

**DRAFT**

August 29, 2014

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File 08799.00004

Mr. Martin Teplitsky  
Teplitsky, Colson LLP  
200-70 Bond St.  
Toronto, ON M5B 1X3

Dear Mr. Teplitsky:

**Re: Esther Ostfeld ats. Lublin Financial Corporation  
Your File No. 24548**

You have asked for my opinion as to whether the August 2008 \$300,000.00 mortgage loan transaction (which is described, below) took place in a manner that would be consistent with what would be expected in a bona fide mortgage loan transaction.

I am attaching to this Opinion a copy of my curriculum vitae.

You provided me with the following materials, which I reviewed prior to rendering the opinions set forth below:

1. A letter from you to me dated April 11, 2014, in which you provided some brief background information.
2. The Statement of Claim issued by Lublin Financial Corporation ("**Lublin**") against Esther Ostfeld in this proceeding, dated February 15, 2011.
3. A Statement of Defence and Counterclaim by Esther Ostfeld in this proceeding, dated April 2, 2011.
4. Reply and Defence to Counterclaim filed by Lublin in this proceeding, dated April 15, 2011.
5. Affidavit of Documents of Ronald Rutman, President of Lublin, in this proceeding.
6. Affidavit of Documents of Esther Ostfeld in this proceeding.
7. Letter dated August 9, 2010 from Fred Tayar & Associates to Eran Ostfeld.

8. Affidavit of Ronald Rutman sworn May 28, 2009 in Court File No. CV-09-8155-OOCL.
9. Term Promissory Note dated February 25, 2008 that was attached as Exhibit "D" to Mr. Rutman's Affidavit of May 28, 2009.

After reviewing the materials you provided to me and in forming the opinions hereinafter set forth, I have assumed the following facts:

1. Simon Schonblum was the solicitor acting for Esther Ostfeld in the mortgage transaction under which Lublin purportedly loaned \$300,000.00 to Esther Ostfeld, secured by a Charge/Mortgage registered on title to property owned by Esther Ostfeld in the original principal amount of \$300,000.00, with interest thereon at 18% per annum, payable on demand, and registered on title on August 26, 2008 as Instrument No. AT1876186 (the "**Mortgage**").
2. Joseph Fried was the solicitor acting for Lublin in the Mortgage transaction.
3. Esther Ostfeld signed a Direction to Lublin dated August 20, 2008, directing Lublin to make the mortgage advance payable to her solicitor, Simon Schonblum, in Trust.
4. The \$300,000.00 advance in the Mortgage transaction was in the form of a Bank Draft dated August 22, 2008 from Royal Bank of Canada at 260 East Beaver Creek Road, Richmond Hill, in favour of Simon Schonblum, in Trust.
5. On August 25, 2008, Esther Ostfeld signed a Direction to Mr. Schonblum's firm directing them to pay the proceeds of the Mortgage to Lublin.
6. On August 26, 2008, Mr. Schonblum delivered to RBC Securities at 260 East Beaver Creek Road, Richmond Hill, a cheque from his trust account in the amount of \$300,000.00. The Re line on the cheque was "Lublin Financial Corp. Acct. 416-12009-2-0". The August 26, 2008 cheque to RBC Securities out of Mr. Schonblum's trust account was replaced with a cheque dated August 27, 2008 in the amount of \$300,000.00 payable to RBC Securities with a Re line of "For account 416-12009-2-0". There is no reference to Lublin in the Re line of this cheque.

7. The only other document that Esther Ostfeld signed and that I reviewed was an Acknowledgement by her that she had received a copy of the Standard Charge Terms No. 2003 before signing the Mortgage.
8. I did not see a copy of an Acknowledgement and Direction signed by Esther Ostfeld, (with a copy of the Mortgage in preparation form attached) that would have authorized and directed Mr. Schonblum to register the Mortgage against Esther Ostfeld's property as described in the Mortgage.
9. There was no correspondence between Mr. Schonblum and Esther Ostfeld setting out the purpose of the Mortgage.
10. There was no document on the letterhead of Lublin, addressed to Esther Ostfeld, setting out the purpose of the \$300,000.00 loan or the terms and conditions of the loan.
11. The Mortgage documentation that was signed by Esther Ostfeld was prepared by Mr. Schonblum and it was signed, not in Mr. Schonblum's office, but in a car outside Mr. Schonblum's office, when Eran Ostfeld had brought Esther Ostfeld to Mr. Schonblum's office.
12. There was no reporting letter sent by Mr. Schonblum to Esther Ostfeld regarding the \$300,000.00 mortgage loan transaction.
13. There was no reporting letter sent by Mr. Fried to Lublin regarding the \$300,000.00 mortgage loan transaction and there were no other pertinent documents in Mr. Fried's file relating to the \$300,000.00 mortgage loan transaction.
14. Approximately two and half years after the advance under the Mortgage and the registration of the Mortgage on title, Lublin issued a Statement of Claim against Esther Ostfeld claiming repayment of the \$300,000.00 principal sum under the Mortgage, together with interest thereon at 18% per annum calculated monthly, for a total claim of \$462,198.91. Lublin had not demanded repayment of the \$300,000.00 by Esther Ostfeld in the two and one-half year time period prior to issuance of the Statement of Claim.

