

**ONTARIO
SUPERIOR COURT OF JUSTICE
(IN BANKRUPTCY AND INSOLVENCY)
(COMMERCIAL LIST)**

**IN THE MATTER OF THE *BANKRUPTCY AND INSOLVENCY ACT*,
RSC 1985, c. B-3, AS AMENDED**

**IN THE MATTER OF THE NOTICE OF INTENTION TO
MAKE A PROPOSAL OF KUK-ILL JOHN KIM**

**MOTION RECORD
(Returnable April 28, 2022)**

April 26, 2022

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and Myoung-Ja Mary Kim**

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AND TO: **CITY OF TORONTO**
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AND TO: LAURENTIAN TRUST OF CANADA INC. IN TRUST FOR SELF-DIRECTED RRSP 710467
385 Spadina Road
Toronto, ON M5T 2G6

-and-

c/o B2B Bank
199 Bay Street, Suite 600
P.O. Box 279, STN Commerce Court
Toronto, ON M5L 0A2

Fax: 1-866-947-7405
questions@b2bbank.com

AND TO: ALBERT GELMAN INC.
100 Simcoe Street, Suite 125
Toronto, ON M5H 3G2

Tom McElroy
tmcelroy@albertgelman.com

Trustee

**ONTARIO
SUPERIOR COURT OF JUSTICE
(IN BANKRUPTCY AND INSOLVENCY)
(COMMERCIAL LIST)**

**IN THE MATTER OF THE *BANKRUPTCY AND INSOLVENCY ACT*,
RSC 1985, c. B-3, AS AMENDED**

**IN THE MATTER OF THE NOTICE OF INTENTION TO
MAKE A PROPOSAL OF KUK-ILL JOHN KIM**

I N D E X

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TAB 1

**ONTARIO
SUPERIOR COURT OF JUSTICE
(IN BANKRUPTCY AND INSOLVENCY)
(COMMERCIAL LIST)**

**IN THE MATTER OF THE *BANKRUPTCY AND INSOLVENCY ACT*,
RSC 1985, c. B-3, AS AMENDED**

**IN THE MATTER OF THE NOTICE OF INTENTION TO
MAKE A PROPOSAL OF KUK-ILL JOHN KIM**

NOTICE OF MOTION

Kuk-Ill John Kim (“**John Kim**”) will make a motion to a judge presiding over the Commercial List on Thursday, April 28, 2022 at 12:00 p.m., or as soon after that time as the motion can be heard, by judicial video conference at Toronto, Ontario.

PROPOSED METHOD OF HEARING: This motion is to be heard orally via Zoom video conference, the details of which are attached as **Schedule “A”**.

1. **THE MOTION IS FOR** an Order, substantially in the form attached hereto as **Schedule “B”**:

- (a) if necessary, abridging the time for service and filing of the notice of motion and motion record in respect of this motion, validating same such that this motion is properly returnable on the day it is heard, and dispensing with further service of same;
- (b) extending the time for the filing of a proposal by John Kim and the time for the filing of a proposal by Myoung-Ja Mary Kim (“**Mary Kim**” and, together with John Kim, the “**Debtors**”) by a period of forty-five (45) days, up to and including July 2, 2022;

- (c) administratively consolidating the estate and court files of the Notice of Intention to Make a Proposal proceedings of the Debtors (collectively the “**NOI Proceedings**”);
- (d) granting a super-priority charge (the “**Administration Charge**”) over the property, municipally known as 385 Spadina Road, Toronto, Ontario (the “**Property**”) for the benefit of the Proposal Trustee, counsel to the Proposal Trustee (if any), and counsel to the Debtors, in the maximum aggregate amount of \$125,000.00 as security for their professional fees and disbursements incurred at the standard rates and charges of the Proposal Trustee and such counsel, ranking in priority to all other security interests, trusts, liens, charges, encumbrances, claims of secured creditors, statutory or otherwise;
- (e) authorizing the Debtors to enter into and perform a listing agreement with a commercial real estate broker to be determined in consultation with the Proposal Trustee for the purpose of marketing and ultimately, entering into and completing an agreement of purchase and sale for the Property, subject to approval by this Court.
- (f) approving the First Report to the Court of AGI in its capacity as Proposal Trustee, to be filed, and the Proposal Trustee’s activities set out therein; and,
- (g) such further and other relief as counsel may advise and this Court may permit.

2. **THE GROUNDS FOR THE MOTION ARE:**

BACKGROUND

- (a) The Debtors are individuals resident in the City of Toronto, in the Province of Ontario, and are spouses of each other;
- (b) On April 18, 2022, the Debtors each filed notices of intention to make a proposal (“**NOI**”) under Division I, Part III of the *Bankruptcy and Insolvency Act*, RSC 1985, c. B-3 (the “**BIA**”);

- (c) The Debtors' primary business asset is the Property, which is a vacant commercial property;
- (d) The Property had been used historically to conduct a dry-cleaning business and is the subject of two court actions relating to alleged environmental contamination (the "**Environmental Litigation**");
- (e) As a result, the Property has remained vacant for approximately 9 years;
- (f) The Debtors' intend to sell the Property with a commercial listing agent and to utilize the proceeds derived therefrom to make a proposal to their creditors;

EXTENSION OF TIME

- (g) Pursuant to subsection 50.4(8) of the *BIA*, the Debtors have until May 18, 2022 to file a proposal unless they obtain an extension of time to file a proposal under subsection 50.4(9) prior to that date;
- (h) The Debtors have acted and are acting in good faith and with due diligence. The requested 45-day extension of time to file a proposal will provide the Debtors with time to speak to and retain a realtor, obtain an appraisal of the Property, respond to any issues raised by said realtor or said appraisal, solicit offers with respect to the Property, and continue working with the Proposal Trustee on a viable proposal;
- (i) No creditor will be materially prejudiced if the extension sought is granted;

ADMINISTRATIVE CONSOLIDATION

- (j) The Debtors jointly own the Property;
- (k) All of the known creditors of the Debtors are in respect of debts or liabilities that are joint and several;
- (l) Each of the Debtors have filed Notices of Intention to Make a Proposal resulting in two separate Court File and Estate numbers;

- (m) Consolidation of these NOI Proceedings with respect to court, administration and professional costs will ensure the most expeditious and least expensive determination of these NOI Proceedings, and will facilitate the handling of this restructuring in an orderly and cost-effective manner;

APPROVAL OF LISTING AGREEMENT

- (n) The Debtors, in consultation with the Proposal Trustee and legal counsel, have concluded that the most effective way of realizing on the value of the Property and allowing for a viable proposal to creditors is to solicit a sale of the Property through a commercial real estate agent and a standard form listing agreement and to market the Property on the Multiple Listing Service;
- (o) Neither the proposed listing agreement nor the orders sought herein allow the Debtors to effect a sale of the Property at this time, and the Debtors will seek approval of any transaction at a later date;

ADMINISTRATION CHARGE

- (p) As the Property is presently vacant and the Debtors have limited income, both the Debtors and the Proposal Trustee request that this Court grant an Administration Charge in the amount of \$125,000.00 to secure the payment of the fees of the Proposal Trustee and the Debtors' counsel;
- (q) The Administration Charge is necessary, as the professionals whose fees are to be secured by the Administration Charge have played and will continue to play a critical role in the Debtors' restructuring;
- (r) At this time, Proposal Trustee does not have independent counsel but should it be required, it is appropriate for the requested Administration Charge to be available for the benefit of independent counsel to the Proposal Trustee;
- (s) There is a charge in favour of Laurentian Trust of Canada Inc. In Trust (for self-directed RRSP 710767) ("**Laurentian Trust**") registered on June 26, 1997 against title to the Property;

- (t) Notice of this motion has been served on Laurentian Trust;
- (u) Notice of this motion has also been served on the plaintiffs in the Environmental Actions;
- (v) The Administration Charge will have priority over all other encumbrances;
- (w) The Proposal Trustee is supportive of the proposed Administration Charge;

STATUTORY PROVISIONS

- (x) The *Bankruptcy and Insolvency Act*, RSC 1985, c. B-3, including sections 50.4(9), 64.2, 65.13 and 183(1) thereof;
- (y) The *Rules of Civil Procedure*, RRO 1990, Reg. 194, including rules 2.03, 3.02 and 6 thereof; and
- (z) Such other and further grounds as counsel may advise and this Honourable Court may permit.

3. **THE FOLLOWING DOCUMENTARY EVIDENCE** will be used at the hearing of this motion:

- (a) The Affidavit of Kuk-Il John Kim, sworn April 26, 2022, and exhibits thereto;
- (b) The First Report of the Proposal Trustee, to be filed separately; and
- (c) Such further and other materials as counsel may advise and the Court may permit.

Dated: April 26, 2022

WEIRFOULDS LLP
Barristers & Solicitors
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TD Bank Tower, P.O. Box 35
Toronto, ON M5K 1B7

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Lawyers for Kuk-Ill John Kim and
Myoung-Ja Mary Kim

Schedule “A”

SCHEDULE “A”

ZOOM Coordinates for Hearing

Philip Cho (he/him) is inviting you to a scheduled Zoom meeting.

Time: Apr 28, 2022 12:00 PM Eastern Time (US and Canada)

Join Zoom Meeting

<https://zoom.us/j/6657580541>

Meeting ID: 665 758 0541

One tap mobile

+13017158592,,6657580541# US (Washington DC)

+13126266799,,6657580541# US (Chicago)

Dial by your location

+1 301 715 8592 US (Washington DC)

+1 312 626 6799 US (Chicago)

+1 346 248 7799 US (Houston)

+1 646 558 8656 US (New York)

+1 669 900 9128 US (San Jose)

+1 253 215 8782 US (Tacoma)

Meeting ID: 665 758 0541

Find your local number: <https://zoom.us/u/anz9EarjY>

Schedule “B”

**ONTARIO
SUPERIOR COURT OF JUSTICE
(IN BANKRUPTCY AND INSOLVENCY)
(COMMERCIAL LIST)**

THE HONOURABLE) THURSDAY THE 28TH
)
JUSTICE CONWAY) DAY OF APRIL, 2022

**IN THE MATTER OF THE *BANKRUPTCY AND INSOLVENCY ACT*,
RSC 1985, c. B-3, AS AMENDED**

**IN THE MATTER OF THE NOTICE OF INTENTION TO
MAKE A PROPOSAL OF KUK-ILL JOHN KIM**

ORDER

(Administrative Consolidation, Administration Charge and other relief)

THIS MOTION, made by Kuk-Ill John Kim (the “**John Kim**”) for administrative consolidation, an administration charge and other relief, was heard this day by videoconference.

ON READING the Motion Record of the John Kim, including the Affidavit of John Kim sworn on April 26, 2022 and the exhibits thereto, and the First Report of Albert Gelman Inc. (“**AGI**”) in its capacity as proposal trustee (the “**Proposal Trustee**”), and on hearing the submissions of counsel for John Kim and Myoung-Ja Mary Kim (“**Mary Kim**”, and together with John Kim, the “**Debtors**”) and such other counsel as were present as listed on the counsel slip, no one appearing for any other person on the service list, although properly served as appears from the affidavit of *** sworn April *, 2022, filed:

SERVICE

1. **THIS COURT ORDERS** that the time for service and filing of the notice of motion and the motion record is hereby abridged and validated so that this motion is properly returnable today and hereby dispenses with further service thereof.

EXTENSION OF TIME

2. **THIS COURT ORDERS** that the time for the filing of a proposal by John Kim and the time for the filing of a proposal by Mary Kim are hereby extended in accordance with section 50.4(9) of the *Bankruptcy and Insolvency Act* (the “**BIA**”) by a period of forty-five (45) days, up to and including July 2, 2022.

ADMINISTRATIVE CONSOLIDATION

3. **THIS COURT ORDERS** that, without prejudice to the right of any party to seek or oppose substantive consolidation in respect of any or all of the following proceedings:

- (a) In the Matter of the Notice of Intention to Make a Proposal of Kuk-Il John Kim, Estate and Court File No. 31-2822607; and
- (b) In the Matter of the Notice of Intention to Make a Proposal of Myoung-Ja Mary Kim, Estate and Court File No. 31-2822601;

(collectively the “**NOI Proceedings**”)

the NOI Proceedings shall be procedurally consolidated and the Proposal Trustee shall be authorized and directed to administer the NOI Proceedings on a consolidated basis for all purposes in carrying out its administrative duties and other responsibilities as trustee under the BIA including, without limitation, the following:

- (a) Sending notices to creditors of the Debtors pursuant to one consolidated notice;
- (b) Calling and conducting any meetings of creditors of the Debtors pursuant to one combined advertisement and meeting;
- (c) Issuing consolidated reports in respect of the estates of the Debtors;
- (d) Preparing, filing, advertising and distributing any and all filings and/or notices relating to the administration of the estates of the Debtors on a consolidated basis; and

- (e) Bringing motions to this Honourable Court on a consolidated basis.

