

Court File No. CV-17-588051-OOCL

ONTARIO
SUPERIOR COURT OF JUSTICE
(*Commercial List*)

BETWEEN

FIRSTONTARIO CREDIT UNION LIMITED

Applicant

-and-

FERWIN VENTURES CAPITAL INC.

Respondent

**REPLY MOTION RECORD OF
ANTONIO DI DOMIZIO AND MALGORZATA DI DOMIZIO
TO BE HEARD APRIL 17, 2018**

Murray N. Maltz
Murray Maltz Professional Corporation
Barrister and Solicitor
933 Mount Pleasant Road
Toronto, Ontario M4P 2L7
Tel: 416-398-6900
Fax: 416-398-6845
lawmaltz@on.aibn.com
Solicitor for Antonio Di Domizio
and Malgorzata Di Domizio
LSUC #25047R

To: David J. Jackson
SimpsonWigle Law LLP
1 Hunter Street East, Suite 200
Hamilton, Ontario L8N 3W2
Tel: 905-528-8411
Fax: 905-528-9008
Solicitor of the Receiver, msi Spergel Inc.

Howard Manis
MacDonald Sager Manis LLP
150 York Street, Suite 800
Toronto, Ontario M5H 3S5
Tel: 416-364-5289
Fax: 416-364-1453

hmanis@msmlaw.ca
Solicitor for Ferwin Ventures Capital Inc., Debtor
and Sting Incorporated, Second Mortgagee

Mark P. Nazarewich
The Corporation of the City of Windsor
400 City Hall Square East
Windsor, Ontario N9A 7K6
Tel: 519-255-6100 x 6427
Fax: 519-255-6933
mnazarewich@citywindsor.ca

Jack Berkow
Berkow Youd Lev-Farrell Das LLP
141 Adelaide Street West, Suite 400
Toronto, Ontario M5H 3L5
Tel: 416-364-4900
jberkow@byldlaw.com
Solicitor for Leo Agozzino

Davide Petretta
Volturara Investments Inc.
2504 Binder Crescent
Oldcastle, Ontario NOR 1L0
Tel: 519-737-1292
info@petcon.net
Mortgagee

Italo Ferrari
29 Knudson Lane
Woodbridge, Ontario L4L 3A6
italo@wilsondale.ca

Diane Winters
Peter Zevenhuizen
Canada Revenue Agency
c/o Department of Justice
The Exchange Tower
130 King Street West, Suite 3400
Toronto, Ontario M5X 1K6
Tel: 416-973-3172
Fax: 416-973-0810
Diane.Winters@justice.gc.ca
Peter.Zevenhuizen@justice.gc.ca

Kevin J. O'Hara
Her Majesty the Queen in Right of the Province of Ontario as represented by The
Ministry of Finance
33 King Street West, 6th Floor
Oshawa, Ontario L1H 1A1
Tel: 905-433-6934
Fax: 905-436-4510
Kevin.Ohara@ontario.ca

Jordana Stockhamer
Halpern Stockhamer
7500 Woodbine Avenue, Suite 300
Markham, Ontario L3R 1A8
Tel: 905-474-3300
Fax: 905-474-3305
Solicitor for Potential Purchaser

Court File No. CV-17-588051-OOCL

ONTARIO
SUPERIOR COURT OF JUSTICE
(Commercial List)

BETWEEN

FIRSTONTARIO CREDIT UNION LIMITED

Applicant

-and-

FERWIN VENTURES CAPITAL INC.

Respondent

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FORM 4D
Courts of Justice Act
AFFIDAVIT

Court File No. CV-17-588051-OOCL

ONTARIO
SUPERIOR COURT OF JUSTICE
(*Commercial List*)

BETWEEN

FIRSTONTARIO CREDIT UNION LIMITED

Applicant

-and-

FERWIN VENTURES CAPITAL INC.

