

Court File No. CV-21-00672899-00CL

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

B E T W E E N:

RIVER CITY CHRISTIAN REFORMED CHURCH

Plaintiff

and

**GRAHAM SINGH, PETER ELGERSMA, TRINITY CENTRES
FOUNDATION, TRINITY CENTRES CAMBRIDGE, MILLER
THOMSON LLP and COLDPOINT HOLDINGS LTD.**

Defendants

**SUPPLEMENTAL THIRD REPORT OF DELOITTE RESTRUCTURING INC.,
IN ITS CAPACITY AS RECEIVER AND MANAGER**

DATED DECEMBER 16, 2022

TABLE OF CONTENTS

INTRODUCTION AND PURPOSE OF THE REPORT	3
NEW ISSUES RAISED BY DEFENCE	3
Litigation Commenced by RCC.....	3
Issues Raised in Respect of the Property	4
Commercial Grade Kitchen.....	4
Space Sharing	4
TMI.....	5
Receiver’s Good Faith.....	5
RCC as a Creditor.....	8
CONCLUSIONS AND RECOMMENDATIONS.....	8

APPENDICES

- APPENDIX “A”** – Statement of Claim of RCC amended and consolidated on March 21, 2022
- APPENDIX “B”** – Statement of Defence of Graham Singh and Trinity Centres Foundation
- APPENDIX “C”** – Statement of Defence of Peter Elgersma
- APPENDIX “D”** – Statement of Defence of Miller Thomson LLP
- APPENDIX “E”** – Statement of Defence of Christian Reformed Church in North America – Canada Corporation
- APPENDIX “F”** – Statement of Defence of Christian Reformed Church Extension Fund Inc.
- APPENDIX “G”** – Ms. De Villiers’ emails with the Receiver regarding RCC’s request for keys
- APPENDIX “H”** – Receiver’s letter to RCC counsel dated May 24, 2022

INTRODUCTION AND PURPOSE OF THE REPORT

1. This report is supplemental to the third report of the Receiver dated December 1, 2022 (the “**Third Report**”). Capitalized terms used herein and not defined in this supplemental report shall have the meaning ascribed to them in the Third Report. The Receiver continues to rely on the information provided in the Third Report. The purpose of this supplemental report is to respond to issues raised in the Statement of Defence and Counterclaim of RCC dated December 12, 2022 (the “**Defence**”) in accordance with the Endorsement of Justice Penny dated November 18, 2022.

NEW ISSUES RAISED BY DEFENCE

Litigation Commenced by RCC

2. The Defence references the statement of claim of RCC which was amended and consolidated on March 21, 2022, a copy of which is attached as **Appendix “A”**. The Defendants to the Claim have filed the following Statements of Defence:
 - (a) Graham Singh and Trinity Centres Foundation, attached as **Appendix “B”**;
 - (b) Peter Elgersma, attached as **Appendix “C”**;
 - (c) Miller Thomson LLP, attached as **Appendix “D”**;
 - (d) Christian Reformed Church in North America – Canada Corporation, attached as **Appendix “E”**; and
 - (e) Christian Reformed Church Extension Fund Inc., attached as **Appendix “F”**.
3. To date, Coldpoint has not been required to file a Statement of Defence.

Issues Raised in Respect of the Property

Commercial Grade Kitchen

4. The Defence states that RCC lost a fundamental part of the Property when the commercial grade kitchen was removed to build change rooms for One Movement. This statement in the Defence is the first time that the Receiver has been made aware of the prior existence of a commercial grade kitchen or the fact that it was considered a fundamental loss to RCC. RCC continues to have access to a kitchen in the basement of the Property, and no issues with respect to the basement kitchen were raised by RCC to the Receiver.

Space Sharing

5. As set out in the Third Report, there is a space sharing arrangement in place whereby each of the Commercial Tenants agreed to the use of their space by RCC on Sundays. One Movement received a rent abatement to share its leased space with RCC on Sundays. The Defence states that One Movement installed a door with a lock and refused to give RCC the key.
6. RCC raised this issue with the Receiver who made inquiries as to RCC's ability to enter the One Movement space on Sundays. The Receiver was advised by Natasa De Villiers, a representative of TCF and the property manager subsequently engaged by the Receiver to assist with the management of the Property, that RCC had made a request for a key and that one was immediately provided. Subsequently, the lock was changed and a duplicate key was provided to RCC by Ms. De Villiers.
7. The Receiver has also been advised by Ms. De Villiers that the same key provides access to the ProActive space which was also available to RCC under the Space Sharing

Agreement. In addition, there were multiple access points to the ProActive and One Movement spaces that could always be accessed by RCC without having to go through the new door. Ms. De Villiers advised the Receiver that RCC has always had full access to the entire Property. Ms. De Villiers shared emails with the Receiver confirming that RCC's request for keys to access the space were accommodated and that if additional keys were required to let her know as she would arrange for them to be provided. The Receiver is not aware of RCC making any further requests for additional keys. Copies of such emails are attached as **Appendix "G"**.

TMI

8. The Defense contends that the Receiver should take the fact that the Commercial Tenants' spaces are air conditioned into account when determining the TMI attributable to RCC. As set out in the Third Report, ProActive pays a fixed price rent that does not include a separate allocation of TMI. One Movement pays a set price each month for TMI which is then adjusted annually based on the actual TMI paid for the Property.
9. The spaces do not have separate utilities meters. There is no requirement in the Lease to make any adjustment to the TMI to account for the air conditioning. Similarly, the Receiver did not take into account the fact that the sanctuary occupied by RCC likely costs more to heat in the winter than the space of the Commercial Tenants given the size and configuration of the space.

Receiver's Good Faith

10. RCC claims that the Receiver has not fulfilled its duties as a court officer and has failed to act honestly and in good faith. RCC has made this serious allegation against an experienced

officer appointed by this Court and the Defence provides no evidence to support their allegation. The Receiver vehemently denies that it has not properly discharged its duties and asserts that it has at all times acted with integrity, honesty and in good faith. The Receiver relies on the facts as set out in the Third Report to illustrate that it did exercise discretion with respect to discounting the rent owing by RCC and made sincere attempts to negotiate in good faith with RCC, who met every such attempt with a refusal to counter the Receiver's proposals and an excuse for not complying with its obligations under the RCC Lease. The fact that a Receiver does not agree with a stakeholder does not mean that it has not been acting in good faith. The Receiver has acted and continues to act with honesty and good faith.

11. RCC contends that the Receiver never met with RCC to obtain information on its use of the Property. This is simply untrue. The Receiver had a detailed conversation with Pam O'Dell of RCC, immediately following its appointment, on September 22, 2021. The Receiver also continues to rely on the numerous discussions that it had with counsel to RCC as detailed in the Third Report which included discussions relating to the use of the Property. In particular, counsel to RCC provided the Receiver with a detailed schedule of RCC's use of the Property which can be found at Appendix "N" to the Third Report. Based on this information, the Receiver provided its analysis of appropriate rent which can be found at Appendix "M" to the Third Report. At no time did the Receiver ever refuse to meet with RCC.
12. The Defense alleges that the Receiver failed to respond to its letter dated November 22, 2021 and failed to engage with RCC between that time and August 2022. Again, this is untrue. The Receiver responded to RCC's letter by way of a request for a conference call

which occurred on November 24, 2021. Further calls between the Receiver and counsel to RCC were held on December 6, 2021, December 10, 2021 and January 17, 2022. The Receiver was focused on attempting to sell the Property during this period for the benefit of the stakeholders whilst trying to negotiate a fair compromise with respect to the rent payable by RCC.

13. The Receiver further engaged with RCC and the potential purchasers of the Property in respect of a potential new lease throughout this period. The Receiver and RCC also negotiated a mutual termination agreement of the Lease in March 2022 in an effort to make the Property more marketable and because RCC had indicated that it may wish to terminate and find a new location.
14. The Receiver filed the First Report dated April 12, 2022 and responded to correspondence from counsel to RCC in respect of same by letter dated May 24, 2022, a copy of which is attached as **Appendix “H”**. The May letter again outlined the Receiver’s position in respect of the market rent due and owing by RCC and their liability for the payment of TMI. As set out in the Third Report, throughout the course of the receivership, the Receiver made numerous attempts to settle the outstanding issues with RCC which were always met with different excuses for their failure to pay market rent. The time spent by the Receiver and its counsel in an effort to settle the rent and TMI issues with RCC dramatically increased the costs of the receivership to the detriment of TCC’s stakeholders. RCC should be accountable for these increased costs.

RCC as a Creditor

15. The Defence claims that RCC is a creditor of the estate in the amount of \$506,200. This amount relates to the Purchase Option that RCC purchased as part of its negotiation of the Lease. As set out in the Third Report, RCC informed the Receiver that it did not want to exercise the Purchase Option prior to the sale of the Property. The Defence alleges that the Purchase Option:

- (a) is equity at paragraph 7;
- (b) was an option to purchase at paragraph 8; and
- (c) was provided for renovations that did not occur at paragraph 49.


16. RCC also alleged by letter dated October 14, 2022, attached as Appendix “V” to the Third Report, that the Purchase Option paid the TMI owing by RCC during the course of its Lease. By letter dated September 28, 2022, attached as Appendix “Z” to the Third Report, RCC also alleges that the Purchase Option ranks *pari passu* with a portion of the secured indebtedness owing to Coldpoint. It is the Receiver’s position, for the reasons set out in the Third Report, that RCC is not a creditor of TCC.

CONCLUSIONS AND RECOMMENDATIONS

17. For the reasons set out above, the Receiver respectfully continues to request that the Court approve the proposed Windup Order.

All of which is respectfully submitted at Toronto, Ontario this 16th day of December, 2022.

DELOITTE RESTRUCTURING INC.,
solely in its capacity as the Court-appointed
Receiver and Manager of Trinity Centres
Cambridge and not in its personal or corporate
capacity

Per: 

Toni Vanderlaan, CPA, CA, CIRP, CTP, LIT
Senior Vice-President

Appendix “A”

AMENDED THIS April 8, 2022 PURSUANT TO
MODIFIÉ _____ CONFORMÉMENT À

Court File No.: CV-21-00672899-00CL

RULE/LA RÈGLE 26.02 (b)

ONTARIO

THE ORDER OF _____

SUPERIOR COURT OF JUSTICE

L'ORDONNANCE DU
DATED/FAIT LE _____

COMMERCIAL LIST

Christin

Digitally signed by Christina Irwin
DN: cn=Christina Irwin, o=Ministry
of the Attorney General,
ou=Superior Court of Justice,
c=CA
Date: 2022.04.11 11:46:17 -0400

a Irwin

RIVER CITY CHRISTIAN REFORMED CHURCH

REGISTRAR

GREFFIER

SUPERIOR COURT OF JUSTICE

COUR SUPÉRIEURE DE JUSTICE

Plaintiff

- and -

**GRAHAM SINGH, PETER ELGERSMA, TRINITY CENTRES FOUNDATION,
TRINITY CENTRES CAMBRIDGE, MILLER THOMSON LLP,
COLDPOINT HOLDINGS LTD., CHRISTIAN REFORMED CHURCH IN NORTH
AMERICA – CANADA CORPORATION and CHRISTIAN REFORMED CHURCH
EXTENSION FUND INC.**

Defendants

FRESH AS AMENDED STATEMENT OF CLAIM

TO THE DEFENDANTS

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 _____ Issued by _____
Local Registrar

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Christian Reformed Church Extension Fund Inc.

CLAIM

1. The Plaintiff claims:

- (a) a declaration pursuant to section 253(1) of the *Canada Not-for-profit Corporations Act* (the “**CNCA**”) that the actions and/or omissions of the Defendant, Trinity Centres Cambridge (the “**Corporation**”), and the conduct of the activities and affairs of the Corporation, and/or or the exercise of the powers of the directors or officers of the Corporation pleaded herein are oppressive and unfairly prejudicial to, or unfairly disregards the interests of, the plaintiff;
- (b) an order appointing a receiver and manager (the “**Receiver**”) of all the assets, property and undertaking of the Corporation, without security, pursuant to section 253(3)(b) of CNCA and section 101 of the *Courts of Justice Act*;
- (c) in the alternative to (b), an injunction restraining the defendants, Trinity Centres Foundation (“**TCF**”), Graham Singh (“**Singh**”) and Peter Elgersma (“**Elgersma**”), their servants and agents, from disposing of or otherwise dealing with the assets, property and undertaking of the Corporation including any account maintained by the Corporation at the Royal Bank of Canada or elsewhere;
- (d) an order requiring the Receiver to account to the Court;
- (e) an order setting aside or annulling section 4.05 of the by-law of the Corporation for invalidity under the CNCA, including sections 128(3) and 253(3)(h) thereof;

- (f) an order setting aside or annulling the unanimous member agreement between the Corporation, the plaintiff and the defendant, TCF, pursuant to sections 170(8) and 253(3)(c) and (h) of the CNCA;
- (g) an order setting aside or annulling the lease and option agreement made as of March 5, 2020 between the Corporation as landlord and the plaintiff as tenant, for fraud and pursuant to section 253(3)(h) of the CNCA;
- (h) an order setting aside or annulling the property services agreement executed on February 9, 2021 between the Corporation and the defendant, TCF, pursuant to sections 141(1) and 253(3)(h) of the CNCA;
- (i) an order removing Elgersma as a director of the Corporation, pursuant to section 253(3)(e) of the CNCA;
- (j) an order granting the plaintiff leave, under sections 251 and 252 of the CNCA, to bring a derivative action on behalf of the Corporation against the defendants, TCF, Singh and Elgersma to disgorge fees paid by the Corporation to TCF and against the defendant Miller Thomson LLP (“**Miller Thomson**”) to disgorge fees paid by the Corporation to Miller Thomson;
- (k) an order that any recovery of fees pursuant to the derivative action brought by the plaintiff on behalf of the Corporation be paid directly to the plaintiff to the extent of the sum of \$506,200 plus interest thereon, absolutely free and clear of any security interest in favour of the defendant, Coldpoint Holdings Ltd.;
- (l) liquidation of the Corporation pursuant to sections 24(1) and 253(3)(l) of the CNCA;

- (m) damages in the amount of \$506,200 jointly and severally against the defendants, TCF, Singh, Elgersma and Miller Thomson for losses suffered as a result of breach of duty (contractual, tortious, equitable, fiduciary, statutory, regulatory and/or other duties) including as a director, officer, trustee or agent, misrepresentation, fraud, oppression and unjust enrichment;
- (n) damages in the amount of \$1,000,000 jointly and severally against the defendants, the Christian Reformed Church in North America – Canada Corporation and the Christian Reformed Church Extension Fund Inc. for losses suffered as a result of breach of duty (contractual, tortious, equitable, fiduciary, statutory, regulatory and/or other duties) including as negligent misrepresentation;
- (o) an order for restitution, rescission and/or such other equitable remedy for the breaches of duties and other tortious conduct referred to in subparagraph 1(m) above;
- (p) punitive damages in the amount of \$500,000 against the defendants, TCF and Singh, jointly and severally;
- (q) punitive damages in the amount of \$250,000 against the defendant, Miller Thomson;
- (r) punitive damages in the amount of \$10,000 against the defendant, Elgersma;
- (s) pre-judgment and post-judgment interest in accordance with the *Courts of Justice Act* (Ontario);
- (t) the costs of this action on a substantial indemnity basis;
- (u) such further and other relief as this Honourable Court may deem just.

Parties

2. The plaintiff, River City Christian Reformed Church (“**RCC**”) is a religious organization incorporated under the laws of Ontario and carries on its activities from lands and premises having the civic address of 15 Wellington Street, Cambridge (the “**Property**”).
3. The defendant Corporation, Trinity Centres Cambridge, is a corporation incorporated under the CNCA. The Corporation owns the Property. Pursuant to By-Law No. 2019-1 of the Corporation, its members are RCC and the defendant TCF.
4. The defendant, TCF, is a corporation incorporated under the CNCA. TCF purports to provide less than market rate spaces to Canada’s charitable sector through adaptive re-use of church buildings.
5. The defendant, the Reverend Singh, is:
 - (a) the executive director and a member of the board of directors of TCF; and
 - (b) the chair and chief executive officer (collectively, the “**CEO**”) of the Corporation.
6. The defendant, Elgersma, is a director and officer of the Corporation.
7. The Defendant, Christian Reformed Church in North America – Canada Corporation, (the “**CRCNA**”) is a religious organization incorporated under the *Canada Not-for-profit Corporations Act* SC 2009 c. 23 (the “**CNCA**”).
8. The Defendant, the Christian Reformed Church Extension Fund Inc. (the “**CRC Extension Fund**”) is a managed and administered capital fund incorporated under the laws of Ontario that provides financing for capital projects of CRC congregations and for independent, parent-directed, or membership-directed Christian schools across Canada.

9. The defendant, Miller Thomson, is a limited liability partnership carrying on the practice of law in Ontario and elsewhere. Miller Thomson acted as counsel for the Corporation and its members, RCC and TCF.
10. The defendant, Coldpoint Holdings Ltd. (“**Coldpoint**”), is a corporation that made a secured loan to the Corporation to finance, in part, the purchase and renovation of the Property.

Background to the Plaintiff and the Purchase of the Property:

11. RCC was incorporated in Ontario in 2018. Before incorporation, its predecessor operated as an unincorporated religious organization continuously since January 29, 2003. This organization was founded by the Reverend Darrell Bierman (“**Bierman**”) and his wife, Barbara Bierman, and has operated continuously in Cambridge Ontario.
12. RCC has 500 people who look to it as their church. On a typical Sunday morning before COVID-19 was declared a pandemic, between 200 to 300 people attended the church’s service. Approximately 75 families regularly make financial contributions to the church by tithes and offerings, enabling the church to be self-sustaining since 2007.
13. RCC was a portable church until 2020. This means that it leased space for formal gatherings of its congregation from Saint Benedict’s Catholic Secondary School from 2003-2006, Galt Collegiate Institute from 2006-2007, Clemens Mills Public School from 2007-2009 and Galaxy Cinemas from 2009 to 2020.
14. RCC and its congregants longed for a permanent home. The Property at issue was a United Church that was owned by the trustees of the First United Church (“**First United Church**”) in Cambridge. It is the oldest church building in Cambridge, but the United Church had ceased

using the Property for formal gatherings of its congregation in 2017. When the Property became available, RCC made several attempts to purchase it.

TCF and Initial Plans to Acquire the Property

15. On or about May 29, 2019, TCF entered into an agreement to purchase the Property from the First United Church.

16. On or about July 22, 2019, TCF sent a letter to RCC proposing to assign TCF's agreement to purchase the Property to RCC. The letter was from Singh, the CEO of TCF.

17. The proposal required a \$100,000 deposit and included a proposed mortgage loan from Wood Development Group¹ (which is an affiliate of Coldpoint Holdings Ltd.) for the difference between the purchase price and what RCC would have available to pay for the purchase. The letter further proposed that TCF would provide property management services under a written agreement for a minimum duration of five years. The closing of the agreement to purchase the Property was to be on September 15, 2019.

18. It was discussed that TCF would provide property management services. TCF's fee would be based on "a charge of 20% of revenue, including an allocation of nominal rent from" RCC. The letter did not contemplate that the Corporation would be created or interposed as owner of the Property or that TCF would acquire, directly or indirectly, an equity interest in the Property.

19. Soon, however, Singh proposed another structure in which TCF and RCC would form a new corporation, the purpose of which would be to purchase the Property and lease it to RCC under

¹ Wood Development rather than Coldpoint is mentioned in the July 22, 2019 letter from TCF.

a lease with an option to purchase. TCF would still have a property management agreement. Singh attributed this restructuring of the acquisition to the defendant, Miller Thomson, who would act for the joint corporation and both its members.

20. On or about September 19, 2019, Bierman met Singh, David Tang (“**Tang**”), a lawyer at Miller Thomson, and Coldpoint’s David Wood (“**Wood**”) at Miller Thomson’s Guelph office to discuss the proposed partnership between RCC and TCF, the purchase from First United Church and its financing by Coldpoint. Wood wanted to assess Bierman personally. Tang assured Bierman that he had worked on “many partnership agreements” like the one that the parties were contemplating and that it was “really quite standard” and “not all that complicated”.
21. Bierman took from this meeting that Miller Thomson would be acting for both partners, RCC and TCF, and the partnership.

The Involvement of the CRCNA and the CRC Extension Fund

22. Elgersma is a director and officer of the Corporation, the chair of the CRC Extension Fund, and both the Director of Advancement (Canada) and Acting Director of congregational services for the CRCNA.
23. In 2018, RCC reached out to Elgersma in his capacity as an officer and employee of the CRC Extension Fund expressing an interest in the acquisition of certain property and potential availability of the CRC Extension Fund financing for the purchase.
24. Elgersma and the CRC Extension Fund said that they were happy to assist RCC with its request.

25. Elgersma was involved in negotiations between RCC and TCF in the summer of 2019 as an officer and employee of the CRC Extension Fund and its vice chairman. Elgersma was considered by RCC to be a sector-specific financial expert – particularly with financing the acquisition and redevelopment of church buildings. Elgersma was well placed to provide advice to RCC on the proposed transaction with TCF.
26. Given the complexity of the ownership and financing negotiations with TCF, RCC again reached out to the Extension Fund for any guidance or insight it could provide with respect to the proposed partnership between RCC and TCF.
27. The CRC Extension Fund and the CRCNA through Elgersma encouraged, assisted, and guided RCC in its negotiations with TCF regarding the Property and its ownership structure.
28. Unknown to RCC at the time, TCF and the CRCNA began exploring other possible transactions involving church properties and church planters. TCF discussed approximately 100 church plants across Canada – which would provide plenty of business opportunities for the CRCNA and the CRC Extension Fund. For their own business reasons, the defendants wanted to test out the viability of TCF’s community hub model to see if it might be successful in generating additional revenues from the use of church properties. RCC would be a test case. However, the defendants did not disclose their mixed motives with RCC.
29. Because of the potential that TCF held out, the CRCNA and CRC Extension Fund’s objectivity in advising RCC on the formation of a partnership with TCF to acquire and manage the Property became impaired. The reasons for this impairment were not disclosed to RCC.

30. Elgersma, on behalf of the defendants, advised RCC that it was beneficial to partner with TCF and that it was an attractive arrangement for RCC. Elgersma advised RCC that the partnership with TCF and financing from Coldpoint would have better rates than the CRC Extension Fund could offer.
31. In advising RCC, the CRCNA and the CRC Extension Fund voluntarily assumed a special relationship to RCC as a financial and transaction advisor. As such, the CRCNA and the CRC Extension Fund owed RCC a duty of care to advise it prudently without minimizing the risks or exaggerating the benefits.
32. In June of 2019, RCC agreed to pay a \$100,000 deposit to purchase the Property with TCF. This was conditional on RCC's ownership stake in the partnership being a 51%/49% split with TCF, with RCC owning 51%.
33. On or about July 25, 2019, Elgersma spoke with Bierman and Singh at Bierman's request. On this call, Singh stated that Elgersma's wisdom was needed for the negotiations. Elgersma helped Singh understand that RCC wished for its investment to be protected. Elgersma provided CRC Extension Fund documents to Singh and agreed to continue with RCC and TCF as a partner and consultant.
34. In August of 2019, RCC was not convinced that it would have enough time to reflect on the documentation TCF had undertaken to prepare regarding the purchase of the Property and determined that it would require its \$100,000 deposit to be returned. This was a result of Singh's failure to provide the requisite legal documentation for the structure of the purchase despite RCC's requests and extensions of time.

