Court File No. CV-16-11369-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

B E T W E E N:

CANADIAN IMPERIAL BANK OF COMMERCE

Applicant

- and -

1299746 ONTARIO INC. o/a COMPUQUEST2000 and
2252709 ONTARIO INC.

Respondents

FACTUM OF THE MOVING PARTY

(returnable January 25, 2017)

January 18, 2017

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CANADIAN IMPERIAL BANK OF COMMERCE

Applicant

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FACTUM OF THE MOVING PARTY, CANADIAN IMPERIAL BANK OF COMMERCE

PART I - NATURE OF THE MOTION

1. Canadian Imperial Bank of Commerce ("**CIBC**") seeks an order appointing Grant Thornton Limited ("**GTL**") as equitable receiver (in such capacity, the "**Equitable Receiver**"), without security, of the real property known municipally as 7472 Ashburn Road, Whitby, Ontario (the "**Ashburn Property**"), with the power to market and sell the Ashburn Property and hold the proceeds of any such sale until further order of the court.

2. The Ashburn Property is the matrimonial home of Gary Bodimeade ("**Gary**"), the principal of the respondents 1299746 Ontario Inc. o/a Compuquest2000 ("**Compuquest**") and 2252708 Ontario Inc. ("**225**" and together with Compuquest, the "**Debtors**"), and his spouse Aimee Bodimeade ("**Aimee**"). Gary and Aimee are separated. Aimee is the sole owner of the Ashburn Property, and currently resides there.

3. On the application of CIBC, GTL has already been appointed first as interim receiver (in such capacity, the "**Interim Receiver**"), and then as receiver (in such capacity, the "**Receiver**"), of the Debtors. CIBC has also sought and obtained bankruptcy orders as against each of Compuquest and Gary, and has appointed GTL as each of their respective trustee in bankruptcy.

4. Through the course of its investigations as part of the Debtors' receivership proceedings, GTL has traced substantial sums – to date, $981,676.87– into significant improvements that were made to the Ashburn Property. As a result, Compuquest's receivership estate has acquired a corresponding interest in the Ashburn Property.

5. Considering the other facts uncovered in the Receiver's investigations, Gary's use of Compuquest funds to pay for improvements to the Ashburn Property is not surprising. Gary appears to have used the Compuquest accounts for all manner of improper conduct, including paying substantial amounts to creditors other than CIBC on the eve of insolvency; flowing millions of dollars' worth of undocumented loan transactions with his friends through the accounts; and freely using Compuquest funds for personal expenses.

6. In June 2016, Aimee advised Gary's trustee in bankruptcy (the "**Trustee**") that she intended to list the Ashburn Property for sale. Despite having so agreed, she did not take any steps to do so, and ceased responding to the Trustee's communications.

7. Additionally, the Ashburn Property is now subject to numerous registrations, including registrations made by a construction lien claimant, one of Gary's business associates, Gary himself, who has registered his spousal interest on title, and the Trustee. As a result of these registrations, a vesting order will be required in order to convey clear title.

8. In light of all of the foregoing, CIBC is not content to let Aimee and/or Gary remain in control of the Ashburn Property, or any sale process relating thereto. In the circumstances, it is just and equitable to appoint GTL as Equitable Receiver for the purpose of monetizing the Ashburn Property by selling it, and thereafter holding the proceeds of sale in trust pending the court's determination of the various interests that have been asserted.

PART II - THE FACTS

THE ASHBURN PROPERTY

9. The Ashburn Property is Gary's and Aimee's matrimonial home.[1] Gary and Aimee are currently separated, and Gary has not resided at the home since at least June 2016.[2] Gary nevertheless retains an interest in the property: he registered a designation of matrimonial home on title to the Ashburn Property on February 4, 2016[3], and has advised that he believes he has an interest in the Ashburn Property.[4] Gary's interest in the Ashburn Property has vested in the Trustee.[5]

10. Gary and/or Aimee purchased the Ashburn Property for $638,000 on or about September 28, 2007.[6] They financed the purchase using approximately $230,000 from the proceeds of sale of their former home located at 72 McBeth Place, Brooklin (the "**McBeth Property**"), the title to which property they held jointly.[7] In addition, they sought and received mortgage financing from the Bank of Nova Scotia ("**BNS**") in the sum of $410,000.[8] BNS registered a charge on title to the Ashburn Property in the sum of $638,000 (the "**BNS**

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[1] Second Report of the Receiver dated November 24, 2016 ("**Second Report**") at para. 13.
[2] Transcript of the cross-examination of Aimee Bodimeade held January 13, 2017 ("**Aimee Transcript**") at Q. 667.
[3] Second Report at para. 25, Appendix 14.
[4] Email exchange between S. De Caria and M. Spence dated January 17, 2017, Brief of Exhibits ("**BE**") at Tab 5.
[5] Third Report of the Receiver dated January 11, 2017 ("**Third Report**") at paras 15-16.
[6] Second Report at para. 20.
[7] Third Report at Appendix 3.
[8] Affidavit of Aimee Bodimeade sworn January 6, 2017 ("**Aimee Affidavit**") at para. 3, Exhibits A and B.

Mortgage").[9] Title to the Ashburn Property was registered in Aimee's name alone on September 28, 2007.[10] Both Aimee and Gary were listed on the mortgage documentation with BNS.[11]

11. In 2014, BNS advised Gary and Aimee that it no longer wished to do business with them as a result of certain irregular activity on their accounts.[12] They accordingly moved their accounts, including their mortgage, to CIBC. On January 23, 2015, Aimee secured mortgage financing from CIBC in the principal sum of $1,000,000 (the "**CIBC Mortgage**"), which was used to pay out the BNS Mortgage and the Lines of Credit (defined below).[13]

12. Since 2007, the Ashburn Property has been subject to significant improvements. These improvements include, without limitation, the construction of:

(a) an approximately 5,680 square foot two-storey detached residential dwelling, excluding the basement (as compared to the existing 2,500 square foot home);

(b) an approximately 3,196 square foot finished basement with dance studio, family room, gym, bedroom and three piece bathroom;

(c) an outdoor pool with pool house;

(d) an approximately 800 square foot heated and insulated RV garage;

(e) an approximately 11,000 square foot equestrian barn complete with riding centre and stalls for 14 horses; and

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[9] Second Report at para. 20; Aimee Affidavit at para. 3.
[10] Second Report at para. 14.
[11] Aimee's Affidavit at Exhibit D; Exhibit 1 to the cross-examination of Aimee Bodimeade, BE at Tab 1; Transcript of the cross-examination of Gary Bodimeade held January 13, 2017 ("**Gary Transcript**") at Q. 18.
[12] Aimee Transcript at Q. 32-38.
[13] Aimee Affidavit at para. 10; Second Report at para. 23, Appendix 12.

