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

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

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

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

This is the Cross-Examination of IMRAN JINNAH, on his Affidavits dated March 25, 2015 and March 13, 2015 herein, taken at the offices of Network North Reporting and Mediation, Nestle Building, 25 Sheppard Avenue West, Suite 1200, North York, Ontario, on Tuesday, the 19th day of May 2015.

APPEARANCES:

Stephen Schwartz	For the Applicants
Emilio Bisceglia	For Argo Lumber Inc. and Newmar Window Manufacturing
James Klein	For Pilbro III Inc., Medi Group Incorporated, Cardell Flooring Ltd., Foremont Drywall Inc., et al., Canadian Concrete Forming Limited, Pave Plumbing & Heating Inc., E.D. Carpenters Limited, Solo Electric Ltd. 1865721 Ontario Inc., GM Interiors Inc., Giancola Aluminum Contractors Inc.
Adam Slavens	For Tarion Warranty Corporation

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--- Upon commencing at 1:02 p.m.

IMRAN JINNAH: AFFIRMED.

CROSS-EXAMINATION BY MR. BISCEGLIA:

1. Q. Sir, could you please state your name?

A. Imran Jinnah.

2. Q. And I understand that you're produced today for cross-examination in relation to two affidavits you swore to get a settlement approved with Tarion?

A. Yes, that's correct.

3. Q. And I just want to get a little bit in terms of background. For the Tarion claims, you got the disclosure. It's one of the exhibits to your affidavit. Do you recall that, sir?

MR. SCHWARTZ: Yes, it's the reply.

BY MR. BISCEGLIA:

4. Q. So I've just printed it out, so we don't have to sort of do it, but the last section -- I'm not sure what page it's at --

MR. SCHWARTZ: What would you like us to look at?

MR. BISCEGLIA: The Tarion section, which is the Tarion documents.

MR. SCHWARTZ: Okay. Just tell me where?

MR. BISCEGLIA: My copy doesn't have page numbers.

MR. SCHWARTZ: Hold on. We have it.

MR. BISCEGLIA: I'll tell you where it starts.

MR. SCHWARTZ: Sure.

MR. BISCEGLIA: It starts at three -- I can't read that number.

MR. SCHWARTZ: Three-fifty something. What's the first page?

MR. BISCEGLIA: Three-fifty-five, I think.

MR. SCHWARTZ: Okay, thank you.

MR. BISCEGLIA: Next page.

MR. SCHWARTZ: Right here.

MR. BISCEGLIA: Starting there.

MR. SCHWARTZ: I think -- sorry, the pages -- I think it's 355. I think you're right.

MR. BISCEGLIA: So 355.

MR. KLEIN: Is that in the reply?

MR. SCHWARTZ: Reply.

BY MR. BISCEGLIA:

5. Q. So, sir, I just want to understand what the financial issue is with Tarion. Right now they've paid out, to the best of your

knowledge, purchasers their deposits, $40,000 each. Is that fair, sir?

A. I'm not -- I don't have it with me who they've paid out.

6. Q. Okay. You swore an affidavit?

A. Yes.

7. Q. This is your affidavit?

A. Yeah, yeah, of course.

8. Q. If you want to take a look --

A. I'll take a look at it.

9. Q. Go to page 4. This is your signature, sir. You want to refer to that. Go back to the same motion record. It's called a reply motion record, page 4. It's your document. Do you agree, sir?

A. Yes, I agree.

10. Q. As part of your affidavit, you said, Here's the documents we got from Tarion. Is that fair, sir?

A. Yes.

11. Q. You were charged, your companies were charged, with breaching -- the company wasn't enrolled with Tarion. Do you recall that, sir?

A. Well, which company? I have a

company was enrolled with Tarion.

MR. SCHWARTZ: We understand there were charges.

BY MR. BISCEGLIA:

12. Q. Right. There were charges. The Puccini company, it's a defined term in your affidavit, Silver Streams Homes (Puccini) Inc., I'm going to call it Puccini, was not registered with Tarion. Is that fair, sir?

A. That's fair.

13. Q. And you admit in your affidavit you're guilty of not registering that company with Tarion. Is that fair, sir?

MR. SCHWARTZ: I don't think he said that. I think he said he wasn't registered. I don't think he said he was guilty.

BY MR. BISCEGLIA:

14. Q. So here's what we'll do, sir. Silver Streams Homes (Puccini) Inc. was not registered with Tarion?

A. Yes, it was not.

15. Q. Right. Every agreement of purchase and sale looks like it was entered into and signed by you with this company, Silver Streams Homes (Puccini) Inc.?

A. Yes, that's correct.

16. Q. And that's why Tarion charged you, because you were selling new homes, you being Silver Streams Homes (Puccini) Inc., and it was not registered with Tarion. Is that fair, sir?

A. Well, yeah, that's the charges. Those are the charges.

17. Q. It's not that's the charge. That's the facts. You agree you did not registered -- that's what your affidavit says. Silver Streams Homes (Puccini) Inc. was not registered.

I know you say it was by accident or by inadvertence, whatever words you want to you use, but it was not registered, agreed?

A. Well, Silver Streams was registered. All other companies was registered. This particular Silver Streams Homes (Puccini) Inc. was not registered.

18. Q. I'm going to try and keep this short, sir, because my clients are paying for it and they're owed a lot of money.

A. Mm-hm.

19. Q. Now, sir, what Tarion paid on your behalf or was going to pay is in your affidavit. It starts at page 355. That's a list of what

Tarion paid; is that fair, sir?

A. Yes.

20. Q. And it looks like -- I don't think there's any issue -- it refunded three deposits of $40,000 each. Is that fair, sir? Take a look and let's confirm that. Do you know what I'm going to do, sir? I'm going to do it one at a time for you to make is simple. Go to page 356.

A. Mm-hm.

21. Q. You have to say yes or no so we get this on the record. This is Elliot Silverstein and Bonnie Sobel. Do you see that, sir?

A. Yes, I do.

22. Q. They terminated the deal. You had to give them back their deposit. Tarion paid $40,000 back to them, correct?

A. Yes, that's correct.

23. Q. Go to page 359. Then there's a further payment to this Nadeyda, N-A-D-E-Y-D-A, Vassilieva, V-A-S-S-I-L-I-E-V-A. This is a $7,500 compensation claim that was paid?

A. Yes.

24. Q. Correct?

A. That's correct.

25. Q. That's number 2, I'll call that.

Number 3, if you go in a few more pages, Joseph Manzo and Rebecca Milton, do you see that, sir?

A. Yes.

26. Q. You didn't return the deposit. That's a $40,000 claim. Am I correct?

A. That's correct.

27. Q. That's number 3.

A. Mm-hm.

28. Q. So I'm just going to write these down so we have a total. 40,000 is number 1, 7,500 is number 2, 40,000 is number 3. Go to number 4, which is Henry Wadowski, W-A-D-O-W-K-S-K-I. Do you see that, sir?

A. Yes.

29. Q. That's another return of deposit?

A. Mm-hm.

30. Q. Is that correct?

A. Yes, that's correct.

31. Q. That's $40,000?

A. Yes.

32. Q. So when I look in here at the charges, they show that approximately $127,000 was paid out by Tarion. Is that fair, sir?

A. Okay. Yes, that's correct.

33. Q. Agreed?

A. Agreed, yes.

34. Q. So as I understand it from your affidavit, and we will go through this in some detail, there are three letters of credit not posted by Puccini, but posted by other companies that you're an officer and director of that Tarion has. Is that fair, sir?

A. Yes.

35. Q. Those letters of credit are actually not in your affidavit of documents?

A. Okay.

36. Q. Is that fair, sir?

A. Yeah, that's fair.

37. Q. So I'm going to mark them. These were sent. Just so we have a reference, they were sent by your office April 14th, 2015. So the first one, January 13, 2009, for $270,000, I'm going to mark this as Exhibit No. 1.

A. Mm-hm.

38. Q. Just identify it for me. Is that correct?

A. That's correct, yeah.

EXHIBIT NO. 1: Letter of credit dated January 13, 2009 for $270,000.

BY MR. BISCEGLIA:

39. Q. We'll just mark these, and then we'll come back to them. I'm going to mark them by date order. The second one is November 12th, 2010 for $400,000, and I'll mark that as Exhibit No. 2. Is that correct?

A. That's correct.

EXHIBIT NO. 2: Letter of credit dated November 12, 2010 for $400,000.

