

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

B E T W E E N:

FIREPOWER DEBT GP INC., AS AGENT

Applicant

- and -

THEREDPIN, INC. and THEREDPIN.COM REALTY INC.

Respondents

**APPLICATION UNDER SUBSECTION 243(1) OF THE *BANKRUPTCY AND
INSOLVENCY ACT, R.S.C. 1985, c.B-3, AS AMENDED, AND SECTION 101 OF THE
COURTS OF JUSTICE ACT, R.S.O. 1990, c.C.43, AS AMENDED***

JOINT FACTUM OF THE APPLICANT AND TRILOGY GROWTH FUND, L.P.
(motion for advice and direction returnable October 22, 2018)

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JOINT FACTUM OF THE APPLICANT AND TRILOGY GROWTH FUND, L.P.

PART I - INTRODUCTION

1. This factum is jointly submitted by the Applicant, acting as agent for FirePower GAP Debt LP and FirePower GAP Debt II LP (collectively, “**FirePower**”), and Trilogy Growth Fund LP (“**Trilogy**”, and together with FirePower, the “**Secured Lenders**”), in response to the Receiver’s motion for advice and direction concerning whether any or all of the Third-party Commissions (as defined below) are held and are to be held in trust for the benefit of, among others, the TRP Salespersons (as defined below).

2. The principle issue to be determined by the Court on this motion is whether TRP Realty intended to hold the Third-party Commissions in trust for the TRP Salespersons. The onus is on the TRP Salespersons to establish, on a balance of probabilities and on an objective basis, that such intention existed.

3. The Secured Lenders respectfully submit that the documentary evidence before the Court with respect to the Commissions Receivables (as defined below), including the Contractor's Agreement (as defined below), the representations and warranties made by the Respondents, TheRedPin.Com Realty Inc. ("**TRP Realty**") and TheRedPin, Inc. (collectively, the "**Debtors**"), to the Secured Lenders in the loan and security documents, and the Debtors' audited financial statements, are inconsistent with an intention by TRP Realty to hold the Third-party Commissions in trust for the TRP Salespersons.

4. The Secured Lenders respectfully request that the Court declare that the Third-party Commissions represent property of TRP Realty and are not held in trust for the TRP Salespersons.

PART II - SUMMARY OF FACTS

THE PARTIES

TRP Realty

5. TRP Realty was a real estate brokerage operating in Ontario and regulated by the Real Estate Council of Ontario ("**RECO**") pursuant to the Ontario *Real Estate and Business Brokers Act, 2002* ("**REBBA**") and associated regulations.

Motion Record of MNP Ltd., Court-appointed Receiver, dated September 10, 2018, Tab 2, Second Report of the Receiver dated September 20, 2018 (the "**Second Report**"), paras. 10, 14, 16 and 20.

6. TRP Realty's revenues were primarily derived from real estate commissions generated from the closing of leasing, purchase and sale transactions of real estate.

Second Report, para. 16; Affidavit of Jared Kalish sworn October 9, 2018 ("Kalish Affidavit"), para. 3.

7. TRP Realty generally acted either for a buyer, where it was the "co-operating brokerage", or for a seller, where it was the "listing brokerage". TRP Realty was the co-operating brokerage in over 96% of the approximately 730 pending transactions to be settled by the Receiver.

Second Report, paras. 17.

8. There are commissions receivable due to TRP Realty totalling approximately \$6.5 million (the "**Commissions Receivables**"), of which approximately \$3.7 million relates to commissions owed by TRP Realty to third parties (the "**Third-party Commissions**"), including TRP Realty's salespersons or agents ("**TRP Salespersons**").

Second Report, paras. 32-33.

TRP Salespersons

9. On September 11, 2018, the Court appointed Dennise Paccione and Michael Sotoadeh as representatives of a class of individuals consisting of all TRP Salespersons.

