

ONTARIO



COURT FILE No.  
FC-19-058934-00

**SUPERIOR COURT OF JUSTICE**

**ENDORSEMENT**

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APPLICANT(S): MARIA ZUCCARO

COUNSEL: R. AVERY ZEIDMAN

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RESPONDENT(S): FRANK ZUCCARO

COUNSEL: A. DOUGLAS BURNS

CO-RESPONDENT: 863704 ONTARIO LIMITED

COUNSEL: A. DOUGLAS BURNS

CO-RESPONDENT: METROPOLITAN ICE CREAM INC.

COUNSEL: A. DOUGLAS BURNS

CO-RESPONDENT: ORACCUZ HOLDING LTD.

COUNSEL: A. DOUGLAS BURNS

ADDED RESPONDENT: GIUSEPPE ZUCCARO

COUNSEL: R. AVERY ZIEDMAN

ADDED RESPONDENT: VITO ANTONIO ZUCCARO

COUNSEL: R. AVERY ZIEDMAN

ADDED RESPONDENT: FILOMENA ZUCCARO

COUNSEL: R. AVERY ZIEDMAN

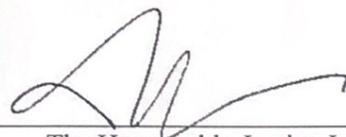
INTERESTED PARTY: DODICK LANDAU INC.

COUNSEL: WENDY GREENSPOON-SOER

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Heard: September 1, 2021 via Zoom videoconference

- [1] The Applicant has filed a motion requesting declaratory relief with respect to the Respondent and Co-Respondents alleged breaches of various Court Orders, as well as related remedies, including striking of pleadings.
- [2] The Respondent opposes the Applicant's motion.
- [3] The Respondent attended today and requested an adjournment of the motion stating that he is in the process of changing counsel.
- [4] The Applicant opposed the adjournment.
- [5] This Court expressed concern regarding the adjournment request, particularly in light of the Respondent's history of non-compliance with Court Orders as reflected in previous Orders and endorsements. However, given the significant impact the outcome of this motion may have on the resolution of the overall proceeding, this Court indicated that it would be prepared to adjourn the matter briefly, on terms. This Court offered the parties return dates next week. The parties then negotiated the terms of an adjournment, which are set out in the Schedule "A" attached hereto.
- [6] OTG in accordance with the Consent attached hereto as Schedule "A". The parties, through counsel, confirmed their agreement to the Consent on the record.
- [7] OTG that the further Affidavit of the Respondent referred to in paragraph 1 of the Consent shall not exceed 12 pages of narrative, double spaced, 12 point font.
- [8] OTG that the Applicant may file a reply Affidavit by January 7, 2022, and that Affidavit shall not exceed 6 pages of narrative, double spaced, 12 point font.
- [9] OTG that the Applicant's August 3, 2021 motion is adjourned to January 12, 2022 at 11:30 a.m.



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The Honourable Justice J. Bruhn

**Released:** September 1, 2021

**Superior Court of Justice**

(Name of Court)

Court File Number

FC-19-0058934-0000

at **50 Eagle Street West, Newmarket, Ontario, L3Y 6B1**

(Court office address)

dated September 1, 2021**Applicant(s)**

SCHEDULE "A"

*Full legal name & address for service — street & number, municipality, postal code, telephone & fax numbers and e-mail address (if any).***Maria Zuccaro**  
c/o Lawyer*Lawyer's name & address — street & number, municipality, postal code, telephone & fax numbers and e-mail address (if any).***R. Avery Zeidman**  
**Avery Zeidman Professional Corporation**  
**Barristers & Solicitors**  
**565 Edgeley Blvd.**  
**Concord, Ontario L4K 4G4**  
**Tel: 905-669-7577 ext. 222**  
**Fax: 905-669-5525**  
**[avery@zeidmanlaw.com](mailto:avery@zeidmanlaw.com)****Respondent(s)***Full legal name & address for service — street & number, municipality, postal code, telephone & fax numbers and e-mail address (if any).***Frank Zuccaro***Lawyer's name & address — street & number, municipality, postal code, telephone & fax numbers and e-mail address (if any).***A. Douglas Burns**  
**Burns Associates**  
**Barrister(s) and Solicitor(s)**  
**21 King Street West, Suite 305**  
**Hamilton, Ontario L8P 4W7**  
**Tel: 905-522-1381**  
**Fax: 905-522-8055**  
**[burns@adburnslaw.com](mailto:burns@adburnslaw.com)****Co-Respondents****863704 Ontario Limited****Metropolitan Ice Cream Inc.****Oraccuz Holding Ltd.****A. Douglas Burns**  
**Burns Associates**  
**Barrister(s) and Solicitor(s)**  
**21 King Street West, Suite 305**  
**Hamilton, Ontario L8P 4W7**  
**Tel: 905-522-1381**  
**Fax: 905-522-8055**  
**[burns@adburnslaw.com](mailto:burns@adburnslaw.com)****Added Respondents****Giuseppe Zuccaro****Vito Antonio Zuccaro****Filomena Zuccaro****R. Avery Zeidman**  
**Avery Zeidman Professional Corporation**  
**Barristers & Solicitors**  
**565 Edgeley Blvd.**  
**Concord, Ontario L4K 4G4**  
**Tel: 905-669-7577 ext. 222**  
**Fax: 905-669-5525**  
**[avery@zeidmanlaw.com](mailto:avery@zeidmanlaw.com)****Interested Party:****DODICK LANDAU INC., in its capacity as**  
**Receiver of the undertaking, property and assets of**  
**Frank Zuccaro, 863704 Ontario Limited,**  
**Metropolitan Ice Cream Inc. and Oraccuz Holding**  
**Ltd., and not in its personal capacity**  
c/o lawyer**Wendy Greenspoon-Soer**  
**GARFINKLE BIDERMAN LLP**  
**Barristers & Solicitors**  
**1 Adelaide Street East, Suite 801**  
**Toronto, Ontario M5C 2V9**  
**Tel: 416-869-1234**  
**Fax: 416-869-0547**

