

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

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

**B E T W E E N :**

**2478888 ONTARIO INC.**

Applicant

- and -

**3070 ELLESMERE DEVELOPMENTS INC.**

Respondent

**SUPPLEMENTAL REPORT TO THE SECOND REPORT OF THE RECEIVER**  
**September 2, 2020**

## TABLE OF CONTENTS

|                                      |   |
|--------------------------------------|---|
| INTRODUCTION .....                   | 3 |
| PURPOSE OF SUPPLEMENTAL REPORT ..... | 3 |
| ALLEGED TRUST CLAIM.....             | 4 |
| REVISED ORDER .....                  | 6 |
| CONCLUSION.....                      | 7 |

## INDEX TO APPENDICES

|            |  |
|------------|--|
| Appendix A | Pleadings in the Alleged Trust Claimant's action       |
| Appendix B | Revised Draft Order to be Sought                       |
| Appendix C | Letter from W. Greenspoon-Soer dated September 2, 2020 |

## INTRODUCTION

1. Pursuant to the Receivership Order made by Justice Hainey on September 13, 2019, RSM Canada Limited was appointed Receiver of all Property of 3070 Ellesmere Developments Inc. (the “**Debtor**”).<sup>1</sup>

## PURPOSE OF SUPPLEMENTAL REPORT

2. The Second Report was filed in connection with a motion brought by the Receiver returnable on Thursday, September 3, 2020 to, *inter alia*:
  - (a) provide the Court with an update as to the Receiver’s activities since the First Report;
  - (b) report to the Court on the results of the Sale Process;
  - (c) provide the Court with a summary of the Receiver’s R&D; and
  - (d) seek an Order from the Court:
    - (i) approving the Transaction, the Sale Agreement, and the Assignment Agreement and seeking an Approval and Vesting Order in respect of the Real Property;
    - (ii) approving a distribution of the proceeds of sale of the Real Property, subject to such holdback as the Receiver may require to complete its mandate and obtain its discharge pursuant to the Receivership Order;
    - (iii) approving the disclaimer of the individual Purchaser Agreements and a deposit protocol for the return of the deposits in respect of the Purchaser Agreements;

---

<sup>1</sup> Capitalized terms not otherwise defined herein have the meaning ascribed to them in the Second Report of the Receiver dated August 13, 2020 (the “**Second Report**”).

- (iv) approving the R&D, the Second Report and the activities of the Receiver set out therein, and the fees of the Receiver and its insolvency and litigation counsel, TGF and its real estate counsel Fogler for the period September 13, 2019 to July 31, 2020;
  - (v) increasing the amount of the Receiver's Borrowings Charge (as defined in the Receivership Order) by \$255,000, *nunc pro tunc*; and
  - (vi) sealing the Confidential Appendices.
3. The purpose of this supplement to the Second Report (the "**Supplemental Second Report**") is to provide the Court with an update in connection with certain communications that have taken place and correspondence that has been received since the Second Report was served and filed.
  4. This Supplemental Report should be read in conjunction with the Second Report, including the Terms of Reference set out therein.

#### **ALLEGED TRUST CLAIM**

5. At 10:34 pm on August 31, 2020, an email was set to the Service List by counsel to Xiuhong Du, Yunduan Chen and Guohua Xu (the "**Trust Claim Plaintiffs**"). The email enclosed the pleadings in an action commenced by the Trust Claim Plaintiffs (attached hereto collectively as Appendix "A"), as well as written submissions (purporting to give unsworn evidence) made on behalf of the Trust Claim Plaintiffs. The Receiver is unaware of whether the Trust Claim Plaintiffs have filed their written submissions with the Court.
6. The Trust Claim Plaintiffs request that the Receiver hold in reserve the amount of \$2,323,523.13 from the net proceeds of sale resulting from the Transaction on the basis that they have asserted a right to a constructive trust over the Real Property, and that if successful, such amount would not form part of the Debtor's estate.
7. The Trust Claim Plaintiffs have not, however, filed any evidence on this motion in respect of the appropriateness of such relief, or in support of an alleged trust claim.

8. Prior to the August 31, 2020 email, the Receiver had not been contacted by the Trust Claim Plaintiffs, nor their counsel, nor had any evidence to support the Trust Claim Plaintiffs' claim been shared with the Receiver. The only communication to date in respect of the Trust Claim Plaintiffs with the Receiver is the following:
  - (a) an October 10, 2019, letter to counsel to the Trust Claim Plaintiffs from the Receiver's counsel advising of the stay of proceedings and enclosing a copy of the Receivership Order which clearly defined the Property over which the Receiver was appointed, and was authorized by Court Order to sell;
  - (b) an April 1, 2020, request of the Receiver by counsel to the Trust Claim Plaintiffs that they be added to the Service List, which the Receiver did; and
  - (c) on August 27, 2020, a short telephone call between counsel where the Trust Claim Plaintiffs' counsel asked for the Receiver's position on their claims. As the Receiver had not received any evidence filed in support of such claims, no position was provided.
9. Since receiving notice of this receivership on October 10, 2019, the Trust Claim Plaintiffs have not brought any motion within this receivership proceeding seeking to advance their claims against the Real Property or any proceeds of sale, have delivered no evidence to the Receiver or to the Court in support of the requested holdback of funds, and have not taken any other steps to the Receiver's knowledge to advance such claims.
10. Upon receiving the Trust Claim Plaintiff's email and attachments referenced above, the Receiver made inquiries of 247 and 261 (the secured creditors whose advances are secured by the first-ranking charge registered on title to the Real Property, and who are the intended recipients of the proceeds of sale of the Real Property pursuant to the Order sought) regarding the Trust Claim Plaintiffs' claims. Each has confirmed in writing to the Receiver that they had no knowledge or notice of the allegations of the Trust Claim Plaintiffs, had no notice of the Trust Claim Plaintiffs' prior motion seeking a certificate of pending litigation, and did not receive copies of the Order granting leave to issue a certificate of pending litigation ("CPL") after it was made. In particular, the prior mortgagees had no

notice of any allegations made by the Trust Claim Plaintiffs prior to advancing funds under their mortgage.

11. Upon receiving the email above from the Trust Claim Plaintiffs on August 31, 2020 at 10:34 pm, the Receiver's counsel requested a copy of and reviewed the Motion Record and Factum filed in support of the Trust Claim Plaintiffs' prior motion for a CPL. No discussion of any intended or potential impact of the CPL on 247 or 261's rights under the first ranking mortgage is made therein, the prior mortgagee is not named as a party in such action, no relief as it affects the mortgagees was sought or obtained, and the CPL was registered on title to the Real Property after the date that the mortgage was registered (again, with no notice to the prior mortgagee).
12. Subject to this Court's direction, the Receiver does not propose to hold back any amount from the net proceeds of the sale resulting from the Transaction on account of the Trust Claim Plaintiffs' alleged claims.
13. The Receiver expresses no view on the claims made by the Trust Claim Plaintiffs against the defendants named in its action, or the right of the Trust Claim Plaintiffs to pursue such claims against any party. Nor is the Order sought by the Receiver at Appendix "B" intended to affect the Trust Claim Plaintiffs' right to continue to assert such claims. The Order sought by the Receiver, including the proposed distributions to be made thereunder, are based on the registered mortgage interests as reflected on the title search to the Real Property and the absence of evidence to suggest that a prior interest in favour of any other party has been established.
14. On September 2, 2020, the Receiver's counsel received a letter from counsel to 261 wherein 261: **(a)** confirms having no prior knowledge of the Trust Claim Plaintiffs' allegations, **(b)** states its position that the Trust Claim Plaintiffs hold unsecured claims ranking behind the secured claims of the mortgagees, and **(c)** consents to the holdback contemplated by the draft order attached as Appendix "B" (described in paragraph 16). A copy of this letter is attached as Appendix "C".

