

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

IN THE MATTER OF section 243(1) of the *Bankruptcy and Insolvency Act*,
R.S.C. 1985, c. B-3, as amended, and section 101 of the *Courts of Justice Act*, R.S.O.
1990, c. C.43, as amended

B E T W E E N:

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

Applicant

- and -

2450531 ONTARIO LIMITED

Respondent

RESPONDING APPLICATION RECORD

November 22, 2019

BERKOW YOUNG LEV-FARRELL DAS LLP
Barristers
141 Adelaide Street West, Suite 400
Toronto ON M5H 3L5

Adam J. Wygodny (LSO#54183J)
awygodny@byldlaw.com

Tel: (416) 364-4900
Fax: (416) 364-3865

Lawyers for the Respondent

TO : SERVICE LIST

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

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I N D E X

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

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- and -

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Respondent

**AFFIDAVIT OF PAYAM KATEBIAN
(affirmed November 22, 2019)**

I, Payam Katebian, of the City of Toronto, in the Province of Ontario, AFFIRM:

1. I am an authorized representative of the Respondent, 2450531 Ontario Limited (the “**Respondent**”), the owner of the subject property in the within proceeding, which property is municipally located at 293 Euclid Avenue, Toronto, Ontario (the “**Property**”), and as such have knowledge of the matters to which I hereinafter depose. Where I have stated facts based on information and belief, I have identified the source of the information and verily believe such facts to be true.

2. I have reviewed the Application Record of the Applicant, Grant Thornton Limited in its capacity as Court-appointed Receiver of Money Gate Mortgage Investment Corporation (the "**Applicant**"). I wish to respond.

3. The appointment of a receiver in this matter on November 25, 2019 (the "**Return Date**") would be unfair and unjust in the circumstances because, as further deposed to hereinbelow, the Respondent has entered into an agreement of purchase and sale for the Property that would provide for all of the Property's encumbrances to be paid out in full.

THE MARKETING & SALE OF THE PROPERTY

4. I engaged Afshin Nabavi (the "**Agent**"), of TESA Real Estate Inc. Brokerage, to market and sell the Property.

5. On October 16, 2019, the Property was listed for sale on the Multiple Listing Service ("**MLS**") with an asking price of \$1,738,000.00 and an offer date of November 8, 2019. The offer date of November 8, 2019, was chosen to allow for there to be two weekends on which "open house" showings of the Property could occur. Although there were eleven showings, no offers were received.

6. On November 8, 2019, the Property was re-listed at \$1,398,888.00 and an open house showing scheduled for the weekend of November 16, 2019, with the offer night scheduled for November 18, 2019. I am advised by the Agent and verily believe that between November 8 and November 16, 2019, there were approximately 40 showings of the Property.

7. On November 18, 2019, four offers, ranging from \$1.4 million to \$1.55 million, were received. After several days of negotiations, the Respondent entered into an OREA Form 100 Agreement of Purchase and Sale (the "**APS**") with the person, who is an arm's length third party, who made the highest offer. The APS, in relevant part, provides for a purchase price of \$1.56 million with a deposit of \$70,000.00, conditional upon the purchaser being able to obtain financing by 6 p.m. on the fourth business day after acceptance of the offer (*i.e.* Monday, November 25, 2019), and a closing date of January 21, 2019 (the "**Closing Date**").

8. Because the financing condition has not yet been waived and there are three other offers (the "**Other Offers**") for the Property, I am not annexing a copy of the APS to my affidavit; however, I am advised by my lawyer, Adam J. Wygodny, and verily believe that a copy of the APS was provided to the lawyer for the applicant to the within proceeding along with copies of the other offers received.

NO PREJUDICE TO THE APPLICANT; PREJUDICE TO 245

9. In that the Property is the subject of the APS, and there are three other offers in hand—all of which would result in the Applicant being paid out in full—there is no need to further market or show the Property. Further, in light of the approximately 40 showings, the APS and the Other Offers, there is no reason to believe that a better price would be obtained if the instant receivership application is granted.

10. Moreover, in light of the APS and the Other Offers, there is no need for the Applicant to attempt to sell the Property under power of sale or by way of a privately

appointed receiver. The purchase price provided for in the APS and the Other Offers are each sufficient to pay out all registered encumbrances on the Property in full.

