CV 12-9821-00CL
Court File No.

ONTARIO
SUPERIOR COURT OF JUSTICE
Commercial List

B E T W E E N:

FIRST LEASIDE WEALTH MANAGEMENT INC., FIRST LEASIDE FINANCE INC., FIRST LEASIDE SECURITIES INC. and FL SECURITIES INC.

Plaintiffs

- and -

DAVID PHILLIPS, MARGARET DAVIS and 970877 ONTARIO INC.

Defendants

STATEMENT OF CLAIM

TO THE DEFENDANT(S):

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 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 Statement of Claim 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 $750 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 for costs and have the costs assessed by the Court.

Date August 28, 2012 Issued by ______________________

Local Registrar

A. Anissimova
Registrar

Address of court office: ~~393 University Avenue, 10th Floor~~
~~Toronto ON M5G 1E6~~

SUPERIOR COURT OF JUSTICE
COUR SUPÉRIEURE DE JUSTICE
BANKRUPTCY / COMMERCIAL
COURTS
330 UNIVERSITY AVENUE
7TH FLOOR
TORONTO, ONTARIO M5G 1R7

TO: David Phillips
430 Regional Road #8
RR1 Uxbridge, ON L9P 1R1

AND TO: Margaret Davis
430 Regional Road #8
RR1 Uxbridge, ON L9P 1R1

AND TO: 970877 Ontario Inc.
430 Durham Road
Suite #8
Uxbridge, ON L9P 1R1

CLAIM

1. The plaintiffs, a group of affiliated companies (collectively, the "FL Plaintiffs"), claim, as set out herein:

(a) As against the defendant, David Phillips ("Phillips"). and, as set out below, 970877 Ontario Inc. ("970877"), damages in an amount to be determined before trial, for misrepresentation, fraudulent misrepresentation, breach of contract, breach of fiduciary duty, breach of duty of loyalty, oppression, conversion, conspiracy, unjust enrichment, knowing assistance and knowing receipt, including:

(i) An Order for payment of the sum of $202,420.00 representing loans made by First Leaside Wealth Management ("FLWM") to Phillips, as evidenced by two promissory notes dated December 31, 2009 and December 24, 2010 in the amounts $50,000.00 USD (converted at the time to $52,420.00 CAD) and $150,000.00 respectively, signed by Phillips in favour of FLWM;

(ii) An Order for recovery of $3,843,549.92 of funds improperly diverted from the FL Plaintiffs by the defendant, Phillips, to himself and to his wife, the defendant, Margaret Davis ("Davis"), directly, or to benefit Phillips and Davis, including:

(1) $44,800.38 in improper payments caused by Phillips to be made from FL Securities Inc. ("FL Securities") to Phillips and Davis or to benefit Phillips and Davis throughout the 2011 fiscal year;

(2) $459,418.86 in improper payments caused by Phillips to be made from FLWM to Phillips and Davis or to benefit Phillips and Davis throughout the 2011 fiscal year;

(3) $49,384.14 in improper payments caused by Phillips to be made from First Leaside Securities Inc. ("FLSI") to Phillips and Davis or to benefit Phillips and Davis throughout the 2011 fiscal year; and

(4) $657,696.54 in improper lump sum payments caused by Phillips to be made from several of the FL Plaintiffs to Phillips and Davis or to benefit Phillips and Davis throughout the 2011 fiscal year, comprising:

(A) improper payments amounting to $131,093.74 caused by Phillips to be made to 970877, a company owned by Phillips, from FLWM; and

(B) improper payments amounting to $526,602.80 caused by Phillips to be made to 970877 from First Leaside Finance Inc. ("First Leaside Finance");

(5) $2,632,250.00 of funds improperly diverted from FLWM by Phillips by way of improper and unauthorized dividends caused by Phillips to be declared by FLWM and received by 970877, which dividends Phillips subsequently caused to be paid from 970877 to himself personally, dating from 2004 to 2010;

(iii) An Order for recovery of $2,541,419.50 of funds improperly diverted from FL Securities and FLSI by the defendant, Phillips, to Davis directly, or to benefit and improve the property located at 430 Regional Road #8 in Uxbridge, Ontario (the "Uxbridge Property"), which property is in the name of Davis and is the personal residence of Phillips and Davis, as evidenced by:

