

**THIS IS EXHIBIT "S" TO THE AFFIDAVIT
OF SUZANNE FISHER SWORN BEFORE ME
ON THIS 26th DAY OF JANUARY, 2012**


Cheryle Elizabeth Thomson

A Commissioner for taking affidavits, etc.

Cheryle Elizabeth Thomson,
a Commissioner, etc., Province of
Ontario, for Central 1 Credit Union.
Expires August 24, 2014.

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Court File No. CV-11-9144-00CL

ONTARIO SUPERIOR COURT OF JUSTICE

(COMMERCIAL LIST)

B E T W E E N :

CENTRAL 1 CREDIT UNION

Applicant

- and -

UM FINANCIAL INC. and UM CAPITAL INC.

Respondents

--- This is the Examination pursuant to a Court Order dated the 10th day of November, 2011, of OMAR KALAIR, taken at the offices of Fraser Milner Casgrain LLP, 77 King Street West, Suite 400, Toronto, Ontario, M5K 0A1, on Friday, the 25th day of November, 2011.

A P P E A R A N C E S :

Neil Rabinovitch, Esq., - for the Court-Appointed
Jane O. Dietrich, Esq., Receiver.
& Saran Ragunathan, Esq.

Colin P. Stevenson, Esq. - for Yusuf Panchbaya.
Harvin Pitch, Esq. - for Omar Kalair.

ALSO PRESENT AS AN OBSERVER:

Mark Thomson (Grant Thornton)

REPORTED BY: Bonnie Lynn van der Meer, CSR

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1	I N D E X O F P R O C E E D I N G S	
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3	WITNESS: Omar Kalair; Affirmed.....	4
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9 ---[Reporter's note: The following indices of
10 undertakings, under advisements and refusals are
11 provided for the assistance of counsel and do not
12 purport to be complete or binding on the parties
13 herein.]

14

15 I N D E X O F U N D E R T A K I N G S

16 The questions/requests undertaken are noted by U/T
17 and appear on the following pages/lines: 10:18,
18 22:10, 83:22, 117:19.

19

20

21 I N D E X O F U N D E R A D V I S E M E N T S

22 The questions/requests taken under advisement are
23 noted by U/A and appear on the following
24 pages/lines: 21:20, 35:23, 37:21, 38:2, 39:1,
25 54:11, 121:9, 122:18, 123:21, 124:23, 125:3.

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I N D E X O F R E F U S A L S

2 The questions/requests refused are noted by R/F and
3 appear on the following pages/lines: 47:16,
4 106:13, 107:8, 107:12, 108:5, 108:10, 121:20.

5

6

7

8 INDEX OF EXHIBITS

9	EXHIBIT NO.	DESCRIPTION	PAGE/LINE
10		(None)	

11

12

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1 ---Upon commencing at 2:07 p.m.

2 OMAR KALAIR; AFFIRMED.

3 STATEMENT FOR THE RECORD BY MR. PITCH:

4 MR. PITCH: I just wanted to state that
5 my client is taking blanket protection of the
6 Canada Evidence Act and the Ontario Evidence Act
7 with respect to incrimination, or
8 self-incrimination. Okay?

9 MR. RABINOVITCH: Okay.

10 MR. PITCH: Thank you. I could refer
11 to the Charter, as well, but I think the Charter,
12 you don't have to refer to it. You're
13 automatically covered. But thank you.

14 Okay. Fire away.

15 EXAMINATION BY MR. RABINOVITCH:

16 1 Q. Can you state your full name for
17 the record, please?

18 A. Omar Kalair.

19 2 Q. Mr. Kalair, where do you reside?

20 A. 12 Stanley Carberry Drive,
21 Brampton, Ontario.

22 ---(Court reporter appeals.)

23 THE DEPONENT: 12 Stanley Carberry
24 Drive, Brampton, Ontario.

25 BY MR. RABINOVITCH:

Page 5

1 3 Q. And, sir, you are the president of
2 UM Financial Inc. and UM Capital Inc.?

3 A. I was.

4 4 Q. You were until when?

5 A. Until October 6.

6 5 Q. On October 6, you resigned?

7 A. Yes.

8 6 Q. And were you the president of,
9 we'll just call it "UM" jointly since their
10 inception?

11 A. Yes. For UM Financial Inc. and UM
12 Capital Inc. since their inception.

13 7 Q. And approximately when were the
14 two UM entities incorporated or created?

15 A. June 2004.

16 8 Q. Okay. And I take it you were also
17 a director of those two companies during the period
18 June 2004 'til October 6, 2011?

19 A. Yes, I was.

20 9 Q. Okay. Were you the most senior
21 person at both of those companies?

22 A. Yes, I was.

23 10 Q. Okay. And, sir, there's a company
24 by the name, UM Real Estate. Are you familiar with
25 that company?

Page 6

1 A. Yes.

2 11 Q. And did you hold any position with
3 UM Real Estate?

4 A. Yes. UM Real Estate Investment
5 Inc., I was the director.

6 12 Q. And also the president?

7 A. Yes, I was.

8 13 Q. Okay. And what is the nature of
9 the business of UM Real Estate Investment Inc.?

10 A. It was structured as a mortgage
11 investment corporation where we had a share
12 subscription of up to 100-million, and we did real
13 estate financing within Canada.

14 14 Q. And was it real estate financing
15 for borrowers or partners of UM Financial?

16 A. It was open for anyone.

17 15 Q. Okay. I'm just trying to
18 understand the relationship between the UM Real
19 Estate company and the UM Financial and Capital
20 companies?

21 A. So UM Real Estate Investment Inc.
22 is a separate company. It would provide financing
23 to any clients, not specific to UM Financial Inc..

24 . 16 Q. Okay. Is it still actively
25 carrying on business?

Page 7

1 A. Yes, it is.

2 17 Q. And you're still actively involved
3 with it?

4 A. Yes, I am.

5 18 Q. Okay.

6 MR. RABINOVITCH: Harvin, do you have
7 our Motion Record?

8 MR. PITCH: Yeah, and so does he.

9 MR. RABINOVITCH: Oh, okay. Perfect.
10 Terrific.

11 BY MR. RABINOVITCH:

12 19 Q. Turn to Tab 11 of the Motion
13 Record, please. You'll see a page that was printed
14 off UM Financial's website on I believe it's
15 October 5th, 2011. Does this accurately, to the
16 best of your knowledge, reflect UM's website?

17 A. This was prior to the
18 receivership. After the receivership, you will
19 notice there's changes on the website.

20 20 Q. Right.

21 A. This, this international Shariah
22 board was created in 2010. It does refer to our
23 past five local scholars at the end. But these
24 three scholars were retained to give a ruling on
25 our iFreedom Plus Mastercard and they're not part

Page 8

1 of the UM Financial Inc. or UM Capital Inc.. They
2 have never given advice for those products.

3 21 Q. Okay. Well, let's look at this
4 document. And maybe it will help if you actually
5 ask for me to wait the questions. It works better
6 that way.

7 A. Okay.

8 22 Q. The last paragraph of this
9 document says:

10 In the past, UM Financial's
11 products were approved by a group of
12 five local religious scholars.

13 Would those products include the
14 musharakahs?

15 A. Yes.

16 23 Q. Okay. And who were the five local
17 religious scholars?

18 A. You want me to give their names?

19 24 Q. Yes.

20 A. Oh. So Yusuf Panchbaya.

21 ---(Court reporter appeals.)

22 MR. PITCH: Well, I think we have a --
23 isn't he P-a-n-c-h-b-a-y-a and Yusuf is Y-u-s-u-f.
24 Okay.

25 THE DEPONENT: And Habeeb Alli whose

Page 9

1 name is here.

2 BY MR. RABINOVITCH:

3 25 Q. Yes?

4 A. And Hussein Patel.

5 26 Q. How do you spell his name?

6 A. P-a-t-e-l.

7 27 Q. Continue.

8 A. Usman Patel, with a U.

9 28 Q. P-a-t-u-l?

10 A. ...e-l.

11 29 Q. ...e-l.

12 A. And Nafis Bhayat, B-h-a-y-a-t.

13 30 Q. And they would have comprised the
14 five local religious scholars who provided advice
15 in respect of UM Financial's musharakahs?

16 A. For UM Financial Inc. from 2004.

17 31 Q. Okay. So these five individuals
18 were involved from 2004 forward?

19 A. Yes.

20 MR. PITCH: I don't want you to be
21 misled, but maybe -- the word is "local".

22 MR. RABINOVITCH: Yes. Thank you,
23 Mr. Pitch.

24 BY MR. RABINOVITCH:

25 32 Q. Did these scholars ever issue any

Page 10

1 fatwas with respect to the musharakahs?

2 A. Yes. They've issued five fatwas
3 and they were given to Credit Union. Their counsel
4 has them, and they're easy accessible. We could
5 provide them, also.

6 33 Q. Terrific.

7 MR. PITCH: Just answer the question;
8 otherwise, we're going to get loaded up with
9 undertakings. He asked you--

10 MR. RABINOVITCH: Well --

11 MR. PITCH: --a question. Just answer
12 the question.

13 BY MR. RABINOVITCH:

14 34 Q. That's fine. I would like an
15 undertaking to profile me with a copy of any and
16 all fatwas that the local scholars have issued with
17 respect to UM Financial's musharakahs.

18 U/T MR. PITCH: Yeah. We'll use our best
19 efforts.

20 THE DEPONENT: Yes.

21 BY MR. RABINOVITCH:

22 35 Q. Thank you. Were any fatwas with
23 respect to these products issued by any foreign
24 scholars?

25 A. Yes. From Egyptian scholars.

Page 11

1 36 Q. And who are the Egyptian scholars?

2 A. Umm. That information, the
3 chairman of the local Shariah board, Yusuf
4 Panchbaya; he was the main contact person.

5 37 Q. So did you ever deal with any of
6 the Egyptian scholars yourself?

7 A. No. The scholars would deal with
8 scholars.

9 38 Q. Did you ever come to know their
10 identity?

11 A. No.

12 39 Q. Okay. Did they ever communicate
13 with you?

14 A. No. I don't speak Arabic, so I
15 didn't have any communication with them.

16 40 Q. Okay. Did they issue any fatwas
17 separate and apart from the five fatwas that the
18 local religious scholars issued?

19 A. Not that I have seen.

20 41 Q. Okay. The Egyptian scholars; have
21 you ever entered into any contract with those
22 scholars?

23 A. Not ourselves directly, no.

24 42 Q. Okay. And the local scholars; is
25 there any written contract or agreement with them?

Page 12

1 A. Not that I have seen.

2 43 Q. And I take it you would be aware
3 if there was one, since you have been the president
4 or were the president of UM Financial and UM
5 Capital since June of 2004; correct?

6 A. The Shariah consultancy for the
7 products was given to the local scholars with the
8 chairman, so that was their line of business and it
9 wasn't really our line of business.

10 44 Q. But UM has no written agreement
11 with the local scholars; correct?

12 A. Umm. No, not, not a formal sort
13 of retainer or contract.

14 45 Q. Okay. And I take it that, call it
15 from 2004 until let's call it August of 2011, the
16 local scholars never issued any invoices or bills
17 to UM?

18 A. Not until they incorporated. That
19 was the only time they invoice.

20 46 Q. Okay. But that came in September
21 of 2011, right?

22 A. Yes.

23 47 Q. So prior to the incorporation of
24 MCC, there were no invoices that the either local
25 or foreign scholars rendered to UM; correct?

Page 13

1 A. No. No invoices. Travelling
2 expense per meeting was paid, \$125 per attending
3 scholar, but that was just for gas and travel
4 expense.

5 48 Q. And I take it that would be in
6 relation to the local scholars, right?

7 A. Yes.

8 49 Q. How many times a year would you
9 have meetings with the local scholars where you
10 would be paying their travel expenses?

11 A. Only formal meetings that we would
12 have; whereas, face-to-face, I estimate this would
13 be close to 50.

14 Many meetings took place actually
15 before we incorporated. We met with the Credit
16 Union in 2003.

17 50 Q. Okay. But, sorry, slow down.
18 When you said "close to 50", are you saying 50
19 meetings with the local scholars since 2004?

20 A. Yes.

21 51 Q. Okay. So it's somewhere under ten
22 a year; correct, roughly?

23 A. Yes. It would not be monthly. It
24 would be roughly every second month or so.

25 52 Q. And were these regular meetings

Page 14

1 that were scheduled?

2 A. It was if anyone would initiate a
3 meeting, then a meeting would be scheduled.

4 53 Q. Okay. Were there ever formal
5 agendas for the meetings, for example?

6 A. The chairman would run the
7 meeting.

8 54 Q. And who would the chairman be?

9 A. Yusuf Panchbaya.

10 55 Q. Okay. In advance of the meeting
11 or at the meeting, would anyone circulate a written
12 agenda, so that you would know what was supposed to
13 be discussed?

14 A. At times we did, from what I
15 recall, and at times we didn't. It depended on the
16 issue and, also, if you met the quorum - they had a
17 quorum system - if at least three of the five were
18 present.

19 56 Q. So unless three of the five local
20 scholars were present, the meeting couldn't take
21 place?

22 A. It would be a, uh, informal
23 meeting.

24 57 Q. Okay. And so it's roughly six,
25 seven times a year that UM Financial would pay the

Page 15

1 \$125 travel expenses of the local scholars?

2 A. Yes.

3 58 Q. Were the meetings with the local
4 scholars more frequent in the early years when the
5 products were just being designed and set up?

6 A. Yes. Prior to our incorporation,
7 it was almost weekly.

8 59 Q. When you say "prior to our
9 incorporation", you mean prior to UM Financial's
10 incorporation?

11 A. Yes.

12 60 Q. So roughly in, call it the 2003
13 time frame, roughly in the 2003 time frame, you
14 would have been meeting with them frequently to
15 discuss designing the Sharia-compliant financial
16 products?

17 A. Yeah, exactly. We engaged a
18 Credit Union legal counsel in summer of 2003. It
19 took us a year to design it and then we
20 incorporated.

21 61 Q. Okay. When you say "we
22 incorporated", you mean UM Financial?

23 A. Exactly.

24 62 Q. Okay. And at the time UM
25 Financial was incorporated some time in 2004... I

1 think you said roughly June of 2004?

2 A. Yes.

3 63 Q. ...I take it that no fees were
4 paid to the scholars for the assistance they had
5 provided up to that time?

6 A. Besides travelling expenses, other
7 fees, we -- the understanding was that in the
8 future, upon our success, they would be paid at
9 that juncture.

10 64 Q. Okay. And is there anything in
11 writing between UM and the scholars that says what
12 you have just told me?

13 A. In our meetings with the other
14 scholars, these points were discussed and noted. I
15 don't have those minutes of those meetings. They
16 might have them.

17 65 Q. Who would have copies of minutes
18 of the meetings between UM and the scholars?

19 A. UM -- it would be a meeting by the
20 scholars, so they would conduct it. UM would not
21 have that.

22 66 Q. Did UM ever have copies of any of
23 the minutes or agendas from the meetings they held
24 with the scholars?

25 A. No. I was simply invited to those

Page 17

1 meetings. The meetings were between the scholars.

2 67 Q. So the scholars would have their
3 own meetings and during the course of their
4 meetings, you would be invited to attend to discuss
5 issues specific to UM?

6 A. Yes. Some meetings, they had
7 without me, also.

8 68 Q. And do I understand correctly that
9 the scholars would discuss issues beyond just the
10 business of UM?

11 A. Scholars would only give legal
12 opinion on the -- their Shariah opinion on the
13 Shariah nature; not on the business of UM.

14 69 Q. Right. But the scholars
15 themselves; did these five scholars exist as a
16 board and do anything other than providing advice
17 or opinions to UM?

18 A. No. The specific composition of
19 that board was only for the opinion for our
20 products.

21 70 Q. Okay. And who was it that chose
22 the composition of this board?

23 A. I don't understand the question.

24 71 Q. There were five members on this
25 board. At some point early on when you were

Page 18

1 designing the product, I assume you concluded you
2 needed to get an opinion, an Islamic opinion from
3 Islamic scholars; correct?

4 A. Yes.

5 72 Q. How did you decide who was going
6 to be on this board of scholars?

7 A. The, umm... We approached two of
8 them, and then they approached a few others, and
9 then a board of five was put together, so that's
10 how the composition occurred.

11 73 Q. Okay. And I think you just told
12 me, two, three minutes ago, that you discussed
13 early on with the scholars that you would pay them
14 when you were able to; correct? Something along
15 those lines?

16 A. Yes.

17 74 Q. Can you be more specific in terms
18 of any discussion you had with them in that regard?

19 A. A lot of them would mention that
20 they would spend many hours on this. They would
21 attend community functions and this would be the
22 only topic that people would come up to them and
23 ask them.

24 And what I would say is that, 'Once we
25 have funds, we will compensate you at that point.'

Page 19

1 75 Q. Okay. And I take it, up until
2 September of 2011, they never made any demand for
3 payment; correct?

4 A. Verbal request was received by a
5 few of them to me, that they put a lot of time into
6 this and they haven't been compensated.

7 76 Q. Okay. And when did those requests
8 take place?

9 A. Umm. Since Central gave us notice
10 on shutting down the facility, those requests were
11 more coming in.

12 77 Q. Starting when?

13 A. We had a meeting with them in the
14 summer, this past summer, where this issue had come
15 up.

16 78 Q. So it was really starting this
17 past summer, so the summer of 2011--

18 A. (Nodding head.)

19 79 Q. --that some of the scholars
20 started asking for payment. Is that correct?

21 A. Yes. On my promise that I would
22 pay them at some point.

23 80 Q. And who were the scholars that
24 were requesting payment in the summer of 2011?

25 A. It was the same, same board.

Page 20

1 81 Q. Okay. But you said "a couple of
2 them", so--

3 A. Yeah.

4 82 Q. --obviously, you had in mind that
5 it wasn't the five of them who were each saying to
6 you they were looking to be paid. There was one or
7 two who were more vocal.

8 So in that context, who were the -- who
9 was leading the charge among the scholars to seek
10 payment.

11 A. One of them moved to U.K. and so
12 he's not here no longer.

13 83 Q. Which one is that?

14 A. Hussein Patel.

15 84 Q. Okay.

16 A. And one, one retired; Usman Patel.

17 85 Q. Okay. So I take it, it wasn't
18 them who were pushing for payment?

19 A. Yeah. The discussion of payment
20 occurred when the other three were present.

21 86 Q. Okay. So it's not the two Patels
22 who were involved in those discussions; correct?

23 A. Yes.

24 87 Q. So it would have been
25 Mr. Panchbaya, Alli, and Bhayat?

Page 21

1 A. Yes.

2 88 Q. Okay. And did they discuss with
3 you specifics of how much they believe they should
4 be paid?

5 A. They just mentioned they've spent
6 thousands of hours, but nothing, nothing in paper
7 or concrete. Many events they have attended,
8 conferences where they travelled overseas, umm, and
9 people they consulted with, calls that they have
10 been getting over the last eight years.

11 ---(Court reporter appeals.)

12 MR. RABINOVITCH: "Eight years".

13 BY MR. RABINOVITCH:

14 89 Q. Okay. I would like an undertaking
15 to give me the last-known contact information for
16 the five members. I don't need Mr. Panchbaya.
17 I've got his. But the other four members of the
18 local Shariah board; I would like their last-known
19 address and phone numbers, please.

20 U/A MR. PITCH: Can I take that under
21 advisement? I'm not sure. It's not a Discovery.

22 BY MR. RABINOVITCH:

23 90 Q. Do you -- fine. Then sitting here
24 today, do you know where I could get in touch with
25 these people? Do you have their contact

Page 22

1 information with you today?

2 A. They are well-known personalities.

3 If you Google them, you can find their information.

4 91 Q. That's not my question to you. Do
5 you have their contact information?

6 A. Yes, I have their contact
7 information.

8 92 Q. Okay. Mr. Pitch, we can either do
9 it on the record now --

10 U/T MR. PITCH: No. Then I will -- if he
11 has it and he has it here, I'm not going to waste
12 your time. I will get it.

13 MR. RABINOVITCH: I appreciate --

14 MR. PITCH: Well, I will use my best
15 efforts. Assuming he's got it, I'll get it.

16 MR. RABINOVITCH: Thank you.

17 BY MR. RABINOVITCH:

18 93 Q. And coming back to Tab 11, sir,
19 the printout from UM Financial's website, the
20 three, we'll call them the "foreign scholars",
21 Sheik Yaqubi, Y-a-q-u-b-i, Dr. Hasan, H-a-s-a-n,
22 and Dr. Usmani, U-s-m-a-n-i; when did they start
23 providing that Shariah advice or consulting
24 services to UM?

25 A. For UM Financial Group Inc., which

Page 23

1 is a separate corporation. Our iFreedom Mastercard
2 is under that corporation. For that, they provide
3 advice. But no advice was given to UM Financial
4 Inc. or UM Capital Inc..

5 94 Q. So -- okay. So they had
6 nothing -- these three individuals had nothing to
7 do with UM Financial and UM Capital; correct?

8 A. Correct.

9 95 Q. Okay. Were there any other
10 foreign scholars who were providing advice or
11 rulings in respect of UM Financial Inc. and UM
12 Capital Inc.'s products?

13 A. Not that I'm aware of.

14 96 Q. Okay. So --

15 MR. PITCH: He did talk about the
16 Egyptian scholars, though, issued fatwas.

17 THE DEPONENT: Yeah. Besides the --

18 MR. RABINOVITCH: No. He said there
19 were no fatwas. The fatwas were from the local
20 scholars, I believe.

21 MR. PITCH: Oh, yeah. He said he
22 didn't see any. But he did mention Egyptian
23 scholars.

24 THE DEPONENT: Yes.

25 MR. PITCH: I don't know if that means

Page 24

1 anything. I just mention it.

2 THE DEPONENT: The Shariah scholars
3 would be aware of that. They were responsible for
4 the Sharia advisement.

5 BY MR. RABINOVITCH:

6 97 Q. Okay. But so you -- the only
7 scholars you dealt with were the five local
8 scholars; correct?

9 A. Yes.

10 98 Q. Beyond that, you don't know
11 whether they were getting advice or direction from
12 any other scholars. As far as you were concerned,
13 the fatwas were issued by the five local members;
14 correct?

15 A. Exactly.

16 99 Q. Okay. And I take it you have
17 never received any demand for payment or request
18 for payment for any, from any foreign scholars who
19 say they provided advice to UM Financial or UM
20 Capital?

21 A. No.

22 100 Q. Okay. So the only ones who were
23 asking for payment were the five members of the
24 local Shariah Board; correct? Not even the five.
25 Really, the three because one had retired and one

Page 25

1 had gone back to the U.K.; correct?

2 A. Yes.

3 101 Q. Okay. Do you know an individual,
4 Joseph Adam?

5 A. Yes.

6 102 Q. Who is he, sir?

7 A. Uh. He's a member of the
8 community. He's of Egyptian descent. And this is
9 where he's somebody who is known, umm, by myself
10 and by these scholars, also.

11 103 Q. Okay. When did you first become
12 associated with Mr. Adam?

13 A. Even prior to creating UM
14 Financial Inc., I knew of him. I had met him.

15 104 Q. Okay. And UM Financial Inc. was
16 created, call it June of 2004, roughly?

17 A. Yes.

18 105 Q. What involvement did Mr. Adam have
19 in the creation of UM Financial?

20 A. No involvement.

21 106 Q. Okay. And I take it the same
22 would hold true in terms of UM Capital?

23 A. Yes.

24 107 Q. All right. Now, Mr. Adam; was he
25 ever employed, for example, by either of the UM

1 companies?

2 A. No.

3 108 Q. Okay. Did he ever provide
4 consulting services to the UM companies?

5 A. No.

6 109 Q. Did you ever have a contract -
7 "you", being UM - ever have any sort of contract
8 with Mr. Adam?

9 A. No.

10 110 Q. Okay. Did you have any dealings
11 with Mr. Adam in respect of UM Financial or UM
12 Capital?

13 A. No.

14 111 Q. Okay. Sir, you're aware that an
15 Application to Appoint a Receiver was brought by
16 Central 1 Credit Union against UM Financial and UM
17 Capital on March 16, 2011; correct?

18 A. Yes.

19 112 Q. Okay. And UM retained counsel and
20 opposed the appointment of a Receiver; correct?

21 A. Yes.

22 113 Q. And it's my understanding that
23 ultimately, UM Financial and UM Capital withdrew
24 their opposition and agreed, consented to the
25 appointment of a Receiver?

1 A. Yes.

2 114 Q. Okay. Now, if you turn to Tab 20
3 of the Motion Record, you will see a summary of
4 gold purchases from the Bank of Nova Scotia by UM
5 Financial Inc..

6 I take it we can agree that UM
7 Financial Inc. bought gold from the Bank of Nova
8 Scotia?

9 A. Yes.

10 115 Q. And if we look at Tab 20, to the
11 best of your knowledge, information and belief,
12 does this set out the dates on which the gold was
13 purchase purchased and the amount of gold that was
14 purchased?

15 A. Yes.

16 116 Q. Okay. Sorry. I should say gold
17 and silver, I believe; correct? So this is a
18 summary of all of the precious metals purchases,
19 right?

20 A. Yes.

21 117 Q. And so if I understand correctly,
22 UM Financial, between August 30th and September of
23 8th, purchased \$2,179,121.51 of precious metals
24 from either Scotiabank or Bendix?

25 A. Yes.

Page 28

1 118 Q. That's correct?

2 A. Yes.

3 119 Q. Okay.

4 MR. PITCH: B-e-n-d-i-x.

5 MR. RABINOVITCH: Thank you, Harvin.

6 BY MR. RABINOVITCH:

7 120 Q. And if you turn to the next tab,

8 Tab 21, behind the front cover page, you will see a

9 sales receipt. You will see, halfway down the

10 page, a box that says "Customer's Signature". Is

11 that your signature, sir?

12 A. Yes.

13 121 Q. Okay. And does this reflect the

14 purchase of \$889,695.90 (U.S.) of gold by UM

15 Financial?

16 A. Yes.

17 122 Q. And the purchase took place, it

18 looks like, on the 30th of August, 2011?

19 A. Yes.

20 123 Q. Okay. And if you turn - just bear

21 with me - if you turn to Tab 23, you will see some

22 invoices from Bendix. Do these reflect the

23 purchase of \$978,263.64 of gold by UM Financial on

24 the 2nd of September, 2011?

25 A. Yes.

Page 29

1 124 Q. And then, two further purchases by
2 UM Financial from Bendix, one on the 8th of
3 September of \$65,055 of silver?

4 A. Yes.

5 125 Q. And also on the 8th of September,
6 \$257,288 of silver, as well?

7 A. Yes.

8 126 Q. Okay. Sir, why was UM Financial
9 buying all this gold and silver at the end
10 August/early September of 2011?

11 A. We, with our own legal counsel and
12 the counsel that Yusuf Panchbaya had, we had
13 creditors outstanding in terms of not receiving
14 payment. So this is where the discussion was that
15 they should be paid, and the payment that was
16 decided upon was in precious metals.

17 127 Q. Okay. And which creditors were
18 outstanding as at the time of these purchases?

19 A. It was the professional fees that
20 were outstanding from the local scholars.

21 128 Q. So those are the only creditors
22 that you were purchasing this gold and silver to
23 deal with?

24 A. That's what the local scholars
25 informed us.

Page 30

1 129 Q. Now, as of August 30th through
2 September 8th, you hadn't received any invoice from
3 the local scholars; correct?

4 A. They were incorporating a company.
5 There was a conflict on the name and then they had
6 to go back and forth, and so that's why the
7 invoice, there was a delay.

8 130 Q. Okay. But to answer my question,
9 you had not received an invoice by the 8th of
10 September from the local scholars; correct?

11 A. Yes. That is correct.

12 131 Q. Okay. And at the time you were
13 purchasing this gold and silver, did the local
14 scholars tell you how much they believed they were
15 owed?

16 A. Yes. We had discussions on the
17 amount and the calculation.

18 132 Q. Okay. Can you tell me about those
19 discussions?

20 A. The discussions were that with the
21 local scholars and the commitment they had with the
22 Egyptian scholars which they mentioned to me is
23 that they came up with the \$30,000 a month as a
24 reasonable retainer, knowing the monthly legal fees
25 at Credit Union, Central 1, and what we were paying

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1 to Minden Gross.

2 133 Q. So the \$30,000-a-month figure was,
3 in essence, premised on how much you were spending
4 monthly to defend the Receivership Application;
5 correct?

6 A. Based upon, also, a calculation in
7 terms of hours that they had put together and
8 looking at if it was relative to the other
9 professional fees.

10 134 Q. So they thought they should be
11 paid a monthly retainer that corresponded to what
12 the other professionals were being paid; correct?

13 A. Yes.

14 135 Q. I see. And when I say "the other
15 professionals", I mean the lawyers; correct?

16 A. Yes.

17 136 Q. Did they provide you any written
18 breakdown of hours that they had spent?

19 A. This was all over telephone
20 conversations. No written.

21 137 Q. Telephone conversations between
22 you and who, sir?

