

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

**B E T W E E N :**

**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

**RESPONDING MOTION RECORD**

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**ONTARIO  
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BETWEEN:

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

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**RESPONDING MOTION RECORD**

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A.	Statement of Claim dated January 4, 2017
B.	Statement of Defence dated January 18, 2017
C.	CBRE's Reply dated January 27, 2017

**TAB 1**

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

**BETWEEN:**

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

**Applicants**

**- and -**

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

**Respondents**

**AFFIDAVIT OF ALI AKMAN  
(sworn November 15, 2017)**

I, Ali Akman, of the City of Toronto, in the Province of Ontario, MAKE OATH AND SAY AS FOLLOWS:

1. I am a Respondent to the motion for a Sale Process Order brought by KPMG Inc. (the "Liquidator"), in its capacity as Liquidator of Tarn Financial Corporation ("Tarn"), returnable November 17, 2017 (the "Motion"). I am also the President and sole director of Tarn, as well as of SAMM Capital Holdings Inc. ("SAMM"). As such, I have knowledge of the matters to which I herein depose, except where I have been informed by others, in which case I have stated the source of my information and belief.
2. I swear this Affidavit in response to the Motion, and for no other purpose.

***The Application***

3. This motion arises out of an application under the oppression provisions of the Ontario *Business Corporations Act*, R.S.O. 1990, c. B.16 (the "Application"). The Application was brought against SAMM, Tarn, and me (collectively, the

"Respondents") by Volkan Basegmez ("Volkan"), Cem Bleda Basegmez, Anil Rukan Basegmez, BA&B Capital Inc. ("BA&B"), Serdar Kocturk ("Serdar"), and KAAN Holdings Inc. ("KAAN") (collectively, the "Applicants").

4. Volkan owns a 40-percent interest in Tarn through BA&B. Serdar owns a 20-percent interest in Tarn through KAAN. I own a 40-percent interest in Tarn through SAMM.

5. The Application was heard by Justice Lederman of the Superior Court of Justice (Commercial List) on August 11, 2017. His Honour gave judgment for the Applicants on September 15, 2017. He ordered that Tarn be wound up and that the Liquidator be appointed.

*The Appeal*

6. On October 12, 2017, the Respondents filed a Notice of Appeal to the Divisional Court from Justice Lederman's Order. The question to be determined on the appeal is whether Justice Lederman erred in ordering that Tarn be wound up and its assets liquidated. The Respondents will ask the Divisional Court to vary Justice Lederman's Order such that, rather than require that Tarn be wound up, the Respondents would instead be required to purchase the Applicants' shares in Tarn at their fair market value.

7. The Respondents sought and obtained an order expediting the appeal on October 26, 2017. Pursuant to the Order of Justice Pattillo, the appeal is to be heard on December 22, 2017.

*The Respondents Do Not Oppose the Proposed Sale Process*

8. I have reviewed the sale process proposed by the Liquidator, as set out in Schedule "A" to the draft Sale Process Order, which in turn is attached as Schedule "A" to the Liquidator's Notice of Motion (the "Sale Process").

9. Neither SAMM nor I object to the Sale Process as a whole. The Respondents do not wish to impede it. We must oppose the Motion, however, on the basis of concerns regarding the hiring of CBRE Limited ("CBRE") as marketing and listing agent.

10. Specifically, if this Court approves the Marketing and Listing Agreement with CBRE, dated November 10, 2017 (the "Agreement"), I believe that an appearance of bias and/or conflict of interest on the part of CBRE, if not real bias and/or conflict of interest, will arise. This, in turn, will compromise the integrity of the Sale Process, to the detriment of all parties and stakeholders.

*CBRE Is Adverse to Akman in Unrelated Litigation*

11. CBRE and is adverse to me in litigation that is unrelated to these proceedings. CBRE commenced an action against S and A Hospitality Corporation ("S&A") by Statement of Claim, dated January 4, 2017 (the "CBRE Lawsuit"). At all times material to the CBRE Lawsuit, I was the President and a director of S&A. CBRE seeks, among other relief, damages for breach of contract in the amount of \$179,670.

