COVERS & INDEX

Court File No. 07-CL-6913

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

ED MIRVISH ENTERPRISES LIMITED AND 1 KING WEST INC.

Applicants

- and -

STINSON HOSPITALITY INC., DOMINION CLUB OF CANADA CORPORATION AND HARRY STINSON

Respondents

RESPONDING MOTION RECORD

(returnable December 10, 2009)

GOODMANS LLP
Barristers & Solicitors
Suite 2400, Box 20
250 Yonge Street
Toronto, Canada M5B 2M6

Fred Myers (LSUC#26301A)
L. Joseph Latham (LSUC#32326A)
Lauren Butti (LSUC#47083W)

Tel: 416.979.2211
Fax: 416.979.1234

Counsel to Ira Smith Trustee & Receiver Inc., in its capacity as receiver and manager of Stinson Hospitality Inc., Dominion Club of Canada Corporation, The Suites at 1 King West Inc. and 2076564 Ontario Inc.

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Proceeding commenced at Toronto

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TAB 1

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ED MIRVISH ENTERPRISES LIMITED AND 1 KING WEST INC.

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- and -

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Respondents

FOURTEENTH REPORT OF IRA SMITH TRUSTEE & RECEIVER INC.

IN ITS CAPACITY AS COURT-APPOINTED RECEIVER OF STINSON HOSPITALITY INC., DOMINION CLUB OF CANADA CORPORATION, THE SUITES AT 1 KING WEST INC. AND 2076564 ONTARIO INC.

DATED NOVEMBER 16, 2009

1.0 INTRODUCTION

This report (the "**Fourteenth Report**") is filed by Ira Smith Trustee & Receiver Inc. ("**ISI**") in its capacity as court-appointed receiver and manager (the "**Receiver**") of all of the assets, undertakings and properties of Stinson Hospitality Inc. ("**SHI**"), Dominion Club of Canada Corporation ("**DCC**"), The Suites at 1 King West Inc. ("**Suites**") and 2076564 Ontario Inc. ("**Housekeeping**") (collectively referred to as the "**Debtors**" or the "**Companies**"), appointed pursuant to the Order of the Honourable Madam Justice Pepall dated August 24, 2007 (the "**Receivership Order**"). By Order dated September 25, 2009 (the "**Discharge Order**") the Receiver is to be discharged following the occurrence of certain events which have not yet taken place. A copy of the

Receivership Order is attached as **Appendix "A"**. A copy of the **Discharge Order** is attached as **Appendix "B"**.

In order to ensure that a full record is available to the Court at the hearing of the within motion, the Receiver incorporates by reference into this Report, relies upon and will have available for the Court at the hearing of the motion, all of its prior reports and all of the Orders approving the Receiver's reports and the actions and activities of the Receiver detailed therein. A summary of the Receiver's previous reports and the resulting court orders is attached hereto as **Appendix "C"**. Capitalized terms not defined herein are defined in Appendix "C". Certain of the Receiver's prior reports were filed under seal pending further Order of the Court. The Receiver will therefore file those reports in a sealed envelope pending any such further Order that the Court may make.

Purpose of this Report

The purpose of this **Fourteenth Report** of the Receiver is to respond to the motion brought by J. Robert Verdun seeking leave to commence proceedings against ISI and its counsel, Goodmans LLP ("**Goodmans**"), on the basis of "gross negligence and/or wilful misconduct", which motion the Receiver opposes. Given the nature of that motion, this report provides background information to this Honourable Court regarding these receivership proceedings (the "**Receivership**"), and will address certain issues raised in the Affidavit of Mr. Verdun sworn October 23, 2009 (the "**Verdun Affidavit**") and Mr. Verdun's draft Statement of Claim dated October 28, 2009 (the "**Draft Statement of Claim**") that may be relevant to the Court's determination of the motion brought by Mr. Verdun.

2.0 BACKGROUND

As is discussed in greater detail in section 2.2 below, the Debtor companies over which the Receiver was appointed were intrinsic to the operations of the hotel condominium development located on the southwest corner of King and Yonge Streets, known municipally as 1 King Street West, Toronto. The hotel that operated from those premises was named "The Suites at 1 King West". As noted by Pepall, J. in her Endorsement dated August 24, 2007, 1 King Street West has a "complex title and organizational structure". For ease of reference, the hotel condominium development and project is hereinafter referred to as "**1 King West**".

Mr. Verdun is the owner of a suite (each suite owner being a "unit holder") in 1 King West and, during the period from the commencement of the monitorship of the Debtors in April of 2007 until January of 2008, he was the President of the residential condominium corporation for 1 King West, Toronto Standard Condominium Corporation No. 1703 ("**TSCC 1703**"). Even after he ceased being the President of TSCC 1703, Mr. Verdun has to this date remained a member of the board of directors of TSCC 1703.

While TSCC 1703 was represented by counsel throughout the Receivership, Mr. Verdun most often appeared in Court without legal representation in such self described capacities as a sophisticated "public interest advocate" possessing unique expertise in the development of condominium and hotel business structures or, at other times, as an unrepresented layman who could not be expected to follow the procedures of the Court. As further discussed below, Mr. Verdun's interventions in these proceedings have been typified by aggressive and hostile personal accusations against the Receiver and its counsel, which accusations have been delivered in Court, in correspondence and on internet postings. Mr. Verdun has previously brought professional conduct complaints against the

principal of ISI to the Institute of Chartered Accountants of Ontario and the Superintendent of Bankruptcy, and against L. Joseph Latham, a partner of Goodmans, to the Law Society of Upper Canada. Mr. Verdun's complaints to these professional bodies have all been dismissed or are not being pursued.

In her Endorsement concerning the discharge of the Receiver dated September 25, 2009, a copy of which is attached as **Appendix "D"**, the Honourable Madam Justice Pepall (who has had carriage of this matter since August of 2007) made the following comments at paragraph 3:

> The Receiver had particular problems with one of the condominium owners, Mr. Verdun. He was insulting and abusive of the Receiver and its counsel, distributed inflammatory correspondence and lodged complaints with the Superintendant of Bankruptcy, the Institute of Chartered Accountants of Ontario, and with the Law Society of Upper Canada. All professional complaints have either been dismissed by the governing body or no action is being taken by the governing body with respect to the subject complaint. After having had numerous opportunities to take issue with the secured parties' security, very late in the proceedings, he chose to challenge it but then abandoned his motion. At that time the Receiver requested costs on a full indemnity basis. While I had considerable sympathy for the Receiver, for the reasons set forth in my endorsement, I awarded costs on a partial indemnity scale against Mr. Verdun. Rouleau J.A. also made a costs order against Mr. Verdun in favour of the Receiver.

Now, on the eve of the successful completion of the Receivership and the discharge of the Receiver, and after the Court-approved claims process has been completed, Mr. Verdun seeks to challenge subsisting Court Orders and the Court-approved activities of the Receiver, complaining of events spanning the entirety of the Receivership, as well as some pre-dating it. In particular, Mr. Verdun seeks to take issue with the Receiver's appointment (which occurred in August of 2007), the complexities of the corporate structure of the Debtors and their operations at 1 King West, the effect of a ruling by the Ontario Securities Commission ("**OSC**") in November of 2004, the nature and

validity of the security held by the Mirvish Group (as herein defined), the sale price TSCC 1703 negotiated and paid to the Receiver for 1King West (which Mr. Verdun submits ought to have been zero since, in his view, TSCC 1703 ought to have owned 1 King West throughout), and the conduct of the Receiver in general – including the form and content of Mr. Ira Smith's business cards.

Given the nature and extent of Mr. Verdun's allegations, the Receiver is compelled at this time to provide the necessary background and factual context surrounding the Receivership.

2.1 Pre-Receivership

This is a summary of the Receiver's understanding of the history of 1 King West and the dispute which gave rise to the Receivership.

In the mid-1990s, Harry Stinson, a well-known condominium salesman in Toronto, acquired the Nags Head Tavern at 5 King Street West. The property was very narrow, but had substantial density rights associated with it, meaning that a very tall structure could be erected there. Mr. Stinson envisaged a slender condominium being built on the site. He was introduced to David Mirvish, the theatre impresario, by a mutual business colleague, Hank Kates, a chartered accountant who has worked with the Mirvish family for decades. Mr. Stinson had great difficulty in finding financing or other support to proceed with the project and Mr. Mirvish and certain of his companies, including Ed Mirvish Enterprises Limited ("**EME**" and, collectively with 1 King Street West Inc. ("**1KW**"), the "**Applicants**" or the "**Mirvish Group**"), agreed to join with him in the endeavour. In order to properly build a tower, they wished to acquire the neighbouring Dominion Bank building, located on the southwest corner of King Street West and Yonge Street. Mr. Mirvish was instrumental in negotiating and financing that property. Having acquired both properties, with the financial support of the Mirvish Group and the legal assistance of their counsel at Miller Thomson

LLP ("**MT**"), Mr. Stinson began to create his slender condominium project on the combined property.

The original iterations of the project involved only a residential condominium tower, to be named "The Sliver". However, as sales lagged, Mr. Stinson conceived of the hotel condominium concept, whereby individuals could purchase their units and place them into a general pool for use as a hotel. Financing for construction of the project was ultimately obtained through the Caisse de Depot, with guarantees being provided by Mr. Mirvish and/or the Mirvish Group.

There is a long history of allegations between Mr. Mirvish and Mr. Stinson about tactics used by Mr. Stinson to complete additional sales, some of which were the subject of an OSC query and ruling dated November 22, 2004 (the "**OSC Ruling**"). A copy of the OSC Ruling is attached as **Appendix "E"**. There were other matters that arose and led to various disputes between the Mirvish Group and Mr. Stinson, some of which are the subject of ongoing litigation. At the time of the appointment of the Receiver, there was overt and substantial enmity between the Mirvish Group side and the Stinson/TSCC 1703 side of the various pieces of litigation.

2.2 The Corporate Structure of 1 King West

The project was ultimately completed in 2005. Legally it consists of three components: (i) a residential condominium corporation, which takes up the majority of the building, (ii) a commercial condominium corporation, and (iii) certain pieces of real property which are owned in freehold.

The residential condominium corporation, TSCC 1703, consisted of approximately 570 units which are owned by unit holders, including Mr. Verdun. Several units were also owned by 1KW or other

Mirvish entities. The residential condominium also includes certain common elements located on the ground floor and on the 12th floor in the old bank executive offices.

The commercial condominium corporation, Toronto Standard Condominium Corporation No.1726 ("**TSCC 1726**"), consisted of four elements, which included the concierge desk, the registration desk, parts of the lobby bar and the service elevator banks. These elements were for use in the hotel and were structured as being part of the separate condominium corporation. The majority of the units in TSCC 1726 were initially owned by 1KW, the "declarant".

The freehold lands consisted of the 2nd floor banking hall and certain areas of the 1st floor and were also initially owned by a Mirvish company. As discussed below, the commercial condominium elements and the freehold lands were later sold to SHI and DCC respectively.

When the project opened, it began operating as "The Suites at 1 King West". Unit holders who wished to put their units into the general pool for use in the hotel (the "**Rental Pool**") signed rental management agreements ("**RMA's**") with SHI, thus entitling them to a share of net revenues generated by the Rental Pool as calculated under the terms of the RMA's.

The hotel operation consisted of a number of complex arrangements between the various Debtor entities. SHI was to act as the rental manager for the Rental Pool and to provide hotel management services to the parties that executed the RMA's; DCC was to provide food and beverage service to SHI and also to run its own independent operation – including the provision of services for social functions from the banking hall on the 2nd floor. Various agreements provided for the use by the hotel of the commercial units in TSCC 1726. Two additional companies were also involved in the operation of the hotel. Mr. Stinson incorporated Housekeeping to provide services to clean rooms for SHI and DCC served areas and earn fees for doing so. Suites was incorporated and structured

under various agreements to function as a flow-through company and was the entity that processed all of the payments from hotel guests and received all of the revenues of the hotel operation (but not DCC's independent operations). Suites then paid the salaries of hotel employees, the management fees to SHI under the terms of the RMA's, all of the other costs associated with operating the hotel, and ultimately distributed the net revenues to the unit holders in the Rental Pool based upon the complicated formula contained in the RMA's. The Receiver maintained the monthly payment of net revenues to these unit holders throughout the Receivership, until the hotel assets were sold.

2.3 The EME Security

Before the hotel operation began, Mr. Stinson and Mr. Mirvish agreed that SHI and DCC should control the commercial condominium units and the freehold lands in furtherance of the proposed operating structure. Accordingly, the Mirvish Group conveyed to SHI the units in the commercial condominium and conveyed to DCC the freehold lands. In that same transaction, DCC and SHI acquired $10 million of indebtedness that Mr. Stinson and his companies owed to the Mirvish Group for the fixturing of the 12th floor and the banking hall. In the documentation, the land is allocated a price of $1.8 million with total stated consideration being $11.8 million. As security for this indebtedness, 1KW took back a mortgage on the freehold lands and the commercial condominium units for the full $11.8 million and assigned that security to EME (the "**EME Security**").

2.4 The CCAA Application and the Receivership Application

1 King West was slow to get off the ground and suffered initial cash flow issues. The Dominion Club of Canada was initially meant to be a private club to which members paid dues, but it failed from the outset. Although DCC took fees from a number of members, it never fully provided the

services contemplated. However, the fees paid by members were used by Mr. Stinson in other aspects of 1 King West and the DCC members were acknowledged to have unsecured claims against DCC. At the time of the Receiver's appointment, Mr. Stinson was allowing some DCC members to recoup their paid fees by staying in the hotel and using other services for free, applying credits provided for the paid fees. Ultimately, DCC evolved into the food and beverage operation for 1 King West.

During this time, Mr. Stinson was attempting to sell units in his Sapphire Project on Temperance Street in Toronto. As is noted in the Receiver's First Supplementary Fifth Report, it appears that Mr. Stinson moved money between his projects freely and without any proper accounting. For example, among the unsecured creditors of SHI are several holders of "SHI notes" which Mr. Stinson granted to these creditors in return for monies invested in other Stinson projects.

The indebtedness of SHI and DCC to the Mirvish Group was due and payable at the end of 2006. The parties agreed to terms of forbearance arrangements to allow Mr. Stinson to refinance the project by the end of February, 2007. Having not been able to successfully refinance, in late February, 2007, Mr. Stinson caused SHI and DCC to make an application for protection under the *Companies' Creditors Arrangement Act* ("**CCAA**"). Mirvish's counsel, MT, was provided with brief notice and attended court to seek an adjournment to allow the Mirvish Group an opportunity to consider its response in light of the expiry of the forbearance period. The CCAA application was adjourned.

Ultimately, the Mirvish Group determined to enforce the EME Security by seeking the appointment of a receiver and manager and filed an application to that end in March of 2007. In late February of 2007, after the CCAA application was adjourned, MT made initial contact with each of ISI and

Goodmans. Ira Smith of ISI and L. Joseph Latham and other members of Goodmans attended meetings at MT to gain some initial understanding of the situation and to receive documents for review for the purposes of a receivership. The intention of these meetings and discussions was to help the proposed receiver and its counsel to begin to understand the corporate and operating structure of 1 King West, and the related financing arrangements, and to become aware of those issues which would be of concern in running a receivership in light of the complex nature of 1 King West. As part of this introduction, Goodmans did some preliminary work to review the EME Security.

After service of the motion for the appointment of a receiver, cross-examinations were conducted and the hearing of the matter was scheduled for April 20, 2007. Shortly before the date of the hearing, counsel for SHI, DCC and Mr. Stinson delivered a new claim against the Mirvish Group, MT and various of MT's partners alleging substantial wrongdoing and conflicts of interest.

The CCAA and receivership applications were heard together on April 20, 2007. The Court hearing was animated. After brief submissions, Justice Pepall directed the parties to attend a case conference before the Honourable Mr. Justice Campbell. With the assistance of Campbell J., Mr. Stinson and Mr. Mirvish reached a settlement agreement under which Mr. Stinson's newly served claim against the Mirvish Group and MT would be dismissed and released; and Mr. Stinson and his companies were given until July 31, 2007 to seek alternate financing to repay the secured debt of the Mirvish Group failing which, or if Mr. Stinson's companies defaulted on the terms of the settlement agreement, Mr. Stinson, SHI and DCC agreed that the Mirvish Group would be entitled to a vesting order to obtain title to the commercial condominium units and the freehold lands in satisfaction of the indebtedness and the EME Security.

In the interim, given concerns over the stability of hotel operations and Mr. Stinson having acknowledged the insolvency of SHI and DCC in his CCAA application, ISI was appointed as an officer of the Court, styled as the "Monitor" of SHI and DCC. Mr. Stinson was concerned that his business and his refinancing efforts would be damaged if ISI took an active role as Monitor or if its reports were published and, accordingly, at the request of Mr. Stinson, the Monitor and its representatives were to maintain a low profile at the hotel, review records in as unobtrusive a fashion as possible, and file sealed reports with the Court. In light of its limited mandate and the requests of Mr. Stinson, the Monitor did not make any decisions about or deal with any property, assets or undertaking of SHI or DCC.

During the course of the monitorship, ISI unearthed accounting issues and other irregularities which were disclosed in the Monitor's Reports. One item of note was a loan from Segura Investments Ltd. ("**Segura**") which was not recorded at all on the books of the Debtors. The Monitor also identified cash flow and accounting irregularities between the various corporate entities. Copies of the Monitor's Reports were provided to the service list, which included counsel for TSCC 1703 of which Mr. Verdun was then President. The sealing of the Monitor's Reports was ultimately rescinded at the August 20, 2007 hearing.

2.5 The Commencement of the Receivership

Mr. Stinson failed to find alternate financing by July 31, 2007 and the Mirvish Group moved for its vesting order and the appointment of a receiver under its April 20, 2007 settlement with Mr. Stinson. On behalf of SHI and DCC, Mr. Stinson countered with a renewal of his request for an Order under the CCAA. In support of the CCAA application, Mr. Stinson produced a letter of intent from TSCC 1703 to purchase the hotel business for $8 million (an amount below the amount

of the Mirvish Group debt secured by the EME Security). The hearing ultimately proceeded on August 20 and 21, 2007.

TSCC 1703 made submissions at the receivership application, including taking the position that there was no legal right to appoint a receiver and that the residential condominium should control who managed the hotel.

During the first day of the hearing on August 20, 2007, Mr. Verdun first identified himself to Goodmans. He was adamant that the hotel operation belonged to the unit holders and should be owned by them or acquired by them free of charge in the circumstances. He was also adamant that the unit holders' right to withdraw their units from the Rental Pool was part of the OSC Ruling exempting the project from certain provisions of the *Securities Act*. Mr. Verdun also made these assertions subsequently during the Receivership.

On August 24, 2007, the Honourable Madam Justice Pepall released Reasons refusing the vesting order at that time (including on grounds that there was lack of notice to appropriate parties), denying SHI's and DCC's request for relief under the CCAA (on the basis that the Mirvish Group would never agree to a compromise and, as the largest creditor, could veto any plan) and appointing ISI as Receiver over SHI and DCC. Her Honour noted that a vesting order would have created a difficult arrangement in terms of what the Receiver could or could not ultimately sell in relation to the hotel. Her Honour requested that attempts be made to settle the form of Order and directed the parties to attend before her on Monday, August 27, 2007. In the course of the negotiations over the form of Order, the Receiver requested that both Housekeeping and Suites be included within the Receivership, to ensure that the entire hotel operation was brought within the purview of the

Receiver for purposes of administration and realization. On August 27, 2007, the Honourable Madam Justice Pepall made the Receivership Order that included the four Debtors.

2.6 The Receivership was Litigious as Stinson, TSCC 1703, and Mirvish All Sought to Obtain Control of the Hotel

After the Receivership was commenced, the matter continued to be extremely litigious for a number of months.

(a) Mirvish Seeks a Vesting Order

Shortly after being appointed, the Receiver and its counsel met with representatives of the Mirvish Group and MT to discuss the Mirvish Group's desire to continue with its application for a vesting order to give it title to the commercial condominium units and the freehold lands. In fact, the Mirvish Group filed materials to have the issue heard on October 5, 2007. The Receiver opposed the bringing of that application on the basis that it would create further uncertainty and continue litigation. The Receiver recommended that it would be better for the parties if the Receiver continued to operate and try to sell 1 King West as a whole. Although the Receiver's views were strongly opposed by the Mirvish Group and their advisors, the Receiver was ultimately able to work with the Mirvish Group and the application for a vesting order was never heard. These matters were previously discussed in the Receiver's First Report, Second Report, and Third Report.

(b) Stinson Seeks to Assign the Debtors into Bankruptcy

Following the appointment of the Receiver, Mr. Stinson purported to file voluntary assignments in bankruptcy in respect of the four Debtors. Mr. Verdun accompanied Mr. Stinson in his meetings with the late Melvin Zwaig, the proposed trustee. Mr. Verdun expressed the view that a bankruptcy

was necessary to ensure that the RMAs and agreements with TSCC 1726 could be terminated, the Receiver removed, and the unit holders obtain control of the hotel (for free). The Mirvish Group moved immediately to invalidate the assignments in bankruptcy and the Receiver supported that motion on the basis that the Receivership Order reserves to the Receiver exclusively the right to assign the Debtors into bankruptcy and, in any event, that leave should have been sought by Mr. Stinson before taking that step. On September 21, 2007, Madam Justice Pepall annulled the assignments in bankruptcy. Mr. Stinson appealed. Mr. Verdun was in attendance at the Court of Appeal although he made no submissions. The Court of Appeal upheld the decision of Pepall, J. that Mr. Stinson required leave to proceed with a bankruptcy but left open the issue of whether leave, if sought, ought to be granted. Mr. Stinson sought leave to appeal to the Supreme Court of Canada, which was denied. The Supreme Court of Canada made a costs award of $1,000 against Mr. Stinson in favour of the Receiver. Mr. Stinson then delivered a motion seeking leave to commence bankruptcy proceedings against the Debtors, but he never set the motion down for hearing.

(c) TSCC 1703 Moves to Allow Unit Holders to Leave the Hotel Pool

TSCC 1703 and one unit holder, Johan Demeester, on behalf of the unit holders, brought a motion to allow unit holders to freely leave the Rental Pool. The Receiver was of the view that the stay of proceedings contained in the Receivership Order prevented termination of RMA's as they were contracts with a receivership entity, SHI, and the Receivership Order imposed a general rule that RMA's could no longer be terminated by unit holders. However, the Receivership Order provided the Receiver with a right to consent to request to lift the stay. The Receiver therefore implemented a financial hardship exception to the stay so that if unit owners could demonstrate that they were intending to move into the units, had to sell their units or had other financial hardship, they could be

removed from the Rental Pool. Unit holders also remained free to bring motions to the Court to lift the stay on an individual basis if so advised. Justice Pepall ultimately denied the motion at a hearing on October 24, 2007. Mr. Verdun attended court in support of the motion by TSCC 1703.

Mr. Verdun complains that some unit holders removed their units from the Rental Pool prior to the Receivership. The Receiver, then functioning as Monitor, had no involvement and had no authority to affect those transactions.

(d) The Receiver Moves for Access to Funds in the FF&E Reserve

Upon its appointment, the Receiver learned that Mr. Stinson had not been fulfilling SHI's obligations under the RMA's to fund a "furniture, fixtures and equipment" reserve ("**FF&E Reserve**"). Although it was accounted for in certain of the books and records, there was no actual fund of money ever created. The Receiver funded the FF&E Reserve shortly after its appointment. However, professional fees and costs resulting from the litigious nature of the proceeding mounted quickly and the Receiver brought a motion to confirm that it could utilize funds in the FF&E Reserve to meet obligations of the estates. The Receiver's motion was heavily contested by TSCC 1703 (supported by Mr. Verdun) which took the position that the funds were trust funds and could not be accessed by the Receiver. The matter was ultimately settled on the basis of an agreement between TSCC 1703 and the Receiver that any funds required by the Receiver would be borrowed from the FF&E Reserve. The Receiver's obligation to repay the FF&E Reserve would be protected by a Receiver's borrowing certificate and would thus be repaid in priority to existing secured creditors.

Ultimately, while monies were advanced to the Receiver from the FF&E Reserve, they were fully repaid, with interest, before any sale of the assets took place. As noted above, Mr. Verdun filed a

complaint with the Law Society of Upper Canada against L. Joseph Latham alleging – among other things – that Mr. Latham had violated solicitors' trust account obligations by assisting the Receiver to obtain access to the FF&E Reserve. He brought this complaint notwithstanding the fact that the accounts in question were not Goodmans' trust accounts, the funds were not held by Goodmans at all, Mr. Latham was not a signatory and had no part in the movement of the funds, the Court approved the settlement and related borrowings by Order dated January 9, 2008, and there was never a finding that the funds were actually trust funds. The complaint was investigated but ultimately not pursued by the Law Society of Upper Canada.

(e) **Mr. Verdun Sought Standing**

In early October, Mr. Verdun brought a motion to be added as a party intervenor in the proceedings. In an affidavit dated October 3, 2007 (the "**2007 Verdun Affidavit**"), Mr. Verdun swore as follows, at paragraphs 4, 6 and 40:

> Since I signed my Agreement of Purchase and Sale with 1 King West Inc. on March 20, 2002, at the Toronto offices of David Mirvish, I have been an observant, responsible investor in this unique project, have done extensive research on all aspects of the project, and have obtained professional advice from lawyers, accountants, and others where I felt it was necessary and appropriate. I respectfully submit that I am the best-informed of all suite owners at One King West, with unique insights and experience regarding this project (as well as condominium hotels in general) that exceed the knowledge and understanding of the condominium corporation's professional advisers [...]
>
> My current work is that of property development consultant, specializing in social and environmental responsibility. I also have expert knowledge in all aspects of marketing real estate and most retail businesses. I have several clients in Barbados proceeding toward condominium hotel developments, and my work in that country is directly supported and encouraged by the Prime Minister of Barbados and his Minister of Tourism [...]

> [...] I am a quasi-expert in this field [land-use zoning status] through my experience as a newspaper editor-publisher, and my many experiences as a public-interest advocate taking cases to the Ontario Municipal Board (often with significant success)[...]

A copy of this **2007 Verdun Affidavit** is attached as **Appendix "F"**.

Contrary to the statement in paragraph 3 of the Verdun Affidavit, filed in support of the within motion, Madam Justice Pepall did read the 2007 Verdun Affidavit (as acknowledged by Mr. Verdun himself in his correspondence to unit holders dated October 10, 2007, a copy of which is attached hereto as **Appendix "G"**). Rather, the Court advised Mr. Verdun that the "expert" or "quasi-expert" evidence he sought to submit was inadmissible.

In the context of this proceeding, it was explained to Mr. Verdun that he had the right to be added to the Service List and to participate in the proceeding like all other creditors without the need to be formally named a party. It was also noted that Mr. Verdun was on the board of directors of TSCC 1703 which was already represented by counsel and an active participant in the Receivership proceedings. At the suggestion of the Court, Mr. Verdun withdrew his request to be made a party and the Receiver agreed to add him to the Service List (which the Receiver did do).

2.7 Internet Postings

Both during and before the Receivership, the residential unit holders maintained internet message boards, called "Google Groups", in which they communicated about various matters pertaining to the project. At the outset of the Receivership, there were two clear camps of unit holders: those very loyal to Mr. Stinson (a large group), and those opposed to Mr. Stinson (a smaller group). Shortly after the Receiver was appointed, the Google Groups became extremely active. There were parties vehemently opposed to a receiver and others who believed the Receiver was going to help

them find a way out of the project's problems. Mr. Verdun was one of the most active and outspoken of those opposed to the Receiver.

On November 3, 2007, Mr. Verdun posted:

> The Great Deceiver raised the issue of zoning for one purpose only: To ensure his tenure sucking $250,000 a month out of our building would continue for as long as possible... It is for reasons such as these that we are at war with the Receiver, who is running up huge bills in pursuit of issues that have nothing to do with Stinson's failure to pay money to Mirvish. The Receiver is trying to make suite owners pay for legal wranglings that are clearly not our responsibility.

On November 22, 2007 Mr. Verdun posted:

> As long as I am here, Ira Smith will have me exposing his greed and incompetence. If I am gone, he could be here indefinitely sucking up your money.
>
> The choice is yours.

The Google Groups were a popular vehicle for unit holders, including Mr. Verdun, to post their messages to seek to garner support for their positions. However, communications and postings often degenerated into personal attacks and the hurling of insults between members of the two groups.

Mr. Verdun was insulting and offensive in his attacks upon the Receiver and its counsel. On the eve of the October 24, 2007 Court hearing concerning the FF&E Reserve, Mr. Verdun sent an email message dated October 24, 2007 to all counsel, a copy of which is attached as **Appendix "H"**, which he acknowledged therein to be a "most inappropriate message", calling the Receiver stupid,

greedy and incompetent, threatening the legal professionals with liability and, among other things, referring to certain of the lawyers as "overgrown Harry Potters in fancy robes".

On October 28, 2007 Mr. Verdun posted the following on the Google Groups:

> [...] We have a judge who has been kept on a mushroom diet for a long time, but must eventually realize there is much more to the story than she was originally told. Ira Smith's idiotic scenario of killing the hotel and shutting down elevators will help her see the light. In any case, the Supreme Court of Canada will never allow our property rights to be permanently suspended - but it would be a long wait if the case has to go that high.
>
> The real risk is #3. We have our own version of the IRA in our midst: the Idiotic Receiver's Army. This is the battle we must all fight - NOW!
>
> We are at war. It's never easy to see or accept the fact that any society is at war. It means hardship and sacrifice, but it will only become worse the longer we delay facing reality and taking the necessary actions against the traitors in our midst [...]
>
> BOTTOM LINE: There are plenty of ways to win. BUT: We have to start by exposing and disarming the traitors in our midst, who are either intentionally or unwittingly working with our enemies to leave us with nothing. We have to eliminate anyone who claims to be a "partner" of Mirvish and his Receiver.

A copy of this posting is attached in **Appendix "I"**.

By letter dated October 31, 2007, Goodmans wrote Mr. Verdun a demand letter on behalf of ISI requiring that he cease and desist from his defamatory statements. A copy of Goodmans' letter is attached as **Appendix "J"**.

Mr. Verdun was also openly critical of the stay provisions of the Receivership Order requiring unit holders to remain in the Rental Pool. Mr. Verdun expressed the view that unit holders' ability to

withdraw from the Rental Pool was key to proving his theory that TSCC 1703 ought to be given control of the hotel business despite the positions of the Debtors, TSCC 1726 and their creditors. On November 26, 2007 he posted the following:

> It is outrageous that we are forced to remain in the hotel pool,...
>
> More important, the freedom to withdraw is essential to proving that there is no hotel "business" to be sold to a third party. It has always belonged to us...

Tensions among unit holders spiked further when some of the unit holders learned that, although Mr. Verdun had reported that he never stayed in his own unit when he visited the hotel because his unit was a large one earning substantial revenue for the Rental Pool, in fact Mr. Stinson was living in Mr. Verdun's unit rent free and Mr. Verdun was being allowed to stay in other unit holders' rooms at no cost. Thus, it appeared that Mr. Verdun was earning fees under the RMA when his unit was not in fact in the Rental Pool and was producing no revenue, and his visits were producing no revenue for the rooms he used. Upon the Receiver's appointment, the practice of allowing Mr. Verdun a free room was discontinued and Mr. Verdun strongly objected. He claimed that he should be entitled to remain in a unit rent free in return for marketing services that he provided to the Debtors. The Receiver did not retain Mr. Verdun to provide any such services.

2.8 The Sale Process

Ultimately, the Receiver sought to conduct a sales process in an effort to find a buyer for the hotel business and operations at 1 King West. TSCC 1703, through its counsel, was actively engaged and participated in the sales process. On a number of occasions, TSCC 1703 wrote to the Receiver detailing its lists of concerns and complaints regarding, *inter alia*, the status and nature of TSCC 1726, alleged breaches by TSCC 1726 of the *Condominium Act* as well as various agreements, the

FF&E Reserve, the right of SHI to act as Rental Manager, continuing obligations under the OSC Ruling, title to the freehold lands and the operation of the Heritage Easement. Copies of this correspondence are attached as **Appendix "K"**. As a member of the board of TSCC 1703, Mr. Verdun was clearly aware – at least as early as January 2008 – of these concerns. In fact, early on in the sales process, TSCC 1703 requested that its letter dated May 9, 2008 (copy of which is included at Appendix "K") detailing the issues TSCC 1703 had with TSCC 1726, be included in the data room and disclosed to any qualified purchasers. The Receiver complied with this request. This matter was disclosed in the Sixth Report.

As described in the Seventh Report, as a result of the Sales Process Order, the Receiver ran a full sale and marketing process and selected as the proposed purchaser a joint venture between Le Jardin Banquet Hall ("**Le Jardin**") and Interstate Hotels & Resorts Inc. ("**IHR**"). The offer that they submitted was not only for the highest purchase price, but also, in the Receiver's view, provided the best food and beverage service, the best event provider service and had the benefit of being an offer from an experienced, recognized hotelier. Accordingly, and subject to due diligence and certain other conditions, the Receiver entered into an agreement of purchase and sale with Le Jardin and IHR. This decision was not popular with TSCC 1703, which had also submitted a bid. However, understanding the need for the Receiver and the board of TSCC 1703 to work together, the Receiver organized meetings between representatives of the TSCC 1703 board, IHR, and Le Jardin in an effort to demonstrate to the board the abilities and capabilities of Le Jardin and IHR. Mr. Verdun was never a participant in these meetings. Initially, the directors of TSCC 1703 appeared to be open-minded, but as the meetings progressed, it became clearer that they were not supportive. Ultimately, at one of the meetings, comments were made by one of the board members of TSCC 1703 which were quite inflammatory and derogatory towards the principal of Le Jardin and his

operations, suggesting that he was not the type of operator who could perform at their location. Le Jardin declined to waive its due diligence condition, expressing deep concern over its ability to work with TSCC 1703. These matters are detailed in the Seventh Report.

The Receiver then began negotiating with the second best bidder, TSCC 1703. In light of the possibility that stakeholders could argue that TSCC 1703 had frustrated the higher offer submitted by Le Jardin and IHR, the Receiver insisted that it would not entertain any reduction in the price that TSCC 1703 had submitted in its second-best bid of $13.9 million. Ultimately, the Receiver entered into an agreement with TSCC 1703 to purchase the hotel for $13.9 million. The agreement with TSCC 1703 was approved by the Court by Approval and Vesting Order dated September 16, 2008. The issues raised by the actions of TSCC 1703 were disclosed in the Seventh Report. As purchaser, TSCC 1703 did not raise any issue or object to the state of title to the freehold lands or the units in TSCC 1726, the status of TSCC 1726 as a condominium corporation or otherwise allege that there was any bar to the Receiver's sale of the hotel business to it. Neither did Mr. Verdun. It was TSCC 1703's position that it was the only entity that could solve all of the issues with the hotel and it proceeded to complete the purchase with knowledge of these issues. The Heritage Easement Agreement referred to by Mr. Verdun and counsel for TSCC 1703 in his letter among Appendix "K" was acknowledged as a Permitted Encumbrance in the Approval and Vesting Order and continues to attach to the land. It was not an impediment to a sale of the hotel business.

Prior to the hearing of the motion to approve the sale of the hotel to TSCC 1703, the Mirvish Group expressed concerns regarding the legal right of TSCC 1703 to purchase the hotel business under condominium law and for other reasons. Shortly before the hearing of the motion, the Mirvish Group and TSCC 1703 settled their issues on the basis that Mirvish Group agreed to support the sale and TSCC 1703 agreed to support a quantification of the EME Security of at least $11.9

million. While the settlement *inter partes* did not bind the Receiver or other creditors, the agreement of the two main disputants concerning the sale and the distribution of proceeds of the assets that were the subject matter of the Receivership was a significant milestone in the proceeding.

The result of the transaction was that the Debtors' employees kept their jobs, TSCC 1703 hired as its manager the hotel consultant that the Receiver had hired (CK Atlantis Inc.), and the unit holders obtained control of the hotel for $13.9 million.

The sale was controversial within some ranks of TSCC 1703. A group of unit holders threatened to sue the board of TSCC 1703 for oppression as a result of the board's decision to take on debt to pay for the purchase of the hotel. Mr. Verdun, in his role as a member of the board, expressed his support for the purchase to other unit holders. Attached as **Appendix "L"** is a copy of his email to a unit holder, Mark Borkowski, dated September 8, 2008 in which Mr. Verdun characterized the sale as a "win-win" for unit owners.

It is difficult to understand Mr. Verdun's efforts in early 2009 to challenge the quantum of the EME Security, after he supported the sale and the arrangements between the Mirvish Group and the board of TSCC 1703 (of which Mr. Verdun was a member), that led to the agreement concerning the quantification of the EME Security.

Justice Pepall approved the sale and the settlement among TSCC 1703 and the Mirvish Group. Mr. Verdun did not appear or indicate that he opposed the sale or the settlement between TSCC 1703 and the Mirvish Group. In her Honour's Endorsement, dated September 16, 2008, a copy of which, with counsel's transcription, is attached as **Appendix "M"**, Justice Pepall also approved the Receiver's fees as sought at the time, with the following comment:

> Not only do I approve the Report and fees, I also wish to compliment the Receiver on its carriage of this difficult and challenging receivership. There has been an ongoing increase in the profitability of the business and, as mentioned by the Receiver's counsel, Mr. Myers, the business has been doing very well under the stewardship of the Receiver.

2.9 EME's and Segura's Security and the Resolution of Segura's Application

In September and October of 2007, as is customary and required in any receivership proceeding, the Receiver's counsel conducted detailed security reviews in respect of both the EME Security and the security claimed by Segura. In respect of the EME Security, the Receiver's counsel found that there was a properly registered and valid first mortgage of the freehold lands and the commercial condominium units. Goodmans' lengthy opinion is attached to the Third Report as Exhibit "L" and included many standard qualifications expected in a real estate security opinion. As is also standard practice, the opinion did not comment on the quantum of the indebtedness owing to the Mirvish Group which remained subject to review at a later time.

While the Mirvish Group's security appeared to be valid on its face, Segura's security did not. As set out in Goodman's opinion that is Exhibit "K" to the Third Report, Segura's security was made out in favour of Segura's principal, Mr. Kwan, who was not a creditor of the Debtor companies. Segura claimed that it loaned money to the Debtors, but the security was in the name of Mr. Kwan who did not claim to have personally advanced any funds to the Debtors. Moreover, the Receiver noted that it had not seen any evidence that Segura had advanced funds or value to the Debtors that were in the Receivership. Segura was also a lender to Stinson's failed Sapphire project and had been tied up in those proceedings. It initially appeared that either Segura's lawyer (who was Mr. Kwan's newly called to the bar son) made a mistake by naming the wrong party in the security documents or there was a possibility that Stinson had granted security over SHI to Mr. Kwan to

support prior advances made by Segura or Mr. Kwan to different companies involved in other of Mr. Stinson's projects and this could have been characterized as a reviewable preference. As outlined in the Third Report, the Receiver's counsel made efforts to engage Segura's counsel in discussions of the issues regarding Segura's security. Segura did not respond to the Receiver's counsel's requests for information. Therefore, the Receiver ultimately reported to the Court that, while the Mirvish Group's security appeared to be valid, Segura's security appeared to be invalid.

At the motion to approve the Receiver's Third Report (which included Goodmans' security opinions), among other things, Segura's counsel acknowledged the accuracy of Goodmans' conclusion that Segura's security was invalid but sought to rectify the security on equitable grounds. However, the evidence advanced at first by Segura was inadequate on its face and raised more questions than it answered.

In its Fifth Report, the Receiver pointed out these issues to the Court without taking a formal position on the merits. In particular, the Receiver noted that the security was invalid on its face, that there was little evidence that money or value had been advanced by or on behalf of Segura to the Debtors, and that there was a potential preference issue arising from the fact that, absent a fresh advance, it appeared that the Segura security might have been granted at a time when Stinson's companies were insolvent in order to give a security to a pre-existing lender to other entities. The Receiver, however, never brought nor sought to bring a preference challenge against Segura's security.

At the motion to approve the Receiver's Third Report, the Court required Segura to bring a motion to lift the stay in order to advance a rectification application. Therefore, Segura brought a motion for leave that was heard on February 4, 2008. By Endorsement dated February 5, 2008, a copy of

which is attached as **Appendix "N"**, Pepall J. granted leave to Segura to bring its proposed rectification proceeding on terms that Segura present further evidence in support of its rectification application. Pepall J. also provided in her Endorsement:

> The Receiver is an officer of the Court with duties to all creditors. Obviously, a rectification of the Segura security would adversely impact the unsecured creditors and their recoveries by reducing the amount of money available to them [...]
>
> Although there is no claim asserted against the Receiver *per se*, it seems to me that he should be joined as a party given the nature of the rectification relief being sought.

Pepall J. required that Segura deliver its further evidence to the Receiver within thirty days, failing which the Receiver could move ex parte for the dismissal of the claim. Despite the Receiver having expressly taken no position on the application, given the inter-creditor nature of the issues, and the Receiver's duties to all, Pepall J. joined the Receiver as a party to the Segura rectification application to act adverse to Segura's claim on behalf of unsecured creditors. Over a period of several months, there was document production and examinations of several witnesses. Ultimately, the Receiver came to the view that there had been a solicitor's error in failing to change the name on a draft security document so that the rectification claim appeared to have some merit. However, there remained an issue as to the proof of the quantum of advances from Segura to the Debtors in the Receivership. The Receiver could see that certain of the funds claimed by Segura had been advanced to or on behalf of the Debtors but Mr. Stinson had not been careful in documenting the use of funds. The prospect of tracing every single inter-company payment among the various different projects (which were not in the Receivership) would have been an expensive and complex undertaking. This would also have required a review of the bills paid by Mr. Stinson's companies to try to reconstruct the actual flow of funds on a partial set of poorly maintained records.

Ultimately, the Receiver, Mr. Stinson personally, and counsel for the Mirvish Group and Segura attended a case conference before Campbell J. Mr. Stinson supported Segura on the rectification application so that both parties to the transaction agreed that there had been a misnomer in the security documentation. The Receiver attended the case conference knowing that Segura likely had valid security for its provable advances and that the real remaining issue was proof of the quantum of Segura's secured advances. The Mirvish Group, which was claiming more than $13 million in principal, interest and costs under the EME Security, was prepared to settle with Segura, but its prime goal was to end the Receivership and obtain a distribution of funds from the Receivership with minimal costs as quickly as possible.

