

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

B E T W E E N :

MONICA MATTA and MARK AMELLO

Applicants

-and-

ALTMORE MORTGAGE INVESTMENT CORPORATION

Respondent

*APPLICATION UNDER SECTION 248(3) OF THE BUSINESS CORPORATIONS ACT
(ONTARIO) AND SECTION 101 OF THE COURTS OF JUSTICE ACT (ONTARIO)*

FACTUM

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FACTUM

PART I - OVERVIEW

1. Pursuant to the Order of the Honourable Madam Justice Conway of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) dated November 8, 2021 (the “**Receivership Order**”), BDO Canada Limited (“**BDO**”) was appointed as receiver (in such capacity, the “**Receiver**”) over Altmore Mortgage Investment Corporation (“**Altmore**”), Altmore Capital Inc. (“**ACI**”), Independent Mortgage Advisors Inc. (“**IMAI**”) and Ian Ross McSevney (“**McSevney**”) (collectively, the “**Receivership Debtors**”) pursuant to section 248(1) of the *Business Corporations Act*, R.S.O. 1990, c. B.16, as amended (the “**OBCA**”) and section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended (the “**CJA**”).
2. Pursuant to the Receivership Order, the Receiver was authorized to make bankruptcy assignments in respect of any of the Receivership Debtors. On November 18, 2021 (the “**Bankruptcy Date**”), the Receiver commenced the bankruptcy proceedings (the “**Bankruptcy Proceedings**”) by filing assignments in bankruptcy in respect of Altmore and McSevney (together, the “**Bankrupts**”).¹
3. Since the date of its appointment the guiding mind behind the corporate Receivership Debtors, Mr. McSevney, has been in flagrant and continuing breach of the Orders made in

¹ Order of Justice Conway dated November 8, 2021 (the “**Receivership Order**”); Third Report of the Receiver (the “**Third Report**”) at para 3.

this proceeding.² Consequently, the Receiver seeks an Order declaring Mr. McSevney to be in contempt.

PART II - THE FACTS

A. Altmore

4. Altmore is a corporation incorporated pursuant to the OBCA on July 30, 2012. McSevney is the sole guiding mind behind Altmore and its affiliates. Altmore claimed to operate as a mortgage investment corporation, and solicited several millions of dollars in investment capital from investors ostensibly for the purpose of investing in a portfolio of mortgages. However, the Receiver is not aware of any mortgage investments actually made by Altmore.³

B. Prior Appointment of Receiver

5. By Application made by Monica Matta and Mark Amello (together, the “**Receivership Applicants**”) returnable May 25, 2021, BDO was initially appointed as Receiver in respect of Altmore for an initial period of 30 days pursuant to the Order of the Honourable Mr. Justice Dunphy dated May 25, 2021 (the “**Interim Receivership Order**”).⁴

6. Following its appointment, the Receiver reviewed statements in respect of Altmore’s bank account (the “**Altmore Account**”). The Altmore Account statements indicate a number of related party transactions including transfers to, and payments made for the benefit of, McSevney, Christie Ward-McSevney, Elaine McSevney, ACI and IMAI.⁵

² Third Report at para 70.

³ Third Report at paras 12-15.

⁴ Third Report at para 17.

⁵ Third Report at para 17.

7. Mr. McSevney failed to provide any documentation or other verifiable information with respect to Altmore, its financial condition or any mortgage investments it made, and ceased communicating with the Receiver shortly after the issuance of the Interim Receivership Order.⁶
8. Accordingly, pursuant to the Order of the Honourable Mr. Justice Dunphy dated June 9, 2021 (the “**June 9th Order**”) the Receiver was appointed over McSevney, ACI and IMAI.⁷
9. McSevney failed to comply with his obligations under the Interim Receivership Order or the June 9th Order. In particular, he failed to provide any documentation related to the business of Altmore or any mortgage investments. However, due to the lack of funding available to continue the receivership proceeding or any further investigations, pursuant to the Order of the Honourable Madam Justice Conway dated June 25, 2021 (the “**June 25th Order**”), the Receiver was discharged.⁸

C. Re-Appointment of Receiver

10. Following the issuance of the June 25th Order, the Receivership Applicants secured funding to continue the investigation into the business and affairs of the Receivership Debtors, and obtained the Receivership Order re-appointing BDO as Receiver and authorizing it to make assignments in bankruptcy in respect of any of the Receivership Debtors.⁹

⁶ Third Report at para 18.