Respondent

AFFIDAVIT OF ANTONIO DI DOMIZIO

I, Antonio Di Domizio, of the Town of Caledon, in the Province of Ontario, MAKE OATH
AND SAY (*or AFFIRM*):

1. My wife, Malgorzata Di Domizio, and I lent to Ferwin Ventures Capital Inc. (hereinafter referred to as "Ferwin") the sum of \$550,000.00. We were provided as security a mortgage registered on the 9th of May 2017 as instrument number CE770259 to secure the debt. The mortgage was registered on a property known as 785 Goyeau Street, Windsor, Ontario (hereinafter referred to as "785 Goyeau").
2. Attached hereto as Exhibit "A" is the mortgage registered on the 9th of May 2017 as instrument CE770259.

3. The loan was for the sum of \$550,000.00 and my wife and I advanced the sum of \$500,000.00 by way of bank draft to Wilsondale Assets Management Inc. Attached hereto as Exhibit "B" is a copy of the bank draft dated the 24th of April 2017.
4. The cheque was advanced to Wilsondale Assets Management Inc. pursuant to a Direction Re-Funds, which is attached hereto as Exhibit "C", as requested by the lawyer acting on the preparation and registration of the mortgage.
5. The advance was \$500,000.00 as there was a commitment fee of \$50,000.00, which was deducted from the advance.
6. I am an acquaintance of Italo Ferrari (hereinafter referred to as "Italo") but have no business dealings with him other than my wife and I lending him money pursuant to this transaction.
7. I permitted Italo's lawyer to prepare the mortgage and act on behalf of both my wife and I and Ferwin. I assumed that he in fact would prepare the correct documents. I have reviewed the mortgage and all terms are correct other than the fact that they have made my address for service the same as Ferwin which is wrong as it should be my home.
8. Pursuant to the report of the Receiver dated the 6th of April Italo is the sole director and officer of Ferwin as well as Wilsondale Assets Management Inc. Attached hereto as

Exhibit "D" is a Special Resolution of the Sole Director and Sole Shareholder permitting Ferwin to enter into the mortgage with my wife and I.

9. Attached hereto as Exhibit "E" is the signed Acknowledgment and Direction regarding the Mortgage.

10. I was later given additional security by way of a fourth mortgage on a property known as 731 Goyeau Street, Windsor Ontario (hereinafter referred to as "731 Goyeau") on the 13th of July 2017 referencing the mortgage as further collateral to 785 Goyeau. No additional money was advanced. I believe that no money will be realized from the sale of 731 Goyeau if sold by way of a third party action as the three mortgages registered on title exceed the value of the property.

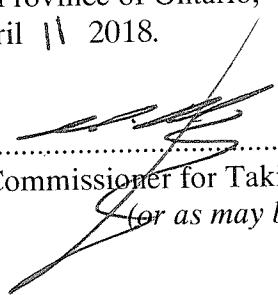
11. Pursuant to the terms of the mortgage, principal and interest was due on the 3rd of November 2017 and no money was received. Attached hereto as Exhibit "F" is a discharge statement dated April 2018. I am owed the sum of \$626,312.48.

12. The Receiver wishes to sell 785 Goyeau for the sum of \$850,000.00. The first mortgage in favour of Volturara Investments Inc. as of March 2018 is owed the sum of \$415,205.91 as found at Tab 15 of the Applicant's Motion Record. The commission on the sale is 2% or a total of \$17,000.00 plus HST of \$2,210.00, City of Windsor tax arrears are the sum of \$8,457.85 and CRA is owed the sum of \$16,966.79. The fees to the Receiver is the sum of \$4,426.00 and legal fees of \$5,544.03, as well as the Receiver wanting to hold


back the sum of \$30,000.00 therefore I will receive the sum of \$350,189.42 of my loan creating a substantial loss, which I am not willing to accept at this time.

