

CITATION: *Slightham et al. v. AGC*, 2023 ONSC 6193
COURT FILE NO.: CV-23-00694309-00CL
DATE: 20231107

ONTARIO – SUPERIOR COURT OF JUSTICE – COMMERCIAL LIST

BETWEEN:)
)
JEFFREY SLIGHTHAM, CHRISTOPHER) *Douglas B. B. Stewart, Jacob Yau and*
SLIGHTHAM and WENDY SLIGHTHAM) *Caroline Harrell, for the Applicants*
Trustees of the Jeffrey Slightham 2010)
Family Trust and of the Christopher)
Slightham 2010 Family Trust)
)
Applicants)
)
AND)
)
THE ATTORNEY GENERAL OF)
CANADA)
)
Respondent)
)
)
) **HEARD:** February 8, 2023

OSBORNE J.

REASONS FOR DECISION

1. The Applicants seek rectification of various sections of certain trust deeds relating to their family trusts, *nunc pro tunc*, for all purposes from the date of the settlement of the trusts forward.

The Parties and their Positions on the Application

2. The Applicants are Jeffrey Slightham, Christopher Slightham and Wendy Slightham, in their respective capacities as Trustees (collectively, “the Trustees”) of the Jeffrey Slightham 2010 Family Trust (the “Jeffrey Trust”) and the Christopher Slightham 2010 Family Trust (the “Christopher Trust”).

3. For convenience and given the commonality of surname, I will refer to the Applicants collectively as such or, where individual reference is required, by their respective first names.
4. The Respondent, the Attorney General of Canada (on behalf of the Canada Revenue Agency (“CRA”)), does not oppose the relief sought on this Application.

The Trust Deeds, the Drafting Mistake, and the Rectification Sought by the Applicants

5. As described in detail below, the Applicants seek an order rectifying sections 4.1, 4.2, 4.3 and 5.1 of the Jeffrey Trust and the Christopher Trust (collectively, “the Trusts”), to delete the inadvertent inclusion of five words, the effect of which is to prohibit the Trustees of the Trusts from distributing dividends received from a family operating company, Signature Realty Inc. (“Signature”), to the corporate beneficiary of the Trusts, 2267134 Ontario Inc. (“Holdco.”).
6. The nature and effect of the rectification sought is illustrated clearly in the table found in the Notice of Application, which is set out at Appendix “A” hereto and which forms part of these Reasons.
7. The Applicants reorganized their shareholdings of Signature in 2010 to implement an estate freeze and enable Signature to pay or reduce surplus assets in a tax-efficient manner (the “Reorganization”). One step in the Reorganization involved designating a new entity, Holdco, as a beneficiary of the Trusts.
8. The Trust Deeds were drafted specifically in contemplation of the potential application of s. 75(2) of the *Income Tax Act*, R.S.C. 1985, c. 1 (5th Supp.) (the “*ITA*”). That section, commonly referred to as the “Attribution Rule”, generally applies where amounts received from a beneficiary of a trust may be paid out to that beneficiary.
9. To ensure against inadvertent triggering of the Application Rule (i.e., by paying out to Holdco amounts that were received from Holdco), the Trust Deeds were drafted to provide that Holdco would not be entitled to receive any income or capital derived from itself.
10. However, in the preparation of the documents, a drafting error, inconsistent with the intentions of the parties, was made and a reference to the entity “Signature” was mistakenly added as one of the parties from which Holdco could not receive income or capital.
11. The mistake was not discovered until several years later, when Signature paid dividends to the Trusts, which in turn distributed those dividends to its beneficiary Holdco. Holdco in turn then attempted to claim the intercorporate dividend deduction on the amount received as permitted pursuant to s.112(1) of the *ITA*.
12. The CRA reassessed the Trusts on the basis that the Trust Deeds prohibited the distribution of dividends received from Signature to Holdco, with the result that the Trusts were subject to tax on the dividends received from Signature.
13. The Applicants submit that such a result was contrary to the original and consistent agreement and intention of the parties, and now seek rectification to fix the drafting mistake.