## REVISED ORDER

15. In the Receiver's Motion Record, the Receiver presented two draft orders in respect of the relief sought: one Approval and Vesting Order (the "AVO"), and another order dealing with the balance of the relief sought, including the proposed distributions.
16. No issue has been raised with respect to the AVO. The Receiver respectfully requests that this Court grant the AVO as filed.
17. Certain stakeholders raised an issue with the inclusion of three months' interest and certain default fees in the payout statements prepared by 247 and 261. The Receiver discussed these concerns with 247 and 261 and, at the request of the stakeholders and with the consent of 247 and 261, the Receiver amended the draft Order in accordance with Appendix "B" herein, to hold back such amounts from the distributions, to allow the issue to be resolved among the stakeholders or be subject to further Court order. The Receiver notes that, given the deficiency to be incurred by 261, even if such amounts were not paid to 247 or 261, there would be no amounts available for distribution to any other creditor.

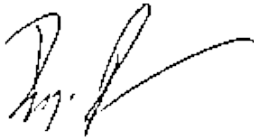
## CONCLUSION

18. The Receiver respectfully requests the relief set out in the Second Report and in this Supplemental Second Report.

All of which is respectfully submitted to this Court as of this 2<sup>nd</sup> day of September, 2020.

**RSM Canada Limited**, solely in its capacity as Court-appointed  
Receiver of 3070 Ellesmere Developments Inc.,  
and not in its personal or corporate capacity

Per:



Bryan A. Tannenbaum, FCPA, FCA, FCIRP, LIT  
President

# Appendix “A”



**ONTARIO  
SUPERIOR COURT OF JUSTICE**

**B E T W E E N**

**XIUHONG DU, YUNDUAN CHEN and GUOHUA XU**

**Plaintiffs**

**- and -**

**LEMINE INVESTMENT GROUP INC., 3070 ELLESMERE DEVELOPMENTS INC.,  
JIN ZHI CHEN and TONG LIU a.k.a. THOMAS LIU**

**Defendants**

**STATEMENT OF CLAIM  
(Notice of Action issued on October 18, 2018)**

1. The plaintiffs claim
  - (a) return of the funds advanced by the plaintiffs in the sum of \$1,873,523.13 for rescission of three agreements dated December 18, 22 and 30, 2013, to acquire real estate interest in a real property municipally known as 3070 Ellesmere Road, Toronto, Ontario;
  - (b) an order directing a reference for an accounting and tracing of such amount;

- (c) a declaration that the defendants hold the funds received from the plaintiffs in trust, including any right, title or interest in any property or assets, which my have been purchased or acquired with the funds;
  - (d) a declaration that any payment of the funds made by the defendants constitutes a breach of trust, knowing assistance of breach of trust and knowing receipt of trust property;
  - (e) a declaration that the defendants which received any portion of the funds hold such funds a constructive trustee for the benefits of the plaintiffs;
  - (f) as against all defendants jointly and severally damages for fraud, conspiracy and breach of trust in the amount of \$3 million;
  - (g) as against the defendants, Lemine Investment Group Inc. and Tong Liu, damages for breach of contract in the amount of \$3 million;
  - (h) punitive damages in the amount of \$500,000.00;
  - (i) prejudgment and post-judgment interest pursuant to the *Courts of Justice Act*;
  - (j) costs of this action; and
  - (k) such further and other relief as to this Honourable Court may deem just.
2. The plaintiffs, Yunduan Chen (“Chen”), Xiuhong Du (“Du”) and Guohua Xu (“Xu”), are individuals residing in the People’s Republic of China.
3. The defendant, Tong Liu a.k.a. Thomas Liu (“Liu”), is an individual residing in

the Township of Richmond Hill, Ontario. The defendant, Jinzhi Chen (“**Jinzhi**”), is an individual residing in the City of Toronto, Ontario.

4. The defendant, Lemine Investment Group Inc. (“**Lemine Investment**”), is a company incorporated pursuant to the laws of Ontario. Lemine Investment carries on business in real estate development. Liu is the sole director and controlling mind of Lemine Investment.

5. The defendant, 3070 Ellesmere Developments Inc. (“**3070 Ellesmere**”), is a company incorporated pursuant to the laws of Ontario. 3070 Ellesmere is the legal owner of a real property municipally known as 3070 Ellesmere Road, Toronto, Ontario (“**the Real Property**”). Liu is the sole director and controlling mind of 3070 Ellesmere.

6. In or around November 2013, the plaintiffs learned from Jinzhi about a program that purportedly permits investors to obtain Canadian permanent resident status through purchase of condominium units to be constructed on the premises of the Real Property.

7. At that time, Jinzhi represented the following to the plaintiffs:

- (a) she explained the program in detail as further described below;
- (b) she strongly recommended the program since it was her company’s program; and
- (c) the plaintiffs were able to obtain a working visa to Canada within one year.

8. On December 9, 2013, Shi Zai, who is a representative of the defendants, further represented the following to the plaintiffs:

- (a) the City of Toronto had approved the development of the Real Property;
- (b) this program was one of Ontario's immigrant investor programs for acquiring immigration status through purchase of real property ;
- (c) the timeline for the development of the Real Property is as follows:
  - (i) grand opening in Beijing and Toronto in November 2013;
  - (ii) construction commenced in February 2014; and
  - (iii) occupancy in late 2016 or early 2017.
- (d) the condominium unit was sold between \$1.12 million and \$1.28 million because Ontario's immigrant investor program requires a minimum of \$1 million investment;
- (e) this program was created because of the demand for approximately ten thousand student housing near University of Toronto, Scarborough Campus;
- (f) the developer guarantees leasing for a period of five years subsequent to completion of the construction;
- (g) the investor could elect as to whether to sell or request the developer to buy back the condominium units;
- (h) this program was for clients who were wealthy but uneducated;
- (i) if the immigration application was rejected, the developer would refund the full payment;
- (j) the Ontario immigration office would approve the submitted application within 10

to 12 months;

- (k) the clients would obtain their working visas within two to three years upon receipt of approval of their applications;
- (l) the requirements for this program are as follows:
  - (i) no education and language requirement;
  - (ii) joint spousal assets in the sum of \$1.6 million;
  - (iii) two years of management experience in the last five years;
  - (iv) aged between 28 and 59 years old;
  - (v) 50% of the purchase price be paid within 90 days upon signing and the balance be paid within approximately one year upon approval of the application;
- (m) the developer consisted of the following professionals:
  - (i) Hunter Milborne of Milborne Real Estate Inc.;
  - (ii) Robert E. Millward of R.E. Millward & Associates;
  - (iii) Clifford Korman of Kirkor Architects & Planners;
  - (iv) Zoran Tanasijevic of Stephenson Engineering; and
  - (v) Peter Lush of Lush Realty.