13. I am 83 years of age and cannot afford to accept this loss. It is my belief that I will receive no further funds associated with the debt of Ferwin despite the fact that the Receiver wishes to investigate the matter more with my secured money.
14. I am not agreeable to holding back \$30,000.00 to be used by the Receiver for him to investigate Ferwin and not to preserve the property or the distribution of the funds.
15. I am advised that the first mortgagee does not wish to sell the property nor do I. It is my belief that the property is being sold for less money than it is worth and in a down market. If left alone it will increase in value and I will get all of my money back.
16. As the unsecured creditors receive no money from the sale there is no benefit to sell the property as only the secured creditors will receive funds.
17. At no time did I give the Receiver the authority to preserve or sell 731 Goyeau. In fact when I found out about the actions of the Receiver I advised them that there was no benefit to their action and I did not want the property sold. Attached hereto as Exhibit "G" is a letter of Murray Maltz dated the 19th of March 2018.
18. 731 Goyeau is a parking lot in the downtown core of Windsor.

Sworn (*or* Affirmed) before me at the City of
Toronto
in the Province of Ontario,
on April 11 2018.




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



.....
Antonio Di Domizio
(*Signature of deponent*)
RCP-E 4D (July 1, 2007)

This is Exhibit A referred to in the
affidavit of Antonio Di Domizio
sworn before me, this 11
day of April, 2018.


A COMMISSIONER FOR TAKING AFFIDAVITS

LRO # 12 Charge/Mortgage

Registered as CE770259 on 2017 05 09 10:42
yyyy mm dd F. 1 of 2

The applicant(s) hereby applies to the Land Registrar:

Properties

Pin 01172 - 0201 LT Interest/Estate Fee Simple
Description LOT 140 PLAN 1303 WINDSOR; LOT 141 PLAN 1303 WINDSOR; LOT 144 PLAN 1303 WINDSOR; LOT 145 PLAN 1303 WINDSOR : WINDSOR
Address 765 GOYEAU STREET WINDSOR

Chargor(s)

The chargor(s) hereby charges the land to the chargee(s). The chargor(s) acknowledges the receipt of the charge and the standard charge terms, if any.

Name FERWIN VENTURES CAPITAL INC.
Address for Service 71 Siltou Road, Unit 10
Woodbridge, ON
L4L 7Z8

I, Italo Ferrari, have the authority to bind the corporation.
This document is not authorized under Power of Attorney by this party.

Chargee(s)

Capacity

Share

Name DI DOMIZIO, ANTONIO
Address for Service c/o 71 Siltou Road, Unit 10
Vaughan, ON
L4L 7Z8

Name DI DOMIZIO, MALGORZATA
Address for Service c/o 71 Siltou Road, Unit 10
Vaughan, ON
L4L 7Z8

Provisions

Principal \$550,000.00 **Currency** CDN
Calculation Period monthly, not in advance
Balance Due Date 2017/11/03
Interest Rate 15% per annum
Payments \$6,875.00
Interest Adjustment Date 2017 05 03
Payment Date
First Payment Date 2017 06 03
Last Payment Date 2017 11 03
Standard Charge Terms 200033
Insurance Amount full insurable value
Guarantor

Additional Provisions

1. The principal balance and interest as monthly payment will be paid on maturity date; and
2. The Charge is non-transferable, and fully open for prepayment in whole or in part at any time or time, without notice or bonus.

Signed By

Davis Lloyd Hynes

510-10 Four Seasons Place
Toronto
M5B 6A7

acting for
Chargee(s)

Signed 2017 05 09

Tel 416-639-1905
Fax 416-639-1470

I have the authority to sign and register the document on behalf of the Chargee(s).

LRO #: 12 Charge/Mortgage

The applicant(s) hereby applies to the Land Registrar.

Registered as CE526081 on 2012 07 05 at 16:39
yyyy mm dd Page 2 of 2

Submitted By		2012 07 05
MAGIACQUE LAW FIRM LLP	455 Pelissier Street Windsor N6A 6Z9	

Tel 5192554316
Fax 5192554334

Fees/Taxes/Payment	
Statutory Registration Fee	\$60.00
Total Paid	\$60.00

File Number	
Charger Client File Number	54050

This is Exhibit B referred to in the
affidavit of Antonio Di Domizio
sworn before me, this 11
day of April 20 18