35. Elgersma attended a meeting with RCC and TCF on August 22, 2019. During this meeting, TCF agreed to provide a document outlining the structure of the partnership between TCF and RCC. Elgersma convinced RCC to continue its discussions with TCF and advised on a fundraising strategy for RCC to raise money for the down payment for the Property. Elgersma had dinner with Bierman following this meeting to continue their discussion. RCC agreed to make a final decision on its participation in the partnership project by September 4, 2019.
36. RCC agreed to extend the time by which it required its deposit returned until September of 2019 to permit time for discussions to continue regarding the Property.
37. On August 31, 2019, TCF provided a revised outline of the proposed partnership structure between RCC and TCF. The partnership structure at this point contemplated RCC having 1/3 membership, with RCC, Peter Elgersma together with the CRC Extension Fund, and TCF both having 1/3 membership. This was presented as RCC and its denomination having a majority voting stake in the partnership project with the CRC Extension Fund supporting RCC. Elgersma agreed to review this roadmap for the partnership project with the RCC board at the request of Singh.
38. A special meeting of the RCC board was called on September 4, 2019 so that Elgersma could take the RCC board through the partnership structure. Elgersma attended this meeting as guest-chair on behalf of the defendants. This meeting lasted approximately 4-5 hours.
39. At the September 4, 2019 meeting, Elgersma on behalf of the defendants led the discussion on TCF's proposal with RCC, including that: RCC, Peter Elgersma together with the CRC Extension Fund and TCF would all have 1/3 membership, that TCF would charge 20% of

revenues for its management fees, and that there would be a \$40,000 exemption for property tax.

40. At the outcome of this meeting, the RCC board passed a resolution to proceed with the partnership with TCF with conditions that included: the ownership of the Hold Co. (what would eventually become the Corporation, Trinity Centres Cambridge) was 51%/49% for RCC and TCF, with RCC owning 51%, and that RCC's rent would not exceed \$50,000.
41. The conditions also stipulated that legal documents, including a property management agreement, would be provided to RCC by October 1, 2019. The RCC board agreed to move forward with TCF and extend the closing date for the Property as result of Elgersma's presentation.
42. Elgersma attended a further special RCC board meeting on October 7, 2019 on behalf of the defendants. At this meeting, Elgersma gave a PowerPoint presentation that he had prepared on behalf of the CRC Extension Fund and CRCNA with the assistance of Mr. Singh. The purpose of this presentation was to convince RCC to move forward with the partnership with TCF. In his presentation, Elgersma induced RCC to agree that the Property would be owned 50/50 by TCF and RCC, rather than the 51%/49% split contemplated previously, but with decision making power 66%/33% in favour of RCC, because of Elgersma's presence on the board as an agent of the CRC Extension Fund. At this time, TCF's fees for property management were contemplated at 20% of revenue.
43. TCF's property management fees would later rise to approximately 140% of revenue. There was no basis for the purported \$40,000 property tax exemption.

44. Following the October 7, 2019 RCC board meeting, Elgersma continued to negotiate on behalf of the defendants with RCC and act as a go-between between RCC and TCF.

45. During the course of its provision of advice to RCC, the CRCNA and the CRC Extension Fund made the following non-exhaustive list of representations to RCC, each of which was untrue, inaccurate, or misleading:

- (a) that the transaction was a “slam-dunk”, meaning to RCC that, on a risk-adjusted basis, the benefits clearly outweighed the risks;
- (b) that the purchase price for the Property made the transaction an “amazing deal”;
- (c) that, as of November 22, 2019, RCC would be in breach of contract, would lose its deposit and be responsible for legal costs incurred if it cancelled the APS;
- (d) that RCC would have majority decision making-power and had two-thirds control of TCC’s board of directors with the CRC Extension Fund represented. This representation was provided to RCC so that it would withdraw its condition that it have 51% voting control at meetings of members of TCC; and,
- (e) that RCC did not require independent legal representation or independent legal advice (collectively, “ILR”) in connection with the transaction.

46. The representations above and similar representations made by the CRCNA and the CRC Extension Fund before the closing date were untrue, inaccurate, or misleading in several respects including for the following non-exhaustive list of reasons:

- (a) the aggregate cost of the purchase to RCC would amount to approximately \$3,000,000 when the Property's fair market value at the time of purchase was only \$1.531 million in 2020 (although some of this increase reflected the cost of improvements to the Property)calculated as follows:
 - a. The Option Premium at \$506,200;
 - b. Coldpoint's \$1,384,000 Mortgage Principal + a \$640,000 renovation loan from Coldpoint, at \$2,024,000;
 - c. with interest calculated as 2% per annum non-compounding for 10 years on the Mortgage Principal and the Option Premium and 2% non-compounding on the \$640,000 renovation loan, at \$392,000; and,
 - d. For a total of \$2,922,200 ($\$506,200 + \$2,024,000 + \$392,000$).
- (b) It was impossible for RCC to derive a financial benefit from its 50% interest in TCC unless it overpaid since RCC was contributing 100% of the equity to TCC, yet, the defendants advised RCC that it did not require ILR;;
- (c) the projected annual costs of owning the building were \$116,400 (excluding management fees) while RCC was the only committed tenant and it could not afford to pay more than \$50,000 a year in rent;

- (d) the property was only zoned for institutional occupancy and not for commercial occupancy, and would require commercial tenants to become self-sustaining, creating an impossible scenario where the Property would be forced to take in commercial tenants in breach of the zoning by-law to become financially sustainable;
- (e) property management fees to TCF were to be 20% of revenues. Accordingly, TCC needed total revenues of at least \$144,500 per annum to reach the break even point (or \$94,500 in revenues beyond RCC's \$50,000 rent cap). At 20% of revenues, property management fees would be \$29,100 per annum at this break even point. The financial viability of the building would change if these fees were materially different; and,
- (f) TCF had no qualification or experience as a construction manager.

47. As a result of Elgersma's presentations during the fall of 2019 and representations made by him in his capacity as an officer and employee and of the CRC Extension Fund and the CRCNA, RCC was induced to enter into the partnership with TCF and proceed with the Property with a 50/50 ownership structure for TCF and RCC.

48. RCC relied on the defendants' expertise in the church funding space to its detriment. But for this presentation, and the above representations, RCC would have followed through on its demand for the return of its \$100,000 deposit and not entered into the partnership with TCF.

Incorporation and Organization of the Joint Corporation

49. The Corporation was incorporated under the CNCA on October 18, 2019. Singh was the sole incorporator.
50. The Corporation was incorporated for the sole purpose of acquiring the Property, which would be the new home of RCC and its congregants, and leasing it to RCC under a lease with an option to purchase.
51. According to its certificate and articles of incorporation (the “**Articles**”), the Corporation’s stated purpose was “To advance the Christian faith by holding title to one or more properties and providing facilities for use by other registered charities, including churches and religious organizations” and to carry on ancillary activities.
52. The Articles also provided that:
- (a) there is only one class of membership in the Corporation;
 - (b) the “Corporation shall be carried on without the purpose of gain for its Members, and any profits or other accretions to the Corporation shall be used in furtherance of its purposes”; and
 - (c) the “Directors shall serve as such without remuneration, and no Director shall directly or indirectly receive any profit from his or her position as such”.
53. However, unbeknownst to RCC at the time of incorporation of the Corporation, Singh, TCF and Miller Thomson were setting the Corporation up as a vehicle by which TCF could extract cash from RCC and its congregant donors for many years to come.
54. Miller Thomson prepared and filed the Articles, taking its instructions from Singh who was the sole incorporator.

55. The Corporation has two equal members: RCC and TCF.
56. The Corporation's current board consists of three directors:
- (a) Pamela O'Dell ("**O'Dell**"), as the designate of RCC;
 - (b) Singh as the designate of TCF; and
 - (c) Elgersma, as the joint designate of RCC and TCF.
57. O'Dell is not a director or officer of RCC and is not, therefore, automatically disqualified from voting on contracts or transactions between the Corporation and RCC, or between the Corporation and TCF.
58. On or about November 21, 2019, the Corporation adopted By-law No. 2019-1 (the "**By-law**"). The By-law provides that:
- (a) the board of directors consists of one individual nominated by RCC, one individual nominated by TCF and one individual nominated jointly by RCC and TCF (By-law, section 4.05);
 - (b) an annual meeting would be held within six months of the financial year end of the Corporation (By-law, section 6.01(b));
 - (c) the term of office of each officer is one year expiring at the next annual meeting (By-law, section 8.02);
 - (d) the CEO shall supervise and control the operations of the Corporation (By-law, section 8.05);

- (e) an officer who is a director shall not be entitled to remuneration for acting as such (By-law, section 8.12);
- (f) in accordance with the CNCA and the By-law, directors and officers shall disclose any interests, whether direct, indirect or imputed, in any matter as required by the CNCA and comply with all other requirements in the CNCA in respect of such conflict of interest (By-law, section 10.01);
- (g) the Corporation shall purchase and maintain appropriate liability insurance, including directors' and officers' insurance (By-law, section 11.01(a)(ii)); and
- (h) the financial year of the Corporation ends on December 31st each year (By-law, section 14.01).

59. Miller Thomson, acting exclusively on the instructions of Singh as first director of the Corporation, prepared the By-law on behalf of the Corporation.

60. On or about February 7, 2020, the Corporation, RCC and TCF entered into a unanimous member agreement (“UMA”). The UMA provides that:

- (a) the board of directors has all of the powers to manage the business and affairs of the Corporation except as otherwise set out in the UMA (UMA, section II.01(d));
- (b) the Corporation has three directors, consisting of one individual designated by the plaintiff, one individual designated by TCF and one individual jointly designated by the plaintiff and TCF (UMA, section II.01(c), (e) and (g));

- (c) Singh is the chair of the board and CEO, with a term of office expiring at the first annual meeting (UMA, section II.01(h));
- (d) all cheques, withdrawal, drawings or authorizations to withdraw or remove funds from the bank accounts of the Corporation require the signature of any one director or officer of the Corporation (UMA, section II.01(i));
- (e) the plaintiff has the right to approve the Corporation's entering into any contracts or arrangements with any director, officer or employee of a member other than in the ordinary course of business and on normal commercial terms (UMA, section II.02(g));
and
- (f) upon the sale of the Property to a third party, the net sale proceeds, after repaying any indebtedness of the Corporation related to the Property, shall be applied to the option costs (the "**Option Premium**") paid by the applicant (the sum of \$506,200), with the balance paid to the members equally (UMA, section IV.01).

61. Miller Thomson, acting exclusively on the instructions of Singh, prepared the UMA. No other law firm represented the parties to the UMA. As Miller Thomson had acted for both RCC and TCF as members of the Corporation, RCC believed and understood that Miller Thomson continued to act as its counsel for RCC and TCF in respect of the preparation and execution of the UMA. At no time did Miller Thomson advise RCC that it was not acting for RCC and TCF jointly. Nor did Miller Thomson ever advise RCC that it should seek either independent legal representation or independent legal advice (collectively, "**ILR**") before executing the UMA.

62. The effect of the UMA is that, despite being the sole financial contributor to the Corporation, RCC has no power to remove or replace a majority of the directors (in particular, Singh or Elgersma) or to ensure that at all times the Corporation has a board of directors that will carry out the stated purposes of the Corporation honestly and in good faith with a view to the best interests of the Corporation. Further, Singh remains in office as chair and CEO until an annual meeting is held, which he has neglected or refused to call.
63. Another effect of the UMA is that it enables TCF to profit solely from the financial contributions of RCC and its congregant donors. For example, if, after closing the purchase of the Property, RCC pays sufficient rent or raises donations from the community to repay the first mortgage, then, assuming that the value of the Property is \$1,506,200, TCF would acquire an equity interest in the Property having a value of \$500,000. RCC's equity interest in the Property would be \$1,006,200. However, RCC has taken all the financial risk and repaid a mortgage having an original principal of \$1,384,800 and paid the entire Option Premium of \$506,200 (for a minimum total of \$1,891,000) while TCF has paid nothing. Accordingly, approximately 33.2% of each dollar donated to RCC and applied to the purchase or occupancy of the Property is indirectly going to TCF. The Defendants did not explain this commercially absurd result to RCC.
64. The defendants were capable of working through the calculations but never appear to have done so. Had they done so, the defendants would have determined that RCC would be paying much more than fair market value for the Property. It was also unusual in that it structured windfall payments to a free-rider (TCF) at the expense of RCC.

65. Only Singh and his subordinates at TCF exercise cheque-signing authority on behalf of the Corporation. Singh has refused to allow either O'Dell or Elgersma to have cheque-signing authority. This arrangement allows Singh to use funds of the Corporation to pay TCF or its insiders, irrespective of whether he has been authorized to do so.

Closing of the Purchase

66. RCC went on a fundraising blitz to raise funds from its congregants and the wider community in Cambridge and the surrounding area to acquire the Property. By the expected closing date of September 15, 2019, it had raised approximately \$356,200. It raised a further \$150,000 by July 31, 2020 for a total of \$506,200.

67. On or about March 5, 2020, the Corporation purchased the Property for a price of \$1,531,000 from First United Church. The purchase price was funded in part by an advance of \$1,384,800 on a registered first mortgage/charge of land (the "**Mortgage**") in favour of Coldpoint, with the balance of the purchase price and acquisition expenses funded by RCC. TCF made no contribution to the purchase price.

68. Elgersma, acting as an officer and employee and of the CRC Extension Fund and the CRCNA, also dissuaded the plaintiff from obtaining ILR, saying that it was unnecessary because Miller Thomson was acting for the Corporation and both its members, which was fortunate because RCC "would save thousands of dollars in legal bills".

69. Miller Thomson acted for the Corporation on the purchase, finance and lease of the Property, taking its instructions exclusively from Singh in his capacity as CEO of the Corporation. RCC's then designate on the Corporation's board was Narima Whitman ("**Whitman**"). She attended at the Guelph offices of Miller Thomson to execute all the closing documents for the

purchase and financing on behalf of the Corporation. At the same time, Whitman executed the lease as a signing officer of RCC while Singh executed it as CEO on behalf of the Corporation.

70. While Miller Thomson had every opportunity to do so, it did not, on or before closing, advise Whitman or anyone else representing RCC that Miller Thomson was not acting for RCC and that it should seek ILR counsel. TCF was not party to the purchase, lease or financing.

Lease and Option to Purchase

71. Miller Thomson also acted on a joint retainer for the Corporation and RCC in preparing the lease and option agreement dated March 5, 2020 (the “**Lease**”) between the Corporation and RCC, taking its instructions exclusively from Singh in his capacity as CEO of the Corporation.

72. Under the Lease, RCC agreed to pay basic rent to the Corporation at:

- (a) the fixed rate of \$50,000 for the first year of the term; and
- (b) \$250,000 a year for each of the remaining nine years of the term (subject to a discretionary discount).

73. RCC is also liable to pay property taxes in respect of the leased premises even though, had it purchased the Property in its own name as sole owner in accordance with its original intention, it would be exempt from property taxes. Miller Thomson, which has special expertise in the taxation of charities, said nothing to RCC or the Corporation about the tax disadvantage to their suggested use of the Corporation to hold title to the Property or the alternative of having RCC hold title.

74. The City of Cambridge has billed the Corporation \$27,038.76 in respect of property taxes for the Property in 2020. The board of the Corporation passed a resolution authorizing Miller Thomson to appeal the bill. Despite this, on February 9, 2021, Singh and Elgersma acting

unilaterally and without notice to O'Dell, authorized the Corporation to pay the entire bill. The Corporation is not the sole tenant of the Property and no other tenant was required to bear any part of this expense.

75. The rent rate after the first year was subject to a discount at the discretion of the board of directors of the Corporation. While RCC did not control the board of the Corporation, it had faith that the directors would keep the rent as low as possible given that the purpose of the Corporation was to acquire the Property for the use of the plaintiff church and not for its gain of the Corporation's members or the direct or indirect benefit of its directors.

76. On or about January 29, 2021, TCF (who is not a party to the Lease) sent a letter to RCC stating that, effective February 14, 2021, the basic rent under the Lease would almost triple from \$50,000 (plus HST) in the first year to \$144,280 (plus HST) in the second year. The explanation for this charge was that, in effect, RCC was the ultimate guarantor that the Property must generate \$250,000 a year in rent and, therefore, must pay \$250,000 less rent received from other tenants. The Lease contains no such formula. Furthermore, the board of the Corporation never met to fix the annual rent as contemplated in the Lease. Singh acted unilaterally in setting the rent for the second year.

77. Miller Thomson never explained to RCC how the rent after the first year would work given the purposes of the Corporation set out in the Articles, the nature of the Corporation as a non-profit organization and Singh's conflict of interest as a director and officer of both the Corporation and TCF. For example, the need for annual revenues of \$250,000 in respect of the Property is not self-evident particularly when total rents from all tenants (including RCC) in the first year amounted to \$111,008.03. Also, had a board meeting of the Corporation been

held to consider the rent (as required by the Lease), Singh would be in a conflict and unable to vote because the main reason for demanding a rent increase from RCC is to then siphon it out of the Corporation as management fees to TCF or other related-party payments to TCF insiders.

78. Under the Lease, RCC has an option to purchase the Property at any time during the 10-year lease term (the “**Option**”). RCC paid the Option Premium of \$506,200. However, the Option is illusory and the Option Premium was, in effect, a disguised forfeiture of 71% of RCC’s funds for no consideration.
79. The exercise price under the Option (the “**Exercise Price**”) has two separate formulae but only one is operative because the Exercise Price is stated to be the greater of the two formulae.
80. Under either formula, the cost of exercising the Option (the “**Option Cost**”) is the sum of the Option Premium and the Exercise Price. The Option Premium is constant in both formulae but the Exercise Price in one formula (the “**Operative Formula**”) is \$147,200 higher on the closing date (“**Day 1**”) than in the second formula (the “**Superfluous Formula**”). This differential remains constant throughout the Lease to the end of year 10. That is why the latter formula is superfluous and merely adds confusion to the Lease.
81. The Operative Formula provides for an Exercise Price equal to the amount owing under the Mortgage. On Day 1, the Option Cost was \$1,384,800 (the Mortgage principal) plus the Option Premium (\$506,200) for a total of \$1,891,600. The purchase price of the Property (and presumptive market value on Day 1) was \$1,531,000, meaning that, if exercised on Day 1, RCC would have sustained an instant loss of \$360,600 (or 71% of the entire Option Premium).

82. The Superfluous Formula provides for an Exercise Price equal to the full purchase price for the Property (\$1,531,000) plus notional interest on it at a rate of 2% per annum less the Option Premium. But the Option Premium has already been paid and therefore forms part of the Option Cost. At the time of closing, the Option Cost was the purchase price of the Property (\$1,531,000 minus the Option Premium) plus the Option Premium (\$506,200) for a total of \$1,531,000. The purchase price of the Property on closing was \$1,531,000, meaning that, if exercised on Day 1, RCC would break even (but for the Operative Formula which trumps). However, if RCC had enough to close the purchase on Day 1, it would have had no need for the Lease, the Option or the Corporation.
83. RCC's loss increases under the Lease with each rent payment plus the accrual of interest on the Exercise Price at the rate of 2% per annum. By the end of 10 years, the Exercise Price would increase by 20% of the principal amount of the Mortgage, reaching \$1,661,760. By the end of 10 years, the Option Cost would be \$2,167,960. In addition, by the end of 10 years, RCC could have paid up to \$2.3 million in total rent (excluding property taxes). Its total Option Cost and rental cost would then be \$4,467,960 (almost triple the amount for which the First United Church sold the Property).
84. Miller Thomson never explained to RCC how the option to purchase would work and whether RCC could possibly raise from its donor congregants enough money beyond the Option Premium (\$506,200) to exercise the Option on Day 1 (at total Option Cost = \$1,531,000) or at the end of the Lease term (\$1,661,760) after paying exorbitant rent charges (\$2.3 million), or at any other time during the Lease term. Nor did Miller Thomson advise RCC that 71% of the Option Premium was lost the moment the purchase was closed and that the Option was entirely an illusion. It had negative value (out-of-the-money) on Day 1 and at all times after Day 1.

Combined Effect of Option and UMA

85. Had RCC exercised the Option on Day 1, it would have had an Option Cost of \$1,891,600.

Under the UMA, RCC's share of the gross proceeds of sale would be \$945,500 and TCF's share would be \$439,300 (or 31.7% of the total proceeds). If RCC were to exercise the Option on the last day of the Lease, its Option Cost would be \$2,167,960 of Option Cost. RCC's share of the \$1,661,760 Exercise Price would be \$1,155,560 and TCF's share would be \$577,780 (or 34.8% of the total proceeds). If RCC were to pay the full Option Cost and rent, it would have \$0.26 of equity for every \$1 in donations that it was able to allocate to the overall building and occupancy cost (rather than to its operations and programs).

86. It would never have made any financial sense for RCC to exercise its Option. If it exercised its Option on Day 1, it would pay a further \$1,384,800 to acquire an equity interest worth only \$945,500. With the lost portion of the Option Premium, the exercise of the Option on Day 1 would only increase RCC's aggregate loss from \$360,600 to \$945,500. If RCC exercised the Option at the end of its term, it would pay a further \$1,661,760 to acquire an equity interest worth only \$1,155,560 (without considering intervening changes in the value of the Property). With the lost portion of the Option Premium, the exercise of the Option would only deepen RCC's aggregate loss from \$360,600 to \$1,012,400 (without considering intervening changes in the value of the Property).

87. The Mortgage also provides for further advances of \$640,000 to cover 80% of the renovation costs to the Property. The total renovation costs were projected to be \$800,000. TCC was to pay 20% of these costs (\$160,000), which RCC provided as part of the Option Premium. Under the Lease, the additional advances under the Mortgage (together with interest thereon at 2% per annum) are added to the Exercise Price under the Operative Formula. However, if RCC

were to exercise the Option, its share of the equity in the Property would only be 50% of this incremental Exercise Price (i.e., \$320,000 without taking into account interest that must be paid on the renovation loan). TCF would receive an incremental increase in its equity equal to \$320,000 despite having contributed nothing to the renovation costs. RCC's incremental equity from the renovation work would increase by 40% of the total cost it has borne for the \$800,000 in renovation work (less if interest on the renovation loan is factored into the calculation). Miller Thomson failed to explain any of this to the affected party, RCC.

88. The Option was financially and legally nonsensical. It was part of an elaborate fraud or deceit perpetrated by Singh and TCF on RCC. RCC was duped into thinking that the Option would ultimately provide it with ownership of the Property. That was never going to be possible. But the only ones who knew this were Singh and Miller Thomson. For RCC, it would take a long time before the truth finally emerged.

History of the Property Management Agreement

89. In determining the financial viability of acquiring the Property, it was crucial to obtain a clear understanding of the likely operating expenses and the revenues needed to reach a break-even point. Management fees charged by TCF to manage the Property were presented by the defendants during the September 4, 2019, meeting with the RCC Board at 20% of the revenues generated by TCC. This would later increase to approximately 140%. The defendants should have identified whether the costs of TCF's management fees were fixed and whether the project was still viable if they increased.

90. The property management agreement in favour of TCF was the main financial interest that TCF has in the Corporation. The only other interest that it has is a theoretical share of some of the profits from the exercise of the Option, which was a total non-starter from the beginning.
91. Conspicuously absent from the documents settled and executed before closing was the property services agreement (“**Management Agreement**”) between TCF and TCC.
92. On or about July 30, 2019, TCF presented a draft Management Agreement between itself and RCC (the “**First TCF Draft**”), the terms of which may be summarized as follows:
- (a) with certain exceptions, TCF would be compensated at a rate of 20% (plus HST) of all collected monthly rental income from the Property (including from the plaintiff), parking revenue, grant revenue and advertising revenue; and
 - (b) there was no stated term, meaning that the plaintiff could, at any time, terminate the agreement on giving TCF reasonable notice.
93. However, the presentation of the First TCF Draft was a form of subterfuge. TCF had much more onerous terms in mind but did not want to disclose these terms to RCC until as long as possible after the purchase of the Property was closed. Meanwhile, TCF would first gain RCC’s trust and then gain control over its financial contribution to the purchase (that is, after the plaintiff had paid over the Option Premium to the Corporation).
94. The Management Agreement was a contract in which Singh has a conflict of interest as a director and officer of both the Corporation and TCF. Under the CNCA and the By-law, the entering into of the Management Agreement by the Corporation required disclosure to the directors of the Corporation and the approval of both directors. Singh is ineligible to vote on

the approval of the agreement. This gave RCC's designated director a veto on whether the Corporation should enter into the agreement and on what terms. The Management Agreement is also required to be reasonable and fair to the Corporation at the time that it was entered into.

