

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

THE HONOURABLE

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TUESDAY, THE 17TH

JUSTICE MCEWEN

DAY OF APRIL, 2018

BETWEEN:



ZEIFMAN PARTNERS INC.,  
IN ITS CAPACITY AS RECEIVER OF THE PROPERTY  
KNOWN MUNICIPALLY AS 40 PARK LANE CIRCLE

Plaintiff

- and -

DAVID AIELLO

Defendant

**ORDER**

**THIS MOTION** made by the Plaintiff, for an Order that the Plaintiff be permitted to examine Leah Aiello, was heard this day at the court house, 330 University Avenue, 8<sup>th</sup> Floor, Toronto, Ontario, M5G 1R7.

**UPON READING** the Motion Record of the Plaintiff, including the Affidavit of Stephanie De Caria sworn April 10, 2018, and the exhibits annexed thereto, and on hearing the submissions of the lawyer for the Plaintiff and of the lawyer for the Defendant and for Leah Aiello,

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion and Motion Record is hereby abridged and validated such that this Motion is properly returnable today, and further service of this Notice of Motion and Motion Record are hereby dispensed with.

2. **THIS COURT ORDERS** that the Plaintiff is hereby granted leave to examine Leah Aiello, such examination to proceed in writing.

3. **THIS COURT ORDERS** that Leah Aiello shall provide answers in writing to the questions attached hereto as Schedule "A" to the Plaintiff on or before May ~~15~~, 2018.

4. **THIS COURT ORDERS** that, to the extent not produced by the Defendant in the within action, Leah Aiello shall produce documents in her possession or control as requested in the questions attached hereto as Schedule "A" to the Plaintiff on or before May ~~15~~, 2018.

ENTERED AT / INSCRIT À TORONTO  
ON / BOOK NO:  
LE / DANS LE REGISTRE NO:

APR 18 2018

PER / PAR:

## SCHEDULE “A” - QUESTIONS FOR LEAH AIELLO<sup>1</sup>

No.	Question No.	Page No.	Specific question	Answer or precise basis for refusal	Position of Defendant at Examination
1.	030	12	To provide Leah Aiello’s address and contact information.		Under Advisement
2.	032	13	To advise on the name of the educational institution and name of the degree obtained by Leah Aiello in Holland.		Undertaking
3.	037-038	13-14	To advise whether Leah Aiello has any building, design or related certifications with respect to construction or design.		Undertaking
4.	118	37-38	To ask Leah Aiello and advise how many times she recalls attending the Property before the November 26, 2013 offer.		Undertaking
5.	126	40-41	To ask Leah Aiello if she has any photos from her visits to the Property prior to making the November 26, 2013 offer, and to provide same.		Undertaking (Best Efforts only)

<sup>1</sup> Notes:

- A. Question and page Number references are to the transcript of the examination for discovery of the Defendant David Aiello on January 25, 2018.
- B. The exhibits referenced are exhibits marked at the examination for discovery of the Defendant David Aiello on January 25, 2018. In particular, Exhibit 1 refers to the Plaintiffs Affidavit of Documents, Exhibit 2 refers to a letter provided by the Defendant from Bower Luxury Builds Inc., undated, and Exhibit 3 refers to the Defendant’s Affidavit of Documents.
- C. The term “Property” means 40 Park Lane Circle, Toronto, Ontario.
- D. The term “APS” means the agreement of purchase and sale dated November 26, 2013 between the Plaintiff and the Defendant in respect of the Property.

No.	Question No.	Page No.	Specific question	Answer or precise basis for refusal	Position of Defendant at Examination
6.	141	46	To ask Leah Aiello and advise whether Frank Serratore or anyone else from Bower Luxury Builds attended at the Property on or before November 26, 2013		Undertaking (Best Efforts only)
7.	192	64	To ask Leah Aiello if she has any notes or photographs from her attendance at the Baker Street Inspection, and if so, to produce.		Undertaking (Best Efforts only)
8.	258	88	To ask Leah Aiello whether any other pool person came through the Property (other than Mr. Ali Fohagani), and to advise when they attended and produce any report or information they provided.		Undertaking (Best Efforts only)
9.	413-147	138-138	With respect to the email at page 1016, Tab 144 of Exhibit 1, and Leah Aiello's request to attend the Property in March 2014, to ask Leah Aiello which mortgage lender she wanted to attend at the Property with.		Refusal
10.	308-309	104-105	To ask Leah Aiello what she remembers about Jeff Clarke noting in the Baker Street Inspection Report (at page 1724, Tab 187 of Exhibit 1) that there was a "repair/replace/install flashings at many faults".		Undertaking