23 A. Between myself, Yusuf Panchbaya,
24 and also the counsel for Yusuf Panchbaya, Shahzad
25 Siddiqui, and also --

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1 --- (Court reporter appeals.)

2 THE DEPONENT: Shahzad Siddiqui,

3 S-h-a-h-z-a-d and Siddiqui, S-i-double d-i-q-u-i.

4 BY MR. RABINOVITCH:

5 138 Q. Okay. Did Mr. Siddiqui provide
6 you with anything in writing in the course of these
7 discussions?

8 A. No. It was just a phone call
9 discussion.

10 139 Q. Any e-mails?

11 A. No.

12 140 Q. Okay. Whose request was it that
13 these fees be paid in the form of precious metals?

14 A. Since the corporation was not set
15 up and they were having delay in setting it up,
16 they felt that payment should be made immediately,
17 and that's where they decided on the precious
18 metals.

19 141 Q. Who asked for the payment to be in
20 the form of precious metals?

21 A. Yusuf Panchbaya.

22 142 Q. Okay. Was Mr. Siddiqui also
23 involved in those discussions?

24 A. He was not involved in all the
25 discussions. I'm not sure if he was involved in

Page 33

1 this one.

2 143 Q. Okay. I take it Mr. Siddiqui was
3 aware that the payment was going to take place in
4 the forms of precious metals?

5 A. I can't confirm, but I believe so.

6 144 Q. Okay. And did Mr. Panchbaya
7 explain to you why he needed it paid in the form of
8 precious metals instead of just a wire transfer or
9 a cheque?

10 A. They didn't have their corporation
11 set up and to set up a bank account would also take
12 a while. And they wanted a payment made, so that's
13 where they requested that I secure it in precious
14 metals for now.

15 145 Q. I take it you found it unusual to
16 be buying over \$2-million in precious metals to pay
17 some people who claim they were owed money?

18 A. The legal advice, we had from our
19 own counsel and --

20 MR. PITCH: Well, I have difficulty
21 with that. I think there's a privilege issue.

22 Just tell him, regardless of where you
23 got information, just answer the question as to
24 your understanding.

25 THE DEPONENT: So our understanding was

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1 if there's any legitimate creditor outstanding, we
2 can pay those legitimate creditors, which includes
3 our legal counsels, commitment fees for funding
4 entities, and services that were rendered, but not
5 paid for.

6 MR. PITCH: I think he was asking,
7 though, in the form of gold and silver versus cash.
8 I think that was his question.

9 THE DEPONENT: Yes. So the reason why
10 we had to pay them on that basis was because they
11 didn't have a corporate entity set up.

12 BY MR. RABINOVITCH:

13 146 Q. Okay. Now, again, I asked you,
14 did you not find it unusual that you were being
15 asked to pay more than \$2-million in precious
16 metals instead of just a wire transfer or a cheque?

17 A. If, if, if the corporation was set
18 up, we would have just sent a wire transfer or
19 cheque, but the corporation was not set up.

20 147 Q. Was there any reason why you
21 couldn't pay a wire transfer or a cheque to any of
22 the individuals who were claiming payment?

23 A. Their legal advisement was not to
24 take it in an individual format.

25 148 Q. Okay. Did they explain to you why

Page 35

1 their lawyer was saying that they shouldn't take
2 payment personally?

3 A. No.

4 149 Q. There were no phone calls or
5 discussions that you participated in where MCC or
6 its counsel explained to you why they couldn't
7 receive the payment personally?

8 A. No. The only discussion was, we
9 came up with the amount and they told me to make
10 payment towards that and then they said, 'Make
11 payment towards that in precious metals.'

12 150 Q. Okay. Now, help me out with
13 something. I understand that UM retained Minden
14 Gross to defend the receivership; correct?

15 A. Yes.

16 151 Q. And I also understand that Minden
17 Gross was never your personal counsel; correct?
18 You didn't retain them personally. It was the
19 company that retained them, right?

20 A. Yes.

21 152 Q. Okay. Did you disclose what was
22 being requested of you to the company's counsel?

23 U/A MR. PITCH: Well, that's -- that's the
24 issue. I just, I'm uncomfortable with that on the
25 issues of privilege and then whose privilege it is,

1 so I'm going to take that under advisement.

2 MR. RABINOVITCH: Okay. Why don't I
3 ask the questions, Harvin, knowing you will take
4 them under advisement and we can either see if we
5 can agree and deal with them that way or,
6 alternatively, if we need direction, we'll seek
7 direction from the Court.

8 MR. PITCH: That's fine.

9 I did want to remind you, not that you
10 needed reminding, but that we're really -- there is
11 a subsequent proceeding to deal with the ownership
12 of the gold. I'm giving you latitude, but I don't
13 want to spend, you know, days on what is really a
14 substantive issue as to ownership of the product.

15 I thought you really wanted to get at
16 is where it is, but I --

17 MR. RABINOVITCH: Well, we'll get to
18 that.

19 MR. PITCH: Anyway, the answer is yes,
20 that would be fine. If you want to -- or
21 alternatively, you can assume that I'm not going to
22 answer any questions about legal advice because
23 it's under advisement. You don't have to ask each
24 one. I'll accept that you asked.

25 BY MR. RABINOVITCH:

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1 153 Q. Okay. Well, here is, then, what I
2 would like.

3 MR. PITCH: I won't make you ask each
4 question.

5 BY MR. RABINOVITCH:

6 154 Q. Here is what I would like: I
7 would like your client to produce for me all
8 correspondence, including e-mails, that he has with
9 Minden Gross.

10 I take it you're going to take that
11 under advisement?

12 MR. PITCH: You don't want to clarify
13 the period of time?

14 BY MR. RABINOVITCH:

15 155 Q. Sorry. All correspondence he has
16 with Minden Gross in respect to their retainer--

17 MR. PITCH: Yes.

18 BY MR. RABINOVITCH:

19 156 Q. --on behalf of UM Financial Inc.
20 and UM Capital Inc..

21 U/A MR. PITCH: Well, I'd have to take that
22 under advisement.

23 BY MR. RABINOVITCH:

24 157 Q. Okay. And in part -- sorry. And
25 specifically, from the commencement of the

Page 38

1 receivership proceedings forward.

2 U/A MR. PITCH: I have your question and
3 I've taken it under advisement.

4 BY MR. RABINOVITCH:

5 158 Q. I would also like production of
6 any notes or records of any discussions between
7 your client and Minden Gross.

8 MR. PITCH: My client being Omar.

9 BY MR. RABINOVITCH:

10 159 Q. Yes, correct. And any the
11 correspondence between Minden Gross and
12 Mr. Siddiqui or anyone on behalf of the MCC
13 relating to the creation of the invoice.

14 MR. PITCH: Of September 26th?

15 BY MR. RABINOVITCH:

16 160 Q. Yes. Any outstanding fees to the
17 scholars, the local scholars, the method of
18 payment, the purchase of the precious metals, and
19 any transfer of the precious metals to MCC or any
20 other party.

21 MR. PITCH: For clarification, is this
22 up to of date of receivership, October 7th, or to
23 date?

24 BY MR. RABINOVITCH:

25 161 Q. No. To date.

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1 U/A MR. PITCH: Okay. I will take that
2 under advisement--

3 MR. RABINOVITCH: Thank you.

4 MR. PITCH: --and I will get you a
5 response. I'll have to obviously speak to
6 Minden's, et cetera.

7 Okay. Go ahead.

8 MR. RABINOVITCH: I'm not sure it's
9 their privilege.

10 MR. PITCH: We'll see. Go ahead.

11 MR. RABINOVITCH: Thank you.

12 BY MR. RABINOVITCH:

13 162 Q. So on August 30, you bought almost
14 \$900,000 worth of gold, right?

15 A. Yes.

16 163 Q. Okay. What branch of Scotia did
17 you buy it from?

18 A. A Downtown branch.

19 164 Q. Which one? Is it the main branch?

20 A. Yes.

21 165 Q. Okay. The one we can see just out
22 the window here?

23 A. Yeah. Yes.

24 166 Q. Did you take possession of the
25 gold after you purchased it?

Page 40

1 A. Yes.

2 167 Q. So you bought it on the 30th. Did
3 you actually leave Scotia with \$900,000 of gold in
4 tow?

5 A. Yes.

6 168 Q. Okay. And you just loaded it into
7 your car and drove away?

8 A. Yes.

9 169 Q. Okay. Then where did you store
10 the gold, sir?

11 A. It was stored in our offices in a
12 secure area.

13 170 Q. So UM Financial's offices?

14 A. Yes.

15 171 Q. Okay. And specifically where in
16 the offices was the gold stored?

17 A. In, in my own personal office.

18 172 Q. And your office had a lock on it?

19 A. Yes.

20 173 Q. Okay. And was there any insurance
21 on the gold?

22 A. No.

23 174 Q. Did UM Financial have any
24 insurance policies?

25 A. Yes. We had insurance for our

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1 office premises and insurance that Central required
2 us to have.

3 175 Q. Okay. I would like production of
4 a copy of the office policy, if you have it.

5 MR. PITCH: Well --

6 THE DEPONENT: We have already provided
7 it to Grant Thornton.

8 BY MR. RABINOVITCH:

9 176 Q. Did it have any sort of fidelity
10 insurance?

11 A. I'm not sure.

12 177 Q. Okay. Have you provided Grant
13 Thornton with any and all insurance policies or
14 details of insurance policies that UM Financial or
15 UM Capital had?

16 A. Yeah. The only one insurance
17 policy that we had, we provided that to them when
18 they visited our office on October 7th.

19 178 Q. Was there also directors and
20 officers insurance in place?

21 A. No.

22 179 Q. Was there any sort of mortgage
23 broker insurance?

24 A. Unless it's in the policy, I'm not
25 aware.

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1 180 Q. So is the only policy that UM had
2 the single policy that you provided to Grant
3 Thornton?

4 A. Yes.

5 181 Q. Okay. Now, where did the money to
6 buy the \$878,000 of gold come from?

7 A. It was in our bank account.

8 182 Q. I take it, it would reflect
9 payments that had been received by UM Financial
10 from borrowers?

11 A. Partly. And other payments that,
12 we have in our bank account.

13 183 Q. Okay. Why did you only buy
14 \$878,000 worth of gold on the 30th of August?

15 A. That's the amount our, our, we
16 were allowed to purchase at that one day.

17 184 Q. When you say "allowed", allowed by
18 who?

19 A. Our, our branch manager for our
20 bank account.

21 185 Q. And who was your branch manager?

22 A. Umm, Michael Durst.

23 186 Q. Okay. What branch was that?

24 THE COURT REPORTER: Sorry. How do I
25 spell that last name?

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1 THE DEPONENT: D-u-r-s-t. It's in our
2 lobby of our office building, 7..., 789 Don Mills.

3 BY MR. RABINOVITCH:

4 187 Q. Okay. And I take it that you went
5 to Mr. Durst so that he could make arrangements
6 with Scotia Downtown to make sure there was
7 sufficient gold available; correct?

8 A. Yes.

9 188 Q. When did you first speak to
10 Mr. Durst about buying these precious metals?

11 A. A few days before.

12 189 Q. Did you provide him with anything
13 in writing, indicating that you were looking to buy
14 almost \$900,000 of precious metals?

15 A. No. I just visited the branch and
16 made the request.

17 190 Q. Okay. So tell me what you told
18 Mr. Durst at that point in time.

19 A. That we wanted to buy gold and how
20 should we transact. And he said, 'You have to buy
21 it from Downtown branch,' and then he'll set up a
22 meeting and I go down and pick it up.

23 191 Q. Okay. And did you tell him how
24 much gold you were looking to buy?

25 A. Yes. Just under 1-million.

1 192 Q. Just under 1-million?

2 A. Yes.

3 193 Q. Okay. And what was the magic to
4 that number? Did it just reflect how much was in
5 your account?

6 A. No. It's the number that Michael
7 Durst said is the most they can transact with us.

8 194 Q. So Scotia put a limit of
9 \$1-million on the gold that you could purchase?

10 A. Yes.

11 195 Q. Did he explain to you why there
12 was a limit? Did it have to do with the available
13 money in your account, for example?

14 A. No. I just, 'We want to buy gold.
15 How much can we buy?' And he said, 'You could buy
16 up to 1-million,' and that's how we transacted it.

17 196 Q. Okay. And so you've told me that
18 you went down to the King and Bay branch and bought
19 878,000. I take it you didn't have enough money in
20 your bank account to buy the full million?

21 A. What I recall, we still had funds
22 in our bank account.

23 197 Q. So why didn't you buy the full
24 million, if you could have?

25 A. Umm. I think it was roughly...

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1 Yes. The 15-kilogram bars is the number that we
2 had agreed upon with Michael Durst.

3 198 Q. Okay. And is there any e-mail you
4 had with Michael Durst about those purchases?

5 A. No. I would just go to the branch
6 and, and talk to him.

7 199 Q. And then we see that --

8 THE COURT REPORTER: Sorry. How many
9 kilograms is that again?

10 MR. RABINOVITCH: Fifteen.

11 MR. PITCH: Fifteen, one five.

12 MR. RABINOVITCH: Fifteen.

13 THE COURT REPORTER: Thanks.

14 BY MR. RABINOVITCH:

15 200 Q. And, sir, then we see that a few
16 days later, you went to Bendix and bought
17 \$978,263.64 worth of gold. Does that accord with
18 your recollection?

19 A. Yes.

20 201 Q. Why did you go to Bendix instead
21 of going back to the bank?

22 A. With Scotiabank, it... We wanted
23 to request to buy more gold through Scotiabank.
24 Michael Durst actually recommended we go to Bendix,
25 so he gave me their contact number.

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1 202 Q. Did he explain to you why he
2 thought you would be better off going to Bendix?

3 A. Because of the, the, the delay
4 factor in doing it through here. It was a long
5 process and it took a lot of time.

6 So then, he gave me the Bendix
7 information. I had never heard of them before.
8 And then we transacted through Bendix.

9 203 Q. When you say it was "a long
10 process" to deal with Scotiabank, if we know you
11 bought the gold and picked it up on the 30th of
12 August, how long before that had you started your
13 discussions with Mr. Durst about actually buying
14 the gold?

15 A. A few days before. But what
16 happened is that the, the Scotia branch Downtown,
17 they had to call him four or five times before the
18 transaction was completed.

19 204 Q. Okay. So then he tells you, 'If
20 you want to buy more precious metals, you should go
21 to Bendix'; correct?

22 A. Yes.

23 205 Q. Okay. And did you contact Bendix
24 before September 1st?

25 A. No. Well, when, when I met with

Page 47

1 Michael Durst after buying this, that's when he
2 gave me Bendix's number.

3 206 Q. Okay. So explain to me when you
4 next met with Michael Durst after you bought the
5 gold.

6 MR. PITCH: I've got to stop. I just
7 don't get it. I mean, the gold is bought. And
8 aren't you going to talk about the invoice and
9 where the gold went? This is --

10 MR. RABINOVITCH: Harvin, we're getting
11 to that. This is all the background to --

12 MR. PITCH: I think you've got enough
13 background.

14 MR. RABINOVITCH: Well, I disagree with
15 you.

16 R/F MR. PITCH: Fine. I object. How's
17 that?

18 MR. RABINOVITCH: Fine.

19 BY MR. RABINOVITCH:

20 207 Q. Sir, on September 1st, you bought
21 \$978,000 worth of gold from Bendix?

22 A. Yes.

23 208 Q. Okay. Did you pick it up that
24 day?

25 A. Yes.

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1 209 Q. Where did you pick it up from?

2 A. From their Adelaide office.

3 210 Q. Okay. And again, you just loaded

4 it into the trunk of your car?

5 A. Yeah. 17 kilograms. It's one

6 bag.

7 211 Q. One bag? Okay. And then, where

8 did you store that gold?

9 A. The same location, in my office.

10 212 Q. Okay. And then on September 8th,

11 you went back to Bendix; correct?

12 A. Yes.

13 213 Q. And this time, you bought silver

14 instead of gold?

15 A. Yes.

16 214 Q. \$322,000 worth of silver; correct?

17 A. Yes.

18 215 Q. Why did you buy silver instead of

19 gold this time?

20 A. Umm. They, they wanted payment in

21 gold and silver, so this is where I did the initial

22 gold transactions and then I bought it in silver at

23 the end.

24 216 Q. When you say "they wanted

25 payment", you mean the local scholars?

1 A. Yes.

2 217 Q. Did they tell you why they wanted
3 some of it in gold and some of it in silver?

4 A. No.

5 218 Q. Did they tell you how much they
6 wanted in gold versus silver?

7 A. No.

8 219 Q. So how did you know how much gold
9 versus silver to buy?

10 A. So I did the first two
11 transactions in gold and then whatever remained, I
12 bought it in silver.

13 220 Q. And the second two transactions,
14 the Bendix transactions, I take it you paid for
15 with money that was in UM Financial's bank accounts
16 at that time?

17 A. All payments were from UM
18 Financial's bank account.

19 221 Q. Okay. And how did you pay for it?
20 Was it a wire?

21 A. Yes.

22 222 Q. So were all these payments done by
23 wire?

24 A. The payments from Bendix were
25 wire, that were approved by Scotiabank, from our

Page 50

1 bank account to Bendix.

2 223 Q. Okay. And after you finished that
3 final transfer on September 8th, the final wire
4 transfer on September 8th, roughly how much money
5 was left in the bank account of UM Financial?

6 A. The actual information would be in
7 the bank records, but from my recollection, it was
8 would be under 200,000.

9 224 Q. And the funds that were used to
10 buy all of these precious metals, again, would have
11 come from the operations of UM Financial, right?

12 A. Yes.

13 225 Q. And that would include receiving
14 payments from its musharakah partners; correct?

15 A. Yes.

16 226 Q. Okay. So I take it you then take
17 the silver back to your office, also?

18 A. Yes.

19 227 Q. So by September 8th, you're
20 sitting in your office with almost \$2.2-million of
21 precious metals; correct?

22 A. Yes.

23 228 Q. And again, you don't get any
24 additional insurance or take any additional
25 precautions other than locking your door?

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1 A. No. Our office has been very
2 secure. We never had any issues and it has
3 security at the front.

4 229 Q. Okay. When did you...? Sorry.
5 Did you then tell Mr. Panchbaya that
6 you had secured the precious metals?

7 A. Yes.

8 230 Q. Were you keeping him updated as
9 these purchases were taking place?

10 A. Yes. He was aware.

11 231 Q. Okay. And when you say "he was
12 aware", he was aware because you were telling him?

13 A. Yes.

14 232 Q. Did he accompany you to buy these
15 precious metals?

16 A. No.

17 233 Q. Did you correspond with him in
18 writing or by e-mail to let him know what was going
19 on and how much precious metals you had succeeded
20 in procuring?

21 A. Our communication was always on
22 the phone.

23 234 Q. Okay. And we know, on the 19th of
24 September, MCC was incorporated, right?

25 A. If that's the date, yes.

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1 235 Q. Yes. You can satisfy yourself at
2 Tab 13.

3 MR. PITCH: We'll accept that.

4 BY MR. RABINOVITCH:

5 236 Q. Okay. And, sir, were you involved
6 in any way in the incorporation of MCC?

7 A. No.

8 237 Q. Was the name a name that came at
9 your suggestion?

10 A. No.

11 238 Q. Was the idea of incorporating the
12 board something that you discussed with
13 Mr. Panchbaya?

14 A. There was discussions they had
15 and, and their lawyer. On some of those calls, I
16 was on. So I knew that discussion was going on,
17 but it was a, a discussion that they were having.

18 239 Q. Okay. And I take it, as we've
19 heard from Mr. Panchbaya, part of the reason they
20 wanted to incorporate was because of this Motion to
21 Intervene. Is that your understanding?

22 A. Their motive, they, they didn't
23 really inform me.

24 240 Q. I see. Sir, turn to Tab 17, the
25 last page. You'll see an invoice from MCC, dated

Page 53

1 September 26, 2011, addressed to UM Financial Inc..

2 I take it you've seen this before?

3 A. Yes.

4 241 Q. It's my information that you, in
5 fact, drafted this invoice; correct?

6 A. Yes.

7 242 Q. And you did it on UM's computer
8 system?

9 A. Yusuf Panchbaya came to our office
10 and he instructed us to put a invoice together.

11 243 Q. Okay. Would he have done that --
12 would you have prepared this invoice with him
13 sitting in your office?

14 A. Yes.

15 244 Q. So it would have been on September
16 26th that this was prepared?

17 A. Umm. Yes.

18 245 Q. Do you have any reason to think it
19 was a different date?

20 A. No. I believe it's the same date.

21 246 Q. Okay. And this... The computer
22 you prepared this on; do you still have that
23 computer?

24 A. Umm. I believe it's in the
25 office.

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1 247 Q. It's in the office. Okay. And
2 this is the office that UM Real Estate continues to
3 use?

4 A. Yes.

5 248 Q. Okay. So you still have access to
6 that computer?

7 A. Yes.

8 249 Q. Okay. I would like an undertaking
9 to produce for me the electronic file, Mr. Pitch,
10 showing the metadata around this document.

11 U/A MR. PITCH: I will take that under
12 advisement.

13 BY MR. RABINOVITCH:

14 250 Q. Okay. And you will see that this
15 invoice indicates that it's Invoice Number 11. Did
16 you create 10 prior invoices for MCC?

17 A. Umm. I seen that a few days ago.
18 I believe it's typo.

19 251 Q. It's supposed to be Invoice 1?

20 A. Yes.

21 252 Q. Okay. And the note at the bottom;
22 whose wording does that reflect?

23 A. This was prepared on instructions
24 from Yusuf Panchbaya.

25 253 Q. Okay. So is the wording the

1 wording he told you to include?

2 A. Yes.

3 254 Q. And I take it that there was no
4 existing monthly retainer agreement; correct?

5 A. Yes.

6 255 Q. You agree with me, right? There
7 was no existing --

8 A. There was no written agreement.

9 256 Q. Right. And do you know whether,
10 as of September 26th, what UM's financial position
11 was? In other words, did it -- if you took its
12 assets and subtracted its liabilities, did it have
13 assets or a spread of more than a million dollars?
14 Did it have more than a million dollars of equity?

15 A. No.

16 257 Q. Okay. And this million-dollar
17 number, was this million-dollar number a number you
18 had told him?

19 A. In our meetings that we've had,
20 umm, with the, uh, the, the board members, this was
21 the discussion that we've had.

22 258 Q. Okay. In other words, when you
23 had more than a million dollars of profit, right?

24 MR. PITCH: Funds. It says "funds".

25 THE DEPONENT: Of funds.

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1 BY MR. RABINOVITCH:

2 259 Q. So it's any funds? So was your
3 discussion with them that any time you had more
4 than a million dollars, even if you had liabilities
5 greater than that, you still would have paid them?

6 A. The position they had is that the
7 \$50-million Statement of Claim that was filed in
8 the summer, that had merit and value of funds that
9 would be coming to UM Financial Inc..

10 260 Q. So that's why they thought UM
11 would be in a position to transfer all this gold
12 and silver to them; because there was this
13 outstanding claim?

14 A. That was part of their, umm, I
15 guess their view.

16 261 Q. Okay. When you say "their", who
17 are you talking about?

18 A. In the meetings that we, we had
19 with them.

20 262 Q. With who? Mr. Panchbaya?

21 A. The three, the three members.

22 263 Q. The three of them? Was Mr.
23 Siddiqui involved in those meetings?

24 A. In later meetings, he was, but in
25 the, in the that Shariah meetings, he was not.

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1 264 Q. And I take it there was no demand
2 for payment that was received by UM in 2004;
3 correct?

4 A. No. We just paid their gas
5 expense and we told them once we have funds, we
6 will make payments on their past hours that they
7 worked on.

8 265 Q. And I take it right up until just
9 before this invoice was created on September 26th,
10 there had been no demands for payment, right?

11 A. They had made demands in the
12 summer.

13 266 Q. Okay. And certainly --
14 ---(Court reporter appeals.)

15 MR. RABINOVITCH: "...in the summer."
16 BY MR. RABINOVITCH:

17 267 Q. And certainly, they had never made
18 any demands before the Receivership Application was
19 outstanding, right?

20 A. The, the understanding --

21 MR. PITCH: Do you understand the
22 question? Before the Receivership --

23 MR. RABINOVITCH: Let me rephrase it,
24 okay.

25 MR. PITCH: Give him the date.

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1 BY MR. RABINOVITCH:

2 268 Q. We saw that the Receivership

3 Application was started in March of 2011. Do you
4 recall that?

5 A. Yes.

6 269 Q. Prior to March of 2011, they
7 hadn't made any demands for payment; correct?

8 A. They've always made demands for
9 payment. The demands for payment increased this
10 year. But in all our meetings, they always wanted
11 to be compensated for the hours they had put in.

12 270 Q. But you can't show me, as we sit
13 here today or if you go back to your office and
14 look, a single piece of paper prior to this invoice
15 that you prepared on September 26th, that shows
16 they were demanding payment; correct?

17 A. Only verbal.

18 271 Q. Okay. You prepared this document,
19 this invoice on UM's computer on or about September
20 26th, right?

21 MR. PITCH: He said that.

22 BY MR. RABINOVITCH:

23 272 Q. What did you do with it?

24 A. We printed it and gave it to him.

25 273 Q. To who?

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1 A. To Yusuf Panchbaya.

2 274 Q. So it was only Mr. Panchbaya who
3 came to your office and said, 'Please prepare
4 this'?

5 A. Yes.

6 275 Q. Did he tell you why he needed this
7 invoice?

8 A. It was discussions that we had
9 been having for two months. And we, at his
10 direction, we prepared it and gave it to him.

11 276 Q. Okay. And if you turn back a
12 page, you will see an October 21 letter addressed,
13 'To whom it may concern,' from Mr. Siddiqui. Did
14 you see this letter on or around October 21st?

15 A. I've only seen it in this package.

16 277 Q. So you had never seen it before
17 the Motion Record?

18 A. No.

19 278 Q. Okay. Did you know when this
20 invoice was provided to Mr. Siddiqui?

21 A. We just interacted with Yusuf
22 Panchbaya.

23 279 Q. Okay. So on September 26th, you
24 render the invoice, right? Or, sorry, they render
25 the invoice that you drafted and you give the

Page 60

1 invoice to Yusuf Panchbaya. Do I have that right?

2 A. Yes.

3 280 Q. What does he do with it, to the
4 best of your knowledge?

5 A. He had counsel and he, and he
6 shared it with his counsel.

7 281 Q. Okay. And this invoice now is in
8 existence because you just created it. What did
9 you do in response to it?

10 A. At that point, we didn't act on
11 it.

12 282 Q. Okay. Why didn't you act on it on
13 September 26th?

14 A. Umm. It was... We weren't given
15 directions to act on it. The invoice was given and
16 until a request is given, we didn't act on it.

17 283 Q. Sorry. You weren't given
18 direction --

19 ---(Court reporter appeals.)

20 MR. RABINOVITCH: 'Until directions
21 were given, we didn't act on it.'

22 BY MR. RABINOVITCH:

23 284 Q. Directions from who?

24 A. From Yusuf Panchbaya.

25 285 Q. So he just said, 'Create this

Page 61

1 invoice and I will tell you when to pay it'?

2 A. (Nodding head.) That was the
3 understanding.

4 286 Q. What did he tell you?

5 A. He said he'll, he'll contact us in
6 terms of next steps.

7 287 Q. I see. Now, September 26th was an
8 interesting day because not only was Mr. Panchbaya
9 in your office, asking you to draft that document,
10 but if you turn to Tab 14, you will see Justice
11 Brown released his Reasons on MCC's Intervention
12 Motion.

13 You were aware of that Motion, weren't
14 you?

15 A. I was aware. This was an -- I
16 personally haven't even read this, and this was an
17 initiative that MCC had taken.

18 288 Q. But on this Motion, if you look at
19 the front page, it talks about who counsel were.
20 See "R. Slattery" for the Respondents?

21 A. Yes.

22 289 Q. Is that Mr. Slattery of Minden
23 Gross, to your knowledge?

24 A. Yes.

25 290 Q. Mr. Slattery of Minden Gross was

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1 the lawyer for UM Financial and UM Capital, right?

2 A. Yes.

3 291 Q. Okay. So you knew that

4 Mr. Slattery and UM Financial were involved in
5 these intervention proceedings, right?

6 A. Yes.

7 292 Q. And you see the fax information at
8 the top of the page, it says, 'September 26, 11:52,
9 from Judges' Admin, Room 170.'

10 Did Mr. Slattery provide you with a
11 copy of this decision of Justice Brown?

12 A. Umm. Yes.

13 293 Q. Okay. And were you aware that
14 Justice Brown had found, Paragraph 23, for example,
15 that MCC didn't put itself forward as a creditor
16 and, in material, didn't disclose any contractual
17 relationship between MCC and UM.

18 You were aware of that?

19 A. I personally did not read this.

20 294 Q. I see. And, sir, did you discuss
21 this decision with Mr. Panchbaya, the fact that MCC
22 had been denied the right to intervene?

