

COURT FILE NUMBER Q.B. No. 1455 of 2019

COURT OF QUEEN'S BENCH FOR SASKATCHEWAN

JUDICIAL CENTRE SASKATOON

**IN THE MATTER OF SECTION 204 OF *THE BUSINESS CORPORATIONS ACT*,
RSS 1978, c B-10**

**AND IN THE MATTER OF THE VOLUNTARY LIQUIDATION AND DISSOLUTION OF
PRIMEWEST MORTGAGE INVESTMENT CORPORATION**

**COMPENDIUM OF FILED EVIDENCE RELIED UPON BY THE APPLICANT, KPMG
INC.**

NOTICE: this document contains evidence contained on the Court file which is referred to in the Notice of Motion filed and served herewith. It is provided as a matter of convenience for the Court and those parties on the Service List who may not otherwise have ready access to such evidence. It is not intended to be a sworn document



THE W LAW GROUP LLP
Suite 300, 110 – 21st Street East
Saskatoon, Saskatchewan
S7K 0B6

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This Compendium of Evidence was delivered by:

Name of firm: The W Law Group LLP

Name of lawyer in charge
of file:

Mike Russell and Michelle Tobin

Address of legal firm: Suite 300, 110 – 21st Street East, Saskatoon, SK
S7K 0B6

Telephone number: (306) 244-2242

E-mail address: mrussell@wlawgroup.com /
mtobin@wlawgroup.com

TAB A

FORM 6-24

(Subrule 6-24(2))

COURT FILE NUMBER: Q.B.G. No. 1455 of 2019

COURT OF QUEEN'S BENCH FOR SASKATCHEWAN

JUDICIAL CENTRE: SASKATOON

IN THE MATTER OF SECTION 204 OF *THE BUSINESS CORPORATIONS*

ACT, RSS 1978, C b-10

**AND IN THE MATTER OF THE VOLUNTARY LIQUIDATION AND
DISSOLUTION OF PRIMEWEST MORTGAGE INVESTMENT CORPORATION**

APPEARANCE DAY NOTICE

Notice to Respondents

TAKE NOTICE that an application is being made in this proceeding.

The application is proposed to be heard by telephone conference by Mr. Justice Gabrielson at a time to be proposed by the Court.

Order or direction claimed or sought:

1. Pursuant to the Order of Mr. Justice Gabrielson issued on November 1, 2019, and pursuant to the Amended and Restated Order of Mr. Justice Gabrielson issued on November 28, 2019, an order is sought providing further direction that the claim issued under QBG 1727 of 2018 (the "**Action**") is excluded from the within liquidation proceedings.

Reasons for making this application:

2. On October 31, 2019 the Court heard submissions from E.F. Anthony Merchant, Q.C., the lawyer on record for the plaintiffs of the Action, that the Action should be excluded from the liquidation proceedings.
3. Counsel for Primewest Mortgage Investment Corporation ("**Primewest**") did not dispute such submissions.
4. This Court granted the order proposed by counsel for Primewest approving the liquidation plan after amending it to exclude the Action from the liquidation proceedings. Paragraph 14 of the proposed order was amended to exclude references to directors.
5. On November 28, 2019, the Amended and Restated Order was issued by this Court. Such order removed the reference to the Action in the definition of "Claim" at paragraph 2 of the Order.
6. On about January 15, 2020, E.F. Anthony Merchant, Q.C. received a letter from KPMG, the appointed liquidator of Primewest (the "**Liquidator**"), which provided that Randy Koroluk, the putative representative plaintiff in the Action, had been identified as a creditor for purposes of the liquidation. According to that letter, the Liquidator did not exclude the Action from the liquidation process.
7. This application can be heard and determined in less than 30 minutes.