BY MR. BISCEGLIA:

40. Q. And the third one is April 12th, 2012 in the amount of $250,000. I'll mark that as Exhibit No. 3. Is that correct?

A. Yes.

EXHIBIT NO. 3: Letter of credit dated April 12, 2012 in the amount of $250,000.

BY MR. BISCEGLIA:

41. Q. In addition to that, and I don't have a document here, but I think your affidavit says you have cash with Tarion?

A. Yes, $320,000.

42. Q. Do you have a receipt when that was given to them or --

A. I don't have a receipt. Recalling my memory, I think it was a Royal Bank LC, because the project had a town home phase, also.

And town home phase was funded by Royal Bank of Canada, and they had provided an LC of 320,000, and then they got paid out. That part went to the power of sale.

So when people who bought it paid Royal Bank off, I think the LC was -- cash was put in against that LC. This is my -- that's what I recall.

43. Q. So your affidavit just says there's cash there. So what I'd like you to do by way of undertaking is produce to me something that shows this $320,000 in cash that's sitting there.

U/T A. Okay.

MR. KLEIN: And just for the record, any undertakings he asks for you'll send to me, as well?

MR. SCHWARTZ: Yes.

BY MR. BISCEGLIA:

44. Q. So if I total this up, you have about a million-two, a million-three that's sitting with Tarion?

A. 1,240,000 to be exact.

45. Q. So let's be exact. You have $1,240,000 in cash or letters of credit with Tarion, and they paid out on your behalf

$127,000?

A. Yes.

46. Q. Let's go through this in stages, then. Do you know the date when you put in the $320,000?

A. Like I said, if my memory is correct, it was a Royal Bank LC and -- when did it go power of sale? December 2013.

MR. SCHWARTZ: Yes, but he asked: When did you arrange for the financing for the LC? That's what he wants to know.

THE DEPONENT: I have to get that commitment letter. I can provide that commitment letter for the Royal Bank.

BY MR. BISCEGLIA:

47. Q. So you'll do that and advise us by way of undertaking?

U/T A. Yes.

48. Q. Hold on. Would it have been before or after the Bank of Montreal loan facility?

A. It was -- again, I'll have to check. But my memory says it was after that, because it is a separate entity. Bank of Montreal was on three companies, which were for the detached homes. Royal Bank was on the town home side.

There was a separate company. There was a third company. So they had really nothing to do with each other. But my memory was it was after the Bank of Montreal LCs.

49. Q. Okay. So let me try do it, then. I'll try and go through it. Let me ask you some cleanup questions, and then we'll go back and go through it. What I'd like to do, for each of the -- I guess there were four LCs when you started?

MR. SCHWARTZ: No, that's not right. That's not what he said.

BY MR. BISCEGLIA:

50. Q. Well, there were three, and we've identified it.

MR. SCHWARTZ: When he started -- that part is not right.

BY MR. BISCEGLIA:

51. Q. You're right. Let me be more precise. You or your companies lodged with Tarion a total of four letters of credit. Is that fair, sir?

A. Yes.

52. Q. For each one of those letters of credit you would have had to apply with Tarion?

A. Yes, that's correct. Basically, every year they do a renewal, and at the time of the renewal we have to state how many homes we're going to build in that year, and based on that, they do a risk assessment. It's an overall risk assessment. They require blanket letters of credit.

So based on the re-registration, then they ask us to put additional letters of credit, or, if there's any money due to us, they return it.

53. Q. And each renewal you have to put in your net worth statement. You have to give a financial statement for each one of the companies, net worth statements for the guarantors. It's all part of the package?

A. Yes.

54. Q. And do I take it, sir, that the first one started with Exhibit No. 1 in January of 2009? Is that fair, sir?

A. Yes, that's fair.

55. Q. So what I'd like you to do, then, is provide copies of the original application with Tarion and all the renewals, and provide it to me by way of undertaking.

MR. SCHWARTZ: I don't know what we have. What we're able to find in answer to your e-mail this morning or yesterday, we have produced to you the February 28th, 2013 renewal application package for -- I'm just not sure if it's -- take one of these. I just don't know...

So this is what -- in answer to your request, this is what we had in our file for 2013. There's more than one here in each package.

BY MR. BISCEGLIA:

56. Q. Okay. So I'm just looking at what your counsel has handed over to me. Are these different, counsel?

MR. SCHWARTZ: No, those are copies.

MR. BISCEGLIA: They're the same.

MR. SCHWARTZ: Yes.

MR. BISCEGLIA: So I'll mark this one, because we're looking at, as the next exhibit, Exhibit No. 4. This is Tarion application form dated February 28, 2013.

EXHIBIT NO. 4: Tarion application form dated February 28, 2013.

MR. SCHWARTZ: But just so you know for the record, rather, you'll see, if you look at it, it starts -- it's not all dated February 28th. That's what I wanted you to appreciate.

MR. BISCEGLIA: All right.

BY MR. BISCEGLIA:

57. Q. To be fair, sir, I don't think this is a complete copy, right, because I've seen people apply for Tarion packages and this isn't it. Even for the renewals, right, you have to put in a package each year with Tarion that you have to fill in, and then there's an exchange of documentation back and forth. Are you familiar with that, sir?

A. Yeah. Back and forth only happens if there are issues. If you submit it properly, then they're not back and forth. But I can always check my file and see what...

58. Q. What I'd like you to do, then, is to produce complete copies of the packages and provide it to us by way of -- a complete copy of the application packages and the renewals and provide it to us by way of undertaking.

U/T A. Okay.

59. Q. So the next question I have for you is, when I requested for, I'll call it, the Tarion documents, one of the people I asked for

that documentation was for Jack Greenberg. You know Mr. Greenberg?

A. Yes.

60. Q. I understand that he acted as your lawyer and for basically all of the applicants' lawyers. Is that fair, sir?

MR. SCHWARTZ: At a point in time.

BY MR. BISCEGLIA:

61. Q. When did he stop or ceasing to be the lawyer for the applicants? When the insolvency proceedings began?

A. Yes, at that time.

62. Q. Sometime in December 2013 I believe the proceedings were started.

A. I would say a little before that, because by that time Stephen was handling most of our things.

MR. SCHWARTZ: So I would suggest it was earlier. It depends on for what. There was -- I think in fairness, I can't give you -- it was in 2013. There was issues that arose pre CCAA that caused Silver Streams to have to retain me.

MR. BISCEGLIA: I think that was, I'm going to say, Firm Capital but --

MR. SCHWARTZ: No, it wasn't Firm

Capital. It was ConDrain.

MR. BISCEGLIA: ConDrain, okay. So in any event --

MR. SCHWARTZ: There were other issues, but in terms of a court proceeding, it was ConDrain, but there were -- I don't want to give an incomplete answer. There were other issues where Mr. Greenberg was no longer acting for Silver Streams and I was. So sometime in 2013.

BY MR. BISCEGLIA:

63. Q. Mr. Greenberg has his lawyer. Mr. Drudi has asked that you -- he has what he calls the Tarion file that Mr. Greenberg has for you, and he wants to make sure that you will waive solicitor-client privilege so he can give us copies of those documents.

A. Yeah, I have no problem.

MR. SCHWARTZ: No, no, no.

THE DEPONENT: No?

MR. SCHWARTZ: Mr. Drudi sent me the e-mail this morning. I haven't seen the file. I want to review the file with Mr. Jinnah, and then I will tell you what we're going to do.

MR. BISCEGLIA: If there is a refusal, you'll give us the basis for the refusal?

MR. SCHWARTZ: Right. But I just now, apparently this morning -- I haven't seen it, Mr. Jinnah hasn't seen it either, but Mr. Drudi sent us what he understands to be Mr. Greenberg's file. I don't know what it is, in relation to Tarion.

MR. BISCEGLIA: So you'll let me --

MR. SCHWARTZ: We'll let you know.

MR. BISCEGLIA: If you can let us know before Friday when we're scheduled to cross-examine him?

U/T MR. SCHWARTZ: Yes. As I said, I have not been in the office yet today, and I will look at that.

BY MR. BISCEGLIA:

64. Q. Now, in addition to acting for you, was Mr. Greenberg also acting for other parties?

A. He was representing the second and the third mortgagee, second, third, fourth mortgagees.

65. Q. We've seen those companies, the company names, Puccini Mortgage Corporation, Dapaul Mortgage, Puccini Mortgage Corporation, I guess Nastell Investments, et cetera. Do you know who the principals were of those companies?

R/F MR. SCHWARTZ: Why is that relevant for this motion, please?