4. **THIS COURT ORDERS** that the single Court File Number 31-2822607 (the “**Consolidated Court File**”) and the following title of proceeding shall be assigned to the NOI Proceedings:

**IN THE MATTER OF THE *BANKRUPTCY AND INSOLVENCY ACT*,
RSC 1985, c. B-3, AS AMENDED**

**IN THE MATTER OF THE NOTICE OF INTENTION TO
MAKE A PROPOSAL OF KUK-ILL JOHN KIM**

**AND IN THE MATTER OF THE NOTICE OF INTENTION TO
MAKE A PROPOSAL OF MYOUNG-JA MARY KIM**

5. **THIS COURT ORDERS** that a copy of this Order shall be filed by the Debtors in the court file for each of the NOI Proceedings but that any other document required to be filed in any of the NOI Proceedings shall hereafter only be required to be filed in the Consolidated Court File.

6. **THIS COURT ORDERS** that for avoidance of doubt, any motion, application or action, including the herein motion, in respect of the Debtors or any of them shall be brought and filed in the Consolidated Court File and if so brought and filed, it shall be deemed brought and filed in each of the NOI Proceedings, as appropriate, without prejudice to any rules of civil procedure or otherwise that are applicable.

7. **THIS COURT ORDERS** that the procedural consolidation of the NOI Proceedings shall not:

- (a) cause either of the Debtors to be liable for any claim for which they otherwise are not liable; or
- (b) affect the Proposal Trustee’s or a creditor’s rights to seek to disallow any claim, including on the basis that such claim is a duplicative claim.

ADMINISTRATION CHARGE

8. **THIS COURT ORDERS** that the Proposal Trustee, counsel to the Proposal Trustee (if any), and counsel to the Debtors shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges, by the Debtors as part of the costs of these NOI Proceedings. The Debtors are hereby authorized but not required to pay the accounts of the Proposal Trustee, counsel to the Proposal Trustee (if any) and counsel to the Debtors on a monthly basis.

9. **THIS COURT ORDERS** that the Proposal Trustee, its legal counsel (if any) and counsel to the Debtors shall pass their accounts from time to time, and for this purpose the accounts of the Proposal Trustee and its legal counsel (if any) are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

10. **THIS COURT ORDERS** that the Proposal Trustee, counsel to the Proposal Trustee (if any) and counsel to the Debtors shall be entitled to the benefit of and are hereby granted a charge (the “**Administration Charge**”) on the property, municipally known as 385 Spadina Road, Toronto, Ontario (the “**Property**”), which charge shall not exceed an aggregate amount of \$125,000, as security for their professional fees and disbursements incurred at the standard rates and charges of the Proposal Trustee and such counsel, both before and after the making of this Order in respect of the NOI Proceedings.

11. **THIS COURT ORDERS** that the Administration Charge shall constitute a charge on the Property and such Administration Charge shall rank in priority to all other security interests, trusts, liens, charges, encumbrances, claims of secured creditors, statutory or otherwise.

12. **THIS COURT ORDERS** that the filing, registration or perfection of the Administration Charge shall not be required, and that the Administration Charge shall be valid and enforceable for all purposes, including as against any right, title or interest filed, registered, recorded or perfected subsequent to the Administration Charge coming into existence, notwithstanding any such failure to file, register, record or perfect.

APPROVAL OF LISTING AGREEMENT

13. **THIS COURT ORDERS** that the Debtors (or either of them) are hereby authorized to enter into and perform a standard form listing agreement with a licensed real estate agent, with such variations as the Proposal Trustee may approve, and to do all things necessary or attendant to the same, for the purpose of listing, marketing and selling the Property.

APPROVAL OF FIRST REPORT

14. **THIS COURT ORDERS** that the First Report of the Proposal Trustee, and the actions, conduct and activities of the Proposal Trustee as set out therein, be and are hereby approved.

GENERAL

15. **THIS COURT ORDERS** that any interested party (including the Debtors and the Proposal Trustee) may apply to this Court to vary or amend this Order on not less than seven (7) days notice to any other party or parties likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

16. **THIS COURT ORDERS** that notwithstanding Rule 59.05, this Order is effective from 12:01 a.m. on the date that it is made and is enforceable without any need for entry and filing.

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

Proceeding commenced at TORONTO

ORDER

**(Re Administrative Consolidation, Sale Approval,
Administration Charge and Related Relief)**

WeirFoulds LLP

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Toronto, ON M5K 1B7

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Lawyers for Kuk-Ill John Kim and Myoung-Ja Mary Kim

**IN THE MATTER OF THE BANKRUPTCY AND
INSOLVENCY ACT, RSC 1985, c. B-3, AS AMENDED**

Court File No. 31-2822607
Estate File No. 31-2822607

**IN THE MATTER OF THE NOTICE OF INTENTION TO
MAKE A PROPOSAL OF KUK-ILL JOHN KIM**

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

Proceeding commenced at TORONTO

NOTICE OF MOTION

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Lawyers for Kuk-Ill John Kim and Myoung-Ja Mary Kim

TAB 2

ONTARIO
SUPERIOR COURT OF JUSTICE
(IN BANKRUPTCY AND INSOLVENCY)
(COMMERCIAL LIST)

IN THE MATTER OF THE *BANKRUPTCY AND INSOLVENCY ACT*,
RSC 1985, c. B-3, AS AMENDED

IN THE MATTER OF THE NOTICE OF INTENTION TO
MAKE A PROPOSAL OF KUK-ILL JOHN KIM

AFFIDAVIT OF ANN WON

I, **Ann Won**, of the City of Toronto, in the Province of Ontario, **MAKE OATH**

AND SAY:

1. I am fluent in the languages of English and Korean.
2. I have truly and faithfully interpreted and explained the contents of the attached affidavit to the deponent Kuk-Ill John Kim, and I will truly and faithfully interpret the oath about to be administered to him. Attached as **Exhibit "1"** is a copy of the narrative portion of the Affidavit of Kuk-Ill John Kim to be sworn.

SWORN BEFORE ME in the City of Toronto in the Province of Ontario, before me at the City of Toronto in the Province of Ontario on this 26th day of April, 2022.




Commissioner for Taking Affidavits etc.



ANN WON

Jae Hyon Cho
Barrister & Solicitor, Vaturi & Cho LLP
1110 Finch Avenue West, Suite 310,
Toronto, Ontario, M3J 2T2
Tel: (416) 661-4529 Fax: (416) 661-5529

This is **Exhibit "1"** referred to
in the Affidavit of Ann Won
sworn this 26th day of April, 2022.



A Commissioner for Taking Affidavits, etc.

Jae Hyon Cho
Barrister & Solicitor, Vaturi & Cho LLP
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**ONTARIO
SUPERIOR COURT OF JUSTICE
(IN BANKRUPTCY AND INSOLVENCY)
(COMMERCIAL LIST)**

**IN THE MATTER OF THE *BANKRUPTCY AND INSOLVENCY ACT*,
RSC 1985, c. B-3, AS AMENDED**

**IN THE MATTER OF THE NOTICE OF INTENTION TO
MAKE A PROPOSAL OF KUK-ILL JOHN KIM**

AFFIDAVIT OF KUK-IL JOHN KIM

I, **KUK-IL JOHN KIM**, of the City of Toronto, in the Province of Ontario,

MAKE OATH AND SAY:

1. I am an individual resident in the Province of Ontario. On April 18, 2022, I filed a notice of intention to make a proposal (“**NOI**”) under Division I, Part III of the *Bankruptcy and Insolvency Act*, RSC 1985, c. B-3 (the “**BIA**”).
2. That same day, my wife, Myoung-Ja Mary Kim (“**Mary**”), also filed a NOI under Division I, Part III of the *BIA*. Mary is also resident in the Province of Ontario. I will use “we” and “our” to refer to Mary and myself throughout this Affidavit.
3. Albert Gelman Inc. (“**AGI**”) has agreed to act as proposal trustee in respect of the proceedings commenced by the NOIs filed by Mary and me (the “**Proposal Trustee**” and the “**NOI Proceedings**”). Copies of the certificates of filing NOIs are attached as **Exhibit “1”** and “**2**”.

BACKGROUND

4. Our sole asset is a piece of commercial property municipally known as 385 Spadina Road, Toronto, Ontario (the “**Property**”). For the reasons that I will explain below, the Property is presently vacant.

5. Historically the Property was used to conduct a dry-cleaning business. From June 1989, Mary and I operated a dry-cleaning business at the Property, until we sold the business in February 2003. Prior to June 1989, other parties operated a dry-cleaning business at the Property.

6. Initially we leased the ground floor premises to operate the dry-cleaning business from the prior owner of the Property. In February 1994, we purchased the Property.

7. In February 2003, we sold the dry-cleaning business to another proprietor and leased the Property to this proprietor until about January 31, 2013. However, this proprietor ultimately filed for bankruptcy. Since January 31, 2013, the Property has remained vacant due to allegations of environmental contamination originating from the Property.

8. To the best of our knowledge, there are no orders issued in respect of the Property in relation to the alleged environmental contamination.

9. On July 10, 2009, Lee-Mar Developments Limited issued a Statement of Claim against us, among others, bearing Court File No. CV-09-380882 (the “**Lee-Mar Action**”, and together with the Bosung Action, the “**Environmental Litigation**”), in which the Plaintiff, which is the registered owner of a property located near our Property, makes similar allegations as alleged in the Bosung Action. A copy of the Statement of Claim in the Lee-Mar Action is attached hereto

and marked as **Exhibit “3”**. A copy of the Statement of Defence and Crossclaim in the Lee-Mar Action is attached hereto and marked as **Exhibit “4”**.

10. On November 17, 2014, Bosung Investments Inc., Byoung Ok Han and Jae Yol Han commenced an action bearing Court File No. CV-14-00516260-0000 (the “**Bosung Action**”) against us, and others, in which the Plaintiffs, who are the registered owners of a property located near our Property, allege, among other things, that the dry-cleaning business operated from the Property caused chemicals to migrate onto its property. A copy of the Statement of Claim in the Bosung Action is attached hereto and marked as **Exhibit “5”**. A copy of our Statement of Defence and Crossclaim is attached hereto and marked as **Exhibit “6”**.

11. As a result of the Environmental Litigation, we have not leased the Property due to the potential liability that may be attributable to any person in possession of the Property while the Environmental Litigation remains outstanding.

12. Professional fees associated with defending the Environmental Litigation have been funded through a series of personal loans provided by our daughter’s now ex-husband, Mr. Jussi Westergreen. However, neither Mr. Westergreen or our daughter are prepared to continue advancing funds to continue defending the Environmental Litigation.

13. As a result, we have decided to commence these NOI Proceedings to make a formal proposal under the BIA. We intend to sell the Property with a commercial real estate listing agent, and then to utilize the proceeds of sale to fund a proposal to our creditors.

KNOWN CREDITORS

14. The known creditors of Mary and me are:

- (a) Hyon-Cheong Sally Westergren, our daughter, who took an assignment of a promissory note in favour of her former spouse, Jussi Westergren;
- (b) Willms & Shier Environmental Lawyers LLP for unpaid legal accounts; and,
- (c) City of Toronto for unpaid property taxes in relation to the Property.

15. We also note that the plaintiffs in the Environmental Litigation have contingent claims against us. In all cases, the debts and liabilities are joint between Mary and me.

16. Registered on title to the Property is a charge in favour of Laurentian Trust of Canada Inc. in trust for Self-Directed RRSP 710467 in the amount of \$70,000, registered on June 26, 1997 (the “**Laurentian Charge**”), a copy of which is attached as **Exhibit “7”**. We had not realized that this Laurentian Charge remained on title to the Property until we were advised in relation to the NOI Proceedings.

17. We are in the process of obtaining information about the status of the Laurentian Charge but at the time of this affidavit, we only know, based on advice from our lawyers at WeirFoulds LLP, that Laurentian Trust of Canada is now operating as B2B Bank. We believe that this Laurentian Charge should be discharged because we no longer hold any RRSPs as they were collapsed and cashed at the time the Environmental Litigation started in or about 2009.

PROCEDURAL CONSOLIDATION

18. Mary and I own the Property in fee simple as joint tenants. We have always operated our commercial property business together in our individual capacities. As stated above, to the best of my knowledge, all our debts or liabilities are joint and several.

19. However, as individuals, we were required to file separate NOIs. I understand from the Proposal Trustee that without approval from the Court to consolidate the separate NOI Proceedings, then separate motions, filings, notices, and other required steps would have to be done in each NOI Proceeding.

20. As a result, we are seeking an order consolidating the administration of the NOI Proceedings. Consolidating our NOI Proceedings will be more efficient and less expensive, and will relieve us, the Court and the Proposal Trustee of the administrative burden of two separate NOI Proceedings. I believe that consolidating the NOI Proceedings will lessen the costs and impact on creditors and stakeholders and will not prejudice any person.

ADMINISTRATION CHARGE

21. The Property is presently vacant, and Mary and I have limited income. As a result, we are not in a position to pay the fees of our counsel and the Proposal Trustee on an ongoing basis.

22. Accordingly, Mary and I are seeking an order granting a priority charge (the “**Administration Charge**”) securing a maximum of \$125,000.00 in respect of the professional fees incurred in relation to the NOI Proceedings, including those of our counsel, the Proposal Trustee and if necessary, counsel to the Proposal Trustee. We propose that this Administration Charge have priority ahead of all creditors, including secured creditors.

23. The professionals whose fees will be secured by the Administration Charge have played and will continue to play a critical role in the NOI Proceedings. Without the security of the Administration Charge to protect the fees that will be incurred by the professionals, I understand

that they are not prepared to continue to act. I believe that the Administration Charge is necessary to ensure their continued participation.