(1) $1,687,564.00 in improper leasehold improvements to the Uxbridge Property caused by Phillips to be paid by FL Securities;

(2) $267,855.50 in improper payments towards a windmill on the Uxbridge Property caused by Phillips to be paid by FL Securities; and

(3) $586,000.00 in improper "rent" payments caused by Phillips to be paid by FLSI to Davis directly;

(b) As against the defendant, Davis, damages in an amount to be determined before trial, for misrepresentation, fraudulent misrepresentation, breach of contract, breach of fiduciary duty, breach of duty of loyalty, oppression, conversion, conspiracy, unjust enrichment, knowing assistance and knowing receipt, including:

(i) An Order for payment of the sum of $160,000.00 representing loans made by FLWM to Davis, as evidenced by two promissory notes dated December 24, 2010 in the amounts of $150,000.00 and $10,000.00 respectively, signed by Davis in favour of FLWM;

(ii) An Order for recovery of $2,541,419.50 of funds improperly diverted from FL Securities and FLSI and paid to Davis directly, or to benefit and improve the Uxbridge Property, as described above;

(iii) An interim, interlocutory and permanent injunction enjoining Davis and any corporations controlled or owned by her, or anyone acting on her behalf or at her direction from dissipating, depleting or otherwise interfering with any funds resulting from the sale of the Uxbridge Property or any of its related assets;

(iv) An Order permitting a Certificate of Pending Litigation to be issued and registered against the Uxbridge Property (as further described in Schedule "A" hereto); and

(v) A declaration that Davis holds the Uxbridge Property in trust and on behalf of FL Securities;

(c) An Order, injunctive or otherwise, interim and permanent to preserve, trace and locate all funds which the defendants have improperly taken from the FL Plaintiffs as set out above;

(d) An Order for an accounting of all funds which the defendants have improperly taken from the FL Plaintiffs as set out above;

(e) Pre-judgment interest in accordance with the promissory notes referred to below, and in the alternative, in accordance with section 128 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended;

(f) Post-judgment interest in accordance with the promissory notes referred to below, and in the alternative, in accordance with section 129 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended;

(g) The costs of this proceeding on a substantial indemnity basis, plus all applicable taxes; and

(h) Such further and other relief as to this Honourable Court may deem just.

The Parties

The Plaintiffs

2. The plaintiffs, First Leaside Wealth Management Inc., First Leaside Finance Inc., First Leaside Securities Inc. and FL Securities (as above, the "FL Plaintiffs"), are a group of affiliated companies. The four FL Plaintiffs form part of a greater enterprise that comprises a large number of affiliated companies and limited partnerships (collectively, "First Leaside"). First Leaside is currently under *Companies' Creditors Arrangement Act* ("CCAA") proceedings and is managed and controlled by a Chief Restructuring Officer, discussed in detail below at paragraphs 20 to 28.

3. At the relevant times, First Leaside ran numerous businesses, including the operation and development of commercial and multi-residential properties and retirement residences. It provided investment and wealth management services to investors who had invested with First Leaside. Specifically, First Leaside raised debt and equity, and sought investments with the objective of providing investors with consistent monthly distributions, potential capital appreciation, and, in the case of equity investments, potential tax deductions.

4. There are significant interrelationships between the various entities in First Leaside which results in a complex corporate structure. Primarily, First Leaside's operations were centred on two principal companies:

(a) First Leaside Wealth Management Inc. (as above, "FLWM"), a holding and operating company and the ultimate parent of the First Leaside group of companies; and

(b) First Leaside Securities Inc. (as above, "FLSI"), a wholly-owned subsidiary of FLWM, and an investment dealer under Ontario securities law and is regulated by the Ontario Securities Commission ("OSC") and the Investment Industry Regulatory Organization of Canada ("IIROC").

5. At the relevant times, FLWM was owned and controlled by Phillips and Davis. Phillips made all business decisions related to First Leaside including what investments First Leaside would make.

6. FLSI is the company through which First Leaside clients invested their money. Clients used FLSI to manage a portfolio of non-proprietary investment products, typically consisting of more conservative investments such as bonds, treasury bills, and marketable securities as well as proprietary equity (such as limited partnership units) and debt securities issued by First Leaside.

7. In addition to FLSI, FLWM has five other wholly-owned subsidiary companies, including the plaintiffs First Leaside Finance Inc. (as above, "First Leaside Finance") and FL Securities Inc. (as above, "FL Securities").