12. CBRE alleges that, on behalf of S&A, I entered into an exclusive listing agreement with CBRE with respect to a hotel property then owned by S&A, only to sell the property without CBRE's involvement and without paying CBRE the commission that it claims it is owed. S&A denies that CBRE is entitled to any commission, and maintains that no contract was ever validly executed as between S&A and CBRE.

13. CBRE's action bears Court File No. CV-17-567067. A copy of CBRE's Statement of Claim is attached as Exhibit "A". A copy of my Statement of Defence is attached as Exhibit "B". A copy of CBRE's Reply is attached as Exhibit "C".

14. The CBRE Lawsuit continues. Examinations for discovery have been completed. The parties are preparing to proceed to mediation, as required by the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194.

*Akman Intends To Bid for Tarn's Assets*

15. I intend to submit a bid for Tarn's assets, pursuant to the Sale Process. This way, should SAMM's and my appeal not succeed, I hope to have the opportunity to purchase Tarn's assets on the same basis as other potential bidders.

*CBRE Is Not an Appropriate Marketing and Listing Agent*

16. The Sale Process contemplates a decisive role for the marketing and listing agent. Pursuant to sections 7 and 9 of the Sale Process, the marketing and listing agent is empowered, along with the Liquidator, to determine:

- (a) who is a "Qualified Phase I Bidder";
- (b) who is a "Qualified Phase II Bidder";
- (c) whether documents submitted by an "Interested Party" — such as me — are satisfactory in form and substance for the purpose of becoming a Qualified Phase I Bidder;
- (d) whether a "Phase I Bidder has the necessary financial ability to close the contemplated transaction and provide adequate assurance of future performance of all obligations";
- (e) whether to waive the Phase I bidding requirements and to deem a non-compliant bidder to be a Qualified Phase I Bidder;
- (f) the effect of any contingencies on the success of a "Qualified Phase II Bid";
- (g) whether "to seek additional information and clarifications from Qualified Phase I Bidders in respect of their Phase II Bids";
- (h) whether to waive the Phase II bidding requirements and to deem a non-compliant bidder to be a Qualified Phase II Bidder; and
- (i) "which of the Qualified Phase II Bids shall be the Successful Bid and which of the Qualified Phase II Bids shall be the Back-up Bid".

17. Because of the CBRE Litigation, I am concerned that CBRE will be unable to perform its role as marketing and listing agent impartially. Even if CBRE can perform its role impartially, I am concerned that it will be perceived to be biased and/or in a real or



apparent conflict of interest. I believe that this will impugn the Sale Process, particularly if a bid with which I am associated is not selected as a Qualified Phase I Bid, a Qualified Phase II Bid, the Back-up Bid, and/or the Successful Bid.

*Another Agent Should Be Chosen*

18. I have read the Liquidator's First Report, dated November 13, 2017. From the First Report, I understand that, "[p]rior to retaining CBRE, the Liquidator had discussions with, met and obtained proposals from CBRE and another large commercial real estate firms [sic] in order to consider, which firm it would retain".<sup>1</sup>

19. From my experience in commercial real estate, and in the hotel industry specifically, I believe that there are other brokerage firms that would be qualified to serve as the marketing and listing agent for the purpose of the Sale Process. My concerns with respect to CBRE's real or apparent bias and/or conflict of interest, described above, apply to CBRE only and not to any other brokerage firm.

20. To avoid the risk of real or apparent bias and/or conflict of interest, another brokerage firm should be chosen as the marketing and listing agent for the purpose of the Sale Process. I note that the Agreement "shall be terminated and shall be null and void" in the event that this Court declines to approve it.<sup>2</sup>

*If the Agreement Is Approved, Appropriate Measures Should Be Put in Place*

21. If, despite the foregoing, this Court sees fit to approve the Agreement and the Liquidator retains CBRE as marketing and listing agent for the purpose of the Sale Process, I believe that appropriate measures will have to be put in place to prevent the appearance of bias and/or conflict of interest on the part of CBRE.

22. Specifically, I believe that the Sale Process should be amended, prior to its approval, as follows:

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<sup>1</sup> First Report of KPMG Inc., in its capacity as Liquidator of Tarn Financial Corporation, dated November 13, 2017 [the "First Report"], at para. 123, Motion Record, Tab 2, at p. 33.