The result was a settlement agreement between the Mirvish Group, Segura, Stinson and the Receiver, subject to Court approval, which did the following:

(a) recognized a secured claim from Segura for $600,000 (on its total claim of approximately $1.4 million);

(b) recognized the quantum of the Mirvish Group secured claim at $12.8 million with no unsecured claim; and

(c) established a sharing arrangement between Segura and the Mirvish Group, whereby Segura and the Mirvish Group shared *pro rata* in the first $13.1 million of recovery by the Receiver, then Segura would get the next $300,000 and the balance, if any, would go to unsecured creditors including Segura's remaining claim.

Between the secured claims of the Mirvish Group and the provable secured advances by Segura and the Receiver's fees and expenses, the proceeds of the Receivership were fully accounted for. There

was not enough money available to leave proceeds for unsecured creditors even with Segura agreeing to take only approximately 40% of its claim on a secured basis. Similarly, there was no need to incur further cost on an accounting for the rest of Segura's claim as there were insufficient funds available to pay more in any event. In fact, any further costs incurred by the Receiver would only decrease the amount available for distribution to Segura.

Contrary to Mr. Verdun's assertions, it is not correct that the Mirvish Group's claim increased on the settlement. The Mirvish Group and TSCC 1703 agreed that TSCC 1703 would support EME's claim of at least $11.9 million. While Mirvish Group settled with Segura for more than its principal amount, it compromised on its claim to interest and costs to which EME was entitled under its security. Segura also compromised on a substantial portion of its claim (recognizing the risk to it of a full accounting for every dollar advanced). In all, the secured parties all compromised and a settlement was reached. Campbell J. supervised the case conference that led to the settlement and endorsed the outcome as follows:

> I am satisfied that in the circumstances of the issues and claims the settlement as set out reflects a fair and reasonable compromise of the matters in the actions.

A copy of the Endorsement of Mr. Justice Campbell dated November 19, 2008 is attached as **Appendix "O".**

The Receiver brought a motion to approve the Segura settlement and the proposed distribution of funds by the Receiver. The motion was returnable on December 11, 2008. By that time, no one had sought to continue Mr. Stinson's efforts to bankrupt the Debtors. No one had sought to raise issues with the quantification of the EME Security, which could have proceeded in parallel with the Segura rectification application throughout 2008. TSCC 1703, for the unit holders (and with

Mr. Verdun as a member of its Board) had already agreed to the quantification of EME's claim as part of the settlement of the sale approval motion. Segura also now agreed.

The Receiver reported on the proposed settlement in the Ninth Report including the proposed distribution to the Mirvish Group under the EME Security. The motion to approve the Segura settlement, including the distribution amounts agreed upon, was served on the Service List, including Mr. Verdun. No one, including Mr. Verdun, opposed the making of the Order approving the Segura settlement and the resulting distribution of the proceeds of the Receivership. The Order was made on December 11, 2008 and was never appealed.

2.10 Mr. Verdun's motion challenging EME's security

In late January, 2009, after orders had already been made, on notice, recognizing the validity and the quantum of the EME Security, the Receiver was advised that Mr. Verdun intended to move before the Court to seek to lift the stay of proceedings and for leave to file a statement of claim challenging the quantum of the EME Security (the "**Verdun Claim**").

Pursuant to an Endorsement of Madam Justice Pepall dated February 9, 2009, a timetable was set in respect of the motion regarding the Verdun Claim, and a return date for the motion was set for March 11, 2009 with the deadline for the filing of materials being set for March 3, 2009. Additionally, the parties were ordered to attend a case conference before Campbell, J. on February 27, 2009. The Endorsement of Madam Justice Pepall dated February 9, 2009 is attached as **Appendix "P"**.

In response to Mr. Verdun's efforts to bring proceedings to attack the Mirvish Group's security and the quantification of its claim, counsel for the Mirvish Group produced expert valuation evidence to

the effect that the property that the Mirvish Group sold to DCC and SHI that resulted in the $11.8 million vendor take-back mortgage (i.e. EME's Security), had a value of $12.8 million at the time that the mortgage was granted in 2006. A copy of the executive summary of the report of Cushman & Wakefield LePage dated February 20, 2009 is attached hereto as **Appendix "Q"**. While parties may allocate a purchase price for their own purposes (typically tax-driven purposes), there was significant evidence that the Mirvish Group contributed full value at the time it was granted security. The fact that the Debtors were insolvent at the time does not make a conveyance for value reviewable. While Mr. Verdun complained that the Mirvish Group should not have responded so fully to his motion for leave to attack the EME Security, the response appeared to be a complete answer to Mr. Verdun's allegations.

Following the settlement conference, on March 3, 2009, the Receiver was advised in writing by Mr. Verdun's counsel (who was retained for that motion only) that Mr. Verdun's motion relating to the Verdun Claim was abandoned.

It is germane to note that shortly after being served with Mr. Verdun's motion to lift the stay to challenge EME's Security, beginning on or about February 5, 2009, the Receiver received a sudden influx of e-mail correspondence from unit holders and creditors of the Debtors proffering support for the Verdun Claim and advising the Receiver of their concerns that the Receivership had not been run in an appropriate manner. Mr. Verdun was copied on each of the emails. Many contained very similar language and complaints. All expressed support for Mr. Verdun's motion. In particular, the correspondents complained that no formal meeting of creditors had been held and that the Receiver had not had proper regard for their interests. Many of these complaints are among those now advanced by Mr. Verdun against the Receiver and Goodmans.

Goodmans, as counsel to and on behalf of the Receiver, responded to each of the complaints received. Details and copies of this correspondence were contained in the Tenth Report that was approved by Order dated March 11, 2009.

2.11 Costs of the Abandoned Motion

By Order dated May 29, 2009, Pepall J. awarded costs of the abandoned motion against Mr. Verdun on a partial indemnity basis in favour of each of the Receiver, the Mirvish Group and Segura in the amounts of $21,061.00, $35,949.75 and $2,000.00, respectively. Mr. Verdun advised that he wished to seek leave to appeal to the Court of Appeal and moved for an extension of time within which to do so. In support of his motion for an extension of time, Mr. Verdun delivered an affidavit which the Receiver viewed as containing inappropriate content. The Receiver brought a cross-motion to strike out the affidavit. At the return of the motion, Mr. Verdun agreed to withdraw his affidavit. By Order dated August 6, 2009, Rouleau J.A. granted Mr. Verdun the extension of time that he sought. However, Rouleau J.A. awarded costs of $1,000 against Mr. Verdun in favour of the Receiver due to the filing of his inappropriate affidavit.

By letter dated August 7, 2009, a copy of which is attached as **Appendix "R"**, Goodmans wrote the following to Mr. Verdun:

> We write concerning the form of affidavit that you purported to file with the Court of Appeal which you then withdrew.
>
> As you acknowledged in Court and the Justice noted, the contents of your affidavit were not relevant to the motion before the court nor to the merits of the proposed appeal from the quantification of costs. Furthermore, the Justice specifically advised you that allegations of the type contained in your affidavit when made against professionals will be responded to severely. You have already seen formal written responses, including responses contained in Receiver's Reports that have been filed with the Court, in respect of the allegations that you

repeated in your withdrawn affidavit. Accordingly, you know that any allegations of inappropriate conduct against our client, our firm, and Justice Pepall, are incorrect and unfounded. You have brought professional conduct charges against the Receiver and Mr. Latham which have been uniformly rejected by the respective professional bodies and regulators. Courts have heard your complaints and rejected them by Orders that have not been appealed. The fact that you are a self-styled "public interest advocate" does not give you licence to make defamatory allegations against others particularly knowing that appropriate responses exist. While you may disagree with the law and the processes involved in the application of the law, that does not give you a basis to repeatedly impugn the integrity of those carrying out the legal processes.

Justice Rouleau has ordered you to pay costs in the amount of $1,000.00 to the Receiver as a result of your having filed the withdrawn affidavit with the Court. This should serve as a significant warning to you concerning the severity with which the Court treats this type of conduct. The Court did not stay the costs order nor make payments dependent upon the outcome of the appeal. Accordingly, the costs, as ordered, are payable now. Interest will accrue automatically under the provisions of the Courts of Justice Act. Should you not pay the costs as ordered, the Receiver and its successors have the right to garnish or otherwise seize your assets, including your condominium unit, in order to obtain payment. If you do not pay the costs and require the Receiver to incur further costs to enforce Justice Rouleau's order against you, you will be responsible for those additional costs of enforcement as well.

As you heard in Court, the Receiver is likely to be discharged in the near future. On that basis, it would not intend to participate in your leave to appeal proceedings. However, be advised that should you seek to file another affidavit or any other documentation repeating your allegations, the Receiver will have no alternative but to respond and take all appropriate steps to have the material once again removed from the Court record. It will seek full indemnity from you for all fees and disbursements incurred in doing so. Furthermore, it will rely upon the terms of this letter in advancing whatever relief it deems appropriate before the Court or elsewhere.

For clarity, we hereby demand that you cease and desist from publishing in any manner, including in documents to be filed with the Superior Court of Justice or the Court of Appeal for Ontario, any statements alleging dishonesty or impropriety against the Receiver, its agents and counsel in connection with the 1 King Street West property.

Mr. Verdun ignored the Receiver's admonition. He subsequently delivered a substantially similar affidavit in support of his motion for leave to appeal the May 29, 2009 costs award. The Mirvish Group and the Receiver moved to strike out this affidavit as well. By Endorsement dated November 5, 2009, a copy of which is attached as **Appendix "S"**, MacFarland J.A. struck out the affidavit and significant portions of Mr. Verdun's factum. While MacFarland J.A. would have struck out the affidavit simply because no affidavit material may be filed on a motion for leave to appeal without leave of the Court, she went on to find expressly that Mr. Verdun's affidavit and references to it in his factum were scandalous and vexatious and should be struck on that basis as well:

> The affidavit is scandalous and vexatious. It makes allegations of misconduct on the part of the Court, the Receiver and Counsel. These are serious allegations that are without foundation and should form no part of the public record.

MacFarland J.A. noted that this was not the first time that Mr. Verdun had filed inappropriate material with the Court and awarded costs against him of $1,500 in favour of the Mirvish Group and $500 in favour of the Receiver.

The Court of Appeal has yet to rule on Mr. Verdun's motion for leave to appeal from the costs awards made against him by Pepall J.

2.12 The Claims Process

In order to distribute the proceeds of the sale of the hotel to the secured creditors in the approved amounts, by motion returnable December 11, 2008, the Receiver sought to conduct a call for claims against all of the Debtors and against the Receiver and its counsel. This was necessary to quantify potential claims against the Receiver and its counsel and to seek out other secured claims that might

be entitled to receive distributions in priority to the claims of the secured creditors. Pursuant to the terms of an Order dated December 11, 2008 (the "**Claims Process Order**") the Receiver conducted the claims process.

Pursuant to the terms of paragraph 4(b) of the Claims Process Order:

> any Creditor that does not deliver a Proof of Claim in respect of a Receiver Claim in the manner required by this Order on or before the Claims Bar Date shall be and is hereby forever barred from making or enforcing any Receiver Claim against the Receiver Parties and such Receiver Claim shall be and is hereby extinguished.

A "Receiver Claim" was defined in paragraph 2(c)(ii) the Claims Process Order as follows:

> any right or claim of any Person against ISI, in its capacity as either Monitor or Receiver, or any of its directors, officers, employees, agents, Ira Smith in his personal capacity, or its counsel, Goodmans LLP, or any partners or employees thereof, (collectively the "**Receiver Parties**"), in connection with any indebtedness, liability or obligation that arose from and after the date of the Monitor Order and that pertains to the Receiver Parties' conduct, involvement or duties with respect to the Debtors, the Monitor Proceedings or the Receivership Proceedings, whether reduced to judgment, liquidated, unliquidated, in tort (whether intentional or unintentional), contract, restitution, whether fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, unsecured, perfected, unperfected, present, future, known, unknown, by guarantee, by surety or otherwise (each a "**Receiver Claim**").

As a result of the call for Receiver Claims, over $3 million in Receiver Claims were received, including a Receiver Claim filed by Mr. Verdun.

In accordance with the Claims Process Order the Receiver reviewed all of the Receiver Claims, and issued notices rejecting each of the Receiver Claims filed. None of the claimants, including Mr.

Verdun, exercised their right to appeal the rejection of their claims to the Court within the time allowed for them to do so. The substance of Mr. Verdun's claim as delivered and rejected in the Claims Process is dealt with below.

2.13 Impending Discharge of the Receiver

Since none of the claimants who had filed Receiver Claims appealed their rejection, all such Receiver Claims were rendered invalid by the Claims Process, and all further potential Receiver Claims were barred. Accordingly, this meant that the remaining sales proceeds in the Receiver's possession could be distributed to the ranking secured creditors (subject to a reserve for some future costs). As the final outstanding items relating to the conduct of the Receivership were being completed, the Receiver moved for an order approving the final payment of distributions to creditors, approval of what it believed to be its final report and seeking its discharge and release (the "**Discharge Motion**"). The Receiver's Discharge Motion was heard on August 21, 2009 – exactly two years after the initial August 20 and 21, 2007 hearing dates resulting in the Receiver's appointment. Mr. Verdun attended and opposed the scope of the release sought by the Receiver on the Discharge Motion.

Pursuant to the Discharge Order, pending the occurrence of certain events, the Receiver will be discharged and the Receiver and Goodmans will be released for all matters other than items arising from their "gross negligence or wilful misconduct". However, as a result of Mr. Verdun's pending motion for leave to commence proceedings against ISI and Goodmans, $100,000 of funds which were otherwise to be paid to Segura, were ordered to be held back in order to cover the costs incurred by the Receiver in having to respond to Mr. Verdun's motion. All of the other funds that the Receiver was directed to distribute have now been distributed.

3.0 MR. VERDUN'S ALLEGATIONS AND CLAIMS ARE ENTIRELY WITHOUT MERIT

As set forth in a piecemeal fashion in the Notice of Motion, the Verdun Affidavit and the Draft Statement of Claim, Mr. Verdun takes issue with (i) a myriad of events and items concerning the nature and structure of 1 King West (the project, its corporate organization and operation) that pre-date the Receivership;[1] (ii) the appointment of the Receiver and to some extent the Monitor;[2] and (iii) the conduct of the Receivership, including his objection to certain court Orders.[3] Mr. Verdun alleges that all of these matters are the result of the Receiver and its counsel's gross negligence and wilful misconduct.

It is the Receiver's view that Mr. Verdun has not articulated a cognizable cause of action against either ISI or Goodmans and that his allegations are utterly devoid of merit. While the Receiver feels obliged to respond directly to Mr. Verdun's allegations, it is the Receiver's position (at the simplest level) that, the Claims Process Order stands as a complete bar to any and all of Mr. Verdun's proposed claims and, in any event, they are all matters that were put forward in the contentious Receivership and monitor proceedings in which Mr. Verdun participated and/or was on notice of and are the subject of prior approval orders by the Court in these proceedings.

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[1] See, *inter alia*, paragraphs 9, 10 and 12-15 of the Statement of Claim, see paragraphs 4-10, 11, 12 and 15-23 of the Second Verdun Affidavit and see paragraphs 5-7 of the Notice of Motion.

[2] See, *inter alia*, paragraphs 1, 6,and 16-20 of the Statement of Claim, see paragraphs 13, 32-34 and 36 of the Second Verdun Affidavit and paragraphs 2, 8 and 24 of the Notice of Motion.

[3] See, *inter alia*, paragraphs 2,3, 6-8, 11 and 12 of the Statement of Claim, see paragraphs 3, 25-31, 35, 37, 38 and 40 of the Second Verdun Affidavit and paragraphs 3-6, and 8-10 of the Notice of Motion.

3.1 The Complete Bar of Receiver Party Claims by the Claims Process Order

All of the complaints that form the basis of Mr. Verdun's motion for leave to commence proceedings against ISI and Goodmans concern issues and events that were clearly known to and, to varying degrees, were previously complained of by Mr. Verdun by the time of the Claims Process Order. As noted above, under the Claims Process Order, Mr. Verdun was required to, on or before January 23, 2009 (the "**Claims Bar Date**"), submit all claims against the Receiver Parties, failing which Mr. Verdun is forever barred from doing so and the claims are extinguished.

Mr. Verdun was served with a copy of the Claims Process Order, and delivered a Proof of Claim in respect of a Receiver Claim in which he claimed $25,654.02 for lost income and expenses in respect of his unit at 1 King West for the period from May 1, 2007 to November 30, 2008. Mr. Verdun claimed that the Receiver was personally liable to pay him for alleged loss of income as a result of the stay contained in the Receivership Order that prevented him from removing his unit from the Rental Pool. A copy of Mr. Verdun's Proof of Claim in respect of his Receiver Claim is attached as **Appendix "T"**.

In accordance with the Claims Process Order, on February 20, 2009 the Receiver sent a Notice of Determination rejecting Mr. Verdun's alleged Receiver Claim on the basis that it was a claim as a result of a Court Order and not anything done by the Receiver. A copy of the Receiver's Notice of Determination is attached as **Appendix "U"**. Mr. Verdun did not appeal the Receiver's Notice of Determination as he was entitled to under the Claims Process Order. Paragraph 9(c) of the Claims Process Order provides:

> if no Person appeals the Receiver's Notice of Determination in accordance with paragraph 9(b) of this Order, the Receiver's Notice of Determination shall be final and binding on all Persons and there

> shall be no further right to appeal, review or recourse to this Court or any other court or tribunal in respect of the Receiver's Notice of Determination

As noted by Madam Justice Pepall at paragraph 4 of her Endorsement discharging the Receiver pending certain events:

> Pursuant to a Court order, the Receiver conducted a call for creditor claims against the debtors and for claims against the Receiver and its counsel. Notices of determination dismissing the claims were sent to claimants but no appeals were initiated.

No other Receiver Claims were asserted or filed by Mr. Verdun in the Claims Process despite the fact that all of the claims Mr. Verdun now seeks leave to assert were known to Mr. Verdun at the time of the Claims Process and concern events which clearly pre-date the Claims Bar Date. Therefore all of Mr. Verdun's claims are barred.

3.2 Mr. Verdun's Complaints Concerning Pre-Receivership Matters and Events Are Not Actionable Against the Receiver

As noted above, Mr. Verdun seeks to hold ISI and its counsel responsible for his myriad of complaints concerning the corporate structure and operations of 1 King West, the quality of the RMA's, the nature of 1 King West's title to certain freehold lands, the operations and status of TSCC 1726, the effect of the OSC Ruling and the nature of the Heritage Easement Agreement.

None of these events or matters were the result of any conduct or involvement of ISI whether in its capacity as Monitor or as Receiver, as they pre-date the involvement of ISI and Goodmans. There is no actionable claim that can be or has been advanced by Mr. Verdun against the Receiver or its counsel in this regard.

In any event, as has been detailed above, Mr. Verdun advised the Receiver and Goodmans, at the August 20, 2007 hearing and subsequently, of the OSC Ruling and his views of the meaning and effect of its terms. However, contrary to Mr. Verdun's position, as is apparent from the terms of the OSC Ruling, it does not order that unit holders may leave the hotel pool, and it does not speak to the terms of a stay available in a Court-ordered receivership. Whether or not, in marketing suites, Mr. Stinson or his companies ought to have been or were exempt from a prospectus requirement under securities law had no bearing upon the Receivership. Mr. Verdun's continued reliance upon the OSC Ruling is misplaced as it has no bearing on the scope and terms of the Receivership. In any event, he has not appealed the subsisting Orders to which he objects.

3.3 Mr. Verdun's complaints concerning the appointment of the Receiver are entirely without merit

In essence Mr. Verdun takes issue with the fact that ISI was appointed as Receiver. His issues are premised on the suggestion that there never was a need for a Receiver to be appointed, nor a legal basis for such appointment based on his view of the corporate structure. The Mirvish Group sought the appointment of the Receiver and the Court ruled that it was just and convenient to do so. Mr. Verdun never appealed the Receivership Order.

3.4 The Receivership Order and the Role of the Receiver

Mr. Verdun also repeatedly and wrongly asserts that ISI and Goodmans acted on behalf of the Mirvish Group or otherwise favoured EME's interest throughout the Receivership and pre-receivership period. This is simply untrue. As Mr. Verdun has been informed previously, representatives of the Mirvish Group approached ISI and Goodmans solely in connection with a proposed retainer of ISI as a Court-appointed receiver and manager. ISI and Goodmans have

conducted themselves as officers of the Court throughout. ISI was advised by Goodmans that it had some brief involvement in assisting the Mirvish Group or affiliates in connection with property tax issues at the site several years earlier, which matters had been completed and closed. The prior retainer did not amount to a conflict in any way with the proposed receivership engagement as reducing property taxes for the building benefited the Debtors and all of their stakeholders.

As is normal and appropriate in any Court-appointed receivership, the Mirvish Group's counsel MT brought the application seeking the appointment of the Receiver and they drafted the Receivership Order setting out the terms of the receivership sought by EME as Plaintiff. Mr. Verdun takes issue with the drafting of the Receivership Order by MT as EME's counsel. As the Plaintiff is the moving party in a receivership application, it is standard practice before the Commercial List for the moving party to draft the Order which it seeks to have the Court make. There was nothing unusual or untoward in the manner of the retainer of the ISI, the meetings it and Goodmans had with MT to obtain information, or in the preparation of the draft Receivership Order by EME's counsel.

Throughout the Receivership, the Receiver understood its role to be principally that of maximizing the value of the business and undertaking of the hotel assets in its possession and control for the benefit of all stakeholders who may have an interest in the business and the proceeds thereof. The Receiver did not act partially toward the Mirvish Group. In fact, the Receiver opposed several requests by the Mirvish Group including, but not limited to, opposing a renewed request by the Mirvish Group for a vesting order during the Receivership proceedings in respect of the commercial elements and freehold elements of the hotel business (see: Third Report at para 10.0). In addition, the Receiver and the Mirvish Group had a number of differences of opinion in the course of the Sales Process, not the least of which was whether the Receiver should enter into negotiations with TSCC 1703 for a purchase of the hotel business, as the Mirvish Group believed TSCC 1703 did not

have the ability to purchase the assets. These and other conflicts between Mirvish Group and the Receiver were not always transparent to Mr. Verdun because the Mirvish Group quite properly withdrew from certain proposed courses of conduct upon learning of the Receiver's concerns.

3.5 Representation of Unsecured Creditors

The Receiver denies that Mr. Verdun or the unsecured creditors of the Debtors have been treated unfairly or disadvantaged at all in these proceedings. The economic reality is that there was insufficient realization on the assets of the Debtors to provide recovery for unsecured creditors, other than the distribution of $122,854.00 on account of the Suites Claims under the Supplementary Claims Process (see Receiver's Thirteenth Report at paragraph 8.0). The Receiver, the secured creditors, as the principal economic stakeholders, and the Court were satisfied with the validity and quantum of the secured claims of EME and Segura. No unsecured creditor took any steps to seek a different result until Mr. Verdun's proposed collateral attack on unappealed Orders which he since abandoned. Mr. Verdun is not a representative of the interests of unsecured creditors.

Mr. Verdun has often asserted that there ought to have been a meeting of unsecured creditors. In fact, although they are not creditors *per se*, within days of being appointed, the Receiver convened a meeting of the unit holders of TSCC 1703. The meeting occurred on September 10, 2007 and was reported upon by the Receiver in its First Report at paragraph 10.0. Unlike a bankruptcy, there are no voting rights for unsecured creditors in a receivership so there was never a formal need for a creditors' meeting. Nevertheless, the Receiver was aware of the emotionally-charged, litigious environment and convened a meeting of the unit holders in order to try to establish a calmer approach toward the management and realization of the hotel while the principal parties continued their litigation *inter se*.

Thereafter, the Receiver communicated with unit holders through counsel for TSCC 1703. In addition, the Receiver posted relevant Court filings on its website. Normally, litigation materials are available to the public only at the Court's offices. As in other significant receiverships, the Receiver posted the materials on the internet in order to ensure that the proceedings were transparent and available to those without counsel or who chose not to avail themselves of their right to participate in the proceedings by adding themselves to the Service List. As noted above, the Receiver and its counsel also responded to a host of specific communications received from unsecured creditors or unit holders addressing this very (albeit misinformed) concern.

Mr. Verdun complains that the Receiver would tell creditors who inquired that recovery for unsecured creditors was unlikely. This was the Receiver's true belief and ultimately proved substantially correct. Mr. Verdun also complains that the Receiver did not post on its website the First Supplementary Fifth Report concerning aspects of the Segura application. This was an oversight that was corrected as soon as the Receiver became aware of it. The Receiver notes that it continued to receive several complaints from unit holders in their emails supporting Mr. Verdun on his abandoned motion concerning the unavailability of this report well after the time that it had been posted on the Receiver's website.

The Receiver also notes that Mr. Verdun complains repeatedly about the lack of a specific representative dedicated solely to protecting and advancing the interests of unsecured creditors of the Debtors. However, he took no steps to deal with his concern. None of the unsecured creditors brought a motion for the appointment of representative counsel. Nor did they seek to bankrupt the Debtors. Mr. Verdun was aware of Mr. Stinson's efforts to assign the Debtors into bankruptcy and that Mr. Stinson brought a further motion for leave to bankrupt the Debtors. Mr. Verdun has indicated that he believes that Mr. Stinson ran out of sources of funding and was not able to retain

new counsel to persist with this issue. Neither Mr. Verdun nor the unsecured creditors for whom he purports to speak brought their own motions or sought to schedule the motion that had been brought by Mr. Stinson for hearing. Had they wished to seek the appointment of a trustee in bankruptcy in order to take advantage of the processes available under the *Bankruptcy and Insolvency Act*, including a meeting of creditors, the trustee's enhanced powers of review and having an officer of the Court committed solely to the interests of the unsecured estate, they had the ability to seek that relief. This would have required the moving unsecured creditor(s) to incur legal fees and to indemnify a licensed trustee. A credible trustee would be loathe to agree to act without an indemnity on an assignment involving a litigious estate that was unlikely to see recovery beyond the secured creditors. The Receiver does not quarrel with the economic rationale laying behind the decision of any unsecured creditor to refrain from seeking the appointment of a trustee in bankruptcy in these circumstances. However, Mr. Verdun does not advert to his ability to have sought the appointment of a representative for the unsecured estate had he chosen to do so. The Receiver owed no duty to Mr. Verdun to bankrupt the Debtors.

3.6 Failure to attack EME's Security

Mr. Verdun repeatedly says that the Receiver should have attacked the EME Security for being preferential like it attacked Segura's security and he claims that this discloses a bias in favour of the Mirvish Group. The facts are to the contrary. The Receiver did not bring any preference challenges. It was hesitant in responding to Segura at all and it raised the issue of a possible preference as a possible equitable defence in *favour* of the unsecured creditors in response to an application being brought by Segura on questionable evidence. Mr. Verdun says that the Receiver acted to help the Mirvish Group. In fact, the Receiver recognized that there was a possibility of

better recovery to both the Mirvish Group and the unsecured creditors and acted to protect all of their interests by ensuring that the creditors and the Court were made aware of the issues.

As Mr. Verdun has been told many times, as a representative of all creditors, a Court-appointed receiver does not choose sides as between creditors absent directions from the Court (as were made by Pepall J. in her February 5, 2008 Endorsement). He has apparently never understood the procedural and substantive elements of the Segura issue which is fully detailed above at Sections 2.9 and 2.10.

3.7 The Court Ordered Stay Was Never Appealed

As noted above, Mr. Verdun has consistently expressed a concern that the stay of proceedings in the Receivership Order would prevent unit holders from voluntarily terminating their participation in the Rental Pool during the course of the Receivership. However, as detailed above, this was the subject of a motion by TSCC 1703 which was heard and determined by the Court. No appeal was ever taken by Mr. Verdun or TSCC 1703. Similarly, his complaint was further specifically considered and determined in the Claims Process from which no appeal of the Receiver's Determination was taken.

Finally, Mr. Verdun also ignores his exchange with the Receiver following his email to the Receiver dated February 18, 2009 seeking compensation on behalf of unit holders who were required to maintain their units in the Rental Pool. By return e-mail, the Receiver, through its counsel, urged Mr. Verdun to seek legal advice to better understand the receivership process. The response explained the nature of the stay provision contained in the Receivership Order, and noted that the Receiver's authority, under paragraph 13 of the Receivership Order, was not to "force" people to remain in the pool. To the contrary, paragraph 13 of the Receivership Order allows the Receiver to

authorize people to terminate their agreements despite the stay and without having to seek Court approval. In fact the Receiver did agree to requests from unit holders who wished to terminate their agreements for reasons related to the need to move into their unit, to sell their unit or for financial hardship. All others, and all parties affected by the stay in the Receivership Order, at all times retained their rights to bring a motion to seek to lift the stay. A copy of this exchange is attached as **Appendix "V"**.

In any event, the stay is a lawful and subsisting Order of the Court. A Receiver overseeing a receivership does not incur liability for the consequences of a lawful Order of the Court.

After the Receiver urged Mr. Verdun to seek legal counsel to help explain the process to him and advised that his continued attacks against the Receiver were not helpful or constructive to the process, and in fact resulted in needless costs to creditors who were to receive distributions in the process, no further response was ever received from Mr. Verdun.

3.8 Other Complaints by Mr. Verdun

In paragraphs 2 through 24 of the Verdun Affidavit, Mr. Verdun provides his understanding of the corporate structure of 1 King West and expresses his views that TSCC 1726 is a "fiction" and a "fraud". Upon the Receiver's appointment however, it was presented with a subsisting legal structure including agreements between TSCC 1726, TSCC 1703 and various of the Debtors governing the structure and relationships among the various components that make up the hotel business. Neither Mr. Verdun, nor any of the interested parties, many of whom are signatories to the various documents, brought any proceedings to advance Mr. Verdun's theories. All of Mr. Verdun's concerns pre-date the involvement of the Receiver and do not affect the Receiver's duties to manage and realize upon the assets that were put under its authority.

Mr. Verdun complains in paragraph 30 of his Affidavit that the Monitor sought the name of counsel for the group of unit holders associated with Mr. Verdun. Mr. Verdun characterizes the Monitor's desire to speak with a stakeholder group's lawyer as a breach of privilege. The Monitor neither sought nor ever obtained information in breach of the solicitor and client privilege of the unit holders. Rather, the Monitor sought to speak to a professional advisor for the group since it wished to open a dialogue with such counsel to better understand any issues or concerns. The Monitor never learned the name of such counsel and no dialogue or other attempts at contact were made.

In paragraphs 32 to 35 of his Affidavit, Mr. Verdun raises concerns about the contents of certain press releases published by the Receiver upon its appointment and makes allegations concerning the hotel manager retained by the Receiver. This issue was raised by Mr. Verdun previously and is addressed in the Receiver's Supplementary First Report. The dispute between the Mirvish Group and Mr. Stinson concerning the hotel had attracted a fair degree of negative press attention in Toronto. It is ordinary course procedure for a receiver to seek to notify the market place of its appointment to bring a measure of stability to a volatile situation. Mr. Verdun notes that the Receiver's business was relatively new at that time; however he omits to note that its principal, Ira Smith, has been a licensed trustee in bankruptcy with an active practice in Toronto in a nationally recognized accounting firm for over 25 years. By Order dated October 5, 2007, the Court expressly approved the Receiver's retainer of CK Atlantis Inc. to manage the hotel. The manager retained by the Receiver was sufficiently successful that it was retained by TSCC 1703 as manager upon the purchase of the hotel from the Receiver.

CONCLUSION

The Receiver submits that Mr. Verdun's motion is wholly unfounded and ought to be dismissed in full. He has raised the same allegations repeatedly throughout these proceedings and has had every opportunity to act on them during the Receivership process. He complains about matters which are not actionable, which in some cases he supported during the Receivership process and in other cases he has already raised, and which, in all cases, he had the ability to make timely motions to raise with the Court if he saw fit to do so. He participated in the Claims Process and was required to make any claims he had against the Receiver and its counsel as part of that process. None of the claims he is advancing now were made and all such claims are now barred. In addition, the Receiver's reports and activities have been approved throughout by appropriate Orders obtained on notice to Mr. Verdun. The Receiver submits that it is not appropriate for Mr. Verdun to continue to seek to litigate and re-litigate the same issues. The proceeding is over, the cash has been distributed and finality is required.

To the extent that Mr. Verdun and his supporters complain that the Receiver's fees consumed possible recoveries for them, they and all of the parties were repeatedly warned by the Receiver and the Court of this potentiality in the event that they continued to bring their disputes to the Receivership.

Finally, the Receiver views as shocking the vitriol with which Mr. Verdun has attacked the Court, the Receiver and Goodmans. His allegations of dishonesty and incompetency are unfounded and would be actionable if stated outside of litigation privilege. While Mr. Verdun purports to rely upon the *Explanatory Notes to the Standard Template Receivership Order* in an attempt to embarrass Goodmans and the Court, he ignores the exhortation in the *Explanatory Notes* that one of

the prime purposes of appointing an officer of the Court is to have an independent party preserve and protect of the business from the tactics and conduct of litigating parties and, as such, the Receiver is not a proper target for recovery by creditors.

The Receiver has sympathy for unsecured creditors and the unit holders – especially those who received such emotive messages from both sides but who were just hoping to obtain the realization on their investments that was initially promised to them by Mr. Stinson or others. The Receiver and its counsel did their best to preserve and protect the business and to maximize realization on the Debtors' assets. Neither the Receiver nor Goodmans did anything that could give rise to actionable claims by Mr. Verdun or any other stakeholder for gross negligence, wilful misconduct or otherwise and that is consistent with no such claims having been made during the Claims Process.

The Receiver is cognizant that it is holding $100,000 on account of fees for responding to this motion that would otherwise have been distributed to Segura on account of its proven losses. Mr. Verdun had every opportunity to participate appropriately, appeal when so advised and bring timely motions to advance proper positions. However, it is not appropriate, fair, just or reasonable, for him to wait until the end of the proceedings to advance unfounded, serious allegations, in the face of subsisting Court Orders, including the Claims Process Order and seek to impugn the personal and professional integrity of the Court, the Receiver and Goodmans.

The Receiver respectfully submits that this motion is just another attempt by Mr. Verdun to put his recycled complaints before the Court. He needs to be told once and for all that these matters have already been addressed and he cannot keep trying to re-litigate them at the expense of the other stakeholders in the estate and the professional reputations of those with whom he disagrees. Accordingly, the Receiver respectfully submits that Mr. Verdun's motion should be dismissed and

that Mr. Verdun should be ordered to pay full indemnity costs to the Receiver and to indemnify Segura for having had to bear the costs of the Receiver and Goodmans in responding to this motion.

All of which is respectfully submitted at Toronto, Ontario this 16th day of November, 2009.

IRA SMITH TRUSTEE & RECEIVER INC.
solely in its capacity as the Court-Appointed Receiver
of Stinson Hospitality Inc., Dominion Club of Canada Corporation,
The Suites at 1 King West Inc., and 2076564 Ontario Inc. and not in its
personal Capacity

Per: _____
President

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Ira Smith
TRUSTEE & RECEIVER INC.

TAB A

Court File No.07-CL-6913

ONTARIO

SUPERIOR COURT OF JUSTICE

COMMERCIAL LIST

THE HONOURABLE MADAM	)	FRIDAY, THE 24TH DAY
	)	
JUSTICE PEPALL	)	OF AUGUST, 2007

ED MIRVISH ENTERPRISES LIMITED AND 1 KING WEST INC.

Applicants

- and –

STINSON HOSPITALITY INC., DOMINION CLUB OF CANADA CORPORATION AND HARRY STINSON

Respondents

ORDER

THIS MOTION, made by the Applicants for an Order, *inter alia*, pursuant to section 101 of the *Courts of Justice Act*, R.S.O 1990 c. C.43, as amended (the "**CJA**") appointing Ira Smith Trustee & Receiver Inc. as receiver and manager (in such capacities, the "**Receiver**") without security, of all of the assets, undertakings and properties of Stinson Hospitality Inc. ("**SHI**"), Dominion Club of Canada Corporation ("**Club Corp.**"), The Suites at 1 King West Inc. ("**The Suites**") and 2076564 Ontario Inc. ("**2076564**") was heard this day at 393 University Avenue, Toronto, Ontario.

ON READING the motion record of the Applicants (the "**Applicants' Motion Record**"), the Affidavits of David Mirvish, sworn March 26, 2007, August 1, 2007, and August 16, 2007, the Affidavit of Hank Kates sworn August 16, 2007 the Affidavits of Harry Stinson sworn February 27, 2007, April 18, 2007, August 14, 2007, and August 17, 2007, the Affidavit of Camillo Casciato sworn June 5, 2007, the Affidavit of Steve O'Brien sworn August 17, 2007, the Affidavit of Robert Verdun sworn June 6, 2007, the Affidavit of Christopher Jaglowitz sworn

August 14, 2007, the Affidavit of Johan Demeester sworn August 8, 2007, and the exhibits to the foregoing, the Minutes of Settlement dated April 20, 2007 between the Applicants, SHI and DCC, and the reports of Ira Smith Trustee & Receiver Inc. (the "**Monitor**"), court-appointed monitor of all of the assets, undertaking and property of SHI, Club Corp,. The Suites and 2076564 (collectively, the "**Companies**") dated June 6, 2007, June 22, 2007, August 3, 2007 and August 16, 2007 and the exhibits thereto, and the Affidavit of David Mirvish sworn March 26, 2007 and the exhibits thereto, and on hearing the submissions of counsel for the Applicants, counsel for the Monitor, counsel for the Companies and Mr. Stinson, and counsel for Toronto Standard Condominium Corporation No. 1703 (the "**Residential Condo**") and Mr. Demeester, and on reading the consent of Ira Smith Trustee & Receiver Inc. to act as receiver:

SERVICE

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

APPOINTMENT AS RECEIVER

2. THIS COURT ORDERS that, pursuant to section 101 of the CJA, Ira Smith Trustee & Receiver Inc. (the "**Receiver**") is hereby appointed Receiver, without security, of all of the Companies' current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate, including all proceeds thereof, whether or not used in the hotel rental management and food and beverage program carried on at the premises known municipally as One King West, Toronto, Ontario (collectively, the "**Property**").

DISCHARGE OF MONITOR

3. THIS COURT ORDERS that the appointment of Ira Smith Trustee & Receiver Inc. as monitor of the Companies pursuant to the Order of Mr. Justice Campbell dated April 23, 2007, as amended by the Order of Mr. Justice Campbell dated June 7, 2007 and the Order of Mr. Justice Campbell dated June 26, 2007, in these proceedings be and the same be hereby terminated and that the actions and activities of the Monitor as described in its reports dated August 3, 2007 ~~and August 16, 2007~~ be and the same be hereby approved, and that the Monitor be and is hereby discharged and any claims of any nature whatsoever against the Monitor, in

relation to its activities as Monitor (save in respect of gross negligence and wilful misconduct), shall be forever barred and extinguished and no proceedings alleging gross negligence or wilful misconduct shall be commenced against the Monitor without leave of the Court on notice to the Monitor.

RECEIVER'S POWERS

4. THIS COURT ORDERS that the Receiver is hereby empowered and authorized, but not obligated, to act at once in respect of the Property and, without in any way limiting the generality of the foregoing, the Receiver is hereby expressly empowered and authorized to do any of the following where the Receiver considers it necessary or desirable:

a) to take possession and control of the Property and any and all proceeds, receipts and disbursements arising out of or from the Property;

b) to receive, preserve, protect and maintain control of the Property, or any part or parts thereof, including, but not limited to, the changing of locks and security codes, the relocating of Property to safeguard it, the engaging of independent security personnel, the taking of physical inventories and the placement of such insurance coverage as may be necessary or desirable;

c) to manage, operate and carry on the hotel management and food and beverage businesses of the Companies (collectively, the "**Business**"), including the power and authority to enter into any agreements or incur any obligations in the ordinary course of such Business, to cease to carry on all or any part of such Business, or to perform or cease to perform any contracts of the Companies;

d) to engage consultants, appraisers, agents, experts, auditors, accountants, managers, counsel and such other persons from time to time and on whatever basis, including on a temporary basis, to assist with the exercise of the powers and duties conferred by this Order;

e) to purchase or lease such machinery, equipment, inventories, supplies, premises or other assets to continue the Business of the Companies or any part or parts thereof;

f) to receive and collect all monies and accounts now owed or hereafter owing to the Companies and to exercise all remedies of the Companies in collecting such monies, including, without limitation, to enforce any security held by the Companies in relation to the Business;

g) to settle, extend or compromise any indebtedness owing to the Companies in relation to the Business;

h) to execute, assign, issue and endorse documents of whatever nature in respect of any or all of the Property, whether in the Receiver's name or in the name and on behalf of the Companies, for any purpose pursuant to this Order;

i) to undertake environmental or workers' health and safety assessments of the Property and operations of the Companies in relation to the Business;

j) to initiate, prosecute and continue the prosecution of any and all proceedings and to defend all proceedings now pending or hereafter instituted with respect to the Companies in relation to the Business, the Property or the Receiver, and to settle or compromise any such proceedings. The authority hereby conveyed shall extend to such appeals or applications for judicial review in respect of any order or judgment pronounced in any such proceeding;

notice of such settlement will be provided by the receiver to Mr. Jacques, counsel for Mr. Soussa + the company in receivership SVP

k) subject to the terms of this Order, to market any or all of the Business or the Property, including advertising and soliciting offers in respect of the Business or the Property, or any part or parts thereof, and negotiating such terms and conditions of sale as the Receiver in its discretion may deem appropriate;

l) to sell, convey, transfer, lease, assign or refinance the Business or the Property or any part or parts thereof out of the ordinary course of business,

(i) without the approval of this Court in respect of any transaction not exceeding $500,000, provided that the aggregate consideration for all such transactions does not exceed $1 million; and

GDP

(ii) with the approval of this Court in respect of any transaction in which the purchase price or the aggregate purchase price exceeds the applicable amount set out in the preceding clause,

and in each such case notice under subsection 63(4) of the Ontario *Personal Property Security Act*, or section 31 of the Ontario *Mortgages Act*, as the case may be, shall not be required, and in each case the Ontario *Bulk Sales Act* shall not apply;

m) subject to the terms of this Order, to apply for any vesting order or other orders necessary to convey the Business or the Property or any part or parts thereof to a purchaser or purchasers thereof, free and clear of any liens or encumbrances affecting such Property;

n) to report to, meet with and enter into discussions with such affected Persons (as defined below) as the Receiver deems appropriate concerning all matters relating to the Business, the Property or the receivership, and to share information, subject to such terms as to confidentiality as the Receiver deems advisable;

o) to register a copy of this Order and any other Orders in respect of the Property against title to any of the Property;

p) to apply for any permits, licences, approvals or permissions as may be required by any governmental authority and any renewals thereof for and on behalf of and, if thought desirable by the Receiver, in the name of the Companies;

q) to enter into agreements with any trustee in bankruptcy appointed in respect of the Companies, including, without limiting the generality of the foregoing, the ability to enter into occupation agreements for any property owned or leased by the Companies in relation to the Business;

r) to exercise any shareholder, partnership, joint venture or other rights which the Companies may have, including, without limitation, any rights of the Companies in connection with or pursuant to (i) the declaration, by-laws or other constating

documents of the Residential Condo or Toronto Standard Condominium Corporation No. 1726 (the "**Commercial Condo**"), (ii) the reciprocal agreement made with effect as of September 9, 2005 between the Residential Condo, the Commercial Condo and 1 King West Inc., as assigned and assumed pursuant to an assignment and assumption of reciprocal agreement dated as of March 6, 2006, and (iii) the lease operating agreement dated the 18th day of November, 2005 between the Residential Condo and Commercial Condo; and

s) to take any steps reasonably incidental to the exercise of these powers,

and in each case where the Receiver takes any such actions or steps, it shall be exclusively authorized and empowered to do so, to the exclusion of all other Persons (as defined below), including the Companies, and without interference from any other Person.