Responding Motion Record of Dennise Paccione and Michael Sotoadeh representatives of the former agents of TheRedPin.Com Realty Inc. ("**Representatives MR**"), Tab 2, Affidavit of Dennise Paccione sworn September 19, 2018, para. 3 and Exhibit "A".

10. Tarik Gidamy ("**Tarik**") is a former officer and director of the Debtors. Tarik was the broker of record of TRP Realty until May 2017, at which time he was terminated by the Debtors.

Tarik claims to be owed sales commissions from TRP Realty from sale transactions that have yet to close.

Representatives MR, Tab 1, Affidavit of Tarik Gidamy sworn September 19, 2018 (“**Tarik Affidavit**”), paras 1-5; Joint Supplementary Record, Tab 3, Transcript of cross-examination of Tarik Gidamy, taken October 11, 2018 (“**Tarik Transcript**”), qq. 79-90.

11. Each TRP Salesperson entered into an independent contract agreement with TRP Realty, (the “**Contractor’s Agreement**”), pursuant to which the TRP Salesperson agreed to provide real estate services to TRP Realty.

Second Report, para. 25(c) and Appendix “N”.

12. Section 5 of the Contractor’s Agreement sets out the commission to be paid to TRP Salespersons upon completion of a sale or transaction milestone. Section 5 provides that:

“5. Commission

The Company will pay out the commissions listed in this section on all transactions executed through the Company provided the Company receive a minimum of \$500 per executed transaction to cover administration costs. The Contractor agrees that the Company will receive the greater of \$500 or the Company portion of the listed commission split, unless otherwise indicated in this section. The Company shall issue commission cheques each Wednesday for transactions closed where final payment was received the previous week. Commissions for pre-construction transactions will be paid in accordance with the builder’s payment schedule. Commissions payable in this section are net of rebate on all firm transactions. In the event of a non-successful or adjustment of transaction, commissions will be adjusted accordingly.”

13. Section 7 of the Contractor’s Agreement describes the relationship between TRP Realty and a TRP Salesperson. Section 7 provides that:

“The Company and the Contractor specifically agree that the Contractor’s relationship with the Company is that of an independent contractor...

The Contractor shall calculate, withhold and remit all taxes and statutorily required payments... owing as a result of the Contractor's receipt of any payments under this Agreement..."

14. Section 17 of the Contractor's Agreement contained an entire agreement clause, which provides that:

"This Agreement including the attached Schedule "A" contains the entire agreement between the parties hereto with respect to matters herein **and supersedes and replaces all prior agreements and understandings, oral or written, between the Contractor and the Company relating to such matters...**" [emphasis added]

15. Section 22 of the Contractor's Agreement dealt with amendments and modifications to the agreement, and provides that:

"No provision of this Agreement may be amended or waived unless such amendment or waiver is authorized by the Company and is in writing signed by the Contractor and a duly authorized of the Company..."

16. The Contractor's Agreement is a comprehensive eleven (11) page agreement dealing with all aspects of the legal relationship between TRP Realty and a TRP Salesperson. The Contractor's Agreement deals specifically with entitlement to commissions and the precise mechanics for the payment of commission. There is no provision in the Contractor's Agreement which provides that commissions are to be held in trust by TRP Realty for the benefit of TRP Salespersons.

17. Tarik's evidence is that the Contractor's Agreement created a contractual obligation on TRP Realty's behalf to pay a TRP Salesperson a commission in connection with a completed sale transaction, as reflected in this excerpt from the transcript of his cross-examination:

"128. Q. If you can look at paragraphs 9 and 10 of your affidavit and perhaps refresh your memory by reading it and then I'll ask you a question.

A. M'hmm.

129. Q. I want to make sure that I understand what you're saying in 9 and 10. And is that when TRP was paid a commission, it was contractually obliged to pay the agent a commission in connection with the completed sale transaction?

