

**ONTARIO
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE MR.
JUSTICE **DUNPHY**

) TUESDAY, THE 11TH
)
) DAY OF DECEMBER, 2018

BETWEEN:

CWB MAXIUM FINANCIAL INC.

Plaintiff

and

1970636 ONTARIO LTD. o/a MT. CROSS PHARMACY,
UMAIR N. NASIM, SHRIKANT MALHOTRA, 1975193 ONTARIO LTD. dba MTN RX &
HEALTH and ANGELO KIRKOPOULOS

Defendants

ORDER

THIS MOTION made by the Plaintiff, CWB Maxium Financial Inc. (the "**Plaintiff**"), for, *inter alia*, (i) an Order pursuant to Rule 26.01 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 1994 ("**Rules**") granting the Plaintiff leave to amend the Statement of Claim; (ii) an Order pursuant to Rule 3.02 of the Rules extending the time for service of the Amended Statement of Claim (as defined below); and, (iii) an Order pursuant to Rule 42.01 of the Rules and section 103 of the *Courts of Justice Act* R.S.O. 1990, Chapter C.43 granting the Plaintiff leave to issue a Certificate of Pending Litigation against the Property (as defined below), was heard this day at the Court House 330 University Avenue, Toronto, Ontario.

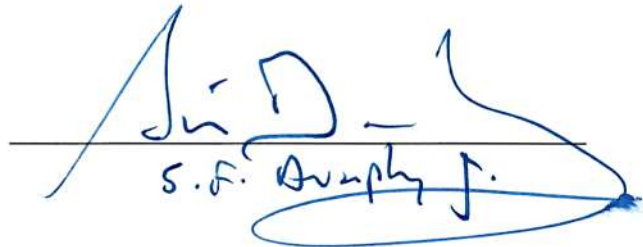
ON READING the Motion Record of the Plaintiff including the Notice of Motion and the Affidavit of Benjamin Wyett sworn November 21, 2018 and the exhibits thereto, and on hearing the submissions of the lawyer for the Plaintiff, and any such counsel as were present as indicated on the Counsel Slip, and no one appearing for any other person on the service list, although duly served as appears from the affidavit of service of Maureen McLaren sworn December 5, 2018, filed.

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion and Motion Record is abridged and validated such that this Motion is properly returnable today, and further service of the Notice of Motion and Motion Record is hereby dispensed with.

2. **THIS COURT ORDERS** that the Plaintiff is hereby granted leave to amend the Statement of Claim in this action in the form attached hereto as Schedule "A" (the "**Amended Statement of Claim**").

3. **THIS COURT ORDERS** that the time prescribed by the Rules for service of the Amended Statement of Claim on the Defendants is hereby extended to June 30, 2019.

4. **THIS COURT ORDERS** that the balance of the Plaintiff's motion, in which it seeks leave to obtain a Certificate of Pending Litigation in respect of the lands and premises municipally known as 5633 Retreat Street, Mississauga, Ontario, is adjourned to January 11th, 2019 at 9:30 a.m.


S.F. Murphy J.

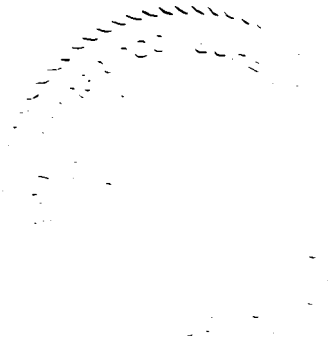
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Schedule A



**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

B E T W E E N:

CWB MAXIUM FINANCIAL INC.

