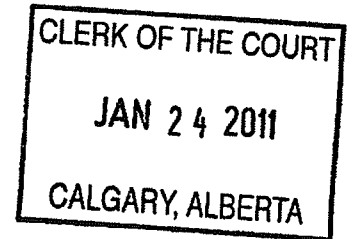


COURT FILE NUMBER 1001-03215
COURT COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL CENTRE CALGARY
PLAINTIFF(S) FIRST CALGARY SAVINGS & CREDIT UNION LTD.
DEFENDANT(S) PERERA SHAWNEE LTD., PERERA
DEVELOPMENT CORPORATION, DON L. PERERA
and SHIRANIE M. PERERA



DOCUMENT AFFIDAVIT

ADDRESS FOR SERVICE AND
CONTACT INFORMATION OF
PARTY FILING THIS DOCUMENT

JEFFREY D. POOLE
126, 2526 BATTLEFORD AVENUE SW
CALGARY, AB T3E 7J4
PHONE: 403.685.2012
FAX: 888.747.7569
EMAIL: jdpoole@pooelawyer.com

AFFIDAVIT OF SANJEEVA PERERA

I, Sanjeeva Perera, of the City of Calgary, in the Province of Alberta, SWEAR AND SAY THAT:

1. I was, prior to the appointment of the Receiver in these proceedings an employee of the Defendant Corporations. After the Appointment of the Receiver I was, until recently, an employee of the Receiver. I am the son of the guarantors who are my parents. As such, I have personal knowledge of the matters herein deposed to except where stated to be based on information and belief, in which case I do verily believe the same to be true.
2. I have a BSc in Civil Engineering and am currently completing work on my MBA from the University of Calgary. I have been involved in the conception, development and construction of the Highbury Project from the outset.

Alberta New Home Warranty

3. On June 2, 2010 I attended a meeting at the offices of the Receiver. In attendance were counsel for my parents, counsel for the Receiver, Counsel for the Plaintiff, Representatives of the Receiver and the Plaintiff, my father and myself (the "June 2 Meeting").
4. In the course of the June 2 Meeting it was agreed by all in attendance that a priority of the Receivership was the Pre Sale Contracts and that to close those contracts it was necessary to finalize an agreement with the Alberta New Home Warranty Program. Counsel for the Receiver, Christa Nicholson and Greg Stevens, representative for the Receiver, advised us that an agreement in principle had been made with New Home Warranty and outlined to us the terms of that agreement.
5. So far as I am aware the Receiver and its counsel did not, until the fall of 2010 make a concerted effort to finalize the contract with New Home Warranty. By that time the Brick Issue had become evident and purchasers under the Pre-Sales had advanced claims to National Home Warranty for deposits back

because the Receiver had not closed the Pre-Sales Contracts on a timely basis. Based on my personal knowledge of the Brick Issue and the New Home Warranty Issues I believe that it was the failure of the Receiver to finalize the contract with New Home Warranty and not the Brick Issue which delayed the closings of the Presales.

CondoSource

- 6. CondoSource has sold no units of the Project. In fact, all of the units sold to date have, despite the fact that a commission has been paid to CondoSource, been sold through the efforts of Judy Poole who formerly worked for the Defendants and is now employed by the Receiver.
- 7. Attached as Exhibit "1" to this Affidavit is a true copy of a letter forwarded by Mr. Poole to the Real Estate Council of Alberta.

One Building in Three Phases

- 8. The Highbury Project is one building which was planned to be developed in three phases. With the sales of each successive unit of the project to individual buyers changes to the condominium plan becomes successively more difficult practically and legally. This point has been made over and over by my father and his counsel Mr. Poole to the Receiver and its counsel. I have participated in telephone conferences where it appeared to me that counsel for the Receiver and the Receiver, Greg Stevens, did not understand the nature of the project.
- 9. I am advised by my father and by Mr. Poole that on November 10, 2010 they attended a meeting at the Project. It is my understanding that Ms. Nicholson had not previously attended at the Project. I am advised and I believe that at that meeting Representatives of CBRE Realty were unaware of the practical and legal issues relating the separation of Phase I from Phases II and III.

The Receiver's Accounting

- 10. By email dated December 10, 2010 Mr. Poole asked Ms. Nicholson the following:

I ask that you ensure that the materials you put before the court on the 20th include a detailed accounting for the receivership up to and including November 30, 2010. I ask that it be prepared on an accrual basis and not a cash basis. In addition, I ask that it disclose the amounts held in trust and a listing of the contingent liabilities the receiver may have incurred including contingent liabilities to, among others, New Home Warranty. And finally, I would appreciate, if the information is available, a projection of the Receiver's expected costs for the next six months. I understand that most of this information is made available to First Calgary in the weekly reports the Receiver sends them so I expect it would not be untoward of me to ask the information be provided to the court.

