

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

B E T W E E N:

ROSE-ISLI CORP., 2631214 ONTARIO INC., SEASIDE CORPORATION, and
2735440 ONTARIO INC.

Applicants

and

FRAME-TECH STRUCTURES LTD., MICHAEL J. SMITH, FRANK SERVELLO,
CAPITAL BUILD CONSTRUCTION MANAGEMENT CORP., and
2735447 ONTARIO INC.

Respondents

APPLICATION under section 248 of the *Business Corporations Act*, R.S.O. 1990, c. B.16,
as amended, section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended, and
section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended

REPLY APPLICATION RECORD

July 4, 2022

Tyr LLP

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Toronto ON M5V 1E3
Fax: 416-987-2370

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Carlos Sayao (LSO #: 68995W)

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Theodore Milosevic (LSO #: 78428H)

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Lawyers for the Applicants

TO: SERVICE LIST

SERVICE LIST

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Proposed Receiver

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*Lawyers for the Applicants,
Rose-Isli Corp., 2631214 Ontario Inc.,
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4. Michael J. Smith

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5. Frank Servello

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Respondent

6. 2735447 Ontario Inc.

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Respondent

7. Capital Build Construction Management Corp.

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Respondent

8. Frame-Tech Structures Ltd.

280 Applewood Crescent, Unit 2
Concord, ON L4K 4B4
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Respondent

9. Trez Capital Limited Partnership

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Secured Creditor

10. Bennett Jones LLP

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Lawyers for Trez Capital Limited Partnership

11. Computershare Trust Company of Canada

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Toronto, ON M5J 2Y1

Administrator and Registered Chargee

12. AKM Holdings Inc.

22 Rowley Drive
Palgrave, ON L7E 0C6
Email: kasia@goldmountcapital.com

Unsecured Creditor

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TAB 1

Court File No.: CV-22-00682959-00CL

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

BETWEEN:

ROSE-ISLI CORP., 2631214 ONTARIO INC., SEASIDE CORPORATION,
and 2735440 ONTARIO INC.

Applicants

– AND –

FRAME-TECH STRUCTURES LTD, MICHAEL J. SMITH, FRANK SERVELLO,
CAPITAL BUILD CONSTRUCTION MANAGEMENT CORP., and 2735447 ONTARIO INC.

Respondents

APPLICATION UNDER SECTION 248 OF THE *BUSINESS CORPORATIONS ACT*
(ONTARIO), R.S.O. 1990, c. B.16, AS AMENDED, SECTION 101 OF THE *COURTS OF*
JUSTICE ACT, R.S.O 1990, c. C. 43, AS AMENDED, AND SECTION 243(1) OF THE
BANKRUPTCY AND INSOLVENCY ACT, R.S.C. 1985, c. B-3, AS AMENDED

REPLY AFFIDAVIT OF KATARZYNA PIKULA
(sworn July 4, 2022)

I, Katarzyna (Kasia) Pikula, of the City of Palgrave, in the Province of Ontario, MAKE
OATH AND SAY:

1. I am the President and a director of the applicants, Rose-Isli Corp., 2631214 Ontario Inc., and Seaside Corporation. As such, have personal knowledge of the matters set out in this affidavit. Where matters described herein are based on information not within my personal knowledge or readily discernable from the face of the documents attached hereto as exhibits, I have stated the source of the information and verily believe it to be true.

2. I swore an Affidavit and a Confidential Affidavit on June 21, 2022, that were filed in this matter (collectively, the “**Main Affidavits**”). Capitalized terms not defined herein have the meanings given in the Main Affidavits.

3. I am swearing this Reply Affidavit in response to the Affidavit of Michael J. Smith sworn July 1, 2022 (the “**Smith Affidavit**”) and the Affidavit of Frank Servello sworn July 1, 2022 (the “**Servello Affidavit**”). Both affidavits were served on me by email at 1:24 AM on July 2, 2022 as shown in the email from Alyssandra Antonangeli of Dickinson Wright LLP attached as **Exhibit “A”** hereto. Given the extremely short timeframe I have had to respond, I do not wish to be taken to admit, and I specifically deny, the statements in the Smith Affidavit and the Servello Affidavit that I do not respond to directly herein.