8. First Leaside Finance is a conduit through which First Leaside facilitated intercompany financial arrangements. In addition to its capacity as a 'central bank' for First Leaside, from time to time First Leaside Finance also acted as a buyer of client positions in investment products through FLSI.

9. FL Securities is an exempt market dealer that is registered with the OSC. It acted as an asset manager and promoter of real estate assets and charged fees for these services.

10. Until recently, First Leaside's head office was located at 430 Regional Road #8 in Uxbridge, Ontario (as above, the "Uxbridge Property"). Approximately 90% of the business of First Leaside was operated out of an apportioned 3,200 square feet of the Uxbridge Property. The Uxbridge Property is also Phillips and Davis' personal residence.

The Defendants

11. The defendant, David Phillips, is an investment advisor and trader.

12. Phillips founded First Leaside in 1989. From that time until November 2011, Phillips controlled the operations of First Leaside and was its primary directing mind. Phillips and Davis had signing authority in respect of all payments made from various First Leaside entities. Among other titles, Phillips was the President, CEO and Secretary of FLSI and the President and a director of FLWM. Phillips and Davis owned 100% of the common shares of FLWM.

13. 970877 Ontario Inc. (as above, "970877") is a holding company wholly owned by Phillips.

14. The defendant, Margaret Davis, is Phillips' wife. She is also a Director and Officer of a number of First Leaside entities. At the relevant times, her day-to-day duties included acting as

supervisor of all banking operations for all First Leaside entities. Since 1999, Davis has been the sole owner of the Uxbridge Property.

The Uxbridge Property

15. Davis purchased the Uxbridge Property from FL Securities in 1999 for $400,000.00. At the time of the purchase, the Uxbridge Property was a modest bungalow on approximately eighteen acres of land. Since that time, it has served as Phillips and Davis' personal residence.

16. On January 1, 2004, Davis entered into a lease agreement with FL Securities (the "Office Lease Agreement") setting out the financial terms of an agreement to run and operate First Leaside from the Uxbridge Property. (Prior to the events leading to the CCAA filing, discussed below, 90% of First Leaside's business was operated out of the Uxbridge Property under Phillips' direction.)

17. Pursuant to the Office Lease Agreement, the term of the lease is seven years, running until January 1, 2011. The Office Lease Agreement further provides, *inter alia*:

(a) "The said Lessee shall pay to the Lessor seventy-five percent (75%) of all electricity costs and forty-four percent (44%) of all other expenses, including, but not limited to: maintenance, utilities (excluding electricity), insurance, property tax, security and capital improvements (the "Rent")"; and

(b) "The Lessee hereby covenants with the Lessor that the Lessee will pay the Rent herein reserved at the times and in the manner aforesaid."

18. In 2008, Toronto-Dominion Bank ("TD") was granted a mortgage on the Uxbridge Property for $900,000.00.

19. On June 20, 2012, the Uxbridge Property was listed for sale at a listed selling price of $2,290,000.00. It was sold on August 7, 2012 for $2,235,000.00 with a closing date of October 1, 2012.

Events Leading to First Leaside CCAA Filing

20. In the fall of 2009, the OSC commenced an audit of First Leaside. In or about March 2010, the OSC escalated the audit to an investigation of First Leaside.

21. On March 5, 2011, and in connection with the OSC investigation, First Leaside, through its counsel ("Counsel"), engaged an independent consultant, Grant Thornton Limited ("GTL") to review its business operations, assess its overall viability, and report and make recommendations about First Leaside's business, assets and operations.

22. GTL released a report on August 19, 2011 (the "August 19 Report"). The August 19 Report advised, *inter alia*, that First Leaside was facing serious cash flow and operational challenges, had weak financial reporting protocols, and proposed several recommendations.

23. On November 3, 2011, the Board of Directors of FLWM appointed an independent committee (the "Independent Committee") to assume all decision-making authority in respect of First Leaside and to oversee its operations. The decision to appoint the Independent Committee was made in consultation with Counsel and with the OSC.

24. On November 4, 2011, First Leaside retained GTL as an independent monitor to, in part, satisfy the OSC that First Leaside was implementing a restructuring plan.

25. In late October 2011, the OSC advised First Leaside that it intended to bring proceedings against it. First Leaside then negotiated and implemented a voluntary cease-trade order over all of its entities on November 7, 2011.

