Court File No. 13-10362-00-CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

B E T W E E N :

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

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

Applicants

MOTION RECORD
(Returnable October 16, 2014)

KLEIN & ASSOCIATES PROFESSIONAL CORPORATION
390 Bay Street, Suite 1101
Toronto, ON M5H 2Y2
James Klein LS#: 25014B
Tel: 416.366-9494
Fax: 416-366-9442

Lawyers for the Moving Parties:

Medi Group Incorporated; 1865721 Ontario Inc.; Canadian Concrete Forming Limited; Cardell Flooring Ltd.; E.D. Carpenters Limited; Foremont Drywall Inc.; 1382479 Ontario Inc., 1382503 Ontario Inc. and 2203579 Ontario Inc. carrying on business as Foremont Drywall Contracting; Giancola Aluminum Contractors Inc.; GM Exteriors Inc.; Pave Plumbing & Heating Inc.; Pilbro III Inc.; and Solo Electric Ltd.

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

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

SERVICE LIST

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Court File No. 13-10362-00-CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

BETWEEN:

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

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

Applicants

INDEX

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Court File No. 13-10362-00-CL

ONTARIO
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BETWEEN:

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

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Applicants

NOTICE OF MOTION
(returnable October 16, 2014)

The moving parties, Medi Group Incorporated; 1865721 Ontario Inc.; Canadian Concrete Forming Limited; Cardell Flooring Ltd.; E.D. Carpenters Limited; Foremont Drywall Inc.; 1382479 Ontario Inc., 1382503 Ontario Inc. and 2203579 Ontario Inc. carrying on business as Foremont Drywall Contracting; Giancola Aluminum Contractors Inc.; GM Exteriors Inc.; Pave Plumbing & Heating Inc.; Pilbro III Inc.; and Solo Electric Ltd. will make a motion to a judge presiding over the Commercial List, on October 16th, 2014, at 10:00 a.m. or as soon after that time as the motion can be heard, at 330 University Avenue, Toronto, Ontario.

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

☐ in writing under subrule 37.12.1(1) because it is on consent or unopposed or made without notice;
☐ in writing as an opposed motion under subrule 37.12.1(4);
☒ orally.

THE MOTION IS FOR:

1. An Order substantially in the form attached as Schedule "A" hereto:

(a) If necessary abridging the time for service and filing of this Notice of Motion and the Motion Record, and dispensing with service on any person other than those served;

(b) lifting the stay of proceedings and granting leave to issue, continue and prosecute the action against Silver Streams Homes Inc., Silver Streams Homes (Puccini) Inc., 2148993 λ

Ontario Inc., 2148990 Ontario Inc., 2147681 Ontario Inc. and 2147650 Ontario Inc. and other parties (the "Medi Group Action");

(c) lifting the stay of proceedings and granting leave to issue, continue and prosecute the Medi Group Action against Imran Jinnah and Asma Jinnah for the purposes issuing, continuing and prosecuting the Medi-Group Action notwithstanding paragraph 16 of the Order of Justice Newbould dated December 17, 2013;

(d) leave to issue the Medi Group Action in the Commercial List;

(e) costs of this motion on a substantial indemnity basis, or in the alternative on a partial indemnity basis; and

(f) such further and other relief as this Honourable Court may deem just.

THE GROUNDS FOR THE MOTION ARE:

1. Rules 1.05, 3.02, 37 and 57.03 of the Rules of Civil Procedure.

2. The moving parties are construction trades who have provided services, labour and materials to the Puccini Project being a 118 unit residential housing project developed, owned and constructed by the Applicants;

3. The moving parties represent a group of construction trades that entered into an agreement on December 17th, 2012 with Silver Streams Homes (Puccini) Inc. and others regarding the construction of the Phase III homes;

4. The moving parties desire to commence a Trust claim against Silver Streams Homes Inc., Silver Streams Homes (Puccini) Inc., 2148993 Ontario Inc., 2148990 Ontario Inc., 2147681 Ontario Inc., 2147650 Ontario Inc. and others for breach of trust under the *Construction Lien Act* (the "Medi Group Action");

5. There is no plan of compromise or arrangement which has been proposed or which will cover the claims being made in the Medi Group Action;

6. As some of the rights sought to be enforced by the moving parties arise out of the Agreement of December 12th, 2012 those rights should not be lost by the passage of time;

7. Such further and other grounds as counsel may advise and this Honourable Court may permit;

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

(a) Affidavit of Dominic Montemurro and the exhibits thereto;

(b) Such further and other documentary evidence as counsel may advise and this Honourable Court may permit.

Sepember 22, 2014

KLEIN & ASSOCIATES PROFESSIONAL CORPORATION
390 Bay Street, Suite 1101
Toronto, ON M5H 2Y2
James Klein LS#: 25014B
Tel: 416.366-9494
Fax: 416-366-9442

Lawyers for the Moving Parties

Medi Group Incorporated; 1865721 Ontario Inc.; Canadian Concrete Forming Limited; Cardell Flooring Ltd.; E.D. Carpenters Limited; Foremont Drywall Inc.; 1382479 Ontario Inc., 1382503 Ontario Inc. and 2203579 Ontario Inc. carrying on business as Foremont Drywall Contracting; Giancola Aluminum Contractors Inc.; GM Exteriors Inc.; Pave Plumbing & Heating Inc.; Pilbro III Inc.; and Solo Electric Ltd.

TO: SERVICE LIST

SCHEDULE "A" TO THE NOTICE OF MOTION

Court File No. 13-10362-00-CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

THE HONOURABLE MR./MADAM	)	THURSDAY, THE 16TH
	)	
JUSTICE	)	DAY OF OCTOBER 2014

B E T W E E N :

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

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

Applicants

O R D E R

THIS MOTION, made by the moving parties, Medi Group Incorporated; 1865721 Ontario Inc.; Canadian Concrete Forming Limited; Cardell Flooring Ltd.; E.D. Carpenters Limited; Foremont Drywall Inc.; 1382479 Ontario Inc., 1382503 Ontario Inc. and 2203579 Ontario Inc. carrying on business as Foremont Drywall Contracting; Giancola Aluminum Contractors Inc.; GM Exteriors Inc.; Pave Plumbing & Heating Inc.; Pilbro III Inc.; and Solo Electric Ltd. (hereinafter collectively referred to as the "Plaintiffs") , for an order, *inter alia* lifting the stay of proceedings and granting leave to issue, continue and prosecute the action against Silver Streams Homes Inc., Silver Streams Homes (Puccini) Inc., 2148993 Ontario Inc., 2148990 Ontario Inc., 2147681 Ontario Inc. and 2147650 Ontario Inc., Imran Jinnah and Asma Jinnah and other parties (the "Medi Group Action") and for leave to issue the Medi Group Action on the commercial list, was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the affidavit of Frank Del Fatti sworn September ______, 2014 and Exhibits thereto, and on hearing the submissions of the lawyer(s) for the moving parties, Silver Streams Homes (Puccini) Inc., Silver Streams Homes Inc., 2148993 Ontario Inc., 2147681 Ontario Inc. and 2147650 Ontario Inc., Imran Jinnah, Asma Jinnah,

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

2. **THIS COURT ORDERS** that the stay of proceedings imposed in the within matter be and is hereby lifted for the purpose of enabling the Plaintiffs in the action attached as Schedule "A" to issue and proceed with the prosecution of their claim against Silver Streams Homes (Puccini) Inc., Silver Streams Homes Inc., 2148993 Ontario Inc., 2147681 Ontario Inc. and 2147650 Ontario Inc., Imran Jinnah, Asma Jinnah and the other named defendants (hereinafter referred to as the "Medi Group Action");

3. **THIS COURT ORDERS** that the Plaintiffs are hereby granted leave to issue their claim under the commercial list and prosecute their claims against Silver Streams Homes (Puccini) Inc., Silver Streams Homes Inc., 2148993 Ontario Inc., 2147681 Ontario Inc. and 2147650 Ontario Inc., Imran Jinnah, Asma Jinnah and the other named defendants pursuant to the Medi Group Action;

4. **THIS COURT ORDERS** that the stay of proceedings imposed in the within matter in favour of Imran Jinnah and Asma Jinnah be and is hereby lifted for the purpose of enabling the Plaintiffs in the action attached as Schedule "A" to issue and proceed with the prosecution of Medi Group Action against Imran Jinnah and Asma Jinnah notwithstanding paragraph 16 of the Order of Justice Newbould dated December 17, 2013;

5. **THIS COURT ORDERS** that the Plaintiffs are hereby granted leave to continue to issue and prosecute their claim as against Imran and Asma Jinnah pursuant to the Medi Group Action notwithstanding paragraph 16 of the Order of Justice Newbould dated December 17, 2013;

6. **THIS COURT ORDERS** that the Medi Group Action be heard together with or immediately following the Con-Drain action being Superior Court of Justice Action # CV-13-115757-00 Newmarket on the commercial list, or as the Trial Judge may further direct;

____

SCHEDULE "A" TO THE ORDER

Court File No.:

Ontario

SUPERIOR COURT OF JUSTICE

B E T W E E N:

MEDI GROUP INCORPORATED, PILBRO III INC., SOLO ELECTRIC LTD., PAVE PLUMBING & HEATING INC., FOREMONT DRYWALL INC. 1382479 ONTARIO INC. 1382503 ONTARIO INC. , 2203579 ONTARIO INC. cob FOREMONT DRYWALL CONTRACTING, E.D. CARPENTERS LTD., CARDELL FLOORING LTD., CANADIAN CONCRETE FORMING LIMITED, 1865721 ONTARIO INC.

Plaintiffs

\- and -

SILVER STREAMS HOMES (PUCCINI) INC., SILVER STREAMS HOMES INC., 2148991 ONTARIO INC., 2148990 ONTARIO INC., 2147650 ONTARIO INC., 2148993 ONTARIO INC., 2147681 ONTARIO INC., IMRAN JINNAH, ASMA JINNAH, PUCCINI MORTGAGE CORPORATION, DAPAUL MANAGEMENT LIMITED, 388242 ONTARIO LIMITED, 53 PUCCINI MORTGAGE CORPORATION, NASTELL INVESTMENTS LIMITED, and JACK GREENBERG

Defendants

STATEMENT OF CLAIM

TO THE DEFENDANTS

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the plaintiffs. The claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or an Ontario lawyer acting for you must prepare a statement of defence in Form 18A prescribed by the Rules of Civil Procedure, serve it on the plaintiffs' lawyer or, where the plaintiffs do not have a lawyer, serve it on the plaintiffs, and file it, with proof of service, in this court office, WITHIN TWENTY DAYS after this statement of claim is served on you, if you are served in Ontario.

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If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your statement of defence is forty days. If you are served outside Canada and the United States of America, the period is sixty days.

Instead of serving and filing a statement of defence, you may serve and file a notice of intent to defend in Form 18B prescribed by the Rules of Civil Procedure. This will entitle you to ten more days within which to serve and file your statement of defence.

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. If YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

IF YOU PAY THE PLAINTIFFS' CLAIM, and $900.00 for costs, within the time for serving and filing your statement of defence, you may move to have this proceeding dismissed by the court. If you believe the amount claimed for costs is excessive, you may pay the plaintiff's claim and $100.00 for costs and have the costs assessed by the court.

Date July , 2014

Issued by ______________________
Local registrar

Address of court office
393 University Avenue
10^{th} Floor
Toronto, OntarioM5G 1E6

TO: SILVER STREAMS HOMES (PUCCINI) INC.
103 Naughton Drive
Richmond Hill, Ontario L4C 8B3

TO: SILVER STREAMS HOMES INC.
103 Naughton Drive
Richmond Hill, Ontario L4C 8B3

TO: 2148991 ONTARIO INC.
103 Naughton Drive
Richmond Hill, Ontario L4C 8B3

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TO: 2148990 ONTARIO INC.
103 Naughton Drive
Richmond Hill, Ontario L4C 8B3

TO: 2147650 ONTARIO INC.
103 Naughton Drive
Richmond Hill, Ontario L4C 8B3

TO: 2148993 ONTARIO INC.
103 Naughton Drive
Richmond Hill, Ontario L4C 8B3

TO: 2147681 ONTARIO INC.
103 Naughton Drive
Richmond Hill, Ontario L4C 8B3

TO: IMRAN JINNAH
c/o 103 Naughton Drive
Richmond Hill, Ontario L4C 8B3

TO: ASMA JINNAH
c/o 103 Naughton Drive
Richmond Hill, Ontario L4C 8B3

TO: PUCCINI MORTGAGE CORP.
c/o Suite 204, 181 Eglinton Avenue East
Toronto, Ontario M4P 1J4

TO: DAPAUL MANAGEMENT LIMITED
c/o Suite 204, 181 Eglinton Avenue East
Toronto, Ontario M4P 1J4

TO: 388242 0NTARIO LIMITED
c/o Suite 204, 181 Eglinton Avenue East
Toronto, Ontario M4P 1J4

TO: 53 PUCCINI MORTGAGE CORP.
c/o Suite 204, 181 Eglinton Avenue East
Toronto, Ontario M4P 1J4

TO: NASTELL INVESTMENTS LIMITED
c/o Suite 204, 181 Eglinton Avenue East
Toronto, Ontario M4P 1J4

TO: JACK GREENBERG
c/o Suite 204, 181 Eglinton Avenue East
Toronto, Ontario M4P 1J4

CLAIM

1. The Plaintiffs, claim:

(a) Payment of the amount of $2,784,728.40;

(b) a declaration that all monies owing to or received by the Defendants from owners of the properties to whom the Plaintiff's materials had been supplied, constitute trust funds for the benefit of the Plaintiff to the extent of $2,784,728.40 pursuant to the provisions of the *Construction Lien Act*, R.S.O. 1990, c. 30 as amended;

(c) a declaration that the Defendants hold the misappropriated funds in a constructive or resulting trust for the benefit of the Plaintiffs;

(d) a declaration that the Defendants hold the misappropriated funds as constructive trustees for the benefit of the Plaintiffs;

(e) a declaration that funds held by Chaitons LLP which are the subject matter of the claim in the Ontario Superior Court of Justice Court File No. CV-13-115767-00 commenced in Newmarket court constitute trust funds for the benefit of the Plaintiffs pursuant to the provisions of the *Construction Lien Act*, R.S.O. 1990, c. 30 as amended;

(f) an accounting of all funds converted by the Defendants and judgment in accordance with the accounting;

(g) damages in the amount of $2,784,728.40 for breach of contract, breach of trust, breach of the *Construction Lien Act* Trust provisions, breach of fiduciary duty, misappropriation of funds, unjust enrichment, conspiracy, fraud, negligent and fraudulent misrepresentations by the Defendants jointly and severally;

(h) damages in the amount of $2,784,728.40 for conversion of the said funds misappropriated by the Defendants;

(i) punitive and exemplary damages in the sum of $2,000,000.00

(j) a declaration that the Defendants have been unjustly enriched at the expense of the Plaintiffs by virtue of the misappropriation of funds and must disgorge all funds misappropriated;

(k) A declaration that the Defendants are all statutory owners under the provisions of the *Construction Lien Act*;

(l) a declaration there exists an equitable mortgage in favour of the Plaintiffs over Property A in the amount of $2,784,728.40;

(m) A declaration that the equitable mortgage of the Plaintiffs is in priority over the charges of the Defendants, Puccini Mortgage Corp., Dapaul Management Limited, 388242 Ontario Limited on Property A;

(n) An order requiring Puccini Mortgage Corp., Dapaul Management Limited, 388242 Ontario Limited to marshal their debt from other security they hold and not from Property A.

(o) A declaration that the equitable mortgage of the Plaintiffs is in priority over the charges of the Defendants, 53 Puccini Mortgage Corp. and Nastell Investments Limited on Property B;

(p) An order requiring 53 Puccini Mortgage Corp. and Nastell Investments Limited to marshal their debt from other security they hold and not from Property B;

(q) an order that Jack Greenberg provide an accounting of the monies flowing through his account as escrow agent under the Forbearance Agreement;

(r) Pre-judgment interest on all amounts owing at Bank of Montreal Prime plus 3% per annum incurred from December 17, 2012 until payment of the Judgment or alternatively pursuant to Section 128 of the *Courts of Justice Act*, S.O. 1990, Chapter 43, as amended;

(s) Interest on all overdue accounts at the rate indicated in the invoices of the plaintiffs' delivered from time to time;

(t) Post-judgment interest from the date of Judgment at Bank of Montreal Prime plus 3% per annum or alternatively pursuant to Section 127 of the *Courts of Justice Act*, S.O. 1990, Chapter 43, as amended;

(u) Their costs of this action on a substantial indemnity basis;

(v) Such further and other relief as this Honourable Court may allow:

THE PARTIES

2. The Plaintiffs are construction trades who have provided services and materials creating an improvement on a residential subdivision project consisting of several phases ("Puccini Project") including on the lands set out in Schedule "A" of this claim.

3. The Defendant, Silver Streams Homes Puccini Inc. (hereinafter referred to as "Silver Streams Puccini"), is a corporation incorporated pursuant to the laws of the Province of Ontario having its head office in the City of Toronto, in the Province of Ontario and carries on business as a builder and/or developer of residential homes

4. The Defendant, Silver Streams Homes Inc. (hereinafter referred to as "Silver Streams Homes"), is a corporation incorporated pursuant to the laws of the Province of Ontario having its head office in the City of Toronto, in the Province of Ontario and carries on business as a builder and or developer of residential homes.

5. The Defendant, 2148991 Ontario Inc. (hereinafter referred to as "2148991"), is a corporation incorporated pursuant to the laws of the Province of Ontario having its head office in the City of Toronto, in the Province of Ontario and was at all material times the registered owner of the lands set out in Schedule "B" to this claim. 2148991 is a related company to Silver Streams Homes and Silver Streams Puccini ("Silver Streams").

6. The Defendant 2148990 Ontario Inc. (hereinafter referred to as "2148990"), is a corporation incorporated pursuant to the laws of the Province of Ontario having its head office in

the City of Toronto, in the Province of Ontario and was at all material times the registered owner of the lands set out in Schedule "C" to this claim. 2148990 is a related company to Silver Streams Homes and Silver Streams Puccini ("Silver Streams").

7. The Defendant, 2147650 Ontario Inc. (hereinafter referred to as "2147650"), is a corporation incorporated pursuant to the laws of the Province of Ontario having its head office in the City of Toronto, in the Province of Ontario. 2147650 is a related company to Silver Streams Homes and Silver Streams Puccini ("Silver Streams").

8. The Defendant, 2148993 Ontario Inc. (hereinafter referred to as "2148993"), is a corporation incorporated pursuant to the laws of the Province of Ontario having its head office in the City of Toronto, in the Province of Ontario. 2148993 is a related company to Silver Streams Homes and Silver Streams Puccini ("Silver Streams").

9. The Defendant, 2147681 Ontario Inc. (hereinafter referred to as "2147681"), is a corporation incorporated pursuant to the laws of the Province of Ontario having its head office in the City of Toronto, in the Province of Ontario. 2147681 is a related company to Silver Streams Homes and Silver Streams Puccini ("Silver Streams").

10. The Defendant, Puccini Mortgage Corp. (hereinafter referred to as "Puccini Mortgage"), is a corporation incorporated pursuant to the laws of the Province of Ontario having its head office in the City of Toronto, in the Province of Ontario and carries on business as a lender and investor. Jack Greenberg ("Greenberg") is the sole officer and director and/or the controlling mind of Puccini Mortgage and is authorized to bind it.

11. The Defendant, Dapaul Management Limited (hereinafter referred to as "Dapaul Management"), is a corporation incorporated pursuant to the laws of the Province of Ontario having its head office in the City of Toronto, in the Province of Ontario and carries on business as a lender and investor. Greenberg is the sole officer and director and/or the controlling mind of Dapaul Management and is authorized to bind it.

12. The Defendant, 388242 Ontario Limited (hereinafter referred to as "388242"), is a corporation incorporated pursuant to the laws of the Province of Ontario having its head office in the City of Toronto, in the Province of Ontario and carries on business as a lender and investor.

Greenberg is the sole officer and director and/or the controlling mind of 388242 and is authorized to bind it.

13. The Defendant, 53 Puccini Mortgage Corp. (hereinafter referred to as " 53 Puccini Mortgage"), is a corporation incorporated pursuant to the laws of the Province of Ontario having its head office in the City of Toronto, in the Province of Ontario and carries on business as a lender and investor. Greenberg is the sole officer and director and/or the controlling mind of 53 Puccini Mortgage and is authorized to bind it.

14. The Defendant, Nastell Investments Limited (hereinafter referred to as "Nastell"), is a corporation incorporated pursuant to the laws of the Province of Ontario having its head office in the City of Toronto, in the Province of Ontario and carries on business as a lender and investor. Greenberg is the sole officer and director and/or the controlling mind of Nastell and is authorized to bind it.

15. Puccini Mortgage, Dapaul Management, 388242, 53 Puccini Mortgage and Nastell are collectively referred to as (the "Greenberg Companies").

16. Imran Jinnah resides in the Town of Richmond Hill in the Province of Ontario and is an officer, director and shareholder and the controlling mind of Silver Streams Puccini, Silver Streams Homes, 2148990, 2148991, 2148993, 2147681 and 2147650.

17. Asma Jinnah resides in the Town of Richmond Hill in the Province of Ontario and is an officer and shareholder and the controlling mind of Silver Streams Puccini.

18. Jack Greenberg is a lawyer licenced to practice law in the Province of Ontario and was at all material times acting as an escrow agent pursuant to an Escrow Agreement referred to below ("the Escrow Agent"). Jack Greenberg as described above was also the sole officer and director and/or the controlling mind of the Greenberg Companies. Greenberg was also acting as solicitor for or the agent of or controlling Silver Streams and actively making decisions regarding the construction, development, payment of accounts including those of the trades in the Puccini Project and was an Owner as defined in the *Construction Lien Act.*

19. Jack Greenberg at all material times also represented the various Greenberg Companies described above as lenders and investors both in his capacity as legal counsel as well as their directing mind and was authorized to bind them in his sole discretion. Jack Greenberg was himself a significant investor in the various lender corporations;

20. The Plaintiffs state that the mortgages in favour of the Greenberg Companies were not at arms-length and not commercially reasonable. Furthermore these mortgagees did not act in a commercially reasonable manner in particular by failing to have regular re-payment terms and failing to exercise default remedies under the mortgagees in a commercially reasonable manner. The Plaintiffs seek a declaration that the various Greenberg Companies (Puccini Mortgage, Dapaul Management, 388242, 53 Puccini Mortgage and Nastell) are all statutory owners under the provisions of the *Construction Lien Act*.

21. Jack Greenberg at times also acted as counsel for Silver Streams (Silver Streams Homes, Silver Streams Puccini, 2148990, 2148991, 2148993, 2147681 and 2147650). He was directing the flow of funds and making decisions regarding the construction of the Puccini Project, whether trades would get paid, paying trades and preferring payment to the Greenberg Companies over the Trades, both in his personal capacity as an investor and also on behalf of the various lender corporations (Puccini Mortgage, Dapaul Management, 388242, 53 Puccini Mortgage and Nastell). By virtue of Jack Greenberg's actions more particularly described below the Plaintiffs seek a declaration that Jack Greenberg in his personal capacity and the Private Lenders (Puccini Mortgage, Dapaul Management, 388242, 53 Puccini Mortgage and Nastell) are all statutory owners under the provisions of the *Construction Lien Act*.

BACKGROUND

THE PUCCINI PROJECT

22. Silver Streams Homes and Silver Streams Puccini in or about 2008 began a residential project consisting of 118 units including detached homes, semi-detached homes and townhouses located at Bathurst Street and King Road in Richmond Hill, Ontario (the "Puccini Project").

23. The Puccini Project was being built in 4 phases. Title to the lands in Phases I, II, and III are in the names of 2148990, 2148993, 2147650 and 2147681. Phase I comprising 20 detached

homes was completed in or around 2010, Phase II comprising 25 detached homes was completed in late 2012 and Phase III comprising 25 detached homes. Phase IV comprises 40 townhouse units and 8 semi-detached units and title is in the name of 2148991.

24. The Plaintiffs entered into one contract with Silver Streams Puccini who was acting as the agent for the different titled owner corporations of each phase within the Puccini Project. Imran Jinnah and Asma Jinnah (collectively referred to as the "Jinnahs") were the officers, directors and shareholders of Silver Streams Puccini. Imran Jinnah was the sole officer, director and shareholder of Silver Streams Homes, 2148990, 2148991, 2148993, 2147681 and 2147650.

25. The Plaintiffs plead that the Defendants were all beneficial owners with respect to the purchase and development of the lands more particularly set out in Schedule "D" hereto and were at all material times owners of them by virtues of the definition of an owner under Section (1) item 15 of the *Construction Lien Act*, 1990, as amended.

REGISTERED MORTGAGES

26. The defendants, Dapaul Management Limited, Puccini Mortgage Corp., 388242 Ontario Limited have registered mortgages against Property A, more particularly set out in Schedule "E". Dapaul Management Limited is registered as a second mortgage for the principal amount of $5,500,000.00. Puccini Mortgage Corp. is registered as a third mortgage for the principal amount of $2,600,000.00. 388242 Ontario Limited is registered as a fourth mortgage in the principal amount of $1,500,000.00 ("Property A Lenders");

27. The defendants 53 Puccini Mortgage Corp. have a registered and Nastell Investments Limited have registered mortgages against Property B, more particularly set out in Schedule "E". 53 Puccini Mortgage Corp. is registered as a second mortgage in the principal amount of $2,000,000.00. Nastell Investments Limited is registered as a third mortgage in the principal amount of $3,200,000 ("Property B Lenders");

FORBEARANCE AGREEMENT

28. The Plaintiffs had provided services and materials and improved the lands on Phase 1 and 2 of the Puccini Project and as at December 12, 2012 were owed cumulatively the amount of

$1,667,538.10 for services and materials supplied to the Project ("Past Debt"). The particulars owed to each Plaintiff as at December 12, 2012 is set out in Schedule "F".

29. In or about the fall of 2012, The Puccini Project was in serious financial difficulty which was not known to the Trades, and at risk of collapsing under the mounting debt including the amounts owed to the Trades. Greenberg and the Jinnahs knew or ought to have known that the Puccini Project was insolvent by this time. Greenberg was concerned about the repayment of monies owing to the Greenberg Companies.

30. Greenberg began meeting with the Trades with the ostensible purpose of;

1. convincing the Trades to not register liens which would have stopped construction financing from being advanced by Bank of Montreal, the construction lender to Phases I,II and III of the Puccini Project; and

2. Actively encouraging the Trades to continue improving the Phase III lands which would increase the equity available to pay back monies owing to the Greenberg Companies.