24. Notice of this motion has been served on Laurentian Trust of Canada (care of B2B Bank).

25. I am advised by the Proposal Trustee and verily believe that it supports the proposed Administration Charge.

APPROVAL OF LISTING AGREEMENT

26. Mary and I, in consultation with our lawyers and with the Proposal Trustee, have concluded that the most effective way to realize the value of the Property and allow for a viable proposal to our creditors is to solicit a sale of the Property through a listing agreement and to market the property on the Multiple Listing Service.

27. In consultation with the Proposal Trustee, we believe that a sale of the Property by us would be more cost-effective and could attract better offers than if the Property were sold by a trustee in bankruptcy.

28. We accordingly request that this Court authorize us to enter into and perform a listing agreement with a commercial real estate broker to be determined in consultation with the Propsoal Trustee, for the purpose of marketing and ultimately, entering into and completing an agreement of purchase and sale for the Property, subject to approval by this Court.

EXTENSION OF TIME

29. I understand that Mary and I, having filed NOIs on April 18, 2022, have until May 18, 2022 to file a proposal unless we obtain an extension of time to file a proposal prior to that date.

30. We request that this Court grant us a 45-day extension to file a proposal. We have and will continue to act in good faith and with due diligence with respect to these NOI Proceedings. I believe that this extension will give us the time we need to speak to and retain a commercial realtor, obtain an appraisal in respect of the Property, respond to any issues raised by that realtor and/or the appraisal, solicit offers with respect to the Property, and work with the Proposal Trustee on a viable proposal to present to the creditors.

31. I do not believe that any creditor will be prejudiced by the extension sought.

32. I understand that the Proposal Trustee will be filing a Report to the Court supporting our request for the relief sought.

33. I swear this Affidavit in support of the within motion and for no other or improper purpose.

SWORN BEFORE ME in the City of Toronto in the Province of Ontario on this 26th day of April, 2022 and having been interpreted to the deponent in my presence by **Ann Won** who took an oath before me to interpret the affidavit correctly.

Commissioner for Taking Affidavits etc.

KUK-IL JOHN KIM

**IN THE MATTER OF THE BANKRUPTCY AND
INSOLVENCY ACT, RSC 1985, c. B-3, AS AMENDED**

Court File No. 31-2822607
Estate File No. 31-2822607

**IN THE MATTER OF THE NOTICE OF INTENTION TO
MAKE A PROPOSAL OF KUK-ILL JOHN KIM**

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

Proceeding commenced at **TORONTO**

AFFIDAVIT OF ANN WON SWORN APRIL 26, 2022

WeirFoulds LLP
66 Wellington Street West, Suite 4100
P.O. Box 35, Toronto-Dominion Centre
Toronto, ON M5K 1B7

Philip Cho (LSO #45615U)
pcho@weirfoulds.com

Max Skrow (LSO # 79799L)
mskrow@weirfoulds.com

Tel: 416-365-1110
Fax: 416-365-1876

Lawyers for Kuk-Ill John Kim and Myoung-Ja Mary Kim

900

2022 APR 26 10:14 AM (114) 101

TAB 3

ONTARIO
SUPERIOR COURT OF JUSTICE
(IN BANKRUPTCY AND INSOLVENCY)
(COMMERCIAL LIST)

IN THE MATTER OF THE *BANKRUPTCY AND INSOLVENCY ACT*,
RSC 1985, c. B-3, AS AMENDED

IN THE MATTER OF THE NOTICE OF INTENTION TO
MAKE A PROPOSAL OF KUK-ILL JOHN KIM

AFFIDAVIT OF KUK-IL JOHN KIM

I, KUK-IL JOHN KIM, of the City of Toronto, in the Province of Ontario,

MAKE OATH AND SAY:

1. I am an individual resident in the Province of Ontario. On April 18, 2022, I filed a notice of intention to make a proposal (“NOI”) under Division I, Part III of the *Bankruptcy and Insolvency Act*, RSC 1985, c. B-3 (the “*BIA*”).
2. That same day, my wife, Myoung-Ja Mary Kim (“Mary”), also filed a NOI under Division I, Part III of the *BIA*. Mary is also resident in the Province of Ontario. I will use “we” and “our” to refer to Mary and myself throughout this Affidavit.
3. Albert Gelman Inc. (“AGI”) has agreed to act as proposal trustee in respect of the proceedings commenced by the NOIs filed by Mary and me (the “**Proposal Trustee**” and the “**NOI Proceedings**”). Copies of the certificates of filing NOIs are attached as **Exhibit “1”** and “2”.

BACKGROUND

4. Our sole asset is a piece of commercial property municipally known as 385 Spadina Road, Toronto, Ontario (the “**Property**”). For the reasons that I will explain below, the Property is presently vacant.

5. Historically the Property was used to conduct a dry-cleaning business. From June 1989, Mary and I operated a dry-cleaning business at the Property, until we sold the business in February 2003. Prior to June 1989, other parties operated a dry-cleaning business at the Property.

6. Initially we leased the ground floor premises to operate the dry-cleaning business from the prior owner of the Property. In February 1994, we purchased the Property.

7. In February 2003, we sold the dry-cleaning business to another proprietor and leased the Property to this proprietor until about January 31, 2013. However, this proprietor ultimately filed for bankruptcy. Since January 31, 2013, the Property has remained vacant due to allegations of environmental contamination originating from the Property.

8. To the best of our knowledge, there are no orders issued in respect of the Property in relation to the alleged environmental contamination.

9. On July 10, 2009, Lee-Mar Developments Limited issued a Statement of Claim against us, among others, bearing Court File No. CV-09-380882 (the “**Lee-Mar Action**”, and together with the Bosung Action, the “**Environmental Litigation**”), in which the Plaintiff, which is the registered owner of a property located near our Property, makes similar allegations as alleged in the Bosung Action. A copy of the Statement of Claim in the Lee-Mar Action is attached hereto

and marked as **Exhibit “3”**. A copy of the Statement of Defence and Crossclaim in the Lee-Mar Action is attached hereto and marked as **Exhibit “4”**.

10. On November 17, 2014, Bosung Investments Inc., Byoung Ok Han and Jae Yol Han commenced an action bearing Court File No. CV-14-00516260-0000 (the “**Bosung Action**”) against us, and others, in which the Plaintiffs, who are the registered owners of a property located near our Property, allege, among other things, that the dry-cleaning business operated from the Property caused chemicals to migrate onto its property. A copy of the Statement of Claim in the Bosung Action is attached hereto and marked as **Exhibit “5”**. A copy of our Statement of Defence and Crossclaim is attached hereto and marked as **Exhibit “6”**.

11. As a result of the Environmental Litigation, we have not leased the Property due to the potential liability that may be attributable to any person in possession of the Property while the Environmental Litigation remains outstanding.

12. Professional fees associated with defending the Environmental Litigation have been funded through a series of personal loans provided by our daughter’s now ex-husband, Mr. Jussi Westergreen. However, neither Mr. Westergreen or our daughter are prepared to continue advancing funds to continue defending the Environmental Litigation.

13. As a result, we have decided to commence these NOI Proceedings to make a formal proposal under the BIA. We intend to sell the Property with a commercial real estate listing agent, and then to utilize the proceeds of sale to fund a proposal to our creditors.

KNOWN CREDITORS

14. The known creditors of Mary and me are:

- (a) Hyon-Cheong Sally Westergren, our daughter, who took an assignment of a promissory note in favour of her former spouse, Jussi Westergren;
- (b) Willms & Shier Environmental Lawyers LLP for unpaid legal accounts; and,
- (c) City of Toronto for unpaid property taxes in relation to the Property.

15. We also note that the plaintiffs in the Environmental Litigation have contingent claims against us. In all cases, the debts and liabilities are joint between Mary and me.

16. Registered on title to the Property is a charge in favour of Laurentian Trust of Canada Inc. in trust for Self-Directed RRSP 710467 in the amount of \$70,000, registered on June 26, 1997 (the “**Laurentian Charge**”), a copy of which is attached as **Exhibit “7”**. We had not realized that this Laurentian Charge remained on title to the Property until we were advised in relation to the NOI Proceedings.

17. We are in the process of obtaining information about the status of the Laurentian Charge but at the time of this affidavit, we only know, based on advice from our lawyers at WeirFoulds LLP, that Laurentian Trust of Canada is now operating as B2B Bank. We believe that this Laurentian Charge should be discharged because we no longer hold any RRSPs as they were collapsed and cashed at the time the Environmental Litigation started in or about 2009.

PROCEDURAL CONSOLIDATION

18. Mary and I own the Property in fee simple as joint tenants. We have always operated our commercial property business together in our individual capacities. As stated above, to the best of my knowledge, all our debts or liabilities are joint and several.

19. However, as individuals, we were required to file separate NOIs. I understand from the Proposal Trustee that without approval from the Court to consolidate the separate NOI Proceedings, then separate motions, filings, notices, and other required steps would have to be done in each NOI Proceeding.

20. As a result, we are seeking an order consolidating the administration of the NOI Proceedings. Consolidating our NOI Proceedings will be more efficient and less expensive, and will relieve us, the Court and the Proposal Trustee of the administrative burden of two separate NOI Proceedings. I believe that consolidating the NOI Proceedings will lessen the costs and impact on creditors and stakeholders and will not prejudice any person.

ADMINISTRATION CHARGE

21. The Property is presently vacant, and Mary and I have limited income. As a result, we are not in a position to pay the fees of our counsel and the Proposal Trustee on an ongoing basis.

22. Accordingly, Mary and I are seeking an order granting a priority charge (the “**Administration Charge**”) securing a maximum of \$125,000.00 in respect of the professional fees incurred in relation to the NOI Proceedings, including those of our counsel, the Proposal Trustee and if necessary, counsel to the Proposal Trustee. We propose that this Administration Charge have priority ahead of all creditors, including secured creditors.

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33. I swear this Affidavit in support of the within motion and for no other or improper purpose.

SWORN BEFORE ME in the City of Toronto in the Province of Ontario on this 26th day of April, 2022 and having been interpreted to the deponent in my presence by **Ann Won** who took an oath before me to interpret the affidavit correctly.



Commissioner for Taking Affidavits etc.


Jae Cho, lawyer



KUK-IL JOHN KIM

Jae Hyon Cho
Barrister & Solicitor, Vaturi & Cho LLP
1110 Finch Avenue West, Suite 310,
Toronto, Ontario, M3J 2T2
Tel: (416) 661-4529 Fax: (416) 661-5529

This is **Exhibit "1"** referred to
in the Affidavit of Kuk-III John Kim
sworn this 26th day of April, 2022.



A Commissioner for Taking Affidavits, etc.

Jae Hyon Cho
Barrister & Solicitor, Vaturi & Cho LLP
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Toronto, Ontario, M3J 2T2
Tel: (416) 661-4529 Fax: (416) 661-5529



Industry Canada
Office of the Superintendent
of Bankruptcy Canada

Industrie Canada
Bureau du surintendant
des faillites Canada

District of Ontario
Division No. 09 - Toronto
Court No. 31-2822601
Estate No. 31-2822601

In the Matter of the Notice of Intention to make a proposal of:

Myoung-Ja Mary Kim

Insolvent Person

ALBERT GELMAN INC.

Licensed Insolvency Trustee

Date of the Notice of Intention:

April 18, 2022

CERTIFICATE OF FILING OF A NOTICE OF INTENTION TO MAKE A PROPOSAL
Subsection 50.4 (1)

I, the undersigned, Official Receiver in and for this bankruptcy district, do hereby certify that the aforementioned insolvent person filed a Notice of Intention to Make a Proposal under subsection 50.4 (1) of the Bankruptcy and Insolvency Act;

Pursuant to subsection 69. (1) of the Act, all proceedings against the aforementioned insolvent person are stayed as of the date of filing of the Notice of Intention.

Date: April 19, 2022, 10:07

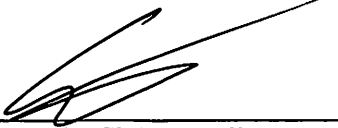
Official Receiver

E-File/Dépôt Electronique

151 Yonge Street, 4th Floor, Toronto, Ontario, Canada, M5C2W7, (877)376-9902

Canada

This is **Exhibit "2"** referred to
in the Affidavit of Kuk-III John Kim
sworn this 26th day of April, 2022.



A Commissioner for Taking Affidavits, etc.

Jae Hyon Cho
Barrister & Solicitor, Vaturi & Cho LLP
1110 Finch Avenue West, Suite 310,
Toronto, Ontario, M3J 2T2
Tel: (416) 661-4529 Fax: (416) 661-5529



Industry Canada
Office of the Superintendent
of Bankruptcy Canada

Industrie Canada
Bureau du surintendant
des faillites Canada

District of Ontario
Division No. 09 - Toronto
Court No. 31-2822607
Estate No. 31-2822607

In the Matter of the Notice of Intention to make a proposal of:

Kuk-III John Kim

Insolvent Person

ALBERT GELMAN INC.

Licensed Insolvency Trustee

Date of the Notice of Intention:

April 18, 2022

CERTIFICATE OF FILING OF A NOTICE OF INTENTION TO MAKE A PROPOSAL
Subsection 50.4 (1)

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Pursuant to subsection 69. (1) of the Act, all proceedings against the aforementioned insolvent person are stayed as of the date of filing of the Notice of Intention.