No.	Question No.	Page No.	Specific question	Answer or precise basis for refusal	Position of Defendant at Examination
11.	311	106	To ask Leah Aiello what she remembers being told by Jeff Clarke of Baker Street regarding the condition of the roof and when she was told this information by Mr. Clarke. (See Baker Street Report, Affidavit of Documents of the Plaintiff, Tab 187, p. 1719-1743).		Refusal
12.	319 -322	110- 112	To ask Leah Aiello what repairs were required to the roof drainage system, and the checked box "replacement/installation of gutters/down pipes recommended at rear pool area" as set out in the Baker Street Inspection Report. (See Baker Street Report, Affidavit of Documents of the Plaintiff, Tab 187, p. 1719-1743).		Refusal
13.	347	119	To ask Leah Aiello what she recalls being told by Jeff Clarke of Baker Street about the condition of the basement and foundation. (See Baker Street Report, Affidavit of Documents of the Plaintiff, Tab 187, p. 1719-1743).		Refusal
14.	467 -469	160	To ask Leah Aiello how many times Leah Aiello personally attended at the Property after the November 26, 2013 Agreement of Purchase and Sale, and for each visit, to advise: (a) when the visit was; (b) who attended; (c) how long she was at the Property; (d) the purpose of the visit; (e) whether she had the permission of the receiver; and (f) if she has any documents or photos from the visit, to identify them in the productions or produce them.		Refusal

No.	Question No.	Page No.	Specific question	Answer or precise basis for refusal	Position of Defendant at Examination
15.	477 -478	163- 164	With respect to the Bower letter (marked as Exhibit 2) and the reference to an attendance at the Property on December 6, 2013, to ask Leah Aiello and advise as follows: (a) did the appointment on December 6, 2013 occur; (b) how long was the visit who was there; (c) what was the purpose of the visit; (d) and are there any documents or photos in relation to the visit, and to produce.		Refusal
16.	479	164	With respect to Leah Aiello's visit on January 22, 2014, to ask Leah Aiello and advise as follows: (a) when the visit was; (b) who attended; (c) how long she was at the Property; (d) the purpose of the visit; (e) are there any documents or photos in relation to the visit, and to produce.		Refusal
17.	483	165	With respect to Leah Aiello's visit on January 26, 2014 (at page 0613, Tab 77 of Exhibit 1), to ask Leah Aiello and advise as follows: (a) when the visit was; (b) who attended; (c) how long she was at the Property; (d) the purpose of the visit; (e) are there any documents or photos in relation to the visit, and to produce.		Refusal



No.	Question No.	Page No.	Specific question	Answer or precise basis for refusal	Position of Defendant at Examination
18.	484	165	With respect to Leah Aiello's visit on January 30, 2014 (at page 0657, Tab 86 of Exhibit 1), to ask Leah Aiello and advise as follows: (a) when the visit was; (b) who attended; (c) how long she was at the Property; (d) the purpose of the visit; (e) are there any documents or photos in relation to the visit, and to produce.		Refusal
19.	509	175	With respect to Jeff Clarke's attendance on January 31, 2014, to ask Leah Aiello if she advised the agent that the purpose of Jeff Clarke being there was to tell the trades what to do and not that it was an inspection.		Refusal
20.	535	183	To advise if there were any visits at the Property between January 31, 2014 and February 20, 2014, by Leah Aiello or anyone representing your interests, and to advise: (a) the date of the visit; (b) who attended; (c) how long they were at the Property; (d) the purpose of the visit; and (e) and whether there was any documents or photos and to produce.		Undertaking (Best Efforts only)
21.	539	184-185	With respect to Leah Aiello's visit on February 20, 2014 (at page 0894, Tab 123 of Exhibit 1), to ask Leah Aiello if it was correct that it was a seven-hour visit that was requested and ask her to provide a detailed description of the visit, including (a) when the visit was; (b) the duration of the visit; (c) who attended; (d) the purpose of the visit; and (e) to identify any documents and productions in relation to the visit.		Refusal