Plaintiff

and

1970636 ONTARIO LTD. o/a MT. CROSS PHARMACY,
UMAIR N. NASIM, SHRIKANT MALHOTRA, 1975193 ONTARIO LTD. dba MTN RX &
HEALTH, ANGELO KIRKOPOULOS, AMIR KASSIM, 1919932 ONTARIO LTD., GEORGE
VLACHODIMOS, ORLANDO DEN CASSAVIA, and MONICA MALHOTRA

Defendants

AMENDED STATEMENT OF CLAIM

(NOTICE OF ACTION ISSUED MAY 16, 2018)

1. The Plaintiff claims:

- (a) an Order pursuant to section 47(1) or 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 as amended (the “BIA”) and section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C-43 as amended (the “CJA”) appointing msi Spergel inc. as receiver (in such capacity, the “Receiver”) without security, of all of the assets, undertaking and properties of the Defendants 1970636 Ontario Ltd. o/a MT Cross Pharmacy, Umair N. Nasim, Shrikant Malhotra and 1975193 Ontario Ltd. dba MTN RX;~~(collectively, the “Debtors”);~~
- (b) judgment against the Defendants 1970636 Ontario Ltd. o/a Mt. Cross Pharmacy, Umair N. Nasim and Shrikant Malhotra in favour of the Plaintiff for breach of contract, fraud and fraudulent misrepresentation in the amount of \$4,577,670.02

plus interest from May 8, 2018, at the rate of 18.00% per annum or, in the alternative, in accordance with sections 128 and 129 of the CJA;

- (c) judgment against 1975193 Ontario Ltd. dba Mtn Rx & Health, ~~and Angelo Kirkopoulos~~ and Amir Kassim in favour of the Plaintiff for conspiracy and fraud in the amount of \$4,577,670.02, plus interest from May 8, 2018, at the rate of 18.00% per annum or, in the alternative, in accordance with sections 128 and 129 of the CJA;
- (d) judgment against Angelo Kirkopoulos in favour of the Plaintiff for theft, conspiracy, defalcation, fraud, breach of fiduciary duty and oppression in the amount of \$4,577,670.02, plus interest from May 8, 2018, at the rate of 18.00% per annum or, in the alternative, in accordance with sections 128 and 129 of the CJA;
- (e) judgment against 1919932 Ontario Ltd., George Vlachodimos and Orlando Den Cassavia in favour of the Plaintiff for fraud, fraudulent misrepresentation and conspiracy in the amount of \$4,577,670.02, plus interest from May 8, 2018, at the rate of 18.00% per annum or, in the alternative, in accordance with sections 128 and 129 of the CJA;
- (f) as against 1919932 Ontario Ltd., George Vlachodimos, Orlando Den Cassavia and Angelo Kirkopoulos (collectively, the “Vendor Defendants”):
 - (i) an Order, injunctive or otherwise, interim or permanent, to preserve, trace and locate all funds improperly had and received by the Vendor Defendants; declaring that any funds so traced are impressed with a constructive trust for the benefit of the Plaintiff; and ordering an accounting of the same;
 - (ii) an interim, interlocutory and permanent injunction in the form of a worldwide Mareva injunction, restraining the Vendor Defendants, their servants, officers, employees, agents, assigns, directors, shareholders and anyone else acting on their behalf or in conjunction with any of them, and

any and all persons with notice of such injunction, from directly or indirectly, by any means whatsoever, selling, removing, dissipating, alienating, transferring, assigning, encumbering, or similarly dealing with any funds or assets of the defendants; instructing, requesting, counselling, demanding or encouraging any other person to do so, or facilitating, assisting in, aiding, abetting or participating in any acts the effect of which is to do so, otherwise than is explicitly authorized by this Honourable Court;

- (g) A Certificate of Pending Litigation against the property municipally known as 5633 Retreat Street, Mississauga, Ontario, more fully described in Schedule A (the “Property”);
- (h) A Declaration that the transfer of the Property dated August 22, 2017 (as Instrument No. PR3188595) from Monica Malhotra and Shrikant Malhotra to Monica Malhotra is null and void for being a transfer under value or was otherwise a fraudulent transaction;
- (i) An Order setting aside the transfer of the Property and returning title to the names of Shrikant Malhotra and Monica Malhotra jointly;
- (j) the costs of this proceeding, plus all applicable taxes; and
- (k) Such further and other relief as to this Honourable Court may seem just.

