

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(Commercial List)**

**THE HONOURABLE** ) **WEDNESDAY, THE 9<sup>th</sup> DAY**  
 )  
**JUSTICE MCEWEN** ) **OF MAY, 2018**

**BETWEEN:**

VOLKAN BASEGMEZ, CEM BLEDA BASEGMEZ, ANIL RUKAN BASEGMEZ,  
BA&B CAPITAL INC., SERDAR KOCTURK  
and KAAH HOLDINGS INC.

**Applicants**

– and –

ALI AKMAN, SAMM CAPITAL HOLDINGS INC.  
and TARN FINANCIAL CORPORATION

**Respondents**



**APPLICATION UNDER** Sections 207 and 248 of the *Business Corporations Act*, R.S.O. 1990, c. B.16.

**ORDER**

**(Re: Entitlement to Terminate Condominium Agreements of Purchase and Sale)**

**THIS MOTION**, made by KPMG Inc. (“**KPMG**”), in its capacity as Court-appointed receiver and manager (in such capacities, the “**Receiver**”) of all of the assets, undertakings and properties of Tarn Construction Corporation (“**Tarn Construction**” and the “**Vendor**”) pursuant to section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended and appointed pursuant to the Order of Justice McEwen dated April 13, 2018 (the “**Receivership Order**”), upon the application of KPMG in its capacity as Court-appointed liquidator (in such capacity, the “**Liquidator**”) pursuant to section 207 of the Ontario *Business Corporations Act* of the effects and estate of Tarn Financial Corporation (“**Tarn Financial**”), and appointed pursuant to the Winding Up Order of Justice Lederman dated September 15, 2017 (the “**Winding Up Order**”) which appointment was effective on September 25, 2017, for advice and directions from the Court in accordance with paragraph 18 of the Receivership Order

specifically confirming that the Receiver is entitled to terminate the Agreements of Purchase and Sale (the “**APSs**”) entered into by Tarn Construction as Vendor and individual purchasers (the “**Purchasers**”) for the sale and purchase of proposed condominium units in the unbuilt development project known as “The Kennedys” in accordance with the terms of the APSs and, in particular, the condition contained at Appendix A of Schedule E to the APSs entitled “Tarion Warranty Corporation Statement of Critical Dates and Addendum” which states: “Receipt by the Vendor of confirmation that financing for the project on terms satisfactory to the Vendor has been arranged by October 9, 2018” (the “**Construction Financing Early Termination Condition**”) and confirming the timing of the Receiver’s ability to do so was heard May 1, 2018 330 University Avenue, Toronto, Ontario.

**ON READING** the Third Report of the Liquidator and the First Report of the Receiver dated April 24, 2018 and on hearing the submissions of counsel for the Receiver, and such other counsel as were present as indicated on the Counsel Slip, no one appearing for any other person on the Service List, although properly served as appears from the Affidavit of Service sworn April 25, 2018, filed:

#### **SERVICE**

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion is hereby abridged and validated such that this Motion is properly returnable today, and further service of the Notice of Motion is hereby dispensed with.

#### **DEFINED TERMS**

2. **THIS COURT ORDERS** that for the purposes of this Order capitalized terms used herein and not otherwise defined shall have the meaning ascribed to them in the Deposit Confirmation Procedure Order granted by the Court on April 13, 2018 in these proceedings.

#### **ENTITLEMENT TO TERMINATE APSs PURSUANT TO CONSTRUCTION FINANCING EARLY TERMINATION CONDITION**

3. **THIS COURT ORDERS AND DECLARES** that the Receiver is entitled to rely upon the Construction Financing Early Termination Condition to terminate the APSs on behalf of Tarn Construction without damages and that the Receiver is hereby authorized to give notice of

termination to terminate the APSs at any time from the date of this Order, subject to further Order of the Court being granted to address the return of Deposits to the Purchasers prior to doing so.

4. **THIS COURT ORDERS AND DECLARES** that upon termination of the APSs pursuant to paragraph 3 of this Order, the only obligation of the Receiver thereafter shall be to return Deposits on behalf of Tarn Construction to the Purchasers in accordance with the terms of the APSs and the further Order of the Court regarding the return of such Deposits. For greater certainty, upon fulfilling such obligation, in no instance thereafter shall the Vendor, Tarn Construction, its parent, Tarn Financial, the Receiver or the Liquidator be liable to the Purchasers for any other costs or claims or damages whatsoever, including, without limitation, any loss of bargain, relocation costs, loss of use of deposit monies or any other fees, professional or otherwise, expended in relation to the APSs.



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ON / BOOK NO:  
LE / DANS LE REGISTRE NO:

MAY 10 2018

PER / PAR:



**ONTARIO  
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at Toronto

**ORDER  
(RE: ENTITLEMENT TO TERMINATE  
CONDOMINIUM AGREEMENTS OF  
PURCHASE AND SALE)  
(DATED MAY 9, 2018)**

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Lawyers for KPMG Inc., in its capacity as Court-appointed Liquidator of Tarn Financial Corporation and Court-appointed Receiver of Tarn Construction Corporation.