No.	Question No.	Page No.	Specific question	Answer or precise basis for refusal	Position of Defendant at Examination
22.	541	185	To ask Leah Aiello if the voicemail by her to Allan Rutman as transcribed at page 1091, Tab 169 of Exhibit 1 is accurate, and to advise if there is anything that is not accurate.		Refusal
23.	543-546	186-187	With respect to the visit request by Leah Aiello referred to in the transcribed voicemail at page 1091, Tab 169 of Exhibit 1, to ask Leah Aiello to confirm that she advised the receiver that that the purpose of the visit was for the contractor to attend and not to look at the condition of the building, but to let the people who were doing the floor, and the wrought iron, to come in and do the final measurements before ordering.		Refusal
24.	547	187	With respect to the visit request by Leah Aiello referred to in the transcribed voicemail at page 1091, Tab 169 of Exhibit 1, to produce any records, photos, documents or quotation material.		Refusal
25.	548	187	With respect to Leah Aiello's visit on March 11, 2014 (at page 1024, Tab 147 of Exhibit 1), to ask Leah Aiello if the purpose of the visit was to allow Harvey Margel and his clients (the potential mortgage lenders) to attend the Property.		Refusal
26.	554-555	188-189	With respect to Leah Aiello's visit on March 11, 2014 (at page 1024, Tab 147 of Exhibit 1), to advise on the names and addresses of Harvey Margel's clients (the potential mortgage lenders).		Refusal



No.	Question No.	Page No.	Specific question	Answer or precise basis for refusal	Position of Defendant at Examination
27.	554	188-189	With respect to Leah Aiello's visit on March 11, 2014, (at page 1024, Tab 147 of Exhibit 1), to provide a description of the visit and provide any documents or photographs resulted.		Refusal
28.	556	189	With respect to Leah Aiello's visit on March 12, 2014, (at page 1026, Tab 148 of Exhibit 1), to ask Leah Aiello and advise as follows: (a) when the visit was; (b) who attended; (c) how long she was at the Property; (d) the purpose of the visit; (e) are there any documents or photos in relation to the visit, and to produce.		Refusal
29.	557-558	189-190	With respect to Leah Aiello's visit on March 21 2014, (at page 1035, Tab 151 of Exhibit 1), to ask Leah Aiello and advise as follows: (a) when the visit was; (b) who attended; (c) how long she was at the Property; (d) the purpose of the visit; (e) are there any documents or photos in relation to the visit, and to produce; and (f) if there are any other information, quotes, inspection reports or documents of any description in relation to the visit.		Refusal
30.	561	191	With respect to Leah Aiello's visit on April 1, 2014, page 1064, Tab 159 of Exhibit 1, to ask Leah Aiello and advise as follows: (a) when the visit was; (b) who attended; (c) how long she was at the Property; (d) the purpose of the visit; and (e) are there any documents or photos in relation to the visit, and to produce.		Refusal

No.	Question No.	Page No.	Specific question	Answer or precise basis for refusal	Position of Defendant at Examination
31.	574	197	With respect to visit request by Leah Aiello (at page 1101, Tab 172 of Exhibit 1), to ask Leah Aiello if its accurate that she asked to visit the Property and whether she asked Saul to be at the Property, that she wanted to the water to be turned on, that she advised that an electrical contractor was coming, and that she was planning to have a mold expert attend to check three spots, where the leak at the garage lite, the fireplace over the garage and the lower level closet.		Refusal
32.	576	198	To ask Leah Aiello if what is set out in the message from Sharon Bobkin to Barry Cohen (at page 1101, Tab 172 of Exhibit 1) is accurate, and if not, to advise what is not accurate.		Refusal
33.	580	199	With respect to visit request by Leah Aiello (at page 1101, Tab 172 of Exhibit 1), to ask Leah Aiello if at that point in time, her concern was to check the three spots, which were a leak at the garage door lite, the fireplace over the garage, and the lower level closet.		Refusal
34.	634	212	To ask Leah Aiello what discussions she had with Charles Ghanime of Moldtech, or anyone else at Moldtech, in advance of the letter from Moldtech dated May 29 2014 letter (at page A0041, Tab 52 of Exhibit 3).		Under Advisement