The Test for Rectification

14. The Supreme Court of Canada has addressed the requirements for rectification in such circumstances: see *Canada (Attorney General) v. Fairmont Hotels Inc.*, 2016 SCC 56, [2016] 2 S.C.R. 720 (“*Fairmont*”), at paras. 14 and 38. It set out four requirements that must be satisfied:
 - a. the parties had reached a prior agreement whose terms are definite and ascertainable;
 - b. the agreement was still effective when the instrument was executed;
 - c. the instrument failed to record accurately that prior agreement; and
 - d. if rectified as proposed, the instrument would carry out the agreement.
15. Rectification is a discretionary and equitable remedy. This Court has the discretion pursuant to section 96 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43 to grant such a remedy where appropriate.
16. As observed by the Supreme Court, rectification allows a court to “achieve correspondence between the parties’ agreement and the substance of the legal instrument intended to record that agreement, when there is a discrepancy between the two.” Its purpose is to give effect to the true intentions of the parties where, for example, a term of a legal instrument incorrectly expresses the parties’ agreement, rather than to give effect to an “erroneous transcription” of those true intentions: *Fairmont*, at para. 12.
17. The party or parties seeking rectification, in this case the Applicants, bear the onus of establishing, with evidence that is sufficiently clear, convincing and cogent, that the true substance of their unilateral intention or agreement with another party was not accurately recorded in the instrument to which they nonetheless subscribed: *Fairmont*, at para. 36.
18. Rectification is intended to correct documents that erroneously fail to accurately record a clear and unequivocal agreement. It is not available to amend the bargain, in the sense of amending to fix “errors of judgment” in that antecedent agreement: *Fairmont*, at paras. 3 and 13.
19. Rectification can be available even if it would have the effect of allowing a party to avoid adverse tax consequences, provided that the above requirements for rectification are met: *Fairmont* at para. 25. Courts have granted rectification in tax cases subsequent to *Fairmont*. (See, for example, *5551928 Manitoba Ltd. v. Canada (Attorney General)*, 2018 BCSC 1482, D.T.C. 5102, aff’d 2019 BCCA 376, 30 B.C.L.R. (6th) 215 and *Sleep Country Canada Holdings Inc. and Sleep Country Canada Inc. v. Attorney General of Canada*, 2022 ONSC 6103 (“*Sleep Country*”).
20. Rectification will not be granted to implement retroactive tax planning, and parties cannot subsequently amend tax arrangements or agreements previously entered into, in order to prevent unintended negative tax consequences: *Canada (Attorney General) v. Collins Family*

Trust, 2022 SCC 26, 471 D.L.R. (4th) 1 (“*Collins*”). As observed by the majority of the Court in *Collins*: “[t]axpayers should be taxed based on what they actually agreed to do and did, and not on what they could have done or later wish they had done” (at para. 1).

21. *Fairmont* and *Collins* are discussed further below in the context of my analysis as to why, in my view, what is sought to be achieved in the present case is distinguishable from the objectives of the applicants in those cases.

Analysis

22. For the reasons set out below, I am satisfied that this is an appropriate case for the exercise of the Court’s equitable jurisdiction to grant rectification.
23. The record on which the Applicants rely is comprehensive. It includes affidavits from each of the individuals from whom a court that is being asked to grant rectification in circumstances such as these would expect to see evidence:
- a. the three Trustees, being Jeffrey, Christopher and Wendy;
 - b. Gordon Edward Slightham, the original settlor of the Trusts and the father of Jeffrey and Christopher;
 - c. the tax lawyer at the firm of solicitors who drafted the Trust Deeds sought to be rectified or under whose supervision the Trust Deeds and other Reorganization documents were drafted;
 - d. the former partner (now retired) in the trusts group at the firm of solicitors who drafted the documents who was involved in the preparation of the Trust Deeds and other Reorganization documents; and
 - e. the Chartered Professional Accountant and Certified General Accountant who has provided accounting services to the Slightham family and their corporations since 1995 (including Signature, Holdco and the Trusts) and who provided advice with respect to the Reorganization.

