

**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.

B E T W E E N:

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

NOTICE OF MOTION

The Moving Party, Moving Party/Applicant, Mintz & Partners Limited (“MPL”) court appointed Construction Lien Act Trustee (“Trustee”) over certain lands and premises owned by Heritage Homes by Invidiata (Phase 3) Inc. (“Invidiata”) (hereinafter referred to as the “Woodhaven Project”) will make a motion to a Judge , on **Thursday, the 9th day of July 2009, at 10:00 a.m.** or as soon after that time as the motion can be heard, at 393 University Avenue, Toronto, Ontario.

PROPOSED METHOD OF HEARING: The motion is to be heard

__ in writing under subrule 37.12.1(1) because it is on consent or unopposed or made without notice;

__ in writing as an opposed motion under subrule 37.12.1(4)

X orally.

THE MOTION IS FOR

- a) an order abridging the time for service and validating service;
- b) an order authorizing the payment by MPL of surplus proceeds it holds together with any balance in the Reserve fund to the Accountant of the Superior Court of Justice to the credit of this Application, or to the credit of the Ontario Superior Court of Justice court file No: 1349/05 action or as the Court may direct;
- c) an order for approving all of the steps, activities and distributions of the MPL for the period February 21, 2005, to June 5, 2009, as described in the Trustee's first and final report to the Court dated June 17, 2009 (the Trustee's "First and Final Report")
- d) an order approving the accounts of the MPL and the accounts of its solicitors for the period February 21, 2005 to June 17, 2009;
- e) an Order declaring that MPL has duly and properly discharged its duties, responsibilities and obligations as Trustee and is immediately discharged and released together with its employees, counsel, and advisors from any and all further obligations and any and all liability in respect of any act done in their respective capacities as Trustee and as employees, counsel, and advisors thereto in respect of Invidiata and in respect of the Woodhaven Project and its conduct as Trustee pursuant to its appointment in accordance with the Appointment Order or otherwise;
- f) Such further and other relief as this Honourable Court may seem just.

THE GROUNDS FOR THE MOTION ARE:

- a) The Trustee has complied with the mandate it obtained by this Court by the Order of the Honourable Mr. Justice Pitt dated February 21st, 2005, and it has

excess proceeds on hand available to be paid to the lien claimants and other creditors of the Woodhaven Project as directed by the Court.

- b) Rule 16.08.
- c) The Order of Justice Pitt dated February 21st, 2005.

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

- a) Report of the Trustee dated June 17, 2009;
- b) The proceedings herein and such other and further materials as counsel may advise and the Court permit.

June 26, 2009

KLEIN & ASSOCIATES
390 Bay Street, Suite 2929
Toronto, Ontario M5H 2Y2

James Klein LSUC#: 25014B
Tel: (416) 366-9494
Fax: (416) 366-9442

Solicitors for the Moving Party, Mintz &
Partners Limited

To: Fogler, Rubinoff LLP
Barristers and Solicitors
95 Wellington Street West, Suite 1200
Toronto, Ontario M5J 2Z9

Blair W.M. Bowen (bbowen@foglers.com)
Tel: 416-864-9700
Fax: 416-941-8852

Solicitors for Canadian Imperial Bank of Commerce

To: Meyer, Wassenaar & Banach LLP

Barristers & Solicitors
Royal Bank Bldg.,
5001 Yonge Street, Suite 301
North York, Ontario M2N 6P6

Martin G. Banach (mbanach@mwb.ca)
Tel: 416-223-9191
Fax: 416-223-9405

Solicitors for Firm Capital Mortgage Fund Inc.

To: O'Connor MacLeod Hanna LLP

Barristers & Solicitors
700 Kerr Street
Oakville, Ontario L6K 3W5

Kenneth W. Watts (watts@omh.ca)
Tel: 905-842-8030
Fax: 905-842-2460

Solicitors for 1167625 Ontario Limited and B2B TRUST, each as to an undivided 50% interest therein, and ReMax Aboutowne Realty

To: Glaholt LLP

Barristers & Solicitors
141 Adelaide Street West, Suite 800
Toronto, Ontario M5H 3L5

Peter-Paul E. Du Vernet (ped@glaholt.com)
Tel: 416-368-8280
Fax: 416-368-3467

Solicitors for Ted Shuen Kong

To: Rose, Persiko, Rakowsky, Melvin LLP

Barristers & Solicitors
390 Bay Street, Suite 600
Toronto, Ontario M5H 2Y2

Ronald Melvin (rbmelvin@rprlaw.com)
Tel: 416-868-1908
Fax: 416-868-1708

Solicitors for Heritage Homes by Invidiata (Phase 3) Inc. and Danny Bucciarelli

To: Vella & Pratt Professional Corporation

Barristers & Solicitors
155 Rexdale Blvd., Suite 510
Toronto, Ontario M9W 5Z8

George Vella (gevel@aol.com)
Tel: 416-742-4406
Fax: 416-746-2288

Solicitors for Beaudry Contracting Inc., Skoko Aluminum Ltd., Hamilton Builders Supply Inc., Ontario Hearth Limited, Index Drywall Limited, J.D. Barnes Ltd., Eurowood Carpentry 2000 Inc., Jackson Roofing, Royale Painting Ltd., J.J. Home Products Inc., AST Flooring Ltd. and 368757 Ontario Limited