5. THIS COURT ORDERS that the Receiver, in operating the Business of The Suites, subject to further of this Court, is hereby authorized and directed to make distributions to residential condominium unit owners who participate in the hotel program, all pursuant to existing arrangements between the Companies and such condominium units owners.

6. THIS COURT ORDERS that the Receiver shall, on or before September 4, 2007, determine which parties should receive notice in the event that the Applicants wish to seek the vesting order contemplated in the Applicants' Motion Record.

DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE RECEIVER

7. THIS COURT ORDERS that (i) the Companies; (ii) all of the Companies' current and former directors, officers, employees, agents, accountants, legal counsel and shareholders, and all other persons acting on its instructions or behalf; (iii) Harry Stinson, Stinson Properties Inc. and all companies related to, or affiliated with, any of the Companies; (iv) the Residential Condo and all of its current and former directors, officers, employees, agents, accountants, legal counsel and shareholders, and all other persons acting on its instructions or behalf; (v) the Commercial Condo and all of its current and former directors, officers, employees, agents, accountants, legal counsel and shareholders, and all other persons acting on its instructions or behalf; (vi) the Applicants and all entities related to, or affiliated with, any of the Applicants; and (vii) all other individuals, firms, corporations, governmental bodies or agencies, or other entities having notice

of this Order (all of the foregoing, collectively being "**Persons**" and each being a "**Person**") shall forthwith advise the Receiver of the existence of any Property in such Person's possession or control, shall grant immediate and continued access to the Property to the Receiver, and shall deliver all such Property to the Receiver upon the Receiver' request.

8. THIS COURT ORDERS that all Persons shall forthwith advise the Receiver of the existence of any books, documents, securities, contracts, orders, corporate and accounting records, and any other papers, records and information of any kind related to the Business or other affairs of the Companies, and any computer programs, computer tapes, computer disks, or other data storage media containing any such information (the foregoing, collectively, the "**Records**") in that Person's possession or control, and shall provide to the Receiver or permit the Receiver to make, retain and take away copies thereof and grant to the Receiver unfettered access to and use of accounting, computer, software and physical facilities relating thereto, provided however that nothing in this paragraph 8 or any other paragraph of this Order shall require the delivery of Records, or the granting of access to Records, which may not be disclosed or provided to the Receiver due to the privilege attaching to solicitor-client communication or due to statutory provisions prohibiting such disclosure.

9. THIS COURT ORDERS that if any Records are stored or otherwise contained on a computer or other electronic system of information storage, whether by independent service provider or otherwise, all Persons in possession or control of such Records shall forthwith give unfettered access to the Receiver for the purpose of allowing the Receiver to recover and fully copy all of the information contained therein whether by way of printing the information onto paper or making copies of computer disks or such other manner of retrieving and copying the information as the Receiver in its discretion deems expedient, and shall not alter, erase or destroy any Records without the prior written consent of the Receiver. Further, for the purposes of this paragraph, all Persons shall provide the Receiver with all such assistance in gaining immediate access to the information in the Records as the Receiver may in its discretion require including providing the Receiver with instructions on the use of any computer or other system and providing the Receiver with any and all access codes, account names and account numbers that may be required to gain access to the information.

NO PROCEEDINGS AGAINST THE RECEIVER

10. THIS COURT ORDERS that no proceeding or enforcement process in any court or tribunal (each, a **"Proceeding"**), shall be commenced or continued against the Receiver except with the written consent of the Receiver or with leave of this Court.

NO PROCEEDINGS AGAINST THE COMPANIES OR THE PROPERTY

11. THIS COURT ORDERS that no Proceeding against or in respect of any aspect of the Companies, the Business or the Property shall be commenced or continued except with the written consent of the Receiver or with leave of this Court and any and all Proceedings currently under way against or in respect of the Companies (in respect of any aspect of the Business) or the Property are hereby stayed and suspended pending further Order of this Court. For greater certainty, nothing in this Order shall prevent the continuation of the proceeding Court File No. 07-CV-329252PD1.

NO EXERCISE OF RIGHTS OR REMEDIES

12. THIS COURT ORDERS that all rights and remedies against the Companies in relation to the Business, the Receiver, or affecting the Property are hereby stayed and suspended except with the written consent of the Receiver or leave of this Court, provided however that nothing in this paragraph shall (i) empower the Receiver or the Companies to carry on any business which the Companies are not lawfully entitled to carry on, (ii) exempt the Receiver or the Companies from compliance with statutory or regulatory provisions relating to health, safety or the environment, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien.

NO INTERFERENCE WITH THE RECEIVER

13. THIS COURT ORDERS that no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the Companies, without written consent of the Receiver or leave of this Court.

CONTINUATION OF SERVICES

14. THIS COURT ORDERS that all Persons having oral or written agreements with the Companies in relation to the Business or statutory or regulatory mandates for the supply of goods and/or services, including without limitation, all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation services, utility or other services to the Companies in relation to the Business are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Receiver, and that the Receiver shall be entitled to the continued use of the Companies' current telephone numbers, facsimile numbers, internet addresses and domain names in relation to the Business, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Receiver in accordance with normal payment practices of the Companies or such other practices as may be agreed upon by the supplier or service provider and the Receiver, or as may be ordered by this Court.

RECEIVER TO HOLD FUNDS

15. THIS COURT ORDERS that all funds, monies, cheques, instruments, and other forms of payments received or collected by the Receiver from and after the making of this Order from any source whatsoever in relation to the Business, including without limitation, the sale or refinancing of all or any of the Business or the Property (in accordance with, and subject to the provisions of this Order) and the collection of any accounts receivable in relation to the Business in whole or in part, whether in existence on the date of this Order or hereafter coming into existence, shall be deposited into one or more new accounts to be opened by the Receiver (the **"Post Receivership Accounts"**) and the monies standing to the credit of such Post Receivership Accounts from time to time, net of any disbursements provided for herein, shall be held by the Receiver to be paid in accordance with the terms of this Order or any further Order of this Court. Nothing herein shall prevent the Receiver from continuing with existing banking arrangements, subject to the Receiver maintaining management and control over existing bank accounts.

OVP

EMPLOYEES

16. THIS COURT ORDERS that all employees of the Companies in relation to the Business shall remain the employees of the Companies until such time as the Receiver, on the Companies' behalf, may terminate the employment of such employees. The Receiver shall not be liable for any employee-related liabilities, including wages, severance pay, termination pay, vacation pay, and pension or benefit amounts, other than such amounts as the Receiver may specifically agree in writing to pay, or such amounts as may be determined in a Proceeding before a court or tribunal of competent jurisdiction.

17. THIS COURT ORDERS that, pursuant to clause 7(3)(c) of the Canada *Personal Information Protection and Electronic Documents Act*, the Receiver shall disclose personal information of identifiable individuals to prospective purchasers or bidders for the Business or the Property and to their advisors, but only to the extent desirable or required to negotiate and attempt to complete one or more sales of the Business or the Property in accordance with, and subject to, the balance of the provisions of this Order (each, a "**Sale**"). Each prospective purchaser or bidder to whom such personal information is disclosed shall maintain and protect the privacy of such information and limit the use of such information to its evaluation of the Sale, and if it does not complete a Sale, shall return all such information to the Receiver, or in the alternative destroy all such information. The purchaser of any part of the Business or the Property shall be entitled to continue to use the personal information provided to it, and related to the Business or the Property purchased, in a manner which is in all material respects identical to the prior use of such information by the Companies, and shall return all other personal information to the Receiver, or ensure that all other personal information is destroyed.

LIMITATION ON ENVIRONMENTAL LIABILITIES

18. THIS COURT ORDERS that nothing herein contained shall require the Receiver to occupy or to take control, care, charge, possession or management (separately and/or collectively, "**Possession**") of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the

Canadian Environmental Protection Act, the Ontario *Environmental Protection Act*, the Ontario *Water Resources Act*, or the Ontario *Occupational Health and Safety Act* and regulations thereunder (the "**Environmental Legislation**"), provided however that nothing herein shall exempt the Receiver from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Receiver shall not, as a result of this Order or anything done in pursuance of the Receiver's duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

LIMITATION ON THE RECEIVER'S LIABILITY

19. THIS COURT ORDERS that the Receiver shall incur no liability or obligation as a result of its appointment or the carrying out the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part. Nothing in this Order shall derogate from the protections afforded the Receiver by section 14.06 of the *Bankruptcy and Insolvency Act* or by any other applicable legislation.

RECEIVER'S ACCOUNTS

20. THIS COURT ORDERS that any expenditure or liability which shall properly be made or incurred by the Receiver, including the fees of the Receiver and the fees and disbursements of its legal counsel, incurred at the standard rates and charges of the Receiver and its counsel, shall be allowed to it in passing its accounts and shall form a first charge on the Business and the Property in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person (the "**Receiver's Charge**").

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

22. THIS COURT ORDERS that prior to the passing of its accounts, the Receiver shall be at liberty from time to time to apply reasonable amounts, out of the monies in its hands, against its fees and disbursements, including legal fees and disbursements, incurred at the normal rates and charges of the Receiver or its counsel, and such amounts shall constitute advances against its remuneration and disbursements when and as approved by this Court.

DMP

FUNDING OF THE RECEIVERSHIP

23. THIS COURT ORDERS that the Receiver be at liberty and it is hereby empowered to borrow by way of a revolving credit or otherwise, such monies from time to time as it may consider necessary or desirable, provided that the outstanding principal amount does not exceed $500,000 (or such greater amount as this Court may by further Order authorize) at any time, at such rate or rates of interest as it deems advisable for such period or periods of time as it may arrange, for the purpose of funding the exercise of the powers and duties conferred upon the Receiver by this Order, including interim expenditures. The whole of the Business and the Property shall be and is hereby charged by way of a fixed and specific charge (the "**Receiver's Borrowings Charge**") as security for the payment of the monies borrowed, together with interest and charges thereon, in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subordinate in priority to the Receiver's Charge.

24. THIS COURT ORDERS that neither the Receiver's Borrowings Charge nor any other security granted by the Receiver in connection with its borrowings under this Order shall be enforced without leave of this Court.

25. THIS COURT ORDERS that the Receiver is at liberty and authorized to issue certificates substantially in the form annexed as Schedule "A" hereto (the "**Receiver's Certificates**") for any amount borrowed by it pursuant to this Order.

26. THIS COURT ORDERS that the monies from time to time borrowed by the Receiver pursuant to this Order or any further order of this Court and any and all Receiver's Certificates evidencing the same or any part thereof shall rank on a pari passu basis, unless otherwise agreed to by the holders of any prior issued Receiver's Certificates.

GENERAL

27. THIS COURT ORDERS that the Receiver may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

28. THIS COURT ORDERS that nothing in this Order shall prevent the Receiver from acting as a trustee in bankruptcy of the Companies.

~~29. THIS COURT ORDERS that this Order shall apply notwithstanding the pendancy of any other proceedings involving any of the Companies and the provisions of any federal or provincial statute, and any and all steps taken by the Receiver pursuant to this Order shall be valid as against any and all parties including any trustee in bankruptcy that may be appointed in respect of any of the Companies.~~

30. THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.

31. THIS COURT ORDERS that the Receiver be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order.

~~32. THIS COURT ORDERS that the Applicants shall have their costs of this motion, up to and including entry and service of this Order, provided for by the terms of the Applicants' security or, if not so provided by the Applicants' security, then on a substantial indemnity basis to be paid by the Receiver from the Companies' estate with such priority and at such time as this Court may determine.~~

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

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

AUG 28 2007

PER/PAR:

S.E. Pepall, J.

SCHEDULE "A"
RECEIVER CERTIFICATE

CERTIFICATE NO. _____

AMOUNT $_____

1. THIS IS TO CERTIFY that Ira Smith Trustee & Receiver Inc., the receiver and manager (the "Receiver") of the assets, undertakings and properties of Stinson Hospitality Inc., Dominion Club of Canada Corporation, The Suites at 1 King West Inc. and 2076564 Ontario Inc. appointed by Order of the Ontario Superior Court of Justice (the "Court") dated the 24th day of August, 2007 (the "Order") made in an action having Court file number 07-CL-6913, has received as such Receiver from the holder of this certificate (the "Lender") the principal sum of $_____, being part of the total principal sum of $_____ which the Receiver is authorized to borrow under and pursuant to the Order.

2. The principal sum evidenced by this certificate is payable on demand by the Lender with interest thereon calculated and compounded [daily][monthly not in advance on the _____ day of each month] after the date hereof at a notional rate per annum equal to the rate of _____ per cent above the prime commercial lending rate of Bank of _____ from time to time.

3. Such principal sum with interest thereon is, by the terms of the Order, together with the principal sums and interest thereon of all other certificates issued by the Receiver pursuant to the Order or to any further order of the Court, a charge upon the whole of the Property (as defined in the Order), in priority to the security interests of any other person, but subject to the priority of the charges set out in the Order, and the right of the Receiver to indemnify itself out of such Property in respect of its remuneration and expenses.

4. All sums payable in respect of principal and interest under this certificate are payable at the main office of the Lender at Toronto, Ontario.

5. Until all liability in respect of this certificate has been terminated, no certificates creating charges ranking or purporting to rank in priority to this certificate shall be issued by the Receiver

to any person other than the holder of this certificate without the prior written consent of the holder of this certificate.

6. The charge securing this certificate shall operate so as to permit the Receiver to deal with the Property (as defined in the Order) as authorized by the Order and as authorized by any further or other order of the Court.

7. The Receiver does not undertake, and it is not under any personal liability, to pay any sum in respect of which it may issue certificates under the terms of the Order.

DATED the _____ day of _____, 2007

Ira Smith Trustee & Receiver Inc., solely in its capacity as Receiver of the Property (as defined in the Order), and not in its personal capacity

Per: _____

Name:
Title:

ED MIRVISH ENTERPRISES LIMITED AND
1 KING STREET WEST INC.

Applicants

- and -

STINSON HOSPITALITY INC., DOMINION CLUB OF CANADA CORPORATION AND HARRY STINSON

Respondents

Court File No. 07-CL-6913

ONTARIO
SUPERIOR COURT OF JUSTICE

Proceeding commenced at Toronto

ORDER

MILLER THOMSON LLP
Scotia Plaza
40 King Street West, Suite 5800
P.O. Box 1011
Toronto, ON Canada M5H 3S1

Jeffrey C. Carhart LSUC#: 23645M
Tel: (416) 595-8615
Fax: (416) 595-8695
Email: jcarhart@millerthomson.com

Margaret R. Sims LSUC#: 39664I
Tel: (416) 595-8577
Fax: (416) 595-8695
Email: msims@millderthomson.com

Solicitors for the Applicants

GOODMANS\\5485973

TAB B

Court File No. 07-CL-6913

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE MADAM	)	FRIDAY, THE 25TH DAY
	)	
JUSTICE PEPALL	)	OF SEPTEMBER, 2009

ED MIRVISH ENTERPRISES LIMITED AND 1 KING WEST INC.

Applicants

- and -

STINSON HOSPITALITY INC., DOMINION CLUB OF CANADA CORPORATION AND HARRY STINSON

Respondents

DISCHARGE ORDER

THIS MOTION, made by Ira Smith Trustee & Receiver Inc. (the "**ISI**"), in its capacity as court-appointed receiver and manager (the "**Receiver**") of the all of the assets, undertakings and properties of Stinson Hospitality Inc. ("**SHI**"), Dominion Club of Canada Corporation ("**DCC**"), The Suites at 1 King West Inc. (the "**Suites**") and 2076564 Ontario Inc. ("**Housekeeping**") (collectively, the "**Debtors**"), for an for an Order substantially in the form attached as Schedule A to the Receiver's Notice of Motion dated August 17, 2009, was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Thirteenth Report of the Receiver dated August 17, 2009, filed, (the "Thirteenth Report") and the exhibits thereto, the Affidavit of Ira Smith sworn August 17, 2009 and the Affidavit of L. Joseph Latham sworn August 17, 2009 (together, the "**Fee Affidavits**"), and upon hearing the submissions of counsel for the Receiver, counsel for the Applicants, and counsel for Segura Investments Ltd., Harry Stinson appearing in person, J. Robert Verdun appearing in person and no one appearing for the other parties served with the Receiver's Motion Record, although duly served as appears from the Affidavit of Service of Hannah Arthurs sworn August 18, 2009:

1. **THIS COURT ORDERS** that the time for service of the Motion Record be and is hereby abridged, that the Motion is properly returnable today, that the service of the Motion Record, including the manner of service, is hereby approved and that any requirement for service of the Motion Record upon any party, other than those served, is hereby dispensed with.

2. **THIS COURT ORDERS** that the activities of the Receiver, as set out in the Thirteenth Report, are hereby approved.

3. **THIS COURT ORDERS** that the fees and disbursements of the Receiver and its counsel, as set out in the Thirteenth Report and the Fee Affidavits, are hereby approved.

4. **THIS COURT ORDERS** that, after payment of the fees and disbursements herein approved, the Receiver is authorized and directed to pay from the funds remaining in the Suites that are in its possession the following amounts:

Claimant	Amount Claimed	Amount Allowed	Amount to be Paid
Bell	$1,677.76	$1,677.76	$364.42
Corporate Housing Locator	$1,776.56	$1,776.56	$385.89
St. Joseph Media	$4,234.70	$4,234.70	$919.82
3627730 Canada Inc. (AVW-Telav)	$1,601.76	$1,601.76	$347.92
Avis Rent-a-Car	$626.05	$626.05	$135.98
Bateman Mackay Chartered Accountant	$3,460.73	$3,460.73	$751.70
Canada Law Book	$1,291.57	$1,291.57	$280.54
Dael Thermal Group Inc.	$5,978.19	$,5978.19	$1,298.52
Fisher Distributing Inc.	$1,094.70	$1,094.70	$237.78
Flexco Products Limited	$6,870.40	$6,870.40	$1,492.31
Gordon Adams Design Limited	$25,552.88	$25,552.88	$5,550.32
Ira Smith Trustee & Receiver Inc., solely in its capacity as Court Appointed Receiver of Dominion Club of Canada Corporation	$38,525.00	$38,525.00	$8,367.98
Lan-Ray Cleaners	$3,857.10	$1,601.32	$347.82
Linx Mechanical	$37,092.15	$37,092.15	$8,056.76
Printing and Copy Centre	$717.29	$717.29	$155.80
Relational Funding Canada Corp.	$412,368.99	$412,368.99	$89,570.33
Shift4 Corporation	$360.62	$360.62	$78.33
Sign One	$592.80	$592.80	$128.76
Spafax Canada Inc.	$10,123.00	$10,123.00	$2,198.81
TOTAL	**$567,858.02**	**$565,602.24**	$122,854.00

5. **THIS COURT ORDERS** that, in respect of the claim of Harry Stinson against the Suites and the amounts otherwise payable to him in connection therewith, the Receiver is authorized and directed to transfer the amount of $1,403.50 to the Receiver's general estate accounts for distribution under paragraph 6 hereof and to make payment of the amount of $780.71 to Harry Stinson, the foregoing in full satisfaction of all claims of Mr. Stinson against the Suites.

6. **THIS COURT ORDERS** that, after payment of the fees and disbursements herein approved, the Receiver is authorized and directed to pay from the proceeds of the realization of the assets of the Debtors, other than the Suites, that are in its possession the following amounts:

(a) to Ed Mirvish Enterprises Limited the amount of $742,674.77 on account of its secured claim; and

(b) to Segura Investments Ltd. the amount of $47,137.91 on account of its secured claim.

6A. **THIS COURT ORDERS** that the Receiver is authorized and directed to retain the sum of $100,000.00 as a reserve (the "**Reserve**") for fees, disbursements and costs which it may incur in connection with, *inter alia*, any pending or threatened motions seeking leave to commence proceedings against the Receiver or its counsel, and the Receiver is authorized and direct to pay to Segura any amount of the Reserve which is not required to pay the fees, disbursements or costs incurred by the Receiver in such matters.

7. **THIS COURT ORDERS** that the Receiver is authorized and directed to assign to Segura the Receiver's right, title and interest in and to the award of costs against Robert Verdun contained in the Order of this Honourable Court dated May 29, 2009 and the award of costs against Robert Verdun contained in the endorsement of the Honourable Justice Rouleau in Court File Nos. M37703 and M37876.

8. **THIS COURT ORDERS AND DIRECTS** Toronto Standard Condominium Corporation 1703 ("**TSCC 1703**") to cooperate with the Receiver by sending a copy of this Order, as issued and entered, by electronic mail to the electronic addresses of the unit holders of TSCC 1703 currently listed with the property manager retained by TSCC 1703, and to provide the Receiver with proof of such delivery in the form of an Affidavit within 5 days of the date of this Order; provided that the Receiver is directed to pay to TSCC 1703 its reasonable costs associated with the electronic service of this Order, to a maximum of $2,000.00.

9. **THIS COURT ORDERS** that, upon the filing with this Court of a Certificate of the Receiver confirming (i) payment of the amounts set out in paragraphs 4, 5, 6 and 6A hereof, (ii) execution of an assignment as referred to in paragraph 7 hereof, and (iii) receipt of the affidavit referred to in paragraph 8 hereof, the Receiver shall be discharged as Receiver of the undertaking, property and assets of the Debtors.

10. **THIS COURT ORDERS** that notwithstanding its discharge, the Receiver shall continue to have the benefit of the provisions of all Orders made in this proceeding, including all

approvals, protections and stays of proceedings in favour of ISI in its capacity as Receiver.

11. **THIS COURT ORDERS AND DECLARES** that, effective upon the filing with this Court of the Certificate of the Receiver referred to in paragraph 9 above, ISI, in its capacity as both Monitor and Receiver, and all of its directors, officers, employees and agents, and Goodmans LLP and all partners and employees thereof (collectively the "**Receiver Parties**"), are hereby released and discharged from any and all liability that the Receiver Parties now have or can, may or shall have hereafter by reason of, or in any way arising out of, or in connection with the Receiver Parties' conduct, involvement or duties with respect to the Debtors or in any way in connection with these proceedings, save and except for gross negligence or willful misconduct. Without limiting the generality of the foregoing, the Receiver Parties are hereby forever released and discharged from any and all liability relating to matters that were raised, or which could have been raised, in these proceedings, save and except for gross negligence or willful misconduct.

Pepall J.

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

OCT 05 2009

PER / PAR: Joanne Nicoara
Registrar, Superior Court of Justice

ED MIRVISH ENTERPRISES LIMITED AND 1 KING WEST INC. Applicants	and	**STINSON HOSPITALITY INC., DOMINION CLUB OF CANADA CORPORATION AND HARRY STINSON** Respondents	Court File No: 07-CL-6913

ONTARIO

SUPERIOR COURT OF JUSTICE

Proceeding commenced at Toronto

DISCHARGE ORDER

GOODMANS LLP
Barristers & Solicitors
Suite 2400, Box 20
250 Yonge Street
Toronto, Canada M5B 2M6

Fred Myers (LSUC#26301A)
L. Joseph Latham (LSUC#32326A)
Lauren Butti (LSUC#47083W)

Tel: 416.979.2211
Fax: 416.979.1234

Counsel to Ira Smith Trustee & Receiver Inc., in its capacity as receiver and manager and former monitor of Stinson Hospitality Inc., Dominion Club of Canada Corporation, The Suites at 1 King West Inc. and 2076564 Ontario Inc.

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TAB C

APPENDIX "C"

The Receiver filed its first report (the "**First Report**") on October 1, 2007 detailing the Receiver's activities following its appointment including the conduct of meetings with affected parties (e.g., unit holders, TSCC 1703, and staff) regarding the continued operations of the Debtors, taking control of the Debtor's books, records, and accounts, retaining an independent hospitality consulting firm, CK Atlantis Inc., and commissioning an operations audit report from CK regarding 1 King West. The First Report, including the activities of the Receiver detailed therein, was approved by the Honourable Madam Justice Pepall by Order dated October 5, 2007 (the "**First Approval Order**").

The Receiver filed a supplementary report dated October 4, 2007 (the "**First Supplementary Report**"). In this report, the Receiver responded to issues raised by Mr. Verdun in response to his motion seeking intervener status in the Receivership proceeding, many of which are the same issues that Mr. Verdun raises on this motion.

The Receiver filed its Second Report to Court on October 22, 2007 (the "**Second Report**") and its Supplementary Report to the Second Report on October 23, 2007 (the "**Supplementary Second Report**"). In its reports, the Receiver detailed for the Court its ongoing activities, provided updated and projected financial information for the Debtors (including projections reflecting the operational changes to be implemented by CK Atlantis Inc.), responded to the pending motion by TSCC 1703 and a unitholder regarding owners participation in the Rental Pool and reporting on the Receiver's fees and disbursements. Certain of the Receiver's recommendations in the Second Report were approved by the Honourable Madam Justice Pepall by Order dated October 24, 2007 (the "**Second Approval Order**"). However, the Receiver's requests for approval of the Receiver's accounts and those of its legal counsel, and approval of the Receiver's actions and activities, all as detailed in the

Second Report, were adjourned to permit counsel for TSCC 1703 an opportunity to review the Second Report. The Second Approval Order approved all of the other relief requested at that time by the Receiver.

The Receiver filed its Third Report on December 28, 2007 (the "**Third Report**") detailing the activities of the Receiver, issues regarding the FF&E Reserve, and updating the financial information, including cash flows projections for the Debtors. The Third Report and the balance of the matters not approved by the Second Approval Order including all of the actions of the Receiver were approved by the Honourable Madam Justice Pepall by Order dated January 9, 2008 (the "**Third Approval Order**").

The Receiver filed its fourth report (the "**Fourth Report**") on January 18, 2008. The Fourth Report dealt only with the Receiver's motion for approval of the proposed sales process for the assets, properties and undertakings of the Debtors (the "**Sales Process**"). The Fourth Report, with some minor amendments, was approved by the Honourable Madam Justice Pepall by Order dated January 24, 2008 (the "**Fourth Approval Order**").

The Receiver filed its fifth report (the "**Fifth Report**") on January 31, 2008. The Fifth Report provided an update on the status of the improving hotel operations as at December 31, 2007, advised of the Receiver's position concerning both the amended motion of Unite Here Local 75 (the "**Union**") and the rectification application of Segura Investments Ltd., its principal Tim Kwan, and 1392964 Ontario Limited (collectively "**Segura**") as of that date (the "**Segura Application**"), and in support of the Receiver's motion for approval of the proposed sales process for the assets, properties and undertakings of the Debtors. The Fifth Report and the activities of the Receiver were

approved by the Honourable Madam Justice Pepall by Order dated February 19, 2008 (the "**Fifth Approval Order**").

On April 4, 2008, the Receiver filed its First Supplementary Fifth Report (the "**First Supplementary Fifth Report**") and its Second Supplementary Fifth Report (the "**Second Supplementary Fifth Report**") in connection with the Segura Application and the Union motion, respectively. A settlement of the Union motion was achieved and approved by the Honourable Madam Justice Pepall by Order dated April 9, 2008. By Endorsement dated May 26, 2008, the Honourable Madam Justice Pepall ordered that the Segura Application be heard on June 27, 2008, and approved a schedule for the delivery of facta by the various interested parties.

The Receiver filed its sixth report (the "**Sixth Report**") on June 13, 2008. The Sixth Report provided an update on the status of the hotel operations and advised of the ongoing actions and activities of the Receiver including the settlement reached between the Receiver and the Union in connection with the Union's amended motion, the status of the Segura Application and the sale process. The Sixth Report and the actions of the Receiver were approved by the Honourable Madam Justice Pepall by Order dated July 11, 2008 (the "**Sixth Approval Order**").

The Receiver filed its seventh report (the "**Seventh Report**") on September 9, 2008. The Seventh Report detailed the information concerning the Sales Process, including a copy of the Asset Purchase Agreement dated August 29, 2008 between the Receiver, as vendor, and TSCC 1703, as purchaser, as well as other details of the Receiver's ongoing actions and activities. On September 11, 2008, the Receiver filed a supplementary report to the Receiver's Seventh Report (the "**Supplementary Seventh Report**") updating the Court with respect to two matters covered in the

Receiver's Seventh Report. The Receiver's Seventh Report was approved by the Honourable Madam Justice Pepall by Order dated September 16, 2008 (the "**Seventh Approval Order**").

On October 28, 2008, the Receiver filed its eighth report (the "**Eighth Report**") in connection with its motion to strike the Statement of Defence purported to have been delivered and filed by Mr. Stinson, on behalf of SHI in the Segura Application. By Order dated October 31, 2008, the Honourable Madam Justice Pepall ordered that the Statement of Defence filed by Mr. Stinson on behalf of SHI be struck out.

On December 5, 2008, the Receiver filed its ninth report (the "**Ninth Report**") updating the Court on the actions and activities of the Receiver since the date of the Seventh Report, reporting on the closing of the sale transaction with TSCC 1703 (the "**Sale Transaction**"), seeking court approval of the settlement of the Segura Application among Segura, the Receiver, Ed Mirvish Enterprises Limited ("**EME**") and 1 King West Inc. ("**1KW**") (collectively the "**Applicants**" or the "**Mirvish Group**"), and Mr. Stinson, including the proposed quantification of distribution amounts under the secured claims of EME and Segura and an Order for the implementation of a claims process by the Receiver in preparation for distribution of the proceeds of sale of the hotel. By Order dated December 11, 2008 (the "**Settlement Approval Order**") the Court approved the Eighth Report, the Ninth Report, the activities of the Receiver as described therein, and the settlement of the Segura Application. In addition, by Order dated December 11, 2008, the Court approved the implementation by the Receiver of a claims process (the "**Claims Process Order**").

On March 6, 2009, the Receiver filed its tenth report (the "**Tenth Report**") updating the Court on the actions and activities of the Receiver since the Ninth Report, including the conduct of the Claims Process, the correspondence exchanged with various creditors in support of a motion

brought by J. Robert Verdun seeking leave to commence an action to challenge the quantum of EME's secured claim (the "**Verdun Motion**"), and seeking Court approval of a proposed interim distribution of proceeds to secured creditors. By Order dated March 11, 2009, the Court approved the Tenth Report, all of the actions and activities of the Receiver, and ordered the interim distribution in the aggregate amount of $6 million of proceeds to EME and Segura under their security in accordance with the distribution amounts previously approved (the "**Tenth Approval and Interim Distribution Order**").

On March 25, 2009, the Receiver issued its eleventh report ("**Eleventh Report**") updating the Court on the activities of the Receiver since its Tenth Report, including its completion of the Claims Process and seeking approval of a further proposed interim distribution of proceeds to the secured creditors EME and Segura. By Order dated March 25, 2009, the court approved the Eleventh Report, the activities of the Receiver, and ordered the interim distribution in the aggregate amount of $6.4 million of proceeds to EME and Segura (the "**Eleventh Approval and Interim Distribution Order**").

On June 16, 2009, the Receiver issued its twelfth report ("**Twelfth Report**") advising the Court that the Receiver had determined that there were funds of the Suites available for distribution to creditors of the Suites (the "**Suites Funds**") and seeking court approval of the conduct by the Receiver of a Supplementary Claims Process in respect of the Suites Funds. By Order dated June 22, 2009, the Court approved the Receiver's Twelfth Report. By another Order also dated June 22, 2009, the Court approved the implementation of a supplementary claims process in respect of the Suites Funds.

On August 17, 2009, the Receiver issued its thirteenth report ("**Thirteenth Report**") detailing the activities of the Receiver, reporting on the final stages of the receivership, seeking approval of a final distribution of sale proceeds to secured creditors, a distribution of the Suites Funds, and seeking the discharge and release of the Receiver and its counsel pending the occurrence of certain events. Pursuant to the terms of the Discharge Order (dated September 25, 2009), the court approved the Thirteenth Report, ordered a distribution of the Suites Funds and the Sale Proceeds (subject to a holdback as detailed in **the Discharge Order**) and ordered the discharge and release of the Receiver and its counsel following the occurrence of certain stipulated events.

TAB D

COURT FILE NO.: 07-CL-6913
DATE: 2009-09-25

SUPERIOR COURT OF JUSTICE - ONTARIO
(COMMERCIAL LIST)

RE: Ed Mirvish Enterprises Limited and 1 King West Inc. v. Stinson Hospitality Inc., Dominion Club of Canada Corporation and Harry Stinson

BEFORE: Pepall, J.

COUNSEL: L. Joseph Latham and Lauren Butti for the Receiver
Jeff Carhart for Ed Mirvish Enterprises Limited and I King West Inc.
M. Michael Title for Segura Investments Ltd.
Harry Stinson on his own behalf
Robert Verdun on his own behalf

Endorsement

Relief Requested

[1] Ira Smith Trustee & Receiver Inc. ("ISI"), the court appointed receiver and manager of Stinson Hospitality Inc., Dominion Club of Canada Corporation, The Suites at 1 King West ("the Suites") and 2076564 Ontario Inc. (the "Receiver"), requests an order: approving its 13th Report and its fees and activities that are detailed in that Report; approving a final distribution of proceeds to secured creditors in the amount of $907,137.91 and to unsecured creditors of Suites in the amount of $122,854; approving an assignment of the Receiver's rights under certain cost awards against Robert Verdun to Segura Investments Ltd.; and discharging the Receiver and releasing the Receiver and its counsel. The motion is supported by all those appearing except Mr. Verdun and Mr. Stinson. They are unopposed to all the relief requested except for the scope of the requested release.

Background Facts

[2] The Receiver was appointed receiver and manager of the debtors on August 24, 2007. The receivership was complex and involved numerous stakeholders with differing

interests including many individual condominium owners. Ultimately the subject property was sold and interim distributions were made to secured creditors. The Receiver reported regularly on its activities and proposed fees to the Court and on notice to interested parties. Twelve Receiver Reports have been approved as have the requested fees. Indeed, no one ever opposed the fees requested by the Receiver and its counsel.

[3] The Receiver had particular problems with one of the condominium owners, Mr. Verdun. He was insulting and abusive of the Receiver and its counsel, distributed inflammatory correspondence and lodged complaints with the Superintendent of Bankruptcy, the Institute of Chartered Accountants of Ontario, and with the Law Society. All professional complaints have either been dismissed by the governing body or no action is being taken by the governing body with respect to the subject complaint. After having had numerous opportunities to take issue with the secured parties' security, very late in the proceedings, he chose to challenge it but then abandoned his motion. At that time the Receiver requested costs on a full indemnity basis. While I had considerable sympathy for the Receiver, for the reasons set forth in my endorsement, I awarded costs on a partial indemnity scale against Mr. Verdun. Rouleau J.A. also made a costs order against Mr. Verdun in favour of the Receiver.

[4] Pursuant to a Court order, the Receiver conducted a call for creditor claims against the debtors and for claims against the Receiver and its counsel. Notices of determination dismissing the claims were sent to claimants but no appeals were initiated.

[5] Administration of the estate has largely been completed. With the exception of the costs owing by Mr. Verdun, all of the undertaking, property and assets of the debtors have been collected and sold by the Receiver. The only task remaining is for the Receiver to issue the final approved distributions and respond to Mr. Verdun's leave to appeal costs motion. It therefore recommends that it be authorized to make those final distributions and assign its interest in its two cost awards to Segura Investments Ltd. and then be discharged. In view of the litigious nature of the proceedings and the claims filed

as part of the claims process, the Receiver requests the following provisions in the discharge order:

10. THIS COURT ORDERS that notwithstanding its discharge, the Receiver shall continue to have the benefit of the provisions of all Orders made in this proceeding, including all approvals, protections and stays of proceedings in favour of ISI in its capacity as Receiver.

11. THIS COURT ORDERS AND DECLARES that, effective upon the filing with this Court of the Certificate of the Receiver referred to in paragraph 9 above, ISI, in its capacity as both Monitor and Receiver, and all of its directors, officers, employees and agents, and Goodmans LLP and all partners and employees thereof (collectively the "Receiver Parties"), are hereby released and discharged from any and all liability that the Receiver Parties now have or can, may or shall have hereafter by reason of, or in any way arising out of, or in connection with the Receiver Parties' conduct, involvement or duties with respect to the Debtors or in any way in connection with these proceedings. Without limiting the generality of the foregoing, the Receiver Parties are hereby forever released and discharged from any and all liability relating to matters that were raised, or which could have been raised, in these proceedings.

Positions of Parties

[6] As mentioned, no one except Mr. Verdun and Mr. Stinson takes issue with the proposed order. They are unopposed to the order requested but submit that the release should exclude gross negligence and willful misconduct on the part of the Receiver Parties as they are defined in the proposed order.

Discussion

[7] The issue raised by this motion often arises on a motion to discharge a receiver.

[8] A Court appointed receiver is an officer and instrument of the Court. Liability it incurs is for its own account. It is for this reason that, subject to certain exceptions, a receiver typically receives a first charge over the assets under receivership. This secures its fees and disbursements and any liability it may incur with the exception of gross negligence and willful misconduct. The receiver is fully compensated by the estate once

it has realized on the assets. A receiver wishes to be discharged once it has completed the substance of its mandate. Creditors typically support the requested discharge as they wish a final distribution of the remaining funds in the estate and do not wish additional receivership expenses to be incurred which would reduce the funds available for distribution. A receiver often is concerned that if it is discharged without a full release, it may be required to spend time and money defending an unmeritorious action. Once discharged, there is no ability for the receiver to recover its costs from the estate. Absent a discharge and if there are funds in the estate, a receiver may be protected and compensated by the estate.

[9] Unlike a trustee in bankruptcy, a receiver is unable to look for statutory assistance. Section 41(8) of the *Bankruptcy and Insolvency Act*[1] provides that the discharge of a trustee discharges him from all liability in respect of any act done or default made by him in the administration of the property of the bankrupt and in relation to his conduct as trustee but any discharge may be revoked by the Court on proof that it was obtained by fraud or by suppression or concealment of any material fact. A receiver's discharge is not addressed by statute. For all of these reasons, requests for full releases are made of the Court.

[10] The Commercial List Users' Committee had occasion to examine this issue when preparing a standard template or model discharge order. That order includes a provision comparable to paragraph 10 before me that continues the protections provided in the initial receivership order and an optional paragraph that contains a general release comparable although not identical to that contained in paragraph 11 before me.

[11] Dealing firstly with the substance of paragraph 10 of the proposed discharge order, the model order appointing a receiver provides that the receiver shall incur no liability or obligation as a result of its appointment or the carrying out of the provisions of the order, save and except for any gross negligence or willful misconduct on its part. In addition, the order states that nothing in it derogates from the protections afforded the

[1] R.S.C. 1985, c.B-3.

receiver by section 14.6 of the BIA or any other applicable legislation. Furthermore, no proceeding shall be commenced or continued against the receiver except with the written consent of the receiver or with leave of the Court. Similarly, subject to certain exceptions, all rights and remedies against the receiver are stayed and suspended except with the written consent of the receiver or leave of the Court.

[12] In the explanatory notes accompanying the model receivership order, the subcommittee observes that it is unaware of any case law guidance on the question of why a receiver who has been found to have committed deliberate misconduct or to have been grossly negligent ought to be protected from an award of damages that reasonably flow from its misconduct.

[13] Turning to the substance of paragraph 11 of the proposed discharge order that includes a general release, the explanatory notes that accompany the model discharge order state: "The model order subcommittee was divided as to whether a general release might be appropriate. On the one hand, the receiver has presumably reported its activities to the Court, and presumably the reported activities have been approved in prior Orders. Moreover, the Order that appointed the receiver likely has protections in favour of the Receiver. These factors tend to indicate that a general release of the Receiver is not necessary. On the other hand, the Receiver has acted only in a representative capacity, as the Court's officer, so the Court may find that it is appropriate to insulate the Receiver from all liability, by way of a general release. Some members of the subcommittee felt that, absent a general release, Receivers might hold back funds and/or wish to conduct a claims bar process, which would unnecessarily add time and cost to the receivership. The general release language has been added to this form of model order as an option only, to be considered by the presiding Judge in each specific case."

[14] It seems to me that as a matter of principle, on discharge, a receiver should not be granted a release that encompasses gross negligence or willful misconduct. It may be that such conduct only comes to light after a receiver has been discharged. In such circumstances, a receiver should be liable for its actions. That said, post discharge, a

claimant should still be required to obtain leave of the Court to institute and continue proceedings against a former receiver. When addressing the request for such leave, the Court will consider, amongst other things, prior Court approval of the conduct of the receiver, the claims bar process, if any, and its outcome, and whether as a condition of proceeding with litigation, it is appropriate for the claimant to post full indemnity security for costs by letter of credit or otherwise. In my view, absent a strong prima facie case, the latter should be the norm, such a regime strikes me as an appropriate balance between the desirability of providing appropriate protection to the Court's former officer and the need to address instances of gross negligence and willful misconduct.