2. The Plaintiff CWB Maxium Financial Inc. (“**CWB Maxium**”) is a corporation duly incorporated pursuant to the laws of the Province of Ontario, carrying on business as a finance company, with offices in Richmond Hill and elsewhere.

3. The Defendant, 1970636 Ontario Ltd. o/a Mt. Cross Pharmacy (“**Mt. Cross**”) is a corporation incorporated pursuant to the laws of the Province of Ontario.

4. The Defendant, Umair N. Nasim (“**Nasim**”), is an individual residing in Mount Hope, Ontario. Nasim is the President and sole director of Mt. Cross.

5. The Defendant, Shrikant Malhotra (“**Malhotra**”), is an individual residing in Mississauga, Ontario. Malhotra is a shareholder of Mt. Cross.
6. Nasim and Malhotra are guarantors (collectively, the “**Guarantors**”) of all obligations owed by Mt. Cross to CWB Maxium.
7. The Defendant, Angelo Kirkopoulos (“**Kirkopoulos**”), is the Secretary and Treasurer of Mt. Cross. Kirkopoulos is also the President of Concession Wentworth Medical Centre Inc. (“**CWMC**”). Kirkopoulos was also, until recently, an officer of 1975 (as defined below). Kirkopoulos was also the Secretary and Treasurer and shareholder of the Defendant 1919932 Ontario Ltd.
8. The Defendant, 1975193 Ontario Ltd. dba MTN RX & Health (“**1975**”) is a corporation incorporated pursuant to the laws of the Province of Ontario, with a registered office in Binbrook, Ontario.
9. The Defendant Amir Kassim (“**Kassim**”) is a pharmacist and is a director, officer and shareholder of 1975. Kassim was previously employed by Mt. Cross immediately prior to his joining 1975.
10. The Defendant 1919932 Ontario Limited (the “**Vendor**”) is a company incorporated pursuant to the laws of the Province of Ontario and was the vendor company in the sale of the assets and pharmacy business to Mt. Cross under an Agreement of Purchase and Sale dated June 4, 2017 (the “**APS**”).
11. The Defendant Orlando Den Cassavia (“**Cassavia**”) was a director, officer and shareholder of the Vendor and a party to the APS.
12. The Defendant George Vlachodimos (“**Vlachodimos**”) was also a director, officer and shareholder of the Vendor and a party to the APS.
13. The Defendant Monica Malhotra (“**Monica**”) is the spouse of the Defendant Malhotra and is the registered owner of the Property.

14. At all material times, Mt. Cross operated a retail pharmacy (“**Mt. Cross Pharmacy**”) at a leased premises located at 503 Concession Street in Hamilton, Ontario (the (“**Premises**”). It was understood by the Plaintiff that the Premises was leased from CWMC.

15. 1975 operates a retail pharmacy (the “**MTN RX Pharmacy**”) at 566 Concession Street in Hamilton, Ontario.

16. On June 6, 2017, CWB Maxium and Mt. Cross entered into a promissory note (the “**Note**”) whereby Mt. Cross promised to pay to CWB Maxium the sum of \$4,300,450.00 with interest at the rate of 5.75% per annum and interest on overdue interest at the rate of 18% per annum to CWB Maxium.

17. As security for the Note, on June 5, 2017, CWB Maxium and Mt. Cross entered into a General Security Agreement (the “**GSA**”) whereby Mt. Cross granted to CWB Maxium a continuing security interest in all of Mt. Cross’s assets and undertakings and an assignment of Mt. Cross’ accounts in consideration for CWB Maxium continuing to deal with Mt. Cross.

18. The GSA provides, among other things, that if Mt. Cross fails to make a payment required pursuant to Note, the Plaintiff may require Mt. Cross to repay all obligations in full and may appoint a receiver over the assets and undertaking of Mt. Cross.