MR. BISCEGLIA: I'm going to come through it in terms of this 1,240,000.

MR. SCHWARTZ: I don't understand how that's relevant to this motion.

MR. BISCEGLIA: I have your refusal. We'll sort of take it a step by step.

MR. SCHWARTZ: Okay. Thank you.

BY MR. BISCEGLIA:

66. Q. So let me work with the documents I do have. Exhibit No. 1, if you can just look at it, it's your first letter of credit.

MR. SCHWARTZ: Did you give us copies of them? I'm sorry.

THE DEPONENT: No, I don't think -- we don't have copies.

BY MR. BISCEGLIA:

67. Q. I didn't bring an extra copy, but we'll share.

A. We can share the document.

68. Q. Yes, we'll share. That was issued in January 13, 2009?

A. Mm-hm.

69. Q. Yes, sir?

A. Yes.
70. Q. And it came from the Bank of Montreal?
A. That's correct.
71. Q. And it shows that the applicants were two numbered companies, 2148993 Ontario Inc. and 2148990 Ontario Inc.; is that correct, sir?
A. Yes.
72. Q. At that time, Silver Streams Homes (Puccini) Inc., was that company incorporated?
A. Okay. At that time I have to give an explanation of this. When this happened --
73. Q. This happened being Exhibit 1?
A. Exhibit 1, the registrant was Silver Streams Home. Both these companies, the 214, they were not registered with Tarion. 2148993 Ontario Inc. and 2148990 Ontario Inc. were not registered.
The process with Tarion was that the builder company, Silver Streams Homes Inc., should register, and we did projects before this project and only Silver Streams Homes was registered, and then we were doing projects.
While we were doing this project, Tarion called us in 2010 and asked us to register all

the numbered companies, the owners of that company. At that time, we registered the four numbered companies over here, the company in Whitby and a company in Maple, because we were doing those projects, also.

So we registered all the land owners at that time, apart from Silver Streams Homes. That's what happened.

When this LC came in, these two companies were not registered with Tarion. Only Silver Streams Homes was registered.

74. Q. What you're saying is there must have been another mistake. I'll call it a second mistake. When this Exhibit 1 letter of credit was put up with Tarion, while the applicant was these two numbered companies, that should not have been the case.

It should have been Silver Streams Homes Inc., because that was the company that was building?

A. The company that -- you asked me which company -- I have understanding which company was registered with Tarion. These two companies own the land, that's correct, because the bank needs –

75. Q. Sir, sir, we're going to try and do this simply. I've been asking for a while for copies of the application forms that you filled out. It's not anywhere in your motion materials. But I do have a letter of credit and it does tell me who the applicant is, and the beneficiary is Tarion.

So the conclusion, which I think is reasonable, is that these two numbered were registered with Tarion.

MR. SCHWARTZ: Why do you draw that conclusion?

BY MR. BISCEGLIA:

76. Q. I'm asking him. If you tell me that's wrong, we'll see when we get the application.

A. Not at this time, but later on they were registered. Not in 2009, but in 2010 when Tarion asked us to register all companies, we registered all companies.

77. Q. So at some point do I take it, sir, that Tarion noticed there was a problem and they said, We want all of your --

A. I don't think there was a problem. I think Tarion changed the procedures, because then we did a project in East Gwillimbury. They never asked us to registered the owner of that land. And we did a project in Scarborough. They never asked us. We were doing a project in Whitby. They never asked us.

But in 2010 they asked us to register all the owners of each property land. So they had a different number for the builder company and a different number for the land owner company. At that time we registered all the companies, which we did.

78. Q. So in 2010, for whatever reason, Tarion said, We want everybody registered, the builder companies and the owners?

A. Yes.

79. Q. Is that correct?

A. That's correct.

80. Q. And you knew that in 2010?

A. Yeah, and we registered that.

81. Q. And your lawyer who registered that was Jack Greenberg?

A. No. Jack didn't deal with Tarion. All we needed to do was send in application to Tarion, send in $500 to Tarion and they registered that company.

82. Q. Okay. And you didn't think you had to do anything else other than that?

A. Well, yeah, and then they gave us a number for all the owners who were registered. And not only do we register each of the owners, we also register each of the lots.

So whenever a lot is created for an M plan, every single lot is registered with Tarion and fee was paid on that. So not only the builder was registered, the owner was registered, but each individual lot was registered with Tarion.

83. Q. Sir, you knew as of 2010 the owners of the land had to be registered and the builders had to be registered. Is that fair, sir?

A. The builder and the owners, yes.

84. Q. I think you told me before, it's in your affidavit, when I look at each one of the agreements of purchase and sale, it shows Silver Streams (Puccini) Inc.?

A. That company was just used for administrative reasons, and the reason was that when people -- when you're selling those homes, there was some lots in one company, some lots in other company. So we used Silver Streams Homes

(Puccini) just for administrative and either marketing purposes. It was never the owner. When the sale was executed, when the transfer was done, it was always from numbered companies to the owners.

85. Q. Did you recognize any income in Silver Streams (Puccini) Inc.?

A. When do you mean income?

86. Q. Okay. All of these companies, these numbered companies, the applicants, they were filing --

A. They were just --

87. Q. Listen, listen, listen. We're going to try and do this. Each one of the companies was filing, was preparing financial statements?

A. I have to check with my accountant, but, as I recall, they were just holding companies. No transactions were being done in the numbered companies.

88. Q. Okay. All of the companies were filing tax returns?

A. I have to check again with my accountant.

89. Q. So I'd like you to produce from 2009 forward the financial statement and the tax

return of each one of the applicant companies.
R/F MR. SCHWARTZ: No. Sorry, not relevant.
MR. BISCEGLIA: I disagree, counsel, but I have your refusal.
BY MR. BISCEGLIA:
90. Q. We'll look in the documents in a minute. In 2010, Exhibit 2, there's another letter of credit. This is for $400,000. Is that correct, sir?
A. Yes. As you can see in this exhibit --
91. Q. Let me ask the questions. I don't need you to tell me what to see or not to see.
A. Okay.
92. Q. By 2010, you told me that Tarion had told you they wanted everybody registered, to use your words?
A. That's correct.
93. Q. And in 2010, you got a letter of credit of 400,000. That's in addition to the letter of credit of $270,000. Is that fair, sir?
A. That's correct.
94. Q. And now it has a total of four numbered companies as the applicants. Is that fair, sir?

A. Can I see? I can't see so far.
95. Q. Go ahead.
A. Okay. So, yeah, you see four numbered companies on the LC.
96. Q. Yes.
A. But if I have the Tarion document, you will see in the Tarion registration that we would have also registered companies outside this project, Whitby and Maple.
97. Q. And you believe it was done as of 2010?
A. Yes.
98. Q. So you think the security is for other companies, as well?
A. No, no. Those companies were providing their own security. Whitby, we were not building at that time, and the security for Maple was provided by Maple. But the companies had to be registered, because with Tarion, it is not just about building. It's about marketing. You can't even market the product without registration.
99. Q. So let me show you. Mr. Greenberg was helpful enough to give us a little map of the site. I've got an extra copy for you.

MR. SCHWARTZ: Thank you.

MR. BISCEGLIA: So if you go to page 15 of his record -- I'm going to mark them separate as exhibit. Otherwise, it will be too cumbersome.

MR. SCHWARTZ: Tab 1?

MR. BISCEGLIA: Yes, tab 1.

MR. SCHWARTZ: Thank you.

BY MR. BISCEGLIA:

100. Q. So if we just look through this list, which companies owned which parcels on Bathurst?

MR. SCHWARTZ: Yes. Imran, look at this. Sit down and...

BY MR. BISCEGLIA:

101. Q. Do you have that, sir?

A. Yes.

102. Q. We're just going to do --

MR. SCHWARTZ: Let him ask the question. Sorry, the document, for the record, that you're referring us to, it's a Greenberg document or it's a Greenberg motion record? I wasn't sure.

MR. BISCEGLIA: It's the book of evidence, whatever that's called.

MR. SCHWARTZ: And it's produced in what

proceeding?

MR. BISCEGLIA: I believe in the arbitration.

MR. SCHWARTZ: Okay. Thank you.

BY MR. BISCEGLIA:

103. Q. So, sir, let me just go through it. This first piece where it says number 1, this is 2148991 Ontario Inc. That's the parcel that went power of sale?