<sup>2</sup> Redacted Marketing and Listing Agreement, dated November 10, 2017, cl. 8.1, Appendix "L" to the First Report, Motion Record, Tab 2L, at p. 4.

- (a) the Sale Process should establish safeguards to prevent the Applicants from exercising influence over CBRE in the exercise of CBRE's duties as marketing and listing agent;
- (b) the Liquidator should be required, as a condition of this Court's approval of the Agreement, to obtain CBRE's consent to amend the Agreement to require:
  - (i) any CBRE employee, officer, or director with involvement, authority, or responsibility in respect of the CBRE Litigation or the dispute underlying the CBRE Litigation not to have any involvement, authority, or responsibility in respect of the Sale Process; and
  - (ii) CBRE immediately to establish a screen, wall, or other confidentiality mechanism to isolate and separate:
    - (A) any CBRE employees, officers, or directors with involvement, authority, or responsibility in respect of the CBRE Litigation or the dispute underlying the CBRE Litigation; and
    - (B) any CBRE employees, officers, or directors with involvement, authority, or responsibility in respect of the Sale Process;
- (c) the Sale Process should require the Liquidator to obtain this Court's approval prior to the selection of Qualified Phase I Bidders, Qualified Phase II Bidders, the Back-up Bid, and the Successful Bid; and
- (d) prior to seeking this Court's approval of the selection of Qualified Phase I Bidders, Qualified Phase II Bidders, the Back-up Bid, and the Successful Bid, the Liquidator should be required to provide the Court and all persons on the Service List with unredacted written reasons for declining

to designate any bid as a Qualified Phase I Bid, a Qualified Phase II Bid, the Back-up Bid, or the Successful Bid.

23. To be clear, I do not believe that any of these measures will be necessary if another brokerage firm is retained as marketing and listing agent for the purpose of the Sale Process. Apart from the foregoing, I do not oppose the Sale Process, as proposed by the Liquidator.

SWORN BEFORE ME at the City of  
Istanbul  
in TURKEY  
on November 15<sup>th</sup>, 2017.



ALI AKMAN

A Commissioner for taking Affidavits

Çiğdem YAVUZ KURU

AVUKAT

Çiğdem Yavuz KURU

Tunus Cad.87/10 Kavaklıdere/ANKARA  
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Kavaklıdere V.D. T.C. NO:15154020448

**TAB A**

This is Exhibit A referred to in the  
Affidavit of Ali Akman  
sworn before me, this 15<sup>th</sup>  
day of November, 2017.



A Commissioner for taking Affidavits

Cigdem YAVUZ KURU

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**Cigdem Yavuz KURU**  
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Kavaklıdere V.D. T.C. NO:15154020448

ONTARIO  
SUPERIOR COURT OF JUSTICE

BETWEEN:

**CBRE LIMITED**

Plaintiff

- and -

**S AND A HOSPITALITY CORPORATION**

Defendant

**STATEMENT OF CLAIM**

TO THE DEFENDANT

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the plaintiff. The claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or an Ontario lawyer acting for you must prepare a statement of defence in Form 18A prescribed by the Rules of Civil Procedure, serve it on the plaintiff's lawyer or, where the plaintiff does not have a lawyer, serve it on the plaintiff, and file it, with proof of service, in this court office, WITHIN TWENTY DAYS after this statement of claim is served on you, if you are served in Ontario.

If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your statement of defence is forty days. If you are served outside Canada and the United States of America, the period is sixty days.

Instead of serving and filing a statement of defence, you may serve and file a notice of intent to defend in Form 18B prescribed by the Rules of Civil Procedure. This will entitle you to ten more days within which to serve and file your statement of defence.

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

TAKE NOTICE: THIS ACTION WILL AUTOMATICALLY BE DISMISSED if it has not been set down for trial or terminated by any means within five years after the action was commenced unless otherwise ordered by the court.