19. On May 25, 2017, CWB Maxium registered its security interest in the assets and undertaking of Mt. Cross pursuant to the *Personal Property Security Act* (the “**PPSA**”).

20. On June 5, 2017, the Guarantors executed personal guarantees (the “**Guarantees**”) whereby they guaranteed all of Mt. Cross’ obligations to CWB Maxium. In support of the Guarantees, they also executed General Security Agreements dated June 5, 2017 as security in respect to the Guarantees.

21. On or about April 15, 2018, Mt. Cross defaulted in its obligations to CWB Maxium in that it failed to make the payments required pursuant to the Note.

22. On May 8, 2018, the Plaintiff delivered demands for payment to Mt. Cross and the Guarantors demanding payment in full of the amount of \$4,577,670.02.

23. Despite these demand letters, neither Mt. Cross nor the Guarantors have paid the amount owing to CWB Maxium under the Note and the Guarantees.

24. Pursuant to the terms of the Note, the GSA and the Guarantees, Mt. Cross and the Guarantors owe CWB Maxium the sum of \$4,577,670.02 as at May 8, 2018, plus interest, at the rate of 18% per annum.

25. The Plaintiff pleads that Mt. Cross' business has been negatively impacted by the following developments:

- (a) Following Mt. Cross' purchase of the Mt. Cross Pharmacy, most of the physicians located within the Premises moved their practices out of the building;
- (b) the MTN RX Pharmacy, which is located close to Mt. Cross Pharmacy, opened in February 2018. A significant number of client files have been transferred from Mt. Cross Pharmacy to the MTN RX Pharmacy, without the consent of the clients;
- (c) ~~MTN RX~~ 1975 and Kirkopoulos recruited two former employees of Mt. Cross and through them obtained confidential information and property of Mt. Cross, including patient lists and contact information;
- (d) ~~MTN RX~~ 1975 and Kirkopoulos have used this confidential information and property of Mt. Cross to improperly compete with Mt. Cross and to essential take Mt. Cross' business as its own;
- (e) Kirkopoulos, as a representative of CWMC, has required two of the remaining physicians in the Premises to vacate the building;
- (f) the insurance policy for the Mt. Cross Pharmacy was cancelled in September 2017;
- (g) Telus Health and Express Scripts ("ESI"), which provide electronic claims processing for a number of insurance companies, terminated their agreements with Mt. Cross in April 2018;

- (h) unauthorized changes have been made to the Mt. Cross Pharmacy's website such that it defaults to the MTN RX Pharmacy website; and
- (i) Mt. Cross Pharmacy's point of sale provider, Fillware Technologies ("**Fillware**") received an unauthorized request to merge the Mt. Cross Pharmacy's prescription software system with the system for the MTN RX Pharmacy.

26. The Plaintiff states that the collateral under the Plaintiff's security has been transferred to 1975.

27. The Plaintiff was neither aware of nor did it consent at any time to the transfer of the assets of Mt. Cross to the MTN RX Pharmacy.

28. On May 22, 2018, CWB Maxium amended its PPSA registration against Mt. Cross to add 1975 as an additional debtor pursuant to s. 48(2) of the PPSA.

29. The Plaintiff states that its security interest extends to the assets transferred to the MTN RX Pharmacy from the Mt. Cross Pharmacy pursuant to s. 48(2) of the PPSA.

30. In the circumstances, it is just and convenient that a receiver be appointed over the assets and undertaking of the Debtors.

31. Msi Spergel inc. ("**Spergel**"), is a licensed insolvency trustee and has consented to being appointed as Receiver, without security, of all of the assets, undertakings and property of the Debtors acquired for, or used in relation to the businesses carried on by the Debtors.

32. On May 16, 2018, Mr. Justice Dunphy appointed Spergel, as interim receiver, without security, of all of the assets, undertakings and properties of Mt. Cross, pursuant to section 47(1) of the BIA.