23 A. When I spoke to Minden Gross, all
24 they said is that --

25 MR. PITCH: Well, no, no. He asked you

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1 about Mr. Panchbaya.

2 THE DEPONENT: No, I did not -- with
3 Panchbaya, the only discussion was that the same
4 information he received from his legal counsel is
5 that the Application was denied.

6 BY MR. RABINOVITCH:

7 295 Q. Okay. And did he tell you that
8 one of the things he was advised is that the judge
9 said there was no creditor relationship?

10 A. No.

11 296 Q. No? Did he tell you why he needed
12 the invoice on September 26?

13 A. Not on why that specific date.

14 297 Q. So were you expecting him to show
15 up that day?

16 A. Umm. I don't believe he was
17 scheduled in that way.

18 298 Q. So he just sort of showed up out
19 of the blue and said, 'I need you to prepare an
20 invoice'?

21 A. They were waiting for the
22 incorporation. And then, when it was done, he
23 showed up and we prepared the invoice on his
24 direction.

25 299 Q. Okay. And the incorporation took

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1 place seven days earlier. Do you have any
2 explanation or do you know why he waited seven days
3 in order to come to you and ask you to draft the
4 invoice?

5 A. No.

6 300 Q. Do you have any reason to believe
7 it's because he was waiting for the decision of
8 Justice Brown?

9 A. No.

10 301 Q. You don't know one way or another?

11 A. In my view, the two things were
12 not related.

13 302 Q. It's just purely coincidental they
14 happened on the same day?

15 A. Yes.

16 303 Q. I see. And, sir, you filed an
17 Affidavit in that proceeding on April 5, 2011;
18 correct?

19 MR. PITCH: Got it. The answer is yes.

20 THE DEPONENT: Yes.

21 BY MR. RABINOVITCH:

22 304 Q. Okay. And if you turn to the last
23 page of the Affidavit, page 31, you will see a
24 signature line.

25 A. Yes.

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1 305 Q. I take it that's your signature?

2 A. Yes.

3 306 Q. Okay. If you... Take a minute
4 and review Paragraphs 101 to 104.

5 --- (Deponent reviewing documentation.)

6 THE DEPONENT: Yes.

7 BY MR. RABINOVITCH:

8 307 Q. Okay. I take it we can agree, you
9 didn't tell the Court that there was any agreement
10 or understanding to pay the scholars; correct?

11 A. No.

12 308 Q. It's not referenced in any of your
13 materials; correct?

14 A. No.

15 309 Q. Okay. And by the way, in all of
16 your dealings with Central, did you tell Central
17 that you owed money to the scholars? When I mean
18 "you", I mean UM owed money to the scholars?

A. They never asked us.

20 310 Q. And you never told them?

21 A. No.

22 311 Q. Right. And during the course of
23 your relationship with UM, did you ever have to
24 provide them with financial information about UM?

25 A. In the past, yes, we did.

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1 312 Q. Right. And I take it they would
2 have been interested and they would asked you about
3 any liabilities that UM has?

4 A. They never asked. We were told to
5 prepare financial statements. We--

6 313 Q. Right.

7 A. --provided them. In all our
8 filings, we were never asked once of what we
9 actually submitted.

10 314 Q. In other words, they didn't ask
11 you any questions. You gave them financial
12 statements, but they never asked you for, you know,
13 further information other than the financials,
14 right?

15 A. Exactly.

16 315 Q. And in any of the financials that
17 you prepared and provided to UM, did you ever
18 indicate that there was money owing to the Shariah
19 scholars?

20 A. No. We did not prepare any
21 invoice. Obviously, the, the accountant who was
22 preparing our financial statements would not have
23 put that in there.

24 316 Q. And did the accountant know that
25 there was money that might be owed to the Shariah

1 scholars?

2 A. The accountant was actually aware
3 that the Shariah scholars were putting in hours.
4 They were aware of this.

5 317 Q. That's not my question, sir.

6 Was the accountant who prepared the
7 statements aware that the Shariah scholars were
8 looking to be paid?

9 A. Not in terms of any amount.

10 318 Q. Okay. So the invoice is created
11 on, it looks like September 26, right?

12 A. Mm-hmm.

13 MR. PITCH: Yeah. Right.

14 BY MR. RABINOVITCH:

15 319 Q. And then Mr. Panchbaya says to
16 you, he'll get back to you when he wants to you act
17 on the invoice, right?

18 A. Yes.

19 320 Q. Okay. Then, my understanding is
20 that on October 4th, a resolution was drafted to
21 appoint Mr. Adam as the financial manager of MCC.
22 Do you have any information about that?

23 MR. PITCH: I've put the resolution
24 before him.

25 MR. RABINOVITCH: Yes. I appreciate

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1 that, Mr. Pitch. Thank you.

2 THE DEPONENT: Yes. This was prepared
3 and, and given to me.

4 BY MR. RABINOVITCH:

5 321 Q. Did you prepare it, sir?

6 A. This was, umm, Yusuf again
7 attended our office--

8 322 Q. Yes?

9 A. --and he, he filled out this
10 information and signed it.

11 323 Q. But you -- when you say "he filled
12 out this information", what information did he fill
13 out? I just see a typewritten document with a
14 signature on the bottom, so what is the information
15 that he filled out?

16 A. So we, we have all draft, umm,
17 legal documents--

18 324 Q. Mm-hmm?

19 A. --so he filled in the, the name,
20 the name of Joseph Adam--

21 325 Q. Yes.

22 A. --and then the dates.

23 326 Q. Okay. So he gave you the
24 information and you put the document together?

25 A. Exactly.

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1 327 Q. Okay. Did he tell you why he
2 needed this resolution?

3 A. Umm. He, he... He did not want
4 to deal with the financial matters for the new
5 corporation, MCC, and wanted to appoint Joseph for
6 that purpose.

7 328 Q. Did you know whether Joseph had
8 any expertise in financial matters?

9 A. Umm. He runs his own business, so
10 he had financial expertise.

11 329 Q. Is his business Amira Fashions?

12 A. Yes.

13 330 Q. Okay. Does he -- to your
14 knowledge, does he own that business?

15 A. I would not know if he owns it or
16 not.

17 331 Q. So Panchbaya comes to see you on
18 the 4th, has you prepare this document. Did he
19 tell you what he was going to do with it, why he
20 needed Mr. Adam to be appointed the manager of
21 finance?

22 A. In reference to the invoice that
23 was prepared, he wanted to act on that invoice and
24 he wanted to appoint Joseph Adam to be the party
25 that transacts with the financial matters for MCC.

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1 332 Q. So did he come to you on that day
2 and say, 'It's now time to pay the invoice'?

3 A. Yes.

4 333 Q. Okay. And on October 4th, the
5 precious metals were still sitting in your office?

6 A. Yes.

7 334 Q. Roughly \$2.2-million?

8 A. Yes.

9 335 Q. Okay. So was Mr. Adam with
10 Mr. Panchbaya when Mr. Panchbaya came by your
11 office on the 4th?

12 A. No.

13 336 Q. And between the time you purchased
14 the precious metals, so let's say, you know, by the
15 end of the first week of September, by September
16 8th, between September 8th and October 4th, did you
17 have any further discussions with Mr. Panchbaya
18 about the invoice or payment?

19 A. We would have regular phone call
20 discussions.

21 337 Q. So what transpired in those
22 discussions? Explain to me what happened.

23 A. In those discussions it was not
24 only regarding this issue. We were trying to find
25 an exit with Credit Union. There were offers from

1 other entities that were happening.

2 Since these scholars had signed these
3 rulings, many of the community would be upset if
4 they were into an arrangement that wasn't
5 Shariah-compliant. They were looking at the ruling
6 of what would happen in a receivership.

7 So on all these issues, we would have
8 regular discussions. And on this issue, also, we
9 would have discussions.

10 338 Q. Okay. So right now, let's talk
11 about the invoice and the gold.

12 First of all, it looks like there was
13 no invoice until September 26th, right?

14 MR. PITCH: We've got that already.

15 BY MR. RABINOVITCH:

16 339 Q. So between September 26 and
17 October 4th, do you have discussions with him about
18 the invoice or the gold?

19 A. Yes, we had discussions.

20 340 Q. And can you tell me what the
21 nature of the discussions were?

22 A. The discussions were that, umm,
23 within MCC, he wants to bring in somebody else to
24 handle the financial matters. And he has spoken to
25 Joseph and he's ready, and that we will do -- he

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1 will do a resolution, uh, for that.

2 341 Q. Okay. Was there any
3 correspondence that you had with Mr. Panchbaya or
4 Mr. Adam relating to either Mr. Adam's appointment
5 or the invoice or the gold? Anything in writing?

6 A. It's phone call discussions.

7 342 Q. Did you ever have any written
8 communications with Mr. Panchbaya or was your
9 relationship such that you transacted business over
10 the phone or in person?

11 A. His first language is not English
12 and in some meetings, I --

13 ---(Court reporter appeals.)

14 MR. PITCH: "His first language..."

15 THE DEPONENT: His first language is
16 not English, so I would translate many things. So
17 when I would speak to him, I would speak to him in
18 our native language and that's the way we
19 communicated.

20 BY MR. RABINOVITCH:

21 343 Q. Okay. So October 4th, he comes to
22 your office and says, 'Mr. Adam is now the manager,
23 finance for MCC,' right?

24 A. Yes.

25 344 Q. Did you ask him whether MCC had

1 taken an assignment of any rights of the
2 pre-existing Shariah board?

3 A. No. We never had that discussion.

4 345 Q. Did you ask him what the
5 involvement of the other scholars were in MCC or
6 whether it was just him?

7 A. Umm. How the board was initially
8 created, he was the chairman. And as the chairman,
9 he can make unilateral decisions, so he set up MCC
10 on his own initiative. It wasn't in consultation
11 with any other members.

12 346 Q. Okay. So he tells you now he has
13 Joseph Adam as the finance manager or manager,
14 finance, and he's ready to have the invoice paid?

15 A. Yes.

16 347 Q. What arrangements did you make for
17 transferring the precious metals or paying the
18 invoice?

19 A. Once I had this -(indicating)-,
20 then I --

21 MR. PITCH: "This" being...?

22 THE DEPONENT: The, the resolution.

23 BY MR. RABINOVITCH:

24 348 Q. Yes.

25 A. ...that this was a party to act

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1 upon in terms of the invoice, then I, I provided
2 all the precious metals to Joseph Adam.

3 349 Q. Okay. But when did you provide
4 the precious metals to Joseph Adam?

5 A. On, on the same date.

6 350 Q. October 4th?

7 A. Yes.

8 MR. PITCH: Do you want to -- it's --

9 MR. RABINOVITCH: Sure. We can take a
10 -- do you want to take a short break?

11 MR. PITCH: Well--

12 MR. RABINOVITCH: Sure.

13 MR. PITCH: Are you okay with that?

14 MR. RABINOVITCH: Do you want to take,
15 take 10 minutes?

16 MR. PITCH: Sure.

17 MR. RABINOVITCH: 10 or 15. Sure.

18 ---Recess at 3:24 p.m.

19 ---On resuming at 3:41 p.m.

20 BY MR. RABINOVITCH:

21 351 Q. Before we took the break, I think
22 you were just in the process of telling me that on
23 October 4th, you provided the precious metals to
24 Mr. Adam?

25 A. Yes.

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1 352 Q. Was it at the same time that you
2 drafted that resolution?

3 A. Later in the day.

4 353 Q. So roughly what time did Mr. Adam
5 come back?

6 A. I delivered it to Adam.

7 354 Q. Okay. Where did you deliver them
8 to?

9 A. Near his... In the
10 Rexdale/Islington area, near the airport.

11 355 Q. Where?

12 A. It was a parking lot on Rexdale
13 Boulevard.

14 356 Q. Rexdale and what?

15 A. Near Rexdale and I think it was
16 Martin Grove.

17 357 Q. Was it a parking lot of an office
18 building or...?

19 A. I were there was a Shoppers Drug
20 Mart that was there.

21 358 Q. And what time of day was this?

22 A. This was at the end of the day.

23 Umm. I would say it was, it was dark, so I'm
24 thinking 7:00 or 8:00 p.m..

25 359 Q. Did he tell you to meet him there?

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1 A. Yes. So after the resolution was
2 signed, Yusuf communicated with him and then we
3 arranged that tonight, I will deliver the precious
4 metals to him.

5 360 Q. Sorry. Maybe I asked you this and
6 if I did, I apologize. Was Mr. Adam in your office
7 when the resolution was--

8 A. No.

9 361 Q. --signed?

10 A. No. He was called on the phone.

11 362 Q. By who? By Yusuf?

12 A. Yes.

13 363 Q. I see. And so who then told you
14 where to meet Mr. Adam? Was it Yusuf or Mr. Adam?

15 A. On the, on the call that -- it was
16 a speaker phone.

17 364 Q. Yes.

18 A. That's where we, we decided to
19 meet at the parking lot where the Shoppers Drug
20 Mart was.

21 365 Q. Why were you transferring
22 \$2.2-million of precious metals, you know, in the
23 dark of night in a parking lot? Weren't you
24 concerned?

25 A. Those were the instructions we

Page 77

1 were given.

2 366 Q. Okay. So you loaded the precious
3 metals into your trunk, I take it?

4 A. Yes.

5 367 Q. You drove out to Rexdale?

6 A. Yes.

7 368 Q. Was anyone with you?

8 A. No.

9 369 Q. Okay. You show up at the parking
10 lot. Who did you meet in the parking lot?

11 A. It was just Joseph and his, and
12 his minivan.

13 370 Q. Joseph and his minivan?

14 A. (Nodding head.)

15 371 Q. Okay. You had met Joseph before,
16 so you knew who he was?

17 A. Yes.

18 372 Q. Did Joseph tell you what kind of
19 car he was going to be driving?

20 A. I know he drives a minivan.

21 373 Q. Do you know what the licence plate
22 number is for the minivan?

23 A. No.

24 374 Q. Okay. So you pull into the
25 parking lot. Joseph is there with his minivan.

1 Then what happens?

2 A. Then I, I provide him the precious
3 metals.

4 375 Q. All of the precious metals?

5 A. Yes.

6 376 Q. For the gold and the silver,
7 right?

8 A. Yes.

9 377 Q. So by that point in time, once you
10 had emptied your car or your trunk into his
11 minivan, you no longer had any of the gold or
12 silver?

13 A. Yes. That's correct.

14 378 Q. Okay. Then what did you do? Did
15 you call Yusuf to tell him that the transfer was
16 completed?

17 A. Yes. I would call Yusuf
18 regularly, so he was aware.

19 379 Q. Well, when you say you call him
20 "regularly", what do you mean? I don't understand.

21 A. Yeah. Like, on all the issues
22 that we were dealing with at that point, I was in
23 discussions with him. So when I would call him, we
24 would not just talk about one issue. It would be
25 these four or five issues.

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1 380 Q. Yeah. But Yusuf knew, because
2 Yusuf was in your office on the phone with you,--

3 A. Yes.

4 381 Q. --that on October 4th at seven
5 o'clock at night, you were going to be taking the
6 gold and silver and driving out to Rexdale and
7 giving it to Mr. Adam, right?

8 A. Yes.

9 382 Q. In fact, they were his
10 instructions to give them to Mr. Adam, weren't
11 they?

12 A. Yes.

13 383 Q. Okay. And were you concerned
14 about transferring these precious metals to
15 Mr. Adam at this point in time, in October?

16 A. There was no reason for me -- I
17 transported it from Downtown to my office.

18 384 Q. Oh, no. Were you concerned about
19 the fact that you had these receivership
20 proceedings out there and here you have
21 Mr. Panchbaya telling you, 'Here. Prepare this
22 invoice and give me all the gold and the silver'?
23 Weren't you concerned?

24 A. The legal advice we had is, as
25 long as we're paying a legitimate creditor, there's

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1 nothing that we're doing wrong.

2 385 Q. And I take it you didn't tell
3 Central 1 that, 'Oh. By the way, we have just
4 converted \$2.2-million of cash into precious
5 metals,' right?

6 A. We had a Statement of Claim out
7 against them, so it wasn't like we were on any
8 friendly terms.

9 386 Q. Right. And your lawyers didn't
10 tell Central 1's lawyers about this invoice from,
11 this invoice that you had created at the request of
12 Mr. Panchbaya, right?

13 A. No.

14 387 Q. And your lawyers didn't tell
15 Central 1's lawyers that Mr. Panchbaya told you to
16 go buy \$2.2-million of precious metals?

17 A. No.

18 388 Q. Your lawyers didn't tell the
19 Central 1's lawyers that Mr. Panchbaya, on October
20 4th, told you, 'Hand over all the precious metals
21 to Mr. Adam'?

22 A. No. We were paying our lawyers,
23 we were paying commitment fees. All these amounts
24 that we were paying to creditors, our lawyers were
25 aware of and they didn't feel any need that that

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1 information needs to be communicated to the Credit
2 Union.

3 389 Q. Okay. Sir, do you have any
4 contact information for Mr. Adam?

5 A. No. Just his, his store.

6 390 Q. Do you know where he lives?

7 A. I think he lives with some
8 friends. I'm not sure.

9 391 Q. So you don't have an address for
10 him?

11 A. No.

12 392 Q. Do you have a phone number for
13 Mr. Adam?

14 A. No.

15 393 Q. Have you seen him since October
16 4th?

17 A. Yes. Before he left, I met with
18 him.

19 394 Q. Okay. When was that?

20 A. This was in, umm... I believe on
21 two occasions, I met him at his store when I was in
22 the area end of October and twice, end of October.

23 395 Q. What was the purpose of the
24 meetings?

25 A. I had another meeting at a

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1 restaurant nearby, so I would just drop in and see
2 him.

3 396 Q. Was there any discussion with him
4 about the gold or the invoices?

5 A. Just passing, that he has it and
6 he secured it.

7 397 Q. Did he tell you where he was
8 keeping it?

9 A. No.

10 398 Q. Do you have any belief as to where
11 he put the gold?

12 A. No. He said, 'It's safe and
13 secure.'

14 399 Q. And do you know where Mr. Adam
15 currently is?

16 A. He's in Egypt.

17 400 Q. Okay. How do you know that?

18 A. He called me from Egypt.

19 401 Q. When did he call you?

20 A. He called me, umm... He called me
21 before I had left, which was about 10, 12 days ago.

22 402 Q. Sorry. Left for where?

23 A. I was travelling overseas, so
24 before I had left.

25 403 Q. Did you go to Egypt?

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1 A. No.

2 404 Q. Did you see Mr. Adam when you were
3 travelling?

4 A. No.

5 405 Q. Okay. So he called you before you
6 left. What was the purpose of his call?

7 A. He was just... I've always had a
8 relationship with him, so he would call me off and
9 on. And we were just talking about his personal
10 life and we didn't really talk about anything of
11 this sort.

12 406 Q. Do you have a phone number for
13 him?

14 A. No. He would just call me from,
15 from there.

16 407 Q. Have you ever had a phone number
17 for Mr. Adam?

18 A. He has a cell phone in Toronto,
19 but right now he's in Egypt.

20 408 Q. I would like an undertaking to
21 provide me with his cell phone number, please.

22 U/T MR. PITCH: Sure. If we have it.

23 MR. RABINOVITCH: We just heard you
24 have it.

25 MR. PITCH: We'll make our best

1 efforts.

2 BY MR. RABINOVITCH:

3 409 Q. Do you know what he's doing in
4 Egypt?

5 A. His, his wife is not a Canadian,
6 so she's due, so he's there for that purpose.

7 410 Q. Was she living with him in
8 Toronto?

9 A. No. She's never been in Canada.

10 411 Q. She's never been in Canada?

11 A. No.

12 412 Q. Do you have any information as to
13 when he's likely to return?

17 413 Q. Have you taken any steps to let
18 him know that there's a Court Order requiring the
19 return of this gold?

20 A. Umm. Just on the phone call,
21 that, you know, there's a Court Order and Yusuf has
22 returned the silver and when he comes back, he
23 should do that with the --

24 THE COURT REPORTER: Sorry.

25 "...there's a Court Order and..."?

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1 THE DEPONENT: ...that Yusuf has
2 returned the silver and that when he comes back, he
3 should return the, the gold.

4 BY MR. RABINOVITCH:

5 414 Q. So you've told him--

6 A. Yeah.

7 415 Q. --that he has to return it?

8 A. Yes.

9 416 Q. And what did he say to you?

10 A. He said when he comes back, he'll
11 meet with us.

12 417 Q. Was Yusuf on this call?

13 A. No.

14 ---(Court reporter appeals.)

15 THE DEPONENT: No.

16 BY MR. RABINOVITCH:

17 418 Q. Did he indicate whether the gold
18 was still here or whether he had taken it with him
19 to Egypt?

20 A. He did not say.

21 419 Q. Did you tell him there was a Court
22 Order that requires him to deliver it?

23 A. Yes, I did.

24 420 Q. And what did he say about that?

25 A. He said he received it, I guess on

Page 86

1 his e-mail, so he said when he comes back, he'll
2 deal with that.

3 421 Q. Okay. And did he say anything
4 about whether he had given the gold to anyone else?

5 A. No. I didn't ask.

6 422 Q. And since that phone call
7 probably, what, 10, 11, 12 days ago; something like
8 that, have you made any other efforts to contact
9 him?

10 A. No.

11 423 Q. Have you sent him any e-mails,
12 since I assume you know his e-mail address?

13 A. I have never e-mailed him. It's
14 always on the phone.

15 424 Q. Okay. So other than that phone
16 call where you told him about the Order, you have
17 done nothing further to try to recover the gold or
18 find the gold?

19 A. Not myself. I'm aware Yusuf has,
20 but myself, I -- besides that phone call --

21 425 Q. What are you aware that Yusuf has
22 done?

23 A. Well, in terms of the documents
24 and what's he has communicated to me that he went
25 to his store and dropped off some letters. He has

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1 e-mailed him. So that information, I'm aware of.

2 426 Q. And you know that Yusuf has
3 delivered the silver, right?

4 A. Yes.

5 427 Q. Okay. Who told you that?

6 A. Yusuf told me that.

7 428 Q. Right. And do you know where the
8 silver was stored that Yusuf returned?

9 A. No. I gave everything on October
10 4th to, to Joseph.

11 429 Q. No. I understand that. But did
12 Yusuf tell you where he got the silver from?

13 A. He received the silver on, on
14 early November.

15 430 Q. Who did he receive the silver from
16 in early November?

17 A. So Joseph was travelling, and he
18 had disclosed that to, to myself and to Yusuf. And
19 then this is where he said the silver, Yusuf should
20 take possession of. So this is where Joseph then
21 transacted that with Yusuf.

22 431 Q. Were you involved in that
23 transaction?

24 A. They did meet at, at my office,
25 but the timings were off. Joseph came in the

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1 441 Q. Okay. Why was he bringing back
2 the silver on November 1st?

3 A. Because he's travelling overseas.
4 And he said he'll keep the gold secure, but the
5 silver, he wanted to give back to Yusuf.

6 442 Q. Did he explain why he was treating
7 the gold and the silver differently?

8 A. The gold was just, from my
9 understanding, one box and the silver were, was 14
10 boxes.

11 443 Q. So it was taking up too much room?

12 A. I guess he was travelling and he,
13 if he wasn't here, he wanted to give back the
14 silver.

15 444 Q. Why was he giving back the silver
16 if he thought he was entitled to it?

17 A. I don't know. You have to ask
18 Yusuf that.

19 445 Q. Did you have any understanding?

20 A. No. He just said he was
21 travelling and he said, 'There's too many boxes,'
22 and to take these other boxes back for now.

23 446 Q. Okay. So November 1st, he comes
24 into your office somewhere around noon?

25 A. Yes.

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1 447 Q. And then what? Did he drop off
2 the boxes?

3 A. Yes. And then Yusuf came later
4 that day and then Yusuf took those boxes.

5 448 Q. From your office?

6 A. Yes.

7 449 Q. Okay. Do you have any paper or
8 receipts showing the exchanges of the gold with
9 Joseph and, and Mr. Panchbaya picking up the silver
10 from your office? Do you have anything in writing?

11 A. No. From my side, since our onus
12 was to give this to MCC, we transacted it based on
13 invoices and directions.

14 450 Q. Are there security cameras in your
15 office?

16 A. Not that I am aware of.

17 451 Q. So you don't have security
18 cameras?

19 A. No.

20 452 Q. Do you know if the building has
21 security cameras?

22 A. Not that I'm aware of.

23 453 Q. Okay. So help me with something
24 because I'm a bit confused here. So if I
25 understand what you have just told me, Joseph drops

Page 91

1 the silver off at your office November 1st around
2 noon and Yusuf Panchbaya picks it up from your
3 office later that day; correct?

4 A. Yes.

5 454 Q. Okay. So if Mr. Panchbaya's
6 evidence is that the exchange of the silver took
7 place in a parking lot where you met him in a
8 parking lot at Don Mills and Eglinton and exchanged
9 the silver, you took the silver out of your trunk
10 and gave it to him, would he be mistaken?

11 A. Yeah. It was -- when Yusuf came,
12 his car was parked in the parking lot, so we
13 transferred it into his, into his car. We didn't
14 take it up to the office.

15 ---(Court reporter appeals.)

16 THE DEPONENT: We did not take it up to
17 the office.

18 BY MR. RABINOVITCH:

19 455 Q. Sorry. You didn't take what up to
20 the office?

21 A. So when I mean the office, I mean
22 the office location. So the transaction, we didn't
23 take the precious metals all the way up to the
24 office and bring them down. It was a transaction
25 in the parking lot of the office.

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1 456 Q. Hold on. I think we're all
2 confused right now.

3 As I understand it, on October 4th, you
4 give Joseph Adam the precious metals?

5 A. Yes.

6 457 Q. Right? Did that take place in the
7 parking lot of your building or in your office?

8 MR. PITCH: Well, remember -- am I
9 wrong? Didn't he drive down to the minivan?
10 Haven't we had that story?

11 MR. RABINOVITCH: Sorry. I think
12 you're --

13 THE DEPONENT: The Shoppers Drug Mart
14 parking lot.

15 BY MR. RABINOVITCH:

16 458 Q. Okay. So --

17 ---(Court reporter appeals.)

18 THE DEPONENT: Sorry. The Shoppers
19 Drug Mart parking lot.

20 BY MR. RABINOVITCH:

21 459 Q. Right. So that's where that
22 exchange took place. The \$2.2-million--

23 A. Yes.

24 460 Q. --took place in the Shoppers Drug
25 Mart parking lot.

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- 1 A. Yes.
- 2 461 Q. Right? That's October 4th?
- 3 A. Yes.
- 4 462 Q. So far so good.
- 5 A. Yes.
- 6 463 Q. November 1st; now we are talking
7 just about the silver, right?
- 8 A. Yes.
- 9 464 Q. Noon on November 1st, Joseph Adam
10 shows up in your office to drop off the silver?
- 11 A. So not in the office. At the
12 office, he parks in the parking lot.
- 13 465 Q. Okay.
- 14 A. And then the silver is transferred
15 from his car to my car in the office parking lot.
- 16 466 Q. Okay. Where is your office
17 located?
- 18 A. At that intersection of Don Mills
19 and Eglinton.
- 20 467 Q. Don Mills and Eglinton. Okay. So
21 November 1st, now the metals, as of noon, the
22 silver, as of noon, are sitting in your car?
- 23 A. Exactly.
- 24 468 Q. Your trunk?
- 25 A. Exactly.

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1 469 Q. Okay. Then Yusuf Panchbaya comes
2 by later in the day?

3 A. Yes.

4 470 Q. And you meet him downstairs in the
5 parking lot?

6 A. Yes.

7 471 Q. And you open your trunk and you
8 transfer into his car the silver. Do I have that
9 right?

10 A. Yes.

11 472 Q. So -- okay. So as of November
12 1st, he now has the silver--

13 A. Yes.

14 473 Q. --and Joseph has the gold?

15 A. Yes.

16 474 Q. That's your evidence. That's my
17 understanding. Do I have it correct?

18 A. Yeah, exactly.

19 475 Q. Okay. Did Mr. Panchbaya ever see
20 the gold, to your knowledge? Remember that on
21 October 4th, the gold is sitting in your office,
22 right?

23 A. Yes.

24 476 Q. In fact, the gold has been in your
25 office since early September?

Page 95

1 A. Yes.

2 477 Q. Mr. Panchbaya has been in your
3 office on a number of occasions since you bought
4 the gold and had it in your office?

5 A. Yes.

6 478 Q. All right. Did you ever show it
7 to him?

8 A. Umm. Not that I recollect.

9 479 Q. So you don't think he actually
10 ever saw the gold in spite of the fact that, you
11 know, there was, like, \$1.8-, \$1.9-million of gold
12 that was sitting there, that he was, he was asking
13 to receive?

14 A. He initially didn't want to deal
15 with the financial issues and that's why he
16 appointed Joseph.

17 480 Q. Well, he was happy to deal with
18 the financial issues in respect of saying, 'Here's
19 how much I want to get paid,' right?