Greenberg and the Jinnahs fraudulently and /or negligently misrepresented the true financial situation of the Puccini Project which was insolvent. To the contrary, Greenberg and the Jinnahs represented to the Trades they would be paid for any improvements to the Phase III lands and would also be paid their old debt. Greenberg knew these representations were false and that the Trades would not be paid for any of their old debt and likely not even paid in full for the improvements to the Phase III lands.

31. On December 17th, 2012, the Defendants Silver Streams Puccini, 2147650, 2148993 and 2148990 entered into an agreement with the Plaintiffs to induce them to forbear seeking their remedies for the amounts owing in Schedule "F" and also to induce them to return to the Project to provide labour and materials to the Puccini Project ("the Forbearance Agreement").

32. By the terms of the Forbearance Agreement, Jack Greenberg, acted as escrow agent to disburse monies to the Plaintiffs for new work to be performed and also towards the Past Debt owing to the Plaintiffs. Jack Greenberg was also binding the parties other than the Trades to the

Forbearance Agreement and to the knowledge of the Trades was also representing the interests of the Greenberg Companies.

33. It was an essential term of the Forbearance Agreement that the Past Debt would be paid from the closing proceeds in Phase III and Phase IV being the Property as described in Schedule "E. The Plaintiffs provided services and materials to the Puccini Project and proceeded to improve the lands by providing labour, services and materials to Phase III in accordance with the Forbearance Agreement.

34. The Forbearance Agreement (a) implicitly provided for the mortgage lenders be kept in good standing to allow the Puccini Project to be completed, with closings of Agreements of Purchase and sales for the homes generating funds (b) to pay for the work performed by the Plaintiffs on Phase III and (c) to pay the Past Debts of the Plaintiffs. The Plaintiffs plead and rely on the terms of the Escrow Agreement as if recited in full herein.

35. Under the terms of the Forbearance Agreement, (a) Silver Streams Puccini was (a) to irrevocably direct the construction lender for Property A and B that the Net Proceeds (as that term is defined in the Forbearance Agreement) of any draw be paid to the Escrow Agent. (b) to irrevocably direct the Escrow Agent that these Net Proceeds be paid to the Plaintiffs (c) to request draws from the construction lender expeditiously (d) to irrevocably designate the Escrow Agent as its solicitor to complete the legal work for each closing. (e) to irrevocably direct the Escrow Agent that from the Net Sale Proceeds (as that term is defined in the Forbearance Agreement) to pay the Past Debt of the Plaintiffs.

All of these payments were to be made by the Escrow Agent no later than the 46th day after the closing of any residential unit.

36. At the time Greenberg negotiated the Forbearance Agreement he was wearing several hats. Greenberg was negotiating and agreeing to the Forbearance Agreement in his personal capacity, on behalf of the Greenberg Companies (Puccini Mortgage, Dapaul Management, 388242, 53 Puccini Mortgage and Nastell) as counsel for the Jinnahs and Silver Streams.

37. The Plaintiffs Trades relied on these representations and good faith of Greenberg as a Lawyer, and forbeared their legal rights. At no time did Greenberg indicate he was not acting for

all the stakeholders being the Silver Streams and Greenberg Companies. More to the point at no time did Greenberg indicate to the Trades that the Greenberg Companies would be seeking priority over the rights of the Trades. But for the representations of Greenberg which the Trades were relying upon, they would not have forbeared liening for monies owing from Phase I and II and would never have returned to do work on Phase III. In effect after providing labour, material and services to Phase III under the Forbearance Agreement the Trades were owed cumulatively more than the Past debt owing from Phase I and II prior to the Forbearance Agreement. While the Trades were in a worse financial position working on Phase III, at the same time the Greenberg Companies were in a better position as the equity in the remaining lands (Phase III) had been increased and they were now claiming a priority over the Trades. The Plaintiffs therefore state any priority given to the Greenberg Companies over the Trades amounts to an unjust enrichment.

38. The defendant Silver Streams Puccini breached the Escrow Agreement;

(i) by allowing the Property A and B lenders to go into default;

(ii) by not completing Agreements of Purchase and sales;

(iii) by failing to direct the construction lenders for Property A and B to advance the Net Proceeds of construction draws;

(iv) by defaulting on conditions within the construction lenders mortgage terms necessary to permit construction advances to flow;

(v) by failing to pay servicing contractors thereby causing constructions liens to be registered against Property A and B paralyzing the flow of construction advances;

(vi) By diverting funds to servicing contractors thereby causing defaults under the mortgages with the Property A and B lenders;

(vii) it sold properties as below market values;

(viii) it received monies it for management fees and other soft costs;

(ix) such further and other breaches as counsel may advise;

The impact of these breaches was to stop payments being made to the Plaintiffs as called for in the Forbearance Agreement.

39. The Plaintiffs state that the charges of Puccini Mortgage Corp., Dapaul Management Limited, 388242 Ontario Limited on Property A and 53 Puccini Mortgage Corp. and Nastell Investments Limited on Property B as a result of the following;

(i) The mortgages are not arms' length mortgages;

(ii) No monies were advanced under the mortgages;

(iii) If monies were advanced they were advanced in excess of the value of the lands before the Plaintiffs provided their labour, material and services;

(iv) If monies were advanced, same were advanced in the in the face of knowledge of the Forbearance Agreement;

(v) such further and other grounds as counsel may advise;

40. In the Alternative the intent of the Forbearance Agreement was to grant security over Property A and B until the debt to the Plaintiffs was paid with interest at Bank of Montreal Prime plus 3%. The Plaintiffs claim they are entitled to an order that they have an equitable mortgage over Property A and B;

41. The Plaintiffs state that the equitable mortgage is in priority to the charges of Puccini Mortgage Corp., Dapaul Management Limited, 388242 Ontario Limited on Property A and 53 Puccini Mortgage Corp. and Nastell Investments Limited on Property B as a result of the following;

(i) The mortgages are not arms' length mortgages;

(ii) No monies were advanced under the mortgages;

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(iii) If monies were advanced they were advanced in excess of the value of the lands before the Plaintiffs provided their labour, material and services;

(iv) If monies were advanced, same were advanced in the in the face of knowledge of the Forbearance Agreement;

(v) such further and other grounds as counsel may advise;

42. In the further alternative if the various mortgages are valid, then they are secured by additional lands besides Property A and B and these mortgagees should be required to marshal their debt from other security held and not from Property A so as to permit the Plaintiffs to obtain recovery from Property A which is their only security.

43. Greenberg as Escrow Agent under the Agreement was under a fiduciary duty to ensure that all charges against the Project were in kept in good standing and further that he accounted to the Plaintiffs for all monies flowing through him. Greenberg has failed to provide such an accounting or to ensure that the charges were kept in good standing, thereby leading to a default under the charges;

CON DRAIN

44. In or about March 31, 2010, Con-Drain Company (1983) Limited ("Con-Drain") was a trade that reached an agreement with Greenberg and the Jinnahs in respect of amounts owing to it for work performed on the Puccini Project.

45. As part of the settlement Con-Drain appears to have been promised payment from Phase III closings of homes. These payments of $50,000 plus interest were to be paid out of the sale of homes in Phase III which improvements were provided by the Plaintiffs. The payments were for a past debt as opposed to any improvement being made by Con-Drain at the time the Plaintiffs were improving the lands being December 2012 until September 2013. Alternatively if Con-Drain provided any improvement to the Phase III lands these improvements were for as far less than the payments being promised which were for a Past Debt not lienable work on Phase III.

46. Con-Drain claimed to be owed the total sum of $794,881.68 as at July 31, 2013. As a result of an action and application for an injunction monies from certain closings in Phase III

were by court order paid to the law firm of Chaitons LLP to be held pending a determination of entitlement to these funds ("the Funds").

47. The Plaintiffs state the Funds are Trust Funds pursuant to the Trust provisions of the *Construction Lien Act* R.S.O. 1990, c.30 as amended for the benefit of Plaintiffs who provided services and improvements to these very lands and premises and are payable to them in priority to the mortgages registered by the Greenberg Companies and Con-Drain. Alternatively these Funds are Trust and must be shared rateably by all Trust beneficiaries under the *Construction Lien Act*.

48. In addition to the extent that the Greenberg Companies received monies totalling approximately $1.2 million from closings on Phase III, lands in June and July 2013, they are constructive trustees of these funds and hold these funds in trust for the Plaintiffs. As a result all such funds must be repaid to the Plaintiffs on the basis that same were clearly distributed to the Greenberg Companies in breach of the constructive trust and fiduciary obligations owed to the Plaintiffs by Silver Streams, Greenberg and/or the Greenberg Companies.

BREACH OF TRUST

49. The Plaintiffs state that Puccini Project was directed and controlled by Greenberg for the benefit of himself and the Greenberg Companies using the Jinnahs and the Silver Streams companies as a tool. There was never any intention to ensure that the project proceeded in a commercially reasonable fashion and that the construction trades such as the Plaintiffs would be paid in the ordinary course or fully paid at all.

50. Greenberg and the Greenberg Companies allegedly advanced funds into the Puccini Project charging high rates of interest and exorbitant fees. Some of the mortgages advanced by the Greenberg companies were to repay such interest accruing and fees. The Jinnahs and the Silver Streams companies were receiving a fee per home closing, the particulars of which are not known to the Plaintiffs at the time of this pleading. The net result of the actions of Greenberg, the Greenberg Companies, the Jinnahs and the Silver Streams companies was that all the equity was sucked out of the Puccini Project, the Puccini Project became insolvent and the Plaintiffs who were the trades improving the lands in the Puccini Project were left unpaid. The actions by

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Greenberg, the Greenberg Companies, the Jinnahs and the Silver Streams Companies give rise to a legal and equitable justification by the court to pierce the corporate veil of the various Greenberg and Silver Streams companies as they were all operating as one and the same in partnership, joint venture or joint enterprise with the same underlying ownership of Greenberg and the Jinnahs.

51. By virtue of the actions of Greenberg, the Greenberg Companies, the Jinnahs and Silver Streams companies they are owners either by legal title or beneficially as that term is defined in the *Construction Lien Act* and have Trust obligations imposed upon them pursuant to the relevant Trust provisions of the *Construction Lien Act*.

52. The actual contract for the supply of labour, materials and services was with Silver Streams Puccini acting as agent for Greenberg, the Greenberg Companies, the Jinnahs and the Silver Streams companies. The acts of Silver Streams Puccini bind Greenberg, the Greenberg Companies the Silver Streams Companies and the Jinnahs.

53. Greenberg and the Jinnahs are persons liable in an action for breach of trust pursuant to Part II of the *Construction Lien Act* R.S.O. 1990, c.30 as amended.

54. The Plaintiffs did at the request of the Defendants deliver labour, material and services in the sum of $2,784,728.40 for the Puccini Project. The particulars of the Plaintiffs claims are particularized in Schedule "G" to this claim.

55. The Plaintiffs state despite demands for payment, the Defendants have refused and neglected to pay the said sum of $2,784,728.40. The Plaintiffs therefore claim entitlement to the sum of $2,784,728.40.

56. By the terms of the invoices delivered by the Plaintiffs for their supply of labour material and services to the improvements they were entitled to interest on all overdue accounts according to the terms as stated in the invoices. The Plaintiffs therefore claim interest at such rate on overdue amounts. In the alternative the Plaintiffs claim interest under the *Courts of Justice Act*.

57. The Plaintiffs plead that the monies received by Greenberg, the Greenberg Companies, the Jinnahs and the Silver Streams companies from the sale of the homes in the Puccini project

constitute trust funds for the benefit of the Plaintiffs pursuant to the provisions of *Construction Lien Act* R.S.O. 1990, c.30 as amended s.7, s.8. and s.13.

58. The Plaintiffs do not have particulars of the monies received by the various defendants from the financing and sale of the homes in the Puccini Project as that information is within the exclusive control of the corporate and individual Defendants.

59. The Plaintiffs allege that monies received by the Defendants were appropriated and converted for their own use inconsistent with the trust imposed under the *Construction Lien Act* R.S.O. 1990, c.30 as amended, and pleads such actions constitute a breach of trust.

60. Greenberg and the Jinnahs as officers and directors of the Greenberg Companies and Silver Streams companies respectively are liable personally to the Plaintiffs for breach of trust as they assented to, or acquiesced in conduct that they knew or ought to have known or reasonably ought to have known amounted to a breach of trust pursuant to s.13 of the *Construction Lien Act* R.S.O. 1990, c.30 as amended.

61. The Plaintiffs submit they have suffered damages by virtue of the breach of trust by the Defendants. The Plaintiffs claim the sum of $2,784,728.40 plus interest as damages.

62. By reason of the high handed callous conduct and complete disregard by the Defendants of the Plaintiffs rights, the Plaintiffs claim punitive damages against the Defendants of $2,000,000.00.

63. The Plaintiffs plead and rely upon the *Courts of Justice Act*, R.S.O. 1990, Chapter 43 as amended and the *Construction Lien Act* R.S.O. 1990, c.30 as amended;

64. The Plaintiffs propose the trial of this action be in the City of Toronto, in the Province of Ontario.

July , 2014

KLEIN & ASSOCIATES PROFESSIONAL
CORPORATION
390 Bay Street, Suite 1101
Toronto, Ontario M5H 2Y2

James Klein LSUC#: 25014B
Tel: (416) 366-9494, Ext. 225
Fax: (416) 366-9442

Lawyers for the Plaintiffs

SCHEDULE "A"

Phase I, Plan 65M-4156, Town of Richmond Hill:

Lot No. / PIN:	Lot No. / PIN:	Lot No. / PIN:
1 / 03206-3200	8 / 03206-3207	15 / 03206-3214
2 / 03206-3201	9 / 03206-3208	16 / 03206-3215
3 / 03206-3202	10 / 03206-3209	17 / 03206-3216
4 / 03206-3203	11 / 03206-3210	18 / 03206-3217
5 / 03206-3204	12 / 03206-3211	19 / 03206-3218
6 / 03206-3205	13 / 03206-3212	20 / 03206-3219
7 / 03206-3206	14 / 03206-3213	

Phase II, Plan 65M-4249, Town of Richmond Hill:

Lot No. / PIN:	Lot No. / PIN:	Lot No. / PIN:
1 / 03206-3418	10 / 03206-3427	18 / 03206-3435
2 / 03206-3419	11 / 03206-3428	19 / 03206-3436
3 / 03206-3420	12 / 03206-3429	20 / 03206-3437
4 / 03206-3421	13 / 03206-3430	21 / 03206-3438
5 / 03206-3422	14 / 03206-3431	22 / 03206-3439
6 / 03206-3423	15 / 03206-3432	23 / 03206-3440
7 / 03206-3424	16 / 03206-3433	24 / 03206-3441
8 / 03206-3425	17 / 03206-3434	25 / 03206-3442
9 / 03206-3426		

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Phase III, Plan 65M-4331, Town of Richmond Hill:

Lot No. / PIN:	Lot No. / PIN:	Lot No. / PIN:
1 / 03206-3484	10 / 03206-3493	18 / 03206-3501
2 / 03206-3485	11 / 03206-3494	19 / 03206-3502
3 / 03206-3486	12 / 03206-3495	20 / 03206-3503
4 / 03206-3487	13 / 03206-3496	21 / 03206-3504
5 / 03206-3488	14 / 03206-3497	22 / 03206-3505
6 / 03206-3489	15 / 03206-3498	23 / 03206-3506
7 / 03206-3490	16 / 03206-3499	24 / 03206-3507
8 / 03206-3491	17 / 03206-3500	25 / 03206-3508
9 / 03206-3492		

SCHEDULE "B"

Phase IV, Plan M-807, Town of Richmond Hill:

Lot No. / PIN:	Lot No. / PIN:
Part Lot 1, Plan M-807, Part 1, 65R-32855 / 03206-3469	Part Lot 2, Plan M-807, Part 2, 65R-32855 / 03206-3467

SCHEDULE "C"

Phase II, Plan 65M-4249, Town of Richmond Hill:

Lot No. / PIN:	Lot No. / PIN:	Lot No. / PIN:
1 / 03206-3418	10 / 03206-3427	18 / 03206-3435
2 / 03206-3419	11 / 03206-3428	19 / 03206-3436
3 / 03206-3420	12 / 03206-3429	20 / 03206-3437
4 / 03206-3421	13 / 03206-3430	21 / 03206-3438
5 / 03206-3422	14 / 03206-3431	22 / 03206-3439
6 / 03206-3423	15 / 03206-3432	23 / 03206-3440
7 / 03206-3424	16 / 03206-3433	24 / 03206-3441
8 / 03206-3425	17 / 03206-3434	25 / 03206-3442
9 / 03206-3426		

Phase III, Plan 65M-4331, Town of Richmond Hill:

Lot No. / PIN:	Lot No. / PIN:	Lot No. / PIN:
1 / 03206-3484	10 / 03206-3493	18 / 03206-3501
2 / 03206-3485	11 / 03206-3494	19 / 03206-3502
3 / 03206-3486	12 / 03206-3495	20 / 03206-3503
4 / 03206-3487	13 / 03206-3496	21 / 03206-3504
5 / 03206-3488	14 / 03206-3497	22 / 03206-3505
6 / 03206-3489	15 / 03206-3498	23 / 03206-3506
7 / 03206-3490	16 / 03206-3499	24 / 03206-3507
8 / 03206-3491	17 / 03206-3500	25 / 03206-3508
9 / 03206-3492		

SCHEDULE "D"

Phase I, Plan 65M-4156, Town of Richmond Hill:

Lot No. / PIN:	Lot No. / PIN:	Lot No. / PIN:
1 / 03206-3200	8 / 03206-3207	15 / 03206-3214
2 / 03206-3201	9 / 03206-3208	16 / 03206-3215
3 / 03206-3202	10 / 03206-3209	17 / 03206-3216
4 / 03206-3203	11 / 03206-3210	18 / 03206-3217
5 / 03206-3204	12 / 03206-3211	19 / 03206-3218
6 / 03206-3205	13 / 03206-3212	20 / 03206-3219
7 / 03206-3206	14 / 03206-3213	

Phase II, Plan 65M-4249, Town of Richmond Hill:

Lot No. / PIN:	Lot No. / PIN:	Lot No. / PIN:
1 / 03206-3418	10 / 03206-3427	18 / 03206-3435
2 / 03206-3419	11 / 03206-3428	19 / 03206-3436
3 / 03206-3420	12 / 03206-3429	20 / 03206-3437
4 / 03206-3421	13 / 03206-3430	21 / 03206-3438
5 / 03206-3422	14 / 03206-3431	22 / 03206-3439
6 / 03206-3423	15 / 03206-3432	23 / 03206-3440
7 / 03206-3424	16 / 03206-3433	24 / 03206-3441
8 / 03206-3425	17 / 03206-3434	25 / 03206-3442
9 / 03206-3426		

Phase III, Plan 65M-4331, Town of Richmond Hill:

Lot No. / PIN:	Lot No. / PIN:	Lot No. / PIN:
1 / 03206-3484	10 / 03206-3493	18 / 03206-3501
2 / 03206-3485	11 / 03206-3494	19 / 03206-3502
3 / 03206-3486	12 / 03206-3495	20 / 03206-3503
4 / 03206-3487	13 / 03206-3496	21 / 03206-3504
5 / 03206-3488	14 / 03206-3497	22 / 03206-3505
6 / 03206-3489	15 / 03206-3498	23 / 03206-3506
7 / 03206-3490	16 / 03206-3499	24 / 03206-3507
8 / 03206-3491	17 / 03206-3500	25 / 03206-3508
9 / 03206-3492		

Phase IV, Plan M-807, Town of Richmond Hill:

Lot No. / PIN:	Lot No. / PIN:
Part Lot 1, Plan M-807, Part 1, 65R-32855 / 03206-3469	Part Lot 2, Plan M-807, Part 2, 65R-32855 / 03206-3467

SCHEDULE "E"

PROPERTY A

Phase IV, Plan M-807, Town of Richmond Hill:

Lot No. / PIN:	Lot No. / PIN:
Part Lot 1, Plan M-807, Part 1, 65R-32855 / 03206-3469	Part Lot 2, Plan M-807, Part 2, 65R-32855 / 03206-3467

PROPERTY B

Phase III, Plan 65M-4331, Town of Richmond Hill:

Lot No. / PIN:	Lot No. / PIN:	Lot No. / PIN:
1 / 03206-3484	10 / 03206-3493	18 / 03206-3501
2 / 03206-3485	11 / 03206-3494	19 / 03206-3502
3 / 03206-3486	12 / 03206-3495	20 / 03206-3503
4 / 03206-3487	13 / 03206-3496	21 / 03206-3504
5 / 03206-3488	14 / 03206-3497	22 / 03206-3505
6 / 03206-3489	15 / 03206-3498	23 / 03206-3506
7 / 03206-3490	16 / 03206-3499	24 / 03206-3507
8 / 03206-3491	17 / 03206-3500	25 / 03206-3508
9 / 03206-3492		

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<u>**SCHEDULE "F"**</u>

<u>Plaintiff's Name:</u>	<u>Amount Owed to Plaintiff on Phase I and Phase II:</u>
Solo Electric Ltd.	$116,773.68
Canadian Concrete Forming Ltd.	$151,158.41
E. D. Carpentry Limited	$201,511.34
Pave Plumbing & Heating Inc.	$141,091.44
Medi Group Incorporated	$377,358.08
Pilbro III Inc.	$425,712.57
Foremont Drywall Contracting	$253,932.58

TOTAL: **$1,667,538.10**

SCHEDULE "G"

Lien Claimant	Phase 1 Contract Amount / Amount Owing	Phase 2 Contract Amount / Amount Owing	Phase 3 Contract Amount / Amount Owing	Total Owed on Phase 1, 2 & 3
1865721 Ontario Inc.			$155,755.58 / Amount Owing $91,518.55	Phase 3 - $91,518.55
Canadian Concrete Forming Limited	$132,502.66 / Amount Owing $62,165.94	$445,235.82 / Amount Owing $66,683.08	$556,193.91 / Amount Owing $65,043.27	Phases 1, 2 & 3 - $193,892.29 (plus $22,309.39 re: Ashcott, Scarborough)
Cardell Flooring Ltd.			$196,633.40 / Amount Owing $94,922.10	Phase 3 - $94,922.10
E. D. Carpentry Limited	$127,029.00 / Amount Owing $85,571.51	$262,153.85 / Amount Owing $84,644.83	$251,510.88 / Amount Owing $107,305.52	Phases 1, 2 & 3 - $277,521.86 (Plus $51,152.15 re: D&I Development, Ashcott Mews, 53 Puccini and Oxford
Foremont Drywall Inc. / 1382479 Ontario Inc. / 1382503 Ontario Inc. / 2203579 Ontario Inc. /c.o.b. Foremont Drywall Contracting	$428,025.00 / Amount Owing $151,285.75	$616,916.06 / Amount Owing $102,646.83	$568,376.58 / Amount Owing $180,645.35	Phases 1, 2 & 3 - $434,577.93
Giancola Aluminum Contractors Inc.		Amount of Contract $not available / Amount Owing $5,527.00	$103,559.00 / Amount Owing $77,052.00	Phases 2 & 3 - $82,579.00

Lien Claimant	Phase 1 Contract Amount / Amount Owing	Phase 2 Contract Amount / Amount Owing	Phase 3 Contract Amount / Amount Owing	Total Owed on Phase 1, 2 & 3
GM Exterior Inc.	$20,558.75 / Amount Owing $1,978.58	$62,840.20 / Amount Owing $2,563.79	$44,516.82 / Amount Owing $42,016.83	Phases 1, 2 & 3 - $46,559.20
Medi Group Incorporated	Phases 1 & 2 - $1,492,924.00 / Amount Owing on Phases 1 & 2 $378,285.00	See note under "Phase 1"	$947,140.00 / Amount Owing $143,390.00	Phase 1, 2 & 3 - $521,675.00
Pave Plumbing & Heating Inc.	Phase 1, 2 & 3 - $834,389.56 / Amount Owing on Phase 1 $82,277.48	See Contract Amount under "Phase 1" / Amount Owing on Phase 2 $39,272.57	See Contract Amount under "Phase 1" / Amount Owing on Phase 3 $64,819.72	Phases 1, 2 & 3 - $186,369.77 (plus $40,933.18 re: Ashcott Mews; Silver Stream Homes Inc.; D&I Developments
Pilbro III Inc.	$471,428.01 / Amount Owing $64,641.13	$827,668.50 / Amount Owing $317,890.80	$867,989.16 / Amount Owing $128,828.95	Phases 1, 2 & 3 - $511,360.88 (plus $42,992.94 re: Ashcott Mews)
Solo Electric Ltd.	Phases 1 & 2 - $452,819.71 / Amount Owing $72,111.89	See note under "Phase 1"	$253,622.32 / Amount Owing $68,578.80	Phases 1, 2 & 3 - $140,690.69 (plus $45,673.47 re: Ashcott Mews and D& I Development)
TOTAL AMOUNT OWING:	$898,317.28	$619,228.90	$1,064,121.09	$2,581,667.27 + $ 203,061.13 Ashcott, D&I, etc. $2,784,728.40

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MEDI GROUP INCORPORATED et al Plaintiffs	and	SILVER STREAMS HOMES (PUCCINI) INC. et al Defendants	Court File No.:

Ontario
SUPERIOR COURT OF JUSTICE

Proceeding commenced at Toronto

STATEMENT OF CLAIM

KLEIN &ASSOCIATES PROFESSIONAL CORPORATION
390 Bay Street, Suite 1101
Toronto, Ontario M5H 2Y2

James Klein LSUC#: 25014B
Tel: (416) 366-9494, Ext. 225
Fax: (416) 366-9442

Lawyers for the Plaintiffs

IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, C. C-36, AS AMENDED and IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF SILVER STREAMS HOMES INC., SILVER STREAMS HOMES (PUCCINI) INC., 2148993 ONTARIO INC., 2148990 ONTARIO INC., 2147681 ONTARIO INC. AND 2147650 ONTARIO INC.

Court File No. 13-10362-00-CL

ONTARIO
SUPERIOR COURT OF JUSTICE – COMMERCIAL LIST

Proceeding commenced at Toronto

ORDER

KLEIN & ASSOCIATES PROFESSIONAL CORPORATION
390 Bay Street, Suite 1101
Toronto, ON M5H 2Y2
James Klein LS#: 25014B
Tel: 416.366-9494
Fax: 416-366-9442

Lawyers for the Moving Parties

Medi Group Incorporated; 1865721 Ontario Inc.; Canadian Concrete Forming Limited; Cardell Flooring Ltd.; E.D. Carpenters Limited; Foremont Drywall Inc. et al carrying on business as Foremont Drywall Contracting; Giancola Aluminum Contractors Inc.; GM Exteriors Inc.; Pave Plumbing & Heating Inc.; Pilbro III Inc.; and Solo Electric Ltd.

IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, C. C-36, AS AMENDED and IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF SILVER STREAMS HOMES INC., SILVER STREAMS HOMES (PUCCINI) INC., 2148993 ONTARIO INC., 2148990 ONTARIO INC., 2147681 ONTARIO INC. AND 2147650 ONTARIO INC.

Court File No: 13-10362-00-CL

ONTARIO
SUPERIOR COURT OF JUSTICE - COMMERCIAL LIST

Proceeding commenced at Toronto

NOTICE OF MOTION
(RETURNABLE October 16, 2014)

KLEIN & ASSOCIATES PROFESSIONAL CORPORATION
390 Bay Street, Suite 1101
Toronto, ON M5H 2Y2
James Klein LS#: 25014B
Tel: 416.366-9494
Fax: 416-366-9442

Lawyers for the Moving Parties

Medi Group Incorporated; 1865721 Ontario Inc.; Canadian Concrete Forming Limited; Cardell Flooring Ltd.; E.D. Carpenters Limited; Foremont Drywall Inc. et al carrying on business as Foremont Drywall Contracting; Giancola Aluminum Contractors Inc.; GM Exteriors Inc.; Pave Plumbing & Heating Inc.; Pilbro III Inc.; and Solo Electric Ltd.

Court File No. 13-10362-00-CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

BETWEEN:

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

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

Applicants

AFFIDAVIT OF DOMINIC MONTEMURRO

I, Dominic Montemurro, of the City of Etobicoke, in the Province of Ontario **MAKE OATH AND SAY:**

1. I am the president of Medi Group Incorporated ("Medi Group"), a supplier and installer of brick and masonry products to the project known as the Puccini Project as more particularly described below. I make this affidavit on behalf of Medi Group as well as several other construction trades on the Puccini Project who have formed a united trade group as listed in Exhibit "A" to my affidavit (collectively, the "Trades") . Except where otherwise noted as information from others I have personal knowledge of the matters deposed.

BACKGROUND

2. The Puccini Project is a low rise residential project consisting of several phases. According to the affidavit of Imran Jinnah sworn December 11th, 2013 and filed in these CCAA proceedings, the title to phases I, II and II are in the names of 2148990 Ontario Inc., 2148993 Ontario Inc., 2147650 Ontario Inc. and 2147681 Ontario Inc.. The project was developed by Silver Streams Homes Inc. and Silver Streams (Puccini) Inc., collectively "Silver Streams" (the "Puccini Project").

3. Imran Jinnah according to his affidavit of December 11th, 2013 is the sole officer, director and shareholder of the companies listed in paragraph 1 above. Asma Jinnah is an officer of Silver Streams (Puccini) Inc.. Now shown to me and marked as Exhibit "B" is a corporate profile report on Silver Stream Homes (Puccini) Inc..

FORBEARANCE AGREEMENT

4. In or about the fall of 2012, the Puccini Project was at the stage of commencing construction of Phase III. Medi Group and several of the other Trades were already owed significant amounts of money for work done and services provided in the earlier phases of the Puccini Project. At the request of Silver Streams, the Trades were requested to forbear seeking their legal remedies and to return to the Puccini Project to work on Phase III. An agreement made December 17th, 2012 was entered into by the Trades. Now shown to me and marked as Exhibit "C" is a copy of the Agreement dated December 12th, 2012.

5. The Trades returned to work on the Puccini project and provided labour, materials and their services. These trades were not fully paid for their work on Phase III at the time of the making of the initial order in this proceeding on December 17th, 2013. Claims for lien have been filed by the Trades.

CCAA Proceedings

6. An initial order under the CCAA was made by Mr. Justice Newbould on December 17th, 2013 in respect of 2148990 Ontario Inc., 2148993 Ontario Inc., 2147650 Ontario Inc. and 2147681 Ontario Inc., Silver Streams Homes Inc. and Silver Streams (Puccini) Inc. The initial order provided for a stay of proceedings that had been commenced or may be commenced against any of the said companies, the directors and officers of the said companies and the property of the said companies. Now shown to me and marked as Exhibit "D" is a copy of the initial order by of December 17th, 2013.

7. The stay of proceedings has been extended several times by court orders. On January 16th, 2014 Justice Wilton-Siegel granted an order extending the stay period until April 18th, 2014. On April 17th, 2014 Justice Newbould further extended the stay period to July 3rd, 2014. On June 26th, 2014 Justice Brown extended the stay period to September 26, 2014.

Now shown to me and marked as Exhibits "E", "F" and "G" are copies of the orders extending the stay.

8. In the Imran Jinnah affidavit of December 11, 2013 filed in the application for an initial order he stated in paragraph 6 of that affidavit "the Applicants objective is to complete the 10 remaining homes in Phases II and III of the Puccini Project and to apply the net proceeds, after payment of operating costs and the costs of these proceedings, to payment of their creditors' claims in the priority determined by the court".

9. The CCAA proceedings concern only secured claims. There are mortgagees whose claims total in excess of $12 million claiming priority to any distributions from the sale of the remaining assets of Silver Streams over the $3.5 million of lien claims which includes $2.784 million filed by the Trades. The mortgagees are also disputing the validity of the claims for lien. The Trades wish to issue a claim for breach of trust and other relief arising out of the forbearance agreement. Now shown to me and marked as Exhibit "H" is a draft of the claim proposed to be issued.

10. The Medi Group claim alleges, *inter alia*, that Silver Streams breached the trust provisions of the *Construction Lien Act*, and that the Trades are beneficiaries of that trust and are owed cumulatively the sum of $2,784,728.40 from all three phases of the Puccini Project.

11. The Medi Group claim also alleges that the defendants Imran and Asma Jinnah were directors or officers or persons having effective control of Silver Streams and its activities and have acquiesced or assented to conduct which they reasonably knew amounted to a breach of trust contrary to section 13 of the *Construction Lien Act*.

12. The Medi Group Action plaintiffs seek to lift the stay of proceedings in favour of Silver Streams, Imran Jinnah and Asma Jinnah so that they may issue and prosecute their claim.

13. The Forbearance Agreement under which there has been a default is dated December 12, 2012 and in order to preserve their rights the Medi Group Action plaintiffs seek to issue and prosecute their claim.

14. There has been no proposal or plan of arrangement in these proceedings and to my knowledge no restructuring of Silver Streams is contemplated. According to the most recent affidavit filed by Imran Jinnah dated August 5th, 2014 only 2 homes remain unsold out of the 10 homes forming the assets of Silver Streams. Of the two remaining homes one is completely constructed and the other is a lot to be sold as vacant land.

15. It is advisable to have the within proceedings heard on the Commercial List as a related matter, being a Newmarket action commenced by Con-Drain Company (1993) Limited (hereinafter "Con-Drain"), who provided underground services to the Puccini Project, is to be traversed to the Commercial List. In the Con-Drain action certain closing proceeds from the sale of homes in Phase III of the Puccini Project were held back further to orders obtained by Con-Drain, who was an unpaid trade on the Puccini Project. Now shown to me and marked as Exhibit "I" are the Con-Drain pleadings in their Newmarket action. Now shown to me and marked as Exhibit "J" is a copy of the order obtained by Con-Drain relating to proceeds from closings in Phase III of the Puccini Project.

16. As a result of Con-Drain obtaining their order as well as their filing of a lien on Phase III, payment to the Trades stopped. The Trades who were constructing the homes in Phase III were unpaid in the cumulative amount of $1,064,121.09 for Phase III work and claim an interest in the proceeds held back in the Con-Drain action.

17. This affidavit is sworn in support of a motion to lift the stay of proceedings against Silver Streams, Imran Jinnah and Asma Jinnah and for no other purpose.

SWORN BEFORE ME at the City of Toronto, in the Province of Ontario, on September 19, 2014.	
Commissioner for Taking Affidavits	Dominic Montemurro

Grace Panettieri-Marson, a Commissioner, etc.,
City of Toronto, for Medi Group Incorporated,
National Air Systems Inc., and National Fireplace
And Facings Inc.
Expires March 24, 2015.

IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, C. C-36, AS AMENDED and IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF SILVER STREAMS HOMES INC., SILVER STREAMS HOMES (PUCCINI) INC., 2148993 ONTARIO INC., 2148990 ONTARIO INC., 2147681 ONTARIO INC. AND 2147650 ONTARIO INC.

Court File No: 13-10362-00-CL

ONTARIO
SUPERIOR COURT OF JUSTICE - COMMERCIAL LIST

Proceeding commenced at Toronto

AFFIDAVIT

KLEIN & ASSOCIATES PROFESSIONAL CORPORATION
390 Bay Street, Suite 1101
Toronto, ON M5H 2Y2
James Klein LS#: 25014B
Tel: 416.366-9494
Fax: 416-366-9442

Lawyers for the Moving Parties

Medi Group Incorporated; 1865721 Ontario Inc.; Canadian Concrete Forming Limited; Cardell Flooring Ltd.; E.D. Carpenters Limited; Foremont Drywall Inc. et al carrying on business as Foremont Drywall Contracting; Giancola Aluminum Contractors Inc.; GM Exteriors Inc.; Pave Plumbing & Heating Inc.; Pilbro III Inc.; and Solo Electric Ltd.

THIS IS EXHIBIT "A" TO THE AFFIDAVIT OF DOMINIC MONTEMURRO SWORN BEFORE ME, THIS 19 DAY OF SEPTEMBER 2014.

Commissioner for Taking Affidavits

ace Panettieri-Marson, a Commissioner, etc.
y of Toronto, for Medi Group Incorporated
tional Air Systems Inc., and National Fire...
d Facings Inc.
pires March 24, 2015.

EXHIBIT "A"

1. 1865721 Ontario Inc.
2. Canadian Concrete Forming Limited
3. Cardell Flooring Ltd.
4. E. D. Carpenters Limited
5. Foremont Drywall Inc., 1382479 Ontario Inc., 1382503 Ontario Inc., 2203579 Ontario Inc. c.o.b. Foremont Drywall Contracting
6. Giancola Aluminum Contractors Inc.
7. GM Exteriors Inc.
8. Medi Group Incorporated
9. Pave Plumbing & Heating Inc.
10. Pilbro III Inc.
11. Solo Electric Ltd.

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THIS IS EXHIBIT "B" TO THE AFFIDAVIT OF DOMINIC MONTEMURRO SWORN BEFORE ME, THIS 19 DAY OF SEPTEMBER 2014.

Commissioner for Taking Affidavits

Grace Panettieri-Marson, a Commissioner, etc.
City of Toronto, for Medi Group Incorporated,
National Air Systems Inc., and National Fireplace
And Facings Inc.
Expires March 24, 2015.

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EXHIBIT "B"

Request ID: 016679717
Transaction ID: 54901006
Category ID: (C)CC/E

Province of Ontario
Ministry of Government Services

Date Report Produced: 2014/07/24
Time Report Produced: 10:19:33
Page: 1

Certified a true copy of the data as recorded on the Ontario Business Information System.

Director
Ministry of Government Services
Toronto, Ontario

CORPORATION PROFILE REPORT

Ontario Corp Number	**Corporation Name**	**Incorporation Date**
2187537	SILVER STREAMS HOMES (PUCCINI) INC.	2008/10/14
		Jurisdiction
		ONTARIO

Corporation Type	**Corporation Status**	**Former Jurisdiction**
ONTARIO BUSINESS CORP.	ACTIVE	NOT APPLICABLE

Registered Office Address

103 NAUGHTON DRIVE

RICHMOND HILL
ONTARIO
CANADA L4C 8B3

Mailing Address

103 NAUGHTON DRIVE

RICHMOND HILL
ONTARIO
CANADA L4C 8B3

Date Amalgamated	**Amalgamation Ind.**
NOT APPLICABLE	NOT APPLICABLE
New Amal. Number	**Notice Date**
NOT APPLICABLE	NOT APPLICABLE
	Letter Date
	NOT APPLICABLE
Revival Date	**Continuation Date**
NOT APPLICABLE	NOT APPLICABLE
Transferred Out Date	**Cancel/Inactive Date**
NOT APPLICABLE	NOT APPLICABLE
EP Licence Eff.Date	**EP Licence Term.Date**
NOT APPLICABLE	NOT APPLICABLE

Number of Directors Minimum	**Maximum**	**Date Commenced in Ontario**	**Date Ceased in Ontario**
00001	00010	NOT APPLICABLE	NOT APPLICABLE

Activity Classification

NOT AVAILABLE

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Request ID: 016679717 Transaction ID: 54901006 Category ID: (C)CC/E	Province of Ontario Ministry of Government Services	Date Report Produced: 2014/07/24 Time Report Produced: 10:19:33 Page: 2

Certified a true copy of the data as recorded on the Ontario Business Information System.

Director
Ministry of Government Services
Toronto, Ontario

CORPORATION PROFILE REPORT

Ontario Corp Number	**Corporation Name**
2187537	SILVER STREAMS HOMES (PUCCINI) INC.

Corporate Name History	**Effective Date**
SILVER STREAMS HOMES (PUCCINI) INC.	2008/10/14

Current Business Name(s) Exist:	NO
Expired Business Name(s) Exist:	NO

Administrator:

Name (Individual / Corporation)	**Address**
IMRAN JINNAH	103 NAUGHTON DRIVE RICHMOND HILL ONTARIO CANADA L4C 8B3

Date Began	**First Director**	
2008/10/14	NOT APPLICABLE	
Designation	**Officer Type**	**Resident Canadian**
DIRECTOR		Y

Certified a true copy of the data as recorded on the Ontario Business Information System.

Director
Ministry of Government Services
Toronto, Ontario

CORPORATION PROFILE REPORT

Ontario Corp Number	Corporation Name
2187537	SILVER STREAMS HOMES (PUCCINI) INC.

Administrator:
Name (Individual / Corporation)

IMRAN

JINNAH

Address

103 NAUGHTON DRIVE

RICHMOND HILL
ONTARIO
CANADA L4C 8B3

Date Began	First Director	
2008/10/14	NOT APPLICABLE	
Designation	**Officer Type**	**Resident Canadian**
OFFICER	PRESIDENT	Y

Administrator:
Name (Individual / Corporation)

IMRAN

JINNAH

Address

103 NAUGHTON DRIVE

RICHMOND HILL
ONTARIO
CANADA L4C 8B3

Date Began	First Director	
2008/10/14	NOT APPLICABLE	
Designation	**Officer Type**	**Resident Canadian**
OFFICER	SECRETARY	Y

45

Certified a true copy of the data as recorded on the Ontario Business Information System.

Director
Ministry of Government Services
Toronto, Ontario

CORPORATION PROFILE REPORT

Ontario Corp Number	**Corporation Name**
2187537	SILVER STREAMS HOMES (PUCCINI) INC.

Administrator:
Name (Individual / Corporation)

IMRAN

JINNAH

Address

103 NAUGHTON DRIVE

RICHMOND HILL
ONTARIO
CANADA L4C 8B3

Date Began	**First Director**	
2008/10/14	NOT APPLICABLE	
Designation	**Officer Type**	**Resident Canadian**
OFFICER	TREASURER	Y

Administrator:
Name (Individual / Corporation)

ASMA

JINNAH

Address

103 NAUGHTON DRIVE

RICHMOND HILL
ONTARIO
CANADA L4C 8B3

Date Began	**First Director**	
2008/10/14	NOT APPLICABLE	
Designation	**Officer Type**	**Resident Canadian**
OFFICER	OTHER	

Request ID:	016679717	Province of Ontario	Date Report Produced:	2014/07/24
Transaction ID:	54901006	Ministry of Government Services	Time Report Produced:	10:19:33
Category ID:	(C)CC/E		Page:	5

Certified a true copy of the data as recorded on the Ontario Business Information System.

Director
Ministry of Government Services
Toronto, Ontario

CORPORATION PROFILE REPORT

Ontario Corp Number	Corporation Name
2187537	SILVER STREAMS HOMES (PUCCINI) INC.

Last Document Recorded

Act/Code	Description	Form	Date
CIA	INITIAL RETURN	1	2009/04/08

THIS REPORT SETS OUT THE MOST RECENT INFORMATION FILED BY THE CORPORATION ON OR AFTER JUNE 27, 1992, AND RECORDED IN THE ONTARIO BUSINESS INFORMATION SYSTEM AS AT THE DATE AND TIME OF PRINTING. ALL PERSONS WHO ARE RECORDED AS CURRENT DIRECTORS OR OFFICERS ARE INCLUDED IN THE LIST OF ADMINISTRATORS.

PLEASE NOTE THAT WHEN THE SAME INDIVIDUAL HOLDS MULTIPLE 'OTHER UNTITLED' OFFICER POSITIONS, AS INDICATED ON A FORM 1 UNDER THE *CORPORATIONS INFORMATION ACT*, ONLY ONE OF THESE 'OTHER UNTITLED' POSITIONS HELD BY THAT INDIVIDUAL WILL BE REFLECTED ON THIS REPORT.

ADDITIONAL HISTORICAL INFORMATION MAY EXIST ON MICROFICHE.

The issuance of this certified report in electronic form is authorized by the Ministry of Government Services.

THIS IS EXHIBIT "C" TO THE AFFIDAVIT OF DOMINIC MONTEMURRO SWORN BEFORE ME, THIS 19 DAY OF SEPTEMBER 2014.

Commissioner for Taking Affidavits

Grace Panettieri-Marson, a Commissioner, etc.,
City of Toronto, for Medi Group Incorporated,
National Air Systems Inc., and National Fireplace
And Facings Inc.
Expires March 24, 2015.

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THIS AGREEMENT made this 17th day of December, 2012
AMONG:

SILVER STREAMS HOMES (PUCCINI) INC.
(hereinafter referred to as the "Builder")

OF THE FIRST PART

- AND -

ALL THOSE PARTIES LISTED ON SCHEDULE "A"
ATTACHED HERETO
(hereinafter individually referred to as a "Creditor" and collectively as the "Creditors")

OF THE SECOND PART

- AND -

JACK GREENBERG
(hereinafter referred to as the "Escrow Agent")

OF THE THIRD PART

- AND -

2147650 ONTARIO INC., 2148993 ONTARIO INC.
AND 2148990 ONTARIO INC.
(hereinafter individually referred to as an "Owner"
and collectively as "Owners")

OF THE FOURTH PART

WHEREAS the Builder has constructed several homes on a parcel of land on the north side of Puccini Drive respectively known as Phase 1 and Phase 2 of the Symphony Series Development (collectively known as the "Completed Projects") and the Creditors are owed various sums of money (collectively the "Existing Indebtedness") in connection with the provision of goods, materials and labour to the Completed Projects in the agreed upon amounts shown on Schedule "A" attached hereto;

AND WHEREAS the Builder is scheduled to commence construction shortly on additional homes in the Symphony Series Development in the parcels therein respectively known as Plan 3 (which has 25 single family homes to be built of which 23 are pre-sold) and Phase 3 (which has 40 Townhomes and 8 Semi-detached homes to be built of which 32 have been pre-sold) (the said Plan 3 and Phase 3 are collectively referred to as the "Future Project") and has requested that the Creditors accept the payment terms and arrangements herein to settle the Existing Indebtedness and that the Creditors continue to provide goods, materials and labour to the Builder for the Future Project also on the terms hereinafter set out;

AND WHEREAS the Owners confirm that they have contracted with the Builder to act as their Agent and Manager to construct residential dwellings in the Future Project;

AND WHEREAS the Creditors have agreed to the terms hereinafter set out and have agreed, as long as the terms hereof are complied with, not to commence any action(s) or register any liens for their individual or collective Existing Indebtedness and to continue to work with and for the Builder, subject to the provisions of the Tolling Agreement as executed by the parties thereto and attached as Schedule "B" hereto;

AND WHEREAS the Escrow Agent has agreed to perform the functions as set out herein;

NOW THEREFORE, in consideration of the mutual covenants and agreements set out herein and the sum of Ten ($10.00) Dollars now paid by each of the parties hereto to each other (the receipt, adequacy and sufficiency of which each party hereto acknowledges), each of the parties hereto agrees as follows:

1. The Builder covenants and agrees and directs as follows:
   (a) in connection with the Future Project,
      (i) to retain and give preference to each of the Creditors to perform their type of work for the Future Project which the Builder requires provided such Creditor wishes to do so and has the best competitive price and terms (the "New Work");
      (ii) to give an irrevocable direction to the lender financing the Builder's construction (the "Lender") for the Future Project stating that the net proceeds of any draw shall be paid to the Escrow Agent;
      (iii) hereby irrevocably directs the Escrow Agent that the net proceeds of any draw shall be paid forthwith on receipt of same to each creditor referred to in the Cost Consultant's report (which justifies such draw) pro rata to the amount authorized for each creditor therein <u>(hereinafter, the "Net Draw Proceeds"); and</u>
      (iv) to request draws from the Lender expeditiously to minimize the delay, if any, in payments to the Creditors for the New Work;

   (b) in connection with the Existing Indebtedness, to repay same together with interest thereon at the Bank of Montreal prime rate plus 3% per annum (hereinafter the "Rate") and :
      (i) in connection with the sale of any home in the Future Project;
         (A) hereby irrevocably designates the Escrow Agent as its solicitor to complete the legal work on each aforesaid closing;
         (B) hereby irrevocably directs the Escrow Agent that, from the net sale proceeds thereof (after deducting HST, closing adjustments, legal costs for the closing, real estate agent/broker commissions, partial discharge amounts for existing encumbrances and

prior servicing obligations, any cash collateralization payments, and reimbursement of prorated soft costs) (hereinafter the "Net Sale Proceeds"), which would be otherwise payable to the Builder, until the Existing Indebtedness together with interest thereon at the Rate, has been paid in full, the Escrow Agent shall deduct, to the extent it is available, \$50,000 from each Plan 3 closing and \$35,000 from each Phase 3 closing to be paid and applied, on a pro rata basis for each Creditor, as follows:

(1)

(a) the first \$10,000 shall be paid and applied against the balance owed to each Creditor in connection with the New Work until same has been paid in full;

(b) The parties hereto acknowledge that from each draw from the Lender, 23% of the value of the New Work completed on the Future Project will not be advanced by the Lender, 10% attributable to the usual construction lien holdback and 13% for HST; and

(2) the balance shall be paid and applied against the Existing Indebtedness and interest thereon; and

(3) the foregoing payments shall be made by the Escrow Agent together with an account of calculation of same to the Creditors on a monthly basis for all closings which have occurred in the prior month, but no later than the 46th day after the closing of any residential unit.

2. The Escrow Agent will hold back from the Net Sale Proceeds an amount (the "Closing Holdback") calculated as the difference between the estimated cost of construction of the residential unit being sold at a rate of \$100 per sq. ft. for each specific residential unit less whatever amounts have already been disbursed by the Escrow Agent against that amount to the Creditors and other suppliers to the Future Project pending receipt of final invoices from the Creditors, which have been approved by the Builder. Such approval/agreement for unpaid invoices shall be finalized as between the Builder and any Creditor on the later of five (5) business days (i) after the closing of any residential unit, or (ii) the rendering of the invoice. Payment of same shall be made by the Escrow Agent as soon as possible after the said approval/agreement of the amount owing out of the Closing Holdback to the extent the Closing Holdback is sufficient.

3. Upon execution of this agreement by all parties hereto, the Escrow Agent hereby undertakes to all parties to act in accordance with the aforesaid instructions and irrevocable directions provided to him by the Builder and to forthwith advise each of the Creditors if the Builder changes the solicitor acting for it in connection with the draws from the Lender and/or in connection with the aforesaid sale closings.

4. (a) The Owners hereby acknowledge, confirm and agree that they have irrevocably authorized the Builder to enter into this Agreement with the other parties hereto and that any actions of the Builder, or of the Escrow Agent shall be deemed to be the actions of and to be fully authorized by the Owners.

(b) The Owners acknowledge and agree to the repayment of the Existing Indebtedness to the Creditors as described herein, notwithstanding that the Existing Indebtedness may have been incurred by the Creditors for labour, materials and services provided on the Completed Project in respect of lands which may have been owned by parties other than the Owners herein.

5. Each of the Creditors agrees as follows:

(a) That the amount shown on Schedule A attached hereto opposite its name is the final and correct amount outstanding to it in connection with the Completed Projects;

(b) That it accepts the arrangements herein to satisfy the New Work and the Existing Indebtedness and that, unless there is default hereunder by either the Builder or the Escrow Agent, it will not commence any action for collection of that portion of the New Work or the Existing Indebtedness due to it nor will it register any lien or liens against any of the Completed Projects or the Future Project therefor; and

(c) That the Escrow Agent has no liability to any Creditor for the whole or any part of the Existing Indebtedness or the cost of the New Work and that he shall only be obligated to distribute such Net Sale Proceeds which are paid to or held by him pursuant to the aforesaid instructions and irrevocable instructions to the extent such Net Sale Proceeds are sufficient net of his reasonable costs for so acting.

6. Each of the parties hereto acknowledges and agrees that each other party hereto is relying on the covenant(s) of each party hereto to perform their obligations hereunder and in particular, as between the Creditors, to comply with subparagraph 3(b) hereof and that each party hereto could suffer damages or losses for a failure to so comply.

7. Each party hereto agrees that time is of the essence hereof and that this agreement shall be governed by the laws of the Province of Ontario.

8. Each party hereto agrees that this agreement shall enure to the benefit of and be binding on each party hereto and their respective heirs, executors, administrators, successors and assigns.

9. Each party hereto agrees that this agreement may be signed in counterpart or counterparts and when all such counterparts are combined same shall constitute the entire agreement.

In Witness Whereof each of the parties hereto has executed this agreement under the hand of its proper officer duly authorized in that behalf and to be deemed to be effective as of the 17th day of December, 2012.

WITNESS:

SILVER STREAMS HOMES (PUCCINI) INC.