Date Jan 4, 2017

Issued by Daina Jones  
Local registrar  
Address of  
court office

TO:

**S AND A HOSPITALITY CORPORATION**

21 Balmuto Street, Suite 2603

Toronto, Ontario

M4Y 1W4

**CLAIM**

1. The plaintiff CBRE Limited ("CBRE") claims against the defendant S and A Hospitality Corporation ("S and A") for:
  - (a) damages for breach of contract in the amount of \$179,670, inclusive of Harmonized Sales Tax (HST);
  - (b) pre-judgment and post-judgment interest in accordance with the provisions of Sections 128 and 129 of the *Courts of Justice Act, R.S.O. 1990*, as amended;
  - (c) costs of this action on a substantial indemnity basis; and
  - (d) such further and other relief as this Honourable Court may deem just.

**The Parties:**

2. CBRE is a corporation duly incorporated pursuant to the laws of the Province of New Brunswick. CBRE carries on business throughout Canada as a commercial real estate brokerage specializing in office, industrial, commercial, and investment real estate.
3. The brokerage services of CBRE material to this action were performed primarily by Bill Stone (Executive Vice President) and Deborah Borotsik (Vice President) of the CBRE Hotels Division.
4. S and A is a corporation duly incorporated pursuant to the laws of the Province of Ontario.
5. At all material times, S and A was the owner of the property located at 940 Champlain Avenue, Oshawa, Ontario (the "Property"). A Travelodge hotel, called 'The Travelodge Oshawa', is situated on the Property.
6. Ali Akman, the President and a Director of S and A, was the representative of S and A with whom CBRE primarily dealt. Ali Akman is a sophisticated and experienced businessman.



**The nature of CBRE's claim:**

7. CBRE claims against S and A for a real estate commission in the amount of \$179,670, inclusive of HST (the "Commission").
8. The Commission is due and payable by S and A to CBRE pursuant to an 'Exclusive Sales Listing Agreement' between CBRE and S and A for the sale of the Property.

**The Exclusive Sales Listing Agreement:**

9. In March 2016, CBRE and S and A entered into an 'Exclusive Sales Listing Agreement' for the sale of the Property (the "Listing Agreement"). The Listing Agreement was executed by Andrew Wright, Broker of Record for CBRE, on March 3, 2016; and by Ali Akman on March 2, 2016. Ali Akman also initialed the first two pages of the three page Listing Agreement.
10. At all material times, Ali Akman was aware of the terms and provisions of the Listing Agreement. Bill Stone reviewed and discussed the Listing Agreement with Ali Akman before Ali Akman executed the Listing Agreement. Ali Akman specifically requested that CBRE reduce its commission rate in the Listing Agreement. The Listing Agreement was revised before execution to reflect the commission rate negotiated between Ali Akman and Bill Stone.
11. Section 1 of the Listing Agreement specified that S and A gave CBRE the "exclusive right to sell the Property" for a period of six calendar months; commencing on the date S and A provided CBRE with S and A's written approval of CBRE's 'Confidential Information Memorandum'.
12. The 'Term' commenced on April 5, 2016, being the date Ali Akman approved CBRE's 'Confidential Information Memorandum'; and expired on October 4, 2016.
13. Pursuant to section 5 of the Listing Agreement, the 'Term' was subject to a holdover period of 180 calendar days. The holdover period expires on April 4, 2017.

**Relevant provisions of the Listing Agreement:**

14. At all material times, CBRE relied upon the terms and provisions of the Listing Agreement in listing the Property for sale.
15. Sections 3 and 4 of the Listing Agreement specified CBRE's entitlement to the payment of a commission from S and A. CBRE is entitled to a commission "on any sale" of the Property "from any source":

3. *The Owner [S and A] agrees to pay CBRE a commission of One and One-Half Percent (1.5%) of the sale price of the Property on any sale effected during the currency of this agreement from any source. The Owner also agrees to pay CBRE a bonus commission of Ten Percent (10.0%) on the amount of any sale price that exceeds Eleven Million Dollars (\$11 million). H.S.T. and all applicable taxes shall be payable on any commission or bonus commission (collectively, the "Commission") paid to CBRE by the Owner herein.*

