

IN THE COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL DISTRICT OF CALGARY

IN BANKRUPTCY AND INSOLVENCY

IN THE MATTER OF THE INSOLVENCY OF SAFEGUARD REAL ESTATE INVESTMENT
FUND LIMITED PARTNERSHIP and its GENERAL PARTNER WEALTHCRETE INVESTMENT
CORPORATION

AND IN THE MATTER OF S. 47.1 OF THE *BANKRUPTCY AND INSOLVENCY ACT* OF CANADA
R.S.C. 1985, c. B-3 AS AMENDED

AND S. 13(2) OF THE *JUDICATURE ACT*, R.S.A. 2000, c. J-2, AS AMENDED

BEFORE THE HONOURABLE	)	At the Calgary Courts Centre, in the City of
MADAM JUSTICE B.E.C. ROMAINE	)	Calgary, in the Province of Alberta, on
IN CHAMBERS	)	Thursday, the 25 th day of June, 2009.

ORDER

UPON the application of James Crittall; AND UPON hearing read the Affidavits of Vincenzo De Palma and James Crittall, filed; AND UPON reviewing the Briefs filed; AND UPON hearing Counsel for the Applicant, Counsel for Wealthcrete Investment Corporation, Counsel for Strategic Financial Corp., and Counsel for the Interim Receiver; IT IS HEREBY ORDERED THAT:

1. The Applicant's application pursuant to section 71 of the *Partnership Act*, R.S.A. 2000, c. P-3 for an Order directing the Registrar of Corporations to amend the Certificate of Limited Partnership No. 12213054 filed pursuant to Section 52 of the said *Act*, as amended, to reflect the replacement of paragraph 3 of the Certificate with the following:

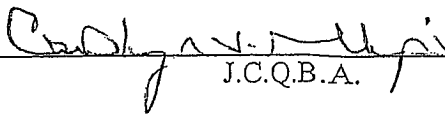
The General Partner of the Partnership is Lavalin L.P. Investment Corp. (the "General Partner") pursuant to a resolution of the Limited Partners, dated effective May 24, 2009

The address of the General Partner is:

Suite 40, 308 – 11th Avenue S.E.
Calgary, Alberta T2G 0Y2

be and the same is hereby stayed, without prejudice to the Applicant's right to renew it.

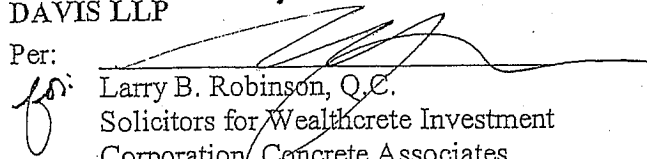
2. This Order may be approved by facsimile and in counterpart.


J.C.Q.B.A.

APPROVED as to form and content
this 2nd day of ~~June~~, 2009
July

DAVIS LLP

Per:


for: Larry B. Robinson, Q.C.
Solicitors for Wealthcrete Investment
Corporation, Concrete Associates
Investment Corporation and Concrete
Associates II Investment Corporation

MCCARTHY TETRAULT LLP

Per:

Sean F. Collins
Solicitors for Ernst & Young Inc.

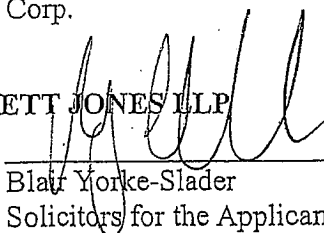
GOWLING LAFLEUR HENDERSON LLP

Per:

Peter S. Jull, Q.C.
Solicitors for Strategic Financial
Corp.

BENNETT JONES LLP

Per:


Blair Yorke-Slader
Solicitors for the Applicant

ENTERED this 20th day of ~~June~~, 2009
V.A. BRANDT COURT
Clerk of the Court SEAL

be and the same is hereby stayed, without prejudice to the Applicant's right to renew it.

2. This Order may be approved by facsimile and in counterpart.

J.C.Q.B.A.