To: Vokes & Pettinato

Barristers & Solicitors
233 Robinson Street,
P.O. Box 100
Oakville, Ontario L6J 4Z5

Edward Pettinato (e.pettinato@on.aibn.com)
Tel: 905-842-8600
Fax: 905-842-4774

Solicitors for 363993 Ontario Limited o/a North Star Electric

To: Roy Wise Professional Corporation

Barrister and Solicitor
40 Scollard Street, Suite 201
Toronto, Ontario M5R 3S1

Roy Wise (roy.wise@wiseandassociates.com)
Tel: 416-866-4144
Fax: 416-866-7946

Solicitor for Downsview Kitchens and Downsview Woodworking Limited

To: Capo, Sgro, DiLena, Hemsworth, Mendicino LLP

Barristers & Solicitors
7050 Weston Road, Suite 400
Woodbridge, Ontario L4L 8G7

Gregory N. Hemsworth (ghemsworth@caposgrodilena.ca)
Tel: 905-850-7000
Fax: 905-850-7050

Solicitors for Limosano Plastering & Stucco Incorporated

To: Bisceglia & Associates
Barristers-at-Law
7941 Jane Street, Suite 200
Concord, Ontario, L4K 4L6

Emilio Bisceglia (ebisceglia@lawtoronto.com)
Tel: 416-633-3336
Fax: 905-695-5201

Solicitors for Central Lumber Limited and Central Fairbank Lumber

To: Gambin RDQ
Barristers & Solicitors
BDC Bldg.
3901 Hwy 7, Suite 400
Vaughan, Ontario L4L 8L5

William Ribeiro (wribeiro@gambinrdq.com)
Tel: 905-264-7800
Fax: 905-264-7808

Solicitors for United Plumbing Inc.

To: Sal's Painting Ltd.
179 Bolzano Drive
Hamilton, Ontario L8W 3W2

Salvatore Gonzalez
Fax: 1-905-388-3858

Lien Claimant

To: Burns, Vasan LLP
Barristers & Solicitors
21 King Street West, Suite 305
Hamilton, Ontario L8P 4W7

Douglas Burns (adouglasburns@burnsvasanlaw.ca)
Tel: 1-905-522-1381
Fax: 1-905-522-0855

Solicitors for Sal's Painting Ltd.

To: Brian I. Taran
Barrister & Solicitor
838 Mt. Pleasant Road
Toronto, Ontario M4P 2L3

(brian@briantaran.com)
Tel: 416-483-7834
Fax: 416-484-1089

Solicitor for Broadway Hardwood Flooring Limited

To: Minden Gross LLP
Barristers and Solicitors
145 King Street West, Suite 2200
Toronto, Ontario M5H 4G2

Raymond M. Slattery (rslattery@mindengross.com)
Tel: 416-362-3711
Fax: 416-864-9223

Solicitors for Eurowood Carpentry 2000 Inc. and Eurowood Concrete & Forming Inc.

To: Koskie Minsky LLP
Barristers & Solicitors
20 Queen Street West, Suite 900
Toronto, Ontario M5H 3R3

Jeffrey J. Long (jlong@koskieminsky.com)
Tel: 416-977-8353
Fax: 416-204-2892

Solicitors for 686008 Ontario Ltd. o/a Minat Sales

To: Parente, Borean
Barristers & Solicitors
3883 Hwy 7 West, Suite 207
Woodbridge, Ontario L4L 6C1

Gerard C. Borean (gborean@parenteborean.com)
Tel: 905-850-6066
Fax: 905-850-6069

Solicitors for Galmar Electrical Contracting Inc.

To: Drudi Alexiou Kuchar LLP
Barristers & Solicitors
7050 Weston Road, Suite 307
Vaughan, Ontario L4L 8G7

Marco Drudi (mdrudi@on.aibn.com)
Tel: 905-850-6116
Fax: 905-850-9146

Solicitors for Omega Trim & Doors Inc. and Studio Fine Cabinetry Inc.

To: Frank Lento
Barrister & Solicitor
3200 Dufferin Street, Suite 504
Toronto, Ontario M6A 2K7

(ldlaw@total.net)
Tel: 416-398-4044
Fax: 416-398-7396

Solicitor for E-M Air Systems Inc.

To: Racioppo Zuber Coetzee Dionne LLP
Barristers & Solicitors
77 City Centre Drive, Suite 700
Mississauga, Ontario L5B 1M5

Jim Smith (jsmith@rzcdlaw.com)
Tel: 905-848-6100 / Toronto Line 416-362-6200
Fax: 905-896-1111

Solicitors for All Weather Windows Ltd.

