

ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)

BETWEEN:

**ICICI BANK CANADA**

Applicant

-and-

**BAYSIDE MALL LIMITED**

Respondent

**SECOND SUPPLEMENT TO THE FIRST REPORT OF THE COURT  
APPOINTED RECEIVER  
OF BAYSIDE MALL LIMITED**

**Dated February 28, 2013**

**Purpose of this Report**

The Purpose of this Second Supplement to the First Report of A. John Page & Associates Inc. in its capacity as Court Appointed Receiver of Bayside Mall Limited dated January 28, 2013 (“**the First Report**”) is to provide the court with an update of certain information provided in the First Report and the Supplement to the First Report dated February 12, 2013 (“**the Supplement to the First Report**”) relating to:

- The collection of rents for December 2012 by SAMAK

All capitalized terms used herein and not otherwise defined are as defined in the First Report or the Supplement to the First Report.

**December 2012 Rent Cheques**

SAMAK collected approximately \$154,000 of the December 2012 tenant rent payments

(“**the December Rents**”) prior to our appointment as Receiver on December 5, 2012. Further details relating to the December Rents are set down in the Supplement to the First Report.

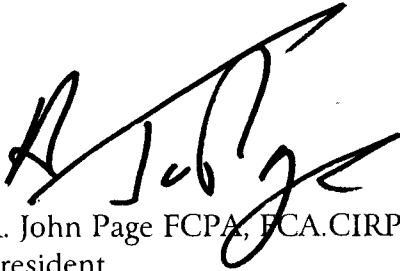
By order of the Honourable Mr. Justice Wilton-Siegel dated February 21, 2013 (“**the February 21, 2013 Order**”) SAMAK was ordered to remit the December Rents in its possession or control up to a maximum of \$155,850.93 to either Feige Nawrocki LLP or Wildeboer Dellelce LLP to be held in trust pending further order of the court. A copy of the February 21, 2013 Order is attached as *Exhibit “A”*. Counsel for SAMAK consented to this term of the February 21, 2013 Order. Prior to the parties agreeing to this term, counsel for SAMAK informed the Receiver that he understood that SAMAK had approximately \$140,000 in its possession. We had previously been informed that SAMAK was insolvent and was contemplating assigning itself into bankruptcy.

Our counsel, Heath Whiteley, wrote to Wildeboer Dellelce LLP on February 21, 2013 and to Feige Nawrocki LLP on February 22, 2013 to enquire as to whether either of them had received any funds from SAMAK in compliance with the February 21, 2013 Order. By email dated February 25, 2013 Mr. Apps of Wildeboer Dellelce LLP indicated that they had not been forwarded any funds from SAMAK nor were they expecting to. By email dated February 26, 2013 Eric Feige of Feige Nawrocki LLP indicated that they had not received any funds from SAMAK. We are unaware of any funds having been paid by SAMAK to either Feige Nawrocki LLP or Wildeboer Dellelce LLP since the time of those emails. We attach as *Exhibit “B”* copies of the applicable emails.

Page 3  
Second Supplement to the First Report to the Court  
February 28, 2013

All of which is respectfully submitted this 28th day of February, 2013

A. JOHN PAGE & ASSOCIATES INC.  
COURT APPOINTED RECEIVER OF BAYSIDE MALL LIMITED  
per:

A handwritten signature in black ink, appearing to read 'A. John Page', written over a horizontal line.

A. John Page FCPA, FCA, CIRP  
President

**Exhibits to the Second Supplement to the First Report of A. John Page &  
Associates Inc.  
as Court Appointed Receiver of Bayside Mall Limited  
dated February 28, 2013**

The February 21, 2013 Order A

Emails pertaining to the non payment of funds by SAMAK B



**Exhibit "A"**

**Second Supplement to the First Report  
of A. John Page & Associates Inc.  
Court Appointed Receiver of Bayside Mall Limited  
Dated February 28, 2013**

**The February 21, 2013 Order**

**ONTARIO**

**SUPERIOR COURT OF JUSTICE**

**COMMERCIAL LIST**

THE HONOURABLE MR. ) THURSDAY, THE 21<sup>st</sup> DAY  
 )  
JUSTICE WILTON-SIEGEL ) OF FEBRUARY, 2013



**ICICI BANK CANADA**

Applicant

- and -

**BAYSIDE MALL LIMITED**

Respondent

**ORDER**

**THIS MOTION**, made by the court-appointed Receiver, A. John Page & Associates Inc., for an Order approving the activities of the Receiver to date (as detailed in the First Report of the Receiver and the Supplement thereto) and the fees and expenses of the Receiver and its counsel, and such further and other relief as to this Honourable Court may seem just, was heard this day at 330 University Avenue, Toronto, Ontario.