4. Further, this Reply Affidavit is filing for the purposes of a hearing scheduled for Friday, July 8, 2022, regarding the issue of whether or not a receiver should be appointed with respect to Rosehill. Accordingly, I have attempted to confine my comments in the Reply Affidavit to matters that are relevant to that particular issue, and reserve all rights to further respond to the allegations in the Smith Affidavit and the Servello Affidavit, some of which require additional time and the assistance of professional advisors to review and understand.

Response to Smith Affidavit

5. I am pleased that Mr. Smith has confirmed at paragraphs 6, 69, and 71 of the Smith Affidavit that the Lands and the Rosehill Project must be sold, and that an independent third-party should oversee the sales process.

6. In response to paragraph 42 of the Smith Affidavit, Mr. Smith’s opposition of the sale of the Project to J’Adore in April 2022 is not credible. He states that he and Mr. Servello

“strenuously opposed” this deal because the net sale proceeds were “insufficient” and because they would have to forego their expected profits in the Project. However, just one month after Mr. Smith and Mr. Servello successfully thwarted the J’Adore deal, they presented and urged me to accept an offer they had sourced at a lower price than the price agreed with J’Adore.¹ This implies that they were satisfied with the price J’Adore agreed to pay to acquire the Project.

7. As stated in my Main Affidavits, Mr. Smith and Mr. Servello knew from the outset that I was investing funds (through my corporation) in the 273 Mortgage. The allegations at paragraph 21-22 of the Smith Affidavit are false. I never told Mr. Smith that the investor under 273 Mortgage insisted on remaining anonymous from them and resided overseas.

8. While I deny that I failed to disclose my interest in the 273 Mortgage to Mr. Smith or Rosehill, I am not responding in full to these allegations because they are not relevant for the purposes of this application to appoint a receiver, which is proceeding on an expedited basis. I will respond in full to all lack of disclosure and conflict of interest related allegations at the appropriate time.

9. I do note, however, that I was concerned that my involvement as a lender on the Project not become publicly disclosed for the following reasons. My main business is as a mortgage broker with Goldmount Capital. I was, and remain, concerned that if people in the market learned that I was now also investing in some projects myself (which they could do if my name appeared on a title registry), instead of looking to me to act as a mortgage broker, I would instead become a target for people asking for funding and this would complicate my acting as a mortgage broker. I had embarked on the Rosehill Project as my first personal

¹ The respective amounts of these two offers are set out in my Confidential Affidavit.

investment project of the sort and done so because I had (mistakenly, it appears) trusted Mr. Smith and Mr. Servello to be good partners, and wanted to make sure that such personal activities did not interfere with or complicate my professional practice as a mortgage broker.

10. I deny Mr. Smith's assertions at paragraph 58 of his Affidavit where he alleges that we had an agreement that Capital Build would be compensated in any manner other than being paid the capped fees as set out in the Altus Budget, namely \$750,000 in construction management fees and \$320,000 for head office and development fees. In particular, I would never accept, let alone agree, that a construction manager would do substantial work without invoicing the company so as to misrepresent the financial health of a development project, or to hide such payables of the company with a view to obtaining more favourable construction financing. I am shocked and dismayed that this was Mr. Smith's strategy for the Rosehill Project, which I learned for the first time by reading the Smith Affidavit.

