

Court File No. CV-17-11697-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE MR.)

TUESDAY, THE 30TH

JUSTICE MCEWEN)

DAY OF MAY, 2023

B E T W E E N:

VOLKAN BASEGMEZ, CEM BLEDA BASEGMEZ, ANIL RUKAN BASEGMEZ,
BA&B CAPITAL INC., SERDAR KOCTURK
and KAAH HOLDINGS INC.

Applicants

– and –

ALI AKMAN, SAMM CAPITAL HOLDINGS INC.
and TARN FINANCIAL CORPORATION

Respondents

ORDER

(Re: Approval of Activities, Conduct, and Fees, Bankruptcy of Tarn Construction Corporation, Discharge of Receiver, Dissolution of Tarn Financial Corporation, Final Distribution and Discharge of Liquidator)

THIS MOTION, made by KPMG Inc. (“**KPMG**”), in its capacity as Court-appointed Liquidator (in such capacity, the “**Liquidator**”) of the effects and estate of Tarn Financial Corporation (“**Tarn Financial**”), pursuant to section 207 of the *Ontario Business Corporations Act* (“**OBCA**”) and appointed pursuant to the Winding Up Order of Justice Lederman dated September 15, 2017 (the “**Winding Up Order**”) which appointment was effective on September 25, 2017 (the “**Winding Up Proceedings**”), and as Court-appointed Receiver (the “**Receiver**”) of

the property, assets and undertakings of Tarn Construction Corporation (“**Tarn Construction**”), pursuant to the Receivership Order of Justice McEwen dated April 13, 2018 (the “**Receivership Proceedings**”), for an order:

- (a) approving the activities and conduct of the Liquidator and the Receiver as set out in the Ninth Report of the Liquidator and the Seventh Report of the Receiver dated May 19, 2023 (the “**Ninth Report**”);
- (b) approving the fees and disbursements of the Liquidator and the Receiver and the legal fees and disbursements of the Liquidator’s and the Receiver’s counsel, Miller Thomson LLP (“**MT**”) for the period of January 1, 2019 to April 30, 2023 (the “**Fee Period**”), as well as an accrual for fees and disbursements of the Liquidator and the Receiver and the Liquidator’s and Receiver’s counsel, to be incurred to the completion of the Winding Proceedings and the Receivership Proceedings (the “**Fee Accrual**”);
- (c) granting leave and authorizing the Receiver to assign Tarn Construction into bankruptcy and authorizing KPMG to act as trustee in bankruptcy of Tarn Construction (the “**Trustee in Bankruptcy**”);
- (d) discharging KPMG as Receiver of Tarn Construction effective upon the filing of a certificate by the Receiver certifying that all matters to be attended to in connection with the receivership of Tarn Construction have been completed to the satisfaction of the Receiver, in substantially the form attached hereto as Schedule “A” (the “**Receiver Discharge Certificate**”);
- (e) releasing KPMG as Receiver of Tarn Construction from any and all liability, as set out in paragraph 10 of this Order;

- (f) approving, *nunc pro tunc*, the distributions made by the Liquidator of proceeds from the estate of Tarn Financial to BA&B Capital Inc. (“**BA&B**”), KAAN Holdings Inc. (“**KAAN**”) and SAMM Capital Holdings Inc. (“**SAAM**” and collectively with BA&B and KAAN, the “**Shareholders**”);
- (g) authorizing and directing the Liquidator to establish a reserve fund (the “**Reserve**”) as described in the Ninth Report;
- (h) approving the distribution by the Liquidator of the remaining proceeds available in the estate of Tarn Financial to the Shareholders;
- (i) dissolving Tarn Financial effective upon the filing of a certificate by the Liquidator in substantially the form attached hereto as Schedule “B” (the “**Dissolution Certificate**”);
- (j) authorizing the Liquidator to dispose of any books and records of Tarn Financial that are not required to be retained, and ordering the Liquidator to retain custody of the Tarn Financial accounting books and records for a minimum period of five (5) years from the date of Tarn Financial’s dissolution;
- (k) discharging KPMG as Liquidator of the estate and effects of Tarn Financial effective upon the filing of a certificate by the Liquidator certifying that all matters to be attended to in connection with the winding-up of Tarn Financial have been completed to the satisfaction of the Liquidator, in substantially the form attached hereto as Schedule “C” (the “**Liquidator’s Discharge Certificate**”); and
- (l) releasing KPMG as Liquidator of Tarn Financial from any and all liability, as set out in paragraph 18 of this Order,

was heard this day at 330 University Avenue, Toronto, Ontario,

ON READING the Ninth Report of the Liquidator and Seventh Report of the Receiver dated May 19, 2023 (the “**Ninth Report**”) including the fee affidavit of Anamika Gadia of KPMG sworn May 18, 2023 and the fee affidavit of Stephanie De Caria of Miller Thomson sworn May 19, 2023 (the “**Fee Affidavits**”), and on hearing the submissions of counsel for the Liquidator and the Receiver, the Applicants and the Respondents no one else appearing although served as evidenced by the Affidavit of Alina Stoica sworn May 23 and 26, 2023, filed;

SERVICE AND DEFINED TERMS

1. **THIS COURT ORDERS** that the time for service and filing of the Notice of Motion and the Motion Record is hereby abridged and validated so that this motion is properly returnable today, and hereby dispenses with further service thereof.
2. **THIS COURT ORDERS** that capitalized terms used in this Order and not otherwise defined herein shall have the meaning ascribed to them in the Winding Up Order and the Ninth Report.