9. In December 2013, relying on the above representations, the plaintiffs and Lemine Investment entered into three separate written agreements (“**the Agreements**”) concerning the immigration/investment program, and transferred a total of \$1,873,523.13 to the defendants in

trust for the plaintiffs.

10. Specifically, the Agreements provide that:
- (a) the investment project by the purchase of condominium units in the Property was for making the plaintiffs, who were identified as “ **the Applicants**”, eligible for the Ontario Provincial Nomination Program and thus obtaining Canadian permanent residency;
  - (b) each Applicant was to pay a “**Program Fee**” in the sum of \$1,249,000.00;
  - (c) \$624,500.00 of the Program Fee was due within 60 days upon signing;
  - (d) the balance of the Program Fee was due within five days upon approval of the immigration application;
  - (e) The Program Fee was to be used to acquire the title of two Penthouse units, which include:
    - (i) \$560,000.00 for a 3-bedroom plus den unit - 946 Square Feet;
    - (ii) \$570,000.00 for a 3-bedroom plus den unit - 1054 Square Feet;
    - (iii) \$50,000.00 for two underground parking units;
    - (iv) \$9,000.00 for two lockers; and
    - (v) \$60,000.00 for two sets of appliances.
  - (f) all of the Program Fee shall be directly transferred to a government supervised account, “3070 Ellesmere in Trust”;
  - (g) the project took about three years;

- (h) the service fees for the immigration application was \$40,000.00 and to be made to a representative of the defendants in China;
  - (i) if the immigration application was rejected, all payment except for \$15,000.00 should be refunded.
  
- 11. At the end of the Agreements, Liu personally guaranteed that the developer would purchase back the condominium units at the original price subsequent the plaintiffs obtaining their immigration visas.
  
- 12. On January 24, 2014, 3070 Ellesmere became the legal owner of the Real Property.
  
- 13. In or around February 2014, the defendants allegedly commenced the plaintiffs' immigration applications.
  
- 14. In or around September 2015, the defendants failed to report any progress on the immigration application and the condominium development. Upon inquiry, Jinzhi advised that the program was delayed because of policy changes, and that the defendants continued working on the application and condominium development.
  
- 15. In late September 2018, the plaintiff discovered the following:
  - (a) Liu denied offering investors Canadian permanent resident status in exchange for

an investment;

- (b) the construction at the Property had yet to began;
- (c) the plaintiffs' funds were not deposited to a lawyer's trust account but in the defendants' business account; and
- (d) most importantly, no immigration programs in Canada offer permanent resident status through investment in the real property in Canada.

16. The Agreements were therefore scams to induce the plaintiffs to make payment to the defendants.

17. At all material times, the defendants together with their representative made false representations to the plaintiffs as particularly described in paragraphs 8 and 9 with the intent that the plaintiffs should act upon same and with the purpose of inducing the plaintiffs to make the payment. The defendants made the statements to the plaintiffs when the defendants knew that these statements were false or when they did not believe in the truth of the statements. The false statements as described in paragraphs 8 and 9 were material facts that the plaintiffs relied on in making the payment. The plaintiffs suffered damages as a result of the false statements.

18. The defendants entered into a conspiracy to defraud the plaintiffs. In furtherance of the conspiracy, the defendants did the following:

- (a) the defendants worked together to induce and persuade the plaintiffs to enter into



the Agreements;

- (b) the defendants made various false representations to the plaintiffs;
- (c) the defendants advised the plaintiffs that the program was delayed because of policy changes; and
- (d) The defendants obtained personal benefit by inducing the plaintiffs into the Agreements.

19. The acts particularized above were unlawful and directed towards the plaintiffs. The defendants, by carrying out the above conspiracy, knew or should have known that injury to the plaintiffs would ensue. As a result of the conspiracy, the plaintiff suffered damages.

20. The funds were transferred to 3070 Ellesmere in trust for the benefit of the plaintiffs. Any benefit from the funds are held on a resulting and implied trust in favour of the plaintiffs. The defendants had actual or constructive knowledge that the funds received were beneficially owned by the plaintiffs. The defendants breached their trust obligations for failing to deposit the funds to a lawyer's trust account and for improperly using the funds for their own benefit and use to the detriment of the plaintiffs. The defendants are therefore liable for breach of trust.

21. Lemine Investment breached the Agreements because:

- (a) the purchase of the condominium units did not make the plaintiffs eligible for

- obtaining Canadian permanent residency;
- (b) the funds were not deposited to a lawyer's trust account;
  - (c) the construction of the condominium project was not complete within three years;
  - (d) the plaintiffs' immigration applications were not approved; and
  - (e) the funds were not returned.

22. Liu breached the Agreement for failure to ensure that Lemine Investment purchase back the condominium units at the original price subsequent to the plaintiffs obtaining their immigration visa.

Dated: November 16, 2018

**HODDER, WANG LLP**  
Adelaide Place  
181 University Avenue, Suite 2200  
Toronto, Ontario M5H 3M7

**YAN WANG (#56176C)**  
(416) 601-6814  
(416) 947-0909 Fax  
ywang@hwlawyers.ca

**YIXIN WANG (#70786W)**  
(416) 601-6810  
(416) 947-0909 Fax  
ewang@hwlawyers.ca

Lawyers for the Plaintiffs

TO: **LEMINE INVESTMENT GROUP INC.**  
5000 Yonge Street  
Suite 1806  
Toronto, ON M2N 7E9

AND TO: **3070 ELLESMERE DEVELOPMENTS INC.**  
1600 16TH Avenue  
Richmond Hill, ON L4B 4N6

AND TO: **JIN ZHI CHEN**  
41 Bowater Drive  
Scarborough, ON M1T 1T4

AND TO: **TONG LIU a.k.a. THOMAS LIU**  
1600 16TH Avenue  
Richmond Hill, ON L4B 4N6

**ONTARIO SUPERIOR  
COURT OF JUSTICE**

Proceeding commenced at:  
TORONTO

**STATEMENT OF CLAIM**

**HODDER, WANG LLP**  
Adelaide Place  
181 University Avenue, Suite  
2200  
Toronto, Ontario M5H 3M7

**YAN WANG (#56176C)**  
(416) 601-6814  
(416) 947-0909 Fax  
ywang@hwlawyers.ca

**YIXIN WANG (#70786W)**  
(416) 601-6810  
(416) 947-0909 Fax  
ewang@hwlawyers.ca

Lawyers for the Plaintiffs





**CASSELS BROCK**  
LAWYERS

**DATE** Tuesday, February 26, 2019 3:06:50 PM

**FROM**

**PHONE**

**FAX**

**TO:**

**FAX #**

4169470909

**PAGES (inclusive)**  
20

**PHONE #**

This facsimile is privileged and may contain confidential information intended only for the person(s) named above. Any other distribution, copying or disclosure is strictly prohibited. If you have received this facsimile in error, please notify us immediately by telephone and return the original transmission to us by mail without making a copy. Facsimile communication is not a 100% secure medium. Unless you advise us to the contrary, by accepting communications that may contain your personal information from us via facsimile, you are deemed to provide your consent to our transmission of the contents of this message in this manner. If you do not want to communicate with us via facsimile, please call us at 1-416-869-5300.



