

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)**

IN THE MATTER OF Section 101 of the  
*Courts of Justice Act* and Section 243 of the *Bankruptcy and Insolvency Act*

B E T W E E N:

**TREZ CAPITAL LIMITED PARTNERSHIP and COMPUTERSHARE TRUST  
COMPANY OF CANADA**

Applicants

and

**WYNFORD PROFESSIONAL CENTRE LTD. and GLOBAL MILLS INC.**

Respondents

**MOTION RECORD  
(Returnable March 16, 2015)**

Date: January 30, 2015

**Macdonald Sager Manis LLP**  
Lawyers & Trademark Agents  
150 York Street, Suite 800  
Toronto, Ontario, M5H 3S5

Telephone:

Telefax:

**Shawn Pulver** (LSUC#51129L)

Email: [spulver@msmlaw.ca](mailto:spulver@msmlaw.ca)

**Debora Miller-Lichtenstein**

(LSUC#66397T)

Email: [dmiller-lichtenstein@msmlaw.ca](mailto:dmiller-lichtenstein@msmlaw.ca)

Lawyers for Metro Toronto Condominium  
Corporation No. 1037

TO: **ROBINS APPLEBY & TAUB LLP**

Barristers & Solicitors  
120 Adelaide Street West  
Suite 2600  
Toronto, Ontario M5H 1T1

**IRVING MARKS** (LSUC #19979H)  
imarks@robapp.com

**DOMINIQUE MICHAUD**  
dmichaud@robapp.com

Tel: (416) 360-3795  
Fax: (416) 868-0306

Lawyers for the Applicants

AND TO: **STEINBERG TITLE HOPE & ISRAEL LLP**

Barristers & Solicitors  
5255 Yonge Street, Suite 1100  
Toronto, Ontario M2N 6P4

**DAVID A. BROOKER** (LSUC #35787W)  
dbrooker@sthilaw.com  
Tel: (416) 225-2777  
Fax: (416) 225-7112

Lawyers to Collins Barrow Toronto Limited, court  
appointed receiver for the Respondents

AND TO: **JACK COPELOVICI**

Barrister  
1220 Sheppard Avenue East  
Suite 204  
Toronto, Ontario M2K 2S5

**JACK COPELOVICI**  
jack@copel-law.com

Tel: (416) 494-0910  
Fax: (416) 494-5480

Lawyers to Laser Heating & Air Conditioning  
Inc.

AND TO: **GOODMANS LLP**  
Barristers & Solicitors  
Bay Adelaide Centre  
333 Bay Street, Suite 3400  
Toronto, Ontario M5H 2S7

**BRIAN EMPEY**  
bempey@goodmans.ca

**MARK DUNN**  
mdunn@goodmans.ca

Tel: (416) 979-2211  
Fax: (416) 979-1234

Lawyers to the Inspector/Manager

AND TO: **LENCZNER SLAGHT GRIFFIN LLP**  
Barristers & Solicitors  
2600-130 Adelaide Street West  
Toronto, Ontario M5H 3P5

**PETER GRIFFIN**  
pgriffin@litigate.com

**SHARA N. ROY**  
sroy@litigate.com

Tel: (416) 865-0500  
Fax: (416) 865-9010

Lawyers to DBDC Spadina Ltd. and Dr. Stanley  
Bernstein

AND TO: **COHEN, SABSAY LLP**  
357 Bay Street, Suite 901  
Toronto, Ontario M5H 2T7

**HOWARD C. COHEN**  
cohen@cohensabsay.com  
Tel: 888-626-1102  
Fax: (416) 364-0083

Lawyers to Ronauld Walton

AND TO: **MILLER THOMSON LLP**  
Scotia Plaza  
40 King Street West, Suite 5800  
Toronto, Ontario M5H 3S1

**JEFFRY C. CARHART**  
jcarhart@millerthomson.com

**MARGARET SIMS**  
msims@millerthomson.com

Tel: (416) 595-8615  
Fax: (416) 595-8695

Lawyers to Ira Smith Trustee & Receiver Inc.,  
Court appointed receiver to Norma Walton and  
Ronald Walton

AND TO: **CENTRIC HEALTH**  
20 Eglinton Avenue West, Suite 2100  
Toronto, Ontario M4R 1K8

**SARA MOONEY**  
sara.mooney@centrichealth.ca  
Tel: (416) 927-8400  
Fax: (416) 927-8405

AND TO: **NORMA WALTON**  
P.O. Box 22070  
East York Post Office  
Toronto, Ontario M4H 1N9

waltonlitigation@gmail.com

Tel: (416) 444-3950  
Fax: (416) 489-9973

Respondent

AND TO: **DEPARTMENT OF JUSTICE**

The Exchange Tower  
130 King Street West  
Suite 3400, P.O. Box 36  
Toronto, Ontario M5X 1K6