A. Yes.

104. Q. So we can forget about that one there?

A. Yes.

105. Q. And then it has four other companies that are listed there. Do you see that, sir?

A. That's correct.

106. Q. 2147650, do you see that company?

A. Yes.

107. Q. That is one of the applicants under Exhibit 2, correct?

MR. SCHWARTZ: Yes.

THE DEPONENT: Yes.

BY MR. BISCEGLIA:

108. Q. The next one, and this is just part 3 of the plan, but I'm going to go through them

just so we keep it organized, 2147681, that owns the next parcel. That's also one of the applicants; is that correct, sir?

A. Yes, that's correct.

109. Q. The next one, 2148893, that's one of the applicants?

A. That's correct.

110. Q. 2148990, that's also one of the applicants?

A. Yes, that's correct.

111. Q. So all of the lands that are listed here, that's where all the trades basically did their work, and this is where the -- those are the applicant companies for Exhibit 2. Is that fair, sir?

A. That is correct.

112. Q. I'm just going to mark this diagram as Exhibit No. 5.

EXHIBIT NO. 5: Map of the site.

BY MR. BISCEGLIA:

113. Q. Sir, you received a number of -- let me sort of finish this exercise, and then we'll go to the financial documents. If I look at Exhibit 3, this is another letter of credit, April 12, 2012. Do you see that, sir?

A. Yes.
114. Q. In addition to the four numbered companies that we just went through --
A. Five.
115. Q. Five, sorry. You've included that parcel which went power of sale, so we'll leave that one aside. But you've now got Silver Streams Homes Inc., Whitby Mews Developments and DNI Developments; is that correct?
A. That's correct.
116. Q. So Silver Streams Homes, what was that company?
A. Silver Streams Homes is the builder, the building company.
117. Q. Whitby Mews Development Inc.?
A. Whitby Mews is a project in Whitby.
118. Q. DNI Developments?
A. A project in Maple, in Vaughan.
119. Q. And the other one that's added -- bear with me -- the extra one, which is 2148891 Inc., which was the piece fronting on Bathurst which went power of sale?
A. Yes.
120. Q. So even though you told us a few moments ago that they have their own security,

when we look at this April 12th, 2012 --
A. The way the LCs --
121. Q. Just let me finish.
A. No, no, you're...
122. Q. You can say I'm wrong.
A. Okay.
123. Q. It now identifies registrant. Before we used to call them applicants, okay. So in Exhibit No. 1, Exhibit No. 2, they were called applicants. In Exhibit No. 3 they're -- sorry, there's now a listing for applicant and registrants. Do you see that? To be fair, the other one said it as well. I didn't take you to it but -- is that fair, sir?
A. Yes.
124. Q. So it now tells us who's registered with Tarion. Is that fair, sir?
A. Yes, that's correct.
125. Q. As of 2012 Silver Streams Homes (Puccini) was now registered?
A. Silver Streams Homes (Puccini) was not registered.
126. Q. And if we go back to Exhibit 2, the only registered it actually shows is Silver Streams Homes Inc.?

A. Yes.

127. Q. And same with Exhibit 1. The only registered is Silver Streams Homes Inc.?

A. That's correct.

128. Q. Sir, do you know, in order to get these letters of credit at the Bank of Montreal, there was cash collateral put up?

A. No. When they give the letter of intent or the commitment letter for financing, it's based on the value of the land. So what they do, they will go in first mortgage position, and they give money against the land. They give money for letters of credit, and they can give money for construction.

So they have different facilities, and their exposure is secured against the value of the land. That's all they assess.

129. Q. Okay. So I'll give you an example. If you look at -- there's a mortgage document. This is a document addressed to you, Bank of Montreal mortgage commitment dated April 12, 2011. Do you see that? This is your signature on the document?

A. My initials.

MR. SCHWARTZ: Sorry. Where are we

looking, for the record?

MR. BISCEGLIA: Page 19.

MR. SCHWARTZ: In the Greenberg stuff?

MR. BISCEGLIA: Yes.

MR. SCHWARTZ: Or ours, because we have --

MR. BISCEGLIA: No, no, Greenberg.

MR. SCHWARTZ: Sorry, what page were you at? I apologize.

MR. BISCEGLIA: Nineteen.

MR. SCHWARTZ: Thank you.

BY MR. BISCEGLIA:

130. Q. So this is your initial on this page?

A. That's correct.

131. Q. This is the bank facility you got from Bank of Montreal?

A. Yes, that's correct.

132. Q. If you turn to the, I guess, fourth page in under banking facility number 2, page 22, it says 670,000 issued to Tarion. Do you see that, sir?

A. Yes.

133. Q. I take it, sir, the 670,000, that's the number in Exhibit 1. Exhibit 2, that's the

total of these two letters of credit?

A. Yes.

134. Q. So this is the money?

A. Yes.

135. Q. And there was a cash advance of 670,000 sitting with BMO to support these letters of credit?

A. They provided letters of credit to Tarion.

136. Q. Right now is there $670,000 of cash collateral with Bank of Montreal?

A. Yes, that's correct.

137. Q. Which branch is the money sitting in?

A. I have no idea. I have to find out.

138. Q. So could you, by way of undertaking, let us know --

MR. SCHWARTZ: How are we going to find that out?

THE DEPONENT: We have to contact the BMO people.

BY MR. BISCEGLIA:

139. Q. So, actually, sir, I misspoke when I said that. In the beginning, it was a facility and the bank issued their letters of credit, took

mortgages over everything.

A. Yeah.

140. Q. Is that correct?

A. They're in first position.

141. Q. And then what happened is the lands over which this mortgage had security, houses were built, and then the mortgages were discharged as you went forward. Is that fair, sir?

A. That's fair. So they have a partial discharge clause of how much money for every lot they're going to discharge.

142. Q. Right. And what was happening is, as the houses were being sold, money was going to the bank, and the mortgage was being replaced with cash collateral in the bank. Is that fair, sir, because at the end there's no more mortgage? All the product sold.

A. Yeah. Let's go to the commitment letter. So if you go to this page, page number 3.

143. Q. So hang on a second. You're at which paragraph?

A. Page number 3.

144. Q. Yes.

A. So you'll see discharge privilege. They have -- for each lot they have a land value discharge privilege: 50-foot lot, 386,000; 45-foot lot, 278,000; and 40-foot lot 296,000.

145. Q. We're saying the same thing. What happens is actually -- hang on. If you just finish off, it says, keep going:

"After advance ... repaid further income and net closing proceeds from phase 1 and 2 lots be directed towards cash collateral, letters of credit issued under facility number 2."

Right? We're saying the same thing.

A. I'm trying to explain to you.

146. Q. Here's what happened. The houses would be sold. This is the amount you get to pay in terms of partial discharge, and what would happen is the Bank of Montreal would be paid everything under facility one, and then you'd have to come up with 670,000 cash collateral for facility two, which is these Tarion letters of credit. That's exactly what that says, correct?

A. Okay. You're almost right. Okay.

147. Q. I'm not almost right, sir. That's what happened. That's what this agreement says?

A. No. What happens is basically first they paid off the land portions and after -- because when they give the financing, for example this financing, for every lot they were giving us $200,000 against each lot.

But when they were discharging the lot, they were discharging at a higher value. So they don't wait for the last lot to be sold before they're paid off the land portion. They get paid out land portion before that, and then after when the land portion is paid out, then they start cash collateralizing, yes. So there's a slight difference.

148. Q. But the point is the proceeds from the sale of these homes ultimately gets converted to cash, and that's the security for these two letters of credit that we just looked at?

A. That's correct.

149. Q. I'm just going to mark this commitment letter as Exhibit No. 6.

EXHIBIT NO. 6: Commitment letter.

BY MR. BISCEGLIA:

150. Q. Sir, similarly, and I don't know if we need to go through the entire process, after those two letters of credit, Exhibits 1 and 2,

then we have Exhibit No. 3. You put another $250,000 for a letter of credit. Do you see that, sir, for Exhibit No. 3?

A. Yes, that's correct.

151. Q. And, sir, it's the same process, right? Ultimately, it's cash from the sale of the homes which make its way into the bank account that's cash collateral for these letters of credit, Exhibit 3. Is that fair, sir?

MR. SCHWARTZ: You can't -- you can't --

BY MR. BISCEGLIA:

152. Q. Just tell us.

A. So when we were doing the phase 3, by that time it went into CCAA after. So I don't -- you're right the way the methodology works, but we had only closed I think 18 homes -- yeah, 18 homes of the 25 that we were building, and there was seven homes in phase 3 and three homes for a total of ten homes which were developed, which were not closed, and then it went into CCAA.