(f) an approximately 2,400 square foot insulated hay/equipment barn.[14]

13. Gary has estimated the cost of these improvements as follows[15]:

Home	$1,400,000
Finished Basement	$135,000
Pool	$65,000
Landscaping	$55,000
SUV Garage	$135,000
Equestrian Barn	$1,200,000
Hay/Equipment Barn	$75,000
Total	**$3,065,000.00**

14. Aimee disputes that these costs are accurate, but has been unable to provide any alternate estimates,[16] or any documentation aside from a single proposal for the equestrian barn.[17] This is despite her evidence that she was heavily involved in the construction process, including selecting and paying the contractors who were involved.[18] To date, the only evidence as to the actual cost of the improvements is Gary's estimate set out above, together with the payments to contractors that the Receiver has identified below.

15. As a result of these improvements, the estimated value of the Ashburn Property has increased to $3,700,000, as at April 11, 2016.[19]

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[14] Second report at para 15.
[15] Third Report at 24, Appendix 4.
[16] Aimee Transcript at Q. 100-111, Q. 506-514
[17] Exhibit 2 to the cross-examination of Aimee Bodimeade, BE at Tab 2.
[18] Aimee Transcript at Q. 72-82.
[19] Second Report at para 16, Appendix 9.

16. The improvements, and in particular the equestrian barn and ancillary buildings, have turned the Ashburn Property into a specialized asset that will require careful marketing to ensure that it is sold for the highest and best price.[20]

THE IMPROVEMENTS TO THE ASHBURN PROPERTY WERE PAID FOR WITH COMPUQUEST'S FUNDS

A. Evidence of Compuquest Funds Flowing to the Ashburn Property

17. Through its investigations, the Receiver has learned that Gary used funds belonging to Compuquest to effect the significant improvements made to the Ashburn Property, among other improper uses. To date, the Receiver has identified payments totalling $981,676.87, which were made towards the construction between 2009 and 2012, and between January and April, 2016.[21] Due to the passage of time and resulting unavailability of records, the Receiver has not been able to review payments made in 2007 and 2008, during which time the construction was ongoing.[22]

18. On cross-examination, Gary confirmed that these payments were made in relation to the improvements to the Ashburn Property, and identified the nature of the work performed by the contractors. Aimee similarly was asked about the nature of the work performed by the contractors identified by the Receiver. In the vast majority of cases, her evidence corroborated Gary's, or she advised that she did not know what work was performed. A summary of the contractors identified by the Receiver, the total payments made to them from Compuquest's account, and the work they did on the Ashburn Property, is as follows:

[20] Second Report at para. 18.
[21] Second Report at para. 33; Third Report at paras. 27-29, Appendix 5.
[22] Third Report at para. 30.

Contractor	Amount Paid	Nature of Work	
		Per Gary **references are to the Gary Transcript*	**Per Aimee** **references are to the Aimee Transcript*
Building Boss	$510,000.00	Construction of the horse barn and the hay barn (Q. 227-230)	Construction of horse barn and the hay barn; do not know what else they may have done (Q. 479-486; 499)
Bonoflo Irrigation	$16,896.89	Irrigation system for the house (Q. 231)	Sprinklers at the house (Q. 487)
Candel Electric	$30,000.00	Electrical work, perhaps for the house (Q. 232)	Do not know (Q. 488)
Spa Shoppe	$15,500.00	Purchase of hot tub (Q. 233)	Purchase of hot tub at the house (Q. 489-490)
Wills Agri-Quip	$47,231.95	Fencing (Q. 234)	Fencing (Q. 494)
Advanced Entry Systems	$7,700.35	Front gates (Q. 235)	Do not know (Q. 495)
Alba Railings	$9,072.00	Staircase for the house (Q. 236)	Do not know (Q. 466)
Bliss Interior Design	$5,450.00	Window coverings for the house (Q. 237)	Designer who helped with paint colours (Q. 469)
BNS	$13,000.00	Unknown – perhaps the Bank of Nova Scotia (Q. 238)	N/A
Brent Jefferys Construction	$79,332.07	Home builder (Q. 239)	Builder and general contractor for the house (Q. 440/441)
C. Avrora Paving Ltd.	$13,818.00	Driveway (Q. 240)	Do not know (Q. 470)
Crossey Plumbing	$8,242.50	Plumbing for the house (Q. 241)	Do not know (Q. 471)

Don Lea Lumber Ltd	$32,320.00	Lumber for the baseboards (Q. 242)	Do not know (Q. 472)
Home Theatre Excellence	$28,882.00	Home automation system (Q. 243)	Installation of a receiver in the basement of the house; a wiring/internet installer who may have done other work for Gary (Q. 475)
J&S Electric	$44,380.35	House electric (Q. 244)	Do not know (Q. 476)
Link Heating & A/C	$9,988.81	Geothermal system for the house (Q. 245)	Heating system for the house (Q. 477)
Zanatta Painting	$3,380.00	Painting for the house, to the primer stage (Q. 246)	Do not know (Q. 478)
Reed Ridge Farms	$106,481.95[23]	Extension under the barn (Q. 247)	Overhang on the side of the arena of the horse barn (Q. 497-498)
Total:	$981,676.87		

19. As set out above, there is no dispute that these payments were made to improve the Ashburn Property. Even where Aimee's and Gary's evidence differs, for example in the cases of Bliss Interior Design and Home Theatre Excellence, they nevertheless each identify the work done as having been performed in relation to the Ashburn Property.