20 A. Yes, in that sense, in terms of
21 services he was owed. But in terms of the
22 financial transactions, he wanted somebody else to
23 handle that.

24 481 Q. I see. So November 1st, he has
25 the gold -- the silver, and doesn't return it

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1 until...?

2 MR. STEVENSON: Fourteenth.

3 BY MR. RABINOVITCH:

4 482 Q. ...the 14th. That's your
5 understanding?

6 A. I believe so, yes.

7 483 Q. Do you know where he kept the
8 silver?

9 A. He did not inform me.

10 484 Q. What's that?

11 A. He did not inform me.

12 485 Q. Did you ever ask him?

13 A. No.

14 MR. RABINOVITCH: Go off the record for
15 a minute.

16 ---Off the record at 4:01 p.m.

17 ---On resuming at 4:02 p.m.

18 BY MR. RABINOVITCH:

19 486 Q. Okay. So let me ask you a couple
20 of questions.

21 Mr. Panchbaya told us the other day
22 that on November 7th, you gave him the silver. I
23 take it from what we've just heard, that would be
24 incorrect?

25 A. The date I recall is November 1st,

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1 the Tuesday.

2 487 Q. Okay. You checked your BlackBerry
3 to try to figure out what the right date was. Was
4 there something in your BlackBerry that led you to
5 conclude it was November 1st?

6 A. I just checked the calendar to see
7 what date Tuesday was, if Tuesday was the 1st.

8 MR. PITCH: He was looking at his
9 calendar.

10 MR. RABINOVITCH: No. That's fine. I
11 just--

12 MR. PITCH: No. That's fine.

13 MR. RABINOVITCH: --didn't know whether
14 there anything to prompt him.

15 BY MR. RABINOVITCH:

16 488 Q. And so looking at your calendar,
17 you're fairly certain that it would have been
18 November 1st that you provided the silver to
19 Mr. Panchbaya?

20 A. Yes. From what I recall, it
21 wasn't the Monday; it was the Tuesday. Tuesday was
22 November 1st.

23 489 Q. And you're fairly certain it was
24 the week of November 1st, not the following week?

25 A. Yeah. It was that week, early

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1 November.

2 490 Q. When did you actually leave town?

3 Do you remember what date?

4 A. Umm. I will check.

5 491 Q. Sure.

6 A. I left on the 14th--

7 492 Q. Okay.

8 A. --or so.

9 493 Q. And if Mr. Panchbaya told us that
10 he didn't know that you had given the gold to
11 Mr. Adam until November 7th, would he be mistaken?

12 A. On October 4th, I gave all the
13 precious metals to Mr. Adam.

14 MR. PITCH: It's a different question,
15 though. He was asking if, if Mr. Panchbaya was
16 aware earlier than November 7th--

17 BY MR. RABINOVITCH:

18 494 Q. ...that you had given--

19 MR. PITCH: --that that had happened.

20 BY MR. RABINOVITCH:

21 495 Q. --the precious metals to Mr. Adam?

22 A. From my information, with all the
23 discussions we were having, he, he was aware of
24 that.

25 496 Q. Okay. And did you have any

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1 discussions with Mr. Panchbaya about returning the
2 silver, returning the silver on or about, any time
3 after the 1st of November?

4 A. Just the normal phone call
5 discussions we would have, umm, that we would have
6 discussions, umm, regarding that.

7 497 Q. So Mr. Adam returns the silver to
8 Mr. Panchbaya November 1st - I just want to make
9 sure I have this correct - because he was going to
10 be travelling, and it was just, it was a large
11 amount to be storing.

12 A. Yes.

13 498 Q. Is that correct?

14 A. Yes.

15 499 Q. And did you have any discussions,
16 have you had any discussions with Mr. Panchbaya or
17 Mr. Adam about the necessity to return both the
18 gold and the silver in accordance with the Court
19 Order?

20 A. Yes. After the Court order on
21 November 10th,--

22 500 Q. Right?

23 A. --at that point I had
24 conversations with Yusuf and we discussed this and,
25 umm, but Mr. Adam was not in town at that point.

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1 501 Q. Okay. So tell me about your
2 conversations with Mr. Panchbaya about returning
3 the gold in accordance with the Court Order.

4 A. Our discussions was that he
5 basically had legal counsel and his counsel was
6 advising to do it, and I just recommended that he
7 do that.

8 502 Q. Did he explain to you who had it
9 or where he believed it was?

10 A. No. In terms of the silver was
11 with him and the, the gold was with Mr. Adam.

12 503 Q. Okay. Did he tell you what
13 efforts he was making to try to locate the gold?

14 A. Besides what I've said in terms of
15 e-mailing and dropping that letter off, those were
16 the efforts he made.

17 504 Q. Now, you say you knew Mr. Adam
18 through the community. How did you know him? I
19 mean, did he play a prominent role in the
20 community?

21 A. He had connections with the
22 Egyptian scholars, so that was the main
23 relationship that we had with him.

24 505 Q. Why did UM Financial need, if they
25 did, the Egyptian scholars?

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1 A. Within Islam, the community is
2 very diverse. We have five schools of thoughts, so
3 it was largely the Indian scholars who gave the
4 local -- five scholars gave the ruling, and that's
5 according to the Hanafi school of thought.

6 ---(Court reporter appeals.)

7 THE DEPONENT: Hanafi, H-a-n-a-f-i.

8 The Shafi school of thought, which is
9 mainly in the Middle East and there's a separate
10 group of scholars for that. So this is where
11 Mr. Adam played a role in getting the approval for
12 that.

13 ---(Court reporter appeals.)

14 THE DEPONENT: Shafi, S-h-a-f-i.

15 BY MR. RABINOVITCH:

16 506 Q. But the actual fatwas were issued
17 by the local scholars who, would you say the
18 Indian...?

19 A. Indian descent scholars.

20 507 Q. Indian descent scholars?

21 A. Yes.

22 508 Q. Okay. And did you ever tell, when
23 you were selling the product or marketing the
24 products that UM Financial was marketing, the
25 Musharakahs, were you telling people that you had

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1 any opinions from Egyptian scholars or was it
2 always the local fatwas that you were relying on?

3 A. We only shared the fatwas that we
4 got locally; however, when the clients would
5 contact these scholars, they would share the other
6 opinions or if they would call, contact Joseph
7 Adam.

8 509 Q. But you have actually never
9 yourself seen any other opinions?

10 A. We wouldn't handle the Shariah
11 issues. The Shariah issues would always be handled
12 by the Shariah scholars.

13 510 Q. Right. But just to answer my
14 question, you have never actually seen any opinions
15 or fatwas from any of the scholars other than the
16 five local scholars; correct?

17 A. Exactly. I only read English, so
18 the Arabic, I haven't seen anything or would I be
19 shown it.

20 511 Q. Okay. Now, one of the things that
21 Mr. Panchbaya indicated in the Affidavit he swore,
22 Tab 12, was that he and the MCC or the board were
23 concerned about potential liability they may have
24 if they were sued by any of UM Financial's clients.
25 You're aware that's one of the concerns he

1 addressed in his Affidavit?

2 A. They had many concerns, so I
3 believe that was one of them.

4 512 Q. Yes. And he was also concerned
5 about their reputation in the community, as well?

6 A. Yes.

7 513 Q. Okay. To your knowledge, have any
8 of the clients of UM Financial sued either MCC or
9 any of the scholars as a result of the receivership
10 proceedings?

11 A. Many have contacted myself and
12 Yusuf and the other scholars because of the
13 receivership.

14 514 Q. Okay. Let me try that again.

15 MR. PITCH: Nobody, nobody has sued.

16 THE DEPONENT: Nobody --

17 BY MR. RABINOVITCH:

18 515 Q. Nobody has sued?

19 A. There's a few people who have
20 threatened legal action and that's there.

21 516 Q. But to your knowledge, nobody has
22 actually commenced legal proceedings?

23 A. No.

24 517 Q. Okay. Then turn to Tab 19,
25 please. It's an Assignment of Claim between UM

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1 Financial and UM Capital as assignors and MCC as
2 assignee?

3 A. Yes.

4 518 Q. I take it you've seen this
5 document before?

6 A. Yes.

7 519 Q. And if you turn the page, you
8 signed on behalf of both UM Financial and UM
9 Capital?

10 A. Yes.

11 520 Q. Do you know who drafted this
12 document?

13 A. This was put together by both
14 counsels.

15 521 Q. So it would be Minden Gross and
16 Mr. Siddiqui?

17 A. Yes.

18 MR. RABINOVITCH: Sorry. Just one
19 minute.

20 ---(Discussion off the record.)

21 BY MR. RABINOVITCH:

22 522 Q. Okay. Sorry. Turn to Tab 1,
23 please. You will see the Receivership Order--

24 A. Yes.

25 523 Q. --from Justice Newbould, dated

1 October 7, 2011?

2 A. Yes.

3 524 Q. I take it you were aware that the
4 Receivership Motion was scheduled to be heard

5 October 7, 2011?

6 A. Yes.

7 525 Q. And do you know when your lawyers
8 advised that they were no longer opposing the
9 receivership?

10 A. The day before, October 6.

11 526 Q. That's when you instructed them
12 not to oppose?

13 A. Yes.

14 527 Q. And did you tell them -- did you
15 give them those instructions before or after you
16 signed this Assignment of Claim?

17 A. That was at the end of the day.

18 This was in the beginning of the day.

19 528 Q. Okay. "That" and "this" might
20 mean something to you, but when we read this on
21 paper, we won't know what "this" or "that" is, so
22 let's do this in baby steps.

23 A. Okay.

24 529 Q. What time of day did you sign the
25 Assignment of Claim?

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1 A. This was done in the morning.

2 530 Q. And so you're saying you decided
3 not to oppose the receivership or told your lawyers
4 not to oppose the receivership in the afternoon?

5 A. Yes.

6 531 Q. Okay. Sir, why were you assigning
7 this claim to MCC?

8 MR. PITCH: I'm going to intervene and
9 say that I don't think it -- does it really matter
10 for the purposes of these Examinations? So what?

11 MR. RABINOVITCH: Well, you can either
12 allow him to answer or not.

13 R/F MR. PITCH: Okay. I will object.

14 MR. RABINOVITCH: Fine.

15 BY MR. RABINOVITCH:

16 532 Q. And, sir, as of October 6, 2011,
17 was there only \$1,000 owing to MCC?

18 A. In terms of that amount, I think
19 it was specific just to this issue and I think
20 their position is that the other invoices are
21 separate.

22 533 Q. Sorry. Specific to what issue?

23 I'm lost.

24 A. It was just in terms of the time
25 and efforts for this, putting this issue together.

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1 534 Q. I see. Whose idea was it to
2 assign this claim?

3 A. It was legal counsel that advised
4 us.

5 535 Q. Who -- was it your legal counsel
6 or Siddiqui that said, 'Hey. We should assign this
7 claim from UM to MCC'?

8 R/F MR. PITCH: Don't answer that.

9 BY MR. RABINOVITCH:

10 536 Q. Was it Mr. Siddiqui that came up
11 with this idea?

12 R/F MR. PITCH: Don't answer.

13 MR. RABINOVITCH: There's no privilege
14 in respect of Mr. Siddiqui,--

15 MR. PITCH: No. It's irrelevant.

16 MR. RABINOVITCH: --Mr. Pitch.

17 MR. PITCH: It doesn't matter. Who
18 cares?

19 MR. RABINOVITCH: Apparently we do on
20 this side of the table.

21 MR. PITCH: Okay.

22 MR. RABINOVITCH: You may not.

23 MR. PITCH: You asked me about it.

24 MR. RABINOVITCH: That's fine. We'll
25 take it up elsewhere.

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1 BY MR. RABINOVITCH:

2 537 Q. Sir, was MCC involved in the
3 decision to sue Central 1?

4 A. That was between --

5 R/F MR. PITCH: Don't answer. That's
6 enough.

7 BY MR. RABINOVITCH:

8 538 Q. Was Mr. Panchbaya involved in that
9 decision?

10 R/F MR. PITCH: No. Same objection.

11 THE DEPONENT: UM Financial --

12 MR. PITCH: Forget it. This is a -- we
13 want to get outta here.

14 MR. RABINOVITCH: And we would like
15 answers, Mr. Pitch.

16 MR. PITCH: Okay. Well, you've got my
17 position.

18 MR. RABINOVITCH: That's fine.

19 BY MR. RABINOVITCH:

20 539 Q. Sir, was there any urgency to
21 transfer the precious metals prior to the return of
22 the Receivership Motion?

23 A. Those were the dates that were
24 selected by..., on the initiative of MCC.

25 THE COURT REPORTER: Sorry.

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1 "...by..."?

2 THE DEPONENT: MCC.

3 MR. RABINOVITCH: "...on the initiative
4 of MCC."

5 BY MR. RABINOVITCH:

6 540 Q. Was there any discussion that you
7 were involved with that the transfer had to take
8 place before the Receivership Motion was heard on
9 October 7th?

10 A. No.

11 541 Q. None whatsoever?

12 A. No.

13 542 Q. Was there any discussion that you
14 were party to that suggested that if the precious
15 metals weren't transferred before the Receivership
16 Order was granted, the Receiver would seize them?

17 A. No.

18 543 Q. Okay. Did you have any discussion
19 with Mr. Panchbaya or anyone on behalf of MCC to
20 say that you were holding the precious metals on
21 behalf of MCC at any point?

22 A. Prior to October 4th, those were
23 assets of UM Financial Inc. That we were just
24 holding in precious metals.

25 544 Q. So all you had done is taken, in

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1 essence, cash and converted it to precious metals.
2 But if we were looking at it from a balance sheet
3 perspective, it would still be an asset of UM
4 Financial?

5 A. Exactly.

6 545 Q. And on October 4th, you paid the
7 invoice by transferring over the precious metals?

8 A. Yes.

9 546 Q. Okay. Sir, turn to Tab 8. It's
10 an e-mail from Mr. Ullmann to Ms. Dietrich. Third
11 paragraph, I take it we can agree that Mr. Ullmann
12 and Minden Gross weren't acting on your personal
13 behalf?

14 A. That is correct.

15 547 Q. They were still counsel to UM;
16 correct?

17 A. On this date, they were counsel to
18 UM Real Estate Investment Inc..

19 548 Q. Right. And prior to that time,
20 they had been counsel to UM Financial and UM
21 Capital?

22 A. That is correct.

23 549 Q. Now, sir, would you agree with me
24 that the purchase of the gold was partially funded
25 with payments from homeowners pursuant to the

1 Musharakah agreements?

2 MR. PITCH: I think he has answered
3 that.

4 THE DEPONENT: There was funds in our
5 account which come from various sources.

6 BY MR. RABINOVITCH:

7 550 Q. Including payment by homeowners
8 from their musharakah agreements, right?

9 A. That is correct.

10 551 Q. And what other sources of revenue
11 did UM have beyond payment from its borrowers under
12 the Musharakahs?

13 A. In some cases, we would get
14 consulting fees for advisement on some products
15 that we structured for individuals. Some speaking
16 engagements, I would be compensated for. So we had
17 various incomes that would come to UM Financial.

18 552 Q. Sorry. When you say "consulting
19 fees" for structuring products for individuals, are
20 these just advising individuals on investments or
21 is this actually structuring financial products?

22 A. Just advising them on how to
23 structure it, that it meets their asset needs.

24 553 Q. Sorry. Advising who?
25 Individuals?

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1 A. Individuals, yes.

2 554 Q. I see. And do you have any way to
3 know, of the \$2.20-million in precious metals,
4 roughly what percentage of that would have been
5 from payments from homeowners as compared to
6 consulting fees?

7 A. I wouldn't have that number.

8 555 Q. In 2011 up until the appointment
9 of the Receiver, roughly how much in consulting
10 fees would UM have earned?

11 A. Umm. I would estimate under
12 200,000.

13 556 Q. Okay. And are there books and
14 records that show MCC invoicing for consulting
15 services?

16 A. MCC?

17 557 Q. Sorry. Not MCC; UM invoicing for
18 consulting services?

19 A. Umm. In some cases, we would have
20 those records.

21 558 Q. Why only in some cases?

22 A. Because sometimes when we did our
23 sort of second mortgage product that we termed it
24 as, it -- that amount would be incorporated in the
25 financing amount that we had.

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1 559 Q. Okay. So explain to me the second
2 mortgage products because Grant Thornton has spent
3 a fair bit of time going through the records of UM
4 and we're having a very difficult time, as you've
5 seen from some of the questions, reconciling
6 amounts that should be paid under Musharakahs,
7 debits and credits, payments that were made to
8 homeowners instead of from homeowners.

9 First, conceptually explain to me what
10 the second mortgage product is.

11 A. When we started up in 2005, we
12 were mainly doing first mortgage funding with
13 funding from the Credit Union. A client would have
14 to put 25 per cent down.

15 Now, we had clients who came to us and
16 said that we have taken money from the Credit Union
17 and did this facility. They, on their own, had
18 personal wealth and they wanted to give it to us.

19 So that's where, working with our legal
20 counsel then, we designed this second mortgage
21 private investor fund. So what would happen is
22 that a client would put in 10 per cent and the
23 second mortgage private investor, which was a
24 person in our community, would put in 15 per cent,
25 making sure they were under the \$50,000 limit

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1 because with private mortgages, as long as they're
2 under 50,000, you don't need a separate lawyer
3 handling it.

4 And then we would get bulk of the
5 financing, 75 per cent from the Credit Union. And
6 the Credit Union was aware of this. They said, 'As
7 long as we're first, we don't really care what
8 happens on the second mortgage.'

9 560 Q. So the second mortgagees were
10 essentially providing the 15 per cent spread on the
11 equity--

12 A. Exactly.

13 561 Q. --that was required?

14 A. So when a deal would close, the
15 funds never went through our bank account. Central
16 gave directions to give it to the lawyer's trust
17 account. The private mortgagee certified an amount
18 from his personal bank account and sent to do the
19 lawyer closing the transaction, and the client
20 would give his 10 per cent into that lawyer. So
21 all the funds would transact through the lawyer's
22 trust account.

23 562 Q. So none of this money came through
24 UM Financial, right?

25 A. Yes.

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1 563 Q. Was UM Real Estate involved in
2 these transactions?

3 A. UM Real Estate Investment Inc.
4 incorporated --

5 ---(Court reporter appeals.)

6 THE DEPONENT: UM Real Estate--

7 MR. PITCH: Slow down.

8 THE DEPONENT: --Investment--

9 BY MR. RABINOVITCH:

10 564 Q. Slow down.

11 A. --Inc. incorporated in 2007.

12 After that point, we engaged in a few of these
13 transactions.

14 565 Q. Okay. So after UM Real Estate
15 Investment was incorporated in 2007, did all the
16 second mortgages flow through Real Estate?

17 A. No. Majority still are private
18 mortgages that we have. The UM Financial contract
19 that we have, as I've shown Mark when he came,
20 there's two sets. One is for the first mortgage
21 and one is for the first and second private
22 mortgage that we would sign with the client.

23 566 Q. Hold on. Now you have confused
24 me.

25 The first mortgage would be the

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1 Musharakahs we have looked at where 75 per cent of
2 the funding would come from Central, right?

3 A. Exactly.

4 567 Q. What I think you were telling us
5 about - correct me if I'm wrong - is that if people
6 came and didn't have the 25 per cent to put down on
7 the house, they put down 10 per cent and then you
8 would find a private lender to advance the other 15
9 per cent by way of a second mortgage?

10 A. Exactly.

11 568 Q. That part, I understood.

12 Then you just recently said there's
13 different sets. There's a set of documents for the
14 first mortgage. I think we've all seen those. We
15 all know those are the Musharakahs, right?

16 A. Yes.

17 569 Q. And then you said, 'And there's
18 also first and second private mortgages.'

19 A. Which is also Musharakah.

20 570 Q. But how are there -- there can't
21 be first mortgages --

22 MR. PITCH: No. There can't be a
23 private -- there can't be a private first mortgage.

24 MR. RABINOVITCH: Right.

25 MR. PITCH: All the first mortgages

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1 were Central.

2 THE DEPONENT: Yeah. So, in dollar
3 numbers, in terms of example, there would be a
4 first mortgage for 100,000. That was disclosed to
5 the Credit Union. Then there would be another
6 Musharakah contract that would have the first and
7 second for 150,000. So the client, when he would
8 come in, he would sign both documents, one only for
9 the first mortgage for 100,000 and one for the
10 first and second for 150,000.

11 BY MR. RABINOVITCH:

12 571 Q. Okay. But let's -- sorry. You
13 have now got me completely confused.

14 MR. PITCH: Why don't we go off the
15 record?

16 MR. RABINOVITCH: Sure.

17 ---(Discussion off the record.)

18 MR. PITCH: Back on the record.

19 U/T We've moved off to the issue of
20 recordkeeping and accounting and we are going to,
21 I'm undertaking, best efforts, to find out as best
22 we can where are the cancelled cheques, where are
23 the deposit books, and where are the bank
24 statements.

25 I'll find out as quickly as I can from

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1 whatever sources I can and report back to you and
2 tell you what I know, subject to -- if I can't, I
3 will tell you why I can't as quickly as I can. And
4 if we have stuff, we'll get it to you, and I will
5 do that.

6 MR. RABINOVITCH: Let's also clarify a
7 few other things.

8 MR. PITCH: Sure.

9 BY MR. RABINOVITCH:

10 572 Q. Off the record, your client was
11 telling us about some significant payments that
12 were made that we had no knowledge of on our side,
13 that we would like whatever supporting
14 documentation he has or can get.

15 One, a \$75,000 payment to Romspan which
16 took place when; roughly, July?

17 A. No. In the month of September.

18 THE COURT REPORTER: How do you spell
19 "Rompsan"?

20 MR. RABINOVITCH: R-o-m-s-p-a-n.

21 THE DEPONENT: Yeah. Month of
22 September.

23 BY MR. RABINOVITCH:

24 573 Q. September. Okay.

25 So, Harvin, we would like an

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1 undertaking to produce whatever documentation there
2 is relating to Romspan.

3 MR. PITCH: Well, just a sec. Okay.

4 Romspan and Trez, T-r-e-z.

5 BY MR. RABINOVITCH:

6 574 Q. Yes. And, and the payments to
7 Minden Gross.

8 MR. PITCH: Okay. So the problem is
9 this: Payments to Minden Gross, what I've been
10 told is, they're in the bank statements which I've
11 got to find. That's Minden Gross.

12 Romspan; do you have a Romspan file?

13 THE DEPONENT: It was all cheques we'd
14 given, but the commitment letter they gave us has,
15 and the Trez commitment letter --

16 ---(Court reporter appeals.)

17 THE DEPONENT: All payments were made
18 via cheques. But the commitment letters we had
19 from Romspan and Trez have these amounts which were
20 shared with Credit Union, also.

21 MR. PITCH: Those would be amounts, you
22 know, 'We will require payment of "X" to do
23 this,'--

24 MR. RABINOVITCH: No, no.

25 MR. PITCH: --and he wants evidence of

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1 the payments.

2 MR. RABINOVITCH: Correct.

3 MR. PITCH: And so, my problem with
4 that - because that part, I did explore - is that
5 what I am told is, you have to look at the bank
6 statements and cancelled cheques.

7 The question I have - and I'm talking
8 on the record - is what about invoices? Do we have
9 copies of any of the invoices?

10 THE DEPONENT: No. Romspan didn't give
11 us an invoice.

12 MR. PITCH: Oh. Probably a deposit,
13 yeah.

14 BY MR. RABINOVITCH:

15 575 Q. Are there any documents in your
16 possession relating to Romspan or Trez that will
17 show how much you were paid or how much they
18 charged?

19 A. The commitment letter that they
20 provided us had the amount in there.

21 576 Q. Okay. Well, can you please
22 provide us with that?

23 MR. PITCH: I think what I'll --
24 commitment letter of Romspan.

25 MR. RABINOVITCH: Trez.

1 MR. PITCH: Trez.

2 BY MR. RABINOVITCH:

3 577 Q. Any other potential lenders?

4 MR. PITCH: With whom you got
5 commitments and paid commitment money?

6 THE DEPONENT: No. These were the two
7 at the end.

8 MR. RABINOVITCH: Okay.

9 U/A MR. PITCH: I may have... When I say I
10 will take it under advisement, I will see what I
11 can get you. I may end up getting you something
12 that shows it without showing some of the other
13 stuff, and I will tell what I'm giving you and not
14 giving you.

15 BY MR. RABINOVITCH:

16 578 Q. And for Minden Gross, I would like
17 you to advise us precisely how much has been paid
18 to them and I would like, Harvin, I would like
19 copies of the accounts.

20 R/F MR. PITCH: I can't do that. I can't
21 undertake to provide accounts.

22 I will say it this way: In the files
23 of UM which is in receivership, are there accounts
24 for Minden Gross? There must be. There must be.

25 THE DEPONENT: Yes. There's invoices.

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1 BY MR. RABINOVITCH:

2 579 Q. Okay. But let's... Let me make
3 this real simple.

4 MR. PITCH: Sure.

5 BY MR. RABINOVITCH:

6 580 Q. We don't have them, okay. If we
7 had them, I wouldn't be playing games and asking
8 you.

9 Do you have copies of the Minden Gross
10 invoices?

11 A. Yes.

12 MR. PITCH: Pardon?

13 THE DEPONENT: (Nodding head.)

14 MR. PITCH: Yes.

15 BY MR. RABINOVITCH:

16 581 Q. I would like you to, please,
17 undertake to produce them to me.

18 U/A MR. PITCH: I'm going to take,
19 definitely take that one under advisement. But you
20 say we have them. I will take it under advisement.
21 I will give you our position as quickly as
22 possible, so we'll know where we're going.

23 BY MR. RABINOVITCH:

24 582 Q. Was UM also --

25 MR. PITCH: Sorry. Can I just

1 interrupt?

2 MR. RABINOVITCH: Yeah. Go ahead.

3 MR. PITCH: Do you need the invoices or
4 just the total? Maybe all you need is the total
5 paid.

6 MR. RABINOVITCH: I want both because
7 they were counsel to UM, not counsel to him
8 personally.

9 MR. PITCH: I understand that.

10 BY MR. RABINOVITCH:

11 583 Q. Were there any other lawyers that
12 were being paid by UM or retained by UM in relation
13 to these matters?

14 A. Cassels & Brock was first on the
15 file--

16 584 Q. Okay.

17 A. --so there are invoices and
18 payments made to them.

19 585 Q. Okay. I would like the same
20 undertaking in respect of Cassels, Brock.

21 U/A MR. PITCH: Same position.

22 BY MR. RABINOVITCH:

23 586 Q. And--

24 MR. THOMSON: You mentioned Gowlings.

25 BY MR. RABINOVITCH:

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1 587 Q. --you mentioned Gowlings.

2 A. Yes.

3 588 Q. And what was Gowlings retained to
4 do?

5 A. They gave an opinion on the old
6 contracts, the Credit Union contracts.

7 589 Q. Okay. Was that in relation to
8 this litigation?

9 A. No, not the litigation.

10 590 Q. So what was the purpose of it?

11 A. In terms of Romspan wanted an
12 opinion from a major law firm that the contracts
13 that the Credit Union designed were enforceable, so
14 Gowlings gave that opinion.

15 MR. PITCH: So they did that for
16 Romspan?

17 THE DEPONENT: Yes. Well, actually,
18 they did that for Trez.

19 MR. PITCH: Sorry.

20 BY MR. RABINOVITCH:

21 591 Q. Okay. Well, I would like an
22 undertaking to produce that opinion to us.

23 U/A MR. PITCH: I'll take it under
24 advisement.

25 BY MR. RABINOVITCH:

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1 592 Q. Sure. As well as any accounts
2 from Gowlings.

3 U/A MR. PITCH: Yes. Same, same answer.

4 BY MR. RABINOVITCH:

5 593 Q. Was UM paying for MCC's counsel?
6 Like, who was paying Mr. Siddiqui?

7 A. That was Yusuf Panchbaya.

8 594 Q. Panchbaya -- MCC had no money,
9 right, to your knowledge?

10 A. Yeah. They, they have funds.
11 Yusuf Panchbaya is paying his legal counsel and he
12 has paid Shahzad.

13 ---(Court reporter appeals.)

14 MR. RABINOVITCH: Shahzad.

15 THE DEPONENT: Shahzad.

16 MR. PITCH: That's Siddiqui. It's just
17 another name for him.

18 BY MR. RABINOVITCH:

19 595 Q. What's MCC's business?

20 A. Umm. Consultancy. That's what
21 they set it up for.

22 596 Q. Do they consult for anyone other,
23 or did they consult for anyone other than UM?

24 A. Not to date.

25 MR. PITCH: No. But I think the

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1 question is --

2 BY MR. RABINOVITCH:

3 597 Q. So where would they have any
4 source of income or funds? You guys didn't pay
5 them, right, other than in gold and silver?

6 A. Yes.

7 598 Q. So other than the gold and silver,
8 you didn't pay them anything other than gas
9 mileage, right?

10 A. Yes.

11 599 Q. So just so I understand, these
12 people provided services for seven years,
13 Mr. Panchbaya provided assistance for seven years
14 and never received a penny, other than gas mileage?