A. Correct.

130. Q. And that contractual obligation was to pay whatever agreed percentage the agent was to get, the agreement being as between the brokerage and the agent. Is that right?

A. Correct.”

Tarik Affidavit, paras. 9-10; Tarik Transcript, qq. 128-130.

The Receiver

18. On June 14, 2018, MNP Ltd. was appointed by the Court as receiver (the “**Receiver**”) of all of the assets, undertakings and properties of the Debtors.

Second Report, para. 1.

FirePower and Trilogy

19. The Secured Lenders are secured creditors of TRP Realty. The Receiver has obtained independent legal opinions which confirm that FirePower and Trilogy each have valid and enforceable security against the assets, property and undertakings of TRP Realty, including its interest in the Commissions Receivables collected and to be collected.

Second Report, paras. 35(a), and 55-56; Motion Record of the Receiver returnable August 29, 2018, Tab 2, First Report of the Receiver dated August 23, 2018 (“**First Report**”), para. 29 and Appendices “D” and “E”.

20. As at June 9, 2018, TRP Realty was indebted to FirePower in the amount of \$3,711,479.96 (principal and interest), and was indebted to Trilogy in the amount of \$2,685,432.68 (principal, accrued interest and costs).

First Report, para. 28.

TRP Realty Bank Accounts

21. As of the date of the Receiver's appointment, TRP Realty maintained three (3) bank accounts:

- (a) a designated real estate trust account, as required to be maintained pursuant to section 27(1) of *REBBA*, into which purchaser deposits received by TRP Realty as listing agent were deposited and held in trust until the sale was completed or terminated;
- (b) a bank account opened by TRP Realty in January 2018 with Royal Bank of Canada ("**RBC**"), into which all commissions due to TRP Realty were received and then amounts were disbursed to the TRP Salespersons and others (the "**Commissions Account**"); and
- (c) a general operating account, from which TRP Realty paid its operating expenses.

Second Report, para. 27.

22. Keith McSpurren, the chief executive officer of TRP Realty from June 2017 to June 2018, advised the Receiver that the Commissions Account was not a trust account.

Second Report, para. 27(b).

Information Provided by TRP Realty to FirePower and Comerica Bank does not reflect that commissions owed to TRP Salespersons are Held in Trust

23. As part of the due diligence process that was completed prior to FirePower advancing its loan, TRP Realty provided a number of financial documents to FirePower, including the following:

- (a) a PowerPoint slide deck prepared by TRP Realty and delivered to FirePower that showed the gross commission receivables of TRP Realty and identified “sales commissions and bonuses” as a “Cost of Sales”;
- (b) a profit and loss summary tab prepared by TRP Realty and provided to FirePower, where the total gross commissions to be received was identified as consolidated income for the Debtors and amounts to be paid to TRP Salespersons and others was reflected as a cost of sales; and
- (c) an accounts receivable analysis, which (i) reflected the full gross commission amounts as accounts receivable of TRP Realty with no deduction for agent commissions, and (ii) referred to “restricted cash” as purchaser deposits received by TRP Realty, where it acted “as custodian until the property closes” and TRP Realty “[did] not have access to... at any time”. No similar distinction was made with respect to commissions payable to TRP Salespersons.

Kalish Affidavit, paras. 11-16 and Exhibits “B”, “C” and “D”.

24. All of the above confirms that the gross commissions payable to TRP Realty are assets of TRP Realty and that commissions owed to TRP Salespersons are a debt of TRP Realty. None of the above reflects that commissions owed to TRP Salespersons are not assets of TRP Realty or are held in trust for TRP Salespersons.

Audited Financial Statements Do Not Show Agent Commissions to be Held in Trust

25. The Debtors also provided their audited financial statements to FirePower during the due diligence process. KPMG LLP (“KPMG”) audited the Debtors’ consolidated statements of financial position as at December 31, 2015 and as at December 31, 2016, the consolidated statements of income and comprehensive income, changes in shareholder equity (deficiency) and statements of cash flows for the year then ended.