⁷ Third Report at para 19.

⁸ Third Report at paras 20 and 22.

⁹ Third Report of para 23.

11. Pursuant to section 21 of the Receivership Order, the Court specifically directed that McSevney: "...assist and cooperate with the trustee in bankruptcy... including in the preparation of the statement of affairs and other statutory documents."¹⁰
12. On November 8, 2021, immediately upon the issuance of the Receivership Order, the Receiver sent an email to McSevney at ian@mcsevney.com advising him of the re-appointment of the Receiver. Included as an attachment to this email was an information request checklist (the "**Information Request**"), containing a list of information requests in respect of McSevney's personal financial affairs and Altmore.¹¹
13. McSevney responded to the Receiver on November 12, 2021 from ian@mcsevney.com, stating, *inter alia*, that he would provide the requested information. This is the last time BDO has had any communication from McSevney.¹²
14. The Receiver sent a follow up email to McSevney on November 12, 2021, again requesting information on McSevney and Altmore, and advising McSevney of the duties of a bankrupt as set out in the BIA. McSevney did not respond to this email.¹³

D. Bankruptcy Assignments

15. The Receiver worked with the OR to make the assignments in respect of McSevney and Altmore despite their lack of participation or cooperation, and on November 18, 2021 the assignments were completed.¹⁴

¹⁰ Receivership Order at para 21.

¹¹ Third Report at para 25.

¹² Third Report at para 26.

¹³ Third Report at para 27.

¹⁴ Third Report at para 28.

E. First Meeting of Creditors

16. In accordance with the Bankruptcy Notices, the First Meetings of Creditors in respect of McSevney and Altmore (the “**First Meetings**”) were held consecutively on December 7, 2021 and were chaired by the OR. Neither McSevney nor any representative of Altmore attended.¹⁵

17. Immediately after the adjournment of the First Meetings, the first meeting of inspectors was held wherein the Trustee was instructed to refer McSevney to the Debtor Compliance Referral Program operated by the OSB. The Trustee promptly notified the OSB of the referral.¹⁶

F. McSevney’s Contempt

18. Ian Ross McSevney is in continuing breach of his obligations under the Receivership Order and the BIA. The Receiver is of the view that it is unlikely that he will comply with such obligations without significant further assistance from the Court including the issuance of Contempt Orders against them.¹⁷

19. Following the issuance of the Interim Receivership Order, the Receiver contacted McSevney in order to obtain information and records, among other things. McSevney was initially responsive and agreed to deliver the requested information and records as soon as possible.¹⁸

¹⁵ Third Report at para 29.

¹⁶ Third Report at para 31.

¹⁷ Third Report at para 50.

¹⁸ Third Report at para 66.

20. However, McSevney quickly became uncooperative and non-responsive, as reported in the First Report and the Second Report.¹⁹
21. As noted above, the Receiver was discharged pursuant to the June 25th Order. McSevney did not deliver a single document to the Receiver prior to its discharge.²⁰
22. Following its re-appointment on November 8, 2021, the Receiver renewed its request to McSevney for the Records. The Receiver also advised McSevney of his obligation to assist the Receiver in connection with the bankruptcy assignments, but McSevney failed to provide any assistance whatsoever in that regard.²¹
23. McSevney has failed to deliver a single page of the Records to the Receiver, and in fact has ceased acknowledging or responding to email correspondence or voicemail messages from the Receiver. McSevney is in deliberate, flagrant and continuing breach of the Receivership Order, to the ongoing and mounting detriment of his creditors.²²
24. Despite the Receivership Order's express direction that McSevney assist the Trustee in its administration of the estates of the Bankrupts, McSevney has also disregarded his statutory duties under the BIA, including:
 - (a) Failing to attend the First Meeting of Creditors in respect of his own bankruptcy as well as that of Altmore in his capacity as an officer;

¹⁹ Third Report at para 67.