[15] In this case no one took issue with the order requested by the Receiver except for Mr. Verdun and Mr. Stinson who questioned the scope of the proposed release in paragraph 11 and asked that the release be amended to exclude gross negligence and willful misconduct. For the reasons given, this is a reasonable position. I am granting the order requested but amended so that the words "save and except for gross negligence or willful misconduct" are added to the first and second sentences of paragraph 11.

Pepall J.

Released: September 25, 2009

TAB E

Headnote

Trades by applicant or licensed real estate agents in residential condominium units included in a rental pool program are not subject to section 25 or 53 provided that purchasers receive certain disclosure.

Statutes Cited

Securities Act, R.S.O. 1990, c. S.5, as am., ss. 25, 53, 74(1)

Condominium Act, 1998 S.O. 1998, c. 19

Real Estate and Business Brokers Act, R.S.O. 1990, c. R.4., as am.

Securities Act, R.S.B.C. 1996, c. 418, as am.

Rules Cited

Ontario Securities Commission Rule 14-501 Definitions.

IN THE MATTER OF

THE SECURITIES ACT

R.S.O 1990, Chapter S.5, AS AMENDED (the Act)

AND

IN THE MATTER OF

1 KING WEST INC.

RULING

(Subsection 74(1))

UPON the application of 1 King West Inc. (the Applicant) to the Ontario Securities Commission (the Commission) for a ruling pursuant to subsection 74(1) of the Act that the sale by the Applicant of residential condominium units (the Residential Units) within a certain condominium project being built by the Applicant on a site located at 1-5 King Street West, Toronto Ontario, will not be subject to section 25 and 53 of the Act;

AND UPON considering the application and the recommendation of the staff of the Commission;

AND UPON the Applicant having represented to the Commission as follows:

1. The Applicant was established by articles of amalgamation under the *Business Corporations Act* (Ontario) on September 21, 2001. the Applicant's predecessor corporations, 1 King West Inc. and 5 King West Inc. were incorporated under the Business Corporations Act (Ontario) on May 10, 2000 and April 18, 1995 respectively.

2. The Applicant is in the business of developing a condominium and mixed-use real estate project on the lands municipally known as 1-5 King Street West, Toronto, Ontario (the Lands).

3. The Applicant is not a reporting issuer under the Act nor under any other securities legislation in Canada and has no present intention of becoming a reporting issuer under the Act.

4. The Applicant has undertaken to develop the Lands by constructing a 51 story condominium building (the Project) which will consist of approximately 572 residential dwelling units the (Residential Units) and other various common areas and common facilities, including a business centre and recreational facilities, that will be available for use by residents and guests of the Residential Units.

5. Each Residential Unit will be sold either as an unfurnished or fully-furnished unit, at the purchaser's option. The Residential Units will consist of a wide variety of accommodation, ranging from small studio to large two-level units.

6. In addition, to his, her or its own Residential Unit, each owner of a Residential Unit will be entitled to a proportionate share of the common property and the common facilities and other assets of the residential condominium corporation (the Residential Condominium) that will be created pursuant to the *Condominium Act*, S.O. 1998, c. C 19 (the Condominium Act) and successor legislation.

7. Certain amenities of the Project, including a front desk service area, a dedicated service elevator, and offices for a general manager and assistant shall form the common property and common facilities of a separate Commercial Condominium (the Commercial Condominium) that will be created pursuant to the Condominium Act. Certain common areas of the Residential Condominium and the Commercial Condominium will be required to support the Rental Program described in paragraphs 11 to 14.

8. In accordance with the Condominium Act, each owner of a Residential Unit will be responsible for expenses, such as real property taxes, that are directly attributable to the Residential Unit and will also be responsible for his, her or its proportionate share of certain utilities and other expenses related to the common property of the Residential Condominium.

9. The Applicant will cause the Residential Condominium to enter into a property management agreement with Stinson Management Ltd. The property manager will manage and administer the Residential Condominium's common property and will be paid a management fee for its services. The property management agreement will be terminable on sixty (60) days prior notice by the board of directors of the Residential Condominium. The board of directors of the Residential Condominium will be elected by the owners of the Residential Units.

10. The Applicant will cause the Residential Condominium to enter into a lease operating agreement with the Commercial Condominium, pursuant to which the Commercial Condominium is inter alia appointed the exclusive leasing agent for Residential Unit owners desirous of engaging in permitted short-term leasing of the owner's Residential Unit. The lease operating agreement shall be for a term of ten (10) years, and shall be terminable by the Residential Condominium, in addition to any other remedies, upon:

(a) A default by the Commercial Condominium which continues for at least 45 days following notice of default, unless the default is not capable of being cured within 45 days and the Commercial Condominium diligently and continuously

attempts to cure such default; or

(b) The Rental Manager makes an assignment of its property for the benefits of its creditors.

11. Each owner of a Residential Unit will be entitled but not obligated, to enter into a rental management agreement (the Rental Management Agreement) with the Commercial Condominium or such other manager as may be appointed by the Condominium Corporation (in such capacity, the Rental Manager). By entering into a Rental Management Agreement, owners of Residential Units will become entitled to participate in a short-term rental management program (the Rental Program).

12. As currently proposed, the Rental Program is an arrangement where revenues derived from the short-term rental of an owner's Residential Unit by the Rental Manager are pooled with the revenues derived from the rental of all other Residential Units located in the Project and participating in the Rental Program. All such pooled revenues are allocated to the owners of Residential Units participating in the Rental Program on the basis of unit type and the number of days during the calculation period that the applicable unit is enrolled in the Rental Program. Each owner of a Residential Unit participating in the Rental Program is then paid his, her or its share of aggregate revenue, less expenses relating to the rental of the owner's Residential Unit, general operating expenses incurred by the Rental Manager to operate the Rental Program, and a fixed administration fee per participating unit representing compensation to the Rental Manager. Net revenues and applicable fees are calculated and paid on a monthly basis. It is also currently proposed that the Rental Manager also be entitled to a 5% bonus based on the difference between Gross Rental Revenue and Gross Operating Expense during the calculation period.

13. It is anticipated that most owners of Residential Units will participant in the Rental Program.

14. No owner of any Residential Unit will be entitled to rent his, her or its Residential Unit on a short-term basis other than through the Rental Program. However, owners of Residential Units will be free to rent their Residential Units directly to the general public for lease terms of one (1) year or greater. Also, owners enrolled in the Rental Program may terminate their Rental Management Agreement on four (4) months prior written notice to the Rental Manager.

15. Residential Units are being offered for sale in Ontario through Harry Stinson Realty Corp., an agent of the Applicant licensed under the *Real Estate and Business Brokers Act*, R.S.O. 1990, c.R.5. The Applicant, through its agent, has actively marketed and is continuing to actively market the Residential Units for sale, including by advertisements published in television, internet and print media.

16. To date, numerous Agreements of Purchase and Sale have been entered into by the Applicant with unit purchasers (the Existing Purchasers). No closings have been completed under any of those agreements. In addition, no Rental Management Agreements have been entered into between the Rental Manager and any of the Existing Purchasers.

17. The Applicant has caused a disclosure statement (the Disclosure Statement) to be delivered to each Existing Purchaser and will cause the Disclosure Statement to be delivered to each person who enters into an Agreement of Purchase and Sale. The Disclosure Statement complies with the requirements of the Condominium Act.

18. Pursuant to Section 52(3) of the Condominium Act, any initial purchaser who enters into an Agreement of Purchase and Sale with the Applicant (an Initial Purchaser), is entitled to

rescind his, her or its Agreement of Purchase and Sale by notice to the Applicant given within ten (10) days after the Initial Purchaser receives a copy of the Disclosure Statement or any material amendment to the Disclosure Statement.

19. None of the advertisements or other marketing materials for the sale of the Residential Units currently make reference to the Rental Program save for:

(a) the references made in the Disclosure Statement;

(b) information disclosing the existence of the Rental Program, and its benefits for the efficient operation of the Residential Condominium for owners, residents and guests.

20. Prospective purchasers of Residential Units will not be provided with any form of rental, cash flow or deficiency guarantees or any other form of financial commitment or projection by or on behalf of the Applicant respecting the Rental Program, other than:

(a) examples of financial calculations solely for the purpose of better explaining to prospective purchasers how rental pooling proceeds are calculated, which sample calculations will be included in the Rental Management Disclosure Memorandum described in paragraphs 23 and 24 below; and

(b) the budget required to be delivered to an initial purchaser of a Residential Unit pursuant to the Condominium Act.

21. Notwithstanding the foregoing, the Applicant acknowledges that:

(a) Trades to Existing Purchasers of Residential Units have been made in contravention of the prospectus and registration requirements of the Act, as there was no available exemption to such requirements and no discretionary relief from such requirements had been obtained pursuant to section 74(1) of the Act; and

(b) previous advertisements or other marketing materials for the sale of the Residential Units, including marketing materials delivered to Existing Purchasers, have made reference to the Rental Program and have made certain representations as to the expected economic benefits of the Rental Program.

In order to correct any prejudice which may thereby have been caused to Existing Purchasers the Applicant is proposing the remedy stated in paragraph 25.

22. The purchase prices for which the Corporation offers Residential Units for sale to Initial Purchasers will not change as a result of the Rental Program such that there will be no premium or discount to such sale prices for Initial Purchasers who participate in the Rental Program.

23. In addition to the delivery of the Disclosure Statement pursuant to the Condominium Act, the Applicant shall deliver:

(a) to each Existing Purchaser, on or before the 60th day next following the date of this Ruling and, in any event, at least 10 days before the earliest to occur of: (i) the date a Rental Management Agreement is entered into with the Existing Purchaser; (ii) the date the Existing Purchaser takes possession of the

Residential Unit; and (iii) the date the purchase transaction is completed; and

(b) to each prospective Initial Purchaser, prior to entering into an Agreement of Purchase and Sale with any such prospective purchaser subsequent to the date of this Ruling,

a disclosure memorandum (the Rental Management Disclosure Memorandum) certified by the Applicant and the Rental Manager in the form of the certificate required pursuant to item 19 of Form 45-906F of the Securities Act, R.S.B.C. 1996, c. 418, as amended (Form 45-906F).

24. The Rental Management Disclosure Memorandum will include the following information relating to the Rental Program prepared substantially in accordance with the form and content requirements of the following sections of BC Form 45-906F:

(a) items 1, 3(1), 5, 7, 9(1), (2), (3) and (4); 10(b) and 16 (including the reporting obligations of the Rental Manager to purchasers as more particularly described in paragraphs 2.26 below) of Form 45-906F, modified as necessary to reflect the operations of the Rental Program; and

(b) items 12(2), (3) and (4) of Form 45-906F with respect to the Applicant and the Rental Manager, as applicable, modified so that the period of disclosure runs from the date of the certificate attached to the Rental Management Disclosure Memorandum.

25. The Applicant undertakes that Existing Purchaser receiving the Rental Management Disclosure Memorandum pursuant to paragraph 24(a) shall be afforded the ten (10) day cooling off period under the Condominium Act described in paragraph 18 above.

26. Initial Purchasers of Residential Units and each subsequent purchaser of a Residential Unit will be provided with a contractual right of action as defined in Commission Rule 14-501 *Definitions* with respect to the disclosure contained in Rental Management Disclosure Memorandum, save and except only that such right of action shall:

(a) be for damages and not include a right of action for rescission;

(b) be exercisable on notice against the certifying entity not later than 180 days after the earlier of the date the purchaser closes his, her or its purchase transaction or takes possession of the Residential Unit.

27. The Rental Management Disclosure Memorandum will describe the contractual right of action, including any defences available to the certifying entity, the limitation periods applicable to the exercise of the contractual right of action, and will indicate that the contractual right of action is in addition to any other right or remedy available to the purchaser.

28. A Rental Management Agreement will impose an irrevocable obligation on the Rental Manager to send to each owner of a Residential Unit participating in the Rental Program:

(a) audited annual financial statements for the Rental Program that have been prepared in accordance with generally accepted accounting principles and otherwise made up, certified and delivered in accordance with the applicable provisions of the Act as if the Rental Program was a reporting issuer for purposes of the Act; and

(b) interim unaudited financial statements for the Rental Program that have been prepared in accordance with generally accepted accounting principles and otherwise made up, certified and delivered in accordance with the applicable provisions of the Act as if the Rental Program was a reporting issuer for the purposes of the Act.

29. A Rental Management Agreement will impose an irrevocable obligation on the Rental Manager to deliver to a prospective subsequent purchaser, upon reasonable notice of an intended sale by the owner of a Residential Unit participating in the Rental Program, and before an agreement of purchase and sale is entered into:

(a) the most recent audited annual financial statements (which include financial statements for the prior comparative year) and, if applicable, the then most recent interim unaudited financial statements for the Rental Program (the Financial Information); and

(b) the Rental Management Disclosure Memorandum certified by the Rental Manager in the form of the certificate required pursuant to item 19 of Form 45-906F.

30. A Rental Management Agreement will impose an irrevocable obligation on each owner of a Residential Unit participating in the Rental Program to provide:

(a) the Rental Manager with reasonable notice of a proposed sale of the Residential Unit; and

(b) a subsequent prospective purchaser of a Residential Unit with notice of his, her or its right to obtain from the Rental Manager, the Financial Information and the Rental Management Disclosure Memorandum.

31. A Rental Management Agreement will not require an owner of a Residential Unit to give any person an assignment of any of his, her or its right to vote in accordance with the Condominium Act or condominium corporation by-laws, or to waive notice of meetings of the Residential Condominium.

AND UPON the Commission being satisfied that to do so would not be prejudicial to the public interest.

IT IS RULED, pursuant to subsection 74(1) of the Act, that:

(a) the distribution of a Residential Unit by the Applicant, Harry Stinson Realty Corp. or another Licensed Agent from the date of this Ruling is exempt from sections 25 and 53 of the Act, provided that;

(i) every Existing Purchaser receives:

(A) all of the documents and information referred to in paragraph 23 above, and a copy of the Ruling, within the time period set out in paragraph 23, and

(B) the ten (10) day "cooling off" for rescission set out in paragraph 25; and

(ii) every other Initial Purchaser receives all of the documents and information referred to in paragraph 23 above, and a copy of this Ruling, prior to entering

into a Purchase Agreement; and

(b) any subsequent trade of a Residential Unit shall be a distribution, unless:

(i) notice is given by the seller to the Rental Manager of the seller's intent to sell his, her or its Residential Unit;

(ii) the prospective purchaser of the Residential Unit receives, prior to the completion of the transaction, all of the documents and information referred to in paragraphs 27 and 28 above; and

(iii) the seller, or an agent acting on the seller's behalf, does not advertise, market, promise or otherwise represent any projected economic benefits of the Rental Program to the prospective purchaser.

November 22, 2004.

"Paul K. Bates" "Robert L. Shirriff", Q.C.

TAB F

Court File No. 07-CL-6913

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

ED MIRVISH ENTERPRISES LIMITED and 1 KING WEST INC.

Applicants

- and -

STINSON HOSPITALITY INC., DOMINION CLUB OF CANADA CORPORATION AND HARRY STINSON

Respondents

AFFIDAVIT OF J. ROBERT VERDUN

I, J. Robert (Bob) Verdun, of the City of Kitchener in the Province of Ontario, MAKE OATH AND SAY AS FOLLOWS:

1. I am the owner of Suite 4706 at 1 King Street West, Toronto. I was elected a Director of Toronto Standard Condominium Corporation 1703 at the turnover meeting on Dec. 6, 2005, receiving the highest number of votes of all candidates to represent the owners generally. I was subsequently elected by my colleagues to serve as President of TSCC 1703, a position that I continue to hold.
2. Until 1999, I owned a newspaper company, and my three-decade media career included front-line work as an investigative reporter and editor. In 1991, my main newspaper, the Elmira Independent, won Canada's highest media honour, the Michener Award for Meritorious Public Service in Journalism, presented by the Governor-General, for my newspaper's exceptional work investigating and reporting on an environmental disaster. In conjunction with my ownership of the Kitchener-Waterloo Real Estate News, I served for several years as a Director of the Home Builders' Association, holding various leadership responsibilities.

3. I have a long record of effective public advocacy in a variety of fields. In 1996, the Supreme Court of Canada heard the case of Verdun v. Toronto-Dominion Bank, which opened up shareholder democracy in Canada, to very positive effect in reforming corporate governance through the direct participation of shareholders in matters that were formerly the unchallenged territory of the boards of directors.

4. Since I signed my Agreement of Purchase and Sale with 1 King West Inc. on March 20, 2002, at the Toronto offices of David Mirvish, I have been an observant, responsible investor in this unique project, have done extensive research on all aspects of the project, and have obtained professional advice from lawyers, accountants, and others where I felt it was necessary and appropriate. I respectfully submit that I am the best-informed of all suite owners at One King West, with unique insights and experience regarding this project (as well as condominium hotels in general) that exceed the knowledge and understanding of the condominium corporation's professional advisers.

5. I am seeking status before this Honourable Court as an individual suite owner, and as the leader of an informal group of approximately 60 suite owners who have contributed to a modest fund to obtain independent legal advice. That fund is not sufficient to pay for legal representation.

6. My current work is that of property development consultant, specializing in social and environmental responsibility. I also have expert knowledge in all aspects of marketing real estate and most retail businesses. I have several clients in Barbados proceeding toward condominium hotel developments, and my work in that country is directly supported and encouraged by the Prime Minister of

Barbados and his Minister of Tourism. I am also an adviser to the Barbados National Trust, where we seek practical means to preserve and re-use heritage buildings up to 300 years old.

7. It is my considered opinion that One King West is a textbook case of how NOT to execute a condominium hotel development. The complexities are almost overwhelming, and the interrelationships among the various parties are almost unworkable. I respectfully submit that this Honourable Court should do everything possible to reduce the complexities and make the interrelationships functional. It is my respectful submission that the addition of a Receiver has made a bad situation worse, and the tenure of the Receiver should be ended as quickly as possible.

8. In my quasi-professional experience, the only practical way to operate a condominium hotel is to place ownership and control of the entire building within a single condominium corporation, whose board of directors is mandated to engage professional management. The condominium board, as the democratic representative of the owners of the hotel business, obviously must set policy, but the day-to-day management requires full-time professional experts.

9. At the time I made my purchase in early 2002, the business structure of One King West was much simpler than what currently exists. With the exception of a separate but comprehensible "theatre/retail component", the entire building was to be under the control of the Residential Condominium Corporation. The relationship between the "theatre/retail component" and the Residential Condominium Corporation was to be regulated by a relatively-simple Reciprocal

Agreement, a copy of which was provided to me when I made signed my Agreement of Purchase and Sale.

10. Two separate companies organized by Harry Stinson were to be charged with two complementary services to the Residential Condominium Corporation: conventional condominium property management as well as management of the hotel operation. This reality was emphasized by the following statement in one of the Disclosure Documents that I received when I made my purchase. This is in a Condominium Budget document dated Sept. 29, 2000: "After the first year, the suite owners shall have elected their own board of directors and become familiar with the general operations of the building. From this point onward, the management of the building shall be entirely under the control of the owners of the individual units. Day to day management of the building shall be carried out by a manager and/or management company which has been hired by the board of directors and approved by the owners." Earlier, the same document stated, "...residents who wish to lease their suite shall execute a separate management agreement with the appointed property manager ... which will specify the terms, payments and obligations and shall be negotiated on a suite by suite basis."
11. An unnecessary and undesirable complication was introduced by the Declarant in a revised package of documents issued by the Declarant in 2004, approximately one year before the first occupancies. This was the "commercial condominium corporation" that would, in law, be the Rental Manager.
12. Unless there is a legitimate reason for different persons to own various odd pieces of real estate required to operate the hotel business, there is no logic in creating a

condominium corporation as the legal structure for a single entity that is charged with managing the hotel business at One King West. As a result of my research, I now understand why a condominium corporation was created by the Declarant as the legal vehicle through which Mr. Stinson would operate the hotel business at One King West. After turnover, the board elected by the suite owners of any condominium corporation in Ontario is empowered to cancel any contract set up by the Declarant. Thus, the suite owners, through their democratically-elected board, would have gained clear control over their own hotel business. There is one, and only one, exception to this broad protection for the purchasers of suites in a condominium, who have a fundamental right to be masters of their own building: That is the rare case where one condominium corporation has a legitimate business relationship with another condominium corporation.

13. The question here is whether there are two legitimate condominium corporations, with equal rights, and equal claims against each other to prevent 1703 from canceling its contract with 1726 to manage the rental program. The answer is simple. TSCC 1703 is a legitimate residential condominium corporation, but TSCC 1726 is a legal fiction created behind a corporate veil strictly to prevent TSCC 1703 from exercising its fundamental rights under the Condominium Act.

14. Because the vast majority of suite purchasers then had overwhelming confidence in Harry Stinson, this complex, curious and questionable business structure slipped "under the radar" of most purchasers, including me. All we saw was that Stinson would be in charge, and we had not yet been given any reasons to mistrust him. Moreover, and this is very important, if Stinson failed and went into any

form of bankruptcy or bankruptcy protection, the documents made it clear that his special protection would end, and the owners of the Residential Condominium Corporation would gain full control of their building and their hotel business.

15. At pages 6 and 7 (overall numbers 15 and 16) of the Monitor's Report before the Court for approval on Oct. 5, the Monitor deals with this situation. At paragraph 2.4, the Monitor notes that individual suite owners may terminate their agreements with the Rental Manager if "the Rental Manager, its successors or assigns, files a petition in bankruptcy, any proposal for reorganization, or for any arrangement under the bankruptcy or insolvency laws ..." At item 3 on page 7 (overall number 16), the Receiver confirms that Stinson Hospitality Inc. is currently in default of all of its Rental Management Agreements. Presumably, as soon as the Receivership is lifted (along with its freeze of existing agreements), the suite owners are no longer bound to any Rental Manager.

16. Individual suite owners were bound by their initial agreements with Stinson Hospitality Inc. But, only as long as SHI was able to sustain its solvency were the suite owners bound to remain within Stinson's version of the hotel program. If Stinson suffered financial collapse, the suite owners effectively became "free agents".

17. Similar language appears in agreements between TSCC 1703 and Stinson Hospitality Inc., all of which were created by the Declarant. If SHI were to fail, the Residential Condominium Corporation is clearly intended to gain control of the Rental Management program on behalf of the participating suite owners.

18. This situation is strongly reinforced by a Ruling of the Ontario Securities Commission, which became involved after becoming aware of an apparent violation of securities legislation in the marketing of suites at One King West. On Nov. 22, 2004, the OSC issued its Ruling, which is contained within Exhibit A to this Affidavit. (The Ruling is somewhere in the middle of a curious package prepared and distributed by 1 King West Inc. at Christmas 2004 that looks nothing like a legal notice, with a reprint from the Toronto Star as its front page.)

19. Paragraph 21 states bluntly that the Applicant (1 King West Inc., a company indirectly owned and effectively controlled by David Mirvish) acknowledges that: "Trades to Existing Purchasers of Residential Units have been made in contravention of the prospectus and registration requirements of the [Securities] Act..."

20. Paragraph 9 confirms a key point that was always understood by suite owners, that a Stinson company would be the property manager of the company. This important provision was not implemented by the Declarant, and the Declarant never admitted that this was a material change that would have triggered a right of rescission for suite purchasers.

21. Paragraph 10 of the OSC Ruling makes it very clear that if the "exclusive leasing agent" [Stinson] defaulted or made an assignment of its property, the agreement empowering Stinson to operate the rental management program "shall be terminable by the Residential Condominium." Paragraph 11 goes on to empower the Condominium Corporation to appoint the subsequent Rental Manager.

22. The net result is that the hotel "business" is not an entity available for sale to any third party. The unintended (and unprovided for) result of the advantage given to one, and only one, entity (Stinson Hospitality Inc.) is that several small pieces of property now remain as legal orphans in the building. The pieces that constitute TSCC 1726 (the commercial condominium) appear to include the right to manage the hotel business, but, after the insolvency of the original privileged party (Stinson), the suite owners have the right to cancel agreements with TSCC 1726, as does TSCC 1703. Without agreements with individual suite owners, and without a Lease Operating Agreement with the Residential Condominium Corporation (1703), the right to operate a Rental Management program is worthless and meaningless. In short, with respect to a hotel "business," the Receiver now has nothing of any real value to sell to a third party. There is no need for the Receiver to develop a "sales process" and no need for a long tenure by a very expensive receivership for that purpose.

23. Although Ira Smith was appointed by the Court as Monitor in April 2007, I did not meet Mr. Smith until a recess during Court on August 20. I had met one of his associates, Martin Wolfe, when Mr. Wolfe introduced himself to the board of TSCC 1703, but I am not aware of any attempt by Mr. Smith to communicate directly with the democratically-elected representatives of the persons who own 95% of the building and are the de-facto shareholders of the hotel business.

24. As a responsible leader of TSCC 1703, following this Honourable Court's decision to appoint Ira Smith as Receiver of the Stinson companies, I have made serious efforts to communicate with the Receiver. I convened a meeting of the

board of TSCC 1703 with Mr. Smith and Mr. Wolfe on August 28, 2007, at which the condo board tried to educate the Receiver about One King West. I subsequently arranged a meeting with Mr. Smith and Mr. Wolfe on Sept. 5, when I provided them with copies and explanations of dozens of documents that show the tenuous nature of the "assets" under the control of the Receiver. I see no acknowledgement of this essential information in the Receiver's report, and no indication that he is acting cautiously because he is now aware of the lack of clear title to the "business" he wishes to sell.

25. Because they were sealed, I had not previously seen any of the reports of the Monitor, although I am aware that a few suite owners who are aligned with the Declarant did receive them, quoted from them, and abused the information contained in these "court documents" to create confusion and division among the broader base of suite owners.

26. On Friday, Sept. 28, counsel for TSCC 1703 provided me with a copy of the Second Supplementary Report of the Monitor, which is before this Honourable Court for approval on Oct. 5. I find some of its contents to be very alarming, particularly the item at the top of page 11 (overall number 20), in which the Monitor appears to be making a serious allegation that I, along with Stinson, have failed to make appropriate disclosures to this Honourable Court. As I have not, to this point in time, been a party, and am not an officer or director of any of the companies involved in the Monitor's scope of work, I am alarmed to see this reference to me.

27. The section noted above refers to a selection of emails reprinted at Tab 2B. These emails contain numerous examples of inflammatory and defamatory references to myself. They are also *prima facie* evidence of the existence of a regular network of communication including one or more suite owners (whose identity is kept secret by the Monitor), but most notably featuring Ira Smith, David Mirvish (through his executive secretary Tracey Nolan), lead counsel for David Mirvish (Patricia Conway), and David Mirvish's closest confidant (Hank Kates, C.A.). This regularity of communication revealed in the Monitor's own report casts into doubt his status as an independent officer of the Court, and raises legitimate concerns that he has been working as a partisan advocate on behalf of the Mirvish Group.

28. Ira Smith notes that he has "redacted" the names of the senders to protect their privacy, but has not extended a similar protection or courtesy to others who are named in correspondence that is scandalous in many respects, with numerous unfounded references to "threatening emails" "intimidating email" "scaring people" "propaganda" "another threatening email" "in case Bob threaten [sic] us again" "obstruction of justice" "distort the truth" "the big secret" "its crazy" "another letter that is not entirely correct" "more lies". A careful reading of the emails shows little, if anything, to support the inflammatory and defamatory comments. It is also obvious that the number of senders is very small, and thus not representative of the approximately 400 owners of the hotel business.

29. Pages 43 to 56 appear to be entirely about one investor's complaints relating to something that happened in 2005, which is anything but "self-explanatory" – as

the Monitor claimed in his comment about the emails on page 11 (main number 20). The entire package is carelessly compiled because exactly the same message dated Feb. 1, 2006, is reprinted twice, on pages 47 and 54.

30. If this was the competent, useful, and relevant advice of an Officer of the Court for the assistance of the Court, the Receiver should have done some basic research and provided the Court with background and explanation. There are legitimate concerns by investors about the guaranteed returns we were offered by the Declarant, but they have little, if anything, to do with the mandate of the Monitor.

31. In the absence of any relevant explanation by the Monitor, I shall endeavour to briefly explain to the Court what the emails at pages 43 to 56 actually mean. As agent for the Mirvish Group, Stinson was selling an investment product with a guaranteed return. This was so attractive that suites sold quickly and easily. However, the Ontario Securities Commission determined that this was a violation of the Securities Act, and the "Applicant", being 1 King West Inc. (controlled by Mirvish), was found to be in violation of the Securities Act, and remedial measures were ordered. The result was the curious legal notice that constitutes Exhibit A of this Affidavit. There is no question that many suite purchasers have suffered significant damages, and that they are upset by actions for which the Mirvish Group is ultimately responsible. Stinson was never more than an agent on behalf of Mirvish.

32. I am one of many investors who was offered a guaranteed return. In my case, I believed I had a right to a net monthly cheque (after all expenses) of approximately $540. Instead of a net positive return, I have lost money every

month. The most recent month, August, had high occupancy and exceeded its budget; my share of the hotel's net revenue was $1,441. However, my expenses for condo fees, property taxes, and mortgage payment total $3,403 for the month, leaving me with a net loss of $1,962.

33. It is important for this Honourable Court to realize that the hotel is well managed by Steve O'Brien, but the Declarant left it with high costs, and the deficiencies place an effective cap on the rental rates that can be achieved for the hotel suites. The best strategy at the present time is to keep tight control on costs while marketing the hotel effectively – while working to fix the deficiencies. The receivership is worse than a distraction, as it is consuming funds that were formerly going into the building to pay creditors and fund upgrades.

34. The most objectionable item in the Second Supplement Report, from the perspective of Ira Smith serving as an Officer of the Court, is found on page 30: "[Name blanked out], do you have the name of the lawyer retained to advise the group of 60 or a copy of the legal opinion referred to, or any excerpts?" This is clearly an attempt by the Monitor to breach the lawyer-client privilege of the group of approximately 60 suite owners for whom I was performing a type of trustee role. I had collected money from concerned suite owners, and had obtained independent legal advice on their behalf. If the Monitor had a legitimate concern about this legal advice, he could have approached me directly, but he made no attempt to do so. Instead, he obtained the information improperly from a member of his network that communicates regularly with the Mirvish Group, and is now publishing it as a Court document. Given the small space that

is blacked out, it is almost certain that Ira Smith is communicating on a first-name basis with his secret source. I respectfully submit that this is not a legitimate means of communication for an Officer of the Court, and definitely not for a legitimate purpose.

35. Not only has the Monitor/Receiver engaged in behaviour that is clearly inappropriate for an Officer of the Court, but he has also failed to consult me where my quasi-professional capacity is highly relevant. After I was elected to the board of TSCC 1703, I took on additional voluntary duties as marketing consultant for The Suites at One King West. Shortly after I took office, in Janaury 2006, I immediately became aware that the hotel was operating at about 15% occupancy, with little likelihood of improvement. I spent many hours working with the hotel management team to re-invent the pricing and marketing strategies for the hotel. Within four weeks, the hotel was over 50% occupancy, and continued to climb, largely as the result of my pricing and marketing plan. Contrary to the most optimistic projections, the hotel actually produced a surplus in March 2006, which was distributed to the participating suite owners. I have continued to work vigorously on all aspects of marketing The Suites at One King West, and my personal efforts have been continuously beneficial. Because condominium officers are not paid for their services, and because it might be perceived as a conflict of interest, I have never billed the hotel business for my marketing services. After the Receiver took over, I attempted to clarify my status as a key marketing consultant, and I was bluntly told that I was providing no

services to the Receiver, and the Receiver was not remotely interested in having me provide any services.

36. On Saturday, Sept. 29, approximately 70 suite owners (representing approximately 100 suites in total) attended a meeting on site to discuss the current situation and consider how to resolve it. There was overwhelming support for the concept that the suite owners should own and control the entire building. One of the speakers at the meeting was Hank Kates, key advisor to David Mirvish and also proxyholder for another suite owner. In several different ways, he expressed frustration and concern about the presence of the Receiver in the hotel. He objected to the high costs and the owners' lack of control as long as the Receiver is present. He also told that gathering that he had personally participated in the selection of Ira Smith as the Monitor (and subsequent Receiver).

37. On Tuesday, Oct. 2, through the counsel for TSCC 1703, I received a copy of the First Report of the Receiver. I then understood the comments of Mr. Kates, which had seemed incomprehensible given that his client, Mr. Mirvish, was the person who asked this Honourable Court to appoint a Receiver. The costs for the Receiver, his legal counsel, and his hotel consultant are clearly unsustainable. They greatly exceed the capacity to pay of the businesses at One King West.

38. Instead of improving the situation that existed under Stinson, who was receiving management fees at the rate of approximately $66,000 a month (plus a one-time annual incentive in the range of $200,000), most of which appears to have been re-invested in the building and used to pay creditors, we now have a Receiver consuming funds at the rate of about $250,000 a month.

39. I respectfully submit that the services of the Receiver should be ended as soon as possible, especially because there is no hotel "business" to be sold. There are only some relatively-small pieces of real estate that are of little value in themselves.

40. In his First Report as Receiver, Ira Smith raises concerns about the land-use zoning status, and suggests that it could be many months before this could be resolved. I am a quasi-expert in this field through my experience as a newspaper editor-publisher, and my many experiences as a public-interest advocate taking cases to the Ontario Municipal Board (often with significant success). This appears to be a delaying tactic to prolong the Receivership, by suggesting that many months might be required to ensure that a branded hotel would be legal on a site where a de-facto hotel has operated since August 2005 without any concern or challenge from the City of Toronto. Adding a brand to a hotel is not something that changes land use, which is the only concern of a zoning by-law.

41. Further evidence of delay and unnecessary cost is the Receiver's proposal to engage the firm headed by Kosta Tomazos for four months. Mr. Tomazos was initially engaged for one month, which is sufficient. He was the consultant who originally advised Mr. Mirvish and Mr. Stinson on the set-up of the hotel. It is unreasonable to expect that he requires more than one month to provide a meaningful assessment of its current situation along with useful recommendations.

42. Attached to this Affidavit and marked Exhibit B is a printout of almost the entirety of the website operated by Ira Smith. I respectfully submit that his

banner headline trumpeting the Receivership of One King West is unnecessary, undesirable, and inappropriate for an Officer of the Court. This appears to be primarily a case of flagrant self-promotion of Mr. Smith's business prospects through improper exploitation of a Court appointment. There are no other clients disclosed anywhere else on this website. Either Mr. Smith has no other clients worth noting, or else he respects their privacy. In either case, he is out of line in his overzealous exposure of the unfortunate situation at One King West. No one should ever celebrate a Receivership with such zeal.

43. The press releases and open letter to the public are also cause for concern and distress. Both news releases inappropriately refer to Mr. Smith's firm as "well-known" – despite the fact that it has existed only since April 2005. Both releases flagrantly invite news coverage, which is contrary to the generally-accepted view that the less said publicly about insolvencies, the better.

44. More significant, both releases erroneously refer to Harry Stinson as the "project developer" and the Mirvish Group as the "project investor". If the Monitor had previously functioned in a competent manner (and continued to do so as Receiver), Mr. Smith would know that the developer has been 1 King West Inc. since Sept. 21, 2001 – as specified by Madam Justice Pepall at paragraph 2 of her Reasons for Decision dated Aug. 24, 2007. A competent Receiver who had already served as Monitor since April would have to know that the key officer, director, and shareholder of 1 King West Inc. is David Mirvish; and moreover, the Receiver should know that Harry Stinson, although he had various agency duties for the Mirvish Group, ceased to be a director or officer of 1 King West Inc. in

October 2004. It is false and misleading to state in news releases that Stinson is the "project developer". The use of these terms betrays a close allegiance with the Mirvish Group, which has made a major effort to portray Stinson as the person responsible for the development, and Mirvish as the innocent "investor".

45. The "open letter to the public" includes the following rather extraordinary statements, given that they refer to a business in receivership: "Since opening its doors in August of 2005, the Suites at 1 King West has quickly become a success story in the Toronto hotel market, continuously offering services and products that exceed expectations. In fact in just 2 short years the Suites at 1 King West continues to sit in the top 10 of 96 Toronto hotels, as ranked by tripadvisor customers. To this day the hotel also continues to be amongst the market leaders in occupancy." The obvious question is never answered: Why does a successful business have a Receiver? I respectfully submit that Mr. Smith failed in his duty as Monitor, and provided faulty information to the Court that led to a solvent business being improperly placed under the control of a Receiver – one who is running up huge and unsustainable bills. In my experience dealing with lawyers and accountants, I find the hourly rates here to be unreasonably high and the number of hours billed to be excessive for the supervision of a business that is mostly very successful, and I respectfully submit that their payment will be significantly detrimental to the legitimate interests of the suite owners at One King West.

46. I respectfully submit that Ira Smith's approach to business is not appropriate for a sophisticated business such as The Suites at One King West. Even his business

cards are offensive for someone with such a huge responsibility. They refer to his telephone number thus: 1-866-483-NO DEBT That betrays an unacceptable level of hucksterism for an Officer of the Court.

47. Further evidence of the inappropriate extravagance of Ira Smith is his decision to include elaborate free food service for the meeting of owners he convened on Sept. 10, 2007, at One King West. The meeting was called for 8:00pm, an hour at which everyone would logically assume that no food would be served. Soft drinks and cookies would have been more than enough. An Officer of the Court should be scrupulously frugal.

48. I make this Affidavit for the purposes of informing this Honourable Court on matters relevant to the issues at hand, and for no other or improper purpose.

SWORN BEFORE ME in the
City of Kitchener in the Province of
Ontario this 3rd day of October, 2007

J. Robert Verdun

TAB G

----- Forwarded Message ----
From: TSCC No.1703 <tscc1703@onekingwest.com>
To: zncal@yahoo.com
Sent: Wednesday, October 10, 2007 12:28:03 PM
Subject: TSCC No.1703 Bob Verdun communication

TSCC No.1703

October 10, 2007

Dear Owners:

To: All suite owners
From: Bob Verdun
Date: October 10, 2007

Attached is the affidavit that I filed in Court last week. Judge Pepall confirmed that she read it, and its contents were the subject of many of the comments made by lawyers during the hearing. While we did not "win" anything on Friday, we at least made a little progress informing the Court about the concerns of the suite owners.

I prepared this affidavit on behalf of the approximately 60 owners who participated in the "independent legal advice" group. They all received this affidavit from me last week.

However, as it is now an official court document, all owners are entitled to see it.

http://www.onekingwest.com/downloads/07-10-03_affidavit_of_JRV.doc

Bob Verdun

Maria Delgado
Y.L. HENDLER LTD.
Agents for and on behalf of TSCC No.1703
Telephone (416) 548-8219
Fax (416) 548-8229

tscc1703@onekingwest.com

Forward email

TAB H

-----Original Message-----
From: Robert Verdun [mailto:bobverdun@rogers.com]
Sent: Wednesday, October 24, 2007 12:49 AM
To: Latham, Joe; Jeffrey Carhart; Patricia Conway; Margaret Sims
Cc: Costa, Cathy; peter.raytek@shibleyrighton.com; Arthur Jacques; Brian Smith; Mark Arnold
Subject: Burn the furniture to heat the building!

Ladies and gentlemen of the exalted ranks of the Bar (especially those at Goodmans and Miller Thomson):

I am driven to a most inappropriate message herein because of the Receiver's gall and greed, not to mention his incompetence and stupidity. This is privileged communication, primarily to alert you all to your potential liability for intentional miscarriage of justice for your own enrichment.

It is totally intolerable for the Receiver to ever consider touching the capital reserve fund that is clearly a trust fund for the essential support of the rental program. You might as well start burning the furniture to heat the building.

I should also point out that the Receiver is a complete idiot for daring to suggest he might have to shut down elevators if he is unable to force suite owners to yield their most basic property rights.

All of the elevators are essential; indeed, the Declarant did not provide enough elevator capacity, and there are still problems with functionality because they were not properly installed and programmed (refer to the deficiency lawsuit).

Never mind that: All but one of the elevators belong to TSCC 1703, and it would be common theft if the Receiver dared to shut down any of them. The other elevator is legally owned by TSCC 1726 (but was not separately programmed by the Declarant, as was required in the documentation), but it is the service and emergency elevator for the building. It is the FIREFIGHTERS' elevator. It cannot possibly be shut down, unless Ira plans to risk spending the rest of his life in the slammer as a result of an emergency that causes death and destruction.

Hello, Ira: Your firm has billed hundreds of thousands of dollars so far, and you still have no clue as to how the building really functions, and no respect for the rights of the people who own 95% of the building. You are A COMPLETE IDIOT because you do not even know how the elevators function (when they function).

Hello, Joe: You are an accessory to the damage being done by your idiot. You can be held responsible for this outrageous nonsense.

You have revelled in the fact that Her Honour Madam Justice Pepall has consistently sided with you. However, you can keep her on the mushroom diet only so long. When she finally realizes she has been kept in the dark and fed excrement, it is YOU who will be in deep do-do.

How crazy is this situation going to get? We seem to have the worst of Kafka and Catch 22 at the same time, but it certainly is lucrative for you lawyers. You have a monstrous conflict of interest. The crazier this gets, the more you get paid, and the longer you get paid.

We have a solvent business that is in receivership, and two hopelessly-insolvent businesses that are currently not allowed to go bankrupt. The courts of appeal will eventually correct this nonsense.

We have a hotel business that was original sold to the suite purchasers, but surreptititously (and improperly) taken away from them and placed under the control of Stinson Hospitality Inc. for up to 20 years, during which time SHI was intending to extract sufficient income from the hotel business to pay for it all over again (at the expense of the suite purchasers). This is in the realm of fraud.

This will all be revealed some day in a comprehensive legal action, and I will insist on prosecuting any lawyers who are culpable. It's not too late for you overgrown Harry Potters in fancy robes to start behaving like Officers of the Court, and not greedy partisans without morals or ethics.

The deal with SHI was clearly intended to be strictly for the benefit of SHI. If SHI failed, the deal was supposed to terminate, and the duly-elected representatives of all of the suite owners (the directors of TSCC 1703) were clearly intended to take control of the hotel business.

There is a niggling matter of title to some small spaces in the building (created solely for the purpose of providing a corporate veil, and easily exposed because I have the background documents to prove the dishonesty of the manoeuvres), but, as we all now know, there is also an issue of municipal approval status to deal with. I expect we will discover that the small spaces were not created with full legal propriety, in that the only documents I can find provide for 551 dwelling units, and certainly not the 575 now in the building, and there is no provision for an additional four separate commercial units that constitute TSCC 1726.