APPROVED as to form and content
this ____ day of June, 2009

DAVIS LLP

Per: _____

Larry B. Robinson, Q.C.
Solicitors for Wealthcrete Investment
Corporation, Concrete Associates
Investment Corporation and Concrete
Associates II Investment Corporation

MCCARTHY TETRAULT LLP

Per: _____

Sean F. Collins
Solicitors for Ernst & Young Inc.

GOWLING LAFLEUR HENDERSON LLP

Per: _____

Peter S. Jull, Q.C.
Solicitors for Strategic Financial
Corp.

BENNETT JONES LLP

Per: _____

Blair Yorke-Slader
Solicitors for the Applicant

ENTERED this ____ day of June, 2009

Clerk of the Court

be and the same is hereby stayed, without prejudice to the Applicant's right to renew it.

2. This Order may be approved by facsimile and in counterpart.

J.C.Q.B.A.

APPROVED as to form and content
this ____ day of June, 2009

DAVIS LLP

Per: _____

Larry B. Robinson, Q.C.
Solicitors for Wealthcrete Investment
Corporation, Concrete Associates
Investment Corporation and Concrete
Associates II Investment Corporation

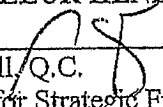
MCCARTHY TETRAULT LLP

Per: _____

Sean F. Collins
Solicitors for Ernst & Young Inc.

GOWLING LAFLEUR HENDERSON LLP

Per: _____

Peter S. Jull, Q.C. 
Solicitors for Strategic Financial
Corp.

BENNETT JONES LLP

Per: _____

Blair Yorke-Slader
Solicitors for the Applicant

ENTERED this ____ day of June, 2009

Clerk of the Court

ACTION NO: 0901-07666

IN THE COURT OF QUEEN'S BENCH OF
ALBERTA
JUDICIAL DISTRICT OF CALGARY

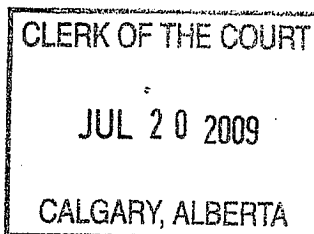
IN BANKRUPTCY AND INSOLVENCY

IN THE MATTER OF THE INSOLVENCY OF
SAFEGUARD REAL ESTATE INVESTMENT
FUND LIMITED PARTNERSHIP and its
GENERAL PARTNER WEALTHCRETE
INVESTMENT CORPORATION

AND IN THE MATTER OF S. 47.1 OF THE
BANKRUPTCY AND INSOLVENCY ACT OF
CANADA R.S.C. 1985, c. B-3 AS AMENDED

AND S. 13(2) OF THE *JUDICATURE ACT*, R.S.A.
2000, c. J-2, AS AMENDED

ORDER



BENNETT JONES LLP
Barristers and Solicitors
4500, 855 2nd Street S.W.
Calgary, Alberta T2P 4K7

Blair C. Yorke-Slader
Telephone No.: (403) 298-3291
Fax No.: 403-265-7219
Our File No.: 64406.1

Appeal No. 0901-0194-AC
Queen's Bench No. 0901-07666
0901-07667
0901-07668
0901-07669
0901-07953

IN THE COURT OF APPEAL OF ALBERTA

IN THE MATTERS OF SAFEGUARD REAL ESTATE INVESTMENT FUND LIMITED
PARTNERSHIP, SAFEGUARD REAL ESTATE INVESTMENT FUND II LIMITED
PARTNERSHIP, SAFEGUARD REAL ESTATE INVESTMENT LIMITED FUND III
LIMITED PARTNERSHIP, SAFEGUARD REAL ESTATE INVESTMENT LIMITED FUND
IV LIMITED PARTNERSHIP, SAFEGUARD REAL ESTATE INVESTMENT LIMITED
FUND V LIMITED PARTNERSHIP

BETWEEN:

JAMES CRITTALL, TERRY LEE TOWN and
GREGG W. HATTON-FEARNLEY

Appellants

- and -

WEALTHCRETE INVESTMENT CORPORATION, CONCRETE ASSOCIATES
INVESTMENT CORPORATION and CONCRETE ASSOCIATES II INVESTMENT
CORPORATION

Respondents

CIVIL NOTICE OF APPEAL

1. **APPEAL FROM:** ☐ Judgment ☒ Orders ☐ Decision

PORTION BEING APPEALED (R.511):

- ☒ Whole of Orders granted June 25, 2009
☒ Only specific part(s) of Orders granted June 9, 2009

If specific part(s), indicate which part(s):

Paragraph 9 of each such Order, entitled "No Proceedings Against the Partnership or the Property", included a prohibition of the commencement or continuation of proceedings to replace the General Partner of each Limited Partnership by the phrase "including any proceedings to replace the General Partner." Such portion of each Order is appealed.

PROVIDE A BRIEF DESCRIPTION OF THE ISSUES:

The Limited Partners of three Limited Partnerships resolved by extraordinary resolution to replace their General Partners, as their Limited Partnership Agreements provided. The General Partners of the three Limited Partnerships and of two further affiliated Limited Partnerships filed Notices of Intention to Make Proposals in Bankruptcy in the names of the Limited Partnerships. Upon application, a Chambers Judge granted wide ranging Interim Receivership Orders. In settling the Minutes of the Orders, counsel for a number of Limited Partners asked that a paragraph be included pursuant to section 71 of the *Partnership Act*, directing the Registrar of Corporations to complete the process of replacement of the General Partners by recording the relevant amendments of the Certificates of Limited Partnership. The Chambers Judge directed that formal applications in such regard be made. The outgoing General Partners refused to sign the required notices of amendment, so the applications were made, but were stayed by the Chambers Judge on the ground that they represented a collateral attack on her Interim Receivership Orders. A paragraph of the Interim Receivership Orders was then clarified to prohibit, without leave of the Court or consent of the Receiver, further proceedings to replace the General Partners.

The primary issue is the authority, if any, of a Chambers Judge to stay or deny a section 71 application by a Limited Partner entitled to have the required notice of amendment signed, where the section provides that the Court "shall by order direct the Registrar to record the relevant amendment to the Certificate."

OF THE TWO OPTIONS BELOW, INDICATE WHERE THE ORDER ORIGINATED:

☒ **COURT OF QUEEN'S BENCH**

File numbers: 0901-07666
0901-07667
0901-07668
0901-07669
0901-07953

Location: Calgary

Justice: B.E.C. Romaine

On appeal from a Queen's Bench Master or Provincial Court Judge? ☐ Yes ☒ No

☐ **BOARD, TRIBUNAL OR PROFESSIONAL DISCIPLINE BODY**

2. PARTICULARS OF JUDGMENT, ORDER OR DECISION APPEALED FROM:

Date pronounced: June 9 and 25, 2009, respectively
Date entered: June 26 and July __, 2009, respectively
Date served: June 29 and July __, 2009, respectively

Attach a copy pursuant to R.506(2). If a copy is not attached, provide reason:

The June 9 Orders appealed from are in five related proceedings, and are essentially identical. The June 25 Orders appealed from are in three such proceedings, and are also essentially identical. The forms of Order in Q.B. Action No. 0901-07666 are attached.

3. IF THE ORDER ORIGINATED IN THE COURT OF QUEEN'S BENCH, CHECK ONE OF THE FOLLOWING, TO INDICATE THE TYPE OF ORDER THAT IS UNDER APPEAL:

☒ Interim order made in chambers

Specify nature of order:

- (a) Interim Receivership Orders – 5 real estate limited partnerships
(b) Order staying applications under s. 71 of the *Partnership Act* to complete change of general partners approved by extraordinary resolutions of limited partners

☐ Final order or refusal to grant final order before trial (e.g. summary judgment, striking pleadings, etc.)

☐ Judgment after trial

4. (A) IS THIS APPEAL ABOUT PROCEDURE OR CUSTODY OR ACCESS ONLY UNDER PART J. OF THE CONSOLIDATED PRACTICE DIRECTIONS?