20. Gary's evidence on cross-examination is consistent with a chain of emails identified by the Receiver dated April 6, 2016, between Gary, Aimee, and Compquest's external accountant

[23] These payments are further corroborated by a statement issued by Reed Ridge Farms (the "**Reed Ridge Statement**") found at Appendix 22 to the Second Report, together with documentation confirming that payments towards this indebtedness were paid from Compuquest's accounts, found at Appendix 23 to the Second Report.

Alan Hogan ("**Hogan**"). In this email chain, Gary admits that "*everything*" was paid for with Compuquest funds. In the context of this email chain, "*everything*" appears to refer to the construction of the new house, the barns, and eleven horses, among other things.[24]

21. This evidence is also consistent with photographs that the Receiver has identified of the Ashburn Property featured on websites maintained by Building Boss (barn builder), Bonoflo (irrigation system) and Wills Agri-Quip (fencing).[25]

22. In addition, in the period leading up to the issuance of CIBC's demands, it appears that Gary was desperately trying to sell off Compuquest's assets in order to satisfy debts owing to creditors other than CIBC. Among these efforts, the Receiver has identified that on March 1, 2016, Gary sold a trailer belonging to Compuquest for the sum of $59,363.13. This amount was paid directly to Reed Ridge Farms on March 1, 2016, and is reflected in the Reed Ridge Statement.[26] Gary, Aimee, and Scott Reed, the principal of Reed Ridge Farms, exchanged emails confirming that this transaction was taking place.[27] Scott Reed had previously registered a construction lien and certificate of action in respect of this debt, which remain on title to the Ashburn Property.

B. Lack of Alternate Source of Funds to Pay for the Improvements

23. Aimee asserts that the funds used to pay for the improvements came from two lines of credit issued by BNS in the amount of $250,000 each (the "**Lines of Credit**"), together with proceeds from the sale of the McBeth Property totalling $57,802 (the "**McBeth Surplus**").[28] The Lines of Credit were repaid when Aimee and Gary refinanced with CIBC as described at paragraph 11 above.

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[24] Second Report at para. 32, Appendix 19.
[25] Second Report at para. 36, Appendix 21.
[26] Second Report at paras. 37-40, Appendix 22.
[27] Second Report at para. 40, Appendix 24.
[28] Aimee Affidavit at paras. 6, 9, Exhibit C.

24. This position is inconsistent with the evidence. The cost of the improvements far exceeded the $557,802 that Aimee purports to have had available to her pursuant to the Lines of Credit and the McBeth Surplus. As set out at paragraph 13 above, Gary estimated the cost of the improvements to be $3,065,000.00, and he confirmed this estimate on cross-examination.[29] Gary's estimate is the only estimate contained in the record, and has not been substantively challenged.

25. The limited direct documentary evidence available relating to the cost of construction also supports the conclusion that the improvements cost far more than $557,802. Aimee has produced a proposal for the construction of the equestrian barn, which identifies a purchase price of $202,000.[30] Aimee has advised that this proposal did not include extras that were subsequently added to the purchase price, but she could not identify what those extras consisted of, nor how much they cost.[31]

26. In addition, the Reed Ridge Statement indicates a total of $106,481.95 paid to construct the "overhang" on the equestrian barn.[32]

27. These two items alone total $308,481.95, and they form but a small portion of the total improvements made to the Ashburn Property. There is no possibility that the remaining improvements could have been funded from the $557,802 identified by Aimee.

28. Finally, even if the Lines of Credit were used to fund the improvements, it appears likely that Compuquest money was being used to make the payments on the BNS Mortgage and the Lines of Credit, and subsequently on the CIBC Mortgage.

29. In her affidavit, Aimee swore as follows:

[29] Gary Transcript at Q. 204-208.
[30] Exhibit 2 to cross-examination of Aimee Bodimeade, BE at Tab 2.
[31] Aimee Transcript at Q. 99-101.
[32] Second Report at para. 38, Appendix 22.; Aimee Transcript at Q. 497-498.

> 17 I have been advised by Alan Hogan, the accountant for Gary and for Compuquest2000, and verily believe, that any payments made directly from Compuquest2000 to third parties for personal expenses of mine or Gary's were considered in the financial statements and income tax returns of Gary and me. As such, dividends were included in my income in the amounts of $88,500 in 2014 and $68,750 in 2012.[33]

Copies of these tax returns were not produced, although Aimee has now undertaken to produce them.[34] Such returns are necessary to allow the Receiver to determine whether the amounts paid to her by Compuquest exceed the dividends she claimed.[35]

30. Despite her affidavit evidence, on cross-examination Aimee's evidence was that while she made the payments on these loans out of her own bank account, all of the money in the account was given to her by Gary, and that she did not know whether those funds were advanced to her in the form of salary, dividends, or simply payments made directly from Compuquest.[36]

31. Even if they are accurate, the dividend figures that Aimee has identified are insufficient to cover the cost of Aimee's lifestyle, which she has estimated at $30,000 per month.[37] CIBC requests that the court infer that the statement she made at paragraph 17 of her affidavit, excerpted above, is incorrect.

32. Aimee has refused to produce the bank statements for any accounts she did not hold jointly with Gary, even though she has advised that all of the money she had was given to her by Gary.[38] She has also redacted the deposit entries on the excerpts from her bank statements that she produced to show that she was making the mortgage payments on the Ashburn

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[33] Aimee Affidavit at para 17.
[34] Aimee Transcript at Q. 401.
[35] Third Report at para. 43.
[36] Aimee Transcript at Q. 136
[37] Third Report at para 38, Appendix 6; Aimee Transcript Q. 524-529.
[38] Aimee Transcript at Q. 159-166.