95. By the closing date, there was no agreement between TCF, the Corporation and RCC on the rates of management fees that TCF intended to charge. Singh knew that his price would be very contentious and wanted the purchase closed and the Option Premium paid by RCC before it became aware of what he would be extracting by way of management fees. He intentionally withheld this information until RCC was trapped.
96. Miller Thomson had a duty of care to the Corporation to ensure that the Management Agreement was in place before the Corporation closed the purchase of the Property. The failure to put the Management Agreement in place by the closing date transferred the entire leverage in the transaction from RCC to TCF especially with Singh as CEO of the Corporation with control of its bank account.
97. Singh circumvented the statutory approval requirement by not seeking board or member approval of the Management Agreement.
98. Despite the absence of an agreement, TCF extracted management fees from the Corporation. In the 10-month period from the closing date of the purchase and ending on December 31, 2020, Singh as CEO of the Corporation (and without any board or member approval) authorized the payment of management fees totalling \$80,020 to TCF. These fees were far higher than 20% of the \$111,009.72 in rents collected in the same period (*i.e.*, \$22,201.94).

99. Alarmed at the state of affairs in which Singh unilaterally authorized the extraction of monies from the Corporation under the cover of management fees, RCC continued to press Singh for the Management Agreement.

100. In October 2020, Singh finally presented a second draft of the Management Agreement (the “**TCF Second Draft**”), the terms of which may be summarized as follows:

- (a) fixed fees were at the rate of \$90,000 per annum for property management (based on a minimum of 2,100 hours or an effective rate of \$42.86 an hour, double the going rate) and a further \$12,000 per annum for accounting services (for total fixed fees of \$102,000);
- (b) fees for janitorial services were extra;
- (c) at the discretion of the directors of the Corporation, there were additional fees for grant writing and marketing;
- (d) the board of the Corporation could pay for additional time;
- (e) all prices were subject to a CPI rate of inflation annually;
- (f) the term was 10 years, commencing retroactively to January 1, 2000 (before the Corporation acquired the Property);
- (g) if the Corporation cancelled the agreement at any time before January 1, 2030, there was a penalty equal to three years of the minimum property management fee at the relevant rate for those years; and
- (h) the Corporation had no rights of termination even for cause.

101. The board of the Corporation rejected the TCF Second Draft.
102. RCC then engaged a law firm, Gray, Whitley LLP (“**GW**”), which, on or about February 5, 2021, sent a letter (the “**GW Letter**”) to Singh, TCF and Elgersma objecting, among other things, to the appropriation of monies by Singh to cover management fees under the terms of a Management Agreement known only to himself.
103. Singh summoned a meeting of the Corporation’s directors ostensibly for the exclusive purpose of discussing the Coldpoint Mortgage, which was not in default. In fact, that was a ruse. Singh’s intent was to ambush O’Dell by springing other business on her.
104. On or about February 9, 2021, and in the face of knowledge that O’Dell would not be attending a meeting called to discuss the GW Letter, Singh purported to expand the business conducted at the meeting. No notice was given to O’Dell that the Management Agreement would be considered at the meeting, and the Management Agreement was only circulated to O’Dell after it was signed by Singh on behalf of TCF and Elgersma on behalf of the Corporation. Singh purported to approve the Corporation entering into the Management Agreement in his capacity as a director of the Corporation.
105. The Management Agreement executed on February 9, 2021 may be summarized as follows:
- (a) a fee of \$90,000 for the calendar year 2020 (including before the Property was acquired) with no fee for any part of calendar year 2019;
 - (b) a term spanning January 1, 2020 to December 31, 2021;

- (c) for the calendar year 2021, the basic fee for property, leasing and governance management is \$52,000 per annum (based on a 1,000-hour annual retainer) and an additional \$52 per hour for additional time required by the directors (that is, almost \$9 more per hour than under the rejected TCF Second Draft);
- (d) for the same period, a construction management fee at market rates estimated at \$38,000 per year or less;
- (e) for the same period, bookkeeping and corporate filing services at market rates estimated at \$12,000 per year;
- (f) janitorial services at market rates although covered under the manager's listed services;
- (g) all rates to be adjusted for inflation and market rate analysis upon renewal; and
- (h) the Corporation had no rights to terminate with or without cause.

106. Therefore, the Management Agreement had a price of \$90,000 for 2020 and \$102,000 for 2021. While the number of hours in the Management Agreement is less than half that contemplated in the TCF Second Draft, the total fixed fee (\$102,000 per annum) is the same. This means that, if TCF claims that it spent 2,100 hours performing property management services, the cost under the Management Agreement would climb another \$57,200 over the cost of the TCF Second Draft to reach \$159,200.

107. TCF is not a competent property manager or construction project manager. For example, it authorized the commencement of renovation work without seeking any input from RCC as tenant and failed to apply for a building permit. As a result of a lack of building permit, the

City of Cambridge ordered the suspension of further work and one of the contractors, Russell Electric, has refused to re-enter the building.

108. Also, at the same February 9, 2021 meeting (which was two business days after Singh received the GW Letter and without prior notice to O'Dell), Singh and Elgersma purported to approve a payment of \$58,680 in disputed management fees to TCF. This payment was taken from the advance of \$138,556.86 to the Corporation made on behalf of Coldpoint on or about January 29, 2021. The purpose of this loan advance was to finance ongoing renovation work, not the TCF fees that were in dispute. Singh's and Elgersma's approval of the payment was not properly authorized by the directors of the Corporation entitled to vote on the resolution. Also, the purchase price under the Lease is increased dollar-for-dollar by the amount outstanding on the Mortgage, which means that the fees appropriated by TCF would ultimately be borne by RCC if it were to exercise its Option.

Direct Payments to TCF Directors and Employees

109. In contravention of the UMA, Singh has also authorized payments by the Corporation to the following TCF directors, employees and related parties without prior disclosure to, or the approval of, the plaintiff:

- (a) \$3,457.80 to Natasa DeVilliers, wife of Cory DeVilliers. Both Natasa and Cory DeVilliers are TCF directors and employees;
- (b) unknown amounts to O&V Testing Room Ltd., a company owned or controlled by Natasa DeVilliers;
- (c) unknown amounts to Cory DeVilliers; and
- (d) \$3,000 to Celine Singh, wife of Reverend Singh, to December 31, 2020 and a further \$2,000 in the first two months of 2021 for alleged marketing services.

Miller Thomson and the Lack of ILR Counsel

110. Singh represented to RCC that Miller Thomson was acting for the Corporation and both partners, TCF and RCC. At no time did Singh or Miller Thomson advise RCC or its designates on the board of the Corporation that Miller Thomson was acting exclusively for TCF in its work in relation to the Corporation (and not for RCC or the Corporation) or that RCC required ILR.
111. Further, Singh consistently dissuaded RCC from obtaining ILR counsel. Singh said that it was unnecessary because Tang of Miller Thomson was a “Christian” and was acting for the Corporation and both members, and that engaging ILR counsel would only entail unnecessary expense, cause delay and jeopardise the opportunity to acquire the Property.
112. Elgersma also dissuaded the plaintiff from obtaining ILR counsel, saying that it was unnecessary because Tang was acting for the Corporation and both its members, which was fortunate because RCC “would save thousands of dollars in legal bills”.
113. Miller Thomson was in a much better position to understand the certain peril that the transactions would put RCC in and owed it a duty of care under its joint retainer to act for TCF, the Corporation and RCC without subordinating the interests of one joint client over another. If Miller Thomson did not intend to act for RCC, it had a duty to warn RCC and the directors of the Corporation other than Singh that Miller Thomson was not acting for RCC and that it should obtain ILR counsel. Miller Thomson should not have proceeded with any of the transactions without ensuring that RCC was notified, both verbally and in writing, to obtain ILR counsel and that Miller Thomson was not looking out for RCC’s interests. A clause to that effect should have been included in each of the UMA, the Lease and the Management

Agreement. This is particularly necessary where, if Miller Thomson assumed that it was not acting for RCC, then it followed that RCC was, to the knowledge of Miller Thomson, entering into a series of highly complex transactions with no legal representation.

114. Any ambiguity in Miller Thomson's representation of RCC should be construed not in favour of the law firm but in favour of RCC. The law firm had intimate knowledge of the transactions and the combined consequences of the Lease, UMA and By-law. RCC could not have this level of knowledge without ILR.
115. The Corporation paid all legal fees of Miller Thomson for the legal services described in this Statement of Claim, totalling \$195,583.03. Most of these fees were paid out of the Option Premium paid by RCC on closing or in post-closing rent payments.
116. On or about December 16, 2020, Singh advised RCC for the first time that Miller Thomson was acting only for TCF and not for the Corporation or RCC. RCC's directors were shocked to hear this and O'Dell immediately sought answers from Miller Thomson.
117. On or about January 12, 2021, Miller Thomson advised O'Dell for the first time that TCF was its client and not the Corporation or RCC. Despite the conflict of interest (including the By-law and CNCA conflict provisions), Miller Thomson acted exclusively on Singh's instructions in Singh's capacity as CEO of the Corporation in allowing the Corporation to pay for all invoices Miller Thomson had rendered to TCF.
118. A member of the Corporation has no authority to instruct a law firm. Singh could only instruct Miller Thomson in his capacity as CEO of the Corporation.

Invalidity of By-law and UMA

119. The Articles provide for a single class of members rather than separate classes with different class voting rights. Under the CNCA, the members of the Corporation are entitled, at each annual meeting, to determine the number of directors within the range of minimum and maximum directors set out in the Articles (in this case 3-15 directors) and elect all directors by ordinary resolution (that is, by a majority of the votes cast at the meeting).
120. The By-law is subject to the CNCA and the Articles, which are paramount to the By-law. Nevertheless, section 4.05 of the Corporation's By-law purports to provide, in effect, for separate voting rights for the members, TCF and RCC. Section 4.05 invalidly purports to override the effect of the Articles and the CNCA by fixing the number of directors at three and pre-determining the composition of the board so that there is no longer any mechanism in which the members can collectively, by ordinary resolution, fix the number of directors and vote on the composition of the entire board at each annual meeting as the CNCA provides.
121. In 2020, the Corporation received a gift of \$20,000 from First United Church, the vendor of the Property. First United Church is not a member of the Corporation. As a result of receiving a gift or other financial assistance over \$10,000 in a fiscal period from a non-member, the Corporation would likely become a soliciting corporation commencing at its 2021 annual meeting.
122. The full circumstances of the financial assistance from First United Church are unknown to RCC. However, by email dated October 18, 2020, Miller Thomson opined to the Corporation that the financial assistance did not, at that time, make the Corporation a soliciting corporation. What Miller Thomson did not say is the attempt to characterize the gift as a

contribution to legal expenses made no difference to the determination of the Corporation's status as a soliciting or non-soliciting corporation. Miller Thomson did not say whether its opinion on the Corporation's continuing status as a non-soliciting corporation turned on (a) whether First United Church (i) made an unsolicited gift to the Corporation or (ii) had not itself received more than \$10,000 in gifts, donations or other financial assistance in any of one or more of the immediately preceding three fiscal periods or (b) the fact that a change of status from non-soliciting to soliciting corporation only takes place at the ensuing annual meeting of members (in this case, the Corporation's 2021 annual meeting). Miller Thomson also failed to state that, unless First United Church made an unsolicited gift or was itself not a soliciting corporation (or akin to a soliciting corporation even though not incorporated under the CNCA), the UMA would be automatically terminated at the conclusion of the Corporation's 2021 annual meeting.

123. Without section 4.05 of the By-law and the UMA, the members of the Corporation will be deadlocked in the election of directors. Without Elgersma as a director, the board of the Corporation is also deadlocked.

Other Serious Governance Issues

124. At least as early November 5 and 18, 2020, RCC raised with Singh, Elgersma and TCF several serious concerns it had with respect to the governance and operations of the Corporation. Some of these concerns include the following:

- (a) no annual or special meeting of members of the Corporation has been called or held. The first annual meeting should have been held no later than June 30, 2020. Miller Thomson have advised GW that the meeting need not be held until April 2021 but has

- ignored the requirement under the By-law it prepared to hold an annual meeting within six months of the fiscal year end;
- (b) the only two members of the Corporation no longer agree on the composition of the board or management. RCC does not agree that Singh should remain in *de facto* control of the Corporation's operations or that Elgersma should remain in office as a director. Despite being a director of the Corporation, Elgersma has rubber-stamped any contentious issues in favour of TCF without seeking ILR. He has not acted as a reasonably prudent director in siding with TCF and its financial demands;
- (c) no annual audited financial statements of the Corporation have been produced or submitted to the board for approval. Nor has the applicant waived its right to receive audited financial statements. The financial year end of the Corporation is December 31. Therefore, financial statements are required for the years ending December 31, 2019 and 2020;
- (d) the board of the Corporation has not properly approved the entering into of any Management Agreement between the Corporation and TCF. Singh is nevertheless operating under the terms of a management agreement known only to himself;
- (e) Singh caused the Corporation to pay \$195,600 in legal fees to Miller Thomson without having made prior disclosure to, or having sought, the Corporation's approval; and

- (f) Singh failed to obtain directors' and officers' liability insurance until September 24, 2020, despite the express requirement under the Corporation's By-law to do so, which exposed the volunteer directors of the Corporation to unnecessary risk.

Liability of the Defendants to the RCC

125. By reason of the facts plead herein, the defendants are liable to RCC for breach of duty (contractual, tortious, equitable, fiduciary, statutory, regulatory and/or other duties) including negligent and/or fraudulent misrepresentation and fraud.
126. Respecting negligent and/or fraudulent misrepresentation, RCC relied on the representations described above to its detriment, and the damages suffered by RCC in furtherance of such reliance were reasonably foreseeable and proximate.
127. TCF and Singh are liable to RCC for the fraud that they have committed as particularized in the facts set out above.
128. At all material times, TCF and Singh owed duties to RCC as fiduciaries, trustees and/or agents. TCF entered into an agreement to purchase the Property from the First United Church in trust for, or as agent for, RCC using RCC's \$100,000 as the deposit. TCF and Singh then became clothed as trustees and attracted all of the liabilities and responsibilities as trustees or trustees *de son tort*. TCF and Singh then introduced RCC to Miller Thomson, claiming that they would act for the newly formed joint Corporation and both its members. As a result of the material facts plead herein, RCC asserts that TCF and Singh breached their duties as fiduciaries, trustees and/or agents causing RCC damages for which TCF and Singh are liable at law.

129. At all material times, (a) Miller Thomson owed fiduciary duties to RCC, and (b) and Singh and Elgersma owed duties to RCC under section 253 of the CNCA as well as fiduciary duties to the Corporation. In the alternative, and if necessary, RCC seeks leave of the court to commence a derivative claim on behalf of the Corporation as against the defendants (other than Coldpoint) pursuant to sections 251 and 252 of CNCA to recover damages of breach of duties owed to the Corporation.
130. The CRCNA and the CRC Extension Fund acted negligently in making the representations herein. The defendants were either unqualified to make the representations or made the representations without adequate analysis of the issues. The financial advice that the CRCNA and the CRC Extension Fund provided to RCC was tainted by their desire to foster an ongoing relationship with TCF and to test the viability of its community hub model. This advice was no longer objective at the time that it was rendered.
131. RCC reasonably relied on the representations made by CRCNA and the CRC Extension Fund in going ahead with the formation of TCC, funding the deposits and the funds due by the purchaser on closing, and entering into the Lease and Option Agreement. RCC relied on these representations in not obtaining ILR in connection with the transaction.
132. Had the CRCNA and the CRC Extension Fund properly advised RCC and avoided the influence of TCF, RCC would never have proceeded with the transaction. It would have insisted on the return of its deposit and would never have proceeded with the incorporation of TCC or funding the acquisition of the Property.

Oppressive Conduct of the Defendants

133. By reason of the facts pleaded herein, the Corporation, TCF, Singh and/or Elgersma have breached section 253 of CNCA by carrying on the business affairs of the Corporation in a manner that is oppressive or unfairly prejudicial or unfairly disregards the interests of RCC.

134. RCC seeks remedies under sections 128, 141 and 253 of CNCA to set aside or nullify the by-law and agreements set out in paragraph 1 above that are oppressive, unfairly prejudicial to or unfairly disregard the interests of RCC.

135. RCC further pleads that absent the appointment of a receiver manager over all of the assets, property and undertakings of the Corporation, TCF, Singh and Elgersma will continue to act oppressively and unlawfully siphon funds from the Corporation.

136. In the alternative, an injunction restraining TCF, Singh and Elgersma from dissipating, disposing of or otherwise dealing with the assets, property and undertakings of the Corporation.

The Defendants are Unjustly Enriched

137. By virtue of the facts pleaded herein, the defendants (other than Coldpoint) have been unjustly enriched by their wrongful acts and omissions. RCC has suffered a corresponding deprivation as a result of these wrongful acts and omissions. There is no juristic reason for the enrichment of these defendants and RCC is entitled to a constructive trust with respect to such enrichment.

Damages

138. RCC has suffered damages as a result of the actions and/or omissions of the defendants (other than Coldpoint), including but not limited to the payment of the Option Premium, rent, management fees and legal fees. This includes the cost RCC incurred in reasonably attempting to mitigate the loss of its investment in TCC including by seeking a change of directors at TCC and, failing that, the appointment of a receiver-manager to, among other things, terminate the property management agreement between TCF and TCC. Such damages were reasonably foreseeable by such defendants.

139. RCC seeks the disgorgement of all fees paid to TCF and Singh by the Corporation. RCC further seeks disgorgement of the legal fees paid by the Corporation to Miller Thomson.

140. Further, by virtue of the conduct set out above, an award of punitive damages is warranted. The defendants' conduct was high-handed and demonstrated reckless and wanton disregard for RCC and its congregants. The defendants' conduct (excluding Coldpoint) was particularly egregious and warrants punitive damages.

141. RCC pleads and relies on the *Canada Not-for-profit Corporations Act*. S.C. 2009, c. 23.

142. RCC proposes that this action be tried in Kitchener, Ontario.

Procedural History, Consolidation and Receivership:

143. On February 23, 2021 an action was commenced against defendants Graham Singh, Peter Elgersma, Trinity Centres Foundation, Trinity Centres Cambridge, Miller Thomson LLP and Coldpoint Holdings Ltd. (“CV-21-00000281-0000”).

144. On May 27, 2021, CV-21-00000281-0000 was transferred from Kitchener, Ontario to the Commercial List in Toronto, Ontario as per the request of Justice Sloan to deal with the receivership. Matter CV-21-00000281-0000 was assigned a new Commercial List court file number, CV-21-00672899-00CL.
145. On September 2, 2021 RCC commenced a separate action against defendants CRCNA and the CRC Extension Fund (“CV-21-00001157-0000”).
146. On September 21, 2021, a receiver was put in place pursuant to the Order of Justice Dietrich over the assets of the Corporation in this matter, CV-21-00672899-00CL. As of the date of this filing, the receiver is reviewing relevant material and has not changed the structure of the Corporation.
147. Both CV-21-00672899-00CL and CV-21-00001157-0000 raise similar issues and arise from the same facts.
148. A Case Conference was held for both CV-21-00672899-00CL and CV-21-00001157-0000 on March 16, 2022. Justice McEwen’s Endorsement states that it was agreed that the Plaintiffs would deliver a Fresh as Amended Statement of Claim in CV-21-00000281-0000 (the former Court File # for CV-21-00672899-00CL) adding the defendants in CV-21-00001157-0000.
149. The Endorsement of Justice McEwen further states: “the Defendants being added can raise defences available to them in the existing action but not new defences e.g. a new limitation defence or claim for costs thrown away” and that “the issue of transfer to Kingston (sic) is deferred.”

150. It is clear that Justice McEwen's Endorsement meant Kitchener, Ontario rather than Kingston, Ontario given that CV-21-00000281-0000 was properly commenced in Kitchener, Ontario prior to Justice Sloan's direction that it be transferred to Toronto and assigned Court File # CV-21-00672899-00CL.

151. This Fresh as Amended Statement of Claim has consolidated the claims in CV-21-00000281-0000 (now CV-21-00672899-00CL) and CV-21-00001157-0000 pursuant to Justice McEwen's direction.

152. RCC proposes that at the conclusion of the receivership that this new consolidated action be tried in Kitchener, Ontario given that the clear nexus of events is Kitchener and there is no reason for this action to be heard on the Commercial List other than the Receivership.

March 21, 2022

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Plaintiff

and

GRAHAM SINGH et al.
Defendants

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST
Proceeding commenced at Toronto

FRESH AS AMENDED STATEMENT OF CLAIM

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Appendix “B”

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

BETWEEN:

RIVER CITY CHRISTIAN REFORM CHURCH

Plaintiffs

and

**GRAHAM SINGH, PETER ELGERSMA, TRINITY CENTRES FOUNDATION, TRINITY
CENTRES CAMBRIDGE, MILLER THOMSON LLP, COLDPOINT HOLDINGS LTD.,
CHRISTIAN REFORMED CHURCH IN NORTH AMERICA – CANADA CORPORATION, and
CHRISTIAN REFORMED CHURCH EXTENSION FUND INC.**

Defendants

**STATEMENT OF DEFENCE OF THE DEFENDANTS,
TRINITY CENTRES FOUNDATION AND GRAHAM SINGH**

1. Unless otherwise expressly admitted herein, the Defendants, Reverend Graham Singh (“**Singh**”) and Trinity Centres Foundation (“**TCF**”), deny all allegations contained in the Fresh as Amended Statement of Claim issued April 8, 2022 (the “**Claim**”).

I. INTRODUCTION

2. The plaintiff, River City Christian Reform Church (“**RCC**”), has initiated this proceeding as an abuse of process and an instrument of oppression to bring an end to the defendant, Trinity Centres Cambridge (“**TCC**”) and the community hub project at 15 Wellington Street in Cambridge (“**15 Wellington**”). RCC seeks to wrongfully resile from its contractual commitments with TCF and TCC, and in so doing, has made false and inflammatory accusations against the defendants to purport that RCC, a sophisticated organization who is experienced in engaging legal counsel: (i) was misled into entering into the partnership concerning the 15 Wellington project; and (ii)

has since been subjected to treatment which is oppressive, or which unfairly disregards or prejudices its interests.

3. RCC's allegations are entirely without merit. The evidence obtained in the interlocutory proceedings commenced by RCC which preceded this pleading revealed that RCC's allegations are false and/or misleading, and that RCC has in fact intentionally pleaded an inaccurate and misleading account of the underlying events in the Claim, including serious allegations of fraud, misappropriation, and conspiracy, which allegations RCC knows to be false.

4. Such conduct ought not be condoned by this Honourable Court, and the action against TCF and Singh ought to be dismissed, with costs payable by RCC on a full or substantial indemnity scale in light of the serious and false claims of fraud advanced by RCC in this proceeding.

i. The Parties and Other Relevant Persons/Entities

a. RCC

5. The plaintiff, RCC, is a religious organization incorporated under the laws of Ontario. It currently operates out of the church premises located at 15 Wellington. Darrell Bierman ("**Bierman**") is RCC's Founder and Pastor.

