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The inner workings of Canadian business deals

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Upbeat Realestate Borrowing: Fast Deals and Slow Police Work

A series of real estate deals between 1978 and last summer are the subject of belated police inquiries by officers from the Peel Region and Metro Toronto fraud sections. Among other individuals, the deals affected:

- Anthony DiDomizio, the man who paid for the beating of a construction union president (Bimonthly Reports, Number 18);

- Florindo Volpi, a key figure in the Astra Trust/Re-Mor affair (Bimonthly Reports, Number 17);

- Paul Volpe, the alleged organized crime figure.

The transactions center around Toronto real estate dealer Vincent Salvatore, and they tell something about police effectiveness in commercial areas, and a lot about real estate and legal issues. The Salvatore/Paul Volpe deal, involving the CITY TV building on Queen Street, was recently the subject of criminal charges laid by Peel Regional Police.

A candid conversation

The most astonishing police lapse of all concerned DiDomizio. The Metro Intelligence Division in 1979 taped a telephone call by DiDomizio that placed the life of a Toronto man in danger, but the man in question, mortgage lender Claude Abrams, was never contacted by police to warn him. The officer in charge of the case told me he was unable to determine Abrams' identity from the call; but it required only the most elementary research. DiDomizio, who had paid for the beating of Bricklayers Union president John Meiorin some months earlier, was offering to "help" a builder deal with Abrams, who is a bona fide lender.

The call, in August 1979, was to builder Paul Macciocchi of JM Construction Ltd. After the initial pleasantries, the conversation developed as follows, according to the police transcript:

Paul [Macciocchi]—... You know, it's just incredible... It's about time to go grab him by the throat. Can you imagine, somebody just watching it go down the drain, and he won't allow, and a million and a half dol-

lars tied up. In other words, let the mortgage take the building, but, ah, first mortgage, but don't let us finish it. What would you do?

Tony [DiDomizio]—Shot somebody.

—Well don't think I'm not thinking of it. It's just as simple as that. You know that fourth building. ... He would rather that the mortgage takes it, Central Mortgage takes it, than to allow the money to go through and finish it.

—Who is that, that's the mortgage company?

—No, that's that... [epithet] Abrams, the one that's giving us the second mortgage. He won't postpone to the new one, eh, and yet he'll let, he'll let the building go... squeeze squeeze squeeze. Now as time goes by the interest rates go up, and it just gets worse.

—You need any help, any way, you understand. I don't want to say over the phone. No problems.

—Well I don't know. Have you, uh, have you, can you come by some time?

—Oh yeah.

—I'll be here for a few hours, if you got time...

—OK. I gonna be there, maybe around one o'clock.

—Yeah, OK, I'll wait for you.

Abrams had loaned Macciocchi's company a total of \$1.9 million secured by second mortgages on five apartment buildings, completed and uncompleted, in Peterborough, Ontario. Macciocchi had defaulted, and he also owed money to the first mortgagees, lien claimants, and the Toronto Dominion Bank. The "fourth building" wasn't yet complete, and refinancing of the first mortgage was apparently conditional on a postponement of the second mortgage, something Abrams didn't want to do.

This explanation, and the entire story of the Abrams/Macciocchi situation, was available in the Toronto office of the Supreme Court of Ontario, in a lawsuit styled Abrams versus JM Construction and Macciocchi. However, Intelligence Division officer Laughlin McPhee told me he didn't know there was a lawsuit, and didn't know

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any other way of identifying the lender referred to as "Abrams," and therefore wasn't able to contact him. Claude Abrams is by far the most significant lender by the name of Abrams in the City of Toronto.

With that degree of expertise, it isn't surprising that the Intelligence Division didn't look at other aspects of DiDomizio's real estate situation.

The big house

DiDomizio had built and lived in a 25,000 square foot house in King City—about ten times the size of a large house. An equally large, but uncompleted, house next door, also belonged to DiDomizio. First mortgages of \$50,000 each against the houses had apparently been paid off in early 1978 but instead of being discharged, had been assigned to DiDomizio's lawyer, Charles Wagman, and his wife Francine Sherkin. During 1979, these mortgages were further assigned to someone named Suleiman Rashid, and since they were allegedly in default, Rashid sold the houses under power of sale to Vincent Salvatore. The price, according to the land transfer tax affidavit, filed directly with the Ministry of Revenue instead of in the Land Titles Office: \$650,000 cash. The obscure Rashid had purportedly invested \$100,000 to recover \$650,000.

The "power of sale" is a provision contained in mortgages that permits the mortgagee, after default and proper notice, to sell the property to pay off the mortgage, and then account to the other mortgagees in order of their priority for the surplus proceeds, if there are any. The possibility of abuse arises from the fact that the procedure automatically eradicates all of the encumbrances registered on title, so that anyone not paid in the process loses his security as well.

