

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

BETWEEN:

**CHIEF EXECUTIVE OFFICER OF THE FINANCIAL SERVICES  
REGULATORY AUTHORITY OF ONTARIO**

Applicant

and

**SUSSMAN MORTGAGE FUNDING INC., 2486976 ONTARIO INC.  
and 1981361 ONTARIO INC.**

Respondents

**FACTUM OF MICHAEL STEIN**  
(Motion returnable July 25, 2025)

**FRIEDMANS LLP**  
150 Ferrand Drive, Suite 800  
Toronto, ON M3C 3E5

**Stephen C. Nadler** (LSO #37946G)  
Tel: 416-496-3340  
Email: [sn@friedmans.ca](mailto:sn@friedmans.ca)

Lawyers for Michael Stein

**TO: THE SERVICE LIST**

Court File No. CV-25-00741044-00CL

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

BETWEEN:

**CHIEF EXECUTIVE OFFICER OF THE FINANCIAL SERVICES  
REGULATORY AUTHORITY OF ONTARIO**

Applicant

and

**SUSSMAN MORTGAGE FUNDING INC., 2486976 ONTARIO INC.  
and 1981361 ONTARIO INC.**

Respondents

**FACTUM OF MICHAEL STEIN**

**PART I – NATURE OF THIS MOTION**

1. This is a motion by Michael Stein (“**Stein**”) for a declaration that the two Olympia Trust Company mortgages discussed below do not form part of the Property of the Respondents and are, therefore, not subject to the receivership herein, and an order requiring the Receiver to deliver any monies it has received regarding those mortgages to the mortgagee, Olympia Trust Company (“**Olympia**”).

**PART II – OVERVIEW OF STEIN’S POSITION**

2. Stein is a beneficial lender/owner of two mortgages held by Olympia in trust for him and others. Stein is not an investor in any mortgage of the Respondent, Sussman Mortgage Funding Inc. (“**SMFI**”).

3. *As to what is referred to as the “S-27 Mortgage”*, in May 2024, Stein and Jay Teichman invested monies in their respective registered accounts held at Olympia, in a mortgage loan to a borrower. At all times, the sole mortgagee of the mortgage was and is Olympia, which holds the mortgage in trust for Stein’s RRSP and Mr. Teichman’s TFSA and RRIF accounts.

4. SMFI never held any registered or beneficial interest in that mortgage. Despite the same, after it was appointed, the Receiver improperly notified the borrower that he is *“indebted to SMFI”* in respect of the mortgage and that he must remit all mortgage payments only to the Receiver.

5. The Receiver now recognizes that SMFI does not hold an interest in the S-27 Mortgage, and it recommends that Olympia, Stein and Mr. Teichman be permitted to deal with their mortgage, which is currently in default. As such, the Receiver does not oppose this motion as it concerns the S-27 Mortgage.

6. *As to what is referred to as the “S-26 Mortgage”*, in June 2023, Stein invested monies in his registered accounts at Olympia, in another mortgage loan to the same borrower. Olympia has at all times held, and continues to hold, a 39.2% interest in that mortgage in trust for Stein’s RRSP and TFSA accounts.

7. Originally, SMFI held the remaining 60.8% interest in the S-26 Mortgage. However, by Transfer of Charge registered on October 31, 2023, SMFI transferred its 60.8% interest in the mortgage to Olympia, in trust for Jay Teichman’s and Bruce Roberts’ RRIF accounts. Accordingly, since that time, Olympia has been the sole mortgagee of the S-26 Mortgage.

8. Despite the same, in May 2025, the Receiver directed the borrower to only make payments to it in respect of the mortgage. The mortgage is currently in default, and the Receiver's interference is preventing the registered owners of the mortgage from enforcing their mortgage. Since SMFI has no registered interest in the mortgage, the Receiver, standing in the shoes of SMFI, has no legal standing to enforce the mortgage.

9. In any event, the Receiver acknowledges that it has no claim to Stein's 39.2% beneficial interest in the S-26 Mortgage, which Olympia has held in trust for him since the mortgage's inception. Accordingly, the Receiver must deliver 39.2% of any monies it has received, and may receive, regarding that mortgage, to Olympia in respect of Stein's undisputed 39.2% interest therein.

