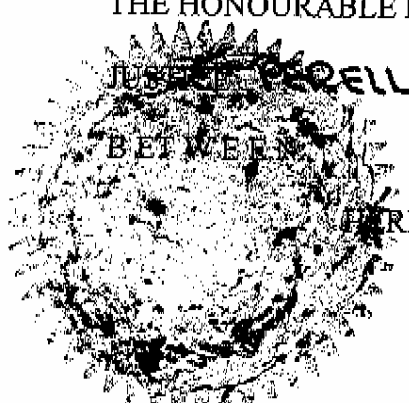


**ONTARIO
SUPERIOR COURT OF JUSTICE**

IN THE MATTER OF THE CONSTRUCTION LIEN ACT, R.S.O. 1990, C.30

AND IN THE MATTER OF AN APPLICATION MADE BY HERITAGE HOMES BY
INVIDIATA (PHASE 3) INC. for an Appointment of a Trustee of certain lands and premises
registered in the name of HERITAGE HOMES BY INVIDIATA (PHASE 3) INC.

THE HONOURABLE MR. ~~ADAM~~) THURSDAY, THE 9TH
)
JUSTICE PIRELL) DAY OF JULY 2009.



BETWEEN
HERITAGE HOMES BY INVIDIATA (PHASE 3) INC.

Applicant

- and -

CANADIAN IMPERIAL BANK OF COMMERCE,
FIRM CAPITAL MORTGAGE FUND INC., 1167625 ONTARIO LIMITED
and B2B TRUST, each as to an undivided 50% interest therein,
and TED SHUEN KONG

Respondents

ORDER

THIS MOTION, made by Counsel for Mintz & Partners Limited ("MPL") in its capacity as Trustee appointed pursuant to Section 68 of the *Construction Lien Act*, R.S.O. 1990, c.30, as amended, by order of the Honourable Mr. Justice Pitt dated February 21st, 2005, (the "Construction Trustee") over certain assets of Heritage Homes by Invidiata (Phase 3) Inc. ("Heritage Phase 3") ("Invidiata") (hereinafter the "Woodhaven Project"), in the Town of Oakville, was heard this day, at 393 University Avenue, Toronto, Ontario.

ON READING the notice of motion, the first and final report of the Construction Trustee dated June 17, 2009, and the Exhibits thereto, and the order of the Honourable Mr. Justice Pitt dated February 21, 2005, and on hearing from counsel appearing on the motion, ,

1. **THIS COURT ORDERS** that the time for the service of the notice of motion and the motion record be, and the same is, hereby abridged and validated and that this motion is properly before this Court.

2. **THIS COURT ORDERS** that the Construction Trustee is hereby authorized to pay to the Accountant of the Ontario Superior Court of Justice to the credit of the action being Ontario Superior Court of Justice ^{Milton} court file No: 1349/05, ~~the balance in its possession including the Reserve, subject to a reasonable reserve for its costs and expenses.~~ *JPNP*

3. **THIS COURT ORDERS** that the accounts of Mintz & Partners Limited and its solicitors as set out in the Construction Trustee's report are hereby authorized and approved.

4. **THIS COURT ORDERS** that the cost of the Construction Trustee and the solicitors for the Construction Trustee of and incidental to this motion be paid out of the assets under the administration of the Construction Trustee herein on a substantial indemnity basis.

5. **THIS COURT ORDERS** that the Construction Trustee, save as expressly provided herein, be and it is hereby discharged as Construction Trustee, its employees, counsel and advisors are hereby relieved, released, and discharged from all powers, duties and obligations conferred upon it in such capacities and from all liability in respect of any act, omission or default by the Construction Trustee, its employees, counsel and advisors in their respective capacity as Construction Trustee and as employees, counsel and advisors thereto or otherwise, with respect to the realization on, distributions on or management of the Woodhaven Project, including without limiting the generality of the foregoing, the administration or realization of the property, assets, and undertaking of the Woodhaven Project, their conduct as Construction Trustee and the various distributions of the proceeds resulting from the realizations of said property, whether by Court order or otherwise.

6. **THIS COURT ORDERS** that notwithstanding its discharge as Construction Trustee, the Construction Trustee shall continue to be subject to all privileges afforded to it by this Court.

* (a) 1,504,829.13 plus interest accrued thereon *JPNP*
✓ (b) upon notice to counsel for Downsview Kitchens, the balance of \$40,000 if any which sum is a reasonable reserve for the trustee's and their legal counsel costs and expenses *JPNP*

7. **THIS COURT ORDERS** that the activities of the Construction Trustee as outlined in the Construction Trustee's first report and final report are hereby authorized and approved.

Panel J

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

JUL 10 2009

AS DOCUMENT NO.:
À TITRE DE DOCUMENT NO.:
PER / PAR:

M

HERITAGE HOMES BY INVIDIATA
(Phase 3) INC.
Moving Party/Applicant

CANADIAN IMPERIAL BANK OF
COMMERCE et al.
Respondents

Court File No: 05-CV-284160PD1

Ontario
SUPERIOR COURT OF JUSTICE

Proceeding commenced at Toronto

ORDER

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Solicitors for the Moving Party, Mintz & Partners
Limited