BANKRUPTCY OF TARN CONSTRUCTION

3. **THIS COURT ORDERS** that the Receiver is hereby granted leave and authorized to assign Tarn Construction into bankruptcy, and KPMG is hereby authorized to act as the Trustee in Bankruptcy of Tarn Construction.
4. **THIS COURT ORDERS** that the Liquidator shall set aside and hold \$25,000 in trust from the proceeds of Tarn Financial for payment of the fees and disbursements of the Trustee in Bankruptcy, and if any amounts remain after payment of the fees and disbursement of the

Trustee in Bankruptcy then the Liquidator shall distribute the remaining amount to the Shareholders of Tarn Financial in accordance with the distribution approved herein.

APPROVAL OF THE LIQUIDATOR'S AND THE RECEIVER'S ACTIVITIES

5. **THIS COURT ORDERS** that the Ninth Report and the conduct and activities of the Liquidator and the Receiver, as set out in the Ninth Report, are hereby approved, provided, however, that only the Liquidator and the Receiver, in their personal capacity and only with respect to their own personal liability, shall be entitled to rely upon or utilize, in any way, such approvals.

APPROVAL OF FEES AND DISBURSEMENTS

6. **THIS COURT ORDERS** that the fees and disbursements of the Liquidator and the Receiver and the Liquidator's and Receiver's counsel, Miller Thomson, including the Fee Accrual to conclude the Winding Up Proceedings and Receivership Proceedings, as set out in the Ninth Report and the Fee Affidavits, be and are hereby approved.

APPROVAL OF RECEIPTS AND DISBURSEMENTS

7. **THIS COURT ORDERS** that the Liquidator's final statement of receipts and disbursements as set out in the Ninth Report be and is hereby approved.

APPROVAL OF RESERVE

8. **THIS COURT ORDERS** that the Liquidator is hereby authorized and directed to establish the Reserve set out in the Ninth Report and to pay amounts out of the Reserve as contemplated in the Ninth Report, as and when due.

RECEIVER'S DISCHARGE AND RELEASE

9. **THIS COURT ORDERS** that upon the Receiver filing the Receiver's Discharge Certificate with the Court certifying that it has completed the other activities described in the Ninth Report, KPMG shall be discharged as Receiver of the undertaking, property and assets of Tarn Construction, provided however that notwithstanding its discharge herein (a) the Receiver shall remain Receiver for the performance of such incidental duties as may be required to complete the administration of the receivership herein, and (b) the Receiver shall continue to have the benefit of the provisions of all Orders made in this proceeding, including all approvals, protections and stays of proceedings in favour of KPMG in its capacity as Receiver.

10. **THIS COURT ORDERS AND DECLARES** that KPMG is hereby released and discharged from any and all liability that KPMG now has or may hereafter have by reason of, or in any way arising out of, the acts or omissions of KPMG while acting in its capacity as Receiver herein, save and except for any gross negligence or wilful misconduct on the Receiver's part. Without limiting the generality of the foregoing, KPMG is hereby forever released and discharged from any and all liability relating to matters that were raised, or which could have been raised, in the within receivership proceedings, save and except for any gross negligence or wilful misconduct on the Receiver's part.

APPROVAL OF DISTRIBUTIONS AND FINAL DISTRIBUTION

11. **THIS COURT ORDERS** that the distributions made by the Liquidator to the Shareholders: (a) on or about November 2, 2023 in the amount of \$2,653,000 in full and final repayment of each of their outstanding shareholder loans; and (b) on or about December 22, 2022 in the amount of \$7,000,000 rateably according to their rights and interests in Tarn

Financial being 40% to BA&B, 40% to SAMM and 20% to KAAN, be and are hereby approved (the “**Shareholders’ Rights and Interests in Tarn Financial**”), *nunc pro tunc*.

12. **THIS COURT ORDERS** that, after: (a) payment of the fees and disbursements of the Liquidator and its counsel, Miller Thomson, approved herein; and (b) setting aside and holding the Reserve in trust to be used to fund the amounts if and when due as described in the Ninth Report, the Liquidator shall pay the monies remaining in its hands to the Shareholders subject to further Order of the Court.