### **PART III - FACTS**

10. By Order of the Honourable Justice Dietrich dated May 2, 2025 (the "**Appointment Order**"), B. Riley Farber Inc. (the "**Receiver**") was appointed as receiver over the assets, undertakings and properties of SMFI.<sup>1</sup>

11. As discussed below, the moving party, Michael Stein ("**Stein**"), is not an investor in any SMFI mortgage.<sup>2</sup>

12. Despite the fact that SMFI does not have any registered interest whatsoever in either of the two Olympia Trust Company mortgages discussed below (the "**Olympia Mortgages**"), the Receiver has unilaterally declared that all monies payable in respect of

---

<sup>1</sup> Appointment Order, Motion Record of Michael Stein ("MR of Stein"), Tab 3, PDF pp. 86-100

<sup>2</sup> Affidavit of Michael Stein sworn July 7, 2025 ("Stein Affidavit"), para. 3, MR of Stein, Tab 2, PDF p. 12

the Olympia Mortgages are owing solely to SMFI, and therefore only the Receiver can enforce the Olympia Mortgages.<sup>3</sup>

***Olympia Mortgage re:1026 Green Street, Innisfil, ON (“S-27 Mortgage”)***

13. In May 2024, Stein invested monies in his registered (RRSP) account in a mortgage loan to an individual named Maheswaran Subramaniam (the “**Borrower**”). Another lender, Jay Teichman (“**Teichman**”), invested monies in his registered (RRIF and TFSA) accounts in the same mortgage loan to the Borrower.<sup>4</sup>

14. Since Stein and Teichman were looking to hold a mortgage investment in their registered accounts, they could only do so through certain approved banks or trust companies, which would hold the mortgage in trust for them.<sup>5</sup>

15. Stein and Teichman made their mortgage loan through one such approved institution, Olympia Trust Company (“**Olympia**”).<sup>6</sup>

16. Their mortgage loan was secured by a Charge/Mortgage registered on title to the Borrower’s property municipally known as 1026 Green Street, Innisfil, Ontario, on May 21, 2024, as Instrument No. SC2056785 (the “**S-27 Mortgage**”).<sup>7</sup>

17. As indicated in the registered Charge:<sup>8</sup>

(a) the sole mortgagee is Olympia; and

---

<sup>3</sup> Stein Affidavit, para. 4, MR of Stein, Tab 2, PDF p. 13

<sup>4</sup> Stein Affidavit, para. 5, MR of Stein, Tab 2, PDF p. 13

<sup>5</sup> Stein Affidavit, para. 6, MR of Stein, Tab 2, PDF p. 13

<sup>6</sup> Stein Affidavit, para. 7, MR of Stein, Tab 2, PDF p. 13

<sup>7</sup> Stein Affidavit, paras. 8-9, and Exhibit “A” to Stein Affidavit, MR of Stein, Tabs 2 & A, PDF pp. 13 & 25-26

<sup>8</sup> Stein Affidavit, para. 10, and Exhibit “A” to Stein Affidavit, MR of Stein, Tabs 2 & A, PDF pp. 14 & 25-26

- (b) Olympia holds the mortgage in trust for Stein's RRSP (as to 55.17%) and Teichman's TFSA and RRIF accounts (as to 44.83%).

18. As further security for their mortgage loan, the Borrower also provided Stein and Teichman an Assignment of Rents registered on title to his property on May 21, 2024.<sup>9</sup>

19. Accordingly, the parties to this mortgage loan have always only been: (i) the Borrower; (ii) the mortgagee – Olympia; and (iii) the beneficial owners/lenders – Stein and Teichman.<sup>10</sup>

20. SMFI never held any registered or beneficial interest in the S-27 Mortgage.<sup>11</sup>

21. The loan monies were sent by Olympia to the Borrower, and were funded by monies in Stein's and Teichman's registered accounts at Olympia.<sup>12</sup>

22. After the loan was made, Stein and Teichman appointed SMFI to act as their agent to administer the mortgage for them, *i.e.*, to collect the monthly mortgage payments from the Borrower and remit them to Olympia.<sup>13</sup>

23. However, in March 2025, Stein and Teichman terminated their appointment of SMFI as the administrator of their mortgage, and they directed the Borrower to make all mortgage payments to Olympia in trust for Stein and Teichman.<sup>14</sup>

---

<sup>9</sup> Stein Affidavit, para. 11, and Exhibit "B" to Stein Affidavit, MR of Stein, Tabs 2 & B, PDF pp. 14 & 28-34

<sup>10</sup> Stein Affidavit, para. 12, MR of Stein, Tab 2, PDF p. 14

<sup>11</sup> Stein Affidavit, para. 13, MR of Stein, Tab 2, PDF p. 14

<sup>12</sup> Stein Affidavit, para. 14, MR of Stein, Tab 2, PDF p. 14

<sup>13</sup> Stein Affidavit, para. 15, MR of Stein, Tab 2, PDF p. 14

<sup>14</sup> Stein Affidavit, para. 16, and Exhibits "C" & "D" to Stein Affidavit, MR of Stein, Tabs 2, C & D, PDF pp. 14-15 & 36-45

24. In any event, the license of Sandy Sussman (the principal of SMFI) with the Financial Services Regulatory Authority of Ontario (“**FSRA**”), that enabled SMFI to act as their mortgage administrator, expired on March 31, 2025, and was never renewed.<sup>15</sup>