11. Finally, on January 30, 2017, 245 paid down the principal of the mortgage by way of four payments totalling \$68,874.64. Attached hereto and marked as **Exhibit "A"** is a copy of the statement for the Respondent's bank account on which I highlighted the aforesaid transactions.

REQUEST FOR ADDITIONAL TIME

12. I have kept the Applicant's lawyer apprised of the sale process throughout.

13. On November 13, 2019, my lawyers wrote to the Applicants' lawyer and provided them with an update on the sale process and requested an adjournment of the within application to a date subsequent to the Closing Date. Attached as **Exhibit "B"** is a copy of the email from my lawyers to the Applicant's lawyers dated November 13, 2019.

14. On November 20, 2019, my lawyers provided the Applicant's lawyer with three of the four offers we received (including the APS) and requested that the within matter be adjourned to a date subsequent to the Closing Date. Attached as **Exhibit "C"** is a copy of the emails from my lawyers to the Applicant's lawyers dated November 20, 2019 (without the attached offers).

15. On November 22, 2019, my lawyers again follow-up with the Applicant's lawyer with respect to the request for an adjournment of the within application. Attached as **Exhibit "D"** is a copy of the email from my lawyers to the Applicant's lawyers dated November 22, 2019.

16. Finally, I attach as **Exhibit "E"** a copy of the listing progress report dated November 11, 2019, and the email from the Agent dated November 18, 2019, which provide details as to the number of showing and real estate agents that viewed the Property.

17. I swear this affidavit in opposition to the with application and for no other or improper purpose.

AFFIRMED BEFORE ME at the
City of Toronto, in the Province of
Ontario on November 22, 2019


Commissioner for Taking Affidavits
ADAM J. WYGODNY


PAYAM KATEBIAN

TAB A

This is **Exhibit "A"** to the
Affidavit of Payam Katebian
affirmed November 22, 2019


A Commissioner, etc.



BEAVER CREEK CBC
220 COMMERCE VALLEY DR W U 100
MARKHAM, ON L3T 0A8

0
TD Canada Trust

Tel: 1-866-222-3456
TTY: 1-800-361-1180

TDCDA71400_6411032_004 E R 01085 09854

2450531 ONTARIO LIMITED
28 DALE PARK CRT
THORNHILL ON L3T 2A2

Statement of Account		Account Type		Statement From - To	
Branch No.	Account No.	BUSINESS CHEQUING ACCOUNT - CAD EVERY DAY A		DEC 30/16 - JAN 31/17	
1085	1085-5407624			Page 1 of 1	
DESCRIPTION		CHEQUE/DEBIT	DEPOSIT/CREDIT	DATE	BALANCE
BALANCE FORWARD				DEC30	480,868.53
FIRST INSURANCE LOAN		159.20		JAN03	
Home Trust Comp MTG		5,774.47		JAN03	474,934.86
MONEY GATE CORP MSP		937.50		JAN04	
MONEY GATE CORP MSP		2,825.00		JAN04	
MONEY GATE CORP MSP		2,849.32		JAN04	
MONEY GATE CORP MSP		3,419.18		JAN04	
MONEY GATE CORP MSP		4,875.00		JAN04	460,028.86
E TFR C2KFQsQY			1,019.00	JAN05	
TOR HYD ELEC Y6W6L6		325.82		JAN05	
GC 1284-DEPOSIT			4,700.00	JAN05	465,422.04
CAD DRAFT 80180030		8,644.10		JAN06	456,777.94
TORONTO HYDRO BPY		712.00		JAN11	456,065.94
CAD DRAFT 79148515		60,482.68		JAN16	395,583.26
CAD DRAFT 79148562		50,007.50		JAN25	
GC 1284-TRANSFER			140,000.00	JAN25	
CAD DRAFT 79148564		400,007.50		JAN25	
E TFR C07u4zUm		500.00		JAN25	
E-TRANSFER FEE		1.50		JAN25	85,066.76
Enbridge Gas BPY		98.00		JAN26	84,968.76
MONEY GATE CORP MTG		3,333.33		JAN27	
MONEY GATE CORP MTG		4,497.45		JAN27	
MONEY GATE CORP MTG		6,927.09		JAN27	
MONEY GATE CORP MTG		24,713.55		JAN27	
MONEY GATE CORP MTG		29,403.25		JAN27	16,094.09
GC 1284-TRANSFER			68,874.67	JAN30	
GC 0677-DEPOSIT			1,016.00	JAN30	85,984.76
FIRST INSURANCE LOAN		159.20		JAN31	
MONTHLY PLAN FEE		19.00		JAN31	
SERVICE CHARGE		7.50		JAN31	85,799.06
0 CHQS ENCLOSED NEXT STATEMENT DATE IS FEB 28/17				No.	Amount
MONTHLY AVER. CR. BAL.				Credits	5 215,609.67
MONTHLY MIN. BAL.				Debits	24 610,679.14
DEP CONTENT- CASH 1,016 ITEMS 3 UNC BATCH 0					