33. On June 14, 2018 Mr. Justice McEwen appointed Spergel as the Receiver, without security of all of the assets, undertakings and properties of Mt. Cross pursuant to Section 243(1) of the BIA.

34. On August 7, 2018 Mr. Justice Dunphy appointed Spergel as interim receiver, without security, of all of the assets, undertakings and properties of 1975, pursuant to section 47(1) of the BIA and section 101 of the CJA.

35. On September 10, 2018, Madam Justice Chiappetta approved Spergel's First Report as interim receiver over 1975 with Spergel having been discharged as the interim receiver pursuant to the provisions of the BIA.

36. On September 21, 2018, Mr. Justice Penny appointed Spergel as Receiver, pursuant to Section 243(1) of the BIA and Section 101 of the CJA, over the assets, undertakings and properties of the Guarantors for the limited purposes of investigation and inspection.

Fraud and Fraudulent Misrepresentation

37. On or about June 4, 2017, the following parties signed an agreement of purchase and sale ("APS") for the acquisition of the pharmacy business (the "Transaction") to be operated by Mt. Cross:

(i) Mt. Cross as the purchaser;

(ii) Nasim as the director of Mt. Cross;

(iii) the Vendor; and

(iv) Kirkopoulos, Vlachodimos and Cassavia as the principals of the Vendor.

38. The key elements of the APS from CWB Maxium's perspective were:

(i) The purchase price was \$5,450,000 subject to the adjustments provided for in the APS.

(ii) Section 2.5(a) of the APS provided that the Vendor had received a deposit of \$1,250,000 from Mt. Cross.

(iii) There were approximately 8 doctors who had signed an agreement to carry on their practice out the same commercial building as Mt. Cross and thereby guarantying a steady flow of patients.

(iv) Section 7.2(b) of the APS provided for the Vendor to arrange for an assignment of the Premises lease.

39. Based upon the APS, the various documents provided by Mt. Cross, the Guarantors as well as by the Vendor, Kirkopoulos, Vlachodimas and Cassavia and the representations of these Defendants, CWB Maxium decided to finance the purchase by Mt. Cross under the APS and the ongoing operations of the Mt. Cross Pharmacy.

40. In fact, the representations by these Defendants (as set out above) were false and were designed to mislead CWB Maxium into financing the purchase by Mt Cross.

41. CWB Maxium only learned in the spring of 2018 after Mt. Cross defaulted on its obligations to CWB Maxium that:

(i) The purchase price for the Transaction, shown to be \$5,450,000 in the APS, was actually \$4,200,000 – being the full amount of the financing advanced by CWB Maxium such that the Purchaser put in no funds of its own into the Transaction ;

(ii) There was no deposit of \$1,250,000 paid by Mt. Cross to the Vendor contrary to what was in the APS and what was represented to CWB Maxium by Mt. Cross, the Guarantors, the Vendor, Kirkopoulos, Vlachodimas and Cassavia;

(iii) That 6 or 7 of the doctors at the Premises had given notice of their departure from the Premises prior the execution of the APS despite assignment agreements provided to CWB Maxium in June 2017 that were later discovered by Spergel to be fraudulently signed; and

(iv) The consent to the Premises lease assignment was not signed by the landlord as determined by the Receiver.

42. In furtherance of the fraud, the Defendants, the Vendor, Kirkopoulos, Vlachodimos and Cassavia provided Mt. Cross and CWB Maxium with falsified financial information consisting of Fillware (as defined below) prescription sales reports and matching financial statements which substantially inflated the sales figures and net income of the Vendor for the prior years. This misrepresentation also inflated the business' ability to service the debt.

43. As directors, officers and shareholders of the Vendor, the Defendants Kirkopoulos, Cassavia and Vlachodimos knew that the Vendor was not receiving \$5,450,000 as the purchase price under the APS. These Defendants also knew that the Vendor did not, at any time, receive a deposit of \$1,250,000. Furthermore, given their role as directors, officers and shareholders in the Vendor, these Defendants knew that 6 or 7 of doctors in the Premises had resigned prior to the execution of the APS or at least prior to the closing of the APS and that none of the doctors signed the assignment agreements provided to CWB Maxium.

