

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

B E T W E E N :

PACE SAVINGS & CREDIT UNION LIMITED

Applicant

- and -

**NOBLE HOUSE DEVELOPMENT CORPORATION,
2307400 ONTARIO INC. and 2209326 ONTARIO LTD.**

Respondents

SUPPLEMENTARY MOTION RECORD
(returnable June 25, 2021)

Date: June 14, 2021

AIRD & BERLIS LLP

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Lawyers for the Receiver

TO THE ATTACHED SERVICE LIST

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1.	Supplement to the Second Report of msi Spergel Inc. dated June 14, 2021
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APPENDIX TO THE SUPPLEMENT TO THE SECOND REPORT

A.	Affidavit of Jay Finch sworn June 14, 2021
2.	Service List

TAB 1

Court File No. CV-20-00635946-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

BETWEEN:

PACE SAVINGS & CREDIT UNION LIMITED

Applicant

- and -

NOBLE HOUSE DEVELOPMENT CORPORATION, 2307400 ONTARIO INC., AND
2209326 ONTARIO LTD.

Respondents

SUPPLEMENMT TO SECOND REPORT OF MSI SPERGEL INC.
IN ITS CAPACITY AS COURT-APPOINTED RECEIVER OF
NOBLE HOUSE DEVELOPMENT CORPORATION, 2307400 ONTARIO INC., AND
2209326 ONTARIO LTD.

JUNE 14, 2021

APPENDICES

1. Affidavit of Jay Finch sworn June 14, 2021

APPOINTMENT AND BACKGROUND

1. This Supplement to the Second Report t (the "**Supplement**") is filed by msi Spergel inc. ("**Spergel**"), in its capacity as the Court-appointed receiver (in such capacity, the "**Receiver**") of Noble House Development Corporation ("**Noble House**"), 2307400 Ontario Inc. ("**230 Inc.**") and 2209326 Ontario Ltd. ("**220 Ltd.**" and, together with Noble House and 230 Inc., the "**Companies**").

PURPOSE OF THIS SUPPLEMENT

2. The purpose of this Supplement is to bring context to the allegations made in Paragraph 27 of the Affidavit of Giuseppe Luongo sworn June 9, 2021 (the "**Luongo Affidavit**") well as to the email referenced therein as Exhibit "G" therein, being an email dated November 17, 2020 from Jay Finch ("**Finch**"), the Broker engaged by the Receiver to sell the property located at 3 Crescent Road, Huntsville (the "**Crescent Road Property**") to Scott Lyall ("**Lyall**"), the real estate agent acting for the purchaser (the "**November 17th Email**").

THE RECEIVER'S POSITION ON THE ALLOCATION ISSUE

3. Despite the conclusion made by the deponent in paragraph 27 of the Luongo Affidavit, the Receiver was not asked any questions about the November 17th Email or the context for same prior to its inclusion in the Luongo Affidavit.
4. Contrary to the allegations contained in paragraph 27 of the Luongo Affidavit, the Receiver states unequivocally that it did not in any way attempt to influence the purchase price allocation. The Receiver gave no instructions to its Listing Broker to advocate for any particular methodology in connection with the purchase price allocation.

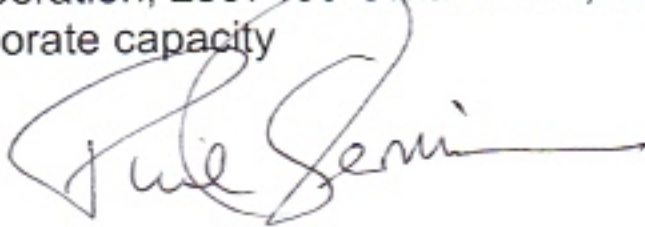
5. The allocation was already a requirement of the draft Agreement of Purchase and Sale and was deemed appropriate in light of the competing interests of stakeholders.
6. To add further context to the circumstances surrounding the November 17th Email, the Receiver includes herewith, as **Appendix "1"** the Affidavit of Jay Finch sworn June 14, 2021.