No.	Question No.	Page No.	Specific question	Answer or precise basis for refusal	Position of Defendant at Examination
35.	635	212-213	To check whether there was any written communication between Leah Aiello with Moldtech, and if there is, to produce.		Under Advisement
36.	638-642	213-214	Provide copies of images provided to MoldTech by Ms. Aiello. (See Exhibit 3, Tab 52).		Undertaking
37.	765	249	To ask Leah Aiello to provide any photos taken by her at any time of the Property, and to identify them by date.		Under Advisement
38.	Additional		To ask Leah Aiello if it was her understanding, desire and/or intention that the purchase of the Property would be completed by her husband David Aiello as of March 28, 2014. If this is not accurate, what was her understanding, desire and/or intention in respect of Property as of March 28, 2014. (See Exhibit 1, Tab 162)		Additional Question
39.	Additional		To ask Leah Aiello if she was continuing to arrange for contractors to attend at the property on behalf of herself and her husband David Aiello as of April 1, 2014. If this is not accurate, what was her understanding, desire and/or intention in respect of Property as of March 28, 2014. (See Exhibit 1, Tab 164)		Additional Question
40.	Additional		To ask Leah Aiello if it was her understanding that should the purchase of the Property complete in accordance with the APS that title to the Property was going to be held jointly in the name of Leah Aiello and David Aiello.		Additional Question

No.	Question No.	Page No.	Specific question	Answer or precise basis for refusal	Position of Defendant at Examination
41.	Additional		<p>As of April 7, 2014, ask Leah Aiello if she was continuing to seek to arrange for contractors to attend at the property on behalf of herself and her husband David Aiello as of April 7, 2014. If so, were these arrangements being made since Leah Aiello still understood that her husband David Aiello would be completing the purchase of the Property? If not, what was the purpose of seeking to arrange contractors to attend at the Property?</p> <p>(See transcribed voicemail at page 1091, Tab 169 of Exhibit 1)</p>		Additional Question
42.	Additional		<p>To ask Leah Aiello if the voicemail by her to Allan Rutman as transcribed at page 1099, Tab 171 of Exhibit 1 is accurate, and to advise if there is anything that is not accurate. Please confirm that this message was left by her on April 7, 2014 at about 12:07 p.m.</p>		Additional Question
43.	Additional		<p>As of April 7, 2014, did Leah Aiello still understand that her husband David Aiello would be completing the purchase of the Property? If not, what was the purpose of her message at page 1099, Tab 171 of Exhibit 1?</p>		Additional Question

No.	Question No.	Page No.	Specific question	Answer or precise basis for refusal	Position of Defendant at Examination
44.	Additional		To ask Leah Aiello the content of her message (transcribed at page 1099, Tab 171 of Exhibit 1) was to tell Allan Rutman that she told her husband David Aiello to call their lawyer Anthony Antonin and tell their lawyer Anthony Antonin to provide the Receiver with comfort that the purchase of the Property would be closed by David Aiello. If not, what was the “comfort level” being referred to? If not, what message was she trying to convey?		Additional Question
45.	Additional		To ask Leah Aiello when she learned that her husband David Aiello would not be completing the purchase of the Property? Provide detail of what she recalls in relation to the purchase of the Property not proceeding, including who she spoke to, any correspondence and the reason that the purchase was not proceeding.		Additional Question
46.	Additional		Please provide details of any discussions or correspondence that Leah Aiello had with the Receiver or its representatives in respect of the purchase of the Property potentially not completing at any time in the period up to and including April 11, 2014. Please provide any documents in Leah Aiello’s possession or control in that regard.		Additional Question

No.	Question No.	Page No.	Specific question	Answer or precise basis for refusal	Position of Defendant at Examination
47.	Additional		At any time in the period from April to June, 2014 after the APS was terminated, did you continue to pursue purchase of the Property by you and/or your husband David Aiello? Provide detail of what she recalls in relation to pursuing the purchase of the Property, including who she spoke to, any correspondence in that regard. Please provide any documents in Leah Aiello's possession or control in that regard.		Additional Question



ZEIFMAN PARTNERS INC.,  
IN ITS CAPACITY AS RECEIVER OF THE PROPERTY  
KNOWN MUNICIPALLY AS 40 PARK LANE CIRCLE

and DAVID AIELLO  
  
Plaintiff Defendant

Court File No.: CV-15-11148-00CL

**ONTARIO  
SUPERIOR COURT OF JUSTICE -  
COMMERCIAL LIST**

Proceeding commenced at Toronto

**ORDER**

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