**ON READING** the Notice of Motion, the First Report of the Receiver dated January 28, 2013 (the "**First Report**"), the Supplement to the First Report of the Receiver dated February 12, 2013 (the "**Supplement to the First Report**"), and the affidavits of A. John Page sworn January 22 and February 6, 2013 (the "**Receiver's Fee Affidavits**"), Heath Whiteley sworn February 19, 2013 (the "**Whiteley Fee Affidavit**") and Jonathan Wigley sworn January 23, 2013 (the "**Wigley Fee Affidavit**") and on hearing the submissions of the lawyer(s) present on the motion, all parties per the

service list on the notice of motion having been served as appears from the affidavit of Heath Whiteley sworn February 19, 2013.

1. THIS COURT ORDERS that the activities of the Receiver to date as set out in the First Report and the Supplement to the First Report are hereby approved.
2. THIS COURT ORDERS that the receipts and disbursements of the Receiver as set forth in the Statement of Receipts and Disbursements contained in the Supplement to the First Report be and the same are hereby approved.
3. THIS COURT ORDERS AND DIRECTS SAMAK Management & Construction Inc. ("**SAMAK**") to remit such funds in its possession or control up to a maximum of \$155,850.93, being the amount of rent collected from tenants of the respondent, Bayside Mall Limited by SAMAK for the month of December, 2012 to either Feige Nawrocki LLP or Wildeboer Dellelce LLP to be held in trust pending further order of this court, and without prejudice to the rights of: (i) the Receiver; and (ii) SAMAK, creditors of SAMAK or any trustee in bankruptcy of SAMAK.
4. THIS COURT ORDERS that the fees of the Receiver for the period ending January 31, 2013 in the amount of \$89,750.15 plus applicable GST/HST as set forth in the Receiver's Fee Affidavit are hereby approved and allowed.
5. THIS COURT ORDERS that the fees of the Receiver's counsel for the period ending January 31, 2013 in the amount of \$16,400.00 plus applicable GST/HST as set forth in the Whiteley Fee Affidavit are hereby approved and allowed.
6. THIS COURT ORDERS that the fees of the Receiver's independent counsel for the period ending December 31, 2012 in the amount of \$1,894.00 plus applicable GST/HST as set forth in the Wigley Fee Affidavit are hereby approved and allowed.

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



FEB 21 2013

*W. Heath Whiteley*

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Exhibit "B"

**Second Supplement to the First Report  
of A. John Page & Associates Inc.  
Court Appointed Receiver of Bayside Mall Limited  
Dated February 28, 2013**

**Emails pertaining to the non payment  
of funds by SAMAK**



**A. John Page**

---

**From:** "Heath Whiteley" <heath@whiteleylitigation.com>  
**To:** <aapps@wildlaw.ca>; <jwigley@gardiner-roberts.com>  
**Cc:** "A. John Page" <ajpage@ajohnpage.com>  
**Sent:** February 21, 2013 5:27 PM  
**Attach:** SCAN0136.JPG; SCAN0137.JPG; SCAN0138.JPG; SCAN0139.JPG; SCAN0140.JPG  
**Subject:** Bayside Mall and Brockville

Gentlemen,

Further to our attendance at court today, I attach:

- the issued and entered Order of Justice Wilton-Siegel in the Bayside Mall receivership;
- the endorsement of Justice Wilton-Siegel in the Bayside Mall receivership; and
- the endorsement of Justice Wilton-Siegel in the Brockville receivership.

Alfred, please provide the particulars of the payment (i.e. quantum and recipient) required by paragraph 3 of the Order.

Regards,

**Heath P.L. Whiteley**  
Lawyer  
905-773-7700  
[heath@whiteleylitigation.com](mailto:heath@whiteleylitigation.com)

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## A. John Page

---

**From:** "Heath Whiteley" <heath@whiteleylitigation.com>  
**To:** "Alfred Apps" <aapps@wildlaw.ca>  
**Cc:** <nawrocki@fnlawyers.com>; <jen@fnlawyers.com>; <ajpage@ajohnpage.com>  
**Sent:** February 25, 2013 11:27 AM  
**Subject:** RE: Bayside Mall

Alfred,

Thank you for confirming that your firm has not received any funds from SAMAK since the Order was made.