- 11. In addition to the Twelfth Report Mr. Poole received on January 19th, 2011 the letter which is attached as Exhibit 2 to this Affidavit.

The CAIRP Intervention

- 12. I am advised by Mr. Poole that on Thursday, January 20, 2011 Victor Kroeger, the Receiver advised Mr. Poole that Mr. Kroeger contacted the Interveners, CAIRP and AAIRP and invited them to intervene in these proceedings. I am further advised by Mr. Poole that he was unaware of the proposed intervention in these proceedings until Wednesday, January 19, 2011.

SWORN BEFORE ME AT CALGARY, ALBERTA,)
THIS 23RD DAY OF JANUARY, 2010)


_____)

Jeffrey D. Poole
Barrister and Solicitor


_____)

Sanjeeva Perera

This is Exhibit "1" to the affidavit of Sanjeeva Perera
sworn before me on January 23, 2011



Jeffrey D. Poole
Barrister and Solicitor

January 23, 2011

REAL ESTATE COUNCIL OF ALBERTA:
Suite 350, 4954 Richard Rd SW,
Calgary AB T3E 6L1

Attention Licensing

Dear Sir:

RE: CondoSource Inc.

I act for Don Perera. Mr. Perera is a director of Perera Shawnee Ltd. which is now in receivership. Deloitte and Touche Inc. is the court appointed receiver.

The Receiver proposes on to seek court approval to a Condominium Project (Sales & Marketing) Listing Contract (the "Contract") it has entered into with CondoSource Inc. ("CondoSource"). On the instructions of my client I have conducted searches on your website to see whether CondoSource is a licensed broker under the Real Estate Act. It appears that it is not. It appears, as well, that none of the principals of CondoSource are licenced brokers or realtors.

I attach a copy of the Contract. It appears that the contract is in contravention of the Real Estate Act of Alberta. Particularly, it does not appear to me that CondoSource is an exempted from the provisions of the act.

We ask that you, as the regulator, investigate the issue of whether the terms of the Contract are contrary to the Alberta Real Estate Act and Regulations.

Yours sincerely,



Jeffrey D. Poole



Condominium Project (Sales & Marketing) Listing Contract

This Contract is made December 27th, 2010 (the "Effective Date")

Between:

The Seller ("Deloitte"):

Deloitte and Touche Inc. as Receiver and Manager of
Perera Shawnee Ltd. ("PSL") and Perera Development Corporation ("PDC")
Suite 3000, 700-2nd Street, S.W. Calgary, AB Canada T2P 0S7

Sales and Marketing Company "CondoSource":

CondoSource Inc.
2519, 246 Stewart Green SW
Calgary, Alberta T3H 3C8


1.0 THE UNITS

The condominium units that are the subject of this Contract are only those condominium units in Condominium Plan No. 0915321 that are located at 10 Shawnee Hill SW and which are listed in Schedule A to this Contract (collectively, the "Units").

2.0 TERM OF CONTRACT

- 2.1 CondoSource will exclusively market for sale the Units on an individual as opposed to en bloc basis from the Effective Date until January 31, 2011 (the "Term"). For greater certainty, it is understood by CondoSource that the Units may be marketed for sale on an en bloc basis through a real estate agent other than CondoSource.
- 2.2 CondoSource agrees to enter into the contract attached hereto as Schedule B (the "Court Approved Contract") at the same time as it enters into this Contract and the Receiver agrees to apply to the Court of Queen's Bench of Alberta (the "Court") to have the Court Approved Contract approved.
- 2.3 This Contract will automatically come to an end without notice:

- (a) upon Court Approval (as that term is defined in the Court Approved Contract) of the Court Approved Contract being obtained; or


T.L. 

(b) upon the expiry of the Term, unless it is extended by agreement in writing by CondoSource and Deloitte,

whichever is earlier.