Whatever it is that Mirvish and the Receiver are continuing to try to sell to some third-party hotelier has many clouds on title. There is no way that such a deal will ever close without the expressed consent of about several hundred suite owners, and you are not going to get that because of the current legal shananigans.

The one thing that is clear from all of the documentation is that the hotel business was never intended to support a Receiver. It is barely profitable at the best of times (Film Festival month being the rare exception). No wonder Stinson went bankrupt. The fact that the Receiver cannot live within his means (despite his draconian powers) proves conclusively that Stinson never had a chance. He was an abused puppet of the Declarant.

The Receiver has already admitted that the actions by Stinson in April effectively triggered the right of suite owners to terminate RMAs. Without RMAs, there is no hotel business, and anyone who insists on trying to sell this hotel business to a third party is verging on fraud. I realize that Officers of the Court can get away with such things (Ira Smith is probably safe), but there is the concept of professional liability for all the lawyers to ponder.

I am absolutely astounded that Ira Smith constantly brings matters to the court on very short notice, despite the long-standing policy of the Commercial List to require seven days' notice. This is intolerable, and someone will be held to account eventually. Heads will roll.

It is unconscionable for the Receiver to mock the efforts of TSCC 1703 in summoning petitions from 130 suite owners on only two days' notice. The suite owners are busy people located all around the world; we were sold a hands-off guaranteed investment. The fact that 130 responded so quickly shows the depth of passion and commitment that will eventually win this battle. (You don't have my fax in the total, because I am travelling at the moment, with no access to fax.)

The Receiver is intellectually dishonest (to put it mildly) to state in his report that 130 suites "does not approach even half of the units in the building". Once again, an Officer of the Court is intentionally misleading the Court, because it is not the number of units in the building that matters (especially because Mirvish still owns 35), but the number caught in the hotel pool. And, 130 is about one-third of the trapped participants – and their quick response is strongly significant.

Page 15 of the Receiver's Report is alarming: "There is no separate financial reporting for Stinson Hospitality Inc., as the Receiver is now effectively operating as the rental manager."

SHI is the insolvent company. The Receiver has an absolute duty to account separately. This is the only possible justification for all of the time and expense of the Receiver: What, indeed, is the state of SHI and DCCC?

Moreover, the Receiver is exposing his extreme incompetence. If he had done his research, and understood all of the complex documents, he would know that SHI was never more than the agent of the Mirvish interests. The Mirvish interests still hold the voting rights to TSCC 1726, which is, in law, the rental manager. TSCC 1726 is part of the receivership, but I am certain that the correct paperwork has never been done. Suite owners such as myself have a contract with SHI, which was signed when SHI did not own TSCC 1726. Those contracts are totally invalid unless Stinson was only the agent of Mirvish, and Mirvish continues to be fully responsible for all debts and obligations of Stinson.

What is the point of having a Receiver if he does not know and comprehend such key facts?

I also take serious issue with the Receiver's cavalier dismissal of the fact that the owners of 22 suites were allowed to cancel their RMAs after April 23, despite the Court Order preventing such steps. As Monitor, Ira Smith was duty-bound to know about such actions, and should have taken steps to prevent them.
As it turns out, most of these suite owners are part of the rogue group that is working on the Receiver's behalf to cause dissension within the ranks of the suite owners -- which, by the way, is contrary to the advice of Justice Pepall.

The evidence of Ira Smith's complicity in this fomenting of dissension is clearly seen in Ira Smith's own reports, which document the circle of information among himself, Miller Thomson, the Mirvish Group, and rogue owners who were improperly allowed to withdraw from the RMA.

The craziness here is beyond belief.

We suite owners have had our hotel business stolen from us twice: first by the surreptitious creation of TSCC 1726 and now by a bogus receivership.

Except for the "Freehold" lands of the Dominion Club, the Receiver has nothing of substance to sell -- and those Freedhold properties are of very limited value except to the party that is operating the hotel. The perpetual requirement to maintain the historic rooms and keep them open to public enjoyment greatly reduce the potential value to anyone other than the hotel operator -- and there will never be an outside hotel operator except by voluntary agreement with a few hundred suite owners. It cannot be imposed by the
Receiver, and this entire process is a total waste that is of benefit only to Ira Smith and a bunch of greedy, unscrupulous lawyers.

This cannot go on forever, and I will do everything in my power to ensure that the culprits are held fully responsible.

I write this email strictly in my personal capacity, and for the totally proper purpose of alerting lawyers of their professional responsibility to not ignore the truth when it is staring them in the face. Every one of you has an obligation to expose Ira Smith as incompetent, and move expeditiously to end this sham receivership.

In case you have forgotten: The elevators are prima facie proof. He has hoisted himself on his own Fujitec petard.

J. Robert (Bob) Verdun
Owner of Suite 4706

--- Mark Arnold <Mark.Arnold@gmalaw.ca> wrote:

> Counsel:
>
>
>
> Yesterday, Mr. Latham for the first time, advised me in clear terms,
> that the receiver intended to look to the Capital Expense Reserve Fund
> to pay any receiver deficit. I advised Mr. Latham that under the
> circumstances I would be amending the Notice of Motion. I intend to do

> that.
>
>
>
> This morning, I received the Receivers Notice of Motion and Motion
> Record served late and certainly not in accordance with the time
> provisions provided for in the Rules.
>
>
>
> The intervenors who I act for need some time to review the receiver's
> material and I understand that the Mirvish Group are in the same
> position.
>
>
>
> In addition, in light of our amendments to our notice of motion Ms.
> Conway and Mr. Carhart have requested an adjournment and I have
> agreed.
>
>
>
> Under the circumstances, if Mr. Latham's client does not agree to
> adjourn then we are probably looking at a contested adjournment motion
> tomorrow.
>
>
>
> Please advise.
>
>
>
> Mark H. Arnold
>
>
>
> Gardiner Miller Arnold LLP
> Barristers and Solicitors
> 1202 - 390 Bay Street
> Toronto, Ontario M5H 2Y2
>
>
>
>
> Certified Specialist (Civil Litigation)
>
>
> Tel. (416) 363-2614 x231
> Fax (416) 363-8451
> E-Mail. mark.arnold@gmalaw.ca
> Web: www.gmalaw.ca <BLOCKED::http://www.gmalaw.ca/>
>
>
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> the sender immediately and destroy this message without making a copy.
>

>
>
> _____
>
> From: Latham, Joe [mailto:jlatham@goodmans.ca]
> Sent: October 23, 2007 1:40 PM
> To: Mark Arnold; Jeffrey Carhart
> Cc: Costa, Cathy; peter.raytek@shibleyrighton.com; Arthur Jacques;
> Patricia Conway; Margaret Sims; Brian Smith; Bob Verdun
> Subject: RE: One King / Adjournment of October 24th Motion
> Importance: High
>
>
>
> Counsel, I have been in meetings this morning and
> have not had an opportunity to discuss this issue
> with the Receiver until just a few moments ago. An
> adjournment of the motion will only serve to
> increase the very costs which all parties are
> presently seeking to reduce. We fail to see what
> will be accomplished by that. The costs of this
> matter have been much higher than any party would
> like to see, but that is caused largely by continual
> procedural steps taken by various parties. While
> Mr. Arnold's motion materials spoke only to the
> distributions, our position would be the same on any
> amended motion - we would oppose it for the reasons
> set out in the Second Report. Our proposal in that
> Second Report does not diminish the unit owner
> distributions at this time, which is consistent with
> our approach throughout the matter.
>
>
>
> In our view, adjourning this matter only means a
> substantial increase in professional fees for all
> parties, in a case where the fees of the court
> officer are being scrutinized and there is a dispute
> over the mechanic of payment, and it is unreasonable
> to put that issue off. To do so will arguably only
> prejudice the estate. As well, the Receiver would
> like to proceed with the Branding opportunity as
> detailed in the Second Report so that the process
> may continue.
>
>
>
> Accordingly, the Receiver does not agree to any
> adjournment of the matter and wishes to proceed
> tomorrow.
>
>
>
> Joe Latham
>
>
>
> _____
>
> From: Mark Arnold [mailto:Mark.Arnold@gmalaw.ca]
> Sent: Tuesday, October 23, 2007 12:55 PM

> To: Jeffrey Carhart
> Cc: Latham, Joe; Costa, Cathy;
> peter.raytek@shibleyrighton.com; Arthur Jacques;
> Patricia Conway; Margaret Sims; Brian Smith; Bob
> Verdun
> Subject: RE: One King / Adjournment of October 24th
> Motion
>
> October 23, 2007.
>
>
>
> Counsel:
>
>
>
> I am instructed to consent to the adjournment
> request of the Mirvish Group.
>
>
>
> I intend to amend our Notice of Motion and will
> serve that by tomorrow.
>
>
>
> I trust that the Motion by the Receiver with respect
> to approval of its second report will also be
> adjourned. Would Mr. Latham please advise his
> agreement.
>
>
>
> As for dates, November 14, 2007 is satisfactory for
> me, although I think that more time will be
> required.
>
>
>
> Finally, will Mr. Carhart confirm that he will take
> all necessary adjournment and re-scheduling steps
> and please advise when I will receive responding
> material if any, hopefully no later then October 29,
> 2007, so that if cross examinations are required
> they can take place without further delay.
>
>
>
> Thank you
>
>
>
> Mark H. Arnold
>
>
>
> Gardiner Miller Arnold LLP
> Barristers and Solicitors
> 1202 - 390 Bay Street
> Toronto, Ontario M5H 2Y2
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>
>
> Certified Specialist (Civil Litigation)
>
>
> Tel. (416) 363-2614 x231
> Fax (416) 363-8451
> E-Mail. mark.arnold@gmalaw.ca
> Web: www.gmalaw.ca <BLOCKED::http://www.gmalaw.ca/>
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>
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>
>
> _____
>
> From: Jeffrey Carhart
> [mailto:jcarhart@millerthomson.com]
> Sent: October 23, 2007 12:38 PM
> To: Mark Arnold
> Cc: jlatham@goodmans.ca; ccosta@goodmans.ca;
> peter.raytek@shibleyrighton.com; Arthur Jacques;
> Patricia Conway; Margaret Sims
> Subject: One King / Adjournment of October 24th
> Motion
>
>
>
>
> Mark
>
> In the circumstances, our instructions are to seek
> an adjournment of your October 24th motion.
>
> We have spoken with the Court and Justice Pepall has
> availability on November 13th (1 hour), 14th (2
> hours) and 16th (2 hours) and we also are available
> for each of those days.
>
> Can you please pick one of those days which work for
> you.
>
> Thank you,
>
> Jeffrey Carhart <mailto:jcarhart@millerthomson.com>
>
>
> Scotia Plaza
> 40 King Street West, Suite 5800
> P.O. Box 1011

> Toronto, ON M5H 3S1
>
> Direct Line: 416.595.8615
>
> Fax: 416.595.8695
>
> Email: jcarhart@millerthomson.com
> <mailto:jcarhart@millerthomson.com>
>
> www.millerthomson.com
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> spéciale.
>
> Pour tout renseignement au sujet des services
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>
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>
****
>
>

TAB I

-----Original Message-----
From: one-king-west-owners@googlegroups.com
[mailto:one-king-west-owners@googlegroups.com]On Behalf Of Robert Verdun
Sent: October 28, 2007 12:59 AM
To: One King West Owners
Subject: The I.R.A.

Some things are provable beyond any shadow of a doubt.

Here is part of what Ira Smith "reported" to court on Oct. 24, in response to the application by TSCC 1703 to allow ALL suite owners to withdraw from the Rental Management Agreement (to the same extent that Ira Smith allowed his co-conspirators to withdraw from the rental pool, flagrantly defying the same Court Order that originally appointed Ira as Mirvish's Monitor):

"If this Honourable Court grants such relief, and a sufficient number of owners withdrew their residential condominium units from the rental management program, the Receiver may be in the position where it is no longer economical or justifiable to continue operating any of the businesses run by Suites, SHI, DCC and Housekeeping. In that event, the result may well be for the Receiver to take steps to terminate the employment of all employees, other than for the few required for ongoing security and maintenance of the property, cease providing services to the Ontario Club, secure off all areas owned by the commercial condominium corporation TSCC 1726 and DCC, reduce the required insurance coverage, and ensure that only a narrow access way, which currently exists, was maintained to allow unit owners to access their units. The Receiver would also have to consider, given the complex nature of the ownership structure, whether or not it would in fact be necessary to maintain the current amount of elevators that are in service."

Ira Smith has been the court-appointed Monitor since April 23, 2007 (as requested by Mirvish) and the court-appointed Receiver since August 24, 2007 (again at the request to the court by Mirvish). Ira Smith has rung up hundreds of thousands of dollars in professional fees. He has met with property management, the full board, various directors, and especially me, and I thoroughly informed him about the precise situation of our building.

After all of that, he still does not know that 6 of the 7 elevators are owned by TSCC 1703, and that the 7th is the service and emergency elevator. The latter cannot possibly be shut down - unless Ira Smith wants to risk going to jail for life in the event of a fire causing death and destruction and "his" elevator not being in operation because of an idiotic decision

to save a few dollars in costs.

In any case, no matter how the building is occupied, the elevators are barely adequate as they are. As I wrote to all of the lawyers on Wednesday, Ira Smith must be considered a COMPLETE IDIOT for not knowing who owns the elevators and for daring to even suggest that they might be shut down as a cost-saving measure.

The reality of One King West is that 95% of the building is under the jurisdiction of TSCC 1703, but Ira Smith is irresponsibly trying to control the entire building. Our part of the building is not legitimately under his control, but he is trying to bleed us death to support his parasitic demands. He is a glutton who will do anything to feed his voracious demand for money from our pockets. He will devour our furniture-and-equipment reserve fund, and when that is gone, he will take our distributions - but he has nothing positive to contribute.

The wonderful irony of the passage quoted above is that it proves exactly why no third-party hotel operator or investor (with or without a brand, which is irrelevant) will ever acquire this business unless one of the three following actions occurs:

1. We, as suite owners, working through our legal representative, the board of TSCC 1703, can openly and willingly reach an agreement that is clearly to the advantage of suite owners;

2. The courts allow the Receiver's high-priced legal team to permanently deprive suite owners of our basic property rights; or

3. A guerrilla force within the suite owners succeeds in driving down suite values so drastically that a hotel-investor "vulture" can pick the carcass clean.

There is a risk of #2 happening, but it is very low. We have a judge who has been kept on a mushroom diet for a long time, but must eventually realize there is much more to the story than she was originally told. Ira Smith's idiotic scenario of killing the hotel and shutting down elevators will help her see the light. In any case, the Supreme Court of Canada will never allow our property rights to be permanently suspended - but it would be a long wait if the case has to go that high.

The real risk is #3. We have our own version of the IRA in our midst: the Idiotic Receiver's Army. This is the battle we must all fight - NOW!

We are at war. It's never easy to see or accept the fact that any society is at war. It means hardship

and sacrifice, but it will only become worse the longer we delay facing reality and taking the necessary actions against the traitors in our midst.

Bob Verdun
4706

P.S. - I hope you have noticed by now that I am a lousy Nanny. I'm not holding your hand, and assuring you that all will be well. Sadly, we had several years of Harry Stinson doing exactly that - and look what a mess he got us into. Virtually all of us continued to buy into his pleas, not knowing there was no feasible business plan behind what he was asking us to do.

P.P.S. - In this Alice-in-Wonderland world, where nothing seems to make any sense, TSCC 1703 still owns one-third of the front desk! With a little creativity, we can tell Ira Smith where to go, and continue to operate our own hotel program. It might be a little crowded with only one-third of the front desk, but it's enough to prove a point if we have virtually all of the hotel suites participating in our program and he has none.

BOTTOM LINE: There are plenty of ways to win. BUT: We have to start by exposing and disarming the traitors in our midst, who are either intentionally or unwittingly working with our enemies to leave us with nothing. We have to eliminate anyone who claims to be a "partner" of Mirvish and his Receiver.

TAB J

From: Lyons, Wanda
Sent: Wednesday, October 31, 2007 2:06 PM
To: 'bobverdun@rogers.com'
Cc: 'mark.arnold@gmalaw.ca'; 'ira@irasmithinc.com'; Conforti, Joe
Subject: Ira Smith/Ira Smith Trustee & Receiver Inc.

Please see attached.

Letter to Verdun.pdf

Wanda Lyons
Assistant to J. Conforti
Goodmans LLP
250 Yonge Street, Suite 2400
Toronto, Ontario
M5B 2M6
Tel: 416.597.4214 x. 3688
Fax: 416.979.1234

Goodmans LLP

Barristers & Solicitors

250 Yonge Street, Suite 2400
Toronto, Ontario Canada M5B 2M6

Telephone: 416.979.2211
Facsimile: 416.979.1234
goodmans.ca

Direct Line: 416.597.4177
jconforti@goodmans.ca

October 31, 2007

Our File No.: TBF

Delivered By Courier and Electronic Mail
(bobverdun@rogers.com)

J. Robert (Bob) Verdun
153-B Wilfred Avenue
Kitchener, Ontario N2A 1X2

Dear Mr. Verdun:

Re: Libel Notice

I represent Ira Smith Trustee & Receiver Inc. ("Receiver Inc.") and its president and principal, Ira Smith.

Mr. Smith and Receiver Inc. have well-deserved reputations for their abilities, integrity, and professionalism. These qualities have continued throughout Receiver Inc.'s appointment by the Ontario Superior Court of Justice on August 27, 2007 as the receiver of all of the assets, undertakings and properties of Stinson Hospitality Inc., Dominion Club of Canada Corporation, The Suites at 1 King West Inc. and 2076564 Ontario Inc. and, prior to that, as the court-appointed monitor of these properties.

I have been consulted in connection with certain written communications published by you (the "Libels") about Mr. Smith and Receiver Inc., in particular:

- email from you delivered on October 28, 2007 @ 12:59 a.m. to the group "one-king-west-owners@googlegroups.com" with the subject heading: "The I.R.A."
- email from you delivered on October 24, 2007 @ 12:49 a.m. to various counsel at Goodmans, Miller Thomson, Shibley Righton and Gardiner Miller Arnold with the subject heading: "Burn the furniture to heat the building";
- email from you delivered on October 26, 2007 @ 12:22 p.m. to the group "one-king-west-owners@goodlegroups.com" with the subject heading: "Good news and bad news"; and

The Libels are false. They constitute, individually and collectively, extremely serious defamations against Mr. Smith and Receiver Inc. -- all calculated with the malicious intent and effect of causing serious damage to their well deserved reputations and business interests as well as with a view to undermining the receivership process.

The Libels are defamatory in their plain and ordinary meaning and also by innuendo, bearing, *inter alia,* the following meanings – all of which are false:

- Mr. Smith/Receiver Inc. are incompetent and incapable of fulfilling their court-appointed role.
- Mr. Smith/Receiver Inc. have acted dishonestly and have otherwise misled the court and others leading up to and during the course of the court-appointed receivership.
- Mr. Smith/Receiver Inc. have committed and intend to commit criminal offences, including fraud and theft, during the course of the court-appointed receivership.
- Mr. Smith/Receiver Inc. are engaged in an unlawful conspiracy with other stakeholders and their representatives.
- Mr. Smith/Receiver Inc. are reckless and indifferent to the lives and the safety of the occupants of the building as to the adherence to health and safety regulations.
- Mr. Smith/Receiver Inc. have acted with improper motives and they are otherwise untrustworthy and unethical in their business practice.

Your defamations are mean-spirited, replete with vitriol and unwarranted personal attacks. Your characterization of my clients' conduct as part of a "Big Lie" together with your drawing of other parallels with Hitler and the Nazi regime are disturbingly provocative given your specific awareness of Mr. Smith's religious affiliation and in extraordinary bad taste (at the very least). Certainly this demonstrates your lack of even an attempt to engage in any reasonable discourse whether in or out of the context of the court proceedings.

Your correspondence serves no constructive purpose whatsoever and they cannot be permitted to continue further.

Mr. Smith and Receiver Inc. have suffered and will continue to suffer serious damages as a result of the Libels. They reserve their rights to pursue an action against you to the fullest extent possible, including a claim for compensatory and punitive damages as well as any steps necessary to remedy your interference with the receivership process.

In order to lessen the harm already incurred and to avoid further aggravation of damages, on behalf of Mr. Smith and Receiver Inc., I demand that:

1. you cease publication of the Libels – verbally or in written form (this includes cessation of any repetition or any portion of the Libels and their removal from any websites or other published materials); and

2. you clearly and unreservedly issue a written apology and retraction in a format approved by Mr. Smith and Receiver Inc.; your draft should be submitted to me for approval.

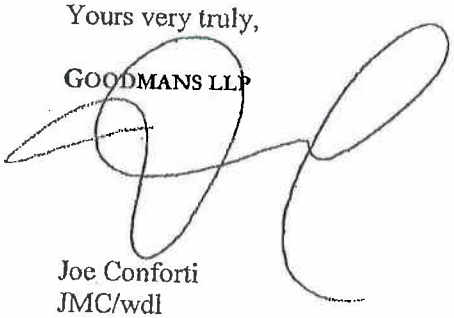
So that it is clear, the foregoing is partial redress only for the substantial injury that you have already caused and is without prejudice to the claim for damages of Mr. Smith and Receiver Inc. Once the remedial steps have been taken, appropriate compensatory payment from you can be discussed.

I require a response from you to this letter within one week.

In order to ensure that the Libels are not re-published by Toronto Standard Condominium Corporation No. 1703 or its board of directors (which I understand you are a member and president), I am copying this letter to that organization's counsel, Mark Arnold; he has confirmed that he does not represent you with respect to the Libels.

Yours very truly,

GOODMANS LLP



Joe Conforti
JMC/wdl

cc: Mark Arnold (Gardiner Miller Arnold) – via email
I. Smith/I. Smith Trustee & Receiver Inc. – via email

GOODMANS\\5509394.2

TAB K

GARDINER MILLER ARNOLD LLP
BARRISTERS & SOLICITORS

J. ROBERT GARDINER
390 BAY STREET, SUITE 1202, TORONTO, ON M5H 2Y2
PHONE (416) 363-2614 ext. 226 FAX (416) 363-8451
e-mail: bob.gardiner@gmalaw.ca www.gmalaw.ca

May 9, 2008

CONFIDENTIAL
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REGISTERED MAIL

Toronto Standard Condominium Corporation No. 1726
c/o Stinson Hospitality Inc.
Management Office
1 King Street West
4th Floor
Toronto, Ontario
M5H 1A1

Attention: Harry Stinson

Toronto Standard Condominium Corporation No. 1726
c/o Camillo Casciato, President
284 King Street West
4th Floor
Toronto, Ontario
M5V 1J2

Ira Smith Trustee & Receiver Inc.
167 Applewood Crescent
Suite 6
Concord, Ontario
L4K 4K7

Attention: Ira Smith

AND TO: Any Potential Purchaser of the Units of TSCC 1726

Dear Sirs:

Re: Concerns to Rectify TSCC 1726 Breaches

Issues

In accordance with our January, 2008 discussions, we undertook to notify the Receiver of the Company's Assets on behalf of any potential Purchaser regarding various concerns of Toronto Standard Condominium Corporation No. 1703 ("TSCC 1703") with respect to apparent breaches of various requirements by Toronto Standard Condominium Corporation No. 1726 ("TSCC

1726"). We expect that any potential Purchaser of the Company's Assets will want to learn TSCC 1703's views with respect to these matters since the short-term rental pool units belong to the Hotel Landlords of TSCC 1703's participating units. TSCC 1703's President will be pleased to respond to any potential Purchaser's due diligence questions. We do not know how a potential Purchaser could complete its due diligence otherwise.

Company's Assets.
It is our view that the Receiver should address a number of the following concerns at this time. In any event, any potential Purchaser will be obligated to rectify and bear the consequences and expenses with respect to each of the concerns enumerated in this letter arising from acquisition of the units of TSCC 1726 in the context of the Receiver's sale of the assets, properties and undertakings (the "Assets") of any or all of Stinson Hospitality Inc. ("SHI"), Dominion Club of Canada (the "Club"), the Suites at 1 King West ("Suites") and 2076564 Ontario Inc. ("Housekeeping") (which together constitute the "Company") in accordance with the provisions of the Order of Pepall J. dated January 24, 2008 (the "Sale Process Order") and the requirements pursuant thereto.

Add to Data Room
We hope that the contents of this letter will assist TSCC 1726, the Receiver and any proposed Purchaser of the Company's Assets to take into consideration and accommodate the rights and needs of the potential Purchaser and TSCC 1703. We request that the contents of this letter be promptly added to the information disclosed in the Data Room to qualified Purchasers who have executed a Confidentiality Agreement, so they receive full and fair disclosure and are not subsequently surprised about the matters, liabilities and expenses arising in connection with acquisition of the 3 2/3 units of TSCC 1726 currently owned by SHI.

TSCC 1703's Concerns
On behalf of its 575 unit owners, Toronto Standard Condominium Corporation No. 1703 ("TSCC 1703") submits the following concerns:

TSCC 1703 as Owner. TSCC 1703 is the owner of 1/3 of Unit 2, Level 1, TSCP 1726 (the "Concierge Unit"). As such, TSCC 1703 expects to have its rights as an owner fully respected by TSCC 1726, SHI as the other existing unit owner, any Purchaser of the balance of the units of TSCC 1726, the Receiver and their directors, officers, property manager and professional advisors.

Notice of Address for Service. Attached is the updated Notice of Address for Service on behalf of TSCC 1703 addressed to TSCC 1726.

Article 19. Article 19 of the Terms and Conditions of Sale attached to the January 24, 2008 Court Order requires any Purchaser of the units of TSCC 1726 to bring TSCC 1726 into compliance with all requirements of the *Condominium Act, 1998* (the "Act") and its declaration, by-laws and rules. That provision is missing from the Terms and Conditions of Sale issued by the Receiver on March 12, 2008. We request that those provisions be re-instated into the Terms and Conditions of Sale, since we are aware that apparently TSCC 1726 is in breach of many legal requirements which must be rectified.

OSC Ruling and LPDM. Note that the Ontario Securities Commission's Ruling (the "OSC Ruling") dated November 22, 2004 and the Lease Program Disclosure Memorandum (the "LPDM") dated December 17, 2004 contain various provisions governing the Rental Management Program, the Lease Operating Agreement (the "LOA"), the Rental Management Agreements (the "RMAs") and the protection of residential unit purchasers, requiring full disclosure of sale and dealing with the units of TSCC 1703 participating in the short term rental management program as a trade in securities, subject to provisions of the *Securities Act*. TSCC 1726 and the Dominion Club are co-owners of various service units in TSCC 1703. The Rental Manager, declarant, unit owners, vendors and purchasers have binding obligations pursuant to those documents. Note particularly Section 10 of the OSC Ruling and Section 6.2 of the LPDM. In addition, Section 29 of the OSC Ruling requires each Rental Management Agreement to impose an irrevocable obligation on the Rental Manager to deliver to a prospective subsequent purchaser of a unit participating in the Rental Program a copy of the most recent audited financial statements and the Rental Management Disclosure Memorandum (presumably, the LPDM). Please ensure compliance with those criteria.

Concerns. We appreciate that some condo criteria are esoteric yet mandatory statutory *Condominium Act* requirements. It is essential that the Receiver and any potential Purchaser of the units of TSCC 1726 receive full and fair disclosure of these concerns. Review of the documents and information contained in the Data Room or in the possession of SHI and the Receiver will hopefully solve some of these concerns. If not already resolved, some of the following concerns can result in substantial time, effort and expense to rectify them.

1. **Turnover Meeting.** Unless the requirements of s. 43 of the Act have been previously achieved, require the first directors to immediately call and hold a turnover meeting, to enable the unit owners to elect a new board, as required by s. 43 of the Act, subject to enforcement in accordance with the compliance criteria set out in s. 134 of the Act and the offence criteria set out in s. 137 of the Act. TSCC 1703 has not previously received the required notice pertaining to a turnover meeting for TSCC 1726, despite the fact that the s. 43 (1) deadline has passed. Note that the declarant and the First Board would remain liable for a number of issues as a result thereof, if compliance has not yet occurred.

2. **Elect Directors.** The Receiver and Manager of the units of TSCC 1726 or the Purchaser should promptly call and hold a meeting of owners to elect a board of directors to manage the affairs of the Corporation in accordance with s. 34, 45, 27, 28, 29, 30 and 31 of the Act. The board may not transact any business of the Corporation except at a meeting of directors at which a quorum is present [s. 32 and 35].

3. **Disclosure of Interest.** If any director or officer of the Purchaser has any direct or indirect interest in a contract or transaction to which TSCC 1726 is or is proposed to be a party, ensure proper disclosure in accordance with the criteria set out in s. 40 and 41 of the Act. 1 King West Inc. ("1KWI") and its associated companies must comply with the conflict of interest criteria set out in Article 8 of the LPDM.

4. **Turnover Documents.** Unless the requirements of s. 43 of the Act previously have been properly achieved, require the declarant to turnover to TSCC 1726 all of the turnover documents referred to in ss. 43 (4) and (5) of the Act. TSCC 1703 has been denied access to those records

and reserves each of its rights and remedies with respect thereto. Carefully review and approve each of the turnover records referred to in ss. 43 (4) and (5) of the Act and confirm that all required records have been turned over. In particular, immediately review any warranties and guarantees, as well as any applicable equipment or chattels and promptly issue any warranty claims within warranty deadlines. Ensure that all as-built plans and specifications referred to in ss. 43 (5) (b) and (c) have in fact been marked "as-built" under the seal of the applicable engineer or architect.

5.**Aud ited Financial Statements.** Unless the requirements of s. 43 (7) of the Act previously have been properly achieved, require the declarant to deliver to the board of directors of TSCC 1726 the audited financial statements of the Corporation prepared by the auditor on behalf of the owners and at the expense of the Corporation, as of the last day of the month in which the turnover meeting is held, pursuant to ss. 43 (7) of the Act. The board must promptly deliver these financial statements to the owners of record, including TSCC 1703.

6.**Dam ages and Offences.** In the event the declarant fails to comply with the requirements of ss. 43 (4), (5) or (7), TSCC 1726 should make an application to the Superior Court of Justice for an Order pursuant to ss. 43 (8) and (9) of the Act requiring compliance and payment of damages, legal costs and the $10,000 fine. Moreover, hold responsible the declarant, its directors and officers and the first directors and the subsequent directors and officers of TSCC 1726 responsible for breach of ss. 43 (1), (3), (4), (5) and (7) of the Act in accordance with the criteria and penalties referred to in s. 137 of the Act.

7.**Hold AGM.** Require TSCC 1726 to call and hold a general meeting of owners with respect to the financial statements and all matters of business conducted since the last annual general meeting of the Corporation (failing which, from the date of registration of the declaration and description of TSCC 1726) in accordance with s. 45, 47 and 48 – 54 of the Act, the criteria set out in TSC 1726's declaration and its by-laws. TSCC 1703 has received no notice of an annual meeting of owners to date, despite the fact it is well known that TSCC 1703 is an owner of a unit at TSCC 1726.

8.**Aud it Compliance.** Prepare and issue the usual condominium annual general meeting notice, agenda, minutes of the last annual general meeting and other relevant meeting documents and ensure that the agenda calls for a review and discussion of the minutes of the last annual general meeting, a review of the financial statements for the last fiscal year and any prior fiscal years not reviewed at an annual meeting of owners, appointment of auditors and a general discussion session in accordance with usual condominium AGM criteria and practice.

9.**Condo Auditor.** Ensure that the auditor is an experienced condominium auditor and that the financial statements comply with generally accepted accounting practices and in accordance with the Ontario Institute of Chartered Accountants' Audit and Accounting Guidelines for Condominium Corporations. Ensure that the auditor reports upon all required matters, including non-compliance issues, the statement of reserve fund operations and other prescribed information, in compliance with s. 60 – 71 of the Act.

10. **Disclosure and First Year Budget.** Review TSCC 1726's Disclosure Statement(s), the original finalized and executed documents referred to therein and the first year budget for conformity with the requirements set out in s. 72 and 75 of the Act. Compare the actual amount

of common expenses and revenue with respect to the audited financial statements for the first year compared to the first year budget statement. Within 30 days of receiving the audited financial statements, give notice to the declarant of any amounts the declarant is required to pay to TSCC 1703 pursuant to s. 75 of the Act. TSCC 1703 has not previously received the first year audited statements; apparently this remedy remains applicable.

11. **Access to Records.** Ensure that TSCC 1726 is keeping adequate records, including each of the records listed in s. 55, 43, 76 and 115 of the Act, together with such records as may be referred to in TSCC 1726's declaration, by-laws, agreements and rules. Permit TSCC 1703 to promptly review any or all records of TSCC 1726 pursuant to this written request upon reasonable notice. For such purpose, TSCC 1703 hereby appoints and duly authorizes J. Robert Gardiner or such person designated by him in writing as an agent of TSCC 1703 to examine the records of TSCC 1726 or to copy any of its records, subject to the requirements of s. 55 of the Act and applicable case law.

12. **Lease, Licence, Easement By-law.** No by-law is currently registered on title to the units of TSCC 1726. Require TSCC 1726 to enact such by-laws as may be required in accordance with s. 176, 21 and 56 of the Act to enter into any lease, licence or easement in favour of any agent or contractor acting as the Rental Manager, the Ontario Club or any other person occupying any of the Assets or common elements of TSCC 1726 (including any portion of the 12th and 13th floor premises) and obtain the required consent to assign or sublease from TSCC 1703 as owner of those premises. No alterations may be made to the 12th or 13th floor leased premises or to TSCC 1703's other common elements or units except pursuant to the prior written consent of its board of directors and owners, where applicable, and subject to a registered Owner's Alteration Agreement and the applicable criteria in accordance with s. 98 and 97 of the Act.

13. **By-laws.** Require TSCC 1726 to duly enact, certify and register on title such general by-law as may be required to elect qualified directors, hold meetings, conduct business, execute agreements and undertake other usual business of a condominium corporation. A by-law is required to authorize any alteration to the Lease Operating Agreement. A joint by-law must be enacted pursuant to s. 59 of the Act to legally authorize the Reciprocal Agreement; please consult with TSCC 1703 in that regard. The Reciprocal Agreement contemplates that TSCC 1726 and the Club will execute and register on title an Assumption of Development Agreements. A by-law will be required to approve any other lease, licence, easement or agreement or any borrowing or other matter, in accordance with the requirements of s. 21, 56 and 59 of the Act, prior to implementing any such agreement, transaction or arrangement. All by-laws must first be passed by the board of directors and must comply with the other criteria set out in s. 56 of the Act, as well as the provisions of the declaration of TSCC 1726, the Lease Operating Agreement, the Rental Management Agreements and the Reciprocal Agreement.

14. **Status Certificate.** TSCC 1726's status certificate must be brought currently up to date and all regular criteria must be complied with in accordance with the Act and applicable case law. In view of the requirements of Article 12 of the status certificate, the obvious necessity for what will likely be a huge increase in common expenses or a special assessment charged to the owners of units of TSCC 1726 must be referred to, having regard to various applicable criteria referred to in this letter (unless the Receiver and Purchaser required 1 KWI and the Receiver on behalf of SHI to comply with their financial obligations). Any real estate or corporate lawyer contemplating a purchase of the units of TSCC 1726 will inevitably require a status certificate from each of TSCC 1703 and TSCC 1726 pursuant to s. 76 of the Act, a review of TSCC 1726's

records pursuant to s. 55 of the Act and a Form 13 (O.R. 48/01), including all the agreements and documents required to be attached thereto, in order to preclude many types of concerns such as those referred to in this letter, and to avoid a claim of professional negligence, especially since TSCC 1726 appears to be significantly mis-managed and could turn out to be a financial albatross.

15. **Status Certificate Request.** As an owner of the Concierge Unit, TSCC 1703 has forwarded a letter to TSCC 1726, any Purchaser of its units and the Receiver requiring them to promptly provide to TSCC 1703 the prescribed form of Status Certificate for TSCC 1726 in accordance with s. 76 of the Act and the requirements of Ontario Regulation 48/01 and Form 13 thereof. Our cheque in the amount of $105 is enclosed therewith, forwarded to the address for service of TSCC 1726.

16. **Information on Corporation.** As required by s. 77 of the Act, please provide the names and addresses for service of the first directors and officers, the past directors and officers and any current directors and officers of TSCC 1726, the persons responsible for the management of the property of TSCC 1726 and the person to whom the Corporation has delegated the responsibility for providing Status Certificates.

17. **Common Expenses.** Please confirm that TSCC 1726 has properly budgeted for, levied common expense assessments and collected all common expense assessments (including reserve fund contributions) against the owners of units at TSCC 1726, including the declarant after registration of the declaration and description, SHI until August 24, 2007, the Receiver thereafter until Closing of purchase of the remaining units of TSCC 1726 and the Purchaser and TSCC 1703 thereafter. Directors were required to assess and levy common expenses in accordance with TSCC 1726's declaration, by-laws and the Act. Please advise whether any of the past or present directors have failed to properly assess or levy common expenses against the unit owners, or lien any of the units which have failed to contribute their proportionate share of common expenses as required by s. 1 (1) and 84 – 88 of the Act and TSCC 1726's declaration and by-laws.

18. **Maintenance and Repairs.** Please ensure that all maintenance and repairs after damage have properly been undertaken to date.

19. **Upgrades.** TSCC 1703 recognizes that it would prefer to upgrade certain portions of its common elements and assets to enhance the hotel operations and appearance. Unfortunately, it has no plans to do so because of its obligations to undertake other more pressing maintenance and repair obligations and to enforce its litigation requiring the Declarant and various contractors to rectify substantial construction deficiencies. Should the Purchaser wish to bear the expense to undertake any upgrades to TSCC 1703's common elements or assets, the Purchaser will be obligated to enter into an Owner's Alteration Agreement in accordance with the criteria set out in s. 98 of the Act at the Purchaser's expense, subject to approvals by the owners of TSCC 1703's units in accordance with s. 97 of the Act.

20. **Changes by TSCC 1726 or Owner.** Please ensure that no additions, alterations or improvements are made to the common elements of TSCC 1726 or its unit assets in TSCC 1703, or any change in the assets, or any change in a service provided by either TSCC 1726 or TSCC 1703 to its owners is undertaken, except in compliance with the Act and applicable declaration

provisions. Please ensure that no owner of a unit at TSCC 1726 makes any such addition, alteration or improvement to the common elements, except at its own expense in accordance with an Owner's Alteration Agreement registered on title and the other criteria set out in s. 97 and 98 of the Act.

21. **Construction Deficiencies.** Rectify any construction deficiencies affecting the units, common elements and assets of TSCC 1726 arising from original construction deficiencies for which 1 King West Inc. ("1 KWI") and various contractors are responsible. Note that TSCC 1703 has sued I KWI for substantial construction deficiencies and for certain in-unit defects, which may affect units of TSCC 1703 owned by TSCC 1726, subject to the potential liabilities of TSCC 1726 pursuant to s. 23 of the Act. TSCC 1726's common elements and some assets, as well as the Dominion Club's freehold lands are not protected by that litigation. TSCC 1703, as a unit owner of TSCC 1726, requires TSCC 1726 to protect the interests of the unit owners by commencing legal action against the Declarant and responsible contractors in order to preclude the Purchaser and TSCC 1703 from having to bear the costs to rectify such building deficiencies in accordance with the duty of TSCC 1726 to maintain and repair its common elements and assets to the "Acceptable Standard" referred to in Section 1 (a) of TSCC 1726's Declaration and in accordance with the Act.

22. **Reciprocal Agreement.**

(a) Please ensure that all criteria and obligations of TSCC 1726 and the Dominion Club set out in the Reciprocal Agreement entered into by or on behalf of TSCC 1703, TSCC 1726 and the Club have been complied with. Attached is a copy of our letter addressed to TSCC 1726 and our letter addressed to the Dominion Club enclosing a form of Certificate of Compliance, together with a cheque in the amount of $105 each payable to TSCC 1726 and to the Dominion Club pursuant to Article 16 of the Reciprocal Agreement. Please complete and return the Certificate of Compliance within 10 days of the date hereof, failing which TSCC 1726, the Club, the Receiver and any proposed Purchaser shall be estopped from bringing any claim against TSCC 1703 in respect thereof.

(b) No by-law has been registered on title to the lands of TSCC 1726 in breach of Article 18.5 of the Reciprocal Agreement. Please promptly arrange to duly enact, certify and register the appropriate by-law on title.

(c) No by-law has been registered on title to the freehold lands of the Dominion Club in breach of Article 18.5 of the Reciprocal Agreement. Please promptly arrange to duly enact, certify and register the appropriate by-law on title.

(d) No Assumption of Development Agreements has been registered on title to Toronto Standard Condominium Plan No. 1726 ("TSCP 1726"), contrary to Article 3.5 of the Reciprocal Agreement. Please comply promptly.

(e) No Assumption of Development Agreements has been registered on title to the freehold lands of the Dominion Club, contrary to Article 3.5 of the Reciprocal Agreement. Please comply promptly.

(f) The corporate seal of TSCC 1726 has not been affixed over the signature of its signing officers. In accordance with precedent cases pertaining to the non-applicability of the Indoor Management Rule to condominium corporations [*Rogers Communications Services Inc. v. Carleton Condominium Corporation No. 53* and *Winfair Holdings v. SCC No. 46*], please affix its corporate seal to the Reciprocal Agreement and provide an executed copy thereof, together with a copy of its by-law confirming its requirements pertaining to due execution of an agreement by TSCC 1726. Please also provide the applicable resolution of directors in conformity with the execution provisions contained in TSCC 1726's General By-law authorizing due execution of the Reciprocal Agreement by TSCC 1726's President.

(g) Upon request, TSCC 1703 will be pleased to provide a copy of the budget entitled 1 King West Shared Facilities Costs Reciprocal Agreement for inclusion in the Data Room.

(h) With respect to Article 4.8 of the Reciprocal Agreement, there has been a disproportionate usage of the garbage disposal, trash compactor and garbage holding room area in relation to the food services provided by the Dominion Club which justifies and additional assessment over and above its existing proportionate share.

(i) With respect to Article 5 of the Reciprocal Agreement, it is expected that separate check meters or sub-metering systems will be required with respect to some of the bulk utility services, particularly those applicable to gas, electricity, water and steam heat consumption by TSCC 1726 and the Dominion Club.

