

MINISTRY OF THE ATTORNEY GENERAL  
SUPERIOR COURT OF JUSTICE  
393 UNIVERSITY AVE.  
TORONTO, ONTARIO  
M5C 1T3

FACSIMILE TRANSMITTAL SHEET

FILE NUMBER:

CV-17-000118(D)-00CL

FILE NAME:

Trez Capital Limited Partnership et al v 7481093 Ontario Inc.

FROM:

Judith McEwen

DATE:

May 25, 2018

FAX NUMBER (S):

NUMBER OF PAGES-(INCLUDING COVER)

6

TO:

George Benchoff (416) 218-1841

TO:

Don Michael (416) 868-0306

TO:

Nicholas J. Caputo (416) 533-7890

TO:

Vern Dore (416) 941-8857

TO:

URGENT  FOR REVIEW  PLEASE COMMENT  PLEASE REPLY  PLEASE RECYCLE

NOTES/COMMENTS:

Orders to be picked up at the Commercial list office at  
330 University Avenue

[CLICK HERE AND TYPE RETURN ADDRESS]

Superior Court of Justice  
Commercial List

FILE/DIRECTION/ORDER

Trez Capital et al Plaintiff(s)  
AND  
2481043 Ontario Inc Defendant(s)

Case Management  Yes  No by Judge: \_\_\_\_\_

Counsel	Telephone No:	Facsimile No:
(See attached)	(list)	

- Order  Direction for Registrar (No formal order need be taken out)
- Above action transferred to the Commercial List at Toronto (No formal order need be taken out)
- Adjourned to: \_\_\_\_\_
- Time Table approved (as follows):

The Receiver brings this motion for an <sup>in</sup> Approval and Vesting order seeking, amongst other things, approval of No sales transaction.

The Applicants support the motion. No <sup>is</sup> interested party opposes.

The Resp seeks an adjournment of two weeks claiming it has another potential, more favourable deal.

24 May 18  
Date

[Signature]  
Judge's Signature

Additional Pages 4

Superior Court of Justice  
Commercial List

## FILE/DIRECTION/ORDER

## Judges Endorsment Continued

involving financing but needs some time to complete all steps required to obtain Mill financing.

I am not prepared to grant the adjournment and grant the order sought as per the draft which I have signed.

I have come to this conclusion for a number of reasons, primarily as follows:

- The building has been encumbered for the most part since its purchase by the Resp in 2016
- The Applicant & Resp entered into a number of Forebearance agreements all of which went unfulfilled by the Resp.
- In the past the Resp has claimed it had financing and it never materialized

Superior Court of Justice  
Commercial List

FILE/DIRECTION/ORDER

Judges Endorsment Continued

• In Dec/17 the Resp. brought a motion after several indulgences over ~~for~~ <sup>for</sup> several months to obtain an injunction to restrain the Receivership and for an adjournment.

Justice Conway refused both.

• The purported tentative offer, unattached to an affidavit (for that matter no affidavit evidence was filed), is conditional and it is highly questionable that the conditions - particularly the \$35,000,000.00 appraisal requirement ~~the~~ <sup>can</sup> can be met (in light of a comparison with the confidential offers received).

• The materials filed by the Applicants unsworn, disclose a history of repeated contractual breaches.

• The Receiver has conducted a robust sales process; the successful bidder has invested money in the

Superior Court of Justice  
Commercial List

FILE/DIRECTION/ORDER

Judges Endorsment Continued

Process

In keeping with the principles set out in Sound Air the integrity of the system must be maintained when a fair process is carried out.

The Applicant will suffer a shortfall if the current sales proceeds, nonetheless they submit they have "zero" confidence in the Resp's ability to rebalance

I do not accept Mr Tian's promise to indemnify <sup>the purchaser</sup> is the deal he proposes. Calls through in light of the above.

In all of these circumstances the appeal & vesting order should go. I have reviewed it and it is reasonable. A sealing order shall also go with respect to the confidential proceedings brief as the Serra Club condition is met.

Court File Number: \_\_\_\_\_

Superior Court of Justice  
Commercial List

**FILE/DIRECTION/ORDER**

Judges Endorsment Continued

The Order for Ancillary Relief is  
also reasonable and shall go as per  
the draft filed & signed. (This order  
includes the sealing order). Fees sought  
are reasonable.

M. E. T.

Page 5 of 5

Judges Initials M