6. As will be discussed below, RCC's tenancy at 15 Wellington is the result of the partnership that was entered into by RCC and TCF to purchase, renovate, and operate 15 Wellington, through TCC, as a revenue generating community hub from which RCC and other tenants would operate.

b. TCF and Singh

7. The defendant, TCF, is a non-religious (secular) charitable corporation incorporated under the *Canada Not-for-profit Corporations Act* ("**CNCA**"). TCF was established in 2018 as a pan-

Canadian charitable organization with the goal of preserving, restoring and repurposing underutilized churches as community hubs. TCF is comprised of a team of approximately 50 associates, including architects, finance specialists, and faith, community, and government leaders, who contribute, as independent contractors or volunteers, in various ways to the community hub projects undertaken by TCF. Information concerning TCF's projects, team members, and operations is set out in detail on TCF's website, <https://www.trinitycentres.org>.

8. The concept of TCF arose from the declining numbers of congregants, shifting expectations and methods of worship, and mounting building maintenance costs that far exceed parish budgets, and to find a path forward for churches of different denominations to avoid closure. Church buildings are among Canada's most underused assets, and the transformation into hubs constitutes a way for local churches to offset shrinking congregations, reinvent themselves, and to remain afloat and relevant in their communities.

9. At the material times of the events underlying this proceeding, Rod Bergen ("**Bergen**"), Jason Barrett ("**Barrett**"), and Singh were the directors of TCF. Bergen is and remains the Chair of the Board of TCF, and Singh remains the Chief Executive Officer and Executive Director of TCF. Bergen, Barrett, and Marie-Sol Gaudreau are the current directors of TCF.

10. Organizations such as TCF are relatively new, but are becoming more common. For example, when one drives by a church building and observes a sign for a children's daycare which operates at the church, it is almost certainly because the church property is being utilized as a "community hub", hosting multiple tenants to fund the property's operating costs.

11. Currently, in addition to the project at 15 Wellington, TCF is involved in 15 other community hub projects at church properties located in Ontario, Québec, Alberta, British Columbia, and New Brunswick.

12. In addition to being the Chief Executive Officer and Executive Director of TCF, Singh is the Senior Pastor of St. Jax Church in Montreal, which is part of the Anglican Diocese of Montreal. Singh has dedicated most of his adult life to developing churches and places of worship. He completed a 5-year term as the Executive Director of Church Planting Canada.

13. Singh graduated from Huron University College at The University of Western Ontario with a Bachelor of Arts (Political Science) in 2000. In 2001, he obtained his Master of Science in International History from The London School of Economic & Political Science. In 2010, he obtained his Bachelor of Ministry (Christian Ministry) from St. Mellitus College & Ridley Hall Cambridge, before securing his Graduate Certificate from Asbury Theological Seminary. Singh has apprenticed and been ordained as an Anglican church planter at Holy Trinity Brompton in London. He has recently completed a certificate in Impact Finance Innovation at Oxford University's Saïd School of Business.

14. Singh was ordained in the Church of England within a team known as the closed churches team, specializing in reopening closed historic parish churches. Contrary to the allegations made by RCC in the Claim, construction, reanimation, multiple stakeholder engagement, and adaptive reuse of church buildings has been fundamental to Singh's training and of all four of his appointments as a pastor. Of the four churches which Reverend Singh has led, two of them have been in Canada and in both cases the management of significant construction activity has been and remains part of his role as pastor.

15. Over the years, Singh has been a member of the National Trust for Canada, the Responsible Investment Association, and the Montreal Chamber of Commerce. Singh has also been a Board Member of the Montreal Table des Grand Jardins and of Church Planting Canada, and is a PIC Team Member of Montreal Peter-McGill Community Table.

c. TCC and Elgersma

16. The defendant, TCC, was incorporated on October 18, 2019 under the CNCA. Pursuant to a Unanimous Members Agreement dated February 7, 2020 (the “**UMA**”), RCC and TCF are the sole members of TCC. Pursuant to Section II.01(v) of the UMA, the Board of TCC is comprised of: (i) a representative of TCF; (ii) a representative of RCC; and (iii) a joint nominee to the TCC Board.

17. At all material times, the members of the TCC Board were: (i) Singh for TCF; (ii) Narima Whitman (“**Whitman**”) from October 15, 2019 to October 2, 2020 for RCC, who was then replaced by Pamela O’Dell (“**O’Dell**”) as RCC’s designate; and (iii) the defendant, Peter Elgersma (“**Elgersma**”), as the joint nominee of RCC and TCF to the TCC Board. Singh also served as the Chair and Chief Executive Officer of TCC. None of these positions were accompanied by remuneration, and the Board members of TCC and TCF all serve as volunteers.

18. In November 2019, Singh, Whitman, and Elgersma approved TCC’s By-law No. 2019-1 enacted on November 21, 2019 (the “**By-law**”). The By-law was designed to provide a flexible but collaborative approach to governing TCC between TCF and RCC. It included, *inter alia*, that:

- (a) the TCC Board shall have three directors to be elected by RCC and TCF (s. 4.01);
- (b) the TCC Board shall be comprised of one director nominated by TCF, one director nominated by RCC, and one director jointly agreed upon by TCF and RCC (s. 4.05);
- (c) the term of a director shall be one year, set to expire at the next Annual Meeting following the election (s. 4.02); and
- (d) the first annual meeting shall be held within 18 months of incorporation (s. 6.01).

19. Elgersma is and/or was at the material times the Canadian Advancement Director of the defendant, Christian Reformed Church in North America – Canada Corporation (“**CRCNA**”). Elgersma is and/or was also at the material times the Vice-Chair of the Board of the co-defendant, Christian Reformed Church Extension Fund Inc. (“**CRC Loan Extension Fund**”).

20. It was RCC who requested that Elgersma become involved with the partnership and operation of TCC and its community hub project at 15 Wellington, given that Elgersma is neither part of RCC nor TCF, but is a member of CRCNA, of which RCC is a denominational ministry.

21. Contrary to the allegations contained in the Claim, Elgersma, like Singh, has always discharged his duties faithfully as a director of TCC, and has at all times voted and conducted himself in an impartial manner. In fact, Elgersma voted in favour of RCC’s position on 62 of 65 occasions since O’Dell was appointed to the TCC Board on October 5, 2020. The former Chair of the Board of RCC, Greg Bowering (“**Bowering**”), has acknowledged since this action was commenced that Elgersma has primarily been an ally to RCC.

22. As will be explained below, the work of TCC was thriving while the TCC Board consisted of Singh, Whitman, and Elgersma, and until O’Dell’s involvement with the project commenced in approximately September 2020. It was only at that time that RCC began making the false, misleading and inflammatory allegations which are the subject of this proceeding. As indicated, O’Dell ultimately replaced Whitman as RCC’s representative on the TCC Board in October 2020.

d. Coldpoint, and Deloitte as Receiver of TCC

23. The defendant, Coldpoint Holdings Ltd. (“**Coldpoint**”), is an Ontario corporation and financed TCC’s acquisition of, and operations and building renovations at, 15 Wellington, pursuant to a Loan Agreement dated March 2020 (the “**Loan Agreement**”), and pursuant to the

security provided by TCC to Coldpoint thereunder, which includes a first-ranking Collateral Mortgage registered on title to 15 Wellington.

24. Coldpoint became involved with the 15 Wellington community hub project as a result of Singh's close, personal relationship with David Wood ("**Wood**") and his family, the owners of Coldpoint, and given Wood's belief in and support of TCF's mission. Coldpoint provides funding to various not-for-profit organizations, and in particular, religious organizations.

25. The Coldpoint Loan Agreement provides for a non-revolving loan to TCC of up to the maximum aggregate amount of \$2,084,000 comprised of: (i) an acquisition loan in the amount of \$1,384,000; and (ii) a renovation loan in the amount of \$640,000, which was designed to fund 80% of the 15 Wellington project costs. The remaining 20% of the project costs was to be funded by RCC's Option Fee (discussed below). The Coldpoint Loan Agreement was on extremely favourable terms, and had a low interest rate of 2% per annum, a 10-year window of no required payments, and was open and could be repaid, in part or in full, without penalty at any time.

26. Wood was clear from the outset that Coldpoint would not provide the Loan Agreement without TCC having a consistent revenue stream, which was central to RCC's rent structure under its Lease and Option with TCC (discussed below). He also wanted to ensure that TCF would remain involved with the management of the 15 Wellington project. An Event of Default under s. 15 of the Loan Agreement would arise if there was a change of control of TCC pursuant to which any person or organization other than TCF held the right to cast more than 50% of the votes at a meeting of the members of TCC.

27. RCC's commencement of this action triggered an Event of Default by TCC under its Loan Agreement with Coldpoint. Coldpoint accordingly brought a motion in this proceeding on September 21, 2021 and obtained an Order of Madam Justice Dietrich of the Ontario Superior Court of Justice (Commercial List) appointing Deloitte Restructuring Inc. as receiver and manager

(in such capacity, the “**Receiver**”) of all of the assets, undertakings and properties of TCC, including 15 Wellington (the “**Appointment Order**”).

28. With respect to the purpose of the Coldpoint financing, Wood, on behalf of Coldpoint, testified as follows in support of Coldpoint’s motion for the Appointment Order:

13. The Credit Facility was not granted on conventional lending terms. The Indebtedness bears interest at the rate of 2% per annum, calculated yearly. Pursuant to the terms of the Loan Agreement, TCC was not obligated to pay principal or interest on the Indebtedness until the 10th anniversary of the advancement of the Acquisition Loan, unless and until an Event of Default (as defined in the Loan Agreement) occurred.
14. The Credit Facility was granted to TCC in an effort to revive the Property for the benefit of the community. The Property had previously been a church building that had been abandoned for a number of years. I was approached about the possibility of financing this project by Reverend Graham Singh, a long-standing friend. It is my understanding that TCF’s mission is to transform vacant and/or underutilized church properties into vibrant community centres across Canada. TCF’s mission fits well with the goals of Coldpoint and [its affiliate] the WDG.
15. Neither TCF nor RCC had the funds available to purchase and renovate [15 Wellington]. As a result, Reverend Singh approach Coldpoint to fund the purchase of the Real Property and its renovation on very favourable terms which would allow for TCF to achieve its goal of revitalizing the Real Property for the benefit of the community and RCC to have a permanent home for its congregation. TCC was formed jointly by TCF and RCC as the vehicle to complete the transaction, and renovate and manage the Real Property [at 15 Wellington].

29. As is reflected in the Receiver’s First Report dated April 12, 2022 (the “**Receiver’s First Report**”), since its appointment, the Receiver, *inter alia*, has: (i) contracted TCF to assist with the monitoring and maintenance of 15 Wellington until it can be transferred to a new owner; (ii) listed and marketed 15 Wellington for sale; and (iii) commenced negotiations with RCC to address deficiencies in RCC’s rent.

30. Commencing in March 2021, RCC defaulted on its rent obligations under its Lease and Option (as defined below) with TCC, and refused to pay any rent whatsoever. Pursuant to an Interim Order of Justice Sloan issued in this proceeding on May 20, 2021, RCC was required to

pay outstanding rents owing to TCC for March, April, and May 2021, as well as rents going forward, at the 2020 Basic Rent rate set out in RCC's Lease and Option, without prejudice to all parties' rights and remedies in respect of the appropriate 2021 rental amount to be paid by RCC to TCC.

e. Miller Thomson

31. The defendant, Miller Thomson LLP, is a law firm operating in Toronto, Ontario and elsewhere, and at all material times, was the lawyers for TCF and TCC.

32. Contrary to the allegations contained in the Claim, at no time did Singh or TCF advise RCC that Miller Thomson was acting for RCC. Singh and TCF have no knowledge of the alleged joint retainer pleaded in paragraphs 71 and 113 of the Claim.

33. In its Statement of Defence dated May 2, 2022, Miller Thomson has denied that it was ever counsel to RCC.

34. By at least June of 2019, RCC had engaged Pavey Law as its legal counsel. RCC's allegation in the Claim that Miller Thomson was its legal counsel is disingenuous, as evidenced by the fact that Bowering has subsequently admitted that the RCC Board, when engaging a lawyer, meets and "*A resolution would be put on the table, and debated, and passed to engage any lawyer*". RCC undertook no such process with respect to Miller Thomson.

f. The Second Action Commenced by RCC Against CRCNA and the CRC Extension Fund, and the Consolidation of the Actions

35. Unbeknownst to Singh, TCF, TCC, Elgersma, or Coldpoint, on September 1, 2022, approximately seven months following the commencement of this proceeding, RCC commenced a separate but related action (CV-21-00001157-0000) (the "**Second Action**") against CRCNA and the CRC Loan Extension Fund.

36. RCC did not provide the defendants in this proceeding with notice of the Second Action. Once the Second Action was discovered by the defendants in this proceeding, the defendants in both actions demanded that the actions be consolidated. RCC ultimately agreed, and by Order of the Honourable Justice McEwen of the Ontario Superior Court of Justice (Commercial List) issued March 16, 2022, this action was consolidated with the Second Action. On April 11, 2022, RCC served the Claim in the Consolidated Action.

37. CRCNA is a religious organization incorporated under the CNCA. RCC is a denominational ministry of CRCNA.

38. CRC Loan Extension Fund is a managed and administered capital fund incorporated under the laws of Ontario that provides financing for capital projects of CRC congregations and for independent, parent-directed, or membership-directed Christian schools across Canada.

39. In the Second Action, RCC alleged that CRCNA and the CRC Loan Extension Fund are liable to RCC on the basis that Elgersma is a director and officer of CRCNA, is the Chair of the CRC Loan Extension Fund, and is both the Director of Advancement (Canada) and Acting Director of congregational services for CRCNA.

40. As is reflected in paragraphs 22 to 31 of the Claim, RCC now asserts that “*the CRC Extension Fund and the CRCNA through Elgersma encouraged, assisted and guided RCC in its negotiations with TCF regarding the Property and its ownership structure*” and that “*the CRCNA and CRC Extension Fund voluntarily assumed a special relationship to RCC as a financial and transaction advisor*”. RCC asserts at paragraphs 45 to 47 of the Claim that the CRCNA and the CRC Extension Fund made inaccurate, untrue, and misleading representations to RCC during the course of their provision of advice to RCC, which “*induced RCC to enter into the partnership with TCF*”, and that but for such representations, RCC would not have proceeded with the partnership.

41. TCF and Singh plead that RCC's commencement of the Second Action, and the addition of such allegations against the CRC Extension Fund and the CRCNA, are reflective of RCC's objective in commencing this proceeding, namely, to bring TCC to an end, and to exert financial pressure on as many parties and their insurers as possible in an effort to force RCC's way out of the partnership and contracts to which RCC knowingly agreed.

42. RCC is a sophisticated organization. While it makes no mention of it in the Claim, it is uncontroverted that RCC has also retained legal counsel on a number of occasions, including during the summer of 2019 when various partnership structures with TCF were being discussed. RCC has acknowledged that it has formal internal procedures to be followed by its Board in retaining counsel. RCC would nevertheless have this Honourable Court believe in its Claim that it is unsophisticated, and that it did not have, or was not familiar with engaging legal counsel where it believed legal counsel was warranted.

II. THE PARTNERSHIP BETWEEN TCF AND RCC

43. In June 2018, TCF was introduced to RCC by a mutual contact, Gerald Ford ("**Ford**"). At that time, Ford sent an email to Cory de Villiers ("**de Villiers**"), an associate of TCF and a Sales Representative at Re/Max Real Estate Centre Inc. in Cambridge, Ontario, introducing de Villiers to Bierman of RCC. Ford indicated that Bierman was "*looking for some space to lease*". In response, de Villiers indicated that he would be happy to help Bierman find some space, and that if he were looking for a "Church Plant" space, he would be personally interested, as de Villiers had recently joined TCF at the time. de Villiers invited Bierman to review TCF's website and read an article about TCF's pilot project, St. Jax in Montreal.

44. It was not until early 2019 that Bierman contacted de Villiers and indicated that RCC was looking for a permanent location, as it was currently renting space at a Galaxy Cineplex movie theatre for its services, paying \$50,000 per annum to use certain theatre space for two hours

every Sunday, together with a storage unit and office space. Bierman expressed that RCC was interested in purchasing 15 Wellington from the then owner, the Trustees of the First United Church, but could not obtain the necessary financing to purchase 15 Wellington itself. At the time, 15 Wellington was listed for sale at a price of \$1,888,000.

45. As indicated, TCF was established in 2018 with the goal of preserving, restoring, and repurposing underutilized churches as community hubs, serving as a way for local churches to offset shrinking congregations, reinvent themselves, and to remain afloat and generate revenue by leasing space to other tenants in the community.

46. RCC and TCF were accordingly the perfect match. From April 2019 through to March 5, 2020, TCF, RCC, and TCC, with involvement from Elgersma at RCC's request, discussed an evolving partnership structure, pursuant to which TCF, RCC, and TCC ultimately agreed that:

1. TCC would be created as the vehicle to acquire 15 Wellington. RCC and TCF would serve as equal members in TCC, and would each be permitted to nominate a director to the TCC Board, with a third jointly-nominated director also being appointed to the TCC Board. TCC completed its acquisition of 15 Wellington on March 5, 2020, for a purchase price of \$1,531,000.

2. TCF would secure the financing to acquire and operate/renovate 15 Wellington, given that RCC was unable to secure financing through the CRC Loan Extension Fund, or any other lender, and accordingly was unable to purchase 15 Wellington itself. TCF secured financing of up to \$2,024,800 on very favourable terms¹ from Coldpoint, given Coldpoint's support for

¹ TCC's indebtedness to Coldpoint bears interest at the rate of 2% per annum, calculated yearly. Pursuant to the terms of the Loan Agreement between TCC and Coldpoint, TCC is not obligated to pay principal or interest until the 10th anniversary of the advancement of the acquisition loan (March 5, 2031), unless and until an Event of Default (as defined in the Loan Agreement) occurs. As a result of RCC's commencement of this action, TCC defaulted on its loan obligations and Coldpoint enforced its security to appoint a Receiver over TCC to effect a sale of 15 Wellington. At the time of the Coldpoint's demand letter dated March 11, 2021, the indebtedness owing by TCC to Coldpoint was \$1,551,759.79.

TCF's mission and desire to revive 15 Wellington for the benefit of the community. The over 100 year old church building at 15 Wellington was in disrepair and had been closed for three years, and the parties intended for TCF to undertake the property and construction management in connection with the repairs and improvements which were necessary in order for the property to be occupied by tenants.

3. RCC would pay \$506,200 (20%) of the project costs (the "**Option Fee**"). Of this amount, \$346,200 was required by the closing date of March 5, 2020, and the remaining \$160,000 on or before May 14, 2020. The original TCC Board of Singh, Elgersma, and Whitman extended the deadline for the remaining \$160,000 to July 31, 2020, given the onset of the COVID-19 pandemic.

4. RCC, pursuant to a Single Tenant Lease and Option Agreement with TCC made March 5, 2020 (the "**Lease and Option**"), would pay basic rent of \$50,000 for the first year of the Term (through to February 14, 2021), and would thereafter pay rent of \$250,000 per annum. TCC would nevertheless be permitted to discount RCC's annual rent of \$250,000, by considering the income generated through RCC's use, licensing, or sub-leasing of 15 Wellington to third parties. RCC was not, as it asserts in the Claim, entitled to have unfettered and exclusive use of 15 Wellington for the cost of \$50,000 per annum throughout the duration of the Lease and Option. Pursuant to sections 4.1 to 4.6 of the Lease and Option, in consideration of the Option Fee, RCC was provided with the option to purchase 15 Wellington on 3 months' notice during the Term of the Lease, provided that RCC was not in default of the Lease and Option. TCF and Singh deny the allegations and purported calculations contained in sections 78 to 87 of the Claim, and state that sections 4.1 to 4.6 of the Lease and Option are clear and unambiguous as to the ability for RCC to exercise its option to purchase, and how it is to be calculated, including the deduction of the Option Fee under section 4.3 thereof. Bowering, RCC's then-Chair, has admitted that RCC of course did not intend to exercise its option to

purchase 15 Wellington on “Day 1” of the property being owned by TCC, which RCC suggests it might have considered doing in paragraph 80 of the Claim. Rather, RCC and TCF’s goal was to have TCF manage the renovations and restoration of 15 Wellington, while Coldpoint financed the construction/improvements, and to ultimately fill 15 Wellington with tenants creating a stable revenue generating hub, which would ultimately be purchased by RCC should it exercise its option under the Lease and Option.

5. TCF would serve as the property and construction manager of 15 Wellington. Contrary to the allegations in the Claim, in December 2019, approximately four months before TCC’s acquisition of 15 Wellington was completed, TCF projected management fees of \$150,000 (\$169,704 if hosting was included) for 2020, comprised of: (i) property and construction management, (ii) accounting, (iii) marketing, (iv) grant writing, and (v) janitorial. Such projections were subsequently presented by Whitman, RCC’s designate to the TCC Board, to RCC, including in writing in a document entitled “*Project Plans between TCF and RCC*”. RCC thereafter proceeded with entering into the UMA and Lease and Option and with the completion of the 15 Wellington acquisition on March 5, 2020. Despite RCC entering into the partnership structure with such expectations, TCF nevertheless charged management fees of \$123,576.80 for 2020, \$26,423.20 less than what was expected and set out in the December 2019 *pro forma* before 15 Wellington was acquired. The management fees charged by TCF for Q1 2021 were \$35,414.21, or \$2,085.79 less than the expected management costs reflected in the December 18, 2019 *pro forma* prior to the acquisition of 15 Wellington.

47. The “*Project Plans Between TCF and RCC*” presented by Whitman to the RCC Board in January 2020, two months prior to TCC’s acquisition of 15 Wellington, confirmed, *inter alia*:

- (a) At s. 5.a, *“It must be clear that RCC cannot afford this building on its own which includes utilities, maintenance and upgrade expenses on an annual basis. Therefore the building must have sub tenants to support the expenses. RCC is the master tenant”*;
- (b) At s. 5.b., *“TCC Wants to establish 15 Wellington as a community project building that will exist for a long time and become self-sustainable. [RCC] cannot do this on its own. It is a community hub to support Cambridge where RCC and TCF are partners in this project”*;
- (c) At s. 5.d., *“Cory de Villiers [of TCF] is leading the renovation project with directions from TCC. RCC has appointed Brian Veenstra to work with Cory as the main point of contact for operations and renovation matters of 15 Wellington”*;
- (d) At s. 6.a, *“TCC and RCC will be setting up a team of 3 to 4 people of which 2 will be from RCC to discuss branding of 15 Wellington. These 2 names will be provided to Cory/Celine Singh (Graham [Singh]’s wife) who will be spear heading this discussion”*;
and
- (e) from Whitman’s concluding remarks: (i) At item 7, *“RCC Board members have access to TCC Minutes via [Whitman]”*; and (ii) At item 12, *“The projected income/expense for TCC is constantly being amended with the addition of tenants, expenses, renovations costs, etc. [Whitman] will provide a copy of the latest one to the board of RCC”*. When asked whether Whitman provided the RCC Board at that time with the December 18, 2019 *pro forma*, Bowering, RCC’s then Board Chair, admitted that he cannot recall.

48. Contrary to the allegations contained in the Claim, RCC has acknowledged and agreed that the amount ultimately charged by TCF in 2020 was less than that which was set out in the December 2019 *pro forma*.

49. RCC's allegation in paragraphs 77 and 135 of the Claim that TCF, Singh, and Elgersma have "*unlawfully siphon[ed] funds*" is entirely false, and has been completely discredited and undermined by Bowering's subsequent admission that: (i) the basis of RCC's allegations in this regard is that it believes TCF charged above market rates for management fees, (ii) there is no basis for the assertion that Singh or Elgersma ever misappropriated any funds.

50. RCC's allegations in paragraph 109 of the Claim that the involvement of Celine Singh, Natasa de Villiers, and Cory de Villiers in TCF's management of the 15 Wellington project was never disclosed to RCC is similarly disingenuous, false and is discredited by, *inter alia*, the "*Project Plans Between TCF and RCC*" which were presented by Whitman to the TCC Board.