153. Q. Right.

A. So what I don't recall is if Bank of Montreal was -- deposit was 700,000 when we went into CCAA, and then they were paid off.

154. Q. But the point of it is -- and I think you're more accurate than I was, so I thank you for that -- the CCAA proceeding starts. There's still another 17-odd homes that need to close.

Those homes -- the sale proceeds close, and what happens is the mortgages, the Bank of Montreal mortgages which were on that land converted to cash, and that's the cash collateral for Exhibit 1, 2, and 3. Is that fair, sir?

MR. SCHWARTZ: You're factually incorrect. You said there's 17 homes left to close. That's not correct.

THE DEPONENT: There were ten.

BY MR. BISCEGLIA:

155. Q. Ten, sorry. Ten homes. But the point of my question is the same. The mortgage on those ten homes turns into sale proceeds, and then that becomes the cash collateral for the letters of credit, fair?

A. No. If my memory is correct, Bank of Montreal cash collateralized all the LCs when they discharged phase 2. So by the time we were doing phase 3, the LCs were already cash collateralized.

156. Q. Okay. So even the third one, Exhibit No. 3, which was issued on April --

A. That I don't know, but the first two ones -- I have to check how the process happened. The bank used to give us statements. Have to find out from the bank.

157. Q. So do you have these statements that show --

A. I'll have to get it from the bank, actually, how they did it.

MR. SCHWARTZ: We know that at some point the Bank of Montreal was taking a larger amount on each discharge of a lot than they were earlier. So Mr. Jinnah's evidence is that by the time the bank had money left over, they had accelerated the repayment portion.

BY MR. BISCEGLIA:

158. Q. Why don't you do this, sir? Why don't you look through your records and show us how, if you can by way of documents, where the proceeds came from that ultimately turned into cash collateral for --

U/T MR. SCHWARTZ: I don't think we disagree. We'll give you that undertaking. I don't think we disagree with the process. I think the issue is the timing, right? I mean, we're not saying the mechanism isn't the same. It's just the timing of it.

THE DEPONENT: Yes.

MR. BISCEGLIA: That's agreeable. So I think that should be sufficient.

BY MR. BISCEGLIA:

159. Q. Then if you go in -- hang on. When you got the private mortgages, then, with Mr. Greenberg, you recall that he made you sign commitment letters every time you were borrowing money from him?

A. Yes, correct.

160. Q. Do you recall that? And I'm not going to take you through all of them, because it's just sort of the -- it'll take too long. But if you go to page 178, counsel, this is sort of a typical -- this is a commitment letter from Dapaul Management Limited?

MR. SCHWARTZ: So we're at tab 16 of the first Greenberg record. Thank you.

BY MR. BISCEGLIA:

161. Q. Sir, if you go to -- this is a loan facility. The borrowers are the three numbered companies. There's guarantors that include

Silver Streams Homes (Puccini) Inc., and if you go to page 4 of this commitment, one of the conditions of the advance is that:

"Evidence of the ten homes on the project have been registered with Tarion and the balance 25 more homes to be registered once funding from the Bank of Montreal is supplied of $250,000 LC to be placed with Tarion." [As read]

Do you see that, sir?

A. Yes.

162. Q. So every time that you got these mortgages, and there's a number of them, with Mr. Greenberg, other than one or two occasions which I'm going to take you to in a few moments, it was one of the conditions before you got any money that you had to produce evidence of that. Do you recall that, sir?

A. Yes, that's correct.

163. Q. Did you produce that evidence --

A. Yes.

164. Q. -- before the advances?

A. We were registered with Tarion.

165. Q. But every time you did this advance, you didn't realize that Silver Streams Homes

(Puccini) Inc. was not registered?

A. That was an oversight. Jack Greenberg was also involved with doing the closings, and the purchase and sale agreements was also made by him. So I guess the oversight was not only from us, but it was an oversight by his part, also.

166. Q. Who's "he"? Oversight by who?

A. By Jack also, because he had made the purchase --

167. Q. Jack is Jack Greenberg?

A. Jack Greenberg, yes.

168. Q. So you're saying your lawyer then -- let's see what hats -- he had drafted the agreements of purchase and sale which say Silver Streams Homes (Puccini) Inc.?

A. Yes.

169. Q. He was your lawyer, as well --

A. Yes.

170. Q. -- in closing the transactions. He was the lawyer for Dapaul Management Limited?

A. Yes.

171. Q. And he was your lawyer, as well?

A. But I was getting independent legal advice at the time of these loans.

172. Q. So he was sending you out to get a certificate signed?

A. I had independent legal advice each time I took a loan from him.

173. Q. Were the advisers dealing with these conditions or was it just Jack Greenberg who was dealing with the conditions?

MR. SCHWARTZ: I don't understand the question. What do you mean dealing with the conditions?

BY MR. BISCEGLIA:

174. Q. Well, was the person -- do you know who was giving you ILA, sir?

A. Yes, it was Mike. I don't -- I can't pronounce his last name, but Mike was his first name.

175. Q. What law firm?

MR. SCHWARTZ: The name of the law firm that he's with.

THE DEPONENT: I think he's an independent lawyer.

BY MR. BISCEGLIA:

176. Q. Can you give us his name by undertaking?

U/T A. Yes, I can find it.

177. Q. So was Mike giving evidence that the homes were registered with the Tarion or the builder was registered with Tarion, or was Jack Greenberg doing that?

A. No. It was -- the homes were registered with Tarion. That was our thing. We just found out last year that there was an issue with the Puccini. We thought that everything was registered.

178. Q. I realize that. But who was checking to make sure all the registrations were in place, because it appears to be one of the conditions of these mortgage advances?

A. Like I said, when we register each house, we were giving documents to Jack and he was aware that each house was registered with Tarion.

179. Q. That's not my question. Who was checking to make sure everyone -- by everyone, I'm including Silver Streams Homes (Puccini) Inc. -- was registered with Tarion? Was it Jack Greenberg or was it Mike? Was it somebody else?

A. Well, Jack was a lender on the site, so I guess myself and Mike, I guess.

180. Q. Yes. So both of you guys were

checking it and Jack Greenberg was checking?
A. Because it never occurred to us it was not registered.
181. Q. So what I'd like you to do, and I'm going to mark this as the next exhibit --
A. When --
182. Q. One second. Exhibit 7.
EXHIBIT NO. 7: Commitment letter from Dapaul Management Limited.
BY MR. BISCEGLIA:
183. Q. So I'm not going to go through each one of them --
A. I want to add something. So when the first mortgage was given December 10, 2008, at that time this was just at development time. We had not started building, and Silver Streams Homes was registered with Tarion.
So we gave proof to Jack that Silver Streams Homes was registered with Tarion, and then later on we had said that by 2010 all the companies were registered, and so we gave proof that all the companies were registered.
What was missed in the translation was Silver Streams (Puccini) Inc.
184. Q. So what I'd like you to do is give

me copies of the proof that you say was being provided to Jack Greenberg that all the registrations were complete. You'll do that by way of undertaking?

MR. SCHWARTZ: No, because I don't even understand the question.

MR. BISCEGLIA: There's evidence on each advance.

MR. SCHWARTZ: Yes.

BY MR. BISCEGLIA:

185. Q. There's a condition that there's evidence that they're registered with Tarion. So I want to know what evidence he was giving to them.

A. All he needed was this document from --

186. Q. Sir, if the answer is, We just gave him a copy of the LC, that's fine. I don't really care. But I want to know what you gave to satisfy that condition.

MR. SCHWARTZ: Why? Why is that relevant for this motion? I'm sorry, I don't --

MR. BISCEGLIA: I'll discuss it with you after.

MR. SCHWARTZ: Okay. Well, unless you

can persuade me that it's relevant for this motion, I don't see it.

BY MR. BISCEGLIA:

187. Q. At some point, sir, did you or did Jack Greenberg realize that you had forgotten to register Silver Streams Homes (Puccini) Inc.?

A. No.

188. Q. So do you remember --

MR. SCHWARTZ: Sorry, I don't know what he can say about -- he's not here to speak for Jack Greenberg. You're going to examine him. As I understand, you served a notice, so he's not going to answer anything for Jack Greenberg. He doesn't know what's in Jack Greenberg's mind.

BY MR. BISCEGLIA:

189. Q. Let me put it to you this way, sir. I'm going to show you one specific one where the registration gets crossed out. So let's take a look at one. I'll call it the last ones. This is second volume, counsel, page 517?