As a result of this power of sale, the mortgages and mechanics liens of various creditors of DiDomizio were wiped out. They were: four mechanics liens, a \$200,000 mortgage to the Royal Bank, a \$125,000 mortgage to a holding-company of the theater-owning Okun family, and mortgages to the Department of National Revenue for unpaid taxes.

Real estate lawyer Milton Rusonik, who acted for some lenders, says DiDomizio himself was "paid off" to induce him to move, something that isn't consistent with the nature of power of sale proceedings. Rusonik implies Salvatore paid DiDomizio off because of his fear of him, but in a letter to his investors Rusonik wrote that Salvatore had made "arrangements to purchase the house from Metrus Contracting [DiDomizio's company]..."

An overdue investment

There was a group of investors that was neither wiped out nor paid off, and they were Rusonik's clients; but they have since sued Rusonik over his handling of their investment. Salvatore had approached Rusonik in 1978 for a loan of \$400,000 and Rusonik obtained the funds from this group. The Toronto Dominion Bank held mortgages of between \$400,000 and \$500,000 on the houses, and Salvatore, for reasons that haven't been ex-

plained, wished to acquire these mortgages from the bank, and he reassigned them to Rusonik as security for the \$400,000 loan. Rusonik advanced the money directly to the bank, on Salvatore's direction. Salvatore claims he had no ownership interest in the property at the time. In any event, Rusonik's clients held a second mortgage of \$400,000.

So at the time of the power of sale, Rashid, in law, owed to Rusonik an accounting for the approximately \$500,000 surplus over what was owed on the small first mortgages, along with interest and costs. But instead of taking the payout, Rusonik agreed to renew his mortgage in another form. Moreover, on the completed house, he agreed to let it stand second to a new mortgage Salvatore had obtained from another law firm for \$300,000.

In summary: It's obscure who controlled the property. But as a fund raising vehicle, the property stood as first mortgage security for a new loan, at the same time that the security for old loans was being eradicated from title, or postponed.

(Rusonik had arranged a further loan to Salvatore—\$385,000 from a company appropriately called Ample Funds Inc.—and had allowed that mortgage to be combined with their original \$400,000 for a restructured mortgage of \$785,000. This further diluted the security of the original investors. To compensate for the weakened security, Rusonik took additional assignments of mortgages held by Salvatore.)

After various legal and negotiating delays, Rusonik's original investors, now represented by different lawyers, were finally closing in on the property last summer with a writ of possession, when another power of sale deal was executed. One man bought the \$300,000 first mortgage, sold the property under power to another man for just the amount that was required to buy the mortgage; Salvatore remained in possession; and the Rusonik group had no more mortgage. Later appraised at between \$750,000 and \$900,000, the house was sold for \$350,000. The purchaser's lawyer Joseph Paradiso, who was also the lawyer for the incredibly astute Rashid, and sometimes a lawyer and business partner of Salvatore, wouldn't discuss the transaction with me.

Salvatore, in a period of about three years, has generated some 27 writs of execution against himself in the hands of the York County Sheriff, representing debt found to be owing by a court, and not collected. The total amount of the outstanding writs is about \$1.7 million.

Assorted mortgages

Between the 1979 and 1981 powers of sale, the Rusonik group had agreed to a further restructuring of their mortgage security, and it was in connection with a deal involving Florindo Volpi.

Salvatore had given Rusonik a \$480,000 mortgage on an Etobicoke theater as part of the earlier restructuring. In 1978 he wanted the investors to exchange this for two mortgages, one for \$400,000, which they would keep, and one for \$150,000, which they would, at Salvatore's

request, assign to others.

The reason: Salvatore had arranged to buy a motel at 3300 Kingston Road, and he wanted to offer the vendors various mortgages or parts of mortgages on other properties as part consideration for the purchase, with real estate dealer Florindo Volpi acting in trust for Salvatore as purchaser.

(Offering vendors an assortment of mortgages on existing properties, or parts of existing mortgages, is one of the most striking parts of the Salvatore method, and the one that elicits the most admiration from real estate professionals. A family holding company called Claros Holdings Ltd recently sold Salvatore properties in Hamilton and Midland, and took back as part consideration such a package of about \$500,000 face-value worth of mortgages. So far, power of sale proceedings have wiped out all but \$100,000 of that.)

In the case of the motel purchase, Salvatore was able to pay \$150,000 cash to the vendors, and he also arranged to have assigned to the vendors, as part consideration, two other mortgages. One was the \$150,000 mortgage created on the Lakeshore theater. And the other was a purported \$100,000 mortgage on land in Tay Township. The vendors of the motel claim that the \$100,000 Tay Township mortgage was worthless, and was deliberately created to defraud them. They say one of the elements of this fraud was the appearance of an arms-length relationship between Florindo Volpi and Salvatore. Rusonik has since re-sold the Tay property under a prior mortgage, wiping out the \$100,000 mortgage, and the court ordered him to hold the proceeds in trust pending the outcome of the lawsuit.