44. In addition, the Defendant Nasim made representations to CWB Maxium that \$1.25 million of the purchase price under the APS had come from non-borrowed sources, being his own personal funds. This representation was false as Nasim invested no personal funds into the Transaction under the APS.

45. In furtherance of the fraud committed by these Defendants, Kirkopoulos presented as evidence of the \$1,250,000 deposit allegedly paid by Mt. Cross to the Vendor a copy of a Bank of Montreal bank draft dated May 5, 2017 (the "**Bank Draft**").

46. The Bank Draft was an entirely fabricated document and there was no deposit paid to the Vendor.

47. In furtherance of the fraud perpetrated by these Defendants, Kirkopoulos executed a document entitled "Purchaser's Declaration Re: Downpayment" dated June 6, 2017 (the "**Declaration**") which provided that:

"The undersigned on behalf of the Purchaser hereby certifies and represents to the Lender that the down payment being provided by the Purchaser as part of the purchase price owing the Vendor, said down payment totally the sum of One Million Two Hundred and Fifty Thousand Dollars (\$1,250,000.00) in Canadian dollars, is entirely from non-borrowed sources.

The undersigned hereby acknowledges and confirms that the Lender is relying on this statement in connection with the loan to be advanced to the Purchaser in this matter.”

48. Kirkopoulos knew that this representation was false and that it would be relied upon by CWB Maxium. The Defendants Mt. Cross, the Vendor, the Guarantors, Vlachodimas and Cassavia also all knew that the representation was false and would be relied upon by CWB Maxium.

49. All of these representations were intended to, and in fact did, induce CWB Maxium into advancing \$4.2 Million into the Transaction under the APS.

50. The Plaintiff also pleads that these Defendants acted in concert, by agreement with or with a common design to perpetrate the fraudulent scheme described herein for the predominant purpose of harming the Plaintiff, and did in fact cause, and profit from, that harm to the Plaintiff. The full particulars of the agreement or common design are only known fully to these Defendants at this time, but further particulars will be provided in advance of trial.

51. Given the deceitful manner in which these Defendants have acted, together with all the surrounding circumstances, there is a real and substantial risk that these Defendants will dissipate assets and/or permanently abscond with the funds advanced by the Plaintiff to avoid enforcement of any judgment the Plaintiff may ultimately obtain. In all the circumstances, interim, interlocutory and permanent injunctive relief, *inter alia*, enjoining these Defendants from accessing, liquidating, dissipating, alienating or otherwise dealing with their assets is necessary, just and appropriate.

Improper Conduct as Against Mt. Cross

52. Pursuant to an assignment agreement dated June 29, 2018 between the Receiver on behalf of Mt. Cross and CWB Maxium, the Receiver assigned to CWB Maxium all of Mt. Cross’ right, title and interest in respect to any and claims the Receiver may have had against any parties standing in the shoes of Mt. Cross.

53. From the time of the closing of the APS until in or about the spring of 2018, Kirkopoulos caused Mt. Cross to order various drugs far in excess of the actual drugs needed to fill the needs of Mt. Cross' patients.

54. Kirkopoulos then took the excess drugs ordered through Mt. Cross and sold them privately for a profit for personal gain.

55. This illegal conduct by Kirkopoulos caused financial harm to Mt. Cross.

56. CWB Maxium states that Kirkopoulos, in conjunction with Nasim, caused Mt. Cross to submit falsified patient claims to insurers of Mt. Cross' patients. These claims were not for any prescriptions actually filled by Mt. Cross for patients.

57. This improper conduct of Kirkopoulos and Nasim ultimately lead to a number of service providers refusing to process any payments for patients of Mt. Cross, thereby causing financial harm to Mt. Cross.