(j) With respect to Article 6.1 of the Reciprocal Agreement, TSCC 1703 may require an adjustment with respect to the commercial property tax assessment of its common elements which may result in an increased amount payable by the Dominion Club or TSCC 1726.

(k) With respect to Articles 11.1, 11.2 and 11.3 of the Reciprocal Agreement, the only outstanding zoning issues of which TSCC 1703 is aware relate to an apparently outstanding report required by the City of Toronto to be provided by 1KWI with respect to parking issues. A potential zoning issue may remain outstanding with respect to an undertaking by the Mirvish Group to use the 2nd floor banking hall for non-profit theatrical presentations or other public events, but it is possible that undertaking has been superseded.

(l) TSCC 1703 and/or its property manager own the computer, desk, printer, fax and internet service affecting their equipment in the Management Office.

(m)TSCC 1703 reserves each of its rights and remedies with respect to the Reciprocal Agreement.

23. **Compliance with Agreements.** Comply with any of the duties applicable to TSCC 1726 and the Club to abide by the provisions of the Heritage Agreement, Tunnel Agreement and other Development Agreements, as well as the Reciprocal Agreement, the Lease Operating Agreement, the Rental Management Agreement and any other agreements affecting TSCC 1726. [Section 1 (f), (k) and (h) and Section 18 of the Declaration of TSCC 1726]

24. **Review Agreements.** If TSCC 1726's turnover meeting has not been held prior to twelve months before the date hereof, ensure that the board carefully reviews all existing agreements referred to in s. 111 and 112 of the Act to ascertain whether improvidential agreements should be terminated by the owner board.

25. **SHI Lacks Contractual Rights.** We are informed that SHI has no contractual agreement entitling it to act as the Rental Manager. TSCC 1703 has received no notice of assignment of TSCC 1726's rights pursuant to the Lease Operating Agreement in favour of SHI, in accordance with the criteria set out in s. 53 of the *Conveyancing and Law of Property Act*. No by-law pursuant to s. 22 of the Act has been registered on title to the units of TSCC 1726 as required to enable TSCC 1726 to lease or licence its LOA assets and rights with respect to the 12th and 13th floor premises to either SHI or the Ontario Club. Some Hotel Landlords question whether SHI has been entitled to enter into RMAs with each of the participants in the short-term rental pool of units ("Hotel Landlords"), or to act as the Rental Manager.

26. **LOA Compliance.** Ensure careful compliance with the requirements of the Lease Operating Agreement ("LOA") during the 7 ½ year remainder of its 10-year term, subject to termination upon notice at the end of the initial 10-year term. Section 13 (g) of TSCC 1703's declaration, confirm that TSCC 1703 and TSCC 1726 will enter into a ten (10) year lease of the business centre, including meeting rooms, and the club/lounge area. The annual lease renewals for a further ten (10) year term referred to in Article 2.1 of the LOA are inconsistent with the superseding requirements contained in Article 13 (g) of TSCC 1703's declaration, Article 10 of the OSC Ruling and clause (d) on page 4 of the LPDM. The Leasehold premises were leased to TSCC 1726 at a substantially reduced annual rental rate of $12,000 plus GST to accommodate the private club concept; instead, TSCC 1726 has permitted the Dominion Club, SHI and the Ontario Club to use the space as their primary food and beverage event meeting facility. Such exclusive use of the leasehold premises for the benefit of TSCC 1726, the Dominion Club, SHI, the Ontario Club and their associated companies by making the leasehold premises available to outsiders for profit is contrary to s. 21 and 116 of the Act and Articles 3.1, 3.2, 3.3 and 3.4 of the LOA. Section 13 (g) of TSCC 1703's declaration confirms that only the residents of TSCC 1703 and the owners, agents, employees and licensees shall have access to, use and enjoyment of the Amenities (which are defined in s. 1 (a) to include a business centre and meeting rooms for business and social purposes located on Level 12, amongst other Amenities). That provision confirms that TSCC 1726 will maintain, for the benefit of TSCC 1703, the club/lounge and meeting rooms located on the 12th and 13th floors and will staff, maintain and operate at its own expense, for the benefit of residents and guests of TSCC 1703, a club/lounge facility and the private rental of the meeting rooms to residents of TSCC 1703. Pursuant to s. 176, 56 (6) – (8) and 21 of the Act, the LOA and its by-law must be consistent with the provision of the Corporations declaration. TSCC 1703 does not have a copy of the LOA executed by either party under its corporate seal, as is required in accordance with the Indoor Management Rule applicable to condominium corporations. The LOA in part purports to constitute a lease of the 12th and 13th floors of TSCC 1703's premises to TSCC 1726, but the LOA lacks the corporate seals of either TSCC 1703 or TSCC 1726, contrary to s. 1 (2) of the *Statute of Frauds* which provides that any such purported lease is void. No by-law of TSCC 1726 has been registered on title adopting the LOA or any Ontario Club lease, nor has a general by-law been registered on title establishing the rights and obligations of TSCC 1726 with respect to execution of contracts. TSCC 1726 has not granted a valid lease to the Ontario Club in view of non-compliance with s.

27. 21 and 56 of the Act. TSCC 1703 reserves each of its rights and remedies with respect to the LOA.

27. **LOA Defaults.** TSCC 1726 has failed to keep, observe or perform various material covenants, agreements, terms and provisions of the LOA for which it is responsible as follows:

(a) TSCC 1726 and SHI have failed to comply with Article 3.1 of the LOA to operate the 12th and 13th floor leasehold premises and their facilities within TSCC 1703's common elements for the benefit and need of residents and their guests of the Condominium (including short term tenants) as their private club. Instead, TSCC 1726, the Dominion Club, SHI and the Ontario Club have mis-used the 12th and 13th floor space, contrary to Articles 3.3 and 3.4 of the LOA as a primary food and beverage revenue source derived from using the leasehold premises as a commercial meeting space, with profits remaining in the hands of the Rental Manager or its associated companies (none of which has been shared with the Hotel Landlords or TSCC 1703). The Leasehold premises were leased to TSCC 1726 at a substantially reduced annual rental rate of $12,000 plus GST to accommodate the private club concept. Such exclusive use of the leasehold premises for the benefit of TSCC 1726, the Dominion Club, SHI, the Ontario Club and their associated companies by making the leasehold premises available to outsiders for profit is contrary to s. 21 and 116 of the Act and Articles 3.1, 3.2, 3.3 and 3.4 of the LOA. Section 13 (g) of TSCC 1703's declaration confirms that only the residents of TSCC 1703 and the owners, agents, employees and licensees shall have access to, use and enjoyment of the Amenities (which are defined in s. 1 (a) to include a business centre, a business centre and meeting rooms for business and social purposes located on Level 12, amongst other Amenities). That provision confirms that TSCC 1726 will maintain, for the benefit of TSCC 1703, the club/lounge and meeting rooms located on the 12th and 13th floors and will staff, maintain and operate at its own expense, for the benefit of residents and guests of TSCC 1703, a club/lounge facility and the private rental of the meeting rooms to residents of TSCC 1703. Pursuant to s. 176, 56 (6) – (8) and 21 of the Act, the LOA and its by-law must be consistent with the provision of the Corporation's declaration.

(b) Contrary to Article 3.3, TSCC 1726 has failed to staff and operate the leasehold premises in a manner comparable to the operation of a private club facility.

(c) TSCC 1726 has failed to provide and maintain suitable furnishings and equipment for the staffing and operation of the leasehold premises as a business centre, as required by Articles 3.3 and 3.4 of the LOA.

(d) Pursuant to Article 4.3 of the LOA and the RMAs, TSCC 1726 and SHI have failed to comply with their obligation pursuant to s. 83 of the Act to provide to TSCC 1703, on a monthly basis, a record of each short term rental, including the identity of the short term tenant taking occupancy of a residential unit in the Building pursuant to the terms of a standard tenancy agreement, the format of which conforms with the terms of the LOA. TSCC 1726 and SHI have failed to require each short term tenant of a TSCC 1703 pooled unit, when registering with the Rental Manager, to execute the Tenant's Undertaking as required by s. 26 (a) and 26 (b) of TSCC 1703's declaration.

TSCC 1703 has received no such s. 83 lease record or tenant's undertaking to date and requires compliance hereafter.

(e) Pursuant to Article 4.7 of the LOA, TSCC 1726 acknowledges that it will require the Rental Manager to arrange for the delivery and exchange of fresh linen by cart between the hours of 12:00 a.m. and 6:00 a.m. each day. TSCC 1726 and the Rental Manager have failed to comply with that requirement, but instead have arranged for exchange of fresh linen by cart on its own schedule of sometime between 12:00 p.m. and 6:00 p.m. each day. TSCC 1703 requires TSCC 1726 and its Rental Manager to comply hereafter.

(f) Article 5.1 and 5.2 of the LOA require the Rental Manager to provide insurance policy coverages referred to therein, but TSCC 1703 has not received any insurance certificates or other confirmation that TSCC 1726 and the Rental Manager have complied with those obligations. TSCC 1703 requires TSCC 1726 and the Rental Manager to provide applicable insurance certificates in compliance with Article 5.1 and 5.2 hereof.

(g) SHI apparently made an assignment of its property for the benefit of its creditors, in default of Article 6.1 of the LOA.

This letter shall constitute written notice of default from TSCC 1703 addressed to TSCC 1726 requesting TSCC 1726 to commence curing each of the defaults referred to in items (a) – (g) above within fourteen days of receipt of this notice and to proceed thereafter to diligently and continuously cure such defaults within 45 days following receipt by TSCC 1726 of this written notice of default, failing which TSCC 1703 shall have the right to terminate the LOA thereafter, in addition to its other rights of termination and other remedies it may have at law. Please be advised that TSCC 1703 reserves the right to amend its declaration after September 9, 2008, free of any requirement to obtain the consent of 1 KWI.

28. **RMA Compliance.** Ensure careful compliance with the requirements of the Rental Management Agreements ("RMAs") by the Receiver during the term of the Receivership and by the Purchaser and each of the Hotel Landlords who choose to remain in the rental pool after they are released from the Receivership Order criteria. Some Hotel Landlords question whether SHI has been entitled to act as the Rental Manager and whether it has been entitled to enter into RMAs with each of the Hotel Landlords. TSCC 1703 requests that TSCC 1726 negotiate revised RMAs with each of the unit owners of TSCC 1703 willing to remain as Hotel Landlords. SHI apparently made an assignment of its property for the benefit of its creditors, in default of Article 2.2 (b) of the RMAs. Hotel Landlords are losing money on their unit investments based upon the current operations of the Leasing Program and allocation of net profits. Hotel Landlords have reserved their rights and remedies with respect to the apparent diversion of funds to SHI from the Leasing Program to which Hotel Landlords may be entitled with respect to office rents, Housekeeping profits and other amounts. Hotel Landlords reserve all of their rights and remedies with respect to their RMAs.

29. **Reserve Fund.** Ascertain the current amount set out in TSCC 1726's reserve fund in accordance with the requirements of s. 93 of the Act. Do the past and current contributions by 1 KWI, SHI, TSCC 1703 and the Receiver to TSCC 1726's reserve fund achieve the contribution

requirements set out in ss. 93 (5) and (6) of the Act? Note that such first year contributions referred to in ss. 93 (5) often should be well in excess of 10% of the budgeted amount required for contributions to common expenses, exclusive of the reserve fund, and that a reserve fund study of a "new" condominium corporation such as TSCC 1726 must have been completed either within nine months or one year after registration of its declaration or description, as required by ss. 43 (5) (j) and (k) and s. 94 of the Act, and the criteria set out in Ontario Regulation 48/01. Apparently, some of the common elements and assets of TSCC 1726 may have been constructed many years ago, or may be subject to construction deficiencies.

30. **Reserve Fund Study.** Please confirm that the required Comprehensive Reserve Fund Study and any Updates to date have been properly completed in accordance with s. 94, 45 (5) (j) and (k) of the Act, Ontario Regulation 48/01 and Form 15 thereof. Please provide a copy of the Form 15 to TSCC 1703 in accordance with the requirements of ss. 94 (8), (9) and (10) of the Act within the next 30 days.

31. **Reserve Fund Expenditures.** Please ensure that any reserve fund expenditures qualify as "major repairs and replacements" and that no inappropriate expenditures have been made from the reserve fund, contrary to s. 93 and 95 of the Act.

32. **Insurance.** Please provide an insurance certificate to TSCC 1703 confirming that TSCC 1726 has obtained in good standing all insurance policies in accordance with s. 39 and 99 – 106 of the Act, and that its unit owners are protected in accordance with the provisions of TSCC 1726's Declaration.

33. **High Speed Internet Service.** Section 9 (a) of the TSCC 1726's declaration makes the Rental Manager responsible for the cable and high speed internet data equipment for the use and operation by the Rental Manager of the Rental Management Program. Article 9 (a) also requires the Rental Manager to operate and maintain the Shared Service Facility Room and the Concierge Service Unit to the acceptable standard defined in Section 1 of its declaration. TSCC 1703 will arrange for the Purchaser to bear its share of the cable and high speed internet data equipment accordingly.

34. **Trust Monies.** Please require TSCC 1726's auditor to carefully analyze the Corporation's financial records, financial statements and accounts to ascertain whether there has been any breach of trust or other breaches of s. 115 of the Act affecting TSCC 1726's operating or reserve fund accounts, other accounts or funds and any of its eligible securities and investments. Confirm whether any of 1 KWI, SHI or the Receiver are in breach of any of their financial obligations to TSCC 1726. Please advise whether TSCC 1726's investment plan is up to date and in good standing [s. 115 (8)]. Ensure that required trust fund records have properly been kept [s. 115 (9)]. The auditor should advise the owners of units at TSCC 1726 regarding the alleged diversion to SHI of funds from the Leasing Program, funds to which Hotel Landlords may have been entitled with respect to office rents, Housekeeping profits and other amounts.

35. **Accounting to Hotel Landlords.** Ensure the Receiver provides a complete and accurate accounting for the short term leasing program and reimbursement to the Hotel Landlords until the Closing Date and comply as a Purchaser thereafter.

36. **Compliance.** Please ensure that past directors and current directors are complying with their duties pursuant to s. 17 (3) of the Act [Enforce Compliance], 119 [Responsibility for Compliance], 132 [Mediation and Arbitration], 133 [False and Misleading Statements], 134 [Compliance Order], 134 [Oppression Remedy], 136 [Other Remedies] and 137 [Offences], especially in connection with any of the matters referred to in this letter and having regard to the statutory obligations of prior directors. If it is found that the Declarant, first directors or subsequent directors have been negligent or in breach of any of their duties, TSCC 1703, as a unit owner, requires the board of directors to promptly enforce compliance in accordance with s. 17 (3) of the Act. If TSCC 1726 has lacked a directors' and officers' errors and omissions insurance policy as required by s. 39 of the Act, the proposed Purchaser who becomes owner of the remaining units of TSCC 1726 and TSCC 1703 will have to bear their proportionate shares of any indemnification obligations to such prior directors.

37. **Receiver's Holdback.** The Purchaser should require the Receiver to hold back from the sale proceeds of the Company's Assets any of the following types of payments otherwise payable to Ed Mirvish Enterprises Ltd. ("EME") or any other secured creditor as may be applicable:

(a) The Receiver should holdback from the sale proceeds any required payment to TSCC 1726 on account of past unassessed or unlevied or unpaid common expenses, reserve fund contributions or amounts found to be in breach of s. 115 of the Act not levied or assessed against any of the following parties;

i. 1 KWI from the date of registration of the declaration and description of TSCC 1726 until the date of sale of its units to SHI;
ii. SHI from the date of purchase of their units until August 24, 2007; and
iii. The Receiver from August 24, 2007 to the date of Closing.

and to hold such amounts in trust pending determination of the required payments by the foregoing parties to TSCC 1726 with respect thereto, pursuant to audited financial statements approved by the auditor appointed by the Purchaser's elected board of directors. Those conditions will enable the Receiver and the Court to uphold statutory requirements of the Act and to hold the applicable parties responsible to fulfill their legal obligations, instead of imposing a substantial and unwarranted financial burden upon the Purchaser. Note that TSCC 1703 will not contribute its proportionate share unless the applicable parties or the Purchaser contribute the balance of all past arrears.

(b) Ensure that the Receiver and its barristers and solicitors and other professional advisors properly account for all fees, charges and expenses deducted from the Capital Expense Reserve Fund referred to in Article 3.4 of the Rental Management Agreement (if any such amounts have been charged to that fund) and ensure that the Receiver replenishes the capital expense reserve fund from the proceeds of sale of the Company's Assets in accordance with the Minutes of Settlement requiring it to do so.

Concerns May Be Rectified

It may turn out that some of the above provisions have been complied with to date, or additional concerns and expenses may be applicable, unbeknownst to TSCC 1703. Please provide any applicable information in that regard at your earliest opportunity in order to promptly resolve any

of these concerns. Perhaps information to be disclosed by the Receiver to potential Purchasers in the Data Room or otherwise may reveal the answers to some of these concerns. However, TSCC 1703 is aware that a number of the foregoing concerns have not been complied with to date, in breach of the Act and TSCC 1726's Declaration.

Qualified Management and Professionals.
It will be essential for the new board of directors of TSCC 1726 to retain the services of an experienced condominium manager with credentials as a Registered Condominium Manager and experienced professional advisors including a condominium lawyer, a condominium auditor and a condominium engineer, each of whom should preferably have credentials as an Associate of the Canadian Condominium Institute or equivalent expertise.

TSCC 1726 Breach Concerns
We trust that the Receiver will disclose these concerns to any potential Purchaser promptly, in a full and fair manner. The Receiver should require the Purchaser to assume the responsibility to comply with the requirements of Article 19 of the Terms and Conditions of Sale and the provisions set out herein.

Conclusion
Please do not hesitate to contact the writer if you wish to discuss any aspect.

Yours truly
GARDINER MILLER ARNOLD LLP

"J. Robert Gardiner"

Per: J. Robert Gardiner
JRG:it
Encl. Notice of Address for Service
Certificate of Compliance and Cheque
Request for Status Certificate and Cheque

c.c. L. Joseph Latham jlatham@goodmans.ca

May 9, 2008

TORONTO STANDARD CONDOMINIUM CORPORATION NO. 1726
c/o Stinson Hospitality Inc.
Management Office
1 King Street West
4th Floor
Toronto, Ontario
M5H 1A1

Attention: President, Secretary and Property Manager

Dear Sirs:

Re: Notice of Address for Service

This will confirm that Toronto Standard Condominium Corporation No. 1703 ("TSCC 1703") is a registered owner of Unit 2, Level 1, of Toronto Standard Condominium Corporation No. 1726 ("TSCC 1726"), being the Concierge Unit located on the ground floor of 1 King Street West, Toronto, Ontario ("Concierge Unit").

Pursuant to s. 47 of the *Condominium Act, 1998* (the "Act"), this Notice shall service as notice given by TSCC 1703 to TSCC 1726 stating the name and address for service of TSCC 1703 as follows:

Toronto Standard Condominium Corporation No. 1703
Property Management Office
1 King Street West
Toronto, Ontario
M5H 1A1
Attention: President & Secretary

Please mark TSCC 1726's Record accordingly, pursuant to s. 47 (2) of the Act and provide notice of any meeting of owners or other matter affecting the owners of units of TSCC 1726 to TSCC 1703 in accordance with the requirements of s. 47 of the Act.

Toronto Standard Condominium Corporation No. 1703

Per: .....
Brian Smith, President

c.c. Ira Smith Trustee and Receiver Inc.
L. Joseph Latham

GARDINER MILLER ARNOLD LLP

BARRISTERS & SOLICITORS

J. ROBERT GARDINER
390 BAY STREET, SUITE 1202, TORONTO, ON M5H 2Y2
PHONE (416) 363-2614 ext. 226 FAX (416) 363-8451
e-mail: bob.gardiner@gmalaw.ca www.gmalaw.ca

May 9, 2008

TORONTO STANDARD CONDOMINIUM CORPORATION NO. 1726
c/o Stinson Hospitality Inc.
Management Office
1 King Street West
4th Floor
Toronto, Ontario
M5H 1A1

Attention: President, Secretary and Property Manager

TORONTO STANDARD CONDOMINIUM CORPORATION NO. 1726
c/o Camillo Casciato, President
284 King Street West
4th Floor
Toronto, Ontario
M5V 1J2

Dear Sirs:

Re: Request for Status Certificate

We are acting on behalf of Toronto Standard Condominium Corporation No. 1703 ("TSCC 1703"), one of the owners of the Concierge Unit, being Unit 2, Level 1 of TSCC 1703.

We have been instructed to request that Toronto Standard Condominium Corporation No. 1726 ("TSCC 1726"), Ira Smith Trustee and Receiver Inc. and any potential purchaser of the units at TSCC 1726 promptly provide to TSCC 1703 the prescribed form of Status Certificate applicable to TSCC 1726 in accordance with s. 76 of the *Condominium Act, 1998* (the "Act") and the requirements of Ontario Regulation 48/01 and Form 13 thereof.

Our cheque in the amount of $105 pertaining to the Status Certificate fee and GST thereon is enclosed herewith, forwarded to the address for services of TSCC 1726.

We look forward to receipt of the Status Certificate within 10 days of the date hereof.

Yours truly
GARDINER MILLER ARNOLD LLP

Per: J. Robert Gardiner
JRG:it / Encl.
c.c. Ira Smith Trustee and Receiver Inc.
Joe Latham

GARDINER MILLER ARNOLD LLP

BARRISTERS & SOLICITORS

J. ROBERT GARDINER
390 BAY STREET, SUITE 1202, TORONTO, ON M5H 2Y2
PHONE (416) 363-2614 ext. 226 FAX (416) 363-8451
e-mail: bob.gardiner@gmalaw.ca www.gmalaw.ca

June 20, 2008

Goodmans LLP
Barristers and Solicitors
#2400 - 250 Yonge Street
Toronto, Ontario
M5B 2M6

Attention: Joe Latham

Dear Mr. Latham:

Re: TSCC 1703 is a Better Choice than Le Jardin/IHR

We would like to respond to various points contained in your e-mail dated June 12, 2008.

1. We would be pleased to receive further information on a confidential basis in order for TSCC 1703 to assess the plans and impacts of the Le Jardin/IHR Proposal. If Le Jardin/IHR are willing to improve the RMAs, we will be very interested to hear their proposals.

2. You have stated:

   "... The Le Jardin/IHR pro formas suggest that owners' distributions would be significantly higher than those in your projections."

   We are not persuaded that owners' distributions would be higher under the Le Jardin/IHR Proposal compared to TSCC 1703's Proposal. At the Thursday meeting with Le Jardin/IHR, there was no discussion about how Hotel Participants' distributions would be significantly increased; I only recall discussions that each of Le Jardin and IHR expected that their involvement would generate increased room night revenue. Increases in Rev PAR result in only marginal increases in distributions to owners under the existing Rental Management Agreements. For owners' benefits to improve significantly, they need a better Rental Management Agreement or a share of F&B revenues, neither of which would apparently be made available by Le Jardin/IHR.

3. TSCC 1703 also expects that its hotel manager can undertake measures to increase the number of room nights and other approaches to increase revenues, but TSCC 1703's board's approach to developing its Proposal was based upon the existing Food and Beverage and Hotel model, using conservative analysis based upon the valuations and advice of its professional appraisers and

business development team. TSCC 1703's conservative estimates were based upon actual past performance in 2007 and prior years, rather than the 2008 forecast or any other best-case scenario. Keep in mind that PriceWaterhouse Coopers' projections were not developed using a base year and then straight-line growing the numbers at a fixed rate (which would, of course, yield a higher number down the road if they had started from a higher base). Instead, PWC analyzed the market for each year in the seven years going forward – taking into account the new supply of hotel rooms coming onto the market each year, the impact of new supply on overall occupancy, the impact of occupancy on ADR, general economic conditions and the combined effect of all of those on RevPAR – i.e., regardless of what happens in 2008, the occupancy levels they project for 2009 and the resulting RevPAR would not change. Very detailed analysis went into TSCC 1703's forecast. We wonder whether Le Jardin/IHR's optimistic projections actually took into account the same type of detailed analysis of the Toronto market as did PWC and their hotel appraisers. We do acknowledge that we could increase the positive cash flow by changing the Year One (2008) figures to reflect the Receiver's budgeted forecast (which is higher than PWC's forecast, because PWC expects that the situation is going to deteriorate later in this year). The board has chosen the more conservative approach, with the hope that figures will in fact be higher. TSCC 1703's forecast indicates a RevPAR increase of only 24.3% for a seven year period and distributions rising only 25.3%. Again, those distributions are a conservative estimate, but even at that low rate, Hotel Participants' income would be supplemented by the reduced common expenses attributed to all unit owners arising from allocation of the net profits of the Hotel Operations to TSCC 1703.

4. It can reasonably be expected that, in reality, TSCC 1703's operation of the Food and Beverage and Hotel Business will significantly exceed the conservative forecast provided to you. The banquet revenue attributable to DCC in Year One was adjusted in TSCC 1703's figures to reflect the obligation of TSCC 1703 to provide the Austin Gallery to the owners as a private club, being a requirement of the Lease Operating Agreement. The line item in TSCC 1703's Projections entitled Ontario Club Expense has been adjusted at 57%, based on the assumption that the existing arrangement with the Ontario Club is terminated.

5. More importantly, the efforts of Le Jardin/IHR to increase Rev PAR would have to be very substantial before it could possibly equate to the increased distributions to Hotel Participants and particularly unit owners who are Non-Participants in the Hotel Program under TSCC 1703's proposal for the following reasons:

   (a) Under Le Jardin/IHR's proposal, we understand that Hotel Participants will not receive any distributions of profits arising from the F&B Business. As you know, the F&B Business has been underperforming and has the higher potential to be grown significantly. Under TSCC 1703's Proposal, all of its unit owners will be entitled to participate in distributions of net profits from the F & B Business.

   (b) Under Le Jardin/IHR's proposal, there is no explicit benefit for non-hotel participants, while under TSCC 1703's proposal, all owners share in revenues from the property to some extent.

(c) Le Jardin/IHR no doubt intend to keep the profits for their own purposes. Obviously, IHR's business model depends upon layers of bureaucratic management which must be funded. Under TSCC 1703's Proposal, all net profits arising from all operations net of usual expenses and financing charges will fund increased distributions to Hotel Participants, as well as a general reduction in common expenses attributed to all unit owners.

(d) TSCC 1703's representatives have confirmed to the Receiver their intention to assess the viability of branded operators to manage the Hotel Business and to assess increased Rev PAR opportunities as may be generated by a brand. For now, however, TSCC 1703 has chosen the existing professional hotel management company which has continued to be retained by the Receiver and has succeeded in running the hotel profitably. As you know, hotel branding can give rise to various problems, but TSCC 1703 expects to remain open to select the best and most profitable form of professional management which suits its business model from time to time.

(e) As you know, IHR does not have a presence in Toronto and may not be aware of the Suites at 1 King West's special niche in the context of the Toronto market. IHR's only Canadian presence is in Vancouver. We are aware that IHR was involved with the Pantages Hotel for a time. Are you aware of the circumstances under which Skyline terminated the arrangements with IHR, and are you satisfied that Skyline's experience is not relevant to our own situation?

(f) If the Le Jardin/IHR Proposal is adopted, we would be concerned that it will likely only perpetuate the inherent conflict that exists between the Hotel Operations and the F&B. Since Suite owners do not receive any shares of the F&B revenues, the temptation would remain to attribute as many expenses as possible to the Hotel Operations (and thereby deflate revenues and distributions to owners), and divert revenues toward the F&B Operations. It would be in the interests of a third party operator to resolve any trade-offs between banquet and hotel in the F&B operation's favour.

(g) As a specific example of the situation alluded to in (f), TSCC 1703 believes the profit attributed to the housekeeping company unfairly inflates the hotel operation's expenses and reduces distributions to hotel participants. Under TSCC 1703's proposal, such profits would effectively be returned to suite owners, rather than be paid to a third-party operator. Hotel participants will undoubtedly seek to redress this situation whatever the outcome of the sales process.

(h) If TSCC 1703's Proposal is accepted, it can design the program in the manner that its unit owners determine is best, and there will be a higher degree of certainty that the changes will be approved, than would be the case for a third party operator. By contrast, according to TSCC 1703's survey of its owners, many are ready to renounce their RMAs if a third party other than TSCC 1703 is selected as the new Hotel Manager.

6. You have indicated that it is the Receiver's view that the Le Jardin/IHR operations will generate an improvement in property values. We think this is unlikely unless the Hotel Participants' units

become viable investments. If TSCC 1703 is selected as the successful bidder for the Company's Assets, owners will be acquiring a valuable asset (which should be reflected in higher property values) and Hotel Participants are projected to be able to make their unit investments viable. Distributions to Hotel Participants and benefits to all owners will be greater, which will have a direct impact on property values. We remind you as we have before that, all things being equal, the benefits available to owners under TSCC 1703 ownership will be greater simply because TSCC 1703 is a not-for-profit – all revenues will be distributed to owners through funding the acquisition of a valuable asset, increased distributions to Hotel Participants and/or decreased common element expenses.

7. If a third party's business model does not substantially increase distributions to Hotel Participants so as to make their investments viable, it is unrealistic to expect that a large percentage of the Hotel Participants will continue to willingly lose money on a monthly basis, given the fact that the cost of mortgage principal, interest, taxes and common expenses at a typical unit is significantly higher than distributions which could be expected from a business entity such as Le Jardin/IHR, which apparently has no intention of sharing its F&B Business net profits with the Hotel Participants. If the Hotel Participants cannot obtain or renew their mortgages for lack of income from the Hotel Program, the Hotel Business will likely crash. If the Receiver fails to insist upon a business plan which makes Hotel Participants' investments viable, any investment by Le Jardin/IHR or any profit-oriented third party can be expected to turn sour and everyone will lose as a result of a bad choice by the Receiver.

8. By contrast, TSCC 1703's Proposal allows existing hotel staff and managers to keep their jobs, while protecting owners who have invested roughly $100,000,000 in the real estate of the Hotel Business. We note that the Stinson Hospitality Inc./Dominion Club of Canada Inc. Creditors List consists of total claims in the amount of $14,630,172.95. While Ed Mirvish Enterprises Ltd. is the largest creditor with respect to its assigned loan for the $1,800,000 purchase price of the Company's Assets and old indebtedness of $10,000,000, the Creditors List prepared by the Receiver indicates that owners of suites at 1 King West are owed approximately $1,166,312 by the Stinson Companies. It is notable that TSCC 1703's offer comes close to reimbursing all creditors for the total principal amount of their claims, while protecting the interests of all other stakeholders. Moreover, TSCC 1703's Proposal offers the largest group of people negatively affected (over 500 unit owners facing the loss of their mortgages), with the most viable solution.

9. You have mentioned that TSCC 1703's own projections do not reflect any changes to the RMAs. We did not feel obligated to do so since the owners would, in effect, be getting both sides of the transaction, rather than paying money out to a third party. TSCC 1703 may propose changes to the RMA, whereupon it is more likely that such changes would be approved by owners than if a third party operator were to attempt to obtain owners' consent.

10. You point out that even though TSCC 1703's owners would end up owning the Hotel after the loan is repaid, they would also bear the burden of the financing. We question the relevance of this comment since we presume Le Jardin will likely also have to bear the burden of its financing, and the risk associated with such financing will be reflected in the cost of the services it provides.

11. It is apparent that the F&B and Hotel Business will generate substantial net profits over and above the cost of financing the entire Purchase Price, and an additional $2,000,000+ will be invested by TSCC 1703 to make various needed improvements. How much money has Le Jardin committed to invest toward needed improvements? Does Le Jardin/IHR intend to fund improvements to rectify degradation of the first floor areas? How much will IHR ask Hotel Participants to spend? Are you aware of IHR's past history of imposing improvement costs directly upon unit owners in condo hotel projects? Do you appreciate how important it is that improvement costs be borne as part of TSCC 1703's financing of its purchase of the Company's Assets, rather than having a third party impose such costs directly upon each individual Hotel Participant? Have you read any of the articles published by the condo hotel association to which IHR belongs advising hotel operators how to control condo boards and force them to pay their share?

12. You have informed us that Le Jardin/IHR is aware of our TSCC 1726 Concerns letter's contents and we wonder how they would address those issues if they became the Purchaser. More importantly, we wonder whether they are aware of the various other issues, concerns and expenses with respect to a range of other topics which were not specific to TSCC 1703's rights as an owner of a unit at TSCC 1726. We recognize that both parties have agreed not to investigate and discuss various concerns with out the presence of the Receiver, but it seems unjust and inappropriate if it turned out that Le Jardin/IHR became the approved Purchaser without ascertaining the nature of the issues and concerns of TSCC 1703, especially since TSCC 1703 would have to assume those responsibilities if it is selected as the Purchaser.

13. You have pointed out that TSCC 1703's owners would face the risk that if the hotel venture does not succeed, they will have to dip into their own pockets in addition to suffering issues with decreased distributions and property values. Indeed, they are already facing very significant losses in their investments. The vast majority of unit purchasers bought their units as investments to participate in the Hotel Program and, in fact, over 90% of the purchasers bought their units at a time when the first Disclosure Statement led them to believe they were acquiring participation in the Hotel. The Lease Program Disclosure Memorandum and the OSC Ruling confirm that purchase of units at TSCC 1703 is considered to be purchase of a security involving risk. It is our view, however, that the current risk level is no higher than the risk at start-up. Indeed, in the first three years, significant net profits have been generated for the F&B and Hotel Business and there is obvious room for improvement of various RevPAR factors, with the result that the F&B and Hotel Business represents a reasonable risk compared to either the present circumstances or the circumstances that would apply if a third party profit-oriented party deprived the owners of the ability to protect their investments. The owners are already having to dip into their own pockets in view of the fact that existing distributions are notably deficient. The risk of a market downturn would be the same for any third party operator – the only difference is that a third-party operator would not provide Hotel Participants with the same safety cushion that TSCC 1703 would provide. It is also notable that our projections demonstrate that TSCC 1703 would be able to operate the F&B and Hotel Business at a profitable level well in excess of expected expenses (including financing charges), even under depressed market conditions. Even if a SARS-type event affected the entire hotel industry in Toronto, TSCC 1703's margin to safely operate the F&B and Hotel Business is much safer for Hotel Participants and Non-Participants than that of a third party.

14. You have mentioned that a group of owners has posted a written notice that they will seek to obtain an injunction to prevent the board from proceeding. No doubt you are aware of the difficult criteria they would have to achieve in a case such as this to obtain an injunction. We do not understand how such an injunction could succeed to stop the Board from developing a business plan and submitting a conditional offer, subject to approval by the owners "without consulting with the owners of 1 King West". As you know, TSCC 1703 could not purchase the Company's Assets without obtaining the approval of its owners. Over 90% of the owners in attendance at the December 3, 2007 AGM authorized the Board of Directors to investigate purchase of the Company's Assets. Of course, that could not occur without following the mandatory Court-ordered Sale Process and confidentiality requirements. As required, TSCC 1703 has carefully complied with the requirements of the Confidentiality Agreement and Acknowledgment. Understandably, the Receiver has restricted TSCC 1703 from disclosing the information which the Board is anxious to provide to its owners, but being under a legal restraint to refrain from doing so, and recognizing that the Board will be obligated to eventually disclose its own position to its owners, it is hard to imagine how a judge would interfere with the mandatory requirements of the *Condominium Act*, since TSCC 1703 cannot possibly acquire the Company's Assets without submitting its proposal to its owners for approval in accordance with s. 97 of the Act. You may be aware that Mark Borkowski has been a conduit for positions taken by the Mirvish legal team in the past and again appears to be acting in that capacity. It seems to us that the Receiver should not be anywhere as concerned about an unrealistic threat from a small group of disaffected owners, than from the potential fallouts affecting the Hotel Business if the Receiver's decision is not well received by the vast majority of owners at 1 King West who are anxious to protect their own interests. For your information, Mr. Borkowski has withdrawn his threat of an injunction.

Yours truly
GARDINER MILLER ARNOLD LLP

"J. Robert Gardiner"

Per: J. Robert Gardiner
JRG:it

GARDINER MILLER ARNOLD LLP

BARRISTERS & SOLICITORS

J. ROBERT GARDINER
390 BAY STREET, SUITE 1202, TORONTO, ON M5H 2Y2
PHONE (416) 363-2614 ext. 226 FAX (416) 363-8451
e-mail: bob.gardiner@gmalaw.ca www.gmalaw.ca

July 4, 2008

Goodmans LLP
Barristers and Solicitors
#2400 - 250 Yonge Street
Toronto, Ontario
M5B 2M6

Attention: Joe Latham via e-mail

Dear Mr. Latham:

Re: Rental Management Problems

At the time this letter was prepared for intended delivery to you on Wednesday, we had not heard back from Ira Smith or you with respect to TSCC 1703's Final Offer in its Letter of Intent dated May 20, 2008, other than the meeting with the representatives of Le Jardin/IHR on June 5, 2008. TSCC 1703 would have been pleased to complete the purchase of the Company's Assets; however, I received the letter from Ira Smith dated July 2, 2008 rejecting TSCC 1703's Final Offer and upon return from my extended Canada Day holiday, I am expediting this letter which was drafted last week in the expectation that TSCC 1703 might still have a chance to be considered as the Purchaser. At this point, I am forwarding this letter as previously drafted, which has now received the various revisions suggested by board members.

We remain concerned that the Receiver is pursuing a potential Agreement of Purchase and Sale, presumably with Le Jardin/IHR, which may potentially not adequately address the Rental Management Problems currently besetting the owners of units at TSCC 1703. In the course of the Receiver's deliberations with respect to purchase of the Company's Assets, please consider the following benefits which would arise if TSCC 1703 were chosen as the Purchaser. Alternatively, since it now appears that Le Jardin/IHR or some other third party may be chosen as the Purchaser, please ensure that they resolve the following Rental Management Problems as they are obligated to do, in the same manner as TSCC 1703 is committed to do.

1. **TSCC 1703 is a Better Choice than Le Jardin/IHR** – We are not aware of any of the benefits which Le Jardin/IHR have hinted at, other than their expectations that they will hope to increase the number of room nights at the Hotel Participant's units. Perhaps the Business Plan submitted by Le Jardin/IHR is more optimistic than the very conservative Business Plan submitted by TSCC 1703, which also expects to accomplish a more significant increase in room nights and RevPAR than are indicated by TSCC 1703's conservative Business Plan (which was based upon existing, unimproved operations). Even if Le Jardin/IHR are able to generate more RevPAR during the remaining 7 ½ years

of the Lease Operating Agreement's term, in comparison to such qualified food and beverage operators and Rental Managers as may be chosen by TSCC 1703, such third party operators cannot hope to save the Hotel Participants and Non-Participants from the existing poorly-structured, short-term rental pool arrangements. In comparison, TSCC 1703's profit sharing approach will confer all of the benefits upon all of its unit owners for the various reasons listed in our letter to you dated June 20, 2008 entitled **TSCC 1703 is a Better Choice than Le Jardin/IHR**.

2. **Benefits to Employees & Creditors** – Both final offers will be equally beneficial to the existing employees and management staff. However, TSCC 1703 is committed to a very substantial Purchase Price payable at the time of closing, to immediately pay out the appropriate claims of the Receivership creditors. If the rumor is true that the Offer by Le Jardin/IHR is conditional upon a substantial holdback or other criteria which will extend the term of the Receivership, then obviously, TSCC 1703's final offer confers a significant advantage by more swiftly advancing the full Purchase Price for distribution to qualified creditors, resulting in a more rapid removal of the Receivership cloud over the Hotel Business. The Mirvish/Stinson battles and the Receivership have harmed the reputation of the Suites at 1 King West and we will be pleased to put them behind us.

3. **Protect Unit Creditors** – A number of the general creditors are owners of units at TSCC 1703 who are collectively owed well in excess of $1,000,000 by SHI and the Dominion Club. All owners of units at TSCC 1703 are potential investors in the short-term rental pool, controlled as securities subject to the OSC Ruling and the Lease Program Disclosure Memorandum (the "LPDM"). All unit owners have invested over $100,000,000 to purchase those units, but have suffered a drop in unit values in the range of approximately $20,000,000. Much of that lost investment is attributable to the improperly structured and mis-functioning short-term rental management business, problems caused by the security given by the Dominion Club and SHI, as assigned to Ed Mirvish Enterprises Limited, and the personal dispute between David Mirvish and Harry Stinson, resulting in the Receivership. While other general and secured creditors have suffered from those scenarios, TSCC 1703's Hotel Participants and Non-Participants will be left holding the bag in future if the Rental Management Business is not restructured in a manner which allows various Rental Management Problems to be rectified.

It is not an adequate answer to claim that unit owners can't look back and must accept their losses, when TSCC 1703's Proposal can be expected to not only assist recoupment from past market value losses applicable to all of its units, but also result in a balanced deal for the Hotel Participants, a reduction in common expenses for all owners, eventual net cost-free ownership of the Rental Management Business, control of the Building, its real estate and the future welfare of unit owners, as well as elimination of the outstanding Rental Management problems. The Receiver's choice of Purchaser will either protect or ruin the fate of over 500 unit owners, many of whom are not participants in the short-term rental program mess created by Mirvish/Stinson. Over 90% of all unit owners purchased their units in the expectations generated by the original Disclosure Statement and marketing promises that the short-term rental program would be operated by TSCC 1703 owned by each of the unit owners in accordance with their proportionate common interests. However, the Rental Management Business was subsequently stripped from

TSCC 1703 by the declarant's unilateral changes by reference to the Commercial Condominium in the July, 2004 Disclosure Statement.

4. **Support Welfare of Residential Owners** – Section 9 (a) of TSCC 1726's declaration confirms that:

"The Corporation has been created by the declarant in order to facilitate the operation of the Rental Management Program by the Rental Manager in accordance with the Lease Operating Agreement and to ensure that permitted short-term leasing of residential units within the Project is carried out in a manner that supports and promotes the safety, security and welfare of the owners of the Residential Condominium."