Please ensure that you report in writing any errors or irregularities found within this statement within 30 days of the statement date. If you do not, the statement of account shall be conclusively deemed correct except for any amount credited to the account in error.

Accounts issued by: THE TORONTO-DOMINION BANK

023686
TDCDA71400_6411032_004 - 0039854

TAB B

This is **Exhibit "B"** to the
Affidavit of Payam Katebian
affirmed November 22, 2019


A Commissioner, etc.

Adam Wygodny

From: Adam Wygodny
Sent: November 13, 2019 2:52 PM
To: Maya Poliak (Maya@chaitons.com) (Maya@chaitons.com)
Cc: Sarah Berhane; Peter Smiley; Nadine Christie
Subject: MGMIC re Euclid

Maya:

I spoke with Payam subsequent to our telephone call of earlier today.

We will provide you with the Listing Progress Report from Tesa Real Estate Brokerage dated November 11, 2019, which provides an update as to the efforts to market and sell the Euclid property, subsequent to you confirming that neither you nor your clients will disclose it to anybody else so that the sale process is not undermined.

As for your questions, Payam believes that the property was re-listed on Friday, November 8, 2019 Thursday, November 7th . The listing can be found on MLS here:

<https://www.realtor.ca/real-estate/21319075/6-bedroom-single-family-house-293-euclid-ave-toronto-trinity-bellwoods>

The offer date of November 18, 2019, was selected so that there would be enough time to develop interest in the property at the new listing price, with an open house showing this weekend. As you will see in the above-mentioned report, the lower listing price has resulted in significantly more interest in the property than the prior listing price.

In terms of your receivership application, we can advise that our client will be opposing it because it would not be fair and just in the circumstances. Your client has a registered mortgage on title. There is no prejudice to MGMIC or the receiver to allow for a sale to take place by the owner. Based on the market value of the property, even if it sells at a discount, there will still be sufficient equity in the Euclid property to pay out the MGMIC mortgage, with interest, in full. Interest continues to accrue on your client's mortgage while our client makes efforts to market and sell the property.

Our client calculates there is roughly \$200,000 - \$250,000 of equity in the property. We fail to see how, in the circumstances, appointing a receiver would provide any benefit and, in any event, whatever benefit that may exist will be outweighed by the legal and professional fees that all parties will incur should a receiver be appointed. The only prejudice here is to my client, who will have to defend this application and whose equity will be consumed by legal and professional fees, because your client will not grant a reasonable amount of time for it to enter into a firm APS.

Our client has instructed us to advise you that if you agree to adjourn the hearing of the receivership application to December 2019 or early-January 2020, and no APS has been entered into by the new hearing date then our client will not oppose that application.

Accordingly, we ask that you agree to adjourn the return of the receivership application to a date in December 2019 or early-January 2020 and ask that you advise us as to whether you will agree to this modest rescheduling request which will result in no prejudice to your client.

We thank you in response for your prompt attention to this matter.

Adam J. Wygodny

Berkow Youd Lev-Farrell Das LLP
400-141 Adelaide Street West
Toronto, Ontario, M5H 3L5

PH: 416-364-4900 ext.220
FX: (416) 364-3865

awygodny@byldlaw.com
<http://www.byldlaw.com>



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TAB C

This is **Exhibit "C"** to the
Affidavit of Payam Katebian
affirmed November 22, 2019


A Commissioner, etc.