Property.[39] With reference to these bank statements, Aimee gave the following evidence:[40]

163. Q. I think...so, where did your income come from?
A. Gary.
164. Q. Yes, right. So, Gary provided you with money?
A. Yes.
165. Q. And you had no separate income?
A. No.
166. Q. So, just to be clear, are you not going to answer the question of where these deposits came from?
MS. ROBERTSON: No, she is not going to answer that.
/R

33. Based on the foregoing, there can be no dispute that Compuquest directly funded at least $981,676.87 towards the improvements made to the Ashburn Property.

34. In addition, there is a complete lack of evidence that the funds Aimee received from Compuquest, and which she used to pay costs associated with the Ashburn Property, were being properly accounted for. There is a strong possibility that the Receiver's continued investigations will uncover that additional funds were paid directly into the Ashburn Property and/or Aimee's bank accounts.

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[39] Aimee Affidavit at Exhibit D.
[40] Aimee Transcript at Q. 163-166.

THE ASHBURN PROPERTY MUST BE SOLD

A. The Parties Agreed to Sell the Ashburn Property

35. In June 2016, Aimee's legal counsel, Andrea Robertson ("**Robertson**") advised GTL that Aimee wished to sell the Ashburn Property. Robertson provided GTL with a proposed listing agreement prepared by Dan Plowman Team Realty Inc., showing a proposed list price of $3,300,000 (the "**Ashburn Listing**"). Robertson sought GTL's feedback on the Ashburn Listing.[41]

36. By email dated July 7, 2016, counsel for the Trustee advised Robertson that the Trustee had no objection to Aimee listing the Ashburn Property for sale on the following conditions:

(a) the Trustee is provided with copies of all offers to purchase the Ashburn Property, forthwith on receipt;

(b) Aimee or the agent named in the Ashburn Listing provides the Trustee with bi-weekly updates regarding sale efforts/activity;

(c) no offer to purchase the Ashburn Property is accepted by Aimee without the prior written consent of the Trustee; and

(d) the Trustee reserves all of its rights with respect to entitlement to the sale proceeds.[42]

37. Counsel for the Trustee received no response to this correspondence, despite sending numerous follow-up emails.[43]

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[41] Second Report at paras. 69-73, Appendix 35.
[42] Second Report at para. 75.
[43] Second Report at para. 76, Appendix 36.

38. Despite its earlier offer, the Receiver has now advised that it is no longer prepared to permit Aimee to list the Ashburn Property for sale through Dan Plowman Realty Team Inc. for the following reasons:

(a) in light of the CIBC Mortgage, the claim asserted in the Norris Application (described at paragraph 52 below), and Gary's spousal interest, which has vested in the Trustee, it is not clear that Aimee has any equity in the Ashburn Property;

(b) Aimee has not provided documentation to substantiate her claim that she funded the construction costs of the Ashburn Property;

(c) Aimee previously agreed to list the Ashburn Property and did not follow through on that undertaking;

(d) the Receiver has lost trust and confidence in Aimee;

(e) the Receiver has learned that Gary and Aimee have a personal relationship with Dan Plowman and his wife Rachel Plowman.[44]

B. Aimee Cannot Maintain the Ashburn Property

39. Aimee states in her affidavit that she is borrowing money from friends and family members and selling personal items in order to continue making mortgage payments on the Ashburn Property. She does not have a job. She states that she is having "*great difficulty*" in making the mortgage payments.[45]

40. Property taxes for the Ashburn Property are $13,000 to $14,000 annually. Aimee has identified but not yet quantified a number of other costs relating to maintenance of the Ashburn

[44] Third Report at para. 83.
[45] Aimee Affidavit at paras. 12-13; Aimee Transcript at Q. 316.

Property, including hydro, propane, telephone, cable and internet bills, costs to maintain the well, and the service contracts relating to the geothermal heating system and the septic system.[46]

41. In addition to the foregoing, there are costs associated with the nine horses that Aimee keeps at the Ashburn Property. Current costs, which Aimee indicates are the "*bare minimums*"[47], include an annual purchase of hay that has not been quantified, $450 per month in feed, $400 per month in blacksmith bills, and miscellaneous veterinarian bills and other costs.[48] These funds are currently being advanced by Aimee's parents.[49]

42. Despite her difficulties in meeting her monthly expenses, Aimee indicates that she has not made any efforts to find alternate, less-costly accommodations, or any efforts to sell or find alternate accommodation for the horses.[50] Aimee has not worked since she had her first child eighteen years ago, and has not taken any efforts to update her qualifications to work as a veterinarian technician, which was the job she held prior to ceasing outside employment. She indicates that she has made some applications for employment, but has not received any response.[51]

43. Aimee is clearly attached to the Ashburn Property, which has been her and her family's home since approximately 2009. Given her current circumstances, however, there is no realistic possibility that Aimee will be able to maintain the property going forward. Aimee acknowledges that the Ashburn Property must be sold:[52]

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[46] Aimee Transcript at Q. 112-124
[47] Aimee Transcript at Q. 126.
[48] Aimee Transcript at Q. 126.
[49] Aimee Transcript at Q. 127.
[50] Aimee Transcript at Q. 283-287.
[51] Aimee Transcript at Q 307-314.
[52] Aimee Transcript at Q. 313-323.

REGISTRATIONS AGAINST THE ASHBURN PROPERTY[53]

44. As discussed above, Gary and Aimee's original purchase of the Ashburn Property was financed by a mortgage obtained from BNS, which registered the BNS Mortgage on title on September 28, 2007. The BNS Mortgage was discharged on June 20, 2008.[54]

45. On June 20, 2008, BNS registered a new charge on title to the Ashburn Property in the principal sum of $1,350,000, which was subsequently discharged on February 10, 2015. The new charge secured the original mortgage debt, as well as the Lines of Credit.[55]

46. A second mortgage in the principal sum of $250,000 (the "**Pinfold Charge**") was registered on title to the Ashburn Property by Craig Pinfold ("**Pinfold**") on September 3, 2009, and discharged on September 13, 2013.[56]

47. On January 23, 2015, Aimee secured mortgage financing from CIBC in the principal sum of $1,000,000. CIBC registered the CIBC Mortgage on title to the Ashburn Property on January 23, 2015. CIBC is currently the first and only mortgagee. As at the date of the Second Report, approximately $963,000 was owing to CIBC in respect of this mortgage. Aimee is not in default of her payment obligations.[57]

48. On December 31, 2015, and January 5, 2016, an individual named Scott Reed, the principal of Reed Ridge Farms, registered two construction liens on title to the Ashburn Property in the sum of $74,615 and $74,616, respectively (together, the "**Construction Liens**"). The

[53] See parcel register at Appendix 11 to Second Report.
[54] Second Report at para. 20.
[55] Second Report at para. 21.
[56] Second Report at para. 22.
[57] Second Report at para. 23, Appendix 12.

