

From: [Cavanagh, Justice Peter \(SCJ\)](#)
To: [Phoenix, Graham](#); [Phoenix, Graham](#); [Adamo, Amanda](#); [White, Sarah](#); [Sheldon Title \(sheldon.title@mnt.ca\)](#); [Robert S. Brown <rsb@rsblaw.ca>](#); [Walter P Burych](#); [Tim Duncan](#); [duguid@omh.ca](#); [john@alouislaw.com](#)
Cc: [JUS-G-MAG-CSD-Toronto-SCJ Commercial List](#); [JUS-G-MAG-CSD-Toronto-SCJ Commercial List](#)
Subject: Court File No. CV-21-00661132-00CL - Buduchnist Credit Union v. Dundas Retirement Place Inc. et al. (RECEIVERSHIP)
Date: Tuesday, September 7, 2021 1:30:45 PM
Attachments: [Order \(2021Sep07\) re. Dundas Property Title Conversion \(L2243009xC2C1F\).PDF](#)
[Order \(2021sep07\) re Admin Relief Borrowings Increase \(Dundas Retirement et al\) \(L2243011xC2C1F\).PDF](#)

MATTER: **Court File No. CV-21-00661132-00CL - Buduchnist Credit Union v. Dundas Retirement Place Inc. et al. (RECEIVERSHIP)**

HEARING DATE: September 7, 2021

HEARING TIME: 10:00am via ZOOM

Appearances:

Graham Phoenix and Sara White... for MNP Ltd., the Receiver

Sheldon Title... representative of the Receiver

Walter Burych... for the Applicant, BCU

Robert Brown... for the Debtors

John Alousis... for the Purchaser

Tim Duncan and Michael McClurg... for the Retirement Homes Regulatory Authority

Endorsement:

MNP, in its capacity as court-appointed receiver of the assets, undertakings and properties of the Debtors (as defined in the materials) moves for an order rectifying the register and directing the conversion to Land Titles Conversion Qualified of certain real property known municipally as 33 Main Street, Dundas, Ontario (the "Property"). The requested order arises from circumstances described in the Receiver's Third Report which includes the affidavit of Walter Burych dated August 25, 2021. Mr. Burych is a senior lawyer with the law firm which represents the Applicant, Buduchnist Credit Union.

In his affidavit, Mr. Burych explains the issues relating to title to the Property which are described in paras. 13 to 35 of his affidavit. I have reviewed this affidavit and accept the evidence given by Mr. Burych.

The first issue relates to a land description error in respect of part of Lot 8 (Part 4 on Plan 62R-6246) (described as the "Triangle" in para. 16 of Mr. Burych's affidavit) which was excluded on Plan 62R-6246 from Instrument No. CD339630 that led to the identical error on Instrument No. CD506914. An attempt was made to rectify the error, as described in para. 24 of Mr. Burych's affidavit, through registrations of (i) Plan 62R-14692 depicting the correct legal description of the Property, (ii) Instrument VM243010 (a Transfer/Deed of Land by Elm Villa Retirement Homes Inc. to the current owner), and (iii) Instrument No. VM243865, a Quit Claim Deed from Martin T. Jeremias and Harjer Corporation Limited (formerly Jerdun Investments Limited).

The second issue stems from a poorly defined physical boundary between the Southern limit of Lot

10, RCP 1401 (Lot 10 forming part of the Property) and the Northern limit of Lot 11, RCP 1401. The history with respect to this issue is also set out in Mr. Burych's affidavit, at paras. 26 to 35. The error relates to a strip of land that, in error, was not included in a conveyance of the Northern portion of Lot 11 by Instrument No. DN15735 in 1939. The strip is a remnant of title from Instrument AB56533 owned by Wallace C. Cattel and Lorna I. Cattel as joint tenants. When, in 1998, the owner of the Property at the time, Elm Villa Retirement Homes Inc. was looking to sell the Property, there was (i) a deposit in August 1998 of Plan 62R-14692, (ii) conveyance of the Property to the current owner by Instrument No. VM243010 in September 1998 using the current description for the Property, and (iii) the registration of a Quit Claim on December 11, 1998 as Instrument No. VM243868 whereby the Estate Trustees for the Estate of Wallace C. Cattel attempted to quit claim any interest the Cattel Estate had in Lot 11 included in Plan 62R-14692, that being the strip. The Quit Claim also confirms that Elm Villa Retirement Homes Inc. is possessed of and occupying the strip.

Section 159 of the Land Titles Act provides as follows: "Subject to any estates or rights acquired by registration under this Act, where a court of competent jurisdiction has decided that a person is entitled to an estate, right or interest in or to registered land or a charge and as a consequence of the decision the court is of opinion that a rectification of the register is required, the court may make an order directing the register to be rectified in such manner as is considered just."

I am satisfied based on the evidence given by Mr. Burych that the requested order should be made. Neither issue affects adjacent lands, as the landowners to the North and the South hold title registered in Land Titles, which property descriptions do not overlap or conflict in any way with the registered description of the Property. I am satisfied that no party will be materially prejudiced if the requested conversion were ordered. The Northern and Southern neighbours were given notice of this motion. The Southern neighbour consents to the requested order and the Northern neighbour did not express opposition.

For these reasons, I grant the requested motion.

The Receiver also moves for an order (i) increasing the principal amount that the Receiver may borrow under the Receiver's Borrowings Charge, as established by - and defined in - the Order of the Honourable Justice Parayeski dated December 23, 2020, (ii) approving the fees and disbursements of the Receiver and its counsel, and (iii) approving the third report of the Receiver dated August 26, 2021 and the activities of the Receiver described therein. I am satisfied that the requested order should be made.

Orders to issue in forms of attached order signed by me.



Cavanagh J.