Material to be relied on:

8. The oral submissions of E.F. Anthony Merchant, Q.C. of October 31, 2019 (**Enclosure "A"**).

9. The book of authorities submitted to Court in support of the submissions of E.F. Anthony Merchant, Q.C. on October 31, 2019 (**Enclosure “B”**).
10. The Order of Mr. Justice Gabrielson, issued on November 1, 2019 (**Enclosure “C”**).
11. The letter from counsel on behalf of Primewest to the Local Registrar of the Court of Queen’s Bench (Saskatoon), dated November 19, 2019, and the attached redline version of the amended and restated order (**Enclosure “D”**).
12. The Amended and Restated Order of Mr. Justice Gabrielson, issued on November 28, 2019 (**Enclosure “E”**).
13. The letter from the Liquidator, dated January 15, 2020 (**Enclosure “F”**).

Applicable rules:

14. Rule 6-24.

Applicable Acts and Regulations

15. *The Queen's Bench Act*, 1998, SS 1998, c Q-1.01, s 9.
16. *The Queen's Bench Act*, 1998, SS 1998, c Q-1.01, s 11.
17. *The Business Corporations Act*, RSS 1978, c B-10, s 204(8).

DATED at Regina, Saskatchewan, this 30th day of January 2020.

MERCHANT LAW GROUP LLP

Per: Merchant

Solicitor for the Plaintiffs under
QBG 1727 of 2018

NOTICE

A party may make representations at the hearing about facts that are not contested. No party will provide an affidavit or testimony at the hearing. The judge will only act on facts that cannot be contested, as told to the judge by the parties or their lawyers. You have the right to be present and speak at the hearing. You must be as brief as possible. If you or your lawyer do not attend, the judge may grant an order without further notice to you.

CONTACT INFORMATION AND ADDRESS FOR SERVICE

If prepared by a lawyer for the party:

Name of firm:	Merchant Law Group LLP
Name of lawyer in charge of file:	E.F. Anthony Merchant, Q.C.
Address of legal firm:	2401 Saskatchewan Drive, Regina, SK S4P 4H8
Telephone number:	306-359-7777
Fax number:	306-522-3299
E-mail address:	tmerchant@merchantlaw.com
File:	77000646

TAB B



Telephone: 306.244.2242 Suite 300
Toll Free: 1.888.244.2242 110-21st Street East
Facsimile: 306.652.0332 Saskatoon, SK S7K 0B6
E-mail: info@wlawgroup.com
Web: www.wlawgroup.com

February 4, 2020

Reply To: Michael J. Russell
mrussell@wlawgroup.com

Court of Queen's Bench
520 Spadina Crescent East
Saskatoon, SK S7K 3G7

VIA COURT RUN

Attention: Glen Metivier

Dear Sir:

Re: Q.B. No. 1455 of 2019 — In the Matter of the Voluntary Liquidation and Dissolution of Primewest Mortgage Investment Corporation
Our File No.: 43743.1

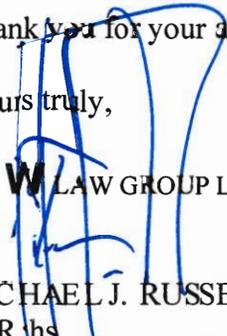
We are counsel to KPMG Inc., the Liquidator of Primewest Mortgage Investment Corporation in the above-captioned proceedings. We write in regard to the Appearance Day Notice dated January 30, 2020 (the "**Appearance Day Notice**"), filed by the Merchant Law Group LLP in this matter.

Rule 6-23 of the *Queen's Bench Rules* describes the circumstances in which an appearance day application is appropriate. Although the remedy sought in the Appearance Day Notice is a direction of the Court in respect of the claim issued in Q.B. 1727 of 2018, it is respectfully submitted that such direction is not simply a direction to require a party to comply with the *Queen's Bench Rules* respecting the conduct of a proceeding, as contemplated by Rule 6-23(1)(a), and is very likely to take longer than 30 minutes to hear and determine. While the Liquidator takes no issue with the application being brought before Mr. Justice Gabrielson in these proceedings, it is submitted that the application ought to be scheduled for a special hearing, and not as an Appearance Day application. Unfortunately, our office has been unable to speak with anyone at Merchant Law Group LLP to schedule the application as a special hearing, and thus hereby requests the direction of the Court in that regard.

Kindly place this letter before Mr. Justice Gabrielson at your earliest opportunity.

Thank you for your assistance in this matter.