15 A. Yes. And our financial records
16 will show that no cheques have been paid to Shahzad
17 or him personally, Yusuf.

18 600 Q. So to your knowledge, how is this
19 person supporting himself, if he spent this much
20 time working for you for seven years and wasn't
21 paid?

22 A. What's he told me, he has obtained
23 some loans for this issue.

24 601 Q. For what issue?

25 A. For this legal issue.

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1 602 Q. Some people have lent him money to
2 pay for counsel?

3 MR. PITCH: Yeah.

4 THE DEPONENT: (Nodding head.)

5 BY MR. RABINOVITCH:

6 603 Q. But that's not my question.

7 For seven years, you've got a guy who
8 says he's spending a lot of time doing work for
9 you. You didn't pay him a penny, other than gas
10 mileage. How did he support himself?

11 A. Well, he has other employments.

12 604 Q. What does he do?

13 A. He's, he's a clergyman, so he
14 works for other organizations and gets paid for
15 that, for his time and effort.

16 605 Q. I see. So he was doing this in
17 terms of providing advice on Shariah compliance to
18 you guys in addition to his regular clergy duties?

19 A. Exactly.

20 MR. PITCH: Okay. That's enough.

21 BY MR. RABINOVITCH:

22 606 Q. Is there any other major
23 payments--

24 MR. PITCH: Oh.

25 BY MR. RABINOVITCH:

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1 607 Q. --that have been made in the last
2 year?

3 A. These are the major ones that I
4 recollect right now.

5 MR. PITCH: That's my list, as well.

6 BY MR. RABINOVITCH:

7 608 Q. And are there any non-arm's length
8 payments -- putting aside the gold for a minute,
9 are there any non-arm's length payments over the
10 last 12 months?

11 A. No. What does happen is, when you
12 see the financial record, is that there's a lot of
13 these second mortgages. So in order to satisfy
14 them and move the funds around, there's some \$20-
15 to \$50,000 transactions for that, but they're all
16 tied with properties.

17 609 Q. Sorry. It's late Friday.

18 MR. PITCH: No, no.

19 BY MR. RABINOVITCH:

20 610 Q. Can you just explain--

21 MR. PITCH: No, no.

22 BY MR. RABINOVITCH:

23 611 Q. --what that means?

24 A. So, for example, we issue a payout
25 statement and the payout statement has a \$50,000

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1 second mortgage that's being paid back to us, also.

2 So we get this \$50,000 second mortgage in our bank
3 account.

4 Now, what the client then recommends is
5 that of that 50,000, he wants 20,000 to be given to
6 his sister and 30,000, he wants us to reinvest on
7 another property.

8 612 Q. Mm-hmm.

9 A. So then, what you'll see is that
10 you will see this 50,000 coming in, you'll see
11 20,000 going out here and 30,000 going out here.

12 MR. PITCH: I'm not continuing this.
13 I'm not suggesting these are improper questions,
14 but this isn't what you were asking.

15 He wants to know whether, you know, you
16 were taking money and giving it to somebody's
17 children--

18 BY MR. RABINOVITCH:

19 613 Q. Or related companies.

20 MR. PITCH: --or related companies.

21 THE DEPONENT: Related -- yeah. No
22 related companies.

23 MR. PITCH: No. The answer is no.

24 BY MR. RABINOVITCH:

25 614 Q. No related companies?

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1 MR. PITCH: No.

2 MR. RABINOVITCH: And just one other
3 thing before we adjourn, Harvin.

4 MR. PITCH: Sure.

5 BY MR. RABINOVITCH:

6 615 Q. Have you made any other purchases
7 of precious metals over the last 12 months?

8 A. No.

9 616 Q. Only the three that we have seen
10 here?

11 A. Yes.

12 MR. PITCH: Okay. Thanks.

13 BY MR. RABINOVITCH:

14 617 Q. And the same would hold true over
15 the last five years?

16 A. Yes. That's correct.

17 MR. RABINOVITCH: Okay. So why don't
18 we adjourn and, Harvin, off the record we'll circle
19 back and figure out how we proceed.

20 MR. PITCH: Yeah.

21 ---[Ending time: 5:11 p.m.]

22

23

24

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1

REPORTER'S CERTIFICATE

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I, BONNIE LYNN VAN DER MEER, C.S.R.,

4

Certified Shorthand Reporter, hereby certify;

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8

That the foregoing proceedings were taken before me at the time and place therein set forth, at which time the witness was put under oath by me;

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That the testimony of the witness and all objections made at the time of examination were recorded stenographically by me and were thereafter transcribed by me;

That the foregoing is a true and correct transcript of my shorthand notes so taken.

Dated this 28th day of November,

2011.

NEESON & ASSOCIATES COURT REPORTING
AND CAPTIONING, INC.

per: BONNIE LYNN VAN DER MEER, CSR

**THIS IS EXHIBIT "T" TO THE AFFIDAVIT
OF SUZANNE FISHER SWORN BEFORE ME
ON THIS 26th DAY OF JANUARY, 2012**


Cheryle Elizabeth H.

A Commissioner for taking affidavits, etc.

Cheryle Elizabeth Thomson,
a Commissioner, etc., Province of
Ontario, for Central 1 Credit Union.
Expires August 24, 2014.

Court File No.: CV-11-9144-00CL

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

**IN THE MATTER OF AN APPLICATION UNDER SECTION 243
OF THE BANKRUPTCY AND INSOLVENCY ACT, R.S.C. 1985, c. B-3, as amended,**

**AND IN THE MATTER OF SECTION 101 OF THE
COURTS OF JUSTICE ACT, R.S.O. 1990, c.C.43, as amended**

BETWEEN:

CENTRAL 1 CREDIT UNION

Applicant

- and -

UM FINANCIAL INC. and UM CAPITAL INC.

Respondents

SECOND REPORT OF THE RECEIVER

December 1, 2011

Grant Thornton Limited
Royal Bank Plaza, South Tower
200 Bay Street, 19th Floor
Toronto, Ontario
M5J 2P9

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Appendix 2 - Production Order dated November 10, 2011

Appendix 3 - BNS Custody Holding Summary and corresponding receipts

Appendix 4 - November 15, 2011 letter from MCC's counsel to Receiver's counsel

Appendix 5 - November 15, 2011 letter from Receiver's counsel to MCC's counsel

Appendix 6 - November 16, 2011 letter from MCC's counsel to Receiver's counsel

Appendix 7 – November 17, 2011 Examination Endorsement

Appendix 8 - Copies of Receiver's November 17 and 21, 2011 emails to Joseph Adam

Appendix 9 - Transcript of the November 23, 2011 examination of Yusuf Panchbaya

Appendix 10 - Transcript of the November 25, 2011 examination of Omar Kalair

Appendix 11 - Corporation Profile Report, Amira Islamic Fashion and Book Centre Inc.

Appendix 12 - Articles of Incorporation, Amira Islamic Fashion and Book Centre Inc.

Appendix 13 – Business Names Report, Amira Islamic Fashion and Book Centre Inc.

Court File No.: CV-11-9144-00CL

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Respondents

SECOND REPORT OF THE RECEIVER

December 1, 2011

INTRODUCTION BACKGROUND PURPOSE OF THE SECOND REPORT

1. On October 7, 2011, the Honourable Mr. Justice Newbould issued an Order (the “**Receivership Order**”) appointing Grant Thornton Limited (“**GTL**”) as receiver (the “**Receiver**”) of all the assets, undertakings and properties of UM Financial Inc. (“**UMF**”) and UM Capital Inc. (“**UMC**”). UMF and UMC are collectively referred to as the “**Companies**”. Copies of the Receivership Order and the endorsement of the Honourable Justice Newbould are collectively attached as **Appendix “1”**.
2. As described in detail in the Receiver’s First Report to Court, the Receiver was advised that the Companies completed three (3) purchases of gold and silver bullion (the “**Precious Metals**”) in August and September 2011 for the total amount of \$2,179,121.
3. On November 10, 2011 the Receiver brought a motion before this Honourable Court requesting an Order (the “**Production Order**”) granting certain relief including: (i) directing all parties with knowledge of the Precious Metals to immediately provide the Receiver with the information regarding the location of the Precious Metals and the contact information for the individual(s) or entity in possession or in control of the Precious Metals; (ii) directing the parties in possession or in control of the Precious Metals to immediately deliver possession and control of the Precious Metals to the Receiver pending the determination of ownership or entitlement to same; and, (iii) empowering and authorizing the Receiver to examine under oath certain parties including Yusuf Panchbaya and Omar Kalair. A copy of the Production Order and the endorsement of the Honourable Justice Wilton-Siegel are collectively attached as **Appendix “2”**.

4. This is the Receiver's second report to Court (the "Second Report"), the purpose of which is to:

- provide an update on the Receiver's activities with respect to the recovery of the Precious Metals;
- provide an update on the examinations of Yusuf Panchbaya and Omar Kalair;
- request that this Honourable Court issue an Order to allow entry and search of the premises municipally known as 48A Rexdale Blvd., Toronto, Ontario (the "Premises"), so as to facilitate the recovery of the Precious Metals, as specified in the draft order attached hereto.

SCOPE

5. In preparing this Second Report, the Receiver has been provided with and, in making comments herein, has relied upon unaudited financial information, the Companies' books and records, discussions with certain of the Companies' former employees and/or consultants and correspondence with a variety of parties. The Receiver has not audited, reviewed or otherwise attempted to verify the accuracy or completeness of such information and, accordingly, the Receiver expresses no opinion or other form of assurance in respect of such information contained in this Second Report. The Receiver notes in particular that due to the significant difficulties experienced to date in obtaining accurate financial information relating to the Companies, the Receiver has been unable to corroborate many aspects of the information obtained through discussions with management and former employees and/or consultants to the Companies.
6. Copies of all Receiver's Reports and orders filed or issued in the receivership proceedings are available on the Receiver's website at: www.grantthornton.ca/umfinancial.
7. All references to currency are to Canadian dollars unless otherwise noted.

THE RECEIVER'S ACTIVITIES

8. On November 14, 2011, the Receiver met with Yusuf Panchbaya ("Panchbaya") at The Bank of Nova Scotia ("BNS") and Panchbaya delivered 7,299 ounces silver (the "Silver") to be held by BNS pending determination of entitlement. Copies of the Custody Holdings Summary and corresponding receipts issued by BNS are attached hereto as **Appendix "3"**.
9. The Silver appears to be that which was purchased by the Companies on September 8, 2011 for the total amount of \$322,343, with the exception of only a single missing one ounce coin.
10. The gold purchased by the Companies in August and September 2011 for the total amount of \$1,856,778 (the "Gold") was not delivered to the Receiver, as required by the Production Order.
11. On November 15, 2011 counsel to Multicultural Consultancy Canada Inc. ("MCC") sent the Receiver's counsel a letter to advise: (i) that MCC does not currently have possession or control over the Gold as MCC appointed Joseph Adam ("Adam") to deal with the Gold; and, (ii) that Adam is out of the country until November 23, 2011. Copies of the November 15, 2011 letter from MCC's counsel and the responding letter of the same date from the Receiver's counsel are attached hereto as **Appendix "4"** and **Appendix "5"**, respectively.
12. On November 16, 2011 counsel to MCC sent the Receiver's counsel a letter confirming among other things that: (i) Adam was [to be¹] given the Gold on or about October 4, 2011; (ii) Adam will have to answer about the present location of the Gold; (iii) Adam's email address; (iv) Adam was advised by email of the Production Order and the need to return the Gold; and, (v) Adam is in Egypt. A copy of the November 16, 2011 letter from MCC's counsel is attached hereto as **Appendix "6"**.

¹ The letter was subsequently corrected by counsel to MCC to add the words "to be".

13. On November 17, 2011 counsel for the Receiver, MCC and Central 1 Credit Union attended before the Honourable Justice Morawetz to report on the status of the delivery of the Precious Metals. As the Gold had not been delivered by end of business on November 14, 2011 as required by the Production Order, the Honourable Mr. Justice Morawetz issued an Endorsement (the “**Examination Endorsement**”) requiring that, among other things, examinations under oath of Adam and Panchbaya to be conducted as soon as practicable. A copy of the Examination Endorsement is attached hereto as **Appendix “7”**.
14. On November 17 and 21, 2011 the Receiver sent emails to Adam at the email address provided by MCC’s counsel in order to request that Adam confirm arrangements for the immediate delivery of the Gold to the Receiver. The Receiver has not received a response to these emails or any correspondence from Adam. Copies of the Receiver’s emails of November 17 and 21, 2011 (without enclosures) are attached hereto as **Appendix “8”**.
15. On November 23, 2011 the Receiver’s counsel began an examination of Panchbaya. Among other things Panchbaya advised that: (i) he believed Adam received the Gold; (ii) when in Toronto, Adam resides at or above the premises of Amira Islamic Fashion and Book Center Inc. (“**Amira**”) located on Rexdale Boulevard near Islington Avenue, Toronto, Ontario; (iii) Adam is currently in Egypt; (iii) Panchbaya does not know where Adam has the Gold; and, (iv) Panchbaya has sent Adam an email and delivered a letter to the Amira premises to advise Adam of the Production Order and the need to return the Gold. A copy of the transcript for the examination of Panchbaya is attached hereto as **Appendix “9”**. The key questions in this transcript concerning Adam and the gold are as follows: 36-44, 51, 139, 179, 183 and 301-306.
16. On November 25, 2011 the Receiver’s counsel completed the examination of Omar Kalair (“**Kalair**”). Among other things Kalair advised that: (i) after purchasing the Precious Metals in August and September 2011 Kalair stored this property in his personal office located in the Companies’ premises on Don Mills

Road; (ii) neither Kalair or the Companies had insurance coverage for the storage of the Precious Metals; (iii) Kalair delivered the Precious Metals to Adam on the evening of October 4, 2011; (iv) his delivery or transfer of the Precious Metals to Adam took place in the dark in a parking lot in the Rexdale and Islington area of Toronto, Ontario; (v) Adam works at Amira; and, (vi) Adam is aware of the Production Order and has advised that he will deal with the Gold when he returns to Toronto. A copy of the transcript for the examination of Kalair is attached hereto as **Appendix “10”**. The key questions in the transcript concerning Adam and the Gold are as follows: 320, 327-330, 349-377, 389-394, 396-398, 413-421, 483-485, 493 and 502.

17. The Receiver obtained a Corporation Profile Report for Amira which confirms Adam is a director of this company and the Corporation Profile Report lists an address for Adam at 48A Rexdale Boulevard, Toronto, ON. A copy of this Corporation Profile Report is attached hereto as **Appendix “11”**. A copy of the Articles of Incorporation for Amira is attached hereto as **Appendix “12”**. A copy of the Business Names Report for Amira is attached hereto as **Appendix “13”**.
18. In light of the foregoing and the unusual nature of the Precious Metals transactions generally, the Receiver is concerned that if notice of this motion was provided to Adam or Amira, the Gold could be moved or secreted.
19. The Receiver is seeking the assistance of this Honourable Court to facilitate the recovery of the Gold so as to give effect to the Production Order.

RELIEF REQUESTED

20. Based upon the foregoing, the Receiver respectfully requests that this Honourable Court issue an order to allow entry and search of the Premises for the purpose of facilitating the recovery of the Precious Metals, and for certain other ancillary relief, as specified in the draft order attached hereto.

All of which is respectfully submitted,

**GRANT THORNTON LIMITED,
IN ITS CAPACITY AS COURT-APPOINTED
RECEIVER OF UM FINANCIAL INC. AND UM CAPITAL INC.
AND NOT IN ITS PERSONAL OR CORPORATE CAPACITY**

Per:



Michael G. Creber, CA•CIRP
Senior Vice-President

**THIS IS EXHIBIT "U" TO THE AFFIDAVIT
OF SUZANNE FISHER SWORN BEFORE ME
ON THIS 26th DAY OF JANUARY, 2012**



A Commissioner for taking affidavits, etc.

Cheryle Elizabeth Thomson,
a Commissioner, etc., Province of
Ontario, for Central 1 Credit Union.
Expires August 24, 2014.

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

**IN THE MATTER OF AN APPLICATION UNDER SECTION 243
OF THE *BANKRUPTCY AND INSOLVENCY ACT*, R.S.C. 1985, c. B-3, as amended,**

**AND IN THE MATTER OF SECTION 101 OF THE
COURTS OF JUSTICE ACT, R.S.O. 1990, c.C.43, as amended**

BETWEEN:

CENTRAL 1 CREDIT UNION

Applicant

- and -

UM FINANCIAL INC. AND UM CAPITAL INC.

Respondents

SUPPLEMENT TO THE SECOND REPORT OF THE RECEIVER

December 3, 2011

BACKGROUND

1. On October 7, 2011, the Honourable Mr. Justice Newbould issued an Order (the “**Receivership Order**”) appointing Grant Thornton Limited (“GTL”) as receiver (the “**Receiver**”) of all the assets, undertakings and properties of UM Financial Inc. (“UMF”) and UM Capital Inc. (“UMC”). UMF and UMC are collectively referred to as the “**Companies**”.
2. On December 1, 2011, the Receiver filed its second report to Court (the “**Second Report**”) in support of a motion, among other things, seeking access to the Premises municipally known as 48A Rexdale Boulevard, Etobicoke, in order to search for, and if found, take possession of the Gold (as defined in the Second Report). Defined terms not otherwise defined herein have the meaning given them in the Secord Report. This Supplement to the Second Report is subject to the terms and qualifications provided in paragraph 5 of the Second Report.

ACTIVITIES SINCE THE SECOND REPORT

3. On the morning of December 2, 2011, the Honourable Mr. Justice Morawetz made an order, among other things, directing the Receiver to enter and search the Premises for the Gold (the “**December 2 Morning Order**”). The Honourable Mr. Justice Morawetz also made an endorsement providing that if the Receiver were not provided access to the Premises, that the Receiver was to serve Mr. Joel Levitt* with the motion material and return before him at 3:30 pm on December 2, 2011 (the “**December 2 Morning Endorsement**”). A copy of the December 2, 2011 Morning Order and December 2 Morning Endorsement are attached hereto as **Appendix A**.
4. The Receiver attended at the Premises at approximately 1:00 pm on December 2, 2011 and was denied access to the Premises by a Mr. Bechir Seghoir who was at

*On the evening of December 1, 2011, Mr. Levitt advised counsel to the Receiver that he was in the process of being retained by Mr. Josef Adam.

the Premises. Mr. Seghoir was provided with a copy of the December 2 Morning Order. Mr. Seghoir advised the Receiver that he had purchased the business from Mr. Adam in October of 2011, but provided no evidence to support such. Further Mr. Seghoir provided the Receiver with a contact card which contained only an email address (no name). The email address being the same as that which had previously been provided to the Receiver on November 15, 2011 for Mr. Adam. As well, Mr. Seghoir advised he would like his lawyer to review the order, that Friday was a very busy day that perhaps the Receiver could search the Premises after the business closed at 9:00 pm. The Receiver advised Mr. Seghoir that they would be returning to Court in the afternoon and encouraged him to contact his lawyer. The Receiver asked for Mr. Seghoir's counsel's contact information, but was not provided with such.

5. As a result, the Receiver's counsel emailed the motion material, the December 2 Morning Order and the December 2 Morning Endorsement to Mr. Levitt. Mr. Levitt replied advising that he has not been retained (and was in an all day mediation).
6. On the afternoon of December 2, 2011, the Receiver again attended in front of the Honourable Mr. Justice Morawetz who granted an order (the "**December 2 Afternoon Order**") providing for the assistance of the sheriff and the police. Copies of the December 2 Afternoon Order and corresponding endorsement are attached as **Appendix B** hereto.
7. During the afternoon of December 2, 2011, representatives of the Receiver and security personnel remained at the Premises. Mr. Seghoir closed the store at approximately 2:00 pm and he advised the Receiver that he was going to pray. Mr. Seghoir returned to the Premises at approximately 2:45 pm. After opening the store for a short period he again left the Premises. He returned at approximately 5:30 pm and turned off all the lights in the store and again left without providing access to the Receiver.

8. The Receiver was provided with a copy of the December 2 Afternoon Order at approximately 5:45. The Sheriff and Police attended at the Premises at approximately 7:00 pm. Mr. Seghoir did not return to the Premises. The Sheriff and Police left at approximately 8:00 pm. Security personnel remained outside the Premises throughout the night (and have not left since).
9. The Receiver returned to the Premises at approximately 9:00 am on December 3, 2011. The Sheriff was also present at approximately 9:00 am. Mr. Seghoir returned to the Premises at approximately 10:00 am and was given a copy of the December 2 Afternoon Order. The Sheriff then called the Police. Mr. Seghoir again advised he wished to review the Order with his lawyer. Mr. Seghoir did not provide contact information for his lawyer again. Mr. Seghoir denied access to the Premises to the Receiver in front of the Sheriff and advised that perhaps the Receiver could enter the Premises later. At approximately 10:30 am, Mr. Seghoir left the Premises. The Police attended at the Premises at approximately 10:45 am. The Receiver and the Sheriff left the Premises at approximately 11:45 am and Mr. Seghoir had not yet returned. The store at the Premises remained closed other than the 15 minutes while Mr. Seghoir was present. The security personnel have been instructed to advise the Receiver should anyone returned to the Premises. As of 3:45 pm on December 3, 2011 the Receiver understands no one has returned and the store remains closed.
10. From discussions with the Sheriff and Police the Receiver is of the understanding that if the Receiver were given the power to forcibly enter the premises and open the locks to do so, that the Sheriff and Police would return to assist the Receiver.

RELIEF REQUESTED

11. The Receiver is seeking the assistance of this Honourable Court to facilitate the recovery of the Gold so as to give effect to the Orders granted on December 2, 2011 and November 10, 2011.

12. Based upon the foregoing, the Receiver respectfully requests that this Honourable Court issue an order to allow forceable entry of the Premises for the purpose of facilitating the recovery of the Gold.

All of which is respectfully submitted,

**GRANT THORNTON LIMITED,
IN ITS CAPACITY AS COURT-APPOINTED
RECEIVER OF UM FINANCIAL INC. AND UM CAPITAL INC.
AND NOT IN ITS PERSONAL OR CORPORATE CAPACITY**

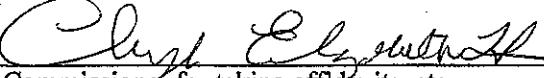
Per:



Michael G. Creber, CA•CIRP

Senior Vice-President

**THIS IS EXHIBIT "V" TO THE AFFIDAVIT
OF SUZANNE FISHER SWORN BEFORE ME
ON THIS 26th DAY OF JANUARY, 2012**


Cheryle Elizabeth Thomson
A Commissioner for taking affidavits, etc.

Cheryle Elizabeth Thomson,
a Commissioner, etc., Province of
Ontario, for Central 1 Credit Union.
Expires August 24, 2014.

Court File No.: CV-11-9144-00CL

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

**IN THE MATTER OF AN APPLICATION UNDER SECTION 243
OF THE *BANKRUPTCY AND INSOLVENCY ACT*, R.S.C. 1985, c. B-3, as amended,**

**AND IN THE MATTER OF SECTION 101 OF THE
COURTS OF JUSTICE ACT, R.S.O. 1990, c.C.43, as amended**

BETWEEN:

CENTRAL 1 CREDIT UNION

Applicant

- and -

UM FINANCIAL INC. and UM CAPITAL INC.

Respondents

THIRD REPORT OF THE RECEIVER

December 6, 2011

Grant Thornton Limited
Royal Bank Plaza, South Tower
200 Bay Street, 19th Floor
Toronto, Ontario
M5J 2P9

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- Appendix 2 - Production Order dated November 10, 2011
- Appendix 3 - Second Report of Receiver (without appendices)
- Appendix 4 - December 2 Morning Order
- Appendix 5 - December 2 Afternoon Order
- Appendix 6 - Supplement to the Second Report
- Appendix 7 - Further Supplemental Order dated December 3, 2011
- Appendix 8 - Acknowledgement

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

**IN THE MATTER OF AN APPLICATION UNDER SECTION 243
OF THE *BANKRUPTCY AND INSOLVENCY ACT*, R.S.C. 1985, c. B-3, as amended,**

**AND IN THE MATTER OF SECTION 101 OF THE
COURTS OF JUSTICE ACT, R.S.O. 1990, c.C.43, as amended**

BETWEEN:

CENTRAL 1 CREDIT UNION

Applicant

- and -

UM FINANCIAL INC. AND UM CAPITAL INC.

Respondents

THIRD REPORT OF THE RECEIVER

December 6, 2011

INTRODUCTION BACKGROUND PURPOSE OF THE THIRD REPORT

1. On October 7, 2011, the Honourable Mr. Justice Newbould issued an Order (the “**Receivership Order**”) appointing Grant Thornton Limited (“**GTL**”) as receiver (the “**Receiver**”) of all the assets, undertakings and properties of UM Financial Inc. (“**UMF**”) and UM Capital Inc. (“**UMC**”). UMF and UMC are collectively referred to as the “**Companies**”. Copies of the Receivership Order and the endorsement of the Honourable Justice Newbould are collectively attached as **Appendix “1”**.
2. As described in detail in the Receiver’s First Report to Court, the Receiver was advised that the Companies completed three (3) purchases of gold and silver bullion (the “**Precious Metals**”) in August and September 2011 for the total amount of \$2,179,121.
3. On November 10, 2011 the Receiver brought a motion before this Honourable Court requesting an Order (the “**Production Order**”) granting certain relief including: (i) directing all parties with knowledge of the Precious Metals to immediately provide the Receiver with the information regarding the location of the Precious Metals and the contact information for the individual(s) or entity in possession or in control of the Precious Metals; (ii) directing the parties in possession or in control of the Precious Metals to immediately deliver possession and control of the Precious Metals to the Receiver pending the determination of ownership or entitlement to same; and, (iii) empowering and authorizing the Receiver to examine under oath certain parties including Yusuf Panchbaya and Omar Kalair. A copy of the Production Order and the endorsement of the Honourable Justice Wilton-Siegel are collectively attached as **Appendix “2”**.
4. On December 1, 2011 the Receiver filed its second report to Court (the “**Second Report**”) in support of a motion, among other things, seeking access to the premises of Amira Islamic Fashion and Book Centre Inc. municipally known as 48A Rexdale Boulevard, Etobicoke (“**Amira**”), in order to search for, and if

found, take possession of the Gold (as defined in the Second Report). Copies of the Second Report without appendices and corresponding Court Order and Endorsement (the “**December 2 Morning Order**”) issued by the Honourable Mr. Justice Morawetz on December 2, 2011 are attached hereto as **Appendix “3”** and **Appendix “4”**, respectfully.

5. As provided for in the Morning Order, the Receiver’s counsel returned to Court in the afternoon of December 2, 2011 to report that the Receiver had been denied access to Amira. The Honourable Mr. Justice Morawetz then issued a Supplemental Order and Endorsement (the “**December 2 Afternoon Order**”). A copy of the December 2 Afternoon Order with the corresponding Endorsement is attached hereto as **Appendix “5”**.
6. The Receiver prepared a Supplement to the Second Report on December 3, 2011 which provides full details on the Receiver’s attempts to carry out the search as provided for in the December 2 Morning Order and December 2 Afternoon Order. A copy of the Supplement to the Second Report is attached hereto as **Appendix “6”**.
7. At approximately 5:00 p.m. on the evening of December 3, 2011 the Honourable Justice Morawetz issued a Further Supplemental Order and Endorsement granting the Receiver the right to enter Amira and forcibly break the locks. A copy of the Further Supplemental Order is attached hereto as **Appendix “7”**.
8. This is the Receiver’s Third Report to Court (the “**Third Report**”), the purpose of which is to:
 - provide an update on the Receiver’s activities;
 - provide an update on the Receiver’s sales process;
 - request that this Honourable Court grant an order;

- (i) approving the Second Report and the Receiver's activities as described therein;
- (ii) approving the Supplement to the Second Report and the Receiver's activities as described therein;
- (iii) approving this Third Report and the Receiver's activities as described herein; and,
- (iv) directing the appropriate Land Registry Office upon written request by the Receiver to delete the Receivership Order from title to any property upon which the Receivership Order is registered.

SCOPE

9. In preparing this Third Report, the Receiver has been provided with and, in making comments herein, has relied upon unaudited financial information, the Companies' books and records, discussions with certain of the Companies' former employees and/or consultants and correspondence with a variety of parties. The Receiver has not audited, reviewed or otherwise attempted to verify the accuracy or completeness of such information and, accordingly, the Receiver expresses no opinion or other form of assurance in respect of such information contained in this Third Report. The Receiver notes in particular that due to the significant difficulties experienced to date in obtaining accurate financial information relating to the Companies, the Receiver has been unable to corroborate many aspects of the information obtained through discussions with management and former employees and/or consultants to the Companies.
10. Copies of all Receiver's Reports and orders filed or issued in the receivership proceedings are available on the Receiver's website at: www.grantthornton.ca/umfinancial.
11. All references to currency are to Canadian dollars unless otherwise noted.