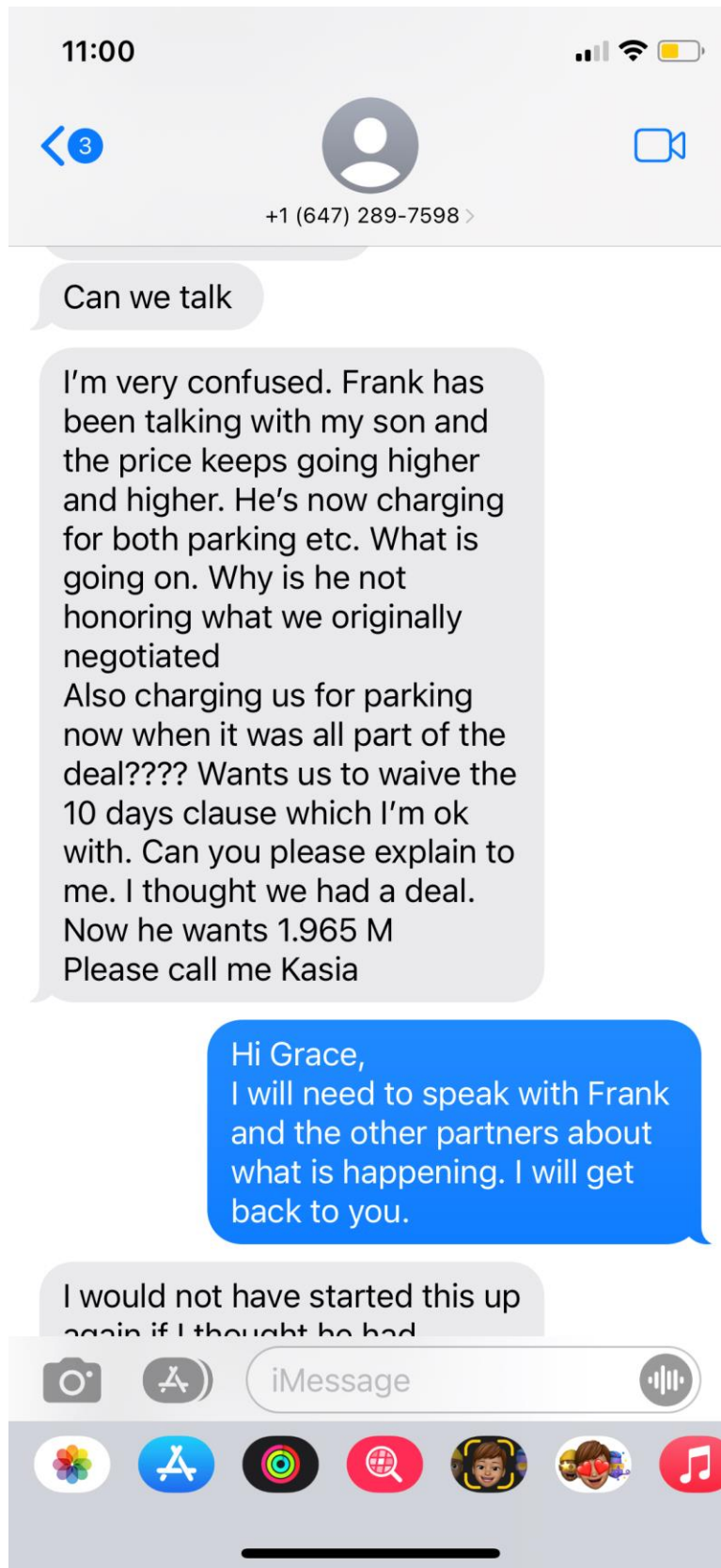
11. In response to paragraph 61 of the Smith Affidavit, I was never aware that the alleged Construction Management Agreement was submitted to Tarion. My involvement with Tarion was limited to providing a personal guarantee in favour of Tarion, at Mr. Smith's request.