²⁰ Third Report at para 68.

²¹ Third Report at para 69.

²² Third Report at para 70.

- (b) Failing to advise the Trustee of any of his assets and liabilities, which may include his interest in the Unit 9 Property;
- (c) Failing to disclose and misappropriating rental proceeds from the Unit 17 Property;
and
- (d) Failing to keep the Trustee advised of his current place of residence.²³

PART III - ISSUE ON MOTION

25. The issue before this Honourable Court is whether McSevney is in contempt of the Receivership Order.

PART IV - LAW & ARGUMENT

A. Contempt Hearing Should be Bifurcated

26. Although there is no mandated process for contempt proceedings, they typically have two stages:
- (a) The liability hearing; and
 - (b) The penalty hearing.
27. The Court of Appeal has indicated that contempt proceeding should be bifurcated because, as in criminal proceedings, liability and penalty are discrete issues.²⁴

²³ Third Report at para 71.

²⁴ *Boily v. Carleton Condominium Corp.*, [2014 ONCA 574](#), paras 121-122.

B. Receivership Order May Be Enforced by Contempt Order

28. Pursuant to Rule 60.05 of the *Rules of Civil Procedure*, an order requiring a person to do an act, other than the payment of money, may be enforced by a contempt order under Rule 60.11.²⁵

29. Neither the Receivership Order nor any of the obligations it places on McSevney is a “payment order” within the meaning of Rule 60.05, and consequently it may be enforced by a contempt order.

C. Test for Civil Contempt

30. The test for civil contempt was articulated by the Supreme Court of Canada in *Carey v. Laiken*:²⁶

- (i) The order alleged to have been breached must state clearly and unequivocally what should and should not be done;
- (ii) The party alleged to have breached the order must have had actual knowledge of it; and
- (iii) The party allegedly in breach must have intentionally done the act that the order prohibits or intentionally failed to do the act that the order compels.

31. Each element of the test for civil contempt must be proved beyond a reasonable doubt.²⁷

²⁵ *Rules of Civil Procedure*, RRO 1990, Reg. 194.

²⁶ [2015 SCC 17](#), [2015] SCR 79, at paras. 33-35 (“*Carey*”).

²⁷ *Carey* at para 32.

i. The Receivership Order is clear and unequivocal

32. The Receivership Order clearly and unequivocally states what must be done, including the timelines that must be followed. Paragraphs 5 through 8 of the Receivership Order provide as follows:

5. THIS COURT ORDERS that (i) the Debtors, (ii) all of their current and former directors, officers, employees, agents, accountants, legal counsel and shareholders, and all other persons acting on their instructions or behalf, and (iii) all other individuals, firms, corporations, governmental bodies or agencies, or other entities having notice of this Order (all of the foregoing, collectively, being “Persons” and each being a “Person”) shall forthwith advise the Receiver of the existence of any Property in such Person's possession or control, shall grant immediate and continued access to the Property to the Receiver, and shall deliver all such Property to the Receiver upon the Receiver's request.

6. THIS COURT ORDERS that all Persons shall forthwith advise the Receiver of the existence of any books, documents, securities, contracts, orders, corporate and accounting records, and any other papers, records and information of any kind related to the business or affairs of the Debtors, and any computer programs, computer tapes, computer disks, or other data storage media containing any such information (the foregoing, collectively, the “Records”) in that Person's possession or control, and shall provide to the Receiver or permit the Receiver to make, retain and take away copies thereof and grant to the Receiver unfettered access to and use of accounting, computer, software and physical facilities relating thereto, provided however that nothing in this paragraph 6 or in paragraph 7 of this Order shall require the delivery of Records, or the granting of access to Records, which may not be disclosed or provided to the Receiver due to the privilege attaching to solicitor-client communication or due to statutory provisions prohibiting such disclosure.