13. **THIS COURT ORDERS** that, any amounts remaining in the Reserve after the Liquidator has fully and finally addressed all matters to be addressed as set out in the Ninth Report shall thereafter be paid to the Shareholders subject to further Order of the Court.

DISSOLUTION

14. **THIS COURT ORDERS** that Tarn Financial be and is hereby dissolved effective as of the date of the filing of Dissolution Certificate by the Liquidator with the Court.

15. **THIS COURT ORDERS** that the Liquidator shall send a certified copy of this Order along with a certified the filed Dissolution Certificate to the Director under the OBCA within ten (10) days of filing the Dissolution Certificate with the Court.

16. **THIS COURT ORDERS AND DIRECTS** that the Liquidator be and is hereby authorized to dispose of any books and records of Tarn Financial that are not required to be retained and shall retain custody of the Tarn Financial accounting books and records for a minimum period of seven (7) years from the date of Tarn Financial’s dissolution.

DISCHARGE AND RELEASE OF THE LIQUIDATOR

17. **THIS COURT ORDERS** that upon the Liquidator filing the Liquidator's Discharge Certificate with the Court certifying that it has completed the other activities described in the Ninth Report and as set out in this Order, the Liquidator shall be discharged of the estate and effects of Tarn Financial, provided however that notwithstanding its discharge herein (a) the Liquidator shall remain Liquidator for the performance of such incidental duties as may be required to complete the administration of the proceedings herein, and (b) the Liquidator shall continue to have the benefit of the provisions of all Orders made in this Proceeding, including all approvals, protections and stays of proceedings in favour of KPMG in its capacity as Liquidator.

18. **THIS COURT ORDERS AND DECLARES** that KPMG is hereby released and discharged from any and all liability that KPMG now has or may hereafter have by reason of, or in any way arising out of, the acts or omissions of KPMG while acting in its capacity as Liquidator herein, save and except for any gross negligence or wilful misconduct on the Liquidator's part. Without limiting the generality of the foregoing, KPMG is hereby forever released and discharged from any and all liability relating to matters that were raised, or which could have been raised, in the within these proceedings, save and except for any gross negligence or wilful misconduct on the Liquidator's part.

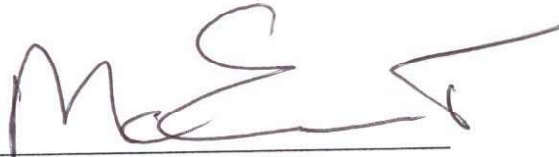
GENERAL

19. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Liquidator and the Receiver and each of their agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the

Liquidator and the Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Liquidator and the Receiver and each of their agents in carrying out the terms of this Order.

20. **THIS COURT ORDERS** that the Liquidator and the Receiver be at liberty, and is hereby authorized and empowered, to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and that the Liquidator and the Receiver are authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

21. **THIS COURT ORDERS** that, notwithstanding Rule 59.05, this Order is effective from the date it is made, and is enforceable without any need for entry and filing.



A handwritten signature in black ink, appearing to be 'M. S.', is written above a horizontal line.

SCHEDULE “A”

RECEIVER’S DISCHARGE CERTIFICATE

CV-17-11697-00CL

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

BETWEEN:

VOLKAN BASEGMEZ, CEM BLEDA BASEGMEZ, ANIL RUKAN BASEGMEZ,
BA&B CAPITAL INC., SERDAR KOCTURK
and KAAAN HOLDINGS INC.

Applicants

– and –

ALI AKMAN, SAMM CAPITAL HOLDINGS INC.
and TARN FINANCIAL CORPORATION

Respondents

RECEIVER’S DISCHARGE CERTIFICATE

RECITALS

A. Pursuant to an Order of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) dated September 15, 2017, KPMG Inc. (“**KPMG**”) was appointed as Liquidator (the “**Liquidator**”) of the effects and estate of Tarn Financial Corporation (“**Tarn Financial**”) pursuant to section 207 of the *Ontario Business Corporations Act* and appointed pursuant to the Winding Up Order of Justice Lederman dated September 15, 2017 (the “**Winding Up Order**”) which appointment was effective on September 25, 2017.

B. Pursuant to an Order of the Court dated April 13, 2018 (the “**Receivership Order**”) KPMG was appointed as Receiver (the “**Receiver**”) of the effects and estate of Tarn Construction Corporation (“**Tarn Construction**”).

C. Pursuant to an Order of the Court dated May 30, 2023 (the “**Discharge Order**”), KPMG was discharged as Receiver of Tarn Construction, to be effective upon the Receiver filing with

the Court a certificate confirming that the Receiver has completed all matters to be attended to in connection with the receivership proceeding to the satisfaction of the Receiver, as set out in the Ninth Report of the Liquidator and Seventh Report of the Receiver dated May 30, 2023 (the “**Ninth Report**”).