25. All of this occurred weeks *before* the Receiver was appointed over SMFI on May 2, 2025.<sup>16</sup>

26. Despite the fact that SMFI does not (and never did) hold any legal or beneficial interest in Stein and Teichman’s mortgage, the Receiver sent an email to the Borrower on May 7, 2025, notifying him that he is “indebted to SMFI” in respect of their mortgage and that, accordingly, he must remit all payments regarding the mortgage only to the Receiver.<sup>17</sup>

27. Before sending that email, the Receiver never consulted with Stein, Teichman or Olympia.<sup>18</sup>

28. Clearly, the Borrower is not indebted to SMFI regarding their mortgage. Instead, the Borrower is indebted to the legal and beneficial owners of the mortgage, being Olympia and Stein / Teichman.<sup>19</sup>

29. To make matters worse, after the Receiver sent its said email to the Borrower, the Borrower ceased making any further payments under the mortgage. Therefore, the

---

<sup>15</sup> Stein Affidavit, para. 17, and Exhibit “E” to Stein Affidavit, MR of Stein, Tabs 2 & E, PDF pp. 15 & 47

<sup>16</sup> Stein Affidavit, para. 18, MR of Stein, Tab 2, PDF p. 15

<sup>17</sup> Stein Affidavit, para. 19, and Exhibit “F” to Stein Affidavit, MR of Stein, Tabs 2 & F, PDF pp. 15 & 49-51

<sup>18</sup> Stein Affidavit, para. 20, MR of Stein, Tab 2, PDF p. 15

<sup>19</sup> Stein Affidavit, para. 21, MR of Stein, Tab 2, PDF p. 16

mortgage is in default, and due to the Receiver's improper interference, Olympia and Stein / Teichman have been prevented from enforcing their mortgage.<sup>20</sup>

30. The Receiver now recognizes that SMFI does not hold an interest in their mortgage. On June 2, 2025, the Receiver's lawyer, Ken Kraft, wrote to Teichman, confirming that the only investors who have an interest in the S-27 Mortgage are Stein and Teichman, and that the mortgage funds were advanced directly by Olympia. As such, Mr. Kraft stated that the Receiver will advise the Court that it recommends that Olympia and Stein / Teichman be permitted to deal with their mortgage directly.<sup>21</sup>

31. Consistent with that advice, paragraphs 108 and 137 of the Receiver's First Report dated June 2, 2025, provided that:<sup>22</sup>

*"108. In respect of the S-27 Property, all of the investments were made by Registered Investors. \$290,000 was advanced by Olympia, secured by a mortgage (the "S-27 Mortgage") maturing in April, 2026... The S-27 Property is currently encumbered by a charge in favour of Olympia in trust for certain Registered Investors."*

*"137. With respect to the S-27 Mortgage, the Receiver's review of SMFI's records...suggests that Teichman and Stein are the only Investors in the SML. Funds were advanced to Subramaniam directly by Olympia and all interest payments made to Teichman and Stein to date have been funded by Subramaniam. As such, and subject to this Court's approval, the Receiver [recommends] Teichman and Stein be allowed to enforce their remedies in respect of the S-27 Mortgage only." (Emphasis added)*

---

<sup>20</sup> Stein Affidavit, para. 22, MR of Stein, Tab 2, PDF p. 16

<sup>21</sup> Stein Affidavit, para. 23, and Exhibit "G" to Stein Affidavit, MR of Stein, Tabs 2 & G, PDF pp. 16 & 53-54

<sup>22</sup> Stein Affidavit, para. 24, and Exhibit "H" to Stein Affidavit, MR of Stein, Tabs 2 & H, PDF pp. 16-17 & 56-59

32. On June 5, 2025, Stein's lawyer, Stephen C. Nadler, wrote to Mr. Kraft urging the Receiver to reconsider its position that court approval must be obtained to allow them to enforce their mortgage, which is already their right.<sup>23</sup>

33. However, the Receiver maintained its position. By email dated June 16, 2025, the Receiver's lawyer, Robert Kennedy, advised Mr. Nadler that "the Receiver is prepared to allow your client to take enforcement steps with respect to S-27 (subject to Court approval)".<sup>24</sup>

34. The Receiver has reportedly collected \$5,706 from the Borrower regarding this mortgage. The Receiver is holding those funds in trust for Stein and Teichman, and it must forward those funds (and any other funds it may have received) to Olympia.<sup>25</sup>

35. Although not entirely relevant given the foregoing, the Receiver has located an SMFI "Investor Agreement" that Stein apparently signed on April 9, 2024. According to that document, the S-27 Mortgage was to be registered in the name of SMFI, in Trust, and held by SMFI in trust for Stein.<sup>26</sup>

36. However, that document, which was a preliminary or draft document only, never went into effect. We know this because the S-27 Mortgage was registered in the name of Olympia, which holds the mortgage in trust for Stein and Teichman. Further, and in any event, SMFI was not an approved bank or trust company capable of holding a mortgage in a registered account.<sup>27</sup>