MR. SCHWARTZ: Did you give us the second volume? I'm sorry.

MR. BISCEGLIA: It's the loose one. I didn't get time to bind it.

MR. SCHWARTZ: Tab?

MR. BISCEGLIA: Fifty-one.
MR. SCHWARTZ: Thank you. I'm going to take the elastic off.
MR. BISCEGLIA: Sure, go ahead.
BY MR. BISCEGLIA:
190. Q. So this is a mortgage commitment January 31st, 2012. Do you see that, sir?
A. Yes.
191. Q. Signed by you? Do you want to look at it? You initialled it, you signed it?
MR. SCHWARTZ: Let's just make sure.
THE DEPONENT: Yes.
MR. BISCEGLIA: So I'll mark this as Exhibit 8.
EXHIBIT NO. 8: Mortgage commitment dated January 31, 2012.
BY MR. BISCEGLIA:
192. Q. If you go to page 4 of this commitment, it looks like you've crossed off -- it says here:
"Evidence of plan of subdivision for construction of 25 homes in phase 3 has been finalized and approved by the Town of Richmond Hill in the Region of York."
And somebody's crossed out where it says:

"... and each home has been registered with Tarion and applicable security has been placed with Tarion."

Do you see that, sir? You crossed that off?

A. Yes, it looks like it. My initial is there.

193. Q. Are you the person that put the check marks there?

A. What do you mean?

194. Q. Somebody crossed it off and put little check marks. Do you see that, sir?

MR. SCHWARTZ: He's pointing --

THE DEPONENT: The check is not mine. That's probably done by Jack.

BY MR. BISCEGLIA:

195. Q. In any event, somebody crossed off that these homes had been registered with Tarion. Do you see that, sir?

A. Yes.

196. Q. And when we look at sort of who the borrowers are, it's the same four numbered companies. The guarantors, it includes Silver Streams Homes (Puccini) Inc. Do agree with that, sir?

A. Yes.

197. Q. Did you realize at the point of this loan facility --

MR. SCHWARTZ: Sorry, you said the borrowers include Silver Streams Homes (Puccini) Inc.

MR. BISCEGLIA: No, no, the guarantors.

MR. SCHWARTZ: Okay. Sorry.

MR. BISCEGLIA: The borrowers are the four numbered companies. The guarantors include Silver Streams Homes (Puccini) Inc.

THE DEPONENT: Mm-hm.

MR. SCHWARTZ: Yes.

BY MR. BISCEGLIA:

198. Q. Sir, at that point in time, did you realize that Silver Streams Homes (Puccini) Inc. had not been registered and that's why you crossed out --

A. It wasn't because of that.

199. Q. Why did you cross it off?

A. It was possible -- I have to check but it's probably -- we were doing the project in phases. So with Tarion, if you tell Tarion you're going to build 100 homes, they're going to want security for 100 homes. But we were not building hundred homes in one go. We were doing projects in stages, and as we were executing the phases, we were registering additional lots with Tarion.

So it looks to be like -- I have to check this, but it looks to me like when we got this loan facility January 31st, 2012, we had not started the last phase, and because we had not started the last phase, we did not need to register the last phase with Tarion.

So that's why we probably crossed it off.

200. Q. What are you going to check to confirm that?

A. I have to look at the marketing schedule, you know, when was the first house sold over there. All those things have to be checked. We registered this project in four phases, phase 1, phase 2, phase 3 and the town homes, which we call phase 4.

So we registered different -- we added on lots at different stages.

201. Q. So you're going to check and let me know -- review your records as to why that change was made?

U/T A. Yes.

202. Q. You'll let me know by way of

undertaking?

A. Yeah, I'll get back to you.

203. Q. Sir, are you still registered with Tarion?

A. No. We did not apply for re -- our registration expired in 2014, I think, and we did not apply for renewal, because you have to do it every year. So technically I have a number with Tarion, but I don't know how they look at it, because we're not current with them.

204. Q. Okay. So you're not current because you didn't pay the $500 renewal fee?

A. Well, we had a meeting with Tarion, and because of all these issues, they would not -- even if we had made the application, the input that we got was they would not approve our application.

205. Q. Did they send you correspondence?

A. Saying that they will not approve it?

206. Q. Yes.

A. No. It was a meeting attended by Jack and myself, and this was the thing we got that, you know, even if we apply for approval, how can they approve it?

207. Q. So my understanding is you're still in the building business. Is that fair, sir?
A. No, I'm not in the building business.
208. Q. So you're not building houses anywhere at this point?
A. No.
209. Q. And when did you attend this meeting with Jack Greenberg?
A. It was summer of 2014. It was before we went into CCAA, so it was '13. I don't recall. I'm very -- I have to check.
210. Q. So you'll check and --
A. I'm bad with dates.
211. Q. So you'll check and let us know when this meeting was?
U/T A. Yes.
212. Q. Has any demand been made by Tarion to have payment on your guarantee of the 127,000 that they paid out on your behalf, 127,500?
A. They haven't made any demand. We have money sitting with them.
213. Q. So their point is they want to get their 127,000 out of these letters of credit?
A. And the cash component.

214. Q. Plus the cash component that's sitting there. Have they started any -- I know that they've charged you under the Provincial Offences Act for failing to be a registrant. Have they started any proceedings against you to collect the 127,500?

MR. SCHWARTZ: No.

THE DEPONENT: No.

MR. BISCEGLIA: So there hasn't been a claim. There's been no demand under the indemnity, nothing of that nature?

MR. SCHWARTZ: No.

MR. BISCEGLIA: Were there other negotiations with Tarion where you would just plead guilty to not being registered, and that's it, to resolve the POE matters?

MR. SCHWARTZ: No.

MR. BISCEGLIA: I'd like you to undertake to produce all the correspondence back and forth that led up to the settlement agreement --

R/F MR. SCHWARTZ: No.

MR. BISCEGLIA: -- marked as an exhibit in your affidavit.

MR. SCHWARTZ: No.

MR. BISCEGLIA: Can we just take a

ten-minute break?

MR. SCHWARTZ: The reason is because that was privileged, and they're part of settlement discussions and not going to be produced.

BY MR. BISCEGLIA:

215. Q. I should ask you one further question. When I look through the minutes of settlement, and I sort of read through in terms of what would happen in terms of an appeal or things of that nature, is there a provision or is there any agreement or anything else in writing as to what would happen if the commercial list motion that you're bringing to approve the settlement agreement was not approved?

MR. SCHWARTZ: I'd have to check. I don't remember.

MR. BISCEGLIA: Because I've looked at the minutes of settlement, and maybe I missed it, but I didn't see -- I see a number of eventualities, but I didn't see an eventuality which is -- I see if it's appealed, but I didn't see any eventuality if it's not approved. So do you have an agreement?

MR. SCHWARTZ: No, we do not have an agreement.

MR. BISCEGLIA: So if it's not approved, are you still planning to go through and --

MR. SCHWARTZ: If it's not approved, we would intend to fight those charges.

MR. BISCEGLIA: So if it's not approved, then your position would be that you're not guilty of the charges and you would go ahead and deal with it in Provincial Offences Court?

MR. SCHWARTZ: Correct.

MR. BISCEGLIA: And assuming it's not approved, would your client then pay or repay the 127,500 to Tarion?

MR. SCHWARTZ: Sorry, say that again? If it's not approved --

MR. BISCEGLIA: So let's say the assignment agreement is not approved. There's no assignment agreement that's contemplated under the minutes of settlement. Is your client planning to pay or reimburse or one of his companies reimburse Tarion for the 127,500 that they paid out?

MR. SCHWARTZ: We haven't considered what we will do in those circumstances.

MR. BISCEGLIA: Thank you. Can we just take a ten-minute break?

--- Afternoon break at 2:08 p.m.
--- Upon resuming at 2:22 p.m.
BY MR. BISCEGLIA:
216. Q. Sir, if I go to your reply affidavit for a moment, do you have it there before you? I have a couple of questions. If you go to page 83, this is the agreement of purchase and sale. This is typical?
MR. SCHWARTZ: Just slow down one second.
BY MR. BISCEGLIA:
217. Q. Do you have it there, sir?
A. Yes.
218. Q. And we have one of them, but each one of the agreements of purchase and sale is identified as Silver Streams Homes (Puccini) Inc.?
A. Yes, it says Silver Streams Homes (Puccini).
219. Q. Right. And on of each them -- we don't have to go through all of them -- they're all the same in terms of who's identified there as the builder for the property?
MR. SCHWARTZ: Well, it doesn't say who the builder is.
MR. BISCEGLIA: It says vendor.