Dated at Toronto, this 14th day of June, 2021.

msi Spergel inc.,

solely in its capacity as Court-appointed Receiver of Noble House Development Corporation, 2307400 Ontario Inc., and 2209326 Ontario Ltd., and not in its personal or corporate capacity

Per:



Philip H. Gennis, JD, CIRP, LIT
Licensed Insolvency Trustee

TAB A

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

B E T W E E N :

PACE SAVINGS & CREDIT UNION LIMITED

Applicant

- and -

**NOBLE HOUSE DEVELOPMENT CORPORATION,
2307400 ONTARIO INC. and 2209326 ONTARIO LTD.**

Respondents

**AFFIDAVIT OF JEFFREY (JAY) FINCH
(sworn June 14, 2021)**

I, JEFFREY (JAY) FINCH, of the City of Richmond Hill, in the Province of Ontario, **MAKE OATH AND SAY** as follows:

1. I am a licenced real estate broker with Lennard Commercial Realty, Brokerage ("**Lennard**") and was engaged by the msi Spergel inc. in its capacity as the Court-Appointed receiver of (in such capacity, the "**Receiver**") of Noble House Development Corporation, 2307400 Ontario Inc., and 2209326 Ontario Ltd., in connection with the sale of the units located in the building municipally known as 3 Crescent Road, Huntsville, Ontario ("**the Properties**") and as such have knowledge of the matters set out herein.
2. I was asked to review the email attached as Exhibit G to the affidavit of Giuseppe Luongo sworn on June 9, 2021 ("**Luongo Affidavit**") and wish to provide additional information to assist the Court in the motion to determine entitlement to the proceeds which remain in the hands of the Receiver.
3. I authored the email attached as Exhibit G to the Luongo Affidavit ("**Lyall Email**"). The email was sent to Scott Lyall who was the real estate broker for the purchaser of the Properties rather than its counsel. I understand that the principal of the purchaser is himself a real estate lawyer.

4. Preceding the delivery of the Lyall Email I had been asked by the Receiver to obtain a purchase price allocation as there were different stakeholders with claims to the proceeds. I contacted Mr. Lyall and had a discussion with Mr. Lyall to explain why the Receiver was seeking a purchase price allocation. We discussed various methods of allocating the purchase price such as income approach and price per square foot. Following that discussions both Mr. Lyall and I believed that the price per square foot was the most appropriate method of allocation for the following reasons:
- a) Not all units had been rented out resulting in a lack of Net Operating Income, so an income approach was not necessarily an accurate method of allocating price;
 - b) Lack of complete information, including the original leases on multiple units (including the Tulloch unit), resulting in uncertainty around lease terms; and,
 - c) Price per square foot seemed to be an objective measure given the state of the facility.
5. The Lyall Email memorialized the discussion and did contain the allocation that I believed the purchaser would be choosing based on the discussion with Mr. Lyall. Regardless, the ultimate decision on purchase price allocation was left in the hands of the purchaser.
6. I was not asked by the Receiver to advocate for any particular method of purchase price allocation nor did I have a preference in which method the purchaser ultimately elected to choose.
7. Prior to being asked to review the Luongo Affidavit by the Receiver, no party came to me to ask about the Lyall Email or the circumstances surrounding its release.
8. This affidavit is sworn in connection with the motions to determine the entitlements to the Disputed Funds as defined in the Second Report of the Receiver and for no improper purpose.

SWORN by Jeffrey (Jay) Finch
Toronto, in the Province of Ontario, before
me on this 14th day of June, 2021 in
accordance with O. Reg 431/20,
Administering Oath or Declaration
Remotely.



A COMMISSIONER, ETC.