---

<sup>23</sup> Stein Affidavit, para. 25, and Exhibit "I" to Stein Affidavit, MR of Stein, Tabs 2 & I, PDF pp. 17 & 61-63

<sup>24</sup> Stein Affidavit, para. 26, and Exhibit "J" to Stein Affidavit, MR of Stein, Tabs 2 & J, PDF pp. 17 & 65

<sup>25</sup> Stein Affidavit, para. 27, MR of Stein, Tab 2, PDF p. 17

<sup>26</sup> Stein Affidavit, para. 29, and Exhibit "K" to Stein Affidavit, MR of Stein, Tabs 2 & K, PDF pp. 18 & 67

<sup>27</sup> Stein Affidavit, para. 30, MR of Stein, Tab 2, PDF p. 18

***Olympia Mortgage re: 1345 Bardeau Street, Innisfil, ON (“S-26 Mortgage”)***

37. In June 2023, Stein invested monies in his registered (RRSP and TFSA) accounts in another mortgage loan to the same Borrower, but in respect of a different property.<sup>28</sup>

38. Once again, Stein made his mortgage loan/investment through Olympia, being one of the approved trust companies and banks capable of holding a mortgage in a registered account. His loan monies were sent by Olympia to the Borrower.<sup>29</sup>

39. Stein’s mortgage loan was secured by a Charge/Mortgage registered on title to the Borrower’s property municipally known as 1345 Bardeau Street, Innisfil, Ontario, on June 23, 2023, as Instrument No. SC1988664 (the “**S-26 Mortgage**”).<sup>30</sup>

40. As set out in the registered Charge, the mortgagees of this mortgage were *originally*:<sup>31</sup>

- Olympia as to a 39.2% interest, in trust for Stein’s RRSP and TFSA; and
- SMFI as to a 60.8% interest.

41. However, on October 31, 2023, a Transfer of Charge was registered as Instrument No. SC2018550, pursuant to which, SMFI transferred its 60.8% interest in the mortgage to Olympia, in trust for Teichman’s and Bruce Roberts’ RRIF accounts.<sup>32</sup>

---

<sup>28</sup> Stein Affidavit, para. 31, MR of Stein, Tab 2, PDF p. 18

<sup>29</sup> Stein Affidavit, para. 32, MR of Stein, Tab 2, PDF p. 18

<sup>30</sup> Stein Affidavit, paras. 33-34, and Exhibit “L” to Stein Affidavit, MR of Stein, Tabs 2 & L, PDF pp. 18 & 69-70

<sup>31</sup> Stein Affidavit, para. 35, and Exhibit “L” to Stein Affidavit, MR of Stein, Tabs 2 & L, PDF pp. 19 & 69-70

<sup>32</sup> Stein Affidavit, para. 36, and Exhibit “M” to Stein Affidavit, MR of Stein, Tabs 2 & M, PDF pp. 19 & 72-73

42. As indicated, the monies invested for the Transfer of Charge came from Teichman and Roberts. None of those monies came from Stein. As indicated, Stein made his 39.2% investment in the mortgage at the very outset through Olympia.<sup>33</sup>

43. Accordingly, since October 31, 2023 (when the Transfer of Charge was registered), SMFI has not held any legal or beneficial interest in this mortgage. Instead, since that time, the sole mortgagee of the mortgage has been (and is) Olympia, which holds the mortgage in trust for Stein's, Teichman's and Roberts' registered accounts.<sup>34</sup>

44. Paragraph 107 of the Receiver's First Report made no mention whatsoever of the said registered Transfer of Charge, and instead incorrectly stated that the property "*is currently encumbered by a charge in favour of SMFI and Olympia in trust for certain Registered Investors*".<sup>35</sup>

45. Despite the foregoing, the Receiver notified the Borrower that all payments under the mortgage are to be made only to it. The Borrower stopped making any further mortgage payments. Further, the mortgage matured on June 8, 2025, and the Borrower has not paid out the mortgage.<sup>36</sup>

46. The Receiver refuses to permit Olympia and the said beneficial owners/lenders to enforce their mortgage.<sup>37</sup>

---

<sup>33</sup> Stein Affidavit, para. 37, MR of Stein, Tab 2, PDF p. 19

<sup>34</sup> Stein Affidavit, para. 38, MR of Stein, Tab 2, PDF p. 19

<sup>35</sup> Stein Affidavit, para. 39, and Exhibit "H" to Stein Affidavit, MR of Stein, Tabs 2 & H, PDF pp. 20 & 57

<sup>36</sup> Stein Affidavit, para. 40, MR of Stein, Tab 2, PDF p. 20

<sup>37</sup> Stein Affidavit, para. 41, MR of Stein, Tab 2, PDF p. 20

47. In its recent Supplemental Report to the First Report dated June 24, 2025, the Receiver explained the reasons for its position:<sup>38</sup>