"Accordingly, the Corporation, including front desk concierge staff and telephone operators employed by the Rental Manager, will occupy and use the units and common elements in the Commercial Condominium, together with the Boardroom Unit, the Rental Manager's Offices, the Servery and the Sign Unit(s) located within the Residential Condominium, for purposes incidental to the continued operation of the Rental Management Program. "

The "General Use and Purpose" of TSCC 1726 is to support the welfare of the owners of units in the Residential Condominium. The Rental Management Agreement also requires the Rental Manager to maximize the returns of the suite owners. The Rental Manager is supposed to be serving the needs of the Hotel Participants and Non-Participants and should not be extracting additional and exorbitant profits through the use of subsidiary companies to the detriment of Hotel Participants who cannot hope to make a profit or break even under the current regime, having regard to the lost opportunity cost of their investments or the cost of financing as the case may be, together with taxes, insurance and common expenses attributable to their units.

5. **Housekeeping Exorbitant Profits** – As highlighted by Mr. Demeester, one of TSCC 1703's Hotel Participants in his letter dated June 24, 2008, Housekeeping has earned net profits of more than $200,000 during the first four months of 2008, 90% of which is attributable to the cleaning of the Hotel Participants' guest rooms. Those artificial and exorbitant profits are a direct drain from the distributions which should be attributable to the Hotel Participants, since Housekeeping is an associated and related company controlled by SHI or the Purchaser and is no more than a flow-through conduit and a legal liability protection corporation. SHI and any Purchaser should avoid unjustly enriching itself at the expense of the Hotel Participants and, like TSCC 1703, must re-allocate those funds to the Hotel Participants, where they properly belong. Operation of Housekeeping by SHI at a profit as an additional expense to the Hotel Participants in favour of the Rental Manager as a subsidiary profit-making entity has never been disclosed to unit owners or purchasers in accordance with the LPDM, as a factor adversely affecting distributions to Hotel Participants, as a conflict of interest and as a risk of the investment. The Receiver's letter to Mr. Demeester dated June 26th does not adequately address Mr. Demeester's point that Housekeeping is overcharging for its services. Diversion of those net profits from the Rental Pool by a third party Purchaser can be expected to result in enforcement by the Hotel Participants of their rights to receive those net profits as part of their net distributions. As you may know, there

currently appears to be a movement to develop an association for the Hotel Participants in order to enforce their various claims.

In fact, the only net profits which could be attributable to Housekeeping are with respect to its services to TSCC 1703 or any third parties who are not Hotel Participants. TSCC 1703 will re-assess whether it wishes to continue to utilize Housekeeping's services if such unconscionable excess net profits are expropriated from its Hotel Participants.

Frankly, Housekeeping should be withdrawn from the list of Receivership Assets and should be designated by the Receiver as merely a flow-through expense corporation. Any portion of the Purchase Price attributable to the Housekeeping profits should be reduced accordingly, as TSCC 1703 would do.

The Housekeeping net profits expropriated from unit owners since commencement of the Receivership should be re-adjusted and distributed to the Hotel Participants for the past and hereafter. Please advise whether the Receiver intends to rectify the Housekeeping diversion of net profits from the Hotel Participants and ensure that any Purchaser of the Company's Assets operate Housekeeping or any alternate provider of those services at cost.

6. **Rental Manager's Offices** – The "Rental Manager's Offices" are defined in Section 1 (m) of TSCC 1726's declaration to mean "Units 6 and 7 on Level 12 of Toronto Standard Condominium Plan No. 1703, being office and service rooms within the Residential Condominium intended to be owned and operated by the Corporation and by the Rental Manager, respectively, as an integral part of the Rental Management Program;". Currently, SHI is not occupying Units 6 and 7 on Level 12 as the Rental Manager's Offices, in breach of Section 1 (m) of TSCC 1726's declaration. Instead, SHI has been paying rent to its wholly-owned subsidiary, the Dominion Club, in order to occupy the offices used by the Rental Manager on the third floor. The Rental Manager is the agent of TSCC 1726 and is not entitled to charge rent for the third floor offices, given the fact that the Rental Manager's offices intended to be located within Units 6 and 7 on Level 12 are an integral part of the Rental Management Program.

7. **Rental Manager's Office Expense** – The Rental Manager is currently charging rent for the Rental Management Offices against incomes from the short-term rental management program, which constitutes an unauthorized and excessive expense and an inappropriate deduction from the net proceeds of distribution to Hotel Participants. Section 2.2 of the LPDM requires TSCC 1726 (as the Rental Manager) to "own, operate and maintain an office for the Rental Manager" on the same terms as it operates the service elevator "and similar 'back of house' facilities". The Rental Manager is entitled to charge only the operating expenses of these necessary facilities and cannot charge rent. See Section 3.1 (c), 7.1 (c) and in the "sample calculation" contained in Section 7.12 of the LPDM. Moreover, the Rental Management Agreement confirms that the specific list of allowable operating costs (Section 1.2 (m)) of the LPDM does not include office rent. Section 1.2 (x) clearly indicates that only the operating expenses of the Rental Manager's office can be charged to the short-term leasing program. Any portion of the Purchase Price attributable to the Rental Manager's office expense should be reduced accordingly. Please account accordingly, and increase the net distributions to Hotel Participants.

8. **Parking and Valet Services** – As you know, TSCC 1703 owns the parking garage and controls the parking licenses, but currently has arranged for the Dominion Club to manage the parking valets. The current arrangements are as follows:

- Term is one year at a time, Sep 1 – Aug 31, in sync with TSCC 1703's budget year.
- Current agreement will expire Aug 31, 2008.
- Dominion Club will receive a 4.5% management fee from gross parking revenues "off the top".
- Dominion Club will collect all revenues and pay all expenses for operating the garage under a stand alone P&L department not to be mixed with any other hotel-like business.
- TSCC1703 will make a monthly $15K cash advance allowance to Dominion Club to help manage cash flow, and serve as an indemnity against operational losses to an annual maximum of $180K.
- No profit can be declared until all of TSCC1703's monthly advances made have been fully repaid by Dominion Club to it.
- All profit realized will be split 25% to TSCC1703, and 75% to Dominion Club
- The garage will be operated in accordance with the stipulations and terms of TSCC 1703's declaration and the City of Toronto by-laws.
- Parking rates are set by TSCC1703 board approval only. (Dominion Club shall be consulted as to what parking rates TSCC1703 should consider and approve)

However, currently Dominion Club is showing a May, 2008 YTD profit of $51,581.00 upon the garage operations departmental P&L summary shared with TSCC1703, despite the fact that the same P&L statement reflects TSCC 1703's 5 month YTD cash advance allowance of $75,000.00 has been received as "wage recovery". Correspondingly, by the Receiver reflecting TSCC 1703's $15K/mth as "income" versus a loan, the bottom line has been inflated into a profit status that does not correctly reflect the fact that all of that "profit" is actually owed back to TSCC1703.

TSCC 1703 has concerns that the $51,581 department profit is being incorrectly stated, and that TSCC1703's $15K monthly allowance is being misconstrued by Dominion Club as a committed operational subsidy versus a cash flow loan and identification for operational losses. Please rectify the accounts and remit payment to TSCC 1703 of any such profits to the extent of TSCC 1703's loan advances. Any portion of the Purchase Price attributable to the Parking and Valet Services profits in excess of any unpaid cash allowance owing to TSCC 1703 should be reduced accordingly.

TSCC 1703 will be pleased to discuss further arrangements in this regard.

9. **Internet Services** – TSCC 1703 owns all of the internet wiring and network hardware as part of its common elements, and manages, maintains and pays for these services as with any of its utilities for the building.

As part of a cost sharing arrangement with the Hotel Suites entity, TSCC1703 has made the following agreement to permit the hotel to charge/resell its internet services to hotel guests:

- Term is one year at a time, Sep 1 – Aug 31, in sync with TSCC 1703's budget year.
- Current agreement will expire Aug 31, 2008.
- The hotel will establish a daily rate for internet usage to be billed to hotel guests (i.e., $11.95/day) without any requirement of approval by TSCC1703.
- Correspondingly, Suites will pay TSCC1703 that same one day's internet rate per month per hotel room suite as a cost sharing formula to offset the costs of the high speed internet service TSCC1703 specifically installed to meet the demands of a business hotel versus a residential condominium. (i.e., $11.95 X 420 RMA suites = $5019.00 for that month of usage).
- Suites will also pay TSCC 1703 the monthly costs of the WIFI wireless services specifically installed throughout TSCC1726 and the club lands for guests to enjoy wireless connectivity anywhere within the common hotel serviced locations. (this is separately billed by Rogers at approximately $4-500/mth which TSCC 1703 passes through to Suites).
- TSCC1703 will also provision the back office of the Hotel operation with a dedicated 10G internet service at no additional costs to what is currently paid as stipulated above.
- Pursuant to s. 7.4 of the LPDM, Gross Rental Revenue includes revenue generated from telephone, internet and in-room movie charges to short-term tenants.

TSCC 1703 will be pleased to discuss further arrangements in this regard.

10. **12th/13th Floor Club/Lounge/Meeting Room Amenities** – SHI, Dominion Club, the Receiver and any Purchaser of the Company's Assets are required to comply with the provisions of the Lease Operating Agreement and the declaration, by-laws and rules of TSCC 1703. Section 13 (g) of TSCC 1703's declaration provides that only its residents, owners, agents, employees and licensees shall have access to, use and enjoyment of the Amenities. TSCC 1726 is obligated to maintain the private Club/Lounge and Meeting Rooms on the 12th and 13th floor. TSCC 1726 is obligated to staff, maintain and operate, at its own expense, for the benefit of residents and guests of TSCC 1703, a Club/Lounge facility and the private rental of the meeting rooms to residents of TSCC 1703. Similar provisions are contained in Articles 3 and 4 of the Lease Operating Agreement. The 12th floor premises have been operated by the Dominion Club and Stinson Hospitality Inc. as a public event space rented and catered to outsiders, in breach of Section 13 (g) of TSCC 1703's declaration and Articles 3.2, 3.3 and 3.4 of the Lease Operating Agreement. Whether the Purchaser is TSCC 1703 or any third party, the private club requirements must be complied with by the Purchaser, TSCC 1726 and its agents as a private club amenity for the benefit of the residents, rather than as a business event space operated for profit. TSCC 1703's board of directors will be pleased to discuss the appropriate furniture, equipment, staffing and operation of the 12th and 13th floor amenity space and business centre to be provided by the Rental Manager as contemplated by those requirements. As you know, TSCC 1703 has not attributed in its Business Plan any food and beverage or event revenue applicable to third party outsider events or use of the 12th and 13th floor private club amenities.

11. **Boardroom Unit** - The "Boardroom Unit" is defined in Section 1 (b) of TSCC 1726's declaration to mean "Unit 5 on Level 12 of Toronto Standard Condominium Plan No. 1703, being an historic boardroom within the Residential Condominium intended to be owned by the Commercial Condominium Corporation and operated by the Rental

Manager as an integral part of the Rental Management Program;". Please ensure that any revenues generated from the Boardroom Unit are included in the Gross Revenue attributable to the Rental Management Program. Note that Article 13 (h) of TSCC 1703's declaration requires the Rental Manager to provide to TSCC 1703 the beneficial results of use of the 12th and 13th floor Amenities in connection with the promotion and operations of the Rental Management Program and any revenue derived from the rental of the business centre, board and meeting rooms for businesses and social purposes. To date, no such funds have been remitted to TSCC1703 to defray and reduce its common expenses as required. The Receiver and Rental Manager must account and remit payment to TSCC 1703 accordingly.

12. **Manager's Office** – The current arrangements with respect to the property management office remain inadequate and must be addressed. TSCC 1703 currently operates its property management department with only one desk in a non-private, non-secure location. Currently, there is nowhere for either the president of the management company or any unit owner to sit to discuss confidential business with the on-site manager and it is not possible for the on-site manager to close a door for privacy in the current open office space at the 4th floor north office shared with the hotel customer relations personnel. A condominium property manager in any high rise building requires a private office for the property manager and a separate administrative area. There are even more pressures applicable in the case of TSCC 1703, given the unique nature of that condominium corporation. While TSCC 1703 and its property manager have exercised considerable patience on this topic, the required 12th or 13th floor property management office and meeting room arrangements have been deferred, but must be provided free of charge by the new Purchaser in its capacity as having control of TSCC 1726 and as the Rental Manager.

13. **Banking Hall** – We understand that the second floor Banking Hall must be maintained in perpetuity as a publicly-accessible heritage structure, with its uses designated as an "event and performance space" (page 9 of the Heritage Strategy Report dated March 22, 2001, which is an integral part of the Heritage Easement Agreement with the City of Toronto dated July 18, 2001). The May 9, 2001 Committee of Adjustment decision pertaining to 5 King Street West requires the declarant to: "alter bank, office and restaurant to a mixed-use building containing service and retail uses, a theatre and 551 dwelling units." 1 King West Inc. agreed to provide a non-profit theatre in order to obtain three additional storeys and exceed the residential gross floor area, while allowing 5 King Street West's building to be extended within 1.7 meters from the property line of 1 King Street West. The Collateral Agreement with the City of Toronto dated May 12, 2002 states: "The Owner, being the registered owner of the Site, has submitted an application under section 41 of the *Planning Act* for site plan approval in connection with the construction of a fifty-one (51) storey apartment building containing theater and retail space, as well as 551 dwelling units, along with an associated parking garage." The Ontario Municipal Board, by its Decision dated August 28, 2001, confirmed that additional height and floor area were being approved for One King West Inc., because it is in the public interest to retain and restore public areas (including a theater). In making that Decision, the OMB was guided by an affidavit from One King West Inc.'s representative, Jassie Khurana, dated August 9, 2001, which states: "King West is donating existing floor area ... for a non-profit theater". That donation was further

confirmed in a letter dated June 12, 2001, from Jassie Khurana to Mr. Tim Bermingham of Blake Cassels & Graydon, the representative of the owners of Commerce Court who had filed the appeal giving rise to the OMB hearing Decision: "In early 2001, David Mirvish proposed a philanthropic concept of a non-profit theater ... The May 2001 Committee of Adjustment Application incorporates the non-profit theater..." Any potential Purchaser of the Dominion Club freehold lands should be aware that purchasers of suites at TSCC 1703 were enticed by various marketing materials based on the concept of the Grand Banking Hall as an integral part of the entire building – a fully-restored historic space that would remain publicly accessible and widely promoted as a theatrical venue in order to draw attention and room-night customers to 1 King West.

14. **Compliance with Lease Operating Agreement** –

(3.3) **Use of Amenities Refused** – Various residents have complained that they have been refused use and rental of the private amenity meeting rooms on the 12th floor at a maximum charge of $100 per diem without explanation and in some cases, without response to requests. Such requests by residents must be accommodated. See Section 3.1 (d) of the Lease Program Disclosure Memorandum.

(4.6) **Maintenance Personnel** - Please require any personnel engaged by TSCC 1726 for the maintenance of any residential unit to be identified and registered with TSCC 1703.

(4.7) **Service Elevator & Linen Carts** - Housekeeping employees have been using the residents' and guests' elevators, rather than the service elevator; please require Housekeeping employees to use only TSCC 1726's service elevator. Please discuss arrangements for the timing of delivery and exchange of fresh linen by cart between the hours of 12:00 a.m. and 6:00 a.m. each day.

(5.1 – 5.2) **Insurance** - Please provide to TSCC 1703 a copy of any current insurance policy in compliance with Article 5.1 and 5.2 in the name of TSCC 1703.

15. **Declaration Amendment** – For some time, TSCC 1703's board of directors has been considering suggestions by the Mirvish Group lawyer and others to alter the existing short-term rental program so as to permit longer term leases for 30 days or more, outside of the short-term leasing program. TSCC 1703 is not entitled to amend its declaration until after September 9, 2008 for that purpose, and will not do so in breach of the Lease Operating Agreement or the provisions contained in TSCC 1703's declaration. Those amendments would be made by TSCC 1703 in order to maximize revenues on behalf of its unit owners if it becomes the Purchaser. Otherwise, it is expected that the declaration amendment will not come into effect until the end of the remaining balance of the original 10-year term of the Lease Operating Agreement, after appropriate termination of the Lease Operating Agreement at that time or otherwise in accordance with its termination provisions. In the interim, if TSCC 1703 is not chosen as the Purchaser, suggestions from a third party Purchaser will be duly considered.

16. **Heritage Easement Agreement** – The Heritage Easement Agreement confirms that 1 King West Inc. and 5 King West Inc. were given permission to develop their respective properties based on the Committee of Adjustments Application No. A474/00TO,

allowing minor variances from Zoning By-law No. 438-86 of the former City of Toronto, subject to a Heritage designation By-law No. 278-90, in accordance with the Ontario *Heritage Act.* The Heritage Easement Agreement governs Normal Repairs and Alterations [2.1], Permitted Alteration and Development [2.2 – 2.4], Security for Conservation of the Building, the North Façade and Historical Interpretation [2.8 – 2.18] and Public Accessibility [10.1].

Articles 11.01 – 11.3 confirm that the Heritage Easement Agreement has registration priority over any other interest in the Site, other than the fee simple and any permitted encumbrances and Article 12.1 confirms that the Agreement is binding upon the Parties and their respective successors and assigns.

The Heritage Strategy Report set out in Schedule "C" defines the Restoration, Preservation, Stabilization, Rehabilitation and Renovation obligations applicable to the title holders and their assigns. Article 1.4 refers to various Overall Impact on Heritage Resources, including the third bullet to the effect that: "The north, south and east facades of 1 King West will be unaffected by the internal structural alteration." Article 2.2 states that the Exterior Heritage Strategy, including the conservation issues, including the following:

> "In general, no significant changes are proposed for the exterior of 1 King West. The owner agrees to undertake an audit of the exterior condition and undertake repairs or restoration based on the findings of that audit.
>
> The portico at the north elevation is to have the 1950's glazing removed and a new suitable vestibule designed."

The Heritage Façade Dismantling and Storage Specifications set out on Schedule "E" outline the various detailed criteria. We understand that the 5 King West façade was carefully dismantled, stored and then forgotten. That is a serious defect which diminishes the appearance of 1 King West and its hotel operations, in breach of the Heritage Easement Agreement. The Heritage Easement Agreement also refers to the historical display room in the north end of the new 3rd floor, accessed by a new doorway on the landing of the Grand Staircase to the Banking Hall. That issue must also be rectified. The declarant simply abandoned rectifying the issues pertaining to the main King Street entrance to 1 King West. TSCC 1703 and SHI shared the cost of an interim bare-bones repair of the glass and installation of simple doors. The front entrance was supposed to be heated; there are sprinkler heads in the ceiling that are not supposed to freeze up, but we expect that they have been frozen and probably damaged. The front entrance needs to be finished in an elegant manner, suitable to the building and its historic entry. TSCC 1703 must be reimbursed for its half share of the bare-bones repair costs to the front entry area. The owner of the Dominion Club is obligated to bring these areas up to standard and in accordance with the Heritage Easement Agreement.

Article 2.2 of the Heritage Easement Agreement permits the Owner to undertake the alterations to the Building outlined in the "Heritage Strategy Report" and the "Drawings" referred to in Schedule "D" to the satisfaction of the City's Commissioner of Economic Development, Culture and Tourism. Article 2.3 requires the Owner's alterations to the

Building to conform with and be limited to the scope of work and interventions contained in the Heritage Strategy Report, the Drawings and the Detailed Heritage Restoration Plan. The Dominion Club, as owner of the front entrance, front lobby and façade is obligated to rectify those outstanding concerns.

17. **Public Artwork** - The third Drawing on page 68 of Schedule "D" attached to the Heritage Easement Agreement depicts the ground floor and front foyer at 1 King West, which refers to two items of public art to be located within the first external foyer. Those two public artworks must be obtained and installed by the owner of the Dominion Club in accordance with all of the applicable criteria in the Heritage Easement Agreement and other artwork contracts. A City policy requires public artworks to be "appropriate" to its building. In other words, the public artworks should be suitable for a heritage building, rather than a modern artwork.

18. **Funding Improvements** – As you know, if TSCC 1703 becomes the Purchaser, it intends to fund various improvements which it can fully recoup only from its initial Purchase Financing out of revenues of the Food and Beverage and Rental Management Businesses. If a third party becomes the Purchaser, the third party will have to assume those obligations, because TSCC 1703 will not do so. The King Street front entrance and front lobby must be properly finished and be provided with artwork as specified in the City of Toronto Heritage Easement Agreement and in compliance with City policy regarding appropriateness. The façade at 5 King West ("Michies") must be restored to its original stone façade and the inappropriate artwork removed. These are all obligations of the owner of the Dominion Club freehold property at those locations. Other hotel ground floor lobby improvements are required. The Purchaser should also consider rectifying the winter-cold air penetration through the single pane windows involving approximately 200 units in the historic building and replacement of the current deficient heat pump system with a replacement radiant heating system or other appropriate alternative, so as to be able to use those units in the Rental Pool during the colder parts of the wintertime, subject to the historic heritage restrictions. If any potential Purchaser has not built into its Business Plan a commitment to pay the cost of such Funding Improvements, then it cannot compete with TSCC 1703's Final Offer; the Receiver should either require such a commitment in the Agreement of Purchase and Sale, or else refrain from closing with such a third party Purchaser.

19. **Building Deficiencies**– TSCC 1703 has protected its unit owners by suing the declarant and various contractors for serious building deficiencies having repair costs in the range of $20,000,000. We are not aware of any such protective measures taken by TSCC 1726 with respect to its common elements and units or by the Dominion Club with respect to its freehold areas. The Purchaser should promptly commission an engineer's technical audit study and set aside and allocate the funds required to repair any such building deficiencies and in addition, set aside reserve funds to repair all freehold and condominium property components on the same basis as is required for TSCC 1726.

20. **Acquisition Capital Costs Not an Expense** – Presumably, like TSCC 1703, any third party Purchaser is aware that any capital costs applicable to its Purchase of the Company's Assets cannot be charged against the expenses of the short-term leasing program, as referred to in Section 7.4 of the Lease Program Disclosure Memorandum.

21. **OSC Ruling and LPDM** – Please ensure that any Purchaser is aware of its continuing obligations under the OSC Ruling and the Lease Program Disclosure Memorandum. The Purchaser, Receiver and the Mirvish Group should each consider their obligations with respect to the various material changes which have occurred, in order to update the Lease Program Disclosure Memorandum resulting from non-disclosure of changes, risks, purchase of the real estate and establishment of the food and beverage business by the Dominion Club and the Rental Management Business by Stinson Hospitality Inc., their insolvency, the CCAA application, Receivership, court-ordered sale of the Company's Assets and information pertaining to the purchase thereof by the Purchaser. The Purchaser must comply with its obligations under the OSC Ruling and Lease Program Disclosure Memorandum.

22. **Disclosure of Short-Term Leasing Particulars** – The Rental Manager has failed to comply with the Leasing Requirements set out in Section 26 (a), (b) and (c), and Section 40 of TSCC 1703's declaration. The Rental Manager is obligated pursuant to Article 2.3, 3.1, 3.2 and 5 of the Rental Management Agreement to function as a unit owner's agent to comply with provisions set out in TSCC 1703's declaration and the *Condominium Act, 1998* (the "Act"). The Rental Manager must notify TSCC 1703 forthwith each time there is a short-term lease of a unit, keeping in mind the requirements of s. 83 of the Act. The Rental Manager should be providing either a copy of each tenancy registration, or a Form 5 Summary of Lease in each case, or e-mailed particulars or password-protected access by TSCC 1703's property manager to review the registration information. A short-term tenant must complete the form of Acknowledgment, which could be built into the Rental Manager's registration form and signed by each short-term tenant. Each short-term tenant must also complete TSCC 1703's Resident's Information Form. A copy of the declaration, by-laws and rules must be provided in each Rental Management Unit at a convenient and visible location within the unit. The Rental Manager must also enforce compliance by short-term tenants with the declaration, by-laws and rule provisions as required by Article 5 of the Rental Management Agreement.

23. **TSCC 1726 Concerns** - Thank you for providing to Le Jardin/IHR our letter with regard to various concerns on the part of TSCC 1703 as owner of a unit at TSCC 1726. We became particularly concerned that the Terms and Conditions of Sale issued by the Receiver on March 12, 2008 did not include Article 19 of the Terms and Conditions of Sale attached to the January 24, 2008 Court Order which requires any Purchaser of the units of TSCC 1726 to bring TSCC 1726 into compliance with all requirements of the *Condominium Act, 1998* and its declaration, by-laws and rules. We trust that the Agreement of Purchase and Sale to be entered into by the Receiver with either TSCC 1703 or any other Purchaser will in fact incorporate the Article 19 provision's requirements and that any Purchaser will comply with the provisions set out in that letter.

24. **Breach of Confidentiality** – Three potential Purchasers who had submitted Letters of Intent to purchase the Company's Assets have disclosed various items of confidential information to directors or representatives of TSCC 1703, including references to purchase prices, a "Woodbridge banquet hall" which is apparently holding back substantial funds from its proposed Purchase Price, and other information/rumors. We note that Patricia Conway, a lawyer for the Mirvish Group, made a point of informing

nine persons at a construction deficiency discovery (who had no need to know) that TSCC 1703 has submitted an offer to the Receiver to purchase the Hotel Business "at a huge purchase price". We are certain that no such information came from any TSCC 1703 representative, but we note that there has been a general lack of compliance with the confidentiality requirements by other parties.

Address Concerns

Whether TSCC 1703 or any other third party is selected by the Receiver as the Purchaser, the foregoing issues must be addressed. We request that the Receiver provide a copy of this letter to any third party Purchaser whose Final Offer remains under consideration by the Receiver, so that any Purchaser receives full and fair disclosure and will not subsequently be surprised to learn of the Purchaser's obligation to address these issues.

Further Discussions

TSCC 1703's representatives will be pleased to meet with the Receiver or any third party Purchaser to discuss and resolve these issues, although obviously, in our view, the Receiver should choose TSCC 1703 as the Purchaser which is already committed to rectifying these Rental Management Problems. Please carefully consider all of the benefits associated with choosing TSCC 1703 as the Purchaser, recognizing that this last chance opportunity to rectify the short-term rental program rests upon the Receiver's shoulders to protect the interests of over 500 unit owners from the current disastrous financial scenario.

Yours truly
GARDINER MILLER ARNOLD LLP

"J. Robert Gardiner"

Per: J. Robert Gardiner
JRG:it

c.c. TSCC 1703

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TAB L

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----- Original Message -----
From: Robert Verdun <mailto:bobverdun@rogers.com>
To: mark@mercantilema.com <mailto:mark@mercantilema.com>
Sent: Monday, September 08, 2008 12:22 PM
Subject: You could be very helpful

Hello, Mark. Important information will be emailed to all suite owners as soon as it is approved by the Receiver. It is anticipated that it will be sent out today.

If you have any questions, I would be pleased to try to answer them for you.

I expect you will be pleasantly surprised at the way the numbers are working out. It's truly a win-win situation.

I am currently out of the country, and my internet service is under repair, but I will reply as quickly as I can to any questions you might have.

Of course, you are also welcome to directly contact any of the other directors.

Bob Verdun

TAB M

Court File Number: 07-CL-6913

Superior Court of Justice
Commercial List

FILE/DIRECTION/ORDER

Ed Mirvish Enterprises Limited et al
Plaintiff(s)

AND

Brunson Hospitality Inc et al
Defendant(s)

Case Management ☑ Yes ☐ No by Judge: Pepall, J.

Counsel	Telephone No.:	Facsimile No.:
See attached counsel slip		

☑ Order ☐ Direction for Registrar (No formal order need be taken out)
☐ Above action transferred to the Commercial List at Toronto (No formal order need be taken out)

☐ Adjourned to:
☐ Time Table approved (as follows):

The Receiver moves for a variety of relief including approval of its 7th report + fees of it + its counsel, a sealing order for 1 volume of that report + a sales approval + vesting order. Dealing with the latter issue first, pursuant to a Jan 24, 08 court order, the Receiver carried out an extensive sales process. 31 parties executed confidentiality agreements + were provided with access to the data room. 11 non-binding LOIs were submitted + 6 final LOIs were submitted to the Receiver. The Receiver ultimately selected a preferred purchaser given, amongst other things, the proposed purchase price, expertise + perceived lower closing risks. A condition in that purchase agreement could not be waived or satisfied + the Receiver therefore entered into negotiations with the offeror with the next best LOI, namely

Sept 16/08
Date

Pepall, J.
Judge's Signature

☑ Additional Pages 3

Court File Number: 07 - CL - 6913

Superior Court of Justice
Commercial List

FILE/DIRECTION/ORDER

Judges Endorsement Continued

13 condominium corporation No. 1703. The sales process ultimately resulted in a transaction that will result in sale proceeds of 13.9 million, an amount that exceeds the face amount owing to the debtors' largest secured creditor at a closing date of Dec 1, 2008. It is conditional on court approval which is sought today.

Applying the principles set forth in RBC - Soundair Corp (1991), 4 OR (3d) 1 (Ont C.A) + Shire pharma PLC v Hyal Pharmaceutical Corp (2000), 47 OR (3d) 234, I am satisfied that the Receiver has carried out a fair + comprehensive marketing + sales process - carried out the process approved by the Court. The Receiver worked to maximize the value recoverable + the proposed transaction represents the best possible outcome that could be obtained in the circumstances. The assets involved are unusual, the Receiver recommends the proposed transaction + has the requisite expertise to deal with these matters. Certainty + timeliness are also important factors. I am persuaded that the purchase agreement is commercially reasonable + in the best interests of the debtors + their stakeholders.

I am therefore granting the approval + vesting order as requested + amended. In doing so, I stress that nothing in it should be construed as limiting the rights + remedies, if any, of the unit owners of TS condominium corporation No 1703.

In addition, the Minosh parties + the purchaser have entered into a settlement agreement that is a condition of the Minosh parties consenting to the transaction.

Judges Initials [illegible]

The Mirvish Group has indicated that it is prepared to consent to the Receiver's motion on the basis that this Court recognizes the terms of a Settlement Agreement between Ed Mirvish Enterprises Limited, 1 King West Inc. and Toronto Standard Condominium Corporation 1703 dated September 12, 2008 ~~and that~~ BVP. ~~Court so orders~~, on the basis that the rights of the Receiver and third parties are reserved.

p 3 g 4

BVP

Court File Number: 07-CL-6917

Superior Court of Justice
Commercial List

FILE/DIRECTION/ORDER

to the agreement

Judges Endorsement Continued

It is understood that that settlement agreement binds the parties. That said, at a later date, the Receiver will return to court to address the issue of distribution of funds. Accordingly, Segnia's position is not prejudiced in any meaningful way. Mr. Degroote for the Stinson Group does not consent to the approval + vesting order but did not make any arguments in this regard.

The 2nd part of the motion deals with approval of the 7th report + fees. Not only do I approve the report + fees, I also wish to compliment the Receiver on its carriage of this difficult + challenging receivership. There has been an dramatic increase in the profitability of the business + as indicated by the Receiver's counsel, Mr. Myers, the business has been doing very well under the stewardship of the Receiver.

Lastly Vol II of the 7th report is to be sealed + not form part of the public record until further order of this court. The materials contained therein are limited but are commercially sensitive + should be protected in the event that the transaction does not close.

The 7th report approval order has been signed + I am initialling the approval + vesting order so a clean copy may be prepared.

Page 4 of 4

Judges Initials SCP

Court File No. 07-CL-6913

ONTARIO
SUPERIOR COURT OF JUSTICE

COMMERCIAL LIST

BETWEEN:

ED MIRVISH ENTERPRISES LIMITED and
I KING WEST INC.

Applicants

-and-

STINSON HOSPITALITY INC. and DOMINION CLUB OF
CANADA CORPORATION and HARRY STINSON

Respondents

Endorsement of Justice Peppall
September 16, 2008

(Unofficial Transcription)

The Receiver moves for a variety of relief including approval of its 7th Report and fees of it and its counsel, a sealing order for 1 volume of that report and a sale approval and vesting order.

Dealing with the last issue first, pursuant to a Jan. 24, 2008 Court order, the Receiver carried out an extensive sales process. 31 parties executed Confidentiality agreements and were provided with access to the data room. 11 non-binding LOIs were submitted and 6 final LOIs were submitted to the Receiver. The Receiver ultimately selected a preferred purchaser given, amongst other things, the proposed purchase price, expertise and perceived lower closing risks. A condition in that purchase agreement could not be waived or satisfied and the Receiver therefore entered into negotiations with the offeror with the next best LOI, namely Toronto Standard Condominium Corporation No. 1703. The sales process ultimately resulted in a transaction that will result in sale proceeds of $13.9 million, an amount that exceeds the face amount owing to the Debtors' largest secured creditor and a closing date of Dec. 1, 2008. It is conditional on court approval which is sought today.

Applying the principles set forth in *RBC* v. *Soundair Corp* (1991), 4, OR (3d) 1 (ONT C.A) and *Skyepharma PLC* v. *Hyal Pharmaceutical Corp.* (2000), 47 OR (3d) 234, I am satisfied that the Receiver has carried out a fair and comprehensive marketing and sales process – carried out the process approved by the Court. The Receiver worked to maximize the value recoverable and the proposed transaction represents the best possible outcome that could be obtained in the

circumstances. The assets involved are unusual, the Receiver recommends the proposed transaction and has the requisite expertise to deal with these matters. Certainty and timeliness are also important factors. I am persuaded that the purchase agreement is commercially reasonable and in the best interests of the debtors and their stakeholders.

I am therefore granting the approval and vesting order as requested and amended. In doing so, I stress that nothing in it should be construed as limiting the rights and remedies, if any, of the unit owners of Toronto Standard Condominium Corporation No. 1703.

In addition, the Mirvish parties and the purchaser have entered into a settlement agreement that is a condition of the Mirvish parties consenting to the transaction. The Mirvish Group has indicated that it is prepared to consent to the Receiver's motion on the basis that this Court recognizes the terms of a Settlement Agreement between Ed Mirvish Enterprises Limited, 1 King West Inc. and Toronto Standard Condominium Corporation 1703 dated September 12, 2008, on the basis that the rights of the Receiver and Third parties are preserved. It is understood that that settlement agreement binds the parties to the agreement. That said, at a later date, the Receiver will return to Court to address the issue of distribution of funds. Accordingly, Segura's position is not prejudiced in any meaningful way. Mr. Jacques for the Stinson group does not consent to the approval and vesting order but did not make any arguments in this regard.

The second part of the motion deals with approval of the 7th Report and fees. Not only do I approve the Report and fees, I also wish to compliment the Receiver on its carriage of this difficult and challenging receivership. There has been an ongoing increase in the profitability of the business and as mentioned by the Receiver's counsel, Mr. Myers, the business has been doing very well under the stewardship of the Receiver.

Lastly, Vol II of the 7th Report is to be sealed and not form part of the public record until further order of this Court. The materials contained therein are limited but are commercially sensitive and should be protected in the event that the transaction does not close.

The 7th Report approval order has been signed and I am initialling the approval and vesting order so a clean copy may be prepared.

Peppall, J.

\5633970

TAB N

Court File Number: 07-CL-6913

Superior Court of Justice
Commercial List

FILE/DIRECTION/ORDER

Mirnah et al
Plaintiff(s)

AND

Sturgeon Hospitality Inc et al
Defendant(s)

Case Management ☑ Yes ☐ No by Judge: Pepall

Counsel	Telephone No.:	Facsimile No.:
Mr Title for Segura Investments et al		416-225-7112
Mr Reytell for Mr Sturgeon et al		416-360-5960
Mr. Myers for the Receiver		416-979-1234
Ms. Cohen for Mirnah Group		416-214-5600

☑ Order ☐ Direction for Registrar **(No formal order need be taken out)**
☐ Above action transferred to the Commercial List at Toronto **(No formal order need be taken out)**

☐ Adjourned to: _____
☐ Time Table approved (as follows):

On Jan 9, 2008, I heard a motion brought by the Receiver to approve certain of its reports. In its 3rd report the Receiver advised the court of the steps it had taken relating to Segura Investments Ltd. It described a loan agreement dated Aug 18, as entered into by Segura + various parties including 5111 for $1.4 million; an undated promissory note; an undated assignment of LOA fees in favour of Mr Kwan as assignee from 5111 & Mr Sturgeon as assignor; + an undated GSA from 5111 in favour of Mr Kwan as the secured party. It reported on the untitled legal opinion it had received dated Jan 14, 07 from Goodmans. Goodmans advised that: i. despite requests of Segura's counsel Goodmans had not been provided with either any security documentation in favour of Segura or any documentation

Feb 5, 2008
Date

Judge's Signature

☑ Additional Pages 4

P.002

FEB-05-2008 15:10

Court File Number: 07-CL-6913

Superior Court of Justice
Commercial List

FILE/DIRECTION/ORDER

Judges Endorsement Continued

evidence an assignment of Segura's rights to Mr Liwan.

2. The security documentation is in favour of Mr Liwan but the PPSA registration is in favour of Segura + relates to the fixed fee assignment only.

Goodmans opined that Segura only had an unsecured loan + Mr Liwan had been granted security without the underlying indebtedness in support.

Approval of that security was granted by me on Jan 9/08 without prejudice to Segura + Liwan to challenge Goodmans opinion + to bring the motion is wished to bring for rectification.

Today, Segura, Mr Liwan + 1392964 Ontario make applications for leave to proceed with the within application + declaratory relief in the form of rectification of the aforementioned loan agreement. In support they have filed an affidavit of Mr Liwan sworn Jan 22/08 + an affidavit of Mr Strusan sworn Jan 30/08 Mr Liwan identifies the loan agreement entered into by 5th, 5P1, Mr Strusan HSRC, High Park, 1392964 Ontario Limited + Segura. The document appears to be signed by Mr Strusan for all the Strusan related companies. Todd Hi for 1392964 Ontario Limited + Mr Liwan for Segura.

The loan agreement states that payment is to be secured by delivery of a promissory note from 5th + HS Equity + Generally of the sum of $1,400,000 upon the terms set out in Schedule A. Schedule A is a promissory note stated to be from 5th + Mr Strusan

Judges Initials SDP

Court File Number: 07-CL-6913

Superior Court of Justice
Commercial List

FILE/DIRECTION/ORDER

Judges Endorsement Continued

but undated.

Mr Hwan states that the Loan Agreement was prepared by a lawyer who is now deceased. There is no evidence of any efforts having been made to obtain that lawyer's file with a view to ascertaining whether an order for rectification is merited.

Mr Hwan states that the loan was advanced but fails to state to whom or to provide any evidence of any advances actually having been made. No cancelled cheques have been produced & the banking records of 5111 show no receipt of funds from Segnor.

Mr Hwan states that the use of funds was intended for the construction of facilities for the hotel operation & the Recreation Club. RCC was not a party to the loan agreement.

Mr Strosberg's affidavit is similarly vague. Few particulars are included. There is no evidence on other security stated to be granted by the other parties to the loan agreement & he too provides no evidence from the auditors that prepared the financials sought to be petitioned. It should also be noted that having signed the promissory note personally clearly he has an interest in taking the position he asserts. There is no evidence of indemnities to be ascertained from the production of contemporaneous documentation.

Mr Morris, respondents submit that Segnor & the other applicants' request should be dismissed & that they have failed

Page 3 of 5 Judges Initials BMP

Court File Number: 07-CL-6913

Superior Court of Justice
Commercial List

FILE/DIRECTION/ORDER

Judges Endorsement Continued

to meet the cross on them. The Receiver is an officer of the Court with duties to all creditors. Obviously a rectification of the Sequoia security would adversely impact unsecured creditors + their recoveries by reducing the amount of money available to them.

That said, there are 2 issues to address. Firstly, should leave be granted to lift the stays in my Aug 24, 07 order + if so, + if granted retroactive to June, should the rectification relief be granted in my view leave should be granted. The applicants have an arguable case + it should be unobjectionable not to grant leave. Although there is no claim asserted against the Receiver per se, it seems to me that he should be joined as a party given the nature of the rectification relief being sought. Having said that, however, I do view the affidavits filed in support of the notice of applications as sufficiently lacking in particulars. In exercising my discretion to grant leave, I am imposing as a term of my order the requirement that the applicants file additional affidavit evidence addressing:

a) evidence of advances made with full particulars + to whom they were made, +
b) evidence of the lawyers file to the extent it has a bearing on the documents sought to be rectified.

If the applicants wish to proceed with their applications, this evidence must be served on the Receiver within 30 days of today failing which the Receiver may request that the notice of applications

Page 4 of 5

Judges Initials SCP

Court File Number: 07-CL-6913

Superior Court of Justice
Commercial List

FILE/DIRECTION/ORDER

Judges Endorsement Continued

be dismissed. Such a request may be made on an ex parte basis. In the absence of leave having been granted the applicants should not have issued a notice of application. In light of my decision, however, I am granting leave nunc pro tunc.

As to the issue of costs, they are reserved to me to be dealt with after the application is heard or dismissed as the case may be.

Pepall J.

Judges Initials DJP

Court File No. 08-CL-7368 (07-CL-6913)

SEGURA INVESTMENTS LTD., et al.

- and –

STINSON HOSPITALITY INC.

Mr. Title	for Segura Investments, et al.
Mr. Reytek	for Mr. Stinson, et al
Mr. Myers	for the Receiver
Ms Conway	for Mirvish Group

February 5, 2008 **COUNSEL'S UNOFFICIAL TRANSCRIPTION OF REASONS OF PEPALL J.**

On January 9, 2008, I heard a motion brought by the Receiver to approve certain of its reports. In its 3rd report, the Receiver advised the Court of the steps it had taken relating to Segura Investments Ltd. It described a loan agreement dated August 18, 2005 entered into by Segura and various parties including SHI for $1.4 million; an undated promissory note; an undated assignment of RMA fees in favour of Mr. Kwan as assignee from SHI and Mr. Stinson as assignors; and an undated GSA from SHI in favour of Mr. Kwan as the secured party. It reported on the written legal opinion it had received dated November 14, 2007 from Goodmans. Goodmans advised that:

1. Despite requests of Segura's counsel, Goodmans had not been provided with either any security documentation in favour of Segura or any documentation evidencing an assignment of Segura's rights to Mr. Kwan.

2. The security documentation is in favour of Mr. Kwan but the PPSA registration is in favour of Segura and relates to the fixed fee assignment only. Goodmans opined that Segura only had an unsecured loan and Mr. Kwan had been granted security without the underlying indebtedness in support.

Approval of that Receiver's report was granted by me on January 9/08 without prejudice to Segura and Kwan to challenge the Goodmans' opinion and to bring the motion it wished to bring for rectification.

