"), a corporation allegedly owned by the Katebians.

THE POSITIONS OF THE PARTIES

The MGMIC Receiver

[15] The MGMIC Receiver urges the court to find that the Dovercourt mortgage was valid. If so, the funds held by the MGMIC Receiver, will be distributed to MGMIC's investors. If the mortgage is found to be invalid, the funds will be split between Payam and A13MC. The OSC has put the MGMIC Receiver on notice that any funds payable to Payam may be garnished or frozen based on investigations by the OSC in which Payam is involved. The OSC has made allegations related to self-dealing and misuse of funds by 239, a company into which funds from the Dovercourt mortgage may have been paid.

[16] There is no dispute that \$611,000 of MGMIC investor money went into 254's bank account in May 2017 for the Dovercourt mortgage. It is also not disputed that 254 granted a mortgage as it was authorized to do by its Director who also gave a personal guarantee. On its face, the mortgage is valid unless there is fraud or some other issue that would invalidate it.

[17] In December 2018 a motion was brought to distribute the proceeds from the sale of Dovercourt. Notice of the motion was given to A13MG. It was determined that no funds could be distributed until further information was received with respect to A13MG's claim to 50% of the mortgage proceeds.

[18] A13MC takes the position that the Dovercourt mortgage is invalid because they did not consent to it as required by the Resolution. The MGMIC Receiver responds that the Resolution did not require a specific form of written consent and that emails exchange between Ricci, Payam, Glenn, James and Ben between May 10 and June 1, 2017 make it clear that the shares were purchased by A13MC on May 25, 2017 and the mortgage registered on June 5, 2017 with everyone's knowledge and approval.

[19] Mr. Ricci was asked about the emails during his cross-examination on December 23, 2019. His evidence was that A13MG did authorize the mortgage but with conditions. When asked about the conditions, Ricci explained that \$375,000 was to come back to A13MC (Curah's funds) which was to be used for another investment project. The MGMIC Receiver submits that if funds were instead paid into 239 and now cannot be located, A13MG's may have a claim against Payam, but that does not invalidate the authorization or the Dovercourt mortgage.

[20] A13MG's counsel alleged fraud but counsel for MGMIC points out that if there was fraud, it was odd that there was never an accusation by A13MC against Payam nor was any written notice from A13MG to MGMIC or Payam that no consent had been obtained and the mortgage should be immediately discharged. In fact, in August 2017, approximately a month after allegedly finding out about it for the first time, there were a series of emails between Ben, Payam, James, Glenn and Ricci in which there was a discussion about assigning the second mortgage or bringing in more investors for a third mortgage on Dovercourt.

[21] The MGMIC Receiver questions why there would be discussions about a third mortgage or an assignment of the second mortgage if Ricci was taking the position that its registration had not been authorized. For example, why would Ricci depose in his affidavit sworn December 3, 2019 that he did not approve of the MGMIC loan and then give evidence at this cross-examination that he definitely understood that there would be a mortgage registered, but with conditions? The MGMIC Receiver argues that in fact, the mortgage was authorized and A13MG continued to do business with Ben and Payam after that.

[22] Further, it makes no sense that A13MG would in effect be reimbursed for the money they paid for the shares while still retaining both the shares and the interest in Dovercourt.

[23] Even if there was no compliance with the Resolution, that would not invalidate the mortgage. The exchange of emails between representatives of A13MG and Payam to "immediately apply for a second mortgage" constitute such an approval.

[24] The MGMIC Receiver also relies on section 17(3) and section 19 of the *Ontario Business Corporations Act*, R.S.O. 1990, c. B.16 ("OBCA"). Those sections prohibit a company from relying on internal procedural failures to nullify a transaction with a third party, unless the third party is in a relationship with the corporation such that the failure was known or should have been known.

[25] The MGMIC Receiver submits that MGMIC was only a conduit for investor's money and would have no information about whether the mortgage was properly authorized.

The Position of the Non-Party 2496050 (A13MG)

[26] On May 16, 2017, A13MG purchased 50% of the shares in 254 for \$375,000. A term of the deal was that their funds would be repaid immediately with a loan financed by MGMIC. The funds for the share purchase were paid to 2399029 Ontario Inc. ("239"), a corporation owned by Ben Katebian.

[27] To mitigate risk for A13MG, Payam and A13MG passed a Unanimous Shareholder's Resolution that restricted the ability of 254 to borrow money or give a mortgage (amongst other restrictions) without the signature of both shareholders. The Resolution was signed by Payam on May 15, 2017 and sent to Ricci on May 23, 2017.

[28] A13MG submits that Payam and MGMIC devised a scheme whereby, notwithstanding the wording of the Resolution, MGMIC advanced \$611,000 to 254 in exchange for a mortgage on Dovercourt and 254 then directed the funds to a corporation owned by Ben (likely 239 or another corporation over which the Katebians had control).

[29] A13MG alleges that Ben and Payam conspired to put Dovercourt into receivership without notifying A13MG despite its 50% shareholding interest in 254. In November 2018, the Ontario Securities Commission ("OSC") applied for an order appointing the MGMIC Receiver on grounds that included malfeasance on the part of Payam including self-dealing and acting in a conflict of interest.

[30] A13MG's position is that the Katebians perpetrated a fraud in which they took 100% of the loan advanced to MGMIC without A13MG's knowledge or authorization. A13MG submits that the MGMIC Receiver is now attempting to enforce the security which MGMIC knowingly obtained by fraud. The MGMIC Receiver has never filed any evidence denying the fraud alleged by A13MG. A13MG points out that the MGMIC Receiver does not dispute that A13MG is a 50% owner of 254 nor that A13MG did not receive any of the funds from the MGMIC mortgage.

[31] In early 2019 A13MG commenced a Fraud Action seeking to set aside the MGMIC mortgage and leave to lift the stay of proceedings against MGMIC ordered by the Receivership Appointment Order. The MGMIC Receiver submits that this Action is a nullity as no proceeding can be brought against the Receiver without leave. No such leave has ever been sought by A13MG. The MGMIC Receiver was surprised to read in A13MG's factum that they intend to proceed with that Action despite not obtaining leave.

[32] A13MG submits that while the MGMIC Receiver purports to bring a motion for advice and directions, it is really seeking summary judgment in the Fraud Action commenced by A13MG. If the funds are distributed to MGMIC's investors, the Fraud Action will be at an end. Further, the MGMIC Receiver has never filed a Statement of Defence in the Fraud Action. The MGMIC Receiver responds that it did not believe a Statement of Defence was required since the action is a nullity without the required leave.

[33] In order for the MGMIC Receiver to obtain summary judgment, it must serve and file a Statement of Defence in the Fraud Action, file an affidavit from someone with knowledge of the events, and produce that person for examination. The MGMIC Receiver has taken none of those steps. Instead, it chooses to rely on emails and innuendo that somehow A13MG consented to the fraud.

THE ISSUES***Is This Motion for Directions Really a Motion for Partial Summary Judgment? If so, Does the Moving Party have Sufficient Evidence to Succeed?***

[34] The MGMIC Receiver points out that A13MG did not obtain leave before commencing its action against 254 or GTL. As such, the MGMIC Receiver wrote to counsel for A13MG stating its position that A13MG was in contempt of the orders of Justice Dunphy dated July 30, 2018 and Justice Hainey dated November 6, 2018 which do not permit proceedings against 254 without the Receiver's consent or leave of the court. The MGMIC Receiver took the position that it would not be responding to the action until leave was obtained. As no leave was obtained, the action is a nullity as against GTL and 254.

[35] In January 2019, Justice McEwen made an order in the Dovercourt Receivership proceeding that funds from the sale of Dovercourt were to be distributed to the MGMIC Receiver and held in trust pending a distribution order. All parties who asserted a claim in the proceeds were advised of a scheduling appointment on October 2, 2019 to schedule the within motion. On that date, A13MG attended the chambers appointment and was aware of the endorsement of Justice Penny that all parties' claims to the Dovercourt Proceeds would be adjudicated on January 30, 2020. The MGMIC Receiver submits that it was not until it received A13MG's factum on January 28, 2020 that it became aware of A13MG's position that this motion was not the proper forum to deal with the entitlement to the Dovercourt funds. The MGMIC Receiver argues it is no longer open to A13MG to take that position.

[36] I agree with the MGMIC Receiver that A13MG should have made it clear at the October 2, 2019 scheduling appointment that it was objecting to the form of the motion. The MGMIC Receiver does not dispute that this matter is being heard in a summary fashion but submits that the evidence it has provided is sufficient to meet the required test.

[37] The MGMIC Receiver relies on the following evidence in this motion:

- (a) The loan and security documents related to the MGMIC mortgage which are not in dispute.
- (b) Email evidence provided by A13MG in its responding record including the cross-examination of Mr. Ricci.
- (c) Transcripts of Payam in a separate proceeding involving the same parties. The MGMIC Receiver does not rely on the veracity of the evidence in the examination but only relies on it as providing information as to the relationship between Payam and A13MG.

[38] The specifics of the evidence provided by MGMIC are as follows:

- (a) Mr. Ricci's evidence. Mr. Ricci's affidavit sworn December 5, 2019 clearly says that that he did not consent to the MGMIC mortgage either before or after it was registered (para 10). In his cross-examination on December 23, 2019 Mr. Ricci deposed that "he definitely understood that there would be a second mortgage placed on the property with conditions." (Question 61). When asked about the conditions he stated, "My recollection is that there was funds that were to be come back to 249 which were Curah's funds, and there there'd be another project to be invested in -afterwards" (Question 62). In A13MG's factum, it states that "249 proceeded with the Dovercourt share purchase on the condition that their funds would be repaid immediately with a loan financed by MGMIC" (para 22).
- (b) Email evidence in the A13MG Responding Record. Emails exchanged between May 10, 2017 and June 1, 2017 between Payam, Glenn, Ben, James and Ricci clearly reference a second mortgage on Dovercourt. There are references to asking for details and getting confirmation of the mortgage.
- (c) Transcripts from the examination of Payam in a separate proceeding. Payam gave evidence about money from MGMIC mortgages being deposited into the account of 239, an account controlled by the shareholders and directors of MGMIC.

[39] A13MG objects to the form of this motion on several grounds as follows:

- (a) It does not fit within the limited scope of the MGMIC Receiver's Order as it is more than simply a request to the court for advice and directions.
- (b) The evidence on the motion fails to reach the "full appreciation test" and only allows for knowledge of the case as opposed to a full appreciation of the evidence and the issues. In this case, the court is unable to accurately weigh and draw inferences from the evidence without the benefit of a trial and its first-hand fact-finding process.
- (c) The case involves multiple findings of fact on the basis of conflicting evidence and credibility disputes which can only be determined through the trial process and not an affidavit record.
- (d) The MGMIC Receiver is asking for partial summary judgment which is a rare procedure and reserved only for cases where the issues in dispute can be easily bifurcated from those in the main action.
- (e) The evidence filed by the MGMIC Receiver is hearsay which includes its own third report and portions of Payam's transcript, neither of which should be admissible on a motion for summary judgment.
- (f) The MGMIC Receiver has not put its best foot forward as it has not denied the fraud or put forward an alternative version of Ricci's evidence. In order to do so,

they should have called Payam or Ben as witnesses. They did not, and as such, an adverse inference should be made that Ben and Payam would have confirmed Ricci's evidence.

- (g) The MGMIC Receiver has not met its burden to obtain judgment in the Fraud Action which raises the same issues being dealt with on this motion as against 254 and Payam. Those issues will have to be canvassed again in the Fraud Action.

Analysis

[40] To succeed on a summary judgment motion, the moving party must establish that there is "no genuine issue for trial." The court may determine that the case is suitable for summary judgment where the record on the motion allows the judge to make the necessary findings of fact on a balance of probabilities, allows the judge to apply the law to the facts, and, is a proportionate, expeditious and less expensive means of achieving a fair result (see *Hyrniak v. Mauldin*, 2014 SCC 7).

[41] I do not disagree with A13MG that this motion, while proceeding as a motion for directions, will result in a form of summary judgment if granted. While this means the threshold of evidence required for a determination is a higher one, it is this court's view that there is sufficient evidence to do exactly what the MGMIC Receiver requests; deal with a priority dispute in relation to funds which it holds by court order.

[42] A13MG relies on *Urbancorp Cumberland 2 GP Inc. (Re)*, 2017 ONSC 7649. In that case, Myers, J., dismissed a motion by the Monitor for advice and directions with respect to payments in kind by way of certain condominium units. The Monitor argued that using the condominium units to satisfy the debts of affiliates of the debtor's trade creditors should result in a monetary award against trade creditors who received the units.

[43] In the course of dismissing the motion, Myers, J. commented that the Monitor was not really seeking advice and directions, it sought a judgment for damages against the creditor who had received the condominium units as payment in kind. The court found that the order appointing the Monitor gave it no such authority.

[44] In the case at bar, there is no dispute that the MGMIC Receiver has the authority to bring this motion. It was brought on notice to all interested parties and with their input for scheduling purposes. The MGMIC Receiver is not seeking damages or frankly anything out of the ordinary except to comply with the court order that requires them to bring a distribution motion.

[45] I reject the contention that this motion must be delayed so that A13MG can proceed with its Fraud Action. They have taken no steps in that litigation for over a year. More importantly, they have failed to bring a motion for leave, as required by the Receivership Order. Given those circumstances, there is no reason not to treat that action as a nullity as suggested by the MGMIC Receiver.

[46] While A13MG complains that the MGMIC Receiver has not put its best foot forward, A13MG has not called Payam, Glenn or Ben as witnesses. It provided a four-page affidavit from Ricci. Further, there is nothing in the Ricci affidavit that mentions a fraud or conspiracy. While A13MG infers that the MGMIC Receiver is somehow participating in the fraud by seeking to distribute money to MGMIC's investors, there is no actual evidence of fraud. MGMIC did not deal with any allegations of fraud in its materials because it only learned of A13MG's allegations of fraud in its January 28, 2020 factum. In any event, even if Payam stole all of the money that went into 254's account for the Dovercourt mortgage, that is a matter between A13MG and Payam and not the MGMIC Receiver.

[47] I do not find that there are credibility disputes which would prevent this motion from proceeding. There may certainly be credibility issues with respect to Payam and Ben given the findings of the OSC against them. However, those findings do not affect this proceeding, as Ben and Payam have not asserted a claim for any of the funds held by the MGMIC, and, as stated above, if Ben and Payam (in concert with others) took steps to defraud A13MG, that cannot be resolved in the context of this proceeding.

[48] As for the allegations about the deficiency of MGMIC's materials, I find that there is no reason why the court cannot rely on Ricci's cross-examination and the emails produced by way of undertakings from that cross-examination. A13MG complains that this court cannot rely on the MGMIC Receiver's "interpretation" of the emails. I find that I do not need to do so. Statements in the emails such as "we will proceed with the Dovercourt transaction...We immediately apply a second mortgage," and "2nd Mortgage on Dovercourt in favour of MGMIC, using current MGMIC's capital." could not be clearer on their face.

[49] With respect to the excerpt of Payam's cross-examination being hearsay on this motion, I agree. However, the MGMIC Receiver is not relying on those excerpts for their truth, only for context in terms of Payam and Ricci's involvement with 254 and 239. That information provides only narrative and not evidence upon which the court can determine the motion.

[50] In summary, I find that the MGMIC Receiver's motion for advice and directions will result in a summary finding, but that the evidence before the court is sufficient to make such a finding.

Is the MGMIC Mortgage Valid?

[51] If the MGMIC mortgage is invalid, the funds held by the MGMIC Receiver would be split between Payam and A13MG. The OSC will seek to freeze any funds to which Payam may be entitled. If the mortgage is valid, the funds will be returned to the MGMIC investors.

[52] On its face, the MGMIC mortgage is valid as a registered instrument granted by 254 in the form of a second mortgage. However, A13MG argues that the mortgage is invalidated by the lack of a written consent pursuant to the Resolution.

[53] I find that while A13MG's counsel is correct that the Resolution was signed to prevent the very thing that came to pass, the actions of the parties involved belie any reliance on that

Resolution. Further, the Resolution does not specify what the form of the consent must be. The e-mail exchanges between Ricci and others involved including James and Payam make it clear that a second mortgage on Dovercourt was intended to be the security for the \$611,000 received from MGMIC.

[54] The second issue is whether the "conditions" mentioned by Ricci in his cross-examination would somehow negate any consent reached through email communication. The conditions involved a repayment to A13MG of the \$375,000 they had paid for a 50% shareholding interest in 254. What this court is unable to unravel is why A13MG would be repaid this money while retaining both their shareholding interest in 254 and their security in Dovercourt. Fortunately, that question does not need to be answered in the context of this motion. The fact that the money was not paid back to A13MG and allegedly retained by Payam and/or Ben does not invalidate the mortgage; it creates an issue between A13MG and Payam.

[55] There are also other actions of the involved parties which put the alleged invalidity of the mortgage in question. For example, in August 2017, approximately one month after discovering that the mortgage had been registered without consent, the involved parties (including Ricci) discussed via email a possible assignment of the second mortgage or bringing in more investors to register a third mortgage. Why were such discussions taking place rather than demands to discharge the mortgage if it was registered without consent? Again, the actions of the parties involved are inconsistent with steps taken without A13MG's knowledge or consent.

[56] In summary, I find that there was consent to register the MGMIC mortgage.

If the Mortgage is Invalid, Does the MGMIC Receiver Have Other Remedies?

[57] If I am wrong with respect to the enforceability of the MGMIC mortgage, what are the MGMIC Receiver's remedies?

[58] The MGMIC Receiver argues that it would be entitled to an equitable mortgage based on the common intention of 254 and MGMIC to grant a mortgage over Dovercourt.

[59] A13MG responds that the MGMIC Receiver has not come to court with clean hands and is therefore not entitled to an equitable remedy. Specifically, A13MG argues that MGMIC knew that it was granting a mortgage contrary to 254's by-laws. The MGMIC Receiver cannot seek relief that MGMIC could not seek itself.

[60] The principles and nature of an equitable mortgage are set out in *Elias Markets Ltd., Re*, 2006 CarswellOnt 5597. In that case, the Ontario Court of Appeal set out at paragraph 64 as follows:

The common law courts were primarily concerned with enforcing the strict legal rights of the parties, whereas equity was a court of conscience; it would step in to prevent an injustice that would otherwise arise from the strict application of the law.

In essence, the concept of an equitable mortgage seeks to enforce a common intention of the mortgagor and mortgagee to secure property for either a past debt or future advances, where that common intention is unenforceable under the strict demands of the common law.

[61] A13MG argues that since the directors of MGMIC knew that the mortgage funds would be deposited into 239's account and that the mortgage was not the subject of a Resolution, the MGMIC Receiver is now tainted with that deception or deliberate non-compliance. I disagree. The fact is that the innocent investors into MGMIC had no idea what the Katebians were planning and what non-compliance with any Resolution was alleged.

[62] The main issues with respect to finding the existence of an equitable mortgage are common intention and preventing any injustice that would result from a strict application of the law. Therefore, if I am wrong and non-compliance with the Resolution invalidates the mortgage, I find that a common intention existed to register a second mortgage and that finding otherwise would result in an injustice to the investors who were not tainted with any malfeasance alleged to have been perpetrated by the Katebiens.

[63] The MGMIC Receiver raised one final argument in the event that the mortgage was found to be invalid and that the investors were disentitled to an equitable mortgage. The MGMIC Receiver relied on Section 17(3) and 19 of the OBCA. Those sections prohibit a company from relying on its own internal procedural failures to nullify a transaction with a third party.

[64] A13MG argues these sections do not apply because those sections of the OBCA refer only to situations in which the person dealing with agent of the corporation knew or ought to have known that the agent did not have the authority to act. A13MG submits that since the directors of MGMIC knew that there was no authority to register the mortgage, they cannot rely on those sections of the OBCA, otherwise referred to as the "Indoor Management Rule."

[65] Once again, I find that the Katebians' knowledge of whether the transaction was authorized or not is of little consequence. The fact is that the investors were entitled to rely on the Indoor Management Rule with respect to any irregularities with internal corporate process. In any event, I have already found that there was a common intention to register the mortgage notwithstanding the terms of the Resolution.

ORDERS AND COSTS

[66] Counsel agreed at the end of the motion that the successful party would receive \$15,000 in costs. I requested that any Offers to Settle be received in a sealed envelope to be opened at the conclusion of writing these reasons. No Offers were received.

[67] Given all of the above, I make the following orders:

- (a) The Money Gate Mortgage Investment Corporation mortgage, formerly registered against Dovercourt, is valid and enforceable.

- (b) The Dovercourt funds shall be released to the Court-appointed Receiver for Money Gate Mortgage Investment Corporation for distribution.
- (c) The non-party 2496050 (A13MG) shall pay costs of \$15,000 to the Court-appointed Receiver, Grant Thornton Limited.



C. Gilmore, J.

Released: February 5, 2020

CITATION: Ontario Securities Commission v. Money Gate Mortgage Investment Corporation,
2020 ONSC 783
COURT FILE NO.: CV-18-00608086-00CL
DATE: 20200205

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

**APPLICATION UNDER Sections 126 and 129 of the
Securities Act, R.S.O. 1990, C.S.5, as amended**

BETWEEN:

Ontario Securities Commission

Applicant

– and –

Money Gate Mortgage Investment Corporation

Respondent

REASONS ON MOTION

C. Gilmore, J.

Released: February 5, 2020

APPENDIX 12

206**FAX COVER SHEET**

TO	Maya Poliak
COMPANY	Chaitons LLP
FAX NUMBER	14162181844
FROM	Info .
DATE	2020-02-12 14:05:52 GMT
RE	OSC v. Moneygate

COVER MESSAGE

Dear Ms. Poliak,

Please find the Notice of Appeal of the non-party, 2496050 Ontario Inc., which is hereby served upon you in accordance with the Rules.