26. In early December 2011, the Independent Committee appointed G.S. MacLeod & Associates Inc. as Chief Restructuring Officer of First Leaside ("CRO"). The Independent Committee asked the CRO to develop a workout plan for First Leaside.

27. In late January 2012, the CRO concluded that it was too risky and uncertain for First Leaside to pursue a resumption of previous operations. The CRO's recommendation to the Independent Committee was that First Leaside should undertake an orderly wind-down of operations. The Independent Committee approved the proposed wind-down and the resultant *Companies' Creditors Arrangement Act* ("CCAA") filing.

28. On February 23, 2012, a number of First Leaside affiliated companies and limited partnerships (the "Applicants") made an application to the Ontario Superior Court of Justice (Commercial List) (the "Court") to commence proceedings under the CCAA (the "CCAA Proceedings"). On February 23, 2012, the Court issued an initial Order pursuant to the CCAA (the "Initial Order"). Among other things, the Initial Order affirmed the appointment of the CRO and gave the CRO the power and authority to manage the affairs of First Leaside, including the commencement of legal proceedings.

The Defendants' Unlawful Conduct is Revealed

29. Since the Initial Order was granted, First Leaside has discovered that Phillips and Davis had for some time been improperly diverting and converting the assets of the FL Plaintiffs to their own use and for their own use.

Accounts Receivable

30. Phillips exercised his powers over the FL Plaintiffs in order to improperly divert $3,843,549.92 of the FL Plaintiffs' funds away from the FL Plaintiffs and to Phillips and to Davis directly, or to benefit Phillips and Davis directly.

31. Specifically, Phillips and Davis lived an extravagant personal lifestyle, which was funded, directly or indirectly, by each of the FL Plaintiffs. For example, with further details to be provided prior to trial, Phillips and Davis caused the FL Plaintiffs:

(a) to pay for landscaping, renovation, repair, utilities, telephone and other household expenses relating to the Uxbridge Property, with title taken in Davis' name to shield the Uxbridge Property from Phillips' creditors;

(b) to pay the salaries of household staff, including a housekeeper, a dogsitter and a gardener;

(c) to fund the purchase of luxury goods, including rare wines and expensive art for Phillips and Davis' own benefit;

(d) to pay Phillips' life insurance policy;

(e) to purchase Phillips' vehicles, and pay for vehicle costs, including gas, repairs and other expenses;

(f) to pay personal credit card debts and other personal obligations;

(g) to pay Phillips' and Davis' personal taxes; and

(h) to pay for Phillips' and Davis' personal travel, hotel and meal expenses.

32. The improper payments listed above were not approved by either the FLWM Board of Directors or the Independent Committee.

33. Further, First Leaside has discovered that Phillips caused a further $2,632,250.00 of funds to be diverted from FLWM by way of improper and unauthorized dividends caused by Phillips to be declared by FLWM and received by 970877, a company owned by Phillips, and subsequently caused by Phillips to be paid by 970877 to himself personally. The $2,632,250.00 in improper dividend payments were made between 2004 and 2010.

34. Phillips made no requests of the FLWM Board of Directors to declare the dividends, nor were any resolutions passed by the FLWM Board of Directors with respect to the payment of dividends to 970877. Rather, the dividend payments were unauthorized and made unilaterally by Phillips for Phillips's personal gain.

35. Together, the costs, payments, expenses and improper dividend declarations listed above, and others, were made entirely for the personal benefit of Phillips and Davis and in no way benefitted First Leaside. These funds were diverted from the FL Plaintiffs exclusively for Phillips and Davis' personal gain.

36. Accordingly, the FL Plaintiffs seek an order requiring that Davis, Phillips and 970877 reimburse the FL Plaintiffs for the full $3,843,549.92 in personal costs and expenditures improperly charged to the FL Plaintiffs, and unauthorized dividends improperly paid by the FL Plaintiffs, as set out above, plus additional amounts, the details of which will be provided prior to trial.

Loans Receivable

37. Phillips and Davis have also received improper and unauthorized loans from FLWM.

38. Phillips has received loans from FLWM in the amount of $202,420.00 which have not been repaid, as evidenced by two promissory notes. The first is dated December 31, 2009 in the amount of $50,000.00 USD (converted at the time to $52,420.00 CAD) with an interest rate of 4% per annum. The second is dated December 24, 2010 in the amount of $150,000.00 with an interest rate of 6% per annum. Both promissory notes are signed by Phillips in favour of FLWM.