The Reorganization and the Intention of the Parties

24. In 2010, Jeffrey and Christopher retained the firm of tax lawyers to assist with the Reorganization that involved their shareholdings and those of their mother, Wendy, in Signature, and the settlement of the two Trusts.
25. In particular, they discussed executing an estate freeze whereby the present value of the common shares of Signature held by Jeffrey, Christopher and Wendy would be “frozen” by exchanging these shares for fixed-value, preferred shares of Signature. Following this exchange, the Trusts would be settled for the benefit of Christopher and Jeffrey and their families and would subscribe for new Signature common shares so that any future growth would accrue to the shares held by the Trusts.

26. Early draft closing agendas were emailed to Christopher and Jeffrey from the tax lawyer. They included the proposed Reorganization steps. Pursuant to Closing Agenda V3, for example, Jeffrey, Christopher and Wendy would sell their Signature common shares to a newly incorporated company, Holdco, in exchange for shares of Holdco. In this early draft of Closing Agenda V3, Holdco would be owned by the individuals and was not a beneficiary of the Trusts.
27. In 2010, the lawyer, Jeffrey, and Christopher discussed the possibility of a future sale of Signature. With this in mind, they discussed modifying the proposed Reorganization steps so that, *inter alia*, Christopher and Jeffrey could qualify for an exemption under the *ITA* on a future sale of their shares of Signature, commonly referred to as the lifetime capital gains exemption (“LCGE”).
28. Generally, the LCGE may exempt from tax up to \$890,000 of proceeds received on a sale of the shares of certain qualifying corporations. One of the requirements for the LCGE to apply is that, at the time of the sale, all or substantially all of the fair market value of the corporation’s assets must be used principally in an active business carried on primarily in Canada (the “90% Test”). The phrase “all or substantially all” is generally considered to mean 90% or more.
29. A corporation that has surplus assets (such as excess cash) or property not used in an active business (such as portfolio investments) that exceed 10% of the total fair market value of the corporation’s assets may fail the 90% Test. Therefore, in order to meet the 90% Test at the time of sale, a corporation may reduce its surplus assets, such as by paying excess cash in the form of bonuses or dividends.
30. The Reorganization resulted in a tax-efficient structure to enable the shares of Signature to meet the 90% Test. In particular, Signature’s excess assets could be reduced by paying a dividend to the Trusts, which in turn could distribute such dividends to Holdco on a tax-free basis. The dividend received by Holdco could then be deducted from its income pursuant to subsection 112(1) of the *ITA*, which generally permits a corporation to deduct a dividend received from another Canadian corporation, in order to avoid double taxation on previously taxed income.
31. The steps required to achieve this included the addition of Holdco as a beneficiary of each of the Trusts, and having the Trusts own the common shares of Holdco.
32. The intention of the tax lawyers drafting the Trust Deeds on behalf of the Applicants and consistent with the Applicants’ intentions, was that, as a result of Holdco becoming a beneficiary of the Trusts, the documents would contain a provision prohibiting the Trusts from distributing to Holdco *qua* beneficiary any amounts that the Trusts had received from Holdco. That prohibition was intended with specific contemplation of the potential impact of subsection 75(2) of the *ITA* (the Attribution Rule).

The Drafting Mistake, the Dividends and the CRA Reassessments

33. In error, sections 4.1, 4.2, 4.3 and 5.1 of the Trust Deeds (the provisions that set out the rules on distribution of income or capital of the Trusts to the beneficiaries) not only prohibited the Trusts from paying dividends of Holdco back to Holdco, but they also prohibited the Trusts from paying to Holdco any dividends received from Signature.