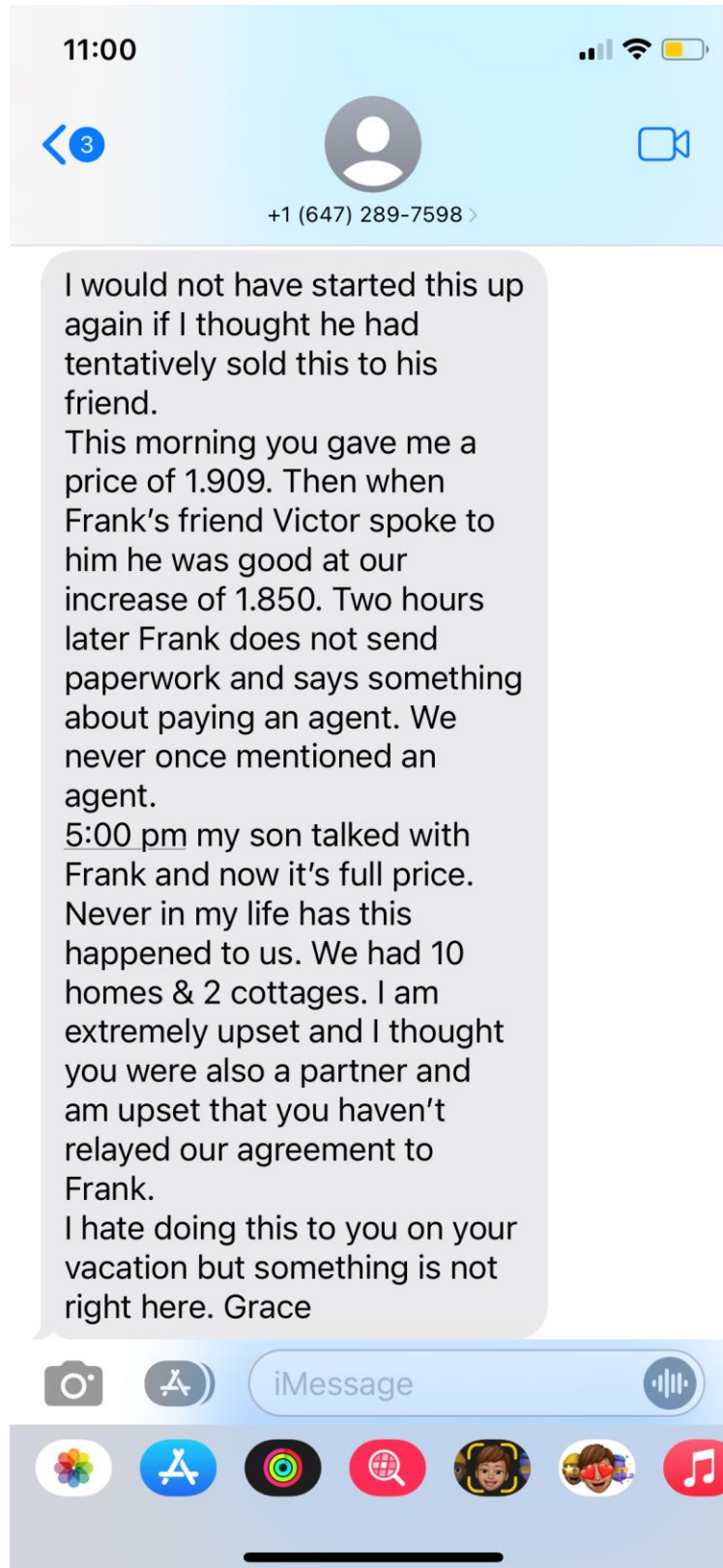
Response to Servello Affidavit

12. In response to paragraph 9 of the Servello Affidavit, it is concerning to learn that Mr. Servello accepted cash payments from condominium unit purchasers in what appear to be under-the-table deals. I never approved such behaviour and never would, as it is highly improper. Further, I am advised by my husband Alfredo that he had no involvement in and never received any money from these deals.

13. Contrary to the assertions in paragraph 10 of the Servello Affidavit, I am advised by Alfredo that he never left threatening voicemails, or otherwise make any other sort of threat, to Mr. Servello nor did he instruct any “associate” to do so.

14. Contrary to the assertions in paragraph 13 of the Servello Affidavit, Mr. Servello did engage in pressure tactics against purchasers. For example, and to provide further details regarding Mr. Servello’s attempts to convince a penthouse purchaser to waive the 10-day cooling off period, I have reproduced below a text message exchange between me and the purchaser (“**Grace**”) on or around March 23, 2022. In this exchange, the purchaser expresses her deep displeasure at the way in which Mr. Servello was dealing with her and her son in connection with the purchase of the penthouse. The grey texts on the left-hand side of the device are from Grace and the blue texts on the right are from me.