**CASSELS BROCK**  
LAWYERS

|                                  |                         |   |                 |                     |
|----------------------------------|-------------------------|---|-----------------|---------------------|
| <b>DATE</b>                      | February 26, 2019       | Please report any<br>problems with the receipt<br>of this transmission to<br>Darlene Power at<br>416.860.5216 | <b>FILE #</b>   | 51384-1             |
| <b>FROM</b>                      | Graham Brown            |   | <b>LAWYER #</b> | 6191                |
| <b>PHONE</b>                     | 416.869.5372            |   | <b>ORIGINAL</b> | will (not) follow   |
| <b>FAX</b>                       | 416.640.3028            |   | <b>PAGES</b>    | (inclusive) 19      |
| <b>E-MAIL</b>                    | gbrown@casselsbrock.com |   |                 |                     |
| <b>TO</b>                        |                         | <b>FAX</b>  |                 | <b>PHONE</b>        |
| <b>Yan Wang &amp; Yixin Wang</b> |                         | <b>416.947.0909</b>   |                 | <b>416.601.6810</b> |
| <b>Hodder, Wang LLP</b>          |                         |   |                 |                     |

This facsimile is privileged and may contain confidential information intended only for the person(s) named above. Any other distribution, copying or disclosure is strictly prohibited. If you have received this facsimile in error, please notify us immediately by telephone and return the original transmission to us by mail without making a copy. Facsimile communication is not a 100% secure medium. Unless you advise us to the contrary, by accepting communications that may contain your personal information from us via facsimile, you are deemed to provide your consent to our transmission of the contents of this message in this manner. If you do not want to communicate with us via facsimile, please call us at 1.416.869.5300.



February 26, 2019

**By Facsimile**

gbrown@casselsbrock.com

tel: +1 416 869 5372

fax: +1 416 640 3028

file # 51384-1

Hodder, Wang LLP  
181 University Avenue, Suite 2200  
Toronto, ON M5H 3M7

**Attention: Yan Wang & Yixin Wang**

Dear Sirs:

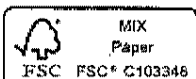
**Re: Xiuhong Du, Yunduan Chen and Guohua Xu v. Lemine Investments Group Inc. et al., Court File No. CV-18-607231**

Enclosed please find the Statement of Defence of the Defendants Lemine Investment Group Inc., 3070 Ellesmere Developments Inc., and Tong Liu a.k.a. Thomas Liu, which is hereby served upon you in accordance with the *Rules of Civil Procedure*.

Yours truly,

**Cassels Brock & Blackwell LLP**

Graham Brown  
GB/dp





Court File No. CV-18-607231

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

BETWEEN:

**XIUHONG DU, YUNDUAN CHEN and GUOHUA XU**

Plaintiffs

- and -

**LEMINE INVESTMENT GROUP INC., 3070 ELLESMERE DEVELOPMENTS INC.,  
JIN ZHI CHEN and TONG LIU a.k.a. THOMAS LIU**

Defendants

**STATEMENT OF DEFENCE OF THE DEFENDANTS  
LEMINE INVESTMENT GROUP INC., 3070 ELLESMERE DEVELOPMENTS INC.,  
and TONG LIU a.k.a. THOMAS LIU**

1. The defendants, Lemine Investment Group Inc. ("**Lemine**"), 3070 Ellesmere Developments Inc. ("**3070 Ellesmere**") and Tong Liu a.k.a. Thomas Liu ("**Liu**") (Lemine, 3070 Ellesmere and Liu collectively referred to as the "**Defendants Pleading**") and admit the allegations contained in paragraphs 3, 4, 5, and 12 of the Statement of Claim.

2. The Defendants Pleading deny the allegations contained in paragraphs 1, 6, 7, 8, 9, 10, 11, 13, 14, 16, 17, 18, 19, 20, 21 and 22 of the Statement of Claim.

3. The Defendants Pleading have no knowledge of the allegations contained in paragraphs 2 and 15 of the Statement of Claim

**THE PARTIES**

4. Lemine is a company incorporated pursuant to the laws of Ontario with offices located in Richmond Hill, Ontario.

5. 3070 Ellesmere is a company incorporated pursuant to the laws of Ontario with offices located in Richmond Hill, Ontario. 3070 Ellesmere was created for the sole purpose of developing and operating the Project (*defined below*).

6. Liu is an individual residing in Richmond Hill, Ontario. Among other things, Liu is an

- 2 -

officer and director of both Lemine and 3070 Ellesmere.

7. Jin Zhi Chen ("**Jin Zhi**") is an individual residing in Toronto, Ontario.

8. In 2011, Jin Zhi agreed to act as an independent contractor for Lemine. Among other things, Jin Zhi's role as a contractor for Lemine required her to make introductions between prospective investors and Lemine. At no material time did Jin Zhi have authority to:

- (a) speak on behalf of Lemine or 3070 Ellesmere;
- (b) bind Lemine or 3070 Ellesmere in written or verbal agreements;
- (c) negotiate agreements on behalf of Lemine or 3070 Ellesmere; or
- (d) make representations on behalf of Lemine or 3070 Ellesmere.

#### THE PROJECT

9. In or about 2013, Lemine, on behalf of 3070 Ellesmere, sought investors for a condominium project known as the *Academy Condos* (the "**Project**") that it was developing at 3070 Ellesmere Road in Scarborough, Ontario (the "**Property**").

10. Lemine asked Jin Zhi to help find interested investors for the Project. Jin Zhi was asked to help advertise the intended Project development plans and, when approached by an interested investor, introduce that person to Lemine for discussion regarding the investment opportunity.

#### XIUHONG DU

11. In or around November of 2013, Jin Zhi met the plaintiff, Xiuhong Du ("**Du**") through a mutual acquaintance.

12. The Defendants Pleading have no knowledge as to the discussion between Jin Zhi and Du, but understand that Du was told that Lemine had an investment opportunity (namely, the Project).

13. Contrary to the allegations in the Statement of Claim, the Defendants Pleading deny, and put the plaintiffs to the strict proof, that Jin Zhi at any time:

- (a) "recommended" the program to Du, she simply made an introduction between Du and Lemine;
- (b) represented that Du would obtain a working visa to Canada within one year; or
- (c) represented to Du that investment in the Project would "permit" Du to obtain Canadian permanent resident status through the purchase of condominium units.

14. Jin Zhi subsequently facilitated a meeting between Du and Lemine so that Du could learn more about the investment opportunity.

15. Upon being introduced to Lemine, Liu, solely in his capacity as an officer of Lemine and not in his personal capacity, and speaking solely on behalf of Lemine, explained to Du that, among other things:

- (a) the Project was, or was going to be, registered in the Ontario Provincial Nominee Program (the "OPNP");
- (b) the Project would create jobs and therefore, it was *possible* that the ongoing job creation aspect of the Project investment would allow Du to qualify for the OPNP;
- (c) the 'job creation' category within the OPNP required a degree of permanence to the jobs created. An entity known as *Academy Management Inc. (2014)* ("AMI") would be created with the purpose of managing the retail/commercial aspects of the Project and would, with Du as a shareholder, hopefully satisfy the permanence requirement of the OPNP;
- (d) the investment would entitle Du to later purchase units within the Project at a reduced price; and
- (e) all work related to immigration/residency applications would be handled by a third-party entity known as *Beijing ForVisa* ("BFV") and that there was no guarantee of success for Du's future residency/immigration application.