Adam Wygodny

From: Adam Wygodny
Sent: November 20, 2019 6:00 PM
To: Maya Poliak (Maya@chaitons.com) (Maya@chaitons.com)
Subject: Eculid
Attachments: Offer - 1.455.pdf; Offer - 1.48.pdf; Offer - \$1.55.pdf; Acceptance of \$1.56.pdf

Maya: Attached are the other three offers. I am trying to get the fourth offer, which was for \$1.45M.

I have spoken with my client about your proposal and he is not agreeable to consenting to a receivership order that hangs in terrorem because there are three other offers that my client can pursue if the accepted offer does not go firm on account of the purchaser being unable to obtain financing.

Again, in the circumstances, we propose that the return date be adjourned to a date after the scheduled closing of the accepted offer (i.e. January 21, 2020). I believe that all of the offers will result in your client being paid out in full so I do not see a good reason as to why this would not be acceptable to your client.

Adam J. Wygodny

Berkow Youd Lev-Farrell Das LLP
 400-141 Adelaide Street West
 Toronto, Ontario, M5H 3L5

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Adam Wygodny

From: Adam Wygodny
Sent: November 20, 2019 4:50 PM
To: Maya Poliak (Maya@chaitons.com) (Maya@chaitons.com)
Cc: Nadine Christie
Subject: Euclid
Attachments: Offer V2.pdf; Offer V2.jpg.pdf

Maya:

Attached is the APS and the page amending the purchase price.

Kindly confirm that it is satisfactory and that we can put off the receivership application to a date subsequent to the closing date of January 21, 2020.

Adam J. Wygodny

Berkow Youd Lev-Farrell Das LLP
400-141 Adelaide Street West
Toronto, Ontario, M5H 3L5

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FX: (416) 364-3865

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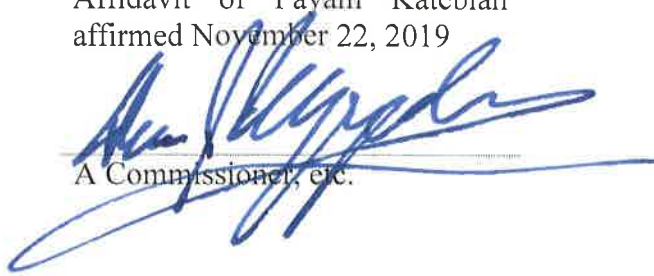


BYLD
BARRISTERS
BERKOW YOOD LEV-FARRELL DAS LLP

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TAB D

This is **Exhibit "D"** to the
Affidavit of Payam Katebian
affirmed November 22, 2019



A Commissioner, etc.

Adam Wygodny

From: Adam Wygodny
Sent: November 22, 2019 10:45 AM
To: Maya Poliak (Maya@chaitons.com) (Maya@chaitons.com)
Subject: Euclid: Fourth Offer
Attachments: (Ontario) 100 - Agreement of Purchase and Sale - Residential (1 Schedule A Page).pdf; (Toronto) 320 - Confirmation of Co-operation and Representation.pdf; (Toronto) 801 - Offer Summary Document.pdf

Maya: Attached are the documents with respect to the fourth offer. My client advises that the broker was having problems with DocuSign, which is why this version is unsigned. Because it was the lowest offer and the offeror was unable to increase her bid, my client did not insist that the broker figure out whatever issue he had with DocuSign.

As for the application, we have not received a response to our request that the matter be adjourned to a date after the scheduled closing date of January 21, 2020. We remind you that there are three other offers, all of which will result in your client being paid out in full, so there is no prejudice to your client in agreeing to the adjournment. If you agree to the adjournment I can speak to the matter and will request the first date available after January 21, 2020.

Adam J. Wygodny

Berkow Youd Lev-Farrell Das LLP
400-141 Adelaide Street West
Toronto, Ontario, M5H 3L5

PH: 416-364-4900 ext.220
FX: (416) 364-3865

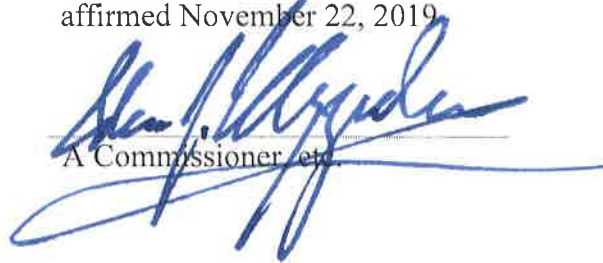
awygodny@byldlaw.com
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BYLD
BARRISTERS
BERKOW YOUD LEV-FARRELL DAS LLP

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This is **Exhibit "E"** to the
Affidavit of Payam Katebian
affirmed November 22, 2019.