To: Movat, Eccleston
Barristers and Solicitors
Scotia Plaza
40 King Street West, Suite 2708
Toronto, Ontario M5H 3Y2

Kenneth W. Movat (kenm@movateccleston.com)
Tel: 416-504-2724
Fax: 416-504-2686

Solicitors for Christopher Invidiata

To: Mark L. Castle
Barrister and Solicitor
P.O. Box 8180
150 King Street West, Unit 5
Dundas, Ontario L9H 5G1

mlclaw@sympatico.ca
Tel: 1-905-628-2214
Fax: 1-905-627-5639

Solicitor for 374068 Ontario Inc. o/a Abbey Demolition

To: Department of Justice
Exchange Tower
2 First Canadian Place, Suite 3400
Toronto, Ontario M5X 1A9

Mr. Edward Park (edward.park@justice.gc.ca)
Solicitor, Tax Litigation Section

Tel: 416-954-0116
Fax: 416-973-0810

On behalf of Her Majesty the Queen in right of Canada
as represented by the Minister of National Revenue

To: Irving A. Burton Limited
201 Consumers Road, Suite 204
Willowdale, Ontario M2J 4G8

Irving A. Burton (iabornton@rogers.com)
Tel: 416-491-4644

Trustee in Bankruptcy for the Estate of Heritage Homes by Invidiata (Phase 3) Inc.

To: Miller Thomson LLP
Barristers & Solicitors
Scotia Plaza
40 King Street West, Suite 5800
Toronto, Ontario M5H 3S1

Craig Mills (cmills@millerthomson.com)
Tel: 416-595-8500
Fax: 416-595-8695

Solicitors for Grant Thornton Limited, Trustee for Christopher Invidiata

To: Basman Smith LLP
Barristers & Solicitors
111 Richmond Street West, Suite 800
Toronto, Ontario M5H 2G4

Kevin W. Fisher (kfisher@basmansmith.com)
Tel: 416-365-0300
Fax: 416-365-9276

Solicitors for Lesley Invidiata

To: Schwartz Levitsky Feldman Inc.
1167 Caledonia Road
Toronto, Ontario M6A 2X1

Alan Page
Tel: 416-785-5353 (alan.page@slf.ca)
Fax: 416-416-784-3025

Trustee for the Estate of Omega Trim & Doors Inc. and Studio Fine Cabinet Inc.

To: Simpson, Wigle LLP
Barristers and Solicitors
Commerce Place
21 King Street West, 4th Floor
P.O. Box 990, Stn. LCD 1
Hamilton, Ontario L8N 3R1

Derek Schmuck (schmuckd@simpsonwigle.com)
Tel: 1-905-528-8411
Fax: 1-905-528-9008

Solicitors for Beaudry Contracting Inc.

To: Stevensons LLP
Barristers and Solicitors
7501 Keele Street, Suite 200
Vaughan, Ontario L4K 1Y2

Colin P. Stevenson
Tel: 905-760-2794 (cstevenson@stevensonlaw.net)
Fax: 905-760-2795

Solicitors for River Oaks Developments Inc.

To: Brian W. King, Q.C.
Hopedale Mall
1515 Rebecca Street, Unit 34
Oakville, Ontario L6L 5G8

Tel: 905-827-0808 (bking@briankinglaw.com)
Fax: 905-827-8380

Solicitors for Inex Drywall Systems

To: Bennett & Company
Barristers & Solicitors
116 Simcoe Street, Suite 101
Toronto, Ontario M5H 4E2

Frank Bennett (bennett@ican.net)
Tel: 416-363-8688
Fax: 416-363-8083

Solicitors for Christopher Invidiata

To: MacDonald Associates
Barristers & Solicitors
Park Place Corporate Centre
15 Wertheim Court, Suite 702
Richmond Hill, Ontario L4B 3H7

Jamie Sanderson (jsanderson@maclawyers.ca)
Tel: 905-731-9251
Fax: 905-731-7989

Solicitors for Marissa Bucciarelli

To: McComb Dockrill
Barristers and Solicitors
Toronto-Dominion Bank Tower
Toronto-Dominion Centre
66 Wellington Street West, Suite 2707
P.O. Box 17, Stn. Toronto Dom
Toronto, Ontario M5K 1A1

Chris Dockrill (cdockrill@bellnet.ca)
Tel: 416-366-1881
Fax: 416-366-0608

Solicitors for Kamal Sharma

To: Tarion Warranty Corporation
5150 Yonge Street
Concourse Level
Toronto, Ontario M2N 6L8

Attention: Pat Varcoe (pat.varcoe@tarion.com)

Tel: 416-229-3844
Fax: 416- 229-3843

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

and

CANADIAN IMPERIAL BANK OF
COMMERCE et al.
Respondents

Court File No: 05-CV-284160PD1

ONTARIO
SUPERIOR COURT OF JUSTICE

Proceeding commenced at Toronto

NOTICE OF MOTION

KLEIN & ASSOCIATES
390 Bay Street, Suite 2929
Toronto, ON M5H 2Y2

James Klein LSUC#: 25014B
Tel: 416.366.9494, Ext. 225
Fax: 416.366.9442

Solicitors for the Court Appointed Trustee, Mintz
& Partners Limited