☒ YES ☐ NO

IF YES, CHECK APPLICABLE BOXES:

Error correcting only ☒ Yes ☐ No

Involves new law ☐ Yes ☒ No

IF YES, WAS VIVA VOCE EVIDENCE GIVEN IN THE COURT APPEALED FROM? ☐ Yes ☒ No

4. (B) IS THIS A FAMILY LAW APPEAL?

☐ YES ☒ NO

IF YES, CHECK APPLICABLE BOXES:

☐ Divorce

Error correcting only ☐ Yes ☐ No

Involves new law ☐ Yes ☐ No

☐ Maintenance Only

☐ Child support ☐ Spousal support ☐ Spousal and child support

Error correcting only ☐ Yes ☐ No

Involves new law ☐ Yes ☐ No

☐ Maintenance Arrears

☐ Child support ☐ Spousal support ☐ Spousal and child support

Error correcting only ☐ Yes ☐ No

Involves new law ☐ Yes ☐ No

☐ Matrimonial property

Error correcting only ☐ Yes ☐ No

Involves new law ☐ Yes ☐ No

☐ Adoption

Error correcting only ☐ Yes ☐ No

Involves new law ☐ Yes ☐ No

☐ Guardianship

Error correcting only ☐ Yes ☐ No

- | | | | | | |
|--------------------------|---|--------------------------|-----|-------------------------------------|----|
| | Involves new law | ☐ | Yes | ☐ | No |
| ☐ | Parentage | | | | |
| | Error correcting only | ☐ | Yes | ☐ | No |
| | Involves new law | ☐ | Yes | ☐ | No |
| ☐ | Protection against family violence | | | | |
| | Error correcting only | ☐ | Yes | ☐ | No |
| | Involves new law | ☐ | Yes | ☐ | No |
| ☐ | Other, please specify: * | | | | |
| | * | | | | |
| | Error correcting only | ☐ | Yes | ☐ | No |
| | Involves new law | ☐ | Yes | ☐ | No |
| 5. | HAS THIS FILE BEEN UNDER CASE MANAGEMENT IN THE COURT OF QUEEN'S BENCH? | ☐ | YES | ☒ | No |
| | * | | | | |
| 6. | IS THIS CASE RELATED TO ANY CASE PRESENTLY BEFORE OR ABOUT TO BE FILED IN THIS COURT: (e.g. Arises From Same Controversy; Involves Same, Similar Or Related Issues, Etc.) | ☐ | YES | ☒ | No |
| 7. | IS THE CONSTITUTIONAL VALIDITY OF AN ACT OR REGULATION BEING CHALLENGED AS A RESULT OF THIS APPEAL? | ☐ | YES | ☒ | No |
| 8. | HAS MEDIATION BEEN ATTEMPTED IN THE TRIAL COURT? | ☐ | YES | ☒ | No |
| 9. | ARE YOU WILLING TO PARTICIPATE IN JUDICIAL DISPUTE RESOLUTION WITH A VIEW TO SETTLEMENT OR CRYSTALLIZING OF ISSUES? | ☐ | YES | ☒ | No |
| 10. | WOULD CASE MANAGEMENT BE BENEFICIAL? | ☐ | YES | ☒ | No |
| 11. | COULD THIS MATTER BE DECIDED WITHOUT ORAL ARGUMENT? | ☐ | YES | ☒ | No |
| 12. | SHOULD THE APPEAL BE EXPEDITED? | ☐ | YES | ☒ | No |
| | If yes provide reason: * | | | | |
| | * | | | | |
| 13. | IS THERE A STATUTORY BAN, BAN ON PUBLICATION OR AN ORDER OF THE COURT WHICH AFFECTS THE PRIVACY STATUS OF THIS FILE? | ☐ | YES | ☐ | No |
| | * | | | | |

14. APPELLANT'S ESTIMATED TIME OF ARGUMENT: (IF LESS THAN 45 MINUTES):

15. LIST RESPONDENT(S) OR COUNSEL FOR THE RESPONDENT(S):

Provide names of lawyers and law firms, complete addresses, telephone and fax numbers for each, and who they represent.