34. The inadvertent inclusion of the reference to Signature went unnoticed and as a result was carried through into subsequent versions of the Trust Deeds, including the final executed versions as part of the Reorganization implemented in December 2010.
35. As intended by the structure resulting from the Reorganization, in 2017 Signature paid dividends to each of the Trusts, which paid those dividends to Holdco. The Trusts and Holdco each deducted those dividends for income tax purposes as permitted by the *ITA*.
36. The CRA subsequently denied the deductions. Tax counsel proposed to correct the error by amending the Trust Deeds *nunc pro tunc*. The CRA took the position that the provisions of the Trust Deeds must be applied as they were in force at the time of the transactions unless an amendment was permitted by court order. Notices of Reassessment followed, in response to which Applicants filed Notices of Objection and advised the CRA that this Application for rectification would be brought. The Applicants submitted that, if the Application succeeded, the objections ought to be allowed.
37. In my view, all four elements of the *Fairmont* test are satisfied here.
38. First, the evidence is clear that there was a prior agreement, the terms of which are definite and ascertainable. The parties to the Reorganization agreed from the outset and always intended to permit the Trustees of the Trusts to allocate dividends received from Signature to Holdco.
39. From the time of the discussion in 2010 referred to above and at all times thereafter, Christopher and the tax lawyer together and unanimously expressed an intention to organize the Signature shareholdings to enable Signature to reduce its surplus assets in a tax efficient manner by allocating dividends received by the Trusts from signature to Holdco. Each of them intended that the Reorganization would give effect to this and each of them also mistakenly thought that it had done so. That intention is fundamentally inconsistent with the effect of the inclusion of the reference to Signature in the relevant provisions of the Trust Deeds.
40. The evidence to this effect is clear, consistent, and tendered from all of the parties and all of their advisors involved in the Reorganization. It is corroborated by the contemporaneously created documents and also by the subsequent conduct, again of the parties themselves as well as their advisors.
41. The Settlor of both Trusts, Gordon Slightham, stated in his affidavit that he would not have settled the Trust that he had known the documents did not accord with the plan designed by the family's tax lawyers.
42. Each of Christopher, Jeffrey and Wendy swore in their affidavits that they would not have executed the documents to implement the Reorganization, nor would they have agreed to pay the dividends received from Signature to Holdco, had they known the documents implementing the Reorganization did not accord with the plan prepared by their tax lawyers.

43. The chartered accountant for the family and its holdings similarly stated in her affidavit that in November 2017, the tax lawyer told her the structure allowed for dividends to flow from Signature to the Trusts and up to Holdco on a tax-free basis.
44. The now-retired former tax lawyer stated in her affidavit that the inclusion of the reference to “Signature” in the Trust Deeds was entirely inadvertent and inconsistent with the intention of the Applicants in planning and implementing the Reorganization, all as set out in the closing agenda.
45. The contemporaneously created documents are to the same effect. They include, for example, Closing Agenda V4, which sets out the Reorganization steps and demonstrates that the agreement of the Applicants was not to restrict the Trusts from being able to pay amounts derived from Signature to Holdco. Closing Agenda V4 states clearly that Holdco would not be entitled to receive any amounts received by either of the two Trusts from Hold Co. Conversely, there is no mention of such a prohibition where amounts are to be received from Signature. All subsequent versions of the closing agendas are to the same effect.
46. I am reinforced in my findings by the subsequent conduct of the Applicants and of their professional advisors. All of that demonstrates that the prior agreement was not to restrict the Trusts from being able to pay amounts derived from Signature to Holdco. For example, both Jeffrey and Christopher attempted to pay the dividends received from Signature to Holdco and both understood that such payments were permitted. Their accountant prepared and filed the T3 tax returns for the Trusts for the 2017 taxation year, claiming in each case deductions permitted under paragraph 104(6)(b) of the *ITA* in connection with the dividends that the Trusts paid to Holdco.
47. Finally, once informed of the error in the Trust Deeds, counsel for the Applicants wrote promptly to the CRA to explain the mistake and provide a draft amending agreement in a proposed effort to remedy the mistake.
48. As to the second element of the *Fairmont* test, the agreement was still effective when the Trust Deeds were executed. Indeed, the agreement of the parties to allow dividends to flow from Signature to the Trusts and then to Holdco never changed prior to the execution of the Trust Deeds on December 15, 2010. Evidence of this is found in, among other places, the last version of the Closing Agenda prepared prior to the execution of the Reorganization. It included the Holdco Prohibition but not the Signature Prohibition.
49. The agreement of the parties was reflected yet again in 2017 when Signature paid dividends to Holdco through the Trusts, and then when the family accountant filed the T3 tax returns for the Trust, claiming deductions for the dividend payments. Those claims were based on her understanding that the Trusts were set up to allow for dividends to flow from Signature to the Trusts and up to Holdco.
50. As to the third element of the *Fairmont* test, the Trust Deeds failed to reflect the prior agreement of the parties. Rather than restricting the Trusts only from being able to pay amounts derived

from Holdco to Holdco, the Trusts were mistakenly also restricted in their ability to pay amounts derived from Signature to Holdco.