39. Similarly, Davis has received loans from FLWM in the amount of $160,000.00 which have not been repaid, as evidenced by two promissory notes. The first is dated December 24, 2010 in the amount of $150,000.00 with an interest rate of 6% per annum. The second is also dated December 24, 2010 in the amount of $10,000.00 with an interest rate of 7.5% per annum. Both promissory notes are signed by Davis in favour of FLWM.

40. The loans to Phillips and Davis set out above were not approved by the FLWM Board of Directors.

41. Accordingly, the FL Plaintiffs seek an order requiring that Davis and Phillips pay FLWM for the full $362,420.00 representing the funds loaned to them, plus interest in accordance with the amounts prescribed in the promissory notes, and as evidenced by the promissory notes referred to above.

Improvements to the Uxbridge Property Funded by the FL Plaintiffs

42. In addition to the $3,843,549.92 of funds caused by Phillips to be improperly diverted from the FL Plaintiffs to fund Phillips and Davis' personal lifestyle, Phillips also caused a total of

$2,541,419.50 of improper payments to be made by FL Securities and FLSI to Davis directly, or to benefit and improve the Uxbridge Property, and thus to ultimately benefit Davis directly, as evidenced by:

(a) $1,687,564.00 in leasehold improvements to the Uxbridge Property caused by Phillips to be paid from FL Securities (the "Leasehold Improvement Payments");

(b) $267,855.50 in payments towards the purchase and maintenance of a windmill on the Uxbridge Property caused by Phillips to be paid from FL Securities (the "Windmill Payments"); and

(c) $586,000.00 in improper rent payments caused by Phillips to be paid from FLSI (the "Rent Payments") to Davis.

Leasehold Improvement Payments

43. As set out above, the Office Lease Agreement pertaining to the Uxbridge Property provides that the lessee, FL Securities, shall pay 44% of all expenses (the "FL Securities Allocation"), including, but not limited to: maintenance, utilities (excluding electricity), insurance, property tax, security and capital improvements.

44. The Office Lease Agreement was entered into for the sole purpose of improperly enriching and benefitting Phillips and Davis and was not in the best interests of FL Securities. Simply, the Office Lease Agreement was a vehicle pursuant to which Phillips and Davis diverted money from FL Securities to themselves to fund their lifestyle and increase the value of the Uxbridge Property.

45. The Office Lease Agreement is oppressive and was entered into in breach of the defendants' duties owed to the FL Plaintiffs. The Office Lease Agreement is void and/or should be set aside.

46. Since 2004, Phillips and Davis have directed the following leasehold improvements to be made to the Uxbridge Property using money of FL Securities:

(a) extensive renovations and upgrades to the bungalow, including additions, renovations and improvements to the living quarters, the establishment of a fitness room and a rooftop deck;

(b) significant landscaping development, including the development of a pond and well on the property;

(c) development of a stone pathway entrance to the home and wrought-iron fencing;

(d) development of a spa, swimming pool and waterfall on the property; and

(e) the addition of a large garage with a fully finished loft therein on the property, which garage also housed an atrium and a greenhouse.

47. Further in spite of the FL Securities Allocation, Phillips has, since 2004, directed FL Securities to pay 100% of all expenses in respect of all leasehold improvements to the Uxbridge Property, and FL Securities has done so at Phillips' direction. Although 56% of leasehold improvements were notionally allocated back to Davis (the "Davis Allocation") in accordance with the Office Lease Agreement, the Davis Allocation was charged to a loan receivable account due from David Phillips on the books of FL Securities. As a result, FL Securities has effectively

paid for 100% of the leasehold improvements to the Uxbridge Property. Neither Phillips nor Davis has paid for any portion of the leasehold improvements personally.

48. In any event, none of the leasehold improvements giving rise to the $1,687,564.00 of leasehold improvement payments paid by FL Securities are in any way linked to the business, affairs or operations of First Leaside and, as a result, can not be deemed to be contemplated by the Office Lease Agreement. Rather, each and every one of the leasehold improvements was made to personally benefit Phillips and Davis.