- 4 -

16. Contrary to the allegations in paragraph 8 of the Statement of Claim, at no material time did Liu or any person with authority or ostensible authority to speak for Lemine represent to Du that:

- (a) the City of Toronto had approved development at the Property;
- (b) the investment opportunity was government-sanctioned, government-approved, or guaranteed;
- (c) there was a guarantee as to the Property's development timeline;
- (d) there was any relationship between the investment amount required and a government requirement for immigration standards;
- (e) there was any guarantee as to post-completion leasing;
- (f) the investment opportunities were for people specifically described as being 'wealthy' or 'uneducated';
- (g) a refund of the investment monies would automatically be provided if Du's immigration application was rejected;
- (h) there was any guarantee that the Province of Ontario would approve submitted immigration applications in a specific timeframe, or at all; or
- (i) Du would receive a working visa within two to three years of entering into a contract for purchase of a condominium or investing in the Project.

17. Du ultimately decided to invest in the Project, and apply for residency with the assistance of BFV. The Defendants Pleading deny that Du's decision to do so was made in reliance on any statements made to Du or, in the alternative, was made in reasonable reliance on such statements. The Defendants Pleading have no knowledge as to Du's decision-making process and deny any liability arising from it.

- 5 -

YUANDUAN CHEN

18. Shortly after Du decided to invest in the Project, Du's sister (and plaintiff), Yuanduan Chen ("Chen") approached Jin Zhi seeking an introduction to Lemine. The Defendants Pleading have no knowledge as to what information and representations were made by Du to Chen.

19. The Defendants Pleading have no knowledge as to the subsequent discussions between Jin Zhi and Chen, but understand that Chen was told that Lemine had an investment opportunity (namely, the Project).

20. Contrary to the allegations in the Statement of Claim, the Defendants Pleading deny, and put the plaintiffs to the strict proof, that Jin Zhi at any time:

- (a) "recommended" the program to Chen, she simply made an introduction between Chen and Lemine;
- (b) represented that Chen would obtain a working visa to Canada within one year; or
- (c) represented to Chen that investment in the Project would "permit" Chen to obtain Canadian permanent resident status through the purchase of condominium units.

21. Jin Zhi subsequently facilitated a meeting between Chen and Lemine so that Chen could learn more about the investment opportunity

22. Upon being introduced to Lemine, Liu, solely in his capacity as an officer of Lemine and not in his personal capacity, and speaking solely on behalf of Lemine, explained to Chen that, among other things:

- (a) the Project was registered in the OPNP;
- (b) the Project would create jobs and therefore, it was *possible* that the ongoing job creation aspect of the Project investment would allow Chen to qualify for the OPNP;
- (c) the 'job creation' category within the OPNP required a degree of permanence to the job creation. AMI would be created with the purpose of managing the

- 6 -

retail/commercial aspects of the Project and would, with Chen as a shareholder, hopefully satisfy the permanence requirement of the OPNP;

- (d) the investment would entitle Chen to later purchase units within the Project at a reduced price; and
- (e) all work related to immigration/residency applications would be handled by a third-party entity based in China known as *Beijing ForVisa* and that there was no guarantee of success for Chen's future residency application.

23. Contrary to the allegations in paragraph 8 of the Statement of Claim, at no material time did Liu or any person with authority or ostensible authority to speak for Lemine represent to Chen that:

- (a) the City of Toronto had approved development at the Property;
- (b) the investment opportunity was government-sanctioned, government-approved, or guaranteed;
- (c) there was a guarantee as to the Property's development timeline;
- (d) there was any relationship between the investment amount required and a government requirement for immigration standards;
- (e) there was any guarantee as to post-completion leasing;
- (f) the investment opportunities were for people specifically described as being 'wealthy' or 'uneducated';
- (g) a refund of the investment monies would automatically be provided if Chen's immigration application was rejected;
- (h) there was any guarantee that the Province of Ontario would approve submitted immigration applications in a specific timeframe, or at all; or
- (i) Chen would receive a working visa within two to three years of entering into a contract for purchase of a condominium or investing in the Project.

- 7 -

24. Chen ultimately decided to invest in the Project, and apply for residency with the assistance of BFV. The Defendants Pleading deny that Chen's decision to do so was made in reliance on any statements made to Chen or, in the alternative, was made in reasonable reliance on such statements. The Defendants Pleading have no knowledge as to Chen's decision-making process and deny any liability arising from it.

#### GUOHUA XU

25. Around the same time that Du and Chen invested in the Project, Jin Zhi's cousin's employer (and plaintiff), Guohua Xu ("Xu"), approached Jin Zhi about the Project investment opportunity.

26. The Defendants Pleading have no knowledge as to the subsequent discussions between Jin Zhi and Xu but understand that Xu was told that Lemine had an investment opportunity (namely, the Project).

27. At the time that Jin Zhi and Xu first spoke, Xu and Liu were both in China. Given their proximity, Jin Zhi facilitated an in-person meeting in China between Xu, Liu and BFV.

28. Contrary to the allegations in the Statement of Claim, the Defendants Pleading deny, and put the plaintiffs to the strict proof, that Jin Zhi at any time:

- (a) "recommended" the program to Xu, she simply made an introduction between Xu and Lemine;
- (b) represented that Xu would obtain a working visa to Canada within one year; or
- (c) represented to Xu that investment in the Project would "permit" Xu to obtain Canadian permanent resident status through the purchase of condominium units.

29. Upon being introduced to Lemine, Liu, solely in his capacity as an officer of Lemine and not in his personal capacity, and speaking solely on behalf of Lemine, explained to Xu that, among other things:

- (a) the Project was registered in the OPNP;
- (b) the Project would create jobs and therefore, it was *possible* that the ongoing job

- 8 -

creation aspect of the Project investment would allow Xu to qualify for the OPNP;

- (c) the 'job creation' category within the OPNP required a degree of permanence to the job creation. AMI would be created with the purpose of managing the retail/commercial aspects of the Project and would, with Xu included as a shareholder, hopefully satisfy the permanence requirement of the OPNP;
- (d) the investment would entitle Xu to later purchase units within the Project at a reduced price; and
- (e) all work related to immigration/residency applications would be handled by a third-party entity based in China known as *Beijing ForVisa* and that there was no guarantee of success for Xu's future residency application.

30. Contrary to the allegations in paragraph 8 of the Statement of Claim, at no material time did Liu or any person with authority or ostensible authority to speak for Lemine represent to Xu that:

- (a) the City of Toronto had approved development at the Property;
- (b) the investment opportunity was government-sanctioned, government-approved, or guaranteed;
- (c) there was a guarantee as to the Property's development timeline;
- (d) there was any relationship between the investment amount required and a government requirement for immigration standards;
- (e) there was any guarantee as to post-completion leasing;
- (f) the investment opportunities were for people specifically described as being 'wealthy' or 'uneducated';
- (g) a refund of the investment monies would automatically be provided if Xu's immigration application was rejected;
- (h) there was any guarantee that the Province of Ontario would approve submitted



- 9 -

immigration applications in a specific timeframe, or at all; or

- (i) Xu would receive a working visa within two to three years of entering into a contract for purchase of a condominium or investing in the Project.

31. Xu ultimately decided to invest in the Project, and apply for residency with the assistance of BFV. The Defendants Pleading deny that Xu's decision to do so was made in reliance on any statements made to Xu or, in the alternative, was made in reasonable reliance on such statements. The Defendants Pleading have no knowledge as to Xu's decision-making process and deny any liability arising from it.