.....
A COMMISSIONER FOR TAKING AFFIDAVITS



ANTONIO AND MALCORZATA

NAME OF BENEFICIARY / DONNEUR D'ORDRE
PAY TO THE ORDER OF / PAYER À L'ORDRE DE
THE SUM OF / LA SOMME DE

TRANSIT NO / N° D'IDENTIFICATION

BRANCH / CENTRE BANCAIRE

BANK DRAFT / TRAITE DE BANQUE
08152 - PIAZZA DEL SOLE BANKING CENTRE
WOODBRIIDGE, ON

27558037-1

27-13345

2017-04-24

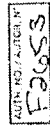
DATE / VIA / M/M / DU

\$*****500,000.00

CANADIAN DOLLARS / CAD
DOLLARS / CANADIENS

NILSON DALE ASSETS MANAGEMENT INC. *****FIVE HUNDRED THOUSAND

FOR CANADIAN IMPERIAL BANK OF COMMERCE
POUR LA BANQUE CANADIENNE IMPERIALE DE COMMERCE




TO / TIRES

CANADIAN IMPERIAL BANK OF COMMERCE
TORONTO
CANADA

[Signature]
AUTHORIZED SIGNATURE / MANIFESTE AUTORISE
COUNTERSIGNED / CONTRESIGNE

⑆ 27558037 ⑆ ⑆ 09502000 ⑆ 08 ⑆ 5200 ⑆ 2743345 ⑆

This is Exhibit C referred to in the
affidavit of Antonio Di Domizio
sworn before me, this 11
day of April 2018

A COMMISSIONER FOR TAKING AFFIDAVITS

FERWIN VENTURES CAPITAL INC.

71 Silton Rd, Suite 10, Woodbridge, Ontario L4L 7Z8 (Tel) 905-264-1555 (Fax) 905-264-2801

TO: Antonio Di Domizio and Malgorzata Di Domizio

RE: Ferwin Ventures Capital Inc., new mortgage to Di Domizio & Di Domizio

PROPERTY: 785 Goyeau Street, Windsor, Ontario

This letter is to direct you and shall constitute your good and sufficient and irrevocable authority to make your cheque representing the mortgage proceeds to:

- WILSONDALE ASSETS MANAGEMENT INC.

or as it may otherwise direct.

DATED at Toronto, Ontario, this 20th day of April, 2017.

FERWIN VENTURES CAPITAL INC.

Per: 

Italo Ferrari, President

APR 20/17

This is Exhibit D referred to in the
affidavit of Antonio Di Domizio
sworn before me, this 11
day of April 2018

.....
A COMMISSIONER FOR TAKING AFFIDAVITS

**SPECIAL RESOLUTION OF THE SOLE DIRECTOR
AND SOLE SHAREHOLDER OF
FERWIN VENTURES CAPITAL INC. (the "Corporation")**

WHEREAS Ferwin Ventures Capital Inc. has entered into a new second mortgage in the amount of \$550,000.00, in favour of Antonio Di Domizio and Malgorzata Di Domizio, with respect to the real property municipally known as 785 Goyeau Street, Windsor, Ontario, scheduled on May 3, 2017.

NOW THEREFORE BE IT RESOLVED THAT:

1. the mortgage is hereby approved, ratified and confirmed.
2. the execution of the Agreement on behalf of the Corporation by the President of the Corporation is hereby approved, together with such amendments, deletions, variations and additions therein, if any, as the President executing the same may approve and its delivery on behalf of the Corporation by the President is hereby authorized and approved, such execution and delivery to the conclusive evidence that the agreement as so executed and delivered is the Agreement authorized by this resolution.
3. the President of the Corporation is hereby authorized and directed to do and perform all acts and things, including the execution of documents, necessary or desirable to give effect to the foregoing resolutions.

* * * * *

CERTIFIED to be a true copy of a special resolution of Ferwin Ventures Capital Inc. resolution was passed by the sole director and shareholder on the 3rd day of May, 2017 and remains in full force and effect, unamended, as at the date hereof.

DATED this 3rd of May, 2017.