7. THIS COURT ORDERS that if any Records are stored or otherwise contained on a computer or other electronic system of information storage, whether by independent service provider or otherwise, all Persons in possession or control of such Records shall forthwith give unfettered access to the Receiver for the purpose of allowing the Receiver to recover and fully copy all of the information contained therein whether by way of printing the information onto paper or making copies of computer disks or such other manner of retrieving and copying the information as the Receiver in its discretion deems expedient, and shall not alter, erase or destroy any Records without the prior written consent of the Receiver. Further, for the purposes of this paragraph, all Persons shall provide the Receiver with all such assistance in gaining immediate access to the information in the Records as the Receiver may in its discretion require including providing the Receiver with instructions on the use of any computer or other system and providing the Receiver

with any and all access codes, account names and account numbers that may be required to gain access to the information.

8. THIS COURT ORDERS that McSevney is hereby directed to provide the following to the Receiver forthwith, and in any event within three (3) days of the date of this Order:

(a) An accounting of receipts and disbursements made by Altmore including, in particular, information related to transfers to Christie Briyer Ward-McSevney, Elaine McSevney and any other non-arm's length party;

(b) A list of all mortgages or other investments in which any of the Debtors holds or previously held an interest, and any related documents in McSevney's possession or control;

(c) A list of all investors in Altmore as well as contact information, amounts invested and copies of all related agreements and other documents; and

(d) Any books and records of Altmore or any other Debtor in McSevney's possession or control.

ii. McSevney Had Actual Knowledge of the Receivership Order

33. A finding of contempt requires actual personal knowledge of the order alleged to have been breached.²⁸

34. It is clear that McSevney has at all material times had actual personal knowledge of the Receivership Order. McSevney was served with a copy of the Receivership Order by email at an address he has since used to communicate with the Receiver. In addition, he has repeatedly acknowledged the issuance of the Receivership Order and the obligations in it, both in Court and directly to the Receiver; he simply has not complied.

35. As noted above, on November 18, 2021, immediately upon the issuance of the Receivership Order, the Receiver sent an email to McSevney advising him of the re-appointment of the Receiver, along with the Information Request. McSevney responded to

²⁸ *Bjatanger v. Canada (Minister of Employment and Immigration)*, 71 DLR (4th) 84, [1990] 2 SCR 217 at para 16.

the Receiver's email acknowledging the Information Request and indicating that he would provide the requested information.²⁹

36. Moreover, McSevney attended Court at the Receiver's motion on February 1, 2022 for the scheduling of this Motion, and was urged by Justice Conway to promptly seek legal advice.

iii. McSevney Has Intentionally Failed to Comply

37. McSevney is fully aware of the Receivership Order and his obligations thereunder as he has repeatedly advised that he would comply with same, but thus far has simply failed to do so.

38. In particular, among other things, McSevney has failed to do the following on behalf of the Receivership Debtors:

(a) advise the Receiver of the existence of any Property (as defined in the Receivership Order) in his possession or control, or provide the Receiver with access to same;

(b) advise the Receiver of any Records (as defined in the Receivership Order) in his possession or control;

(c) provide the Receiver with an accounting of receipts and disbursements made by Altmore, a list of all mortgages and other investments in which any of the Receivership Debtors holds or previously held an interest, and a list of all investors in Altmore, among other documents; and

²⁹ Third Report at para 25; Third Report, Appendix "J".

(d) provide the Receiver with assistance in connection with the bankruptcy assignments.

39. McSevney has simply ceased acknowledging or responding to the Receiver's correspondence or voicemail messages, and continues to deliberately breach his obligations under the Receivership Order.

40. Accordingly, the Receiver submits that the evidence before this Honourable Court establishes contempt beyond a reasonable doubt.

PART V - ORDER SOUGHT

41. For the foregoing reasons, the Receiver respectfully requests an Order:

(a) Declaring that McSevney is in contempt of the Receivership Order;

(b) Directing McSevney to pay the Receiver's costs of this Motion on a full indemnity basis; and

(c) If a finding of contempt is made, scheduling a hearing to determine the appropriate penalty.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 8th day of April, 2022.



