

**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*

BETWEEN:

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

Applicants

- and -

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

Respondents

**FURTHER SUPPLEMENTARY RESPONDING MOTION RECORD OF THE  
APPLICANTS, TREZ CAPITAL LIMITED PARTNERSHIP and  
COMPUTERSHARE TRUST COMPANY OF CANADA**

March 19, 2015

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<b>TAB</b>	<b>DOCUMENT</b>
1.	Reply Affidavit of Audrey Loeb sworn March 18, 2015

**TAB 1**

**ONTARIO  
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**REPLY AFFIDAVIT OF AUDREY LOEB  
(sworn March 18, 2015)**

I, Audrey Loeb, of the City of Toronto, MAKE OATH AND SAY:

1. I swore an Affidavit in these proceedings on February 20, 2015 (the "Original Affidavit"), wherein I provided my opinion that it was reasonable for the Applicants to rely on the Status Certificates (as defined therein) in advancing loan funds to the Respondent, Wynford.
2. I have been provided with a copy of the Affidavit of Denise Lash sworn March 2, 2015 (the "Lash Affidavit") in response to my Original Affidavit and I have reviewed the same. My comments hereinafter are in response to the Lash Affidavit. Where I employ capitalized terms in this my Reply Affidavit without defining them, they refer to terms that were defined in my Original Affidavit.
3. In the Lash Affidavit, Ms. Lash raises a number of issues which, she states, ought to have been examined in greater detail or been viewed as "red flags" by the Applicants' lending counsel on the Transaction, Blaneys.

4. In my Original Affidavit, I stated that, barring the disclosure on the face of a status certificate of a potential issue, the recipient of the status certificate is entitled to rely on the statements made on a status certificate and ought not be put to the task of poring over the documents attached to the status certificate in order to confirm the truth of the statements, made in the status certificate, by the providing condominium corporation.

5. I agree with Ms. Lash's statement at paragraph 4 of the Lash Affidavit that the Act is consumer protection legislation. The provision of status certificates at section 76 of the Act is evidence of this. However, contrary to Ms. Lash's statement later in that same paragraph, the ambit of the consumer protection afforded by the Act - and particularly by status certificates - is not limited to "innocent owners" but extends at section 76(6) to "purchasers or mortgagees" who rely on them.

6. To force purchasers and mortgagees to, in essence, "satisfy themselves" that the statements made in the status certificates are correct by examining the content of the enclosures provided would run directly counter to consumer protection and would diminish severely the very exercise of a status certificate, that is, to have a condominium corporation make statements about its affairs.

7. Further, at paragraphs 8-15 of the Lash Affidavit, Ms. Lash emphasizes the provisions of the Act requiring a status certificate to be complete and deeming certain information not to exist if certain portions of the status certificate are incomplete. It is important to note that these provisions and principles concern obligations on a condominium corporation which will be bound by the status certificate (per its former name, an *estoppel certificate*). It does not follow, however, that a recipient cannot rely on the clear statements it contains.

8. Two of Ms. Lash's "red flags" in the Status Certificates concern the reserve fund and the audited financial statements of MTCC 1037. Ms. Lash attempts to emphasize that these two items should have been afforded greater scrutiny by Blaneys.

9. In my opinion, when lending to a unit owner, such as was the case in this matter, these two items were of far lesser importance to a lender than were the representation that there were no common expense arrears for the units in question which would have taken priority

over any loan advances. The representations that there were no arrears of common expenses owing for the units against which security was being taken, were supported by a statutory declaration from Norma attesting to the lack of pertinent issues concerning the Wynford Units.

10. Neither the reserve fund nor the audited financial statements would have provided any further unit-specific information to the Applicants, which would have contradicted the clear statements on the Status Certificates regarding arrears, as these documents do not contain unit-specific details. Such inquiries may have been germane had the Applicants been lending directly to MTCC 1037 as a condominium corporation and therefore required a better picture of its finances, however that was not the case in the facts at bar.

11. I also note that the position discussed at paragraphs 41 to 45 of the Lash Affidavit, regarding due diligence, appears to be based on a mistaken assumption. A review of the Commitment Letter discussed therein (and produced at tab 1(e) of the Responding Motion Record) shows that the "Subject Property" which was to be the subject of due diligence was not MTCC 1037, but rather Wynford and the Wynford Units themselves per the definition contained at paragraph 4 of the Commitment Letter (page 59 of the Responding Motion Record). Accordingly, these paragraphs in the Lash Affidavit do not support a failure by the lender to carry out its usual due diligence practices. The lender's due diligence or lack thereof, as suggested in the Lash Affidavit, should not preclude the lender from priority status vis-à-vis MTCC 1037. The lender had a right to rely on clear statements that arrears were not owing against the Wynford Units.

12. Similarly, and further contrary to Ms. Lash's comments, a purchaser of a unit, or a lender cannot assume fraud prospectively from otherwise innocuous facts, such as the common occurrence of a majority unit owner sitting on the board of a condominium corporation. The Applicants had the comfort of the Status Certificates which were absolutely clean on the issues of arrears and potential increases of common expenses. Whereas a lender to the condominium corporation as a whole would have been concerned with its financial well-being, here the lender had security in the units. Its main concern was the equity in the units and the ability of the borrower to repay the debt, based on its business revenue and

expenses. It would also want to know that there were no arrears of common expenses, which might take priority over its advances.

13. On this point, the *XDG Limited v. 1099606 Ontario Ltd.* case cited by Ms. Lash at paragraph 46 of the Lash Affidavit is not applicable. Firstly, there is a robust body of case law on status certificates under section 76 of the Act such that reference to general corporate law cases is unnecessary. More specifically, the facts of that case deal with a general due diligence situation wherein a lender took almost no steps, unlike the steps which were taken by Blaneys in the case at bar. More importantly, the lender in the *XDG Limited* case was not statutorily entitled to rely on the statements in a status certificate, as the Applicants were entitled to do on the Status Certificates. Given this, it is my opinion that Blaneys' reliance on the clear statements in the Status Certificates does not even begin to approach wilful blindness as opined in the Lash Affidavit.

14. I swear this affidavit in reply to the Lash Affidavit and for no other or improper purpose.

SWORN BEFORE ME at the City of Toronto on March 18, 2015.

Commissioner for Taking Affidavits

P. Greco

AUDREY LOEB



TREZ CAPITAL LIMITED  
PARTNERSHIP *et al*  
Applicants

WYNFORD PROFESSIONAL CENTRE  
LTD. *et al*  
Respondents

Court File No: CV-14-10493-00CL

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at TORONTO

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(SWORN MARCH 18, 2015)**

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