

**ONTARIO
SUPERIOR COURT OF JUSTICE
- COMMERCIAL LIST**

B E T W E E N :

CLEARFLOW COMMERCIAL FINANCE CORP.

Applicant

-and-

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

Respondents

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

**MOTION RECORD OF THE RESPONDENTS
TRIGGER WHOLESale, INC., THE EN CADRE GROUP INC.,
MARK GDAK, AND JAIMAK REAL PROPERTIES INC.
(Returnable October 22, 2020)**

October 22, 2020

LERNERS LLP
130 Adelaide Street West
Suite 2400
Toronto, ON M5H 3P5

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jsquire@lerners.ca
Tel: 416.601.2369
Fax: 416.867.2404

Lawyers for the Respondents
Trigger Wholesale Inc., The En Cadre Group
Inc., Jaimak Real Properties Inc., and
Mark Gdak

TO: **TORKIN MANES LLP**
151 Yonge Street
Suite 1500
Toronto ON M5C 2W7

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Lawyers for the Applicant
ClearFlow Commercial Finance Corp.

AND TO: SERVICE LIST

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

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**NOTICE OF MOTION
(Returnable October 22, 2020)**

The Respondents Trigger Wholesale, Inc., the En Cadre Group Inc., Mark Gdak and Jaimak Real Properties Inc. will make a motion to a judge of the Commercial List, on Thursday, October 22, 2020, at noon or as soon after that time as the motion can be heard, at 393 University Avenue.

PROPOSED METHOD OF HEARING: The motion is to be heard orally.

THE MOTION IS FOR:

- (a) An Order directing that \$30,000 from the within Receivership Proceedings be transferred to Lerner's LLP to fund the legal fees in respect of Trigger Wholesale Inc., The En Cadre Group Inc., Jaimak Real Properties Inc., and/or Mark Gdak;
- (b) An Order directing that \$30,000 from the within Receivership Proceedings be transferred to Albert Gelman to fund fees in respect of accounting and

advisory services for of Trigger Wholesale Inc., The En Cadre Group Inc., Jaimak Real Properties Inc., and/or Mark Gdak;

- (c) An order that \$6,000 from the within Receivership Proceedings be provided to Mark Gdak and Jaimee Gdak on a monthly basis for personal use, until further Order of this court.
- (d) Such further and other relief as this court deems just.

THE GROUNDS FOR THE MOTION ARE:

- (a) Lerner's LLP is in the process of being retained by the corporate respondents and Mark Gdak. It is necessary that those parties fund Lerner's' retainer. \$15,000 has been transferred so far and is on retainer; a further \$30,000 for the time being is reasonable and commensurate with the nature of the allegations being made and the work currently anticipated in the near term.
- (b) It is also necessary to retain on behalf of those same parties a forensic accounting firm with expertise in insolvency matters. Such is appropriate given the allegations at issue.
- (c) The Initial Receivership Order, and Justice Gilmore's Endorsement of October 13, 2010, each contemplate funds being made available to Mark Gdak and Jaimee Gdak for personal use/household expenses, including for their family home and their children. The monthly amount sought is reasonable and can be adjusted by future court order. Take note that Jaimee Gdak is in the process of retaining her own lawyer, and may later take a position on such personal expenses that may require further court order.
- (d) Such further and other grounds as counsel may advise.

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

- (a) The Affidavit of Jolene McKenna sworn October 22, 2020.

October 21, 2020

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ClearFlow Commercial Finance Corp.

CLEARFLOW COMMERCIAL FINANCE CORP. TRIGGER WHOLESale, INC., et al
Applicant and Defendant

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

**ONTARIO
SUPERIOR COURT OF JUSTICE
- COMMERCIAL LIST**

Proceeding commenced at Toronto.

**NOTICE OF MOTION
(Returnable October 22, 2020)**

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130 Adelaide Street West
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Trigger Wholesale Inc., The En Cadre
Group Inc., Jaimak Real Properties Inc.,
and Mark Gdak

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

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CLEARFLOW COMMERCIAL FINANCE CORP.

Applicant

-and-

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MARK GDAK, JAIMEE LYNN GDAK and JAIMAK REAL PROPERTIES INC.

Respondents

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

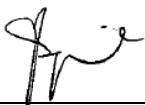
**AFFIDAVIT OF JOLENE MCKENNA
(Sworn October 22, 2020)**

I, Jolene McKenna, of the City of Mississauga, Regional Municipality of Peel,
MAKE OATH AND SAY:

1. I am the legal assistant for Jason Squire, counsel for the corporate respondents and Mark Gdak in this matter and, as such, I have knowledge of the matters to which I herein depose.
2. \$15,000 was transferred to Lerner's LLP on account of a retainer for our clients in this proceeding on approximately October 16, 2020.
3. Attached and marked as Exhibit "A" to this my affidavit is a copy of Mr. Gdak's email of October 21, 2020 setting out his budget for personal/household expenses.
4. Attached and marked as Exhibit "B" to this my affidavit is a copy of a letter from Albert Gelman indicating their willingness to be engaged and their retainer requirements.

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SWORN BEFORE ME *by video conference* from
the City of Mississauga, (location of deponent), to
the City of Toronto (location of commissioner), this
22nd day of October, 2020.