#### THE CONTRACTS

32. After deciding to invest in the Project, each of the plaintiffs executed separate agreements with Lemine (together, the "Contracts").

33. It was an express or implied term of each of the Contracts that:

- (a) In exchange for payment, each investor would be granted a right to a condominium and related common elements at the Project;
- (b) the payment was to be paid in two parts, with the first part being described as a "deposit";
- (c) investment in the Project was not intended to create shareholder's rights in the Project;
- (d) investment in the Project was for the primary purpose of assisting the investor's application for residency;
- (e) Lemine's responsibility, in terms of immigration, was only to create the investment opportunity and connect the investor to the immigration broker, BFV;
- (f) BFV would handle all of the work associated with the plaintiffs' applications for permanent residency in Canada, or for work visas;
- (g) BFV bore sole liability for the success or failure of the immigration applications,

- 10 -

and any advice associated with those applications;

- (h) the investor would only become a shareholder of AMI for the purpose of creating a basis for a permanent residency application in Canada, and the investor was not granted any economic interest in the Project; and
- (i) there was no expectation of profit on the part of the investor.

34. To the extent that there was any difference in the English and Chinese portions of the Contracts, which is denied, such difference was caused through inadvertence in translation and the English provisions take precedence to the extent of any difference or ambiguity.

35. Contrary to the allegations in the Statement of Claim, the Contracts did not:

- (a) provide any guarantee as to when the closing date for the purchased condominium units would be; or
- (b) provide that the deposit monies would be held in a lawyer's trust account, or any form of trust. In fact, it was always known to the plaintiffs that 3070 Ellesmere would be using the monies received to construct the Project.

36. Subsequent to the execution of the Contracts, and pursuant to the terms of the Contracts, Xu, Du and Chen each transferred \$624,500 (the "Deposit Monies") to Lemine as a deposit. Notably, the plaintiffs never paid the remaining balance on their investments.

37. 3070 Ellesmere and AMI were both not incorporated at the time of the execution of the Contracts and it was contemplated that the monies to be paid to 3070 Ellesmere would be held by Lemine until such time as 3070 Ellesmere and AMI could be incorporated and could be transferred the monies as if they had been paid to 3070 Ellesmere or AMI in the first instance.

38. As contemplated, 3070 Ellesmere was incorporated in January of 2014 and the Deposit Monies were transferred to 3070 Ellesmere by Lemine.

39. As agreed, AMI was incorporated in September of 2014. The plaintiffs were all duly listed as shareholders of AMI upon incorporation.

40. As agreed, Lemine assisted the plaintiffs in commencing a relationship with BFV for the

purpose of preparing residency applications. At no material time was Lemine ever required to perform any direct work for the plaintiffs with respect to assisting the plaintiffs with immigration/obtaining permanent residency, and at no material time did Lemine ever perform any such work.

#### POST-INVESTMENT CONDUCT

41. The construction of the Project was ultimately indefinitely delayed by reasons beyond 3070 Ellesmere's control.

42. Between 2015 and 2017, the plaintiffs would occasionally ask Jin Zhi and/or Liu for updates on the status of the Project and/or the status of their immigration applications. Each time, the plaintiffs were told that:

- (a) the Project was delayed; and
- (b) all inquiries regarding the immigration/residency applications should be directed to BFV, as BFV was solely responsible for that process.

After each inquiry, the plaintiffs told the Defendants Pleading that they were prepared to maintain their investment in the Project and would separately speak to BFV regarding the status of their immigration applications.

43. In November of 2018, the plaintiffs travelled together to meet with Lemine and requested a refund of the Deposit Monies.

44. During the November 2018 meeting, Liu, on behalf of Lemine, told the plaintiffs that the Deposit Monies had been invested in the Project and were not liquid. Liu advised that the plaintiffs that the Project no longer appeared to be feasible and that 3070 Ellesmere intended to sell the Property. Liu stated that 3070 Ellesmere had no assets other than the land, but that once the Property was sold, the plaintiffs had the option of requesting a return of their investment monies from 3070 Ellesmere. Liu expressly stated to the plaintiffs that there was no guarantee that the Deposit Monies would be repaid to them in full since there were secured creditors that would be need to be paid out first, and unsecured creditors (such as the plaintiffs) would be paid pro-rata thereafter.

- 12 -

45. The plaintiffs opted to accept Lemine's proposal to be refunded as 'unsecured creditors' upon sale of the Property, and the Contracts were correspondingly terminated.

46. As of the date of this pleading, the Property has not been sold. Efforts continue to be made to sell the Property.

#### **ALLEGED TRUST**

47. At no material time was a trust, whether actual or constructive, ever created.

48. To the extent that the word "trust" was ever used by any party in relation to the transfer of monies for the Project, the term was unintentionally misused and had no intended legal force or effect.

#### **ALLEGED BREACHES OF CONTRACT**

49. Contrary to the allegations pleaded in:

(a) paragraph 21 of the Statement of Claim, Lemine did not breach the Contracts because:

(i) nothing in the Contracts stated that the condominium units would make the plaintiffs eligible for obtaining Canadian permanent residency and, in any event, such a representation (which the defendants deny was ever made) does not represent a breach of contract by Lemine;

(ii) there was no requirement in the Contract for funds of any sort to be deposited in a lawyer's trust account;

(iii) there was no contractual guarantee that the Project would be completed in three years;

(iv) Lemine had no control over the plaintiffs' immigration applications and whether they were approved and, in any event, there was no agreement of any kind that the plaintiffs' immigration applications would be approved; and

(v) there was no obligation under the Contracts that was triggered, or at all,

- 13 -

which would have required the return of funds to the plaintiffs.

- (b) paragraph 22 of the Statement of Claim, Liu did not breach the Contracts because no such clause existed and, in any event, the plaintiffs did not obtain the immigration visas that were a condition precedent to the provision described.

#### **ALLEGED RESCISSION**

50. At no material time was there a vitiating factor that entitled or would entitle the plaintiffs to rescind the Contracts.

51. In any event, at no material time did the plaintiffs or Defendants Pleading purport to rescind the Contracts.

52. Further, the Contracts were terminated, at the plaintiffs' request, upon entering into the November 2018 Deal.

#### **ALLEGED FRAUD AND CONSPIRACY**

53. Relying on the facts pleaded above, the Defendants Pleading deny that there was a fraud or conspiracy as pleaded above, or at all.

54. To the extent that there was any change in the OPNP, such change was as a result of government policy change(s) that were out of the defendants' control. The Defendants Pleading were in no way responsible for the policy change(s) or the corresponding effect of the policy change(s) on the plaintiffs' residency/immigration applications.

55. To the extent that the steps taken by the plaintiffs were insufficient for the purpose of gaining residency/immigration under the OPNP:

- (a) the plaintiffs knew or ought to have known that they were not eligible for residency in Canada/immigration to Canada for reasons unrelated to their investment in the Project;
- (b) the plaintiffs knew or ought to have known that they were not eligible for residency in Canada/immigration at all;

- 14 -

- (c) the plaintiffs knew or ought to have known that they had failed to take the required steps to obtain residency in Canada/immigration to Canada;
- (d) the plaintiffs knew or ought to have known that the defendants were not responsible for ensuring that the plaintiffs obtained residency/immigration; and
- (e) the plaintiffs failed to take the necessary steps or make the necessary inquiries to effect a proper residency/immigration application.