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JEFFREY (JAY) FINCH

PACE SAVINGS & CREDIT UNION LIMITED

**NOBLE HOUSE DEVELOPMENT CORPORATION,
2307400 ONTARIO INC. and 2209326 ONTARIO
LTD.**

Applicant

Respondents

- and -

CV-20-00635946-00CL

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

Proceedings commenced at Toronto

**AFFIDAVIT OF JEFFREY (JAY) FINCH
(sworn June 14, 2021)**

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Lawyers for the Court-appointed Receiver

TAB 2

SERVICE LIST
“SCHEDULE A”
(Current as of June 8, 2021)

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TO:	<p>MSI SPERGEL INC. 505 Consumers Road., Suite 200 Toronto, ON M2J 4V8</p> <p>Philip H. Gennis Tel: (416) 498-4325 Fax: (416) 498-4325 Email: pgennis@spergel.ca</p> <p>Mukul Manchanda Tel: (416) 498-4314 Fax: (416) 498-4314 Email: mmanchanda@spergel.ca</p> <p>Receiver</p>
AND TO:	<p>AIRD & BERLIS LLP Brookfield Place, 181 Bay Street, Suite 1800 Toronto, ON M5J 2T9</p> <p>Sanjeev Mitra Tel: (416) 865-3085 Fax: (416) 863-1515 Email: smitra@airdberlis.com</p> <p>Jeremy Nemers Tel: (416) 865-7724 Fax: (416) 863-1515 Email: jnemers@airdberlis.com</p> <p>Lawyers for the Receiver</p>
AND TO:	<p>FALLS LAW GROUP 255 Manitoba St. Bracebridge, ON P1L 1S2</p> <p>Jason Herbert Tel: (705) 645-3007 Fax: (705) 645-3998 Email: jay@fallslaw.ca</p> <p>Lawyers for the Respondents, 2307400 Ontario Inc., 2209326 Ontario Ltd., Noble House Development Corporation, Ray Jarvis, 1923129 Ontario Inc., 1981262 Ontario Inc. and 2557295 Ontario Inc.</p>

AND TO:	<p>LIPMAN, ZENER & WAXMAN PC Barristers and Solicitors 100 Sheppard Avenue East, Suite 850 Toronto, ON M2N 6N5</p> <p>Ian Klaiman Tel: (416) 789-0658 Fax: (416) 789-9015 Email: iklaiman@lzwlaw.com</p> <p>Jason Spetter Tel: (416) 789-0655 Fax: (416) 789-9015 Email: jspetter@lzwlaw.com</p> <p>Lawyers for the Respondent, BDO Canada Limited</p>
AND TO:	<p>HARRISON PENZA LLP Barristers & Solicitors 450 Talbot Street London, ON N6A 5J6</p> <p>Timothy C. Hogan Tel: (519) 661-6743 Fax: (519) 667-3362 Email: thogan@harrisonpensa.com</p> <p>Robert Danter Tel: (519) 661-6770 Fax: (519) 667-3362 Email: rdanter@harrisonpensa.com</p> <p>Lawyers for the Applicant, Pace Savings & Credit Union Limited</p>
AND TO:	<p>GARDINER ROBERTS LLP Lawyers Bay Adelaide Centre, East Tower 22 Adelaide Street West, Suite 3600 Toronto ON M5H 4E3</p> <p>Gavin J. Tighe (34496Q) Tel: (416) 865-6664 Email: gitighe@grllp.com</p> <p>Alexander Melfi (64154H) Tel: (416) 865-6712 Email: amelfi@grllp.com</p> <p>Lawyers for Lloyds Underwriters and 3303128 Canada Inc. T/A Alternative Risk Services</p>

