



Clerk's stamp:

COURT FILE NUMBER

1801- 08982

COURT

COURT OF QUEEN'S BENCH

JUDICIAL CENTRE

CALGARY

APPLICANT

ROBERTA OTT

RESPONDENTS

**CROSSROADS-DMD MORTGAGE
INVESTMENT CORPORATION, GERRY
MACDONALD, GERRY GARVEY,
JAMES DEVLIN, 485380 ALBERTA
LTD., 702653 ALBERTA LTD., DONNA
DEVLIN, GINA DEVLIN, DRB HOLDINGS
INC., ROBERT DRESSLER, MARIAN
DRESSLER, MAUREEN MACDONALD
AND BLAIR ROBERTSHAW**

DOCUMENT

ORIGINATING APPLICATION

ADDRESS FOR SERVICE AND
CONTACT INFORMATION OF PARTY
FILING THIS DOCUMENT

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File No.: 039387-00001/GBD

NOTICE TO THE RESPONDENT(S)

This application is made against you. You are a respondent.

You have the right to state your side of this matter before the Court.

To do so, you must be in Court when the application is heard as shown below:

Date: July 11, 2018

Time: 10:00a.m. or so soon thereafter as Counsel may be heard

Where: Calgary Court Centre, 601 – 5th Street SW, Calgary, AB T2P5P7

Before: Master in Chambers

Go to the end of this document to see what you can do and when you must do it.

Basis for this claim:

Background

1. The Applicant, Roberta Ott ("**Ott**") is a shareholder of the Respondent Crossroads-DMD Mortgage Investment Corporation ("**Crossroads**"). She owns 531,218 Class B preferred shares of Crossroads.
2. The directors of Crossroads are James Devlin ("**Devlin**"), Gerry Garvey ("**Garvey**") and Gerry Macdonald ("**G. Macdonald**"), (collectively the "**Directors**"). Devlin also holds the office of secretary/treasurer; Garvey holds the office of vice president; and G. Macdonald holds the office of President.
3. Crossroads is an Alberta corporation, which carries on business as a mortgage investment corporation ("**MIC**") in Alberta and elsewhere in western Canada.
4. CMS Financial Management Services Ltd. ("**CMS Financial**") is an Alberta corporation which acted as the Exempt Market Dealer, Restricted Portfolio Manager and Investment Fund Manager of Crossroads until November 30, 2016. On or about April 1, 2017, the Alberta Securities Commission ("**ASC**") revoked the registration of CMS Financial as an Exempt Market Dealer, Restricted Portfolio Manager and Investment Fund Manager.
5. Caplink Financial Corporation ("**Caplink**") is an Alberta corporation engaged in the business of real estate secured mortgage investment and lending. Since November 30, 2016, Caplink has served as Exempt Market Dealer, Restricted Portfolio Manager and Investment Fund Manager for Crossroads.
6. Crossroads, through the services of CMS Financial, issued offering memoranda and raised funds from investors, who obtained Class B preferred shares of Crossroads which entitled them to receive dividends from the profits of Crossroads. Crossroads was to use the investment funds in accordance with the terms of the offering memoranda to provide mortgage financing to qualified borrowers.
7. There are approximately 1,500 Class B shareholders of Crossroads holding approximately 1,700 accounts, who have invested \$68,387,328 in Crossroads.

8. There are eleven Class A voting shareholders of Crossroads.

Reasonable Expectations and Oppression

9. In the capacity of a shareholder, Ott has reasonable expectations as to how the Directors will conduct themselves with respect to the management of Crossroads. These reasonable expectations include, but are not limited to:

- (a) the Directors would act in the best interests of the corporation;
- (b) the Directors would not place their personal interests ahead of the interests of the corporation;
- (c) all mortgages, promissory notes, caveatable interests and any other security investments would, prior to funding, be registered on title of the approved property;
- (d) mortgages would be purchased from financial institutions, investment dealers, and pension funds, all of whom would be arm's-length to CMS Real Estate Ltd., CMS Financial, Crossroads and their respective directors, officers, and promoters; and
- (e) that the Directors would fulfill their fiduciary duty as a director of Crossroads in accordance with the obligations set out in the *Alberta Business Corporations Act*.