- (a) The Receiver firstly acknowledged its aforesaid error in its First Report and confirmed that SMFI ceased having any registered interest in the S-26 Mortgage following the Transfer of Charge on October 31, 2023, when SMFI's former 60.8% interest in the mortgage was transferred to Olympia in trust for the RRIF accounts of Teichman and Roberts;
- (b) The monies invested by Teichman and Roberts at the time of the Transfer of Charge (\$303,000), were supposed to pay out the 4 non-registered investors for whom SMFI had formerly held its 60.8% interest in the mortgage; and
- (c) The Receiver has confirmed that 2 of the 4 SMFI investors were fully paid out at the time of the Transfer of Charge. The other 2 SMFI investors were supposed to have received a transfer of their investments to other SMFI mortgages, but the Receiver has not been able to confirm whether or not that took place.

48. Even if that were the case, the Receiver may not unilaterally hijack all authority and enforcement powers over the mortgage from the registered owners of the mortgage, simply because the Receiver has not been able to determine whether 2 SMFI investors

---

<sup>38</sup> Stein Affidavit, para. 42, and Exhibit "N" to Stein Affidavit, MR of Stein, Tabs 2 & N, PDF pp. 20-21 & 75-77

had received transfers of their investments to other SMFI mortgages after the Transfer of Charge took place back in October 2023.<sup>39</sup>

49. As SMFI has no registered interest in the mortgage, the Receiver, standing in the shoes of SMFI, cannot enforce the mortgage. Only the mortgagee (Olympia) and the beneficial owners can enforce the mortgage. Only they can issue a mortgage discharge statement to the Borrower. Only they can consent to the discharge of their mortgage.<sup>40</sup>

50. Regardless of the foregoing, there is no issue that, ever since the mortgage's inception, Olympia has been holding an undivided 39.2% interest in the mortgage in trust for Stein's registered accounts.<sup>41</sup>

51. The Receiver acknowledges that it has no claim to Stein's 39.2% beneficial interest in this mortgage. The Receiver has reportedly received payments totaling \$4,918 from the Borrower regarding this mortgage. However, the Receiver advises that it requires an order permitting it to forward 39.2% of those funds to Olympia in trust for Stein, even though 39.2% of those funds clearly belong to Stein.<sup>42</sup>

52. The Receiver cannot deprive or impair Stein's legal rights as to his undisputed 39.2% ownership interest in the mortgage. The Receiver must transfer 39.2% of any monies it has received, and may receive, regarding this mortgage to Olympia in respect of Stein's undisputed 39.2% interest therein.<sup>43</sup>

---

<sup>39</sup> Stein Affidavit, para. 43, MR of Stein, Tab 2, PDF p. 21

<sup>40</sup> Stein Affidavit, para. 44, MR of Stein, Tab 2, PDF p. 21

<sup>41</sup> Stein Affidavit, para. 45, MR of Stein, Tab 2, PDF p. 21

<sup>42</sup> Stein Affidavit, para. 46, MR of Stein, Tab 2, PDF pp. 21-22

<sup>43</sup> Stein Affidavit, para. 47, MR of Stein, Tab 2, PDF p. 22

53. The Receiver has located an SMFI “Investor Agreement” that Stein apparently signed on May 22, 2023. According to the document, the S-26 Mortgage was to be registered in the name of SMFI, in Trust, and held by SMFI in trust for Stein.<sup>44</sup>

54. However, this document (like the other one discussed above) never went into effect. Stein’s 39.2% beneficial interest and investment in the mortgage was registered in favour of Olympia. It could not have been registered in favour of SMFI as SMFI was not an approved bank or trust company capable of holding a mortgage in a registered account.<sup>45</sup>

55. While Stein did appoint SMFI to be his agent to administer the mortgage on his behalf, as discussed above, SMFI’s role as the administrator of the mortgage was terminated in March 2025, and its mortgage license with FSRA expired on March 31, 2025. By letter dated March 28, 2025, Teichman instructed the Borrower to make all payments regarding this mortgage to Olympia. Subsequently, in May 2025, the Receiver was appointed and it instructed the Borrower to make all mortgage payments only to it.<sup>46</sup>

#### **PART IV – LAW**

56. The fundamental principles of Ontario’s land titles regime are as follows:<sup>47</sup>

*“The philosophy of a land titles system embodies three principles, namely, the mirror principle, where the register is a perfect mirror of the state of title; the curtain principle, which holds that a purchaser need not investigate the history of past*

---

<sup>44</sup> Stein Affidavit, para. 48, and Exhibit “O” to Stein Affidavit, MR of Stein, Tabs 2 & O, PDF pp. 22 & 79

<sup>45</sup> Stein Affidavit, para. 49, MR of Stein, Tab 2, PDF p. 22

<sup>46</sup> Stein Affidavit, para. 50, and Exhibit “P” to Stein Affidavit, MR of Stein, Tabs 2 & P, PDF pp. 22-23 & 81-83

