

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

BETWEEN:

**THE TORONTO-DOMINION BANK**

Applicant

-and-

**2314251 ONTARIO INC., MOHAMMAD ABDUL HAFIZ and KAWSER  
ZAHAN**

Respondents

**AFFIDAVIT OF AFREEN HAFIZ**  
(affirmed remotely on August 29, 2022)

I, Afreen Hafiz, of the City of Toronto, in the Province of Ontario, AFFIRM AND SAY that:

1. I am the person with the operational responsibility for 2314251 Ontario Inc. ("**231**"), and I am the daughter of the individual respondents Mohammad Abdul Hafiz and Kawser Zahan, and as such have knowledge of the matters which I hereinafter depose. Where I do not have direct knowledge of the facts, I have stated my source of information below and I believe such facts to be true.

**THE FINANCIAL STATEMENTS**

2. I have reviewed paragraphs 14-16 of the affidavit of Amanda Benzer, sworn August 19, 2022 (the "**Benzer Affidavit**"), and exhibit J, which are the financial statements (the "**Statements**") which I gave to the Toronto-Dominion Bank (the "**Bank**").

3. My family bought the property located at 6233 Highway 48, Sutton, Ontario to operate it as a gas station (the "**Station**"). I have been the individual with the primary responsibility for operating the Station, including looking after getting financial information to the Bank.

4. I have not made independent inquiries of Fareed Sheik LLP or Fareed Sheik & Co., and so I have no information, one way or the other, about their relationship with and to the Statement.

5. Indeed, I have never had any direct communications with Fareed Sheik LLP or Fareed Sheik & Co.. Instead, I obtained the Statements through the efforts of an individual named Vikram Malhotra ("**Malhotra**").

6. The individual who sold us the Station, and an existing customer of the Station at the time, introduced me and my parents to Malhotra at that time, explaining that Malhotra was a financial professional.

7. After the time when we acquired the Station, Malhotra was at the Station one day and he asked me whether we required any assistance with accounting or financial information.

8. We did, and I told him so.

9. I explained that we needed a new accountant:

- (a) We were in the process of refinancing the loan that had provided us with the purchase financing for the Station, by taking out a new load from the Bank;

- (b) That in conjunction with applying for that new loan, the Bank would require “Review Engagement” statements;
- (c) That our then-current financial professional had advised us that he was only qualified to produce “Notice to Reader” statements; and so
- (d) We were looking for someone new to help us.

10. Malhotra explained to me that we were in luck. He, Malhotra, had lots of experience helping gas station owners with their financials, including the prior owner, and in particular that he was familiar with the format and requirements of bank with respect to financial statements.

11. Malhotra further told me that if I gave to him 231’s financial information, that he would take that to accounting professionals whom he knew, and he would coordinate with them to prepare statements which would satisfy the Bank.

12. Malhotra gave me the impression that he had working relationships with several accounting firms, and that he would use his judgment to bring our information to the right professional to help us quickly and properly.

13. Because of what Malhotra told me, including the fact that he had done similar work for the prior owner, I believed him.

14. Accordingly, I gave Malhotra the underlying financial information which he asked for, together with payment. Sometime later, he returned with the Financials, which I then gave to the Bank.

15. Malhotra preformed the same service for 231 for a number of years, and each time I have given the resulting statements to the Bank.

16. It was not until we were contacted by the Bank most recently, that I had any hint that there was anything suspicious about the Statements.

17. Because I have had very little time to consider the Bank's accusation about the Statements, I have not had the opportunity yet to:

(a) Contact Fareed Sheik LLP or Fareed Sheik & Co. myself; or

(b) Have another financial professional compare the Statements to 231's source documents to determine whether the information in them is in any event accurate.

18. I have attempted to contact Malhotra, since I became aware of the Bank's accusations. I have used the phone number that I have for him – 647-405-7982 – that I had previously used to reach him. Unfortunately, I have not reached him despite several attempted calls. I have no other information about why I have been unable to reach him.

19. I see in paragraph 24 of the Benzer Affidavit, she alludes to suspicions around the real estate broker who referred the refinancing to the Bank, which resulted in the loan.

20. I know that the agent who assisted us is Mirza Chaudhary ("**Chaudhary**"). I have no knowledge about Benzer's bald allegation that "TD Bank has identified five other borrowers, being separate corporate borrowers, involved with the same person, where the accountant identified on the financial statements of the borrower has advised that they did

not prepare such statements”. What I do know, however, is that Malhotra was not referred to me Chaudhary, and so far as I know, there is no connection between the two of them.