Sincerely,

DJD Law Professional Corporation

Court of Appeal File Number:
Court File No.: CV-18-00608086-00CL

BETWEEN : COURT OF APPEAL FOR ONTARIO

ONTARIO SECURITIES COMMISSION

Applicant

-and-

MONEY GATE MORTGAGE INVESTMENT CORPORATION

Moving Party on Motion/Respondent on Appeal

APPLICATION UNDER

Sections 126 and 129 of the *Securities Act* as Amended

**NOTICE OF APPEAL OF THE NON-PARTY RESPONDENT 2496050 ONTARIO
INC.**

THE NON-PARTY RESPONDENT APPEALS to the Court of Appeal from the judgment of Justice C. Gilmore (the “Motion Judge”) dated February 5, 2020 made at the Commercial List in Toronto (the “Judgement”).

THE APPELLANT ASKS that the Judgment be set aside and the matter be directed to a trial of an issue, or in the alternative, the motion dismissed.

THE GROUNDS OF APPEAL are as follows:

1. The Judgement appealed from is a final order as it relates to the claim by the Appellant that the mortgage previously held by MGMIC was invalid, as it was procured by fraud.
2. The Judgement was ordered in the context of a motion for directions brought by Grant Thornton Ltd (“GTL”) in its capacity as Receiver of the assets and undertakings of Money Gate Mortgage Investment Corporation (“MGMIC”).
3. GTL was appointed pursuant to sections 126 and 129 of the *Securities Act* and not under the *BLA*.
4. Appeal lies to this court under Rule 61.01 of the *Rules of Civil Procedure*.
5. The Judge erred in law and principle in determining, on a summary basis, that MGMIC was entitled to the proceeds of sale attributable to the Mortgage with instrument number AT4588484 that was, prior to the sale of 558 Dovercourt Rd, previously registered in the name of MGMIC against that Property, on a motion for advice and directions brought by Grant Thornton Ltd, as Receiver of MGMIC.
6. Furthermore, in granting the Judgement the court made palpable and overriding errors in making factual findings that were not supported in the evidence before the court.
7. The Court made, *inter alia*, the following intertwined and intra-connected errors of law and principle:
 - a. Treating Money Gate Mortgage Investment Corporation as a pass-through entity disregarded and **not separate from its preferred shareholders**, instead

of treating it properly as a corporation with an identity unique from its preferred shareholders, which operated through its directors Ben and Payam Katebian;

b. As a result of that error, failing to deal with the issue of whether the knowledge and intent of Payam and/or Ben Katebian is imputed to MGMIC, contrary to this Court's decision in *Livent Inc. v. Deloitte & Touche*, 2016 ONCA 11;

c. As result of the above errors of law, failing to require any response or evidence from MGMIC on the issue of whether or not Payam and Ben Katebian used MGMIC to deliberately defraud the Appellant (given Justice Gilmore's findings that the Katebians' intention was irrelevant to MGMIC), which failure to require evidence from MGMIC at all on the key issue is contrary to this court's holding in *Johnston v. Futerman*, 2012 ONSC 4092;

d. Failing to recognize that MGMIC has the burden of leading evidence showing that there is no genuine issue requiring a trial before shifting the burden to the Defendant to show that there is a genuine issue requiring a trial;

e. Finding that the Appellant should have called Ben or Payam as witnesses under 39.03, which finding has the effect of shifting the burden to the Appellant in circumstances where MGMIC as moving party has the burden to prove its own case;

f. Not accepting the argument of the Respondent, that *res ipsa loquitur* that Ben and Payam intentionally defrauded the Appellant, where there was no

evidence from MGMIC or any denial from MGMIC that the same had occurred, because of the errors in a, b, c, d, and e above;

g. All of which errors compounded and led to the Motion Judge, granting MGMIC (what amounts to) partial summary judgement, where the issues and findings made by the court in the Judgement will have a continuing effect outside the motion for summary judgement, and where: 1) it was not the case that every party to the litigation had been served with the summary judgment motion material 2) there was a real risk of duplicative proceedings and inconsistent factual findings, including with respect to the Appellants Respondent's claim with court file no CV-19-00613363-0000, all of which are contrary to this court's holding in *Butera v. Chown, Cairns LLP*, 2017 ONCA 783 and contrary to this court's recent holding in *Service Mold + Aerospace Inc. v. Khalaf*, 2019 ONCA 369 (CanLII);

h. Finding that MGMIC had an equitable claim on the basis of its errors in a and b above;

i. The court's reasons are inadequate as the court did not properly enunciate the legal test applied to grant judgement and did not explicitly aver to any *Rule of Civil Procedure* or other legislative provision in granting the judgement;

j. The Motion Judge speculated as to whether or not the conduct of the Respondent was "consistent with someone who had been defrauded", and the same was not an inference or grounded in any evidence in the record, and

subsequently based a factual finding on such speculation without any opinion evidence adduced by MGMIC, and without any evidentiary foundation for same;

k. The Motion Judge further erred by accepting counsel submissions as evidence and making a finding that Appellant's counsel had consented to the matter being decided on a motion for directions, merely because the court had set a hearing date at a 9:30 appointment where counsel appeared, rather than properly accepting the same as evidence that counsel was aware of the hearing date, but not evidence that counsel had consented to the matter being determined summarily, especially where the Motion Record served by MGMIC had not been served at the time of the 9:30 appointment, and counsel could not have known that MGMIC would not serve any evidence in support of its motion at that time; and

l. Such further and other grounds as counsel may advise and this court permit

THE BASIS OF THE APPELLATE COURT'S JURISDICTION IS:

- 1) Rule 61.01 of the Rules of Civil Procedure;
- 2) The order is final, and leave is not required

212

February 10, 2020

**DJD LAW PROFESSIONAL
CORPORATION**

1186 Eglinton Avenue West
Toronto, Ontario M6C 2E3

Eli Karp

Tel: (416) 769-4107

Fax: (416) 352-7638

ek@djdllaw.ca

Lawyer for the Appellant

TO: Chaitons LLP

5000 Yonge St, 10th Floor,
Toronto, Ontario, Canada, M2N 7E9

Maya Poliak

Tel: 416.218.1161

Fax: 416.218.1844

Email: Maya@chaitons.com

Lawyer for the non-party,
2496050 Ontario Corp.

APPENDIX 13

COUNSEL SLIP

COURT FILE

NO.: CV-18-00596922-00CLDATE: OCT 02 2019NO. ON LIST 3TITLE OF
PROCEEDINGMONEY GATE MORTGAGE
INVESTMENT CORPORATION

V.

ENIGMA LAND LTD.
et al.

COUNSEL FOR:

- ☐ PLAINTIFF(S)
☐ APPLICANT(S)
☐ PETITIONER(S)

*Maya Poliak for Receiver of
Money Gate.*

PHONE

(416) 218-1161

FAX

(416) 218-1894

EMAIL

maya@chapters.com

COUNSEL FOR:

- ☒ DEFENDANT(S)
☐ RESPONDENT(S)

R. Macdonald for 2399021 Ontario Inc.

T: 647-729-0754

E: rmacdonald@foglars.com

PHONE

FAX

EMAIL

Cliff Karp 2399021 Ontario. 416-765-4107 & L@cliffkarp.com

JUDICIAL NOTES:

October 2, 2019

there is a dispute over claims to
money paid into Court in another
proceeding.

Grant Thornton will deliver
material by October 25, 2019.

Mr. Karp's client, which is the
same on this issue as Grant
Thornton, will file any material
by November 1, 2019.

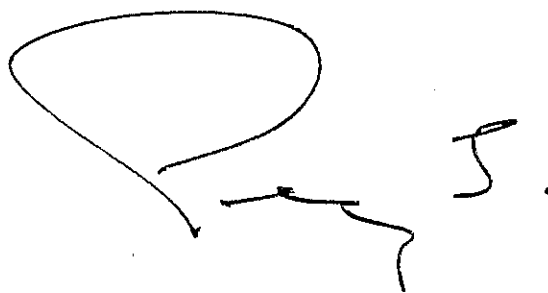
Mr. MacDonald's client shall
file responding material by Nov

15 2019.

Reply if any by November 20, 2019.

Examination completed by December 6, 2019

Hearing December 16, 2019 2.5 hours closed.

 J.

* F_n

There is apparently another proceeding between the same parties raising ~~the~~ an ~~act~~ ^{it similarly} issue. Parties to explore whether this should be consolidated.

APPENDIX 14



Court File No. CV-19-00628085-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

THE HONOURABLE MR.

JUSTICE HAINEY

)
)
)

THURSDAY, THE 2ND

DAY OF APRIL 2020

BETWEEN:

GRANT THORNTON LIMITED in its capacity as Court-appointed Receiver of MONEY
GATE MORTGAGE INVESTMENT CORPORATION

Applicant

-and-

2450531 ONTARIO LIMITED

Respondent

APPROVAL AND VESTING ORDER

THIS MOTION, made by GRANT THORNTON LIMITED in its capacity as the Court-appointed receiver (the "**Receiver**") over the property municipally known as 293 Euclid Avenue, Toronto, Ontario and listed on **Schedule B** hereto (the "**Property**"), for an order, among other things:

1. approving certain corrects to instruments registered against title to the Property;
2. approving the sale transaction (the "**Transaction**") contemplated by an agreement of purchase and sale dated January 16, 2020 (the "**Sale Agreement**") between the Receiver and Philip Huang appended to the First Report of the Receiver dated March 25, 2020 (the "**Report**");
3. vesting, as directed by Philip Huang, in Thousand Steps Real Estate Inc. (the "**Purchaser**"), the right, title and interest of the owner of the Property (the "**Owner**") in and to the assets described in the Sale Agreement (the "**Purchased Assets**");

4. sealing the confidential appendices to the Report until the closing of the Transaction or until further order of the Court;
5. authorizing distributions of net sale proceeds from the sale of the Property; and
6. discharging the Receiver,

was heard this day at via telephone conference.

ON READING the Report and on hearing the submissions of counsel for the Receiver, and such other parties as appearing at the hearing via telephone conference as reflected in the Endorsement of the judge hearing the motion:

1. **THIS COURT ORDERS** that the time for service of the Receiver's Notice of Motion and Motion Record is hereby abridged and validated so that this motion is properly returnable today and hereby dispenses with further service thereof.
2. **THIS COURT ORDERS AND DECLARES** that the Transaction is hereby approved, and the execution of the Sale Agreement by the Receiver is hereby authorized and approved, with such minor amendments as the Receiver may deem necessary. The Receiver is hereby authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the Transaction and for the conveyance of the Purchased Assets to the Purchaser.
3. **THIS COURT ORDERS AND DECLARES** that upon the delivery of a Receiver's certificate to the Purchaser substantially in the form attached as Schedule A hereto (the "**Receiver's Certificate**"), all of the Owner's right, title and interest in and to the Purchased Assets described in the Sale Agreement and listed on Schedule B hereto shall vest absolutely in the Purchaser, free and clear of and from any and all security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, levies, charges, or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise (collectively, the "**Claims**") including, without limiting the generality of the foregoing: (i) any encumbrances or charges created by the Order of the Honourable Justice Penny dated November 25, 2019; (ii) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (Ontario) or any other personal property registry system; and (iii) those Claims listed on Schedule C hereto (all of which are

collectively referred to as the "**Encumbrances**", which term shall not include the permitted encumbrances, easements and restrictive covenants listed on Schedule D) and, for greater certainty, this Court orders that all of the Encumbrances affecting or relating to the Purchased Assets are hereby expunged and discharged as against the Purchased Assets.

4. **THIS COURT ORDERS** that upon the registration in the Land Registry Office for the Land Titles Division of Metro Toronto (No. 80) of an Application for Vesting Order in the form prescribed by the *Land Titles Act*, the Land Registrar is hereby directed to enter the Purchaser as the owner of the Property in fee simple, and is hereby directed to delete and expunge from title to the Property all of the Claims listed in Schedule C hereto.

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

6. **THIS COURT ORDERS** that, after receiving a final security opinion from Dentons LLP, the Receiver is authorized to distribute the net sale proceeds from the sale of the Purchased Assets as follows:

- (a) First to Home Trust Company up to the full amount owing under its mortgage against the Property;
- (b) Second to the Receiver for payment of fees and disbursements of the Receiver and its legal counsel; and
- (c) Third to Grant Thornton Limited in its capacity as the court-appointed receiver of Money Gate Mortgage Investment Corporation up to the full amount owing under its mortgage against the Property.

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

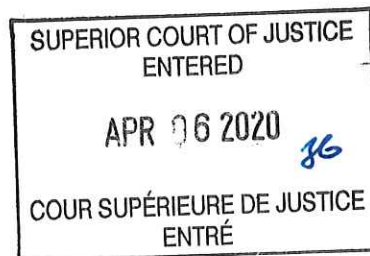
8. **THIS COURT ORDERS** that, notwithstanding:

- (a) the pendency of these proceedings;
- (b) any applications for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act* (Canada) in respect of the Owner and any bankruptcy order issued pursuant to any such applications; and
- (c) any assignment in bankruptcy made in respect of the Owner;

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

9. **THIS COURT ORDERS** that the Confidential Appendices to the Report be and hereby are sealed pending the closing of the Transaction or an order of this Court.

10. **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 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.



Schedule A – Form of Receiver's Certificate

Court File No. CV-19-00628085-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

BETWEEN:

GRANT THORNTON LIMITED in its capacity as Court-appointed Receiver of MONEY
GATE MORTGAGE INVESTMENT CORPORATION

Applicant

-and-

2450531 ONTARIO LIMITED

Respondent

RECEIVER'S CERTIFICATE

RECITALS

A. Pursuant to an Order of the Honourable Justice Penny of the Ontario Superior Court of Justice (the "**Court**") dated November 25, 2020, as amended, Grant Thornton Limited was appointed as the Receiver (the "**Receiver**") of the property municipally known as 293 Euclid Avenue, Toronto, Ontario (the "**Property**").

dated January 16, 2020 (the "**Sale Agreement**") between the Receiver and Philip Huang (the "**Purchaser**")

B. Pursuant to an Order of the Court dated April 2, 2020, the Court approved the sale transaction (the "**Transaction**") contemplated by an agreement of purchase and sale made as of January 16, 2020 (the "**Sale Agreement**") between the Receiver and Philip Huang and provided for the vesting in Thousand Steps Real Estate Inc. (the "**Purchaser**") of the right, title and interest in and to the purchased assets described in the Sale Agreement (the "**Purchased Assets**"), which vesting is to be effective with respect to the Purchased Assets upon the delivery

by the Receiver to the Purchaser of a certificate confirming (i) the payment by the Purchaser of the Purchase Price (as defined in the Sale Agreement) for the Purchased Assets; (ii) that the conditions to closing as set out in the Sale Agreement have been satisfied or waived by the Receiver and the Purchaser; and (iii) the Transaction has been completed to the satisfaction of the Receiver.

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

THE RECEIVER CERTIFIES the following:

1. The Purchaser has paid and the Receiver has received the Purchase Price for the Purchased Assets payable on closing pursuant to the Sale Agreement;
2. The conditions to closing as set out in the Sale Agreement have been satisfied or waived by the Receiver and the Purchaser; and
3. The Transaction has been completed to the satisfaction of the Receiver.
4. This Certificate was delivered by the Receiver at _____ [TIME] on _____ [DATE].

**GRANT THORNTON LIMITED, in its
capacity as Receiver over the property
municipally known as 293 Euclid Avenue,
Toronto, Ontario, and not in its personal
capacity**

Per: _____

Name: _____

Title: _____

Schedule B – Purchased Assets

PIN: 21249-0077

PT LT 108 PL 314 TORONTO AS IN CA758318; CITY OF TORONTO

Schedule C – Claims to be deleted and expunged from title to Real Property

1. Instrument No. AT3832218 registered on March 13, 2015, being a Transfer from Kerri Ann Macaulay to 2450531 Ontario Inc. (as amended);
2. Instrument No. AT3999558 registered on September 2, 2015, being a Transfer of Charge from Money Gate MIC to Money Gate MIC and 2418047 Ontario Inc.;
3. Instrument No AT4329958 registered on September 1, 2016, being a Charge/Mortgage of Land granted in favour of Home Trust Company;
4. Instrument No. AT4353622 registered on September 27, 2016, being a Charge/Mortgage of Land granted in favour of Money Gate Mortgage Investment Corporation;
5. Instrument No. AT4526574 registered on March 31, 2017, being a Caution on Land in favour of Bitu Ghaffari;
6. Instrument No. AT5004195 registered on November 9, 2018, being an Application to Register Court Order by Grant Thornton Limited; and
7. Instrument No. AT5009854 registered on November 16, 2018, being a Certificate of Direction in favour of the Ontario Securities Commission.

**Schedule D – Permitted Encumbrances, Easements and Restrictive Covenants
related to the Real Property**

(unaffected by the Vesting Order)

- (a) Any reservations, restrictions, rights of way, easements or covenants that run with the land, to the extent such reservations, restrictions, rights of way, easements or covenants are preserved by Section 44 of the *Land Titles Act* (Ontario);
- (b) The reservations, limitations, provisos and conditions expressed in the original grant from the Crown;
- (c) Any registered or unregistered easements or rights of way in favour of any governmental authority or public utility provided that none of the foregoing interfere in any material adverse respect with the current use of the Property;
- (d) liens for real property taxes and assessments, and charges for water and other public services and utilities, all that have accrued but are not yet due and owing or, if due and owing, are adjusted for on closing;
- (e) All agreements and easements, registered or otherwise, for utilities and services for hydro, water, heat, power, sewer, drainage, cable and telephone serving the Property, adjacent or neighbouring properties, provided none of the foregoing interfere in any material adverse respect with the current use of the Property;
- (f) Any encroachments, minor defects or irregularities indicated on any survey of the Property or which may be disclosed on an up-to-date survey of the Property provided that in either case same do not materially adversely impair the use, operation, or marketability of the Property;
- (g) Zoning (including, without limitation, airport zoning regulations), use and building by-laws and ordinances, federal, provincial or municipal by-laws and regulations, work orders, deficiency notices and any other noncompliance;
- (h) Any breaches of any Applicable Laws, including work orders and deficiency notices;
- (i) Any subdivision agreements, site plan agreements, developments and any other agreements with the Municipality, Region, publicly regulated utilities or other governmental authorities having jurisdiction; and
- (j) Minor title defects, if any, that do not in the aggregate materially affect the use of the Property for the purposes for which it is used on the date of this Order.

GRANT THORNTON LIMITED
Applicant

-and- 2450531 ONTARIO LIMITED
Respondent

Court File No. CV-19-00628085-00CL

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

ORDER

CHAITONS LLP
Barristers & Solicitors
5000 Yonge Street, 10th Floor
Toronto, ON M2N 7E9

Maya Pollak (54100A)
Tel : (416) 218-1161
Fax: (416) 218-1844

Lawyers for the Applicant

RE. MONEY GATE INVESTMENT CORP.

- ① This Motion was heard by teleconference in accordance with the change in operations of the Commercial List in light of the Covid-19 crisis and the Chief Justice's Notice to the Profession dated March 15/20.
- ② The Receiver's motion with respect to the Title Correction Order and the Approval and vesting order regarding 293 Euclid Avenue, Toronto is not opposed. I am satisfied that the Motion should be granted on the terms of the attached Title Correction Order and approval and

Testing ended.

③ With respect to the Receiver's request for a Discharge Order, two aspects of the order are opposed by the respondent's principal, Payam Kotelian, namely that the Receiver's Mortgage payout Statement failed to account for four payments totalling \$68,874.64 allegedly made by the Enchid owned to MORTGAGE and that the fees the Receiver seeks to have approved by the Court are excessive.

④ With respect to the accuracy of the Receiver's Mortgage payout Statement

I have concluded that Mr Katchian's claim that the M&M's Mortgage was paid down by the respondent and unsubstantiated and that the Renewal Letter provided by Mr Katchian & the Receiver yesterday is not credible.

I therefore do not accept Mr Katchian's contention that the Mortgage payout statement is not accurate.

(5) Further, despite Mr Wygodny's able submissions, I am satisfied that the fees claimed by the Receiver are fair and reasonable, particularly in light of the added expense & this

(4) necessity caused by Mr Katschinsky's unreasonable conduct.

(6) The Discharge order is approved and shall issue on the Terms of the attached.

(7) These orders are effective as of today's date whether or not they are entered.

Haring J.

There shall be a sealing order on the Terms of para 9 of the Approval and Vesting Order.

Haring J.

APPENDIX 15

District of Ontario
Court File No.: CV-18-00608086-00CL

**IN THE MATTER OF THE RECEIVERSHIP OF
MONEYGATE INVESTMENT CORPORATION
AND IN THE MATTER OF A MOTION PURSUANT TO SECTION 101
OF THE COURTS OF JUSTICE ACT, R.S.O. 1990, C. C.43, AS AMENDED**

**RECEIVER'S INTERIM STATEMENT OF RECEIPTS AND DISBURSEMENTS
NOVEMBER 6, 2018 TO APRIL 24, 2020**

	<u>Palace Pier Property</u>	<u>Birchmount Property</u>	<u>Dovercourt Property</u>	<u>Euclid Property Note 1</u>	<u>Timiskaming Property</u>	<u>Timmins Property</u>	<u>Steeles Property</u>	<u>Total</u>
RECEIPTS								
Cash in Bank	-	-	-	-	-	-	-	164,159
Mortgage Interest	-	-	-	14,125	-	-	-	14,125
Sale of Assets/Real Property	894,122	467,500	556,079	-	-	-	-	1,917,701
Interest Allocation	-	-	-	-	-	-	-	8,259
Misc. Refunds	-	5,004	-	-	-	-	-	5,004
	<u>894,122</u>	<u>472,504</u>	<u>556,079</u>	<u>14,125</u>	<u>-</u>	<u>-</u>	<u>-</u>	<u>2,109,247</u>
<i>Percentage of Revenue</i>								
DISBURSEMENTS								
Outside Consulting - Appraisal	-	-	-	-	4,700	4,700	-	9,400
Computer Services	-	-	-	-	-	-	-	275
Bank Charges	-	-	-	-	-	-	-	618
HST and GST Paid	-	-	-	-	611	611	-	1,258
	<u>-</u>	<u>-</u>	<u>-</u>	<u>-</u>	<u>5,311</u>	<u>5,311</u>	<u>-</u>	<u>11,551</u>
PROFESSIONAL FEES								
Receiver Fees	-	-	-	-	-	-	-	207,602
HST on the above	-	-	-	-	-	-	-	26,988
Counsel to the Receiver/Monitor	-	-	-	-	-	-	-	308,104
HST on the above	-	-	-	-	-	-	-	39,686
	<u>-</u>	<u>-</u>	<u>-</u>	<u>-</u>	<u>-</u>	<u>-</u>	<u>-</u>	<u>582,380</u>
RECEIPTS LESS DISBURSEMENTS	<u>894,122</u>	<u>472,504</u>	<u>556,079</u>	<u>14,125</u>	<u>(5,311)</u>	<u>(5,311)</u>	<u>-</u>	<u>1,515,316</u>

Note 1

The Euclid Property's Receipts and Disbursement have been docketed separately, by GTL in its capacity as Euclid Receiver. Details on the Receipts and Disbursement can be found in the Euclid Receiver's First Report to Court, on www.GrantThornton.ca/Euclid.