49. As a result, the leasehold improvement payments caused by Phillips to be made from FL Securities to benefit the Uxbridge Property were made in breach of Phillips and Davis' fiduciary duties and duties of loyalty, and constitute oppression, conversion, conspiracy, unjust enrichment, knowing assistance and knowing receipt.

50. Accordingly, the FL Plaintiffs seek an order requiring that Davis and Phillips repay FL Securities the sum of $1,687,564.00 representing the total amount of leasehold improvement payments caused by them to be paid by FL Securities to benefit the Uxbridge Property.

51. As a result of the leasehold improvement payments, the value of the Uxbridge Property has been greatly increased at the expense of the FL Plaintiffs and for the sole benefit of Davis and Phillips.

52. The Uxbridge Property, purchased by Davis for $400,000.00 in 1999, was listed for sale on June 20, 2012 at a listed price of $2,290,000.00. It was sold on August 7, 2012 for $2,235,000.00 with a closing date of October 1, 2012.

53. As a result of the above, the FL Plaintiffs seek an interim, interlocutory and permanent injunction enjoining Davis and any corporations controlled or owned by her, or anyone acting on her behalf or at her direction from dissipating, depleting or otherwise interfering with any funds resulting from the sale of the Uxbridge Property or any of its related assets, as well as an Order permitting a Certificate of Pending Litigation to be issued and registered against the Uxbridge Property

Windmill Payments

54. In addition to the $1,687,564.00 in improper leasehold improvement payments benefitting the Uxbridge Property and the defendants paid for by FL Securities as set out above, Phillips and Davis also caused FL Securities to make $267,855.50 in improper payments towards the purchase and maintenance of a windmill on the Uxbridge Property.

55. The windmill is owned by F.L. Research Management, a company that is owned by Phillips and Davis. The windmill in no way connected to the business, affairs or operations of First Leaside and, as a result, can not be deemed to be contemplated by the Office Lease Agreement. Rather, each of the improper windmill payments was made for the personal benefit and enjoyment of Phillips and Davis.

56. Accordingly, the FL Plaintiffs seek an order requiring that Davis and Phillips repay FL Securities the sum of $267,855.50.

Rent Payments

57. In addition to the Leasehold Improvement Payments and Windmill Payments detailed above, all of which served to benefit and improve the Uxbridge Property and thus benefit Davis

and Phillips directly, since January 2005, Phillips and Davis caused an additional $586,000.00 of "rent" payments to be paid by FLSI directly to Davis.

58. Specifically, Phillips directed FLSI to improperly pay Davis $6,000.00 in January and February 2005, and for every month thereafter until November 2011, Phillips directed FLSI to improperly pay Davis $7,000.00 per month.

59. These lump sum payments are not authorized by the Office Lease Agreement or by any other agreement and are entirely improper. The payments were made directly to Davis for her personal benefit and at Phillips' direction. Accordingly, the FL Plaintiffs seek an order requiring that Davis repay FLSI the sum of $586,000.00 representing the total amount of "rent" payments she received from FLSI.

60. As the primary directing mind of First Leaside and as President, CEO and Secretary of FLSI, Phillips is jointly liable by causing the monthly "rent" payments to be made by FLSI to Davis.

Damages Suffered by the FL Plaintiffs as a Result of the Defendants' Wrongful Acts

61. The FL Plaintiffs plead that they have suffered enormous pecuniary losses as a result of the defendants' extensive wrongful conduct as pleaded in this Statement of Claim.

62. The defendants' wrongful conduct has been ongoing for years. As a result, the FL Plaintiffs have suffered exponential losses for which the defendants are liable. The gains that the defendants have received from their wrongful conduct have funded the defendants' extravagant personal lifestyle. The gains from the defendants' wrongful conduct have also funded extensive renovations to the defendants' real estate, including the Uxbridge Property, and expenditures on

assets related to the Uxbridge Property, which have drastically increased the value of the Uxbridge Property at the expense and to the detriment of the FL Plaintiffs.

The FL Plaintiffs are Entitled to the Relief Claimed

63. The FL Plaintiffs are entitled to all of the relief requested herein, including the interim remedies, interim and interlocutory orders which they seek as a result of the defendants' actions as set out above.

Misrepresentation and Fraudulent Misrepresentation

64. As the sole directing mind of First Leaside and as President, CEO and Secretary of FLSI and President and director of FLWM, Phillips owed a duty of care to First Leaside, including all of its entities.