Larry B. Robinson, Q.C.
Davis LLP
Livingston Place
250 - 2nd Street SW, 1000
Calgary, AB T2P 0C1
Telephone: (403) 698-8715
Facsimile: (403) 296-4474
Counsel for the Respondents

NOTE: THE ADDRESS SET OUT IN SECTION 15 WILL BE CONSIDERED THE RESPONDENT'S ADDRESS FOR SERVICE UNTIL SUCH TIME AS THE RESPONDENT FILES DOCUMENTATION SPECIFYING OTHERWISE.

ALL PARTIES LISTED IN SECTION 15 MUST BE SERVED WITH A FILED COPY OF THE NOTICE OF APPEAL WITHIN THE PRESCRIBED APPEAL PERIOD. [R.510(1)]

July 15, 2009
DATE

SIGNATURE OF APPELLANTS OR COUNSEL

Blair C. Yorke-Slader
Bennett Jones LLP
4500, 855 - 2nd Street SW
Calgary, AB T2X 1M7
Telephone: (403) 298-3291
Fax: (403) 265-7219

APPEAL NO: 0901-0194-AC
ACTION NO: 0901-07666
0901-07667
0901-07668
0901-07669
0901-07953

NOTICE TO THE RESPONDENT

A respondent who fails to comply with the requirements of the Alberta Rules of Court and the Court of Appeal Consolidated Practice Directions, within the prescribed time, will not be allowed to present oral argument, nor be entitled to costs, unless otherwise ordered.

Failure to appear at the appeal hearing may also lead to an order or judgment being made against the respondent in their absence.

NOTICE TO ALL PARTIES

Parties are required to provide an address for service if it is different than the address set out in this document.

Parties are also required to notify the Registrar of any change of address throughout the proceedings, to ensure that they can be contacted at all times.

An address for service within 30 kilometers of the office of the Registrar must be provided [R. 5(1)(b)(i)].

IN THE COURT OF APPEAL OF ALBERTA

IN THE MATTERS OF SAFEGUARD REAL ESTATE
INVESTMENT FUND LIMITED PARTNERSHIP,
SAFEGUARD REAL ESTATE INVESTMENT FUND II
LIMITED PARTNERSHIP, SAFEGUARD REAL ESTATE
INVESTMENT LIMITED FUND III LIMITED
PARTNERSHIP, SAFEGUARD REAL ESTATE
INVESTMENT LIMITED FUND IV LIMITED
PARTNERSHIP, SAFEGUARD REAL ESTATE
INVESTMENT LIMITED FUND V LIMITED
PARTNERSHIP

BETWEEN:

JAMES CRITTALL, TERRY LEE TOWN and GREGG W.
HATTON-FEARNLEY

Appellants

- and -

WEALTHCRETE INVESTMENT CORPORATION,
CONCRETE ASSOCIATES INVESTMENT
CORPORATION and CONCRETE ASSOCIATES II
INVESTMENT CORPORATION

Respondents

CIVIL NOTICE OF APPEAL

BENNETT JONES LLP
Barristers and Solicitors
4500, 855 - 2nd Street SW
Calgary, AB T2X 1M7

Blair C. Yorke-Slader
Telephone No.: (403) 298-3291
Fax No.: (403) 265-7219
Our File No.: 64406-1 BCYS



Appeal No. 0901- 01941 -AC
Queen's Bench No. 0901-07666
0901-07667
0901-07668
0901-07669
0901-07953

IN THE COURT OF APPEAL OF ALBERTA

IN THE MATTERS OF SAFEGUARD REAL ESTATE INVESTMENT FUND LIMITED
PARTNERSHIP, SAFEGUARD REAL ESTATE INVESTMENT FUND II LIMITED
PARTNERSHIP, SAFEGUARD REAL ESTATE INVESTMENT LIMITED FUND III
LIMITED PARTNERSHIP, SAFEGUARD REAL ESTATE INVESTMENT LIMITED FUND
IV LIMITED PARTNERSHIP, SAFEGUARD REAL ESTATE INVESTMENT LIMITED
FUND V LIMITED PARTNERSHIP