January 5, 2015 construction lien was purportedly perfected by registration of a certificate of action on February 18, 2016 (the "**Certificate of Action**").[58]

49. On February 4, 2016, Gary registered a spousal interest in the Ashburn Property.[59]

50. GTL was appointed as Gary's Trustee by order dated May 25, 2016. On June 1, 2016, the Trustee registered the Bankruptcy Order for Gary on title to the Ashburn Property, in respect of Gary's spousal interest.[60]

51. On June 30, 2016, an individual named Dean Salem ("**Salem**"), together with his company, Norris Technologies LLC ("**Norris**"), registered a certificate of pending litigation (the "**CPL**") on title to the Ashburn Property.[61]

52. The CPL relates to an application by Salem and Norris as against Aimee (the "**Norris Application**") for, among other things, a declaration that Salem and Norris have an interest in the Ashburn Property pursuant to a revolving line of credit agreement. The Trustee was not served with the notice of motion or any other materials in advance of the registration of the CPL, despite having an interest registered on title to the Ashburn Property.[62]

53. On August 12, 2016, Salem and Norris registered a court order dated August 9, 2016, on title to the Ashburn Property (the "**Norris Order**").[63]

54. The Norris Order was made in the context of the Norris Application, and provides, among other things, that the Registrar of Land Titles is directed to permit Salem and Norris to register a non-interest bearing charge/mortgage bearing standard charge terms 200033, in the

[58] Second Report at para. 24, Appendix 13.
[59] Second Report at para. 25, Appendix 14.
[60] Second Report at para. 26, Appendix 15.
[61] Second Report at para. 27, Appendix 16.
[62] Second Report at para. 28, Appendix 17.
[63] Second Report at para. 29, Appendix 18.

amount of $1,000,000 on title to the Ashburn Property. To date, no such charge has been registered, nor has a date been set for the hearing of the Norris Application.[64]

55. In light of the foregoing registrations, a vesting order will be required to convey clear title to any prospective purchaser of the Ashburn Property.[65]

ADDITIONAL IMPROPER CONDUCT

56. In addition to those set out above, there are many other facts that suggest improper conduct by Gary in his dealings with Compuquest's assets and the Ashburn Property.

A. Dean Salem's and Norris' Interest in the Ashburn Property is Questionable

57. As described above, Salem and Norris have registered a CPL on title to the Ashburn Property relating to the Norris Application. The obligation underlying the Norris Application is an alleged debt owed by Compuquest and Gary to Norris and Salem, which debt was purportedly guaranteed by Aimee and secured against, among other things, the Ashburn Property.[66]

58. Gary's and Aimee's obligations to Norris and Salem were documented in similar agreements each entitled a "revolving line of credit agreement". Gary signed his on December 31, 2015 (the "**Gary/Norris RLOC**"),[67] while Aimee signed hers on March 3, 2016 (the "**Aimee/Norris RLOC**").[68] The Aimee/Norris RLOC was purportedly modified by an email from Robertson to Gary's lawyer dated March 3, 2016, pursuant to which Aimee purports to limit the effect of the Aimee/Norris RLOC to "*Gary's share*" of the Ashburn Property.[69]

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64 Second Report at para. 30.
65 Third Report at para. 84.
66 Second Report at para. 45.
67 Second Report at Appendix 27.
68 Second Report at Appendix 28.
69 Second Report at Appendix 28.

59. Aimee asserts that she only signed the Aimee/Norris RLOC because Gary told her that if she did not, he would no longer be able to support her.[70] When Gary later asked her to sign mortgage documentation relating to the Aimee/Norris RLOC, she refused because, in her view she had not agreed to mortgage the Ashbrun Property.[71] It is therefore questionable whether the Aimee/Norris RLOC is enforceable as against the Ashburn Property.

60. On July 29, 2016, Salem filed unsecured proofs of claim with the Trustee on behalf of himself and Norris for a total of USD$803,585.49, in each of Gary's and Compuquest's bankruptcies. The claims are made up of a claim by Salem in the sum of USD$106,200.00, and a claim by Norris in the sum of USD $697,385.49, and are the debts to which the Gary/Norris RLOC and the Aimee/Norris RLOC relate.[72]

61. The Receiver has uncovered correspondence that suggests that Gary made numerous preferential payments to Norris and Salem in the period leading up to the appointment of the Interim Receiver on April 29, 2016, and the Receiver on May 17, 2016.[73]

62. For example, on March 11, 2016, Gary sold a 2014 Kingaire Motorhome (the "**Kingaire**") which was leased by Compuquest, for USD$505,000. Gary paid a lease payout of USD$249,118.23, and received USD$255,881.77 in net equity from the sale, which amount was received in Compuquest's CIBC account on April 6, 2016. Gary immediately transferred this amount to a bank account he had set up at TD, contrary to the terms of the loan agreement between Compuquest and CIBC, and then wired the sum of $253,000 to Norris.[74]

63. The Receiver has also discovered two further emails of note between Gary and Salem. On March 5, 2016, Salem wrote to Gary to confirm that Gary would be sending to Norris:

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70 Aimee Transcript at Q. 253.
71 Aimee Transcript at Q.263-265.
72 Second Report at para. 46, Appendix 26.
73 Second Report at para. 51.
74 Second Report at para. 52, Appendix 29.