<sup>47</sup> [Airport Business Park Inc. v. Huszti Holdings Inc.](#), 2023 ONCA 391, at paras. 42-43; [Stanbarr Services Ltd. v. Metropolis Properties Inc.](#), 2018 ONCA 244, at para. 13

*dealings with the land, or search behind the title as depicted on the register; and the insurance principle, where the state guarantees the accuracy of the register and compensates any person who suffers loss as the result of an inaccuracy. These principles form the doctrine of indefeasibility of title and [are] the essence of the land titles system[.]”* (Emphasis added)

57. The mirror principle is reflected in s. 78(4) of the *Land Titles Act*, R.S.O. 1990, c. L-5, which provides that:

**Effect of registration**

(4) When registered, an instrument shall be deemed to be embodied in the register and to be effective according to its nature and intent, and to create, transfer, charge or discharge, as the case requires, the land or estate or interest therein mentioned in the register. R.S.O. 1990, c. L-5, s. 78 (4).

58. “Put another way, everyone is entitled to rely on the land titles system to deal with land in accordance with what is shown on the registered title. The system establishes that title is what the registry says and changes to title, such a transfer or discharge of mortgage, are effective once registered”.<sup>48</sup>

59. In the present case, it is undisputed that:

- (a) *regarding the S-27 Mortgage*, Olympia has at all times been the sole registered mortgagee, and it has at all times held the mortgage in trust for Stein’s and Teichman’s registered accounts. SMFI never held any registered interest in the S-27 Mortgage; and
- (b) *regarding the S-26 Mortgage*: (i) Olympia has at all times held a 39.2% interest in the mortgage in trust for Stein’s registered accounts; (ii) on October

---

<sup>48</sup> [\*Airport Business Park Inc. v. Huszti Holdings Inc.\*, supra, at para. 44](#)

31, 2023, Olympia began to also hold the remaining 60.8% interest in the mortgage (in trust for Teichman's and Roberts' registered accounts) when the Transfer of Charge from SMFI was registered; and (iii) accordingly, since October 31, 2023, Olympia has been the sole registered mortgagee, and SMFI ceased holding any registered interest in the mortgage.

60. One exception to the mirror principle is where the registered instrument was fraudulent.<sup>49</sup> In the present case, there is no evidence or suggestion by anyone that either of the Olympia Mortgages was a fraudulent instrument.

61. Similarly, there is also no evidence or suggestion that the registered Transfer of Charge in respect of the S-26 Mortgage, was a fraudulent instrument. Instead, the Receiver has confirmed that SMFI received all of the monies it was expecting (\$303,000) in exchange for the transfer of its former 60.8% interest in the mortgage, to Olympia (in trust for Teichman's and Roberts' registered accounts).

62. Although unclear if it still remains good law, the only other possible exception to the mirror principle is where the recipient had *actual* notice of an unregistered instrument. Constructive notice is not sufficient. Therefore, this possible exception is limited to a consideration of what the party actually knew, not what it could have known had it made inquiries.<sup>50</sup>

---

<sup>49</sup> S. 78(4.1) of the *Land Titles Act* (Ontario); [Airport Business Park Inc. v. Huszti Holdings Inc.](#), *supra*, at para. 45; [Stanbarr Services Ltd. v. Metropolis Properties Inc.](#), *supra*, at para. 21

<sup>50</sup> [Airport Business Park Inc. v. Huszti Holdings Inc.](#), *supra*, at para. 46; [Stanbarr Services Ltd. v. Metropolis Properties Inc.](#), *supra*, at para. 26

63. Clearly, this possible exception also does not apply in the present case. In particular, there is no evidence or suggestion by anyone that, when Olympia received the Transfer of Charge from SMFI in late October 2023, there existed an unregistered instrument, let alone that Olympia, Teichman and Roberts had actual knowledge of any such unregistered instrument.

64. Olympia is the sole registered owner of both Olympia Mortgages, and it holds both mortgages in trust for the registered accounts of Stein, Teichman and/or Roberts. SMFI never had any registered interest in the S-27 Mortgage, and it relinquished its partial (60.8%) registered interest in the S-26 Mortgage when the Transfer of Charge was registered in late October 2023. Accordingly, pursuant to the mirror principle, as embodied in s. 78(4) of the *Land Titles Act* (Ontario), only Olympia (and the said beneficial owners) are deemed to hold and own the Olympia Mortgages and all rights associated therewith.

65. This fact is also spelled out in ss. 93(3) and 101(3) of the *Land Titles Act* (Ontario), which discuss the legal effects of a registered charge and transfer of charge, as follows:

**Effect of charge when registered**

**93** (3) The charge, when registered, confers upon the chargee a charge upon the interest of the chargor as appearing in the register subject to the encumbrances and qualifications to which the chargor's interest is subject, but free from any unregistered interest in the land. [Emphasis added]

**Transfer of charges**

**101** (1) The registered owner of a registered charge may, in the prescribed manner, transfer the charge to another person as owner.