BETWEEN:

JAMES CRITTALL, TERRY LEE TOWN and
GREGG W. HATTON-FEARNLEY

Applicants
(Appellants)

- and -

WEALTHCRETE INVESTMENT CORPORATION, CONCRETE ASSOCIATES
INVESTMENT CORPORATION and CONCRETE ASSOCIATES II INVESTMENT
CORPORATION

Respondents
(Respondents)

BEFORE THE HONOURABLE

Mr. JUSTICE *CD O'Brien*) At the Court of Appeal, in the City of Calgary,
IN CHAMBERS) in the Province of Alberta, on Wednesday
) 15th day of July, A.D. 2009.

ORDER

UPON the ex parte application of the Applicants; AND UPON noting the consent of the
Respondents by Counsel; AND UPON hearing Counsel for the Applicants; IT IS HEREBY
ORDERED:

1. The Applicants shall have leave to file their Civil Notice of Appeal in the consolidated form attached as Schedule "A".
2. The granting of such leave to permit consolidation shall be not determine or affect the questions of whether leave to appeal pursuant to section 193(e) of the *Bankruptcy and Insolvency Act*, and/or an extension of the time for making such appeal, is required.
3. For purposes of the subsequent determination of either such question, if required, the date hereof shall be regarded as the effective date of application by the Applicants for such leave or extension.
4. The within Order may be consented to by facsimile.

C. O'Brien
J.C.C.A.A.

CONSENTED TO:

DAVIS LLP

Per:

Larry B. Robinson, Q.C.
Counsel for the Respondents

ENTERED this 16th day of July, 2009.

S. [Signature]
Registrar of the Court of Appeal of Alberta

COURT
SEAL

Appeal No. 0901- -AC
Queen's Bench No. 0901-07666
0901-07667
0901-07668
0901-07669
0901-07953

IN THE COURT OF APPEAL OF ALBERTA
IN THE MATTERS OF SAFEGUARD REAL ESTATE
INVESTMENT FUND LIMITED PARTNERSHIP,
SAFEGUARD REAL ESTATE INVESTMENT FUND
II LIMITED PARTNERSHIP, SAFEGUARD REAL
ESTATE INVESTMENT LIMITED FUND III
LIMITED PARTNERSHIP, SAFEGUARD REAL
ESTATE INVESTMENT LIMITED FUND IV
LIMITED PARTNERSHIP, SAFEGUARD REAL
ESTATE INVESTMENT LIMITED FUND V LIMITED
PARTNERSHIP

BETWEEN:

JAMES CRITTALL, TERRY LEE TOWN and
GREGG W. HATTON-FEARNLEY

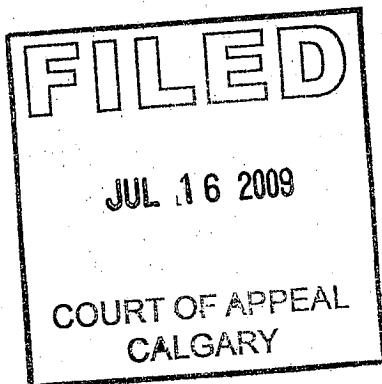
Applicants
(Appellants)

- and -

WEALTHCRETE INVESTMENT CORPORATION,
CONCRETE ASSOCIATES INVESTMENT
CORPORATION and CONCRETE ASSOCIATES II
INVESTMENT CORPORATION

Respondents
(Respondents)

ORDER



BENNETT JONES LLP
Barristers and Solicitors
4500, 855 - 2nd Street SW
Calgary, AB T2X 1M7

Blair C. Yorke-Slader
Telephone No.: (403) 298-3291
Fax No.: (403) 265-7219
Our File No.: 64406-1 BCYS