51. As indicated in paragraph 29 above, following the Appointment Order, the Receiver has and continues to contract TCF to assist with the ongoing monitoring and maintenance of 15 Wellington until it can be transferred to a new owner.

III. TCF'S MANAGEMENT FEES AND SERVICES

52. In the year following TCC's acquisition of 15 Wellington in March 2020, and despite the onset of the COVID-19 pandemic and the commencement of this litigation by RCC in February 2021, TCF, among other management activities detailed in minutes of the TCC Board of Directors ("**TCC Board Minutes**"):

- (a) convened 13 TCC Board Meetings, operating in a cooperative manner;
- (b) negotiated and secured leases with and secured two sub-tenants, One Movement Dance Studio and Proactive Training;
- (c) retained and worked with Larkin Architects Limited ("**Larkin**");

- (d) prepared a building permit application with Larkin, Ontenco Inc. (electrical engineer), Mark Brayn (mechanical engineer), and Tacoma Engineers (structural engineer), and obtained a building permit from the City of Cambridge;
- (e) applied for grants, and received a grant from Shantz Mennonite Church for \$30,000, intended to be used for audio-video equipment for the benefit of 15 Wellington;
- (f) completed extensive renovations and capital improvements to 15 Wellington, despite the administrative challenges caused by the onset of the COVID-19 pandemic;
- (g) researched and sought quotes from local constructions companies for the outstanding building permit-based work at 15 Wellington, as authorized by the TCC Board at its Special Meeting held on February 5, 2021;
- (h) filed an application to challenge TCC's municipal tax status in an effort to maintain a tax-exempt status; and
- (i) secured rents of \$116,766.34.

53. As will be elaborated upon below, RCC's unfounded allegations concerning governance issues with TCC are in actuality the result of RCC's discontent with: (i) the quantum of management fees charged by TCF in 2020 and for Q1 2021, and; (ii) RCC and O'Dell's dislike for Singh. Yet, TCF's management expenses were under budget compared to what RCC expected.

IV. THE UNFOUNDED ALLEGATIONS OF GOVERNANCE ISSUES FOLLOWING O'DELL'S REPLACEMENT OF WHITMAN ON THE TCC BOARD

54. RCC only began to raise governance concerns upon the commencement of O'Dell's involvement in TCC in the late Summer 2020. The fact is, TCC was not operating contrary to RCC's expectations, and was carrying on its operations cooperatively, effectively, and with financial transparency. When O'Dell became involved, she wished for TCC to act with strict corporate formality, and made voluminous requests for documentation and other information concerning TCC's operation.

55. Singh, Elgersma, and TCC's bookkeeper, LiveCA, went to great lengths to address O'Dell's requests as is reflected in the TCC Board Meeting Minutes of October, November, and December 2020, yet O'Dell was not satisfied, and in turn, neither was RCC. Singh also had genuine concerns regarding O'Dell's association with O'Dell Engineering Ltd. and the impact it would have on TCC, TCF, and prospective donors and tenants, given that O'Dell Engineering distributes firearms and glorifies weaponry through the use of religious figures, civilians, and sexualized women.

56. O'Dell's approach and dislike for Singh disrupted the TCC Board's previously collaborative approach. She demanded that all construction halt at 15 Wellington at a November 18, 2020 TCC Board Meeting (which Elgersma also voted in favour of, again showing his neutrality and frequent support for RCC), inhibiting TCC and TCF's ability to advance the 15 Wellington community hub project, complete required works for its tenants and prospective tenants, and to obtain quotes on the building permit works. Further, O'Dell required routine tasks and bill payments to be authorized by TCC Board resolutions, thereby slowing the progress of the project.

57. The TCC Board, with Singh abstaining, appointed Racolta Jensen LLP on January 28, 2021 to perform a financial audit of TCC for the year ending December 31, 2020, despite the fact

that the *CNCA* permits the members to waive the requirement of a review engagement or a financial audit. *Racolta Jenson LLP* resigned on March 17, 2021 as a result of *RCC's* commencement of this action. *TCF* and *Singh* supported the appointment of a new auditor, and requests for quotations were sent out by *TCF* and *Reverend Singh's* counsel to potential audit firms on April 16, 2021. Ultimately, given the Appointment Order, such further operations of *TCC* are now within the authority of the Receiver.

58. On January 29, 2021, *Singh* advised *RCC* that its rent would be \$144,360 plus HST annually commencing on the anniversary of the Term (February 14, 2021), crediting *RCC* for \$105,640 in annual rent *TCC* receives from *TCC's* other tenants. At that time, *Singh* reminded *RCC* that it could further reduce its rent if the *TCC* Board approved a lease with a Montessori STEM school, a further prospective tenant identified by *TCF*. Without such notice from *Singh*, *RCC's* rent would have reverted to the default Maximum Basic Rent under section 5.1 of *RCC's* Lease and Option, being \$250,000 per annum. In default of its obligations under the Lease and Option, *RCC* nevertheless unilaterally ceased paying any rent whatsoever to *TCC* beginning in March 2021. *RCC* also remained unwilling to reasonably negotiate the proposed Montessori STEM school lease, which would bring additional revenue to the project thereby further reducing *RCC's* rent.

59. As indicated in the Receiver's First Report, the Receiver, since its appointment, has commenced negotiations with *RCC* to address deficiencies in *RCC's* rent.

60. One of *RCC's* largest points of contention concerns *TCF's* property management agreement, which is similarly without merit. Once *O'Dell* became a director, she demanded that a formal agreement between *TCF* and *TCC* be entered into. Both *TCF* and *RCC* prepared drafts of a property management agreement. *TCF's* draft essentially reduced to writing the manner in which the *TCC* Board had been operating following incorporation since December 2019. *RCC's*

draft, on the other hand, maintained all of TCF's responsibilities, but reduced its compensation to approximately half.

61. In November and December 2020, as tensions grew, Singh recommended that the parties enter mediation. The mediation was unsuccessful. Upon learning of the failed mediation, Wood of Coldpoint requested a meeting with RCC, TCF, and TCC because the dispute potentially affected Coldpoint's security, but RCC would not agree to attend the meeting.

62. On February 5, 2021, RCC suddenly caused its then lawyers, Gray Whitley LLP, to issue a demand letter (the "**Gray Whitley Demand**") to Singh and Elgersma demanding that RCC be given voting control over TCC in breach of the Coldpoint Loan Agreement, and alleging that Elgersma "*has been completely ineffectual as a director of TCC in controlling Mr. Singh*".

63. After receiving the Gray Whitley Demand on February 5, 2021, Singh called a TCC Board meeting for February 9, 2021. O'Dell was given notice, but chose not to attend. At the meeting, acting in the best interests of TCC, Singh and Elgersma resolved to authorize Miller Thomson to respond to the Gray Whitley Demand on TCC's behalf, and approved payment of TCF's outstanding Q4 and Q1 invoices. They also approved an amended draft of RCC's proposed property management agreement, but restricted the term to one year, despite the expectation of all parties from the outset that TCF would be the manager of 15 Wellington through the duration of the community hub project.

64. Despite her access to TCC's bank account being restricted from January until March 24, 2021, RCC's designate to the TCC Board of Directors, O'Dell, has otherwise at all times had access to all of the banking and accounting records of TCC (including after March 24, 2021), and has admitted that she has no basis for the false accusation that Singh has misappropriated funds from TCC. Her access to the accounting records of TCC on Xero.com, as maintained by TCC's bookkeeper, LiveCA, was at no time ever restricted.

V. RCC'S DISHONEST SCHEME AND CONDUCT DESIGNED TO BRING AN END TO TCC

65. That RCC does not come to this Court with clean hands is perhaps no more evident than in the events which transpired in February 2021 shortly prior to this action being commenced.

66. On February 4, 2021, Bowering, Elgersma, Bergen, and Darren Roorda (the Director of Canadian Ministries for CRCNA) met via Zoom (the "**Recorded Meeting**") in an effort to discuss a path forward for the project at 15 Wellington. Unbeknownst to Elgersma, Bergen, and Roorda, the meeting was being recorded by Bowering.

67. In an affidavit sworn by Bowering in support of RCC's motion for injunctive relief in this proceeding ("**RCC's Motion**"), which motion ultimately did not proceed, Bowering testified that "*At this meeting, Rod [Bergen] told me that the TCF board is a board in name only: the board never meets, and Singh makes all the decisions*". However, such statement is false, and nowhere in the transcript of the recording does Bergen state that, or anything close to it.

68. During the Recorded Meeting, Bergen reiterated that RCC's governance concerns could be readily solved by resetting the TCC Board, a solution previously offered by Singh, and that the issue would then be operationally how to move forward. Bergen reiterated that he and Singh remained willing to immediately "*reset*" the TCC Board, pursuant to which both Singh and O'Dell would come off of the Board of TCC. Elgersma also expressed a willingness to stay on the TCC Board to assist through the transition. No objection was raised to Elgersma's ongoing role, and in fact, Bowering was receptive of Elgersma staying on as a director through the transition. While Bowering stated that RCC was unwilling to work with Singh any longer, the meeting concluded with Bowering advising that he would "*be patient and let God work*" and would seek the RCC Board's approval to reset the TCC Board.

69. The following morning on February 5, 2021, Bowering attended a TCC Board Meeting with Singh and Elgersma as O'Dell's proxy. Bowering and Elgersma voted against paying TCF's Q4 management fee, pending a TCC Board reset and getting TCF's property management agreement in place. Bowering agreed at the meeting that, after the Board reset, this would be a "priority item and conversation".

70. Hours following the February 5, 2021 TCC Board meeting, without any warning, Singh, Elgersma, TCC, and TCF received the Gray Whitley Demand from RCC's lawyer, Wayne Gray. Bowering admitted during cross-examination in this proceeding that he had already reviewed and approved of the Gray Whitley Demand prior to the Recorded Meeting, and accordingly, his subsequent representations that he supported a reset of the TCC Board were intentionally false and insincere.

71. Bowering and RCC attempted to justify RCC's about-face decision on February 5, 2021 to not proceed with a TCC Board reset, and to instead send the Gray Whitley Demand, by falsely asserting that Bergen advised that it would be impossible to extricate Singh from the project and that he would have to stay on as CEO of TCC.

72. However, RCC's assertions in this regard are again entirely false. Instead, in emails sent by Bergen to Bowering on February 5, 2021, Bergen advised Bowering that following "a members meeting to replace the existing directors..[t]he new [TCC] Board would meet to ensure that we can put the proper operational measures in place". Bergen further advised Bowering that he had spoken to Singh and "we will get him unlinked from the project operationally. While we might not be 100% effective, I do think we can at least ensure that you or your board won't have to deal with him going forward." At no time did Bergen advise Bowering or RCC that it would be impossible to extricate Singh and that he would have to stay on as CEO of TCC.

VI. RCC'S UNSUCCESSFUL MOTION FOR INJUNCTIVE RELIEF

73. After this proceeding was commenced on April 23, 2021, RCC's Motion for injunctive relief was brought against Singh and Elgersma and for the appointment of a receiver-manager over TCC, which motion was vigorously opposed by TCF, Singh, Coldpoint, and Elgersma, all of whom wanted to see TCC continue. At that time, RCC had yet to commence an action against CRCNA and the CRC Loan Extension Fund. The responding evidence filed by Singh and Elgersma to address and respond to the serious and false allegations made by RCC in this proceeding was extensive. For approximately six months, Coldpoint agreed to forebear from enforcing its security if RCC would cease the litigation. When RCC refused to do so, Coldpoint proceeded to obtain the Appointment Order.

74. In the course of RCC's Motion, which was ultimately rendered moot, Bowering admitted that the alleged "*siphoning*" of funds by TCF, Singh, and to "*TCF insiders*" only concerns TCC's payment of management fees to TCF. Bowering also confirmed that RCC does not dispute that TCF provided those services to TCC, or that TCF was paying people – including Natasa and Cory de Villiers – to manage 15 Wellington. Bowering further admitted on cross-examination that: (i) quotes from possible alternative managers had not been obtained by RCC or otherwise provided to the TCC Board; and (ii) that it was TCF's expectation in the partnership that it would be the manager of 15 Wellington.

75. Nevertheless, RCC now alleges that because TCC had paid TCF management fees, which was never previously objected to by the TCC Board when Whitman was a member, that TCF and Singh have "*siphoned*" monies from TCC, despite Bowering's acknowledgement that TCF is entitled to be paid for the valuable services which it has provided. Such serious and false accusations are entirely misleading to this Court.

76. Further, after RCC's counsel denied TCF the right to obtain Whitman's evidence on RCC's Motion, Whitman filed a reply affidavit on behalf of RCC rendering an examination of her unnecessary, as her evidence did not dispute the overwhelming majority of Singh and Elgersma's evidence. Nor did she corroborate or adopt the allegations made in the affidavits sworn by RCC's affiants (Bowering and O'Dell) on RCC's Motion. For example, Whitman:

- (a) did not deny that she kept RCC apprised of the evolving *pro formas* and anticipated management fees and expenses for the project. She acknowledged that "*it was agreed that I would communicate [on behalf of RCC] with the TCC Board to avoid any miscommunications*";
- (b) did not deny that TCF and its associates, including Cory and Natasa de Villers who manage 15 Wellington for TCF, performed the management, construction, and related services;
- (c) did not state that she objected to TCF's property management services or fees, or that she was unaware that TCF was paid its management fees while she was a TCC director;
- (d) did not suggest that TCC was not to pay Miller Thomson's legal fees for the work which it undertook for TCC's benefit, or that Singh represented to her or anyone that Miller Thomson was RCC's legal counsel;
- (e) did not suggest that she, or anyone else from RCC, ever told Singh or TCF that Pavey Law LLP was no longer acting for RCC, or that RCC was not otherwise represented by counsel; and
- (f) did not suggest that she did not read, understand, comment on, or execute the partnership documents on behalf of RCC in consultation with RCC's Board, including RCC's Lease and Option with TCC.

77. In her affidavit, Whitman expressed her “*frustration with the level of Ms. O’Dell’s requests*” shortly prior to October 5, 2020 when O’Dell replaced Whitman as RCC’s designate to the TCC Board. Whitman further testified that “*Based on the information I had at the time when I was RCC’s designate on the TCC Board, I worked cooperatively with the other directors (Singh and Elgersma) to advance the project surrounding 15 Wellington*”.

78. In the course of RCC’s Motion, O’Dell made misleading and false accusations in an effort to cast Singh and TCF in a negative light. For example O’Dell swore affidavits in which she:

(a) asserted that in late February of 2021, she discovered that Singh attempted to hire SKC Construction (“**SKC**”) for the renovation of 15 Wellington, despite there having been no TCC Board approval for this activity. Contrary to O’Dell’s assertions, the TCC Board – including Bowering sitting as O’Dell’s proxy – did unanimously authorize on February 5, 2021 to have Natasa and Cory de Villiers’ company, OV Property Development and Consulting Inc., “*start acquiring quotes for renovation work as per the building permit for 15 Wellington*”. Natasa de Villiers subsequently sought quotes from SKC, only for SKC to suddenly advise on March 8, 2021 that “*We have decided not to quote on this project*”. O’Dell subsequently claimed to have never contacted SKC for any reason, before ultimately admitting to having spoken with the son of one of the owners of SKC in late February 2021, which was the cause of SKC suddenly refusing to quote the 15 Wellington building permit works; and

(b) asserted that “*On March 9, 2021, in the face of the service of the [Statement of] Claim, Reverend Singh unilaterally changed the locks on the Property with no notice to RCC*”. Contrary to O’Dell’s allegations, Singh lives in Montreal. Only an interior lock was changed by property management, and a broken push bar was

fixed, as a result of a break-in at 15 Wellington. RCC has at all times continued to enjoy access to 15 Wellington, as Bowering subsequently admitted, and maintenance promptly made a new key available to RCC.

79. RCC's claim in this proceeding that it believed that Miller Thomson was acting as its counsel is similarly not credible. In the context of RCC's Motion, Bowering admitted that when engaging a lawyer, the process that the RCC Board follows is to meet and "*A resolution would be put on the table, and debated, and passed to engage any lawyer*". RCC undertook no such process with respect to Miller Thomson. It is undisputed that Pavey Law LLP was RCC's lawyers before 15 Wellington was acquired. Bowering further acknowledged that it was not him who was communicating with Pavey Law, but Pastor Bierman.

80. At paragraphs 19 and 20 of the Claim, RCC alleges that on September 19, 2019 Pastor Bierman met with lawyer David Tang of Miller Thomson, Wood of Coldpoint, and Singh at Miller Thomson's office, and that "*Bierman took from this meeting that Miller Thomson would be acting for both partners, RCC and TCF, and the partnership*". TCF and Singh deny RCC's allegations in this regard. Pastor Bierman was conspicuously absent from RCC's evidentiary record on RCC's Motion, and proffered no evidence, despite remaining the founder and pastor of RCC to this day.

VII. CONCLUSION

81. TCC was successfully functioning in 2020, and had made significant progress under Singh, Elgersma, and Whitman's guidance in renovating 15 Wellington and in securing and prospecting additional tenants, despite the onset and lockdowns which arose as a result of the COVID-19 pandemic shortly after 15 Wellington was acquired by TCC in March 2020.

82. RCC's commencement of this action was calculated and designed to bring TCC to an end. As indicated in the First Report, the Receiver is in the process of finalizing a sale of 15 Wellington, and has entered into a conditional sale of the Property with a June 30, 2022 closing date, which sale the Receiver expects will generate proceeds for the benefit and creditors of the estate of TCC.

83. Section IV.01 of the UMA determines the allocation of all proceeds of the sale of 15 Wellington if RCC chooses *not* to exercise its Option and the property is sold to a third-party. TCF *only* obtains 50% of any remaining net proceeds of a sale after RCC is repaid its Option Fee from the sale proceeds. Accordingly, RCC's motivation for bringing an end to TCC is clear, albeit, misguided given that it will not likely recover its Option Fee after the indebtedness of Coldpoint and professional costs are repaid, and RCC has destroyed what would have been a renovated, revenue generating permanent home for RCC's congregation for years to come.

84. TCF and Singh deny that they acted in an oppressive or unlawful manner. TCF, Singh, and the TCC Board at all times acted in a manner consistent with what the members of RCC expected, or ought to have reasonably expected in the circumstances.

85. TCF and Singh deny: (i) any liability to RCC; (ii) that they made any false representations to RCC; and (iii) the breaches of duty otherwise as alleged in the Claim.

86. TCF and Singh further deny that RCC has suffered any damages, or that RCC is entitled to any of the relief claimed in the Claim. If RCC did suffer any damages as alleged, which is not admitted but is specifically denied by Singh and TCF, then RCC is the author of its own misfortune. Singh and TCF plead and rely upon the provisions of the *Negligence Act*, R.S.O. 1990, c. N.1.

87. TCF and Singh further plead that any such damages claimed by RCC are exaggerated, remote, speculative, unmitigated and/or are unrecoverable at law.

88. For the reasons set out above, Singh and TCF request that this action be dismissed, with costs awarded to TCF and Singh on a full indemnity scale, or alternatively, on a scale as is just.

May 6, 2022

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RIVER CITY CHRISTIAN REFORMED CHURCH

-and-

GRAHAM SINGH et al.

Plaintiff

Defendants

Court File No. CV-21-00672899-00CL

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

PROCEEDING COMMENCED AT
TORONTO

**STATEMENT OF DEFENCE OF THE DEFENDANTS,
TRINITY CENTRES FOUNDATION AND GRAHAM SINGH**

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Appendix “C”

**ONTARIO
SUPERIOR COURT OF JUSTICE**

B E T W E E N:

RIVER CITY CHRISTIAN REFORMED CHURCH

Plaintiff

and

**GRAHAM SINGH, PETER ELGERSMA, TRINITY CENTRES FOUNDATION,
TRINITY CENTRES CAMBRIDGE, MILLER THOMSON LLP,
COLDPOINT HOLDINGS LTD., CHRISTIAN REFORMED CHURCH IN NORTH
AMERICA - CANADA CORPORATION, and CHRISTIAN REFORMED
CHURCH EXTENSION FUND INC.**

Defendants

**STATEMENT OF DEFENCE OF THE DEFENDANT,
PETER ELGERSMA**

1. The defendant, Peter Elgersma ("**Elgersma**"), admits the allegations contained in paragraphs 3 to 6, 10, and 15 of the Fresh as Amended Statement of Claim ("**ASOC**").
2. Elgersma has no knowledge in respect of the allegations contained in paragraphs 9 (first sentence only) and 11 to 14 of the ASOC.
3. Elgersma denies every other allegation in the ASOC.

A. Overview

4. This action involves a partnership between the plaintiff, River City Christian Reformed Church ("**RCC**") and the defendant, Trinity Centres Foundation ("**TCF**"), to create a not-for-profit corporation called Trinity Centres Cambridge ("**TCC**"). The purpose of the partnership from RCC's perspective was to acquire a permanent space for its congregation, which it could not have afforded but for the partnership.

5. Elgersma, who was a stranger to both RCC and TCF, cumulatively volunteered multiple weeks or months of his time to help make the project succeed on terms that were acceptable to RCC. He was never paid a penny by RCC for his assistance nor did he benefit personally in any way from the partnership. RCC, in interlocutory proceedings commenced prior to delivery of the ASOC, conceded under oath that Elgersma at all times acted honestly, in good faith, as an ally to RCC, and for no personal benefit. RCC nevertheless continues to allege that Elgersma breached his duties as a director of TCC despite effectively having admitted the opposite under oath.

6. After conceding that Elgersma did not breach his duties to TCC, RCC reconstituted its claim to allege that Elgersma “induced” it to enter into the partnership by making misrepresentations on TCF’s behalf regarding the structure of the partnership. These claims were not referenced in the original Statement of Claim or in the interlocutory proceedings commenced by RCC, which involved an extensive evidentiary record. Elgersma at no time made any misrepresentations to RCC, nor could RCC possibly have relied on any such representations before finalizing the partnership structure between it and TCF.

7. There is no basis for liability against Elgersma. In fact, RCC is aware that Elgersma at all times discharged his duties to TCC, as conceded under oath, and did not make any misrepresentations upon which RCC could have relied to its detriment. Rather, this action is being advanced for an ulterior purpose: RCC is seeking to circumvent a contractual arrangement it entered with eyes wide open simply because it is no longer interested in continuing the partnership with TCF. Elgersma pleads that RCC’s claim against him amounts to an abuse of process.

B. Background

8. Elgersma is an individual residing in Vaughan. He has a Bachelor of Mathematics from the University of Waterloo. Between 1995 and 2016, he was employed by The Nielsen Company where, prior to being laid off, his position was Vice President of Retail Sales.

9. At all material times, Elgersma was employed by the defendant, Christian Reformed Church of North America (“**CRCNA**”), which is an ecclesiastical body that includes over 100 ministries and 250 member churches. The plaintiff, RCC, is one of those member churches. At the material time, Elgersma was employed as CRCNA’s Canadian Advancement Director, responsible for leading the denomination’s fundraising efforts. The position, which was initially part-time, became full-time in March 2020.

10. Since 2014, Elgersma has also been a volunteer director of the defendant, the Christian Reformed Church Loan Extension Fund (the “**Extension Fund**”), which is a charitable organization focussed on providing financing for capital projects undertaken by Christian Reformed Church (“**CRC**”) congregations in Canada. This includes financing for renovations to existing facilities and the purchase of new facilities. Contrary to the allegations in the ASOC, Elgersma has never been employed by the Extension Fund and has never been remunerated by the Extension Fund.

11. RCC was always aware that Elgersma was not a lawyer, financial advisor, or real estate advisor. Elgersma never held himself out as an expert or advisor in any of those fields, to RCC or to anyone else. Nor was he ever retained by RCC to provide any legal, financial, or real estate advice.