AND TO:	<p>HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO as represented by Ministry of Finance Legal Services Branch 33 King Street West, 6th Floor Oshawa, ON L1H 8E9</p> <p>Tel: (905) 433-6934 Fax: (905) 436-4510 Email: insolvency.unit@ontario.ca</p>
AND TO:	<p>CANADA REVENUE AGENCY c/o Department of Justice Ontario Regional Office 120 Adelaide St. W., Suite 400 Toronto, ON M5H 1T1</p> <p>Rakhee Bhandari Tel: (416) 952-8563 Email: rakhee.bhandari@justice.gc.ca</p>
AND TO:	<p>REAL ESTATE COUNCIL OF ONTARIO 3300 Bloor Street West, Suite 1200, West Tower Toronto, ON Canada M8X 2X2</p> <p>ALSO SEND AN EMAIL COPY TO: registration@reco.on.ca</p>
AND TO:	<p>LOOPSTRA NIXON Woodbine Place 135 Queens Plate Drive Suite 600 Toronto, ON M9W 6V7</p> <p>Alison Kutchinsky Tel: 416-748-4771 Email: akuchinsky@loonix.com</p> <p>Lawyers for Dael Thermal Group Inc.</p>
AND TO:	<p>BYLD Barristers 141 Adelaide street West, Suite 400 Toronto, ON M5H 3L5</p> <p>Ranjan Das Tel: 416-364-4900 x221 Fax: 416-364-3865 Email: rdas@byldlaw.com</p> <p>Lawyers for Ray Jarvis</p>

AND TO:	WYLAW PROFESSIONAL CORPORATION 39 Dominion St. P.O. Box 177 Bracebridge, ON P1L 1T6 Daniel Wyjad Tel: 705-645-8787 Fax: 705-645-3390 Email: bracebridge@wylaw.ca Lawyers for John Jarvis
AND TO:	SCOTT LYALL 2277 Queen Street East Toronto, ON M5E 3N4 Email: scottlyall@sympatico.ca
AND TO:	REALCROP LAW 32-3075 Ridgeway Drive Mississauga, ON L5L 5M6 Shaffiq Dar sdar@real-corp-law.com Lawyers for the Purchaser
AND TO:	Rutman & Rutman Professional Corporation 184 Queen Street West Brampton, ON L6X 1A8 Zafir Khan Tel: 905-456-9969 Fax: 905-456-7448 Email: zafir@rutmanlaw.com AND Macdonald Sager Manis LLP 150 York Street, Suite 800 Toronto, ON M5H 3S5 Howard Manis Tel: 416-364-1553 Fax: 416-364-1453 Email: hmanis@msmlaw.net Lawyers for the Level 2 Creditors

AND TO:	WILLIAM HARVEY JONES, BARRISTER & SOLICITOR 401 Bay Street, Suite 2702 Toronto, ON M5H 2Y4 Email: whjones@williamjones.ca Lawyers for Andrew Turner
----------------	---

**SERVICE LIST
SCHEDULE "B"
(Current as of June 8, 2021)**

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TO:	RAYMOND JARVIS 65 Main Street West Huntsville, ON P1H 1W9
AND TO:	JOHN JARVIS 14 Glenwood Drive Huntsville, ON P1H 1B8
AND TO:	CANADIAN WESTERN TRUST COMPANY 750 Cambie Street, Suite 300 Vancouver, BC V6B 0A2
AND TO:	MCAP HOLDINGS INC. c/o Canadian Western Trust Company 750 Cambie Street, Suite 300 Vancouver, BC V6B 0A2
AND TO:	THE TOWN OF HUNTSVILLE General Town Hall 37 Main St. East Huntsville, ON P1H 1A1
AND TO:	THE DISTRICT MUNICIPALITY OF MUSKOKA 70 Pine Street Bracebridge, ON P1L 1N3
AND TO:	DEBORAH BRANNAN 845 Wilson Ave., Suite 201 Toronto, ON M3K 1E6
AND TO:	WATER DRAGON HOLDINGS INC. 845 Wilson Ave., Suite 201 Toronto, ON M3K 1E6
AND TO:	REAL ESTATE COUNCIL OF ONTARIO 3300 Bloor Street West, Suite 1200, West Tower Toronto, ON Canada M8X 2X2

AND TO:

**MUSKOKA STANDARD CONDOMINIUM
CORPORATION NO. 80**

3 Crescent Rd
Huntsville, ON P1H 1Y3

and

**MUSKOKA STANDARD CONDOMINIUM
CORPORATION NO. 80**

c/o Ain Whitehead LLP

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Respondents

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Lawyers for the Receiver