56. The plaintiffs' failure to qualify for residency was as a result of their own actions or inactions, or otherwise as a result of government decisions or a change in policies.

57. In the alternative, the plaintiffs' failure to obtain residency was as a result of the errors and omissions of BFV, which is an arm's-length entity from Lemine and 3070 Ellesmere.

58. The Defendants Pleading bear no liability for the plaintiffs' failed attempts to obtain permanent residency in Canada.

#### CONCLUSION

59. At all material times, the plaintiffs knew or ought to have known that they were investing in a real estate venture that had risk.

60. The plaintiffs knew or ought to have known that there was a possibility that they would lose all or part of their investment monies if the Project was not ultimately constructed.

61. To the extent that the plaintiffs suffered any losses, those losses were reasonably foreseeable. The Defendants Pleading plead and rely on the principle of *caveat emptor*.

62. The plaintiffs knew or ought to have known that Liu was not a necessary party to this action. At all material times, Liu acted as a director, officer or representative of Lemine and/or 3070 Ellesmere and not in his personal capacity. The plaintiffs have no basis on which to pierce the corporate veil and make a direct claim against Liu. The action against Liu personally was commenced with the plaintiffs' knowledge that Liu was not a necessary party to the action and was commenced with the sole intention of trying to obtain leverage in the action. The plaintiffs' action against Liu is therefore frivolous, vexatious, malicious and an abuse of process. On this

- 15 -

basis, the action should be dismissed as against Liu with costs payable to Liu on a substantial indemnity basis.

63. The Defendants Pleading deny that the plaintiffs have any damages as pleaded, or at all. The Defendants Pleading hold the plaintiffs to the strict proof of their damages. In the alternative, if the plaintiffs have any damages, which is denied, then those damages are excessive, vague and remote and the plaintiffs have failed to mitigate their damages.

64. For all of the reasons pleaded above, the Defendants Pleading deny that the plaintiffs have any entitlement to punitive damages. In any event, the plaintiffs have not pleaded any basis for entitlement to punitive damages.

February 26, 2019

**CASSELS BROCK & BLACKWELL LLP**

Scotia Plaza  
40 King Street West, Suite 2100  
Toronto, ON M5H 3C2

**Raivo Uukkivi (LSO# 49932L)**

Tel: 416.860.6613  
Fax: 416.640.3110  
ruukkivi@casselsbrock.com

**Graham Brown (LSO# 61421U)**

Tel: 416.869.5372  
Fax: 416.640.3028  
gbrown@casselsbrock.com

Lawyers for the defendants  
Lemine Investment Group Inc., 3070 Ellesmere  
Developments Inc., and Tong Liu a.k.a Thomas  
Liu

**TO: HODDER, WANG LLP**  
181 University Avenue, Suite 2200  
Toronto, Ontario M5H 3M7

**Yan Wang (LSO# 56176C)**  
**Yixin Wang (LSO# 70786W)**

Tel: (416) 601-6810  
Fax: (416) 947-0909

Lawyers for the plaintiffs

- 16 -

**AND Jin Zhi Chen**  
**TO: 41 Bowater Drive**  
**Scarborough, ON M1T 1T4**

Defendant



**XIUHONG DU et al.**  
Plaintiffs

and

**LEMINE INVESTMENT GROUP INC. et al.**  
Defendants

Court File No. CV-18-607231

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at **TORONTO**

**STATEMENT OF DEFENCE OF THE DEFENDANTS  
LEMINE INVESTMENT GROUP INC., 3070 ELLESMERE  
DEVELOPMENTS INC., and TONG LIU a.k.a. THOMAS LIU**

**CASSELS BROCK & BLACKWELL LLP**

Scotia Plaza  
40 King Street West, Suite 2100  
Toronto, ON M5H 3C2

**Raivo Uukkivi (LSO# 49932L)**

Tel: 416.860.6613

Fax: 416.640.3110

ruukkivi@casselsbrock.com

**Graham Brown (LSO# 61421U)**

Tel: 416.869.5372

Fax: 416.640.3028

gbrown@casselsbrock.com

Lawyers for the defendants

Lemine Investment Group Inc., 3070 Ellesmere  
Developments Inc., and Tong Liu a.k.a. Thomas Liu

## **Appendix “B”**

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

THE HONOURABLE MR. )

THURSDAY, THE 3<sup>RD</sup>

JUSTICE HAINEY )

DAY OF SEPTEMBER, 2020

**2478888 ONTARIO INC.**

Applicant

- and -

**3070 ELLESMERE DEVELOPMENTS INC.**

Respondent

**ORDER**

**(Disclaiming Purchase Agreements, Approving the Receiver's Activities and Fees,  
Approving Distributions)**

THIS MOTION, made by RSM Canada Limited in its capacity as the Court-appointed receiver (the "**Receiver**") without security, of the undertaking, property and assets of 3070 Ellesmere Developments Inc. (the "**Debtor**") for an order, *inter alia*, approving of the disclaimer of the Purchaser Agreements (as defined in the Report of the Receiver dated August 13, 2020, the "**Receiver's Second Report**"), an Order approving the fees and activities of the Receiver and its counsel, approving the distributions proposed in the Receiver's Second Report and an Order sealing the Confidential Appendices to the Receiver's Second Report, was heard this day by videoconference due to the COVID-19 crisis.

ON READING the Receiver's Second Report, the Supplement to the Receiver's Second Report dated September 2, 2020, the Fee Affidavit of Bryan Tannenbaum, sworn August 5, 2020,

the Fee Affidavit of Joseph Fried, sworn August 6, 2020, the Fee Affidavit of Rebecca L. Kennedy sworn August 10, 2020, and the written submissions of the Trust Claim Plaintiffs (as that term is defined in the Supplement to the Receiver's Second Report) and on hearing the submissions of counsel for the Receiver, and all other parties listed on the Counsel Slip, no one else appearing for any other person, although all parties appearing on the Service List in this proceeding were duly served as it appears from the Affidavit of Service of Bobbie-Jo Brinkman sworn September 1, 2020:

### **SERVICE**

1. **THIS COURT ORDERS** that service of the Notice of Motion and the Motion Record including the Receiver's Second Report is hereby validated so that this Motion is properly returnable today and hereby dispenses with further service thereof. All capitalized terms used herein and not otherwise defined are as defined in the Receiver's Second Report.

### **PURCHASE AGREEMENTS**

2. **THIS COURT ORDERS AND DECLARES** that the Receiver's disclaimer of the Purchaser Agreements be and hereby is approved.

3. **THIS COURT ORDERS AND DECLARES** that the Deposit Protocol attached hereto at Schedule "A" is hereby approved.

### **APPROVAL OF ACTIVITIES & FEES**

4. **THIS COURT ORDERS AND DECLARES** that the Receiver's Second Report, the Supplement to the Receiver's Second Report, and all of the activities of the Receiver described therein are hereby ratified and approved.

5. **THIS COURT ORDERS AND DECLARES** that the Receiver's Borrowings Charge (as defined in the Receivership Order) is increased by \$255,000 to a total of \$755,000, *nunc pro tunc*;

6. **THIS COURT ORDERS AND DECLARES** that the fees and disbursements of the Receiver and its counsel, as set out in the fee affidavits of Bryan A. Tannenbaum, sworn August 5, 2020, of Joseph Fried, sworn August 6, 2020, and the of Rebecca L. Kennedy sworn August 10,

2020, are hereby approved, and the Receiver is authorized and directed to pay all such fees which remain unpaid at this time.