APPENDIX 16

Court File No. CV-18-00608086-00CL

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

B E T W E E N:

ONTARIO SECURITIES COMMISSION

Applicant

- and -

MONEY GATE MORTGAGE INVESTMENT CORPORATION

Respondent

AFFIDAVIT OF JONATHAN KRIEGER

I, JONATHAN KRIEGER, of the City of Toronto, in the Province of Ontario, MAKE OATH AND SAY:

1. I am a Senior Vice President of Grant Thornton Limited (“GTL”), Court-appointed Receiver of Money Gate Mortgage Investment Corporation (the “**Company**”) and as such, have knowledge of the matters hereinafter deposed except where stated to be upon information in which case I do verily believe such information to be true. This affidavit is made in support of the Receiver’s motion, among other things, to approve its accounts.

2. Attached and marked as **Exhibit "A"** to this my affidavit is a detailed billings setting out the fees and disbursements of GTL incurred in its role as Receiver of the Company from April 1, 2019 to April 24, 2020, in the total amount of \$133,721.36, disbursements of \$42.36 and HST of \$15,383.88 and such is summarized on Exhibit “**B**” to this my affidavit. The average hourly rate is \$371.94.

3. Given the complexity of this insolvency matter, I believe the hourly rates and the total amount of fees are reasonable and comparable for insolvency services of this nature rendered by other firms in the City of Toronto.

4. This affidavit is sworn in connection with the approval of the fees and disbursements of GTL and for no improper purpose.

SWORN BEFORE ME at the City of
Toronto, in the Province of Ontario, this
29 day of April 2020



Commissioner for Taking Affidavits, etc.



JONATHAN KRIEGER

David Lawrence Goldband, a Commissioner, etc.
Province of Ontario
For Grant Thornton Limited
Expires April 01, 2022

Exhibit "A" to the Affidavit of Jonathan Krieger,
sworn before me this 29 day of April 2020



David Lawrence Goldband, a Commissioner, etc.
Province of Ontario
For Grant Thornton Limited
Expires April 01, 2022

Court File No. CV-18-00608086-00CL

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

BETWEEN:**ONTARIO SECURITIES COMMISSION****Applicant****- and -****MONEY GATE MORTGAGE INVESTMENT CORPORATION****Respondent**

**APPLICATION UNDER SECTION 126 and 129 OF THE SECURITIES ACT R.S.O.
1990, c. S.5, AS AMENDED**

BILL OF COSTS

**BN 12738 4717 RT0001
Client #254817
Invoice#LSO-5240**

To professional services rendered as Receiver for the period from April 1, 2019 to April 30, 2019.

Date	Full Name	Hours	Detail
April 1, 2019	Jason Knight	0.50	Review information provided by P. Katebian; Internal discussions re: settlement negotiations and results of same; Internal discussions re: appraisal of Mansteel and Timmins properties.
April 1, 2019	Charles Skelton	0.40	Correspondence to appraiser; Internal meeting re appraisals.
April 1, 2019	Jonathan Krieger	1.70	Review of information from Katebian; Correspondence with OSC; Correspondence with counsel; Review of materials and respond to OSC; Correspondence with team re: proposed settlements; Review of additional materials.
April 2, 2019	Jonathan Krieger	0.50	Correspondence with counsel; Correspondence with team re: matters related to tracing use of funds; Correspondence re: matters related to proposed settlement.
April 2, 2019	Charles Skelton	0.40	Correspondence to appraiser.

Date	Full Name	Hours	Detail
April 3, 2019	Jason Knight	2.10	Prepare for and attend meeting with the OSC re: file update and progress on same; Review information re: Birchmount and Mansteel properties; Correspondence with investor re: file update.
April 3, 2019	Jonathan Krieger	1.90	Correspondence with counsel re: matters related to settlement documentation; OSC meeting re: update; Correspondence re: property realizations and discussion of alternatives.
April 8, 2019	Rania Erian	0.60	General administration.
April 9, 2019	Charles Skelton	2.10	Calls with investors; Review draft Notice to Investors; correspondence with appraiser; Correspondence to counsel.
April 11, 2019	Charles Skelton	1.00	Call with principal; Review correspondence from principal.
April 11, 2019	Rosa Wilford	0.10	Review estate bank account and reconcile March statement.
April 12, 2019	Charles Skelton	0.60	Correspondence to counsel; Review settlement proposal.
April 15, 2019	Charles Skelton	0.30	Correspondence to counsel re: litigation matters.
April 16, 2019	Jonathan Krieger	1.20	Review of draft settlement agreement; Comments to counsel.
April 17, 2019	Jonathan Krieger	0.50	Correspondence re: matters related to Birchmount settlement; Correspondence with team thereto.
April 17, 2019	Charles Skelton	0.40	Correspondence to counsel re: mortgage advances.
April 17, 2019	Jason Knight	0.20	Prepare instructions re: deposit of Dovercourt funds into GIC.
April 18, 2019	Charles Skelton	0.60	Call with counsel re: litigation matters.
April 18, 2019	Jonathan Krieger	0.90	Call re: settlement discussions; Correspondence re: settlement document; Correspondence and calls with counsel re developments on Birchmount, action plan going forward.
April 22, 2019	Jonathan Krieger	0.60	Correspondence with OSC re: reporting; Correspondence with team re: requirements for report.
April 22, 2019	Jonathan Krieger	0.20	Correspondence with OSC re: reporting; Correspondence with team re: requirements for report; Correspondence with counsel.

Date	Full Name	Hours	Detail
April 22, 2019	Charles Skelton	3.20	Prepare draft report to Court; Correspondence to appraiser.
April 23, 2019	Jason Knight	0.60	Draft correspondence to OSC re: Mansteel / Uniboard proceedings; Internal discussions re: correspondence from OSC and first draft of report.
April 23, 2019	Charles Skelton	1.90	Draft Court report.
April 23, 2019	Rosa Wilford	0.60	Review internal instructions from team: re Banking; Review and print general ledger report; Purchase GIC investment; Draft letter to Bank; Correspondences to and from Bank; Prepare disbursement requisition form; Post term deposit entries; Review account ledger; Provide supporting documentation; Emails; General banking administration.
April 24, 2019	Charles Skelton	0.30	Call with principal.
April 25, 2019	Jason Knight	0.10	Email correspondence with Uniboard re: Mansteel property.
April 25, 2019	Charles Skelton	0.20	Correspondence to counsel.
April 26, 2019	Charles Skelton	1.10	Edits to Court report.
April 29, 2019	Charles Skelton	1.60	Prepare discharge notice re: mortgage; Edits to Court report; Call with counsel.
April 29, 2019	Jonathan Krieger	1.30	Meeting with team re: property status; Conference call with counsel re: review of property matters, litigation matters and discussions of next steps.
April 30, 2019	Valerie Naccarato	0.10	General banking administration.
April 30, 2019	Charles Skelton	0.80	Correspondence to auditors re invoices.
April 30, 2019	Jason Knight	6.60	Correspondence re: Second Report and update on same; Perform detailed review of first draft of Second Report and make revisions and additions to same; Compile appendices required for Second Report; Prepare statement of receipts and disbursements for the period ending April 30, 2019.

Time Summary

J. Krieger, Sr. Vice President	8.80	hours @	\$595.00 per hour	\$	5,236.00
J. Knight, Manager	10.10	hours @	\$375.00 per hour	\$	3,787.50
R. Wilford, Manager	0.70	hours @	\$275.00 per hour	\$	192.50
C. Skelton, Senior Associate	14.90	hours @	\$235.00 per hour	\$	3,501.50
R. Erian, Analyst	0.60	hours @	\$135.00 per hour	\$	81.00
V. Naccarato, Analyst	0.10	hours @	\$135.00 per hour	\$	13.50
	35.20			\$	12,812.00
5% Administration and Technology fees				\$	640.60
				\$	13,452.60
HST @13%				\$	1,748.84
Total Due				\$	15,201.44

Court File No. CV-18-00608086-00CL

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

BETWEEN:

ONTARIO SECURITIES COMMISSION

Applicant

- and -

MONEY GATE MORTGAGE INVESTMENT CORPORATION

Respondent

**APPLICATION UNDER SECTION 126 and 129 OF THE SECURITIES ACT R.S.O.
1990, c. S.5, AS AMENDED**

BILL OF COSTS

**BN 12738 4717 RT0001
Client #254817
Invoice#LSO-5608**

To professional services rendered as Receiver for the period from May 1, 2019 to September 30, 2019.

Date	Full Name	Hours	Detail
May 1, 2019	Charles Skelton	0.80	Edits to Court report; correspondence to investors.
May 1, 2019	Jonathan Krieger	2.70	Review of draft report and comments thereto; Correspondence with team thereto; Correspondence with OSC; Correspondence with investor; Review of materials re: Birchmount motion; Correspondence from counsel thereto.
May 1, 2019	Jason Knight	1.20	Review comments on draft Second Report and discuss same internally; Provide direction on required changes to Second Report; Phone conversation with investor re: update on proceedings; Review correspondence from OSC and investor.
May 2, 2019	Gladys Nmoye	0.25	Corporate search.

Date	Full Name	Hours	Detail
May 2, 2019	Jason Knight	2.90	Internal discussions re: Euclid Mortgage and outstanding amounts owing under same; Internal discussions re: Second Report and revisions required to same; Review revised first draft of Second Report and revise and adjust same.
May 2, 2019	Charles Skelton	1.60	Edits to Court report; correspondence to principal re payment; correspondence to counsel.
May 3, 2019	Valerie Naccarato	0.30	Prepare receipt requisition form; Post deposit entry; General banking administration.
May 3, 2019	Charles Skelton	0.70	Correspondence to appraiser; meeting with principal.
May 6, 2019	Jonathan Krieger	0.60	Call with counsel re: matters related to draft report; Correspondence with OSC; Correspondence with team re: considerations re: report.
May 6, 2019	Charles Skelton	0.50	Correspondence to counsel; correspondence to appraiser.
May 6, 2019	Rosa Wilford	0.10	Review estate bank account and reconcile April statement.
May 7, 2019	Rosa Wilford	0.60	Review internal instructions from team re Banking; Review payment requests; Prepare disbursement requisition forms; Post entries; Issue cheques; General banking administration.
May 7, 2019	Jason Knight	0.10	Correspondence re: Second Report.
May 7, 2019	Charles Skelton	2.20	Review/draft edits to Court Report; correspondence to counsel.
May 8, 2019	Jason Knight	0.20	Review counsel's comments on Second Report.
May 8, 2019	Valerie Naccarato	0.10	General banking administration.
May 8, 2019	Jonathan Krieger	1.30	Correspondence from counsel; Review of draft report.
May 8, 2019	Charles Skelton	3.70	Edits to Court report; correspondence to counsel; correspondence to previous accountant.
May 9, 2019	Rosa Wilford	0.30	Review and reconcile April GIC term deposits and approve estate balances.
May 9, 2019	Charles Skelton	1.60	Review and finalize Court report; correspondence to counsel; edits to affidavit.

Date	Full Name	Hours	Detail
May 9, 2019	Jonathan Krieger	3.70	Review of draft report, comments thereto; Team meeting to discuss considerations; Correspondence with counsel.
May 9, 2019	Jason Knight	0.10	Correspondence re: Second Report with team.
May 13, 2019	Charles Skelton	0.50	Correspondence to appraiser; correspondence to counsel.
May 13, 2019	Jonathan Krieger	0.20	Follow up re: matters related to report.
May 15, 2019	Charles Skelton	0.30	Review OSC hearing documents.
May 15, 2019	Jason Knight	0.20	Review and discuss response to investor correspondence.
May 16, 2019	Jason Knight	0.20	Internal discussions re: Second Report and investor correspondence.
May 17, 2019	Charles Skelton	0.20	Review correspondence re: mortgage registration.
May 28, 2019	Rosa Wilford	0.10	General banking administration.
May 29, 2019	Charles Skelton	0.40	
May 29, 2019	Rosa Wilford	0.40	Review internal instructions from team re Banking; Review payment requests; Prepare disbursement requisition forms; Post entries; Issue cheque; General banking administration.
May 30, 2019	Jonathan Krieger	0.80	Team discussion re: considerations with properties, proposed interim settlement, relief required.
May 30, 2019	Charles Skelton	1.20	Calculation of mortgage arrears; Correspondence to counsel.
May 31, 2019	Valerie Naccarato	0.10	General banking administration.
June 4, 2019	Jonathan Krieger	0.80	Review of Dovercourt analysis and comments thereto; Correspondence re: matters related to Birchmount; Call with counsel re: review of documents, go forward plan.
June 4, 2019	Jason Knight	0.10	Review payout statement letter and supporting calculations for outstanding balance; Discussions internally with team re: payout statement.
June 4, 2019	Charles Skelton	1.10	Correspondence to receiver re Dovercourt final distribution; call with counsel re properties, litigation.

Date	Full Name	Hours	Detail
June 5, 2019	Charles Skelton	1.10	Correspondence to counsel re Euclid property demand; correspondence to receiver
June 6, 2019	Charles Skelton	0.30	Correspondence to counsel re: mortgage discharges.
June 10, 2019	Charles Skelton	1.30	Correspondence with appraiser; internal meeting with team; correspondence to counsel.
June 11, 2019	Jonathan Krieger	0.50	Correspondence with team re: matters related to outstanding documents, status of mortgages.
June 11, 2019	Charles Skelton	1.30	Correspondence with principal; review correspondence from counsel; internal discussion re: asset realization.
June 12, 2019	Charles Skelton	0.30	Correspondence with appraiser.
June 12, 2019	Rosa Wilford	0.10	General banking administration.
June 14, 2019	Rosa Wilford	1.00	Review internal instructions from team re Banking; Prepare and post deposit entries; Purchase investment; Bank letter; Prepare disbursement requisition forms; Post accrual entries; General banking administration.
June 14, 2019	Jonathan Krieger	0.40	Update with team re: matters related to properties, correspondence and discussions re: Euclid action plan.
June 14, 2019	Valerie Naccarato	0.10	Deposit at bank,
June 14, 2019	Charles Skelton	1.00	Instructions re: funds held in trust.
June 17, 2019	Charles Skelton	1.10	Correspondence to counsel re: realization strategy; call with counsel; correspondence to appraiser.
June 17, 2019	Jonathan Krieger	0.50	Update with team re: matters related to properties, status of various litigation and enforcement actions.
June 18, 2019	Jonathan Krieger	1.00	Review of matters re: Euclid; Review of matters related to litigation; Review of considerations re: enforcement.
June 18, 2019	Charles Skelton	1.10	Calculation of mortgage interest arrears.
June 18, 2019	Rosa Wilford	0.20	Review estate bank account and reconcile May statement.
June 19, 2019	Rosa Wilford	0.30	Review and reconcile May GIC term deposit and approve estate balances.

Date	Full Name	Hours	Detail
June 20, 2019	Jonathan Krieger	0.50	Correspondence with counsel re: considerations with Birchmount; Correspondence re: matters related to Court relief.
June 21, 2019	Rosa Wilford	0.80	Review internal instructions: re Banking; Review general ledger report; Purchase GIC investment; Draft letter to Bank; Correspondences to and from Bank; Review account for returned items; Provide supporting documentation to team; Prepare disbursement requisition form; Post entries; Review account ledger; Emails; General banking administration.
June 28, 2019	Charles Skelton	0.60	Review of arrears calculation; correspondence to counsel re: realization.
July 4, 2019	Jonathan Krieger	0.50	Review of correspondence re: properties, and impact on recoveries; Correspondence with team thereto.
July 4, 2019	Charles Skelton	1.70	Compile requests for information for banks re: accounts; correspondence to appraiser.
July 5, 2019	Jonathan Krieger	0.60	Review of matters re: registrations; Correspondence with team thereto.
July 5, 2019	Charles Skelton	1.70	Call with counsel re: mortgages enforcement; updated payout figures to counsel. Internal discussion re: strategy.
July 8, 2019	Jonathan Krieger	0.50	Correspondence with team re: considerations on properties and recoveries; Correspondence re: Correspondence from Ministry; Correspondence re: matters related to request for discharge.
July 8, 2019	Charles Skelton	0.70	Draft correspondence to City of Temiskaming Shores re: property tax.
July 11, 2019	Charles Skelton	0.30	Correspondence to bank re: bank statements, transaction records.
July 11, 2019	Rosa Wilford	0.30	Review mail; Prepare receipt requisition form; Post deposit entries; General banking administration.
July 12, 2019	Jason Knight	0.50	Draft letter to Temiskaming Shores re: correspondence re: property taxes.
July 12, 2019	Jonathan Krieger	0.30	Review of correspondence re: Northern property; Correspondence with team thereto.
July 12, 2019	Charles Skelton	0.70	Correspondence to counsel; call with counsel re: receivership, demands.

Date	Full Name	Hours	Detail
July 16, 2019	Charles Skelton	0.40	Correspondence with bank re: transaction backup.
July 17, 2019	Rosa Wilford	0.30	Review estate bank account and reconcile June statement.
July 18, 2019	Valerie Naccarato	0.10	General banking administration.
July 18, 2019	Charles Skelton	1.50	Call with counsel re: mortgages; draft correspondence to party to Mansteel action.
July 22, 2019	Charles Skelton	0.40	Correspondence to bank re bank statements, transaction backup.
July 22, 2019	Rosa Wilford	0.60	Review and reconcile June GIC term deposit and approve estate balances.
July 24, 2019	Charles Skelton	0.70	Correspondence with other mortgagee.
July 25, 2019	Charles Skelton	1.10	Review correspondence from counsel; review bank statements re: flow of funds re: additional property; prepare summary, correspondence to counsel.
July 25, 2019	Jonathan Krieger	0.40	Correspondence and discussions with team re: appraisals; Correspondence re: matters related to asset tracing.
July 26, 2019	Jonathan Krieger	0.50	Call with Chaitons re: matters related to relief on properties, matters related to potential recoveries;
July 26, 2019	Charles Skelton	1.10	Call with counsel re: file status; internal meeting to discuss file; correspondence to former counsel of company.
July 30, 2019	Charles Skelton	2.10	Subsequent Source/Use analysis of bank account transactions.
July 31, 2019	Charles Skelton	3.00	Review Source/Use for transactions re: additional property. Correspondence to appraiser re: Timmins, Temiskaming; correspondence to counsel re: receivership applications.
July 31, 2019	Jonathan Krieger	0.80	Correspondence with team re: considerations related to review of records re: purported transactions; Review of correspondence from counsel thereto; Discussions re: next steps.
July 31, 2019	Rosa Wilford	0.30	Review internal instructions from team re Banking; Review payment requests; Post disbursement entries; Issue cheque; General banking administration.

Date	Full Name	Hours	Detail
August 1, 2019	Jonathan Krieger	0.50	Review of matters re: transfers involving MGMIC; Correspondence with team re: review of bank records.
August 1, 2019	Charles Skelton	3.50	Additional Source/Use analysis, verification of transactions; correspondences to counsel re: receivership appointments; call with appraiser re: northern properties.
August 2, 2019	Charles Skelton	1.40	Return investor correspondence; correspondence to counsel.
August 2, 2019	Rosa Wilford	0.30	Review internal instructions from team re Banking; Prepare disbursement requisition forms; Post entries; Issue cheque; General banking administration.
August 6, 2019	Charles Skelton	2.70	Prepare analysis re: realization for properties; correspondence to counsel.
August 7, 2019	Charles Skelton	0.30	Return investor inquiry.
August 8, 2019	Ada Shahini	0.10	General Banking Administration.
August 12, 2019	Jason Knight	0.20	Phone call with team re: Mansteel Property.
August 13, 2019	Charles Skelton	1.20	Correspondence with investor; internal discussion re: tax treatment of proceeds.
August 15, 2019	Rosa Wilford	0.10	Review estate bank account and reconcile July statement.
August 16, 2019	Charles Skelton	0.50	Correspondence to counsel.
August 18, 2019	Rosa Wilford	0.50	Review and reconcile July GIC term deposit and approve estate balances.
August 19, 2019	Charles Skelton	1.60	Correspondence to counsel re: Temiskaming Property. Prepare realization scenario summary; internal meeting to discuss strategy.
August 19, 2019	Rosa Wilford	0.10	Review banking reports and approve monthly estate balances.
August 21, 2019	Jonathan Krieger	0.80	Review of matters re: valuations, request for documents; Correspondence re: reports from counsel, considerations for recovery.
August 22, 2019	Charles Skelton	1.40	Review correspondence from counsel re: third party mortgage assignment; review affidavit re: Euclid receivership.
August 28, 2019	Charles Skelton	0.70	Review correspondence from counsel re: mortgage discharge.

