

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

**IN THE MATTER OF 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**

THE HONOURABLE) TUESDAY, THE 29TH
JUSTICE KIMMEL) DAY OF NOVEMBER, 2022

B E T W E E N:

C & K MORTGAGE SERVICES INC.

Applicant

- and -

2781774 ONTARIO INC.

Respondent

ORDER

THIS MOTION made by Rosen Goldberg Inc. in its capacity receiver and manager (in such capacities, the “**Receiver**”) of all of the assets, undertakings and properties of 2781774 Ontario Inc. (the “**Debtor**”) acquired for, or used in relation to a business carried on by the Debtor, including the lands and premises municipally known as 315 Brock Road South, in Puslinch, Ontario, was heard this day by Zoom judicial videoconference.

ON READING the Notice of Motion, the First Report of the Receiver dated November 26, 2022 (the “**First Report**”), and upon hearing the submissions of counsel for the Receiver, counsel for Dipal Patel, Jignesh Kumar Patel and Vishal Patel (collectively, the “**Plaintiffs**”), no one else appearing for any other person on the service list, although served,

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion, Motion Record, including the First Report, is hereby abridged and validated so that this motion is properly returnable today, and hereby dispenses with further service thereof.

2. **THIS COURT ORDERS** that the First Report and the activities and proposed activities of the Receiver set out in the First Report be and are hereby approved.

3. **THIS COURT ORDERS** that only the Receiver, in its personal capacity and only with respect to its own personal liability, shall be entitled to rely upon or utilize in any way the approval of the First Report detailed in paragraph 2 hereof.

4. **THIS COURT ORDERS** that all of the right, title and interests of the Debtor in and to the claims and causes of action against 2335320 Ontario Inc., Muhammad Latif and Sohan Kansal (collectively, the “**Defendants**”) asserted in the draft statement of claim attached hereto as Schedule “A” (collectively, the “**Claims**”) be and are hereby assigned to the Plaintiffs, subject to the rights and security of C & K Mortgage Services Inc. (the “**Applicant**”) in the Claims and the proceeds thereof.

5. **THIS COURT ORDERS** that the Plaintiffs be and are hereby authorized to commence, prosecute and continue the Claims in their own names and at their own risk and expense.

6. **THIS COURT ORDERS** that the Plaintiffs shall provide the Applicant with periodic reports on the status of the Claims, and shall not settle or compromise the Claims for an amount less than the amount of the indebtedness then owing by the Debtor to the Applicant, except with the prior written consent of the Applicant.

7. **THIS COURT ORDERS** that net of legal fees and disbursements incurred by the Plaintiffs in connection with the Claims, the proceeds realized from the Claims shall be paid firstly to the Applicant until the indebtedness then owing by the Debtor to the Applicant is satisfied in full.

8. **THIS COURT ORDERS** that the Plaintiffs shall be entitled to the surplus proceeds of the Claims and all benefits of the Claims remaining after the indebtedness then owing by the Debtor to the Applicant is satisfied in full.

9. **THIS COURT ORDERS** that the Plaintiffs shall execute and deliver to the Applicant a security agreement in form and content satisfactory to counsel for the Applicant, granting the Applicant a security interest in the Claims and the proceeds thereof, as security for the performance and payment by the Plaintiffs of their obligations to the Applicant pursuant to this Order.

10. **THIS COURT ORDERS** that this Order is without prejudice to the rights of the Applicant to assert such claims or causes of action that it may have against the Defendants, or any of them.

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Schedule "A"

Court File No.:

**ONTARIO
SUPERIOR COURT OF JUSTICE**

B E T W E E N:

DIPAL PATEL, JIGNESH KUMAR PATEL and VISHAL PATEL

Plaintiffs

- and -

2335320 ONTARIO INC., MUHAMMAD LATIF and SOHAN KANSAL

Defendants

STATEMENT OF CLAIM

TO THE DEFENDANTS:

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the plaintiff. The claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or an Ontario lawyer acting for you must prepare a statement of defence in Form 18A prescribed by the Rules of Civil Procedure, serve it on the plaintiff's lawyer or, where the plaintiff does not have a lawyer, serve it on the plaintiff, and file it, with proof of service, in this court office, **WITHIN TWENTY DAYS** after this statement of claim is served on you, if you are served in Ontario.