## **DISTRIBUTION**

7. **THIS COURT ORDERS** that the Receiver be and hereby is authorized to distribute to 2478888 Ontario Inc. (“**247**”) the sum of \$8,234,646.57 and shall not pay 247, and shall hold in reserve, the \$229,290.53 claimed by 247 on account of the three months’ interest charge pending further order of this Court.

8. **THIS COURT ORDERS** that the Receiver be and hereby is authorized to distribute up to the maximum amount of \$7,603,561.82 to 2615333 Ontario Inc. (“**261**”), in such instalments from time to time as the Receiver may determine without further order of this Court and shall not pay 261, and shall hold in reserve an amount up to a maximum of, the \$177,764.97 claimed by 261 on account of the three months’ interest charge and charge for default proceeding pending further order of this Court.

## **SEALING OF CONFIDENTIAL SCHEDULES**

9. **THIS COURT ORDERS** that Confidential Schedules 1-8, inclusive, to the Receiver’s Second Report shall be, and are, hereby sealed, kept confidential and shall not form part of the public record pending further Order of this Court.

## **GENERAL**

10. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada 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.

11. **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, and that the Receiver is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

12. **THIS COURT ORDERS** that this Order is effective from the date that it is made and is enforceable without any need for entry and filing.

13. **THIS COURT ORDERS** that the E-Service Guide of the Commercial List (the “**Guide**”) is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Guide (which can be found on the Commercial List website at: [www.ontariocourts.ca/scj/practice/practice-directions/toronto/eservice-commercial/](http://www.ontariocourts.ca/scj/practice/practice-directions/toronto/eservice-commercial/)) shall be valid and effective service.

---

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

**2478888 ONTARIO INC.**

- and -

**3070 ELLESMERE DEVELOPMENTS INC.**

Applicant

Respondent

Court File No.: CV-19-00627187-00CL

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

Proceedings commenced at Toronto, Ontario

**ORDER  
(Disclaiming Purchase Agreements, etc.)**

**THORNTON GROUT FINNIGAN LLP**  
TD West Tower, Toronto-Dominion Centre  
100 Wellington Street West, Suite 3200  
Toronto, Ontario M5K 1K7  
Tel: (416) 304-1313

**D.J. Miller (LSO# 34393P)**  
Tel: (416) 304-0559 / Email: [djmiller@tgf.ca](mailto:djmiller@tgf.ca)

**Rebecca L. Kennedy (LSO# 61146S)**  
Tel: (416) 304-0603 / Email: [rkennedy@tgf.ca](mailto:rkennedy@tgf.ca)

**Alexander Soutter (LSO#72403T)**  
Tel: (416) 304-0595 / Email: [asoutter@tgf.ca](mailto:asoutter@tgf.ca)

Lawyers for RSM Canada Limited, as Receiver

## **Appendix “C”**



September 2, 2020

**SENT BY E-MAIL:** [djmiller@tgf.ca](mailto:djmiller@tgf.ca)

**THORNTON GROUT FINNIGAN LLP**

TD West tower, Toronto-Dominion Centre  
100 Wellington Street West  
Suite 3200  
Toronto, Ontario, M5K 1K7

**Attention: D.J. Miller**

Dear Mr. Miller:

**Re: 3070 Ellesmere Developments Inc.**  
**Court File No.: CV-19000627187-00CL**

---

As you are aware, I am legal counsel to 2615333 Ontario Inc., the holder of the subordinated portion of the first ranking Charge over the subject property. In accordance with the pending motion for the Approval and Vesting Order, it is my understanding that the Receiver is also seeking an Order authorizing and directing, *inter alia*, a distribution in accordance with paragraph 3(b) of the Notice of Motion, in favour of my client. I am writing to advise that my client consents to the relief sought on the motion.

It is my understanding a subsequent mortgagee may take issue with respect to certain fees included in my client's Payout Statement with respect to missed payment fees and administrative charges, as well as certain fees included in the priority ranking portion of the first ranking Charge. In the event that the objection is advanced, we are content for a holdback from the distributions to be maintained pending consent or further Court Order.

With respect to the position which we now understand has been taken by the claimants Xiuhong Du, Yunduan Chen and Guohua Xu asserting trust claims on the eve of the scheduled motion (the "Alleged Trust Claims"), I am advised by my clients that they had no prior notice of the claims of these Plaintiffs before receipt of the written submissions on August 31<sup>st</sup>, 2020 at 10:34 PM. It would be our position that:

- (a) The Action was stayed by virtue of the Receivership Order;
- (b) That the Alleged Trust Claims were in existence at the time the Charge was granted, yet they were not registered and, as such, the mortgagees are innocent purchasers for value without notice; and
- (c) The Alleged Trust Claims are unsecured and rank behind the secured claims of the mortgagees.

**Letter to D.J. Miller, Thornton Grout Finnigan LLP**

September 2, 2020

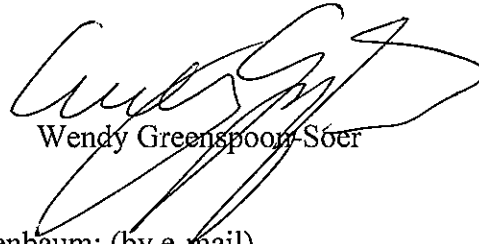
Page 2

I have stated our position on the record as there is a possibility that I may be unable to participate in the motion on September 3<sup>rd</sup>, 2020. I have a pre-existing conflict although I will make every effort to join in to the Zoom hearing. In the event that I am unable to connect, I trust that you will either provide this correspondence to the Court or make my client's position known at the time.

Thank you for your understanding.

Yours very truly,

**Garfinkle Biderman LLP**



Wendy Greenspoon-Soer

WHG-S:sq

cc: Hodder Wang LLP; Joseph Fried; Bryan Tannenbaum; (by e-mail)

H:\CLIENT\12256\12256-001\Correspondence\Letter To DJ Miller September 2020.Docx

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

**2478888 ONTARIO INC.**

- and -

**3070 ELLESMERE DEVELOPMENTS INC.**

Applicant

Respondent

Court File No.: CV-19-00627187-00CL

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

Proceedings commenced at Toronto, Ontario

**SUPPLEMENT TO THE SECOND REPORT OF THE RECEIVER  
(September 2, 2020)**

**THORNTON GROUT FINNIGAN LLP**  
TD West Tower, Toronto-Dominion Centre  
100 Wellington Street West, Suite 3200  
Toronto, Ontario M5K 1K7  
Fax: (416) 304-1313

**D.J. Miller (LSO# 34393P)**  
Tel: (416) 304-0559 / Email: [djmiller@tgf.ca](mailto:djmiller@tgf.ca)  
**Rebecca L. Kennedy (LSO# 61146S)**  
Tel: (416) 304-0603 / Email: [rkennedy@tgf.ca](mailto:rkennedy@tgf.ca)  
**Alexander Soutter (LSO#72403T)**  
Tel: (416) 304-0595 / Email: [asoutter@tgf.ca](mailto:asoutter@tgf.ca)

Lawyers for RSM Canada Limited, as Receiver