58. In or about February 2018, Kirkopoulos, still an officer and perhaps a shareholder of Mt. Cross, caused a new pharmacy, the MTN RX Pharmacy, to open up in extremely close proximity to Mt. Cross.

59. The improper and illegal conduct of Kirkopoulos and Nasim was carried out while each of them were fiduciaries of Mt. Cross.

60. CWB Maxium states that the primary objective in incorporating 1975 was to strip away all of the business and patients of Mt. Cross.

61. Kirkopoulos retained Kassim as the pharmacist for MTN RX Pharmacy and provided him with a majority share interest in 1975 at no cost. Kassim was formerly employed by Mt Cross.

62. Kirkopoulos, as a representative of CWMC, then unsuccessfully sought to cause the two of the remaining physicians in the Premises to vacate the building, thereby impacting patient referrals to Mt. Cross. This plan was ultimately foiled by CWB Maxium's intervention.

63. Kirkopoulos and Kassim together then caused 1975 to retain the services of the Angela Abrantes ("Abrantes"), formerly employed with Mt. Cross, in or about April of 2018. Abrantes was a technician with Mt. Cross at the time she was recruited away by 1975.

64. Abrantes took with her the property of Mt. Cross on her departure from her employment. Namely, she took Mt. Cross' customer/patient list and contact information which were confidential and the property of Mt. Cross.

65. Abrantes then, at the instruction of Kassim and Kirkopoulos, embarked on campaign to transfer over from Mt. Cross to 1975 as many of the Mt. Cross patients and prescriptions as possible using the confidential patient lists of Mt. Cross.

66. Some of the transfers of patient files from Mt. Cross to 1975 were made by Kassim and Abrantes without the consent or knowledge of the patients themselves and without authorization of the pharmacist at Mt. Cross, as required.

67. Kirkopoulos, Kassim and Abrantes then made or caused to be made unauthorized changes to the Mt. Cross Pharmacy's website such that it defaulted to the MTN RX Pharmacy website.

68. Kirkopoulos, Kassim and Abrantes then instructed the Mt. Cross Pharmacy's point of sale provider, Fillware Technologies ("Fillware") to merge the Mt. Cross Pharmacy's prescription software system with the system for the MTN RX Pharmacy.

69. Unbeknown to CWB Maxium, the insurance policy for the Mt. Cross Pharmacy was cancelled in September 2017.

70. At no time did Mt. Cross, Nasim, Malhotra or Kirkopoulos ever advise CWB Maxium that Telus Health, which provides electronic claims processing for a number of insurance companies, terminated its agreement with Mt. Cross in April 2018 due to evidence of fraudulent false drug claims in excess of \$800,000.

71. The termination by Telus Health was particularly damaging to Mt. Cross as it meant that Mt. Cross could no longer process the prescriptions of its patients without charging the patients the full amount of the prescription price and leaving it to the patient to later recover the

prescription price from its insurer. As a result Mt. Cross patients simply went to other pharmacies, primarily 1975, that could bill the insurers directly and receive payment from the insurers directly.

72. CWB Maxium states that Kirkopoulos and Kassim conspired to cause harm to Mt. Cross (and in fact did so) through illegal means by utilizing the customer lists and contact information of the customers which were improperly taken by Abrantes on her departure from Mt. Cross.

73. The overt acts of the conspiracy included the hiring of Abrantes, having Abrantes bring the customer list and contact information of Mt. Cross' customers to MTN RX, confusing patients to the effect that 1975 was somehow related to Mt. Cross, causing Telus Health and ESI to cease providing insurance coverage to Mt. Cross and by stealing drugs bought for and paid for by Mt. Cross.

74. The ultimate goal of the conspiracy engaged in by Kirkopoulos and Kassim was to cause financial harm to Mt. Cross and to force it to shut down so that 1975 could assume all of Mt. Cross' business and patients.