President: Italo Ferrari

This is Exhibit E referred to in the
affidavit of Antonio Di Domizio
sworn before me, this 11
day of April 2018


A COMMISSIONER FOR TAKING AFFIDAVITS

ACKNOWLEDGEMENT AND DIRECTION

TO: David Lloyd Hynes
(Insert lawyer's name)

AND TO: DAVID L. HYNES
(Insert firm name)

RE: Ferwin Ventures Capital Inc. new 2nd mortgage with Di Domizio & Di Domizio (the transaction)
of 785 Goyeau Street, Windsor, ON
(Insert brief description of transaction)

This will confirm that:

- I/We have reviewed the information set out in this Acknowledgement and Direction and in the documents described below (the "Documents"), and that this information is accurate;
- You, your agent or employee are authorized and directed to sign, deliver, and/or register electronically, on my/our behalf the Documents in the form attached.
- You are hereby authorized and directed to enter into an escrow closing arrangement substantially in the form attached hereto being a copy of the version of the Document Registration Agreement, which appears on the website of the Law Society of Upper Canada as of the date of the Agreement of Purchase and sale herein. I/We hereby acknowledge the said Agreement has been reviewed by me/us and that I/We shall be bound by its terms;
- The effect of the Documents has been fully explained to me/us, and I/we understand that I/we are parties to and bound by the terms and provisions of the Documents to the same extent as if I/we had signed them; and
- I/we are in fact the parties named in the Documents and I/we have not misrepresented our identities to you.
- I, [Signature], am the spouse of [Signature], the (Transferor/Chargor), and hereby consent to the transaction described in the Acknowledgment and Direction. I authorize you to indicate my consent on all the Documents for which it is required.

DESCRIPTION OF ELECTRONIC DOCUMENTS

The Document(s) described in the Acknowledgement and Direction are the document(s) selected below which are attached hereto as "Document in Preparation" and are:

- A Transfer of the land described above.
- A Charge of the land described above.
- Other documents set out in Schedule "B" attached hereto.

Dated at Toronto, this _____ day of May, 2017

WITNESS

(As to all signatures, if required)

FERWIN VENTURES CAPITAL INC.

ITALO FERRARI

I have authority to bind corp.

This document has not been submitted and may be incomplete.

Properties

PIN 01172 - 0201 LT Interest/Estate Fee Simple
 Description LOT 140 PLAN 1303 WINDSOR; LOT 141 PLAN 1303 WINDSOR; LOT 144 PLAN 1303 WINDSOR; LOT 145 PLAN 1303 WINDSOR ; WINDSOR
 Address 785 GOYEAU STREET WINDSOR

Chargor(s)

The chargor(s) hereby charges the land to the chargee(s). The chargor(s) acknowledges the receipt of the charge and the standard charge terms, if any.

Name FERWIN VENTURES CAPITAL INC.
 Acting as a company
 Address for Service 71 Siltan Road, Unit 10
 Woodbridge, ON
 L4L 7Z8

This document is being authorized by a representative of the Crown.

Chargee(s)

Capacity

Share

Name DI DOMIZIO, ANTONIO
 Acting as a company
 Address for Service c/o 71 Siltan Road, Unit 10
 Vaughan, ON
 L4L 7Z8

Name DI DOMIZIO, MALGORZATA
 Acting as an individual
 Address for Service c/o 71 Siltan Road, Unit 10
 Vaughan, ON
 L4L 7Z8

Provisions

Principal	\$ 550,000.00	Currency	CDN
Calculation Period	monthly, not in advance		
Balance Due Date	2017/11/03		
Interest Rate	15% per annum		
Payments	\$ 6,875.00		
Interest Adjustment Date	2017 05 03		
Payment Date			
First Payment Date	2017 06 03		
Last Payment Date	2017 11 03		
Standard Charge Terms	200033		
Insurance Amount	full insurable value		
Guarantor			

Additional Provisions

1. The principal balance and interest as monthly payment will be paid on maturity date; and
2. The Charge is non-transferable, and fully open for prepayment in whole or in part at any time or time.