THE RECEIVER'S ACTIVITIES

Recovery of Precious Metals

12. On December 4, 2011, the Receiver in the presence of two (2) police officers attended at the Amira Fashions and served Seghaier Bashir ("Bashir") with the Further Supplemental Order. Bashir consented to the search of the premises by the Receiver. At this time Bashir advised that he had no knowledge of the gold. The Receiver's search recovered no gold.
13. The Receiver obtained an Acknowledgement signed by Bashir and all witnesses to the search on December 4, 2011 confirming the following: (i) no property at Amira was disturbed or damaged in any way and no property was removed during the search; (ii) the search began at 2:45 p.m. on December 4, 2011; and, (iii) the search ended a 4:07 p.m. on December 4, 2011. A copy of the Acknowledgement is attached hereto as **Appendix "8"**.

Update on Sales Process

14. To the date of writing this report, the Receiver has compiled a listing of 39 prospective purchases who have all received a copy of the Receiver's Confidentiality Agreement ("CA").
15. To date 19 prospective purchasers have signed the CA and have been granted access to the Receiver's online data room.
16. The Receiver has prepared a Confidential Information Memorandum to provide further details of the sales process to those prospective purchases who have signed the CA.
17. The Receiver has had general discussions with prospective purchasers concerning its sales process. To date no prospective purchasers have expressed concern to the Receiver that the Receiver's proposed timetable for its sales process is too short.

18. On December 6, 2011, the Receiver met with a homeowners committee (“HC”) who advised the Receiver that they represent the majority of homeowners with mortgages provided by the Companies. Among other things, the Receiver reviewed the status of its sales process with the HC. The members of the HC did not object to the Receiver’s current sales process or schedule as previously provided to this Honourable Court.
19. The Receiver is in the process of reviewing a form of template agreement of purchase and sale (“APA”) with its legal counsel. When finalized the APA will be made available to prospective purchasers upon request or through the Receiver’s on line data room.

Homeowner Payout Requests

20. The Receiver has received payout requests from approximately 20 homeowners. In order to facilitate these requests the Receiver will require the ability to instruct the appropriate Land Registry Offices to remove the Receivership Order from title to any real property upon which the Receivership Order is registered.

Second Mortgages

21. Approximately 50 properties in the Companies’ portfolio of mortgages include second mortgages with total indebtedness of approximately \$1.4 Million (the “Second Mortgages”). Based on the documentation available to the Receiver to date, it is not clear whether the Second Mortgages are subject to agreements with the Companies or to agreements with other companies in the UM Group. As a result, the Second Mortgages are not currently included in the Receiver’s sales process.

22. The Receiver continues its investigation of the Second Mortgages. It is anticipated that the Receiver will need to return to court early in the new year to seek directions in this respect.

RELIEF REQUESTED

23. Based upon the foregoing, the Receiver respectfully requests that this Honourable Court issue an order approving the relief requested in paragraph 8 hereof.

All of which is respectfully submitted,

**GRANT THORNTON LIMITED,
IN ITS CAPACITY AS COURT-APPOINTED
RECEIVER OF UM FINANCIAL INC. AND UM CAPITAL INC.
AND NOT IN ITS PERSONAL OR CORPORATE CAPACITY**

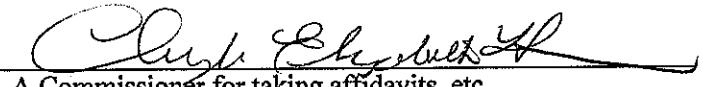
Per:



Michael G. Creber, CA•CIRP

Senior Vice-President

**THIS IS EXHIBIT "W" TO THE AFFIDAVIT
OF SUZANNE FISHER SWORN BEFORE ME
ON THIS 26th DAY OF JANUARY, 2012**



A Commissioner for taking affidavits, etc.

Cheryle Elizabeth Thomson,
a Commissioner, etc., Province of
Ontario, for Central 1 Credit Union.
Expires August 24, 2014.

Thomson, Mark

From: Thomson, Mark
Sent: Thursday, December 15, 2011 8:39 PM
To: Thomson, Mark
Subject: UM (FW: Joseph Adam)

From: Joel Levitt [mailto:jlevitt@fryerlevitt.com]
Sent: Tuesday, December 13, 2011 4:42 PM
To: Rabinovitch, Neil
Subject: Re: Joseph Adam

Thank you Neil.

I am awaiting my client's call and will respond as soon as I have spoken with him.

Regards,

Joel Levitt

On 11-12-13 4:14 PM, "Rabinovitch, Neil" <Neil.Rabinovitch@fmc-law.com> wrote:

Joel

Here are the endorsements you need. Can you please call me as soon as you have spoken with your client. The simple questions are:

1. where is the gold?
2. will he comply with the court order and return it?

I look forward to your prompt response.

Neil

Neil S. Rabinovitch, Partner

Fraser Milner Casgrain LLP | www.fmc-law.com <<http://www.fmc-law.com/>>

T 416 863 4656 | F 416 863 4592

E neil.rabinovitch@fmc-law.com

77 King Street West, Suite 400, Toronto-Dominion Centre, Toronto ON, M5K 0A1

Bio <<http://www.fmc-law.com/ch.aspx?a=bl-Neil.Rabinovitch@fmc-law.com>> | vCard <<http://www.fmc-law.com/ch.aspx?a=vc-Neil.Rabinovitch@fmc-law.com>>

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From: Dietrich, Jane

Sent: Tuesday, December 13, 2011 3:37 PM
To: Rabinovitch, Neil
Subject: RE: Joseph Adam

Attached are:

1. The Receivership Order;
2. The November 10, 2011 Order (which, among other things require parties in possession or control of the precious metals to deliver such);
3. The December 2 Morning Order (which, among other things mentions Joseph Adam specifically); and
4. The December 2 Afternoon and December 3 Order (dealing with access to Amira Fashion).

Jane O. Dietrich, Partner

Fraser Milner Casgrain LLP | www.fmc-law.com <<http://www.fmc-law.com>>

T 416 863 4467 | F 416 863 4592

E jane.dietrich@fmc-law.com

77 King Street West, Suite 400, Toronto-Dominion Centre, Toronto ON, M5K 0A1

Bio <<http://www.fmc-law.com/ch.aspx?a=bl-Jane.Dietrich@fmc-law.com>> | vCard <<http://www.fmc-law.com/ch.aspx?a=vc-Jane.Dietrich@fmc-law.com>>

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From: Rabinovitch, Neil
Sent: Tuesday, December 13, 2011 3:30 PM
To: Dietrich, Jane
Subject: Fwd: Joseph Adam

Sent from my iPhone

Begin forwarded message:

From: Joel Levitt <jelevitt@fryerlevitt.com>
Date: 13 December, 2011 2:52:23 PM EST
To: "Rabinovitch, Neil" <Neil.Rabinovitch@fmc-law.com>
Subject: Re: Joseph Adam

Thank you, but can you please send me the relevant Orders rather than requiring me to review every Order made in this matter.

Regards,

Joel Levitt

On 11-12-13 1:14 PM, "Rabinovitch, Neil" <Neil.Rabinovitch@fmc-law.com> wrote:

http://www.grantthornton.ca/services/reorg/bankruptcy_and_insolvency/umfinancial

Neil S. Rabinovitch, Partner

Fraser Milner Casgrain LLP | www.fmc-law.com <<http://www.fmc-law.com>> <<http://www.fmc-law.com>>

T 416 863 4656 | F 416 863 4592

E neil.rabinovitch@fmc-law.com

77 King Street West, Suite 400, Toronto-Dominion Centre, Toronto ON, M5K 0A1

Bio <<http://www.fmc-law.com/ch.aspx?a=bl-Neil.Rabinovitch@fmc-law.com>> | vCard <<http://www.fmc-law.com/ch.aspx?a=vc-Neil.Rabinovitch@fmc-law.com>>

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From: Joel Levitt [<mailto:jlevitt@fryerlevitt.com>]

Sent: Tuesday, December 13, 2011 1:10 PM

To: Rabinovitch, Neil

Subject: Joseph Adam

Dear Neil:

This will confirm our conversation of yesterday afternoon, wherein I advised that I have now been formally retained by Joseph Adam and am awaiting instruction from him.

As discussed it would be helpful if you could forward to me any Orders to which Mr. Adam might be subject at this time.

Regards,

Joel Levitt

FRYER LEVITT
Lawyers
421 Eglinton Avenue West
Suite 2,
Toronto, Ontario
M5N 1A4

TEL: 416 323 1377
FAX: 416 323 9355

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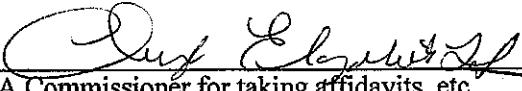
FRYER LEVITT
Lawyers
421 Eglinton Avenue West
Suite 2,
Toronto, Ontario
M5N 1A4

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FRYER LEVITT
Lawyers
421 Eglinton Avenue West
Suite 2,
Toronto, Ontario
M5N 1A4

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**THIS IS EXHIBIT "X" TO THE AFFIDAVIT
OF SUZANNE FISHER SWORN BEFORE ME
ON THIS 26th DAY OF JANUARY, 2012**


Cheryle Elizabeth Thomson
A Commissioner for taking affidavits, etc.

Cheryle Elizabeth Thomson,
a Commissioner, etc., Province of
Ontario, for Central 1 Credit Union.
Expires August 24, 2014.

Court File No.: CV-11-9144-00CL

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

**IN THE MATTER OF AN APPLICATION UNDER SECTION 243
OF THE *BANKRUPTCY AND INSOLVENCY ACT*, R.S.C. 1985, c. B-3, as amended,**

**AND IN THE MATTER OF SECTION 101 OF THE
COURTS OF JUSTICE ACT, R.S.O. 1990, c.C.43, as amended**

BETWEEN:

CENTRAL 1 CREDIT UNION

Applicant

- and -

UM FINANCIAL INC. and UM CAPITAL INC.

Respondents

FOURTH REPORT OF THE RECEIVER

December 21, 2011

Grant Thornton Limited
Royal Bank Plaza, South Tower
200 Bay Street, 19th Floor
Toronto, Ontario
M5J 2P9

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Court File No.: CV-11-9144-00CL

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

**IN THE MATTER OF AN APPLICATION UNDER SECTION 243
OF THE *BANKRUPTCY AND INSOLVENCY ACT*, R.S.C. 1985, c. B-3, as amended,**

**AND IN THE MATTER OF SECTION 101 OF THE
COURTS OF JUSTICE ACT, R.S.O. 1990, c.C.43, as amended**

BETWEEN:

CENTRAL 1 CREDIT UNION

Applicant

- and -

UM FINANCIAL INC. AND UM CAPITAL INC.

Respondents

FOURTH REPORT OF THE RECEIVER

December 21, 2011

INTRODUCTION AND PURPOSE OF THE FOURTH REPORT

1. On October 7, 2011, the Honourable Mr. Justice Newbould issued an Order (the "**Receivership Order**") appointing Grant Thornton Limited ("GTL") as receiver (the "**Receiver**") of all the assets, undertakings and properties of UM Financial Inc. ("**UMF**") and UM Capital Inc. ("**UMC**"). UMF and UMC are collectively referred to as the "**Companies**". Copies of the Receivership Order and the endorsement of the Honourable Justice Newbould are collectively attached as **Appendix "1"**.
2. As described in detail in the Receiver's First Report to Court, the Receiver was advised that the Companies completed three (3) purchases of gold and silver bullion (the "**Precious Metals**") in August and September 2011 for the total amount of \$2,179,121.
3. On November 10, 2011 the Receiver brought a motion before this Honourable Court requesting an Order (the "**Production Order**") granting certain relief including: (i) directing all parties with knowledge of the Precious Metals to immediately provide the Receiver with the information regarding the location of the Precious Metals and the contact information for the individual(s) or entity in possession or in control of the Precious Metals; (ii) directing the parties in possession or in control of the Precious Metals to immediately deliver possession and control of the Precious Metals to the Receiver pending the determination of ownership or entitlement to same; and, (iii) empowering and authorizing the Receiver to examine under oath certain parties including Yusuf Panchbaya and Omar Kalair. A copy of the Production Order and the endorsement of the Honourable Justice Wilton-Siegel are collectively attached as **Appendix "2"**.
4. On December 2nd and 3rd, 2011 the Receiver filed a second report (the "**Second Report**") and supplement to the Second Report, seeking access to the premises of

Amira Islamic Fashion and Book Centre Inc. municipally known as 48A Rexdale Boulevard, Etobicoke ("Amira"), to search for, and if found, take possession of the Gold (as defined in the Second Report) and The Honourable Mr. Justice Morawetz issued three corresponding court orders and endorsements granting the Receiver authority to complete the search of Amira.

5. On December 6, 2011, the Receiver filed its third report to court (the "**Third Report**") in order to: (i) provide an update on its sales process; (ii) report that the Gold had not been recovered; and (iii) seek certain relief including the ability to remove the Receivership Order from title to any real property upon the Receiver's written request. On December 12, 2011, the Honourable Mr. Justice Wilton Siegal issued a corresponding Order (the "**Sales Process Update Order**"). A copy of the Sales Process Update Order is attached hereto as **Appendix "3"**.
6. This is the Receiver's Fourth Report to Court (the "**Fourth Report**"), the purpose of which is to:
 - provide an update on the Receiver's activities since the Third Report;
 - provide a further update on the Receiver's sales process;
 - request that this Honourable Court grant an order:
 - (i) approving the Fourth Report and the Receiver's activities as described therein;
 - (ii) authorizing the Receiver to distribute to Central 1 Credit Union ("Central 1"), amounts directly related to Central 1's interest in those mortgages registered in the name of either of the Debtors and assigned to Central 1 (the "**First Mortgages**") if and when such First Mortgages are paid out, as the Receiver, in its discretion from time to time, determines is appropriate;
 - (iii) authorizing the Receiver to repudiate, as of the date of the Receivership Order, all right, title and interest, if any, that the Debtors' may have in the Second Mortgages (as defined

below) and declaring that the Receiver and the Debtors have no interest in the portfolio of Second Mortgages (the “**Second Mortgages Portfolio**”);

- (iv) authorizing the Receiver to pay to the registered owners of the properties over which the second Mortgages have been registered (the “**Second Mortgagors**”) or to such party as the Second Mortgagors may direct, any funds received by the Receiver in respect of such Second Mortgage,
- (v) authorizing the Receiver to deliver any documents relating to the Second Mortgages in its possession to the Second Mortgagors or those parties registered as chargees on the Second Mortgages (the “**Second Mortgagees**”);
- (vi) declaring that no party has a right of set off against amounts owed to the Debtors, the Receiver, or any purchaser or assignee of the Portfolio, in respect of amounts owing or owed under the Second Mortgages unless agreed to in writing by the Receiver; and
- (vii) approving the Receiver’s fees and disbursements and those of its legal counsel, Fraser Milner Casgrain LLP (“FMC”) to December 15, 2011.

SCOPE

7. In preparing this Fourth Report, the Receiver has been provided with and, in making comments herein, has relied upon unaudited financial information, the Companies’ books and records, discussions with certain of the Companies’ former employees and/or consultants and correspondence with a variety of parties. The Receiver has not audited, reviewed or otherwise attempted to verify the accuracy or completeness of such information and, accordingly, the Receiver expresses no opinion or other form of assurance in respect of such information

contained in this Fourth Report. The Receiver notes in particular that due to the significant difficulties experienced to date in obtaining accurate financial information relating to the Companies, the Receiver has been unable to corroborate many aspects of the information obtained through discussions with management and former employees and/or consultants to the Companies.

8. Copies of all Receiver's Reports and orders filed or issued in the receivership proceedings are available on the Receiver's website at: www.grantthornton.ca/umfinancial.
9. All references to currency are to Canadian dollars unless otherwise noted.

THE RECEIVER'S ACTIVITIES

Recovery of Precious Metals

10. As noted in the Receiver's Second Report, the Receiver's counsel completed examinations under oath of Yusuf Panchbaya ("Panchbaya") and Omar Kalair ("Kalair"). In their sworn testimonies, both Panchbaya and Kalair advised that the Gold, purchased by Kalair using the Companies' funds in August and September 2011 for the total amount of \$1,865,778, was given to Joseph Adam ("Adam").
11. To the date of writing this report, the Receiver has not recovered the Gold.
12. On December 13, 2011, FMC was contacted by Joel Levitt of Fryer Levitt who advised that he has been formally retained by Adam and is awaiting instructions from Adam with respect to providing information on the current location and/or return of the Gold. Copies of email correspondence between FMC and Adam's counsel on December 13, 2011 are attached hereto as Appendix "4". FMC continues to regularly follow up with Mr. Levitt regarding further information on Adam's return to Canada and the location/delivery of the Gold.

13. Counsel for Adam and FMC have confirmed their availability for an examination under oath of Adam to be completed on January 10, 2011. Adam has not yet confirmed his availability for this examination. However, FMC has served a notice of examination on Adam through Adam's counsel. A copy of this notice of examination is attached hereto as Appendix "5".

Update on Sales Process

14. To the date of writing this report, the Receiver has compiled a listing of 50 prospective purchasers who have all received a copy of the Receiver's Confidentiality Agreement ("CA").
15. To date 27 prospective purchasers have signed the CA and have been granted access to the Receiver's online data room.
16. The Receiver has prepared a Confidential Information Memorandum to provide further details of the sales process to those prospective purchasers who have signed the CA.
17. The Receiver is in the process of reviewing a form of template agreement of purchase and sale ("APS") with its legal counsel. When finalized the APS will be made available to prospective purchasers through the Receiver's on line data room.

Bankruptcies of the Companies

18. As provided for in the Production Order, the Receiver filed assignments in bankruptcy for each of the Companies effective November 23, 2011 wherein GTL was appointed as Trustee and later affirmed at the first meetings of creditors held on December 13, 2011.
19. At approximately 4:00 P.M. on December 12, 2011, Kalair's counsel advised FMC that Kalair would not be attending the first meetings of creditors for the

Companies due to a prior speaking engagement commitment in Oman scheduled for December 17th and/or 18th, 2011. Copies of the December 12, 2011 email and letter from Kalair's counsel and the response of the same date from FMC are attached hereto as **Appendix "6"**.

20. On December 13, 2011, the first meetings of creditors were held for the bankrupt estates of each of the Companies under the chair of the Official Receiver. Copies of the minutes of the first meetings of creditors are attached hereto as **Appendix "7"**.
21. As noted in the minutes of the first meetings of creditors and confirmed by subsequent email, the chair has recommended to the Senior Bankruptcy Analyst that Kalair be designated as an officer of each of the Companies pursuant to section 159(b) of the BIA for the purpose of performing the duties in S.158 of the BIA and that Kalair be required to attend before the Official Receiver for an examination under s.161 of the BIA.

Mortgagor Payout Requests

22. The Receiver has received payout requests from 23 Mortgagors.
23. To date the Receiver has received the required payout funds from five (5) Mortgagors in the total amount of \$939,925.83 including amounts due to the Companies for fees and profit and applicable HST thereon.
24. In order to facilitate the discharge of the First Mortgages assigned to Central 1, following receipt of the required payout funds, the Receiver is requesting the ability to distribute the corresponding funds due to Central 1 in respect of these mortgages.
25. In this respect the Receiver has received from FMC an opinion that the security granted by the Companies in respect of the First Mortgages in favour of Central 1 is valid and enforceable, subject to the usual assumptions and qualifications. As

well, a portion of the Portfolio (being 18 First Mortgages held by UMF) have been absolutely assigned to Central 1 (rather than assignments by way of security).

26. As provided for in the Sales Process Update Order, the Receiver also intends to make arrangements for the removal of the Receivership Order from title to properties where it has received the required payout funds from the First Mortgagors.

Second Mortgages

27. Approximately 44 properties in the Companies' portfolio of mortgages (the "Portfolio") include second mortgages with total indebtedness of approximately \$1.4 Million (the "Second Mortgages"). A copy of the list of Second Mortgages known to the Receiver is attached hereto as **Appendix "8"**. The agreements contained in the files in respect of the Second Mortgages are not consistent and in certain cases are not signed.
28. Despite the inconsistency of documentation in the Second Mortgage files, the Receiver understands the primary Second Mortgage agreement is a mudarabah contract (the "Mudarabah"). A copy of a Mudarabah is attached hereto as **Appendix "9"**
29. As noted in the sample Mudarabah (Appendix 9), this is an agreement between 'UM Financial' and a private party as the "Lender" (the "Second Mortgagee") and a homeowner, the Second Mortgagor. It is not clear what corporate entity 'UM Financial' is meant to identify.¹
30. Many of the Second Mortgage files include a second agreement: Mortgage Loan Agreement / Instructions to Solicitor (2nd Mortgages) (the "Loan/Instructions Agreement") between the Second Mortgagee and the Second Mortgagor. Neither

¹ Although a trademark search of UM Financial has revealed that UMF has filed an application to register 'UM Financial' as a trademark.

of the Companies are named in the Loan/Instructions Agreement. A copy of a sample Loan/Instructions Agreement is attached hereto as Appendix "10".

31. The Receiver is advised by FMC that a review of title to the properties which are subject to the Portfolio does not reveal the Companies' being registered on title to the properties in respect of the Second Mortgages.
32. From its discussions with Kalair, the Receiver understands that the Second Mortgages were an investment arrangement established and administered by members of the UM Group whereby the UM Group would arrange for Second Mortgage agreements between Second Mortgagees and Second Mortgagors. At times Mr. Kalair has indicated that UMRE was involved in the Second Mortgage Portfolio, where at other times he has indicated rather that UMF was involved.
33. The Receiver met with counsel to UMRE on December 15, 2011 and has requested that UMRE provide an explanation of whatever interest it may have in the Second Mortgages.
34. According to Kalair, the Second Mortgages are closed mortgages without the opportunity for principal loan balance reductions prior to repayment of the mortgage loan in full. Kalair further advised that the Second Mortgagor pays rent or profit equivalent to 10% of the loan amount per annum and that these payments are completed on a monthly basis whereby UMF would retain 10% of these payments and 90% is distributed to the Second Mortgagees.
35. The Receiver has been advised by Kalair that the monthly payments issued by Second Mortgagors were sent electronically to the bank account of UMF held with Alterna Credit Union (the "Alterna Account").
36. The Receiver further has been advised by Kalair that Second Mortgagees who are also Mortgagors for other properties in the Portfolio were permitted to set off

against their monthly mortgage payments amounts due to them as Second Mortgagees rather than receiving these amounts as distributions.

37. The Receiver has taken control of the Alterna Account and is investigating the payments and amounts set off by Second Mortgagees who are also first Mortgagors on other properties. It is the intention of the Receiver to work with each of the Second Mortgagees / Mortgagors to create a reconciliation.
38. The key Second Mortgage agreements show a direct relationship between the Second Mortgagees and Second Mortgagors. This relationship appears to be substantially for the benefit of the Second Mortgagors and Second Mortgagees. The only potential benefit to UMF, if in fact UMF is a party to the applicable agreements, would be the receipt of the 1% annualized fee.
39. Based on the approximate total Second Mortgage balances in the amount of \$1.4 million, if UMF is in fact a party to the underlying agreements, it would be entitled to annual revenue of approximately \$14,000 in respect of the Second Mortgages Portfolio.
40. The Second Mortgage documentation available to the Receiver indicates that the Second Mortgagees and Second Mortgagors could deal with each other directly without the involvement of UMF or the Receiver.
41. The Receiver has received communications from several Second Mortgagees who have requested approval to deal with the corresponding Second Mortgagors directly without the involvement of UMF or the Receiver.
42. As noted in the Third Report, the Receiver met with a homeowners committee (“HC”) who advised that they represent the majority of homeowners or Mortgagors with first and Second Mortgages provided by the Companies. During this meeting, the Receiver reviewed the possibility of the Receiver seeking court approval to repudiate its interest, if any, in the Second Mortgages Portfolio such

that the Second Mortgagees and Second Mortgagors would deal directly with one another. The HC did not object to the Receiver requesting this relief.

43. In order to aid in the facilitation of any orderly transition of the administration of the Second Mortgages Portfolio to the Second Mortgagors and Second Mortgagees, the Receiver may require the ability to release Second Mortgage documents and/or agreements in its possession to the applicable Second Mortgagors and Second Mortgagees.
44. If the Court authorizes the Receiver to repudiate its interest, if any, in the Second Mortgages Portfolio, the Receiver will require the Court's approval to return any funds it has received from Second Mortgagors.
45. In this respect, the Receiver is requesting that the Receiver be authorized to repudiate any interest that the Companies or the Receiver may have in the Second Mortgage Portfolio as at the date of the Receivership Order. Should the requested relief be granted, it is the Receiver's intention to then reconcile amounts received by the Receiver with respect to the Second Mortgages with the Second Mortgagees and Second Mortgagors. The Receiver's intention is not to charge the 1% fee, return any funds received by a Second Mortgagor to such Second Mortgagor (or to whom they may direct in writing) and to ensure that all payments from mortgagees made with respect to the Portfolio are made without deduction or set off for Second Mortgages.

INTERIM RECEIPTS AND DISBURSEMENTS OF THE RECEIVERSHIP

46. Attached as Appendix "11" is the Receiver's Interim Statement of Receipts and Disbursements as at December 14, 2011 ("Interim R&D").
47. The Receiver and FMC have accrued fees and expenses in their capacity as Receiver and counsel thereto, respectively, which fees and expenses require the approval of this Honourable Court pursuant to the Receivership Order.

48. The Receivership Order authorizes the Receiver to pass its accounts from time to time, and to include any necessary solicitor fees and disbursements in the passing of the accounts.
49. The fees and disbursements of GTL, in its capacity as Receiver of the Companies for the period ending December 15, 2011, total \$410,638.96 including HST as detailed in the affidavit of Michael Creber attached hereto as **Appendix "12"**.
50. The fees and disbursements of FMC, for the period ending December 15, 2011 total \$298,430.56, including HST as detailed in the affidavit of R. Shayne Kukulowciz attached hereto as **Appendix "13"**.
51. The Receiver is of the view that these accounts are reasonable in the circumstances and requests Court approval of the fees and disbursements as set out therein.

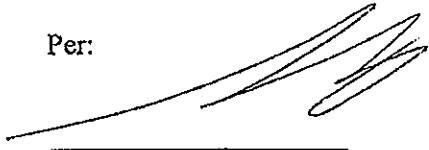
RELIEF REQUESTED

52. Based upon the foregoing, the Receiver respectfully requests that this Honourable Court issue an order approving the relief requested in paragraph 6 hereof.

All of which is respectfully submitted,

**GRANT THORNTON LIMITED,
IN ITS CAPACITY AS COURT-APPOINTED
RECEIVER OF UM FINANCIAL INC. AND UM CAPITAL INC.
AND NOT IN ITS PERSONAL OR CORPORATE CAPACITY**

Per:



Michael G. Creber, CA•CIRP

Senior Vice-President

**THIS IS EXHIBIT "Y" TO THE AFFIDAVIT
OF SUZANNE FISHER SWORN BEFORE ME
ON THIS 26th DAY OF JANUARY, 2012**


A Commissioner for taking affidavits, etc.

Cheryle Elizabeth Thomson,
a Commissioner, etc., Province of
Ontario, for Central 1 Credit Union
Expires August 24, 2014.

Court File No.: CV-11-9144-00CL

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

**IN THE MATTER OF AN APPLICATION UNDER SECTION 243
OF THE BANKRUPTCY AND INSOLVENCY ACT, R.S.C. 1985, c. B-3, as amended,**

**AND IN THE MATTER OF SECTION 101 OF THE
COURTS OF JUSTICE ACT, R.S.O. 1990, c.C.43, as amended**

BETWEEN:

CENTRAL 1 CREDIT UNION

Applicant

- and -

UM FINANCIAL INC. and UM CAPITAL INC.

Respondents

FIFTH REPORT OF THE RECEIVER

December 29, 2011

Grant Thornton Limited
Royal Bank Plaza, South Tower
200 Bay Street, 19th Floor
Toronto, Ontario
M5J 2P9

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Appendix 2 - Production Order dated November 10, 2011

Appendix 3 - Orders of the Honourable Mr. Justice Morawetz made on December 2 and 3, 2011

Appendix 4 - Sales Process Update Order dated December 12, 2011

Appendix 5 - Correspondence to Stevenson and Pitch from FMC

Appendix 6 - Correspondence between Adam's Counsel and FMC

Appendix 7 - Revised Second Mortgage Listing

Appendix 8 - Correspondence between Mohammed Khan and FMC

Appendix 9 - Correspondence received from Advisory Committee on December 23, 2011

Appendix 10 - Notice from Woods Law Professional Corporation

Court File No.: CV-11-9144-00CL

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

**IN THE MATTER OF AN APPLICATION UNDER SECTION 243
OF THE *BANKRUPTCY AND INSOLVENCY ACT*, R.S.C. 1985, c. B-3, as amended,**

**AND IN THE MATTER OF SECTION 101 OF THE
COURTS OF JUSTICE ACT, R.S.O. 1990, c.C.43, as amended**

BETWEEN:

CENTRAL 1 CREDIT UNION

Applicant

- and -

UM FINANCIAL INC. AND UM CAPITAL INC.