A Commissioner for taking Affidavits (*or as may be*)



Jolene McKenna

Jolene McKenna

From: Mark Gdak <mwgdak@gmail.com>
Sent: October 21, 2020 3:40 PM
To: Jason Squire; Domenico Magisano
Subject: [**EXT**]-Gdak Budget

EXHIBIT "A" TO THE
AFFIDAVIT OF JOLENE MCKENNA
SWORN OCTOBER 22, 2020



Commissioner for taking affidavits

Hello Jason and Domenico,

Here is our budget requirements:

Mortgage: \$3600.00 (drops to \$2600 on December 01, 2020)

Groceries: \$700.00

Utilities: \$700.00

Phone/Internet: \$500.00

Fuel: \$150.00

Pet Food: \$100.00

Medication: TBD (our daughter found out today that she is having seizures)

ALBERT  GELMANEXHIBIT "B" TO THE
AFFIDAVIT OF JOLENE MCKENNA
SWORN OCTOBER 22, 2020

Commissioner for taking affidavits

Bryan GelmanDirect: 416-504-1650 ext. 115
bgelman@albertgelman.com

October 21, 2020

VIA EMAIL

To: Trigger Wholesale, Inc. ("Trigger"), The En Cadre Group Inc. ("En Cadre"),
Jaimak Real Properties Inc., (collectively the "Corporations") and,
Mark Gdak (collectively the "Clients")

Dear Mr. Gdak:

Re: Consulting Engagement

We are writing to you with respect to our proposed engagement as consultant for the Clients.

The purpose of this letter is to set out the scope of our proposed mandate, our professional fees and other matters set out below.

It is our understanding that the Clients are the Respondents pursuant to an Order ("Appointment Order") granted on October 13, 2020, appointing Grant Thornton Limited as Interim Receiver ("IR") of the assets, undertakings and properties of Trigger and En Cadre.

Furthermore, it's our understanding that as a result of the Appointment Order, you will be seeking the Court's approval to execute this engagement letter appointing AGI as Consultant.

1. **Mandate:**

We are advised that the Clients would like to engage Albert Gelman Inc. ("AGI" or "Consultant"), as a Consultant, with the following mandate, including but not limited to the following tasks:

1. Review and analysis of the current financial position and projections of the Corporations for the purpose of assessing the viability of the Corporations and a repayment of the indebtedness owing to the Applicant in the Appointment Order, Clearflow Commercial Finance Corp.; and,
2. Communicate our comments and options that we believe to be pertinent to the Clients.

2. **Professional Fees**

AGI's fees for this engagement shall be based upon the actual time spent by AGI's professional and administrative staff at prevailing hourly rates, set out below.

- Partner \$495-615 per hour

- Associate Staff \$225-395 per hour
- Professional Support Staff \$185-225 per hour

Time spent will include work performed prior to the execution of this engagement letter by the Clients. Actual disbursements incurred by AGI and its staff will be added to the invoice as well as HST which we are required to add on all services.

AGI's rates are subject to change without notice (ordinarily in January of each year). Our invoices will be rendered to the Clients on at least a monthly basis and are due immediately upon rendering. Late payments received more than 30 days past the billing date will be subject to an interest charge of 1.5% (18% per annum).

The Clients have jointly and severally agree to: (a) guarantee the fees and disbursements of AGI in performing its mandate; and, (b) indemnify, and hold harmless, AGI, its partners, employees or contractors for any claim by any person in relation to this mandate.

AGI requires the following initial retainer payment for our professional services: \$30,000.

3. Termination of Agreement:

Either party may terminate this agreement by providing written notice. Sections relating to Professional Fees and Acknowledgements shall survive any termination of this agreement.

In the event we become aware of any conflict of interest we will notify you immediately.

AGI reserves the right to immediately terminate this agreement for any reason, at the sole discretion of AGI, without penalty or damages to the Clients.

4. Acknowledgements

The Clients acknowledge that AGI's engagement will be based on data supplied by the Corporations and its management, supplemented by discussions with management and other parties, including the IR and its counsel. The Clients authorize AGI, and its representatives, to speak with these parties and others in relation to its mandate, as the Consultant deems appropriate in its sole discretion.

The Clients acknowledges that they will be responsible for the vetting and verification of all documentation, information, and financial models, including those prepared by AGI, the Clients and its management. AGI does not assume any responsibility for losses occasioned to the Clients, its shareholders and directors, or any other party, for reliance on any information or documentation prepared or provided to the Clients by AGI.

The Clients understand that although all information gathered will be reviewed for reasonableness, AGI will not be conducting an audit or in-depth review of the information provided by the Clients. Therefore, AGI's work will not necessarily disclose any errors, irregularities, or illegal acts, if such exist, on the part of the Clients.

Kindly sign below to acknowledge your acceptance of the terms of our engagement set out above and return to us on or before October 30, 2020. After that date this engagement letter shall become null and void.

We thank you for the opportunity to work with you.

Yours very truly,

Albert Gelman Inc.

Per:

 Bryan Gelman
cn=Bryan Gelman, c=CA, o=Albert
Gelman Inc.,
email=bgelman@albertgelman.com

Bryan Gelman, *CIRP, LIT*

ACCEPTANCE OF ENGAGEMENT

ACCEPTED AND AGREED this ____ day of _____, 2020

Trigger Wholesale, Inc.

Per:

The En Cadre Group Inc.

Per:

Mark Gdak

Mark Gdak

Jaimak Real Properties Inc.

Per:

Mark Gdak

I have the authority to bind each corporation set out above.

Witness

Mark Gdak, in his personal capacity

ALBERT  GELMAN

CLEARFLOW COMMERCIAL FINANCE CORP. TRIGGER WHOLESale, INC., et al
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CLEARFLOW COMMERCIAL FINANCE CORP.
Applicant and

TRIGGER WHOLESale, INC., et al
Defendant

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

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