3.0 REAL ESTATE COMMISSION

- 3.1 Except in the case of a Double Agent Commission or an En Bloc Commission (as those terms are hereinafter defined), the commission payable to CondoSource hereunder is 4.0% of the Selling Price (as hereinafter defined) of a Unit plus GST in accordance with Section 5.3 (the "Single Agent Commission").
- 3.2 The "Selling Price" means the sale price of a Unit, not including GST, that is specified in the offer to purchase contract in respect of that Unit, which is agreed to by Deloitte (the "Selling Price").
- 3.3 The Single Agent Commission will be paid in the following manner: 100% of the total commission will be paid within (7) business days of a completed sale (title transfer date).
- 3.4 All commission cheques to be made payable to Eimbi Properties Group Inc. (a subsidiary of Condo Source Inc.) but Eimbi Properties Group Inc. shall have no rights hereunder.
- 3.5 Where a sale occurs with a purchaser who is represented by an outside real estate agent (i.e., an agent other than CondoSource), the commission payable to CondoSource hereunder will be 4.5% of the Selling Price of the Unit plus GST in accordance with Section 5.3 (the "Double Agent Commission"). The Double Agent Commission will be paid in the following manner: 100% of the total commission will be paid within (7) business days of a completed sale (title transfer date). CondoSource is responsible for payment to an outside real estate agent.
- 3.6 In the event of a wholesale offer where all or substantially all of the Units are purchased by one purchaser, the commission payable to CondoSource hereunder shall be 1.25% of the total en bloc purchase price for all Units plus GST in accordance with Section 5.3 (the "En Bloc Commission").
- 3.7 The Single Agent Commission, the Double Agent Commission and the En Bloc Commission are hereinafter collectively referred to as the "Commission".
- 3.8 Notwithstanding any other provision of this Contract, in the event that First Calgary Savings & Credit Union Ltd. or its nominee successfully makes a credit bid for any or all of the Units or other assets of PSL or PDC ("Credit Bid") or successfully exercises its right to foreclose on or take title to any or all of the Units (collectively, "Foreclosure"), CondoSource hereby acknowledges and agrees that no fee, commission or other compensation, including Commission or Alternate Compensation (as hereinafter defined), will be payable to CondoSource in respect of any Units which are the subject of a Credit Bid or a Foreclosure.
- 3.9 Notwithstanding any other provision of this Contract, in the event that a Unit is sold to a purchaser who entered into a purchase and sale contract with PSL in respect of a Unit prior to Deloitte being appointed receiver and manager of PSL and PDC (a "Presale Buyer"), CondoSource hereby acknowledges and agrees that no fee, commission or

T.C. 



other compensation, including Commission or Alternate Compensation (as hereinafter defined), will be payable to CondoSource in respect of any Units sold to a Presale Buyer.

- 3.10 Subject to Section 5.1(b) hereof, the provisions of this Section 3.0 apply during the Term and not beyond the same.
- 3.11 For clarity, no Commission or Alternate Compensation (as hereinafter defined) is payable on the GST portion of the sale price.
- 3.12 Notwithstanding any other provision of this Contract, no fee, commission or other compensation is payable to CondoSource other than the Commission or Alternate Compensation (as hereinafter defined) payable as provided in this Contract as the case may be.

4.0 DEPOSITS

- 4.1 All deposits collected on the sale of a Unit will be held in trust in accordance with the terms of the signed purchase contract for the sale of a Unit.

5.0 DUTIES OF THE SELLER (DELOITTE)

- 5.1 Deloitte will pay the applicable Commission to CondoSource provided:


- (a) the property is sold, exchanged or otherwise disposed of by Deloitte or anyone else other than CondoSource during the Term of this Contract.
- (b) during the Term of this Contract, a person contacts Deloitte directly or through a brokerage or inspects the Unit and the Unit is then sold, exchanged or otherwise disposed of by Deloitte or anyone else to that person within 90 days after the expiry of the Term.

- 5.2 Deloitte will pay alternate compensation to CondoSource provided:

- (a) during the Term a buyer is found who is willing and able to complete the sale, at the Selling Price, upon the conditions outlined in this contract but Deloitte refuses to sign the purchase contract; or
- (b) during the Term a purchase contract is signed but the buyer defaults and the deposits are forfeited.

This alternate compensation will be the lesser of the applicable Commission that would have been payable had the sale been completed or 50% of the forfeited deposits (the "Alternate Compensation").

- 5.3 In addition Deloitte will pay GST, where applicable, to CondoSource on the Commission or on any Alternate Compensation due under this Contract.
- 5.4 Deloitte will make its best efforts to insure the Units and their contents against loss or damage due to perils that are normally insured against for similar properties. This insurance will be effective even when the property is vacant.
- 5.5 Deloitte will make reasonable efforts to cooperate with CondoSource.

T.C. 




