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From: Harvin D. Pitch **File No.:** 27914

Re: 2122775 Ontario Inc. ats. Home Trust Company / Court File No.: CV-13-10313-00CL

No. of Pages: 21 (including cover) **Original to follow:** no by mail by courier

Comments: Please refer to attached correspondence of February 24, 2014, with Notice of Appeal and Appellant's Certificate.

In case of transmission problems, please contact Oxana Lavrikova at (416) 365-9320 ext. 168.

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February 24, 2014

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Dear Counsel:

RE: 2122775 Ontario Inc. ats. Home Trust Company
Court File No.: CV-13-10313-00CL
Our File No.: 27914

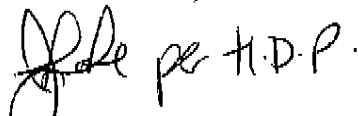
We have been retained to represent 2122775 Ontario Inc. on the appeal of this matter. Enclosed please find the Notice of Appeal and Appellant's Certificate which is hereby served upon you pursuant to the *Rules*.

The Approval and Vesting Order of Justice D. Brown dated February 14, 2014 is automatically stayed pursuant to section 195 of the *Bankruptcy and Insolvency Act*, R.S.O. 1985, c. D-3, as amended. As such, the sale transaction cannot take place as set out in the Approval and Vesting Order.

If anyone is disputing the automatic stay, please advise us by no later than close of business on **Tuesday, February 25, 2014**. If there is a dispute we will bring a motion for directions forthwith.

Yours truly,

TEPLITSKY, COLSON LLP



Harvin D. Pitch*

*Pitch Professional Corporation

HDP/ol

cc: Jennifer J. Lake

*Encls.

Court of Appeal No.
Court File No. CV-13-10313-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

B E T W E E N:

HOME TRUST COMPANY (Applicant)

- and -

2122775 ONTARIO INC. Appellant
(Respondent)

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

NOTICE OF APPEAL

THE APPELLANT, 2122775 ONTARIO INC. ("**212 Ontario**") hereby appeals to the Court of Appeal from the decision of the Honourable Justice D. Brown dated February 14, 2014 made at Toronto, Ontario.

THE APPELLANT ASKS that the Approval and Vesting Order of the Honourable Justice D. Brown dated February 14, 2014 which, *inter alia*, authorized and approved a sale transaction (the "**Transaction**") contemplated by an Agreement of Purchase and Sale ("**APS**") between Collins Barrow Toronto Limited, in its capacity as Receiver of 212 Ontario ("**Receiver**") and the purchaser, Urbancorp (Downtown) Developments Inc. ("**Urbancorp**") for lands known municipally as 2426 and 2427 Bayview Avenue, Toronto, Ontario (the "**Property**") and which granted a Vesting Order to Urbancorp on closing, be set aside in its entirety.

The APPELLANT ASKS that it be allowed to redeem the mortgage (“**Home Trust Mortgage**”) of the Respondent, Home Trust Company (“**Home Trust**”) and, upon payment into Court of the amount owing under the Home Trust Mortgage together with the fees and disbursements of the Receiver, that the Home Trust Mortgage be discharged, or in the alternative assigned as directed by the Appellant.

THE GROUNDS OF APPEAL are as follows:

1. The Receiver brought a motion returnable February 14, 2014 to approve the Transaction and to obtain, *inter alia*, a Vesting Order with respect to the Receiver’s sale of the Property to Urbancorp pursuant to an APS made as of January 22, 2014 between the Receiver and Urbancorp and to provide a vesting of the Property in Urbancorp’s name following the closing of the Transaction which was to take place within the earlier of 31 days of the date of the Vesting Order or May 1, 2014;
2. In response, the Appellant brought a cross-motion returnable on February 14, 2014 seeking to stay the sale approval process for 30 days in order to allow it to: i) redeem the Home Trust Mortgage and pay the Receiver’s fees and disbursements; and ii) obtain an assignment or discharge of the Home Trust Mortgage and a discharge of the Receiver in due course. The financing to be acquired by the Appellant provided opportunities for the 2nd, 3rd and 4th mortgages on the Property to be repaid, which the Transaction pursuant to the Approval and Vesting Order does not;
3. The Honourable Justice D. Brown refused to grant any extension of the hearing (“**Extension**”) to allow the Appellant to confirm that its financing commitment to pay the Home Trust Company Mortgage and Receiver’s fees could be effected within 14 to 21 days, or

alternatively to allow the Appellant's lender to testify *viva voce* on February 14, 2014 and confirm that the financing commitment to pay for the discharge of the Home Trust Mortgage and Receiver's fees was a firm commitment that would be financed within 14-21 days from February 14, 2014;

4. The Honourable Justice D. Brown erred in law in refusing to grant the Extension or allow the *viva voce* evidence in that he:
 - a) acted without granting the Appellant due process, contrary to legal principles;
 - b) failed and/or refused to consider exercising discretion in favour of the Appellant on equitable principles.
 - c) failed to allow the opportunity for redemption;
 - d) caused serious and substantial prejudice to the subsequent mortgagees who, as a result of the Vesting Order, stand to lose virtually all of their investments;
 - e) exercised judicial discretion on incorrect principles; and
 - f) failed to consider whether to apply, or alternatively refused to apply, the equitable right to relief from forfeiture and the statutory right to relief from forfeiture under Section 98 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43 and the right of redemption under Section 22(1) of the *Mortgages Act*, R.S.O. 1990, C. M.40 entitling the Appellant to redeem the first mortgage.
5. Such further and other grounds as counsel may advise and this Honourable Court may permit.

THE BASIS OF THE APPELLATE COURT'S JURISDICTION IS:

1. The Order of the Honourable Mr. Justice Brown is a final Order in that the specific issues raised before him were finally, substantively and conclusively determined;
2. Sections 193(a), (b) and (c) and 195 of the *Bankruptcy and Insolvency Act*, R.S.O. 1985, c. D-3, as amended;
3. Sections 6.1(b) and 98 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43;
4. Sections 2 and 22(1) of the *Mortgages Act*, R.S.O. 1990, C. M.40; and
5. Leave to appeal is not required.

February 24, 2014

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2122775 ONTARIO INC.
Appellant
(Respondent)

v.

HOME TRUST COMPANY
(Applicant)
Court of Appeal No.
Court File No. CV-13-10313-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

Proceeding commenced at Toronto

NOTICE OF APPEAL

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Court of Appeal No.
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**ONTARIO
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B E T W E E N:

HOME TRUST COMPANY

(Applicant)

- and -

2122775 ONTARIO INC.

Appellant
(Respondent)

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

APPELLANT’S CERTIFICATE

THE APPELLANT, 2122775 ONTARIO INC. (“**212 Ontario**”) certifies that the following evidence is required for the appeal in the Appellant’s opinion:

1. Order of Justice D. Brown dated December 11, 2013
2. Motion Record of the Receiver dated February 7, 2014
3. Second Supplemental Report of the Receiver dated February 13, 2014
4. Motion Record of 2122775 Ontario Inc. returnable February 14, 2014
5. Reasons for Decisions of Justice D. Brown dated February 18, 2014
6. Approval and Vesting Order of Justice D. Brown dated February 14, 2014

2

February 24, 2014

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2122775 ONTARIO INC.
Appellant
(Respondent)

v.

HOME TRUST COMPANY
(Applicant)
Court of Appeal No.
Court File No. CV-13-10313-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
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Proceeding commenced at Toronto

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