A Commissioner, etc.

TESA REAL ESTATE BROKERAGE

Date: November 11, 2019

Re: 293 Euclid Listing Progress

To Whom It May Concern:

Hello,

As you know, we listed 293 Euclid on October 16th 2019. We held 2 open houses for the following 2 weeks of the listing period, and had a number of showings from cooperating brokerages that I have named and below. We were listed for 22 days at \$1,738,000 before we decided to change the strategy of the listing. For this 22 days, we only had 11 showings booked in the 22-day period which indicated to us that our price point was on the higher end of the market.

1. Brokerage: REMAX HALLMARK – October 17th
Agent: ROBERT STORTINI
Office: (416)465-7850
2. Brokerage: Chestnut Park – October 17th
Agent: Graeme McIntosh
Office: (416)925-9191
3. Brokerage: Bay Street Group – October 17th
Agent: Lily Gong
Office: 905 - 909 0101
4. Brokerage: REAL ESTATE HOMEWARD – October 17th
Agent: DAVID BOUGIE
Office: (416)389-0505
5. Brokerage: REMAX REAL ESTATE CENTER -- October 17th
Agent: BOBBY KHAPER
Office: (905)270-2000

6. Brokerage: ROYAL LEPAGE – October 18th
Agent: DAVE DUBBIN
Office: (416)762-8255
7. Brokerage: FOREST HILL – October 22nd
Agent: Suzette Wong
Office: (416)449-2020
8. Brokerage: CHESTNUT PARK – October 24th
Agent: ALEXANDRA SANDLER
Office: (416)925-9191
9. Brokerage: YOUNG REALTY – October 24th
Agent: SARVENAZ TADAYON
Office: (416)913-1089
10. Brokerage: AIM HOME – October 25th
Agent: NATHAN NIT
Office: (905)276-0880
11. Brokerage: right at home – October 29th
Agent: michael shafik
Office: (905)953-0550
- 12.

After analyzing the price point and the traffic, we have decided to take on a more aggressive approach to create a more proactive process to achieve a faster sale. This second strategy is to list the subject property below market value at \$1,398,888 to increase the number of showings, with a dedicated offer presentation night of Monday November 18th 2019. Since we terminated the previous listing and relisted with this new strategy in mind, we have received 13 showings in the past 4 days of listing. We anticipate that this increased level of interest should translate to a number of offers on offer night, so that we can anticipate a selling price higher than the listing price to achieve market value. Listed Below are the cooperating brokerages that have requested to see the property in the past 4 days.

1. Brokerage: KELLER WILLIAMS REFERRED – November 8th
Agent: DAVID PERES
Office: (416)572-1016
2. Brokerage: HOMELIFE LOCAL – November 8th
Agent: JOSE GONCALVES
Office: (416)537-2441
3. Brokerage: FOREST HILL REAL ESTATE INC. – November 9th
Agent: KAYA KARAKAYA
Office: (416)363-3473
4. Brokerage: BOSLEY REAL ESTATE LTD. November 8th

Agent: ALAIN JUNEAU
Office: 416 322 8000

5. Brokerage: REMAX WEST REALTY November 8th
Agent: RENEE PROULX
Office: (416) 769 – 1616
6. Brokerage: ROYAL LEPAGE REAL ESTATE SERVICES – November 9th
Agent: FENG HUA FANG
Office: (905) 822 6900
7. Brokerage: REMAX HALLMARK – November 10th
Agent: DANNY REISES
Office: (416)465-7850
8. Brokerage: ROYAL LEPAGE ESTATE REALTY -- November 10th
Agent: BEN SCHOLLES
Office: (416)690-2181
9. Brokerage: REMAX CENTRAL – November 10th
Agent: WENDY ZHENG
Office: (416)500-5888
10. Brokerage: REMAX ULTIMATE – November 11th
Agent: DORIN KOSANOVIC
Office: (416)487 5131
11. Brokerage: SOTHEBY's INTERNATIONAL REALTY – November 11th
Agent: DAVID DUBIN
Office: (416) 960 9995
12. Brokerage: KELLER WILLIAMS REFERRED URBAN – November 11th
Agent: DAVID PERES
Office: (416)572 1016
13. Brokerage: SOTHEBY's INTERNATIONAL -- November 12th
Agent: ALEX BALIKOEV
Office: (416) 960 9995