### **Effect of registration of transfer**

(3) The transfer, when registered, confers upon the transferee the ownership of the charge free from any unregistered interests therein, and the transfer of part of the sum secured by a charge confers upon the transferee the ownership of such part free from any unregistered interests therein. [Emphasis added]

66. As discussed above, the Receiver purports to justify its position of unilaterally asserting control over the S-26 Mortgage, despite not having any registered interest therein following the Transfer of Charge, as it reportedly does not know whether 2 SMFI investors received equivalent mortgage security from SMFI after the Transfer of Charge was registered. However, that position is simply not tenable at law under our land titles system and the mirror principle. Olympia and Teichman/Roberts were also innocent parties when they paid SMFI \$303,000 in exchange for the transfer of SMFI's former 60.8% interest in the mortgage. Yet, Olympia and Teichman/Roberts' interests in the mortgage are registered, and as such, their interests clearly prevail over any possible interests of the 2 SMFI investors who might not have received equivalent mortgage security from SMFI after the Transfer of Charge was registered.

67. In any event, whether or not the 2 SMFI investors received equivalent mortgage security from SMFI after the Transfer of Charge was registered, has no bearing whatsoever on Stein's undisputed 39.2% beneficial interest in the S-26 Mortgage, which Olympia has been holding in trust for him ever since the mortgage's inception.

68. Further, by law, only the registered owner of a mortgage has the right to enforce a mortgage, including (in part) to commence power of sale proceedings, to recover a judgment for the balance owing under the mortgage, to assign the mortgage or to provide

a mortgage discharge statement.<sup>51</sup> The Receiver, standing in the shoes of SMFI, which holds no registered interest in either of the Olympia Mortgages, has no legal standing to enforce either of the mortgages.

## **PART V – ORDER REQUESTED**

69. Stein respectfully requests an order:

### *AS TO THE S-27 MORTGAGE:*

- (a) declaring that the S-27 Mortgage does not form part of the Property of the Respondents under the Appointment Order and is therefore, not subject to the Respondents' receivership herein;
- (b) requiring the Receiver to forthwith notify the Borrower of the same and directing the Borrower to make all payments regarding the S-27 Mortgage to the mortgagee, Olympia; and
- (c) requiring the Receiver to forthwith deliver (without deduction) all monies it has received, and may in the future receive, in respect of the S-27 Mortgage, to Olympia,

### *AS TO THE S-26 MORTGAGE:*

- (d) the same relief in subsections (a) to (c) above, but with reference to the S-26 Mortgage instead; or
- (e) alternatively, an order: (i) declaring that Olympia holds an undivided 39.2% interest in the S-26 Mortgage in trust for Stein's RRSP, and that Stein's 39.2% beneficial interest does not form part of the Property of the Respondents and is, therefore, not subject to the Respondents' receivership herein; and (ii) requiring the Receiver to forthwith deliver

---

<sup>51</sup> See, for e.g., ss. 78(4), 93(3), 99(1) & 101(3) of the *Land Titles Act* (Ontario); and ss. 20(2), 22(2) & (3), 24.1 & 31(1) of the *Mortgages Act*, R.S.O. 1990, c. M.40

(without deduction) 39.2% of all monies it has received, and may in the future receive, in respect of the S-26 Mortgage, to Olympia on account of Stein's 39.2% beneficial interest;

*AND GENERALLY:*

(f) for his costs of this motion on a substantial indemnity scale.

**ALL OF WHICH IS RESPECTFULLY  
SUBMITTED,**

A handwritten signature in blue ink, appearing to read "Stephen C. Nadler", is written above a horizontal line.

---

Stephen C. Nadler,  
of counsel for Michael Stein

**SCHEDULE “A”**

1. [\*Airport Business Park Inc. v. Huszti Holdings Inc.\*, 2023 ONCA 391](#)
2. [\*Stanbarr Services Ltd. v. Metropolis Properties Inc.\*, 2018 ONCA 244](#)

**SCHEDULE “B”****Land Titles Act, R.S.O. 1990, c. L.5:****Effect of registration**

**78** (4) When registered, an instrument shall be deemed to be embodied in the register and to be effective according to its nature and intent, and to create, transfer, charge or discharge, as the case requires, the land or estate or interest therein mentioned in the register. R.S.O. 1990, c. L.5, s. 78 (4).

**Exception**

(4.1) Subsection (4) does not apply to a fraudulent instrument that is registered on or after October 19, 2006. 2006, c. 34, s. 15 (10).

**Non-fraudulent instruments**

(4.2) Nothing in subsection (4.1) invalidates the effect of a registered instrument that is not a fraudulent instrument described in that subsection, including instruments registered subsequent to such a fraudulent instrument. 2006, c. 34, s. 15 (10).