4. *The Commission shall be earned by CBRE in the event that during the Term: (a) the Property is sold to a purchaser procured by CBRE, the Owner, or anyone else; (b) any contract for sale of the Property is entered into by the Owner; (c) the Owner contributes or conveys the Property to a partnership, joint venture or other business entity; (d) the Owner is a corporation, partnership or other business entity and an interest in such corporation, partnership or other business entity is transferred, whether by merger, outright purchase or otherwise, in lieu of a sale of the Property. The Commission shall be payable upon the completion of the sale of the Property.*

16. Section 7 of the Listing Agreement specified S and A's obligation to refer all inquiries with respect to the Property to CBRE; and to negotiate through CBRE:

*The Owner agrees to co-operate with CBRE in bringing about a sale of the Property and to refer immediately to CBRE all inquiries of anyone interested in the Property. All negotiations are to be through CBRE...*

17. Section 12 of the Listing Agreement contained an "entire agreement" provision:

*This Exclusive Sales Listing Agreement constitutes the entire agreement between the Owner and CBRE and supersedes all prior discussions, negotiations and agreements, whether oral or written. In case of any inconsistencies between this Agreement and any commission provisions in the*

*Agreement of Purchase and Sale, the provisions of this Agreement shall govern and be paramount. No amendment or alteration of this Agreement shall be valid or binding unless made in writing and signed by both the Owner and CBRE.*

**Marketing the Property:**

18. On Ali Akman's instructions, CBRE marketed the Property on a limited basis; to 'targeted groups'.
19. Ali Akman did not want marketing materials to be broadly distributed. Ali Akman did not want it widely known that the Property, and the Travelodge hotel situated thereon, was for sale.
20. In an email sent from Ali Akman to Bill Stone on April 14, 2016, Ali Akman informed Bill Stone that, "I strictly do not want any of my staff to know that I have intention of selling, so please be careful on that issue."

**S and A sold the Property without involving CBRE:**

21. On May 20, 2016, Ali Akman emailed Bill Stone. In his email, Ali Akman informed Bill Stone that S and A was pursuing a prospective purchaser without CBRE's involvement; and that S and A was terminating the Listing Agreement.
22. On May 20, 2016, Bill Stone responded to Ali Akman's email. In his email, Bill Stone confirmed that Ali Akman, in negotiating the Listing Agreement, did not exclude any prospective purchasers from the Listing Agreement. Bill Stone also confirmed that CBRE did not accept Ali Akman's termination of the Listing Agreement.
23. S and A did not disclose to CBRE the name of the prospective purchaser that had submitted the offer to purchase the Property. S and A refused to submit the offer to purchase to CBRE, and refused to work with CBRE in respect of the offer to purchase, notwithstanding the presence of the binding Listing Agreement which:

- (a) appointed CBRE as S and A's exclusive brokerage for the sale of the Property;
  - (b) required S and A to refer all inquiries to CBRE; and
  - (c) required S and A to negotiate through CBRE.
24. After Bill Stone protested S and A's refusal to work with CBRE, CBRE continued to list the Property for sale pursuant to the Listing Agreement; and to pursue prospective purchasers.
25. CBRE subsequently learned that, on August 16, 2016, S and A sold the Property to a numbered corporation, 1489338 Ontario Inc., for \$10,600,000.
26. The sale of the Property to 1489338 Ontario Inc. occurred during the 'Term' of the Listing Agreement.
27. In the event Ali Akman's unilateral termination of the Listing Agreement is effective, which is not admitted but denied, the sale of the Property to 1489338 Ontario Inc. occurred during the holdover period prescribed by the Listing Agreement.

**CBRE is entitled to the Commission from S and A:**

28. Pursuant to the Listing Agreement, S and A is liable for payment of the Commission to CBRE in the amount of \$179,670, inclusive of HST.
29. The amount of \$179,670 represents one and one-half (1.5%) percent of the purchase price of \$10,600,000 (\$159,000), plus HST.
30. On August 17, 2016, CBRE issued an invoice to S and A for the Commission. S and A has not paid the Commission; and payment is overdue.

