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		May 28, 2021	É
		28 mai 2021	
Michael Kowalchuk			
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Court File No.: T-

FEDERAL COURT

BETWEEN:

HER MAJESTY THE QUEEN

PLAINTIFF

- and -

THE TORONTO-DOMINION BANK

DEFENDANT

STATEMENT OF CLAIM

TO THE DEFENDANT:

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the Plaintiff. The claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or a solicitor acting for you are required to prepare a statement of defence in Form 171B prescribed by the *Federal Courts Rules*, serve it on the Plaintiff's Solicitor or, where the Plaintiff does not have a solicitor, serve it on the Plaintiff, and file it, with proof of service, at a local office of this Court, **WITHIN 30 DAYS** after this Statement of Claim is served on you, if you are served within Canada.

If you are served in the United States of America, the period for serving and filing your Statement of Defence is forty days. If you are served outside Canada and the United States of America, the period for serving and filing your statement of defence is sixty days.

Copies of the *Federal Court Rules*, information concerning the local offices of the Court and other necessary information may be obtained on request to the Administrator of this Court at Ottawa (telephone 613-992-4238) or at any local office.

IF YOU FAIL TO DEFEND THIS PROCEEDING, judgment may be given against you in your absence and without further notice to you.

Date: _____ *Issued by:* _____
(Registry Officer)

Registry of the Federal Courts
1801 Hollis Street, 17th Floor
Suite 1720
Halifax, Nova Scotia
B3J 3N4

TO: The Toronto-Dominion Bank
Legal Demands Department
4720 Tahoe Boulevard 3rd Floor
Mississauga, Ontario
L4W 5P2

1. This action is brought by Her Majesty the Queen in right of Canada, as represented by the Minister of National Revenue.
2. In these proceedings, the Plaintiff is claiming from the Defendant a total amount of \$436,931.35 plus interest, on the basis of the deemed trust mechanism governed by section 222 of the *Excise Tax Act* (“ETA”).
3. Terramine Development Inc. (the “Debtor”) is a corporation that carried on business in the province of New Brunswick, constructing and selling residential properties. The Debtor was involuntarily dissolved effective March 23, 2018.
4. Between monthly reporting periods ending between August 1, 2012 and June 30, 2015, the Debtor failed to remit GST/HST to the Receiver General in the approximate amount of \$789,021.58.
5. By virtue of the statutory provisions governing the deemed trust mechanism of the *ETA* these amounts collected from sales but not remitted, as well as all of the assets of the Debtor necessary to satisfy payment of such amounts, were deemed to be held in trust for the benefit of the Crown.
6. An audit of the Debtor was carried out by the Canada Revenue Agency (“CRA”) resulting in a reassessment being issued on July 12, 2017. The amount deemed to be held in trust for the Crown was \$517,362.32.
7. The Debtor was the owner of real property located in Dieppe in the Province of New Brunswick, bearing PID number 70391867 (the “Property”).
8. The Property was subject to a collateral mortgage granted to the Defendant on June 27, 2011, to secure a loan to the Debtor from the Defendant in the amount of \$700,000, which collateral mortgage was registered in the Land Titles system for the Province of New Brunswick on July 5, 2011 (the “Security”).
9. On or about May 29, 2015, the Debtor conveyed the Property to Maurice Leblanc and Andrea Leblanc, who were shareholders and directors of the

Debtor. The transfer of the Property was registered in the Land Titles system for the Province of New Brunswick on June 2, 2015.

10. The Defendant received proceeds from the conveyance of the Property in the approximate amount of \$600,000.
11. On August 17, 2015, the Defendant registered a discharge of the Security against the Property, dated July 2, 2015, in the Land Titles system for the Province of New Brunswick.
12. The CRA also received proceeds from the conveyance of the Property in the amount of approximately \$13,670.89, in satisfaction of a judgment registered against the Property on October 10, 2014 by the CRA in the approximate amount of \$12, 961.11, representing the Debtor's debt to the Crown for unremitted payroll source deductions.
13. By virtue of the statutory provisions governing the deemed trust mechanism of the *ETA*, the proceeds from the conveyance of the Property received by the Defendant were required to be paid to the Receiver General, up to the deemed trust claim totalling \$436,931.35, notwithstanding any security interests.
14. On or about October 10, 2018, the CRA sent correspondence to the Defendant to advise it of the deemed trust claim.
15. The Defendant has failed or neglected to pay the deemed trust claim.
16. The Plaintiff requests the following relief:
 - a) payment in the amount of \$436,931.35;
 - b) pre-judgment and post-judgment interest on this amount;
 - c) costs of this action; and,
 - d) any other relief that this Honourable Court may allow.

The Plaintiff proposes that this action be tried at the Regional Municipality of Halifax, in the Province of Nova Scotia.

DATED at the Regional Municipality of Halifax, in the Province of Nova Scotia, this 28th day of May, 2021.



ATTORNEY GENERAL OF CANADA

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