**Effect of charge when registered**

**93** (3) The charge, when registered, confers upon the chargee a charge upon the interest of the chargor as appearing in the register subject to the encumbrances and qualifications to which the chargor's interest is subject, but free from any unregistered interest in the land. R.S.O. 1990, c. L.5, s. 93 (3).

**Remedy of owner of charge with power of sale**

**99** (1) Subject to the *Mortgages Act* the registered owner of a registered charge that contains a power of sale, upon registering the evidence specified by the Director of Titles, may sell and transfer the interest in the land or any part thereof that is the subject of the charge in accordance with the terms of the power in the same manner as if the registered owner of the registered charge were the registered owner of the land to the extent of such interest therein. R.S.O. 1990, c. L.5, s. 99 (1); 1998, c. 18, Sched. E, s. 137 (1).

**Transfer of charges**

**101** (1) The registered owner of a registered charge may, in the prescribed manner, transfer the charge to another person as owner. R.S.O. 1990, c. L.5, s. 101 (1).

**Effect of registration of transfer**

(3) The transfer, when registered, confers upon the transferee the ownership of the charge free from any unregistered interests therein, and the transfer of part of the sum secured by a charge confers upon the transferee the ownership of such part free from any unregistered interests therein. R.S.O. 1990, c. L.5, s. 101 (3).

**Transferor deemed owner until registration**

(5) The transferor shall be deemed to remain owner of the charge until registration of the transfer of charge has been completed in accordance with this Act. R.S.O. 1990, c. L.5, s. 101 (5).

**Mortgages Act, R.S.O. 1990, c. M.40:****Right of mortgagee to recover personal judgment**

**20** (2) Despite any stipulation to the contrary in a mortgage, where a mortgagor has conveyed and transferred the equity of redemption to a grantee under such circumstances that the grantee is by express covenant or otherwise obligated to indemnify the mortgagor with respect to the mortgage, the mortgagee has the right to recover from the grantee the amount of the mortgage debt in respect of which the grantee is obligated to indemnify the mortgagor; provided that the right of the mortgagee to recover the amount of the mortgage debt under this section from the grantee of the equity of redemption shall as against such grantee terminate on the registration of a grant or transfer of the equity of redemption by such grantee to another person unless prior to such registration an action has been commenced to enforce the right of the mortgagee.

**Statement of arrears, expenses, etc.**

**22** (2) The mortgagor may, by a notice in writing, require the mortgagee to furnish the mortgagor with a statement in writing,

- (a) of the amount of the principal or interest with respect to which the mortgagor is in default; or
- (b) of the nature of the default or the non-observance of the covenant, and of the amount of any expenses necessarily incurred by the mortgagee.

**Idem**

(3) The mortgagee shall answer a notice given under subsection (2) within fifteen days after receiving it, and, if without reasonable excuse the mortgagee fails so to do or if the answer is incomplete or incorrect, any rights that the mortgagee may have to enforce the mortgage shall be suspended until the mortgagee has complied with subsection (2). R.S.O. 1990, c. M.40, s. 22.

**Powers incident to mortgages after default**

**24** Where any principal money is secured by mortgage of land, the mortgagee, at any time after the expiration of three months from the time of default in the payment of any money due under the mortgage or after any omission to pay any premium of insurance that by the terms of the mortgage ought to be paid by the mortgagor, has the following powers to the like extent as if they had been in terms conferred by the mortgage:

**Power of sale**

1. A power to sell, or to concur with any other person in selling, the whole or any part of the mortgaged property by public auction or private contract, subject to any reasonable conditions the mortgagee may think fit to make, and to buy in at an auction

and to rescind or vary contracts for sale, and to resell the land, from time to time, in like manner without being answerable for any loss occasioned thereby.

**Notice of power of sale**

**31** (1) A mortgagee shall not exercise a power of sale unless a notice of exercising the power of sale in the form prescribed by the regulations made under this Act has been given by the mortgagee to the following persons, other than the persons having an interest in the mortgaged property prior to that of the mortgagee and any other persons subject to whose rights the mortgagee proposes to sell the mortgaged property: ...

**CHIEF EXECUTIVE OFFICER OF THE  
FINANCIAL SERVICES REGULATORY  
AUTHORITY OF ONTARIO**

Applicant

and

**SUSSMAN MORTGAGE FUNDING INC., et al.**

Respondents

Court File No. CV-25-00741044-00CL

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

Proceeding commenced at Toronto

**FACTUM OF MICHAEL STEIN**

**FRIEDMANS LLP**

150 Ferrand Drive, Suite 800  
Toronto, ON M3C 3E5

**Stephen C. Nadler** (LSO #37946G)

sn@friedmans.ca

Tel: 416-649-4466

Lawyers for Michael Stein