## **OPERATIONS**

21. I have reviewed paragraph 17 of the Benzer Affidavit and exhibit K. I acknowledge that the sign shown in the exhibit is displayed at the Station.

22. It is true that for a number of months, the Station has not been able to sell fuel. 231 has been forced into that situation because of a dispute with its fuel supplier, Parkland (“*Parkland*”).

23. In Ontario, Esso-branded stations and Ultramar-branded stations both receive their fuel from the same supplier; namely Parkland.

24. 231 was, previously, branded as a “Ultramar” gas station, under a fuel supply agreement with Parkland. At the end of the term of that agreement, 231 told Parkland that it would enter into a new supply agreement only if it was permitted to change its outward branding to be an “Esso” gas station.

25. In the marketplace, the Esso brand is perceived as a higher quality brand than Ultramar, and can generally charge more per litre for its fuel products, regardless of whether there is actually any difference in the fuel itself

26. Parkland, reluctantly, agreed.

27. It would appear that Parkland then decided to punish 231.

28. As an Ultramar-branded station, Parkland was precluded from permitting the operation of another, competing, Ultramar-branded station within close proximity to the Station.

29. However, now that the Station was Esso-branded, Parkland was no longer constrained. Instead, it promoted the opening of another Ultramar-branded station in very close proximity to the Station (the “**Competitor**”).

30. Moreover, Parkland has now lavished significant corporate subsidies on this new Ultramar-branded station. Parkland has refused to provide any price supports, whatsoever, to the Station.

31. The result has been that since January 2022, the **retail** price which the Competitor has offered fuel for sale to its customers was significantly less than the **wholesale** price 231 would have to pay Parkland for the same litre of fuel.

32. Because the Competitor is so close to the Station, the Station has to calibrate its fuel prices to those charged by the Competitor, or no customers will buy any fuel. Even though, as an Esso branded station, the Station can charge a premium, that premium is only a few cents per litre.

33. When the Station in fact began to adjust its prices, in order to accommodate the Competitor’s discount pricing, it quickly discovered that it could not:

- (a) When it charged a price per litre at which it was at least breaking even, no customers would buy their gas; and

(b) When it charged a price per litre at which customers were willing to buy, it was selling each litre at a loss.

34. As a result, 231 made the only prudent business decision which it could make; namely, to cease selling fuel until the dispute with Parkland is resolved.

35. And 231 believes that the dispute will, in fact be resolved in the medium term. So long as the dispute persists, Imperial Oil – i.e. Esso – is not represented in the market place in Sutton, Ontario. 231 believes that as this dispute goes on, there will be pressure on Parkland to deal fairly with 231 so that it can resume selling fuel on a prudent business basis.

#### **THE BANK**

36. In the interim, and notwithstanding the dispute with Parkland, 231 has at all times kept current all of its payments on the with the Bank, and will continue to do so indefinitely.

37. 231 has been a good customer of the Bank and, we would hope, the Bank would be interested in continuing to support 231 until such time as its dispute with Parkland is resolved.

38. However, and without conceding that the dispute with Parkland is a material adverse change in the circumstances of 231's business under the loan agreement with the Bank, 231 accepts that the Bank wants its loan paid back and no longer to have 231 as a customer.

39. 231 is content to pay off the loan. My father, Mohammad Abdul Hafiz, has told me, and I believe, that:


- (a) He owns several valuable parcels of land in Bangladesh.
- (b) He is in the process of selling one or more of them, and the anticipated proceeds of sale are significantly greater than the balance of the Loan.
- (c) Those sales should be completed, and the funds available in Canada, by February 2023.

40. In the interim, the current fair market value of the Property is approximately \$3.5 million, significantly in excess of the balance of the Loan. 231 will consent to an order, which may be registered on title, that 231 will not permit any disposition of any interest in the Property until after the Loan is repaid.

**AFFIRMED BEFORE ME this 29<sup>th</sup> day of August, 2022 by video conference, in accordance with the provisions of the Regulations governing Administering Oaths or Declarations Remotely, while the affiant was at the City of Toronto, in the Province of Ontario and I was at the City of Toronto, in the Province of Ontario**



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**AFREEN HAFIZ**



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A commissioner of oaths, etc.