Date: April 19, 2022, 10:13

Official Receiver

E-File/Dépôt Electronique

151 Yonge Street, 4th Floor, Toronto, Ontario, Canada, M5C2W7, (877)376-9902

Canada

This is **Exhibit "3"** referred to
in the Affidavit of Kuk-III John Kim
sworn this 26th day of April, 2022.



A Commissioner for Taking Affidavits, etc.

Jae Hyon Cho
Barrister & Solicitor, Vaturi & Cho LLP
1110 Finch Avenue West, Suite 310,
Toronto, Ontario, M3J 2T2
Tel: (416) 661-4529 Fax: (416) 661-5529

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:

LEE-MAR DEVELOPMENTS LIMITED

Plaintiff

and

KUK-ILL JOHN KIM and MYOUNG-JA MARY KIM

Defendants

STATEMENT OF CLAIM
(Notice of action issued on June 12, 2009)

1. The Plaintiff claims against the Defendants:

- (a) damages in the amount of \$5,000,000.00 for:
 - (i) damaging, contaminating, sterilizing and stigmatizing the Lee-Mar Property;
 - (ii) property devaluation, loss of development opportunity, business interference, loss of profit, interference with the Plaintiff's ability to re-finance and re-sell the Lee-Mar Property and costs for investigating and responding to allegations of contamination on and under the Lee-Mar Property;
 - (iii) the costs and fees associated with the investigation of the Ontario Ministry of the Environment ("MOE") with respect to the contamination of the Lee-Mar Property;
 - (iv) the costs and fees associated with investigating and determining the acts and omissions of the Defendants which caused the contamination;
 - (v) the costs and fees for future repair to the Lee-Mar Property and/or adjoining properties necessitated by the acts and omissions of the Defendants.

- (vi) the costs and fees incurred in responding to any directions, requirements, restrictions, orders and/or remediation requirements issued by the Province of Ontario or City of Toronto,
- (b) an Order that the Defendants abate, remediate and contain ongoing groundwater contamination migrating from the Kim Property,
- (c) a declaration that the Defendants are liable to indemnify the Plaintiff in respect of any claims, damages, costs, liabilities or governmental orders (including the Plaintiff's costs of investigating and defending any such claims or orders or taking any other action whatsoever), as well as legal fees on a substantial indemnity basis and reasonable engineering fees, associated with or arising from claims that contamination on or formerly on the Lee-Mar property has spread or otherwise reached, polluted, contaminated or in any way affected property or interests in use of property adjacent to or beyond the Lee-Mar Property;
- (d) pre-judgment and post-judgment interest;
- (e) costs of this action on a substantial indemnity basis, together with applicable taxes thereon; and
- (f) such further and other relief as this Honourable Court deems just.

The Parties

2. The Plaintiff Lee-Mar Developments Limited ("Lee-Mar") is a corporation incorporated pursuant to the laws of Ontario and the registered owner of property known municipally as 389 Spadina Road, Toronto, Ontario (the "Lee-Mar Property").
3. The Defendants Kuk-Il John Kim and Myoung-Ja Mary Kim (collectively referred to as "the Kims") are the registered owners of property known municipally as 385 Spadina Road, Toronto, Ontario, which property has been and continues to be used for a dry cleaning operation (the "Kim Property")

Claims against the Defendants

4. The Kim Property is hydrogeologically upgradient from the Lee-Mar Property. The dry cleaning operation on the Kim Property uses and/or has used a toxic chemical known as perchloroethylene ("PCE").
5. PCE and associated chemicals (the "Contamination") from the operations conducted on the Kim Property have migrated onto and, possibly, beyond the Lee-Mar Property, in concentrations which exceed applicable Ministry of Environment standards and are causing ongoing damage and risk of damage to Lee-Mar.
6. Contamination of the Lee-Mar Property is a result of the Kims causing or permitting the operation on the Kim Property of activities which they knew could and which in fact did contaminate such lands and the aquifers under such lands or failing to take any or appropriate actions to prevent the contamination of such lands and aquifers, failing to determine the extent of the contamination on or under such lands and the aquifers below them and failing to prevent the escape of contamination from such lands, with the result that the Lee-Mar Property and the groundwater on and other such lands were also contaminated.
7. The Kims caused or permitted PCE and associated chemicals to be improperly and negligently used, handled, stored and disposed, so as to cause or permit the release of the Contamination into the soil and groundwater on, in or under their own property and adjacent properties. In particular, the Kims:
 - (a) permitted the release or discharge of the Contamination while such was in their control or possession or that of their tenants and agents;
 - (b) failed to properly store and dispense or failed to ensure that their tenants and agents properly stored and dispensed the Contamination under their control or possession;
 - (c) failed to take proper precautions or failed to ensure that their tenants and agents took proper precautions to prevent the release or discharge of the Contamination;

- (d) failed to use reasonable care or failed to ensure that their tenants and agents used reasonable care with respect to the handling, storage and monitoring of the Contamination;
 - (e) failed to monitor or failed to ensure that their tenants and agents monitored the Contamination; and
 - (f) failed to clean-up or failed to ensure that their tenants and agents cleaned-up the Contamination which had been released, spilled or discharged by prior owners of the Kim Property.
8. By improperly and negligently using, handling, storing and dispensing the Contamination, or by permitting the improper use, handling, storage and dispensing of the Contamination, the Kims failed to adhere to the standard of care of a reasonable landowner and reasonably competent business operator requisite to the use, handling, storage and dispensing of dangerous and toxic products.
 9. It was reasonably foreseeable by the Kims that the use, handling, storing, dispensing and spilling of the Contamination on their property would cause an adjacent property owner to suffer damage.
 10. As a direct result of the escape of the Contamination, as well as the Kims' acts, omissions, failure to supervise, monitor and clean-up and negligence in respect thereto, the Lee-Mar Property has been contaminated and Lee-Mar has suffered damages.
 11. The release, discharge, and spilling of the Contamination by the Kims so as to cause soil and groundwater contamination on, in or under the adjacent properties has resulted in devaluation of the Lee-Mar Property, loss of development opportunity, interference with the business of Lee-Mar and interference with the ability of Lee-Mar to re-finance and re-sell the Lee-Mar Property.
 12. The release, discharge, and spilling of the Contamination by the Kims so as to cause soil and groundwater contamination on, in or under the adjacent properties has resulted in damage to and unreasonable interference with the use and enjoyment of the Lee-Mar Property.

13. The PCE and associated chemicals brought onto, used, handled, stored, disposed of and spilled on the Kim Property and which escaped therefrom are unnatural substances which are inherently dangerous.
14. The escape of the Contamination from the Kim Property has resulted in the Contamination seeping into, onto or under the adjacent properties. Lee-Mar has suffered damages and is exposed to statutory and civil liability as a result.
15. Lee-Mar pleads and relies upon the doctrine of strict liability arising from *Rylands v. Fletcher*.
16. Further, Lee-Mar claims against the Kims under the Ontario *Environmental Protection Act*, as amended ("*EPA*"), and in particular claims compensation pursuant to Section 99 thereof as well as damages in respect of the failure of the Kims to prevent, eliminate and ameliorate the adverse effects of the Contamination and to do everything practicable to restore the natural environment. These breaches resulted in the damage accruing to Lee-Mar and the Lee-Mar Property.
17. Lee-Mar seeks an interlocutory and permanent injunction requiring the Kims to take all necessary steps to contain and remediate the ongoing migration of the Contamination.

Place of Trial

18. The Plaintiff proposes that this action be tried at Toronto

Date: July 10, 2009

BORDEN LADNER GERVAIS LLP
Barristers and Solicitors
Scotia Plaza
40 King Street West
Toronto, ON M5H 3Y4

M.J. Dermer (LSUC #: 167226)
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Fax: (416) 361-2724

F.F. Rick Coburn (LSUC #306040)
Tel: (416) 367-6038
Fax: (416) 361-2437

Lawyers for the Plaintiff

LEE-MAR DEVELOPMENTS LIMITED
Plaintiff

- vs. -

KUK-ILL JOHN KIM and MYOUNG-JA MARY KIM
Defendants

ONTARIO
SUPERIOR COURT OF JUSTICE

PROCEEDINGS COMMENCED AT TORONTO

STATEMENT OF ACTION
(Notice of Action issued on June 12, 2009)

BORDEN LADNER GERVAIS LLP

Barristers and Solicitors

Scotiabank Plaza

40 King Street West

Toronto, ON M5H 1Y4

M.J. Dermer (S.D.C. #167226)

Tel: 416-597-6382

Fax: 416-591-2724


F.F. Rick Coburn (L.S.C. #306040)

Tel: (416) 367-6038

Fax: (416) 361-2437

Lawyers for the Plaintiff

This is Exhibit "4" referred to
in the Affidavit of Kuk-III John Kim
sworn this 26th day of April, 2022.



A Commissioner for Taking Affidavits, etc.

Jae Hyon Cho
Barrister & Solicitor, Vaturi & Cho LLP
1110 Finch Avenue West, Suite 310,
Toronto, Ontario, M3J 2T2
Tel: (416) 661-4529 Fax: (416) 661-5529

**ONTARIO
SUPERIOR COURT OF JUSTICE**

B E T W E E N:

LEE-MAR DEVELOPMENTS LIMITED

Plaintiff

- and -

KUK-ILL JOHN KIM and MYOUNG-JA MARY KIM

Defendants

STATEMENT OF DEFENCE

- 1 The Defendants, Kuk-Ill John Kim and Myoung-Ja Mary Kim, admit the allegations contained in paragraphs 2, 3 (first part of sentence) and 4 (second sentence) of the Statement of Claim.
- 2 The Defendants, Kuk-Ill John Kim and Myoung-Ja Mary Kim, deny the allegations contained in paragraphs 1, 3 (second part of sentence), 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17 and 18 of the Statement of Claim.
- 3 The Defendants, Kuk-Ill John Kim and Myoung-Ja Mary Kim, have no knowledge in respect of the allegations contained in paragraphs 4 (first sentence) and 5 of the Statement of Claim.

A. THE PARTIES AND THE PROPERTIES

4 Mr. and Mrs. Kim are the registered owners of the property municipally known as 385 Spadina Road, Toronto, Ontario ("Kim Property"). Mr. Kim and Mrs. Kim purchased the Kim Property in February 1994.

5 In June 1989, Mr. and Mrs. Kim purchased the dry cleaning business, "Valet Care" that was operating at the Kim Property prior to Mr. and Mrs. Kim's purchase of the Kim Property. In February 2003, Mr. and Mrs. Kim sold Valet Care.

6 Lee-Mar Developments Limited is the registered owner of the property municipally known as 389 Spadina Road, Toronto, Ontario ("Lee-Mar Property"). Lee-Mar purchased the Lee-Mar Property on September 23, 2004. The Lee-Mar Property is leased to a retail grocery business.

7 The Kim Property and the Lee-Mar Property are not adjacent nor abutting properties.

B. ALLEGED PRESENCE OF PERC AT THE LEE-MAR PROPERTY

8 Mr. and Mrs. Kim plead that the alleged migration of perchloroethylene and its degradation products ("Perc") from the Kim Property to the Lee-Mar Property was not the result of the actions or omissions of Mr. and Mrs. Kim. Rather the actions or omissions of other individuals and/or corporations who operated businesses at the Lee-Mar Property, Kim Property or nearby properties resulted in the alleged presence of Perc at the Lee-Mar Property.

C. MR. AND MRS. KIM AS OWNERS AND OPERATORS OF VALET CARE

9 From June 1989 to February 2003, Mr. and Mrs. Kim owned and operated Valet Care at the Kim Property.

10 Mr. and Mrs. Kim admit that laundry soap and perchloroethylene was used during Mr. and Mrs. Kim's operation of Valet Care at the Kim Property. However, Mr. and Mrs. Kim deny that they discharged or permitted the loss of perchloroethylene from Valet Care's operation at the Kim Property.

11 Mr. and Mrs. Kim took the following precautions to prevent the loss of perchloroethylene during Mr. and Mrs. Kim's operation of Valet Care at the Kim Property:

- (a) Mr. and Mrs. Kim did not store perchloroethylene at the Kim Property aside from perchloroethylene stored in the dry cleaning machines for ongoing use
- (b) the dry cleaning machines were self-contained and closed loop
- (c) the perchloroethylene was recycled and then properly and lawfully disposed
- (d) used filters from the dry cleaning machines were properly and lawfully disposed, and
- (e) the collection, removal and transportation of perchloroethylene and used filters to and from the Kim Property was at all times undertaken in compliance with industry standards and practices and by certified waste disposal contractors.

- 12 Mr. and Mrs. Kim state, in their capacity as owners and operators of Valet Care, that they never:
- (a) caused or permitted the loss of perchloroethylene on, at or from the Kim Property
 - (b) caused or permitted the escape of perchloroethylene on, at or from the Kim Property, or
 - (c) caused or permitted the migration of perchloroethylene beyond the Kim Property to the Lee-Mar Property or to any other property.
- 13 In fact, Mr. and Mrs. Kim, in their capacity as owners and operators of Valet Care, state that they knew nothing about the alleged presence of perchloroethylene in soil and/or groundwater at the Kim Property (and continue to not know to this day) nor did Mr. and Mrs. Kim know anything about the alleged migration of perchloroethylene from the Kim Property to the Lee-Mar Property until Mr. and Mrs. Kim were served with Lee-Mar's Statement of Claim.
- 14 Mr. and Mrs. Kim plead that at all material times during their ownership and operation of Valet Care they acted in accordance with industry standards and practices, and never acted in such a way as to constitute negligence, nuisance, trespass or breach of statutory duty or contrary to the doctrine of strict liability.