I look forward to hearing from Mr. Nawrocki.

Regards,

**Heath P.L. Whiteley**  
 Lawyer  
 905-773-7700  
[heath@whiteleylitigation.com](mailto:heath@whiteleylitigation.com)

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**From:** Alfred Apps [aapps@wildlaw.ca]  
**Sent:** Monday, February 25, 2013 11:18 AM  
**To:** Heath Whiteley  
**Cc:** 'nawrocki@fnlawyers.com'; 'jen@fnlawyers.com'; 'ajpage@ajohnpage.com'  
**Subject:** Re: Bayside Mall

Heath:

As you know and as I have advised, I met with Mr. Khalid and provided him with a copy of the Order of Mr. Justice Wilton Siegel on Thursday, following our appearance in Chambers. I have no update and our firm has not been forwarded any funds from Samak for deposit into trust since the Order was made. Nor am I currently expecting any such funds.

I have strongly encouraged Mr. Khalid to deal with Feige Nawrocki LLP in respect of the bankruptcy of Samak and compliance with the Order in question.

Alfred Apps

Alfred Apps  
 WILDEBOER DELLELCE LLP  
 Suite 800 | Wildeboer Dellelce Place  
 365 Bay Street, Toronto, ON M5H 2V1  
 T 416 361 6211 | F 416 361 1790 | aapps@wildlaw.ca

**From:** Heath Whiteley [mailto:heath@whiteleylitigation.com]  
**Sent:** Monday, February 25, 2013 10:59 AM

**To:** Alfred Apps  
**Cc:** nawrocki@fnlawyers.com <nawrocki@fnlawyers.com>; jen@fnlawyers.com <jen@fnlawyers.com>; A. John Page <ajpage@ajohnpage.com>  
**Subject:** FW: Bayside Mall

Alfred,

I write further to your email sent Thursday at 5:38 p.m. and my email below to Mr. Nawrocki (in respect of which I have yet to receive a response).

Please advise whether your firm has received any funds from SAMAK in accordance with paragraph 3 of the Order of Justice Wilton-Siegel issued February 21st. If it has, please advise of the quantum.

Regards,

**Heath P.L. Whiteley**  
Lawyer  
905-773-7700  
[heath@whiteleylitigation.com](mailto:heath@whiteleylitigation.com)

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**From:** Heath Whiteley  
**Sent:** Friday, February 22, 2013 11:56 AM  
**To:** nawrocki@fnlawyers.com  
**Cc:** aapps@wildlaw.ca; A. John Page  
**Subject:** Bayside Mall

Mr. Nawrocki,

I am counsel to the Receiver of Bayside Mall Limited.

Alfred Apps informs me that you are advising Malik Khalid.

Please find attached the issued and entered Order of Mr. Justice Wilton-Siegel issued yesterday in the Bayside Mall receivership, along with his Honour's endorsement in connection with this Order.

Please advise whether your firm is agreeable to holding the funds required by paragraph 3 of the Order to be paid by SAMAK Management & Construction Inc. If it is, please advise of the quantum paid to and held by your firm in this regard.

I look forward to your earliest response hereto.

Regards,

**Heath P.L. Whiteley**  
Lawyer  
905-773-7700  
[heath@whiteleylitigation.com](mailto:heath@whiteleylitigation.com)

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prohibited. If you have received this communication in error, please notify the sender immediately at the contact information in the email signature. Thank you.

## A. John Page

---

**From:** "Heath Whiteley" <heath@whiteleylitigation.com>  
**To:** "A. John Page" <ajpage@ajohnpage.com>  
**Cc:** <lionel.meunier@icicibank.com>; <meunier.lionel@gmail.com>  
**Sent:** February 26, 2013 4:32 PM  
**Subject:** FW: Bayside Mall

John,

As disclosed below, SAMAK has not remitted funds to Feige Nawrocki LLP.

We should discuss scheduling a 9:30 chambers appointment to address SAMAK's breach of the Order.

Regards,

**Heath P.L. Whiteley**  
 Lawyer  
 905-773-7700  
[heath@whiteleylitigation.com](mailto:heath@whiteleylitigation.com)

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**From:** Eric Feige [feige@fnlawyers.com]  
**Sent:** Tuesday, February 26, 2013 2:24 PM  
**To:** Heath Whiteley  
**Cc:** aapps@wildlaw.ca; Julian Nawrocki  
**Subject:** Bayside Mall

Heath, your e-mail to Julian Nawrocki was passed along to me. Julian is currently overseas, but in any event, is not involved in this matter. I have now read the order of Wilton-Siegel J., dated Feb. 21, 2013.