This is Exhibit F referred to in the
affidavit of Antonio Di Domizio
sworn before me, this 11
day of April 2018

.....
A COMMISSIONER FOR TAKING AFFIDAVITS

DISCHARGE STATEMENT

RE: Ferwin Ventures Capital Inc. 1st mortgage to Antonio and Malgorzata Di Domizio
Discharge on 785 Goyeau Street Windsor Ontario

Principal as of the 3 rd of April 2018	\$550,000.00
Interest from May 3, 2017 to April 3, 2018 at 15%	\$ 75,625.00
Interest from April 3, 2018 to April 6, 2018 At a per diem of \$229.16	\$ 687.48
Total payable	\$626,312.48

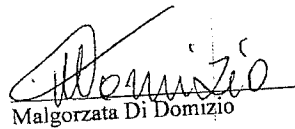
**Total payable to Antonio and Malgorzata Di Domizio by way of certified funds
\$626,312.48**

Legal Fees to date	\$2,500.00
HST	\$ 325.00
Disbursement of Registration	\$ 75.63
Total Payment to Murray Maltz Professional Corporation	\$2,900.63

**Total payable to Murray Maltz Professional Corporation In Trust by way of
certified funds \$2,900.63**

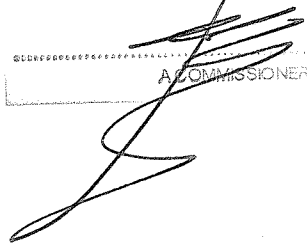
Dated this day of April 2018


Antonio Di Domizio


Malgorzata Di Domizio

This is Exhibit G referred to in the
affidavit of Antonio Di Domizio
sworn before me, this 11
day of April 2018.

.....
A COMMISSIONER FOR TAKING AFFIDAVITS



MURRAY MALTZ PROFESSIONAL CORPORATION
MURRAY N. MALTZ
BARRISTER AND SOLICITOR
933 MOUNT PLEASANT ROAD
TORONTO ONTARIO M4P 2L7
TEL: 416-398-6900 FAX: 416-398-6845

March 19, 2018

Sent by fax: 905-528-9008

David J. Jackson
SimpsonWigle Law LLP
1 Hunter Street East
Suite 200
Hamilton, Ontario
L8N 3W1

Dear Mr. Jackson,

RE: Sale of 785 Goyeau Street, Windsor Ontario

I have been retained by Mr. and Mrs. Di Domizio concerning the above noted matter. Mr. and Mrs. Di Domizio have a second mortgage in the principal sum of \$550,000.00 and there is a first mortgage on the property for the sum of \$400,000.00. It is my understanding that neither the first mortgage nor the second mortgage has any interest in realizing on their security at this time. I further understand that the Receiver has been appointed on behalf of FirstOntario Credit Union Limited. I understand that the property has been sold for the sum of \$850,000.00. The sale price would assure that my client does not realize the full amount of the debt owed to him by Ferwin Ventures Capital Inc. More-so, none of the unsecured creditors will realize any money from the sale as well. In that regard I see no benefit or reason to the Trustee sale of the property and in fact only a detriment to both the secured creditors and potentially unsecured creditors.

Please assure that I receive a copy of the motion material dealing with the sale of the above noted property as it will be opposed. I suggest that the Receiver declare the Agreement null and void considering the above.

I must advise that this letter will be used to deal with the issue of costs.

I look forward to your reasoned position.

Yours truly,

Murray N. Maltz
MNM/sb

Cc: A. Di Domizio

FIRSTONTARIO CREDIT UNION LIMITED
APPLICANT

AND

FERWIN VENTURES CAPITAL INC.
RESPONDENT

SUPERIOR COURT OF ONTARIO
(Commercial Court)

Proceedings Commenced at:

TORONTO

REPLY MOTION RECORD OF
ANTONIO AND MALGORZATA
DI DOMIZIO

MURRAY N. MALTZ
Murray Maltz Professional Corporation
Barrister & Solicitor
933 Mount Pleasant Road
Toronto, Ontario
M4P 2L7
Tel: (416) 398-6900
Fax: (416) 398-6845
LSUC #25047R
Solicitor for Antonio and Malgorzata
Di Domizio