PER: ______________________
Imran Jinnah-President
I have authority to bind the Corporation

____
Jack Greenberg as Escrow Agent

THE PARTIES REFERRED TO AS THE CREDITORS HAVE SIGNED OPPOSITE THEIR NAMES ON SCHEDULE A ATTACHED HERETO

2147650 ONTARIO INC.

PER: ______________________
Imran Jinnah – President
I have authority to bind the Corporation

2148993 ONTARIO INC.

PER: ______________________
Imran Jinnah – President
I have authority to bind the Corporation

2418990 ONTARIO INC.

PER: ______________________
Imran Jinnah – President
I have authority to bind the Corporation

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SCHEDULE A

CREDITORS AND EXISTING INDEBTEDNESS

Creditors	Existing Indebtedness
SOLO ELECTRIC LTD. Per:____________________ I have authority to bind the Corporation 13205 McLaughlin Road Caledon, ON L7C 2B1	$116,773.68
CANADIAN CONCRETE FORMING LTD. Per: ____________________ I have authority to bind the Corporation 100 Creditstone Road Concord, ON L4K 1P2	$151,158.41
E.D. CARPENTRY LIMITED Per:____________________ I have authority to bind the Corporation 3302 Cardross Road Mississauga, ON L4X 2N2	$ 201,511.34 I
PAVE PLUMBING & HEATING INC. Per: ____________________ Pat Di Stefano - President I have authority to bind the Corporation 360 Enford Road Richmond Hill, ON L4C 3G1	$141,091.44

54

SCHEDULE A

CREDITORS AND EXISTING INDEBTEDNESS

Creditors	Existing Indebtedness
SOLO ELECTRIC LTD. Per:____________________ I have authority to bind the Corporation 13205 McLaughlin Road Caledon, ON L7C 2B1	$116,773.68
CANADIAN CONCRETE FORMING LTD. Per:____________________ I have authority to bind the Corporation 100 Creditstone Road Concord, ON L4K 1P2	$151,158.41
E.D. CARPENTRY LIMITED Per:____________________ I have authority to bind the Corporation 3302 Cardross Road Mississauga, ON L4X 2N2	$ 201,511.34 I
PAVE PLUMBING & HEATING INC. Per:____________________ Pat Di Stefano - President I have authority to bind the Corporation 360 Enford Road Richmond Hill, ON L4C 3G1	$141,091.44

SCHEDULE A

CREDITORS AND EXISTING INDEBTEDNESS

Creditors	Existing Indebtedness
SOLO ELECTRIC LTD. Per:____________________ I have authority to bind the Corporation 13205 McLaughlin Road Caledon, ON L7C 2B1	$116,773.68
CANADIAN CONCRETE FORMING LTD. Per: ____________________ I have authority to bind the Corporation 100 Creditstone Road Concord, ON L4K 1P2	$151,158.41
E.D. CARPENTRY LIMITED Per: SAM DIBACCO I have authority to bind the Corporation 3302 Cardross Road Mississauga, ON L4X 2N2	$ 201,511.34 I
PAVE PLUMBING & HEATING INC. Per: ____________________ Pat Di Stefano - President I have authority to bind the Corporation 360 Enford Road Richmond Hill, ON L4C 3G1	$141,091.44

56

SCHEDULE A

CREDITORS AND EXISTING INDEBTEDNESS

Creditors	Existing Indebtedness
SOLO ELECTRIC LTD. Per:_________________________ I have authority to bind the Corporation 13205 McLaughlin Road Caledon, ON L7C 2B1	$116,773.68
CANADIAN CONCRETE FORMING LTD. Per: _________________________ I have authority to bind the Corporation 100 Creditstone Road Concord, ON L4K 1P2	$151,158.41
E.D. CARPENTRY LIMITED Per:_________________________ I have authority to bind the Corporation 3302 Cardross Road Mississauga, ON L4X 2N2	$ 201,511.34 I
PAVE PLUMBING & HEATING INC. Per:_________________________ Pat Di Stefano - President I have authority to bind the Corporation 360 Enford Road Richmond Hill, ON L4C 3G1	$141,091.44

57

MEDI GROUP INCORPORATED $377,358.08

Per: ______________________________

DOMINIC MONTEMURRO

I have authority to bind the Corporation

56 Brockport Drive
Toronto, ON M9W 5N1

PILBRO III INC. $425,712.57

Per: ______________________________

Tony Pileggi –

I have authority to bind the Corporation

13 Roxaline Street
Etobicoke, ON M9P 2Y6

FOREMONT DRYWALL CONTRACTING Partnership
by FOREMONT DRYWALL INC. $253,932.58

Per: ______________________________

I have authority to bind the Corporation

495 Deerhurst Drive
Brampton, ON L6T 5K3

58

MEDI GROUP INCORPORATED $377,358.08

Per:____________________________

I have authority to bind the Corporation

56 Brockport Drive
Toronto, ON M9W 5N1

PILBRO III INC. $425,712.57

Per:____________________________
Tony Pileggi –
I have authority to bind the Corporation

13 Roxaline Street
Etobicoke, ON M9P 2Y6

FOREMONT DRYWALL CONTRACTING Partnership by FOREMONT DRYWALL INC. $253,932.58

Per:____________________________

I have authority to bind the Corporation

495 Deerhurst Drive
Brampton, ON L6T 5K3

59

MEDI GROUP INCORPORATED | $377,358.08

Per:________________________________

I have authority to bind the Corporation

56 Brockport Drive
Toronto, ON M9W 5N1

PILBRO III INC. | $425,712.57

Per:________________________________
Tony Pileggi –
I have authority to bind the Corporation

13 Roxaline Street
Etobicoke, ON M9P 2Y6

FOREMONT DRYWALL CONTRACTING Partnership by FOREMONT DRYWALL INC. | $253,932.58

Per: M Montagner

I have authority to bind the Corporation

495 Deerhurst Drive
Brampton, ON L6T 5K3

SCHEDULE B

TOLLING AGREEMENT

(Dated December 17th, 2012)

BETWEEN:

Ashcott Mews Developments Inc., Silver Streams Homes Inc., Silver Streams Homes (Puccini) Inc. and D&I Developments Inc. (collectively, the "Silver Stream Parties") and IMRAN JINNAH (the "Principal")

- and -

Those parties set out on Schedule "A" hereto (individually a "Contractor", and collectively the "Contractors")

WHEREAS:

A. The Silver Stream Parties and the Contractors entered into various contracts (the "Contracts") pursuant to which the Contractors agreed to supply and install labour, materials, works and services to projects known as Phase 1 and Phase 2 of the Symphony Series Development located in the Town of Richmond Hill (the "Projects");

B. The Contactors supplied such services, labour and materials to the Projects, pursuant to the Contracts;

C. The Silver Stream Parties are currently indebted to the Contractors for those amounts as set out on Schedule "A" hereto (the "Indebtedness") and the parties herein have agreed to extend all applicable limitation periods and related defences in relation to the claims for the Indebtedness (the "Contractor Claims") which may be asserted as against the Silver Stream Parties and the Principal by the Contractors or any one of them under this Agreement of which this Schedule "B" forms part, dated the 17th day of December, 2012 (the "Settlement Agreement").

NOW THEREFORE in consideration of the mutual covenants and agreements herein contained and for other good and valuable consideration, the receipt and sufficiency of which is hereby irrevocably acknowledged, the parties hereto covenant and agree as follows:

1. The running of any and all statutory limitation periods, including, without limiting the generality of the foregoing, the limitation period set out in the *Limitations Act*, 2002, S.O., c.24, as amended, the defence of laches, and all other statutes and rules of substance or procedure governing or pertaining to the time for the bringing of any and all actions, applications or other proceedings by any Contractor against any or all of the Silver Stream Parties and the Principal with respect to, or arising out of, or related to the Contractor Claims, have been and are hereby suspended and tolled from the effective date of this agreement to a period of three years thereafter, or until such other time as this agreement is terminated in accordance with its terms (the "Suspension Period").

2. For greater certainty, and except if such Contractor is in contravention of the Settlement Agreement, any action, application or other proceeding commenced by any Contractor against any or all of the Silver Stream Parties and the Principal during the Suspension Period shall be treated for the purpose of any limitation period, or the defence of laches, as though it was commenced on the business day prior to the commencement of the Suspension Period. Any action, application or other proceeding by any Contractor against any of the Silver Stream Parties and the Principal after the Suspension Period shall be treated, for the purpose of the consideration of any limitation period or defence of laches, as though the limitation period or delay did not run during the Suspension Period;

3. Either party, on written notice to the other, can terminate this Agreement at any time upon providing the other party with 30 days written notice of termination. Notice to terminate shall be delivered by facsimile as follows:

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a. If to Contractors:

c/o Baker Schneider Ruggiero LLP
Attention: Gerald Warner
Fax: 416-363-0645

b. If to Silver Stream Parties and the Principal:

c/o Law Offices of Jack Greenberg
Attention: Jack Greenberg
Fax: 416 485-3246

4. Nothing in this Tolling Agreement is to be taken as any acknowledgment of any liability by the Silver Stream Parties, the Principal or the Contractors, nor as any acknowledgment by any of the Contractors that any limitation period is applicable or would expire or that any defence of laches would apply but for this Tolling Agreement.

5. This Tolling Agreement may be executed in counterparts (by original or facsimile), which together shall constitute a binding agreement.

6. This Tolling Agreement shall bind and inure to the benefit of the parties hereto and their respective agents, successors and assigns.

7. This Tolling Agreement shall be construed and enforced in accordance with the laws of the Province of Ontario.

IN WITNESS WHEREOF, the parties have executed this Tolling Agreement effective as of the date first above written.

ASHCOTT MEWS DEVELOPMENTS INC.

Per:____________________
Name:
Title:

I have the authority to bind the Corporation

SILVER STREAMS HOMES INC.

Per:____________________
Name:
Title:

I have the authority to bind the Corporation

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SILVER STREAMS HOMES (PUCCINI) INC.

Per:__________________________
Name:
Title:

I have the authority to bind the Corporation

D&I DEVELOPMENTS INC.

Per:__________________________
Name:
Title:

I have the authority to bind the Corporation

____
WITNESS

____
IMRAN JINNAH

THIS IS EXHIBIT "D" TO THE AFFIDAVIT OF DOMINIC MONTEMURRO SWORN BEFORE ME, THIS 19 DAY OF SEPTEMBER 2014.

Commissioner for Taking Affidavits

Grace Panettieri-Marson, a Commissioner, etc.
City of Toronto, for Medi Group Incorporated,
National Air Systems Inc., and National Fireplace
And Facings Inc.
Expires March 24, 2015.

EXHIBIT "D"

Court File No. ~~12~~-10362-00-CL
3 25

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE MR.	)	TUESDAY, THE 17TH
	)	
JUSTICE NEWBOULD	)	DAY OF DECEMBER, 2013

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

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

the "Applicants"

INITIAL ORDER

THIS APPLICATION, made by Silver Streams Homes Inc., Silver Streams Homes (Puccini) Inc., 2148993 Ontario Inc., 2148990 Ontario Inc., 2147681 Ontario Inc. and 2147650 Ontario Inc. (collectively, the "**Applicants**"), pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**") was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the affidavit of Imran Jinnah sworn December 11, 2013 and the Exhibits thereto (the "**Jinnah Affidavit**"), the Proposed Monitor's Report to the Court and on being advised that the secured creditors who are likely to be affected by the charges created herein were given notice, and on hearing the submissions of counsel for the Applicants, Grant Thornton Limited (as the proposed Monitor), counsel for Bank of Montreal, counsel for Foremost Mortgage Corporation, counsel for the private secured lenders, counsel for certain lien claimants, counsel for the Corporation of the Town of Richmond Hill, and such other counsel as are present, no one else appearing although duly served as appears from the affidavit of service of Lynn Lee sworn December 12, 2013 and on reading the consent Grant Thornton Limited to act as the Monitor,

SERVICE

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

2. **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/practicedirections/toronto/#Commercial_List) shall be valid and effective service. Subject to Rule 17.05 this Order shall constitute an order for substituted service pursuant Rule 16.04 of the *Rules of Civil Procedure*. Subject to Rule 3.01(d) of the *Rules of Civil Procedure* 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.grantthornton.ca/silverstreams]>.

3. **THIS COURT ORDERS** that the E-Service List Keeper and the WebHost (as such terms are defined in the Protocol) for the purpose of this proceeding shall be the Monitor.

3A. **THIS COURT ORDERS** that the sum of $491,985.33, plus interest accrued thereon, being held in trust by Chaitons LLP pursuant to the orders of the Honourable Madam Justice Lack dated August 15, 2013 and the Endorsement of the Honourable Madam Justice Gilmore dated November 20, 2013 in the Con-Drain Company (1983) Limited action bearing Newmarket court file no. CV-12-115757-00 (the "Con-Drain Action") shall be maintained in trust by Chaitons LLP until further court order or consent of the parties to the Con-Drain Action, and the determination of whether the above noted funds form Property, as defined in paragraph 5 of the Initial Order, shall be determined at a late date.

APPLICATION

4. **THIS COURT ORDERS AND DECLARES** that the Applicants are affiliated debtor companies to which the CCAA applies.

POSSESSION OF PROPERTY AND OPERATIONS

5. **THIS COURT ORDERS** that, subject to paragraph 17 the Applicants shall remain in possession and control of their current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof (the "**Property**"). Subject to further Order of this Court, the Applicants shall continue to carry on business in a manner consistent with the preservation of their business (the "**Business**") and Property. The Applicants shall be authorized and empowered to continue to retain and employ the employees, consultants, agents, experts, accountants, counsel and such other persons (collectively "**Assistants**") currently retained or employed by them, with liberty to retain such further Assistants as they deem reasonably necessary or desirable in the ordinary course of business or for the carrying out of the terms of this Order.

6. **THIS COURT ORDERS** that the Applicants shall be entitled but not required to pay the following expenses whether incurred prior to or after this Order:

(a) all outstanding and future wages, salaries, employee and pension benefits, vacation pay and expenses payable on or after the date of this Order, in each case incurred in the ordinary course of business and consistent with existing compensation policies and arrangements; and

(b) the fees and disbursements of any Assistants retained or employed by the Applicants in respect of these proceedings, at their standard rates and charges.

7. **THIS COURT ORDERS** that, except as otherwise provided to the contrary herein, the Applicants shall be entitled but not required to pay all reasonable expenses incurred by the Applicants in carrying on the Business in the ordinary course on and after the date of this Order, and in carrying out the provisions of this Order, which expenses shall include, without limitation:

(a) all expenses and capital expenditures reasonably necessary for the preservation of the Property or the completion of Phases II and III of the Puccini Project (as defined in the Jinnah Affidavit) including, without limitation, payments on account of insurance, maintenance and security services; and

(b) payment for goods or services actually supplied to the Applicants following the date of this Order.

8. **THIS COURT ORDERS** that the Applicants shall remit, in accordance with legal requirements, or pay:

(a) any statutory deemed trust amounts in favour of the Crown in right of Canada or of any Province thereof or any other taxation authority which are required to be deducted from employees' wages, including, without limitation, amounts in respect of (i) employment insurance, (ii) Canada Pension Plan, (iii) Quebec Pension Plan, and (iv) income taxes;

(b) all goods and services or other applicable sales taxes (collectively, "**Sales Taxes**") required to be remitted by the Applicants in connection with the sale of goods and services by the Applicants, but only where such Sales Taxes are accrued or collected after the date of this Order, or where such Sales Taxes were accrued or collected prior to the date of this Order but not required to be remitted until on or after the date of this Order, and

(c) any amount payable to the Crown in right of Canada or of any Province thereof or any political subdivision thereof or any other taxation authority in respect of municipal realty, municipal business or other taxes, assessments or levies of any nature or kind which are entitled at law to be paid in priority to claims of secured creditors and which are attributable to or in respect of the carrying on of the Business by the Applicants.

9. **THIS COURT ORDERS** that, except as specifically permitted herein, the Applicants are hereby directed, until further Order of this Court: (a) to make no payments of principal, interest thereon or otherwise on account of amounts owing by the Applicants to any of their creditors as of this date; (b) to grant no security interests, trust, liens, charges or encumbrances upon or in respect of any of their Property; and (c) to not grant credit or incur liabilities except in the ordinary course of the Business.

RESTRUCTURING

10. **THIS COURT ORDERS** that the Applicants shall, subject to such requirements as are imposed by the CCAA and such covenants as may be contained in the Definitive Documents (as hereinafter defined), have the right to:

(a) permanently or temporarily cease, downsize or shut down any of their business or operations,

(b) terminate the employment of such of their employees or temporarily lay off such of their employees as they deems appropriate;

(c) pursue all avenues of refinancing of their Business or Property, in whole or part, subject to prior approval of this Court being obtained before any material refinancing; and

(d) complete the construction and sale of the remaining 10 homes in Phases II and III of the Puccini Project with the approval of the Monitor in respect of all sales made in the ordinary course of the Applicants' business and otherwise with prior Court approval,

all of the foregoing to permit the Applicants to proceed with the completion of Phases II and III of the Puccini Project (the "**Restructuring**").

NO PROCEEDINGS AGAINST THE APPLICANTS OR THE PROPERTY

11. **THIS COURT ORDERS** that until and including January 16, 2014, or such later date as this Court may order (the "**Stay Period**"), no proceeding or enforcement process in any court or tribunal (each, a "**Proceeding**") shall be commenced or continued against or in respect of the Applicants or the Monitor, or affecting the Business or the Property, except with the written consent of the Applicants and the Monitor, or with leave of this Court, and any and all Proceedings currently under way against or in respect of the Applicants or affecting the Business or the Property are hereby stayed and suspended pending further Order of this Court, including the action commenced in Newmarket, Ontario by Con-Drain Company (1983) Limited against certain Applicants and others bearing Court File Number CV-13-115757-00.

NO EXERCISE OF RIGHTS OR REMEDIES

12. **THIS COURT ORDERS** that during the Stay Period, all rights and remedies of any individual, firm, corporation, governmental body or agency, or any other entities (all of the foregoing, collectively being "**Persons**" and each being a "**Person**") against or in respect of the Applicants or the Monitor, or affecting the Business or the Property, are hereby stayed and suspended except with the written consent of the Applicants and the Monitor, or leave of this Court, provided that nothing in this Order shall (i) empower the Applicants to carry on any business which the Applicants are not lawfully entitled to carry on, (ii) affect such investigations, actions, suits or proceedings by a regulatory body as are permitted by Section 11.1 of the CCAA, (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 RIGHTS

13. **THIS COURT ORDERS** that during the Stay Period, 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 Applicants, except with the written consent of the Applicants and the Monitor, or leave of this Court.

CONTINUATION OF SERVICES

14. **THIS COURT ORDERS** that during the Stay Period, all Persons having oral or written agreements with the Applicants 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 Business or the Applicants, 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 Applicants, and that the Applicants shall be entitled to the continued use of their current premises, 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 Applicants in accordance with normal payment practices of the Applicants or such other practices as may be

agreed upon by the supplier or service provider and each of the Applicants and the Monitor, or as may be ordered by this Court.

NON-DEROGATION OF RIGHTS

15. **THIS COURT ORDERS** that, notwithstanding anything else in this Order, no Person shall be prohibited from requiring immediate payment for goods, services, use of lease or licensed property or other valuable consideration provided on or after the date of this Order, nor shall any Person be under any obligation on or after the date of this Order to advance or re-advance any monies or otherwise extend any credit to the Applicants. Nothing in this Order shall derogate from the rights conferred and obligations imposed by the CCAA.

PROCEEDINGS AGAINST DIRECTORS AND OFFICERS

16. **THIS COURT ORDERS** that during the Stay Period, and except as permitted by subsection 11.03(2) of the CCAA, no Proceeding may be commenced or continued against any of the former, current or future directors or officers of the Applicants with respect to any claim against the directors or officers that arose before the date hereof and that relates to any obligations of the Applicants whereby the directors or officers are alleged under any law to be liable in their capacity as directors or officers for the payment or performance of such obligations, until a compromise or arrangement in respect of the Applicants, if one is filed, is sanctioned by this Court or is refused by the creditors of the Applicants or this Court.

DIRECTORS' AND OFFICERS' INDEMNIFICATION

17. **THIS COURT ORDERS** that the Applicants shall indemnify their directors and officers against obligations and liabilities that they may incur as directors or officers of the Applicants after the commencement of the within proceedings, except to the extent that, with respect to any officer or director, the obligation or liability was incurred as a result of the director's or officer's gross negligence or wilful misconduct.

APPOINTMENT OF MONITOR

18. **THIS COURT ORDERS** that Grant Thornton Limited is hereby appointed pursuant to the CCAA as the Monitor, an officer of this Court, to monitor the business and financial affairs

of the Applicants with the powers and obligations set out in the CCAA or set forth herein and that the Applicants and their shareholders, officers, directors, and Assistants shall advise the Monitor of all material steps taken by the Applicants pursuant to this Order, and shall co-operate fully with the Monitor in the exercise of its powers and discharge of its obligations and provide the Monitor with the assistance that is necessary to enable the Monitor to adequately carry out the Monitor's functions.

19. **THIS COURT ORDERS** that the Monitor, in addition to its prescribed rights and obligations under the CCAA, is hereby directed and empowered to:

(a) monitor the Applicants' receipts and disbursements;

(b) report to this Court at such times and intervals as the Monitor may deem appropriate with respect to matters relating to the Property, the Business, and such other matters as may be relevant to the proceedings herein;

(c) assist the Applicants, to the extent required by the Applicants, in their dissemination, to the DIP Lender (as defined below) and its counsel on a periodic basis of financial and other information as agreed to between the Applicants and the DIP Lender which may be used in these proceedings including reporting on a basis to be agreed with the DIP Lender;

(d) advise the Applicants in the preparation of the Applicants' cash flow statements and reporting, which information shall be reviewed with the Monitor and delivered to the DIP Lender and its counsel on a periodic basis or provided to the Court as required;

(e) to assist the Applicants with the Restructuring;

(f) have full and complete access to the Property, including the premises, books, records, data, including data in electronic form, and other financial documents of the Applicants, to the extent that is necessary to adequately assess the Applicants' business and financial affairs or to perform its duties arising under this Order;

(g) be at liberty to engage independent legal counsel or such other persons as the Monitor deems necessary or advisable respecting the exercise of its powers and performance of its obligations under this Order;

(h) perform the tasks requested to be performed by the Monitor under the DIP Term Sheet;

(i) to advise and assist the Applicants in their negotiations with their stakeholders;

(j) perform such other duties as are required by this Order or by this Court from time to time; and

(k) in the name and/or for the benefit of the Applicants, to exercise control over the receipts, disbursements and bank accounts of the Applicants and receive and collect all monies and accounts of the Applicants in respect of the Property.

20. **THIS COURT ORDERS** that, subject to paragraph 17(k) of this Order, the Monitor shall not take possession of the Property and shall take no part whatsoever in the management or supervision of the management of the Business and shall not, by fulfilling its obligations hereunder, be deemed to have taken or maintained possession or control of the Business or Property, or any part thereof.

21. **THIS COURT ORDERS** that nothing herein contained shall require the Monitor 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 Monitor from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Monitor shall not, as a result of this Order or anything done in pursuance of the Monitor'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.

22. **THIS COURT ORDERS** that the Monitor shall provide any creditor of the Applicants and the DIP Lender with information provided by the Applicants in response to reasonable requests for information made in writing by such creditor addressed to the Monitor. The Monitor shall not have any responsibility or liability with respect to the information disseminated by it pursuant to this paragraph. In the case of information that the Monitor has been advised by the Applicants is confidential, the Monitor shall not provide such information to creditors unless otherwise directed by this Court or on such terms as the Monitor and the Applicants may agree.

23. **THIS COURT ORDERS** that, in addition to the rights and protections afforded the Monitor under the CCAA or as an officer of this Court, the Monitor shall incur no liability or obligation as a result of its appointment or the carrying out of 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 Monitor by the CCAA or any applicable legislation.

24. **THIS COURT ORDERS** that the Monitor, counsel to the Monitor and counsel to the Applicants shall be paid their reasonable fees and disbursements, incurred both before and after the making of this Order, in each case at their standard rates and charges, by the Applicants as part of the costs of these proceedings. The Applicants are hereby authorized and directed to pay the accounts of the Monitor, counsel for the Monitor and counsel for the Applicants on a monthly basis upon receipt of an invoice.

25. **THIS COURT ORDERS** that the Monitor and its legal counsel shall pass their accounts from time to time, and for this purpose the accounts of the Monitor and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

26. **THIS COURT ORDERS** that the Monitor, counsel to the Monitor and the Applicants' counsel shall be entitled to the benefit of and are hereby granted a charge (the "**Administration Charge**") on the Property, which charge shall not exceed an aggregate amount of $500,000 as security for their professional fees and disbursements incurred at the standard rates and charges of the Monitor and such counsel, both before and after the making of this Order in respect of

these proceedings. The Administration Charge shall have the priority set out in paragraphs 31 and 33 hereof.

DIP FINANCING

27. **THIS COURT ORDERS** that the Applicants are hereby authorized and empowered to obtain and borrow under a credit facility from Sandall Investments Limited (the "**DIP Lender**") in order to finance the Applicants' working capital requirements, including the cost of completing Phases II and III of the Puccini Project and the costs of these proceedings, provided that borrowings under such credit facility shall not exceed the principal amount of $1,000,000 unless permitted by further Order of this Court.

28. **THIS COURT ORDERS** that such credit facility shall be on the terms and subject to the conditions set forth in the term sheet among the Applicants and the DIP Lender dated as of December 11, 2013 (the "**Term Sheet**"), filed.

29. **THIS COURT ORDERS** that the Applicants are hereby authorized and empowered to execute and deliver such credit agreements, mortgages, charges, security documents, guarantees and other definitive documents (collectively, the "**Definitive Documents**"), as are contemplated by the Term Sheet or as may be reasonably required by the DIP Lender pursuant to the terms thereof, and the Applicants are hereby authorized and directed to pay and perform all of their indebtedness, interest, fees, liabilities and obligations to the DIP Lender under and pursuant to the Term Sheet and the Definitive Documents as and when the same become due and are to be performed, notwithstanding any other provision of this Order.

30. **THIS COURT ORDERS** that the DIP Lender shall be entitled to the benefit of and is hereby granted a charge (the "**DIP Lender's Charge**") on the Property, which DIP Lender's Charge shall not secure an obligation that exists before this Order is made. The DIP Lender's Charge shall have the priority set out in paragraphs 31 and 33 hereof.

31. **THIS COURT ORDERS** that, notwithstanding any other provision of this Order:

(a) the DIP Lender may take such steps from time to time as it may deem necessary or appropriate to file, register, record or perfect the DIP Lender's Charge or any of the Definitive Documents;

(b) upon the occurrence of an event of default under the Definitive Documents or the DIP Lender's Charge, the DIP Lender may immediately terminate the facility and, upon seeking an Order of the Court on 5 days notice to the Applicants and the Monitor, may exercise any and all of its rights and remedies against the Applicants or the Property under or pursuant to the Term Sheet, Definitive Documents and the DIP Lender's Charge, including without limitation, to apply to this Court for the appointment of a receiver over the Property; and

(c) the foregoing rights and remedies of the DIP Lender shall be enforceable against any trustee in bankruptcy, interim receiver, receiver, receiver and manager or lien trustee of the Applicants or the Property.

32. **THIS COURT ORDERS AND DECLARES** that the DIP Lender shall be treated as unaffected in any plan of arrangement or compromise filed by the Applicants under the CCAA with respect to any advances made under the Definitive Documents.

VALIDITY AND PRIORITY OF CHARGES CREATED BY THIS ORDER

33. **THIS COURT ORDERS** that the priorities of the Administration Charge and the DIP Lender's Charge, as among them, shall be as follows:

First – Administration Charge (to the maximum amount of $500,000); and

Second – DIP Lender's Charge.