If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your statement of defence is forty days. If you are served outside Canada and the United States of America, the period is sixty days.

Instead of serving and filing a statement of defence, you may serve and file a notice of intent to defend in Form 18B prescribed by the *Rules of Civil Procedure*. This will entitle you to ten more days within which to serve and file your statement of defence.

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU, IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

IF YOU PAY THE PLAINTIFF'S CLAIM and \$2,500.00 for costs, within the time for serving and filing your statement of defence, you may move to have this proceeding dismissed by the court. If you believe the amount claimed for costs is excessive, you may pay the plaintiff's claim and \$400.00 for costs and have the costs assessed by the court.

TAKE NOTICE THIS ACTION WILL AUTOMATICALLY BE DISMISSED if it has not been set down for trial or terminated by any means within five years after the action was commenced unless otherwise ordered by the court.

Date: November ____, 2022

Issued by: Local registrar

Address of Court House:
330 University Avenue
Toronto, Ontario M5G 1E6

TO: 2335320 ONTARIO INC.
8 Cortese Terrace
Thornhill, Ontario
L4J 8S4

AND TO: MUHAMMAD LATIF
15 Pleasant Valley Drive
Stouffville, Ontario
L4A 7X4

AND TO: SOHAN KANSAL
8 Cortese Terrace
Thornhill, Ontario
L4J 8S4

CLAIM

1. The Plaintiffs claim against the Defendants, 2335320 Ontario Inc. (the "Vendor"), Muhammad Latif ("Latif") and Sohan Kansal ("Kansal") (collectively, the "Vendor Defendants"):

- a) Damages in the amount of \$8,000,000.00 for fraudulent misrepresentation, breach of contract, deceit and the breach of duty of good faith and honest performance;
- b) Punitive, aggravated and exemplary damages in the amount of \$100,000.00;
- c) A Declaration that any judgment granted as against the Vendor Defendants, or any one of them, constitutes a debt or liability that shall not be released by an order of discharge from bankruptcy pursuant to the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, or any similar statute or regulation;
- d) Pre and post-judgment interest in the accordance with the *Courts of Justice Act*;
- e) Costs of this action; and
- f) Such further and other relief as this Honourable Court may permit.

THE PARTIES

2. The Plaintiff, Dipal Patel ("Dipal") is an individual residing in the Town of Port Hope, in the Province of Ontario. At all material times, Dipal was a shareholder, officer and director of 2781774 Ontario Inc. (the "Purchaser").

3. The Plaintiff, Jignesh Kumar Patel (“Jignesh”) is an individual residing in the City of Toronto in the Province of Ontario. At all material times, Jignesh was also a shareholder, officer and director of the Purchaser.

4. The Plaintiff, Vishal Patel (“Vishal”) is an individual residing in the City of Vaughan, in the Province of Ontario. At all material times, Vishal was also a shareholder, officer and director of the Purchaser.

5. By way of a Court Order dated November 29, 2022, all rights, title and interest of the Purchaser in respect of the claims herein were assigned to the Plaintiffs.

6. The Vendor is an entity incorporated pursuant to the laws of the Province of Ontario.

7. Latif is an individual who resides in the Province of Ontario. At all material times, Latif was an officer, director and/or principal of the Vendor.

8. Kansal is also an individual who resides in the Province of Ontario. At all material times, Kansal was also an officer, director and/or principal of the Vendor.

9. Latif and Kansal are hereinafter referred to as the “Vendor Principals”.

10. The Plaintiffs state that to the extent that either of Latif or Kansal are not principals of the Vendor, then their actions as described herein were conducted solely on their personal behalf.