SWORN BEFORE ME by video conference by Katarzyna Pikula of the City of Toronto, in the Province of Ontario, before me at the City of Toronto, in the Province of Ontario, on July 4, 2022 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely



Carlos Sayao

Commissioner for Taking Affidavits
(or as may be)



KATARZYNA PIKULA

THIS IS **EXHIBIT "A"** REFERRED TO IN THE REPLY
AFFIDAVIT OF KATARZYNA PIKULA SWORN JULY 4, 2022.



CARLOS SAYAO

*Commissioner for Taking Affidavits
(or as may be)*

Sandy Ballott

From: Alyssandra A. Antonangeli <AAntonangeli@dickinson-wright.com>
Sent: July 2, 2022 1:24 AM
To: Jeffrey.D.Kerbel@parthenon.ey.com; david.saldanha@parthenon.ey.com; skour@reconllp.com; erich@trezcapital.com; zweigs@bennettjones.com; kasia@goldmountcapital.com; Jason Wadden; Carlos Sayao; Theodore Milosevic; Sandy Ballott
Cc: Mordy Mednick; Sam D. Friedman; David P. Preger
Subject: [EXT]: Responding & Counter-Application of FTSL

Follow Up Flag: Follow up
Flag Status: Flagged

CAUTION: This e-mail originated from outside of the firm. Do not click links or open attachments unless you recognize the sender and know that the content is safe.

Dear all,

Please find below a secure link to FTSL's materials in response to your clients' applications and our client's application, which is being served on you pursuant to the *Rules of Civil Procedure*.

Please note the following:

1. Our client's Notice of Application will be delivered on Monday, July 4, 2022. Attached to the record is a copy of the draft order, which will become Schedule "A" to the Notice of Application.
2. Our materials refer to some of the confidential information contained in the affidavits of Pikula and Grossi. We will make sure that none of these materials are uploaded to CaseLines without first redacting the confidential information.
3. The materials will be page numbered and bookmarked shortly.

<https://kiteworks.dickinson-wright.com/w/f-8c4ac65f-3b00-46b6-bf2a-d3e37271c08b>

Kindest regards,
Aly

Alyssandra A. Antonangeli Lawyer

199 Bay Street
Suite 2200
Commerce Court West
Toronto ON M5L 1G4

Phone 416-646-6869
Fax 844-670-6009
Email AAntonangeli@dickinsonwright.com

DICKINSON WRIGHT LLP

ARIZONA CALIFORNIA FLORIDA ILLINOIS KENTUCKY MICHIGAN NEVADA
OHIO TENNESSEE TEXAS WASHINGTON D.C. TORONTO

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Applicants Respondents

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

Proceeding commenced at TORONTO

**REPLY AFFIDAVIT OF KATARZYNA PIKULA
(SWORN JULY 4, 2022)**

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Lawyers for Applicants

TAB 2

Court File No.: CV-22-00682959-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
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B E T W E E N :

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BANKRUPTCY AND INSOLVENCY ACT, R.S.C. 1985, c. B-3, AS AMENDED

AFFIDAVIT OF DAVIDE DI IULIO
(sworn July 4, 2022)

I, Davide Di Iulio, of the City of Toronto, in the Province of Ontario, MAKE OATH AND
SAY:

1. I am the sole officer and director of the applicant, 2735440 Ontario Inc, and was
formerly a lawyer at the firm Schneider Ruggerio Spencer Milburn LLP ("**SR Law**"). As such,
have personal knowledge of the matters set out in this affidavit. Where matters described
herein are based on information not within my personal knowledge or readily discernable from

the face of the documents attached hereto as exhibits, I have stated the source of the information and verily believe it to be true.

2. 2735440 Ontario Inc. ("**273**") was incorporated on or around January 6, 2020 to serve as a bare trustee as described below. At that time, another lawyer with SR Law, Ryan Igel, was the sole director and officer of 273. On or around November 12, 2020, I became the sole officer and director of 273 and 273 began engaging in the business of private lending.

