

IN THE COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL DISTRICT OF CALGARY

BETWEEN:

KENDAX INVESTMENTS INC.

Applicant

and

**DONALD CARMICHAEL, 658051 ONTARIO LIMITED and
KINGSCROFT INVESTMENTS LTD.**

Respondents

BEFORE THE HONOURABLE
JUSTICE K. M. HORNER
IN CHAMBERS

) At the Court of Queen's Bench, at
) Calgary, Alberta on Tuesday, the 27th day
) of September, 2005.

ORDER

UPON THE APPLICATION of the Judicial Trustee; **AND UPON** hearing read the Affidavits of Bruce Alger, sworn October 9, 2003, December 4, 2003 and June 3, 2005, and the Affidavit of Donald Carmichael, sworn July 27, 2005; **AND UPON HEARING** counsel for the Judicial Trustee, counsel for the BSIG, counsel for the Applicants and counsel for Adamic and Biondich (certain judgment creditors of the Respondents); **IT IS HEREBY ORDERED AND ADJUDGED THAT:**

1. The Respondents Donald Carmichael and 658051 Ontario Limited are in contempt of the Orders of this Honourable Court dated December 20, 2002, January 22, 2003 and April 10, 2003 in the within proceedings for failure to produce all books and records to the Judicial Trustee as previously directed.
2. The Respondents Donald Carmichael, 658051 Ontario Limited, Kingscroft Investments Limited and any "affiliate" corporation, as defined under the Alberta *Business Corporations Act* R.S.A 2000, c. B-9, (the "Affiliates") are directed to produce to the Judicial Trustee any and all books and records, including but not limited to all contracts, bank records,


correspondence and supporting documents, in its possession regarding Bonaventure Court, including:

- (a) any and all books and records arising out of or in any way related to payments made from the net revenue or surplus funds from Bonaventure Court;
- (b) any and all books and records relating to the accounting performed or that should have been performed by or for Kingscroft Investments Ltd. from December 31, 1988 to February 1, 2003;
- (c) any and all books and records relating to the accounting performed or that should have been performed by or for Winchester Properties Corporation from December 31, 1988 to February 1, 2003;
- (d) any unit accounting or UPA account reconciliation prepared for Bonaventure Court by the Respondents or the Affiliates, including the one prepared in 2003 and any and all books and records underlying that unit accounting or intended unit accounting;
- (e) any and all books, records and accountings maintained or prepared in relation to the money claimed to be owed to or paid to the Respondents or the Affiliates in relation to the promissory notes given by the current and former beneficial owners of Bonaventure Court to the Respondents or the Affiliates;
- (f) any and all books, records and accountings maintained or prepared in relation to the cash flow loans allegedly made by the Respondents or the Affiliates to the current and former beneficial owners of Bonaventure Court;
- (g) any and all books, records and accountings maintained or prepared in relation to the cash calls requested by the Respondents or the Affiliates from the current and former beneficial owners of Bonaventure Court;
- (h) any and all bank records, including statements of account, deposit slips and cancelled cheques of the Respondents and the Affiliates including but not limited

to Kingscroft Capital Corporation and Winchester Properties Corporation, and consents to obtain the same if requested by the Judicial Trustee;

- (i) any and all books and records regarding the purchase of treasury bills by the Affiliate as described in undertaking responses 7 and 9 to the cross examination of Donald Carmichael on September 19, 2005; and
 - (j) any and all books and records regarding the payments made from 658051 Ontario Limited to Winchester Financial Group regarding "Kendax Transfer of Debt to WFC" as reflected in Tab 2 to undertaking response 3 to the cross examination of Donald Carmichael on September 19, 2005.
3. The Judicial Trustee is awarded its costs in the amount of \$397,278.77 (the "Costs Award") from the Respondents Donald Carmichael and 658051 Ontario Limited on a joint and several basis, which amount is composed of the following:
- (a) the costs and disbursements of the Judicial Trustee on a full indemnity basis for all steps taken to prepare for and attend all contempt applications to date;
 - (b) the legal costs and disbursements of the Judicial Trustee on a solicitor and his own client indemnity basis for all steps taken to date to: obtain records from the Respondents; prepare for and attend all contempt applications; and to apply for this contempt Order;
 - (c) the costs and disbursements of the Judicial Trustee on a full indemnity basis for all steps taken to date to reconcile and attempt to reconcile the accounting records provided by the Respondents prior to this Order, including all fees and disbursements of BSIG since the May 4, 2005 Order in the within proceedings;
4. The Respondents Donald Carmichael and 658051 Ontario Limited shall purge their contempt by providing all books and records to the Judicial Trustee as directed in paragraph 3 above and by paying the Costs Award to the Judicial Trustee as directed in paragraph 4 above, and thereafter may bring an application before this Honourable Court to show that they have purged their contempt.