Today, Segura, Mr. Kwan and 1392964 Ontario make application for leave to proceed with the within application and declaratory relief in the form of rectification of the aforementioned loan agreement. In support, they have filed an affidavit of Mr. Kwan sworn Jan 22/08 and an affidavit of Mr. Stinson sworn Jan 30/08. Mr. Kwan identifies the loan agreement entered into by SHI, SPI, Mr. Stinson, HSRC, High Park, 1392964 Ontario Limited and Segura. The document appears to be signed by Mr. Stinson for all the Stinson related companies, Jang Li for 1392964 Ontario Limited and Mr. Kwan for Segura.

The loan agreement states that payment is to be secured by delivery of a promissory note from SHI and HS jointly and severally of the sum of $1,400,000 upon the terms set out in Schedule A. Schedule A is a promissory note stated to be from SHI and Mr. Stinson but undated.

Mr. Kwan states that the Loan Agreement was prepared by a lawyer who is now deceased. There is no evidence of any efforts having been made to obtain that lawyer's file with a view to ascertaining whether an order for rectification is merited.

Mr. Kwan states that the loan was advanced but fails to state to whom or to provide any evidence of any advances actually having been made. No cancelled cheques have been produced and the banking records of SHI show no receipt of funds from Segura.

Mr. Kwan states that the use of funds was intended for the construction of facilities for the hotel operation and the Dominion Club. DCC was not a party to the loan agreement.

Mr. Stinson's affidavit is similarly vague. Few particulars are included. There is no evidence on other security stated to be granted by the other parties to the loan agreement and he too provides no evidence from the law firm that prepared the materials sought to be rectified. It should also be noted that having signed the promissory note personally, clearly he has an interest in taking the position he asserts. There is no evidence of intention to be ascertained from the production of contemporaneous documentation.

The Mirvish respondents submit that Segura and the other applicants' request should be dismissed and that they have failed to meet the onus on them. The Receiver is an officer of the Court with duties to all creditors. Obviously, a rectification of the Segura security would adversely impact unsecured creditors and their recoveries by reducing the amount of money available to them.

That said, there are 2 issues to address. Firstly, should leave be granted to lift the stays in my August 24/07 Order and if so, and if granted, *nunc pro tunc,* should the rectification relief be granted.

In my view, leave should be granted. The applicants have an arguable case and it would be inequitable not to grant leave. Although there is no claim asserted against the Receiver per se, it seems to me that he should be joined as a party given the nature of the rectification relief being sought. Having said that, however, I do view the affidavits filed in support of the notice of application as severely lacking in particulars. In exercising my discretion to grant leave, I am imposing as a term of my Order the requirement that the applicants file additional affidavit evidence addressing:

a) evidence of advances made with full particulars and to whom they were made; and

b) evidence of the lawyer's file to the extent that it has a bearing on the documents sought to be rectified.

If the applicants wish to proceed with their application, this evidence must be served on the Receiver within 30 days of today, failing which the Receiver may request that the notice of application be dismissed. Such a request may be made on an *ex parte* basis.

In the absence of leave having been granted, the applicants should not have issued a notice of application. In light of my decision, however, I am granting leave *nunc pro tunc*.

As to the issue of costs, they are reserved to me to be dealt with when the application is heard or dismissed as the case may be.

Pepall, J.

TAB O

Court File Number: 08-CL-7368
07-CL-6913

Superior Court of Justice
Commercial List

FILE/DIRECTION/ORDER

SEGURA INVESTMENTS et al v STINSON HOSPITALITY et al
Plaintiff(s)

AND

ED. MIRVISH ENTERPRISES et al v SM LEASING LTD et al
Defendant(s)

Case Management ☐ Yes ☐ No by Judge: _____

Counsel	Telephone No.:	Facsimile No.:
MICHEAL NALE, ANTONIN PRIBETIC	- SEGURA	
FRED MYERS, WARREN BUTTI for	IRA SMITH TRUSTEE -	also present
MARGARET SIMS - ED MIRVISH ENTERPRISES		
AS ESTEFAMER, C. JANUSZ → BRIAN KWAN - INTERVENER		
HARRY STINSON - IN PERSON.		

☐ Order ☐ Direction for Registrar **(No formal order need be taken out)**
☐ Above action transferred to the Commercial List at Toronto **(No formal order need be taken out)**

☐ Adjourned to: _____
☐ Time Table approved (as follows):

Counsel & parties participated in a Settlement Conference of this complicated matter to-day.
Agreement has been reached between the parties in both actions the result of which will see the actions dismissed on terms agreed to in Minutes of Settlement to be filed with the Court. ~~Settlement~~ Court approval of the final distribution will be dependent on the claims & costs in the related insolvency proceedings and is conditional on closing of the sale transaction.
I am satisfied that in the circumstances of the issues & claims the settlement as set out reflects a fair & reasonable compromise of the matters in the actions.

Nov. 19/08
Date

Judge's Signature

☐ Additional Pages _____

Court File No. 08-CL-7368
07-CL-6913

FILE/DIRECTION/ORDER

Segura Investments et al. v. Stinson Hospitality et al.

and

Ed Mirvish Enterprises et al. v. ISM Leasing Ltd. et al.

Counsel:

Michael Title, Antonin Pribetic – Segura
Fred Myers, Lauren Butti for Ira Smith Trustee – also present
Margaret Sims – Ed Mirvish Enterprises
A.J. Esterbauer, C. Janusz – Brian Kwan – intervener
Harry Stinson – in person

Counsel and parties participated in a settlement conference of this complicated matter to-day. Agreement has been reached between the parties in both actions. The result of which will see the actions dismissed on terms agreed to in Minutes of Settlement to be filed with the Court. Court approval of the final distribution will be dependent on the claims and costs in the related insolvency proceedings and is conditional on closing of the sale transaction. I am satisfied that in the circumstances of the issues and claims the settlement as set out reflects a fair and reasonable compromise of the matters in the actions.

November 19, 2008 Campbell, J.

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TAB P

Lawyer for applicant/moving party:

Ed Mirvish Enterprises Ltd.
and 1 King West Inc.

Lawyer: Jeffrey Carhart
Margaret Sims

Print name and sign or initial

Date: January 30 , 2009

Address: **MILLER THOMSON LLP**
Scotia Plaza
40 King Street West, Suite 5800
P.O. Box 1011
Toronto, ON
Canada M5H 3S1

Phone: 416.597.4375
Fax: 416.595.8695

Lawyer for other party:

Party: Court Appointed receiver of Stinson Hospitality Inc. and Dominion Club of Canada Corporation

Lawyer: Joseph Latham

per:

Print name and sign or initial

Date: January 30 , 2009

Address: **GOODMANS LLP**
Barristers and Solicitors
250 Yonge Street, Suite 2400
Toronto, Ontario, Canada
M5B 2M6

Phone: 416.979.4211
Fax: 416.979.1234

To be submitted to: **Commercial List / Bankruptcy Court Office**
330 University Avenue, 7th Floor
Toronto, ON M5G 1R7
Telephone: (416) 327-5043
Fax No.: (416) 327-6228

Feb 9/09

Endorsement / disposition

a) 2 motions are to be heard before me on March 11, 2009:
1. Mr. Verdun's motion to lift the stay +
2. the receiver's distribution motion.
All day is required.

b) settlement conference before Campbell J on Feb 27, 2009. ~~counsel~~ parties are to make their best efforts to be present although Mr. Verdun may participate by telephone conference. Brief settlement conference memos are to be filed by Wednesday in advance.

c) Motion materials (excluding facta + XE transcripts) to be filed with court by March 3, 09.

d) compliance with the attached timetable is ordered

Campbell, J.

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Court File No. 07-CL-6913

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

B E T W E E N :

ED MIRVISH ENTERPRISES LIMITED AND 1 KING WEST INC.

Applicants

- and –

STINSON HOSPITALITY INC., DOMINION CLUB OF CANADA CORPORATION AND HARRY STINSON

Respondents

TIMETABLE

February 3, 2009

MILLER THOMSON LLP
Barristers & Solicitors
Suite 5800 - 40 King Street West
Toronto, Ontario M5H 3S1

Jeffrey C. Carhart LSUC#: 23645M
Margaret R. Sims LSUC#: 39664I
Tel: 416.595.8615/8577
Fax: 416.595.8695

Solicitors for Ed Mirvish Enterprises Limited and 1 King West Inc.

1. By Order of Madam Justice Pepall, dated August 24, 2007 (the "**Appointment Order**"), Ira Smith Trustee & Receiver Inc. was appointed receiver of Stinson Hospitality Inc. ("**SHI**") and Dominion Club of Canada Corporation ("**Club Corporation**"), The Suites at 1 King West Inc. (the "**Suites**") and 2076564 Ontario Inc ("**Housekeeping**") (the "**Receiver**").

2. The Appointment Order includes a stay of proceedings in paragraphs 10 to 12 (the "**Stay**").

3. Robert Verdun, a party to the proceedings since October, 2007 and member of TSCC1703 board, indicated to the Receiver for the first time on January 22, 2009 that he wished to seek to lift the Stay and pursue a claim to impugn the secured claim of Ed Mirvish Enterprises Limited ("**EME**").

4. Mr. Verdun has not yet delivered a proposed draft form of statement of claim or brought a motion to seek to lift the Stay.

5. In light of the fact that the sale of assets by the Receiver closed in December, 2008 and a Court approved Claims Process is currently underway, the Receiver will soon be in a position to distribute funds to the secured creditors EME and Segura Properties Limited on the basis of their accepted and approved secured claims.

6. EME asks that the Court set a timetable so that any motion brought by Mr. Verdun to lift the Stay can be adjudicated as expeditiously as possible.

7. The following timetable governs any such motion to lift the Stay:

Deadline	Event
February 11, 2009	Mr. Verdun will deliver ~~and file its~~ his motion record with respect to his motion to lift the Stay on his undertaking that the unsigned document will be delivered to that effect.
February 16, 2009	Any parties delivering materials in support of Mr. Verdun's motion will deliver their materials.
February 23, 2009	EME will deliver its responding motion materials.
February 26, 2009	Any parties delivering materials in opposition to Mr. Verdun's motion will deliver their materials.
Week of March 2, 2009 (In particular March 2, 3 and 4, 2009 (if necessary)) L and S	Cross-Examinations (if any) will be conducted
March ~~5~~ 6, 2009	Mr. Verdun and any parties supporting the motion will deliver and file any facta and authorities.
March 9, 2009	EME and any parties opposing the motion will deliver and file any facta and authorities.
March 11 ~~or 12~~, 2009 (Subject to confirmation with the Commercial List Office)	Hearing before Madam Justice Pepall ~~(1/2 day)~~ (1 day)

February 27, 2009 (10 a.m.) Settlement Conference before Mr. Justice Campbell

ED MIRVISH ENTERPRISES LIMITED AND 1 KING WEST INC. Applicants	and	STINSON HOSPITALITY INC., DOMINION CLUB OF CANADA CORPORATION AND HARRY STINSON Respondents	Court File No: 07-CL-6913

ONTARIO
SUPERIOR COURT OF JUSTICE-
COMMERCIAL LIST

Proceeding commenced at Toronto

TIMETABLE

MILLER THOMSON LLP
SCOTIA PLAZA
40 KING STREET WEST, SUITE 5800
P.O. BOX 1011
TORONTO, ON CANADA M5H 3S1

Margaret R. Sims LSUC#: 39664I
Tel: 416.595.8577
Fax: 416.595.8695

Solicitors for the Applicants,
Ed Mirvish Enterprises Limited
and 1 King West Inc.

TAB Q

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CUSHMAN & WAKEFIELD LePAGE®

Cushman & Wakefield LePage, Inc.
Valuation & Advisory Services
33 Yonge Street, Suite 1000
Toronto, ON M5E 1S9
Phone 416.862.0611
Fax 416.359-2613

February 20, 2009

Margaret Sims
Miller Thomson LLP
Scotia Plaza
Suite 5800, 40 King Street West
Toronto
Ontario M5H 3S1

Re: **Valuation of the Club Lands, the Commercial Condo Units and the Residential Service Units at One King Street West, Toronto, Ontario**

C&W File ID: 09-4015

Dear Ms Sims:

In accordance with your request, and as outlined in your Letter of Engagement dated February 14, 2009, we are pleased to present our valuation report on the property referenced above.

You have asked that Cushman & Wakefield LePage prepare a valuation of the property listed above and that are further detailed through legal description in Schedule A attached to your Engagement Letter. You have requested that the valuation be as of February 3rd, 2006.

The value opinion reported below is qualified by certain assumptions, limiting conditions, certifications and definitions which are set forth in the report.

The purpose of the report is to develop an opinion of the market value of:

1. *Ownership of the freehold interest in the Commercial Condominium Units and the Residential Service Units, ownership of which provides exclusive rights to manage the hotel rental programme; and*

2. *Freehold Interest in the Club Lands*

As a result of our analysis, we formed an opinion that the market value of the Club Lands, Commercial Condominium Units and Residential Service Units of One King Street West, as at February 3rd, 2006, to be:

TWELVE MILLION EIGHT HUNDRED THOUSAND DOLLARS

($12,800,000)

The total value is made up of a freehold interest in the Commercial Condominium Units and Residential Service Units, providing the right to manage the hotel rental pool, at:

SIX MILLION ONE HUNDRED THOUSAND DOLLARS

($6,100,000)

plus the value of the Club Lands, at:

SIX MILLION SEVEN HUNDRED THOUSAND DOLLARS

($6,700,000)

The analysis contained in this valuation is based upon assumptions and estimates that are subject to uncertainty and variation. These estimates are often based on data obtained in interviews with third parties, and such data are not always completely reliable. In addition, we make assumptions as to the future behavior of consumers and the general economy, which are highly uncertain. However, it is inevitable that some assumptions will not materialize and unanticipated events may occur that will cause actual achieved operating results to differ from the financial analyses contained in this report and these differences may be material. Therefore, while our analysis was conscientiously prepared on the basis of our experience and the data available, we make no warranty that the conclusions presented will, in fact, be achieved. Additionally, we have not been engaged to evaluate the effectiveness of management and we are not responsible for future marketing efforts and other management actions upon which actual results may depend.

We did not ascertain the legal, engineering, and regulatory requirements applicable to the property, including zoning and other provincial and municipal regulations, permits and licenses. No effort has been made to determine the possible impact on the property of present or future federal, provincial or municipal legislation, including any environmental or ecological matters or interpretations thereof. With respect to the market demand analysis, our work did not include analysis of the potential impact of any significant rise or decline in local or general economic conditions.

We believe, based on the assumptions employed in our cash flow, as well as our selection of investment parameters for the subject, that the value conclusion represents a market price achievable within one-year exposure prior to the date of value.

This letter is invalid as an opinion of value if detached from the report, which contains the text, exhibits, and addenda.

Respectfully submitted,

CUSHMAN & WAKEFIELD LEPAGE, INC.

Toivo Heinsaar, B.A., AACI, P.App
Vice President
Valuation & Advisory Services
Capital Markets Group
Toivo.Heinsaar@ca.cushwake.com
Phone Office Direct 416.359.2490
Fax 416.359.2602

Charles Suddaby
Vice President & Hospitality Practice Director
Valuation & Advisory Services
Capital Markets Group
carles.suddaby@ca.cushwake.com
Phone Office Direct 416.359.2407
Fax 416.359.2602

TAB R

Goodmans LLP

Barristers & Solicitors
250 Yonge Street, Suite 2400
Toronto, Ontario Canada M5B 2M6
Telephone: 416.979.2211
Facsimile: 416.979.1234
goodmans.ca

Direct Line: 416.597.5923
fmyers@goodmans.ca

August 7, 2009

Our File No.: 070060

Delivered Via E-mail (bobverdun@rogers.com)

J. Robert Verdun
153-B Wilfred Avenue
Kitchener, ON
N2A 1X2

Dear Mr. Verdun:

Re: Ed Mirvish Enterprises Ltd., et al
Court of Appeal File No. M37 703

We write concerning the form of affidavit that you purported to file with the Court of Appeal which you then withdrew.

As you acknowledged in Court and the Justice noted, the contents of your affidavit were not relevant to the motion before the court nor to the merits of the proposed appeal from the quantification of costs. Furthermore, the Justice specifically advised you that allegations of the type contained in your affidavit when made against professionals will be responded to severely. You have already seen formal written responses, including responses contained in Receiver's Reports that have been filed with the Court, in respect of the allegations that you repeated in your withdrawn affidavit. Accordingly, you know that any allegations of inappropriate conduct against our client, our firm, and Justice Pepall, are incorrect and unfounded. You have brought professional conduct charges against the Receiver and Mr. Latham which have been uniformly rejected by the respective professional bodies and regulators. Courts have heard your complaints and rejected them by Orders that have not been appealed. The fact that you are a self-styled "public interest advocate" does not give you licence to make defamatory allegations against others particularly knowing that appropriate responses exist. While you may disagree with the law and the processes involved in the application of the law, that does not give you a basis to repeatedly impugn the integrity of those carrying out the legal processes.

Justice Rouleau has ordered you to pay costs in the amount of $1,000.00 to the Receiver as a result of your having filed the withdrawn affidavit with the Court. This should serve as a significant warning to you concerning the severity with which the Court treats this type of conduct. The Court did not stay the costs order nor make payments dependent upon the outcome of the appeal. Accordingly, the costs, as ordered, are payable now. Interest will accrue automatically under the provisions of the *Courts of Justice Act*. Should you not pay the costs as ordered, the Receiver and its

Goodmans LLP

Barristers & Solicitors

250 Yonge Street, Suite 2200
Toronto, Ontario Canada M5B 2M6

Telephone: 416.979.2211
Facsimile: 416.979.1234
goodmans.ca

successors have the right to garnish or otherwise seize your assets, including your condominium unit, in order to obtain payment. If you do not pay the costs and require the Receiver to incur further costs to enforce Justice Rouleau's order against you, you will be responsible for those additional costs of enforcement as well.

As you heard in Court, the Receiver is likely to be discharged in the near future. On that basis, it would not intend to participate in your leave to appeal proceedings. However, be advised that should you seek to file another affidavit or any other documentation repeating your allegations, the Receiver will have no alternative but to respond and take all appropriate steps to have the material once again removed from the Court record. It will seek full indemnity from you for all fees and disbursements incurred in doing so. Furthermore, it will rely upon the terms of this letter in advancing whatever relief it deems appropriate before the Court or elsewhere.

For clarity, we hereby demand that you cease and desist from publishing in any manner, including in documents to be filed with the Superior Court of Justice or the Court of Appeal for Ontario, any statements alleging dishonesty or impropriety against the Receiver, its agents and counsel in connection with the 1 King Street West property.

Govern yourself accordingly.

Yours very truly,

GOODMANS LLP

Fred Myers
FLM/krw

cc: Ira Smith Receiver & Trustee Inc.
L. Joseph Latham, Goodmans LLP

TAB S

ROBERT VERDUN Applicant	and	ED MIRVISH ENTERPRISES LTD. *et al.* Respondents	Court File No: M37930

November 5/2009
via Teleconference
Robert Verdun in person
Margaret Sims for Mirvish Group
Jessica Kimmel for Trustee
Michael Title for Segura — watching brief only made no submissions.

Mr Verdun has filed a lengthy affidavit [redacted] (85 paragraphs) sworn September 17, 2009 in support of his motion for leave to appeal the costs order Pepall J dated May 29th, 2009 and included that affidavit in his Motion Record filed on his leave application.

It is well settled that the record before an appellate Court is to contain only the materials that were before the judge at first instance — and this affidavit clearly was not. No leave was sought to include this affidavit in the Motion Record and on this basis alone the affidavit must be struck.

The costs order which is the subject of the leave application was made against Mr Verdun in relation to a motion brought by him very late in the day to lift a stay imposed August 24/2007 to permit him to issue a Statement of Claim →

COURT OF APPEAL FOR ONTARIO

Proceeding commenced at Toronto

MOTION RECORD
(MOTION IN WRITING)
(RETURNABLE OCTOBER 23, 2009)

MILLER THOMSON LLP
Scotia Plaza
40 King Street West, Suite 5800
P.O. Box 1011
Toronto, ON Canada M5H 3S1

Margaret Sims LSUC#: 39664I
Tel: 416.595.8577
Fax: 416.595.8695

Lawyer for the Respondents,
1 King West Inc., and Ed Mirvish Enterprises Ltd.

that challenged the EME secured claim. The motion was scheduled to be heard March 11, 2009 – nearly two years after the stay was imposed and shortly before the receivership was about to be wound up and distribution made. On March 3rd, 2009 Mr Verdun delivered Notice of Abandonment of his motion and the responding parties to that motion – as they were entitled – sought and were awarded costs of the abandoned motion against Mr Verdun. It is these costs which Mr Verdun seeks the leave of this court to appeal. And it is in relation to that leave application that this affidavit was filed.

The impugned references in his factum relate to the affidavit or are otherwise inappropriate.

The affidavit is scandalous and vexatious. It makes allegations of misconduct on the part of the Court, the Receiver and Counsel. These are serious allegations that are without foundation and should form no part of the public record.

~~[redacted]~~

This is not the first time Mr Verdun has filed inappropriate material with this Court.

The motion to strike the affidavit in its entirety is granted. The offending paragraphs in Mr Verdun's factum are also to be removed.

Mr Verdun is to file an amended factum to replace the current factum and the amended factum will have paragraphs 2 through 10, 12, 18, 23 through 36, 36, 38, 39, 46, 64 and 65 removed from it. The affidavit of Mr Verdun

Sworn September 17, 2009 is to be removed from the Motion Record

Costs of this motion to Ed Mirvish Enterprises Ltd and 1 King West Inc fixed in the sum of $1500 ~~inclusive~~ and to the Receiver fixed in the sum of $500. both amounts to be inclusive of disbursements and GST and to be paid by Robert Verdon forthwith.

Juriansland JA.

11

Court File No. 07-CL-6913

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

ED MIRVISH ENTERPRISES LIMITED AND 1 KING WEST INC.

Applicants

- and -

STINSON HOSPITALITY INC., DOMINION CLUB OF CANADA CORPORATION AND HARRY STINSON

Respondents

UNOFFICIAL TRANSCRIPT OF THE ENDORSEMENT OF JUSTICE MACFARLAND

November 5, 2009

Re: Robert Verdun's motion for Leave to Appeal the Costs order of Justice Pepall dated May 29, 2009

---

via Teleconference

Robert Verdun in person

Margaret Sims for Mirvish Group

Jessica Kimmel for Trustee

Michael Title for Segura – watching brief only, made no submissions

Mr. Verdun has filed a lengthy affidavit (85 paragraphs) sworn September 17, 2009 in support of his motion for leave to appeal the costs order of Pepall J. dated May 29th, 2009 and included that affidavit in his Motion Record filed on his leave application.

It is will settled that the record before an appellate Court is to contain only the materials that were before the judge at first instance – and this affidavit clearly was not. No leave was sought to include this affidavit in the Motion Record and on this basis alone the affidavit must be struck.

The costs order which is the subject of the leave application was made against Mr. Verdun in relation to a motion brought by him very late in the day to lift a stay imposed August 24, 2007 to permit him to issue a Statement of Claim that challenged the EME secured claim, The motion

was scheduled to be heard March 11, 2009 – nearly two years after the stay was imposed and shortly before the receivership was about to be wound up and distribution made. On March 3rd, 2009 Mr. Verdun delivered Notice of Abandonment of his motion and the responding parties to that motion – as they were entitled – sought and were awarded costs of the abandoned motion against Mr. Verdun. It is those costs which Mr. Verdun seeks the leave of this Court to appeal. And it is in relation to that leave application that this affidavit was filed.

The impugned references in his factum relate to the affidavit or are otherwise inappropriate. The affidavit is scandalous and vexatious. It makes allegations of misconduct on the part of the Court, the Receiver and Counsel. These are serious allegations that are without foundation and should form no part of the public record.

This is not the first time Mr. Verdun has filed inappropriate materials with this Court. The motion to strike the affidavit in its entirety is granted. The offending paragraphs in Mr. Verdun's factum are also to be removed. Mr. Verdun is to file an amended factum to replace the current factum and the amended factum will have paragraphs 2 through 10, 12, 18, 23 through 36, 38, 39, 46, 64 and 65 removed from it. The affidavit of Mr. Verdun sworn September 17, 2009 is to be removed from the Motion Record.

Costs of this motion to Ed Mirvish Enterprises Ltd. and 1 King West Inc. fixed in the sum of $1,500 and to the Receiver fixed in the sum of $500. Both amounts to be inclusive of disbursements and GST and to be paid by Mr. Verdun forthwith.

MacFarland J.

TAB T

032

SCHEDULE "D"

PROOF OF CLAIM
(RECEIVER PARTIES)

Ira Smith Trustee & Receiver Inc., in its capacities as Court-appointed monitor and Court-appointed receiver of Stinson Hospitality Inc., Dominion Club of Canada Corporation, The Suites at 1 King West Inc. and 2076564 Ontario Inc., and its counsel, and its counsel, Goodmans LLP (the "Receiver Parties")

Please read carefully the enclosed Instruction Letter for completing this Proof of Claim.

A. **PARTICULARS OF DEBTOR**

This Proof of Claim is submitted in respect of Claims against the Receiver Parties arising from and after April 23, 2007.

B. **PARTICULARS OF CREDITOR:**

Full Legal Name of Creditor: J. ROBERT VERDUN

(the "Creditor"). (Full legal name should be the name of the original Creditor of the, notwithstanding whether an assignment of a Claim, or a portion thereof, has occurred.)

7. Full Mailing Address of the Creditor (the original Creditor not the Assignee):

153 WILFRED AVENUE
KITCHENER, ONTARIO
N2A 1X2

8. Telephone Number: 519-574-0252

9. E-Mail Address: bobverdun@rogers.com

10. Facsimile Number: 519-896-6912

11. Attention (Contact Person): J. ROBERT VERDUN

12. Has the Claim been sold or assigned by the Creditor to another party [check (√) one]?

Yes: ☐ No: ☒

C. PARTICULARS OF ASSIGNEE(S) (IF ANY):

Full Legal Name of Assignee(s): _____

_____

(Insert full legal name of assignee(s) of Claim if all or a portion of the Claim has been sold. If there is more than one assignee, please attach a separate sheet with the required information.)

6. Full Mailing Address of Assignee(s):

_____

_____

_____

7. Telephone Number: _____

8. E-Mail Address: _____

9. Facsimile Number: _____

10. Attention (Contact Person): _____

034

D. PROOF OF CLAIM:

I, J. ROBERT VERDUN

(name of Creditor or Representative of the Creditor), of

KITCHENER, ONTARIO do hereby certify:

(city and province)

(e) that I [check (√) one]

☒ am the Creditor of the Receiver Parties; OR

☐ am _____ (state position or title) of

_____;

(name of Creditor)

(f) that I have knowledge of all the circumstances connected with the Claim referred to below;

(g) the Creditor asserts its claim against the Receiver Parties;

(h) the Receiver Parties was/were and still is/are indebted to the Creditor as follows:

CLAIM ARISING FROM AND AFTER **April 23, 2007:**

$ 25,654.02 (insert $ value of claim) CAD.

(Claims in a foreign currency are to be converted to Canadian Dollars at the Bank of Canada noon spot rate as at August 24, 2007. The Canadian Dollar/U.S. Dollar rate of exchange on that date was CDN$1.0525/ US$1.00.)

E. NATURE OF CLAIM

(check (√) one and complete appropriate category)

☒ A. UNSECURED CLAIM OF $ 25,654.02

That in respect of this debt, I do not hold any security and:

(check (√) appropriate description)

☒ Regarding the amount of $ 25,654.02 I do not claim a right to a priority.

☐ Regarding the amount of $ _____, I claim a right to a priority under section 136 of the Bankruptcy and Insolvency Act (Canada) (the "BIA") or would claim such a priority if this Proof of Claim were being filed in accordance with the BIA.

(Set out on an attached sheet details to support any priority claim.)

☐ B. SECURED CLAIM OF $ _____

That in respect of this debt, I hold security valued at $ _____, particulars of which are as follows:

(Give full particulars of the security, including the date on which the security was given and the value at which you assess the security, and attach a copy of the security documents.)

F. **PARTICULARS OF CLAIM:**

Other than as already set out herein the particulars of the undersigned's total Claim are attached.

(Provide all particulars of the Claim and supporting documentation, including amount, description of transaction(s) or agreement(s) giving rise to the Claim, name of any guarantor which has guaranteed the Claim, and amount of invoices, particulars of all credits, discounts, etc. claimed, description of the security, if any, granted by the Receiver to the Creditor and estimated value of such security, and particulars of any interim period claim.)

G. FILING OF CLAIM

This Proof of Claim must be received by the Receiver by no later than 5:00 p.m. (Eastern Standard/Daylight Time) on January 31, 2009 by prepaid ordinary mail, courier, personal delivery or electronic or digital transmission at the following address:

Ira Smith Trustee & Receiver Inc.
Suite 6 - 167 Applewood Crescent
Concord, Ontario L4K 4K7

Attention: Ira Smith

(Failure to file your proof of claim as directed by 5:00 p.m., on January 31, 2009 (Toronto time) will result in your claim being barred and in you being prevented from making or enforcing a Claim against the Receiver. In addition, you shall not be entitled to further notice in, and shall not be entitled to participate as a creditor in the Receivership Proceedings in respect of a Claim against the Receiver.)

Dated at KITCHENER this 9th day of DECEMBER, 2008.

Signature of Creditor

J. Robert (Bob) Verdun
153 Wilfred Avenue
Kitchener, Ontario N2A 1X2
519-574-0252
Fax 519-896-6912
bobverdun@rogers.com

Dec. 9, 2008

Statement of Income and Expenses for Unit 4706, 1 King St. West, Toronto
For the period of May 1, 2007, and Nov. 30, 2008 (the period of court-ordered participation in the hotel rental pool). This unit is rated at 1.4 for distributions.

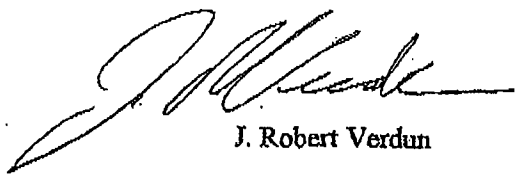
Income	30,647.16 *

* Nov. 2008 estimated at $1,650.00

Expenses

Condo fees – 19 months @ 631.08	11,990.52
Interest – 19 months @ $998 (average)	18,962.00
Property tax – 19 months @1,334.14	25,348.66
SUBTOTAL of Expenses	56,301.18
Net loss	25,654.02

Certified correct:



J. Robert Verdun

TAB U

NOTICE OF DETERMINATION REGARDING CLAIMS AGAINST:

Stinson Hospitality Inc., Dominion Club of Canada Corporation, The Suites at 1 King West Inc. and/or 2076564 Ontario Inc.
(each a "Debtor" and collectively the "Debtors")

and/or

Ira Smith Trustee & Receiver Inc., in its capacities as Court-appointed monitor and Court-appointed receiver of the Debtors, and its counsel Goodmans LLP
(the "Receiver Parties")

Please read carefully the Instruction Letter accompanying this Notice. All capitalized terms used but not otherwise defined herein shall have the meaning ascribed to them in the Order oft he Ontario Superior Court of Justice datedD ecember 11, 2008 authorizing the within Claims Process.

TO: Verdun,J . Robert

The Receiverh ereby gives you notice that it has reviewed your Claim and has accepted, revised or rejected your Claim as follows:

	The Proof of Claim as Submitted	The Claim as Accepted
A. Claim against:		
B. Claim against Receiver Parties	$25,654.02	Nil.

Reasons for Disallowance or Revision:

The Receiver Parties are not liable to **Verdun, J. Robert** fort he amount claimed. The Proof of Claim seeks recovery based upon the losses allegedly suffered due to the operation of the stay of proceedings contained in paragraph 13 of the Ordero f the SuperiorC ourt of Justice dated August 24, 2007. TheR eceiver Parties aren ot liable at law for such alleged losses.

Rather, the losses, if any, under unit owner contracts with the Debtors are unsecured claims against the Debtors. The Receiver Parties also rely upon section 142 of the *Courts ofJ ustice Act,* R.S.O. 1990, c. C.43, as amended and paragraph 19 of the Order of the Superior Court of Justice dated August 24, 2007.

If you do not agree with this Notice of Determination, please take notice of the following:

If you dispute this Notice of Determination, you may appeal such decision to the Court by sending a written notice of appeal to the Receiver and filing a copy of the notice of appeal with the Court at the addresses listed below within twenty (20) days of receiving the Notice of Determination, in which case such Claim shall bet reated as if the Claim had been entirely disallowed by the Receiver. If you do not appeal to the Claims Officer within the aforesaid time period, your Claim shall be deemed to be as set out in this Notice of Determination.

The Receiver:

Ira Smith Trustee & Receiver Inc.
Suite 6 - 167 Applewood Crescent
Concord, Ontario L4K 4K7

Attention: Ira Smith

Ontario Superior of Justice
Commercial List
330 University Avenue
7th Floor
Toronto, Ontario M5G 1E3

IF YOU FAIL TO TAKE ACTION WITHIN THE PRESCRIBED TIME PERIOD, THIS NOTICE OF DETERMINATION WILL BE BINDING UPON YOU.

Dated at Concord this 20th day of February, 2009.

Ira Smith Trustee & Receiver Inc.

\5686936

TAB V

415

Butti, Lauren

From: Myers, Fred
Sent: Tuesday, February 24, 2009 2:26 PM
To: Butti, Lauren
Subject: FW: Obligations of Receiver of Suites Inc.

Fred Myers, Goodmans LLP

From: Myers, Fred
Sent: Thursday, February 19, 2009 10:18 AM
To: 'bobverdun@rogers.com'
Cc: 'Ira Smith'; Latham, Joe; 'Tony Frost'
Subject: RE: Obligations of Receiver of Suites Inc.

Mr. Verdun,

We strongly urge that you seek legal counsel to advise you and that you communicate with the Receiver and us only through legal counsel in future. Your assertions below continue to reflect your lack of understanding of the law and practice relating to receivership processes.

The Receiver was appointed by Order of the Superior Court dated August 24, 2007 (the "Order"). Paragraphs 13 and 14 of that Order are drawn from the Template Receivership Order approved by the Commercial List Users' Committee and form a part of virtually every receivership order made on the Commercial List in Toronto. The provisions prevent anyone from terminating agreements with the debtors except with the consent of the Receiver or leave of the Court. They are two of several provisions that enforce a comprehensive stay of proceedings in order to stabilize a business that is under the Court's supervision and prevent unilateral actions by one or more parties that could impact the rights of other interested parties. The stay can always be lifted by the Court upon sufficient grounds being shown. But the motion to lift the stay will be made on notice to all interested parties so that those who submit that they may be affected adversely by the lifting of the stay in favour of another can have their say in Court. Your counsel should be able to explain to you the purposes of an insolvency stay and the law relating to motions to lift the stay.

Paragraph 13 of the Order did not empower the Receiver to force anyone to remain in the pool as you assert. Rather, by its express terms it empowered the Receiver to grant exemptions from the stay, i.e. to let people out of the pool, without the necessity of them incurring the expense and delay of going to Court to seek relief from the stay. Every member of the pool has always had the right to go to Court at any time to seek to be relieved the stay. In addition, the Receiver has consented to several requests to allow owners to do so without the need for a Court hearing, on the basis of the Receiver's policy as set out in its reports. But a hearing was always available to any owner who sought one.

In October, 2007, a motion was brought by parties seeking a blanket exemption of all RMAs from the provisions of paragraph 14 of the Order. (They probably should have sought a lifting under paragraph 13, but that is of no consequence at this point). The Receiver reported to the Court on its views that a wholesale flight of owners from the hotel pool would have prevented the Receiver from seeking to improve the business and maximize

realization. The Receiver also advised the Court that the motion appeared to be brought in furtherance of an effort by TSCC 1703, in which you were involved at that time, to acquire the hotel operations without participating in the Receiver's sale process. The Court did not grant the motion as sought and approved the Receiver's report. However, and as signalled in the Receiver's reports, the Receiver has continued to consider and consent to requests under paragraph 13 of the Order. But, we reiterate, even where the Receiver has refused to grant its consent, no one was ever prevented from exercising his or her right to go to Court to seek relief from the stay.

The Receiver is of the view that it did very much consider and act in the interests of pool members throughout the proceedings as well as in the interests of all stakeholders collectively. As indicated in its reports, the Receiver both improved the business and maximized both realizations for creditors and returns to unit owners from operations. Among other things, the Receiver continued owners' distributions in full despite the insolvency of the debtors and the blanket denial of distributions to other creditors; it improved hotel operations and financial results; and it obtained an excellent outcome in the sales process.

However, a receiver bears no liability to compensate unit owners for their alleged losses, if any, under their contracts with the insolvent debtors. Any such losses as can be proved by unit owners may amount to unsecured claims against Suites and will be dealt with as such. Your suggestion that the Receiver "invoked court authority to override your right of withdrawal" or that it could attract liability for such an outcome is not correct. First, the Receiver is an Officer of the Court. It does not and did not invoke the Court to do anything. Second, and more important, the Court-ordered stay is itself an order of the Superior Court of Justice. Compliance with a subsisting Court order cannot amount to a basis for liability. That is, by definition, a subsisting Court order is lawful and cannot be illegal or a basis for liability. Section 142 of the *Courts of Justice Act* provides additional protection to those who act under Court orders. Paragraph 19 of the Order provides yet additional protection to the Receiver in particular.

Your continued allegations against the Receiver are not helpful or constructive to the process. We ask you to be aware that the costs of the receivership are ultimately borne by the creditors who stand in line to receive distributions according to their lawful priorities. Running up costs with ill-informed critique costs other people money. We have noted that the Receiver has received a large number of claims and complaints recently from unit owners. Many are similar and many are copied to you or refer to you by name. In addition, most have reflected a misunderstanding of the process and applicable law similar to the critiques you have provided and have not been constructive or beneficial for the Receivership. As an Officer of the Court, the Receiver tries to be responsive to all reasonable creditor inquiries. However, it reserves the right to refrain from incurring costs in responding to communication which is not helping to advance matters constructively. Again, we urge you to seek legal representation from counsel if you wish to participate in the process further.

We have copied Mr. Frost as a matter of courtesy as we know that he acts for you in relation to one particular matter involving the receivership.

Fred Myers, Goodmans LLP

From: Robert Verdun [mailto:bobverdun@rogers.com]
Sent: Wednesday, February 18, 2009 11:13 AM
To: Ira Smith; Latham, Joe; Myers, Fred
Subject: Obligations of Receiver of Suites Inc.

To: Ira Smith, Joe Latham, and Fred Myers
From: J. Robert (Bob) Verdun

I am writing as an RMA Participating Suite Owner to the Receiver in your capacity as Receiver of

Suites Inc.

The PSOs are the real victims here, and we have never had any formal organization to represent us. Suites Inc. was supposed to function like a trustee, but we have never had input, and Suites Inc. has never had direction or resources to represent our interests. As the Receiver of Suites Inc., it is your duty to defend our interests and treat us fairly.

Over the period of the receivership, the majority of suite owners would have done much better finding a tenant than staying in the hotel pool. For example, my suite is 600 sq.ft. with a spectacular view; one can live in it very comfortably. It's easily rentable well in excess of $2,500 a month, which is my breakeven at residential tax rates.

The court empowered you to force us to stay in the pool, overriding our contractual right to withdraw on four months' notice for personal use or to install a long-term tenant. That right of withdrawal is in the RMA and also in the Ontario Securities Commission Ruling.

It is normal for a Receiver to have the power to require a supplier to continue supplying, but I respectfully submit that you do not have the right to enforce supply at a loss when our contract contains a clear escape provision. When you invoked court authority to override our right of withdrawal, then you should also have changed the terms of payment to ensure that we were not supplying at a loss.

HYPOTHETICAL EXAMPLE: I am a commercial food supplier, and Harry Stinson has convinced me of the merits of being his supplier. I sign a multi-year contract at only 10% over my actual cost of goods, and an unwritten promise that Stinson will buy supplies from me at $10,000 a day. It turns out that Stinson is buying only $4,000 a day, which nets me $400 a day. However, my costs to load a truck, drive to One King, unload, and do all the paperwork, is $600 a day. My contract allows me to cancel on four months' notice, but in the meantime a Receiver has been appointed. The Receiver does not have the power to force me to continue supplying at a loss. It can prevent me from exercising my cancellation clause, but it can't also enforce the other terms of the supply contract. It's one or the other: Either I can cancel and go away, or the Receiver can force me to continue to supply, but at prices that cover my costs and allow me a normal profit. That MUST be a fundamental principle of insolvency law in a free country.

That is exactly the position of the PSOs. The Receiver persuaded the court to force us to continue to supply, by suspending our right to withdraw on four months' notice for the purposes of personal occupancy or leasing to long-term tenants. The Receiver therefore must compensate us at no less than our actual costs. We should be able to also demand a normal profit, but I'm content to only recover my losses.

I can't be certain of what amount of profit, if any, that I could have earned by withdrawing and finding a tenant. I do know for certain what losses I incurred while being a forced supplier, and I am entitled to full compensation for actual losses.

This should actually be done in the normal course of business, rather than having to compete for ranking with other creditors. Compensation for our losses should have been recorded as amounts payable, to be paid if and when the Receiver was able to sell the hotel business and assets.

All PSOs should be compensated now, even if they had not submitted a Receiver Claim by Jan. 23, 2009.

As I said, the Receiver is effectively a trustee acting on behalf of PSOs, who have no mechanism for

being collectively represented in any other way.

Bob Verdun
519-574-0252

ED MIRVISH ENTERPRISES LIMITED AND 1 KING WEST INC.	and	**STINSON HOSPITALITY INC., DOMINION CLUB OF CANADA CORPORATION AND HARRY STINSON**	Court File No: 07-CL-6913
Applicants		Respondents	

ONTARIO

SUPERIOR COURT OF JUSTICE

Proceeding commenced at Toronto

RESPONDING MOTION RECORD
(returnable December, 2009)

GOODMANS LLP
Barristers & Solicitors
Suite 2400, Box 20
250 Yonge Street
Toronto, Canada M5B 2M6

Fred Myers (LSUC#26301A)
L. Joseph Latham (LSUC#32326A)
Lauren Butti (LSUC#47083W)

Tel: 416.979.2211
Fax: 416.979.1234

Counsel to Ira Smith Trustee & Receiver Inc., in its capacity as receiver and manager of Stinson Hospitality Inc., Dominion Club of Canada Corporation, The Suites at 1 King West Inc. and 2076564 Ontario Inc.