5.6 Deloitte will, subject to prior review and approval by Deloitte, pay all hard costs including but not limited to: signage, advertising, brochures, business cards, stationery, sales center set-up, sales center cleaning, sales center lease, sales center furnishing, utility payments, condominium document preparation and reproduction, interior design fees, architect fees, surveying fees, municipal development fees, virtual tour (hard cost only).

6.0 DUTIES OF CONDOSOURCE

6.1 CondoSource will:

- (a) make all reasonable efforts to find buyers for the Units;
- (b) not discourage any person who is an industry member as defined in the *Real Estate Act* (Alberta) and who is not a member of a real estate board from attempting to sell the Property, unless Deloitte otherwise instructs CondoSource in writing;
- (c) pay any applicable Commission, Alternate Compensation and GST that are payable to another brokerage;
- (d) ensure the sales center is open during the hours of operation set forth in all advertising material;
- (e) train and coach the sales staff and personnel; all such personnel may be interviewed and accepted by Deloitte, if it so desires;
- (f) hire and pay for sales staff and personnel related to the selling of the Units;
- (g) provide Deloitte with a competitive analysis from time to time;
- (h) handle all public relations related to the marketing of the Units, subject to prior review and approval by Deloitte;
- (i) follow-up with all prospective purchasers (visitors to the sales center);
- (j) maintain the ongoing advertising and marketing of the Units;
- (k) write and negotiate purchase contracts in a form approved by Deloitte and present them to Deloitte;
- (l) collect all deposit money on behalf of Deloitte from a purchaser;
- (m) provide, on a weekly basis, a report on sales activity, sales center traffic, source of traffic, current advertising and promotion and current prospective buyers;
- (n) make all efforts to obtain a guest card from visitors to the sales center;
- (o) maintain a database of purchasers and potential purchasers. This database will be the property of Deloitte;
- (p) make all press releases in direct relation to the Units, subject to prior review and approval by Deloitte;

J.L. 



(q) maintain and distribute a current asking price list for all Units, subject to prior review and approval by Deloitte; and

(r) duplicate and distribute relevant marketing material to prospective purchasers.

6.2 CondoSource and its agents, employees or directors will not be liable and be saved harmless for any errors in information provided by Deloitte including but not limited to: size of units, general specifications, condominium fees, paint colors etc. All agents will discourage the purchasers and general public from entering the construction site and will not be liable for any accident or injury that may take place if anyone does so.

7.0 DEVELOPMENT SET-UP

7.1 CondoSource will, subject to prior approval by Deloitte:

(a) design and set-up the sales and marketing center;

(b) design and set-up a web page to market the sale of Units;

(c) design and arrange all marketing material including but not limited to: artist renderings, art work, brochures, letterhead, envelopes, business cards, floor plans, general specifications, pricelists, thank you cards and building models;

(d) consult with Deloitte's architect on building and floor plan design;

(e) consult with Deloitte's legal counsel on relevant condominium document preparation, reproduction and distribution;

(f) consult with Deloitte's interior designer on interior selection colors, flooring, cabinets etc.;

(g) consult with Deloitte regarding construction and finishing material;


(h) arrange the set-up of "the virtual walk through"; and

(i) prepare all relevant material and make arrangements for a grand opening of the condominium development.

8.0 SECURITY FOR COMMISSION AND MARKETING FEES.

The parties agree that CondoSource is entitled to encumber the land in accordance with the *Land Titles Act* (Alberta). Deloitte authorizes CondoSource to file and maintain a caveat to give notice of this encumbrance.

8.1 If CondoSource successfully enforces any of its rights or remedies under this Section, Deloitte agrees to pay reasonable lawyer and client legal fees and costs paid by CondoSource.

T.C. 

9.0 ENDING THE CONTRACT

- 9.1 Notwithstanding Section 2.0 above, this contract will automatically end if CondoSource is bankrupt or insolvent or in receivership.
- 9.2 Where a party to this contract has breached a portion of this contract, the other party may immediately end this contract by notice in writing to the party in breach.
- 9.3 Deloitte and CondoSource may enforce portions of this contract even if this contract has ended or expired.