65. However, Phillips has made inaccurate and misleading statements to the FL Plaintiffs with respect to his use of the FL Plaintiffs' funds. He falsely represented that the FL Plaintiffs' moneys were being used exclusively for proper purposes, when they were in fact being used for improper personal purposes; specifically, to benefit and enrich himself and Davis personally, and to benefit and improve the Uxbridge Property.

66. Phillips made these false representations with the knowledge and intent that the FL Plaintiffs would rely on them. Phillips' representations were false and, as a result, the FL Plaintiffs have suffered the damages pleaded herein.

Breach of Contract, Fiduciary Duty and Duty of Loyalty

67. As the sole directing mind of First Leaside, and as President, CEO and Secretary of FLSI and President and a director of FLWM, Phillips was in a fiduciary relationship with First Leaside and owed all of First Leaside, including all of the FL Plaintiffs, the commensurate duties and

obligations. He had a duty to act in the best interests of the FL Plaintiffs, to conduct himself honestly and in good faith, and to avoid conflicts of duty and self interest in accordance with the duty of loyalty.

68. Phillips did none of the above. Instead, he misappropriated, diverted and converted the FL Plaintiffs' funds to himself and to Davis and for his and Davis' personal use and benefit. In flagrant breach of his fiduciary duties to the FL Plaintiffs, including his good faith obligations and duty to avoid conflicts of duty and self interest, Phillips took advantage of his position at First Leaside, benefitting personally for years by wilfully and entirely disregarding the FL Plaintiffs' interests.

69. Similarly, Davis was in a fiduciary relationship with First Leaside, including the FL Plaintiffs, due to her position as a Director and Officer of a number of First Leaside entities and her role as supervisor of all banking operations for all First Leaside entities. Like Phillips, Davis also misappropriated, diverted and converted the FL Plaintiffs' funds to herself and to Phillips for her and Phillips' personal use and benefit. In flagrant breach of her fiduciary duties to the FL Plaintiffs, Davis took advantage of her position at First Leaside, benefitting personally for years by wilfully and entirely disregarding the FL Plaintiffs' interests.

70. The FL Plaintiffs seek an accounting from Phillips and Davis and the entities related to Phillips and Davis for all funds improperly taken and profits earned therefrom as pleaded herein. Further, the FL Plaintiffs seek disgorgement of all funds improperly taken and profits earned therefrom as pleaded herein and/or equitable and common law damages, in amounts to be determined prior to trial.

Oppression

71. At the relevant times, Phillips had the *de jure* control of both FL Securities and FLSI.

72. As sole shareholder of FL Securities and FLSI, FLWM has standing as a "complainant", as that term is defined in section 238 of the *Canada Business Corporations Act*, R.S.C. 1985, c. C-44 ("*CBCA*"), to seek a declaration pursuant to section 241 of the *CBCA* that Phillips and Davis have exercised their powers over FL Securities and FLSI in a manner that is oppressive or unfairly prejudicial to and that unfairly disregards the interests of FLWM.

73. As pleaded herein, Phillips improperly diverted funds from FL Securities and FLSI to himself and Davis directly, or to benefit himself and Davis, and to benefit and improve the Uxbridge Property. Davis, with the knowledge and support of Phillips, also diverted funds from FL Securities and FLSI to herself and Phillips or to benefit herself and Phillips, and to benefit and improve the Uxbridge Property.

74. These acts were committed by Phillips and Davis for the wrongful purpose of enriching themselves at the expense of FL Securities and FLSI. These actions violated FLWM's interests and expectations as sole shareholder of FL Securities and FLSI and were not in the best interests of the companies.

75. FLWM reasonably expected that FL Securities and FLSI would continue to operate as profitable ventures for many years to come. FLWM also reasonably expected that the companies would be operated and managed responsibly by Phillips and that FLWM would enjoy a long-term interest in the increasing value of these businesses. However, Phillips pursued a course of conduct designed to deprive FL Securities and FLSI of many of their assets in order to fund Phillips and Davis' personal lifestyle and to benefit and improve the Uxbridge Property. These wrongful

actions unfairly disregarded the interests and expectations of FLWM and were not in the best interests of the companies.