34. **THIS COURT ORDERS** that the filing, registration or perfection of the Administration Charge or the DIP Lender's Charge (collectively, the "**Charges**") shall not be required, and that the Charges shall be valid and enforceable for all purposes, including as against any right, title or interest filed, registered, recorded or perfected subsequent to the Charges coming into existence, notwithstanding any such failure to file, register, record or perfect.

35. **THIS COURT ORDERS** that each of the Administration Charge and the DIP Lender's Charge (all as constituted and defined herein) shall constitute a charge on the Property and such Charges shall rank in priority to all other security interests, trusts, liens, charges, construction

liens (whether or not perfected or preserved) and encumbrances, claims of secured creditors, statutory or otherwise (collectively, "**Encumbrances**") in favour of any Person.

36. **THIS COURT ORDERS** that except as otherwise expressly provided for herein, or as may be approved by this Court, the Applicants shall not grant any Encumbrances over any Property that rank in priority to, or *pari passu* with, any of the Administration Charge or the DIP Lender's Charge, unless the Applicants also obtain the prior written consent of the Monitor, the DIP Lender and the beneficiaries of the Administration Charge, or further Order of this Court.

37. **THIS COURT ORDERS** that the Administration Charge, the Term Sheet, the Definitive Documents and the DIP Lender's Charge shall not be rendered invalid or unenforceable and the rights and remedies of the chargees entitled to the benefit of the Charges (collectively, the "**Chargees**") and/or the DIP Lender thereunder shall not otherwise be limited or impaired in any way by (a) the pendency of these proceedings and the declarations of insolvency made herein; (b) any application(s) for bankruptcy order(s) issued pursuant to the BIA, or any bankruptcy order made pursuant to such applications; (c) the filing of any assignments for the general benefit of creditors made pursuant to the BIA; (d) the provisions of any federal or provincial statutes; or (e) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of Encumbrances, contained in any existing loan documents, lease, sublease, offer to lease or other agreement (collectively, an "**Agreement**") which binds the Applicants, and notwithstanding any provision to the contrary in any Agreement:

(a) neither the creation of the Charges nor the execution, delivery, perfection, registration or performance of the Term Sheet or the Definitive Documents shall create or be deemed to constitute a breach by the Applicants of any Agreement to which they are a party;

(b) none of the Chargees shall have any liability to any Person whatsoever as a result of any breach of any Agreement caused by or resulting from the Applicants entering into the Term Sheet, the creation of the Charges, or the execution, delivery or performance of the Definitive Documents; and

(c) the payments made by the Applicants pursuant to this Order, the Term Sheet or the Definitive Documents, and the granting of the Charges, do not and will not constitute preferences, fraudulent conveyances, transfers at undervalue, oppressive conduct, or other challengeable or voidable transactions under any applicable law.

SERVICE AND NOTICE

38. **THIS COURT ORDERS** that the Monitor shall (i) without delay, publish in the Toronto Star or the Globe and Mail a notice containing the information prescribed under the CCAA, (ii) within five days after the date of this Order, (A) make this Order publicly available in the manner prescribed under the CCAA, (B) send, in the prescribed manner, a notice to every known creditor who has a claim against the Applicants of more than $1000, and (C) prepare a list showing the names and addresses of those creditors and the estimated amounts of those claims, and make it publicly available in the prescribed manner, all in accordance with Section 23(1)(a) of the CCAA and the regulations made thereunder.

39. **THIS COURT ORDERS** that the Applicants and the Monitor be at liberty to serve 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 electronic transmission to the Applicants' creditors or other interested parties at their respective addresses as last shown on the records of the Applicants and that any such service or notice by courier, personal delivery or electronic 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.

40. **THIS COURT ORDERS** that the Applicants, the Monitor, and any party who has filed a Notice of Appearance may serve any court materials in these proceedings by e-mailing a PDF or other electronic copy of such materials to counsels' email addresses as recorded on the Service List from time to time, and the Monitor may post a copy of any or all such materials on its website at www.grantthornton.ca/silverstreams.

GENERAL

41. **THIS COURT ORDERS** that the Applicants or the Monitor may from time to time apply to this Court for advice and directions in the discharge of their powers and duties hereunder.

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42. **THIS COURT ORDERS** that nothing in this Order shall prevent the Monitor from acting as an interim receiver, a receiver, a receiver and manager, a trustee in bankruptcy or a lien trustee of the Applicants, the Business or the Property.

43. **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 Applicants, the Monitor and their respective 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 Applicants and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Monitor in any foreign proceeding, or to assist the Applicants and the Monitor and their respective agents in carrying out the terms of this Order.

44. **THIS COURT ORDERS** that each of the Applicants and the Monitor 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 Monitor 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.

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

46. **THIS COURT ORDERS** that this Order and all of its provisions are effective as of 12:01 a.m. Eastern Standard/Daylight Time on the date of this Order.

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

DEC 17 2013

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

Court File No. 13-10362-00-CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

Proceedings commenced at TORONTO

INITIAL ORDER

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Lawyers for the Applicants

THIS IS EXHIBIT "E" TO THE AFFIDAVIT OF DOMINIC MONTEMURRO SWORN BEFORE ME, THIS 19 DAY OF SEPTEMBER 2014.

Commissioner for Taking Affidavits

Grace Panettieri-Marson, a Commissioner, etc.
City of Toronto, for Medi Group Incorporated,
National Air Systems Inc., and National Fireplace
And Facings Inc.
Expires March 24, 2015.

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

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE MR.	)	THURSDAY, THE 16TH DAY
	)	
JUSTICE WILTON-SIEGEL	)	OF JANUARY, 2014

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

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

Applicants

ORDER

THIS MOTION, made by the Applicants for an order, *inter alia*:

1. Extending the stay period (the "**Stay Period**") defined in paragraph 11 of the Initial Order of the Honourable Mr. Justice Newbould dated December 17, 2013 (the "**Initial Order**");

2. Approving the First Report of Grant Thornton Limited ("**GTL**") in its capacity as court-appointed monitor of the Applicants (the "**Monitor**") dated January 14, 2014 (the "**First Report**"), the report of GTL in its capacity as proposed monitor dated December 13, 2013 (the "**Proposed Monitor's Report**") and the activities described therein;

3. Approving an interim distribution to Bank of Montreal ("**BMO**") in an amount not exceeding $570,000 subject to BMO entering into a reimbursement agreement with the Monitor; and

4. Amending the Initial Order,

was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Affidavit of Imran Jinnah sworn January 10, 2014 and the Monitor's First Report to the Court dated January 14, 2014, and on hearing the submissions of counsel for the Applicants, counsel for the Monitor and such other counsel as were present, and on being advised that the Service List was served with the Notice of Motion and Motion Record of the Applicants:

SERVICE

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

STAY EXTENSION

2. **THIS COURT ORDERS** that the Stay Period is hereby extended until and including April 18, 2014.

INTERIM DISTRIBUTION

3. **THIS COURT ORDERS** that the Monitor may make an interim distribution to BMO in an amount not exceeding $570,000 subject to BMO and the Monitor entering into a reimbursement agreement in a form satisfactory to the Monitor.

MONITOR'S ACTIVITIES AND REPORT

4. **THIS COURT ORDERS** that the First Report and the Proposed Monitor's Report, together with the activities described therein, are hereby approved.

AMENDMENT TO THE INITIAL ORDER

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5. **THIS COURT ORDERS** that the Initial Order is hereby amended by adding the following paragraph:

12 (a) **THIS COURT ORDERS** that nothing in this Order shall in any way impact and/or affect the rights of The Corporation of the Town of Richmond Hill (the "**Town**") to:

(i) serve any notices, for default or otherwise, provided for pursuant to the Subdivision Agreement entered into with 2148993 Ontario Inc. and 2148990 Ontario Inc. dated July 31, 2009 (File 19T-98004), the Subdivision Agreement entered into with 2147650 Ontario Inc., 2147681 Ontario Inc., 2148990 Ontario Inc. and 2148993 Ontario Inc. dated June 30, 2010 (Files 19T-98004 and 19T-07002) and the Subdivision Agreement entered into with 2147650 Ontario Inc., 2148990 Ontario Inc. and 2148993 Ontario Inc. dated November 24, 2011 (File 19T-98004) – (collectively, the "**Subdivision Agreements**"), provided however that, subject to paragraph (ii) below, no further steps, including any enforcement proceedings, shall be taken by the Town without the written consent of the Applicants and the Monitor or with leave of the Court; and

(ii) in accordance with Section 11.04 of the CCAA, draw upon and/or bring any action, suit or proceeding against the Bank of Montreal with respect to its obligations under the Letters of Credit issued by the Bank of Montreal to the Town of Richmond Hill referenced as 19T-98004 - Phase 1 (Letter of Credit No. BMTO261114OS, BMTO230993OS); 19T-98004 – Phase 3 (Letter of Credit No. BMTO358576OS); and 19T-98004 and 19T-07002 – Phase 2 (Letter of Credit No. BMTO301203OS) (collectively, the "**Letters of Credit**"), subject to the Town complying with any conditions precedent in respect of the Subdivision Agreements to drawing on or taking any action, suit or proceeding against the Letters of Credit.

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

JAN 16 2014

N. Newbould J.

Doc#2906603v1

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

Court File No. 13-10362-00-CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

Proceedings commenced at TORONTO

ORDER

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Lawyers for the Applicants

Doc#2886374v1

THIS IS EXHIBIT "F" TO THE AFFIDAVIT OF DOMINIC MONTEMURRO SWORN BEFORE ME, THIS 19 DAY OF SEPTEMBER 2014.

Commissioner for Taking Affidavits

ɾrace Panettieri-Marson, a Commissioner, etc.,
ity of Toronto, for Medi Group Incorporated,
Jational Air Systems Inc., and National Fireplace
ınd Facings Inc.
:xpires March 24, 2015.

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

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE MR.	)	THURSDAY, THE 17TH DAY
	)	
JUSTICE NEWBOULD	)	OF APRIL, 2014

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

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

Applicants

ORDER

THIS MOTION, made by the Applicants for an order amount other things:

1. extending the stay period (the "**Stay Period**") as defined in paragraph 11 of the Initial Order of the Honourable Mr. Justice Newbould dated December 17, 2013 (the "**Initial Order**");

2. approving the Second Report of Grant Thornton Limited ("**GTL**") in its capacity as the Court-appointed monitor of the Applicants (the "**Monitor**") dated April 11, 2014 (the "**Second Report**"), the Monitor's interim statement of the Applicant's receipts and disbursements from December 17, 2013 to and including March 31, 2014 (the "**Interim R&D**") and the activities of the Monitor described therein;

3. approving the fees and disbursements of the Monitor and its counsel; and

4. granting such further and other relief as this Honourable Court may deem just.

86

Was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Affidavit of Imran Jinnah sworn April 9, 2014 and the Monitor's Second Report to the Court, and on hearing the submissions of counsel for the Applicants, counsel for the Monitor and such other counsel as were present, and on being advised that the Service List was served with the Notice of Motion and Motion Record of the Applicants:

SERVICE

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

STAY EXTENSION

2. **THIS COURT ORDERS** that the Stay Period is hereby extended to and including July 3, 2014.

MONITOR'S ACTIVITIES AND REPORT

3. **THIS COURT ORDERS** that the Second Report, the Interim R&D and the activities of the Monitor described therein, be and are hereby approved.

4. **THIS COURT ORDERS** that the fees and disbursements of the Monitor and its counsel for the period from November 25, 2013, 2014 to and including March 31, 2014, in the amount of $103,395.68, inclusive of applicable HST, be and are hereby approved.

5. **THIS COURT ORDERS** that the fees and disbursements of the Monitor's legal counsel, Aird & Berlis LLP, for the period from November 13, 2013 to and including March 31, 2014, in the amount of $110,270.97, inclusive of HST, be and are hereby approved.

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

APR 17 2014

MB

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

Court File No. 13-10362-00-CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

Proceedings commenced at TORONTO

ORDER

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Lawyers for the Applicants

Doc#2886374v1

THIS IS EXHIBIT "G" TO THE AFFIDAVIT OF DOMINIC MONTEMURRO SWORN BEFORE ME, THIS 19 DAY OF SEPTEMBER 2014.

Commissioner for Taking Affidavits

Grace Panettieri-Marson, a Commissioner, etc.,
City of Toronto, for Medi Group Incorporated,
National Air Systems Inc., and National Fireplace
And Facings Inc.
Expires March 24, 2016.

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

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE MR.	)	THURSDAY, THE 26TH DAY
	)	
JUSTICE D. BROWN	)	OF JUNE, 2014

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

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

Applicants

ORDER

THIS MOTION, made by the Applicants for an order among other things:

1. extending the stay period (the "**Stay Period**") as defined in paragraph 11 of the Initial Order of the Honourable Mr. Justice Newbould dated December 17, 2013 (the "**Initial Order**") to and including January 16, 2015;

2. approving a distribution of proceeds from sale of Lot 19 and Lot 20 (as defined in the Affidavit of Imran Jinnah sworn June 19, 2014 (the "**Jinnah Affidavit**")) to Bank of Montreal ("**BMO**") up to the full amount of the Applicants' indebtedness to BMO subject to the Monitor and BMO entering into a reimbursement agreement on terms satisfactory to the Monitor;

3. approving the Third Report of Grant Thornton Limited ("**GTL**") in its capacity as the Court-appointed monitor of the Applicants (the "**Monitor**") dated June 24, 2014 (the

"**Third Report**"), the Monitor's interim statement of the Applicant's receipts and disbursements from December 17, 2013 to and including June 18, 2014 (the "**Interim R&D**") and the activities of the Monitor described therein;

4. approving the fees and disbursements of the Monitor and its counsel; and

5. granting such further and other relief as this Honourable Court may deem just,

was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Jinnah Affidavit and the Third Report, and on hearing the submissions of counsel for the Applicants, counsel for the Monitor and such other counsel as were present, and on being advised that the Service List was served with the Notice of Motion and Motion Record of the Applicants:

<u>SERVICE</u>

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

<u>STAY EXTENSION</u>

2. **THIS COURT ORDERS** that the Stay Period is hereby extended to and including September 26, 2014.

<u>DISTRIBUTION TO BMO</u>

3. **THIS COURT ORDERS** that the Monitor may make a distribution to BMO (the "**BMO Distribution**") up to the full amount of the Applicants' indebtedness to BMO subject to BMO and the Monitor entering into a reimbursement agreement in a form satisfactory to the Monitor (the "**Reimbursement Agreement**"), provided however, that nothing in this paragraph shall affect the rights to or priority of any Person with a Secured Claim against the proceeds subject to the BMO Distribution (the "**Proceeds**"). The rights to or priority of any Person holding a Secured Claim against the Proceeds shall be determined as at the

Filing Date. For greater clarity, nothing in this Order shall impair the rights of any Person to make a claim against the Proceeds in priority to BMO until such time as the Reimbursement Agreement is terminated by further order of this Court. Terms not otherwise defined in this paragraph of the Order shall have the meaning ascribed to those terms in the Claims Process Order made by the Honourable Mr. Justice Wilton-Siegel dated January 15, 2014.

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

JUN 2 7 2014

NB

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

Court File No. 13-10362-00-CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

Proceedings commenced at TORONTO

ORDER

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Lawyers for the Applicants

THIS IS EXHIBIT "H" TO THE AFFIDAVIT OF DOMINIC MONTEMURRO SWORN BEFORE ME, THIS 19 DAY OF SEPTEMBER 2014.

Commissioner for Taking Affidavits

Grace Panettieri-Marson, a Commissioner, etc., City of Toronto, for Medi Group Incorporated, National Air Systems Inc., and National Fireplace And Facings Inc.
Expires March 24, 2015.

EXHIBIT "H"

Court File No.:

Ontario

SUPERIOR COURT OF JUSTICE

BETWEEN:

MEDI GROUP INCORPORATED, PILBRO III INC., SOLO ELECTRIC LTD., PAVE PLUMBING & HEATING INC., FOREMONT DRYWALL INC. 1382479 ONTARIO INC. 1382503 ONTARIO INC. , 2203579 ONTARIO INC. cob FOREMONT DRYWALL CONTRACTING, E.D. CARPENTERS LTD., CARDELL FLOORING LTD., CANADIAN CONCRETE FORMING LIMITED, 1865721 ONTARIO INC.

Plaintiffs

- and -

SILVER STREAMS HOMES (PUCCINI) INC., SILVER STREAMS HOMES INC., 2148991 ONTARIO INC., 2148990 ONTARIO INC., 2147650 ONTARIO INC., 2148993 ONTARIO INC., 2147681 ONTARIO INC., IMRAN JINNAH, ASMA JINNAH, PUCCINI MORTGAGE CORPORATION, DAPAUL MANAGEMENT LIMITED, 388242 ONTARIO LIMITED, 53 PUCCINI MORTGAGE CORPORATION, NASTELL INVESTMENTS LIMITED, and JACK GREENBERG

Defendants

STATEMENT OF CLAIM

TO THE DEFENDANTS

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the plaintiffs. The claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or an Ontario lawyer acting for you must prepare a statement of defence in Form 18A prescribed by the Rules of Civil Procedure, serve it on the plaintiffs' lawyer or, where the plaintiffs do not have a lawyer, serve it on the plaintiffs, and file it, with proof of service, in this court office, WITHIN TWENTY DAYS after this statement of claim is served on you, if you are served in Ontario.

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If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your statement of defence is forty days. If you are served outside Canada and the United States of America, the period is sixty days.

Instead of serving and filing a statement of defence, you may serve and file a notice of intent to defend in Form 18B prescribed by the Rules of Civil Procedure. This will entitle you to ten more days within which to serve and file your statement of defence.

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. If YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

IF YOU PAY THE PLAINTIFFS' CLAIM, and $900.00 for costs, within the time for serving and filing your statement of defence, you may move to have this proceeding dismissed by the court. If you believe the amount claimed for costs is excessive, you may pay the plaintiff's claim and $100.00 for costs and have the costs assessed by the court.

Date July , 2014

Issued by ______________________

Local registrar

Address of court office: 393 University Avenue
10th Floor
Toronto, OntarioM5G 1E6

TO: SILVER STREAMS HOMES (PUCCINI) INC.
103 Naughton Drive
Richmond Hill, Ontario L4C 8B3

TO: SILVER STREAMS HOMES INC.
103 Naughton Drive
Richmond Hill, Ontario L4C 8B3

TO: 2148991 ONTARIO INC.
103 Naughton Drive
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TO: 2148990 ONTARIO INC.
103 Naughton Drive
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TO: 2147650 ONTARIO INC.
103 Naughton Drive
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TO: 2148993 ONTARIO INC.
103 Naughton Drive
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TO: 2147681 ONTARIO INC.
103 Naughton Drive
Richmond Hill, Ontario L4C 8B3

TO: IMRAN JINNAH
c/o 103 Naughton Drive
Richmond Hill, Ontario L4C 8B3

TO: ASMA JINNAH
c/o 103 Naughton Drive
Richmond Hill, Ontario L4C 8B3

TO: PUCCINI MORTGAGE CORP.
c/o Suite 204, 181 Eglinton Avenue East
Toronto, Ontario M4P 1J4

TO: DAPAUL MANAGEMENT LIMITED
c/o Suite 204, 181 Eglinton Avenue East
Toronto, Ontario M4P 1J4

TO: 388242 0NTARIO LIMITED
c/o Suite 204, 181 Eglinton Avenue East
Toronto, Ontario M4P 1J4

TO: 53 PUCCINI MORTGAGE CORP.
c/o Suite 204, 181 Eglinton Avenue East
Toronto, Ontario M4P 1J4

TO: NASTELL INVESTMENTS LIMITED
c/o Suite 204, 181 Eglinton Avenue East
Toronto, Ontario M4P 1J4

TO: JACK GREENBERG
c/o Suite 204, 181 Eglinton Avenue East
Toronto, Ontario M4P 1J4

CLAIM

1. The Plaintiffs, claim:

   (a) Payment of the amount of $2,784,728.40;

   (b) a declaration that all monies owing to or received by the Defendants from owners of the properties to whom the Plaintiff's materials had been supplied, constitute trust funds for the benefit of the Plaintiff to the extent of $2,784,728.40 pursuant to the provisions of the *Construction Lien Act*, R.S.O. 1990, c. 30 as amended;

   (c) a declaration that the Defendants hold the misappropriated funds in a constructive or resulting trust for the benefit of the Plaintiffs;

   (d) a declaration that the Defendants hold the misappropriated funds as constructive trustees for the benefit of the Plaintiffs;

   (e) a declaration that funds held by Chaitons LLP which are the subject matter of the claim in the Ontario Superior Court of Justice Court File No. CV-13-115767-00 commenced in Newmarket court constitute trust funds for the benefit of the Plaintiffs pursuant to the provisions of the *Construction Lien Act*, R.S.O. 1990, c. 30 as amended;

   (f) an accounting of all funds converted by the Defendants and judgment in accordance with the accounting;

   (g) damages in the amount of $2,784,728.40 for breach of contract, breach of trust, breach of the *Construction Lien Act* Trust provisions, breach of fiduciary duty, misappropriation of funds, unjust enrichment, conspiracy, fraud, negligent and fraudulent misrepresentations by the Defendants jointly and severally;

   (h) damages in the amount of $2,784,728.40 for conversion of the said funds misappropriated by the Defendants;

(i) punitive and exemplary damages in the sum of $2,000,000.00

(j) a declaration that the Defendants have been unjustly enriched at the expense of the Plaintiffs by virtue of the misappropriation of funds and must disgorge all funds misappropriated;

(k) A declaration that the Defendants are all statutory owners under the provisions of the *Construction Lien Act*;

(l) a declaration there exists an equitable mortgage in favour of the Plaintiffs over Property A in the amount of $2,784,728.40;

(m) A declaration that the equitable mortgage of the Plaintiffs is in priority over the charges of the Defendants, Puccini Mortgage Corp., Dapaul Management Limited, 388242 Ontario Limited on Property A;

(n) An order requiring Puccini Mortgage Corp., Dapaul Management Limited, 388242 Ontario Limited to marshal their debt from other security they hold and not from Property A.

(o) A declaration that the equitable mortgage of the Plaintiffs is in priority over the charges of the Defendants, 53 Puccini Mortgage Corp. and Nastell Investments Limited on Property B;

(p) An order requiring 53 Puccini Mortgage Corp. and Nastell Investments Limited to marshal their debt from other security they hold and not from Property B;

(q) an order that Jack Greenberg provide an accounting of the monies flowing through his account as escrow agent under the Forbearance Agreement;

(r) Pre-judgment interest on all amounts owing at Bank of Montreal Prime plus 3% per annum incurred from December 17, 2012 until payment of the Judgment or alternatively pursuant to Section 128 of the *Courts of Justice Act*, S.O. 1990, Chapter 43, as amended;

(s) Interest on all overdue accounts at the rate indicated in the invoices of the plaintiffs' delivered from time to time;

(t) Post-judgment interest from the date of Judgment at Bank of Montreal Prime plus 3% per annum or alternatively pursuant to Section 127 of the *Courts of Justice Act*, S.O. 1990, Chapter 43, as amended;

(u) Their costs of this action on a substantial indemnity basis;

(v) Such further and other relief as this Honourable Court may allow:

THE PARTIES

2. The Plaintiffs are construction trades who have provided services and materials creating an improvement on a residential subdivision project consisting of several phases ("Puccini Project") including on the lands set out in Schedule "A" of this claim.

3. The Defendant, Silver Streams Homes Puccini Inc. (hereinafter referred to as "Silver Streams Puccini"), is a corporation incorporated pursuant to the laws of the Province of Ontario having its head office in the City of Toronto, in the Province of Ontario and carries on business as a builder and/or developer of residential homes

4. The Defendant, Silver Streams Homes Inc. (hereinafter referred to as "Silver Streams Homes"), is a corporation incorporated pursuant to the laws of the Province of Ontario having its head office in the City of Toronto, in the Province of Ontario and carries on business as a builder and or developer of residential homes.

5. The Defendant, 2148991 Ontario Inc. (hereinafter referred to as "2148991"), is a corporation incorporated pursuant to the laws of the Province of Ontario having its head office in the City of Toronto, in the Province of Ontario and was at all material times the registered owner of the lands set out in Schedule "B" to this claim. 2148991 is a related company to Silver Streams Homes and Silver Streams Puccini ("Silver Streams").

6. The Defendant 2148990 Ontario Inc. (hereinafter referred to as "2148990"), is a corporation incorporated pursuant to the laws of the Province of Ontario having its head office in

the City of Toronto, in the Province of Ontario and was at all material times the registered owner of the lands set out in Schedule "C" to this claim. 2148990 is a related company to Silver Streams Homes and Silver Streams Puccini ("Silver Streams").

7. The Defendant, 2147650 Ontario Inc. (hereinafter referred to as "2147650"), is a corporation incorporated pursuant to the laws of the Province of Ontario having its head office in the City of Toronto, in the Province of Ontario. 2147650 is a related company to Silver Streams Homes and Silver Streams Puccini ("Silver Streams").

8. The Defendant, 2148993 Ontario Inc. (hereinafter referred to as "2148993"), is a corporation incorporated pursuant to the laws of the Province of Ontario having its head office in the City of Toronto, in the Province of Ontario. 2148993 is a related company to Silver Streams Homes and Silver Streams Puccini ("Silver Streams").

9. The Defendant, 2147681 Ontario Inc. (hereinafter referred to as "2147681"), is a corporation incorporated pursuant to the laws of the Province of Ontario having its head office in the City of Toronto, in the Province of Ontario. 2147681 is a related company to Silver Streams Homes and Silver Streams Puccini ("Silver Streams").

10. The Defendant, Puccini Mortgage Corp. (hereinafter referred to as "Puccini Mortgage"), is a corporation incorporated pursuant to the laws of the Province of Ontario having its head office in the City of Toronto, in the Province of Ontario and carries on business as a lender and investor. Jack Greenberg ("Greenberg") is the sole officer and director and/or the controlling mind of Puccini Mortgage and is authorized to bind it.

11. The Defendant, Dapaul Management Limited (hereinafter referred to as "Dapaul Management"), is a corporation incorporated pursuant to the laws of the Province of Ontario having its head office in the City of Toronto, in the Province of Ontario and carries on business as a lender and investor. Greenberg is the sole officer and director and/or the controlling mind of Dapaul Management and is authorized to bind it.

12. The Defendant, 388242 Ontario Limited (hereinafter referred to as "388242"), is a corporation incorporated pursuant to the laws of the Province of Ontario having its head office in the City of Toronto, in the Province of Ontario and carries on business as a lender and investor.

Greenberg is the sole officer and director and/or the controlling mind of 388242 and is authorized to bind it.