From my review of the materials, it is unclear whether the \$300,000.00 that was advanced to Esther Ostfeld in August 2008 was used to pay down indebtedness of her son, Eran Ostfeld, or whether the Mortgage was given to protect Esther Ostfeld's equity in the property

against a potential claim by the Canada Revenue Agency for a lien on her property for alleged unpaid taxes in the approximate amount of \$300,000.00. If the Mortgage loan was intended to pay down existing indebtedness of Eran Ostfeld, it is difficult for me to determine whether the true lender was Lublin Financial Corporation or Fez Financial Corporation and whether there was a trustee/beneficiary relationship between Lublin Financial Corporation and Fez Financial Corporation. I did not see any trust declaration or any other documentation confirming such a trustee/beneficiary relationship. I also did not see any documentation that would show what the balance due and owing under Eran Ostfeld's indebtedness was after payment of the \$300,000.00, if in fact that is what happened.

In order to determine who ultimately received the \$300,000.00 disbursed out of the borrower's solicitor's trust account after the \$300,000.00 advance from Lublin and what the real nature was of this Mortgage loan transaction, it would have been very helpful to see appropriate excerpts from the financial records of Lublin Financial Corporation and Fez Financial Corporation, which would show whether the financial records of either of them showed that they received a \$300,000.00 payment in August of 2008 (and for what purpose) and whether the financial records of either of them showed a reduction of \$300,000.00 in Eran Ostfeld's indebtedness. The financial records would also have been helpful in reconciling the differences between what is set out in Mr. Thayer's letter of August 9, 2010 (that the March 27, 2008 \$300,000.00 advance was still an outstanding indebtedness of Eran Ostfeld), what is set out as the outstanding indebtedness in Mr. Rutman's May 28, 2009 Affidavit (which seems to be higher than would be the case if Eran Ostfeld had paid \$300,000.00 in August of 2008 to reduce the debt), and the Claims Register in the matter of the Bankruptcy of Eran Ostfeld dated April 15, 2011 (that shows indebtedness to Lublin Financial Corporation of \$1,337,832.00). All of this would have been helpful in assessing what the real purpose was of the August 2008 mortgage transaction but none of this documentation was available for me to review.

Based upon the materials which I have reviewed and subject to the foregoing, it is my opinion that if the Mortgage loan was a bona fide mortgage loan to pay down existing indebtedness of Eran Ostfeld:

1. Lublin would have provided a document to Esther Ostfeld and to Mr. Schonblum setting out the purpose, the principal amount, the terms, the interest rate, and other pertinent terms and conditions of the \$300,000.00 loan. I did not see any such document.

2. If Mr. Schonblum was acting for both Esther Ostfeld and Eran Ostfeld, then it would have been standard practice for Esther Ostfeld to have been advised by Mr. Schonblum to obtain independent legal advice prior to the completion of the Mortgage transaction because she was putting a mortgage against her property and the party benefitting from the advance of the mortgage proceeds was her son, Eran Ostfeld. Lublin and Mr. Fried would also have required this, in order to ensure that Esther Ostfeld knew what she was signing and was not signing the mortgage under undue influence or duress. I did not see any evidence that Lublin and Mr. Fried required that Esther Ostfeld obtain independent legal advice and I did not see any evidence that Mr. Schonblum required Esther Ostfeld to obtain independent legal advice.
3. The financial records of Lublin (and Fez Financial Corporation if they were the true lender) should have shown the receipt of the \$300,00.00 in August of 2008 as a payment to reduce the indebtedness of Eran Ostfeld. No such financial records seem to exist.
4. There would have been written communication by Lublin to Eran Ostfeld and Esther Ostfeld shortly after receipt by Lublin of the \$300,000.00 confirming that the monies had been received and that Eran Ostfeld's indebtedness had been reduced by \$300,000.00. There does not appear to be any such communication.
5. Lublin would have received a reporting letter from Mr. Fried regarding the \$300,000.00 Mortgage loan. There was no reporting letter.
6. Esther Ostfeld would have received a reporting letter from Mr. Schonblum. There was no reporting letter.

In conclusion, if the Mortgage loan was a bona fide mortgage loan to pay down existing indebtedness of Eran Ostfeld, the Mortgage loan transaction did not proceed in the manner that would be consistent with a bona fide mortgage loan transaction for that purpose.

Yours truly,

**WeirFoulds LLP**

Bradley N. McLellan

BNM/fs