3. On or around January 6, 2020, 273 agreed to extend the respondent 2735447 Ontario Inc. (the "**Company**") loan financing in the principal amount of \$3,400,000, to assist with the acquisition of a property on which a condominium development project was to be constructed. This loan was secured by a second-ranking mortgage on the property (the "**273 Mortgage**").

4. Funds for the 273 Mortgage were provided by Seaside Corporation ("**Seaside**"). Seaside is owned and controlled by Kasia Pikula. I understand that Seaside received funds from different sources for the purpose of advancing the 273 Mortgage.

5. On or around January 13, 2020, an Agreement was entered into between 273 as Trustee and Seaside as Beneficial Owner (the "**Bare Trust Agreement**"). Pursuant to the Bare Trust Agreement, 273 held the 273 Mortgage in trust for the sole benefit of Seaside. A copy of the Bare Trust Agreement is attached as **Exhibit "A"** hereto.

6. SR Law acted as counsel for the parties to both the 273 Mortgage and the Bare Trust Agreement. At that time, I was a lawyer at SR Law (I left the firm in June 2022). The Bare Trust Agreement was included in the closing book for the 273 Mortgage.

7. I spoke to and corresponded with the respondents Michael J. Smith and Frank Servello in respect of all of the closing documents for the 273 Mortgage, both before and after the 273

Mortgage was completed and closed. To the best of my knowledge, SR Law couriered all documents for the 273 Mortgage and acquisition of the property to Mr. Smith's office on or around February 20, 2020. A copy of the delivery confirmation form indicating that the package was delivered to "Mike" is attached as **Exhibit "B"** hereto.

8. Various advances to the Company were subsequently made on the 273 Mortgage. For instance, in or around March 2020, the Company needed funds and an advance of approximately \$160,000 was requested from 273. Around this time, during more than one conversation that I had with Mr. Servello, he referenced the fact that 273 was controlled by Ms Pikula, that he knew that she was at least a partial investor in the 273 Mortgage, and that she was the directing mind of the loan syndicate. He asked me specifically who had invested in the 273 Mortgage, and I responded that it was not my syndicate but that Ms Pikula had invested funds.

9. 273 is also a party to the Rosehill Development Joint Venture Agreement with the Company, the respondent Frame-Tech Structures Ltd., and the applicant 2631214 Ontario Inc (the "**Joint Venture**"). The Joint Venture was entered into after the parties decided to develop the condominium project on the property (the "**Rosehill Project**") rather than sell the property to another developer (the Agreement was fully executed in June 2021 after many months of negotiations). I am 273's representative on the Joint Venture Management Committee, meaning I am responsible for voting 273's 25 per cent interest in the Joint Venture.

10. 273's involvement in the Joint Venture is separate and apart from its role as trustee under the Bare Trust Agreement with Seaside. While the Bare Trust Agreement requires 273 to act as instructed by Seaside in connection with the 273 Mortgage, 273 is not similarly

constrained under the Joint Venture. Instead, I exercise 273's votes under the Joint Venture independently and in accordance with my view as to the best interests of the Rosehill Project as a whole. I reject categorically any suggestion that I am a "puppet" of Ms Pikula, Seaside, or any one else.

11. In or around March 2022, Mr. Smith and Mr. Servello indicated to me that they wanted to buy out the other Joint Venture partners' respective interests in the Rosehill Project and develop the Project on their own. They stated that they intended to pay out all the secured creditors in full, but needed time to raise sufficient funds.

12. In April 2022, I became aware that Ms Pikula wished to sell the Project to a third-party known as J'Adore Homes. At first I was hesitant to agree to such a sale, including because I considered that Mr. Smith and Mr. Servello would be the best parties to take over and develop the site given their familiarity with the Project. However, by late-April 2022, despite the fact that I had urged them on a least a couple of occasions to put forward a proposal, they had still not put forward a real proposal and I was doubting their ability to do so given the passage of time.