The Certificate of Pending Litigation

75. Malhotra and Monica purchased the Property on February 12, 2008.

76. As part of the credit application submitted to CWB Maxium by Mt. Cross and the Guarantors, Malhotra represented that he was a joint owner in the Property.

77. CWB Maxium relied upon Malhotra's representation that he was a joint owner of the Property.

78. Shortly after the closing of the APS, Malholtra transferred his interest in the Property to Monica for \$1.00 on August 22, 2017 (the "Transfer").

79. CWB Maxium states that the Transfer was undervalue and should be set aside.

80. CWB Maxium further states that the Transfer was designed to deprive CWB Maxium with recourse to the Property in the event that Mt. Cross could not honour its obligations to CWB Maxium.

81. CWB Maxium further states that the Transfer took place at a time when Malhotra was otherwise insolvent or unable to pay his liabilities as they became due without recourse to his share of the Property.

82. CWB Maxium further states that the Transfer was designed to defraud and defeat any claim by CWB Maxium against Malhotra.

83. CWB Maxium further states that Malhotra continued to retain a beneficial interest in the Property after the Transfer, notwithstanding his purported transfer to Monica.

84. CWB Maxium states that given the nature of the fraud against its interests, as described herein, a certificate of pending litigation against the Property is necessary in order to protect the equity in the Property and to prevent the Defendants Malhotra and Monica from dissipating that equity while this matter awaits trial.

85. Given the nature of the conduct of the Defendants as described herein, CWB Maxium states that it is entitled to punitive damages against all of the Defendants other than Monica in the amount of \$200,000.

86. The Plaintiff pleads and relies upon subsections 47(1), 96(1) and 243(1) of the BIA, section 101 and 103 of the CJA, Rule 42.01 of the Rules of Civil Procedure and sections 9, 39 and 48(2) of the PPSA.

87. The Plaintiff also pleads and relies upon the *Fraudulent Conveyances Act*, R.S.O. 1990 c. F29.

88. To the extent that any of the Defendants reside outside of Ontario, the Plaintiff pleads and relies upon Rule 17.02 as the claims herein pertain to torts committed, contracts made and breached and injunctions sought to take effect in the Province of Ontario.

89. The Plaintiff proposes that the trial of this action be held in the City of Toronto, in the Province of Ontario.

~~June 15, 2018~~ December , 2018

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Lawyers for the Plaintiff

Schedule A

PIN: 13502-0601 (LT)

Property Description

LOT 127, PLAN 43M1708, MISSISSAUGA; S/T EASEMENT IN GROSS OVER LT 127 PL 43M-1708, AS IN PR1078071; S/T EASEMENT IN GROSS OVER LT 127 PL 43M-1708, AS IN PR1078156; S/T EASEMENT IN GROSS OVER LT 127 PL 43M-1708, AS IN PR1078194. S/T EASEMENT OVER LT 127 PL 43M1708, AS IN PR1245841. T/W AN UNDIVIDED COMMON INTEREST IN PEEL COMMON ELEMENTS CONDOMINIUM CORPORATION NO.810. S/T EASEMENT OVER LOT 127, PLAN 43M1708, IN FAVOUR OF PEEL COMMON ELEMENTS CONDOMINIUM PL NO. 810 AS IN DECLARATION PR1287136, AS IN PR1456303. S/T EASEMENT FOR ENTRY AS IN PR1577566.

Municipally known as 5633 Retreat Street, Mississauga, Ontario

CWB Maxium Financial Inc.
Plaintiff

and

1970636 Ontario Ltd. et al.
Defendants

Court File No.: CV-18-597922-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE -
COMMERCIAL LIST

Proceeding commenced at TORONTO

AMENDED STATEMENT OF CLAIM

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Plaintiff and 1970636 ONTARIO LTD., et al.
Defendants

Court File No: CV-18-597922-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE

Proceeding commenced at TORONTO

O R D E R
(AMENDING CLAIM AND EXTENSION OF TIME)

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