51. All of that is completely contrary to the prior agreement of the parties as it defeats one of the principal objectives and purposes of the Reorganization in the first place, which was to enable Signature to reduce its surplus assets in a tax efficient manner by paying dividends through the Trusts to Holdco.
52. The fourth element of the *Fairmont* test is also satisfied here if rectification as sought is granted. The Trust Deeds would carry out the agreement of the parties since rectification would remove the restriction on the Trustees allocating dividends received from Signature to Holdco.
53. As stated above, when the error was first brought to the attention of the Applicants and their professional advisors, they sought to amend the Trust Deeds themselves pursuant to the amendment provisions already contained in those instruments. That would not fix the problem, however, since the CRA took the position that they would accept amendments to the Trust Deeds only if they were made pursuant to a court order.
54. Also as stated above, the CRA does not oppose this application. The record is clear that the Applicants followed the instructions of the CRA to bring this Application, and both the Application Record and the draft order sought were provided to counsel for the CRA. After reviewing both the Application Record and the draft order, the CRA confirmed by correspondence dated December 7, 2022 (also in the Record) that the Attorney General of Canada on behalf of the CRA does not oppose the Application for rectification. From this I infer that the CRA was also satisfied that rectification was appropriate and the Trust Deeds mistakenly did not reflect the agreement intended and reached by the parties from the outset.
55. For all of the above reasons, the four elements of the *Fairmont* test have been satisfied here.
56. I have given particular consideration to the clear statements from the Supreme Court of Canada in *Collins* to the effect that rectification is not available where the purpose is to achieve retroactive tax planning. Indeed, that is clear from *Fairmont* itself: "[t]axpayers should be taxed based on what they actually agreed to do and did, and not on what they could have done or later wish they had done": *Collins*, at para. 1, citing with approval *Fairmont*, at paras. 23 and 24, in turn citing *Shell Canada Ltd. v Canada*, [1999] 3 S.C.R. 622, at para. 45.
57. *Fairmont*, and its companion case *Jean Coutu Group (PJC) Inc. v. Canada (Attorney General)*, 2016 SCC 55, [2016] 2 S.C.R. 670, are clear that parties cannot change an agreement they freely entered into because, among other reasons, they intended a different tax consequence than the one brought about by their agreement. The parties' intention of tax neutrality (as was the issue in *Fairmont*) could not support a grant of rectification. A common continuing intention does not suffice.
58. The Supreme Court was clear that rectification is an equitable remedy designed to correct errors in the recording of terms in written legal instruments. It is limited to cases where a written instrument has incorrectly recorded the parties' antecedent agreement. Rectification is not

available where the basis for seeking it is that one or both of the parties wishes to amend not the instrument recording their agreement, but the agreement itself.

59. In my view, the present case is clearly distinguishable from *Fairmont* on that straightforward yet fundamental point. I am satisfied on the evidence that the parties here are not seeking to amend their antecedent agreement to avoid an unintended tax consequence. There is no question that the tax consequence of the agreement as written was unintended; that is precisely why this Application for rectification was brought. However, the parties seek rectification in respect of a written document that did not and does not reflect their agreement. That agreement remains unamended.
60. In *Collins*, the parties attempted to avoid the clear unavailability of rectification where it is sought to achieve retroactive tax planning by seeking the different equitable remedy of rescission. The Supreme Court was equally clear that rescission is not available to implement retroactive tax planning for the same reasons that the Supreme Court had previously held that rectification is not available for that purpose.
61. The Supreme Court held that a court of equity may grant relief where it would be unconscionable or unfair to allow the common law to operate in favour of the party seeking enforcement of the transaction.
62. However, it is a limiting principle and a fundamental premise of equity that it developed to alleviate results under the common law that call for relief as a matter of conscience and greater fairness. Transactions that do not call for relief as a matter of conscience or fairness are properly outside equity's domain. "[T]here is nothing unconscionable or unfair in the ordinary operation of tax statutes to transactions freely agreed upon. ... If there is to be a remedy, it lies with Parliament, not a court of equity": *Collins*, at para. 11.
63. The Supreme Court held that the principles of tax law and the prohibition against retroactive tax planning preclude any equitable remedy to give effect to retroactive tax planning, and the principles that flow from *Fairmont* and *Jean Coutu* are of general application and not confined to cases where rectification is sought. Those authorities cannot be distinguished on the basis of the particular remedy sought. Taxpayers are barred from "resorting to equity in order to undo or alter or in any way modify a concluded transaction or its documentation to avoid a tax liability arising from the ordinary operation of the tax statute": *Collins*, at para. 22.
64. *Collins* is completely consistent with *Fairmont* and *Jean Coutu*: parties cannot resort to equity (whether in the form of rectification or rescission) to change their agreement in order to avoid an unintended tax consequence.
65. In this case, as in *Sleep Country*, the parties are not changing their antecedent agreement. Rather, they are seeking the assistance of equity to change the written instrument that did not at the time it was executed, and does not now, properly and accurately reflect the agreement of the parties that has remained unchanged throughout. In such a situation, equity remains available to the parties if the required factors for the particular relief being sought (here, rectification) can be met.