10. The Directors have acted in a manner that is oppressive, unfairly prejudicial, and unfairly disregard the interests of Ott, the particulars of which include:

- (a) acting in a conflict of interest with the Class B shareholders and the interests of Crossroads;
- (b) approving the financials of Crossroads with no scrutiny;
- (c) approving the wrongdoings described herein with no scrutiny;
- (d) taking advantage of their positions of authority and using those positions for individual gain and profit;
- (e) preferring their own interests over the interests of Crossroads;
- (f) causing funds belonging to Crossroads to be used for purposes contrary to the representations in the offering memorandum;
- (g) misrepresenting the fair market value of investments, and failure to disclose material facts related to the true market value and non arms-length nature of any particular investment in reporting to Class B shareholders;

- (h) approving the use of funds to enrich themselves to the detriment of Class B shareholders;
- (i) continuing to issue dividends when to do so would devalue the Class B shares;
- (j) contravening section 43 of the Alberta *Business Corporations Act* by improperly continuing to issue dividends;
- (k) contravening section 36 of the Alberta *Business Corporations Act* by improperly continuing to pay redemptions;
- (l) refusing to answer Class B shareholders' questions;
- (m) failing to provide adequate financial disclosure;
- (n) paying unreasonable year-end bonuses while Crossroad was in poor financial standing;
- (o) threatening the winding up of Crossroads if proposed changes to Crossroads Articles of Incorporation weren't accepted, and thereby coercing holders of Class B shares to vote contrary to their own interests; and
- (p) such further and oppressive acts as Counsel may advise and this Honourable Court may permit.

11. The Directors, in discharging their duties as directors of Crossroads, have failed to act honestly and in good faith with a view to the best interests of Crossroads. They have failed to meet the reasonable expectations expected of them in their position in Crossroads.

Remedy sought:

12. Ott seeks an Order:

- (a) holding that the Directors have acted in a manner that is oppressive and unfairly prejudicial to Ott;
- (b) removing Devlin, Garvey, and G. Macdonald as directors and officers of Crossroads;
- (c) appointing Peter Stafford, Michael Benning, and Gordon Smith as directors of Crossroads;
- (d) granting costs of this Application against the Respondents and in favour of the Applicant on a solicitor-client basis, alternatively party and party basis; and

- (e) such further and other relief as this Honourable Court may deem just and appropriate.

Affidavit or other evidence to be used in support of this application:

13. Affidavit of Roberta Ott, sworn June 22, 2018, filed;
14. Affidavit of Brian Menges, sworn June 22, 2018, filed; and
15. Such further and other material as counsel may advise and this Honourable Court may permit.

Applicable Acts and regulations:

16. *Alberta Business Corporations Act*, RSA 2000, c B-9, as amended, sections .
17. *Alberta Rules of Court*, Alta Reg 124/2010, Rules.
18. Such further and other legislation as counsel may advise and this Honourable Court may permit.

WARNING

You are named as a respondent because you have made or are expected to make an adverse claim in respect of this originating application. If you do not come to Court either in person or by your lawyer, the Court may make an order declaring you and all persons claiming under you to be barred from taking any further proceedings against the applicant(s) and against all persons claiming under the applicant(s). You will be bound by any order the Court makes, or another order might be given or other proceedings taken which the applicant(s) is/are entitled to make without any further notice to you. If you want to take part in the application, you or your lawyer must attend in Court on the date and at the time shown at the beginning of this form. If you intend to give evidence in response to the application, you must reply by filing an affidavit or other evidence with the Court and serving a copy of that affidavit or other evidence on the applicant(s) a reasonable time before the application is to be heard or considered.