Date	Full Name	Hours	Detail
August 29, 2019	Charles Skelton	1.50	Correspondence to counsel re: Temiskaming property; correspondence to realtor re: opinion of value.
August 30, 2019	Charles Skelton	1.50	Review affidavit in support of receivership application.
September 3, 2019	Jonathan Krieger	0.50	Review of draft materials re: matters related to Euclid; Correspondence and discussion with team thereto.
September 3, 2019	Charles Skelton	1.70	Review of draft affidavit; call with realtor re: CMA, appraisal; correspondence with first mortgagee.
September 4, 2019	Charles Skelton	0.30	Correspondence to counsel.
September 4, 2019	Rosa Wilford	0.20	On-line banking; Review estate bank account and reconcile August statement.
September 5, 2019	Rosa Wilford	0.40	Review and reconcile August GIC term deposits and approve estate balances.
September 5, 2019	Jonathan Krieger	1.00	Review of affidavit; Correspondence with team thereto.
September 6, 2019	Rosa Wilford	0.10	Review banking reports and approve monthly estate balances.
September 10, 2019	Charles Skelton	1.30	Correspondence with realtors re: letter of opinion; correspondence re: Temiskaming property.
September 11, 2019	Charles Skelton	1.70	Correspondence to counsel re: receivership applications; review application from OSC re: additional property.
September 12, 2019	Charles Skelton	1.70	Review of affidavit re: receivership application; correspondence with first mortgagee.
September 16, 2019	Charles Skelton	1.60	Edits to affidavits for property receivership applications.
September 17, 2019	Jonathan Krieger	1.10	Call with counsel re: status review of properties; Review of draft materials; Correspondence with team re: matters related to documents required.
September 17, 2019	Ada Shahini	0.10	General banking administration.
September 17, 2019	Charles Skelton	2.40	Call with counsel re: properties; correspondence to realtors re: MPAC assessment, opinion of value letters; correspondence to counsel re: Temiskaming.

Date	Full Name	Hours	Detail
September 18, 2019	Charles Skelton	0.60	Correspondence with counsel re: settlement of Birchmount funds; edits to receivership application affidavits.
September 18, 2019	Jonathan Krieger	1.20	Review of draft documents; Meeting re: review of same; Correspondence with counsel for company re: concerns with lack of documentation.
September 19, 2019	Jonathan Krieger	1.50	Review of documentation re: matters related to mortgage arrears; Review and comment on court materials; Correspondence to counsel thereto; Discussion with team re: next steps.
September 19, 2019	Charles Skelton	0.20	Review correspondence from OSC.
September 20, 2019	Jonathan Krieger	1.10	Calls with counsel re: case conference on Birchmount, correspondence re: considerations on Steeles; Review of documentation.
September 23, 2019	Charles Skelton	2.70	Correspondences to counsel re: receivership applications; edits to affidavits; compile documents for execution; correspondence to counsel re: Temiskaming property.
September 24, 2019	Jonathan Krieger	1.50	Review and finalize affidavits; Correspondence with team; Correspondence with counsel.
September 24, 2019	Charles Skelton	3.20	Correspondences to counsel re: receivership applications; edits to Court application.
September 25, 2019	Jonathan Krieger	1.30	Correspondence re: matters related to service of materials; Correspondence re: funds re settlement.
September 25, 2019	Charles Skelton	1.70	Analysis of realization re: northern properties; prepare summary of issues for OSC.
September 26, 2019	Charles Skelton	2.00	Update Meeting with OSC re: status of properties.
September 26, 2019	Jonathan Krieger	1.90	Review of status reporting on properties; Meeting with OSC re: review of file status; Correspondence with counsel; Review of filed materials; Correspondence with team and discussion thereto re: status of properties.
September 30, 2019	Jonathan Krieger	0.50	Correspondence re: court attendance.
September 30, 2019	Charles Skelton	0.40	Review correspondence from counsel; review issued application.

Time Summary

J. Krieger, Sr. Vice President	29.50	hours @	\$595.00 per hour	\$ 17,552.50
J. Knight, Sr. Manager	5.70	hours @	\$375.00 per hour	\$ 2,137.50
R. Wilford, Manager	7.10	hours @	\$275.00 per hour	\$ 1,952.50
C. Skelton, Senior Associate	76.10	hours @	\$235.00 per hour	\$ 17,883.50
A. Shahini, Sr. Associate	0.20	hours @	\$165.00 per hour	\$ 33.00
V. Naccarato, Analyst	0.70	hours @	\$135.00 per hour	\$ 94.50
G. Nmoye, Associate	0.25	hours @	\$130.00 per hour	\$ 32.50
	<u>119.55</u>			<u>\$ 39,686.00</u>
5% Administration and Technology fees				\$ 1,984.30
				<u>\$ 41,670.30</u>
Disbursement (courier)				\$ 24.50
				<u>\$ 41,694.80</u>
HST @13%				\$ 5,420.33
Total Due				<u>\$ 47,115.13</u>

Court File No. CV-18-00608086-00CL

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

BETWEEN:

ONTARIO SECURITIES COMMISSION

Applicant

- and -

MONEY GATE MORTGAGE INVESTMENT CORPORATION

Respondent

**APPLICATION UNDER SECTION 126 and 129 OF THE SECURITIES ACT R.S.O.
1990, c. S.5, AS AMENDED**

BILL OF COSTS

**BN 12738 4717 RT0001
Client #254817
Invoice#LSON-5720**

To professional services rendered as Receiver for the period from October 1, 2019 to October 31, 2019.

Date	Full Name	Hours	Detail
October 1, 2019	Jonathan Krieger	0.70	Review of matters related to court applications, reporting; Discussions with team thereto.
October 1, 2019	Charles Skelton	0.40	Correspondence with counsel re: court dates for receivership applications.
October 2, 2019	Charles Skelton	0.40	Correspondence to counsel re: court dates.
October 11, 2019	Jonathan Krieger	1.60	Review of correspondence re: matters related to receivership applications; Correspondence with counsel re: alternatives; Call with counsel; Correspondence with team and counsel re: OSC meeting;
October 11, 2019	Charles Skelton	1.60	Review correspondence from counsel; Various correspondence to counsel; Review documents in preparation for meeting with OSC.
October 15, 2019	Charles Skelton	1.50	Prepare summary of assets for meeting with OSC.
October 16, 2019	Rosa Wilford	0.20	Review estate bank account and reconcile September statement.

Date	Full Name	Hours	Detail
October 16, 2019	Charles Skelton	2.90	Attend meeting at OSC re: realization; Correspondence to counsel re: Birchmount funds; Call with counsel.
October 17, 2019	Jonathan Krieger	0.60	Correspondence re: court order; Discussions with team re: timeline; Correspondence re: matters related to proposed settlement.
October 17, 2019	Charles Skelton	0.80	Review report to Court.
October 18, 2019	Rosa Wilford	0.60	Review and reconcile September GIC term deposits and approve estate balances.
October 18, 2019	Charles Skelton	1.70	Edits to Report to Court; Correspondence to counsel; Correspondence to bank re: transaction details.
October 18, 2019	Jonathan Krieger	2.20	Review of report, Finalization of report re: Dovercourt; Correspondence with counsel.
October 21, 2019	Charles Skelton	1.30	Call with counsel; Correspondence with bank re: transaction backup; Correspondence to counsel re: Dovercourt Report.
October 21, 2019	Jonathan Krieger	0.50	Correspondence with team and counsel re: service of materials; Review of materials thereto.
October 24, 2019	Charles Skelton	0.40	Correspondence to counsel re: Steeles motion materials.
October 24, 2019	Jonathan Krieger	0.40	Correspondence with team re: matters related to court materials; Discussions thereto.
October 25, 2019	Charles Skelton	1.20	Correspondence to counsel re: flow of funds; Review of flow of funds.
October 25, 2019	Jonathan Krieger	1.20	Call with counsel; Conference call with T. Wilson and counsel re: Steeles, other properties; Correspondence with counsel re: court materials.
October 28, 2019	Jonathan Krieger	2.30	Review of draft materials and comments thereto; Correspondence and calls with counsel; Correspondence with team re: finalization of materials.
October 28, 2019	Charles Skelton	1.00	Review affidavit re: Steeles litigation.
October 29, 2019	Rosa Wilford	0.30	Review internal instructions from team re Banking; Prepare disbursement requisition forms; Post entries; Issue cheque; General banking administration.
October 29, 2019	Jonathan Krieger	1.20	Finalization and sign off on Court materials; Correspondence with counsel thereto; Review of correspondence from counsel; Correspondence re: matters related to Birchmount.

Date	Full Name	Hours	Detail
October 29, 2019	Charles Skelton	1.40	Compile and send executed affidavit; Correspondence to counsel re: litigation proceeds; Instructions to staff re: deposit.

Time Summary

J. Krieger, Sr. Vice President	10.70	hours @	\$595.00 per hour	\$ 6,366.50
R. Wilford, Manager	1.10	hours @	\$275.00 per hour	\$ 302.50
C. Skelton, Senior Associate	14.60	hours @	\$235.00 per hour	\$ 3,431.00
	26.40			<u>\$ 10,100.00</u>
5% Administration and Technology fees				<u>\$ 505.00</u>
				<u>\$ 10,605.00</u>
HST @13%				<u>\$ 1,378.65</u>
Total Due				<u><u>\$ 11,983.65</u></u>

Court File No. CV-18-00608086-00CL

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

BETWEEN:

ONTARIO SECURITIES COMMISSION

Applicant

- and -

MONEY GATE MORTGAGE INVESTMENT CORPORATION

Respondent

**APPLICATION UNDER SECTION 126 and 129 OF THE SECURITIES ACT R.S.O.
1990, c. S.5, AS AMENDED**

BILL OF COSTS

**BN 12738 4717 RT0001
Client #254817
Invoice#LSO-6005**

To professional services rendered as Receiver for the period from November 1, 2019 to January 31, 2020.

Date	Full Name	Hours	Detail
November 1, 2019	Charles Skelton	0.70	Correspondence to counsel re: Court dates; correspondence to bank re: transaction support; correspondence to previous auditor.
November 4, 2019	Valerie Naccarato	0.10	General banking administration.
November 4, 2019	Jonathan Krieger	0.60	Review of correspondence re: matters related to upcoming motion, access to documentation and rights thereto.
November 10, 2019	Rosa Wilford	0.20	Review estate bank account and reconcile October statement.
November 11, 2019	Charles Skelton	0.70	Correspondence to investors.
November 12, 2019	Charles Skelton	1.00	Internal meeting to discuss file; Review of documentation.
November 13, 2019	Jonathan Krieger	0.70	Review of matters re: requested adjournment on Euclid; Correspondence with counsel; Review of information thereto.

Date	Full Name	Hours	Detail
November 14, 2019	Charles Skelton	1.10	Internal correspondence re: status of file; Review of materials.
November 14, 2019	Jason Kanji	1.10	Internal meeting to discuss receivership and litigation matters.
November 14, 2019	Jonathan Krieger	0.50	Correspondence re: matters related to Court motion; Correspondence re: matters related to request for adjournment, review of documentation thereto.
November 15, 2019	Jonathan Krieger	0.80	Review of status memos; Correspondence with team re: court attendance; Review of timeline re: asset monetization.
November 18, 2019	Rosa Wilford	0.70	Review and reconcile October GIC term deposits and approve estate balances.
November 19, 2019	Jason Kanji	1.70	Prepare information for Palace Pier payout statement.
November 20, 2019	Jason Kanji	2.40	Prepare for an attend court hearing for Palace Pier Receivership appointment.
November 20, 2019	Jonathan Krieger	1.50	Correspondence with team and counsel re: Court matters; Correspondence re: Euclid position of purchaser; Correspondence re: matters related to payout statement on Palace Pier; Calls with counsel thereto.
November 21, 2019	Jason Kanji	3.70	Prepare analysis of Euclid offer and Receiver's position, prepare for attendance to court.
November 21, 2019	Jonathan Krieger	1.30	Review correspondence re: Euclid property and position to protect interest; Correspondence with counsel; Review of payout statement; Correspondence re: matters related to Court session; Review of Factum; Correspondence thereto.
November 22, 2019	Rosa Wilford	0.30	Review internal instructions from team re Banking: Review payment request; Prepare disbursement requisition form; Post invoice entries; Issue cheque; General banking administration.
November 22, 2019	Jonathan Krieger	1.20	Review of materials and preparation of same re: Euclid; Correspondence with team; Calls with counsel thereto.
November 22, 2019	Jason Kanji	1.20	Correspond with Counsel re: Euclid Receivership and return analysis.

Date	Full Name	Hours	Detail
November 25, 2019	Jonathan Krieger	1.10	Calls with team and counsel from Court re: Euclid; Correspondence re: form of order and re: timeline and considerations with appointment; Correspondence re: matters related to taking possession on Euclid; Correspondence re: matters related to access to information.
November 25, 2019	Jason Kanji	0.80	Follow up with RBC for bank statements; Review Source and Use analysis.
November 26, 2019	Jonathan Krieger	1.30	Correspondence re: matters related to property valuation, considerations re: sale and maintenance; Correspondence with team and counsel thereto; Correspondence with counsel re: matters related to administration, litigation matters.
November 27, 2019	Jonathan Krieger	1.00	Review of materials re: Moneygate litigation; Correspondence with counsel.
November 27, 2019	Jason Kanji	2.10	Review Laila proceedings information, investigate Dale property, run title search, review source and use, bank statements for potential transfers to the MGMIC and the Dale Property.
November 27, 2019	Valerie Naccarato	0.10	General banking administration.
November 27, 2019	Rosa Wilford	0.30	Review internal instructions from team re Banking: Review account; General banking administration.
November 28, 2019	Jason Kanji	1.10	Prepare updated Steeles property payout statement.
November 28, 2019	Jonathan Krieger	1.80	Review of materials; Correspondence with counsel; Call with counsel; Discussions re: matters related to approach, considerations with monetization.
November 29, 2019	Jonathan Krieger	1.00	Correspondence with counsel re: litigation claims, court dates, matters related to additional materials.
December 2, 2019	Jason Kanji	2.30	Prepare and attend court hearing re: Laila vs MGMIC; Review affidavit of J. Krieger.
December 2, 2019	Jonathan Krieger	0.70	Review of responding materials re: matters related to Steeles property.
December 3, 2019	Jonathan Krieger	4.00	Review of materials re: Steeles property; Finalize affidavit; Correspondence with counsel; Correspondence with team re: verification of materials.

Date	Full Name	Hours	Detail
December 3, 2019	Jason Kanji	1.10	Update Palace Pier - pay out statement; Review J. Krieger affidavit.
December 5, 2019	Jason Kanji	2.80	Review of materials and prepare for cross examination of T. Wilson.
December 6, 2019	Jason Kanji	3.70	Prepare for and attend cross examination of Troy Wilson.
December 6, 2019	Jonathan Krieger	1.30	Correspondence and discussions re: matters related to examination attendance, findings thereto; Execution of documents re: Palace Pier; Call Wotu counsel; Correspondence re: Steeles materials and request for examination.
December 6, 2019	Valerie Naccarato	0.10	General banking administration.
December 9, 2019	Jason Kanji	1.10	Review cross examination materials.
December 9, 2019	Jonathan Krieger	2.00	Review of materials related to actions on various properties; Correspondence re: Court attendance; Review of materials re: examination; Correspondence re: matters related to Court applications.
December 12, 2019	Jonathan Krieger	1.20	Correspondence and discussions with Chaitons re: matters related to Steeles status and settlement discussions; Correspondence re: matters related to Court date.
December 13, 2019	Jason Kanji	1.20	Update case website; Calls with investors explaining receivership proceedings.
December 19, 2019	Jonathan Krieger	1.10	Correspondence and calls with counsel re: Steeles property; Correspondence re: matters related to litigation matters, Review of OSC materials.
December 19, 2019	Rosa Wilford	0.30	Review internal email instructions from team; Prepare bank letter; General banking administration.
December 20, 2019	Jonathan Krieger	0.60	Review of materials re: matters related to Timmins property; Review of documents thereto.
December 20, 2019	Rosa Wilford	1.00	Review internal email instructions from team re Banking: Review payment requests; Prepare disbursement requisition form; Prepare wire transfer; Letter; Emails; Correspondences to and from Bank for authorization of transfers; Notify team confirmation; Post wire entries; General banking administration.

Date	Full Name	Hours	Detail
December 20, 2019	Jason Kanji	1.40	Prepare payout statement for Timmins property; Communicate with legal counsel on various matters relating to Timmins property.
December 23, 2019	Rosa Wilford	0.10	Review banking reports and approve monthly estate balances.
December 24, 2019	Rosa Wilford	0.50	Review and reconcile November GIC term deposits and approve various estate balances.
December 31, 2019	Valerie Naccarato	0.10	General banking administration.
January 3, 2020	Valerie Naccarato	0.10	General banking administration.
January 12, 2020	Rosa Wilford	0.20	Review estate bank account: Post accrued interest: Reconcile December statement.
January 13, 2020	Jonathan Krieger	1.00	Call with counsel re: matters related to Palace Pier property; Correspondence with team re: valuation required; Review of correspondence thereto; Review of materials thereto.
January 13, 2020	Rosa Wilford	0.50	Review internal instructions re Banking; On-line banking; Review print screens for expecting wire; Prepare receipt and disbursement requisition forms; Post entries; Email team notification of wire; General banking administration.
January 14, 2020	Jason Kanji	1.10	Prepare updated Palace Pier outstanding mortgage balance and arrears; Review potential settlement offer; Correspond with Real Estate agent to complete appraisal of the property.
January 14, 2020	Jonathan Krieger	0.80	Review of valuation information; Correspondence with counsel; Correspondence with team re; comments on claim.
January 15, 2020	Jason Kanji	0.80	Correspondence with RBC re: compliance with Court Order; Review source and use analysis re: Timmins property and investigate transfers of the same.
January 16, 2020	Jason Kanji	1.00	Review and respond to emails and call from investors re: update on receivership proceedings.
January 17, 2020	Jason Kanji	0.70	Call with Real Estate Agent re: appraisal of Palace Pier; Call internally re: Palace Pier appraisal.
January 20, 2020	Ada Shahini	0.10	Meet with team to review work required.

Date	Full Name	Hours	Detail
January 20, 2020	Jonathan Krieger	1.20	Review of materials re: Palace Pier valuation; Correspondence and call with counsel; Discussions with team; Call with appraisal group.
January 20, 2020	Jason Kanji	2.20	Follow up with RBC re: 239 statements; Correspondence with legal counsel re: 239 statements; Palace Pier and Steeles proceedings; Coordinate Money Gate proceedings realization work.
January 21, 2020	Ada Shahini	1.20	Prepared Statement of Receipts and Disbursements; Communicate with manager on file to confirm details of transactions.
January 22, 2020	Jason Kanji	2.20	Review supplemental third report from legal counsel; Calls with legal counsel re: the adjournment of Palace Pier and Steeles property hearings; Review of realization analysis of properties under MGMIC receivership.
January 22, 2020	Rosa Wilford	0.50	Review and reconcile December GIC term deposits and approve estate balances.
January 22, 2020	Jonathan Krieger	0.60	Call with counsel re: considerations on Dovercourt; Correspondence re: matters related to Steeles motion.
January 22, 2020	Ada Shahini	0.10	Reviewed and emailed the updated statement of receipts and disbursements to manager of file for review.
January 23, 2020	Jonathan Krieger	1.30	Finalize and sign off Supplemental report; Correspondence re: matters related to reconciliation.
January 24, 2020	Jason Kanji	0.70	Call with Legal Counsel re: finalized APS, Palace Pier; Steeles and Dovercourt Proceedings; Correspond with insurance re: coverage.
January 24, 2020	Jonathan Krieger	1.20	Review of reconciliation; Correspondence with team thereto; Correspondence re: upcoming motions.
January 27, 2020	Jason Kanji	2.70	Internal meeting and calls with counsel re: Review of Euclid security; Review of Dovercourt proceedings; Review of positions held on Timmins and Timiskaming properties; Euclid Court hearing date; Euclid court report and position.
January 28, 2020	Jason Kanji	0.50	Correspond with counsel re: deposit receipt and security documents.

Date	Full Name	Hours	Detail
January 30, 2020	Jason Kanji	7.10	Prepare for and attend Dovercourt distribution motion.
January 30, 2020	Jonathan Krieger	0.30	Debrief with team re: matters related to Dovercourt.
January 31, 2020	Valerie Naccarato	0.20	General filing administration on account re December bank statements.

Time Summary

J. Krieger, Sr. Vice President	30.10 hours @	\$595.00 per hour	\$ 17,909.50
J. Kanji, Manager (as of January 1, 2020)	19.00 hours @	\$295.00 per hour	\$ 5,605.00
J. Kanji, Manager	27.70 hours @	\$250.00 per hour	\$ 6,925.00
R. Wilford, Manager	4.60 hours @	\$275.00 per hour	\$ 1,265.00
A. Shahini, Sr. Associate	1.40 hours @	\$165.00 per hour	\$ 231.00
C. Skelton, Senior Associate	3.50 hours @	\$235.00 per hour	\$ 822.50
V. Naccarato, Analyst	0.70 hours @	\$145.00 per hour	\$ 101.50
	<u>87.00</u>		<u>\$ 32,859.50</u>
5% Administration and Technology fees			<u>\$ 1,642.98</u>
			\$ 34,502.48
Disbursements (travel)			<u>\$ 17.86</u>
			\$ 34,520.34
HST @13%			<u>\$ 4,487.64</u>
Total Due			<u><u>\$ 39,007.98</u></u>

Court File No. CV-18-00608086-00CL

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

BETWEEN:

ONTARIO SECURITIES COMMISSION

Applicant

- and -

MONEY GATE MORTGAGE INVESTMENT CORPORATION

Respondent

**APPLICATION UNDER SECTION 126 and 129 OF THE SECURITIES ACT R.S.O.
1990, c. S.5, AS AMENDED**

BILL OF COSTS

**BN 12738 4717 RT0001
Client #254817
Invoice#LSO-6105**

To professional services rendered as Receiver for the period from February 1, 2019 to February 29, 2020.

Date	Full Name	Hours	Detail
February 5, 2020	Jason Kanji	0.50	Review judgement of Dovercourt property.
February 5, 2020	Jonathan Krieger	0.80	Correspondence with team; Review of Decision on Dovercourt; Correspondence thereto.
February 6, 2020	Jonathan Krieger	1.20	Correspondence re: matters related to Dovercourt; Discussion with team re; report, timing.
February 7, 2020	Rosa Wilford	0.20	Review estate bank account: Post accrued interest: Reconcile January statement.
February 11, 2020	Rosa Wilford	0.40	Review and reconcile January GIC term deposit and approve estate balances.
February 12, 2020	Jason Kanji	0.50	Correspond with Counsel re: Dovercourt funds and billing.
February 12, 2020	Jonathan Krieger	0.50	Correspondence with counsel re: Dovercourt notice to appeal; Correspondence with team re: Court reporting.

