

IN THE COURT OF APPEAL FOR SASKATCHEWAN

BETWEEN:

RANDY KOROLUK

Appellant (*Applicant/Respondent*)

– and –

KPMG INC.

Respondent (*Respondent/Applicant*)

– and –

PRIMEWEST MORTGAGE INVESTMENT CORPORATION, DAN ANDERSON, TOM ARCHIBALD, FRANCIS BAST, DOUG FRONDALL, MIKE HOUGH, WILSON OLIVE, TOM ROBINSON, IRENE SEIFERLING, ERNST & YOUNG INC.

Respondents (*Respondents*)

– and –

DIRECTOR OF CORPORATIONS, CANADA REVENUE AGENCY, P.I. FINANCIAL, DONALD ZEALAND, GRANITE ENTERPRISES, DEBBIE GLORIA BURWASH

Non-parties (*Non-parties*)

NOTICE OF MOTION TO QUASH APPEAL

TAKE NOTICE:

1. THAT the Respondent (Applicant) intends to apply to the presiding judge in Chambers by telephone at the Court House, 2425 Victoria Avenue, Regina, Saskatchewan on **[NTD: DATE]** at 10:00 a.m. for the following relief:

- (a) An order pursuant to Rule 46.1(1)(a) of *The Court of Appeal Rules* quashing the within appeal on the basis that it discloses no right of appeal;
- (b) Alternatively, an order pursuant to Rule 46.1(1)(b) of *The Court of Appeal Rules* quashing the within appeal on the basis that it is frivolous or vexatious;
- (c) Alternatively, an order pursuant to Rule 46.1(1)(d) of *The Court of Appeal Rules* quashing the within appeal on the basis that it is otherwise an abuse of the process of the court; and

(d) An order pursuant to Rule 52 of *The Court of Appeal Rules* that the Respondent (Applicant) have the costs of this application payable forthwith.

2. THAT the Respondent (Applicant) relies upon the following grounds:

(a) The Appellant is required to obtain leave of this Honourable Court to appeal the order of the Honourable Mr. Justice N.G. Gabrielson (the "Order") pursuant to s. 8 of *The Court of Appeal Act, 2000* because:

- i. the Order is interlocutory in nature; and
- ii. section 242 of *The Business Corporations Act* is inapplicable as the Order was not granted pursuant to that act;

(b) Leave to appeal should not be granted *nunc pro tunc* because:

- i. the within appeal lacks sufficient merit to warrant leave to appeal being granted;
- ii. the within appeal lacks sufficient importance to warrant leave to appeal being granted;
- iii. the Appellant has acted unreasonably in failing to apply for leave to appeal; and
- iv. the Appellant has occasioned undue delay by electing not to apply for leave to appeal.

3. THAT the following material will be filed in support of this application:

- (a) This notice of motion with proof of service;
- (b) The fiat of the Honourable Mr. Justice N.G. Gabrielson, dated July 7, 2020;
- (c) The Supplemental Report of the Liquidator, dated August 21, 2020;
- (d) A draft order quashing the appeal; and
- (e) A Brief of Law on behalf of the Respondent (Applicant)

DATED at the City of Saskatoon, Saskatchewan, this 11th day of September, 2020.

THE W LAW GROUP LLP



PER: _____
Mike Russell, and Nick Conlon,
Solicitors for the Respondent (Applicant),
KPMG Inc.

TO: ALL RECIPIENTS ON THE SERVICE LIST

This Notice of Motion was delivered by:

Name of firm: The W Law Group LLP

Name of lawyers in
charge of file: Mike Russell and Michelle Tobin

Address of legal firm: Suite 300-110 21st Street East
Saskatoon, SK S7K 0B6

Telephone: (306) 244-2242

Fax: (306) 652-0332

Email: mrussell@wlawgroup.com/
mtobin@wlawgroup.com/
nconlon@wlawgroup.com