Gregory Azeff & Monica Faheim

MILLER THOMSON LLP
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SCHEDULE “A”
LIST OF AUTHORITIES

1. *Boily v. Carleton Condominium Corp.*, [2014 ONCA 574](#), paras 121-122.
2. *Carey v. Laiken*, [2015 SCC 17](#), [2015] SCR 79.
3. *Bjatanger v. Canada (Minister of Employment and Immigration)*, 71 DLR (4th) 84, [1990] [2 SCR 217](#).

**SCHEDULE “B”
RELEVANT STATUTES**

R.R.O. 1990, Reg. 194: RULES OF CIVIL PROCEDURE

Enforcement of Order to Do or Abstain from Doing any Act

60.05 An order requiring a person to do an act, other than the payment of money, or to abstain from doing an act, may be enforced against the person refusing or neglecting to obey the order by a contempt order under rule 60.11. R.R.O. 1990, Reg. 194, r. 60.05.

Contempt Order

Motion for Contempt Order

60.11 (1) A contempt order to enforce an order requiring a person to do an act, other than the payment of money, or to abstain from doing an act, may be obtained only on motion to a judge in the proceeding in which the order to be enforced was made. R.R.O. 1990, Reg. 194, r. 60.11 (1).

(2) The notice of motion shall be served personally on the person against whom a contempt order is sought, and not by an alternative to personal service, unless the court orders otherwise. R.R.O. 1990, Reg. 194, r. 60.11 (2).

(3) An affidavit in support of a motion for a contempt order may contain statements of the deponent’s information and belief only with respect to facts that are not contentious, and the source of the information and the fact of the belief shall be specified in the affidavit. R.R.O. 1990, Reg. 194, r. 60.11 (3).

Warrant for Arrest

(4) A judge may issue a warrant (Form 60K) for the arrest of the person against whom a contempt order is sought where the judge is of the opinion that the person’s attendance at the hearing is necessary in the interest of justice and it appears that the person is not likely to attend voluntarily. R.R.O. 1990, Reg. 194, r. 60.11 (4).

Content of Order

(5) In disposing of a motion under subrule (1), the judge may make such order as is just, and where a finding of contempt is made, the judge may order that the person in contempt,

- (a) be imprisoned for such period and on such terms as are just;
- (b) be imprisoned if the person fails to comply with a term of the order;

- (c) pay a fine;
- (d) do or refrain from doing an act;
- (e) pay such costs as are just; and
- (f) comply with any other order that the judge considers necessary,

and may grant leave to issue a writ of sequestration under rule 60.09 against the person's property. R.R.O. 1990, Reg. 194, r. 60.11 (5).

Where Corporation is in Contempt

(6) Where a corporation is in contempt, the judge may also make an order under subrule (5) against any officer or director of the corporation and may grant leave to issue a writ of sequestration under rule 60.09 against his or her property. R.R.O. 1990, Reg. 194, r. 60.11 (6).

Warrant of Committal

(7) An order under subrule (5) for imprisonment may be enforced by the issue of a warrant of committal (Form 60L). R.R.O. 1990, Reg. 194, r. 60.11 (7).

Discharging or Setting Aside Contempt Order

(8) On motion, a judge may discharge, set aside, vary or give directions in respect of an order under subrule (5) or (6) and may grant such other relief and make such other order as is just. R.R.O. 1990, Reg. 194, r. 60.11 (8).

Order that Act be done by Another Person

(9) Where a person fails to comply with an order requiring the doing of an act, other than the payment of money, a judge on motion may, instead of or in addition to making a contempt order, order the act to be done, at the expense of the disobedient person, by the party enforcing the order or any other person appointed by the judge. R.R.O. 1990, Reg. 194, r. 60.11 (9).

(10) The party enforcing the order and any person appointed by the judge are entitled to the costs of the motion under subrule (9) and the expenses incurred in doing the act ordered to be done, fixed by the judge or assessed by an assessment officer in accordance with Rule 58. R.R.O. 1990, Reg. 194, r. 60.11 (10).

• **MONICA MATTA and MARK
AMELLO**

and **ALTMORE
INVESTMENT CORP**

MORTGAGE

Court File No: CV-21-00662471-00CL

**ONTARIO
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Proceeding commenced at Toronto

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