**DIANE WINTERS**

diane.winters@justice.gc.ca

Tel: (416) 973-3172

Fax: (416) 973-0810

Lawyers to Canada Revenue Agency

# INDEX

**ONTARIO  
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**INDEX**

<b>DOCUMENT</b>	<b>EXHIBIT/TAB</b>
<b>Notice of Motion</b>	<b>1</b>
<b>Affidavit of Daleechand Naraine</b>	<b>2</b>
MTCC 1037's Declaration dated October 6, 1992	A
Parcel Register dated January 9, 2015 and the Charge/Mortgage registered as Instrument No. AT2616231 dated February 7, 2011	B
Statutory Declaration from OLA's purchase of units 401 to 407 and 411 to 416 in MTCC 1037 dated December 27, 2011	C
Status certificate from OLA's purchase of units 408, 409 and 410 in MTCC 1037 dated July 4, 2012	D
MTCC 1037's By-laws dated October 28, 1992	E
Status certificates from I Vedha's purchase of units 301 to 307 in MTCC 1037 dated January 18, 2013	F
Order of Justice NewBould dated November 5, 2013	G
Order of Justice Newbould dated January 20, 2014	H

<b>DOCUMENT</b>	<b>EXHIBIT/TAB</b>
Notice of Application dated January 24, 2014 and the accompanying affidavit of George Habib dated January 3, 2014	I
Order of Justice Newbould dated January 24, 2014	J
Minutes of the AGM dated February 13, 2014	K
Minutes of the Current Board meeting dated March 3, 2014	L
Minutes from the owners meeting dated April 1, 2014	M
Minutes of the Current Board meeting dated April 22, 2014	N
Minutes of the Current Board meeting dated July 23, 2014	O
Order of Justice Newbould dated September 12, 2014	P
Draft minutes of the Current Board meeting dated December 4, 2014	Q
Status certificate related to the sale by Collins Barrow of unit 601 in MTCC 1037 dated December 10, 2014	R
Email correspondence Brett Leahey and Daleechand Naraine dated December 15, 2014 and the attached amended status certificate related to the sale by Collins Barrow of unit 601 in MTCC 1037 dated December 10, 2014.	S
Letter from Mr. Cass to Mr. Pulver dated December 16, 2014	T
Letter from Mr. Pulver to Mr. Cass dated January 7, 2015	U



# TAB 1

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**NOTICE OF MOTION**

Metro Toronto Condominium Corporation No. 1037 (“**MTCC 1037**”), will make a motion to the Court on **March 16, 2015**, at 10:00 a.m., or as soon after that time as the motion can be heard at the Court House, 330 University Avenue, 8<sup>th</sup> Floor, Toronto, Ontario.

**PROPOSED METHOD OF HEARING:** Orally

**THE MOTION IS FOR:**

1. A declaration that Norma Walton and/or Ronauld Walton (the “**Controlling Directors**”) acted fraudulently and negligently by failing to pay Wynford Professional Corporation’s (“**Wynford**”) share of its common expenses totalling \$1,284,508.23 (the “**Arrears**”);
2. A declaration that the Controlling Directors acted fraudulently and negligently by failing, as the controlling members of the board of directors of MTCC 1037, to lien Wynford’s

units in MTCC 1037 (the “**Wynford Units**”) for the Arrears pursuant to Section 86 of the *Condominium Act, 1998*, S.O. 1998 (the “*Act*”);

3. A declaration pursuant to the *Act* that the Controlling Directors breached Section 37 of the *Act* by failing to act honestly and in good faith;
4. A declaration that at all material times, the Controlling Directors failed to act in the best interests of MTCC 1037, and by failing to lien the Wynford Units in arrears, they breached such duties and Wynford became unjustly enriched to the detriment of MTCC 1037;
5. An Order that due to the Controlling Directors’ fraudulent and negligent actions, and the resulting unjust enrichment of Wynford, MTCC 1037 has an equitable lien against the Wynford Units, granting MTCC 1037 priority to be reimbursed for the Arrears before Trez can collect its mortgage proceeds accordingly;
6. In the alternative, an Order:
  - (a) reviving MTCC 1037’s right to lien against the Wynford Units pursuant to Section 86 of the *Act*, due to the Controlling Directors negligent and fraudulent actions; and
  - (b) granting MTCC 1037 priority to be reimbursed for the Arrears before Trez can collect its mortgage proceeds accordingly;
7. An Order requiring Trez to pay the costs of these proceedings on a partial indemnity basis; and
8. Such further and other relief as counsel may advise and this Honourable Court will permit.