C. Elgersma Was a Stranger to RCC and TCF

12. Prior to July 2018, Elgersma had no relationship with RCC and had never heard of the defendant TCF.

13. Elgersma was first introduced to RCC when its pastor, Darrell Bierman (“**Bierman**”), contacted the Extension Fund in July 2018 to advise that RCC was interested in acquiring a property as a permanent home for its church. At that time, RCC was holding its weekly services at a movie theatre in Cambridge, Ontario. RCC was paying \$50,000 annually to use the movie

theatre for two hours on Sunday mornings for its prayer service. For that price, it also had some office space and a storage unit.

14. RCC was interested in acquiring two properties as a permanent space, one of which was a church owned by First United Church at the property known municipally as 15 Wellington Street in Cambridge (“**15 Wellington**” or the “**Property**”).

15. RCC applied to the Extension Fund for financing, but the Extension Fund could not offer sufficient financing to permit RCC to make a successful offer on either property. The Extension Fund only provides financing for up to 60% of the appraised value of any given property and it only does so after it is satisfied that the applicant has sufficient financial stability to repay the loan. RCC was unable to raise enough to cover the other 40% of the purchase price of either property. RCC therefore started to look at other forms of financing.

16. It was RCC who introduced Elgersma to TCF. In April 2019, Bierman contacted Elgersma to ask him whether he had heard of TCF. Elgersma advised Bierman that he had not. Elgersma conducted internet searches and discovered that TCF was a not-for-profit focussed on re-purposing old churches to make them “community hubs” as well as churches in order to preserve them in an increasingly heated Canadian real estate market. Financial pressures were causing many old churches in urban areas to close. TCF’s goal was to prevent that by subleasing church space to community organizations or businesses while the congregation was not using it.

17. Elgersma believed that TCF’s idea was an exciting one and told Bierman that he believed it was reasonable for RCC to explore a partnership with TCF. RCC wanted to own a permanent space for its congregation but could not afford it, while TCF was developing a model that could nevertheless facilitate RCC having such a space.

D. Formation of the Partnership Between RCC and TCF: No “Inducement” or Misrepresentation by Elgersma

(i) Adverse Inference and Abuse of Process

18. When this proceeding was commenced, there was no allegation of misrepresentation by Elgersma in the negotiation between RCC and TCF regarding their partnership structure. The meetings at which Elgersma is now alleged to have “induced” RCC to enter into a partnership with TCF were not referenced once in the original pleading. Rather, RCC claimed that Elgersma acted oppressively as a director of TCC, the not-for-profit corporation that was created pursuant to the partnership.

19. Moreover, shortly after commencing this proceeding RCC sought to appoint a receiver over TCC. In the course of that motion, RCC’s representative admitted that Elgersma had at all times acted honestly, in good faith, and as an ally to RCC while he served on TCC’s Board of Directors. It was only after RCC made these concessions that it sought to advance claims of misrepresentation by Elgersma in the negotiations between RCC and TCF regarding their partnership structure.

20. An adverse inference should be drawn against RCC due to its failure to raise these claims before it conceded that it had no claim against Elgersma for oppression or breach of duty. As pleaded above, this action should also be deemed an abuse of process because it is an improper use of the court’s process for an ulterior purpose.

(ii) RCC Decided to Partner with TCF on its Own

21. Elgersma had no involvement in RCC’s decision to partner with TCF, which decision was first made in or around May 2019, when TCF entered into an agreement to purchase 15 Wellington. The agreement required a \$100,000 deposit toward the purchase price, which deposit was advanced by RCC in the form of a “refundable” loan in the event the partnership did

not ultimately proceed. In fact, Elgersma had no substantive involvement with RCC or TCF, or their proposed partnership, between April and July 2019.

(iii) Elgersma was no “Agent” of TCF: RCC Requested Elgersma’s Involvement

22. The general idea underlying TCF’s community hub model was effectively a “rent to own” concept. It was envisioned that, after acquiring the Property, TCF would serve as property manager for 15 Wellington and lease it to a number of community-based tenants, in addition to RCC. The rental revenue would be used to: (a) service the debt used to acquire 15 Wellington in a manner that would subsidize RCC’s eventual acquisition of title to the Property; (b) supplement funding for renovation efforts; and (c) allow TCF to fundraise in order to expand its efforts to preserve churches across Canada. RCC was aware of these goals at all material times.

23. In July 2019, after RCC had already decided to partner with TCF, the two organizations were negotiating the structure of the partnership (referred to herein as the “**15 Wellington project**”). Bierman contacted Elgersma to advise that RCC’s governing Visionary Board (“**RCC’s Board**”) had concerns about the pace of those negotiations, because TCF had not yet delivered certain documentation related to the partnership transaction structure. Certain conditions had to be waived by September 5, 2019, in order to proceed with the purchase of 15 Wellington. RCC also had concerns about having its investment protected. Bierman asked Elgersma to attend a call between Bierman and the defendant, Graham Singh (“**Singh**”), a founder of TCF, to provide his input on the negotiation as an independent third party.

24. Elgersma attended a call on July 25, 2019, where both Singh, on TCF’s behalf, and Bierman, on RCC’s behalf, were thankful for Elgersma’s input. Prior to that call, Elgersma had never communicated with Singh or any other representative of TCF. During the call, RCC and TCF both asked Elgersma if he would continue to provide input as negotiations over the partnership structure progressed.

25. Elgersma agreed to volunteer his time if he could be of assistance because he believed the project was a good idea. Elgersma was never engaged by RCC or TCF to provide advice, never had any affiliation with TCF or RCC, and was never paid for his time. Elgersma at no time represented himself to be a “sector-specific financial expert” in respect of the acquisition and re-development of church buildings, as alleged in the ASOC. Elgersma never represented himself to be an expert in real estate, financial advice, or law, nor was it reasonable for RCC to assume that Elgersma was an expert in any of those fields.

26. To RCC’s full knowledge, Elgersma’s only relevant experience was in fundraising (through his work at CRCNA) and lending for CRC congregations to undertake capital projects (through his involvement with the Extension Fund).

27. In any case, RCC had the requisite financial expertise and sophistication to make its own decisions on whether to partner with TCF. RCC had a Finance Committee, which included Narima Whitman (“**Whitman**”), who was also an RCC Board member. Whitman held a Master of Business Administration and worked at RBC providing financial advice to small businesses. RCC also had protocols in place to engage legal counsel when necessary.

(iv) August 22 and September 4, 2019 Meetings: Elgersma Volunteered His Time at RCC’s Request

28. Elgersma again had no substantive involvement in the discussions between TCF and RCC between July 25 and August 22, 2019. Around that date, Bierman asked Elgersma to attend a meeting between RCC and TCF. RCC’s Board wanted to again express concerns about the pace at which TCF was delivering documentation related to the transaction structure. RCC’s Board was concerned about finalizing a partnership structure before the final condition had to be waived for the acquisition of 15 Wellington, the deadline for which was September 5, 2019.

29. At the August 22, 2019, meeting, TCF committed to providing a revised “roadmap” of the proposed partnership structure by August 31, 2019, and RCC committed to making a final decision on its participation in the project by September 4, 2019.

30. RCC’s Board held a meeting on September 4, 2019, to make its final decision. TCF was initially supposed to attend to present the revised roadmap at that meeting. Contrary to the allegation at paragraph 37 of the ASOC, it was not TCF or Singh who requested that Elgersma review the roadmap document with RCC’s board. Rather, it was RCC who declined to invite TCF to the September 4 meeting and instead asked Elgersma to lead the discussion on RCC’s proposal because it wished to have an independent view of TCF’s roadmap document.

31. Elgersma drove from Vaughan, where he resides, to Cambridge during the evening on September 4 and attended the meeting of RCC’s Board, which lasted over four hours, past 11:00 p.m. At the September 4 meeting, Elgersma presented his understanding of the roadmap document prepared by TCF, as requested by RCC.

32. Elgersma did not make any of the representations alleged to have been made at paragraph 45 of the ASOC. However, given Elgersma’s experience with the Extension Fund, Elgersma did believe, and expressed to RCC, that TCF had secured financing for the project through the defendant, Coldpoint Holdings Ltd. (“**Coldpoint**”), on terms that were far more favourable than even the Extension Fund could have offered, let alone any conventional lender such as a bank.

33. TCF was able to secure that financing because TCF’s principal, Singh, had a relationship with Coldpoint’s principal, David Wood, who in turn supported philanthropic causes related to Christian churches.

34. Coldpoint agreed to lend more than \$2 million for the project for a 10 year term at an interest rate of 2% per annum, calculated annually. Moreover, all interest payments and principal repayments would be deferred for 10 years, to the maturity date of the loan. In other words, Coldpoint offered \$2 million without having to pay a penny for 10 years. This was in fact an attractive arrangement for RCC, and it would only be available if RCC partnered with TCF.

35. In contrast, the Extension Fund could only provide a variable rate of 3.85% amortized over 20 years, with no deferral of interest or principal. The terms of Coldpoint's loan, as facilitated by TCF, were very favourable to RCC. If RCC wanted to have a permanent space at 15 Wellington but could not qualify for financing offered by the Extension Fund, the financing from Coldpoint was RCC's only choice. RCC was fully aware of that.

36. At the September 4 meeting, RCC resolved to move forward with the partnership so long as TCF agreed to the following conditions:

- (a) RCC's all-inclusive rent would not be higher than \$50,000 annually;
- (b) RCC would maintain a 51% interest in the project;
- (c) TCF would provide clarification on the maximum purchase price of 15 Wellington in a scenario whereby RCC ultimately decided to exercise its option to acquire 15 Wellington;
- (d) TCF would provide clarification on the value of the property; and
- (e) "Legal documents" would be provided by TCF to RCC by October 1, 2019.

37. Elgersma had no involvement in RCC's decision to move forward on that basis. It was a decision made by RCC's Board.

38. Bierman and Singh had a call on September 5, 2019, which Elgersma was not invited to attend. As a result of that call, RCC agreed that TCF could waive the final condition on the agreement to purchase 15 Wellington, thereby making the purchase of 15 Wellington a firm deal. RCC and TCF announced their partnership publicly on September 6, 2019.

(v) October 7, 2019 Meeting

39. Negotiations over the structure of the partnership continued throughout September 2019. Elgersma was not involved in those negotiations. However, RCC invited Elgersma to another meeting of the RCC Board on October 7, 2019, in Cambridge. RCC asked Elgersma to summarize his understanding of TCF's position on the conditions RCC had insisted on following the September 4 meeting. Again, RCC asked Elgersma to attend because it knew he was independent, contrary to the allegation it now makes that he was an "agent" of TCF.

40. Elgersma's presentation was not prepared to "convince RCC to move forward with the partnership", as alleged in the ASOC. Nor did Singh provide any assistance with preparation of the presentation. RCC asked Elgersma for his understanding of TCF's proposal so that it could deliberate on whether to proceed. Elgersma provided his understanding based on a term sheet provided to RCC by TCF.

41. Elgersma understood that RCC's primary concerns in October 2019 related to: RCC having control of the project; its annual rent not exceeding \$50,000; and ensuring the total acquisition cost if RCC ultimately acquired the property did not exceed \$2.3 million. Elgersma summarized TCF's position on those issues as he understood it from the term sheet provided by TCF, as follows:

(A) RCC's Rent

42. Elgersma expressed his understanding that TCF had agreed to "initial" annual rent of \$50,000 for the first year, but on the basis that RCC would be using the space in the same manner

that it used the movie theatre, for which it also paid \$50,000 per annum. In other words, RCC would be entitled to some office space and storage plus two hours on Sundays for the church prayer service. Elgersma noted that, under the proposed partnership structure, the rent would vary with the amount RCC wished to use 15 Wellington. Annual rent could be as high as \$250,000 per year if RCC wanted full and exclusive use of the facility seven days a week.

(B) Control of the Project

43. Regarding control of the project, Elgersma expressed his understanding that TCF had proposed the creation of a not-for-profit corporation called TCC. At that time, TCF had proposed that TCC's Board have three members, comprised of a representative from RCC, TCF, and CRCNA. TCF noted, and Elgersma agreed, that under this structure RCC would exercise effective control over the project because RCC and the CRCNA's representative would be aligned in interest.

44. When TCC was ultimately incorporated, its constating documents (which were prepared around November 2019) did not provide for a representative of CRCNA to be on TCC's Board. Instead, the three-member board was comprised of a TCF representative, an RCC representative, and a jointly-designated director. TCF and RCC would later invite Elgersma to be the jointly-designated director of TCC.

45. Notwithstanding the above, RCC did in fact exercise voting control over TCC right up until February 5, 2021, when it caused its lawyers to send a letter to Elgersma alleging that he had breached his duties as, and been an "ineffectual" director of, TCC. RCC exercised control because, as admitted by RCC, Elgersma was at all times an ally to RCC while he served on TCC's Board. RCC has also admitted in this proceeding that, in fact, Elgersma at all times up to February 5, 2021, acted honestly, in good faith, and always tried to make the 15 Wellington project work on terms that were acceptable to RCC.

(C) Cost of the Project

46. Regarding the acquisition cost of the project, Elgersma expressly advised that TCF had rejected RCC's proposed upper limit on the total acquisition cost of 15 Wellington because RCC's proposed limit was not feasible.

47. TCF and RCC continued negotiating the partnership structure throughout October and November 2019. Contrary to the allegation at paragraph 44 of the ASOC, Elgersma had no involvement in those negotiations. Notwithstanding that a number of the conditions RCC imposed on itself at the September 5, 2019 meeting were not accepted by TCF, RCC ultimately decided to proceed with the 15 Wellington project.

48. The partnership structure was finalized in November 2019. Elgersma did not have any input into any of the constating documents negotiated by RCC and TCF. Also in November 2019, RCC and TCF formally invited Elgersma to be the jointly designated member of TCC's Board. Elgersma agreed to volunteer his time for what he believed was a good cause.

49. When Elgersma accepted the directorship, he believed he would always be allied with RCC given his denominational alignment and the relationship he had developed with RCC, so long as doing so was consistent with his duties as a director of TCC to act honestly, in good faith, and in TCC's best interest. As described below, and as admitted by RCC in this proceeding, Elgersma was in fact allied with RCC throughout his directorship. He almost exclusively advocated RCC's position when disagreements arose between RCC and TCF and almost exclusively voted with RCC on voting matters before TCC's Board.

50. Among the documents entered into by RCC when the partnership with TCF was formed was a Unanimous Members Agreement ("**UMA**") between TCF and RCC, which set out their rights and obligations. Elgersma was not involved with negotiation of the UMA. The UMA contained an entire agreement clause which provided as follows:

Section V.05 Entire Agreement. This Agreement and all related Exhibits and Schedules hereto constitutes the sole and entire agreement of the parties to this Agreement with respect to the subject matter contained herein, and supersedes all prior and contemporaneous understandings, agreements, representations and warranties, both written and oral, with respect to such subject matter.

51. RCC also entered into a loan agreement with Coldpoint setting out the terms of Coldpoint's loan to RCC. Again, Elgersma had no input into that arrangement or the negotiation of the loan agreement. That loan agreement, dated March 5, 2020, also contained an entire agreement clause, as follows:

23. Entire Agreement - This Agreement embodies the entire agreement of understanding between the Lender and the Borrower in this regard and supercedes all prior agreements and understandings between the parties relating to the subject matter hereof and thereof

52. RCC also entered into a Single Tenant Lease and Option Agreement with TCC dated as of February 18, 2020 (the "**Lease and Option**"), setting out the terms of its lease of 15 Wellington and the terms on which it could exercise its option to acquire 15 Wellington. Elgersma had no input into the negotiation of that document. The Lease and Option spelled out RCC's rent obligations clearly. The Lease and Option also contained an entire agreement clause, as follows:

25.2 Whole Agreement

This Lease contains the whole agreement between the parties with respect to the subject matter of this Lease. There is no representation, warranty, collateral agreement or condition affecting the Lands, the Building, the Premises or this Lease, or supported by this Lease other than as expressed in this Lease. The schedules to this Lease form part of this Lease. Notwithstanding the Commencement Date of the Term, the provisions of this Lease will have effect and bind the parties hereto from the date TCC execution hereof.

E. Management and Operation of TCC

(i) RCC Sought to Disregard the Partnership Structure

53. Nearly from the outset of the 15 Wellington project, it was apparent that RCC wished to operate the partnership in a manner that would minimize the viability of the community hub model, to their own detriment. It eventually became apparent that RCC not only wanted exclusive control,

but also nearly exclusive use of 15 Wellington, without having to pay rent consistent with increased use. In particular, RCC repeatedly objected to renovations that were necessary to accommodate subtenants. RCC's objections were never in TCC's best interest. They were motivated by self-interest, even if it meant risking the ability to accommodate other subtenants who would, in turn, subsidize RCC's cost of acquiring 15 Wellington in 10 years' time.

54. RCC also unreasonably refused to approve multiple subleases. It also wanted to use 15 Wellington as it pleased while taking the position it should only have to pay the same rent it paid for the use of a cinema for two hours on Sunday mornings.

55. RCC now claims that the cost of 15 Wellington was too high, and that it should not have had to pay increased rent for increased use of 15 Wellington, contrary to the express terms of the arrangement it entered into with TCF.

(ii) Elgersma was RCC's Ally

56. Notwithstanding the above, Elgersma almost exclusively advocated for RCC's position on TCC's Board, so long as doing so was consistent with his duties as a director of TCC.

57. Disputes between TCF and RCC started arising around August 2020 when RCC advised that it intended to replace Whitman with an individual named Pamela O'Dell ("**O'Dell**") as RCC's representative on TCC's Board. O'Dell, as one of her first acts shortly after becoming involved, accused Singh of fraud, which allegation was false. Whitman, a director of RCC, described O'Dell's allegations as a "witch hunt".

58. Singh also had a strong personality and convictions, which caused interpersonal conflict between O'Dell and Singh. As a result, after August 2020, there was regular conflict on the RCC Board.

59. Between August 2020 and February 5, 2021, which is when RCC threatened litigation against Elgersma and others, Elgersma continued to be an ally of RCC. He voted with RCC on 62 of 65 matters that were put to a vote by TCC's Board. The only three times Elgersma voted against RCC was with respect to the payment of three expenses approved at a February 5, 2021 TCC Board meeting, hours before RCC threatened litigation against TCC. Those three expenses cumulatively totaled less than \$4,000 in payments. Those expenses had been incurred by TCC, payment was overdue, and there was no reason not to pay them.

60. Aside from those three payments, Elgersma voted with RCC on every issue that was put to a vote by TCC's board, including all of the issues raised in the ASOC:

(A) The Property Management Agreement

61. RCC's Board from the time of incorporation consisted of Singh on behalf of TCF and Elgersma as the jointly-designated director. RCC'S representative on TCC's Board between October 2019 and October 2020 was RCC's own financial expert, Whitman. Whitman condoned and approved of many of the actions RCC now complains about in the ASOC.

62. TCF began providing property management services to the 15 Wellington project around November 2019. Contrary to the manner in which this issue is described in the ASOC, TCF's fees for property management were not "contentious" and there was no attempt to "trap" RCC by "intentionally withholding" information from it. In fact, with respect to the fourth quarter of 2019 and the first three quarters of 2020, TCF charged management fees for its services, including to compensate subcontractors that were paid through TCF. The TCC Board, including Whitman on behalf of RCC, was aware of the fees being charged by TCF. Neither she nor RCC raised any objection to the quantum of fees being charged and paid to TCF. Whitman had access to and was reviewing monthly bank statements for TCC's bank account during this time. She was aware of all payments to TCF and expressly approved them.

63. When O'Dell joined TCC's Board in place of Whitman as RCC's designate, she questioned why there was no written property management agreement ("**PMA**") in place between TCF and RCC. Elgersma agreed with O'Dell that the terms of TCF's provision of property management services should be reduced to writing. He supported O'Dell's request that TCF propose a written PMA. TCF had already previously proposed a written PMA, but it was rejected by RCC. Elgersma also supported RCC's position on that first draft PMA.

64. TCF proposed a second written draft PMA in October 2020. RCC rejected the October 2020 draft PMA on the basis that it proposed a ten year term and because the proposed fees were, in its view, too high. Elgersma agreed that the term should be shorter and open to re-negotiation after the parties had some experience operating under it. Elgersma did not agree that the proposed fee was too high. Elgersma nevertheless voted with RCC to reject the October 2020 PMA, because he viewed himself as RCC's ally and did not view it as inconsistent with his duties to TCC to object to the October 2020 draft PMA.

65. RCC proposed its own draft PMA in November 2020. Elgersma supported most of RCC's draft PMA. However, RCC proposed that someone other than TCF be engaged to perform the property management services. Elgersma did not believe this was reasonable given that it would have defeated the entire basis for the partnership between RCC and TCF.

66. RCC's draft PMA was discussed at a TCC Board meeting on December 2, 2021, but that discussion was not completed because the relationship between TCF and RCC deteriorated to the point where the December 2, 2021, TCC Board meeting was adjourned before all agenda items were addressed. No vote was taken on RCC's draft PMA, and, at that point, the ability of RCC and TCF to continue working together was in question.

67. In January 2021, TCF, RCC, and Elgersma engaged in a protracted two week mediation, without counsel, which ultimately failed. As described below, RCC then engaged counsel, who threatened litigation and a motion for injunctive relief against Elgersma, Singh, TCC, and TCF.

(B) Other Governance Issues

68. At paragraph 124 of the ASOC, RCC describes “several serious concerns” it raised at TCC Board meetings on November 5 and 18, 2020. RCC also pleads that it sought Elgersma’s removal as a director of TCC during these meetings because he had “rubber-stamped any (*sic*) contentious issues in favour of TCF without seeking [independent legal representation]”.

69. RCC did not seek Elgersma’s removal from the Board prior to February 5, 2021. In fact, after the November 5 and 18 meetings, RCC insisted on continuing to work with Elgersma to help advance its position at TCC’s Board.

70. RCC has also admitted under oath that, prior to February 2021, Elgersma voted together with RCC on every single matter that was put to a vote of TCC’s Board members. This includes the “serious governance concerns” addressed at the November 5 and 18 Board meetings. In response to paragraph 124 of the ASOC, Elgersma pleads as follows:

- (a) When RCC through O’Dell sought audited financial statements, Elgersma voted in favour of appointing an accounting firm, Racolta Jensen LLP, to prepare audited financial statements. TCC’s Board, including Whitman, had previously decided that audited financial statements were not necessary for TCC’s first fiscal year because very little activity was being conducted. When O’Dell changed course on RCC’s behalf, Elgersma continued to support RCC, even though he believed audited financial statements were not necessary and that the Board should waive the requirement, at least for TCC’s first year of operations.
- (b) When RCC questioned whether TCC had properly paid legal fees to the defendant, Miller Thomson LLP, Elgersma supported RCC’s efforts to investigate the issue, which investigations were conducted.
- (c) When O’Dell pointed out that TCC had not yet put in place directors’ and officers’ liability insurance, Elgersma supported RCC’s request to obtain such coverage.

- (d) When TCF purported to increase RCC's rent payable for 2021, Elgersma objected both to the amount of the rent increase and the process employed by TCF to increase the rent. Elgersma wrote a sternly worded email to TCF taking the position that the amount of rent payable by RCC for 2021 needed to be determined by TCC's Board. This was precisely RCC's position as well.

71. RCC's allegation that Elgersma "rubber-stamped ... contentious issues in favour of TCF" is without any factual basis. As admitted by RCC's representative under oath, Elgersma at all times acted as an ally to RCC so long as doing so was consistent with his duties to act honestly, in good faith, and in TCC's best interest.

F. RCC's Failure to Mitigate and to Act in TCC's Best Interest: Refusal to Entertain the Board Reset

72. After the mediation in January 2021 failed, Elgersma, RCC, and TCF continued to look for ways to resolve their differences and move forward with the 15 Wellington project.