Supplementary Report to the Second Report of the Receiver dated September 28, 2018, para. 15 and Appendix “A”; Kalish Affidavit, para. 8 and Exhibit “A”.

26. The consolidated statements of income and comprehensive income show “Revenue” amounts and “Cost of Revenue” amounts. Note 12 to the statements indicate that the Revenue amount reflects the total commission revenue. Note 4(c) to the statements provides that:

Cost of revenue:

Cost of revenue consists of agent salaries, bonus, **commissions**, direct selling costs, direct advertising costs and referral fees. **Agent commissions are generally paid at a time of closing on resale units and at time the Company receives the first instalment on new units. [emphasis added]**

27. The consolidated statements of financial position and consolidated statements of cash flow each included amounts identified as “Restricted Cash”. Note 4(d) of the statements provides that:

Excluded from cash and cash equivalents are amounts **held in trust as required by various purchase and sale agreements, which are separately disclosed as restricted cash. [emphasis added]**

28. Tarik, as a member of the board of the Debtors, approved the financial statements.

Tarik Transcript, qq. 215-216.

29. Tarik executed a letter to KPMG dated October 11, 2016 in connection with KPMG's audit of the financial statements for the year ended December 31, 2015. In the letter, Tarik, on behalf of the Debtors, represented and confirmed that:

“15) **[The Debtors have] satisfactory title to all assets...**

18) There are no liens or encumbrances on the [Debtors'] assets, except for those that are disclosed in Notes to financial statements.

19) We have no knowledge of any liens or encumbrances on assets and/or assets that have been pledged or assigned as security for liabilities, performance of contracts etc. not disclosed in the financial statements...

22) **We have no knowledge of side arrangements (contractual or otherwise) with any parties that have not been disclosed to you.**

23) We have no knowledge of material unrecorded assets or liabilities or contingent assets or liabilities...” **[emphasis added]**

Tarik Transcript, qq. 217-218; Joint Supplementary Record, Tab 3(c), Exhibit “3” to the Tarik Transcript.

30. The audited financial statements and the information provided to KPMG as auditor all confirm that gross commissions are assets of TRP Realty and that commissions owed to agents is a debt of TRP Realty. The audited financial statements recognize that purchaser deposits are “restricted cash” held in trust. There is no such designation for agents’ commissions.

FirePower Loan and Security Documents Negate Agents’ Commissions being Held in Trust

31. In connection with the credit facilities advanced to the Debtors, FirePower and the Debtors entered into a loan agreement dated as of February 15, 2017 (the “**Loan Agreement**”), and TRP Realty executed a general security agreement dated February 15, 2017 (the “**GSA**”). Tarik executed the Loan Agreement and the GSA on behalf of the Debtors.

Tarik Transcript, qq. 163-164 and 195 and Exhibits “1” and “2”.

32. Pursuant to section 29 of the Loan Agreement, Tarik, signing on behalf of the Debtors, represented and warranted as follows to FirePower:

“Each of the Obligors represents and warrants as follows to the Agent and acknowledges and **confirms that the Agent and the Lenders are relying upon such representations and warranties in granting the Loan and making any Advances hereunder**...”

(g) Subject to the Permitted Encumbrances and the permitted Indebtedness referred to in Section 30(c) of this Agreement, each Obligor has, and when it executes and delivers the Security will have, **good and unencumbered title to the assets and property described therein and included in the Security, free and clear of all assignments, liens, charges and encumbrances whatsoever**...”

(j) ... Any and all representations and warranties made by the Obligors pursuant to any Credit Documents are true, accurate and correct in all material respects, and **any and all other applications, books, records, financial statements or other documents delivered to the Agent or any Lender by or on behalf of the Obligors prior to the date hereof, in connection with the Agent’s or any Lender’s due diligence review or otherwise do not contain any material misrepresentation as to the matters set out therein**.” [emphasis added]

Tarik Transcript, Exhibit “1”.