66. For all of the above reasons, the *Fairmont* factors for rectification have been met and I am satisfied that this is an appropriate case for the exercise of the Court's equitable jurisdiction. Accordingly, sections 4.1, 4.2, 4.3 and 5.1 of the Trust Deeds are rectified as requested in the Notice of Application.
67. Order to go in the form signed by me, which is effective immediately and without the necessity of issuing and entering.

Osborne J.

APPENDIX “A”

JEFFREY SLIGHTHAM 2010 FAMILY TRUST	
Original	As Rectified
<p>4.1 Discretionary Income Payments</p> <p>The Trustees shall hold the Trust Property and keep it invested and prior to the Division Date the Trustees may from time to time pay to apply for the benefit of such one or more of the Permitted Beneficiaries to the exclusion, even to the complete exclusion, of the other or others, the whole or such part of the annual net income derived from the Trust Property, in such proportions and in such manner as the Trustees determine provided that no portion of the annual net income shall be paid to the spouse of Jeffrey Slightham during his lifetime and no portion of the annual net income derived from Signature Realty Inc. or from 2267134 Ontario Inc. shall be paid to 2267134 Ontario Inc.</p>	<p>4.1 Discretionary Income Payments</p> <p>The Trustees shall hold the Trust Property and keep it invested and prior to the Division Date the Trustees may from time to time pay to apply for the benefit of such one or more of the Permitted Beneficiaries to the exclusion, even to the complete exclusion, of the other or others, the whole or such part of the annual net income derived from the Trust Property, in such proportions and in such manner as the Trustees determine provided that no portion of the annual net income shall be paid to the spouse of Jeffrey Slightham during his lifetime and no portion of the annual net income derived from Signature Realty Inc. or from 2267134 Ontario Inc. shall be paid to 2267134 Ontario Inc.</p>
<p>4.2 Accumulation of Income</p> <p>Any net income not paid to or applied for the benefit of one or more Permitted Beneficiaries in a year shall be accumulated by the Trustees and added to the capital of the Trust Property and dealt with as a part of it, provided that after the</p>	<p>4.2 Accumulation of Income</p> <p>Any net income not paid to or applied for the benefit of one or more Permitted Beneficiaries in a year shall be accumulated by the Trustees and added to the capital of the Trust Property and dealt with as a part of it, provided that after the</p>