THE VENDOR’S SALE OF THE GAS STATION TO THE PURCHASER

11. On or about June 19, 2020, the Purchaser and the Vendor entered into an agreement and purchase of sale (the “APS”).

12. Pursuant to the APS, the Vendor agreed to sell the property municipally known as 315 Brock Road South, Guelph, Ontario (the "Property"), inclusive of a gas station and convenience store thereon (the "Business") to the Purchaser (the "Transaction").

13. The purchase price for the Transaction was agreed to at \$4,425,000 based principally upon certain representations by the Vendor and the Vendor Principals as to certain sales volumes of the Business.

14. The representations of the Vendor and the Vendor Principals were further made to, and used to prepare a third party appraisal of the Business, which valued same at \$6,050,000.

15. Shortly after entering into the APS, the Vendor Principals indicated to the Purchaser and the Plaintiffs that they would secure a lease/tenancy from a "Tim Horton's" franchise for the Property/Business.

16. Based on said promise, the Purchasers were induced into increasing the purchase price of the Transaction to \$5,690,000.

17. The Vendor Principals promised that if a lease/tenancy for a Tim Horton's was not secured at the time of the closing for the Transaction, then the purchase price of the Transaction would be reduced back to \$4,425,000.

18. The Plaintiffs state that the Vendor Principals further represented to them that proceeding with the increased purchase price for the Transaction would benefit them in connection with future capital gains should a Tim Horton's be added to the Business at a future date and would be of no risk to them given the loan from the Vendor Principals.

19. At the time the Vendor Principals had raised the promise of securing of the Tim Horton's franchise as part of the Transaction, they had agreed that financing for the balance of the purchase price in relation to the increased price would be financed by way of a vendor take back mortgage offered by the Vendor Principals through another corporation, 1650333 Ontario Inc, of which Kansal and/or Latif were officers, directors and/or principals.

20. Almost immediately following the Closing, the Vendor Principals advised that they could not secure a lease/tenancy with Tim Horton's and thereby the purchase price of the Transaction reverted back to \$4,425,000.

21. The Plaintiffs state that they found the structure of this transaction rather odd, but as it was their first purchase of gas station, they relied upon the Vendor Principals who advised that such arrangements were common.

22. The Transaction closed on December 2, 2020 (the "Closing").

FINANCING FOR THE TRANSACTION

23. The APS specifically contemplated that the Vendor was responsible for arranging financing/a mortgage for Purchaser to complete the Transaction.

24. The Plaintiffs state that as per the terms of the APS, the Vendor was responsible for arranging financing through a private lender for a period of 12-months after the Closing, and that after the Closing, the Vendor would continue to work with the Plaintiffs and/or the Purchaser to arrange bank financing at a better rate, failing which the Seller would have to provide or obtain private financing for an additional one-year as per the terms stated in the APS.

25. In addition, further to the Plaintiffs discussions with the Vendor Principals, and as per the terms of the APS, it was agreed that if the interest rate for the financing arranged by the Vendor was above 5.5%, then the Vendor would reimburse the Purchaser for any interest payments amounts beyond that set rate (the "Interest Differential").

26. The Plaintiffs further state that in order to induce them and the Purchaser into completing the Transaction, the Vendor Defendants agreed to and did make payment of a significant portion of the Lender's fee for the financing arranged by the Vendor.

27. To further induce the Plaintiffs and the Purchaser to complete the Transaction, the Vendor Principals advised the Purchaser and the Plaintiffs that financing for the Transaction could be arranged by the Vendor Defendants through C & K Mortgage Services Inc., which carries on business as Rescom Capital (the "Lender").

28. The Vendor Principals represented that they and the Vendor had a long-standing personal and professional relationship with the Lender, which they could leverage to secure favourable financing for the Purchaser to close the Transaction.

29. The Plaintiffs state that virtually all communication with the Lender regarding financing for completion of the Transaction was carried out and/or facilitated by the Vendor Principals.

30. With the assistance of the Vendor Principals, the Purchaser and the Plaintiffs entered into a commitment with the Lender to receive financing for the Transaction, and ultimately the Lender provided the necessary financing on Closing.

31. On Closing, a charge for the Lender's first-ranking security was registered on title to the Property for the amount of \$4,000,000 (the "Loan").