(a) receivables, totalling approximately $90,000;

(b) Gary's HST refund, in the amount of $160,00;

(c) the proceeds of sale of vehicles identified as:

  (i) Kingaire, having equity of USD$259,744;

  (ii) Optimus, having equity of USD$63,833;

  (iii) Stacker Trailer, having equity of USD$39,500;

  (iv) Other trailer, having equity of USD$30,000.[75]

64. On April 25, 2016, Gary wrote to Salem in the context of having received CIBC's demand letters on March 24, 2016, and April 19, 2016, to assure Salem that he would continue to repay his debts to Norris. In particular, Gary stated, "*I have given you every penny I have received from the sales of any personal assets and will continue to do so…I will continue you (sic) to sell whatever I can and forward any equity to you to pay down the debt.*"[76]

65. Salem and Norris are not opposing this motion, and accordingly, the validity of their claim to an interest in the Ashburn Property will be addressed at a later date. At the present time, however, the Receiver strongly suspects that the debts allegedly owing by Compuquest, Gary and Aimee to Norris and Salem are unfounded, and/or ought to be set-off preferential payments made by Compuquest to Norris or Salem in the period immediately prior to the Receiver's appointment.[77]

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[75] Second Report at para. 53, Appendix 30.
[76] Second Report at para. 54, Appendix 30.
[77] Second Report at para. 55.

B. Payments to Jay Clausner and Craig Pinfold

66. In the Second Report, the Receiver identified $885,000 in funds that were paid from Compuquest's account to Pinfold and/or his company, Pinfold and Associates Inc. The Receiver identified a further $80,000 in cheque payments made to an individual named Jay Clausner ("**Clausner**") and/or his company, Virtual Tech, but which identified Pinfold in the memo box of the cheques.[78]

67. As a result of the Pinfold Charge having been registered on title to the Ashburn Property, the Receiver initially suspected that these payments had also been made in relation to improvements to the home.[79]

68. However, Gary has sworn an affidavit and confirmed on cross-examination that Pinfold and Clausner are individuals from whom Compuquest has been borrowing money on a revolving basis for the past several years.[80] He asserts that they have loaned more than $965,000 to Compuquest for corporate purposes since approximately 2009.[81] He advises that Pinfold is the source of funds, and that Pinfold may advance loans either directly to Compuquest, or to Compuquest through Clausner. The Pinfold Charge purports to document these loans. There is no documentation of the loans between Clausner or Clausner's companies, and Compuquest.[82]

69. Gary has further advised that in addition to the loan arrangements with Pinfold, he and Clausner are engaged in business dealings whereby they sell computer equipment and

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[78] Second Report at para. 42, Appendix 25.
[79] Second Report at para. 43.
[80] Affidavit of Gary Bodimeade sworn January 5, 2017 ("**Gary Affidavit**") at paras. 6-10.
[81] Gary Transcript at Q. 117, 154.
[82] Gary Transcript at Q. 140-142.

software to one another's customers.[83] Gary advises that these deals were also not documented.[84]

70. Gary and Clausner are friends from high school. Despite Clausner's friendship with Gary, Aimee has advised the following:

> 235. Q. How often would you see Mr.
> Clausner?
> A. I had no social contact with Mr.
> Clausner at all. Mr. Clausner is not somebody that
> I like, or want around my family or my kids. I have
> never liked Mr. Clausner. He would come by and see
> Gary periodically.[85]

71. The Receiver's concerns regarding Compuquest's payments to Clausner are heightened due to the fact that, on April 28, 2016, being the date that CIBC's counsel first attended at court to seek the appointment of an interim receiver over the Debtors, without notice, Gary caused a payment in the sum of USD$16,000 to be paid to 2401484 Ontario Inc. ("**240**"), the director of which company is Clausner's wife, Kara Clausner ("**Kara**"). On April 29, 2016, Gary caused a payment of USD$75,000 to be paid by Compuquest to Clausner personally.[86]

72. On June 2, 2016, the Receiver asked Gary why he had made the USD$75,000 payment to Clausner. Gary initially advised that it reflected a loan repayment owing to Clausner. On June 7, 2016, Gary wrote to the Receiver to change his story, and to advise that in fact the

[83] Gary Transcript at Q. 167-172.
[84] Gary Transcript at Q. 186.
[85] Aimee Transcript at Q. 235.
[86] Second Report at paras. 62-63

USD$75,000 payment represented the repayment of a deposit for a deal that had not materialized.[87]

73. In the Second Report, the Receiver identified a large number of payments issued by Compuquest from its CIBC bank account to either Clausner, Kara, 240, or Clausner's company Total Cart Solutions Inc. ("**TCSI**"), totalling $1,219,530.19.[88] Gary has not offered any explanation for these payments in his affidavit, and he has indicated that all of his dealings with Clausner were undocumented.[89]

74. In the Third Report, the Receiver identified a further $1,184,699.00 in payments made to Virtual Technology, as well as $322,278.00 in payments made to Pinfold, $398,509.56 in payments made to Clausner, and a $5,000 payment to Kara.[90]

75. On the basis of this evidence, it appears possible that the payments made to Pinfold and Clausner, and/or their companies, were not related to the Ashburn Property. They do, however, represent millions of dollars flowing in and out of Compuquest's account to Gary's friend from high school, in a completely undocumented manner.

C. Miscellaneous Personal Use of Compuquest Funds

76. The Receiver has identified numerous additional payments made from Compuquest's accounts which appear to be in the nature of personal expenses. These include, among other things, retail purchases, vehicle leasing costs, insurance, utilities, telephone and cable, credit cards, and ATM cash withdrawals.[91]

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[87] Second Report at para. 64.
[88] Second Report at para. 65, Appendix 34.
[89] Gary Transcript at Q. 140-142, 186.
[90] Third Report at para. 61-63, Appendices 14,15.
[91] Third Report at para 45, Appendix 7.