**THE GROUNDS FOR THE MOTION ARE:**

9. MTCC 1037 is a commercial condominium corporation was created by the registration of its declaration and description on October 6, 1992, as Instrument No. A721241, pursuant to the *Act* as amended and the regulations made thereafter (the “**Declaration**”), to control, manage and administer the assets and common elements, among other things of the condominium premises located municipally at 18 Wynford Drive, Toronto, Ontario;
10. Wynford owns a majority of the units in MTCC 1037, so it had control of the board of directors of MTCC 1037 (the “**Norma Board**”);
11. At all material times in 2012 and 2013, the representatives of Wynford on the Norma Board were:
  - (a) Norma Walton (“**Norma**”), President of Wynford and Chairman of the Board;
  - (b) Ronauld Walton (“**Ronauld**”), Norma’s husband and Secretary of the Board; and
  - (c) Dr. Stanley Bernstein (“**Stanley**”), Norma and Ronauld’s business partner in several ventures including Wynford and unknowingly a Director of MTCC 1037;
12. At all material times in 2012 and 2013, the other minority directors of MTCC 1037 on the Norma Board were George Habib; and Jonathan Griffiths (the “**Minority Directors**”);
13. The dishonest, fraudulent and negligent behaviour of the Controlling Directors included, *inter alia*:
  - (a) breaching the Declaration and By-Laws of MTCC 1037;
  - (b) not giving notice to the Minority Directors for Norma Board Meetings;
  - (c) excluding the Minority Directors from the Norma Board meetings;

- (d) excluding the Minority Directors from decisions made regarding MTCC 1037;
  - (e) not holding annual general meetings for all owners of MTCC 1037 in 2012 and 2013;
  - (f) not informing the Minority Directors and the minority owners of MTCC 1037 of the financial status of and/or decisions made regarding MTCC 1037;
  - (g) not giving the Minority Directors access to MTCC 1037's bank records and relevant financial information;
  - (h) not disclosing the Arrears;
  - (i) not putting a lien on the Wynford Units due to the Arrears; and
  - (j) executing false and incomplete status certificates that did not reference the Arrears;
14. The Minority Directors did not attend any Norma Board Meetings, as they were unaware of when and if any Norma Board Meetings took place;
  15. The Minority Directors and minority owner of MTCC 1037 were never shown or given access to the MTCC 1037's financial records;
  16. Wynford had control of the Norma Board and concealed its actions and the Arrears from the Minority Directors and other owners in MTCC 1037;
  17. Had the Controlling Directors exercised their rights to lien the Wynford Units for the Arrears, those liens would have had priority pursuant to the *Act*;
  18. MTCC 1037 is now saddled with the responsibility to pay for the Controlling Directors' fraudulent and negligent actions;

19. Trez did not exercise proper due diligence, as it:
  - (a) relied on a status certificate executed by the borrower, Norma;
  - (b) did not inquire further with the Minority Directors, which would have confirmed that they were not involved in the operations or decision making of the Norma Board;
  - (c) relied on old financial statements; and
  - (d) did not request updated financial statements from 2011 and 2012, which would have disclosed the Arrears;
20. Trez is a sophisticated lending institution and identifying such problems and performing such due diligence should be part of its normal practice;
21. Sections 37 and 134 of the *Act*;
22. Sections 37, 38 and 39 of the *Rules of Civil Procedure*, R.R.O. 1990; and
23. Such further and other grounds as the lawyers may advise.

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

24. The affidavit of Daleechand Naraine and Exhibits thereto; and
25. Such further and other evidence as counsel may advise and this Honourable Court permit.

Date: January 30, 2015

**Macdonald Sager Manis LLP**  
Lawyers & Trademark Agents  
150 York Street, Suite 800  
Toronto, Ontario, M5H 3S5

Telephone: (416) 364-1553  
Telefax: (416) 364-1453

**Shawn Pulver** (LSUC#51129L)  
Email: [spulver@msmlaw.ca](mailto:spulver@msmlaw.ca)

**Debora Miller-Lichtenstein** (LSUC#66397T)  
Email: [dmiller-lichtenstein@msmlaw.ca](mailto:dmiller-lichtenstein@msmlaw.ca)

Lawyers for Metro Toronto Condominium  
Corporation No. 1037

TO: **ROBINS APPLEBY & TAUB  
LLP**  
Barristers & Solicitors  
120 Adelaide Street West  
Suite 2600  
Toronto, Ontario M5H 1T1

**IRVING MARKS** (LSUC  
#19979H)  
[imarks@robapp.com](mailto:imarks@robapp.com)

**DOMINIQUE MICHAUD**  
[dmichaud@robapp.com](mailto:dmichaud@robapp.com)

Tel: (416) 360-3795  
Fax: (416) 868-0306

Lawyers to the Applicant

**TREZ CAPITAL LIMITED PARTNERSHIP** - and -  
**and COMPUTERSHARE TRUST COMPANY OF CANADA**  
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Court File No. CV-14-10493-00CL

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**Proceedings Commenced at Toronto**

**NOTICE OF MOTION**

**MACDONALD SAGER MANIS LLP**

Lawyers and Trade-mark Agents  
150 York Street, Suite 800  
Toronto, ON M5H 3S5

Tel: (416) 364-1553

Fax: (416) 364-1453

**Shawn Pulver** (LSUC#51129L)

Email: [spulver@msmlaw.ca](mailto:spulver@msmlaw.ca)

**Debora Miller-Lichtenstein** (LSUC#66397T)

Email: [dmiller-lichtenstein@msmlaw.ca](mailto:dmiller-lichtenstein@msmlaw.ca)

Lawyers for Metro Toronto  
Condominium Corporation No. 1037