<p>expiration of the maximum period permitted by law for the accumulation of income, the Trustees shall pay to or apply for the benefit of such one or more of the Permitted Beneficiaries to the exclusion, even to the complete exclusion, of the other or others, as the Trustees determine, the whole of the annual net income derived from the Trust Property, in such proportions and in such manner as the Trustees determine provided that no portion of the annual net income shall be paid to the spouse of Jeffrey Slightham during his lifetime and no portion of the annual net income derived from Signature Realty Inc. or from 2267134 Ontario Inc. shall be paid to 2267134 Ontario Inc.</p>	<p>expiration of the maximum period permitted by law for the accumulation of income, the Trustees shall pay to or apply for the benefit of such one or more of the Permitted Beneficiaries to the exclusion, even to the complete exclusion, of the other or others, as the Trustees determine, the whole of the annual net income derived from the Trust Property, in such proportions and in such manner as the Trustees determine provided that no portion of the annual net income shall be paid to the spouse of Jeffrey Slightham during his lifetime and no portion of the annual net income derived from Signature Realty Inc. or from 2267134 Ontario Inc. shall be paid to 2267134 Ontario Inc.</p>
<p>4.3 Discretionary Capital Payments</p> <p>Until the Division Date, the Trustees may at any time and from time to time pay to or apply for the benefit of such one or more of the Permitted Beneficiaries to the exclusion, even to the complete exclusion, of the other or others, the whole or such part of the capital of the Trust Property, in such proportions and in such manner as the Trustees determine provided that no portion of the capital shall be paid to the spouse of Jeffrey Slightham during his lifetime and no portion of the capital derived from Signature Realty Inc. or from 2267134 Ontario Inc. shall be paid to 2267134 Ontario Inc.</p>	<p>4.3 Discretionary Capital Payments</p> <p>Until the Division Date, the Trustees may at any time and from time to time pay to or apply for the benefit of such one or more of the Permitted Beneficiaries to the exclusion, even to the complete exclusion, of the other or others, the whole or such part of the capital of the Trust Property, in such proportions and in such manner as the Trustees determine provided that no portion of the capital shall be paid to the spouse of Jeffrey Slightham during his lifetime and no portion of the capital derived from Signature Realty Inc. or from 2267134 Ontario Inc. shall be paid to 2267134 Ontario Inc.</p>

<p>5.1 Distributions On the Division Date</p> <p>On the Division Date, the Trustees shall divide and distribute the Trust Property between or among such one or more Permitted Beneficiaries or to a New Trust (as that term is defined in this Trust) for the benefit of one or more Permitted Beneficiaries to the exclusion, even to the complete exclusion of the other or others, such proportions, in such manner and to the extent that Trustees shall by instrument executed on or before the Division Date, appoint provided that no portion of the accumulated income or capital shall be paid to the spouse of Jeffrey Slightham during his lifetime and no portion of the accumulated income or capital derived from Signature Realty Inc. or from 2267134 Ontario Inc. shall be paid to 2267134 Ontario Inc.</p>	<p>5.1 Distributions On the Division Date</p> <p>On the Division Date, the Trustees shall divide and distribute the Trust Property between or among such one or more Permitted Beneficiaries or to a New Trust (as that term is defined in this Trust) for the benefit of one or more Permitted Beneficiaries to the exclusion, even to the complete exclusion of the other or others, such proportions, in such manner and to the extent that Trustees shall by instrument executed on or before the Division Date, appoint provided that no portion of the accumulated income or capital shall be paid to the spouse of Jeffrey Slightham during his lifetime and no portion of the accumulated income or capital derived from Signature Realty Inc. or from 2267134 Ontario Inc. shall be paid to 2267134 Ontario Inc.</p>
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CHRISTOPHER SLIGHTHAM 2010 FAMILY TRUST	
Original	As Rectified
<p>4.1 Discretionary Income Payments</p> <p>The Trustees shall hold the Trust Property and keep it invested and prior to the Division Date the Trustees may from time to time pay to apply for the benefit of such one or more of the Permitted Beneficiaries to the exclusion, even to the complete exclusion, of the other or others, the whole or such part of the annual net income derived from the Trust Property, in such proportions and in such manner as the Trustees determine provided that no portion of the annual net income shall be paid to the spouse of Christopher Slightham during his lifetime and no portion of the annual net income derived from Signature Realty Inc. or from 2267134</p>	<p>4.1 Discretionary Income Payments</p> <p>The Trustees shall hold the Trust Property and keep it invested and prior to the Division Date the Trustees may from time to time pay to apply for the benefit of such one or more of the Permitted Beneficiaries to the exclusion, even to the complete exclusion, of the other or others, the whole or such part of the annual net income derived from the Trust Property, in such proportions and in such manner as the Trustees determine provided that no portion of the annual net income shall be paid to the spouse of Christopher Slightham during his lifetime and no portion of the annual net income derived from Signature Realty Inc. or from 2267134</p>