Respondents

FIFTH REPORT OF THE RECEIVER

December 29, 2011

INTRODUCTION AND PURPOSE OF THE FIFTH REPORT

1. On October 7, 2011, the Honourable Mr. Justice Newbould issued an Order (the "**Receivership Order**") appointing Grant Thornton Limited ("GTL") as receiver (the "**Receiver**") of all the assets, undertakings and properties of UM Financial Inc. ("UMF") and UM Capital Inc. ("UMC"). UMF and UMC are collectively referred to as the "**Companies**". A copy of the Receivership Order is attached as **Appendix "1"**.
2. As described in detail in the Receiver's First Report to Court, the Receiver was advised that the Companies completed three (3) purchases of gold and silver bullion (the "**Precious Metals**") in August and September 2011 for the total amount of \$2,179,121.
3. On November 10, 2011 the Receiver brought a motion before this Honourable Court requesting an Order (the "**Production Order**") granting certain relief including: (i) directing all parties with knowledge of the Precious Metals to immediately provide the Receiver with the information regarding the location of the Precious Metals and the contact information for the individual(s) or entity in possession or in control of the Precious Metals; (ii) directing the parties in possession or in control of the Precious Metals to immediately deliver possession and control of the Precious Metals to the Receiver pending the determination of ownership or entitlement to same; and, (iii) empowering and authorizing the Receiver to examine under oath certain parties including Yusuf Panchbaya and Omar Kalair. A copy of the Production Order and the endorsement of the Honourable Justice Wilton-Siegel are collectively attached as **Appendix "2"**.
4. On December 1st and 3rd, 2011 the Receiver filed a second report (the "**Second Report**") and supplement to the Second Report, seeking, among other things, access to the premises of Amira Islamic Fashion and Book Centre Inc.

municipally known as 48A Rexdale Boulevard, Etobicoke ("Amira"), to search for, and if found, take possession of the Gold (as defined in the Second Report) and The Honourable Mr. Justice Morawetz issued three corresponding court orders and endorsements granting the Receiver authority to complete the search of Amira. These orders are attached hereto as "**Appendix 3**".

5. On December 6, 2011, the Receiver filed its third report to court (the "**Third Report**") in order to: (i) provide an update on its sales process; (ii) report that the Gold had not been recovered; and (iii) seek certain relief including the ability to remove the Receivership Order from title to any real property upon the Receiver's written request. On December 12, 2011, the Honourable Mr. Justice Wilton Siegal issued a corresponding Order (the "**Sales Process Update Order**"). A copy of the Sales Process Update Order is attached hereto as **Appendix "4"**.
6. On December 21, 2011 the Receiver filed its fourth report to Court (the "**Fourth Report**"), in order to: (i) provide an update on its activities since the Third Report; (ii) provide a further update on the Receiver's sales process; (iii) seek certain relief including regarding the Second Mortgages Portfolio (as defined in the Fourth Report).
7. This is the Receiver's Fifth Report to Court (the "**Fifth Report**"), the purpose of which is to:
 - provide an update on the Receiver's activities since the Fourth Report;
 - request that this Honourable Court grant an order:
 - (i) approving the Fifth Report and the Receiver's activities as described therein;
 - (ii) requiring Omar Kalair ("Kalair"), Yusuf Panchbaya ("Panchbaya") and Joseph Adam ("Adam") deliver their cell phone records from the period from August 30, 2011 to December 31, 2011 to the Receiver;
 - (iii) requiring Joel Levitt to advise the Receiver in writing of any information Mr. Levitt may have as to the whereabouts of Mr.

Adam including providing the Receiver, in writing, all known contact information for Joseph Adam, if Joseph Adam fails to attend on January 10, 2012 for examination pursuant to the Production Order and the December 2, 2011 Order of Justice Morawetz;

SCOPE

8. In preparing this Fifth Report, the Receiver has been provided with and, in making comments herein, has relied upon unaudited financial information, the Companies' books and records, discussions with certain of the Companies' former employees and/or consultants and correspondence with a variety of parties. The Receiver has not audited, reviewed or otherwise attempted to verify the accuracy or completeness of such information and, accordingly, the Receiver expresses no opinion or other form of assurance in respect of such information contained in this Fifth Report. The Receiver notes in particular that due to the significant difficulties experienced to date in obtaining accurate financial information relating to the Companies, the Receiver has been unable to corroborate many aspects of the information obtained through discussions with management and former employees and/or consultants to the Companies.
9. Copies of all Receiver's Reports and orders filed or issued in the receivership proceedings are available on the Receiver's website at: www.granthornton.ca/umfinancial.
10. All references to currency are to Canadian dollars unless otherwise noted.

THE RECEIVER'S ACTIVITIES

Recovery of Precious Metals

11. As noted in the Receiver's Second Report, the Receiver's counsel completed examinations under oath of Panchbaya and Kalair. In their sworn testimonies,

both Panchbaya and Kalair advised that the Gold, purchased by Kalair using the Companies' funds in August and September 2011 for the total amount of \$1,865,778, was given to Joseph Adam ("Adam").

12. To the date of writing this report, the Receiver has not recovered the Gold.
13. As shown in the transcripts (the "Transcripts") of the testimonies of Panchbaya and Kalair, which were previously filed with this Court with the Receiver's Second Report, Panchbaya and Kalair have advised that they communicated regarding the details of the purchase and transfer of the Gold with one another by way of cell phone communication and did not record these transactions in writing via email or otherwise. Panchbaya and Kalair each testified that the Gold was transferred on different dates, but both testified that cell phone communication was involved. The Receiver's view is that access to the cell phone records of Kalair, Panchbaya and Adam may assist in recovering assets of the Companies. On December 22, 2011, FMC sent requests for Panchbaya's and Kalair's cell phone records to counsel from Multicultural Consultancy Canada Inc. and Kalair. To date FMC has not received a response to such requests. A copy of such email from FMC is attached hereto as Appendix "5".
14. On December 1, 2011, FMC was first contacted by Joel Levitt of Fryer Levitt who advised that he was in the process of being retained by Mr. Adam. On December 13, 2011, FMC was again contacted by Levitt who then advised that he had been formally retained by Adam and was awaiting instructions from Adam with respect to providing information on the current location and/or return of the Gold. Copies of email correspondence between FMC and Adam's counsel on December 13, 2011 were included in the Receiver's Fourth Report. FMC continued to regularly follow up with Mr. Levitt regarding further information on Adam's return to Canada from Egypt and the location/delivery of the Gold. On December 21, 2011, Levitt advised FMC in a telephone conversation that the Gold had been transported by Adam to Egypt and disbursed to various Egyptian scholars. Following the telephone conversation with FMC, Levitt sent an email to

FMC which summarized the earlier telephone conversation. On December 22, 2011 FMC replied to Levitt requesting further information. A copy of the email exchange with Levitt is attached hereto as **Appendix “6”**.

15. As noted in the Fourth Report, counsel for Adam and FMC have confirmed their availability for an examination under oath of Adam to be completed on January 10, 2012. It is unclear if Adam has returned to Canada (or will return prior to January 10) and whether or not Adam plans to attend the examination on January 10, 2012. Should Adam fail to attend for examination on January 10, 2012, the Receiver requests that this Court order Levitt to provide to the Receiver all known contact information for Adam as well as require Levitt to provide to the Receiver any information he has as to the whereabouts of Adam.

Communications Following the Fourth Report

16. The Receiver has received a number of communications following the service of the Fourth Report from both Second Mortgagees and Second Mortgagors. The Receiver is continuing to respond to such inquiries as received.
17. One such inquiry was by Mohammed Khan, a Second Mortgagee with respect to a Second Mortgage registered against the property municipally known as 984 Thompson Road South, Milton, Ontario (the “**Thompson Road Property**”). This Second Mortgage was not included in Appendix “8” to the Fourth Report, and the Receiver has not located any documentation in the Companies’ files in respect of this mortgage. However, it is the Receiver’s view that it is appropriate to include this mortgage over the Thompson Road Property in the Second Mortgage listing to provide clarity that the Receiver and the Companies have no interest in the mortgage and rather the parties to that mortgage are free to deal directly with each other. A revised version of the Second Mortgage listing, including the Thompson Road Property is attached hereto as **Appendix “7”**. The exchange of email between Mohammed Khan and FMC relating to this mortgage is attached hereto as **Appendix “8”**.

18. On December 23, 2011, the Receiver also received correspondence from the UM Homeowner's Advisory Committee (the "Advisory Committee") requesting certain clarifications be brought to the Court's attention. Specifically, the Advisory Committee advised that it is still considering its options with respect to the Sales Process and that it neither consented to nor objected to the Receiver's requesting the relief sought as detailed in the Fourth Report. A copy of the December 23, 2011 correspondence is attached hereto as Appendix "9".
19. The Receiver has also made inquiries with Woods Law Professional Corporation ("Woods"), who the Receiver understands is taking over as administrator of the UM Real Estate Investments Inc. ("UMRE") portfolio, as of January, 2012. In this respect, the Receiver is seeking further information in an attempt to understand the relationship between UMRE and the Companies. Attached hereto as Appendix "10" is a copy of the notice from Woods dated November 28, 2011, with respect to its involvement as administrator of the UMRE portfolio.

RELIEF REQUESTED

20. Based upon the foregoing, the Receiver respectfully requests that this Honourable Court issue an order approving the relief requested in paragraph 7 hereof.

All of which is respectfully submitted,

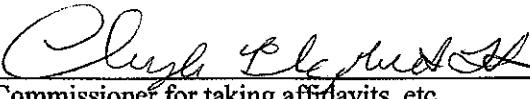
**GRANT THORNTON LIMITED,
IN ITS CAPACITY AS COURT-APPOINTED
RECEIVER OF UM FINANCIAL INC. AND UM CAPITAL INC.
AND NOT IN ITS PERSONAL OR CORPORATE CAPACITY**

Per:



Michael G. Creber, CA•CIRP
Senior Vice-President

**THIS IS EXHIBIT "Z" TO THE AFFIDAVIT
OF SUZANNE FISHER SWORN BEFORE ME
ON THIS 26th DAY OF JANUARY, 2012**


Cheryle Elizabeth Thomson

A Commissioner for taking affidavits, etc.

Cheryle Elizabeth Thomson,
a Commissioner, etc., Province of
Ontario, for Central 1 Credit Union.
Expires August 24, 2014.

Bowles-Dove, Laura

From: Dietrich, Jane
Sent: Wednesday, December 28, 2011 9:30 AM
To: Bowles-Dove, Laura
Subject: FW: Joseph Adam

From: Joel Levitt [mailto:jelevitt@fryerlevitt.com]
Sent: Wednesday, December 21, 2011 4:33 PM
To: Rabinovitch, Neil
Subject: Re: Joseph Adam

Hi Neil:

I finally spoke with my client yesterday. He was apparently involved in a car accident last week and that caused the delay in his making contact with me. Mr. Adam has not returned to Toronto. He has now advised me that the gold was disbursed to various scholars prior to the issuance of the Court Order. I have reviewed the Order of the Court with my client and he is attempting to gain the co-operation of the scholars to return the gold to him. He expects to determine in the next few days whether any of the gold can be recovered, and we will provide you with that information as soon as we receive it.

Regards,

Joel Levitt

FRYER LEVITT
Lawyers
421 Eglinton Avenue West
Suite 2,
Toronto, Ontario
M5N 1A4

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On 11-12-21 2:51 PM, "Rabinovitch, Neil" <Neil.Rabinovitch@fmc-law.com> wrote:

Joel
Can you please provide me with a written update of where we are at.

Neil S. Rabinovitch, Partner

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**THIS IS EXHIBIT "AA" TO THE AFFIDAVIT
OF SUZANNE FISHER SWORN BEFORE ME
ON THIS 26th DAY OF JANUARY, 2012**


Cheryle Elizabeth Thomson

A Commissioner for taking affidavits, etc.

Cheryle Elizabeth Thomson,
a Commissioner, etc., Province of
Ontario, for Central 1 Credit Union.
Expires August 24, 2014.

Court File No:

CV-11-429307

**ONTARIO
SUPERIOR COURT OF JUSTICE**

RE: N:

UM FINANCIAL INC. and UM CAPITAL INC.

Plaintiffs

-and-

CENTRAL 1 CREDIT UNION and CREDIT UNION CENTRAL OF ONTARIO

Defendants

STATEMENT OF CLAIM

TO THE DEFENDANT:

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the plaintiff. The claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or an Ontario lawyer acting for you must prepare a statement of defence in Form 18A prescribed by the Rules of Civil Procedure, serve it on the plaintiff's lawyer or, where the plaintiff does not have a lawyer, serve it on the plaintiff, and file it, with proof of service, in this court office, WITHIN TWENTY DAYS after this statement of claim is served on you, if you are served in Ontario.

IF YOU 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 June 23, 2011.

Issued
by:

J. S. G. S. C. A. N.
Local Registrar

Address:

SUPERIOR COURT
OF JUSTICE
393 UNIVERSITY AVE.
10TH FLOOR
TORONTO, ONTARIO
M5G 1E6

COUR SUPÉRIEURE
DE JUSTICE
393 AVE. UNIVERSITY
10E ÉTAGE
TORONTO, ONTARIO
M5G 1E6

**TO: CENTRAL 1 CREDIT
UNION**
2810 Matheson Boulevard E.
Mississauga, Ontario
L4W 4X7

AND

**TO: CREDIT UNION CENTRAL
OF ONTARIO**
2810 Matheson Boulevard E.
Mississauga, Ontario
L4W 4X7

CLAIM

1. The Plaintiffs claim against each of the Defendants for the following relief:
 - (a) damages in the amount of \$50,000,000 for discrimination, breach of contract, breach of confidence, intentional interference with economic relations, breach of fiduciary duty, negligence and bad faith conduct, loss of opportunity and the continuing loss of future income;
 - (b) punitive damages in the amount of \$500,000;
 - (c) an Order declaring that the Plaintiffs are not indebted to the Defendant or in the alternative an accounting to determine what amount, if any, it owes the Defendant;
 - (d) an Order declaring that all or, in the alternative, part of the Defendant's security (as defined herein) be discharged as being null and void, or in the alternative of no legal effect, or in the alternative is unenforceable;
 - (e) an Order waiving the payment of any interest otherwise payable to the Plaintiffs hereunder in accordance with Section 128 of the *Courts of Justice Act* RSO 1990 c C43 as amended (the "CJA");
 - (f) an Order directing the Defendants to make a donation to a charity selected by the Plaintiffs in an amount equal to the amount which would otherwise be payable to the Plaintiffs in respect of pre-judgment interest in accordance with Section 128 of the *Courts of Justice Act* RSO 1990 c C43 as amended (the "CJA");

- (g) an Order waiving the payment of any interest otherwise payable to the Plaintiffs hereunder in respect of post-judgment interest in accordance with Section 129 of the CJA;
- (h) an Order directing the Defendants to make a donation to a charity selected by the Plaintiffs in an amount equal to the amount which would otherwise be payable to the Plaintiffs hereunder in respect of post-judgment interest in accordance with Section 129 of the CJA;
- (i) its cost of this proceeding on a substantial indemnity basis, or in the alternative on a partial indemnity basis, plus HST; and
- (j) such further and other relief as to this Honourable Court seems just.

Background and Parties

2. The Defendant Central 1 Credit Union ("Central") is a credit union. All of the credit unions in British Columbia and the majority of the credit unions in Ontario are Class A members of the Defendant. The head office for the Defendant from which it administers the various credit union members is located in Vancouver, British Columbia.
3. The Defendant Credit Union Central of Ontario ("CUCO") is or was a credit union operating in Ontario.
4. The Defendants provide or provided banking and financing facilities to members of its credit union.

5. The Plaintiffs believe that effective July 1, 2008, the Defendant Central purchased substantially all of the assets of CUCO. For all intents and purposes in this claim, the Plaintiffs understand that Central is the successor entity of CUCO and is the assignee of all of CUCO's rights and obligations under its agreements and arrangements with the Plaintiffs.
6. The Plaintiffs are each federally incorporated companies which operate out of offices in Toronto, Ontario.
7. The Plaintiffs each offer mortgage and financial products to the devout Muslim community throughout Canada. Given that their claims are essentially identical other than with respect to the quantification of their respective damages which will be determined, the Plaintiffs are sometimes referred to collectively herein as "UM".
8. The Plaintiffs offer Shariah compliant mortgages which allow for ordinary security and lending arrangements to be connected to and function in concert with recognized Islamic lending instruments. These instruments accommodate, among other things the Islamic prohibition against charging or paying interest, and allow for the lender and the borrower to enter into a partnership instead of a strict debtor creditor relationship.

9. The Plaintiffs currently have 180 clients, with a total mortgage loan value of approximately \$30,500,000 (the "Mortgage Portfolio").
10. The clients of UM are generally located in and around the greater Toronto area. The various security and lending agreements between UM and Central were entered into in the greater Toronto area and are governed by Ontario law.
11. UM is widely recognized and known as the sole significant provider of Shariah compliant mortgage facilities in Canada.
12. The Canadian Muslim community is a significant and growing portion of the Canadian financial market. It is expected to double to 2.6 million by 2030. It is anticipated that close to 20 percent of new bank accounts opened by 2030 will be from this community.
13. The global Islamic finance industry, which has been growing by 15 to 20 percent per year, is widely expected to reach 2 Trillion in the next three to five years.
14. A unique feature about the lending arrangements among the Defendants and the Plaintiffs is that the agreements make no provision for the payment of

interest by the Plaintiffs or the Defendants from the clients who receive loans through this structure.

15. This is due to the fact that the agreements are based on Shariah (Islamic law) principles which prohibit, among other things, the payment of interest. No contract that the Plaintiffs and the Defendants have signed uses the word "interest".
16. Both the Defendants and the Plaintiffs have benefited from the Plaintiffs being the only substantial lending entity providing these facilities to the Canadian Muslim community.

Creation of the Shariah Lending Structure

17. The Defendants have been fully involved in the development and application of the security and lending documents among the Plaintiffs, the Defendants and the Plaintiffs' clients, and are expected to conduct their business with the Plaintiffs in accordance with their terms.
18. In 2003, Omar Kalair, who would become the principal of each of the Plaintiffs, attended CUCO with various other members of the Canadian Muslim community to explore the opportunity of providing for the financing

needs of the growing Canadian Muslim community through the credit union system.

19. CUCO, and in particular Peter Collins and Andrew Schroer, Managers of the Defendants, were particularly enthusiastic about the opportunity to provide credit facilities to this under served and growing community. Several meetings were held with various people at CUCO to address this opportunity at that time.
20. In 2004, UM Financial Inc. ("UMF") was incorporated by Mr. Omar Kalair, among others, to serve this need.
21. In or about February, 2005, CUCO agreed to enter into a Shariah compliant finance and security structure with UMF. This structure included not only financing agreements between CUCO and UMF, but acknowledged that UMF would finance its clients through the use of Shariah compliant contracts and that a form of mortgage would arise therefrom. Central was directly involved in advising UMF on the design of the structure, of tax issues related thereto and of the form and function of certain of the necessary documents.

22. UM provided unique confidential information in respect of the Shariah arrangements and introduced CUCO to its contacts in the Muslim community. The relationship was such that CUCO had an obligation to act in good faith in its dealings with UM and not take advantage of the vulnerability of UM that arose as a result of this special relationship.
23. In creating this unusual and novel business structure the Plaintiffs entered into a special relationship with the Defendants, relying upon their knowledge of the financial sector and their skill and expertise in retail mortgage lending.
24. The lending arrangements among the Defendants and the Plaintiffs are characterized as a Shariah compliant Mudarabah arrangement.
25. Mudarabah is a special kind of partnership where one partner provides the capital (rabb-ul-maal) to the other (mudarib) for investment in a commercial enterprise. The distribution of profit must be pre-determined by the two parties. Furthermore, the amount of profit ascribed to either of the parties must be independent of the capital amount, dependent solely on the actual profit realized by the commercial enterprise. That is, the profit assigned to a party cannot be a percentage of the capital amount contributed as that would be considered a fixed return, or interest. The profit assigned to either of the

parties cannot be a lump sum amount either as this would also constitute interest.

26. In mudarabah, the rabb-ul-maal has no right to participate in the management which is carried out by the mudarib only. The loss, if any, is suffered by the rabb-ul-mal only, because the mudarib does not invest anything. His loss is restricted to the fact that his labor has gone in vain and his work has not brought any fruit to him. However, this principle is subject to a condition that the mudarib has worked with due diligence which is normally required for the business of that type. If he has worked with negligence or has committed dishonesty, he shall be liable for the loss caused by his negligence or misconduct.
27. Consistent with such arrangement, Central, the Plaintiffs' silent partner, provides all of the capital to the Plaintiffs (on an interest free basis) and the Plaintiffs invest the capital for Central in residential real estate mortgages (a "Central Funded Mortgage") and provides all of the brokerage, loan approval and loan administration services associated with residential real estate mortgages.

28. In exchange for such services, the Plaintiffs are paid the pre-determined compensation, estimated at 3% of the profits that Central makes on the Central Funded Mortgages. The documentation for each property has a schedule B where the Central profit rate and Companies mark up rate is quantified.
29. The residential real estate mortgage arrangements among the Plaintiffs and each client it contracts with is characterized as a Mushakarah arrangement. Consistent with such arrangement, the Plaintiffs and the clients operate as partners to acquire residential real estate.
30. At all times Central understood that its loan and security arrangements were predicated on and limited by the principals of Shariah law which governed not only the contracts entered into between the Companies and the clients of the Companies, but also between CUCO and the Companies.
31. In order to prove the legitimacy of its business in the eyes of the Muslim community, UMF sought and received *Fatwaas* (religious edicts and directions) from Muslim scholars about the business structure. These *Fatwaas* governed the security and lending structure with CUCO and were well known by CUCO.

32. The Defendants are parties, either expressly or impliedly, not only to the direct lending and security agreements between themselves and the Plaintiffs but to the overall contractual structure of the contracts, agreements and arrangements between Central, UM and the various clients who ultimately received funds from Central through this method.
33. The Defendants have received and Central continues to receive significant profit and benefit from their involvement in this financing arrangement, including through the receipt of regularly scheduled payments from these clients.
34. The Defendants required that all of the parties who received loans through this structure become members of the credit union system. In this way the Defendants increased their credit union membership by several hundred members.
35. Since the creation of this structure between the Defendants and the Plaintiffs, there have been close to 100 community events sponsored by UM which have been attended and supported by CUCO and then Central.

36. Together the Plaintiffs and the Defendants educated the community on the UM products and explained the Defendants' role. Close to 500,000 flyers, many of which had the Defendants' logos on them, were distributed to the community over this time.

Loss of Opportunity – Withdrawn \$49,000,000 facility

37. The Plaintiff's lending facilities with the Defendant peaked at \$82 million in 2007 with UM and CUCO providing Shariah compliant facilities to close to 500 clients.
38. In June 2007, CUCO provided a new credit facility to UM Capital Inc. authorizing loans up to \$49,000,000. A form of loan agreement was executed at that time. That loan, like all the other security and lending arrangements between these parties, was made with the full knowledge and understanding of CUCO that the loans would be Shariah compliant.
39. In reliance upon the creation and existence of this facility and the special relationship which it had with CUCO, UM entered into preliminary agreements with more than 2000 interested parties at that time who were looking to enter into Shariah compliant facilities. It also published the

existence of this facility to its community, took on additional staff and took on larger offices.

40. Since 2007 UM has assembled and maintained contact with a database of these future clients, as well as other potential clients who have approached UM to provide them with Shariah compliant mortgages. Collectively these potential clients, which now number approximately 5000, are referred to herein as the "Future Clients".
41. However, in August 2007 CUCO unilaterally decided not to honour the terms of the loan agreement with the Plaintiffs and withdrew the facility, despite the reasonable expectations of the Plaintiffs that this facility would be available.
42. As a direct result of CUCO's withdrawal of this facility UM was denied the opportunity to capitalize upon the goodwill it had amassed or the interest of these Future Clients in their products. CUCO's decision to reduce the facility was done without notice or explanation.
43. Enrolling the Future Clients would have generated immediate and sustained revenue for the Plaintiffs.

44. Based on the reasonable assumptions that the Future Clients would have required an average loan of \$160,000 and had an average home price of \$325,000 and inputting those amounts into the business model used by the Plaintiffs, and assuming the total number of future clients would be approximately 5000, the Plaintiffs would have received approximately \$10,400,000 of revenue per year.
45. The Plaintiffs would have been able enter into agreements with these 5000 clients using this facility and other facilities which would have become available from the Defendants.
46. CUCO was aware or should have been aware that UM required this facility in order to provide lending and brokerage facilities to the Future Clients and that they would incur obligations and make statements in reliance on the availability of this facility.
47. The Defendants were obliged under their loan agreement with the Plaintiffs and pursuant to their special relationship with the Plaintiffs, to provide these facilities.

48. As a result of Central's action in withdrawing this facility, UM has suffered damage to its reputation and credibility as well as actual direct monetary damages.
49. UM was named as a party in an action brought by one of these Future Clients who had relied on the Central promises of funding to their detriment. UM ultimately paid \$35,000 of damages in this case in 2010.
50. In addition, not only did UM lose the opportunity to provide products and services to the Future Clients, UM lost approximately 300 existing clients after August 2007 due to lack of funds from Central and therefore lost the opportunities that those clients could have provided for further revenue and profit.
51. These clients left as a direct result of the Defendants being unwilling to provide further financing to refinance their homes.
52. In addition, after 2007, the Defendants required that the existing clients incur new and additional legal fees at the time of the renewal of their mortgages. The Defendants knew or ought to have known that these fees would prevent

or discourage many of these clients from renewing their mortgages with the Plaintiffs.

53. Since 2007, as a result of the pressure exerted by the Defendants and the withdrawal of further financing, the Plaintiffs have been forced to coordinate the payouts of over \$50 million to Central involving these 300 families. No losses were suffered by Central from the payout of these loans.
54. Central knew or ought to have known that UM would have derived revenue from these existing clients and would have used the facility which they would have provided for this purpose.
55. Assuming, these 300 clients had continued to be clients of UM, and again assuming these clients had an average loan of \$160,000 and an average home price of \$325,000, the total revenue lost by UM equals approximately \$1,000,000 per year.
56. In addition, it was known to the Defendants that several of the UM clients had second mortgages with private individuals. The Defendants knew or ought to have known that UM intended to use the new facility and the ongoing support of the Defendants to allow the clients who were lost, as

well the remaining clients to convert their existing second mortgages into UM mortgages.

57. From August 2007 until November 2010, the Plaintiffs from time to time entered into discussions with Central to try to have Central honour its commitment to offer the 2007 facility and to provide Shariah compliant lending facilities to the Future Clients.
58. From time to time, the Defendants advanced new funds to existing UM clients between 2007 and November 2010.
59. Throughout this period UM expected that Central would honour its commitments to UM and allow UM to capitalize on the opportunity presented by the Future Clients. UM remained in contact with the Future Clients throughout this period so as to be able to offer them the new facility when it became available.
60. However, on November 23rd, 2010, Central conclusively terminated these discussions by making demand for repayment.

Capricious Demand and Bad Faith actions

61. At some point in 2010, on a date and time known to Central but not yet known to UM, Central determined that it no longer wanted to provide banking facilities to the Islamic community serviced through UM. They did not make this fact expressly known to UM at that time.
62. Central embarked on a campaign thereafter to disengage their business from the Plaintiffs, regardless of the damage that it would cause, and, ultimately, without concerning itself with either the terms of its contracts with the Plaintiffs or their fiduciary and other duties to either of the Plaintiffs or their clients.
63. Central initially attempted to sell their debt and security position to a fellow credit union, Meridian Credit Union ("Meridian").
64. Between March and August 2010, Central, UM and Meridian entered into a series of meetings and discussions to review the possible sale of the UM security and lending position to Meridian.
65. During this period Central made positive statements about UM to Meridian and tried to encourage Meridian to enter into the proposed sale.

66. In the course of those discussions, the Plaintiffs explained to Meridian the full scope of their arrangements with UM, including their obligation to abide by the entire Shariah compliant structure of those security and lending arrangements.
67. Central made no mention to UM or to UM's knowledge to Meridian about any defaults in the security and lending arrangements with UM, although such so called defaults as Central would later rely upon, already existed at that time and had existed for some time prior.
68. Ultimately, in or around August 2010, Meridian decided not to pursue the proposed transaction.
69. On November 23rd, 2010, without warning, the Defendant issued demand for repayment of the entire amount of the debt of the Mortgage Portfolio and terminated certain mortgage assignment agreements between the Plaintiffs and Defendants.
70. Central is aware that UM does not have these funds and could not possibly make the payment being demanded, knowing full well that all of the relevant

funds that the Defendants have advanced to UM have been applied to the various mortgages in the Mortgage Portfolio.