D. MR. AND MRS. KIM AS OWNERS OF THE KIM PROPERTY

15 Mr. and Mrs. Kim became owners of the Kim Property in February 1994. At that time, Mr. and Mrs. Kim were the owners and operators of Valet Care. In February 2003, Mr. and Mrs. Kim sold the Valet Care business to another proprietor who now leases the premises at the Kim Property from Mr. and Mrs. Kim.

16 As landlord, Mr. and Mrs. Kim state that they are not responsible for any nuisance that may have been created by any tenant(s) at the Kim Property (which is not admitted but specifically denied) because the Kim Property was not let for a purpose calculated to cause a nuisance.

17 Further, any nuisance created by any tenant(s) of Mr. and Mrs. Kim resulting from the alleged loss of perchloroethylene at the Kim Property (which is not admitted but specifically denied) was not expressly authorized or a necessary consequence of the purpose for which the Kim Property was let during Mr. and Mrs. Kim's ownership of the Kim Property.

18 Mr. and Mrs. Kim plead that no adverse inference should be drawn against Mr. and Mrs. Kim because neither had knowledge about the alleged Perc contamination (which is not admitted but specifically denied) during the time of any tenancy at the Kim Property while Mr. and Mrs. Kim were landlords.

19 Mr. and Mrs. Kim state, in their capacity as owners of the Kim Property, that they never:

- (a) caused or permitted the loss of perchloroethylene on, at or from the Kim Property
- (b) caused or permitted the escape of perchloroethylene on, at or from the Kim Property, or
- (c) caused or permitted the migration of perchloroethylene beyond the Kim Property to the Lee-Mar Property or to any other property.

20 In fact, Mr. and Mrs. Kim, in their capacity as owners of the Kim Property, state that they knew nothing about the alleged presence of perchloroethylene in soil and/or groundwater at the Kim Property (and continue to not know to this day) nor did Mr. and Mrs. Kim know anything about the alleged migration of perchloroethylene from the Kim Property until Mr. and Mrs. Kim were served with Lee-Mar's Statement of Claim.

21 Mr. and Mrs. Kim plead that at all material times during their ownership of the Kim Property they acted in accordance with industry standards and practices, and never acted in such a way as to constitute negligence, nuisance, trespass or breach of statutory duty.

E. LEE-MAR'S ENVIRONMENTAL DUE DILIGENCE WHEN PURCHASING THE LEE-MAR PROPERTY

- 22 On September 23, 2004, Lee-Mar purchased the Lee-Mar Property.
- 23 In advance of or concurrent with the purchase, Lee-Mar ought to have completed pre-purchase environmental due diligence at the Lee-Mar Property. This would have involved Lee-Mar retaining an environmental consultant to complete Phase 1 and Phase 2 Environment Site Assessments for the Lee-Mar Property.
- 24 By September 2004, it was standard and prudent practice for purchasers of commercial properties in urban areas in Ontario to complete purchaser's own pre-purchase environmental due diligence.
- 25 If Lee-Mar completed its own pre-purchase environmental due diligence at the Lee-Mar Property in advance of or concurrent with the timing of the purchase, Lee-Mar ought to have discovered or did discover that the Lee-Mar Property was contaminated by Perc. In light of this, Lee-Mar's decision to close the purchase transaction was at Lee-Mar's own peril and Lee-Mar was the author of its own misfortune. Accordingly, Lee-Mar ought not to be permitted to claim against Mr. and Mrs. Kim for alleged damages that Lee-Mar could have and should have avoided.
- 26 In the alternative, if Lee-Mar did not complete its own pre-purchase environmental due diligence in advance of or concurrent with the timing of the purchase of the Lee-Mar Property, Lee-Mar proceeded with the purchase at its own peril and Lee-Mar was the author of Lee-Mar's own misfortune. Accordingly,

Lee-Mar ought not to be permitted to claim against Mr. and Mrs. Kim for alleged damages that Lee-Mar could have and should have avoided.

27 It is inequitable and unfair for Lee-Mar to gain any benefit by suing Mr. and Mrs. Kim when Lee-Mar ought to have discovered or did discover the presence of Perc at the Lee-Mar Property in advance of or concurrent with the timing of Lee-Mar's purchase of the Lee-Mar Property in September 2004.

F. LEE-MAR'S ACTION IS STATUTE BARRED

28 Mr. Kim and Mrs. Kim state that this action was commenced on June 10, 2007 by Lee-Mar after expiry of the limitation period and therefore this action ought to be dismissed.

29 Mr. Kim and Mrs. Kim state that Lee-Mar ought to have discovered or did discover the alleged presence of Perc at the Lee-Mar Property and the alleged migration of Perc from the Kim Property to the Lee-Mar Property (which is not admitted and specifically denied) prior to June 10, 2007. More specifically, Lee-Mar knew about the presence of Perc at the Lee-Mar Property no later than April 4, 2005, and likely in advance of or concurrent with the timing of the purchase of the Lee-Mar Property in September 2004.

30 By April 2005, Lee-Mar's environmental consultant, AiMS Environmental, found Perc at the Lee-Mar Property at levels in excess of the Ministry of the Environment *Soil, Groundwater and Sediment Standards for Use Under Part XV.1 of the Environmental Protection Act* ("MOE Standards"). In fact, AiMS Environmental likely discovered the presence of contamination at the Lee-Mar

Property in September 2004 when boreholes were drilled and groundwater monitoring wells were installed at the Lee-Mar Property.

- 31 Lee-Mar, upon discovering the presence of Perc, by no later than April 4, 2005, and likely in September 2004, should have made all reasonable inquires about the presence of Perc at the Lee-Mar Property, including ascertaining the source(s) of Perc.
- 32 By no later than April 2005 and more likely in September 2004 or shortly thereafter, Lee-Mar should have or could have determined from which property or properties Perc originated, the owners of the source properties and any tenants at the source properties pursuant to, and in consideration of, section 5 of the *Limitations Act, 2002*, S.O. 2002, c. 24.
- 33 Given that the Kim Property is situate only a few metres from the Lee-Mar Property and that the Kim Property has been historically used for dry cleaning as is clearly evident from looking at the Kim Property store front signage, the Kim Property ought to have been readily identified by Lee-Mar and Lee-Mar's environmental consultant AiMS Environmental as a potential source property of Perc (which is not admitted but specifically denied).
- 34 Lee-Mar issued its Statement of Claim on June 10, 2009. This was 57 months after September 2004 and 45 months after April 2005 when Lee-Mar ought to have discovered or did discover Lee-Mar's claim against Mr. and Mrs. Kim.

35 Lee-Mar's failure to issue its claim within the two (2) year limitation period is fatal. Accordingly, Mr. and Mrs. Kim plead that Lee-Mar's claim is statute barred and ought to be dismissed with costs.

G. SPOILIATION OF EVIDENCE

36 Mr and Mrs. Kim state that there has been spoliation of evidence by Lee-Mar when Lee-Mar carried out environmental investigation and remediation (including hydrogen compound release injections into the subsurface) at the Lee-Mar Property. Specifically, Mr. and Mrs. Kim state that Lee-Mar has failed to preserve evidence of the alleged presence of Perc at the Lee-Mar Property.

37 Mr. and Mrs. Kim state that Lee-Mar has failed to preserve evidence of the alleged presence of Perc at the Lee-Mar Property including after Lee-Mar issued this action.

38 Mr. and Mrs. Kim state that Lee-Mar's destruction of evidence or partial destruction of evidence of the alleged presence of Perc at the Lee-Mar Property has resulted in prejudice to Mr. and Mrs. Kim. Mr. and Mrs. Kim were precluded from:

- (a) investigating the alleged presence of Perc at the Lee-Mar Property for which Lee-Mar alleges that Mr. and Mrs. Kim are liable (which is not admitted but specifically denied)
- (b) reviewing, commenting on or having input into the proposed work plan and budget for investigation and remediation of the alleged presence of Perc at the Lee-Mar Property

- (c) attending, observing, monitoring, taking split-samples or otherwise participating in any investigation and/or remediation of the alleged presence of Perc at the Lee-Mar Property, and
- (d) properly defending this action.

H. DAMAGES

39 Mr. and Mrs. Kim have no knowledge about the Plaintiff's alleged damages.

Mr. and Mrs. Kim deny that the Plaintiff has sustained damages and/or that the Plaintiff has sustained damages to the extent alleged. Mr. and Mrs. Kim put the Plaintiff to the strict proof thereof. In the alternative, if such damages as claimed by the Plaintiff were sustained by the Plaintiff (which is not admitted but specifically denied) such damages are excessive and too remote.

40 Mr. and Mrs. Kim plead that Lee-Mar has sustained no interference with Lee-Mar's use and enjoyment of the Lee-Mar Property as a result of the alleged presence of Perc at the Lee-Mar Property and/or the alleged migration of Perc from the Kim Property to the Lee-Mar Property.

41 Specifically, Mr. and Mrs. Kim state that Lee-Mar has maintained ownership of the Lee-Mar Property since September 23, 2004 and throughout Lee-Mar's ownership has and continues to let the Lee-Mar Property and to collect full market value rent for lease of the Lee-Mar Property.

I. STATUTES

42 Mr. and Mrs. Kim plead and rely on the following statutes, as amended:

(a) *Environmental Protection Act*, R.S.O. 1990, c. E.19

(b) *Negligence Act*, R. S.O. 1990, c. N.1

(c) *Limitations Act, 2002*, S.O. 2002, C. 24 and

(d) *Courts of Justice Act*, R.S.O. 1990, c. C.43.

43 Mr. and Mrs. Kim submit that this action should to be dismissed with costs payable by Lee-Mar to Mr. and Mrs. Kim on a substantial indemnity basis.

July 12, 2010

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Lawyers for the Plaintiff,
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LEE-MAR DEVELOPMENTS LIMITED
Plaintiff

-and-

KUK-ILL JOHN KIM et al.
Defendants

Court File No. CV-09-380822

ONTARIO
SUPERIOR COURT OF JUSTICE
PROCEEDING COMMENCED AT
TORONTO

STATEMENT OF DEFENCE

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Lawyers for the Defendants,
Kuk-III John Kim and Myoung-Ja Mary Kim

This is **Exhibit "5"** referred to
in the Affidavit of Kuk-III John Kim
sworn this 26th day of April, 2022.



A Commissioner for Taking Affidavits, etc.

Jae Hyon Cho
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Court File No. *CV-14-00516260-0000*

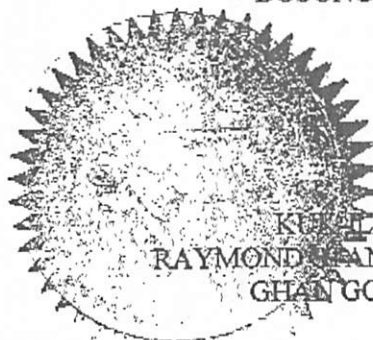
**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

BOSUNG INVESTMENTS INC., BY YOUNG OK HAN
and JAE YOL HAN.

Plaintiffs

- and -

 KEH ALL JOHN KIM, MYOUNG-JA MARY KIM,
RAYMOND STANCER, STANCER GOSIN ROSE LLP, EUNICE KIM
GHAN GON CHEE and URBAN REAL ESTATE LTD.

Defendants

STATEMENT OF CLAIM

TO THE DEFENDANT(S)

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the plaintiff(s). 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(s) or, where the plaintiff(s) do(es) not have a lawyer, serve it on the plaintiff(s), 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.

Date: November 12th, 2014

Issued by: *A. Kivimäki*
Local Registrar

ADDRESS OF COURT OFFICE:
393 University Avenue
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URBAN REAL ESTATE LTD.
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CLAIM

1. The Plaintiffs claim against Kuk-Il John Kim and Myoung-Ja Mary Kim (collectively referred to as "the Kims") in negligence, nuisance, strict liability and trespass for:
 - (a) Damages in the sum of \$5 million for losses and expenses resulting from contamination, including contamination by various chlorinated volatile organic compounds (the "Contaminants" or "Contamination"), of the Plaintiffs' Lands described below;
 - (b) A declaration that the Kims are responsible for the Contamination;
 - (c) An order requiring the Kims to take all appropriate and necessary measures at their cost to prevent any further migration of Contaminants onto, through or under the Plaintiffs' Lands;
 - (d) "Stigma damages" in the amount of \$1 million for the post-remedial loss in value of the Plaintiffs' Lands;
 - (e) Full recovery of the Plaintiffs' legal and other professional costs and expenses incurred in investigating and remediating the Contamination;
 - (f) Prejudgment interest pursuant to s. 128 of the *Court of Justice Act*, R.S.O., 1990 c. C.43;
 - (g) The Plaintiffs' costs of this action on a substantial indemnity basis; and
 - (h) Such further and other relief as counsel may advise and this Honourable Court may permit.