77. For example, for the period January 1, 2009 to 2015, Compuquest funded down payments and lease payments for a fleet of leased vehicles totalling $1,759,994.53.[92] Compuquest also issued personal cheques to Aimee totalling $138,800 for the period 2009 to 2013; to Gary totalling $88,000 for 2013; and to "CASH" totalling $122,957.37 for the period 2009 to 2013.[93]

78. These payments represent only a portion of those that the Receiver has identified as having likely been used for personal expenses.

D. Gary Has Been Convicted of Fraud

79. The Receiver has learned through its counsel, Minden Gross, that on September 12, 2006, Gary was found guilty of laundering proceeds of crime contrary to the Criminal Code of Canada, arising out of charges that Gary and his brother defrauded Royal Bank of Canada. He was on probation for a period of two years, and was therefore on probation at the time of the purchase of the Ashburn Property.[94]

PART III - THE LAW

80. Section 101 of the *Courts of Justice Act* provides for the appointment of a receiver where it appears to a judge to be just and convenient to do so.[95] In exercising its discretion to appoint a receiver, the court must have regard to all of the circumstances, including the nature of the property, and the rights and interests of all parties in relation thereto.[96]

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[92] Third Report at para. 47, Appendix 8.
[93] Third Report at paras. 50-52, Appendices 9-11.
[94] Second Report at paras. 58-59, Appendix 32.
[95] *DBDC Spadina Ltd. v. Walton*, 2013 ONSC 6833 (Ont. S.C.J. – Commercial List) at para. 41; aff'd 2014 ONCA 428.
[96] *Bank of Nova Scotia v. Freure Village on Clair Creek*, 1996 CarswellOnt 2328 (Ont. S.C.J. – Commercial List) at para. 11.

81. Since the appointment of a receiver is an equitable remedy, the conduct of the parties is also a relevant factor.[97]

A. The Rights and Interests of the Parties

82. CIBC has already appointed GTL as receiver over the assets of Compuquest. The Receiver's realization from Compuquest's assets has been minimal, and has been significantly less than Compuquest's reporting led CIBC to expect.[98] CIBC is accordingly anticipating a shortfall in the recovery on its debt.

83. Through the course of its investigations, the Receiver has traced $981,676.87 in funds belonging to Compuquest, into the Ashburn Property.[99] This figure is not seriously in dispute: Gary has admitted that the funds identified by the Receiver as having been paid to contractors for work done on the Ashburn Property were used for that purpose.[100]

84. In addition, there is a significant likelihood that additional Compuquest funds were used to fund the construction costs in 2007 and 2008, and to make payments on the BNS Mortgage and Lines of Credit, as well as on the CIBC Mortgage. The Receiver is currently awaiting or seeking answers to undertakings, and the production of documentation from third parties,[101] which will assist the Receiver in answering this question. Even without this information, the evidence establishes that a significant quantum of funds belonging to Compuquest have been paid into the Ashburn Property.

85. The court is entitled to order that funds traced from a company in receivership into the hands of third parties be repatriated into the receivership estate. Such funds constitute assets

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[97] *Royal Bank v. Chongsim Investments Ltd.* (1997), 32 O.R. (3d) 565 (Ont. Gen. Div.) at para. 18.
[98] Second Report at paras. 56-57, Appendix 31.
[99] Third Report at Appendix 5 and para 66.
[100] Gary Transcript at Q. 227-247.
[101] Third Report at para 86-87.

that are subject to the receivership order.[102] Accordingly, the Compuquest receivership estate holds an interest in the Ashburn Property equivalent to at least $981,676.87.

86. Aimee asserts that the appointment of the Receiver is not in her interest. However, the evidence establishes that:

(a) she is only maintaining the Ashburn Property with "*great difficulty*", by borrowing funds from her parents;[103]

(b) she would like to sell the Ashburn Property, and purchase an alternate property that will be easier for her to manage;[104]

(c) there are numerous legal interests registered on title to the Ashburn Property, which will impede its sale. These include the Construction Liens and Certificate of Action, Gary's spousal interest, and the CPL and Norris Order. In order for Aimee to sell the Ashburn Property without a vesting order, she will be required to address at least three separate ongoing or potential legal proceedings in order to obtain clear title.[105] It appears likely that her ability to maintain the Ashburn Property will elapse prior to the resolution of these issues, and she will be put into a worse position; and

(d) Aimee has failed to take any steps to remedy her situation, including by:

(i) failing to communicate with the Trustee regarding the sale of the Ashburn Property between July 2016 and the initiation of this motion in November

[102] *Business Development Bank of Canada v. Aventura II Properties Inc.*, 2016 ONSC 1545 (Ont. S.C.J. – Commercial List) at para. 20; aff'd 2016 ONCA 300.
[103] Aimee Affidavit at para. 13; Aimee Transcript at Q. 127.
[104] Aimee Transcript at Q. 344.
[105] Second Report at paras. 24-30; Third Report at para. 84.

2016;[106]

(ii) failing to address Salem's claim against her by allowing the Norris Application to remain unscheduled for a hearing date between August 2016, to present;[107]

(iii) failing to seek employment;[108]

(iv) failing to seek alternate, more affordable accommodation;[109] and

(v) failing to seek alternate, more affordable accommodation for her horses, or to sell them.[110]

87. CIBC has sympathy for Aimee's position, and recognizes the upheaval that Gary's and Compuquest's bankruptcies have caused in her and her family's lives. However, Aimee spent many years living beyond her means using money that did not belong to her, and CIBC is now bearing the cost of that extravagance. Aimee cannot demand that the status quo continue, to CIBC's detriment, simply because she is accustomed to a standard of living that she can no longer afford.

88. The appointment of the Receiver will allow the Ashburn Property to be sold, will allow Aimee's interest in the Ashburn Property, if any, to be monetized, determined, and eventually paid to her, and will allow her and her family to move on with their lives.

89. If the Receiver is not appointed, Aimee will continue to be embroiled in the various legal proceedings affecting the Ashburn Property, apparently without the means to address or advance those proceedings. Although she has refused to identify a limit to her family's

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106 Second Report at paras 75-76. Third Report at para. 77.
107 Second Report at para. 30.
108 Aimee Transcript at Q. 307-312.
109 Aimee Transcript at Q. 283.
110 Aimee Transcript at Q. 285-286.

willingness to lend her money to maintain the Ashburn Property,[111] such a limit will inevitably be reached. When that occurs, Aimee will find herself in a much worse position.