**Breach of the Listing Agreement:**

31. S and A breached its contractual obligations under the Listing Agreement. S and A:

- (a) deprived CBRE of CBRE's "exclusive right" to act as S and A's real estate brokerage for the sale of the Property;
- (b) failed to submit the offer to purchase of 1489338 Ontario Inc. to CBRE;
- (c) failed to inform CBRE that 1489338 Ontario Inc. was the prospective purchaser interested in purchasing the Property;
- (d) failed to refer 1489338 Ontario Inc. to CBRE;
- (e) failed to negotiate with 1489338 Ontario Inc. through CBRE; and
- (f) failed to pay CBRE the Commission in accordance with the Listing Agreement

**Place of Trial:**

32. CBRE requests that the trial of this action take place in Toronto, Ontario.

Date: January 4, 2017

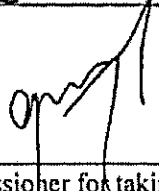
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**Antony Niksich (LSUC #47225H)**

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Fax: (416) 367-2502  
Solicitors for the Plaintiff

**TAB B**

This is Exhibit B referred to in the  
Affidavit of Ali Akman  
sworn before me, this 15<sup>th</sup>  
day of November, 2017.



A Commissioner for taking Affidavits

Çiğdem YAVUZ KURU

AVUKAT

Çiğdem Yavuz KURU

Tunus Cad 87/10 Kavaklıdere/ANKARA  
Tel:0312 417 19 07 Faks:0312 417 80 29  
Kavaklıdere V.D. T.C. NO:15154020448

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

B E T W E E N:

**CBRE LIMITED**

Plaintiff

-and-

**S AND A HOSPITALITY CORPORATION**

Defendant

**STATEMENT OF DEFENCE**

1. The Defendant admits the allegations contained in paragraphs 3, 4, 5, 19, 20, 21, 22, and 30 of the Plaintiff's Statement of Claim.
2. The Defendant denies the allegations contained in paragraphs 1, 6, 7, 8, 9, 10, 11, 12, 13, 15, 16, 17, 23, 26, 27, 28, 29, and 31 of the Plaintiff's Statement of Claim.
3. The Defendant has no knowledge of the allegations contained in paragraphs 2, 14, 18, 24 and 25 of the Plaintiff's Statement of Claim.

**The Parties and Background Facts:**

4. The Defendant, S and A Hospitality Corporation ("**S and A**") is a corporation, incorporated pursuant to the laws of the province of Ontario.
5. At all material times, the Defendant was the owner of the property located at 940 Champlain Avenue, Oshawa, Ontario (the "**Property**").
6. At all material times, Ali Akman ("**Akman**") was the President and a Director of S and A.



7. At all material times, Bill Stone (“Stone”) was a representative of the Plaintiff, CBRE Limited (“CBRE”) and had authority to bind CBRE.

**CBRE is Prohibited from Claiming Commission:**

8. The Defendant states that the Plaintiff is barred from making any claim for commission.
9. At the time the “Exclusive Sales Listing Agreement” (the “**Listing Agreement**”) was signed by the Defendant, S and A already had an unexpired listing agreement with RE/Max Dynasty Hospitality (“**RE/Max**”), for the sale of the Property.
10. Furthermore, Stone knew that S and A had an existing listing agreement and that many potential buyers had already been introduced to S and A through RE/Max, which buyers would continue to negotiate with S and A and not through CBRE.
11. In the alternative, Stone had an obligation to ascertain the existence of any agreements between S and A and the previous brokerage, and to not interfere in the previous exclusive listing agreement.

**There is no Valid Contract between CBRE and S and A:**

12. In the event CBRE is not prohibited from making a claim for commission, which is not admitted but denied, the Defendant further states that the Listing Agreement, which forms the basis of the Plaintiff’s claim is not a validly executed contract. Accordingly, there can be no breach, and no cause of action.
13. The “executed” Listing Agreement was a standard form contract drafted by the Plaintiff. The Defendant states that Akman did not read the Listing Agreement, which is evident by the fact that the name for the “Owner” is missing, and the signature line was improperly completed. Akman did not read the Listing Agreement as he was confident that the terms contained therein would align with the discussions Akman had previously had with Stone.
14. The Defendant states that it entered into the Listing Agreement on the basis and due to the claims by Stone that that he had readily available purchasers that would offer over \$11 million for the Property. Akman made it clear to Stone that various purchasers were already

looking at the Property and he was only interested in working with Stone and CBRE if they could guarantee a sales price of over \$11 million.