33. Pursuant to the GSA, TRP Realty granted security in favour of FirePower over all of its property and assets (defined thereunder as “Collateral”), including:

“Accounts – all present and future debts, demands and amounts due or accruing due to the Borrower whether or not earned by performance, including without limitation its book debts, accounts receivable, and claims under policies of insurance”.

Tarik Transcript, Exhibit “2”.

34. Pursuant to section 8(c) of the GSA, Tarik, signing on behalf of TRP Realty, represented and warranted as follows to FirePower:

“The Guarantor hereby represents and warrants as follows to the Agent and acknowledges that the Agent and the Lender are relying thereon: ...

(c) **except for the Security Interest, the Comerica Security Interest, the Permitted Encumbrances, and other liens explicitly permitted pursuant to the terms of the Loan Agreement, the Collateral is owned by the Guarantor free from all mortgage, lien, charge, encumbrance, pledge, security interest or other claim whatsoever...** [emphasis added]

Tarik Transcript, Exhibit “2”

35. The term “Permitted Encumbrances” in the GSA and the Loan Agreement did not include any reference to an agent’s interest in commissions.

Tarik Transcript, qq. 200-205 and Exhibits “1” and “2”.

Comerica Borrowing Base Compliance Certificate Does Not Reflect Agents’ Commissions are Held in Trust

36. During the time FirePower was a lender to the Debtors, Comerica Bank had provided secured operating credit facilities to the Debtors, which was margined against accounts receivable. The Debtors represented to Comerica Bank and FirePower that the gross receivables it was scheduled to receive was entirely their property and available to be margined.

Kalish Affidavit, para. 17.

37. In connection with the Comerica Bank credit facilities, the Debtors completed and delivered borrowing base compliance certificates. In a compliance certificate signed by Tarik for the period ending May 31, 2017, the accounts receivable listed on the certificate were the gross commissions to be received by the Debtors, and did not provide for any deduction for the agents’ share of the commissions.

Tarik Transcript, qq. 219-227 and Exhibit “D”.

No OREA, REBBA or RECO Document Provides that Agents' Commissions Held in Trust

38. There are a number of standard form documents that are utilized by real estate brokerages in connection with transactions related to sale and lease of residential real estate. Such forms have been created by the Ontario Real Estate Association (“OREA”) and/or RECO. REBBA places no statutory or other requirement on behalf of real estate brokerages to hold commission amounts in trust for agents. Samples of such forms, which were used by TRP Realty, are attached as appendices to the Receiver’s Second Report.

39. Not one of the documents used by TRP Realty in connection with real estate transactions completed during the course of carrying on business provided that TRP Realty hold any portion of the commissions it earned in trust for its agents.

PART III - ISSUE

- (a) Whether any or all of the Third-party Commissions collected and to be collected by the Receiver are held and to be held in trust for the benefit of the TRP Salespersons.

PART IV - LAW AND ARGUMENT

40. For a trust to come into existence, it must have three essential characteristics, also referred to as the “three certainties”: certainty of intention, certainty of subject-matter, and certainty of object. The three certainties must be established for both an express or implied trust.

Highland Nursing Home Employee Pension Plan Trust v. Aldridge, 2004 CarswellOnt 447 (C.A.), para. 6.

41. In this case, the subject-matter and object of the alleged trust are not at issue. The sole issue before the Court is whether TRP Realty intended to hold any of the Third-party Commissions in trust for the TRP Salespersons.

42. The onus is on the TRP Salespersons to show that the evidence establishes on a balance of probabilities and on an objective basis that it was the intention of TRP Realty to hold Third-party Commissions in trust for the TRP Salespersons.

Ridel v. Schwartz, Levitsky, Feldman Inc., 2016 ONCA 522, paras. 11 and 13;
Infoplace Ticket Centres Ltd., Re, 2009 CarswellOnt 8082 (SCJ), para. 3.