90. The parties' rights and interests favour the appointment of the Receiver.

B. The Nature of the Property

91. The Ashburn Property is a specialized piece of real property. It will require careful marketing to ensure that it realizes the highest and best price for the benefit of all stakeholders, including Aimee.[112]

92. Aimee has not demonstrated any ability to deal appropriately with the Ashburn Property. She failed to list it for sale after advising the Trustee that she would do so, and failed to communicate with the Trustee in any way regarding her reasons for this decision. She further declined to tell the Trustee that her proposed listing agent is a friend of Gary's, which association is not favourable in the circumstances. The Receiver has lost trust and confidence in Aimee.[113]

93. CIBC seeks to appoint the Receiver only for the limited purpose of listing the Ashburn Property for sale, and selling it. All parties agree that it must be sold, which will allow its value to be divided up among the various parties who are entitled to a portion of the proceeds.

94. Further, given Aimee's current financial situation, there is a significant risk that she will not be able to continue maintaining the Ashburn Property. The property depends on a well, a septic system, and a geothermal heating system, all of which are maintained by independent service providers paid by Aimee.[114] The property taxes are significant. If these obligations are not maintained, there is a risk that the property will lose value.

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[111] Aimee Transcript at Q. 128.
[112] Second Report at para. 18.
[113] Third Report para 83.
[114] Aimee Transcript at Q. 112-123.

95. The nature of the Ashburn Property favours the appointment of the Receiver.

C. Conduct of the Parties

96. As set out herein, Gary has engaged in a substantial level of improper conduct, the extent of which is still being uncovered by the Receiver. His behaviour ought to weigh in favour of appointing the Receiver, in order to ensure that he will have no opportunity to interfere with the sale of the Ashburn Property.

97. CIBC acknowledges that the person who will be most affected by the order sought herein is Aimee, and not Gary. However, even if Aimee was not directly involved in Gary's improper actions, she had sufficient opportunity and access to information, that she ought to have been aware that Gary's dealings were not appropriate. In this regard,

(a) Aimee was aware that Gary had been arrested for fraud and money laundering in or around 2006;[115]

(b) Aimee was aware that BNS had closed her and Gary's accounts in 2015, because they no longer wished to do business with Gary as a result of the manner in which he was dealing with his accounts;[116]

(c) Aimee was aware that Compuquest was having "cash flow issues" in or around 2009, which required her to sign a charge in favour of Pinfold;[117]

(d) Aimee received funds from Gary irregularly, and as needed, by way of direct deposits into her bank account, cheques, and cash. In her words, the manner in which she received money from Gary "*always seemed to change*";[118]

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[115] Aimee Transcript at Q. 423-424.
[116] Aimee Transcript at Q. 31, 32, 37, 38.
[117] Aimee Transcript at Q. 203.
[118] Aimee Transcript at Q. 137-143.

(e) Aimee and Gary lived an extravagant lifestyle which included, without limitation, a fleet of luxury cars such as Lamborghinis and Ferraris, some of which she herself drove,[119] a barn full of horses that required trainers and expensive feed, and personal expenses in the neighbourhood of $30,000 per month;[120] and

(f) Aimee never inquired into where the money was coming from, or how it was being accounted for. She could not answer whether she received a salary from Compuquest,[121] and stated that she did not review the tax returns that were prepared for her to sign.[122]

98. Aimee's opposition to this motion must be viewed in light of the foregoing. While she now finds herself in a difficult position, she reaped the benefit of Gary's dealings for many years, without questioning how their lifestyle was being maintained. This reality weighs in favour of the relief CIBC seeks on this motion.

PART IV - ORDER REQUESTED

99. CIBC respectfully requests an order appointing GTL as Receiver, without security, of the Ashburn Property, with the power to market and sell the Ashburn Property and hold the proceeds of any such sale pending a further order of the court.

ALL OF WHICH IS RESPECTFULLY SUBMITTED

Date: January 18, 2017

Miranda Spence - LSUC #60621M
Counsel for the Applicant, Canadian Imperial Bank of Commerce

[119] Aimee Transcript at Q. 585.
[120] Aimee Transcript at Q. 524-545.
[121] Aimee Transcript at Q. 137.
[122] Aimee Transcript at Q. 385-394.

SCHEDULE A

LIST OF AUTHORITIES

1. *DBDC Spadina Ltd. v. Walton*, 2013 ONSC 6833 (Ont. S.C.J. – Commercial List); aff'd 2014 ONCA 428

2. *Bank of Nova Scotia v. Freure Village on Clair Creek*, 1996 CarswellOnt 2328 (Ont. S.C.J. – Commercial List)

3. *Royal Bank v. Chongsim Investments Ltd.* (1997), 32 O.R. (3d) 565 (Ont. Gen. Div.)

4. *Business Development Bank of Canada v. Aventura II Properties Inc.,* 2016 ONSC 1545 (Ont. S.C.J. – Commercial List); aff'd 2016 ONCA 300

SCHEDULE B

LIST OF RULES AND STATUTES

***Courts of Justice Act* RSO 1990, c C.43**

101. (1) In the Superior Court of Justice, an interlocutory injunction or mandatory order may be granted or a receiver or receiver and manager may be appointed by an interlocutory order, where it appears to a judge of the court to be just or convenient to do so. R.S.O. 1990, c. C.43, s. 101 (1); 1994, c. 12, s. 40; 1996, c. 25, s. 9 (17).

(2) An order under subsection (1) may include such terms as are considered just. R.S.O. 1990, c. C.43, s. 101 (2).

CANADIAN IMPERIAL BANK OF COMMERCE - and - **1299746 ONTARIO INC. *o/a* COMPUQUEST2000 et al.**

Applicant Respondents

Court File No. CV-16-11369-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

Proceedings commenced at Toronto

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(returnable January 25, 2017)

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