32. In addition to the charge on the Property, the Loan was also secured by a first-ranking general assignment of rents and a general security agreement.

33. The Plaintiffs state that pursuant to the terms of the APS, and as represented to them by the Vendor Principals, the Vendor delivered payments to the Purchaser with respect to the Interest Differential, as the financing with the Lender was at a rate beyond 5.5%.

34. The Plaintiffs state that after the Vendor was late in paying the Interest Differential to the Purchaser, they requested the Vendor Defendants to make payment of the Interest Differential directly to the Lender, but the Lender stated that it could only accept payments from the Purchaser.

THE VENDOR DEFENDANTS' MISREPRESENTATIONS

35. As part of the due diligence disclosure and other information exchanged prior to completion of the Transaction, the Vendor Defendants, including specifically the Vendor Principals, provided the Purchaser, among other things, unaudited financial statements, financial projects, financial statements, an "Appraisal", dated May 1, 2020 and other information regarding the Property and Business.

36. Most notably, the Vendor Principals provided information about the sales volumes to the Plaintiffs which significantly misrepresented the volume of fuel sales for the subject Business (the "Fuel Misrepresentation").

37. The Plaintiffs further state that this same Fuel Misrepresentation was also made to and/or otherwise conveyed to the author of the Appraisal, which was arranged for and addressed to Kansal, and thereby the Fuel Misrepresentation formed the basis of the appraised value which was also represented by the Vendor Defendants, including specifically the Vendor Principals, to the Purchaser and the Plaintiffs.

38. The Plaintiffs state that after the Closing, upon receiving "Commissions Reports" from the gasoline supplier for the Business, the Purchaser discovered the Fuel Misrepresentation by realizing that the fuel sales volume was actually a small fraction of the amount(s) represented to the Purchaser by the Vendor Defendants, including specifically the Vendor Principals.

39. The Purchaser further states that the Vendor Principals' promises to secure the lease/tenancy with Tim Horton's was another misrepresentation made by the Vendor Principals (the "Lease Misrepresentation").

40. The Fuel Misrepresentation, Lease Misrepresentation and other misrepresentations, which will be particularized prior to trial, are hereinafter referred to as the "Misrepresentations".

41. The Plaintiffs state that on behalf of the Purchaser, they detrimentally relied on the Vendor Defendants' Misrepresentations, as well as the Appraisal secured by and presented by the Vendor Defendants and other misrepresentations and promises made by the Vendor Defendants, including specifically the Vendor Principals, in the course of the Transaction.

42. The Plaintiffs state that the Misrepresentations, and the information resulting therefrom induced their decision for the Purchaser to complete the Transaction and the price which the Purchaser was willing to pay to complete the Transaction.

43. The Plaintiffs further state that the Misrepresentations were specifically made to induce the Purchaser into completing the Transaction, and to induce the Lender into providing a higher amount of financing for the Transaction.

44. The Plaintiffs state that they immediately approached the Vendor Principals upon learning of the Fuel Misrepresentation and were advised that it was a simple mistake and that the Vendor Principals would pay a significant portion of the Lender's financing costs while they worked on a solution.

45. The Plaintiffs state that while the Vendor Principals did make certain such payments to the Lender, totaling approximately \$50,000, the Plaintiffs learned that the "solution" that the Vendor Principals were proposing was to have the Plaintiffs repeat the misrepresentations to other lenders that would replace the Lender, as well as to prospective subsequent purchasers.

46. The Plaintiffs state that the Vendor Principals arranged a new appraisal report for the Business which they used to arrange potential refinancing of the Loan for the Purchaser through other lenders and which they indicated they also intended to use to market the sale of the Business to other prospective subsequent purchasers.

47. The Plaintiffs state that like the first Appraisal report, the new appraisal report prepared by the Vendor Principals, was based upon fraudulently inflated fuel sales and other sales figures, which bore no resemblance to the actual sales of the Business.

48. The Plaintiffs state that they refused to participate in this fraud and instead contacted the Lender to advise them of the fraud being perpetrated upon the Lender and on the Purchaser/Plaintiffs by the Vendor Principals.