73. On February 4, 2021, a meeting was held between Greg Bowering ("**Bowering**"), a member of RCC's Board, Rod Bergen ("**Bergen**"), an experienced businessman and the Chair of TCF's Board, Darren Roorda ("**Roorda**"), a senior CRCNA official, and Elgersma. The purpose of the meeting was to attempt to address RCC's concerns in order to move forward with the 15 Wellington project. RCC's primary demand was the removal of Singh both from TCC's Board and from oversight of operations at 15 Wellington.

74. During the meeting, Bergen distinguished between "operational" and "governance" issues. He proposed that the parties start by addressing the governance issues by performing a "board reset". The two clashing personalities, O'Dell and Singh, would be replaced by Bowering and Bergen respectively. The new TCC Board would then be in a position to address the operational issues, including removal of Singh from his role as CEO.

75. Bowering advised that, although RCC wanted Singh removed from the 15 Wellington project entirely, they were prepared to be “patient and let God work and see what – what He can accomplish”. Bowering agreed that the parties should proceed with the board reset sooner than later, and advised that he would obtain the position of RCC’s Board by end of day.

76. The next day, February 5, a TCC Board meeting was held to deal with outstanding expenses, including the payment of TCF’s management fee for the fourth quarter of 2020, which was more than a month overdue by that time.

77. Bowering attended the meeting in place of O’Dell as RCC’s representative. RCC took the position that payment of TCF’s management fee should be deferred until after the board reset, at which time it would be made a priority item. Elgersma supported Bowering’s position and voted against payment of the management fee on the basis that it would be dealt with expeditiously after the board reset.

78. Later on February 5, it became apparent that RCC had no intention of entertaining a board reset and attempting to find a reasonable resolution to the dispute between TCF and RCC. Bowering sent an email to Bergen demanding that Singh be removed from the project entirely and with immediate effect, including from operational aspects, and provided Bergen with less than three hours to respond.

79. Bergen advised that the board reset would take effect immediately and that, although it might take some time to “unlink” Singh from the project operationally, RCC would not have to deal with Singh going forward.

80. Despite the assurance provided by Bergen on TCF’s behalf, RCC refused to dialogue to attempt to resolve the dispute. In fact, by that time, RCC’s lawyer had already prepared a letter in draft threatening to seek injunctive relief and a receivership over RCC.

81. Even though Bergen told Bowering that RCC would effectively get what it wanted, RCC proceeded with its threat to litigate the dispute. Hours after the TCC Board meeting on February 5, 2021, where Bowering represented that the board reset would proceed, RCC's solicitor, Wayne Gray, sent a letter to Singh, Elgersma, and TCF. Notwithstanding RCC's admission that Elgersma at all times up to February 5, 2021 acted honestly, in good faith, in TCC's best interests, and as an ally to RCC, the letter alleged that Elgersma had breached his duties to TCC by being "completely ineffectual" in "controlling" the allegedly improper activities of Singh. RCC, through Gray, demanded that Elgersma be replaced on TCC's Board by a nominee of RCC, thereby giving RCC complete control of the project. RCC threatened an application to appoint a receiver over TCC if Elgersma, Singh, and TCF did not comply with its demands.

G. February 9, 2021 TCC Board Meeting: Elgersma Acted Honestly, in Good Faith, and in TCC's Best Interest

82. Singh called a TCC Board meeting for February 9, 2021, in part to address the implications of RCC's demand letter. O'Dell, despite having notice of the February 9 meeting, did not attend.

83. TCF was out of pocket for expenses paid to third party contractors in the fourth quarter of 2020. As noted, its management fee was also 30 days overdue. Elgersma was also concerned about the implications of a receivership on TCC's operations and reputation.

84. Elgersma, based on his experience over the preceding 15 months, believed that TCF was a competent property manager and that the absence of a written PMA could be prejudicial to TCF and TCC if a receiver were appointed. Elgersma and Singh therefore approved a written PMA at the February 9 meeting.

85. Contrary to the allegations in the ASOC, Elgersma did not "rubber stamp" TCF's PMA. Rather, Elgersma started with the draft PMA proposed by RCC in November 2020. He honestly and in good faith considered TCC's best interest and, in doing so, pushed back on a number of

TCF's requests. Among other things, Singh proposed a 10 year term for the PMA. Elgersma insisted on a one year term as an interim measure, in the hope that the dispute with RCC would be resolved by the end of 2021, and the PMA could be revisited at that time. Once Elgersma was satisfied that the PMA represented TCC's best interest, he executed it.

86. Elgersma also at the February 9 meeting approved TCF's fourth quarter 2020 management fee. Four days earlier, Elgersma had supported RCC's request to defer payment of the management fee until after the board reset. Given that RCC demonstrated that it had no intention of proceeding with the board reset, Elgersma did not believe there was any reason to continue deferring payment to TCF for services it had provided to RCC, including expenses for which TCF was out of pocket, such as payments to subcontractors.

87. At paragraph 135 of the ASOC, TCC pleads that Elgersma has "siphoned" funds from TCC. RCC also has alleged that Elgersma was complicit in "fraud". RCC conceded under oath that the allegation of "siphoning" and "fraud" is a reference to approval, at the February 9 TCC Board meeting, of payment of TCF's fourth quarter 2020 management fee.

88. Elgersma at no time "siphoned" any funds from TCC, nor did he defraud it. He did not even have signing authority over TCC's bank account. He acted honestly and in good faith to approve payment of an overdue invoice after RCC unreasonably threatened to put TCC into a receivership. Elgersma reasonably believed that it was in TCC's best interest that TCF's invoice be paid. Similarly, Elgersma approved other expenses at the February 9, 2021 TCC Board meeting because he honestly and in good faith believed it was in TCC's best interest to do so.

H. No Liability or Damages

(i) No Misrepresentation

89. Elgersma denies that he made the representations as alleged in the ASOC. In the alternative, any such representations made by Elgersma were not negligent or fraudulent.

90. Elgersma owed no duty of care to RCC. Elgersma could not have reasonably foreseen that RCC would place reliance on statements he made summarizing the status of negotiations between it and TCF. RCC had its own financial expertise on its board of directors and had at various times engaged legal counsel to assist with the 15 Wellington project. Reliance on a stranger to the negotiation who volunteered his time to help RCC to the extent he could, for no personal gain, is not reasonable or foreseeable.

91. In the event Elgersma owed a duty of care to RCC, he did not breach it. To the extent Elgersma made any representations to RCC and they were false, which is denied, he did not and could not reasonably have known that they were false. As requested by RCC, Elgersma simply summarized the status of negotiations based on documents exchanged between RCC and TCF and facilitated discussion among RCC's Board. RCC was more than capable of obtaining legal or financial advice if it so wished.

92. Moreover, RCC did not rely on any representations made by Elgersma or, if it did, its reliance was not reasonable. RCC was aware at all times that Elgersma was not a lawyer, realtor, or financial advisor, and Elgersma never represented himself to be any of those things. To the extent Elgersma had any experience with the matters RCC was dealing with in the fall of 2019, it was in charitable fundraising and funding for capital projects of the Christian Reformed Church. Elgersma advised RCC, correctly, that the funding offered by Coldpoint was on very borrower-friendly terms. Elgersma's advice met the applicable standard of care.

93. Nor was RCC's reliance on Elgersma detrimental to RCC. RCC proceeded, after the September 4 and October 7, 2019, meetings, to negotiate documentation governing the partnership structure, including the Lease and Option and UMA, without Elgersma's involvement. RCC had every opportunity to ensure the terms of the partnership were consistent with what was discussed at the September 4 and October 7 meetings and acceptable to RCC. RCC was aware

that it could have obtained legal or financial advice but declined to do so. If the partnership structure as described in the Lease and Option and the UMA was not acceptable to RCC, it was a result of RCC's own negligence.

94. Further, RCC did not suffer any damages or, alternatively, RCC's damages are not recoverable because they are exaggerated, speculative, too remote, and RCC failed to mitigate its damages.

95. RCC fails to appreciate that any premium it would have paid to acquire 15 Wellington was consideration for the fact that it was being given an opportunity to acquire a property it could not have purchased on its own, and that the cost of acquiring a property over ten years is inevitably higher than purchasing it on day one. Additionally, had RCC given the 15 Wellington project an opportunity to succeed, the additional costs now complained of as damages would have been offset by rent paid by subtenants. That was the intention of the community hub model as articulated by TCF. RCC refused to give that model an opportunity to succeed and instead is trying to get out of the 15 Wellington project because it unreasonably wanted full control of the project without any regard for the interests of the subtenants who were supposed to offset the rent. RCC unreasonably expected the entire project to be conducted on its own terms, and to have use of 15 Wellington at whatever times it pleased. RCC failed to mitigate its alleged damages by permitting TCF to subtenant 15 Wellington and giving the 15 Wellington project an opportunity to succeed.

96. RCC also misunderstands the nature of an option. At paragraph 78 of the ASOC, RCC pleads that it never would have made sense to exercise the option on day one of the Lease and Option. Indeed, the entire point of the partnership with TCF and the financing from Coldpoint was that RCC could not have acquired the property on its own, on day one. The point of the option

premium was to facilitate the acquisition of 15 Wellington by RCC at a later date, after subtenants had helped subsidize the cost through the community hub model.

97. Moreover, and in any event, RCC's claim for damages on the basis that the Lease and Option is "nonsensical" and an "elaborate fraud or deceit" do not hold up to scrutiny. RCC wrongly pleads at paragraph 80 of the ASOC that RCC's cost of acquiring 15 Wellington would be the sum of the original purchase price *plus* the option premium. Section 4.3 of the Lease and Option clearly provides that the acquisition cost is the exercise price *less* the option fee. What RCC refers to as the "Superfluous Formula" covers the possibility that the mortgage value may in fact be higher than the original purchase price less the option fee.

98. RCC's damages claim also appears to assume that RCC would pay the maximum rent of \$250,000 per year over the course of the 10 year lease. There is no basis for that assumption. RCC's damages claim also fails to factor in that it is entitled to 50% of the accumulated surplus in the TCC entity.

99. When all of the above is taken into account, together with RCC's failure to mitigate its damages by refusing to proceed with the "board reset" as proposed by Bergen on February 5, 2021, it is apparent that RCC either suffered no damages or they are otherwise unrecoverable in this action.

100. Elgersma pleads that RCC was contributorily negligent. Elgersma relies on the *Negligence Act*, RSO 1990, c N1.

(ii) No Oppression or Breach of Duty

101. RCC has not identified what expectations it claims were violated by the conduct at issue nor has it pleaded that those expectations were reasonably held. To the extent any of RCC's expectations were not met, those expectations were not reasonable and/or they were not violated

by conduct that was oppressive or unfairly prejudicial to, or unfairly disregarded, RCC's interests. There is no basis for a finding of oppression against Elgersma.

102. In any event, there is no basis to attribute personal liability to Elgersma for oppression. RCC has conceded under oath that, at all times prior to February 5, 2021, when RCC threatened a receivership application and demanded Elgersma's removal from TCC's Board, Elgersma acted honestly, in good faith, in TCC's best interests, and for no gain to him personally. In these circumstances, personal liability cannot attach to an individual director. Based on these facts, Elgersma also pleads that he discharged any duties he owed to TCC and/or RCC, to the extent he owed any duty to the latter, which is denied.

(iii) No Unjust Enrichment

103. Elgersma gained nothing personally from the 15 Wellington project. He has not received any enrichment and, as a result, RCC cannot be said to have suffered a corresponding deprivation. There is no basis for a finding that Elgersma was unjustly enriched.

(iv) No Punitive Damages

104. RCC has pleaded no basis for punitive damages, particularly against Elgersma. Elgersma at all times acted honestly, in good faith, in TCC's best interests, and as an ally to RCC. There is simply no basis for a finding that Elgersma's conduct was high-handed or that he demonstrated a reckless and wanton disregard for RCC.

(v) Abuse of Process and Adverse Inference

105. This proceeding is an abuse of process as against Elgersma. This proceeding was not commenced because RCC suffered damages as a result of some wrongful act committed by Elgersma. Rather, RCC decided that it no longer wanted to be in a partnership with TCF and is using this proceeding, including the receivership application it brought at the outset, as a means to put an end to a valid and enforceable contractual relationship.

106. RCC was afforded every opportunity to make the 15 Wellington project work on terms that were acceptable to it. Its conduct beginning in at least November 2021, when it sought to remove TCF as the property manager of 15 Wellington, demonstrates that it had no intention of engaging in good faith. Removing TCF as property manager would have defeated the purpose of the partnership and put it an end. Taking that position was entirely unreasonable and indicative of an ulterior purpose.

107. When RCC was unable to remove TCF as property manager, it then continued to act unreasonably and for an improper purpose by failing to entertain the board reset as proposed by Bergen on February 5, 2021. The board reset would have given RCC exactly what it represented it wanted: it would not have had anymore dealings with Singh. In reality, removing Singh from the 15 Wellington project was not what it wanted. It wanted to end the partnership with TCF entirely, even though it had no contractual basis to do so.

108. RCC commenced this action to attempt to accomplish what it could not by employing tactics on TCC's Board: to extricate itself from the 15 Wellington project for reasons that would not otherwise justify termination of the project under the contractual arrangement between TCF and RCC.

109. Indeed, RCC named Elgersma in this action because, in order to succeed on its oppression claims, it needed to prove that Elgersma, as the independent, tie-breaking vote on TCC's Board, prejudiced or unfairly disregarded RCC's interests. Yet, in the course of RCC's receivership application, RCC's representative acknowledged under oath that Elgersma had at all times acted honestly, in good faith, and as an ally to RCC. Notwithstanding the fact that RCC has acknowledged it has no oppression claim against Elgersma, it continues to pursue oppression claims against him, and even claims of fraud, which are completely baseless by RCC's own admission.

110. Despite the admissions given by RCC, it has now added claims of misrepresentation against Elgersma arising out of facts that RCC had knowledge of at the time it commenced this proceeding but did not plead until after it conceded its oppression claim against Elgersma was meritless. Elgersma respectfully requests an adverse inference on the basis of the timing of the misrepresentation claims, in addition to a finding that this proceeding is an abuse process.

111. Elgersma asks that this action be dismissed with full indemnity costs payable to him.

May 31, 2022

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RIVER CITY CHRISTIAN
REFORMED CHURCH
Plaintiff

-and-
GRAHAM SINGH et al.
Defendants

Court File No. CV-21-00672899-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
PROCEEDING COMMENCED AT
TORONTO**

**STATEMENT OF DEFENCE OF
PETER ELGERSMA**

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Appendix “D”

Court File No. CV-21-00672899-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE**

B E T W E E N:

RIVER CITY CHRISTIAN REFORMED CHURCH

Plaintiff

and

GRAHAM SINGH, PETER ELGERSMA, TRINITY CENTRES FOUNDATION,
TRINITY CENTRES CAMBRIDGE MILLER THOMSON LLP, COLDPOINT
HOLDINGS LTD, CHRISTIAN REFORMED CHURCH IN NORTH AMERICA
– CANADA CORPORATION and CHRISTIAN REFORMED CHURCH
EXTENSION FUND INC.

Defendants

STATEMENT OF DEFENCE OF MILLER THOMSON LLP

1. The Defendant, Miller Thomson LLP (“**Miller Thomson**”), denies or has no knowledge of the allegations contained in any of the paragraphs of the Fresh as Amended Statement of Claim unless specifically admitted herein.
2. The Defendant, Miller Thomson denies the Plaintiff is entitled to any of the relief sought as against it in paragraph 1 of the Fresh as Amended Statement of Claim.
3. Miller Thomson is a national law firm operating across Canada.
4. The Plaintiff, River City Christian Reformed Church is a religious organized based in Cambridge, Ontario. At no time was the Plaintiff a client of Miller Thomson. The Fresh as

Amended Statement of Claim herein therefor fails to disclose any tenable or reasonable cause of action as against MT and ought to be struck out at least insofar as the allegations against this defendant are concerned.

MILLER THOMSON'S RETAINER

5. In or around July 2019, Miller Thomson was initially retained by the Defendant, Trinity Centres Foundation (“**TCF**”) and ultimately undertook the following: (1) the creation of a new non-share capital corporation i.e. the Defendant, Trinity Centres Cambridge (“**TCC**”), (2) the preparation of a unanimous members agreement between TCF, TCC and the Plaintiff, (3) the preparation of a property services agreement between TCC and TCF, (4) the purchase of the Property located at 15 Wellington Street, Cambridge, Ontario (the “**Property**”) and (5) a lease agreement with and option to purchase between TCC and the Plaintiff for the Property. Miller Thomson is bound by solicitor client privilege and has a duty of confidentiality to its clients, TCF and TCC. The claim by the non-client Plaintiff against Miller Thomson in no way waives or affects that privilege which is not Miller Thomson’s to waive.
6. Miller Thomson was not involved in the negotiation or preparation of the Agreement of Purchase and Sale for the Property.
7. This proceeding centres around the acquisition of the Property by TCF and the Plaintiff which includes five related transactions which are:
 - (a) The incorporation of TCC,

- (b) the unanimous members agreement between TCF and the Plaintiff (the “**UMA**”) with respect to the operations of TCC,
 - (c) the lease and option to purchase the Property between TCC and the Plaintiff (the “**lease and option**”);
 - (d) a property services agreement between TCF and TCC (the “**property services agreement**”); and
 - (e) the closing of purchase of the Property by TCC and the financing associated therewith.
8. With respect to the above listed transactions, Miller Thomson acted only for TCF and TCC. Miller Thomson prepared all documentation including the UMA, the lease and option and the property services agreement (collectively the “**Agreements**”) in accordance with the instructions received from its clients.
9. Miller Thomson was not retained or involved in any negotiations or discussions that may have taken place between TCF, the Defendant, Graham Singh, TCC and the Plaintiff with respect to the acquisition of the Property or any of the Agreements executed in relation therein.
10. Save and except for one meeting held on September 19, 2019, which David Tang, a lawyer with Miller Thomson, attended in his capacity as counsel for TCF, Miller Thomson had no contact or communication with the Plaintiff. In fact it was not until the Plaintiff contemplated the within litigation that Miller Thomson received any communication on

behalf of the Plaintiff. Miller Thomson denies that it was ever counsel to the Plaintiff and further denies that it made any representations to the Plaintiff, or its representative Darryl Bierman to that effect.

11. For clarity, Miller Thomson denies the existence of any retainer with the Plaintiff, joint, or otherwise.
12. Miller Thomson made no representations to the Plaintiff whatsoever about the terms of the Agreements or the advisability of entering into same. In fact, Miller Thomson understood that the Plaintiff had retained its own lawyer to review the Agreements.
13. Miller Thomson acted only on instructions from TCF with respect to the preparation of the UMA, as TCF was its client. Miller Thomson specifically denies that it acted for the Plaintiff with respect to the UMA and states that it did not communicate with the Plaintiff in any respect regarding the UMA as to do so would constitute a breach of Miller Thomson's duties to TCF.
14. Without waiving privilege, Miller Thomson states that the calculations offered by the Plaintiff in paragraphs 78-87 of the Fresh as Amended Statement of Claim in support of its claims regarding the lease and the option to purchase the Property are plainly incorrect. The Plaintiff alleges that the cost of the option to purchase is comprised of the "option premium" and the "exercise price", however, a plain reading of the language of the agreement states that the "option premium" is actually deducted from the price. Miller Thomson pleads and relies on the actual wording of the entire agreement and without

limitation specifically section 4.3 of the lease and option agreement which provides credit to the Plaintiff for the \$506,000 that it paid towards the acquisition of the Property.

15. Miller Thomson further states that the Plaintiff has misapplied and/or misunderstood the provisions of the lease relating to the 2% interest on capital cost incurred and soft costs. The Plaintiff alleges that its losses increase with each rent payment plus an accrual of interest on the exercise price at the rate of 2% per year. The terms of the lease and option contain no provision as described by the Plaintiff in paragraph 83 of the Fresh as Amended Statement of Claim.
16. With respect to the property services agreement, Miller Thomson drafted an agreement on the instructions of its clients only.

NO LIABILITY FOR LOSSES CLAIMED

17. As the lawyers for TCF and TCC, Miller Thomson owed no duty to the Plaintiff and was not obligated to advise the Plaintiff to obtain independent legal advice or independent legal representation. In any event, the Plaintiff was represented by a number of sophisticated individuals who were capable of understanding the transactions and/or either did or were well aware of the fact that they should retain their own lawyer.
18. At all material times, Miller Thomson acted in accordance with the standard of care of a reasonably prudent lawyer in the circumstances of their retainer as the lawyers for TCF and TCC. No client of Miller Thomson makes any allegations to the contrary.

19. As the lawyers acting for TCF and TCC, Miller Thomson owed no duty of care, duty of loyalty, contractual or fiduciary duty to the Plaintiffs as a non-client.
20. Miller Thomson denies all allegations of negligence, breach of fiduciary duty, breach of contract or breach of loyalty in connection with the lease and option agreement, the UMA or the property services agreement. Miller Thomson further denies that it was in any conflict of interest. As Miller Thomson was never retained by or act for the plaintiff, no such alleged conflict existed. Miller Thomson owed no duty to the plaintiff and accordingly was not in any position where its duties to it actual clients were in conflict.
21. The Fresh as Amended Statement of Claim fails to plead any facts that indicate a relationship of sufficient proximity existed between Miller Thomson and the Plaintiff, or that Miller Thomson made any representations to the Plaintiff regarding the acquisition of the Property and the related Agreements and that the Plaintiff relied on such representations.
22. If the Plaintiff suffered any damages as a result of the acquisition of the Property and the related Agreements, which is not admitted but specifically denied, the Plaintiff is the author of its own misfortune. Miller Thomson pleads that such damages as set out in the statement of claim are exaggerated and remote. Miller Thomson puts the Plaintiff to the strict proof of all alleged damages.
23. Miller Thomson states that the Plaintiff has pleaded no facts which support an award of punitive damages.

24. Miller Thomson further states that had the Plaintiff taken appropriate steps with respect to reviewing the Agreements, following its counsel's advice or retaining counsel, the Plaintiffs alleged losses would have been avoided. Miller Thomson pleads and relied on the provisions of the *Negligence Act*, R.S.O. 1990, c.N.1.
25. Further, the Plaintiff has misapplied the provisions of the lease and option in the calculation of its damages which has resulted in overly inflated alleged losses.
26. In any event, the damages claimed by the Plaintiff are excessive exaggerated, speculative, unmitigated and/or otherwise unrecoverable at law.
27. Miller Thomson asks that this action be dismissed with costs on a substantial indemnity scale.

May 2, 2022

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Lawyers For The Defendant Christian Reformed Church Extension Fund Inc.

RIVER CITY CHRISTIAN REFORMED CHURCH
Plaintiff

-and- MILLER THOMSON LLP et al.
Defendants

Court File No. CV-21-00672899-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE

PROCEEDING COMMENCED AT
TORONTO

STATEMENT OF DEFENCE OF MILLER THOMSON LLP

GARDINER ROBERTS LLP

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Appendix “E”

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

B E T W E E N:

RIVER CITY CHRISTIAN REFORMED CHURCH

Plaintiff

- and -

GRAHAM SINGH, PETER ELGERSMA, TRINITY CENTRES FOUNDATION, TRINITY CENTRES CAMBRIDGE, MILLER THOMSON LLP, COLDPOINT HOLDINGS LTD, CHRISTIAN REFORMED CHURCH IN NORTH AMERICA – CANADA CORPORATION and CHRISTIAN REFORMED CHURCH EXTENSION FUND INC.

Defendants

STATEMENT OF DEFENCE OF CHRISTIAN REFORMED CHURCH IN NORTH AMERICA – CANADA CORPORATION

1. The Defendant, the Christian Reformed Church in North America – Canada Corporation (“**CRCNA**”), denies or has no knowledge of the allegations contained in the Fresh as Amended Statement of Claim, issued April 8, 2022 (“Claim”), unless otherwise expressly admitted herein.
2. The Defendant, CRCNA, specifically denies that the Plaintiff is entitled to the relief sought against it in paragraph 1 of the Claim.