76. As a result of Phillips and Davis' wrongful acts, the plaintiff FLWM seeks a declaration pursuant to section 241 of the *CBCA* that the defendants have exercised their powers in a manner that is oppressive or unfairly prejudicial to and that unfairly disregards the interests of FLWM, and damages caused by their actions.

Conversion

77. The defendants, Phillips and Davis, by their misconduct, wrongfully converted the FL Plaintiffs' funds for their own use, as pleaded herein.

78. The wrongful conversion of Phillips and Davis stems from their misappropriation of the FL Plaintiffs' funds and their transfer of the FL Plaintiffs' funds to their own personal use. In doing so, Phillips and Davis intentionally exercised control over the funds of the FL Plaintiffs in a manner that impeded the possessory rights of their rightful owners – FLWM, FLSI, FL Securities, and First Leaside Finance.

79. In taking the FL Plaintiffs' funds for their own personal use, Phillips and Davis knowingly and wrongfully converted the funds by treating them as if they were their own and exercising unauthorized control over their use; for instance, to pay extravagant personal living costs, personal debts, obligations and other expenditures, and to pay for leasehold improvements and additions to the Uxbridge Property, as set out in detail above.

80. Further particulars of the conduct of the defendants are within their knowledge.

81. As a result of the conduct of the defendants, the FL Plaintiffs have suffered significant financial damages and losses as pleaded herein.

Conspiracy

82. Together, Phillips and Davis agreed upon and coordinated a deceitful scheme, the predominant purposes of which were to commit a series of unlawful acts, namely the wrongful acts of enriching themselves and injuring the FL Plaintiffs by misappropriating, diverting and converting the FL Plaintiffs' funds for the purpose of achieving personal gain, and to ensure that the FL Plaintiffs remained unaware of their unlawful behaviour.

83. Further, the conspiracy between Phillips and Davis was planned and conducted in such a way that Phillips and Davis knew or ought to have known that injury to the FL Plaintiffs would be likely to result from their wrongful actions. As a result of the defendants' actions, the FL Plaintiffs have suffered damages as pleaded herein.

Unjust Enrichment

84. The defendants, Phillips and Davis, have been unjustly enriched by their misconduct. As described above, the defendants have benefited from their wrongful misappropriation and misuse of the FL Plaintiffs' funds, despite having no juristic reason for this enrichment. The FL Plaintiffs have correspondingly been deprived of the benefits of ownership over their own funds, as described above. The defendants should not benefit from their misconduct. The enrichment they have enjoyed from the misuse of Company money should be accounted for and disgorged to the FL Plaintiffs.

Knowing Assistance and Knowing Receipt

85. The defendants, Phillips and Davis, knowingly assisted one another in breaches of their obligations to the FL Plaintiffs, specifically, in breaches of their fiduciary duties and their duties of trust and loyalty, in order to misappropriate, divert and convert the FL Plaintiffs' funds for their own use and benefit.

86. Phillips and Davis had actual knowledge of, or were reckless or wilfully blind to, one another's wrongful misappropriation and misuse of the FL Plaintiffs' funds, and assisted one another in breaching their obligations to the FL Plaintiffs.

87. Davis has also knowingly and willingly accepted the fruits of Phillips' wrongful misappropriation and misuse of the FL Plaintiffs' funds. As described above, both Phillips and Davis have been greatly enriched by Phillips' breaches of his obligations owed to the FL Plaintiffs and his wrongful misuse and misappropriation of the FL Plaintiffs' funds to benefit and improve the Uxbridge Property.

Place of Trial

88. The plaintiffs propose that this action be heard in Toronto.

August 28, 2012

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Lawyers for the Plaintiffs

SCHEDULE "A"

Part of West half of Lot 31 Concession 4, Uxbridge, Part 1, 40R1921, PIN 26856-0058 (LT), Township of Uxbridge, Regional Municipality of Durham

FIRST LEASIDE WEALTH MANAGEMENT INC. ET AL.
Plaintiffs

and

DAVE PHILLIPS ET AL.
Defendants

Court File No. CV12-9821-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

PROCEEDING COMMENCED AT
TORONTO

STATEMENT OF CLAIM

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Lawyers for the Plaintiffs

We hearby accept service of a true copy

of the within____________________

on this____**day of**__________**,20**____

Per:__________________
Lawyers For

We hearby accept service of a true copy

of the within____________________

on this____**day of**__________**,20**____

Per:__________________
Lawyers For