15. Had the Defendant been aware that CBRE would benefit from the efforts of S and A and its previous broker, it never would have agreed to the terms of the Listing Agreement. The Defendant states that this key term, which is fundamental to the contract, was never agreed to by the Defendant. As a result, there was no meeting of the minds, and the contract is null and void.
16. The Defendant states that Stone and CBRE had an obligation to ensure Akman was aware of the specific provisions of the Listing Agreement. Due to the failure of Stone to bring attention to the significant and onerous provisions of the Listing Agreement, such as the length of term and wide reaching entitlement to commission, the Defendant states that the Plaintiff cannot rely on said provisions, and that the claim has no contractual basis.

**The Listing Agreement is *Void Ab Initio*:**

17. In the event CBRE is not prohibited from making a claim for commission, and that the Listing Agreement is on its face a valid contract, all of which is not admitted but denied, the Defendant further states that Akman did not have the legal authority to enter into the Listing Agreement and thus the Listing Agreement it is *void ab initio*.
18. S and A had an existing exclusive agreement with RE/Max, and due to the nature of that agreement, was prohibited from entering into any further exclusive agreements for the sale of the Property. The Defendant states that the Plaintiff's claim for breach of contract is misplaced, as no contract ever existed.
19. The Defendant relies on the facts contained in paragraphs 10 and 11 to support the above assertion.

**CBRE is Attempting to Secure Windfall Gains:**

20. In the event CBRE is not prohibited from making a claim for commission, and that the Listing Agreement is on its face a valid contract, and is not *void ab initio*, all of which is not admitted but denied, the Defendant further states that the Plaintiff is attempting take

advantage of the onerous provisions of the Listing Agreement to claim commission on a transaction that the Plaintiff never took part in.

21. The eventual purchaser of the Property is one that S and A had been negotiating with prior to its involvement with CBRE. At no point did CBRE introduce the purchaser to the Defendant, nor did it provide any support in the process of negotiations.
22. The Defendant states that to allow the Plaintiff to profit from the work of others would amount to a windfall gain.

### **The Listing Agreement was Terminated**

23. In the event CBRE is not prohibited from making a claim for commission, and that the Listing Agreement is on its face a valid contract, and is not *void ab initio*, all of which is not admitted but denied, the Defendant states that that Listing Agreement was terminated by the Defendant on May 20, 2016. As such, there can be no commission payable
24. The holdover period contained in paragraph 5 of the Listing Agreement does not apply to the subsequent sale of the Property, as commission was only to be earned by CBRE in the event that the Property is sold to a purchaser with whom CBRE had negotiated, or if the negotiations had begun during the term of the Agreement. CBRE had never negotiated with the purchaser, and the negotiations began prior to the commencement of the Listing Agreement. Accordingly, the Plaintiff cannot make a claim for commission.

### **Misrepresentation and Inducement**

25. In the event CBRE is not prohibited from making a claim for commission, and that the Listing Agreement is on its face a valid contract, and is not *void ab initio*, and that the agreement was no properly terminated, all of which is not admitted but denied, the Defendant states that Stone induced the Defendant into signing the Listing Agreement with representations and assurances that Stone had readily available purchasers that would offer over \$11 million for the Property. Stone made further assurances that he could secure a purchase price of over \$11 million, and it was on this basis that S and A was induced into the Listing Agreement. The Defendant relied on this representation to its detriment, and

would not have signed the Listing Agreement had it known that the Plaintiff had no intent on fulfilling this condition.

26. The Defendant further states that the Plaintiff cannot rely on an “entire agreement” clause contained in paragraph 12 of the Listing Agreement when it knowingly induced the Defendant into signing.
27. As a result, the Defendant states that the appropriate remedy would be a rescission of the Listing Agreement.