Date	Full Name	Hours	Detail
February 21, 2020	Jason Kanji	0.50	Calls with Money Gate investors updating them on the receivership proceedings.
February 24, 2020	Jonathan Krieger	0.50	Correspondence and discussions with team re: matters related to Court materials, examinations re: Palace Pier.
February 25, 2020	Jason Kanji	1.40	Correspond with Counsel re: property matters; Review and discuss settlement offer re: Dovercourt; Update payout statement for Palace Pier.
February 25, 2020	Jonathan Krieger	1.10	Discussions with team re: reporting; Correspondence and call with counsel re: matters related to Palace Pier examination, reporting, settlement discussions; Correspondence and discussions with team re: appraisals, status of Northern Ontario properties.
February 26, 2020	Jonathan Krieger	0.30	Review of proposal and correspondence with counsel re: counter offer re: Palace Pier.
February 27, 2020	Jason Kanji	0.50	Call with legal counsel re: update on properties and requirement to draft report to court for OSC.
February 28, 2020	Jonathan Krieger	1.10	Correspondence with counsel re: matters related to proposed settlement on Palace Pier; Review of matters re: status of other properties, possible recoveries; Correspondence with counsel re: report requirements; Correspondence with team thereto.

Time Summary

J. Krieger, Sr. Vice President	5.50	hours @	\$595.00 per hour	\$ 3,272.50
J. Kanji, Manager	3.40	hours @	\$295.00 per hour	\$ 1,003.00
R. Wilford, Manager	0.60	hours @	\$275.00 per hour	\$ 165.00
	9.50			\$ 4,440.50
5% Administration and Technology fees				\$ 222.03
				\$ 4,662.53
HST @13%				\$ 606.13
Total Due				\$ 5,268.66

Court File No. CV-18-00608086-00CL

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

BETWEEN:

ONTARIO SECURITIES COMMISSION

Applicant

- and -

MONEY GATE MORTGAGE INVESTMENT CORPORATION

Respondent

**APPLICATION UNDER SECTION 126 and 129 OF THE SECURITIES ACT R.S.O.
1990, c. S.5, AS AMENDED**

BILL OF COSTS

**BN 12738 4717 RT0001
Client #254817
Invoice#LSON-6106**

To professional services rendered as Receiver for the period from March 1, 2020 to March 22, 2020.

Date	Full Name	Hours	Detail
March 2, 2020	Jonathan Krieger	0.50	Correspondence with counsel and team re: matters related to Palace Pier settlement; Review of information thereto.
March 4, 2020	Jason Kanji	1.30	Correspond with M. Poliak re: update on properties and security review on Euclid property.
March 5, 2020	Jonathan Krieger	0.70	Review of report; Correspondence with team; Correspondence with counsel.
March 6, 2020	Jason Kanji	1.00	Correspond with investors re: status of receivership proceedings.
March 9, 2020	Valerie Naccarato	0.20	General filing administration on account re January bank statements.
March 13, 2020	Rosa Wilford	0.30	Review estate bank account: Post accrued interest: Reconcile February statement; Review banking reports and approve monthly estate balances.

Date	Full Name	Hours	Detail
March 13, 2020	Jason Kanji	1.00	Review and respond to correspondence with investors.
March 17, 2020	Rosa Wilford	0.60	Review estate bank account: Post accrued interest: Reconcile February statement. Review and reconcile February GIC term deposits and approve estate balances.
March 17, 2020	Jason Kanji	2.10	Call with legal counsel re: court proceedings, update on properties and security reviews; Calls with investors providing update on the Receivership proceedings; General banking matters.
March 18, 2020	Jason Kanji	1.10	Correspond with investors re: Receivership proceedings and impact of COVID19.
March 19, 2020	Jason Kanji	2.00	Contact with investors, Review of property statuses.
March 20, 2020	Jason Kanji	0.50	Contact with investors.

Time Summary

J. Krieger, Sr. Vice President	1.20	hours @	\$595.00 per hour	\$	714.00
J. Kanji, Manager	9.00	hours @	\$295.00 per hour	\$	2,655.00
R. Wilford, Manager	0.90	hours @	\$275.00 per hour	\$	247.50
V. Naccarato, Analyst	0.20	hours @	\$145.00 per hour	\$	29.00
	11.30			\$	3,645.50
5% Administration and Technology fees				\$	182.28
				\$	3,827.78
HST @13%				\$	497.61
Total Due				\$	4,325.39

Court File No. CV-18-00608086-00CL

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

BETWEEN:

ONTARIO SECURITIES COMMISSION

Applicant

- and -

MONEY GATE MORTGAGE INVESTMENT CORPORATION

Respondent

**APPLICATION UNDER SECTION 126 and 129 OF THE SECURITIES ACT R.S.O.
1990, c. S.5, AS AMENDED**

BILL OF COSTS

**BN 12738 4717 RT0001
Client #254817
Invoice#LSO-6239**

To professional services rendered as Receiver for the period from March 23, 2020 to April 24, 2020.

Date	Full Name	Hours	Detail
March 23, 2020	Jason Kanji	0.50	Call with counsel re: powers under receivership order.
March 24, 2020	Jason Kanji	0.50	Calls with investors re: Receivership proceedings.
March 24, 2020	Rosa Wilford	1.00	Review internal instructions from team re Banking; Review payment requests: Prepare disbursement requisition forms: Prepare wire transfer; Email correspondences to and from Bank for authorization of transfers; Faxes; Posting entries; Issue cheques; Email wire confirmations to team. General banking administration.
March 24, 2020	Valerie Naccarato	0.10	General banking administration.
March 25, 2020	Valerie Naccarato	0.10	General banking administration.
March 26, 2020	Jason Kanji	1.00	Calls with investors re: update on properties

Date	Full Name	Hours	Detail
March 31, 2020	Jason Kanji	1.40	Correspond with legal counsel re: Palace Pier settlement; Review second mortgage documents and prepare payout calculation.
April 1, 2020	Jonathan Krieger	0.50	Correspondence with counsel re: considerations for report to Court, claims process considerations.
April 2, 2020	Jason Kanji	0.50	Calls with investors re: distributions and receivership proceedings.
April 2, 2020	Valerie Naccarato	0.20	Review internal instructions from team; Assist with preparing deposit request; General administration.
April 7, 2020	Jason Kanji	2.50	Prepare draft report of to court updating on the properties and preparing for a distribution; Call with legal counsel re: court report.
April 7, 2020	Rosa Wilford	0.50	On-line banking; Review estate bank account; Email correspondences with Bank; Post accrued interest; Reconcile March statement.
April 8, 2020	Jason Kanji	2.40	Review details of each property and statuses of the same; Draft Court report.
April 9, 2020	Jason Kanji	2.10	Draft the fourth report to court; Communicate with investors re: property updates; Calls with legal and internally re: Report matters.
April 13, 2020	Jason Kanji	2.70	Prepare and draft Fourth Report to court.
April 14, 2020	Jason Kanji	0.50	Call with Legal Counsel re: update on properties for Court Report.
April 15, 2020	Jason Kanji	7.20	Prepare and draft Fourth Report to Court; Correspond with investors providing an update on Receivership Proceedings.
April 15, 2020	Rosa Wilford	0.30	Review estate bank accounts; Post accrued interest; Review and reconcile March GIC term deposit and approve estate balances.
April 16, 2020	Jason Kanji	3.20	Prepare and draft fourth report to court; Update investors on Receivership proceedings.
April 16, 2020	Jonathan Krieger	1.70	Review and comment on draft Fourth Report; Review of additional materials; Correspondence with team thereto.
April 16, 2020	Valerie Naccarato	0.20	General filing administration on account re March bank statements.

Time Summary

J. Krieger, Sr. Vice President	2.20 hours @ \$595.00 per hour	\$ 1,309.00
J. Kanji, Manager	24.50 hours @ \$295.00 per hour	\$ 7,227.50
R. Wilford, Manager	1.80 hours @ \$275.00 per hour	\$ 495.00
V. Naccarato, Analyst	0.60 hours @ \$145.00 per hour	\$ 87.00
	<u>29.10</u>	<u>\$ 9,118.50</u>
5% Administration and Technology fees		<u>\$ 455.93</u>
		\$ 9,574.43
HST @13%		<u>\$ 1,244.68</u>
Total Due		<u><u>\$ 10,819.11</u></u>

Exhibit "B" to the Affidavit of Jonathan Krieger,
sworn before me this 29 day of April 2020



David Lawrence Goldband, a Commissioner, etc.
Province of Ontario
For Grant Thornton Limited
Expires April 01, 2022

Money Gate Mortgage Investment Corporation
 Summary of Billings
 April 1, 2019 to April 24, 2020

Date	Hours	Fees	Disbursements	Subtotal	HST	Total
April 1-30, 2019	35.20 \$	13,452.60 \$	- \$	13,452.60 \$	1,748.84 \$	15,201.44
May 1, 2019 to September 30, 2019	119.55 \$	41,670.30 \$	24.50 \$	41,694.80 \$	5,420.33 \$	47,115.13
October 1-31, 2019	26.40 \$	10,605.00 \$	- \$	10,605.00 \$	1,378.65 \$	11,983.65
November 1, 2019 to January 31, 2020	87.00 \$	34,502.48 \$	17.86 \$	34,520.34 \$	4,487.64 \$	39,007.98
February 1-29, 2020	9.50 \$	4,662.53 \$	- \$	4,662.53 \$	606.13 \$	5,268.66
March 1-22, 2020	11.30 \$	3,827.78 \$	- \$	3,827.78 \$	497.61 \$	4,325.39
March 23, 2020 to April 24, 2020	29.10 \$	9,574.43 \$	- \$	9,574.43 \$	1,244.68 \$	10,819.11
	318.05 \$	118,295.12 \$	42.36 \$	118,337.48 \$	15,383.88 \$	133,721.36

Average Hourly Rate:

371.94

Court File No. CV-18-00608086-00CL

ONTARIO SECURITIES COMMISSION**- and -****MONEY GATE MORTGAGE INVESTMENT
CORPORATION**

Applicant

Respondent

***ONTARIO*
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at Toronto

AFFIDAVIT OF JONATHAN KRIEGER**CHAITONS LLP**5000 Yonge Street
10th Floor
Toronto, ON M2N 7E9Sam Rappos (LSO#51399S)
Tel: 416-218-1137
Fax: 416-218-1837
samr@chaitons.com*Lawyers for the Court-appointed Receiver, Grant Thornton Limited*

APPENDIX 17

Court File No. CV-18-00608086-00CL

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

**IN THE MATTER OF AN APPLICATION PURSUANT TO SECTION 129 OF THE
SECURITIES ACT R.S.O. 1990, c. S.5, AS AMENDED**

BETWEEN:

ONTARIO SECURITIES COMMISSION

Applicant

and

MONEY GATE MORTGAGE INVESTMENT CORPORATION

Respondent

**AFFIDAVIT OF MAYA POLIAK
(sworn April 29, 2020)**

**I, MAYA POLIAK, of the City of Toronto, in the Province of Ontario MAKE OATH
AND SAY AS FOLLOWS:**

1. I am a partner with the law firm of Chaitons LLP (“**Chaitons**”), lawyers for Grant Thornton Limited (“**GTL**”) in its capacity as receiver (the “**Receiver**”) without security, of all the properties, assets and undertakings of Money Gate Mortgage Investment Corporation, and as such have knowledge of the matters to which I hereinafter depose.

2. Attached hereto as the following exhibits are copies of the accounts issued by Chaitons LLP to the Receiver for the time period commencing on April 1, 2019 and ending on April 24, 2020 totalling \$258,533.00 (comprised of fees of \$220,964.50, disbursements of \$8,119.35 and HST of \$29,449.15) with respect to this proceeding:

- (a) **Exhibit “A”** – account dated June 20, 2019, for the period from April 1, 2019 up to and including June 30, 2019;

- (b) **Exhibit “B”** – account dated August 31, 2019, for the period from June 3, 2019 up to and including August 31, 2019;
- (c) **Exhibit “C”** – account dated September 30, 2019, for the period from August 8, 2019 up to and including September 30, 2019;
- (d) **Exhibit “D”** – account dated December 16, 2019, for the period from October 1, 2019 up to and including November 30, 2019;
- (e) **Exhibit “E”** – account dated January 31, 2020, for the period from December 1, 2019 up to and including January 31, 2020;
- (f) **Exhibit “F”** – account dated March 10, 2020 for the period from February 5, 2020 up to and including February 29, 2020;
- (g) **Exhibit “G”** – account dated March 24, 2020, for the period from March 2, 2020 up to and including March 23, 2020; and
- (h) **Exhibit “H”** – account dated April 29, 2020, for the period from March 27, 2020 up to and including April 24, 2020;

3. Attached hereto as **Exhibit “I”** is a summary of additional information with respect to the accounts referred to in paragraph 2 above, indicating all members of Chaitons LLP who have worked on this matter, their year of call to the bar, total time charged and hourly rates, and I hereby confirm that this list represents an accurate account of such information.

4. I confirm that the accounts described in paragraph 2 above accurately reflect the services provided by Chaitons LLP in this matter and the fees and disbursements claimed by it from April 1, 2019 to April 24, 2020.

SWORN before me at the City)
 of Toronto, in the Province of)
 Ontario, this 29th day of)
 April, 2020)

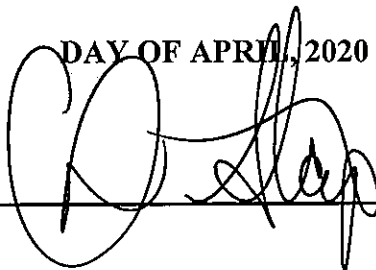
A Commissioner, etc.

Christopher J. Staples



MAYA POLIAK

**THIS IS EXHIBIT "A" TO
THE AFFIDAVIT OF MAYA POLIAK
SWORN BEFORE ME THIS 29TH
DAY OF APRIL, 2020**

A handwritten signature in black ink, appearing to be "C. Slap", is written over a horizontal line.

A Commissioner Etc.

5000 YONGE STREET, 10TH FLOOR, TORONTO, CANADA M2N 7E9
www.chaitons.com



INVOICE NUMBER: 271921

June 30, 2019

GRANT THORNTON LIMITED
200 KING STREET WEST
11TH FLOOR
TORONTO, ON M5H 3T4

Re: MONEY GATE MORTGAGE INVESTMENT CORPORATION ET AL
Our file: 006588-31761

FOR PROFESSIONAL SERVICES RENDERED on this matter up to and including June 30, 2019:

PROFESSIONAL FEES		
SUBJECT TO HST	\$27,698.00	
SUB-TOTAL		\$27,698.00

DISBURSEMENTS

NON TAXABLE	\$436.80	
SUBJECT TO HST	\$466.62	
SUB-TOTAL		\$903.42
HST at 13.00%		\$3,661.40

GRAND TOTAL

\$32,262.82

Amount payable on the current invoice	\$32,262.82
Plus outstanding invoices on this matter	\$89,256.88
Amount Due	<u>\$121,519.70</u>
Trust Balance	

HST No R124110933

INVOICE NUMBER: 271921

E. & O.E. Payment due on receipt of the account. In Accordance with the Solicitor's Act, interest will be charged on any unpaid balance at the rate of 0.5% per annum commencing one month after delivery of this account.

PROFESSIONAL FEES:

Apr 1, 19	MP	Conference call with L. Ellis regarding settlement; conference call with J. Krieger regarding same; review and revise draft summary for OSC; review media information on ONEPLUS12;	0.80	\$420.00
Apr 2, 19	MP	Email correspondence with A. Wygodny and B. Shiller regarding Dovercourt examinations;	0.20	\$105.00
Apr 3, 19	MP	Meeting with L. Ellis regarding settlement; conference call with J. Krieger regarding same; email correspondence with H. Manis regarding Dovercourt; follow up call with L. Ellis;	1.40	\$735.00
Apr 4, 19	MP	Conference call with J. Krieger regarding proposed settlement with A. Missaghi;	0.20	\$105.00
Apr 9, 19	MP	Conference call with C. Skelton regarding file updates;	0.40	\$210.00
Apr 11, 19	MP	Review summary of registrations against all of the properties subject to MGMIC mortgages;	0.50	\$262.50
Apr 12, 19	MP	Office conference with A. Krancevic and D. Bourassa regarding the Euclid Property; conference call with E. Golden regarding Missaghi Settlement; review parcel registration summary and various MGMIC mortgages; revise draft settlement agreement;	3.30	\$1,732.50
Apr 12, 19	AMK	Meeting with M. Poliak in respect of the summary of parcel registers;	0.40	\$118.00
Apr 13, 19	DB	Review terms of settlement agreement re: Birchmount and Steeles; Discussion with M. Poliak re: issues with draft language;	0.50	\$262.50
Apr 13, 19	MP	Review draft settlement agreement with D. Bourassa; email correspondence with C. Skelton regarding Euclid; draft full and final release;	1.50	\$787.50

HST No R124110933

INVOICE NUMBER: 271921

E. & O.E. Payment due on receipt of the account. In Accordance with the Solicitor's Act, interest will be charged on any unpaid balance at the rate of 0.5% per annum commencing one month after delivery of this account.

3.

Apr 15, 19	MP	Office conference with A. Krancevic regarding various MGMIC mortgages and summary review;	0.50	\$262.50
Apr 15, 19	MP	Meeting with A. Krancevic regarding summary of parcel registers;	0.60	\$315.00
Apr 15, 19	AMK	Meeting with M. Poliak in respect the summary of parcel registers;	0.60	\$177.00
Apr 16, 19	MP	Email correspondence and conference call with J. Krieger and C. Skelton regarding draft settlement with A. Missaghi; conference call with L. Ellis regarding same; email correspondence with L. Ellis and C. Skelton regarding advances on Steeles; conference call with E. Golden regarding Birchmount; review revised summary of parcel registers;	1.50	\$787.50
Apr 16, 19	AMK	Review and revisions to the summary of parcel registers;	1.70	\$501.50
Apr 17, 19	MP	Review and revise the draft settlement agreement; conference call with E. Golden regarding Birchmount and new claims; conference call with J. Krieger regarding same;	0.80	\$420.00
Apr 18, 19	HGC	Conference with M. Poliak;	0.30	\$217.50
Apr 18, 19	DB	Meeting with M. Poliak re: issue with Birchmount property and 4th mortgagee;	0.50	\$262.50
Apr 18, 19	MP	Conference calls with E. Golden, L. Ellis and J. Krieger regarding the Birchmount proceeds;	0.30	\$157.50
Apr 24, 19	MP	Review motion materials and transcripts from examinations in preparation for examinations of P. Katebian and B. Katebian;	2.00	\$1,050.00
Apr 25, 19	MP	Attended at examination of Payam and Ben Katebian in the Palace Pier proceeding;	6.00	\$3,150.00
Apr 26, 19	DB	Discussions with M. Poliak re: mortgage issues at Dovercourt and Palace Pier properties; Review shareholder resolution and mortgage advances; Review OBCA provisions re: shareholder resolutions; Review J. Ricci affidavit materials	2.50	\$1,312.50

HST No R124110933

INVOICE NUMBER: 271921

B. & O.E. Payment due on receipt of the account. In Accordance with the Solicitor's Act, interest will be charged on any unpaid balance at the rate of 0.5% per annum commencing one month after delivery of this account.

Apr 26, 19	MP	Attend at the office of H. Mannis to review corporate documents of the Dovercourt borrower; review correspondence with B. Shiller and A. Wygodny regarding the sale of the borrower's shares to a company related to J. Ricci and the shareholder resolution executed by P. Katebian; office conference with D. Bourassa regarding same; review affidavit of J. Ricci in connection with the Dovercourt property; reviewed amended statement of defence in connection with the Palace Piers property;	5.20	\$2,730.00
Apr 29, 19	MP	Conference call with J. Krieger and C. Skelton regarding litigation and property updates; email correspondence with B. Shiller and H. Manis regarding Dovercourt; office conference with D. Bourassa regarding same; email correspondence with F. Yack as counsel for MGMIC on the dovercourt mortgage; conference call with J. Krieger and C. Skelton regarding enforcement;	2.20	\$1,155.00
Apr 30, 19	MP	Review motion record of the Receiver regarding the motion for advice and directions of distribution of the Birchmount funds;	0.40	\$210.00
May 1, 19	DB	Discussions with M. Poliak re: Lakeshore property and issues related thereto; Review e-mails from A. Wygodny attaching documents and e-mails from MGMIC principals;	0.50	\$262.50
May 1, 19	MP	Email correspondence with C. Skelton regarding the First Report; email correspondence with B. Shiller and A. Wygodny regarding Dovercourt; email correspondence with E. Golden regarding scheduling conference; conference call with D. Bourassa regarding same; review and revise draft second report;	1.50	\$787.50

HST No R124110933

INVOICE NUMBER: 271921

E. & O.E. Payment due on receipt of the account. In accordance with the Solicitor's Act, interest will be charged on any unpaid balance at the rate of 0.5% per annum commencing one month after delivery of this account.

5.

May 3, 19	MP	Review documents received from B. Shiller regarding Dovercourt; office conference with D. Bourassa regarding same; conference call with C. Skelton regarding access to additional bank account statements;	0.40	\$210.00
May 6, 19	MP	Email correspondence with L. Ellis and E. Golden regarding settlement and Birchmount; conference call with L. Ellis regarding same; email correspondence with A. Wygodny regarding Dovercourt and Payam's evidence; review additional documents provided; review answers to undertakings of B. Katebian and P. Katebian on Palace Piers examinations; review and revise draft Second report;	3.40	\$1,785.00
May 7, 19	MP	Review and revise draft Second Report;	4.00	\$2,100.00
May 8, 19	MP	Conference call with C. Skelton regarding draft Second Report; revise draft Second Report;	6.70	\$3,517.50
May 15, 19	AMK	Review of file and e-mail to M. Poliak in connection with the appointment orders registered on title to various properties;	0.20	\$59.00
May 27, 19	MP	Conference call with C. Skelton regarding updates on various proceedings;	0.30	\$157.50
May 28, 19	MP	Draft email to E. Karp regarding Palace Piers mortgage; email correspondence and conference call with C. Skelton regarding outstanding items; draft report in support of the Receiver's claim to proceeds from the sale of the Birchmount Property;	0.50	\$262.50
May 30, 19	MP	Email correspondence with C. Skelton regarding Palace Piers first mortgage; email to E. Karp regarding same; email correspondence with L. Ellis and E. Golden regarding the Birchmount Claims motion; email correspondence with C. Skelton and commercial court regarding scheduling;	0.70	\$367.50

HST No R124110933

INVOICE NUMBER: 271921

2. & O.E. Payment due on receipt of the account. In Accordance with the Solicitor's Act, interest will be charged on any unpaid balance at the rate of 0.5% per annum commencing one month after delivery of this account.