2. The Plaintiffs claim against Raymond Stancer and Stancer Gosin Rose LLP in breach of contract and in negligence for:
 - (a) Damages in the sum of \$5 million for losses and expenses resulting from contamination, including contamination by various chlorinated volatile organic compounds (the "Contaminants" or "Contamination"), of the Plaintiffs' Lands

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described below;

- (b) "Stigma damages" in the amount of \$1 million for the post-remedial loss in value of the Plaintiffs' Lands;
 - (c) Full recovery of the Plaintiffs' legal and other professional costs and expenses incurred in investigating and remediating the Contamination;
 - (d) Prejudgment interest pursuant to s. 128 of the *Court of Justice Act*, R.S.O., 1990 c. C.43;
 - (e) The Plaintiffs' costs of this action on a substantial indemnity basis; and
 - (f) Such further and other relief as counsel may advise and this Honourable Court may permit.
3. The Plaintiffs claim against Eunice Kim in breach of contract and in negligence for:
- (a) Damages in the sum of \$5 million for losses and expenses resulting from contamination, including contamination by various chlorinated volatile organic compounds (the "Contaminants" or "Contamination"), of the Plaintiffs' Lands described below;
 - (b) "Stigma damages" in the amount of \$1 million for the post-remedial loss in value of the Plaintiffs' Lands;
 - (c) Full recovery of the Plaintiffs' legal and other professional costs and expenses incurred in investigating and remediating the Contamination;
 - (d) Prejudgment interest pursuant to s. 128 of the *Court of Justice Act*, R.S.O., 1990 c. C.43;
 - (e) The Plaintiffs' costs of this action on a substantial indemnity basis; and
 - (f) Such further and other relief as counsel may advise and this Honourable Court may permit.

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4. The Plaintiffs claim against Ghan Ghon Chee and Urban Real Estate Ltd. in breach of contract, negligence, and breach of fiduciary duty, for:
- (a) Damages in the sum of \$5 million for losses and expenses resulting from contamination, including contamination by various chlorinated volatile organic compounds (the "Contaminants" or "Contamination"), of the Plaintiffs' Lands described below;
 - (b) "Stigma damages" in the amount of \$1 million for the post-remedial loss in value of the Plaintiffs' Lands;
 - (c) Full recovery of the Plaintiffs' legal and other professional costs and expenses incurred in investigating and remediating the Contamination;
 - (d) Prejudgment interest pursuant to s. 128 of the *Court of Justice Act*, R.S.O., 1990 c. C.43;
 - (e) The Plaintiffs' costs of this action on a substantial indemnity basis; and
 - (f) Such further and other relief as counsel may advise and this Honourable Court may permit.

The Parties

5. The Plaintiff Bosung Investments Inc. ("Bosung") is a corporation established pursuant to the laws of Ontario, with its registered offices located in Toronto, Ontario. Bosung currently is the registered owner of the lands located at 387 Spadina Road, Toronto, Ontario ("the Plaintiffs' Lands").
6. The Plaintiffs Byoung Ok Han and Jae Yol Han (collectively referred to as "The Hans") were the registered owners of the Plaintiffs' Lands from in or about July 25, 2002, to in or about April 13, 2012.

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7. On or about April 13, 2012, for estate planning purposes, the Hans effected a rollover and transfer of the Plaintiffs' Lands to Bosung. The Hans are the principals and directing minds of Bosung.
8. The Kirns are individuals residing in the City of Toronto and are the owners of the property municipally known as 385 Spadina Road, Toronto, Ontario ("the Kim property") which property has been used for a laundry and dry cleaning business from in or about 1989 to in or about the summer of 2013.
9. The Defendant Raymond Stancer ("Stancer") is an individual who resides in the City of Toronto, Ontario.
10. Stancer is a lawyer and a member of the Law Society of Upper Canada licensed to practice law in the Province of Ontario. At all times relevant to this action, Stancer practiced in the area of corporate, commercial and real estate law.
11. The Hans retained Stancer to act as their lawyer with respect to their purchase of the Plaintiffs' Lands.
12. Stancer was retained to undertake all tasks associated with the lawyer's role in acting for the purchaser of a commercial property.
13. Stancer at all times relevant to this action was a partner in the law firm of Stancer Gosin Rose LLP.
14. The Defendant Eunice Kim ("Kim") resides in the City of Toronto. Kim is a lawyer and a member of the Law Society of Upper Canada licensed to practice law in the Province of

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Ontario. Kim practices in the area of corporate, commercial and real estate law.

15. In or about April of 2012, Kim was retained by the Hans for the purpose of transferring ownership of the Plaintiffs' Lands to a corporation to be incorporated by Kim, which transaction was effected for estate planning purposes.
16. The Defendant Ghan Gon Chee ("Chee") resides in the City of Toronto and is a duly licensed real estate agent.
17. The Defendant Urban Real Estate Ltd. ("Urban") is a duly licensed real estate brokerage.
18. Chee at all relevant times was the Hans' real estate agent with respect to their purchase of the Plaintiffs' Lands.
19. At all times relevant to this action Chee worked for Urban who was the listing and selling brokerage with respect to the Hans' purchase of the Plaintiffs' Lands.

The Contamination

20. The Kim Property is located to the south of the Plaintiffs' Lands. The Kim Property is hydrogeologically upgradient from the Plaintiffs' Lands.
21. The soil and groundwater on and under the Plaintiffs' Lands is contaminated with various chlorinated volatile organic compounds, including perchloroethylene and its various degradation products (the "Contamination"). The Contamination originated, in whole or in part, from the Kim Property and has migrated through the subsurface onto and under the Plaintiffs' Lands and the area surrounding the Plaintiffs' Lands. The Contamination continues to migrate onto the Plaintiffs' Lands and is currently present at concentrations

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exceeding provincial standards.

22. The Plaintiffs became aware of the Contamination in September of 2013.

Claim against the Kims

23. The Contaminants escaped or were spilled, released or discharged, from the Kims' operations on or near the Kim Property, into the natural environment, including into the soil and groundwater. The Kims are liable to the Plaintiffs for all Contamination on the Plaintiffs' Lands that originated in whole or in part, as a result of the Kims' operations on the Kim Property.
24. The Kims are liable in negligence to the Plaintiffs. The Kims owed the Plaintiffs a duty of care to ensure that the Contaminants were wholly contained on their own property and did not migrate offsite to surrounding lands. The Kims also owed the Plaintiffs a duty of care to warn them of the Contamination and to take active steps to ensure the presence of the Contamination on, under or in proximity to the Plaintiffs' Lands did not cause any injury to the Plaintiffs and/or the Plaintiffs' Lands. The Kims, including their agents, employees, and tenants for whose actions the Kims are legally responsible, breached their duty to the Plaintiffs by:
- (a) failing to take reasonable precautions in handling, storing, using, and disposing of the Contaminants;
 - (b) failing to warn the Plaintiffs of the Contamination and the ongoing migration of the Contamination in the area surrounding the Plaintiffs' Lands; and
 - (c) failing to prevent or mitigate the ongoing migration of the Contamination off of the Kim Property and within the surrounding area.
25. It was reasonably foreseeable by the Kims that the use, handling, storage, dispensing and

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spilling of the Contamination on their property would cause an adjacent property owner to suffer damage.

26. The present, and ongoing and past migration, of the Contamination onto, through, and under the Plaintiffs' Lands constitutes an unreasonable interference with the use and enjoyment of the lands and also constitutes a substantial and unreasonable physical harm to the property. The levels of the Contamination are such that the use of the land and the rights associated with the ownership of the land have been detrimentally affected. The Kims are therefore liable to the Plaintiffs in private nuisance for all damages occasioned by the presence and ongoing migration of Contamination onto the Plaintiffs' Lands and any expense necessary to abate the ongoing migration.
27. The Kims made a non-natural use of the Kim Property by, among other things, failing to comply with regulatory restrictions of the use, storage, handling, and disposal of the Contaminants. The Kims brought the Contaminants onto the Kim Property. The Contaminants are substances that are likely to do mischief if they escape. The Contaminants, did, in fact, escape from the Kim Property and have caused injury to the Plaintiffs. The Kims are therefore strictly liable for damages caused by the escape of the Contaminants from the Kim Property, pursuant to the doctrine of strict liability as established in *Rylands v. Fletcher*.
28. The migration and continuing presence of the Contamination on the Plaintiffs' Lands constitutes an actionable and ongoing trespass. The Contaminants were and continue to be the personal property of the Kims. The Plaintiffs have not consented to the presence of the Contaminants on their lands and the Kims have had a reasonable opportunity to remove the Contaminants from those lands. As such, the presence of the Contaminants of the Plaintiffs' Lands is an ongoing trespass.

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29. The Plaintiffs plead that the Kims' acts and omissions as aforesaid have interfered substantially with the use and enjoyment of the Plaintiffs' Lands and have caused a permanent reduction in the value of the Plaintiffs' Lands, in addition to other damages, as a result of the presence and threat of continued impacts from the Contaminants originating from the Kims operations on the Kim Property.
30. The Plaintiffs further claim against the Kims under the *Ontario Environmental Protection Act*, R.S.O. 1990, c. E.19 ("EPA") and in particular claims compensation pursuant to section 99 thereof as well as damages in respect of the failure of the Kims to prevent, eliminate and ameliorate the adverse effects of the Contamination and to do everything practicable to restore the natural environment. These breaches result in damages accruing to the Plaintiffs' Lands.

Claim against Raymond Stancer and Stancer Gosin Rose LLP

31. The Plaintiffs state that it was an express or an implied term of Stancer's retainer that he would act diligently and competently on behalf of the Hans and in their best interests in all matters pertaining to their purchase of the Plaintiffs' Lands in or about July of 2002.
32. The Plaintiffs state that Stancer at all relevant times owed the Hans a duty of care which included the duty to act diligently and competently on their behalf and in their best interests and to exercise all reasonable care, skill, knowledge and diligence of a competent lawyer acting in the best interests of his or her client.
33. The Plaintiffs state that Stancer was in breach of contract and was negligent with respect to the duty of care owed to them.

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34. Particulars of Stancer's breach of contract and breach of his duty of care include the following:
- (a) He failed to meet the standard of care of a reasonably competent lawyer practicing in the area of commercial and real estate law;
 - (b) He failed to maintain up-to-date knowledge of the standard practices required of the a commercial and real estate lawyer in 2002;
 - (c) He failed to accurately and fairly advise the Hans of environmental risks and adverse consequences of purchasing a commercial property and purchasing a property immediately adjacent to a property upon which an active dry cleaning business was being operated; and
 - (d) He failed to accurately and fairly advise the Hans of all necessary environmental inquiries to be made with respect to purchasing a commercial property and purchasing a property immediately adjacent to a property upon which an active dry cleaning business was being operated.
35. Stancer's breach of contract and negligence have caused the damages suffered by the Plaintiffs.
36. The Defendant Stancer Gosin Rose LLP is liable in law for the damages incurred by the Plaintiffs as a result of Stancer's breach of contract and negligence.

Claim against Eunice Kim.

37. The Plaintiffs state that it was an express or an implied term of Eunice Kim's retainer that she act diligently and competently on their behalf and in their best interests in all matters relating to the transfer of the ownership of the Plaintiffs' Lands from the Hans to Bosung in or about April of 2012.

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38. The Plaintiffs state that Eunice Kim at all relevant times owed them a duty of care which included a duty to act diligently and competently on their behalf and in their best interests and to exercise all reasonable care, skill, knowledge and diligence of a competent lawyer acting in the best interests of his or her client.
39. The Plaintiffs state that Kim breached her contract and was negligent with respect to the duty of care owed to them.
40. Particulars of Kim's breach of contract and breach of duty of care include the following:
- (a) She failed to meet the standard care of a reasonably competent lawyer practicing in the area of corporate, commercial and real estate law;
 - (b) She failed to maintain up-to-date knowledge of the standard practices required by a corporate, commercial and real estate in 2012.
 - (c) She failed to accurately and fairly advise the Plaintiffs about the potential environmental risks and adverse consequences of transferring and acquiring a commercial property and transferring and acquiring a property immediately adjacent to a property upon which an active dry cleaning business was being operated;
 - (d) She failed to accurately and fairly advise the Plaintiffs of all necessary environmental inquiries to be made with respect to acquiring ownership of a commercial property and with respect to acquiring ownership of a property immediately adjacent to a property upon which an active dry cleaning business was being operated.
 - (e) She failed to accurately and fairly advise the Plaintiffs of the potential adverse consequences of transferring ownership of the Plaintiffs' Lands.
41. Eunice Kim's breach of contract and negligence have caused the damages suffered by the Plaintiffs.

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Claim against Ghan Gon Chee and Urban Real Estate Ltd.

42. The Plaintiffs state that it was an express or implied term of Chee's retainer with the Hans as their agent that she act diligently and competently on behalf of them and in their best interests in all matters relating to the purchase of the Plaintiffs' Lands in 2002.
43. The Plaintiffs state that Chee at all relevant times owed the Hans a duty of care which included a duty to act diligently and competently in their best interests and to exercise all reasonable care, skill, knowledge and diligence of a competent real estate agent acting in the best interests of his or her client.
44. The Plaintiffs state that Chee breached her contract and was negligent with respect to her obligations to the Hans.
45. Particulars of Chee's breach of contract and breach of duty of care include the following:
- (a) She failed to meet the standard of care of a reasonably competent real estate agent involved in the sale of commercial real estate;
 - (b) She failed to maintain up-to-date knowledge of the standard practices required of a real estate agent in 2002;
 - (c) She failed to accurately and fairly advise the Hans about the potential adverse consequences and environmental risks involved in purchasing a commercial property and in purchasing a property immediately adjacent to a property upon which an active dry cleaning business was being operated.
 - (d) She failed to accurately and fairly advise the Hans of all necessary inquiries to be made with respect to purchasing a commercial property and with respect to purchasing a property immediately adjacent to a property upon which an active dry cleaning business was being operated.