13. The Defendant, 53 Puccini Mortgage Corp. (hereinafter referred to as " 53 Puccini Mortgage"), is a corporation incorporated pursuant to the laws of the Province of Ontario having its head office in the City of Toronto, in the Province of Ontario and carries on business as a lender and investor. Greenberg is the sole officer and director and/or the controlling mind of 53 Puccini Mortgage and is authorized to bind it.

14. The Defendant, Nastell Investments Limited (hereinafter referred to as "Nastell"), is a corporation incorporated pursuant to the laws of the Province of Ontario having its head office in the City of Toronto, in the Province of Ontario and carries on business as a lender and investor. Greenberg is the sole officer and director and/or the controlling mind of Nastell and is authorized to bind it.

15. Puccini Mortgage, Dapaul Management, 388242, 53 Puccini Mortgage and Nastell are collectively referred to as (the "Greenberg Companies").

16. Imran Jinnah resides in the Town of Richmond Hill in the Province of Ontario and is an officer, director and shareholder and the controlling mind of Silver Streams Puccini, Silver Streams Homes, 2148990, 2148991, 2148993, 2147681 and 2147650.

17. Asma Jinnah resides in the Town of Richmond Hill in the Province of Ontario and is an officer and shareholder and the controlling mind of Silver Streams Puccini.

18. Jack Greenberg is a lawyer licenced to practice law in the Province of Ontario and was at all material times acting as an escrow agent pursuant to an Escrow Agreement referred to below ("the Escrow Agent"). Jack Greenberg as described above was also the sole officer and director and/or the controlling mind of the Greenberg Companies. Greenberg was also acting as solicitor for or the agent of or controlling Silver Streams and actively making decisions regarding the construction, development, payment of accounts including those of the trades in the Puccini Project and was an Owner as defined in the *Construction Lien Act*.

19. Jack Greenberg at all material times also represented the various Greenberg Companies described above as lenders and investors both in his capacity as legal counsel as well as their directing mind and was authorized to bind them in his sole discretion. Jack Greenberg was himself a significant investor in the various lender corporations;

20. The Plaintiffs state that the mortgages in favour of the Greenberg Companies were not at arms-length and not commercially reasonable. Furthermore these mortgagees did not act in a commercially reasonable manner in particular by failing to have regular re-payment terms and failing to exercise default remedies under the mortgagees in a commercially reasonable manner. The Plaintiffs seek a declaration that the various Greenberg Companies (Puccini Mortgage, Dapaul Management, 388242, 53 Puccini Mortgage and Nastell) are all statutory owners under the provisions of the *Construction Lien Act*.

21. Jack Greenberg at times also acted as counsel for Silver Streams (Silver Streams Homes, Silver Streams Puccini, 2148990, 2148991, 2148993, 2147681 and 2147650). He was directing the flow of funds and making decisions regarding the construction of the Puccini Project, whether trades would get paid, paying trades and preferring payment to the Greenberg Companies over the Trades, both in his personal capacity as an investor and also on behalf of the various lender corporations (Puccini Mortgage, Dapaul Management, 388242, 53 Puccini Mortgage and Nastell). By virtue of Jack Greenberg's actions more particularly described below the Plaintiffs seek a declaration that Jack Greenberg in his personal capacity and the Private Lenders (Puccini Mortgage, Dapaul Management, 388242, 53 Puccini Mortgage and Nastell) are all statutory owners under the provisions of the *Construction Lien Act*.

<u>BACKGROUND</u>

THE PUCCINI PROJECT

22. Silver Streams Homes and Silver Streams Puccini in or about 2008 began a residential project consisting of 118 units including detached homes, semi-detached homes and townhouses located at Bathurst Street and King Road in Richmond Hill, Ontario (the "Puccini Project").

23. The Puccini Project was being built in 4 phases. Title to the lands in Phases I, II, and III are in the names of 2148990, 2148993, 2147650 and 2147681. Phase I comprising 20 detached

homes was completed in or around 2010, Phase II comprising 25 detached homes was completed in late 2012 and Phase III comprising 25 detached homes. Phase IV comprises 40 townhouse units and 8 semi-detached units and title is in the name of 2148991.

24. The Plaintiffs entered into one contract with Silver Streams Puccini who was acting as the agent for the different titled owner corporations of each phase within the Puccini Project. Imran Jinnah and Asma Jinnah (collectively referred to as the "Jinnahs") were the officers, directors and shareholders of Silver Streams Puccini. Imran Jinnah was the sole officer, director and shareholder of Silver Streams Homes, 2148990, 2148991, 2148993, 2147681 and 2147650.

25. The Plaintiffs plead that the Defendants were all beneficial owners with respect to the purchase and development of the lands more particularly set out in Schedule "D" hereto and were at all material times owners of them by virtues of the definition of an owner under Section (1) item 15 of the *Construction Lien Act*, 1990, as amended.

REGISTERED MORTGAGES

26. The defendants, Dapaul Management Limited, Puccini Mortgage Corp., 388242 Ontario Limited have registered mortgages against Property A, more particularly set out in Schedule "E". Dapaul Management Limited is registered as a second mortgage for the principal amount of \$5,500,000.00. Puccini Mortgage Corp. is registered as a third mortgage for the principal amount of \$2,600,000.00. 388242 Ontario Limited is registered as a fourth mortgage in the principal amount of \$1,500,000.00 ("Property A Lenders");

27. The defendants 53 Puccini Mortgage Corp. have a registered and Nastell Investments Limited have registered mortgages against Property B, more particularly set out in Schedule "E". 53 Puccini Mortgage Corp. is registered as a second mortgage in the principal amount of \$2,000,000.00. Nastell Investments Limited is registered as a third mortgage in the principal amount of \$3,200,000 ("Property B Lenders");

FORBEARANCE AGREEMENT

28. The Plaintiffs had provided services and materials and improved the lands on Phase 1 and 2 of the Puccini Project and as at December 12, 2012 were owed cumulatively the amount of

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$1,667,538.10 for services and materials supplied to the Project ("Past Debt"). The particulars owed to each Plaintiff as at December 12, 2012 is set out in Schedule "F".

29. In or about the fall of 2012, The Puccini Project was in serious financial difficulty which was not known to the Trades, and at risk of collapsing under the mounting debt including the amounts owed to the Trades. Greenberg and the Jinnahs knew or ought to have known that the Puccini Project was insolvent by this time. Greenberg was concerned about the repayment of monies owing to the Greenberg Companies.

30. Greenberg began meeting with the Trades with the ostensible purpose of;

1. convincing the Trades to not register liens which would have stopped construction financing from being advanced by Bank of Montreal, the construction lender to Phases I,II and III of the Puccini Project; and

2. Actively encouraging the Trades to continue improving the Phase III lands which would increase the equity available to pay back monies owing to the Greenberg Companies.

Greenberg and the Jinnahs fraudulently and /or negligently misrepresented the true financial situation of the Puccini Project which was insolvent. To the contrary, Greenberg and the Jinnahs represented to the Trades they would be paid for any improvements to the Phase III lands and would also be paid their old debt. Greenberg knew these representations were false and that the Trades would not be paid for any of their old debt and likely not even paid in full for the improvements to the Phase III lands.

31. On December 17th, 2012, the Defendants Silver Streams Puccini, 2147650, 2148993 and 2148990 entered into an agreement with the Plaintiffs to induce them to forbear seeking their remedies for the amounts owing in Schedule "F" and also to induce them to return to the Project to provide labour and materials to the Puccini Project ("the Forbearance Agreement").

32. By the terms of the Forbearance Agreement, Jack Greenberg, acted as escrow agent to disburse monies to the Plaintiffs for new work to be performed and also towards the Past Debt owing to the Plaintiffs. Jack Greenberg was also binding the parties other than the Trades to the

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Forbearance Agreement and to the knowledge of the Trades was also representing the interests of the Greenberg Companies.

33. It was an essential term of the Forbearance Agreement that the Past Debt would be paid from the closing proceeds in Phase III and Phase IV being the Property as described in Schedule "E. The Plaintiffs provided services and materials to the Puccini Project and proceeded to improve the lands by providing labour, services and materials to Phase III in accordance with the Forbearance Agreement.

34. The Forbearance Agreement (a) implicitly provided for the mortgage lenders be kept in good standing to allow the Puccini Project to be completed, with closings of Agreements of Purchase and sales for the homes generating funds (b) to pay for the work performed by the Plaintiffs on Phase III and (c) to pay the Past Debts of the Plaintiffs. The Plaintiffs plead and rely on the terms of the Escrow Agreement as if recited in full herein.

35. Under the terms of the Forbearance Agreement, (a) Silver Streams Puccini was (a) to irrevocably direct the construction lender for Property A and B that the Net Proceeds (as that term is defined in the Forbearance Agreement) of any draw be paid to the Escrow Agent. (b) to irrevocably direct the Escrow Agent that these Net Proceeds be paid to the Plaintiffs (c) to request draws from the construction lender expeditiously (d) to irrevocably designate the Escrow Agent as its solicitor to complete the legal work for each closing. (e) to irrevocably direct the Escrow Agent that from the Net Sale Proceeds (as that term is defined in the Forbearance Agreement) to pay the Past Debt of the Plaintiffs.

All of these payments were to be made by the Escrow Agent no later than the 46th day after the closing of any residential unit.

36. At the time Greenberg negotiated the Forbearance Agreement he was wearing several hats. Greenberg was negotiating and agreeing to the Forbearance Agreement in his personal capacity, on behalf of the Greenberg Companies (Puccini Mortgage, Dapaul Management, 388242, 53 Puccini Mortgage and Nastell) as counsel for the Jinnahs and Silver Streams.

37. The Plaintiffs Trades relied on these representations and good faith of Greenberg as a Lawyer, and forbeared their legal rights. At no time did Greenberg indicate he was not acting for

all the stakeholders being the Silver Streams and Greenberg Companies. More to the point at no time did Greenberg indicate to the Trades that the Greenberg Companies would be seeking priority over the rights of the Trades. But for the representations of Greenberg which the Trades were relying upon, they would not have forbeared liening for monies owing from Phase I and II and would never have returned to do work on Phase III. In effect after providing labour, material and services to Phase III under the Forbearance Agreement the Trades were owed cumulatively more than the Past debt owing from Phase I and II prior to the Forbearance Agreement. While the Trades were in a worse financial position working on Phase III, at the same time the Greenberg Companies were in a better position as the equity in the remaining lands (Phase III) had been increased and they were now claiming a priority over the Trades. The Plaintiffs therefore state any priority given to the Greenberg Companies over the Trades amounts to an unjust enrichment.

38. The defendant Silver Streams Puccini breached the Escrow Agreement;

(i) by allowing the Property A and B lenders to go into default;

(ii) by not completing Agreements of Purchase and sales;

(iii) by failing to direct the construction lenders for Property A and B to advance the Net Proceeds of construction draws;

(iv) by defaulting on conditions within the construction lenders mortgage terms necessary to permit construction advances to flow;

(v) by failing to pay servicing contractors thereby causing constructions liens to be registered against Property A and B paralyzing the flow of construction advances;

(vi) By diverting funds to servicing contractors thereby causing defaults under the mortgages with the Property A and B lenders;

(vii) it sold properties as below market values;

(viii) it received monies it for management fees and other soft costs;

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(ix) such further and other breaches as counsel may advise;

The impact of these breaches was to stop payments being made to the Plaintiffs as called for in the Forbearance Agreement.

39. The Plaintiffs state that the charges of Puccini Mortgage Corp., Dapaul Management Limited, 388242 Ontario Limited on Property A and 53 Puccini Mortgage Corp. and Nastell Investments Limited on Property B as a result of the following;

(i) The mortgages are not arms' length mortgages;

(ii) No monies were advanced under the mortgages;

(iii) If monies were advanced they were advanced in excess of the value of the lands before the Plaintiffs provided their labour, material and services;

(iv) If monies were advanced, same were advanced in the in the face of knowledge of the Forbearance Agreement;

(v) such further and other grounds as counsel may advise;

40. In the Alternative the intent of the Forbearance Agreement was to grant security over Property A and B until the debt to the Plaintiffs was paid with interest at Bank of Montreal Prime plus 3%. The Plaintiffs claim they are entitled to an order that they have an equitable mortgage over Property A and B;

41. The Plaintiffs state that the equitable mortgage is in priority to the charges of Puccini Mortgage Corp., Dapaul Management Limited, 388242 Ontario Limited on Property A and 53 Puccini Mortgage Corp. and Nastell Investments Limited on Property B as a result of the following;

(i) The mortgages are not arms' length mortgages;

(ii) No monies were advanced under the mortgages;

(iii) If monies were advanced they were advanced in excess of the value of the lands before the Plaintiffs provided their labour, material and services;

(iv) If monies were advanced, same were advanced in the in the face of knowledge of the Forbearance Agreement;

(v) such further and other grounds as counsel may advise;

42. In the further alternative if the various mortgages are valid, then they are secured by additional lands besides Property A and B and these mortgagees should be required to marshal their debt from other security held and not from Property A so as to permit the Plaintiffs to obtain recovery from Property A which is their only security.

43. Greenberg as Escrow Agent under the Agreement was under a fiduciary duty to ensure that all charges against the Project were in kept in good standing and further that he accounted to the Plaintiffs for all monies flowing through him. Greenberg has failed to provide such an accounting or to ensure that the charges were kept in good standing, thereby leading to a default under the charges;

CON DRAIN

44. In or about March 31, 2010, Con-Drain Company (1983) Limited ("Con-Drain") was a trade that reached an agreement with Greenberg and the Jinnahs in respect of amounts owing to it for work performed on the Puccini Project.

45. As part of the settlement Con-Drain appears to have been promised payment from Phase III closings of homes. These payments of $50,000 plus interest were to be paid out of the sale of homes in Phase III which improvements were provided by the Plaintiffs. The payments were for a past debt as opposed to any improvement being made by Con-Drain at the time the Plaintiffs were improving the lands being December 2012 until September 2013. Alternatively if Con-Drain provided any improvement to the Phase III lands these improvements were for as far less than the payments being promised which were for a Past Debt not lienable work on Phase III.

46. Con-Drain claimed to be owed the total sum of $794,881.68 as at July 31, 2013. As a result of an action and application for an injunction monies from certain closings in Phase III

were by court order paid to the law firm of Chaitons LLP to be held pending a determination of entitlement to these funds ("the Funds").

47. The Plaintiffs state the Funds are Trust Funds pursuant to the Trust provisions of the *Construction Lien Act* R.S.O. 1990, c.30 as amended for the benefit of Plaintiffs who provided services and improvements to these very lands and premises and are payable to them in priority to the mortgages registered by the Greenberg Companies and Con-Drain. Alternatively these Funds are Trust and must be shared rateably by all Trust beneficiaries under the *Construction Lien Act*.

48. In addition to the extent that the Greenberg Companies received monies totalling approximately $1.2 million from closings on Phase III, lands in June and July 2013, they are constructive trustees of these funds and hold these funds in trust for the Plaintiffs. As a result all such funds must be repaid to the Plaintiffs on the basis that same were clearly distributed to the Greenberg Companies in breach of the constructive trust and fiduciary obligations owed to the Plaintiffs by Silver Streams, Greenberg and/or the Greenberg Companies.

BREACH OF TRUST

49. The Plaintiffs state that Puccini Project was directed and controlled by Greenberg for the benefit of himself and the Greenberg Companies using the Jinnahs and the Silver Streams companies as a tool. There was never any intention to ensure that the project proceeded in a commercially reasonable fashion and that the construction trades such as the Plaintiffs would be paid in the ordinary course or fully paid at all.

50. Greenberg and the Greenberg Companies allegedly advanced funds into the Puccini Project charging high rates of interest and exorbitant fees. Some of the mortgages advanced by the Greenberg companies were to repay such interest accruing and fees. The Jinnahs and the Silver Streams companies were receiving a fee per home closing, the particulars of which are not known to the Plaintiffs at the time of this pleading. The net result of the actions of Greenberg, the Greenberg Companies, the Jinnahs and the Silver Streams companies was that all the equity was sucked out of the Puccini Project, the Puccini Project became insolvent and the Plaintiffs who were the trades improving the lands in the Puccini Project were left unpaid. The actions by

Greenberg, the Greenberg Companies, the Jinnahs and the Silver Streams Companies give rise to a legal and equitable justification by the court to pierce the corporate veil of the various Greenberg and Silver Streams companies as they were all operating as one and the same in partnership, joint venture or joint enterprise with the same underlying ownership of Greenberg and the Jinnahs.

51. By virtue of the actions of Greenberg, the Greenberg Companies, the Jinnahs and Silver Streams companies they are owners either by legal title or beneficially as that term is defined in the *Construction Lien Act* and have Trust obligations imposed upon them pursuant to the relevant Trust provisions of the *Construction Lien Act.*

52. The actual contract for the supply of labour, materials and services was with Silver Streams Puccini acting as agent for Greenberg, the Greenberg Companies, the Jinnahs and the Silver Streams companies. The acts of Silver Streams Puccini bind Greenberg, the Greenberg Companies the Silver Streams Companies and the Jinnahs.

53. Greenberg and the Jinnahs are persons liable in an action for breach of trust pursuant to Part II of the *Construction Lien Act* R.S.O. 1990, c.30 as amended.

54. The Plaintiffs did at the request of the Defendants deliver labour, material and services in the sum of $2,784,728.40 for the Puccini Project. The particulars of the Plaintiffs claims are particularized in Schedule “G” to this claim.

55. The Plaintiffs state despite demands for payment, the Defendants have refused and neglected to pay the said sum of $2,784,728.40. The Plaintiffs therefore claim entitlement to the sum of $2,784,728.40.

56. By the terms of the invoices delivered by the Plaintiffs for their supply of labour material and services to the improvements they were entitled to interest on all overdue accounts according to the terms as stated in the invoices. The Plaintiffs therefore claim interest at such rate on overdue amounts. In the alternative the Plaintiffs claim interest under the *Courts of Justice Act.*

57. The Plaintiffs plead that the monies received by Greenberg, the Greenberg Companies, the Jinnahs and the Silver Streams companies from the sale of the homes in the Puccini project

constitute trust funds for the benefit of the Plaintiffs pursuant to the provisions of *Construction Lien Act* R.S.O. 1990, c.30 as amended s.7, s.8. and s.13.

58. The Plaintiffs do not have particulars of the monies received by the various defendants from the financing and sale of the homes in the Puccini Project as that information is within the exclusive control of the corporate and individual Defendants.

59. The Plaintiffs allege that monies received by the Defendants were appropriated and converted for their own use inconsistent with the trust imposed under the *Construction Lien Act* R.S.O. 1990, c.30 as amended, and pleads such actions constitute a breach of trust.

60. Greenberg and the Jinnahs as officers and directors of the Greenberg Companies and Silver Streams companies respectively are liable personally to the Plaintiffs for breach of trust as they assented to, or acquiesced in conduct that they knew or ought to have known or reasonably ought to have known amounted to a breach of trust pursuant to s.13 of the *Construction Lien Act* R.S.O. 1990, c.30 as amended.

61. The Plaintiffs submit they have suffered damages by virtue of the breach of trust by the Defendants. The Plaintiffs claim the sum of $2,784,728.40 plus interest as damages.

62. By reason of the high handed callous conduct and complete disregard by the Defendants of the Plaintiffs rights, the Plaintiffs claim punitive damages against the Defendants of $2,000,000.00.

63. The Plaintiffs plead and rely upon the *Courts of Justice Act*, R.S.O. 1990, Chapter 43 as amended and the *Construction Lien Act* R.S.O. 1990, c.30 as amended;

64. The Plaintiffs propose the trial of this action be in the City of Toronto, in the Province of Ontario.

July , 2014

KLEIN & ASSOCIATES PROFESSIONAL
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Fax: (416) 366-9442

Lawyers for the Plaintiffs

SCHEDULE "A"

Phase I, Plan 65M-4156, Town of Richmond Hill:

Lot No. / PIN:	Lot No. / PIN:	Lot No. / PIN:
1 / 03206-3200	8 / 03206-3207	15 / 03206-3214
2 / 03206-3201	9 / 03206-3208	16 / 03206-3215
3 / 03206-3202	10 / 03206-3209	17 / 03206-3216
4 / 03206-3203	11 / 03206-3210	18 / 03206-3217
5 / 03206-3204	12 / 03206-3211	19 / 03206-3218
6 / 03206-3205	13 / 03206-3212	20 / 03206-3219
7 / 03206-3206	14 / 03206-3213	

Phase II, Plan 65M-4249, Town of Richmond Hill:

Lot No. / PIN:	Lot No. / PIN:	Lot No. / PIN:
1 / 03206-3418	10 / 03206-3427	18 / 03206-3435
2 / 03206-3419	11 / 03206-3428	19 / 03206-3436
3 / 03206-3420	12 / 03206-3429	20 / 03206-3437
4 / 03206-3421	13 / 03206-3430	21 / 03206-3438
5 / 03206-3422	14 / 03206-3431	22 / 03206-3439
6 / 03206-3423	15 / 03206-3432	23 / 03206-3440
7 / 03206-3424	16 / 03206-3433	24 / 03206-3441
8 / 03206-3425	17 / 03206-3434	25 / 03206-3442
9 / 03206-3426		

Phase III, Plan 65M-4331, Town of Richmond Hill:

Lot No. / PIN:	Lot No. / PIN:	Lot No. / PIN:
1 / 03206-3484	10 / 03206-3493	18 / 03206-3501
2 / 03206-3485	11 / 03206-3494	19 / 03206-3502
3 / 03206-3486	12 / 03206-3495	20 / 03206-3503
4 / 03206-3487	13 / 03206-3496	21 / 03206-3504
5 / 03206-3488	14 / 03206-3497	22 / 03206-3505
6 / 03206-3489	15 / 03206-3498	23 / 03206-3506
7 / 03206-3490	16 / 03206-3499	24 / 03206-3507
8 / 03206-3491	17 / 03206-3500	25 / 03206-3508
9 / 03206-3492		

SCHEDULE "B"

Phase IV, Plan M-807, Town of Richmond Hill:

Lot No. / PIN:	Lot No. / PIN:
Part Lot 1, Plan M-807, Part 1, 65R-32855 / 03206-3469	Part Lot 2, Plan M-807, Part 2, 65R-32855 / 03206-3467

SCHEDULE "C"

Phase II, Plan 65M-4249, Town of Richmond Hill:

Lot No. / PIN:	Lot No. / PIN:	Lot No. / PIN:
1 / 03206-3418	10 / 03206-3427	18 / 03206-3435
2 / 03206-3419	11 / 03206-3428	19 / 03206-3436
3 / 03206-3420	12 / 03206-3429	20 / 03206-3437
4 / 03206-3421	13 / 03206-3430	21 / 03206-3438
5 / 03206-3422	14 / 03206-3431	22 / 03206-3439
6 / 03206-3423	15 / 03206-3432	23 / 03206-3440
7 / 03206-3424	16 / 03206-3433	24 / 03206-3441
8 / 03206-3425	17 / 03206-3434	25 / 03206-3442
9 / 03206-3426		

Phase III, Plan 65M-4331, Town of Richmond Hill:

Lot No. / PIN:	Lot No. / PIN:	Lot No. / PIN:
1 / 03206-3484	10 / 03206-3493	18 / 03206-3501
2 / 03206-3485	11 / 03206-3494	19 / 03206-3502
3 / 03206-3486	12 / 03206-3495	20 / 03206-3503
4 / 03206-3487	13 / 03206-3496	21 / 03206-3504
5 / 03206-3488	14 / 03206-3497	22 / 03206-3505
6 / 03206-3489	15 / 03206-3498	23 / 03206-3506
7 / 03206-3490	16 / 03206-3499	24 / 03206-3507
8 / 03206-3491	17 / 03206-3500	25 / 03206-3508
9 / 03206-3492		

SCHEDULE "D"

Phase I, Plan 65M-4156, Town of Richmond Hill:

Lot No. / PIN:	Lot No. / PIN:	Lot No. / PIN:
1 / 03206-3200	8 / 03206-3207	15 / 03206-3214
2 / 03206-3201	9 / 03206-3208	16 / 03206-3215
3 / 03206-3202	10 / 03206-3209	17 / 03206-3216
4 / 03206-3203	11 / 03206-3210	18 / 03206-3217
5 / 03206-3204	12 / 03206-3211	19 / 03206-3218
6 / 03206-3205	13 / 03206-3212	20 / 03206-3219
7 / 03206-3206	14 / 03206-3213	

Phase II, Plan 65M-4249, Town of Richmond Hill:

Lot No. / PIN:	Lot No. / PIN:	Lot No. / PIN:
1 / 03206-3418	10 / 03206-3427	18 / 03206-3435
2 / 03206-3419	11 / 03206-3428	19 / 03206-3436
3 / 03206-3420	12 / 03206-3429	20 / 03206-3437
4 / 03206-3421	13 / 03206-3430	21 / 03206-3438
5 / 03206-3422	14 / 03206-3431	22 / 03206-3439
6 / 03206-3423	15 / 03206-3432	23 / 03206-3440
7 / 03206-3424	16 / 03206-3433	24 / 03206-3441
8 / 03206-3425	17 / 03206-3434	25 / 03206-3442
9 / 03206-3426		

Phase III, Plan 65M-4331, Town of Richmond Hill:

Lot No. / PIN:	Lot No. / PIN:	Lot No. / PIN:
1 / 03206-3484	10 / 03206-3493	18 / 03206-3501
2 / 03206-3485	11 / 03206-3494	19 / 03206-3502
3 / 03206-3486	12 / 03206-3495	20 / 03206-3503
4 / 03206-3487	13 / 03206-3496	21 / 03206-3504
5 / 03206-3488	14 / 03206-3497	22 / 03206-3505
6 / 03206-3489	15 / 03206-3498	23 / 03206-3506
7 / 03206-3490	16 / 03206-3499	24 / 03206-3507
8 / 03206-3491	17 / 03206-3500	25 / 03206-3508
9 / 03206-3492		

Phase IV, Plan M-807, Town of Richmond Hill:

Lot No. / PIN:	Lot No. / PIN:
Part Lot 1, Plan M-807, Part 1, 65R-32855 / 03206-3469	Part Lot 2, Plan M-807, Part 2, 65R-32855 / 03206-3467

SCHEDULE "E"

PROPERTY A

Phase IV, Plan M-807, Town of Richmond Hill:

Lot No. / PIN:	Lot No. / PIN:
Part Lot 1, Plan M-807, Part 1, 65R-32855 / 03206-3469	Part Lot 2, Plan M-807, Part 2, 65R-32855 / 03206-3467

PROPERTY B

Phase III, Plan 65M-4331, Town of Richmond Hill:

Lot No. / PIN:	Lot No. / PIN:	Lot No. / PIN:
1 / 03206-3484	10 / 03206-3493	18 / 03206-3501
2 / 03206-3485	11 / 03206-3494	19 / 03206-3502
3 / 03206-3486	12 / 03206-3495	20 / 03206-3503
4 / 03206-3487	13 / 03206-3496	21 / 03206-3504
5 / 03206-3488	14 / 03206-3497	22 / 03206-3505
6 / 03206-3489	15 / 03206-3498	23 / 03206-3506
7 / 03206-3490	16 / 03206-3499	24 / 03206-3507
8 / 03206-3491	17 / 03206-3500	25 / 03206-3508
9 / 03206-3492		

SCHEDULE "F"

Plaintiff's Name:	Amount Owed to Plaintiff on Phase I and Phase II:
Solo Electric Ltd.	$116,773.68
Canadian Concrete Forming Ltd.	$151,158.41
E. D. Carpentry Limited	$201,511.34
Pave Plumbing & Heating Inc.	$141,091.44
Medi Group Incorporated	$377,358.08
Pilbro III Inc.	$425,712.57
Foremont Drywall Contracting	$253,932.58

TOTAL: **$1,667,538.10**

SCHEDULE "G"

Lien Claimant	Phase 1 Contract Amount / Amount Owing	Phase 2 Contract Amount / Amount Owing	Phase 3 Contract Amount / Amount Owing	Total Owed on Phase 1, 2 & 3
1865721 Ontario Inc.			$155,755.58 / Amount Owing $91,518.55	Phase 3 - $91,518.55
Canadian Concrete Forming Limited	$132,502.66 / Amount Owing $62,165.94	$445,235.82 / Amount Owing $66,683.08	$556,193.91 / Amount Owing $65,043.27	Phases 1, 2 & 3 - $193,892.29 (plus $22,309.39 re: Ashcott, Scarborough)
Cardell Flooring Ltd.			$196,633.40 / Amount Owing $94,922.10	Phase 3 - $94,922.10
E. D. Carpentry Limited	$127,029.00 / Amount Owing $85,571.51	$262,153.85 / Amount Owing $84,644.83	$251,510.88 / Amount Owing $107,305.52	Phases 1, 2 & 3 - $277,521.86 (Plus $51,152.15 re: D&I Development, Ashcott Mews, 53 Puccini and Oxford
Foremont Drywall Inc. / 1382479 Ontario Inc. / 1382503 Ontario Inc. / 2203579 Ontario Inc. /c.o.b. Foremont Drywall Contracting	$428,025.00 / Amount Owing $151,285.75	$616,916.06 / Amount Owing $102,646.83	$568,376.58 / Amount Owing $180,645.35	Phases 1, 2 & 3 - $434,577.93
Giancola Aluminum Contractors Inc.		Amount of Contract $not available / Amount Owing $5,527.00	$103,559.00 / Amount Owing $77,052.00	Phases 2 & 3 - $82,579.00

Lien Claimant	Phase 1 Contract Amount / Amount Owing	Phase 2 Contract Amount / Amount Owing	Phase 3 Contract Amount / Amount Owing	Total Owed on Phase 1, 2 & 3
GM Exterior Inc.	$20,558.75 / Amount Owing $1,978.58	$62,840.20 / Amount Owing $2,563.79	$44,516.82 / Amount Owing $42,016.83	Phases 1, 2 & 3 - $46,559.20
Medi Group Incorporated	Phases 1 & 2 - $1,492,924.00 / Amount Owing on Phases 1 & 2 $378,285.00	See note under "Phase 1"	$947,140.00 / Amount Owing $143,390.00	Phase 1, 2 & 3 - $521,675.00
Pave Plumbing & Heating Inc.	Phase 1, 2 & 3 - $834,389.56 / Amount Owing on Phase 1 $82,277.48	See Contract Amount under "Phase 1" / Amount Owing on Phase 2 $39,272.57	See Contract Amount under "Phase 1" / Amount Owing on Phase 3 $64,819.72	Phases 1, 2 & 3 - $186,369.77 (plus $40,933.18 re: Ashcott Mews; Silver Stream Homes Inc.; D&I Developments
Pilbro III Inc.	$471,428.01 / Amount Owing $64,641.13	$827,668.50 / Amount Owing $317,890.80	$867,989.16 / Amount Owing $128,828.95	Phases 1, 2 & 3 - $511,360.88 (plus $42,992.94 re: Ashcott Mews)
Solo Electric Ltd.	Phases 1 & 2 - $452,819.71 / Amount Owing $72,111.89	See note under "Phase 1"	$253,622.32 / Amount Owing $68,578.80	Phases 1, 2 & 3 - $140,690.69 (plus $45,673.47 re: Ashcott Mews and D& I Development)
TOTAL AMOUNT OWING:	$898,317.28	$619,228.90	$1,064,121.09	$2,581,667.27 + $ 203,061.13 Ashcott, D&I, etc. $2,784,728.40

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MEDI GROUP INCORPORATED et al
Plaintiffs

and

SILVER STREAMS HOMES (PUCCINI) INC.
et al
Defendants

Court File No.:

Ontario
SUPERIOR COURT OF JUSTICE

Proceeding commenced at Toronto

STATEMENT OF CLAIM

KLEIN &ASSOCIATES PROFESSIONAL
CORPORATION
390 Bay Street, Suite 1101
Toronto, Ontario M5H 2Y2

James Klein LSUC#: 25014B
Tel: (416) 366-9494, Ext. 225
Fax: (416) 366-9442

Lawyers for the Plaintiffs

THIS IS EXHIBIT "I" TO THE AFFIDAVIT OF DOMINIC MONTEMURRO SWORN BEFORE ME, THIS 19 DAY OF SEPTEMBER 2014.

Commissioner for Taking Affidavits

Grace Panettieri-Marson, a Commissioner, etc.,
City of Toronto, for Medi Group Incorporated,
National Air Systems Inc., and National Fireplace
And Facings Inc.
Expires March 24, 2015.

EXHIBIT "I"

Court File No.:

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:

CON-DRAIN COMPANY (1983) LIMITED

Plaintiff

- and -

SILVER STREAMS HOMES INC., SILVER STREAMS HOMES (PUCCINI) INC., JACK GREENBERG, 2148990 ONTARIO INC., 2148993 ONTARIO INC., 2147650 ONTARIO INC. 2147681 ONTARIO INC., PUCCINI MORTGAGE CORP., 53 PUCCINI MORTGAGE CORP., 388242 ONTARIO LIMITED, DAPAUL MANAGEMENT LIMITED and NASTELL INVESTMENTS LIMITED

Defendants

NOTICE OF MOTION
(returnable on Thursday, August 15, 2013)

The Plaintiff will make a motion to the Court on Thursday, August 15, 2013, at 9:00 a.m. or as soon after that time as the motion can be heard, at 50 Eagle Street W. Newmarket, ON L3Y 6B1.

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

☐ in writing under subrule 37.12.1(1) because it is on consent or unopposed or made without notice;

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

☒ **orally.**

THE MOTION IS FOR:

(a) an interim and/or permanent Mandatory Order requiring the sum of $800,000.00 be paid into Court from the net proceeds received on closing of the remaining eighteen (18) lots located on the residential project in question. Such net proceeds to be the balance of the purchase price "after payment" of necessary closing legal fees, real estate commissions and mortgage discharge payments to the Bank of Montreal and shall remain in Court until further Order of this Honourable Court or Consent of the parties herein;

(b) in the alternative, an Order that a Certificate of Pending Litigation be granted in respect of the remaining 18 Lots on the residential project in question located in Richmond Hill, the legal description for same is set forth in Schedule "A" attached hereto; and

(c) such further and other relief as counsel may advise and this Honourable Court may deem just.

THE GROUNDS FOR THE MOTION ARE:

(a) The Plaintiff has just commenced a proceeding by way of Notice of Action which the Plaintiff claims an interest in either the net closing proceeds with respect to the remaining eighteen (18) lots to be sold on the Project in question and/or an interest in the eighteen (18) remaining lots themselves;

(b) The basis for the Plaintiff's Claim is pursuant to a settlement reached with the builder/developer of the lots in question, Silver Streams et al, in which $50,000.00 plus interest was to be paid to the Plaintiff on the closing of each lot from the net proceeds received on the closings;

(c) The Defendant, Jack Greenberg, counsel for Silver Streams et al was the lawyer who conducted all of the closings to date and will be conducting the closings on the remaining eighteen (18) lots. Jack Greenberg signed a personal Undertaking to pay the Plaintiff the above noted amounts on closing, "but" on the nine (9) recent closing which took place in June and throughout July failed or intentionally chose not to pay the Plaintiff the required amounts on closing;

(d) Only inadvertently did the Plaintiff find out these nine (9) closings had taken place as none of the Defendants ever disclosed the recent nine (9) closings to the Plaintiff, notwithstanding the registered owners, Greenberg, and the builder/developer, Silver Streams' obligation to do;

(e) The Plaintiff states this misappropriation of funds totals $450,000.00 in principle plus approximately $110,000.00 in interest for a total of approximately $560,000.00 which should have been paid to Con-Drain on these recent nine (9) closings;

(f) The intention of this Motion is to prevent any further misappropriation of funds by some or all of the Defendants and to protect the $800,000.00 amount presently owing to Con-Drain for work performed on the Project;

(g) There is a serious issued to be tried. The Plaintiff will suffer a irreparable harm if the Order requested is not granted. However, the Defendants will not suffer any prejudice if the Order is granted to pay the proceeds into Court with the merits of this matter to be determined thereafter.

(h) Sections 101 and 103 of the *Courts of Justice Act*, R.S.O. 1990, as amended;

(i) Rules 40 and 42.01 of the Rules of Civil Procedure; and

(j) Such further and other grounds as counsel may advise and this Honourable Court may admit.

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

(a) The Affidavit of Nunzio Bitondo and exhibits attached thereto;

(b) The Notice of Action herein;

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(c) Such further and other documentation evidence as counsel may request and this Honourable may allow.

August 13, 2013

Koskie Minsky LLP
20 Queen Street West, Suite 900, Box 52
Toronto, ON M5H 3R3

Jeffrey J. Long LS#: 32602V
Tel: 416-595-2125
Fax: 416-204-2892

Lawyers for the Plaintiff

TO: SILVER STREAMS HOMES INC.
SILVER STREAMS HOMES (PUCCINI) INC.
2148990 ONTARIO INC.
2148993 ONTARIO INC.
2147650 ONTARIO INC.
2147681 ONTARIO INC.
103 Naughton Drive
Richmond Hill, ON L4C 8B3

AND TO: JACK GREENBERG
PUCCINI MORTGAGE CORP.
53 PUCCINI MORTGAGE CORP.
388242 ONTARIO LIMITED
DAPAUL MANAGEMENT LIMITED
NASTELL INVESTMENTS LIMITED
181 Eglinton Ave. E., Suite 204
Toronto, ON M4P 1J4

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SCHEDULE "A"

PIN 03206 - 3484 LT
LOT 1, PLAN 65M4331; SUBJECT TO AN EASEMENT IN GROSS OVER PTS 1 & 2 65R33105 AS IN LB43081;
TOWN OF RICHMOND HILL
RICHMOND HILL

PIN 03206 - 3485 LT
LOT 2, PLAN 65M4331; TOWN OF RICHMOND HILL
RICHMOND HILL

PIN 03206 - 3486 LT
LOT 3, PLAN 65M4331; TOWN OF RICHMOND HILL
RICHMOND HILL

PIN 03206 - 3487 LT
LOT 4, PLAN 65M4331; TOWN OF RICHMOND HILL
RICHMOND HILL

PIN 03206 - 3488 LT
LOT 5, PLAN 65M4331; TOWN OF RICHMOND HILL
RICHMOND HILL

PIN 03206 - 3495 LT
LOT 12, PLAN 65M4331; SUBJECT TO AN EASEMENT IN GROSS OVER PT 8 65R33105 AS IN YR1611262; TOWN OF RICHMOND HILL
RICHMOND HILL

PIN 03206 - 3497 LT
LOT 14, PLAN 65M4331; TOWN OF RICHMOND HILL
RICHMOND HILL

PIN 03206 - 3499 LT
LOT 16, PLAN 65M4331; TOWN OF RICHMOND HILL
RICHMOND HILL

PIN 03206 - 3501 LT
LOT 18, PLAN 65M4331; TOWN OF RICHMOND HILL
RICHMOND HILL

PIN 03206 - 3502 LT
LOT 19, PLAN 65M4331; TOWN OF RICHMOND HILL
RICHMOND HILL

PIN 03206 - 3503 LT
LOT 20, PLAN 65M4331; TOWN OF RICHMOND HILL
RICHMOND HILL

PIN 03206 - 3504 LT
LOT 21, PLAN 65M4331; TOWN OF RICHMOND HILL
RICHMOND HILL

PIN 03206 - 3505 LT
LOT 22, PLAN 65M4331; TOWN OF RICHMOND HILL
RICHMOND HILL

PIN 03206 - 3506 LT
LOT 23, PLAN 65M4331; TOWN OF RICHMOND HILL
RICHMOND HILL

PIN 03206 - 3507 LT
LOT 24, PLAN 65M4331; TOWN OF RICHMOND HILL
RICHMOND HILL

PIN 03206 - 3508 LT
LOT 25, PLAN 65M4331; TOWN OF RICHMOND HILL
RICHMOND HILL

PIN 03206 - 3418 LT
LOT 1, PLAN 65M4249; TOWN OF RICHMOND HILL
RICHMOND HILL

PIN 03206 - 3440 LT
LOT 23, PLAN 65M4249; SUBJECT TO AN EASEMENT IN GROSS OVER PT 2, 65R32917 AS IN YR1620823; TOWN OF RICHMOND HILL

Court File No.

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:

CON-DRAIN COMPANY (1983) LIMITED

Plaintiff

- and -

SILVER STREAMS HOMES INC., SILVER STREAMS HOMES (PUCCINI) INC., JACK GREENBERG, 2148990 ONTARIO INC., 2148993 ONTARIO INC., 2147650 ONTARIO INC. 2147681 ONTARIO INC., PUCCINI MORTGAGE CORP., 53 PUCCINI MORTGAGE CORP., 388242 ONTARIO LIMITED, DAPAUL MANAGEMENT LIMITED and NASTELL INVESTMENTS LIMITED

Defendants

AFFIDAVIT OF NUNZIO BITONDO (SWORN AUGUST 13, 2013)

I, **NUNZIO BITONDO**, of the City of Vaughan, **MAKE OATH AND SAY AS FOLLOWS:**

1. I am the Chief Financial Officer for the Plaintiff, Con-Drain Company (1983) Limited (**"Con-Drain"**) and have been involved with this matter for the past several years in regards to collecting amounts owing to Con-Drain from work performed on the Silver Streams Homes residential project (the **"Project"**). As such I have knowledge of the matters to which I hereinafter depose. Where evidence is not of my direct knowledge it has been advised to me by my counsel, Jeffrey Long, and I verily believe same to be true.

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SUMMARY

2. Pursuant to its Contract, Con-Drain provided earthworks, underground services, roads, curbs, asphalt and all related labour materials to a residential construction project located in Richmond Hill. Con-Drain's Contract was with Silver Streams Homes Inc. and/or Silver Streams Homes (Puccini) Inc., the builder and developer of the Project. By the end of 2009 Con-Drain was owed almost $2.0 million dollars for work performed but Silver Streams was unable to pay. As such, those parties, along with counsel, entered into settlement negotiations in an attempt to secure upon appropriate payment terms.

3. A settlement was reached and pursuant to that settlement Con-Drain was to receive the sum of $50,000.00 plus interest from the closings of the various homes being built and sold on the Project.

4. As part of the settlement, the Defendant, Jack Greenberg ("Greenberg") (lawyer for the vendors and builder/developer) gave a personal Irrevocable Undertaking on March 31, 2010 to make the aforementioned payments to Con-Drain and his client signed an Irrevocable Direction authorizing said payments.

5. It recently came to my attention that Greenberg and/or his clients failed or intentionally refused to pay Con-Drain on nine (9) closings which took place in June and July of this year. Instead of paying Con-Drain the above noted required amounts, Greenberg directed the excess closing proceeds to his own Companies being lenders which have subsequent mortgages registered on title after the first mortgage of the Bank of Montreal.

6. This intentional non-payment and misappropriation of funds paid to Greenberg's Companies is a breach of Greenberg's personal Undertaking as well as the Irrevocable Direction provided by his clients. As of this date, Con-Drain is still owed the sum of approximately $800,000.00 for work performed on the Project (earthworks, servicing, installation of roads, curbs and all related labour and materials). Attached hereto and marked as **Exhibit "A"** is a copy of Greenberg's personal Undertaking and his client's Irrevocable Direction dated March 31, 2010.

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7. Con-Drain brings this Motion for a Certificate of Pending Litigation or an Order paying all net proceeds into Court from the future remaining "18" closings in order to avoid any further misappropriation of funds by some or all of the Defendants. There are only eighteen (18) lots that Con-Drain is aware of which have yet to close and those closings are happening as early as today with future closings in August and the immediate future.

HISTORY OF THE FACTS

8. In or about September, 2008, Con-Drain entered into a Contract with the builder/developer of the Project, Silver Streams Homes Inc. and/or Silver Steams Homes (Puccini) Inc. (hereinafter referred to as "Silver Streams"). The contract required that Con-Drain would perform the earthworks and site preparation, external works, underground services and roads, base asphalt, second phase of asphalt and hydro and utility works. Attached to this my Affidavit and marked as **Exhibit "B"** is a copy of the first two pages of said Contract. The Contract is lengthy and therefore the entire Contract is not being included herein.

9. The total approximate value of the Contract was the sum of $4,500,000.00, including GST.

10. The Project is a residential subdivision being constructed by Silver Streams as a builder/developer. Silver Streams' four (4) related companies are the registered title holders of the Project. The officer and director/shareholder of both Silver Streams and the related companies is Mr. Imran Jinnah **("Jinnah")**. To the best of my knowledge, the registered title holders of the lots located on the Project are the following companies: 2147681 Ontario Inc., 2147650 Ontario Inc., 2148993 Ontario Inc. and 2148990 Ontario Inc. (hereinafter referred to as the **"Registered Owners"**). Attached to this my Affidavit and marked as **Exhibit "C"** is a copy of the corporate searches for the Registered Owners which confirms that Jinnah is the president of all four companies.

11. In order so the Court has an idea as to the layout of the Project, attached to this my Affidavit and marked as **Exhibit "D"** is a copy of a Plan which shows the various lands in question. Essentially the lands are located just east of Bathurst Street on the north side of Puccini Drive in Richmond Hill.

12. Pursuant to the Contract, Con-Drain carried out its work and completed a substantial portion of same by late 2009. Unfortunately, Silver Streams did not have the funds available to pay Con-Drain for its work. In any event, section 4.1 of the Contract required Silver Streams to pay Con-Drain within 15 days from receiving the return of security that Silver Streams had posted with the Town of Richmond Hill.

13. However, and contrary to the Contract provision mentioned above, Silver Steams improperly retained the security received from the Town of Richmond Hill and intentionally refused to pay that amount to Con-Drain. This direct breach of the Contract and promise to pay is confirmed in Con-Drain's letter to Greenberg dated February 5, 2010. Attached to this my Affidavit and marked as **Exhibit "E"** is a copy of Con-Drain's letter to Greenberg in that regard.

14. In light of the above actions by Silver Streams and/or Greenberg, Con-Drain had no choice but to register Claims for Lien in order to protect the substantial amounts owing to Con-Drain for work performed on the Project at that time. As such, on February 9, 2010, Con-Drain registered two Claims for Lien against the Project in the sums of $998,098.46 and $930,120.27. Attached to this my Affidavit and marked as **Exhibit "F"** is a copy of Con-Drain's two Claims for Lien.

15. As I recall, the reason for registering two separate Claims for Lien is because one Lien was registered on Phase I or Plan 1 of the Project and the other Lien was registered on Phase II or Plan 2 of the Project.

16. Shortly after registration of our Claims for Lien, settlement negotiations took place with Greenberg and Jinnah. In fact, on or about March 31, 2010, a Settlement was entered into between the parties. The Settlement entitled Con-Drain to a prompt payment of $550,000.00 as well as an Irrevocable Direction from Silver Streams and an

Irrevocable Undertaking from Greenberg to pay Con-Drain $50,000.00 plus interest from each of the future closings, which amount was to be paid in priority to any amounts otherwise payable to Silver Streams on closing. In exchange, Con-Drain was required to discharge its two Claims for Lien. Attached to this my Affidavit and marked as **Exhibit "G"** is a copy of the March 31, 2010 Settlement letter from Greenberg confirming the above noted Settlement, along with enclosures.

17. Con-Drain received the $550,000.00 payment required by the above noted Settlement and began to receive $50,000.00 plus interest on the various closings as they proceeded to take place. In turn, Con-Drain discharged it's Claim for Lien which never would have been done if Con-Drain was not going to receive $50,000.00 plus interest from each closing going forward.

18. However, and while I cannot recall the exact circumstances, Silver Streams got into further financial trouble at some point in early 2012 such that Jinnah and Greenberg contacted me to discuss revising the Settlement terms.

19. As a courtesy to Jinnah and in order to assist Silver Streams in continuing to close its various Projects without undue delay, Con-Drain agreed to revise some of the Settlement terms. Part of the revision provided that Con-Drain would be paid $50,000.00 plus interest from ten (10) closings on the "Third Plan of Subdivision (Plan 3)". While doing so would delay payment to Con-Drain which should have been paid in full on Plans 1 and 2, Jinnah and Greenberg advised same was necessary due to various financing issues with the Bank of Montreal. The Bank of Montreal has a first mortgage registered against the Project. Attached to this my Affidavit and marked as **Exhibit "H"** is a copy of Greenberg's letter dated April 16, 2012 confirming the revised Settlement along with Greenberg's Irrevocable Undertaking and Silver Streams Irrevocable Direction which were specifically to continue to be in effect.

20. After the revised Settlement on April 16, 2012, Con-Drain did start receiving further $50,000.00 payments on closing, plus interest, as required. In fact, those payments continued up and until March 11, 2013, at which time Con-Drain received its last $50,000.00 payment and received the applicable interest payment in the sum of

$11,500.00 for Lot number 20. Attached to this my Affidavit and marked as **Exhibit "I"** is a copy of Greenberg's letter to Con-Drain dated March 11, 2013 along with a copy of the interest cheque from Greenberg's office.

21. It should be noted the above mentioned March, 2013 payment was the "**last payment**" received to date from Greenberg and/or Jinnah's companies on this matter. No further payments whatsoever were received since that time.

MISAPPROPRIATION OF FUNDS BY GREENBERG/JINNAH ET AL

22. From the commencement of the settlement in late March, 2010 through until mid-March, 2013, I believe there were thirty-four (34) lots which closed and which Con-Drain received the required $50,000.00 payment along with applicable interest. Those payments were made from Greenberg's trust account and flowed from the purchase proceeds paid on the thirty-four (34) closings. These payments to Con-Drain continued for a three year period as required under the settlement and were to continue until Con-Drain was paid in full.

23. However, in April, 2013, I began to inquire as to when the next set of closings were taking place as Jinnah told me there would be numerous closings in the summer of 2013. For reasons that have only now become clear, neither Jinnah nor Greenberg ever provided the future closing dates.

24. Instead, and totally by coincidence, in late July I became aware that one of the lots had closed because it was sold to a family member of someone I know personally. Quite frankly I couldn't believe that a closing had taken place in late July because Con-Drain never received the required $50,000.00 payment plus interest from Greenberg's office.

25. I contacted Jinnah to inquire as to what was going on and he told me that nine (9) or ten (10) lots had closed in June and July but that Greenberg had decided no monies would be paid to Con-Drain regardless of the Irrevocable Direction from Jinnah and the Irrevocable Undertaking of Greenberg. Jinnah also told me that Greenberg had taken over all decisions related to the closing proceeds.

26. Subsequently, Jinnah sent me an email confirming the various lots which had closed in June and July. His email also confirmed that ten (10) more closings were taking place in August, four (4) closings in September and one (1) in December. Attached to this my Affidavit and marked as **Exhibit "J"** is a copy of Jinnah's emails in that regard.

27. I could not believe that Greenberg and/or Jinnah breached the Irrevocable Direction and Irrevocable Undertaking and their obligations to pay Con-Drain on the nine (9) closings which took place in June and July. As such, a meeting with Jinnah and Greenberg was arranged immediately after the above information came to light and was held at Con-Drain's offices on August 6th.

28. At the meeting, Greenberg admitted that funds were paid to the secondary lenders with mortgages registered "after" the Bank of Montreal's first mortgage, such that no funds were available to be paid to Con-Drain on those nine (9) closings. In fact, those "secondary lenders" received approximately over $1.0 million dollars from the nine (9) closings, while Con-Drain received nothing. What makes those payments even more inappropriate and why I suggest that same were a misappropriation of funds by Greenberg is that "**Greenberg**" is the President and sole officer/director of all the "Secondary Lender" companies.

29. In support of the above, attached as **Exhibit "K"** are copies of the Corporation Profile Reports for the five (5) companies who have mortgages registered on title to the Project. Those five companies are Puccini Mortgage Corp., 53 Puccini Mortgage Corp., 388242 Ontario Limited, Dapaul Management Limited and Nastell Investments Limited (the **"Greenberg Companies"**).

30. As a result, it is Con-Drain's position that Greenberg breached the obligation to pay Con-Drain on these nine (9) closings by unilaterally deciding to pay the Greenberg Companies in direct contravention of his personal Undertaking and in contravention to his client's Irrevocable Direction.

31. Attached to this my Affidavit and marked as **Exhibit "L"** is a recent Summary of the amounts properly due and owing to Con-Drain, including interest, which are to be paid from the various closings. The balance owing to Con-Drain including interest as of July 31, 2013 is the sum of $678,176.88 plus interest of $116,704.80 for a total owing in the sum of **$794,881.68**.

32. It should be known that of the above amount owing to Con-Drain, $94,836.71 relates to work recently performed by Con-Drain and approved by Silver Streams engineer. It should also be known that in order to further protect Con-Drain's legal rights, on August 9, 2013, Con-Drain registered a Claim for Lien against the eighteen (18) remaining lots in the sum of $94,836.71 and also registered a Notice against title to these lots. Attached to this my Affidavit and marked as **Exhibit "M"** is a copy of Con-Drain's Claim for Lien and Notice registered on Friday, August 9, 2013 along with a cover letter from Con-Drain's counsel as forwarded to Greenberg that afternoon.