10.0 ADDITIONAL TERMS


- 10.1 This contract is for the benefit of and will be binding upon the heirs, administrators, executors, successors and assigns of the parties.
- 10.2 All changes of number and gender will be made where required.
- 10.3 Portions of this contract is a Seller's Brokerage Agreement for the purposes of the *Real Estate Act* (Alberta).
- 10.4 The parties understand and agree that this Contract contains the entire agreement between the parties and there are no representations or warranties other than expressly set forth herein. Any and all amendments to this Contract shall be agreed to in writing by Deloitte and CondoSource.
- 10.5 In no event is Deloitte liable for any damages on any basis, in contract, tort or otherwise, of any kind and nature whatsoever, arising out of or in connection with this Contract, howsoever caused, including damages and/or losses of any kind and nature caused by Deloitte's negligence, or by a fundamental breach of contract or any other breach of duty whatsoever.
- 10.6 This Contract supersedes any and all previous agreements between the parties, which agreements shall be of no force and effect as of the Effective Date.

11.0 ADVICE TO THE SELLER

- 11.1 This contract creates binding legal obligations. Deloitte is free to obtain legal advice before signing.
- 11.2 The amount of Commission and Alternate Compensation are not fixed by law and are as set forth herein.


12.0 SIGNATURES

- 12.1 This contract may be signed by the parties and transmitted by fax or email. This procedure will be as effective as if the parties had signed and delivered an original copy.


T.C. 

13.0 COURT APPROVAL


13.1 CondoSource acknowledges that the sale of any Unit is subject to approval by the Court. CondoSource further acknowledges that in the event that the sale of any of the Units is not approved by the Court, notwithstanding any other term of this Contract, Deloitte is not liable to pay any Commission or Alternate Compensation in respect of those Units.

T.G. 

December 27th, 2010
Date

Per: 
CondoSource- Signature *Tott Gol*
(President)

January 4, 2011
Date


Deloitte & Touche Inc., as Receiver and
Manager of Perera Shawnee Ltd. and
Perera Development Corporation, and
not in its personal capacity



SCHEDULE A
UNITS

T.L. *[Signature]*





**Condominium Project (Sales & Marketing) Listing
SCHEDULE 'A'**

This Schedule is attached to and forms part of the Condominium Project (Sales & Marketing)

Listing Contract between the parties listed below

The Seller: Deloitte

&

Sales & Marketing Company: CondoSource Inc.


The following units are available for sale and promotion by CondoSource:

Unit #

201, 202, 207, 306, 307, 402, 405, 406, 407, 501, 508, 508, 601, 605, 702, 708, 14601, 14603,
14605, 14609, 14615, 14617, 14623.

A handwritten signature or initials in black ink, located in the lower right quadrant of the page.

**SCHEDULE B
COURT APPROVED CONTRACT**

T.L. 



This is Exhibit "2" to the affidavit of Sanjeeva Perera
sworn before me on January 23, 2011



Jeffrey D. Poole
Barrister and Solicitor

Osler, Hoskin & Harcourt LLP
Suite 2500, TransCanada Tower
450 - 1st Street S.W.
Calgary, Alberta, Canada T2P 5H1
403.260.7000 MAIN
403.260.7024 FACSIMILE

OSLER

Calgary

January 19, 2011

Christa Nicholson
Direct Dial: 403.260.7025
cnicholson@osler.com

Toronto

SENT BY EMAIL

Montréal

Mr. Jeff Poole
Poole Lawyer
126, 2526 Battleford Ave. SW
Calgary, AB T3E 7J4
jdpool@poolelawyer.com

Ottawa

New York

Dear Mr. Poole:

Re: First Calgary Savings & Credit Union Ltd. ("First Calgary") v. Perera Shawnee Ltd. ("PSL"), Perera Development Corporation ("PDC") and Don L. Perera and Shiranie M. Perera (collectively the "Guarantors")

Court of Queen's Bench Action No. 1001-03215 (the "Receivership Proceedings")

This is further to your email of December 10, 2010, the Twelfth Report of the Receiver dated January 18, 2011 (the "Twelfth Receiver's Report") and the applications filed by the Receiver, returnable at 2:00 p.m. on Monday, January 24, 2011.

Further to the "Receipts and Disbursements" addressed in the Twelfth Receiver's Report, including Schedule 1 thereto, this is to advise on behalf of the Receiver that apart from the disbursements shown thereon, the Receiver has made the following material commitments:

- Construction costs of \$783,482.66;
- Receiver's fees of \$732,291.21 to December 31, 2010; and
- Professional fees payable to counsel for the Receiver of \$726,760 to December 15, 2010.

Yours very truly,



Christa Nicholson
CN:jer

c: *Deloitte & Touche Inc.*
Josef Kruger, Borden Ladner Gervais LLP
Morgan Fowler, Osler, Hoskin & Harcourt LLP