dated August 31, 2021

[wgreenspoon@garfinkle.com](mailto:wgreenspoon@garfinkle.com)

The parties consent to an Order on the following terms:

1. The Applicant, Maria Zuccarro's ("MZ"), motion for the relief set out in her Notice of Motion dated August 3, 2021 is adjourned to January 12, 2022. The motion shall be preemptory on the Respondent, Frank Zucarro ("FZ"), and the corporate Respondents. On the return date, the onus shall be on FZ to demonstrate that he has complied fully with his court ordered disclosure obligations, failing which his pleadings shall be struck. If the documents cannot be produced because they do not exist, FZ will provide evidence to explain the efforts he has made to obtain them. FZ may file a further Affidavit to demonstrate his compliance by January 3, 2022. As some of the exhibits may be voluminous and exceed the page limits set out in the Notice to the Profession, they may be made available to the Court by providing a hyperlink to an online file sharing service.
2. From the funds the Receiver, Dodick Landau Inc. (the "Receiver"), is holding, it shall pay \$670,000 to Avery Zeidman Professional Corporation in trust for MZ, and \$30,000 to Epstein Cole LLP in trust for FZ to be used solely for legal fees and disbursements. If Epstein Cole LLP ceases acting for FZ, it shall return any remaining funds to the Receiver. These funds shall be credited against the parties' property claims. This paragraph is without prejudice to either party's right to seek a further payment out of the funds the Receiver is holding.
3. From the funds the Receiver is holding, it shall pay the spousal support arrears owed to MZ (\$20,374.66 as of August 3, 2021), the ongoing spousal support owed to MZ, the arrears for FZ's half of the carrying costs of the home (\$12,548.61 as of August 3, 2021), and FZ's half of the ongoing carrying costs of the home going forward. The parties shall withdraw from enforcement of the support order through the Family Responsibility Office, and the receiver shall pay the support directly to MZ. This is without prejudice to either party's right to re-register the Order for enforcement with the Family Responsibility Office.
4. FZ shall provide the Receiver with a key to the property at 3815 King Road, King City (the "King Property") by the close of business on September 3, 2021 and shall cooperate with respect to providing the Receiver and its appraiser access for the purpose of conducting an appraisal of the King

dated August 31, 2021

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Property on 24 hours notice (the "King Appraisal"). The appraiser, Reliable Appraisal Services, shall attend at the property on September 17 at 10:00 a.m. to inspect the property. FZ shall cooperate. In the event that FZ does not provide the Receiver and the appraiser access, or is not at the property for the scheduled King Appraisal, the Receiver shall be at liberty to use the key to enter the King Property with the appraiser for the purpose of conducting the King Appraisal.

5. FZ shall provide vacant possession of the King Property on or before October 31, 2021. The Receiver shall have leave to issue a Writ of Possession on November 1, 2021 and to proceed with the listing and sale of the King Property thereafter in accordance with the Order of Douglas, J dated November 17, 2020.
6. The Receiver shall advise within 5 business days as to what assets it shall reconvey to FZ and/or what assets it currently does not intend to take possession or control of.
7. The Receiver shall continue to pay from the estate funds of the Debtors the Receiver's ongoing fees, disbursements and taxes together with the Receiver's lawyer's ongoing fees, disbursements and taxes in a timely manner. Without limitation, the foregoing include payments required to deliver all disclosure ordered on March 11, 2020 and June 29, 2020 and fees, disbursements and taxes for the valuations of the Debtor's businesses by a CBV, the income assessments for the Respondent husband by a CBV, and the tracing of dissipation of assets by the Respondent husband by a CBV or forensic accountant.
8. Costs thrown for today are fixed at \$5,000 payable to MZ from the funds that the Receiver is holding.

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