13. Around that time, Ms Pikula called two Joint Venture Management Committee meetings to consider a sale of the Project to J'Adore Homes. During the first meeting, I indicated to the Joint Venture partners that 273 was not in a position to vote as I wanted to obtain independent legal advice about certain matters, and the vote was postponed. The night before the second meeting, on or around April 24, 2022, I called both Mr. Servello and Ms Pikula (separately) to advise that I had decided to vote 273's interest in favour of the sale to J'Adore.

14. I made the decision to vote in favour of the sale to J'Adore because I considered it to be in the best interests of the Project. I felt as though Mr. Smith and Mr. Servello had been given sufficient time to put forward their own proposal to acquire the Project and they had not done so. I also considered that there had been a breakdown between the relationship between Ms Pikula on the one hand and Mr. Smith and Mr. Servello on the other and that a sale to another purchaser was necessary to allow the Project to proceed.

15. During the Management Committee meeting on April 25, 2022, both 273 and 263 voted in favour of the sale to J'Adore Homes. Together they account for 62 per cent of the votes, which surpassed the 50 per cent majority needed under the Joint Venture for the sale to be approved. At the meeting the parties agreed that accepting the J'Adore offer would not prevent Mr. Servello and Mr. Smith from making their own offer before closing should they be in a position to do so, and a seller's solicitor condition was included in the agreement to allow for this. To me this was a reasonable compromise to accommodate all parties' interests.

16. Prior to the meeting, Seaside's counsel, Tyr LLP, sent me a letter advising of Seaside's view that it could direct me to vote at the meeting as instructed by it. As stated above, I did not consider that 273 was bound to follow Seaside's or Ms. Pikula's directions in connection with 273's Joint Venture interest. Indeed, the letter set out four points and the manner in which Seaside wished me to vote on these points. The fourth point in the letter, namely the removal and replacement of Capital Build Construction Management Corp. as the Project's Construction Manager did not come up in the meeting, but if it had, I would not have voted in the way suggested in the letter because Capital Build was familiar with the Project and I was not aware of any reason for them to be removed and replaced with a construction manager that had no or limited knowledge of the Project.

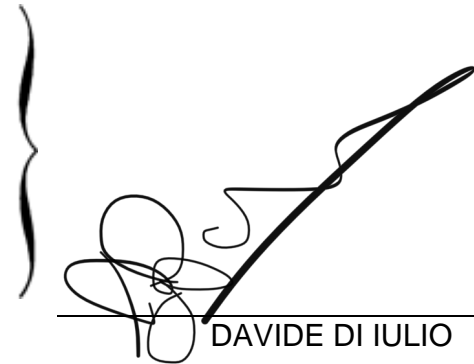
17. A few days after the meeting, I showed Mr. Smith and Mr. Servello an excerpt of the letter from Tyr LLP in the interests of full transparency. I told them that despite the letter, I had exercised 273's vote independently and in the best interests of the Project and the Joint Venture as a whole.

SWORN BEFORE ME by video conference by Davide Di Iulio of the City of Toronto, in the Province of Ontario, before me at the City of Toronto, in the Province of Ontario, on July 4, 2022 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely



Alexandria Matic

Commissioner for Taking Affidavits
(or as may be)



DAVIDE DI IULIO

THIS IS **EXHIBIT "A"** REFERRED TO IN THE AFFIDAVIT
OF DAVIDE DI IULIO SWORN JUL 4, 2022.

A handwritten signature in black ink, reading "Alexandria Matic", written over a horizontal line.