33. Con-Drain believes that in light of the settlements entered into with the parties herein along with the Irrevocable Direction from Silver Streams/Jinnah and personal Undertaking of Greenberg, Con-Drain has an interest in the lands insofar as the remaining lots to be sold up to the sum of approximately $800,000.00 and/or a constructive trust for that amount in respect of the proceeds from those 18 remaining lots. Con-Drain is seeking the amount owing be paid into Court or into Trust from the remaining closings so that said amount can be protected and/or preserved with payment of same to be made out of Court upon further Motion and/or Order of this Honourable Court.

34. In the alternative, Con-Drain is seeking an Order for a Certificate of Pending Litigation in regards to the remaining eighteen (18) lots.

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CONCLUSION

35. It was a direct breach of contract when Silver Streams/Jinnah retained approximately $1.2 million dollars security from the Town of Richmond Hill back in late 2009 and failed to provide same to Con-Drain notwithstanding a clear agreement and obligation to do so.

36. It is even more disconcerting that Greenberg and/or Jinnah would retain funds from the recent nine (9) closings without paying any amount to Con-Drain whatsoever "**and**" that Greenberg would unilaterally decide to pay his own Greenberg Companies the sum of over $1.0 million dollars instead of paying Con-Drain, notwithstanding Greenberg's personal Undertaking to pay Con-Drain as previously described herein.

37. So this Honourable Court has actual evidence of the 18 lots still owned by the "Registered Owners", attached to this my Affidavit and as **Exhibit "N"** is a copy of recent Title Searches for the eighteen (18) lots which have yet to close.

38. Con-Drain hereby undertakes to abide by any Order for damages that may be made by this Honourable Court as a result of an Order paying the above requested sale proceeds into Court and/or from the registration of an Order for a Certificate of Pending Litigation as against the remaining eighteen (18) lots on the Project.

39. I make this Affidavit for no improper purpose.

SWORN before me at the City of Toronto, on August 13, 2013.	
A Commissioner for taking affidavits	Nunzio Bitondo

[illegible]

CON-DRAIN COMPANY (1983) LIMITED
Plaintiff

and

SILVER STREAMS HOMES INC. et al.
Defendants

Court File No:

ONTARIO
SUPERIOR COURT OF JUSTICE

Proceeding commenced at NEWMARKET

AFFIDAVIT OF NUNZIO BITONDO

Koskie Minsky LLP
20 Queen Street West, Suite 900, Box 52
Toronto, ON M5H 3R3

Jeffrey Long LSUC #: 32602V
Tel: 416-595-2125
Fax: 416-204-2892

Lawyers for the Plaintiff

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CV-13-115757-00

Court File No.

ONTARIO
SUPERIOR COURT OF JUSTICE

B E T W E E N :

CON-DRAIN COMPANY (1983) LIMITED

Plaintiff

- and -

SILVER STREAMS HOMES INC., SILVER STREAMS HOMES (PUCCINI) INC., JACK GREENBERG, 2148990 ONTARIO INC., 2148993 ONTARIO INC., 2147650 ONTARIO INC. 2147681 ONTARIO INC., PUCCINI MORTGAGE CORP., 53 PUCCINI MORTGAGE CORP., 388242 ONTARIO LIMITED, DAPAUL MANAGEMENT LIMITED, NASTELL INVESTMENTS LIMITED and CASTLE LANE DESIGN GROUP INC.

Defendants

NOTICE OF ACTION

TO THE DEFENDANT(S)

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the plaintiff. The claim made against you is set out in the statement of claim served with this notice of action.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or an Ontario lawyer acting for you must prepare a statement of defence in Form 18A prescribed by the Rules of Civil Procedure, serve it on the plaintiff's lawyer or, where the plaintiff does not have a lawyer, serve it on the plaintiff, and file it, with proof of service, in this court office, WITHIN TWENTY DAYS after this notice of action is served on you, if you are served in Ontario.

If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your statement of defence is forty days. If you are served outside Canada and the United States of America, the period is sixty days.

Instead of serving and filing a statement of defence, you may serve and file a notice of intent to defend in Form 18B prescribed by the Rules of Civil Procedure. This will entitle you to ten more days within which to serve and file your statement of defence.

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

IF YOU PAY THE PLAINTIFF'S CLAIM, and $3,500.00 for costs, within the time for serving and filing your statement of defence, you may move to have this proceeding dismissed by the court. If you believe the amount claimed for costs is excessive, you may pay the plaintiff's claim and $400.00 for costs and have the costs assessed by the court.

Date August 15, 2013

Issued by D. Van Wessem
Local registrar

Address of court office: 50 Eagle St. W.
Newmarket, ON L3Y 6B1

TO: SILVER STREAMS HOMES INC.
103 Naughton Drive
Richmond Hill, ON L4C 8B3

AND TO: SILVER STREAMS HOMES (PUCCINI) INC.
103 Naughton Drive
Richmond Hill, ON L4C 8B3

AND TO: JACK GREENBERG
181 Eglinton Ave. E., Suite 204
Toronto, ON M4P 1J4

AND TO: 2148990 ONTARIO INC.
103 Naughton Drive
Richmond Hill, ON L4C 8B3

AND TO: 2148993 ONTARIO INC.
103 Naughton Drive
Richmond Hill, ON L4C 8B3

AND TO: 2147650 ONTARIO INC.
103 Naughton Drive
Richmond Hill, ON L4C 8B3

AND TO: 2147681 ONTARIO INC.
103 Naughton Drive
Richmond Hill, ON L4C 8B3

AND TO: PUCCINI MORTGAGE CORP.
181 Eglinton Ave. E., Suite 204
Toronto, ON M4P 1J4

AND TO: 53 PUCCINI MORTGAGE CORP.
181 Eglinton Ave. E., Suite 204
Toronto, ON M4P 1J4

AND TO: 388242 ONTARIO LIMITED
181 Eglinton Ave. E., Suite 204
Toronto, ON M4P 1J4

AND TO: DAPAUL MANAGEMENT LIMITED
181 Eglinton Ave. E., Suite 204
Toronto, ON M4P 1J4

AND TO: NASTELL INVESTMENTS LIMITED
181 Eglinton Ave. E., Suite 204
Toronto, ON M4P 1J4

AND TO: CASTLE LANE DESIGN GROUP INC.
181 Eglinton Ave. E., Suite 204
Toronto, ON M4P 1J4

CLAIM

1. The Plaintiff claims:

   (a) damages in the amount of $800,000.00 for breach of contract, breach of the personal Undertaking of Jack Greenberg, breach of trust, breach of the *Construction Lien Act* Trust Provisions, breach of fiduciary duty, misappropriation of funds, unjust enrichment, conspiracy, fraud, negligent and fraudulent misrepresentations by the Defendants jointly and severally;

   (b) damages in the amount of $800,00.00 for conversion of the said funds misappropriated by the Defendants;

   (c) punitive and exemplary damages in the sum of $500,000.00;

   (d) an interim and/or permanent Mandatory Order requiring the sum of $800,000.00 be paid into Court from the net proceeds received on closing of the remaining nineteen (19) lots located on the residential project in question. Such net proceeds to be the balance of the purchase price "after payment" of necessary closing legal fees, real estate commissions and mortgage discharge payments to the Bank of Montreal, and shall remain in Court until further Order of this Honourable Court or Consent of the parties herein;

   (e) an Order that a Certificate of Pending Litigation be granted in respect of the remaining 19 Lots on the residential project in question, the legal description for same is set forth in Schedule "A" attached hereto;

   (f) a declaration that the Defendants hold the misappropriated funds as constructive trustees for the benefit of the Plaintiff;

   (g) a declaration that the Defendants hold the Plaintiff's funds in a constructive or resulting trust for the benefit of the Plaintiff;

(h) an equitable tracing Order tracing the funds misappropriated by the Defendants;

(i) an Order enjoining and restraining the Defendants from disposing any of the Plaintiff's funds held as constructive trustees by the Defendants for the Plaintiff's benefit;

(j) a declaration that the Defendants have been unjustly enriched at the expense of the Plaintiff by virtue of the misappropriation of funds and must disgorge all funds misappropriated;

(k) pre-judgment and post-judgment interest on the above noted sum from June 26, 2013 in accordance with the terms of the contracts entered into between the parties, or in the alternative, in accordance with the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended;

(l) costs of the action payable on a full indemnity basis;

(m) any Harmonized Sales Tax which may be payable on any amount pursuant to the *Excise Tax Act*, R.S.C., 1995, c. E-15, as amended, or any other legislation enacted by the Government of Canada; and

(n) such further and other relief as counsel may advise and this Honourable Court may deem just.

2. The Plaintiff proposes that this action be tried in the City of Newmarket, Ontario.

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August ~~13~~, 2013

Koskie Minsky LLP
20 Queen Street West, Suite 900, Box 52
Toronto, ON M5H 3R3

Jeffrey Long LSUC #: 32602V
Tel: 416-595-2125
Fax: 416-204-2892

Lawyers for the Plaintiff

SCHEDULE "A"

PIN	03206 - 3484 LT LOT 1, PLAN 65M4331; SUBJECT TO AN EASEMENT IN GROSS OVER PTS 1 & 2 65R33105 AS IN LB43081; TOWN OF RICHMOND HILL RICHMOND HILL
PIN	03206 - 3485 LT LOT 2, PLAN 65M4331; TOWN OF RICHMOND HILL RICHMOND HILL
PIN	03206 - 3486 LT LOT 3, PLAN 65M4331; TOWN OF RICHMOND HILL RICHMOND HILL
PIN	03206 - 3487 LT LOT 4, PLAN 65M4331; TOWN OF RICHMOND HILL RICHMOND HILL
PIN	03206 - 3488 LT LOT 5, PLAN 65M4331; TOWN OF RICHMOND HILL RICHMOND HILL
PIN	03206 - 3495 LT LOT 12, PLAN 65M4331; SUBJECT TO AN EASEMENT IN GROSS OVER PT 8 65R33105 AS IN YR1611262; TOWN OF RICHMOND HILL RICHMOND HILL
PIN	03206 - 3497 LT LOT 14, PLAN 65M4331; TOWN OF RICHMOND HILL RICHMOND HILL
PIN	03206 - 3499 LT LOT 16, PLAN 65M4331; TOWN OF RICHMOND HILL RICHMOND HILL
PIN	03206 - 3501 LT LOT 18, PLAN 65M4331; TOWN OF RICHMOND HILL RICHMOND HILL
PIN	03206 - 3502 LT LOT 19, PLAN 65M4331; TOWN OF RICHMOND HILL RICHMOND HILL
PIN	03206 - 3503 LT LOT 20, PLAN 65M4331; TOWN OF RICHMOND HILL RICHMOND HILL
PIN	03206 - 3504 LT LOT 21, PLAN 65M4331; TOWN OF RICHMOND HILL RICHMOND HILL
PIN	03206 - 3505 LT LOT 22, PLAN 65M4331; TOWN OF RICHMOND HILL RICHMOND HILL
PIN	03206 - 3506 LT LOT 23, PLAN 65M4331; TOWN OF RICHMOND HILL RICHMOND HILL
PIN	03206 - 3507 LT LOT 24, PLAN 65M4331; TOWN OF RICHMOND HILL RICHMOND HILL
PIN	03206 - 3508 LT LOT 25, PLAN 65M4331; TOWN OF RICHMOND HILL RICHMOND HILL
PIN	03206 - 3418 LT LOT 1, PLAN 65M4249; TOWN OF RICHMOND HILL RICHMOND HILL
PIN	03206 - 3440 LT LOT 23, PLAN 65M4249; SUBJECT TO AN EASEMENT IN GROSS OVER PT 2, 65R32917 AS IN YR1620823; TOWN OF RICHMOND HILL
PIN	03206 – 3441LT LOT 24, PLAN 65M-4249, SUBJECT TO AN EASEMENT IN GROSS PT 3, 65R-32917 AS IN YR1620823, TOWN OF RICHMOND HILL RICHMOND HILL

CON-DRAIN COMPANY (1983) LIMITED
Plaintiff

and

SILVER STREAMS HOMES INC. et al.
Defendants

Court File No: CV-13-115757-00

ONTARIO
SUPERIOR COURT OF JUSTICE

Proceeding commenced at NEWMARKET

NOTICE OF ACTION

Koskie Minsky LLP
20 Queen Street West, Suite 900, Box 52
Toronto, ON M5H 3R3

Jeffrey Long LSUC #: 32602V
Tel: 416-595-2125
Fax: 416-204-2892

Lawyers for the Plaintiff

THIS IS EXHIBIT "J" TO THE AFFIDAVIT OF DOMINIC MONTEMURRO SWORN BEFORE ME, THIS 19. DAY OF SEPTEMBER 2014.

Commissioner for Taking Affidavits

Grace Panettieri-Marson, a Commissioner, etc.,
City of Toronto, for Medi Group Incorporated,
National Air Systems Inc., and National Fireplace
And Facings Inc.
Expires March 24, 2015.

EXHIBIT "J"

Court File No.: CV-13-115757-00

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:

CON-DRAIN COMPANY (1983) LIMITED

Plaintiff

- and -

SILVER STREAMS HOMES INC., SILVER STREAMS HOMES (PUCCINI) INC., JACK GREENBERG, 2148990 ONTARIO INC., 2148993 ONTARIO INC., 2147650 ONTARIO INC. 2147681 ONTARIO INC., PUCCINI MORTGAGE CORP., 53 PUCCINI MORTGAGE CORP., 388242 ONTARIO LIMITED, DAPAUL MANAGEMENT LIMITED, NASTELL INVESTMENTS LIMITED and CASTLE LANE DESIGN GROUP INC.

Defendants

STATEMENT OF CLAIM

(Notice of Action issued on August 15, 2013)

1. The Plaintiff claims:

   (a) damages in the amount of $800,000.00 for breach of contract, breach of the personal Undertaking of Jack Greenberg, breach of trust, breach of fiduciary duty, misappropriation of funds, conspiracy, fraud and negligent or fraudulent misrepresentations payable by the Defendants jointly and/or severally;

   (b) a Mandatory Order requiring the sum of up to $800,000.00 be paid into Court or into Trust from the net proceeds received on the remaining nineteen (19) lots located on the project in question, after payment of necessary legal fees, real estate commissions, mortgage payments to the Bank of Montreal and reasonable payments to other trades until further Order of this Honourable Court;

(c) an Order declaring that the Plaintiff has a full priority over all of the Defendants to the $800,000.00 amount referenced in paragraphs 1 (a) and (b) above;

(d) in the alternative, an Order that a Certificate of Pending Litigation be granted in respect of the remaining 19 Lots on the residential project in question located in Richmond Hill, the legal description for same is set forth in Schedule "A" attached hereto;

(e) punitive damages in the sum of $500,000.00;

(f) pre-judgment and post-judgment interest on the above noted sum from June 26, 2013 in accordance with the terms of the Settlement entered into between the parties, or in the alternative, in accordance with the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended;

(g) costs of the action payable on a full indemnity basis;

(h) any Harmonized Sales Tax which may be payable on any amount pursuant to the *Excise Tax Act*, R.S.C., 1995, c. E-15, as amended, or any other legislation enacted by the Government of Canada; and

(i) such further and other relief as counsel may advise and this Honourable Court may deem just.

THE PARTIES

2. The Plaintiff, Con-Drain Company (1983) Limited (**"Con-Drain"**) is a company incorporated pursuant to the laws of the Province of Ontario and operates as an earthworks and servicing contractor from its head offices in Concord, Ontario.

3. The Defendants, Silver Streams Homes Inc. and Silver Streams Homes (Puccini) Inc. (**"Silver Streams"**) are companies incorporated pursuant to the laws of the Province of Ontario operating as builders and/or developers from their head offices in Richmond Hill, Ontario. At all material times, Silver Streams was the builder and/or developer of the residential homes constructed on the lands in question (the **"Project").**

4. The Defendants, 2148990 Ontario Inc., 2148993 Ontario Inc., 2147650 Ontario Inc. and 2147681 Ontario Inc. (hereinafter collectively referred to as the **"Registered Owners"**) are companies incorporated pursuant to the laws of the Province of Ontario. At all material times, said companies were and/or are the **"Registered Owners"** of the Project lands. The Registered Owners are companies related to the Silver Streams companies in that they all share the same controlling mind and director/officer, namely, Imran Jinnah (**"Jinnah"**).

5. The Defendant, Jack Greenberg (**"Greenberg"**) is a lawyer residing in the Province of Ontario. At all material times, Greenberg was the lawyer for Silver Streams and the related Registered Owner companies. In addition, Greenberg is an officer, director and a controlling mind of the remaining corporate defendants described in paragraph #6 below.

6. The remaining corporate Defendants, namely, Puccini Mortgage Corp., 53 Puccini Mortgage Corp., 388242 Ontario Limited, Dapaul Management Limited, Nastell Investments Limited and Castle Lane Design Group Inc. (hereinafter collectively referred to as the **"Greenberg Companies"**) are companies incorporated pursuant to the laws of the Province of Ontario and are lenders and/or investors operating from their head offices in Toronto, Ontario. Greenberg is the sole officer and director and/or the controlling mind of the Greenberg Companies and is authorized to bind them.

7. The Greenberg Companies have mortgages registered against the Project, which mortgages are subsequent to a 1st mortgage registered in favour of the Bank of Montreal.

THE FACTS

8. Pursuant to its Contract in the sum of approximately $4.5 million including GST (the "Contract"), Con-Drain provided earthworks, underground services, roads, curbs, asphalt and all related labour and materials to the entire Project, being a residential construction project located in Richmond Hill. Con-Drain's Contract was with Silver Streams Homes Inc. and/or Silver Streams Homes (Puccini) Inc., the builder and developer of the Project.

9. Pursuant to the Contract, Con-Drain carried out its work and completed a substantial portion of same by late 2009. Unfortunately, Silver Streams did not have the funds available to pay Con-Drain for its work and was indebted to Con-Drain in the sum of approximately $2.0 million.

10. In any event, section 4.1 of the Contract required Silver Streams to pay Con-Drain within 15 days of receiving the return of security that Silver Streams had posted with the Town of Richmond Hill in the sum of approximately $1.2 million.

11. Contrary to the Contract provision mentioned above, Silver Steams improperly retained and/or misappropriated the security it received from the Town of Richmond Hill and wilfully neglected to pay said funds to Con-Drain.

12. In light of the above improper actions by Silver Streams, Con-Drain was required to register Claims for Lien in order to protect the substantial amounts owing for work performed on the Project at that time. As such, on February 9, 2010, Con-Drain registered two Claims for Lien against the Project, claiming $998,098.46 and $930,120.27, respectively.

13. Shortly after registration of Con-Drain's Claims for Lien, settlement negotiations took place with Greenberg and Jinnah. In fact, on or about March 31, 2010, a Settlement was entered into between the parties. The Settlement entitled Con-Drain to receive an immediate payment of $550,000.00. In addition, an Irrevocable Direction was provided by Silver Streams and an Irrevocable Undertaking was executed by Greenberg directing

payment to Con-Drain in the sum of $50,000.00 plus interest from each future closing until Con-Drain was paid in full, including interest.

14. In exchange, and as part of the Settlement, Con-Drain agreed to immediately discharge its two Claims for Lien.

15. Con-Drain received the $550,000.00 payment required by the above noted Settlement and began to receive $50,000.00 plus interest on the various closings as they proceeded to take place. In turn, Con-Drain discharged its two Claims for Lien and did so in strict reliance upon the Irrevocable Direction and Greenberg's Undertaking to pay Con-Drain proceeds from each closing.

16. The Settlement was performed by the parties until Silver Streams got into further financial trouble at some point in early 2012. At that time, Jinnah and Greenberg contacted Con-Drain to discuss revising the Settlement terms.

17. In order to assist Silver Streams in continuing to close the homes without undue delay and to avoid litigation, Con-Drain agreed to revise some of the Settlement terms. Part of the revision provided that Con-Drain would be paid $50,000.00 plus interest from the first ten (10) closings of homes constructed on the "Third Plan" of the Project (Plan 3). While doing so would delay payment to Con-Drain, which otherwise would have been paid in full on Plans 1 and 2, Jinnah and Greenberg advised the delay was necessary due to various financing issues with the first mortgage registered in favour of Bank of Montreal.

18. Con-Drain at all material times relied on the representations made by the Defendants that Con-Drain would receive the balance of funds owing from the first ten (10) closings on Plan 3. But for these representations, Con-Drain would not have agreed to the deferral in payment from the Plan 1 and 2 sales.

MISAPPROPRIATION OF FUNDS BY GREENBERG/JINNAH ET AL

19. From the commencement of the original Settlement in late March, 2010 until mid-March, 2013, there were approximately thirty-four (34) lots that closed from which Con-Drain received the required $50,000.00 payment along with applicable interest. All of those payments were made from Greenberg's trust account as required by the Settlement, the Irrevocable Direction and Greenberg's personal Undertaking.

20. Con-Drain pleads and relies upon the Settlement, the Irrevocable Direction and Greenberg's Undertaking as well as representations from Jinnah and Greenberg to comply with the terms of the Settlement in order to ensure full payment to Con-Drain. To that end, Con-Drain states the Defendants specifically owe a fiduciary duty, duty of care and are constructive trustees in respect of that portion of the closing proceeds payable to Con-Drain under the Settlement.

SECRET CLOSINGS AND DEFENDANTS' BREACHES

21. In April, 2013, Con-Drain inquired as to when the next set of closings were taking place as it was expected there would be numerous closings in the summer of 2013. Neither Jinnah nor Greenberg ever advised Con-Drain about the future closing dates.

22. Totally by coincidence, in late July it came to Con-Drain's attention that one of the lots in the Project had closed earlier that month. However, Con-Drain never received the Settlement payment and/or interest from Greenberg's office in respect of that closing.

23. Con-Drain immediately contacted Silver Streams/Jinnah and was advised that nine (9) or ten (10) lots had closed in June and July but that Greenberg had unilaterally decided no amount would be paid to Con-Drain notwithstanding the Irrevocable Direction from Silver Streams/Jinnah and Irrevocable Undertaking from Greenberg.

24. Con-Drain states the failure and/or intentional decision not to pay Con-Drain from the June and July, 2013 closing was a direct breach of the Irrevocable Direction, Irrevocable Undertaking and the Settlement obligations to pay Con-Drain.

25. In light of the above breaches and non-payment, Con-Drain demanded a meeting with Jinnah and Greenberg, which meeting was held at Con-Drain's offices on or about August 6th.

26. At the meeting, Greenberg admitted that funds were paid to the "Secondary Lenders" i.e. the Greenberg Companies who have mortgages registered "after" the Bank of Montreal's first mortgage. In fact, the Greenberg Companies received approximately $1.2 million dollars from the nine (9) secret closings, and other trades received over $800,000.00. Con-Drain received nothing.

27. Con-Drain states the above noted distribution of closing proceeds by the Defendants was a breach of the Settlement, a breach of trust, a breach of Greenberg's Undertaking and a breach fiduciary duty owed by Silver Streams and Greenberg to Con-Drain.

28. In addition, Con-Drain states that in light of all the above, Con-Drain has full priority over all of the Defendants to the $800,000.00 amount and seeks payment of same from the Defendants, jointly and/or severally.

BALANCE OWING TO CON-DRAIN

29. The balance presently owing to Con-Drain as of July 31, 2013, was the sum of $678,176.88 plus interest of $116,704.80 for a total owing in the sum of **$794,881.68**.

30. Of the above noted amount the sum of $94,836.71 relates to work recently performed by Con-Drain and approved by Silver Streams' engineer. In order to further protect Con-Drain's rights, on August 9, 2013, Con-Drain registered a Claim for Lien against eighteen (18) of the remaining lots in the sum of $94,836.71 and also registered a Notice against title to those lots.

31. Con-Drain believes that in light of the Settlements entered into with the parties herein along with the Irrevocable Direction from Silver Streams/Jinnah and the personal Undertaking of Greenberg, Con-Drain has an interest in the remaining lots up to the amount owing to Con-Drain and/or a constructive trust claim for that amount. Con-Drain has sought an Order requiring the amount owing be paid into Court or into Trust from the remaining closings so it can be protected and so as to prevent any further breaches and/or misuse of the closing proceeds by the Defendants.

32. In the alternative, Con-Drain seeks an Order for a Certificate of Pending Litigation in regards to the remaining lots.

CONCLUSION

33. Con-Drain also states the improper distribution of closing proceeds by Greenberg, Silver Streams and/or Jinnah from the nine (9) secret closings of over $1.2 million to the Greenberg Companies and over $800,000.00 to "other trades" instead of paying Con-Drain was a flagrant and intentional breach of the Settlement, breach of trust, breach of fiduciary duty and breach of duty of care for which those Defendants are jointly and/or severally liable.

34. Furthermore, Con-Drain states it has priority and is entitled to be paid in priority to the mortgages registered by the Greenberg Companies as Con-Drain began performing its work and entered into to the terms of the Settlement "prior to" the advances made by the Greenberg Companies. As a result, it is Con-Drain's position that all amounts still owing to it have priority to the Greenberg Company mortgages.

35. In addition, Greenberg's Undertaking is binding on the Greenberg Companies, who are identified in law with Greenberg and who are impressed with his knowledge and are liable for his wrongful conduct.

36. In addition or in the alternative, Con-Drain states the aforementioned amounts up to $800,000.00 are Trust Funds pursuant to the Trust provisions of the Construction Lien Act, R.S.O. 1990, c.C.30 and therefore payable to Con-Drain in priority to all of the Defendants.

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37. In the further alternative, Con-Drain states the Greenberg Companies, which received approximately $1.2 million from the 9 secret closings in June and July, 2013, are constructive trustees in regards to those amounts and are holding those funds in trust for Con-Drain. As a result, all such funds must be repaid to Con-Drain up to the sum of $800,000.00 on the basis that same were clearly distributed to the Greenberg Companies in breach of the constructive trust and fiduciary duty owed to the Plaintiff by Silver Streams, Greenberg and/or the Greenberg Companies.

38. The Plaintiff proposes that this action be tried in the City of Newmarket, Ontario.

September 3, 2013

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CON-DRAIN COMPANY (1983) LIMITED
Plaintiff

and

SILVER STREAMS HOMES INC. et al.
Defendants

Court File No: CV-13-115757-00

ONTARIO
SUPERIOR COURT OF JUSTICE

Proceeding commenced at NEWMARKET

STATEMENT OF CLAIM
(Notice of Action Issued August 15, 2013)

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IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, C. C-36, AS AMENDED and IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF SILVER STREAMS HOMES INC., SILVER STREAMS HOMES (PUCCINI) INC., 2148993 ONTARIO INC., 2148990 ONTARIO INC., 2147681 ONTARIO INC. AND 2147650 ONTARIO INC.

Court File No: 13-10362-00-CL

ONTARIO
SUPERIOR COURT OF JUSTICE - COMMERCIAL LIST

Proceeding commenced at Toronto

MOTION RECORD
(RETURNABLE October 16, 2014)

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