71. As the loan facilities between Central and the Plaintiffs are term facilities, Central could only make demand in the event the security and lending arrangements were in default.
72. At the time of the demand, all payments owed by UM to Central were paid in full. There were no monetary defaults of any kind under the security and lending arrangements by UM.
73. Central was unable to and did not provide any detail or explanation of any such default in their demand letter.
74. At the time of demand the only recent monetary default in the security and lending arrangements between the parties was the fact that Central owed UMF approximately \$30,000. This amount was ultimately acknowledged and paid by Central to UMF in February 2011, after several requests.
75. There was no material change in the condition of the business relationship between Central and UM from what had been the case at the time Central had attempted to sell its debt and security to Meridian.

76. Central's decision to terminate the mortgage assignment agreements, which coincided with the demand for repayment, was done without any reasonable notice or any genuine default. The termination was in breach of the terms of those agreements, contrary to its fiduciary and other duties owed to UM including an obligation to act in good faith in its dealings with UM.
77. The mortgage assignment agreements require that disputes between the parties with respect to the subject matter of those agreements be referred to arbitration.
78. The arbitration provisions are a material provision of the agreements in which they appear. The parties agreed to include this arbitration provision in these agreements in recognition of the fact that any dispute in this matter would require a creative, less public and non-binary approach.
79. Central has refused all offers to arbitrate this dispute. Arbitration would have reduced the costs of this process and avoided the negative stigma of the receivership proceeding which followed, all of which have damaged the Plaintiffs as further set out herein.

80. There was no basis for Central to make demand for the repayment of its loans to UM in November 2010.
81. Central confirmed in a conversation with UM on November 24, 2010 that it had made a unilateral internal decision that it wished to discontinue its involvement in the Islamic finance business by the first quarter of 2012 and that its demands had been made for that reason.
82. Following its demand letters, the Central advised the Plaintiffs of three unacceptable options: 1) pay the entirety of the debt, which the Defendants knew the Plaintiffs could not possibly do, 2) declare bankruptcy, which would have thrown the clients into a chaotic situation, or 3) that the Plaintiffs should send a letter that was to instruct its clients that they had to seek conventional financing elsewhere to repay their mortgages in full as the Islamic financing by Central was to be terminated.
83. Central also required that all outstanding and future fees due and owing by the clients to the Plaintiffs should be paid to Central. These fees were in excess of \$1,000,000. Central had no legitimate claim to these fees as they were properly due and owing to the Plaintiffs only under the security and lending arrangements then in place between the parties.

84. The Plaintiffs refused these unreasonable options.
85. Central had no genuine concern about the Mortgage Portfolio or any supposed defaults in the security and lending arrangements. The Defendants were motivated solely by their own agenda, reckless of the terms of its agreements with UM or the consequences to UM and its clients of its actions.
86. Central relied on its position as the economically larger and dominant party to impose its will on the Plaintiffs and expected their acquiescence in the face of these demands. However, the Plaintiffs retained counsel and resisted.
87. After being confronted by UM and their counsel as to the baseless nature of their demands, Central withdrew their demands on December 3, 2010.
88. Over the next several months Central attempted to use the threat of forced insolvency proceedings to leverage unreasonable concessions from the Plaintiffs, including having the Plaintiffs execute a form of forbearance agreement which would strip the Plaintiffs of all of their rights, including

their rights to pursue this action against Central for all of their damaging and inappropriate conduct. The Plaintiffs refused to capitulate.

89. On December 22, 2010, almost a month after the demand letter, Central attempted in a letter of that date to retroactively justify their baseless demand from the previous month. Their letter set out a series of supposed defaults by UM, all of which were technical, extremely stale and or insignificant to the security and lending arrangements between the parties.
90. During the period between November 23rd, 2010 and January 26th, 2011, UM was in compliance with all the material terms of the security and lending arrangements with Central, continued to make all payments when due to Central, and did not commit any monetary defaults with Central.
91. After receiving the demand letter of November 23rd, 2010 and being advised of Central's requirement that it would not honour its financing commitments to UM, UM sought an alternate financial partner to take out the security and lending position held by Central.

92. UM arranged for Central to enter into negotiations with an arm's length investor who was capable of purchasing the Mortgage Portfolio named Pharos Mortgage Investment Corporation ("Pharos").
93. At that time Pharos had access to a facility in the amount of \$50,000,000 which it was prepared to apply to this matter. Pharos had several meetings and calls with Central, up to and including March 8, 2011.
94. Pharos communicated to Central several times that they were ready willing and able to close. However, Central would not agree to sell the Mortgage Portfolio.

Second Demand Letter

95. In an attempt to leverage a better deal out of Pharos, and again in reckless disregard to the consequences to either of the Plaintiffs or their clients, on January 26, 2011 Central issued demands against the Plaintiffs a second time.
96. Nothing material had changed since the demands were withdrawn on December 3, 2010. No monetary default was identified as outstanding at the

- time of making demand. Central continued to be in default of its monetary obligations to UMF, having still failed to pay the \$30,000 due to UMF.
97. UM advised Central that the defaults upon which they were relying were inappropriate, in a letter dated January 31, 2011.
98. The Plaintiffs were either not in default of their lending arrangements with Central, or if there were defaults, the issues which gave rise to the alleged defaults had either been condoned by Central, had been acknowledged and waived, had become customary between the parties in the interim, or were caused by Central.
99. Central was also advised at this time, as it had been advised previously and as it knew or should have known, that making demand on the Plaintiffs or pursuing a receivership would be a breach of their security and lending arrangements with UM, and that it would lead to chaos among the UM clients.
100. Pharos made a reasonable written offer to Central to purchase the portfolio on February 4, 2011. Central would not accept this offer.

101. Central continued to pressure the Plaintiffs. On February 10th, Central spontaneously and without warning decided that it would no longer allow for further renewals of the mortgages by the Plaintiff's clients when those mortgages came due.
102. Central then took the position that 26 UM client mortgages then awaiting renewal, would not be renewed. Therefore, Central concluded, UM now owed Central in excess of \$3,000,000 immediately.
103. Central had, since 2007, routinely granted mortgage renewal requests which were presented to them with respect to the Mortgage Portfolio.
104. It is transparent that Central took this position in its February 10th letter to manufacture another after-the-fact default in order to retroactively lend credibility to their demand letter and to pressure the Plaintiffs.
105. Despite this action from Central, UM continued to service those clients awaiting renewal of their mortgages. From then until the present, those clients have continued to make payments when due, pending a resolution to the issues between Central and UM. However, the number of parties with mortgages awaiting renewals is now 100 and is continuing to grow.

106. Central was unwilling to reach a resolution with Pharos. On March 18th, 2011, Central issued an application for the appointment of a receiver over the Plaintiffs.
107. To date the receivership application has not been heard although it is now anticipated that that application will be heard in late September 2011. The Plaintiffs are contesting those receivership proceedings.

Breach of Contract

108. Given the nature of the lending products provided by UM, and with a view to ensuring both Central and the community that those products were and remained compliant with Shariah principals, UM sought the assistance of an independent board of scholars.
109. The members of this board are Yusuf Panchbhaya, Usman Patel, Nafees Bhayat, Habeeb Alli, and Muhammad Hussain Patel.
110. The Board is independent of the Plaintiffs. Its members are not directors or officers of the Plaintiffs. Its function is to review the ongoing compliance of the Plaintiffs lending with Shariah principles. Its independent overview

function is akin to the function performed by Kashruth or Halal food certification organizations.

111. The Board is strongly opposed to Central's recent enforcement actions on religious grounds. Central knew or ought to have known of the religious consequences of their actions and that their actions were in breach of their arrangements with the Plaintiffs.
112. Central knew or ought to have known that in order for the contracts to be recognized as enforceable by the clients of UM, the party enforcing must be a risk sharing partner of those clients. Any enforcement of these mortgages must be done in accordance with these agreements.
113. The Board has confirmed that if the Plaintiffs are put into receivership, it will result in the partnership contracts with the clients being null and void. The partnership contracts are only valid if both parties are active partners and share the risks. In the opinion of the Shariah board, the clients are to be advised that if UM is put into receivership the clients are not obliged to meet the obligations under their mortgages with Central.

114. The mortgages themselves may not be capable of being enforced under the *Mortgages Act*, due to the fact that the mortgages are non-interest bearing.
115. These difficulties arise not as a result of any flaw in the underlying mortgage or the business of UM, but rather as a result of the nature of the relationship which Central knowingly entered into.
116. Central has been repeatedly advised directly in writing and even provided a sworn affidavit to the effect that in the event there is a receivership or any other involuntary enforcement of security is conducted against the business without the consent and active involvement of the Plaintiffs, that such action will render the Plaintiffs' contracts to be non-Shariah compliant. They are continuing with their actions in express disregard of this warning.
117. Central is acting with full knowledge of the consequences of their actions. Central has at all relevant times had able and sophisticated counsel who have advised or ought to have advised Central of the consequences of their actions.

118. A receivership may cause the mortgages which are currently in good standing to go into default as the clients may not be able to make payments to a non-Shariah compliant bank.
119. In the event there is a receivership, where existing clients are forced by the receiver to make payments to the receiver, it is expected that the majority of the clients will be directed by their religious scholars to immediately sell their homes, regardless of the loss and personal dislocation they will suffer.
120. Making payments into this form of non-compliant arrangement may actually constitute a sin to those devout Muslims who are clients of the Plaintiffs, with dire religious consequences.
121. Central is acting in breach of its contracts and other duties with the Plaintiffs by making its demand and bringing its receivership application.
122. To the extent that any debt is proven to be owing by the Plaintiffs to the Defendants under the agreements between the Plaintiffs and the Defendants it should be and is set off by the obligations which Central has to UM under its Shariah compliant obligations as set out above.

Impact on Funding

123. The Defendants actions have prevented the Plaintiffs from being able to secure new funding.
124. The Plaintiffs, and a related company of the Plaintiffs, entered into discussions with a chartered bank in September 2010 to have that bank provide new financing and new lending products to UM and its clients and the Future Clients. Those discussions had matured to a significant point by the time Central issued its receivership application.
125. The Plaintiffs were to provide management services to that related company who was to be financed by this bank to provide Shariah compliant mortgages to the existing and Future Clients of UM.
126. The bank required a reference to be provided by Central. UM requested this reference from Central but Central refused to provide it. By failing to enter into conversations with the bank, Central has unfairly and unreasonably blocked the Defendants from being able to secure and benefit from financing with that bank.

127. Prior to Central refusing to provide a reference, the bank advised that it was prepared to offer financing to all of the Plaintiffs existing clients who met their underwriting criteria, as well as to begin financing the Future Clients, subject to receiving that reference.
128. At the beginning of April, 2011 the bank expressly committed to making their new product available by the end of April 2011, once they had spoken with the Defendants.
129. Had Central provided an honest reference at that time, similar to the ones they had provided to Meridian in 2010, UM would have been able to refinance its debts to Central. Despite repeated requests from UM, Central refused to provide the requested reference or to speak with the bank.
130. When the bank became aware of the receivership proceedings, and without being able to discuss same with the Defendants, the bank decided to discontinue its negotiations with the Plaintiffs.
131. UM has lost the opportunity to move forward with the bank and was again denied the opportunity by Central to service or facilitate lending to the Future Clients.

132. The Plaintiffs also entered into preliminary discussions with a large credit union to refinance the debt with the Defendants and to fund the Future Clients in or around March and April 2011.
133. Despite promising beginnings to those discussions, when the credit union became aware of the receivership proceedings, they too withdrew from further discussions with the Plaintiffs.
134. The Plaintiffs claim that this credit union became aware of the receivership from statement made to them by the Defendants.
135. There have been other opportunities with other potential lenders which have been curtailed or spoiled by the aggressive and inappropriate enforcement actions by Central. The Plaintiffs also claim that there have been other unknown opportunities to refinance which would have otherwise been available but which were denied to it by the existence of the receivership proceedings.
136. But for the ill advised actions of the Defendants, the Plaintiffs would have been able to refinance with the bank, or the credit union, or through some other entity. In so doing it would have avoided significant fees and time

spent dealing with the receivership and or commencing and prosecuting this action

137. UM has lost the opportunity to enter into new and profitable arrangements with these new lenders. Had these the Plaintiffs been able to proceed, the Plaintiff would be able to receive the benefit of the revenue to be derived from financing the Future Clients, and the benefit of fees to be earned by Plaintiffs through entering these new business relationships.
138. For each year that the Plaintiffs are prevented by the actions of the Defendants as detailed herein from being able to secure additional financing so as to be able to service the Future Clients or to recover the clients they have lost as a result of Central's actions, the Plaintiffs claim that they are suffering damages in the amount of that lost future income.

Impact on Other Initiatives

139. In addition to the foregoing, the Plaintiffs have lost the benefit of proceeding with various other initiatives which it had pending or in connection with which it had management or other contracts from which it would derive revenue and profit. In particular these included, without limitation, the following.

a) Impact on Mastercard program

140. Two related but separate companies, UM Realty Services Inc. and UM Real Estate Investment Inc. are in the process of preparing to launch a Shariah compliant pre-paid Mastercard credit card product.
141. The Plaintiffs have management agreements with UM Realty Services Inc., iFreedomplus Mastercard, and UM Real Estate Investment Inc. under which the Plaintiffs were to provide expertise and access to their clients, including the Future Clients, to sell and service this product.
142. It is anticipated that this management contract would generate revenue to the Plaintiffs of approximately \$2 million per year.
143. However, as a result of the uncertainty caused by the Defendants actions, the Plaintiffs have lost the opportunity to assist in the launch of the iFreedomplus Mastercard. As a result the iFreedomplus Mastercard has been suspended and the opportunity is either lost or delayed.
144. The Plaintiffs claim they have suffered damages to date due to the loss of this opportunity and that for each year that the Plaintiffs are prevented by the actions of the Defendants from pursuing this opportunity, the Plaintiffs claim

that they are suffering the loss of that future income which would have been derived from this opportunity.

b) Sukuk Financing

145. UM Advisory, a division of UMF, is pursuing providing Islamic bond financing, known as "Sukuk," to the Canadian marketplace.
146. The Plaintiffs have management agreements with UM Advisory under which they were to provide expertise and access to their clients to sell, develop and market this product.
147. It is anticipated that this management contract would generate revenue to the Plaintiffs of approximately \$1 million per year.
148. However, as a result of the uncertainty caused by the Defendants actions, the Plaintiffs have lost the opportunity to assist with the Sukuk financing. As a result the development of Sukuk financing by UM Advisory has been suspended and the opportunity is either lost or delayed.
149. The Plaintiffs claim they have suffered damages to date due to the loss of this opportunity and that for each year that the Plaintiffs are prevented by the

actions of the Defendants from pursuing this opportunity, the Plaintiffs claim that they are suffering the loss of that future income which would have been derived from this opportunity.

Interference with Economic Relations

150. Rather than provide a positive reference or assist UM in seeking alternative financing, Central has engaged in a deliberate campaign against UM to diminish its reputation, goodwill, and by extension, its ability to receive financing or pursue other opportunities available to it.
151. The business of the Plaintiffs relies on the business being perceived as a trustworthy and reputable lending and financing entity. The Plaintiffs have amassed such goodwill in this community.
152. Central has allowed, condoned or been wilfully blind to the conduct of its account managers and others under its care and control who are actively slandering UM and its officers and directors in order to discourage parties from doing business with the Plaintiffs.

153. On February 17, 2011, Mr. Kalair wrote to Vickie Sacco and Sandra Barrow, each of whom are managers of the Defendants with whom the Plaintiffs deal regularly.
154. The Plaintiffs were advised in that email that two staff members of Central working in Ontario had advised at least one mortgage broker that, "UM was about to be forced into bankruptcy by Central" and that they had made untrue and defamatory allegations about Mr. Kalair personally.
155. The email further advised, "Please look into this and do what you can to make sure that no information of this kind is coming from Central, especially now when we are going through this transition period."
156. The Defendants took no steps of which the Plaintiffs are aware to address these issues, despite their obvious seriousness as pointed out explicitly to Central by the Plaintiffs.
157. The Plaintiffs assert that there have been other similar statements made by Central to various parties which statements are as yet unknown to the Plaintiffs but which will become known in these proceedings.

158. All of these allegations negatively impacted at least one significant financing opportunity of which the Plaintiff is aware and likely others of which it is unaware
159. The impact of these actions are amplified in the circumstances of the Plaintiffs' business as the mortgage lending and financing community is relatively small and in constant communication among themselves.
160. Similarly the devout Muslim community is in constant communication amongst themselves where such comments could be particularly damaging.
161. Central filed its receivership proceedings with the Court on March 18, 2011.
162. UM was provided with a draft of the receivership materials on March 14, 2011.
163. UM advised Central at that time of the inappropriate nature of their demands, their claims, and the negative impact this action would have on the efforts of the Plaintiffs to refinance.

164. In particular, the Defendants were advised at that time of several then pending refinancing opportunities that would be so effected, including the opportunity with the chartered bank mentioned above.
165. Central filed and served their materials notwithstanding this warning, again reckless of the damage they would cause in doing so and in breach of their duty to act in good faith.
166. Their actions both in bringing the receivership proceedings in the absence of a material default, and their actions in deliberately undermining the refinancing efforts, are in breach of their fiduciary and other duties owed to the Plaintiffs and damaged the goodwill of the Plaintiffs.
167. The Plaintiffs claim for the damages suffered to date due to the loss of goodwill as detailed herein. In addition, the Plaintiffs seek an immediate and public apology from the Defendants, which shall be in form and substance satisfactory to the Plaintiffs.
168. In addition, for each year that the Defendants fail to apologize for their actions and the Plaintiffs are unable as a result of the damage to their goodwill to enter into a new lending arrangement which allows for the

servicing of the Future Clients or to recover the clients lost as a result of Central's actions, the Plaintiffs claim that they are suffering the loss of such future income as would have otherwise been earned by them.

Other Breaches of Contract

169. The Defendants provided funds to UM in accordance with various financing agreements. Under the financing agreements the Defendants were entitled to retain an amount equal to 65 basis points of the amount defined therein as the "Charge Amount".
170. The Plaintiffs' business model is based on receiving these funds from the mortgages which they finance with their clients.
171. In breach of their agreements with UM, it is now known that the Defendants from time to time unilaterally reduced the Plaintiffs' profit from 65 basis points to approximately 20 basis points.
172. It is now known that these changes began in 2007 and continue to present, although they were only discovered recently by UM. Given that the average amount of the loans made to the Defendants over that period was

\$30,000,000.00, the total amount of damages suffered as a result of these actions is approximately \$500,000.00 and continues to accrue.

173. Central has been advised of this error and has acknowledged that they made this change unilaterally and without informing the Plaintiffs. However, Central has not paid the lost profit owing to the Plaintiffs.
174. Central has also breached its agreements by charging penalty fees to individual clients, failing to permit UM to assume the defaulting mortgages, applying the incorrect interest rate to UM's payments on expired individual client agreements, and applying the incorrect interest rate to transactions with UM.
175. Other errors in the processing and handling of the Plaintiffs' account occurred throughout this period. These errors are known to Central but as yet unknown to the Plaintiffs, and will become known in these proceedings.

Negligent Lending Practices

176. CUCO and Central have certain underwriting criteria which they use to assess the suitability of candidates to whom they are to advance credit. The

Defendants did not apply those criteria consistently in providing loans to UM and its clients.

177. As noted above, the Defendants profited by the fees charged from the loans provided to the clients of UM, and by requiring the clients of UM to become members of the credit union system.
178. The Defendants negligently disregarded their own lending practices and guidelines in making loans to parties who are unsuitable or unable to repay their loans.
179. In particular, from time to time the Defendants allowed UM to make loans to unsuitable candidates even though the Defendants knew that those candidates would be unlikely to be able to repay those loans.
180. UM relied upon the expertise of the Defendants in applying their lending criteria in selecting and qualifying parties to whom loans could be made.
181. The Defendants had a duty of care to UM with respect to the application of its lending criteria to qualifying potential lenders. The Defendants knew or ought to have known that UM was relying upon The Defendants to ensure that the loans being made were reasonable and likely to be collectable.

182. In the course of reviewing the Mortgage Portfolio in an attempt to sell the Mortgage Portfolio as a result of the pressure from the Defendants, the Defendants have become aware that a portion of their clients may not be able to repay their loans in full and or that the underlying security is worth less than the outstanding mortgages on those properties.
183. UM estimates that the total value of these mortgages is approximately 10% of the Mortgage Portfolio or approximately \$3,000,000.
184. The Plaintiffs should be absolved of any responsibility to repay any debt negligently advanced by the Defendants.

Discrimination

185. The actions of the Defendants in singling out and ejecting its devout Muslim clients from the credit union system constitutes discrimination on the basis of religion.
186. All of the clients of UM and the employees of the Plaintiffs are Muslims, many of whom are devout Muslims who often dress and appear in traditional Muslim attire and are readily identifiable as Muslims.

187. Through the credit union system, and through UM as their intermediary, the Defendants have a duty of care to their credit union members, including all the clients of the Plaintiffs.
188. Since the acquisition of CUCO by Central, the Defendants have demonstrated that they are uncomfortable with and not supportive of those members of the Credit Union who are clients of the Plaintiffs or with the religious requirements of the Plaintiffs. Central never exhibited the same enthusiasm about this industry as was exhibited by CUCO.
189. It is clear that this antipathy on the part of Central with respect to the difficulties which they perceive in providing lending facilities to the clients of UM and the Plaintiffs has transformed into open hostility against their devout Muslim clients at this point, including the Plaintiffs.
190. This course of discrimination naturally impacts not only the clients of UM but also UM which is an organization owned and operated by devout Muslims.
191. The Defendants have clearly and deliberately decided that they will not do business with Muslims such as the Plaintiffs and their clients whose

religious beliefs only allow them to enter into financing arrangements which have received the approval of a Shariah Board of Scholars.

192. While the Defendants no doubt have other Muslim clients who are not subject to this discrimination by the Defendants, it is clear that the Defendants have decided that they will not tolerate Muslim clients whose religious beliefs require that their lending facilities be Shariah compliant.
193. As such, the Defendants have singled out this religious minority for different treatment than the other members of the Credit Union system, with reckless disregard to and full knowledge of the upheaval and damage it will do to the clients and to Plaintiffs.
194. By engaging in this discriminatory practice the Defendants are requiring that the Plaintiffs repay the entirety of the loan portfolio, thereby attempting to force the clients of the Defendants to seek funding elsewhere and ensuring that there will no longer be any devout Muslim clients of Central.
195. This decision by the Defendants to discriminate against devout Muslims will, in addition to the harm it will cause those clients, necessarily and directly cause the financial ruin of the business of the Plaintiffs, whose

business relies on the financing of these clients through the Defendants at this time.

196. But for these discriminatory practices, UM would continue to be a profitable entity for the foreseeable future. The discriminatory actions of the Defendants are damaging the Plaintiffs by denying the Plaintiffs that future income and profit.
197. The Plaintiffs claim that they have suffered losses with respect to the professional fees incurred in responding to Central's receivership action. These fees continue to accrue.
198. In addition, for each year the Plaintiffs are unable, as a result of Central actions to enter into a new lending arrangement which allows for the servicing of the Future Clients or to recover the clients lost as a result of the fact that Central's discriminatory practices, the Plaintiffs claim that they are suffering the loss of such future income as would have otherwise been earned by them.

Damages

199. UM has suffered damages in respect of the lost revenue from the various Future Client and existing clients or lost clients as a result of Central's actions as detailed above.
200. In addition, the Plaintiffs are involved in litigation unrelated to this matter in which they expect to recover in excess of \$880,000. The Plaintiffs are also involved in an appeal for the recovery of a significant amount of Land Transfer Taxes which the Plaintiffs assert are owing to them.
201. The actions of Central have forced the Plaintiffs to divert resources which could otherwise be used to prosecute those actions and have put the outcome of those actions in jeopardy.
202. The Plaintiffs reasonably expect to suffer ongoing damages for the foreseeable future from the lost opportunities being denied to it by Central's actions as detailed above and the ongoing damage being caused by Central to the goodwill of the business and revenue lost or which will foreseeably be lost to the business.

203. Since November 2010, the Plaintiffs have provided the Defendants with 9 different substantial and capable entities who have offered to acquire, or inquired about the opportunity to acquire, the debt and security position of Central with respect to the Plaintiffs. All of these offers have been rejected and most recently, in June 2011, Central has refused to even discuss new offers made to them by the Plaintiffs.
204. The Plaintiffs have lost the opportunity and continue to be denied the opportunity to pursue these profitable new facilities as a result of Central's actions, the successful pursuit of which would have not only provided them with profit and gain, but enabled them to consolidate their position as the leading provider of Islamic finance in Canada.
205. Central has admitted that its true motivation for pursuing the enforcement of its security against the Companies is based on its desire to disconnect itself from the Islamic finance business.
206. It is pursuing this course of corporate discrimination without regard to its duties to its clients, its obligations under its agreements and arrangements with the Plaintiffs and their clients, and without regard to the harm which

will be caused to clients of the Plaintiffs who are members of the credit union.

207. This callous, reckless and discriminatory conduct warrants the awarding of punitive damages against Central, in addition to the other amounts claimed herein.

Date: June 23, 2011

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#1754075

B E T W E E N :

UM FINANCIAL INC and UM CAPITAL INC.

Plaintiffs

-and-

CENTRAL 1 CREDIT UNION and CREDIT UNION
CENTRAL OF ONTARIO

Defendants

Court CV-11-429322.

ONTARIO
SUPERIOR COURT OF JUSTICE

STATEMENT OF CLAIM

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**THIS IS EXHIBIT "BB" TO THE AFFIDAVIT
OF SUZANNE FISHER SWORN BEFORE ME
ON THIS 26th DAY OF JANUARY, 2012**


Cheryl Elizabeth Thomson
A Commissioner for taking affidavits, etc.

Cheryle Elizabeth Thomson,
a Commissioner, etc., Province of
Ontario, for Central 1 Credit Union.
Expires August 24, 2014.

ASSIGNMENT OF CLAIM

BETWEEN:

UM FINANCIAL INC. and UM CAPITAL INC. ("Assignors")

- and -

MULTICULTURAL CONSULTANCY CANADA INC. ("Assignee")

WHEREAS:

A claim was commenced between the Assignors and Central 1 Credit Union and Credit Union Central Of Ontario, a copy of which is attached hereto (the "Claim").

AND WHEREAS:

The Assignee is a creditor of the Assignors both in terms of outstanding fees in the amount of \$1000 and on a contingent basis in anticipation of claims which may be made against the Assignee in respect of which the Assignee would have claims against the Assignors.

AND WHEREAS:

The Assignee is prepared to take on this Claim at its own expense and risk on notice to the other creditors of the Assignors, subject to the terms hereof.

NOW THEREFORE for mutual consideration, the receipt and sufficiency of which is hereby acknowledged by each of the parties, the parties agreed as follows:

1. The Assignors hereby assign all of their rights, title and interest in the chose in action and proceeding to and in favour of the Assignee.
2. The Assignors hereby agree that any benefit derived from a proceeding taken in respect of the Claim and costs related thereto, belongs exclusively to the Assignee and the surplus realized from the Claim, net the Assignee's Claim against the Assignors and its costs if any, belongs to the Assignors and shall be paid to the Assignors.
3. The Assignors agree to seek an Order of this Court affirming the transfer of this action if same is required at any time in the future by the Assignee at the costs of the Assignors.
4. The parties hereto agree to give notice of this Assignment to the Defendants immediately following the execution of this Agreement.
5. Notwithstanding the Assignment contained herein, the Assignor's retain the right to release and withdraw the Claim, on notice to the Assignee at any time prior to

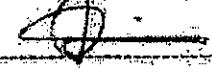
11:59 p.m. on October 6, 2011 or such further date as the parties may agree to in writing prior to that date and time.

6. The Assignee hereby agrees to assign this Claim to any Trustee in Bankruptcy appointed with respect to the Assignors upon receiving a request from the Trustee to do so provided that the Trustee gives an undertaking in which it acknowledges that the proceeding is for the benefit of the Estate of the Assignors and that the Trustee will diligently undertake the prosecution of the Claim and shall refund any costs incurred by the Assignee from the date of this Assignment to the date of such Assignment to the Trustee upon the granting of said Assignment.

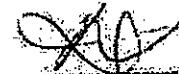
DATED at Toronto, this 6th day of October, 2011.

UM FINANCIAL INC. and UM
CAPITAL INC.

Per: 
Name: Omkar Patel
Title: President, UM Financial

Per: 
Name: Omkar Patel
Title: President, UM Capital

MULTICULTURAL CONSULTANCY
CANADA INC.

Per: 
Name: Mufti Yusuf Panchbhaya (Chairman)
Title:

#1809737

Court File No. CV-11-9144-00CL

CENTRAL 1 CREDIT UNION

Applicant

-and-

UM FINANCIAL INC. and UM CAPITAL INC.
Respondents

**APPLICATION UNDER section 243 of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended, and under section 101 of the
Courts of Justice Act, R.S.O., 1990, c. C.43.**

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

PROCEEDINGS COMMENCED AT TORONTO

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