Ontario Inc. shall be paid to 2267134 Ontario Inc.	Ontario Inc. shall be paid to 2267134 Ontario Inc.
<p>4.2 Accumulation of Income</p> <p>Any net income not paid to or applied for the benefit of one or more Permitted Beneficiaries in a year shall be accumulated by the Trustees and added to the capital of the Trust Property and dealt with as a part of it, provided that after the expiration of the maximum period permitted by law for the accumulation of income, the Trustees shall pay to or apply for the benefit of such one or more of the Permitted Beneficiaries to the exclusion, even to the complete exclusion, of the other or others, as the Trustees determine, the whole of the annual net income derived from the Trust Property, in such proportions and in such manner as the Trustees determine provided that no portion of the annual net income shall be paid to the spouse of Christopher Slightham during his lifetime and no portion of the annual net income derived from Signature Realty Inc. or from 2267134 Ontario Inc. shall be paid to 2267134 Ontario Inc.</p>	<p>4.2 Accumulation of Income</p> <p>Any net income not paid to or applied for the benefit of one or more Permitted Beneficiaries in a year shall be accumulated by the Trustees and added to the capital of the Trust Property and dealt with as a part of it, provided that after the expiration of the maximum period permitted by law for the accumulation of income, the Trustees shall pay to or apply for the benefit of such one or more of the Permitted Beneficiaries to the exclusion, even to the complete exclusion, of the other or others, as the Trustees determine, the whole of the annual net income derived from the Trust Property, in such proportions and in such manner as the Trustees determine provided that no portion of the annual net income shall be paid to the spouse of Christopher Slightham during his lifetime and no portion of the annual net income derived from Signature Realty Inc. or from 2267134 Ontario Inc. shall be paid to 2267134 Ontario Inc.</p>

<p>4.3 Discretionary Capital Payments</p> <p>Until the Division Date, the Trustees may at any time and from time to time pay to or apply for the benefit of such one or more of the Permitted Beneficiaries to the exclusion, even to the complete exclusion, of the other or others, the whole or such part of the capital of the Trust Property, in such proportions and in such manner as the Trustees determine provided that no portion of the capital shall be paid to the spouse of Christopher Slightham during his lifetime and no portion of the capital derived</p>	<p>4.3 Discretionary Capital Payments</p> <p>Until the Division Date, the Trustees may at any time and from time to time pay to or apply for the benefit of such one or more of the Permitted Beneficiaries to the exclusion, even to the complete exclusion, of the other or others, the whole or such part of the capital of the Trust Property, in such proportions and in such manner as the Trustees determine provided that no portion of the capital shall be paid to the spouse of Christopher Slightham during his lifetime and no portion of the capital derived</p>
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<p>from Signature Realty Inc. or from 2267134 Ontario Inc. shall be paid to 2267134 Ontario Inc.</p>	<p>from Signature Realty Inc. or from 2267134 Ontario Inc. shall be paid to 2267134 Ontario Inc.</p>
<p>5.1 Distributions On the Division Date</p> <p>On the Division Date, the Trustees shall divide and distribute the Trust Property between or among such one or more Permitted Beneficiaries or to a New Trust (as that term is defined in this Trust) for the benefit of one or more Permitted Beneficiaries to the exclusion, even to the complete exclusion of the other or others, such proportions, in such manner and to the extent that Trustees shall by instrument executed on or before the Division Date, appoint provided that no portion of the accumulated income or capital shall be paid to the spouse of Christopher Slightham during his lifetime and no portion of the accumulated income or capital derived from Signature Realty Inc. or from 2267134 Ontario Inc. shall be paid to 2267134 Ontario Inc.</p>	<p>5.1 Distributions On the Division Date</p> <p>On the Division Date, the Trustees shall divide and distribute the Trust Property between or among such one or more Permitted Beneficiaries or to a New Trust (as that term is defined in this Trust) for the benefit of one or more Permitted Beneficiaries to the exclusion, even to the complete exclusion of the other or others, such proportions, in such manner and to the extent that Trustees shall by instrument executed on or before the Division Date, appoint provided that no portion of the accumulated income or capital shall be paid to the spouse of Christopher Slightham during his lifetime and no portion of the accumulated income or capital derived from Signature Realty Inc. or from 2267134 Ontario Inc. shall be paid to 2267134 Ontario Inc.</p>