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- (e) She placed herself in a position of conflict to the interests of the Hans by providing advice to the Hans with respect to both the purchase of the Plaintiffs' Lands and other properties for which Chee had prepared and submitted offers to purchase on behalf of the Hans without disclosing to the Hans that she stood to earn a substantially larger real estate commission if the Hans purchased the Plaintiffs' Lands and not any competing property;
 - (f) She failed to disclose to the Hans that the Plaintiffs' Lands had been listed for a lengthy period of time in a previous listing which listing expired without the property having been sold.
 - (g) She failed to disclose to the Hans important information known to Chee concerning the Plaintiffs' Lands.
 - (h) She provided misleading information to the Hans with respect to the Plaintiffs' Lands.
46. Chee's breach of contract and negligence have caused the damages suffered by the Plaintiffs.
47. The Plaintiffs further state that Chee at all material times owed the Hans a fiduciary duty, which included:
- (a) A duty to act in the Hans' best interests;
 - (b) A duty to accurately and fairly advise the Hans with respect to:
 - (i) purchasing a commercial property;
 - (ii) purchasing a property located immediately adjacent to a property upon which an active dry cleaning business was being operated; and
 - (c) A duty not to place herself in a position which conflicted with the Hans' best interests.

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48. The Plaintiffs state that in addition and in the alternative to the allegations of negligence set out in paragraph 45 above, to the extent that the matters alleged therein were occasioned by Chee with an intent to prefer her interests to the interests of the Hans, Chee breached her fiduciary duty with respect to her obligations to the Hans.
49. Chee's breach of fiduciary duty has caused the damages suffered by the Plaintiffs.
50. The Defendant Urban is liable in law for the damages incurred by the Plaintiffs as a result of Chee's breach of contract, negligence and breach of fiduciary duty.
51. The Plaintiffs plead that as a result of the Contamination on the Plaintiffs' Lands, all of the Defendants are liable for:
- (a) The costs associated with the remediation of the Plaintiffs' Lands, and costs of obtaining environmental, legal and consulting advice to address the contamination issue both pre and post-issuance of this action, the amount of which will be provided prior to trial;
 - (b) Damages arising from any claims that may be made by adjoining property owners and the owners of property beyond those property adjacent thereto;
 - (c) Diminution of the value of the Plaintiffs' Lands; and
 - (d) Damages as a result of the loss of use of the Plaintiffs' Lands;
52. The Plaintiffs plead and rely on the provisions of the *Environmental Protection Act*, R.S.O. 1990, c.E.19, the *Negligence Act*, R.S.O. 1990, c.N.1 and the *Courts of Justice Act*, R.S.O. 1990, c. C.43.

- 16 -

53. The Plaintiffs propose that this action be tried at the City of Toronto.

DATE: November 17th, 2014

KLEIN & SCHONBLUM ASSOCIATES

Barristers and Solicitors
Suite 2901, Box 2406
2300 Yonge Street
Toronto, ON M4P 1E4

SIMON SCHONBLUM
Law Society #: 021845Q
Tel: (416) 480-0221
Fax: (416) 480-0017

Lawyers for the Plaintiffs

CV-14-00512260-0000

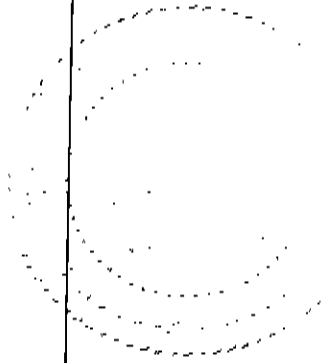
BOSUNG INVESTMENTS INC. ET AL.
Plaintiffs

- and -

KUK-ILL JOHN KIM ET AL.
Defendants

Court File No.

<p align="center">ONTARIO SUPERIOR COURT OF JUSTICE</p> <p>Proceeding commenced at Toronto</p>	<p align="center">STATEMENT OF CLAIM</p>	<p>KLEIN & SCHONBLUM ASSOCIATES Barristers & Solicitors Yonge-Eglinton Centre, Box 2406 2300 Yonge Street, Suite 2901 Toronto, ON M4P 1E4</p> <p>Simon Schonblum Law Society No. 021845Q Tel: (416) 480-0221 Fax: (416) 480-0017</p> <p>Lawyers for the Plaintiffs</p>
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This is **Exhibit "6"** referred to
in the Affidavit of Kuk-Il John Kim
sworn this 26th day of April, 2022.



A Commissioner for Taking Affidavits, etc.

Jae Hyon Cho
Barrister & Solicitor, Vaturi & Cho LLP
1110 Finch Avenue West, Suite 310,
Toronto, Ontario, M3J 2T2
Tel: (416) 661-4529 Fax: (416) 661-5529

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

BOSUNG INVESTMENTS INC., BYOUNG OK HAN and JAE YOL HAN

Plaintiffs

and

**KUK-ILL JOHN KIM, MYOUNG-JA MARY KIM, RAYMOND STANCER,
STANCER GOSIN ROSE LLP, EUNICE KIM, GHAN GOE CHEE and
URBAN REAL ESTATE LTD.**

Defendants

**STATEMENT OF DEFENCE AND CROSSCLAIM OF THE DEFENDANTS
KUK-ILL JOHN KIM AND MYOUNG-JA MARY KIM**

1. The Defendants, Mr. and Mrs. Kim, admit the allegations contained in paragraphs 8 (subject to the dry cleaning ceasing operations in summer 2013) and 20 of the Statement of Claim.
2. The Defendants, Mr. and Mrs. Kim, deny the allegations contained in paragraphs 1, 8 (as to the dry cleaning operations which ceased in January 2013), 21, 23-30, 56, and 58 of the Statement of Claim.
3. The Defendants, Mr. and Mrs. Kim, have no knowledge in respect of the allegations contained in paragraphs 2, 3, 4, 5, 6, 7, 9, 10-19, 22, and 31-55 of the Statement of Claim.

I. THE PARTIES AND THE PROPERTIES

4. Mr. and Mrs. Kim are the registered owners of the property municipally known as 385 Spadina Road, Toronto, Ontario ("Kim Property"). Mr. Kim and Mrs. Kim purchased the Kim Property in February 1994.

5. Between June 1989 and February 2003, Mr. and Mrs. Kim operated a dry cleaning business at the Kim Property.

6. The Kim Property is adjacent to the property municipally known as 387 Spadina Road, Toronto, Ontario ("Bosung Property").

II. ALLEGED PRESENCE OF VOLATILE ORGANIC COMPOUNDS AT THE BOSUNG PROPERTY

7. Mr. and Mrs. Kim plead that the alleged migration of various chlorinated volatile organic compounds ("VOCs") from the Kim Property to the Bosung Property was not the result of the actions or omissions of Mr. and Mrs. Kim. Rather the actions or omissions of other individuals and/or corporations who operated businesses at the Bosung Property, the Kim Property or nearby properties resulting in the alleged presence of VOCs at the Bosung Property.

III. MR. AND MRS. KIM AS OWNERS AND OPERATORS OF A DRY CLEANING BUSINESS

8. From June 1989 to February 2003, Mr. and Mrs. Kim owned and operated a dry cleaning business at the Kim Property.

9. Prior to Mr. and Mrs. Kim, unrelated parties operated a dry cleaning business at the Kim Property. A dry cleaning business continued to operate at the Kim Property

following Mr. and Mrs. Kim ceasing to operate their dry cleaning business in February 2003 until January 2013.

10. Mr. and Mrs. Kim admit that laundry soap and perchloroethylene were used during Mr. and Mrs. Kim's operation of the dry cleaning business at the Kim Property. However, Mr. and Mrs. Kim deny that they discharged or permitted the loss of any perchloroethylene or VOCs from the dry cleaning operation at the Kim Property during Mr. and Mrs. Kim's operation.

11. Mr. and Mrs. Kim took the following precautions to prevent the loss of perchloroethylene or VOCs during Mr. and Mrs. Kim's operation of the dry cleaning business at the Kim Property:

- (a) Mr. and Mrs. Kim did not store perchloroethylene or VOCs at the Kim Property aside from perchloroethylene or VOCs contained within the dry cleaning machines for ongoing use
- (b) the dry cleaning machines were self-contained and closed loop
- (c) the perchloroethylene or VOCs were recycled and properly and lawfully disposed
- (d) used filters from the dry cleaning machines were properly and lawfully disposed, and
- (e) the collection, removal and transportation of perchloroethylene or VOCs and used filters to and from the Kim Property was at all times undertaken in

compliance with industry standards and practices, and by certified waste disposal contractors.

12. Mr. and Mrs. Kim, in their capacity as owners and operators of the dry cleaning business never:

- (a) caused or permitted the loss of perchloroethylene or VOCs on, at or from the Kim Property
- (b) caused or permitted the escape of perchloroethylene or VOCs on, at or from the Kim Property, or
- (c) caused or permitted the migration of perchloroethylene or VOCs beyond the Kim Property to the Bosung Property or to any other property.

13. Mr. and Mrs. Kim plead that at all material times during their ownership and operation of the dry cleaning business they acted in accordance with industry standards and practices, and never acted in such a way as to constitute negligence, nuisance, trespass or breach of statutory duty or contrary to the doctrine of strict liability.

IV. MR. AND MRS. KIM AS OWNERS OF THE KIM PROPERTY

14. Mr. and Mrs. Kim became the owners of the Kim Property in February 1994. At that time, Mr. and Mrs. Kim were the owners and operators of the dry cleaning business. In February 2003, Mr. and Mrs. Kim sold the dry cleaning business to another proprietor who leased the premises at the Kim Property from Mr. and Mrs. Kim until January 31, 2013.

15. As landlord, Mr. and Mrs. Kim state that they are not responsible for any nuisance that may have been created by any tenant(s) at the Kim Property (which is not admitted and specifically denied) because the Kim Property was not let for a purpose calculated to cause a nuisance.

16. Further, any nuisance created by any tenant(s) of Mr. and Mrs. Kim resulting from the alleged loss of perchloroethylene or VOCs at the Kim Property (which is not admitted and specifically denied) was not expressly authorized or a necessary consequence of the purpose for which the Kim Property was let during Mr. and Mrs. Kim's ownership of the Kim Property.

17. Mr. and Mrs. Kim state that, in their capacity as owners of the Kim Property, that they never:

- (a) caused or permitted the loss of perchloroethylene or VOCs on, at or from the Kim Property
- (b) caused or permitted the escape of perchloroethylene or VOCs on, at or from the Kim Property, or
- (c) caused or permitted the migration of perchloroethylene or VOCs beyond the Kim Property to the Bosung Property or to any other property.

18. Mr. and Mrs. Kim plead that at all material times during their ownership of the Kim Property they acted in accordance with industry standards and practices, and never acted in such a way as to constitute negligence, nuisance, trespass or breach of statutory duty.

V. THE HANS PURCHASE OF THE BOSUNG PROPERTY

19. On or about July 25, 2002, Mr. and Mrs. Han purchased the Bosung Property.

20. In advance of, or concurrent with, the purchase, the Hans ought to have completed pre-purchase environmental due diligence at the Bosung Property. This would have involved the Hans retaining an environmental consultant to complete Phase One and Phase Two Environmental Site Assessments for the Bosung Property.

21. By 1990, and certainly by 2002, the time of purchase, it was standard and prudent practice for purchasers of commercial properties in urban areas in Ontario, and in particular in Toronto, to complete purchaser's own pre-purchase environmental due diligence.

22. The Hans ought to have discovered or did discover that the Bosung Property was contaminated by VOCs at or concurrent with their purchase. In light of this, the Hans decision to close the purchase transaction was at the Plaintiffs' own peril and the Plaintiffs were the authors of their own misfortune. Accordingly, the Plaintiffs ought not to be permitted to claim against Mr. and Mrs. Kim for alleged damages that the Plaintiffs could have and should have avoided.

23. In the alternative, if the Plaintiffs did not complete their own pre-purchase environmental due diligence in advance of or concurrent with the timing of the purchase of the Bosung Property, the Plaintiffs proceeded with the purchase at its own peril and the Plaintiffs are the author of their own misfortune. Accordingly, the Plaintiffs ought not to be permitted to claim against Mr. and Mrs. Kim for alleged damages that the Plaintiffs could have and should have avoided.

24. It is inequitable and unfair for the Plaintiffs to gain any benefit by suing Mr. and Mrs. Kim when the Plaintiffs ought to have discovered or did discover the presence of perchloroethylene or VOCs at the Bosung Property in advance of or concurrent with the timing of the Plaintiffs purchase of the Bosung Property in July 2002.

VI. THE HANS AND BOSUNGS ACTION IS STATUTE BARRED

25. Mr. and Mrs. Kim state that this action was commenced on November 17, 2014 by the Plaintiffs after expiry of the limitation period and therefore this action ought to be dismissed as it is statute-barred.