3. The Defendant, CRCNA, is a corporation incorporated federally and operates in Canada out of the City of Burlington. It is the denominational office of the Christian Reformed Church in Canada. It is not the operating body of the churches and does not become involved in the day to day operation of the churches.
4. The Defendant, the Christian Reformed Church Extension Fund Inc. ("**CRC Extension Fund**") is a non-profit corporation that provides funding for churches. CRC Extension Fund exists separately from CRCNA.
5. The Defendant, Peter Elgersma ("**Mr. Elgersma**"), is an individual who was a Director of Advancement of CRCNA. As it relates to the allegations in the Claim, at no time was Mr. Elgersma acting in a capacity as a representative of CRCNA.

No Involvement or Liability of CRCNA

6. CRCNA pleads that Mr. Elgersma was not acting in any capacity representing CRCNA in his dealings with the Plaintiff or any of the other Defendants.
7. CRCNA pleads that it has no interest in the assets or dealing of local churches, such as River City Christian Reformed Church ("**RCCRC**"). As a local church, RCCRC is free to make its own decisions, including any decisions with respect to ownership of properties. There are no financial or legal ties between CRCNA and the local churches, such as RCCRC.

8. CRCNA denies that it is liable to the Plaintiff for losses suffered as a result of breach of duty (contractual, tortious, equitable, fiduciary, statutory, regulatory or otherwise).
9. At all times, the Plaintiff knew or ought to have known that Elgersma was acting in an independent capacity in his dealings with the Plaintiff and any of the other Defendants, and not as an officer, director or employee of CRCNA.
10. CRCNA denies that it, through Mr. Elgersma or otherwise, encouraged, assisted, or guided RCCRC in its negotiations with respect to the purchase of the property in question.
11. At all material times, CRCNA pleads that RCCRC was a sophisticated party, and was able to understand the arrangements it made in purchasing the property. In addition, RCCRC was able to obtain independent legal advice, but failed or refused to do so.
12. As well, CRCNA denies exploring possible transactions involving church properties or church planters and the other defendants as a means to benefit whatsoever from such transactions.

13. CRCNA further denies having made inaccurate or misleading statements to the Plaintiff, and/or having negligently misrepresented the Plaintiff either through Mr. Elgersma's actions or otherwise. In fact, CRCNA pleads that it was never contacted by and/or spoke with a representative of RCCRC with respect to CRCNA assisting with its decision to purchase the Property.

14. If Mr. Elgersma made any misrepresentations, as alleged and which are denied, such misrepresentations were not made on behalf of CRCNA.

15. Moreover, CRCNA pleads that the Plaintiff did not rely or reasonably rely on such representations.

16. CRCNA denies that Mr. Elgersma gave improper or negligent advice as alleged by the Plaintiff and even if he did, he did not do so on behalf of CRCNA. Moreover, the Plaintiff did not rely, or reasonably rely, on any such advice.

17. There was no special relationship, or any relationship for that matter, between CRCNA and the Plaintiff with respect to financial or transactional advice as alleged in the Claim. Any such relationship is denied.

18. CRCNA denies acting negligently as alleged in the Claim.

19. Any meetings attended by Mr. Elgersma or presentations made, whether with power point or without, were not done in his capacity as a representative of CRCNA.

No Damages to the Plaintiff

20. CRCNA denies that the Plaintiff incurred any damages whatsoever as a result of the allegations against CRCNA and puts the Plaintiff to the strict proof thereof.

21. Alternatively, if the Plaintiff has incurred damages, which is not admitted but specifically denied, such damages are due to the Plaintiff's own actions or inactions, are excessive and remote, and the Plaintiff has not taken proper steps to mitigate its damages.

22. The Defendant pleading claims that the Plaintiff's claims against it are statute barred pursuant to the *Limitations Act, 2002*, or otherwise the Plaintiff is estopped from advancing its claims due to the passage of time and its actions.

23. CRCNA pleads that the Plaintiff's claim ought to be dismissed with costs on a substantial indemnity basis.

Dated: June 10, 2022

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Lawyers for the Defendant,
Christian Reformed Church Extension Fund Inc.

RIVER CITY CHRISTIAN REFORMED CHURCH

- and -

**CHRISTIAN REFORMED CHURCH IN NORTH AMERICA –
CANADA CORPORATION et al**

Plaintiff

Defendants

Court File No. CV-21-672899-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

Proceeding commenced at
Toronto

**STATEMENT OF DEFENCE OF
CHRISTIAN REFORMED CHURCH
IN NORTH AMERICA – CANADA
CORPORATION**

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Lawyers for the Defendant,
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America – Canada Corporation

Appendix “F”

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

BETWEEN :

RIVER CITY CHRISTIAN REFORMED CHURCH

Plaintiff

- and -

**GRAHAM SINGH, PETER ELGERSMA, TRINITY CENTRES FOUNDATION,
TRINITY CENTRES CAMBRIDGE, MILLER THOMSON LLP,
COLDPOINT HOLDINGS LTD., CHRISTIAN REFORMED CHURCH IN NORTH
AMERICA – CANADA CORPORATION and CHRISTIAN REFORMED CHURCH
EXTENSION FUND INC.**

Defendants

**STATEMENT OF DEFENCE OF THE DEFENDANT,
CHRISTIAN REFORMED CHURCH EXTENSION FUND**

1. The Defendant, Christian Reformed Church Extension Fund Inc. ("**Extension Fund**") denies or has no knowledge of each and every allegation in the Fresh as Amended Statement of Claim ("**Claim**"), except as specifically admitted herein.
2. The Extension Fund denies that the Plaintiff is entitled to any of the relief sought against the Extension Fund as pleaded in paragraph 1 of the Claim.

Background

3. The Extension Fund is a non-profit corporation and registered charity that provides funding for capital projects for churches and schools. Its lending criteria limits loans to

no more than 60% of the appraised value of the borrower's property and after it is satisfied that the borrower has the financial stability to service and repay the loan.

4. The Defendant, Peter Elgersma ("**Elgersma**") is a volunteer director of the Extension Fund, but not an employee.
5. Although the Extension Fund has provided capital funds to many Christian Reformed Churches, it operates independently of the Christian Reformed Church in North America – Canada Corporation ("**CRCNA**").
6. The Plaintiff is not a member of the Extension Fund, and the Extension Fund has never provided capital funding to the Plaintiff.
7. At no time has the Extension Fund had any dealings or relationship with the Defendants, Graham Singh, Trinity Centres Foundation, Trinity Centres Cambridge, Miller Thomson LLP, and Coldpoint Holdings Ltd. (collectively "**Other Defendants**"), contractual or otherwise.

The Plaintiff's Allegations against the Extension Fund

8. The Extension Fund denies that it is liable to the Plaintiff for losses suffered as a result of breach of duty (contractual, tortious, equitable, fiduciary, statutory, regulatory or otherwise).
9. The Extension Fund denies that Elgersma was acting in any capacity as an officer, director or employee of the Extension Fund in its dealings with the Plaintiff and Other Defendants, and puts the Plaintiff to the strict proof thereof.

10. The Extension Fund admits that in early dealings with the Plaintiff, the Plaintiff sought a loan from the Extension Fund. On February 4, 2019, the Extension Fund provided the Plaintiff with a commitment letter agreeing to lend the Plaintiff a maximum amount of \$840,000 on the following terms:
 - a. The loan could not exceed 60% of the purchase price;
 - b. The borrower could not further encumber the property with additional mortgage financing; and
 - c. The borrower was required to pay interest monthly and reduce the principal by \$50,000 per annum.
11. The Plaintiff did not accept the loan commitment offer by the Extension Fund, and after that the Extension Fund had no further dealings with the Plaintiff, directly or through Elgersma.
12. At all times, the Plaintiff knew or ought to have known, that Elgersma was acting in an independent capacity in his dealings with the Plaintiff and any of the Other Defendants, and not as an officer, director or employee of the Extension Fund.
13. Furthermore, the Extension Fund is a charitable organization and lender, and not a financial advisor. At no time was the Extension Fund offering financial advisory services to the Plaintiff, whether directly or through Elgersma as its agent.
14. The Extension Fund denies that Elgersma made any untrue, inaccurate or misleading representations as alleged in paragraph 45 of the Claim and puts the Plaintiff to the strict proof thereof.

15. If Elgersma made such misrepresentations, which is not admitted, but strictly denied, such misrepresentations were not made on behalf of the Extension Fund or in Elgersma's capacity as a director, officer or employee of the Extension Fund.
16. In any event, if the Plaintiff relied on such misrepresentations, which is not admitted but strictly denied, such reliance was unreasonable. The Plaintiff knew that the Extension Fund was not involved in the creation of the corporate entities and transactions that are the subject matter of this lawsuit, was not a party to them, and was not in the business of providing financial advice to independent churches, including the Plaintiff.
17. The Extension Fund denies that Elgersma gave improper or negligent advice to the Plaintiff as pleaded in the Claim, and in particular in paragraphs 22 to 48, 63. 64. 68 and 89 and puts the Plaintiff to the strict proof thereof.
18. If Elgersma gave improper or negligent advice to the Plaintiff, which is not admitted but strictly denied, the advice was not given by the Extension Fund or in Elgersma's capacity as an officer, director or employee of the Extension Fund.
19. The Extension Fund denies the allegations of negligence as pleaded in paragraphs 130 to 133 of the Claim and puts the Plaintiff to the strict proof thereof.

Damages

20. The Extension Fund denies that the Plaintiff has suffered any damages as a result of the allegations against the Extension Fund. If the Plaintiff has suffered damages, which is not admitted but denied, such damages were caused by poor business decisions, over-

reaching, being underfunded, failing to obtain independent legal advice, and as a result of its own negligence.

21. The Extension Fund pleads that all damages claimed against it are unrelated to any involvement by the Extension Fund, whether directly or through Elgersma as an officer, director or employee of the Extension Fund, and in any event are excessive, remote, and not compensable at law. Furthermore, the Plaintiff has failed to mitigate its damages.

Limitation Act

22. The Extension Fund further claims that the claims by the Plaintiff against the Extension Fund are statute barred pursuant to the *Limitations Act, 2002*.

Remedy Sought

23. The Extension Fund thereof asks that this Claim be dismissed against it with costs on a substantial indemnity basis.

June 8, 2022

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RIVER CITY CHRISTIAN REFORMED CHURCH

- and -

GRAHAM SINGH ET AL

Plaintiff

Defendants

Court File No.: CV-21-00672899-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

Proceeding commenced at Toronto

**STATEMENT OF DEFENCE OF THE DEFENDANT,
CHRISTIAN REFORMED CHURCH EXTENSION
FUND INC.**

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Christian Reformed Church Extension Fund Inc.

Appendix “G”

Subject: Fwd: Key to access 1st floor washrooms

From: Natasa de Villiers <nat.devilliers@trinitycentres.org>

Sent: Thursday, December 15, 2022 8:02 PM

To: Vanderlaan, Toni <tvanderlaan@deloitte.ca>

Subject: [EXT] Fwd: Key to access 1st floor washrooms

Here is an email that I sent Brian about his access to the entire space. From the sanctuary, they have access to the third floor of the dance studio. From there they can get into the second floor but I did also give him a key.



Natasa de Villiers | Associate | Associé
nat.devilliers@trinitycentres.org | +1 226-600-4510

Trinity Centres Foundation / Fondation des Centres Trinité
1439 rue Sainte-Catherine Ouest | Montréal, QC | H3G 1S6
trinitycentres.org

----- Forwarded message -----

From: **Natasa de Villiers** <nat.devilliers@trinitycentres.org>

Date: Tue, Jul 20, 2021 at 1:42 PM

Subject: Key to access 1st floor washrooms

To: Brian and Natasha Veenstra <mrandsmrsveenstra@gmail.com>

Hi Brian,

I heard from Adam that your group was not able to access the washrooms on the 1st floor outside of studio 1. I apologize for not re-familiarizing you with the space ahead of time. For future reference, if you access the studios from the mezzanine, you can then go down the stairs and open the security door from the inside. There are no locked doors in that path.

I had given you a key to the security door on the first floor back in November, the last time we were on site with Pam. It was newly installed at that time. I will leave another copy for you in the maintenance office on the desk. I will put it in an envelope with your name on it. It will be there by Wednesday of this week. Once you pick it up can you please confirm that you have it so that I can update my records. Do you need more than one? If so, let me know.

If you need anything else, please let me know.

Thanks Brian



Natasa de Villiers | Associate | Associé
nat.devilliers@trinitycentres.org | +1 226-600-4510

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1439 rue Sainte-Catherine Ouest | Montréal, QC | H3G 1S6
trinitycentres.org

Subject: Fwd: Key to access 1st floor washrooms

From: Natasa de Villiers <nat.devilliers@trinitycentres.org>

Sent: Thursday, December 15, 2022 8:03 PM

To: Vanderlaan, Toni <tvanderlaan@deloitte.ca>

Subject: [EXT] Fwd: Key to access 1st floor washrooms

Here is an email confirming that I left him a key



Natasa de Villiers | Associate | Associé
nat.devilliers@trinitycentres.org | +1 226-600-4510

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----- Forwarded message -----

From: **Natasa de Villiers** <nat.devilliers@trinitycentres.org>

Date: Wed, Jul 21, 2021 at 1:48 PM

Subject: Re: Key to access 1st floor washrooms

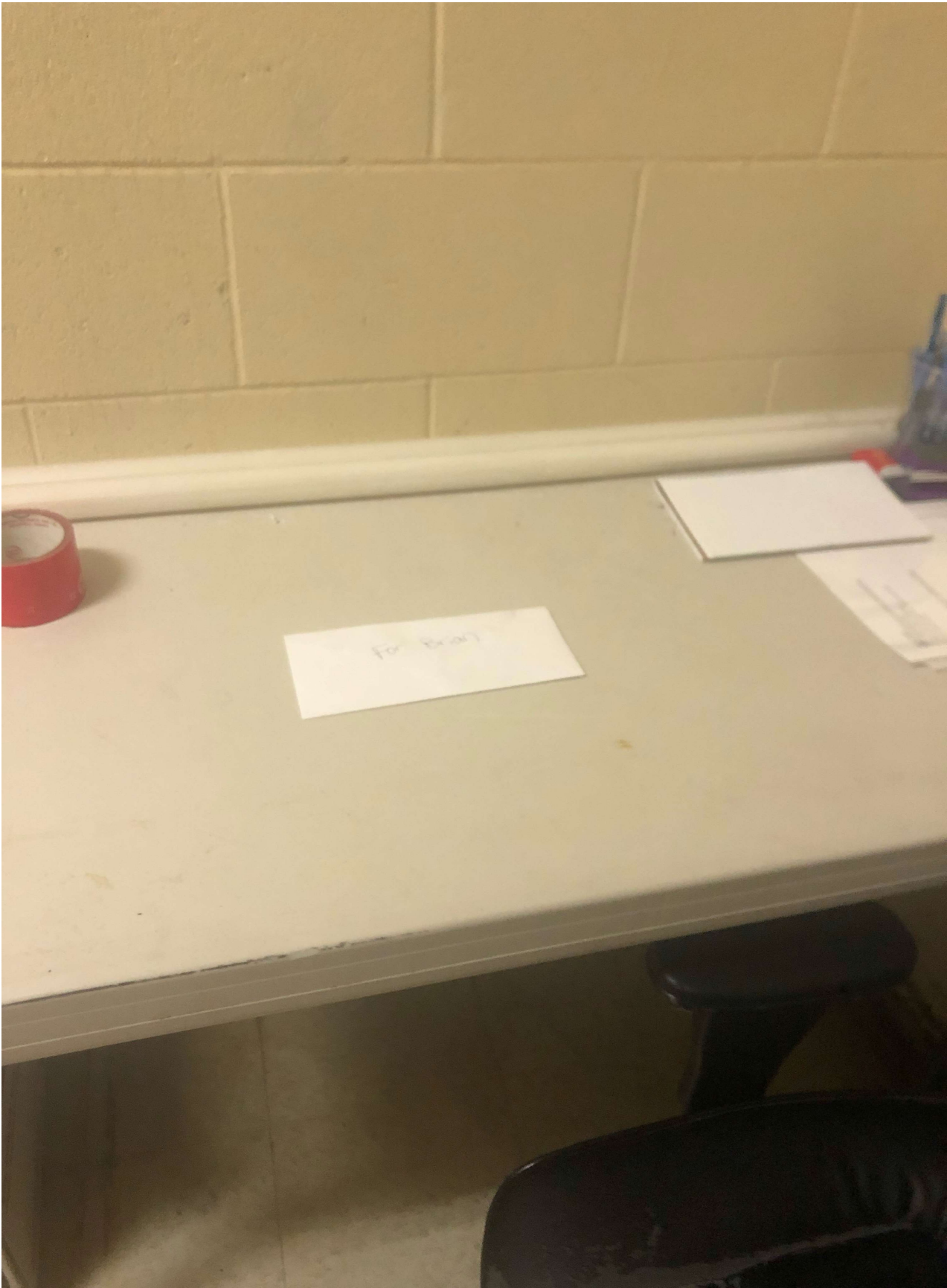
To: Brian and Natasha Veenstra <mrandsmrsveenstra@gmail.com>

Hi Brian.

As promised the key has now been left in an envelope for you on the desk in the maintenance office. See below. I have checked the key to confirm that it does unlock the door at the top of the stairs.

On another note, can you please ensure that after Sunday service all doors leading into the main church space from the admin area are locked? There is the door into the basement as well as the door going into the sanctuary from the first floor at the top of the stairs. When we came to clean on Monday the door to the sanctuary was left unlocked. We have had issues with people coming in from outside through the Wellington st door and hiding out in the sanctuary space. This is why we had to get the existing lock repaired. as you can imagine this poses a threat to all occupants of the building so it is imperative that all doors are locked after use.

Thanks so much!







Sent from my iPhone

On Jul 20, 2021, at 1:42 PM, Natasa de Villiers <nat.devilliers@trinitycentres.org> wrote:

Hi Brian,

I heard from Adam that your group was not able to access the washrooms on the 1st floor outside of studio 1. I apologize for not re-familiarizing you with the space ahead of time. For future reference, if you access the studios from the mezzanine, you can then go down the stairs and open the security door from the inside. There are no locked doors in that path.

I had given you a key to the security door on the first floor back in November, the last time we were on site with Pam. It was newly installed at that time. I will leave another copy for you in the maintenance office on the desk. I will put it in an envelope with your name on it. It will be there by Wednesday of this week. Once you pick it up can you please confirm that you have it so that I can update my records. Do you need more than one? If so, let me know.

If you need anything else, please let me know.

Thanks Brian



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Appendix “H”

May 24, 2022

PERSONAL & CONFIDENTIAL

VIA EMAIL

Weintraub Erskine Huang LLP
Suite 501 – 365 Bay Street
Toronto, ON M5H 2V1

Attention: Sara J. Erskine

Dear Ms. Erskine:

**Re: River City Christian Reformed Church (“RCC”) v. Graham Singh, et al
Court File No. CV-21-00000281-0000**

We refer to your letter dated April 29, 2022 in respect of the report of Deloitte Restructuring Inc., in its capacity as Court-appointed Receiver (the “**Receiver**”) of Trinity Centres Cambridge (“**TCC**”) dated April 12, 2022 (the “**Report**”). We respond as follows in respect of the points raised:

1. It is the Receiver’s understanding that 15 Wellington Street, Cambridge (the “**Property**”) is a heritage designated property by the city of Cambridge/Galt, not by the *Ontario Heritage Act*. You are correct in your statement that the property is zoned N1 Institutional. The Receiver will provide an update in its next report. The realtor engaged to market and sell the Property is aware of the correct property designation.
2. Although the Receiver is under no obligation to provide the information requested, we have enclosed a detailed listing (the “**Statement Detail**”) of the items noted in the Statement of Receipts and Disbursements. The Statement Detail evidences the rent received to date, the expenses paid in respect of the building and includes all applicable taxes. TCF, as property manager, has not yet been paid for their services as at the time of the Report.
3. The Receiver has continued to utilize the services of TCF to manage the Property since its appointment. TCF has been very helpful to the Receiver to maintain the status quo given their familiarity with the Property, its tenants and local trades people. A formal review for alternate property managers was not undertaken given the unique nature of the Property and the services required by the Receiver.

4. In addition to the day-to-day general management and maintenance of the Property, TCF has been responsible for managing all repairs and service visits to the site, they have assisted with security issues, managing COVID-19 protocols, they prepared the Property for sale, complied the data room, have been assisting potential purchasers with inspections, have attended all of the showings of the Property with the real estate agent, have been providing records and documentation to the Receiver and responding to a variety of general inquiries by stakeholders. It is the view of the Receiver that all of these activities have been essential to maintaining and maximizing the value of the Property and ensuring that the Property is in a condition that is safe for the tenants and the potential purchasers visiting the site. The involvement of TCF has significantly reduced the costs that would have been incurred by the Receiver's team if they had taken on these responsibilities themselves.
5. TCF has not been paid for any amounts in addition to the amounts set out in the Order of Justice Sloan, although the nature of the activities and work that TCF provides has changed from what was contemplated in the original agreement with TCC.
6. Pursuant to the terms of the Property Management Agreement (the terms of which are disputed by RCC), TCF is entitled to be paid "20% of all collected monthly revenues to 15 Wellington Account". This amount, if paid pursuant to the Property Management Agreement, would exceed the amount currently paid to TCF. It is the Receiver's position that in its experience, the account contemplated to be paid to TCF is reasonable in the circumstances.
7. Your letter asserts that the Receiver did not respond to your letter dated November 22, 2021. That is not correct. We responded via email on November 23, 2021 and set up a conference call to discuss your letter on November 24, 2021. At that conference call, the Receiver walked through its detailed analysis of the appropriate rent to be paid by RCC. RCC advised that they would consider the information provided by the Receiver. At this same time, the Receiver was presented with an offer to purchase the Property and these discussions were not advanced.
8. The Receiver continues to contend that RCC is not paying market rent and is liable for the payment of all taxes, utilities and maintenance in accordance with the terms of its lease.
9. As is typical, the request to freeze the accounts of RCC was made immediately following the appointment of the Receiver. The funds were sent to the Receiver in the form of a cheque which was deposited by the Receiver on October 13, 2021.
10. Your letter requests copies of all of the service agreements and contracts in the Receiver's possession in relation to TCC. Please confirm what agreements RCC is looking for and the purpose for the request. The Receiver is trying to avoid incurring unnecessary costs.



Thornton Grout Finnigan LLP

3.

Further to our recent email, please provide your proposed revisions to the Termination Agreement as soon as possible.

Yours truly,

Thornton Grout Finnigan LLP

A handwritten signature in black ink, appearing to be 'Leanne M. Williams', written over a circular scribble.

Leanne M. Williams

cc: Toni Vanderlaan, Deloitte

RIVER CITY CHRISTIAN REFORMED CHURCH

and

**GRAHAM SINGH, PETER ELGERSMA, TRINITY CENTRES
FOUNDATION, TRINITY CENTRES CAMBRIDGE, MILLER
THOMSON LLP and COLDPOINT HOLDINGS LTD.**

Plaintiff

Defendants

Court File No. CV-21-00672899-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

Proceeding commenced at Kitchener, Ontario

**SUPPLEMENTAL THIRD REPORT OF
DELOITTE RESTRUCTURING INC.,
IN ITS CAPACITY AS RECEIVER AND MANAGER**

DECEMBER 16, 2022

THORNTON GROUT FINNIGAN LLP

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Toronto, ON M5K 1K7

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Lawyers for the Court-Appointed Receiver,
Deloitte Restructuring Inc.