THE RECEIVER CERTIFIES the following:

1. All matters to be attended to in connection with the receivership of Tarn Construction, as set out in the Ninth Report, have been completed to the satisfaction of the Receiver.

This Certificate was delivered by the Receiver at [Time] on [Date].

KPMG Inc., in its capacity as Court-appointed Receiver of Tarn Construction Corporation, and not in its personal or corporate capacity

Per: _____
Name: Anamika Gadia
Title: Senior Vice President

SCHEDULE "B"

DISSOLUTION CERTIFICATE

CV-17-11697-00CL

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

BETWEEN:

VOLKAN BASEGMEZ, CEM BLEDA BASEGMEZ, ANIL RUKAN BASEGMEZ,
BA&B CAPITAL INC., SERDAR KOCTURK
and KAAH HOLDINGS INC.

Applicants

– and –

ALI AKMAN, SAMM CAPITAL HOLDINGS INC.
and TARN FINANCIAL CORPORATION

Respondents

DISSOLUTION CERTIFICATE

RECITALS

A. Pursuant to an Order of the Ontario Superior Court of Justice (Commercial List) (the "**Court**") dated September 15, 2017, KPMG Inc. ("**KPMG**") was appointed as Liquidator ("**Liquidator**") of the effects and estate of Tarn Financial Corporation ("**Tarn Financial**") pursuant to section 207 of the *Ontario Business Corporations Act* and appointed pursuant to the Winding Up Order of Justice Lederman dated September 15, 2017 (the "**Winding Up Order**") which appointment was effective on September 25, 2017.

B. Pursuant to an Order of the Court dated May 30, 2023 (the "**Discharge Order**"), the Court ordered the dissolution of Tarn Financial effective as of the date of the filing of this Dissolution Certificate by the Liquidator with the Court.

This Certificate was delivered by the Receiver at [Time] on [Date].

KPMG Inc., in its capacity as Court-appointed
Liquidator of Tarn Financial Corporation and
not in its personal or corporate capacity

Per: _____

Name: Anamika Gadia

Title: Senior Vice President

SCHEDULE “C”

LIQUIDATOR’S DISCHARGE CERTIFICATE

CV-17-11697-00CL

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

BETWEEN:

VOLKAN BASEGMEZ, CEM BLEDA BASEGMEZ, ANIL RUKAN BASEGMEZ,
BA&B CAPITAL INC., SERDAR KOCTURK
and KAAAN HOLDINGS INC.

Applicants

– and –

ALI AKMAN, SAMM CAPITAL HOLDINGS INC.
and TARN FINANCIAL CORPORATION

Respondents

LIQUIDATOR’S DISCHARGE CERTIFICATE

RECITALS

- A. Pursuant to an Order of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) dated September 15, 2017, KPMG Inc. (“**KPMG**”) was appointed as Liquidator (the “**Liquidator**”) of the effects and estate of Tarn Financial Corporation (“**Tarn Financial**”) pursuant to section 207 of the *Ontario Business Corporations Act* and appointed pursuant to the Winding Up Order of Justice Lederman dated September 15, 2017 (the “**Winding Up Order**”) which appointment was effective on September 25, 2017.
- B. Pursuant to an Order of the Court dated April 13, 2018 (the “**Receivership Order**”) KPMG was appointed as Receiver of the effects and estate of Tarn Construction Corporation (“**Tarn Construction**”) (the “**Receiver**”).
- C. Pursuant to an Order of the Court dated May 30, 2023 (the “**Discharge Order**”), KPMG was discharged as Liquidator of Tarn Financial, to be effective upon the Liquidator filing with

the Court a certificate confirming that the Liquidator has completed all matters to be attended to in connection with the winding up proceeding to the satisfaction of the Liquidator, as set out in the Ninth Report of the Liquidator and Seventh Report of the Receiver dated May 30, 2023 (the “**Ninth Report**”).

THE LIQUIDATOR CERTIFIES the following:

2. All matters to be attended to in connection with the winding up of Tarn Financial, as set out in the Ninth Report, have been completed to the satisfaction of the Liquidator.

This Certificate was delivered by the Liquidator at [Time] on [Date].

KPMG Inc., in its capacity as Court-appointed
Liquidator of Tarn Financial Corporation and
not in its personal or corporate capacity

Per: _____
Name: Anamika Gadia
Title: Senior Vice President

VOLKAN BASEGMEZ ET AL
Applicants and Respondents
ALI AKMAN ET AL.
Respondents

Court File No: CV-17-11697-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE -
COMMERCIAL LIST
Proceeding commenced at Toronto

ORDER
(MAY 30, 2023)

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Lawyers for KPMG Inc., in its capacity as court appointed Liquidator of Tarn Financial Corporation and court-appointed Receiver of T Construction.