**Place of Trial:**

28. The Defendant requests that the trial of this action take place in Toronto, Ontario.

DATE: January 18, 2017

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Lawyers for the Defendant

**CBRE LIMITED**  
Plaintiff

-and-

**S AND A HOSPITALITY CORPORATION**  
Defendant

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**  
Proceedings Commenced at Toronto

**STATEMENT OF DEFENCE**

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Fax: (289) 801-2248

Lawyers for the Defendant

**TAB C**

This is Exhibit C referred to in the  
Affidavit of Ali Akman  
sworn before me, this 15th  
day of November, 2017.



A Commissioner for taking Affidavits

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AVUKAT

Çiğdem Yavuz KURU  
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**FACSIMILE COVER PAGE**

DATE: January 27, 2017  
ATTENTION: Devesh Gupta  
COMPANY: Prudent Law  
FAX NO.: 289-801-2248  
FROM: Jens Drees  
RE: *CBRE Limited v. S and A Hospitality Corporation*  
Ontario Superior Court of Justice File No. CV-17-567067  
NO. OF PAGES: 5 (including cover sheet)

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January 27, 2017

**VIA FACIMILE**

**Prudent Law**  
Barristers & Solicitors  
33 City Centre Drive, Suite 543  
Mississauga, Ontario  
L5B 2N5

**Attn: Devesh Gupta**

Dear Sirs / Mesdames:

**Re: CBRE Limited v. S and A Hospitality Corporation**  
**Ontario Superior Court of Justice File No. CV-17-567067**

Please find enclosed our client's Reply, which is served upon you pursuant to the *Rules of Civil Procedure*.

Yours truly,

Jens O. Drees

\* Practicing as Drees Professional Corporation

Encl.

ONTARIO  
SUPERIOR COURT OF JUSTICE

BETWEEN:

CBRE LIMITED

Plaintiff

- and -

S AND A HOSPITALITY CORPORATION

Defendant

REPLY

1. CBRE admits the allegations contained in paragraphs 4, 5, 6 and 7 of the Statement of Defence.
2. CBRE denies the allegations contained in paragraphs 8, 10, 11, 12, 13, 14, 15, 16, 17, 18 in part, 19, 20, 22, 23, 24, 25, 26 and 27 of the Statement of Defence.
3. CBRE has no knowledge of the allegations contained in paragraphs 9, 18 in part and 21 of the Statement of Defence.
4. CBRE repeats and relies upon the statements contained in the Statement of Claim.
5. For the purpose of this Reply, all defined terms have the definition prescribed in the Statement of Claim.
6. With respect to paragraph 10 of the Statement of Defence, at no time during the course of CBRE's exclusive Listing Agreement, did Ali Akman inform Bill Stone that S and A was a party to any listing agreement with another real estate brokerage.
7. The existence of any listing agreement between S and A and another real estate brokerage has no bearing on the contractual obligations of S and A set out in the Listing Agreement.

8. With respect to paragraph 17 of the Statement of Defence, section 11 of the Listing Agreement stipulated that S and A "declares, represents, warrants and certifies" that S and A "has the authority to enter into and execute this Exclusive Sales Listing Agreement".
9. With respect to paragraph 20 of the Statement of Defence, the provisions of the Listing Agreement which S and A pleads are "onerous" are standard commercial real estate brokerage industry provisions.
10. With respect to paragraph 25 of the Statement of Defence, no representations or assurances were made by Bill Stone with respect to a sale price over \$11 million. In fact, section 3 of the Listing Agreement stipulated that CBRE would receive a 'bonus commission' with respect to any sale price that exceeded \$11 million. The Property could have sold for less than \$11 million, in which case, CBRE would not receive a 'bonus commission'.

Date: January 27, 2017

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**CBRE LIMITED**

Plaintiff

and

**S AND A HOSPITALITY CORPORATION**

Defendant

Court File No.: CV-17-567067

ONTARIO  
SUPERIOR COURT OF JUSTICE  
Proceedings commenced at **TORONTO**

**REPLY**

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Solicitors for the Plaintiff

Basegmez, et al.      Akman, et al.  
Applicants      and      Respondents

Court File No.: CV-17-11697-0000

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

Proceeding commenced at Toronto

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**RESPONDING MOTION RECORD**

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Ali Akman and Samm Capital Holdings Inc.