5. In the event that the Costs Award in paragraph 4 above are not paid by the Respondents Donald Carmichael and 658051 Ontario Limited within 30 days of service of this Order on Donald Carmichael, then \$397,278.77 shall form a charge in favour of the Judicial Trustee (the "JT Charge") against the units of Bonaventure Court to which any of the Respondents or the Affiliates claim an interest as security for payment of the Costs Award. The Judicial Trustee is hereby authorized to take all steps as it deems necessary and appropriate to register, record or perfect the JT Charge. Leave is given to the creditors of the Respondents represented by Miles Davison LLP to apply to determine the priority of the JT Charge in relation to other encumbrances.
6. The Respondents Donald Carmichael and 658051 Ontario Limited are required to provide all answers to the undertakings given at the cross examination on Affidavit of Donald Carmichael on September 19, 2005 on or before October 15, 2005.
7. This Order may be approved by counterpart and facsimile.



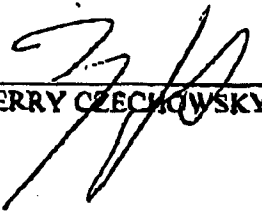
 J.C.C.Q.B.A.

ENTERED this 13 th day of January, 2006
~~day of December, 2005~~
 V.A. BRANDT

 C.C.Q.B.A.



APPROVED AS TO FORM ON THIS _____
 DAY OF DECEMBER, 2005.
 MILES DAVISON LLP
 Solicitors for Biondich & Adamic

Per: 

 TERRY CZECHOWSKYJ

APPROVED AS TO FORM ON THIS _____
 DAY OF DECEMBER, 2005.
 AG YOUNG LEGAL CENTRE
 Solicitors for the Applicant

Per: _____
 ANTHONY YOUNG

- 5. In the event that the Costs Award in paragraph 4 above are not paid by the Respondents Donald Carmichael and 658051 Ontario Limited within 30 days of service of this Order on Donald Carmichael, then \$397,278.77 shall form a charge in favour of the Judicial Trustee (the "JT Charge") against the units of Bonaventure Court to which any of the Respondents or the Affiliates claim an interest as security for payment of the Costs Award. The Judicial Trustee is hereby authorized to take all steps as it deems necessary and appropriate to register, record or perfect the JT Charge. Leave is given to the creditors of the Respondents represented by Miles Davison LLP to apply to determine the priority of the JT Charge in relation to other encumbrances.

- 6. The Respondents Donald Carmichael and 658051 Ontario Limited are required to provide all answers to the undertakings given at the cross examination on Affidavit of Donald Carmichael on September 19, 2005 on or before October 15, 2005.

- 7. This Order may be approved by counterpart and facsimile.

J.C.C.Q.B.A.

ENTERED this ____ day of December, 2005

C.C.Q.B.A.

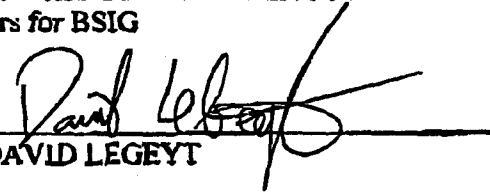
APPROVED AS TO FORM ON THIS _____
DAY OF DECEMBER, 2005.
MILES DAVISON LLP
Solicitors for Biondich & Adamic

Per: _____
TERRY CZECHOWSKYJ

APPROVED AS TO FORM ON THIS _____
DAY OF DECEMBER, 2005.
AG YOUNG LEGAL CENTRE
Solicitors for the Applicant

Per: _____
ANTHONY YOUNG

APPROVED AS TO FORM ON THIS 13th
DAY OF DECEMBER, 2005.
FRASER MILNER CASGRAIN LLP
Solicitors for BSIG

Per: 
DAVID LEGEYT

Action No. 0201-13248

IN THE COURT OF QUEEN'S
BENCH OF ALBERTA
JUDICIAL DISTRICT OF CALGARY

BETWEEN

KENDAX INVESTMENTS INC.

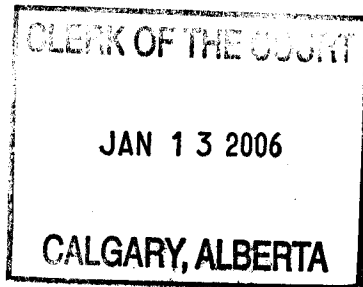
Applicant

and

**DONALD CARMICHAEL, 658051 ONTARIO
LIMITED and KINGSCROFT
INVESTMENTS LTD.**

Respondents

ORDER



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Barristers and Solicitors
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Fax: (403) 260-0332

File No. 58585-1