Yours truly,

the  LAW GROUP LLP

MICHAEL J. RUSSELL

MJR:hs

cc: Tony Merchant

Professional. Passionate. Personal.

TAB C



2401 Saskatchewan Drive
Regina, Saskatchewan
S4P 4H8

E.F.A Merchant Q.C.
tmerchant@merchantlaw.com
(306) 539-7777

March 10, 2020

Court House
520 Spadina Crescent E.
Saskatoon, SK S7K 3G7

VIA COURIER

Attention: Glen Metivier

URGENT

Dear Mr. Metivier:

**RE: Q.B. No. 1455 of 2019 - In the Matter of the Voluntary Liquidation and
Dissolution of Primewest Mortgage Investment Corporation
Our File # 77000646**

I believe the original Appearance Day Notice was filed in February. Enclosed are the materials we rely on pursuant thereto.

It appears KPMG regarded the documents sent to the webmaster as service thereof. The enclosed Affidavit of Service ought to be in order, but they can let us know if they suggest changes.

Yours truly,

MERCHANT LAW GROUP LLP

Per:

E.F. ANTHONY MERCHANT, Q.C.

CC- The W Law Group

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TAB D



2401 Saskatchewan Drive
Regina, Saskatchewan
S4P 4H8

E.F.A Merchant Q.C.
tmerchant@merchantlaw.com
(306) 539-7777

March 17, 2020

Court House
520 Spadina Crescent E.
Saskatoon, SK S7K 3G7
Attention: Glen Metivier

VIA EMAIL glen.metivier@gov.sk.ca

URGENT

Dear Mr. Metivier:

**RE: Q.B. No. 1455 of 2019 - In the Matter of the Voluntary Liquidation and
Dissolution of Primewest Mortgage Investment Corporation
Our File # 77000646**

This matter has been set down for March 19, 2020. We request an adjournment until a date when we can appear before Mr. Justice Gabrielson in chambers.

Yours truly,

MERCHANT LAW GROUP LLP

Per:

E.F. ANTHONY MERCHANT, Q.C.

CC - The W Law Group - Mike Russell <mrusell@wlawgroup.com>; Michelle Tobin <mtobin@wlawgroup.com>; Hailey Swire <hswire@wlawgroup.com>

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TAB E



2401 Saskatchewan Drive
Regina, Saskatchewan
S4P 4H8

E.F.A Merchant Q.C.
tmerchant@merchantlaw.com
(306) 539-7777

May 7, 2020

Court House
520 Spadina Crescent E.
Saskatoon, SK S7K 3G7

VIA EMAIL glen.metivier@gov.sk.ca

Attention: Glen Metivier

URGENT

Dear Mr. Metivier:

**RE: Q.B. No. 1455 of 2019 - In the Matter of the Voluntary Liquidation and
Dissolution of Primewest Mortgage Investment Corporation
Our File # 77000646**

Please draw this letter to the attention of Mr. Justice Gabrielson.

On October 31, 2019 we objected to the inclusion of QBG1727 of 2018 (the Class Action) to the liquidation of PrimeWest.

We appeared before the Court on October 31, 2019. Changes to the draft order of the liquidator were made. More changes were made thereafter to indicate that QBG1727 of 2018 is excluded from the liquidation.

The liquidator has requested a submission of claims from *inter alia* these claimants, under a time limit, and under the pretense that if the claims are not submitted the claimants allegedly lose their claim causing confusion.

We sought court determination by way of declaratory relief.

We ask that this matter be scheduled quickly for a half day argument.

As the confusion continues, our concern, and it is an urgent concern, is that the liquidator's wrongful inclusion of QBG 1727 of 2018 to the liquidation will cause our claim to become either *res judicata* or moot.

This qualifies for an
Yours truly, *immediate in person hearing please*
MERCHANT LAW GROUP LLP

Per: *E.F. Anthony Merchant*

E.F. ANTHONY MERCHANT, Q.C.

CC - The W Law Group - Mike Russell <mrusell@wlawgroup.com>; Michelle Tobin <mtobin@wlawgroup.com>; Hailey Swire <hswire@wlawgroup.com>

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