APPOINTMENT OF RECEIVER BY THE LENDER

49. The Plaintiffs state that over the course of the Purchaser's ownership of the Property and Business, it made its best efforts to carry out the Business after the Closing, and the Plaintiffs made personal financial contributions to the Purchaser for the Business in an effort to maintain its viability and so that it could pay its Loan and other obligations.

50. The Plaintiffs state that notwithstanding the foregoing, the actual revenue generated by the Business was not sustainable to allow the Purchaser to satisfy the inflated purchase price for the Transaction, or the Loan obligations.

51. As such, following their notification to the Lender of the above-noted matters, the Lender took steps to appoint a "Receiver", which the Purchaser and Plaintiffs fully cooperated with.

52. On August 4, 2022, the Court granted the Lender's application to appoint a Receiver over the Purchaser's Assets, which included the Property and the Business (the "Receivership Order").

53. Paragraph 9 of the Receivership Order restricted any proceedings against or in respect of the Purchaser or the Property (as defined in the Receivership Order), from being commence or continued, except with written consent of the Receiver or with leave of the Court.

54. By way of a Court Order dated November 29, 2022, the Receiver assigned all rights, title and interest of the Purchaser in respect of the claims herein to the Plaintiffs.

THE PURCHASER'S CLAIMS AND DAMAGES

55. The Plaintiffs state that the damages owed to it by the Vendor Defendants are as follows:

- a) All monies paid by the Plaintiffs directly or indirectly to complete the Transaction;
- b) All personal capital injections made by the Plaintiffs into the Purchaser/Business since the Closing and until the Receivership;
- c) The Plaintiffs' loss of their anticipated profit and investment gains from the Transaction;
- d) All costs and damages that it has been forced to expend and will be forced to expend in respect of monies owed to the Lender, including their costs in connection with the Receivership; and,
- e) Other damages to be particularized before trial.

56. The Plaintiffs state that the fraudulent and false representations made by the Vendor Defendants, including specifically the Vendor Principals, were known by them to be false and/or were recklessly made.

57. The Plaintiffs states that the representations made by the Vendor Defendants, including specifically the Vendor Principals, caused and/or induced the Plaintiffs to direct the Purchaser into entering the APS and completing the Transaction at a significantly inflated price.

58. The Plaintiffs state that had they known the true state of the fuel sales volume, they would not have directed the Purchaser to enter the Transaction.

59. Further and/or in the alternative, the Plaintiffs seek damages from the Vendor Defendants on the basis of breach of good faith and honest performance.

60. The Plaintiffs state that the Vendor Defendants, including specifically the Vendor Principals, knowingly and repeatedly lied and mislead the Purchaser vis-à-vis the Plaintiffs by way of the Fuel Misrepresentation, the Lease Misrepresentation and other related matters that are wholly within the knowledge of the Vendor Principals.

61. The Plaintiffs state that the actions of the Vendor Principals over the course of the Transaction, and also thereafter in attempting to fix their Misrepresentations by repeating them to another lender and prospective subsequent purchasers is shocking, callous, high-handed, intentional, wrongful and outrageous, and shows a wanton disregard of the rights of the Plaintiffs and others and is deserving of an award of punitive, exemplary and/or aggravated damages by this Honourable Court.

62. The Plaintiffs state that the Receiver has consented to the commencement of this action and it has been allowed by way of Court Order, dated November 29, 2022.

63. The Plaintiffs request that the trial of this action take place in the City of Toronto.

Date: November ____, 2022

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DIPAL PATEL et al.
Plaintiff

- and -

2335320 ONTARIO INC., et al.
Defendants

Court File No:

ONTARIO
SUPERIOR COURT OF JUSTICE
Proceeding commenced at TORONTO

STATEMENT OF CLAIM

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Lawyers for the Plaintiffs

C & K MORTGAGE SERVICES INC.
Applicant

-and-

2781774 ONTARIO INC.
Respondent

Court File No. CV-22-00684807-00CL

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PROCEEDING COMMENCED AT
TORONTO

ORDER

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