MR. SCHWARTZ: It says vendor.

THE DEPONENT: But I would like to point out that the number that we write down is 34331, which is Silver Streams Homes, the original number that we had, and that's why we always -- when we got registered with Tarion, this was the number we got registered under, 34331.

BY MR. BISCEGLIA:

220. Q. So --

A. So the number, the builder number, is not Silver Streams Homes (Puccini) Inc. It's Silver Streams Homes.

221. Q. So you were writing the wrong number down on the forms?

A. No, actually, it was always this number on all the purchase agreements, even from 2008.

222. Q. Sir, this is not preprinted. Somebody's writing it down.

A. Yeah, but we were doing it before. We were always under the impression that Silver Streams is the builder, and that's why it's -- 34331 was used for all the purchase agreements.

223. Q. When people buy a house, sir, did they have to pay HST in terms of the new home

sales.

A. Yeah, there is an HST -- I don't know. There is an HST component.

224. Q. So the purchase price would be plus HST, unless you filed certain documents. Is that fair, sir?

A. Our purchase price included the HST.

225. Q. Was Silver Streams Homes (Puccini) Inc. registered for HST?

A. I have to check with my accountant --

226. Q. Could you check --

A. -- how they did the --

MR. SCHWARTZ: What do you want him to check?

MR. BISCEGLIA: I want to know whether or not Silver Streams Homes (Puccini) Inc. was registered for HST. That's number one; and, number two, whether or not they actually accounted for HST for the sale of all the homes in the various phases.

U/T MR. SCHWARTZ: I know the answer to that. They wouldn't have done that, because they're not -- just because it's the vendor for the purposes that he said, but we'll give you -- I'll give you the undertaking if Silver Streams Homes (Puccini) was registered for HST, right?

MR. BISCEGLIA: Right.

BY MR. BISCEGLIA:

227. Q. For each one of the homes, there would be, I'll call it, a package of documents, a sale package of documents which would be signed by you on behalf of the various companies. Do you recall that, sir? Every time a home was sold you'd sign --

A. You mean on closing?

228. Q. Yes, on closing you'd sign a transfer, you'd sign some statutory declarations, stuff like that?

A. Yes.

229. Q. Sir, what I'd like you to do, sir, for each one of the phases, could you give me a sample of the closing package of documents that you signed?

A. So you want one for each phase?

230. Q. That's right.

MR. SCHWARTZ: Hold on. You want to know -- for some clarity, you want to know what documents -- I want to make sure that I'm understanding what you're asking me for.

MR. BISCEGLIA: Sure. I'll give you an example. If I was closing and buying a house, if I bought a house and the house was actually transferred to me, there would be a closing package. This gentleman would receive a reporting letter and it would show the transfers signed by him, it would show us statutory declarations signed by him, undertaking to readjust. There'd be a series of closing documents.

So I'd like a sample of the closing documents for each --

MR. SCHWARTZ: The reason I'm confused is because there could be documents that would be given to a purchaser independent of what -- you want the legal documents --

MR. BISCEGLIA: No, no. I want to know what's being exchanged on closing.

MR. SCHWARTZ: Right. My position still stands. So you want what, let's say, Jack Greenberg would provide him on each sale?

MR. BISCEGLIA: Yes. But I just want a sample on each phase.

THE DEPONENT: Yes, we have that, because at every stage he used to provide us a covering letter, all the accounts, how the funds were distributed, what happened.

MR. BISCEGLIA: Okay. You'll do that, then?

MR. SCHWARTZ: You don't want the reporting letter. That's what I'm trying to understand.

MR. BISCEGLIA: I don't need the reporting letter. I need the documents that were attached to the reporting letter.

BY MR. BISCEGLIA:

231. Q. Sir, when I look at the contracts with the various trades, my client, Mr. Klein's clients, everybody's clients, those contracts were with Silver Streams Homes (Puccini) Inc.?

A. Yes.

232. Q. You said before that Silver Streams Homes (Puccini) was a marketing company?

A. No. It was an administrative company.

233. Q. What does that mean?

A. Basically, because there were five numbered companies had different lots, were under the different companies, so from the -- it's difficult to do the accounts, it's difficult for the marketing people to look at, you know, how to sell. So they can't be selling 2148990. So we had to put the name Silver Streams Homes (Puccini).

Puccini was the name of the street. Silver Streams Homes was the builder. So we said, okay, Silver Streams Homes (Puccini) Inc.

234. Q. And that's why I asked you before what transactions you were running through that company. That's why I asked you for the financial statements.

If I looked at the financial statements, would that show me what type of transactions you were running through Silver Streams Homes (Puccini) Inc.?

A. Yeah, I guess. But do we have to provide this --

MR. SCHWARTZ: We're not providing that. You've asked and answered.

MR. BISCEGLIA: Then what I'd like to do, if you don't want to provide the financial statements, give me copies of the bank statements for Silver Streams Homes (Puccini) Inc. for the last three years.

R/F MR. SCHWARTZ: No, not relevant, not on this motion. This smacks of collateral purpose all over it.

MR. BISCEGLIA: He brought it up. He says it's administrative, which I still don't understand.

MR. SCHWARTZ: Okay, good. The answer is no.

BY MR. BISCEGLIA:

235. Q. You've included, sir, in Exhibit 1 to your affidavit, that the borrower was Symphony Series Co-Tenancy Corp. Is that correct, sir?

A. The marketing name for this project, all our -- I think it was Symphony Series. This was Silver Streams Homes Symphony Series.

So this project had -- you know, so every project has a name. We called this Symphony Series. We had signs, we had brochures, everything was Symphony Series.

So initially when –- I had an agent. Vestcon (ph) Financial was the broker dealing with Bank of Montreal. So they used that name, and then we corrected that when the financing came in.

236. Q. Is that the beneficial owner of all four phases, Symphony Series Co-Tenancy Corp.?

A. No, no. Owner are the numbered companies.

237. Q. I know that you say that the registered owner is the numbered company, but if I look at the financial statements and the tax returns, am I going to see the land in the numbered company or am I going to see it in Symphony Homes Co-Tenancy Corp.?

A. The land was owned in the numbered companies.

238. Q. What was in these Symphony Series Co-Tenancy --

A. It was just the marketing name.

239. Q. So you're saying there was nothing ever owned by them?

A. No.

240. Q. And if I wanted to check that, because you've given me the term sheet here as Exhibit 1, and now you're telling me that was a marketing name. It wasn't really the owner. Again, would I look at the financial statements to see whether that's accurate or not?

MR. SCHWARTZ: I don't even understand the question. I'm sorry.

BY MR. BISCEGLIA:

241. Q. What you told me is --
MR. SCHWARTZ: You're not getting the financial statements. You can ask it until 6:00. You're not getting the financial statements. It's not relevant to the issues on this motion.
MR. BISCEGLIA: I disagree, counsel.
MR. SCHWARTZ: I understand your point.
BY MR. BISCEGLIA:
242. Q. You've got a settlement agreement. Let's just pull that out for a moment.
MR. SCHWARTZ: Sure.
MR. BISCEGLIA: It's your original motion record. A couple of questions in relation to that.
BY MR. BISCEGLIA:
243. Q. So if you go to the assignment and assumption agreement, which is page 128, we can go to that.
A. Which one?
244. Q. One-two-eight.
A. One-twenty-eight.
245. Q. Yes. So a couple of questions. Do I understand this, that what you want to do is you want to assign all the agreements of purchase and sale from Silver Streams Homes (Puccini) Inc.

to Silver Streams Homes Inc.? That's what you're trying to do if this gets approved?

Do you know why you're doing it? Counsel, this is sort of at the heart of our objection.

MR. SCHWARTZ: Well, no, but --

MR. BISCEGLIA: If he wants to plead guilty, we don't care.

MR. SCHWARTZ: No, but you're asking him for his interpretation of a legal agreement.

MR. BISCEGLIA: No, I don't want the interpretation. I'm asking him his understanding of it.

BY MR. BISCEGLIA:

246. Q. Do you have any idea why this assignment agreement is important, sir?

A. I'm not a lawyer.

247. Q. And you've no idea why --

A. Well, there's a difference between no idea and being a lawyer. There's something in between.

248. Q. Let's do the in between one. Let's talk about what we do know, because it's going to make this easier. You're trying to assign all these deals to Silver Streams Homes Inc., right?