6.

May 31, 19	MP	Conference call with E. Golden regarding claims motion re: Birchmount; voicemail to L. Ellis and J. Szabarris regarding same; conference call with C. Skelton regarding materials to be prepared; review available materials regarding the Birchmount Property and begin preparing a report;	1.00	\$525.00
Jun 21, 19	HGC	Conference with D. Bourassa;	0.30	\$217.50
			53.80	\$27,698.00
		TOTAL HOURS		

TOTAL PROFESSIONAL FEES
HST at 13.00%

\$27,698.00
3,600.74

DISBURSEMENTS:**Subject to HST:**

Kap Litigation Services Taxable	\$35.00
Examination and Transcript Fee Taxable	\$155.00
Internet Search Fee Taxable	\$191.75
Teraview Charges Taxable	\$28.65
Long Distance Telephone Taxable	\$0.42
Photocopying Charges Taxable	\$55.80
	\$466.62

Non-Taxable:

Registration/Filing Fee(s) Non-taxable	\$320.00
Teraview Charges Non-taxable	\$12.80
Government Disbursement Internet Search Non-tax.	\$104.00
	\$436.80

TOTAL DISBURSEMENTS**\$903.42**

HST No R124110933

INVOICE NUMBER: 271921

E. & O.E. Payment due on receipt of the account. In Accordance with the Solicitor's Act, interest will be charged on any unpaid balance at the rate of 0.5% per annum commencing one month after delivery of this account.

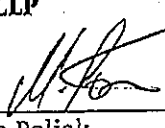
7.

HST at 13.00%

60.66

GRAND TOTAL**\$32,262.82****CHAITONS LLP**

per:


Maya Poliak

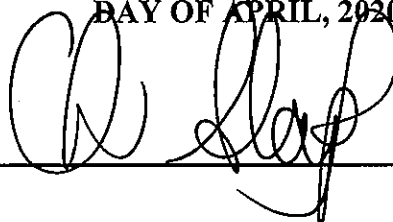
8.

LAWYERS' SUMMARY:

Lawyers and legal assistants involved	Hourly Rate	Hours Billed	Total Billed
HARVEY G. CHAITON	\$725.00	0.60	\$435.00
DOUG BOURASSA	\$525.00	4.00	\$2,100.00
MAYA POLIAK	\$525.00	46.30	\$24,307.50
ALEXANDRA KRANCEVIC	\$295.00	2.90	\$855.50
Total:		53.80	\$27,698.00

**THIS IS EXHIBIT "B" TO
THE AFFIDAVIT OF MAYA POLIAK
SWORN BEFORE ME THIS 29TH**

DAY OF APRIL, 2020

A handwritten signature in black ink, appearing to be "R. Hap", is written over a horizontal line.

A Commissioner Etc.

5000 YONGE STREET, 10TH FLOOR, TORONTO, CANADA M2N 7E9
www.chaitons.com



INVOICE NUMBER: 272760

August 31, 2019

GRANT THORNTON LIMITED
200 KING STREET WEST
11TH FLOOR
TORONTO, ON M5H 3T4

Re: MONEY GATE MORTGAGE INVESTMENT CORPORATION ET AL
Our file: 006588-31761

FOR PROFESSIONAL SERVICES RENDERED on this matter up to and including August 31, 2019:

PROFESSIONAL FEES

SUBJECT TO HST	\$28,637.50	
SUB-TOTAL		\$28,637.50

DISBURSEMENTS

NON TAXABLE	\$322.35	
SUBJECT TO HST	\$374.49	
SUB-TOTAL		\$696.84
HST at 13.00%		\$3,771.56

GRAND TOTAL		\$33,105.90
--------------------	--	--------------------

Amount payable on the current invoice	\$33,105.90
Plus outstanding invoices on this matter	\$121,519.70
Amount Due	<u>\$154,625.60</u>
Trust Balance	

HST No R124110933

INVOICE NUMBER: 272760

E. & O.E. Payment due on receipt of the account. In Accordance with the Solicitor's Act, interest will be charged on any unpaid balance at the rate of 0.5% per annum commencing one month after delivery of this account.

**PROFESSIONAL FEES:**

- Jun 3, 19 Email correspondence and conference call with D. Ward regarding Birchmount; email correspondence with E. Golden regarding same;
- Jun 4, 19 Email correspondence with E. Golden regarding Birchmount and funds advanced by Money Gate; conference call with C. Skelton and J. Krieger regarding same;
- Jun 6, 19 Email correspondence with E. Karp regarding first mortgage on Palace Piers; review motion record of the Dovercourt Trustee in support of the discharge motion;
- Jun 10, 19 Conference call with D. Ward regarding Birchmount;
- Jun 11, 19 Email correspondence with the Court regarding scheduling;
- Jun 12, 19 Draft Notice of Motion for the motion returnable June 20, 2019;
- Jun 13, 19 Conference call and email correspondence with D. Ward regarding representation of Missaghi and settlements;
- Jun 14, 19 Discussions with M. Poliak re: enforcement and inspection; E-mail to property management firm re: occupancy inspection; Prepare direction letter to property manager re: access from Condo Corp.;
- Jun 14, 19 Email correspondence and conference call with B. Shiller regarding motion for summary judgment on Palace Piers; conference call with Receiver regarding enforcing against Euclid and Palace Piers; office conference with D. Bourassa regarding same; email correspondence and conference call with Cassels Brock regarding Missaghi's representation; conference call with the Receiver regarding Birchmount;

HST No R124110933

INVOICE NUMBER: 272760

E. & O.E. Payment due on receipt of the account. In Accordance with the Solicitor's Act, interest will be charged on any unpaid balance at the rate of 0.5% per annum commencing one month after delivery of this account.



- Jun 18, 19 Office conference with D. Bourassa regarding arranging for occupancy report for Euclid and Palace Piers; email correspondence with B. Shiller and A. Wygodny regarding Palace Piers; email correspondence with B. Tamlin regarding same;
- Jun 19, 19 Discussions with M. Poliak re: enforcement on Palace Pier and related receivership issues and strategy;
- Jun 19, 19 Revise demand letter to Atlas re: first Palace Pier mortgage; email with counsel for Atlas regarding demand for particulars; call with D. Bourassa regarding enforcement proceedings against Atlas; email correspondence with client regarding Euclid; email correspondence with B. Shiller regarding scheduling of CPC; prepare for motion returnable June 20, 2019;
- Jun 20, 19 Prepared for and attended at the motion for an order approving, among other things, release of information regarding ancillary bank account statements;
- Jul 5, 19 Attend at CPC court to reschedule the Palace Piers summary judgment motion; email correspondence with A. Wygodny about cross-examinations; update call with C. Skelton regarding outstanding issues; office conference with D. Bourassa regarding Birchmount and other scheduling matters;
- Jul 8, 19 Conference call with J. Carhart regarding settlement with Missaghi; email correspondence with J. Carhart regarding same;
- Jul 10, 19 Email correspondence with A. Wygodny and B. Shiller regarding scheduling of continued examinations;
- Jul 12, 19 Conference call with C. Mills and J. Carhart regarding Birchmount;
- Jul 16, 19 Telephone call with M. Poliak;
- Jul 16, 19 E-mails to and from M. Poliak re: Katebian attendance at examinations and Lakeshore property issues;



- Jul 16, 19 Email correspondence and conference call with C. Skelton regarding outstanding items on Money Gate; email correspondence with B. Shiller and A. Wygodny regarding Ben's cross-examination on Palace Piers; email correspondence with J. Krieger regarding receivership applications on Palace Piers and Euclid; email correspondence with E. Karp regarding demand for particulars on Palace Piers;
- Jul 17, 19 Prepared materials in support of Palace Piers' and Euclid receivership application;
- Jul 18, 19 Draft Euclid and Palace Piers receivership materials; review litigation between Money Gate and Ghaffari;
- Jul 19, 19 Draft reports in support of the appointment of a receiver of the Euclid and the Palace Piers properties; email correspondence with C. Skelton regarding same;
- Jul 25, 19 Review email correspondence from E. Golden regarding Malmo;
- Jul 26, 19 Telephone conference call with M. Poliak and D. Bourassa re Malmo property;
- Jul 26, 19 Conference call with H. Chaiton and D. Bourassa regarding the Malmo Property; review outstanding Money Gate files; conference call with E. Golden regarding Malmo; email correspondence with M. Wine regarding claims against Money Gate;
- Jul 31, 19 Review materials provided by A. Wygodny regarding Malmo; email correspondence with client regarding same;
- Aug 8, 19 Conference call with E. Golden regarding scheduling motions; office conference with S. Rappos regarding scheduling;
- Aug 9, 19 Email correspondence with S. Rappos regarding motions;
- Aug 12, 19 Office conference with S. Tanvir regarding preparation of Palace Piers receivership materials;



Aug 14, 19 Drafting a Notice of Application and Affidavit regarding Palace Pier Property as per M. Poliak's instructions;

Aug 16, 19 Draft affidavit in support of the Euclid receivership application; review draft affidavit in support of Palace Pier; office conference with S. Tanvir regarding same;

Aug 19, 19 Draft affidavit in support of Euclid Receivership; review affidavit in support of Palace Pier Receivership; office conference with S. Tanvir regarding same;

Aug 19, 19 Finalizing affidavit of Jonathan Krieger re Palace Pier Property for M. Poliak's review;

Aug 20, 19 Finalize draft affidavit in support of the Euclid receivership;

Aug 20, 19 Reviewing affidavit of Jonathan Krieger with M. Poliak and revising as necessary;

Aug 28, 19 Drafting a Notice of Application, Application Record and putting together Service List for Euclid Property as per M. Poliak's instructions;

To all matters of a general nature not more particularly referred to herein;

TOTAL PROFESSIONAL FEES
HST at 13.00%

\$28,637.50
3,722.88

DISBURSEMENTS:

Subject to HST:

Kap Litigation Services Taxable	\$50.00
Internet Search Fee Taxable	\$266.60
Teraview Charges Taxable	\$27.75

HST No R124110933

INVOICE NUMBER: 272760

E. & O.E. Payment due on receipt of the account. In Accordance with the Solicitor's Act, interest will be charged on any unpaid balance at the rate of 0.5% per annum commencing one month after delivery of this account.

6.



Postage Charges Taxable	\$0.87	
Parking Charges Taxable	\$17.70	
Photocopying Charges Taxable	\$1.20	
Registered Mail Taxable	\$10.37	
		\$374.49

Non-Taxable:

Teraview Charges Non-taxable	\$14.90	
Government Disbursement Internet Search Non-tax.	\$307.45	
		\$322.35

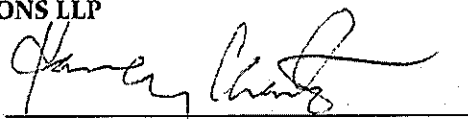
TOTAL DISBURSEMENTS**\$696.84**

HST at 13.00%

48.68

GRAND TOTAL**\$33,105.90****CHAITONS LLP**

per:


 Harvey Chaiton

HST No R124110933

INVOICE NUMBER: 272760

E. & O.E. Payment due on receipt of the account. In Accordance with the Solicitor's Act, interest will be charged on any unpaid balance at the rate of 0.5% per annum commencing one month after delivery of this account.

7.

**LAWYERS' SUMMARY:**

Lawyers and legal assistants involved	Hourly Rate	Hours Billed	Total Billed
HARVEY G. CHAITON	\$725.00	2.00	\$1,450.00
DOUG BOURASSA	\$525.00	1.80	\$945.00
MAYA POLIAK	\$525.00	43.70	\$22,942.50
SANEEA TANVIR	\$275.00	12.00	\$3,300.00
Total:		59.50	\$28,637.50

HST No R124110933

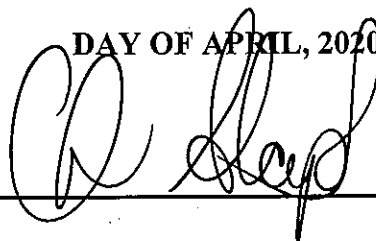
INVOICE NUMBER: 272760

E. & O.E. Payment due on receipt of the account. In Accordance with the Solicitor's Act, interest will be charged on any unpaid balance at the rate of 0.5% per annum commencing one month after delivery of this account.

Doc#4574719v2

**THIS IS EXHIBIT "C" TO
THE AFFIDAVIT OF MAYA POLIAK
SWORN BEFORE ME THIS 29TH**

DAY OF APRIL, 2020

A handwritten signature in black ink, appearing to read "D. Hap", is written over a horizontal line.

A Commissioner Etc.

5000 YONGE STREET, 10TH FLOOR, TORONTO, CANADA M2N 7E9
www.chaitons.com



INVOICE NUMBER: 273088

September 30, 2019

GRANT THORNTON LIMITED
200 KING STREET WEST
11TH FLOOR
TORONTO, ON M5H 3T4

Re: **MONEY GATE MORTGAGE INVESTMENT CORPORATION ET AL**
Our file: 006588-31761

FOR PROFESSIONAL SERVICES RENDERED on this matter up to and including September 30, 2019:

PROFESSIONAL FEES		
SUBJECT TO HST	\$17,062.50	
SUB-TOTAL		\$17,062.50

DISBURSEMENTS

NON TAXABLE	\$288.80	
SUBJECT TO HST	\$171.57	
SUB-TOTAL		\$460.37
HST at 13.00%		\$2,240.43

GRAND TOTAL

\$19,763.30

Amount payable on the current invoice	\$19,763.30
Plus outstanding invoices on this matter	\$154,625.60
Amount Due	<u>\$174,388.90</u>
Trust Balance	

HST No R124110933

INVOICE NUMBER: 273088

E. & O.E. Payment due on receipt of the account. In Accordance with the Solicitor's Act, interest will be charged on any unpaid balance at the rate of 0.5% per annum commencing one month after delivery of this account.

PROFESSIONAL FEES:

Aug 8, 19	SPR	Discussed matters with M. Poliak;	0.20	\$105.00
Aug 9, 19	SPR	Attended before Justice Hainey regarding various matters and discussed same with M. Poliak;	3.80	\$1,995.00
Sep 13, 19	DB	Attend at case conference re: quantum of WFC charge; Settlement negotiations between WFC and 4th mortgagee; Telephone discussions with M. Poliak re: settlement issues;	5.00	\$2,625.00
Sep 17, 19	MP	Office conferences with S. Tanvir and S. Rappos regarding Dovercourt and Steeles; revise email to service list regarding the Steeles Property; conference call with client regarding outstanding matters; conference call with B. Shiller regarding Dovercourt and other matters; conference call with A. Wygodny regarding Euclid;	2.60	\$1,365.00
Sep 17, 19	SPR	Discussed matters with M. Poliak;	0.30	\$157.50
Sep 18, 19	MP	Email correspondence with C. Skelton and J. Krieger regarding Euclid and Palace Piers receiverships; conference call with C. Skelton regarding file update; review receivership affidavits;	1.10	\$577.50
Sep 19, 19	MP	Email correspondence with counsel and the Court regarding scheduling of motions in the Steeles proceeding and the Dovercourt Proceeding; conference call with J. Krieger regarding Birchmount settlement; office conference with S. Rappos regarding Dovercourt;	1.50	\$787.50
Sep 20, 19	MP	Attend at the settlement conference regarding Birchmount;	6.00	\$3,150.00

HST No R124110933

INVOICE NUMBER: 273088

E. & O.E. Payment due on receipt of the account. In Accordance with the Solicitor's Act, interest will be charged on any unpaid balance at the rate of 0.5% per annum commencing one month after delivery of this account.

3.

Sep 23, 19	MP	Conference call with A. Wygodny regarding Euclid; email to C. Mills regarding cost award against WFC;	0.30	\$157.50
Sep 24, 19	MP	Office conference with S. Tanvir regarding Palace Pier and Euclid receivership materials;	0.20	\$105.00
Sep 25, 19	MP	Finalize Euclid Materials;	2.70	\$1,417.50
Sep 26, 19	MP	Finalize motion record for the appointment of the receiver over the Euclid Property; email correspondence with E. Golden and C. Mills regarding the Birchmount Settlement; revise notice of application or the Palace Pier receivership application; draft receivership order for the palace pier application; review and revise receivership materials;	6.50	\$3,412.50
Sep 27, 19	MP	Finalize receivership materials for Palace Pier; email correspondence with Y. Rifkind regarding Euclid receivership;	2.30	\$1,207.50
			32.50	\$17,062.50
		TOTAL HOURS		

TOTAL PROFESSIONAL FEES
HST at 13.00%

\$17,062.50
2,218.13

DISBURSEMENTS:**Subject to HST:**

Kap Litigation Services Taxable	\$66.00
Internet Search Fee Taxable	\$82.20
Teraview Charges Taxable	\$3.00
Postage Charges Taxable	\$0.87
Photocopying Charges Taxable	\$19.50
	\$171.57

Non-Taxable:

HST No R124110933

INVOICE NUMBER: 273088

E. & O.E. Payment due on receipt of the account. In Accordance with the Solicitor's Act, interest will be charged on any unpaid balance at the rate of 0.5% per annum commencing one month after delivery of this account.

4.

Issue Notice(s) of Application Non-taxable	\$229.00
Teraview Charges Non-taxable	\$11.80
Government Disbursement Internet Search Non-tax.	\$48.00

\$288.80

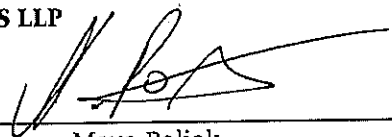
TOTAL DISBURSEMENTS**\$460.37**

HST at 13.00%

22.30

GRAND TOTAL**\$19,763.30****CHAITONS LLP**

per:


Maya Poliak

HST No R124110933

INVOICE NUMBER: 273088

E. & O.E. Payment due on receipt of the account. In Accordance with the Solicitor's Act, interest will be charged on any unpaid balance at the rate of 0.5% per annum commencing one month after delivery of this account.

5.

LAWYERS' SUMMARY:

Lawyers and legal assistants involved	Hourly Rate	Hours Billed	Total Billed
DOUG BOURASSA	\$525.00	5.00	\$2,625.00
MAYA POLIAK	\$525.00	23.20	\$12,180.00
SAM RAPPOS	\$525.00	4.30	\$2,257.50
Total:		32.50	\$17,062.50

HST No R124110933

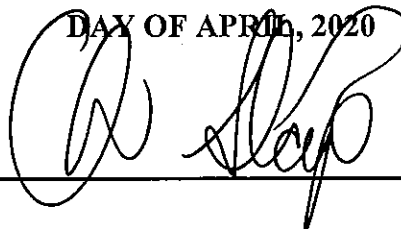
INVOICE NUMBER: 273088

E. & O.E. Payment due on receipt of the account. In Accordance with the Solicitor's Act, interest will be charged on any unpaid balance at the rate of 0.5% per annum commencing one month after delivery of this account.

Doc#4600088v1

**THIS IS EXHIBIT "D" TO
THE AFFIDAVIT OF MAYA POLIAK
SWORN BEFORE ME THIS 29TH**

DAY OF APRIL, 2020

A handwritten signature in black ink, appearing to read "A. Slap", is written over a horizontal line.

A Commissioner Etc.

5000 YONGE STREET, 10TH FLOOR, TORONTO, CANADA M2N 7E9
www.chaitons.com



INVOICE NUMBER: 273932

December 16, 2019

GRANT THORNTON LIMITED
200 KING STREET WEST
11TH FLOOR
TORONTO, ON M5H 3T4

Re: **MONEY GATE MORTGAGE INVESTMENT CORPORATION ET AL**
Our file: **006588-31761**

FOR PROFESSIONAL SERVICES RENDERED on this matter up to and including November 30, 2019:

PROFESSIONAL FEES

SUBJECT TO HST	\$54,992.50	
SUB-TOTAL		\$54,992.50

DISBURSEMENTS

NON TAXABLE	\$831.10	
SUBJECT TO HST	\$893.84	
SUB-TOTAL		\$1,724.94
HST at 13.00%		\$7,265.22

GRAND TOTAL		\$63,982.66
--------------------	--	--------------------

Amount payable on the current invoice	\$63,982.66
Plus outstanding invoices on this matter	\$174,388.90
Amount Due	<u>\$238,371.56</u>
Trust Balance	\$894,122.30

HST No R124110933

INVOICE NUMBER: 273932

E. & O.E. Payment due on receipt of the account. In Accordance with the Solicitor's Act, interest will be charged on any unpaid balance at the rate of 0.5% per annum commencing one month after delivery of this account.