26. Mr. and Mrs. Kim state that the Plaintiffs ought to have discovered or did discover the alleged presence of perchloroethylene or VOCs at the Bosung Property and the alleged migration of perchloroethylene or VOCs from the Kim Property to the Bosung Property (which is not admitted and specifically denied) prior to November 17, 2014.

27. Further, the Plaintiffs knew about the presence of perchloroethylene or VOCs at the Bosung Property no later than June 2005 when the Hans received notification from the owner of the property municipally known as 389 Spadina Road, Toronto, Ontario, alleging that perchloroethylene or VOCs were migrating from the Kim Property through the Bosung Property to 389 Spadina Road (which is not admitted and specifically denied).

28. Mr. and Mrs. Kim plead and rely on paragraphs 34-39 of the Plaintiffs' Statement of Claim that the Hans received notice of the alleged presence of perchloroethylene or VOCs at the Bosung Property and that perchloroethylene or VOCs may be migrating from the Kim Property, through the Bosung Property to 389 Spadina Road (which is not admitted and specifically denied).

29. Mr. and Mrs. Kim also plead and rely on paragraphs 10-16 of Raymond Stancer and Stancer Gossin Rose LLP's Statement of Defence, specifically that

- (a) the Plaintiffs were given notice of the alleged presence of perchloroethylene or VOCs at the Bosung Property and the alleged migration of perchloroethylene or VOCs from the Kim Property to the Bosung Property (which is not admitted and specifically denied) prior to November 17, 2014 and at least as early as June 2005
- (b) the Plaintiffs contacted at least two environmental consultants who advised that perchloroethylene or VOCs may be originating at the Kim Property (which is not admitted and specifically denied)
- (c) the Plaintiffs were considering further testing and monitoring to assess whether perchloroethylene or VOCs were present at the Bosung Property, and
- (d) the Plaintiffs were given legal advice by Mr. Stancer to take steps to address any perchloroethylene or VOCs and that in or about June 2005 the Hans likely had a claim against the owners of the dry cleaning business at the Kim Property.

30. The Plaintiffs, upon discovering the presence of perchloroethylene or VOCs, by no later than June 2005, should have made all reasonable inquiries about the presence of VOCs at the Bosung Property, including ascertaining the source(s) of perchloroethylene or VOCs.

31. By no later than June 2005, the Plaintiffs should have, could have or did determine from which property or properties perchloroethylene or VOCs originated, the owners of the source properties and any tenants at the source properties pursuant to, and in consideration of, section 5 of the *Limitations Act, 2002*, S.O. 2002, c. 24.

32. The Plaintiffs issued their Statement of Claim on November 17, 2014. This is nine (9) years and five (5) months after June 2005 when the Plaintiffs ought to have discovered or did discover the Plaintiffs' claim against Mr. and Mrs. Kim.

33. The Plaintiffs' failure to issue its claim within the two (2) year limitation period is fatal. Accordingly, Mr. and Mrs. Kim plead that the Plaintiffs' claim is statute barred and ought to be dismissed with substantial indemnity costs.

VII. DAMAGES

34. Mr. and Mrs. Kim have no knowledge about the Plaintiffs' alleged damages. Mr. and Mrs. Kim deny that the Plaintiffs have sustained damages and/or that the Plaintiffs have sustained damages to the extent alleged. Mr. and Mrs. Kim put the Plaintiffs to the strict proof thereof. In the alternative, if such damages as claimed by the Plaintiffs were sustained by the Plaintiffs (which is not admitted and specifically denied) such damages are excessive and too remote.

35. Mr. and Mrs. Kim plead that the Plaintiffs have sustained no interference with the Plaintiffs' use and enjoyment of the Bosung Property as a result of the alleged presence of perchloroethylene or VOCs at the Bosung Property and/or the alleged migration of perchloroethylene or VOCs from the Kim Property to the Bosung Property.

36. Specifically, Mr. and Mrs. Kim state that the Plaintiffs have maintained ownership of the Bosung Property and throughout the Plaintiffs' ownership have, continued to and continue to lease the Bosung Property and to collect full market value rent for the Bosung Property.

VIII. STATUTES

37. Mr. and Mrs. Kim plead and rely on the following statutes, as amended:

- (a) *Environmental Protection Act*, R.S.O. 1990, c. E.19
- (b) *Negligence Act*, R.S.O. 1990, c.N.1
- (c) *Limitations Act, 2002*, S.O. 2002, C. 24 and
- (d) *Courts of Justice Act*, R.S.O. 1990, c. C.43.

38. The Defendants, Mr. and Mrs. Kim ask that this action be dismissed with costs payable by the Plaintiffs to Mr. and Mrs. Kim on a substantial indemnity basis.

CROSSCLAIM

39. The Defendants, Kuk-III John Kim and Myoung-Ja Mary Kim, claim against the Defendants:

- (a) contribution and indemnity under sections 2 and 3 of the *Negligence Act*, R.S.O. 1990, c. N.1, as amended, for any amounts which Kuk-III John Kim and Myoung-Ja Mary Kim may be found to be responsible to the Plaintiffs

- (b) contribution and indemnity under the common law and equity for any amounts which Kuk-III John Kim and Myoung-Ja Mary Kim may be found to be responsible to the Plaintiffs.
- (c) the costs of the main action, plus all applicable taxes
- (d) the costs of this Crossclaim, plus all applicable taxes, and
- (e) Such further and other Relief as to this Honourable Court may seem just.

40. The Defendants, Mr. and Mrs. Kim, repeat and rely upon the allegations contained in their Statement of Defence in support of the Crossclaim.

41. The Defendants, Mr. and Mrs. Kim, request that the Crossclaim be heard at the same time as the Main Action.

June 25, 2015

WILLMS & SHIER
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Peter J. Osborne / Vanessa Park-Thompson
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Defendant

AND TO: GHAN GOE CHEE
2498 Yonge Street, Suite 206
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Defendant

AND TO: URBAN REAL ESTATE LTD.
2498 Yonge Street, Suite 206
Toronto ON M4P 2H8

Defendant

BOSUNG INVESTMENTS INC. et al.
Plaintiffs

-and- **KUK-ILL JOHN KIM et al.**
Défendants

Court File No. CV-14-00516260-0000

ONTARIO
SUPERIOR COURT OF JUSTICE
PROCEEDING COMMENCED AT
TORONTO

STATEMENT OF DEFENCE AND CROSSCLAIM

WILLMS & SHIER
ENVIRONMENTAL LAWYERS LLP
4 King Street West, Suite 900
Toronto, ON M5H 1B6

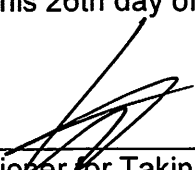
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mmcarea@willmsshier.com
jstevens@willmsshier.com

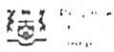
Lawyers for the Defendants,
Kuk-Ill John Kim and Myoung-Ja Mary Kim

This is **Exhibit "7"** referred to
in the Affidavit of Kuk-III John Kim
sworn this 26th day of April, 2022.



A Commissioner for Taking Affidavits, etc.

Jae Hyon Cho
Barrister & Solicitor, Vaturi & Cho LLP
1110 Finch Avenue West, Suite 310,
Toronto, Ontario, M3J 2T2
Tel: (416) 661-4529 Fax: (416) 661-5529



Charge/Mortgage of Land

Form 2 - Land Registration Reform Act

1997 & 1998 AM CO INC
Form 2 (to 9/97)

B

FOR OFFICE USE ONLY

C 4 0 0 0 3 4

NEW PROPERTY IDENTIFIERS

07 06 26 10 26

Additional See Schedule

(1) Registry Land Titles (2) Page 1 of 2 pages

(3) Property Identifier(s) Block Property Additional See Schedule

(4) Principal Amount
SEVENTY THOUSAND----- Dollars \$70,000.00

(5) Description
Part of Lots 31 and 32, Plan 861, City of Toronto Municipality of Metropolitan Toronto, designated as Parts 1 and 3, Plan 64R-14057, Land Registry Office for the Land Registry Division of Metropolitan Toronto (No. 64)

Executions
Additional See Schedule

(6) This Document Contains (a) Redescription New Easement Plan/Sketch (b) Schedule for Description Additional Parties Other (7) Interest/Estate Charged Fee Simple

(8) Standard Charge Terms - The parties agree to be bound by the provisions in Standard Charge Terms filed as number _____ and the Charge(s) hereby acknowledge(s) receipt of a copy of these terms

(9) Payment Provisions		(b) Interest Rate	(c) Calculation Period
(a) Principal Amount \$	70,000.00	9.5 % per annum	half-yearly not in advance
(d) Interest Adjustment Date	1997 06 26	(e) Payment Date and Period	26th of each and every month
(f) First Payment Date	1997 07 26	(g) Amount of Each Payment	ONE THOUSAND SEVEN HUNDRED & FIFTY-TWO & 52/100 Dollars \$1,752.52
(h) Last Payment Date	2001 05 26	(i) Insurance	Full Replacement Value Dollars \$
(j) Balance Due Date	2001 06 26		

(10) Additional Provisions
Continued on Schedule

(11) Charge(s) The chargor hereby charges the land to the chargee and certifies that the chargor is at least eighteen years old and that We are spouses of one another.

The charge(s) acknowledge(s) receipt of a true copy of this charge

Name(s)	Signature(s)	Date of Signature
KIM, Kuk-Il John	X	1997 06 25
KIM, Myoung-Ja Mary	X	1997 06 25

(12) Spouse(s) of Charge(s) I hereby consent to this transaction

Name(s)	Signature(s)	Date of Signature

(13) Charge(s) Address for Service
385 Spadina Road, Toronto, Ontario M5T 2G6

(14) Chargee(s)
LAURENTIAN TRUST OF CANADA INC. IN TRUST FOR SELF-DIRECTED RRSP 710467

(15) Chargee(s) Address for Service
Suite 404, 130 Adelaide Street West, Toronto, Ontario M5H 3P5

(16) Assessment Roll Number of Property	City	Mun	Map	Sub	Par	FOR OFFICE USE ONLY	Fees	
	19	04	111	280	00200		Registration Fee	50
(17) Municipal Address of Property	(18) Document Prepared by:							
385 Spadina Road TORONTO, Ontario M5T 2G6	STANLEY J. ARBUS Barrister & Solicitor 615A Bloor Street West TORONTO, Ontario M6G 1K8 (KIM 3545)							50
							Total	100

2

SCHEDULE "A"

PREPAYMENT PRIVILEGE

PROVIDED that the mortgagors, after June 26, 1999, shall have the privilege of prepaying the whole or any part of the principal sum hereby secured at any time or times upon the payment of three months interest as a bonus.

SALE OF PROPERTY

It is further understood and agreed between the parties hereto that in the event of the Mortgagor selling or agreeing to sell or otherwise disposing of the mortgaged premises or part thereof the whole of the principal sum then remaining unpaid and all other sums secured hereby shall, at the sole option of the Mortgagee and notwithstanding any other provision of this mortgage forthwith become due and payable, and all powers in and by this mortgage conferred shall become exercisable.

POST-DATED CHEQUES

The Mortgagor shall provide a series of twelve post-dated cheques prior to the commencement of the within mortgage and shall provide a further set of twelve post-dated cheques on each anniversary date of the within mortgage.

NSF FEE

In the event that any of the Mortgagors' cheques are not honoured when presented for payment to the Bank or Trust Company on which they are drawn, the Mortgagor shall pay to the Mortgagee for each such returned cheque a servicing fee of \$150.00 as a liquidated amount to cover the Mortgagee's administrative costs which respect to same. In the event that the said cheque which has not been honoured by the Mortgagor's bankers is not forthwith replaced by the Mortgagor, the Mortgagee shall be entitled to a further servicing fee equal to \$50.00 for each written request which may be necessitated by the Mortgagor not forthwith replacing such dishonoured cheque.

INSURANCE FEE

In the event that the Mortgagor does not provide insurance in accordance with the terms of this Mortgage, the Mortgagee shall be entitled to place such insurance with a company of the Mortgagee's choice and in addition to the insurance company charges, the Mortgagee shall be entitled to a \$150.00 servicing fee as a liquidated amount to cover the Mortgagee's administrative costs with respect to same.

**IN THE MATTER OF THE BANKRUPTCY AND
INSOLVENCY ACT, RSC 1985, c. B-3, AS AMENDED**

Court File No. 31-2822607
Estate File No. 31-2822607

**IN THE MATTER OF THE NOTICE OF INTENTION TO
MAKE A PROPOSAL OF KUK-ILL JOHN KIM**

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

Proceeding commenced at TORONTO

AFFIDAVIT OF KUK-ILL JOHN KIM SWORN APRIL 26, 2022

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Tel: 416-365-1110
Fax: 416-365-1876

Lawyers for Kuk-Ill John Kim and Myoung-Ja Mary Kim

**IN THE MATTER OF THE BANKRUPTCY AND
INSOLVENCY ACT, RSC 1985, c. B-3, AS AMENDED**
**IN THE MATTER OF THE NOTICE OF INTENTION TO
MAKE A PROPOSAL OF KUK-ILL JOHN KIM**

Court File No. 31-2822607
Estate File No. 31-2822607

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

Proceeding commenced at TORONTO

MOTION RECORD

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