That's the builder company, you said. Is that fair?

A. I have to read this.

249. Q. So you're not even sure who you're trying to assign it to. Let me do it this way, sir. Do you know who came up with this idea of this assignment agreement?

MR. SCHWARTZ: Who came up with the idea?

MR. BISCEGLIA: He doesn't even know who he's assigning it to, counsel. Come on. Don't interrupt. This is pretty central to this.

BY MR. BISCEGLIA:

250. Q. Sir, let me ask you a different question, because obviously you're not familiar with the document. Let me ask you this. Silver Streams Homes Inc., that's insolvent right now, right? That company is one of the applicants in this proceeding, Silver Streams Homes Inc.?

A. Yes.

251. Q. Insolvent, it's got no more money, it's broke. Is that fair, sir?

A. Well, yes.

252. Q. It's not operating?

A. No.

253. Q. Is that right? So if this agreement

gets approved by the courts and there is a leak in one of the houses or a structural defect or whatever it is that's covered by Tarion, is Silver Streams Homes Inc. going to go and fix the problem?

A. No. Tarion is going to go and fix the problem.

254. Q. Okay. So there's no future work that's contemplated by Silver Streams Homes?

A. No.

255. Q. Silver Streams Homes Inc., is it going to get something for this assignment, or Silver Streams Homes (Puccini) Inc., are they going to get some money by doing this assignment agreement?

A. No. They're not going to get anything. The money was posted to Tarion and Tarion has to -- it's liable to pay whatever the charges are. So it's our position that we always gave the LC on behalf of this project to Tarion.

256. Q. So the real purpose is this, that if you don't do this agreement, you'd have to pay the $127,000 personally. This gets you out of paying for it personally. Is that what we're talking about, sir?

A. No. The money was already given to Tarion.

257. Q. I realize that. But if this agreement is not approved, then you're stuck having to pay for it personally. Is that fair, sir?

A. Well, that has to be decided, because it's our position that we already gave the deposits to Tarion and we already registered the companies, the owners of the companies. We registered each individual lot.

So it's our position that everything -- we did not do anything wrong, except for that oversight of that one name. So we will not -- it's not that we did something wrong and there's going to be -- and there's going to be like a slam dunk and we have to pay. I don't think it's that.

258. Q. Okay. So you're going to fight it. If Tarion --

A. It's our position that we did everything right. We've been working with Tarion for the last twelve years. We handed over to Tarion multiple projects, give backup service even during CCAA. We had very good terms with

Tarion. We tried to do everything right, and it was never our intention to go -- you know, to be in this position.

259. Q. Sir, why didn't Tarion just draw on the letters of credit if what you're saying is correct?

MR. SCHWARTZ: He can't answer that.

BY MR. BISCEGLIA:

260. Q. Do you know? Did you tell Tarion, Hey, listen, we've registered the lots. You should just draw on these letters of credits that we have with you and cash --

A. I don't know. You have to ask Tarion.

261. Q. But you went to the meeting. I didn't go to the meeting.

A. I mean, if they had drawn on the letter of credit, maybe we would not be sitting here now.

262. Q. Or the cash, they got cash, as well, right?

A. Yeah, yes.

263. Q. Why didn't they take the money out of the cash?

A. I don't know. You have to ask

Tarion.

264. Q. Did they tell you?

A. No. I don't talk to them. We only talk to them about if there's -- you know, there's an inspection. They sent the thing if there's an inspection.

265. Q. So you don't know why Tarion hasn't taken the money out of the account?

A. No. You have to ask Tarion.

266. Q. Did you give notice to Jack Greenberg and say, Listen, we made a mistake. It shouldn't have been as the vendor for all these companies. It shouldn't have been Silver Streams Homes (Puccini) Inc. It should have been Silver Streams Homes.

Did you tell him if there's any repercussions, he's responsible for it?

A. No. I found out when I got -- you know that -- the notice from Tarion that there's a problem. I was not even aware. I found out in September, I think it was, last year.

267. Q. And they charged you. But when they charged you, did you tell Mr. Greenberg --

A. I sent him a copy of that charge.

268. Q. Did you –

A. And I sent a copy of the charge to Stephen, and then from there on, Stephen started dealing with Tarion and, you know, kept me...

269. Q. That's not my question. My question is --

MR. SCHWARTZ: We didn't put Greenberg on notice.

BY MR. BISCEGLIA:

270. Q. Do you know -- you've outlined, I think -- do you know Mr. Greenberg and his companies, of the four or five private mortgages, what the balance is owed? I know that they've done the power of sale for the front piece. Do you know what the current balance is?

R/F MR. SCHWARTZ: Not relevant. Don't answer. It's not relevant.

MR. BISCEGLIA: In his affidavit -- I think it is relevant. He's saying in his affidavit he makes a statement about what the balance of the debt is. He says, paragraph 13, counsel, just --

MR. SCHWARTZ: Sorry, I don't have that. Is that in the arbitration proceedings?

MR. BISCEGLIA: No, no, this is your motion record.

MR. SCHWARTZ: Paragraph 13.

MR. BISCEGLIA: In your motion record, he says --

MR. SCHWARTZ: Paragraph 13 of?

MR. BISCEGLIA: This gentleman's affidavit.

MR. SCHWARTZ: Oh, I'm sorry. You said of his affidavit.

MR. BISCEGLIA: No, no.

MR. SCHWARTZ: I thought you meant Greenberg's affidavit. That's why I got confused. I apologize.

MR. BISCEGLIA: Now you'll reconsider and answer, I'm sure.

MR. SCHWARTZ: Paragraph 13 of Imran's affidavit, yes.

MR. BISCEGLIA: So at paragraph 13, he says:

"As of the filing date, the debt was in excess of $12 million."

MR. SCHWARTZ: Right.

MR. BISCEGLIA: We know now from -- I'm not sure if it's in the materials or not -- there's been significant pay down. I'd like to know what the secured debt is now. If you don't know, you can let me know by way of undertaking.

MR. SCHWARTZ: You can ask Greenberg that.

BY MR. BISCEGLIA:

271. Q. I've seen you're a guarantor on every single one of these.

MR. SCHWARTZ: Right. But you can ask Greenberg for the calculation.

MR. BISCEGLIA: I'm not going to ask him. This gentleman swore an affidavit. I can ask Mr. Greenberg, but I've got this witness here.

THE DEPONENT: I can find out.

MR. SCHWARTZ: No, no, because I don't even know if I agree with the numbers. I don't know.

MR. BISCEGLIA: What I'd like is this witness -- and he can put it in without prejudice to Greenberg, or whatever he wants to do with it. I'd like to know what the amount -- in your e-mails, I think you've claimed windfall or something along those lines. I'd like to know what the secured debt, according to this witness, is as of now?

R/F MR. SCHWARTZ: Thank you. I have your question. You have my answer.

BY MR. BISCEGLIA:

272. Q. I asked you whether or not you were still building houses and the answer was given no, but I didn't ask the question properly. Are you or any family members still in the house building business?

A. No.

273. Q. So you and your family, in particular your wife, no longer have any properties where Mr. Greenberg or his companies are lenders and family member of yours own the properties. That would be incorrect?

R/F MR. SCHWARTZ: That's not relevant today. You asked if he's a builder with Tarion. The answer is no. If they're doing anything else, not relevant.

MR. BISCEGLIA: I didn't ask if he was a builder with Tarion, because he told me he's no longer registered.

MR. SCHWARTZ: If he's doing anything else, nothing to do with this motion.

MR. BISCEGLIA: I have your refusal.

MR. SCHWARTZ: Thank you.

MR. BISCEGLIA: We'll just take two

minutes. I just want to review my notes.

--- Off the record at 2:40 p.m.

--- Upon resuming at 2:42 p.m.

BY MR. BISCEGLIA:

274. Q. Sir, just one follow-up question. I take it, sir, what you told me is if the settlement agreement is not approved, it's not your intention to plead guilty. You're going to fight those charges, because you don't believe that you're guilty of it. Is that fair, sir?

A. Yeah, we did everything right. I was surprised when I found out.

275. Q. Subject to the undertakings and refusals, those are my questions.

MR. SCHWARTZ: Thank you.

MR. KLEIN: I have no questions for now.

--- Whereupon the proceedings adjourned at 2:42 p.m.

I HEREBY CERTIFY THE FOREGOING
to be a true and accurate
transcription of my shorthand notes
to the best of my skill and ability.

LINDA O'BRIEN
Computer-Aided Transcription