If you have any further questions, please don't hesitate to contact me directly

Best Regards,

Afshin Nabavi

Afshin Nabavi
President / Broker of Record
TESA Real Estate Inc. Brokerage
TESA Development Inc.
TESA Finance Group
C: 416 305 4726
O: 905 503 TESA



Payam Katebian <payam.ktb@gmail.com>

293 Euclid Ave. Cooperating Brokerages that visited the property

TESA Real Estate, Development & Finance Group <afshin@tesa.group>
To: Payam Katebian <payam.ktb@gmail.com>

Mon, Nov 18, 2019 at 7:50 PM

Hi,

Please see attached additional showings from cooperating brokerages following our previous progress report.

Please let me know if you have any questions

Afshin Nabavi
President / Broker of Record
TESA Real Estate Inc. Brokerage
TESA Development Inc.
TESA Finance Group
C: 416 305 4726
O: 905 503 TESA

FINDing, BUILDing, FUNDing Residential and Commercial Projects in the Greater Toronto Area

1. Brokerage: Global Link Realty Group - November 11th
Agent: Erkang Cao
Office: (905)889-4860
2. Brokerage: Forest Hill Real Estate - November 12th
Agent: Leonard Fridman
Office: (416)363-3473
3. Brokerage: BOSLEY REAL ESTATE - November 13th
Agent: JAIME RANDLE
Office: (416)530-1100
4. Brokerage: CHESTNUT PARK REAL ESTATE - November 13th
Agent: CLARK CAI
Office: (416)925-9191
5. Brokerage: Sutton Group Admiral - November 14th
Agent: Olessya Vasiliev
Office: (416)739-7200
6. Brokerage: BLUE ELEPHANT - November 15th
Agent: RICHARD KANG-CHOO
Office: (416)504-6133
7. Brokerage: BAY STREET REALTY - November 14th
Agent: ALEX WU
Office: (905)909-0101
8. Brokerage: MASTER CHOICE REALTY - November 16th

11/18/2019

Gmail - 293 Euclid Ave. Cooperating Brokerages that visited the property

016

Agent: KEREN QUAN
Office: (905)940-8999

9. Brokerage: LIVING REALTY - November 16th
Agent: LINDA CHOW
Office: (416)223-8833

10. Brokerage: HOMELIFE EXCELSIOR November 16th
Agent: BRUCE CHAN
Office: (905)415-1000

11. Brokerage: HOMELIFE LANDMARK - November 16th
Agent: CATHY MEI
Office: (905)305-1600

12. Brokerage: SUTTON GROUP ADMIRAL - November 17th
Agent: ANNA DI PIAZZA
Office: (416)739-7200

13. Brokerage: ROYAL LEPAGE ESTATE - November 17th
Agent: BRIAN CHAPUT
Office: (416)690-5100

14. Brokerage: HOMELIFE/CIMERMAN REAL ESTATE - November 17th
Agent: Matty Nayebyzadeh Atay
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15. Brokerage: ROYAL LEPAGE TERREQUITY - November 18th
Agent: GAVIN CHEN
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GRANT THORNTON LIMITED *et al.*
Applicant

- and - 2450531 ONTARIO LIMITED
Respondent

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

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

Proceedings commenced at **Toronto**

AFFIDAVIT OF PAYAM KATEBIAN
(affirmed November 22, 2019)

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RCP-E 4C (May 1, 2016)

**GRANT THORNTON LIMITED IN ITS CAPACITY AS
COURT-APPOINTED RECEIVER OF MONEY GATE
MORTGAGE INVESTMENT CORPORATION**
Applicant

- and - **2450531 ONTARIO LIMITED**

Respondent

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

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RESPONDING APPLICATION RECORD

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RCP-E 4C (May 1, 2016)