43. In *Bank of Nova Scotia v. Atcon Group Inc.*, the New Brunswick Court of Appeal cited favourably the following passage from the House of Lords decision in *Gissing v. Gissing*:

“[...] in the branch of English law relating to constructive, implied, or resulting trusts effect is given to the inferences as to the intentions of parties to a transaction which a reasonable man would draw from their words or conduct and not to any subjective intention or absence of intention which was not made manifest at the time of the transaction itself [...]” [emphasis added]

Bank of Nova Scotia v. Atcon Group Inc., 2012 CarswellNB 378 (C.A.), para. 18.

44. As stated in *Waters' Law of Trusts in Canada*, certainty of intention cannot be solely derived from a “moral obligation as to what is to be done with the property”.

Donovan W.M. Waters, etc., *Waters' Law of Trusts in Canada*, 4th ed., § 5.1 (WestlawNext Canada).

45. As stated by Justice Feldman (as she the was) in *Ontario (Ministry of Consumer and Commercial Relations v. Safeguard Real Estate Ltd.*

It is common ground that where there is no specific trust agreement in place between salespeople and their broker or between co-brokers... then

commissions are not impressed with a trust, and they rank with other unsecured creditors in a bankruptcy of a real estate brokerage...

That law is well-settled in Ontario...

Ontario (Ministry of Consumer and Commercial Relations v. Safeguard Real Estate Ltd., 1994 CarswellOnt 292 (Gen. Div. [Commercial List]), paras. 13-14.

46. As acknowledged by the TRP Salespersons, the Contractor's Agreement contains no express language which provides that TRP Realty agreed to hold commissions in trust for them. The TRP Salespersons rely on the following as evidence of TRP Realty's intention to hold the funds in trust: bank account documents, which were not provided to FirePower, that include the term "trust"; a text message; and the fact that the Commissions Receivables were deposited into a separate bank account.

47. The Contractor's Agreement contains both an entire agreement clause and a no amendment clause, which make it clear that any representations or understandings not reflected in the Contractor's Agreement are not enforceable, and the terms of the agreement govern the relationship between the parties.

48. As noted above, the onus is on the TRP Salespersons to show that it was TRP Realty's intention to hold Third-party Commissions in trust for the TRP Salespersons. The documents provided by the Debtors to the Secured Lenders, and on which they relied on in making loans to the Debtors, clearly demonstrate that the Commissions Receivables were property of the Debtors over which the Secured Lenders' were granted a security interest.

49. In the absence of an express trust, the Court should exercise extreme caution before implying a trust or imposing a constructive trust remedy in insolvency situations where the interest of third parties are adversely affected. This consideration was emphasized by Justice Blair (as he

then was) in *Canada (Attorney General) v. Confederation Life Insurance Co.*, which considered the impact of determining the existence of a constructive trust:

“Equitable remedies entail the necessity of balancing interests. In the context of a constructive trust claim against the assets of an insolvent constructive trustee, it is important to be aware of the interests of the insolvent's other creditors as well as those of the constructive trust claimant.”

Canada (Attorney General) v. Confederation Life Insurance Co., 1995 CarswellOnt 318 (Gen. Div.), para. 221.

50. The decision of Justice Cameron in *Eu v. Rosedale Realty Corp. (Trustee of)*, which is one of two cases relied upon by the TRP Salespersons, is readily distinguishable. Justice Cameron determined that a bankrupt brokerage had intended to hold commissions in trust for its agents. The basis of this determination appears to be grounded in the fact that the brokerage had a separate commission account where commissions were deposited into and disbursed out of, and to the Court it made “no business sense to place commissions into the commission trust account if they were not intended to be held in trust”.

Eu v. Rosedale Realty Corp. (Trustee of), 1997 CarswellOnt 2519 (Gen. Div.) (In Bankruptcy), paras. 27-28.