PROFESSIONAL FEES:

Oct 1, 19	Emails regarding scheduling of four proceedings; email correspondence and conference call with D. Emami regarding proceedings against the principals;
Oct 1, 19	Email correspondence with C. Mills regarding the Birchmount Settlement;
Oct 2, 19	Attend at Court for the purpose of scheduling the hearing of distribution motions on Steeles and Dovercourt; email to client regarding same;
Oct 2, 19	Reviewed and drafted correspondence regarding the Dovercourt Funds motion;
Oct 3, 19	Email correspondence with the Commercial Court regarding scheduling of the Euclid and Palace Pier receiverships; email correspondence with various parties on the service list regarding same;
Oct 7, 19	Email to service lists regarding chambers appointments for the Euclid and Palace Pier receivership; email correspondence with E. Golden regarding Birchmount; conference call with A. Wygodny regarding Euclid settlement;
Oct 7, 19	Meeting with M. Poliak to discuss affidavit, and drafting affidavit for Steeles Property;
Oct 8, 19	Draft distribution order on Birchmount; email correspondence and conference call with counsel for other parties regarding same;
Oct 10, 19	Email correspondence with E. Golden regarding Birchmount settlement order; conference call with D. Emami regarding proceedings against Katebians; email correspondence with D. Emami regarding same; voicemails to E. Golden and C. Kopach regarding Birchmount;
Oct 11, 19	Attend at Court to schedule the receivership of the Palace Pier property; conference call with J. Krieger regarding Euclid and Palace Pier; conference call with J. Krieger regarding Palace Pier and Euclid;
Oct 11, 19	Conference call with C. Mills regarding Birchmount and Steeles;
Oct 15, 19	Email correspondence with counsel regarding the distribution of the Birchmount proceeds; prepare for court attendances on the Euclid and Palace Pier receiverships; conference calls and email correspondence with E. Karp regarding consent to a receivership order and re-financing; email correspondence with B. Shiller and E. Karp regarding summary judgment motion on Palace Pier; conference calls with A. Jackson regarding Home Trust's position on Euclid; conference calls client and A. Wygodny regarding settlement of the Euclid Receivership;



Oct 16, 19 Attended at the scheduling motions for Euclid and Palace Pier; attended at the OSC's office to discuss proceedings against Katebians; office conference with S. Rappos to review evidence in support of the Dovercourt motion; conference call with C. Mills regarding settlement of the Steeles Motion; email correspondence with E. Karp regarding proposed amendment to the Receivership Order; prepare for the attendance regarding the Palace Pier receivership;

Oct 16, 19 Reviewed documents and drafted report regarding distribution of Dovercourt Funds; discussed matters with M. Poliak; reviewed and drafted correspondence;

Oct 17, 19 Conference call with E. Karp regarding draft receivership order on Palace Pier; attended at the 9:30 chambers appointment to schedule the return of the Palace Pier receivership application; review draft Dovercourt materials; office conference with S. Rappos regarding same; review transcripts from examination of P. Katebian and B. Katebian in the Atlas proceeding;

Oct 17, 19 Continued to review documents and draft report regarding Dovercourt Funds; discussed draft report with M. Poliak and revised same; reviewed and drafted correspondence;

Oct 18, 19 Discussed draft report regarding Dovercourt Funds with client; finalized report for signature and compiled appendices; reviewed and drafted correspondence regarding service of motion materials;

Oct 19, 19 Conference call with C. Mills regarding Steeles Settlement; review evidence provided by E. Karp regarding Steeles;

Oct 21, 19 Drafted notice of motion and finalized Dovercourt Funds motion materials; reviewed and drafted correspondence;

Oct 23, 19 Review draft Steeles affidavit; office conference with S. Tanvir regarding same; conference call with C. Mills regarding potential settlement; email correspondence with E. Karp regarding summary judgment motion on Palace Pier;

Oct 24, 19 Meeting with M. Poliak re: issues with Steeles property and co-mortgage dispute; Review R. Mehta admissions re: Lakeshore condominium; Discussions with M. Poliak re: Mehta admissions;

Oct 24, 19 Office meeting with D. Bourassa regarding Steeles; conference call with C. Mills regarding same; review draft Steeles motion materials;

Oct 25, 19 Conference calls with J. Krieger regarding settlement with T. Wilson and the Missaghi group; conference call with J. Krieger, T. Wilson and C. Mills; call with C. Mills regarding same; email correspondence with C. Skelton regarding payment of Steeles mortgage by Enigma; office conference with S. Tanvir revised affidavit in connection with the Steeles motion;



Oct 28, 19	Attend at CPC court re: scheduling of Lakeshore summary judgment;
Oct 28, 19	Review and provide S. Tanvir with comments regarding draft affidavit on the Steeles proceeding; review final affidavit and exhibits; provide additional comments to S. Tanvir;
Oct 29, 19	Finalized motion materials on the Steeles Proceeding; email correspondence with A. Wygodny regarding claim of Ghaffari; review correspondence from C. Kopach regarding various outstanding matters;
Nov 4, 19	Email correspondence with E. Karp regarding materials filed on Steeles;
Nov 11, 19	Conference call with A. Wygodny regarding Euclid;
Nov 13, 19	Meeting with M. Poliak re: receivership of Euclid avenue and tenancy issues; Review listing particulars for mortgagor's listing and tenancy information therein;
Nov 13, 19	Conference call with A. Wygodny regarding adjournment request; email correspondence with A. Wygodny and client regarding same;
Nov 18, 19	Email correspondence with J. Krieger and D. Marcovitch regarding payout and assignment of the first mortgage on Palace Pier;
Nov 20, 19	Attended at court to adjourn the Palace Pier receivership application; email correspondence with atrialaw; email correspondence with D. Marcovitch regarding payout of the first mortgage on Palace Pier property; conference call with A. Wygodny regarding offers on the Euclid property and request for an adjournment; conference call with client regarding same; email correspondence with A. Wygodny regarding same;
Nov 21, 19	Email correspondence with J. Kanji regarding supplemental materials on Euclid; draft factum in support of the receivership application against the Euclid Property;
Nov 22, 19	Meeting with M. Poliak re: issues with T. Wilson claim to funds on Steeles property; Discussions re : receivership and enforcement issues on Euclid; Review of e-mails re: Home Trust position and various issues;
Nov 22, 19	Conference calls and email correspondence with counsel for Home Trust regarding the Euclid receivership; office conference with D. Bourassa regarding same; review and finalize a reply affidavit on the Euclid Receivership Application; finalize the brief of authorities in support of the Euclid Receivership Application; review responding materials served; review responding materials filed on the Steeles matter; conference call with E. Karp regarding same;



- Nov 22, 19 Drafted supplemental affidavit of Jonathan Krieger and Affidavit of Darren Marr in preparation of upcoming motion to appoint receiver; prepared exhibits to be attached to same affidavits; revised affidavits to reflect M. Poliak's comments and changes;
- Nov 24, 19 Prepare for the Euclid Receivership; finalize order and case law; email correspondence with counsel for Home Trust regarding form of order; email correspondence with D. Marr regarding same;
- Nov 25, 19 Conference with M. Poliak re Steeles Avenue;
- Nov 25, 19 Attend at Court to obtain an order appointing GT as receiver over the Euclid property; review responding record of 239 regarding the Steeles Property; conference calls with E. Karp regarding same; office conference and conference call with D. Bourassa regarding reply; office conference with H. Chaiton regarding reply;
- Nov 25, 19 Completed revisions to Draft Order as per agreement with counsel for Home Trust Company; communicated with Home Trust Company regarding order; prepared blackline copies of newly completed order against previous version and model order; delivered draft orders to court in preparation of hearing;
- Nov 26, 19 Review file materials re: Steeles Avenue litigation and position taken therein by Missaghi Group; Meeting with M. Poliak re: statement of indebtedness advanced by Missaghi in previous proceeding;
- Nov 26, 19 Email correspondence with C. Mills and E. Karp regarding the Steeles proceeding; conference call with E. Karp; office conference with D. Bourassa regarding the first mortgage on the Steeles Property; office conference with H. Chaiton regarding same; review bank statements provided by J. Kanji;
- Nov 26, 19 Preparing Notice of Cross-Examination for Terry Wilson and Troy Wilson as per M. Poliak's instructions;
- Nov 27, 19 Receipt and review of CPL material re: claim against MGMIC without leave; Meeting with M. Poliak re: response to CPL and consequences to MGMIC;
- Nov 27, 19 Draft assignment agreement for the first mortgage on Palace Pier; review responding materials in the new proceeding by L. Alizadeh and the claim issued against MGMIC; email correspondence with various counsel and client regarding same; email correspondence with the receiver regarding additional properties; office conference with H. Chaiton regarding new proceeding; email correspondence with C. Mills regarding examination of Troy and Terry;
- Nov 28, 19 Email correspondence with various counsel and client regarding the new proceeding commenced by L. Alizadeh; review claim; draft reply affidavit in connection with the Steeles proceeding; email correspondence with counsel for Olympia Trust regarding assignment of the first mortgage;



Nov 28, 19 Conducting various corporate searches against Enigma Land Ltd. and reviewing point-in-time reports. Reporting on findings to Maya Poliak.

Nov 29, 19 Draft reply affidavit in connection with the Steeles motion; call with C. Mills regarding supplemental affidavit on Steeles motion and examinations; email correspondence with counsel for Olympia Trust regarding Palace Pier first mortgage; email correspondence with various counsel regarding a new proceeding commenced by L. Alizadeh et. al.;

Nov 29, 19 Attending 9:30 to have Palace Piers motion adjourned as per M. Poliak's instructions;
To all matters of a general nature not more particularly referred to herein;

TOTAL HOURS

TOTAL PROFESSIONAL FEES

\$54,992.50

HST at 13.00%

7,149.03

DISBURSEMENTS:

Subject to HST:

Kap Litigation Services Taxable	\$405.60	
Internet Search Fee Taxable	\$236.62	
Teraview Charges Taxable	\$26.10	
Courier and Taxi Charges Taxable	\$98.00	
Postage Charges Taxable	\$0.87	
Parking Charges Taxable	\$38.05	
Telecopier Charges Taxable	\$4.00	
Photocopying Charges Taxable	\$84.60	
		\$893.84

Non-Taxable:

Registration/Filing Fee(s) Non-taxable	\$320.00
File Motion Record(s) Non-taxable	\$320.00

HST No R124110933

INVOICE NUMBER: 273932

E. & O.E. Payment due on receipt of the account. In Accordance with the Solicitor's Act, interest will be charged on any unpaid balance at the rate of 0.5% per annum commencing one month after delivery of this account.



Issue Notice(s) of Application Non-taxable	\$0.00	
Teraview Charges Non-taxable	\$13.10	
Government Disbursement Internet Search Non-tax.	\$128.00	
Bank Service Charges Non-taxable	\$50.00	
		\$831.10

TOTAL DISBURSEMENTS
HST at 13.00%

\$1,724.94
116.20

GRAND TOTAL

\$63,982.66

CHAITONS LLP

per:


Harvey Chaiton

HST No R124110933

INVOICE NUMBER: 273932

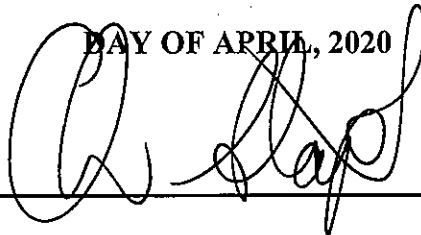
E. & O.E. Payment due on receipt of the account. In Accordance with the Solicitor's Act, interest will be charged on any unpaid balance at the rate of 0.5% per annum commencing one month after delivery of this account.

**LAWYERS' SUMMARY:**

Lawyers and legal assistants involved	Hourly Rate	Hours Billed	Total Billed
HARVEY G. CHAITON	\$725.00	1.60	\$1,160.00
DOUG BOURASSA	\$525.00	8.20	\$4,305.00
MAYA POLIAK	\$525.00	77.70	\$40,792.50
SAM RAPPOS	\$525.00	11.00	\$5,775.00
SANEEA TANVIR	\$275.00	5.00	\$1,375.00
JESSICA CHAN	\$275.00	0.60	\$165.00
DARREN MARR	\$200.00	7.10	\$1,420.00
Total:		111.20	\$54,992.50

**THIS IS EXHIBIT "E" TO
THE AFFIDAVIT OF MAYA POLIAK
SWORN BEFORE ME THIS 29TH**

DAY OF APRIL, 2020

A handwritten signature in black ink, appearing to be "A. Hap", is written over a horizontal line.

A Commissioner Etc.

5000 YONGE STREET, 10TH FLOOR, TORONTO, CANADA M2N 7E9
www.chaitons.com



INVOICE NUMBER: 274872

January 31, 2020

GRANT THORNTON LIMITED
200 KING STREET WEST
11TH FLOOR
TORONTO, ON M5H 3T4

Re: MONEY GATE MORTGAGE INVESTMENT CORPORATION ET AL
Our file: 006588-31761

FOR PROFESSIONAL SERVICES RENDERED on this matter up to and including January 31, 2020:

PROFESSIONAL FEES

SUBJECT TO HST	\$75,941.50	
SUB-TOTAL		\$75,941.50

DISBURSEMENTS

NON TAXABLE	\$539.15	
SUBJECT TO HST	\$3,336.13	
SUB-TOTAL		\$3,875.28
HST at 13.00%		\$10,306.09

GRAND TOTAL

\$90,122.87

Amount payable on the current invoice	\$90,122.87
Plus outstanding invoices on this matter	\$0.00
Amount Due	<u>\$90,122.87</u>
Trust Balance	

HST No R124110933

INVOICE NUMBER: 274872

E. & O.E. Payment due on receipt of the account. In Accordance with the Solicitor's Act, interest will be charged on any unpaid balance at the rate of 0.5% per annum commencing one month after delivery of this account.

PROFESSIONAL FEES:

Dec 1, 19	MP	Review and revise draft reply affidavit in connection with the Steeles Proceeding;	2.00	\$1,050.00
Dec 2, 19	DB	Meeting with M. Poliak re: review of reply materials and discussion of strategic issues on Steeles property; Review motion material on Steeles second mortgage; Review and revise affidavit material re: previous Steeles proceeding involving 527540 Ontario;	2.50	\$1,312.50
Dec 2, 19	MP	Attended at the motion to deal with the new proceedings by Laila and CPLs; obtained an endorsement dismissing the new Missaghi claim against MGMIC; conference call with J. Krieger regarding reply affidavit on Steeles; revise draft affidavit with comments from J. Krieger; review supplementary responding affidavit and amend reply affidavit with same; office conference with D. Bourassa regarding same;	7.00	\$3,675.00
Dec 2, 19	SPR	Reviewed and drafted correspondence regarding Dovercourt funds motion and discussed same with Eli Karp;	0.50	\$262.50
Dec 2, 19	ST	Compiling exhibits to J. Krieger's affidavit as per M. Poliak's instructions;	0.40	\$110.00
Dec 3, 19	DB	Meeting with M. Poliak re: issues relating to Steeles property; Review of underlying documents and strategy for examination of T. Wilson;	2.50	\$1,312.50
Dec 3, 19	MP	Finalize reply affidavit of J. Krieger and exhibits thereto; email correspondence with counsel for Olympia Trust regarding assignment of the First Mortgage on Palace Pier; meeting with D. Bourassa regarding examination of T. Wilson.	4.00	\$2,100.00

HST No R124110933

INVOICE NUMBER: 274872

E. & O.E. Payment due on receipt of the account. In Accordance with the Solicitor's Act, interest will be charged on any unpaid balance at the rate of 0.5% per annum commencing one month after delivery of this account.

Dec 3, 19	ST	Revising Notices of Cross-Examination for Troy and Terry Wilson as per M. Poliak's instructions, preparing Reply Motion Record for Steeles Property for service, serving Reply Motion Record;	2.50	\$687.50
Dec 3, 19	JCH	Receiving instructions from Maya Poliak; Re. Matter background and request to verify the resignation dates for certain directors of Enigma Land Ltd. and 2399021 Ontario Inc. Instructing law clerk to pull full corporate document list and various Point in Time reports for Enigma Land Ltd. and 2399021 Ontario Inc. Reviewing Point in Time reports to confirm that there was no break in the various resignations and appointments of directors for both corporations.	0.70	\$192.50
Dec 4, 19	SPR	Reviewed and drafted correspondence regarding Dovercourt motion;	0.30	\$157.50
Dec 5, 19	MP	Prepare for cross-examination of Troy Wilson; email correspondence with C. Mills and E. Karp regarding same; email correspondence with D. Marcovitch regarding assignment of the first mortgage on Palace Pier; conference call with E. Karp regarding same;	3.10	\$1,627.50
Dec 6, 19	MP	Prepared for and attended at cross-examination of T. Wilson; email correspondence and conference calls with E. Karp and D. Marcovitch regarding paying out of the first mortgage on Palace Pier;	6.00	\$3,150.00
Dec 6, 19	AMK	Review of mortgage transfer, mortgage and applicable PINs; e-mail communication to M. Poliak in connection therewith;	0.20	\$59.00
Dec 9, 19	HGC	Conference with M. Poliak;	0.30	\$217.50

HST No R124110933

INVOICE NUMBER: 274872

E. & O.E. Payment due on receipt of the account. In Accordance with the Solicitor's Act, interest will be charged on any unpaid balance at the rate of 0.5% per annum commencing one month after delivery of this account.

Dec 9, 19	MP	Draft factum on the Steeles motion; prepare for examinations of Terry Wilson; calls with C. Mills and J. Krieger regarding adjournment request and refusal to produce T. Wilson for examination; email correspondence with D. Markovitch regarding payout of the first mortgage on Palace Pier;	3.40	\$1,785.00
Dec 10, 19	MP	Call with E. Karp regarding Miller Thomson's proposed motion; draft factum on the Steeles Motion;	2.40	\$1,260.00
Dec 10, 19	SPR	Reviewed materials for Dovercourt funds; reviewed and drafted correspondence regarding cross-examination;	0.70	\$367.50
Dec 10, 19	DM	Received instructions from M. Poliak; attended at examination; obtained certificate of non-attendance of witness who was scheduled to be examined; provided same certificate to M. Poliak;	3.30	\$660.00
Dec 11, 19	MP	Attend at a 9:30 chambers appointment regarding scheduling of a motion to strike certain exhibits from our reply; reporting email to client; email correspondence with E. Karp regarding adjournment;	2.50	\$1,312.50
Dec 11, 19	SPR	Reviewed and drafted correspondence regarding Dovercourt motion;	0.20	\$105.00
Dec 12, 19	MP	Email correspondence with various parties regarding transfer of charge on the first mortgage;	0.20	\$105.00
Dec 19, 19	DB	Review file materials re: potential guarantee claim against T. Wilson; Meeting with M. Poliak re: claim against T. Wilson; Telephone conference with J. Krieger re: T. Wilson guarantee claim;	2.90	\$1,522.50
Dec 19, 19	MP	Receipt and review of OSC reasons for decision against Katebians; meeting with D. Bourassa regarding claim against T. Wilson	1.50	\$787.50
Dec 20, 19	DB	Prepare demand letter to T. Wilson as guarantor of Timmins loan;	0.50	\$262.50

HST No R124110933

INVOICE NUMBER: 274872

E. & O.E. Payment due on receipt of the account. In Accordance with the Solicitor's Act, interest will be charged on any unpaid balance at the rate of 0.5% per annum commencing one month after delivery of this account.

5.

Dec 23, 19	MP	Meeting with S. Rappos regarding cross-examination of J. Ricci.	0.20	\$105.00
Dec 23, 19	SPR	Completed cross examination of Jonathane Ricci regarding Dovercourt; discussed same with M. Poliak;	1.00	\$525.00
Jan 6, 20	SPR	Reviewed cross-examination transcript; reviewed and drafted correspondence;	0.70	\$367.50
Jan 9, 20	MP	Draft palace pier factum;	1.00	\$540.00
Jan 10, 20	MP	Call with A. Wygodny regarding various MGMIC loans;	0.30	\$162.00
Jan 10, 20	MP	Draft Palace Pier factum;	1.50	\$810.00
Jan 13, 20	MP	Email to E. Karp and B. Shiller regarding the Palace Pier proceeding; settlement discussions with E. Karp and J. Krieger regarding Palace Pier; call with A. Wygodny regarding his client's undertakings and examinations in connection with Palace Pier; conference call with E. Golden and E. Karp regarding Malmo; draft factum in support of Palace Pier summary judgment motion;	5.30	\$2,782.50
Jan 13, 20	SPR	Drafted correspondence regarding Dovercourt motion;	0.20	\$108.00
Jan 14, 20	MP	Conference call and email correspondence with E. Karp regarding settlement of Palace Pier; conference call with E. Karp, E. Golden and A. Wygodny regarding Malmo and Highpoint distributions; conference call with OSC regarding same; review motion records for Malmo distribution and Highpoint distribution; email correspondence with E. Karp and A. Wygodny regarding bank account statements of 239 and A. Wygodny's client's refusal to attend at examinations; draft factum on Palace Pier;	5.00	\$2,700.00

HST No R124110933

INVOICE NUMBER: 274872

E. & O.E. Payment due on receipt of the account. In Accordance with the Solicitor's Act, interest will be charged on any unpaid balance at the rate of 0.5% per annum commencing one month after delivery of this account.

Jan 15, 20	DB	Meeting with M. Poliak re: Palace Pier summary judgment strategy and issues relating to Timmins mortgage flow of funds; Receipt and review of banking records re: Timmins advances and issues related thereto;	1.50	\$825.00
Jan 15, 20	MP	Attend at a scheduling appointment before Justice Hainey to deal with distribution of proceeds on Malmo; conference with D. Emami regarding various Katebian owned properties and other proceedings; email correspondence with A. Wygodny and E. Karp regarding examination of B. Katebian regarding Palace Pier, request to transfer matter to the Commercial Court and request for attendance; review materials pertaining to the Timmins loan; draft palace pier factum;	5.30	\$2,862.00
Jan 15, 20	SPR	Reviewed and drafted correspondence regarding answers to undertakings;	0.20	\$108.00
Jan 16, 20	DB	Discussion with M. Poliak re: Oro-Medonte property history and connection with Palace Pier litigation;	0.50	\$275.00
Jan 16, 20	MP	Email correspondence with A. Wygodny, E. Karp and Commercial court regarding palace pier; call with P. Katebian and A. Wygodny; draft factum regarding Euclid; review answers to undertakings of T. Wilson; call with D. Bourassa regarding Oro-Medonte property history.	4.20	\$2,268.00
Jan 16, 20	SPR	Reviewed and drafted correspondence regarding Dovercourt motion;	0.30	\$162.00
Jan 17, 20	MP	Attend at a 9:30 chambers appointment to transfer the Palace Pier proceeding to the Commercial Court; email correspondence and conference calls with E. Karp regarding same; email correspondence with P. Katebian and J. Krieger regarding Timmins; draft factum in support of the motion regarding the Steeles Property;	5.50	\$2,970.00

HST No R124110933

INVOICE NUMBER: 274872

E. & O.E. Payment due on receipt of the account. In Accordance with the Solicitor's Act, interest will be charged on any unpaid balance at the rate of 0.5% per annum commencing one month after delivery of this account.