We have not received any funds from Samak Management or anyone else in connection with this matter.

*R. Eric Feige*

**Feige Nawrocki LLP**  
 Barristers & Solicitors  
 3300 - 130 Adelaide Street West  
 Toronto, Ontario  
 CANADA M5H 3P5

Tel.: 416-366-8833, Ext. 211  
 Fax: 416-366-3992

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**A. John Page**

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**From:** "Heath Whiteley" <heath@whiteleylitigation.com>  
**To:** <nawrocki@fnlawyers.com>  
**Cc:** <aapps@wildlaw.ca>; "A. John Page" <ajpage@ajohnpage.com>  
**Sent:** February 22, 2013 11:56 AM  
**Attach:** SCAN0136.JPG; SCAN0137.JPG; SCAN0138.JPG; SCAN0139.JPG  
**Subject:** Bayside Mail

Mr. Nawrocki,

I am counsel to the Receiver of Bayside Mail Limited.

Alfred Apps informs me that you are advising Malik Khalid.

Please find attached the issued and entered Order of Mr. Justice Wilton-Siegel issued yesterday in the Bayside Mall receivership, along with his Honour's endorsement in connection with this Order.

Please advise whether your firm is agreeable to holding the funds required by paragraph 3 of the Order to be paid by SAMAK Management & Construction Inc. If it is, please advise of the quantum paid to and held by your firm in this regard.

I look forward to your earliest response hereto.

Regards,

**Heath P.L. Whiteley**  
Lawyer  
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[heath@whiteleylitigation.com](mailto:heath@whiteleylitigation.com)

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1 2 3  
2 3 4

**A. John Page**

---

**From:** "Heath Whiteley" <heath@whiteleylitigation.com>  
**To:** "A. John Page" <ajpage@ajohnpage.com>  
**Sent:** February 27, 2013 9:22 AM  
**Subject:** FW: Bayside Mall

FYI.

**Heath P.L. Whiteley**  
Lawyer  
905-773-7700  
[heath@whiteleylitigation.com](mailto:heath@whiteleylitigation.com)

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**From:** Alfred Apps [aapps@wildlaw.ca]  
**Sent:** Wednesday, February 27, 2013 9:13 AM  
**To:** Heath Whiteley  
**Cc:** Julian Nawrocki; Eric Feige  
**Subject:** RE: Bayside Mall

Heath:

Thank you for your email. I will have to consult with Mr. Kahlid as to whether I am still acting for Samak in any respect. It is my understanding that Samak is in the process of being bankrupted (although I am not acting or advising in relation to that) which may resolve the matter from my perspective. I will revert today.

Alfred

**From:** Heath Whiteley [mailto:heath@whiteleylitigation.com]  
**Sent:** February-27-13 9:06 AM  
**To:** Eric Feige  
**Cc:** Alfred Apps; Julian Nawrocki  
**Subject:** RE: Bayside Mall

Alfred,

In light of the apparent failure of SAMAK to comply with paragraph 3 of the Order dated February 21, 2013, I will be arranging a 9:30 chambers appointment before Justice Wilton-Siegel to address same. Please advise whether there are any dates next week that you are not available.

Regards,

**Heath P.L. Whiteley**

Lawyer  
905-773-7700  
[heath@whiteleylitigation.com](mailto:heath@whiteleylitigation.com)

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**From:** Eric Feige [feige@fnlawyers.com]  
**Sent:** Tuesday, February 26, 2013 2:24 PM  
**To:** Heath Whiteley  
**Cc:** [aapps@wildlaw.ca](mailto:aapps@wildlaw.ca); Julian Nawrocki  
**Subject:** Bayside Mall

Heath, your e-mail to Julian Nawrocki was passed along to me. Julian is currently overseas, but in any event, is not involved in this matter. I have now read the order of Wilton-Siegel J., dated Feb. 21, 2013.

We have not received any funds from Samak Management or anyone else in connection with this matter.

*R. Eric Feige*

**Feige Nawrocki LLP**  
Barristers & Solicitors  
3300 - 130 Adelaide Street West  
Toronto, Ontario  
CANADA M5H 3P5

Tel.: 416-366-8833, Ext. 211  
Fax: 416-366-3992

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