51. There is no reference in the decision to any evidence that (i) agents had entered into comprehensive agreements dealing with payment of commissions which did not provide for commissions to be held in trust; (ii) the brokerage had represented to its lenders and others that gross commissions were the property of the brokerage and that agent commissions were a cost of sales; or (iii) audited financial statements reflected commissions as assets of the brokerage and not held in trust. The primary evidence of intention in the case was a separate bank account where commissions were deposited into.

52. Additionally, it is clear in the decision that certain of the broker's agents had signed agreements with the broker that included trust language. As stated by Justice Cameron at paragraph 27 of the decision:

“All Rosedale agents received their commissions from the commission trust account, including employed agents as well as independent contractor agents. The latter included those who had specific provisions in their contracts that their commissions be held in trust, those without any contract and those who had factored their commissions under a form of agreement specifically providing that the commission be held in trust.”

53. The fact that the brokerage had the contractual obligation to hold commissions in trust for its independent contractor agents must be taken into account when considering the applicability of the ratio of that decision to the case at bar.

54. With respect to the decision of Justice Cohen of the British Columbia Supreme Court in *Midland Pacific Properties Corp. (Trustee of), Re*, which is the other case relied upon by the TRP Salespersons, that case is also distinguishable, as the contracts between the agents and the broker provided that the agents were entitled to 100% of the commissions, and they were required to pay a portion of the commission to the broker as a fee on account of administrative and other services provided by the brokerage to the agent, and the brokerage would deduct its fee from the commission.

Midland Pacific Properties Corp. (Trustee of), Re, 1999 CarswellBC 1868 (S.C.), paras. 11, 15 and 33-35.

55. No similar language exists in any of the agreements executed by TRP Realty, including most importantly, the Contractor's Agreement.

PART V - ORDER REQUESTED

56. The Secured Lenders respectfully submit that the TRP Salespersons have failed to establish on a balance of probabilities that TRP Realty intended to hold the Third-party Commissions in trust for the TRP Salespersons.

57. Accordingly, the Secured Lenders respectfully request that the Court grant an order declaring that the Commission Receivable are entirely the property of TRP Realty.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 18th day of October, 2018.



Harvey Chaiton

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Aubrey Kauffman

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SCHEDULE “A”

LIST OF AUTHORITIES

1. *Highland Nursing Home Employee Pension Plan Trust v. Aldridge*, 2004 CarswellOnt 447 (C.A.)
2. *Ridel v. Schwartz, Levitsky, Feldman Inc.*, 2016 ONCA 522
3. *Infoplacé Ticket Centres Ltd., Re*, 2009 CarswellOnt 8082 (S.C.J.)
4. *Bank of Nova Scotia v. Atcon Group Inc.*, 2012 CarswellNB 378 (C.A.)
5. *Ontario (Ministry of Consumer and Commercial Relations v. Safeguard Real Estate Ltd.*, 1994 CarswellOnt 292 (Gen. Div. [Commercial List])
6. *Canada (Attorney General) v. Confederation Life Insurance Co*, 1995 CarswellOnt 318 (Gen. Div.)
7. *Eu v. Rosedale Realty Corp. (Trustee of)*, 1997 CarswellOnt 2519 (Gen. Div.)
8. *Midland Pacific Properties Corp. (Trustee of), Re*, 1999 CarswellBC 1868 (S.C.),

SCHEDULE "B"

TEXT OF STATUTES, REGULATIONS & BY - LAWS

Nil

FIREPOWER DEBT GP INC., AS AGENT

THEREDPIN, INC. and THEREDPIN.COM REALTY INC.

Applicant

and

Respondents

Court File No. CV-18-599644-00CL

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

Proceedings commenced at TORONTO

**JOINT FACTUM OF THE APPLICANT
AND TRILOGY GROWTH FUND, L.P.**

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