Jan 20, 20	MP	Conference calls with J. Krieger and E. Karp regarding settlement of Palace Pier; draft factum in support of the Steeles motion; email correspondence and conference calls regarding various MGMIC proceedings;	5.30	\$2,862.00
Jan 20, 20	SPR	Reviewed and drafted correspondence regarding Dovercourt motion; drafted factum for Dovercourt motion;	2.20	\$1,188.00
Jan 21, 20	DB	Meeting with M. Poliak re: issues with Steeles avenue property and strategy on pending motion; Obtain tax information property re: claimed tax payments; Review motion materials re: factum issues; Obtain motor vehicle dealer information for tenant of Steeles;	2.50	\$1,375.00
Jan 21, 20	MP	Draft factum in support of the motion for payment of funds out of court re: Steeles Property;	10.60	\$5,724.00
Jan 22, 20	MP	Finalize factum and brief of authorities; conference call with C. Mills regarding motion;	3.00	\$1,620.00
Jan 22, 20	MP	Conference with S. Rappos regarding Dovercourt; call with J. Krieger regarding Euclid, Dovercourt and Steeles;	0.50	\$270.00
Jan 22, 20	MP	Conference with M. Poliak; call with M. Poliak and J. Krieger.	0.50	\$270.00
Jan 22, 20	SPR	Dovercourt - Discussed matters with client; drafted supplementary report; drafted correspondence to opposing counsel; continued to review documents and draft factum;	6.00	\$3,240.00
Jan 23, 20	DB	Review Dovercourt factum;	0.50	\$275.00
Jan 23, 20	MP	Office conference with S. Rappos regarding Dovercourt; review draft factum and provide comments on same; email correspondence with C. Mills regarding Steeles;	1.50	\$810.00

8.

Jan 23, 20	SPR	Dovercourt - Finalized factum and supplementary motion record; discussed matters with M. Poliak; reviewed and drafted correspondence;	5.80	\$3,132.00
Jan 24, 20	MP	Email correspondence with Miller Thomson regarding adjournment; office conference with S. Rappos regarding Dovercourt; call with J. Krieger regarding settlement of same;	1.00	\$540.00
Jan 24, 20	SPR	Dovercourt - Discussed matters with opposing counsel and M. Poliak;	0.50	\$270.00
Jan 27, 20	MP	Prepare for the Dovercourt motion; review outstanding matters;	1.70	\$918.00
Jan 28, 20	MP	Prepare for the Dovercourt motion; conference call with E. Karp regarding settlement; review responding factum and draft reply; office conference with S. Rappos regarding same;	4.50	\$2,430.00
Jan 28, 20	SPR	Dovercourt - Discussed matters with M. Poliak; reviewed Ricci responding factum;	0.70	\$378.00
Jan 28, 20	DT	Research regarding after the fact conduct in contracts, the Ontario Business Corporations Act and general case law about validating a contract that a corporation was not authorized to enter into;	3.90	\$780.00
Jan 29, 20	MP	Finalize reply factum, brief of authorities and affidavit of S. Rappos in support of the Dovercourt motion; prepare for Dovercourt motion;	6.40	\$3,456.00
Jan 30, 20	MP	Prepared for and attended the motion regarding claims to the Dovercourt funds;	8.80	\$4,752.00
			148.20	\$75,941.50
		TOTAL HOURS		

TOTAL PROFESSIONAL FEES

HST at 13.00%

\$75,941.50**9,872.40**

HST No R124110933

INVOICE NUMBER: 274872

E. & O.E. Payment due on receipt of the account. In Accordance with the Solicitor's Act, interest will be charged on any unpaid balance at the rate of 0.5% per annum commencing one month after delivery of this account.

DISBURSEMENTS:**Subject to HST:**

Kap Litigation Services Taxable	\$479.80	
Examination and Transcript Fee Taxable	\$2,283.95	
General Taxable	\$25.03	
Internet Search Fee Taxable	\$354.00	
Teraview Charges Taxable	\$26.10	
Teranet Fee Taxable	\$10.85	
Parking Charges Taxable	\$17.70	
Telecopier Charges Taxable	\$20.00	
Photocopying Charges Taxable	\$53.70	
Teranet Electronic Registration Fee Taxable	\$65.00	
		\$3,336.13

Non-Taxable:

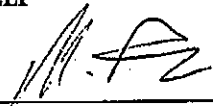
Registration/Filing Fee(s) Non-taxable	\$294.05	
Teraview Charges Non-taxable	\$13.10	
Government Disbursement Internet Search Non-tax.	\$182.00	
Bank Service Charges Non-taxable	\$50.00	
		\$539.15

TOTAL DISBURSEMENTS
HST at 13.00%

\$3,875.28
433.70

GRAND TOTAL**\$90,122.87****CHAITONS LLP**

per:


 Maya Poliak

HST No R124110933

INVOICE NUMBER: 274872

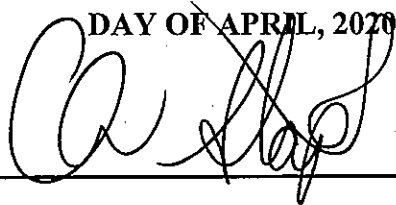
E. & O.E. Payment due on receipt of the account. In Accordance with the Solicitor's Act, interest will be charged on any unpaid balance at the rate of 0.5% per annum commencing one month after delivery of this account.

LAWYERS' SUMMARY:

Lawyers and legal assistants involved	Hourly Rate	Hours Billed	Total Billed
HARVEY G. CHAITON	\$725.00	0.30	\$217.50
DOUG BOURASSA	\$550.00	5.00	\$2,750.00
DOUG BOURASSA	\$525.00	8.40	\$4,410.00
MAYA POLIAK	\$540.00	66.60	\$35,964.00
MAYA POLIAK	\$525.00	37.60	\$19,740.00
SAM RAPPOS	\$540.00	15.90	\$8,586.00
SAM RAPPOS	\$525.00	3.40	\$1,785.00
ALEXANDRA KRANCEVIC	\$295.00	0.20	\$59.00
SANEEA TANVIR	\$275.00	2.90	\$797.50
JESSICA CHAN	\$275.00	0.70	\$192.50
DARREN MARR	\$200.00	3.30	\$660.00
DANA TALUCCI	\$200.00	3.90	\$780.00
Total:		148.20	\$75,941.50

**THIS IS EXHIBIT "F" TO
THE AFFIDAVIT OF MAYA POLIAK
SWORN BEFORE ME THIS 29TH**

DAY OF APRIL, 2020

A handwritten signature in black ink, appearing to read "A. Hap", is written over a horizontal line.

A Commissioner Etc.

5000 YONGE STREET, 10TH FLOOR, TORONTO, CANADA M2N 7E9
www.chaitons.com



INVOICE NUMBER: 275552

March 10, 2020

GRANT THORNTON LIMITED
200 KING STREET WEST
11TH FLOOR
TORONTO, ON M5H 3T4

Re: MONEY GATE MORTGAGE INVESTMENT CORPORATION ET AL
Our file: 006588-31761

FOR PROFESSIONAL SERVICES RENDERED on this matter up to and including February 29, 2020:

PROFESSIONAL FEES		
SUBJECT TO HST	\$8,154.00	
SUB-TOTAL		\$8,154.00
DISBURSEMENTS		
NON TAXABLE	\$81.30	
SUBJECT TO HST	\$214.94	
SUB-TOTAL		\$296.24
HST at 13.00%		\$1,087.96
GRAND TOTAL		\$9,538.20

Amount payable on the current invoice	\$9,538.20
Plus outstanding invoices on this matter	\$90,122.87
Amount Due	<u>\$99,661.07</u>
Trust Balance	

HST No R124110933

INVOICE NUMBER: 275552

E. & O.E. Payment due on receipt of the account. In Accordance with the Solicitor's Act, interest will be charged on any unpaid balance at the rate of 0.5% per annum commencing one month after delivery of this account.

PROFESSIONAL FEES:

Feb 5, 20	MP	Review endorsement of Justice Gilmore regarding Dovercourt;
Feb 18, 20	MP	Email correspondence with E. Karp regarding continuing examinations on Palace Pier;
Feb 20, 20	MP	Email correspondence with E. Karp and A. Wygodny regarding palace pier summary judgment motion; email correspondence with M. Kestenberg regarding Laila's claim;
Feb 24, 20	MP	Email correspondence with D. Emami;
Feb 24, 20	MP	Review documents relating to the Nady assignment; Call with A. Wygodny and P. Katebian regarding the Nady assignment; email correspondence with E. Karp regarding answers to undertakings on Palace Pier; review transcripts of B. Katebian and P. Katebian;
Feb 25, 20	MP	Attended continued examination of B. Katebian; conference call with J. Krieger and J. Kanji regarding settlement; email correspondence with E. Karp regarding same;
Feb 26, 20	MP	Email correspondence with J. Krieger and E. Karp regarding settlement of Palace Pier; conference call with D. Emami regarding OSC's proceeding against the principals; conference call with M. Kestenberg regarding the proceeding by L. Alizadeh; email to M. Kestenberg regarding same;
Feb 27, 20	MP	Attend at the office of the Securities Commission to discuss outstanding matters; email correspondence with J. Krieger and J. Kanji regarding same; email correspondence with J. Krieger and J. Kanji regarding Palace Pier settlement;
Feb 28, 20	MP	Email correspondence with P. Katebian regarding Mady Assignment; email correspondence with E. Karp regarding settlement of Palace Pier;

TOTAL HOURS

3.

TOTAL PROFESSIONAL FEES
HST at 13.00%

\$8,154.00
1,060.02

DISBURSEMENTS:**Subject to HST:**

General Taxable	\$74.75
Internet Search Fee Taxable	\$29.50
Teraview Charges Taxable	\$109.30
Postage Charges Taxable	\$0.89
Telecopier Charges Taxable	\$0.50

\$214.94

Non-Taxable:

Search(es) Non-taxable	\$14.00
Teraview Charges Non-taxable	\$51.30
Government Disbursement Internet	\$16.00
Search Non-tax.	

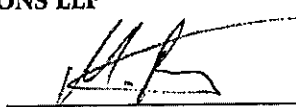
\$81.30

TOTAL DISBURSEMENTS
HST at 13.00%

\$296.24
27.94

GRAND TOTAL

\$9,538.20

CHAITONS LLPper: 

Maya Poliak

HST No R124110933

INVOICE NUMBER: 275552

E. & O.E. Payment due on receipt of the account. In Accordance with the Solicitor's Act, interest will be charged on any unpaid balance at the rate of 0.5% per annum commencing one month after delivery of this account.

4.

LAWYERS' SUMMARY:

Lawyers and legal assistants involved	Hourly Rate	Hours Billed	Total Billed
MAYA POLIAK	\$540.00	15.10	\$8,154.00
Total:		15.10	\$8,154.00

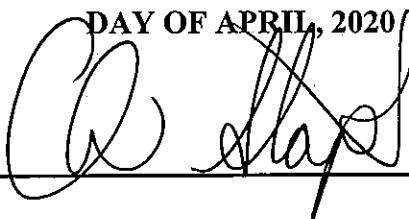
HST No R124110933

INVOICE NUMBER: 275552

E. & O.E. Payment due on receipt of the account. In Accordance with the Solicitor's Act, interest will be charged on any unpaid balance at the rate of 0.5% per annum commencing one month after delivery of this account.

**THIS IS EXHIBIT "G" TO
THE AFFIDAVIT OF MAYA POLIAK
SWORN BEFORE ME THIS 29TH**

DAY OF APRIL, 2020

A handwritten signature in black ink, appearing to read "A. Shapiro", is written over a horizontal line.

A Commissioner Etc.

5000 YONGE STREET, 10TH FLOOR, TORONTO, CANADA M2N 7E9
www.chaitons.com



INVOICE NUMBER: 275683

March 24, 2020

GRANT THORNTON LIMITED
200 KING STREET WEST
11TH FLOOR
TORONTO, ON M5H 3T4

Re: MONEY GATE MORTGAGE INVESTMENT CORPORATION ET AL
Our file: 006588-31761

FOR PROFESSIONAL SERVICES RENDERED on this matter up to and including March 23, 2020:

PROFESSIONAL FEES		
SUBJECT TO HST	\$486.00	
SUB-TOTAL		\$486.00
DISBURSEMENTS		
NON TAXABLE	\$13.10	
SUBJECT TO HST	\$30.30	
SUB-TOTAL		\$43.40
HST at 13.00%		\$67.12
GRAND TOTAL		\$596.52

Amount payable on the current invoice	\$596.52
Plus outstanding invoices on this matter	\$99,661.07
Amount Due	<u>\$100,257.59</u>
Trust Balance	

HST No R124110983

INVOICE NUMBER: 275683

E. & O.E. Payment due on receipt of the account. In Accordance with the Solicitor's Act, interest will be charged on any unpaid balance at the rate of 0.5% per annum commencing one month after delivery of this account.

2.

PROFESSIONAL FEES:

Mar 2, 20	MP	Email correspondence with E. Karp and J. Krieger regarding settlement of Palace Pier;	0.40	\$216.00
Mar 4, 20	MP	Conference calls with J. Camp and D. Emami regarding sanction hearing against the principals;	0.50	\$270.00
			0.90	\$486.00
		TOTAL HOURS		

TOTAL PROFESSIONAL FEES**\$486.00**

HST at 13.00%

63.18

DISBURSEMENTS:**Subject to HST:**

Teraview Charges Taxable	\$26.10	
Photocopying Charges Taxable	\$4.20	
		\$30.30

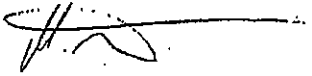
Non-Taxable:

Teraview Charges Non-taxable	\$13.10	
		\$13.10

TOTAL DISBURSEMENTS**\$43.40**

HST at 13.00%

3.94

GRAND TOTAL**\$596.52****CHAITONS LLP**per: 

HST No R124110933

INVOICE NUMBER: 275683

E. & O.E. Payment due on receipt of the account. In Accordance with the Solicitor's Act, interest will be charged on any unpaid balance at the rate of 0.5% per annum commencing one month after delivery of this account.

3.

Maya Poliak

HST No R124110933

INVOICE NUMBER: 275683

E. & O.E. Payment due on receipt of the account. In Accordance with the Solicitor's Act, interest will be charged on any unpaid balance at the rate of 0.5% per annum commencing one month after delivery of this account.

Doc#4739843v1

4.

LAWYERS' SUMMARY:

Lawyers and legal assistants involved	Hourly Rate	Hours Billed	Total Billed
MAYA POLIAK	\$540.00	0.90	\$486.00
Total:		0.90	\$486.00

HST No R124110933

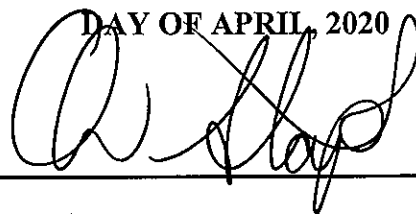
INVOICE NUMBER: 275683

E. & O.E. Payment due on receipt of the account. In Accordance with the Solicitor's Act, interest will be charged on any unpaid balance at the rate of 0.5% per annum commencing one month after delivery of this account.

Doc#4739843v1

**THIS IS EXHIBIT "H" TO
THE AFFIDAVIT OF MAYA POLIAK
SWORN BEFORE ME THIS 29TH**

DAY OF APRIL, 2020

A handwritten signature in black ink, appearing to be "A. Shapiro", is written over a horizontal line.

A Commissioner Etc.

Chaitons^{LLP}

INVOICE NUMBER: 276106

April 29, 2020

GRANT THORNTON LIMITED
200 KING STREET WEST
11TH FLOOR
TORONTO, ON M5H 3T4

Re: MONEY GATE MORTGAGE INVESTMENT CORPORATION ET AL
Our file: 006588-31761

FOR PROFESSIONAL SERVICES RENDERED on this matter up to and including April 24, 2020:

PROFESSIONAL FEES		
SUBJECT TO HST	\$7,992.50	
SUB-TOTAL		\$7,992.50
DISBURSEMENTS		
NON TAXABLE	\$39.30	
SUBJECT TO HST	\$79.56	
SUB-TOTAL		\$118.86
HST at 13.00%		\$1,049.37
GRAND TOTAL		\$9,160.73

Amount payable on the current invoice	\$9,160.73
Plus outstanding invoices on this matter	\$596.52
Amount Due	<u>\$9,757.25</u>
Trust Balance	

HST No R124110933

INVOICE NUMBER: 276106

E. & O.E. Payment due on receipt of the account. In Accordance with the Solicitor's Act, interest will be charged on any unpaid balance at the rate of 0.5% per annum commencing one month after delivery of this account.

PROFESSIONAL FEES:

Mar 27, 20	MP	Email correspondence with D. Emami; draft update report;	1.50	\$810.00
Mar 30, 20	MP	Draft Palace Pier Settlement;	0.60	\$324.00
Mar 31, 20	MP	Draft minutes of settlement;	2.10	\$1,134.00
Apr 2, 20	MP	Prepared for and attended at the hearing to approve the Sale Motion; email Justice Hainey counsel slip; email correspondence and calls regarding title correction;	3.70	\$1,998.00
Apr 6, 20	MP	Email correspondence with E. Karp regarding Palace Pier settlement;	0.20	\$108.00
Apr 7, 20	MP	Call with J. Kanji regarding general report on Money Gate and claims procedure;	0.50	\$270.00
Apr 14, 20	MP	Call with J. Kanji regarding the update report; email correspondence with D. Emami;	0.50	\$270.00
Apr 15, 20	AMK	Review of the various properties and determination of whether or the appointment order has been registered on title to same; e-mail communication with M. Poliak in connection therewith;	0.50	\$162.50
Apr 17, 20	MP	Review Fourth Report of the Receiver; prepare claims procedure order;	1.80	\$972.00
Apr 20, 20	MP	Review and revise draft fourth report;	1.60	\$864.00
Apr 24, 20	MP	Revise fourth report; email correspondence with E. Karp regarding settlement; draft claims process;	2.00	\$1,080.00
			15.00	\$7,992.50
		TOTAL HOURS		

TOTAL PROFESSIONAL FEES
HST at 13.00%

\$7,992.50
1,039.03

HST No R124110933

INVOICE NUMBER: 276108

E. & O.E. Payment due on receipt of the account. In Accordance with the Solicitor's Act, interest will be charged on any unpaid balance at the rate of 0.5% per annum commencing one month after delivery of this account.

3.

DISBURSEMENTS:**Subject to HST:**

Teraview Charges Taxable	\$78.30	
Postage Charges Taxable	\$1.26	
		\$79.56

Non-Taxable:

Teraview Charges Non-taxable	\$39.30	
		\$39.30

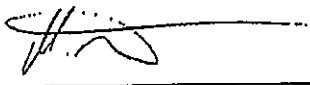
TOTAL DISBURSEMENTS**\$118.86**

HST at 13.00%

10.34

GRAND TOTAL**\$9,160.73****CHAITONS LLP**

per: _____


Maya Poliak

HST No R124110933

INVOICE NUMBER: 276106

E. & O.E. Payment due on receipt of the account. In Accordance with the Solicitor's Act, interest will be charged on any unpaid balance at the rate of 0.5% per annum commencing one month after delivery of this account.

4.

LAWYERS' SUMMARY:

Lawyers and legal assistants involved	Hourly Rate	Hours Billed	Total Billed
MAYA POLIAK	\$540.00	14.50	\$7,830.00
ALEXANDRA KRANCEVIC	\$325.00	0.50	\$162.50
Total:		15.00	\$7,992.50

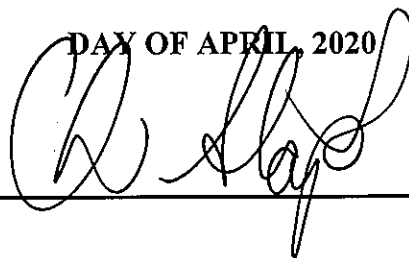
HST No R124110933

INVOICE NUMBER: 276106

E. & O.E. Payment due on receipt of the account. In Accordance with the Solicitor's Act, interest will be charged on any unpaid balance at the rate of 0.5% per annum commencing one month after delivery of this account.

**THIS IS EXHIBIT "I" TO
THE AFFIDAVIT OF MAYA POLIAK
SWORN BEFORE ME THIS 29TH**

DAY OF APRIL, 2020

A handwritten signature in black ink, appearing to read "R. Hay", is written over a horizontal line.

A Commissioner Etc.

SUMMARY

Lawyer	Year of Call	Hours Billed	Hourly Rate	Amount Billed
Harvey Chaiton	1982	4.50	\$725.00	\$3,262.50
Doug Bourassa	2005	27.40	\$525.00	\$14,385.00
Doug Bourassa	2005	5.00	\$550.00	\$2,750.00
Maya Poliak	2007	228.50	\$525.00	\$119,962.50
Maya Poliak	2007	96.20	\$540.00	\$52,434.00
Alexandra Krancevic	2017	3.10	\$295.00	\$914.50
Alexandra Krancevic	2017	0.50	\$325.00	\$162.50
Sam Rappos	2005	18.70	\$525.00	\$9,817.50
Sam Rappos	2005	15.90	\$540.00	\$8,586.00
Saneea Tanvir	2019	19.90	\$275.00	\$5,472.50
Jessica Chan	2009	1.30	\$275.00	\$357.50
Darren Marr	Articling Student	10.40	\$200.00	\$2,080.00
Dana Talucci	Articling Student	3.90	\$200.00	\$780.00
Total Hours and Amounts Billed		435.30		\$220,964.50
Average Hourly Rate			\$507.61	
Total Costs				\$8,119.35
Total Taxes (HST)				\$29,449.15
TOTAL				\$258,533.00

Court File No. CV-18-00608086-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(Commercial List)

PROCEEDING COMMENCED AT
TORONTO, ONTARIO

AFFIDAVIT OF MAYA POLIAK

CHAITONS LLP
Barristers & Solicitors
5000 Yonge Street, 10th Floor
Toronto, ON M2N 7E9

Maya Poliak (54100A)
Tel : (416) 218-1161
Fax: (416) 218-1844

Lawyers for Receiver, Grant Thornton Limited

ONTARIO SECURITIES COMMISSION
Applicant

-and-

MONEY GATE MORTGAGES
Respondent

Court File No. CV-18-00608086-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
(Commercial List)**

PROCEEDING COMMENCED AT
TORONTO, ONTARIO

**FOURTH REPORT OF THE RECEIVER
(Dated April 29, 2020)**

CHAITONS LLP

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

Maya Poliak (54100A)
Tel : (416) 218-1161
Fax: (416) 218-1844

Lawyers for Receiver, Grant Thornton Limited