ALEXANDRIA MATIC

*Commissioner for Taking Affidavits
(or as may be)*

- BUCKP

THIS AGREEMENT made the 30th day of January 2020

BETWEEN:

2735440 ONTARIO INC.

(hereinafter called the "Trustee")

OF THE FIRST PART

- and -

SEASIDE CORPORATION

(hereinafter collectively called the "Beneficial Owner")

OF THE SECOND PART

WHEREAS the Trustee has agreed to hold in trust its whole interest in respect of the second charge/ mortgage in the registered principal amount of \$3,000,000.00 together with all ancillary security (the "Mortgage") secured primarily against the properties municipally known as 177, 185 and 197 Woodbridge Avenue, Vaughan, Ontario (collectively the "Property") for the benefit of the Beneficial Owner;

NOW THEREFORE THIS AGREEMENT WITNESSETH THAT:

1. The Trustee hereby acknowledges that it holds the Mortgage secured against the Property as trustee, in trust for and for the sole benefit of the Beneficial Owner.
2. The Trustee further declares that it has no beneficial right, title or interest, directly or indirectly, in the Mortgage and that any and all other rights in respect thereof, including any proceeds arising from the sale, transfer or other disposition thereof, do not in any manner whatsoever belong to the Trustee but are the property of, and are subject to the order and control of, the Beneficial Owner, its successors and assigns.
3. The Trustee further agrees (i) to transfer, assign, convey, and otherwise deal with the Property at any and all times as instructed and directed by the Beneficial Owner; (ii) that it will not convey or otherwise deal with the Mortgage, except as authorized, instructed, or directed by the Beneficial Owner; and (iii) that in acting as trustee it will give prompt written notice to the Beneficial Owner of any claims, liens, actions, or proceedings against the Mortgage or the Property that shall come to its attention by reason of it holding registered ownership of the Mortgage.
4. The Beneficial Owner acknowledges that the Trustee has been requested to hold the Mortgage in trust for the account of the Beneficial Owner as above provided and the Beneficial Owner hereby covenants and agrees to indemnify and save harmless the Trustee from and against all costs, charges, expenses and liabilities of the Trustee that arise by reason of the Trustee being a trustee.

5. This agreement shall enure to the benefit of and be binding upon the parties hereto and their respective heirs, executors, administrators, legal personal representatives, successors and assigns.

6. This Agreement may be executed in one or more counterparts, each of which so executed shall constitute an original and which together shall constitute one and the same agreement. This Agreement may be executed by facsimile or email, and receipt by any party to this agreement of a facsimile or PDF copy showing execution by one or more parties shall be considered firm and binding upon the parties having so executed.

[Signing page follows]

This agreement has been executed by the parties hereto as of the date written on the first page hereof.

2735440 ONTARIO INC.

Per: 

Name: Ryan Igel

President

I have the authority to bind the corporation

SEASIDE CORPORATION

Per: 

Name: Katarzyna Anna Pikula

President

I have the authority to bind the corporation

THIS IS **EXHIBIT "B"** REFERRED TO IN THE AFFIDAVIT
OF DAVIDE DI IULIO SWORN JULY 4, 2022.

A handwritten signature in black ink, reading "Alexandria Matić". The signature is written in a cursive style with a horizontal line underneath it.

ALEXANDRIA MATIC

*Commissioner for Taking Affidavits
(or as may be)*

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Order Details

Create New Order | Order History |

Status : Delivered
Created : May 16, 2022 09:36am
Pickup
Company: Schneider Ruggiero, LLP
Address: 120 Adelaide St. W, Suite: 1000
City: TORONTO **Province:** ON **Postal Code:**M5H 3V1
Contact Name: Inma Llama **Phone Number:**416-363-2211

Print Way Bill
W/B Number : 649237
Delivery
Company: Michael Smith
Address: 111 Buttermill Ave
City: WOODBRIDGE **Province:** ON **Postal Code:**4J3x5
Contact Name: **Phone Number:**

Pickup Date: Feb 20, 2020 **Ready Time:** 03:25
Service: Express Noon **Vehicle:** Weight: 2 lb **Insurance:** Number of pieces: 1 **Package type:** Envelope
Comments:

Delivered On: February 20, 2020 AT 10:29am **Recipient:** Mike (redirected to 357 Edgeley Blvd,unit 11)

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

Proceeding commenced at TORONTO

**AFFIDAVIT OF DAVIDE DI IULIO
(SWORN JULY 4, 2021)**

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Lawyers for Applicants

Applicants Respondents

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

Proceeding commenced at TORONTO

REPLY APPLICATION RECORD

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