(Florindo Volpi was the developer of a Welland-area housing project whose investigation by Ontario Provincial Police caused the unravelling of the Re-Mor and Astra Trust affair. Mortgage advances against that project were disbursed to unrelated ventures of Volpi and Astra president Carlo Montemurro (Bimonthly Reports, Number 17). No charges were laid relating to the development project, and no further deals of Volpi were investigated.)

Volpi, who acted in trust for Salvatore as the motel purchaser, swore in the transfer tax affidavit that the motel price included \$450,000 in mortgages back to the vendor, or \$200,000 more than there were in fact. As it happened, Volpi almost immediately re-sold the property to arms-length purchasers, for about what they actually bought it for. But the difference in price as indicated in the transfer tax affidavit would have enabled Salvatore to document a capital loss for income tax purposes.

Fast action

Far from resulting in a loss, the motel transactions actually resulted in about \$140,000 cash to Salvatore, and he used the money to pay down his debt to the original Rusonik investors in the King City mortgage. It was on that basis that the investors agreed to this second mortgage restructuring.

But the investors had soon had enough. They had retained as a new lawyer P. Theodore Matlow—since named

a County Court Judge—and the collection of the debt became a priority. By 1981 the debt, with various paydowns, was under \$700,000, and the investors still had the theater mortgage, and the second mortgage on the former DiDomizio home. Rusonik had told the investors that if the house were to be sold, “any offer in the range of \$750,000 should be accepted,” even though it had been listed at a higher asking price. And later Matlow had the house appraised at between \$750,000 and \$900,000. So it appeared that a sale would produce substantial recovery for the investors, even after the \$300,000 first mortgage was paid.

With their mortgage in arrears, the Matlow group obtained judgment for possession of the house in August 1980, in a court action Salvatore didn't defend. There followed negotiations with Salvatore, and then a motion by Salvatore to set aside the default judgment, which was rejected as a sham. Salvatore then had until June 29, 1981 to pay the debt, which stood at \$650,000. Otherwise, on June 30, the Matlow group could exercise their writ of possession and kick Salvatore out.

But by July 2 the following steps had been taken. The \$300,000 first mortgage, also in arrears, had been bought by one Duca Muscillo, in trust, and Muscillo had sold the property under power of sale to one Basil Ferrari, also in trust, for an amount of \$365,000, or just enough money to have bought the first mortgage, with interest and costs. It was well short of the expected \$750,000, and it wiped out the Matlow group's security. Ferrari immediately registered two new mortgages totalling \$270,000, to two apparently arms-length parties, and this was probably the bulk of the money that (a) purchaser Ferrari paid Muscillo, and (b) Muscillo paid to buy the first mortgage. Questions of control aside, it amounted to a refinancing of the first mortgage, along with a wiping out of subsequent mortgages.

The Matlow group executed its writ of possession anyway—even though its underlying mortgage had vanished. However, the group's agent was confronted by Salvatore, and “fearing for his safety,” according to Matlow, the agent fled the property. No one was surprised that it was Salvatore, not the purchaser Ferrari, who continued to occupy the property, until a court receivership order was obtained.

Matlow and Ample Funds sued Salvatore, Muscillo, Ferrari, lawyers Joseph Paradiso and John Faraci, and others for conspiring to defraud them, in a civil action. They say the steps taken were all part of a scheme to wipe out their security.

They also went to the Metro fraud section alleging criminal fraud. But the officer in charge of the case, who has been to visit some of the relevant lawyers, told me: “We haven't really gotten into it yet. It's a big civil suit. They're claiming it's criminal. It may be, but whether we can prove it or not, I don't know.”

Well-known escrow agent

The transaction that led to criminal charges last summer was a lot easier for police to deal with. The CITY TV building on Queen Street was owned by a company whose sole director is Angelo Pucci. Salvatore says he

was promised a \$300,000 commission to find a buyer for the building, which he did in the form of Barry Tjen and Suzanne Tjan of something called the Samudra Jaya Corporation. Their lawyer was Samuel Wetston, who had often acted for Salvatore, and who was already charged in various unrelated counts of breach of trust.

Various documents were exchanged in late 1980, and the Tjens were supposedly buying the building by buying the shares in Pucci's company. According to Salvatore, the documents were held in escrow over the new year because Pucci didn't want the deal to close in 1980 for tax reasons. The documents were held in "escrow" by the alleged organized crime figure Paul Volpe, whom Salvatore described as "a mutual friend" of himself and Pucci.

In the new year, Pucci arranged to sell the property, in

an unrelated deal, to a company, Redstripe Investments Ltd, represented by lawyer Edward Sonshine of the firm of Siegal Fogler. The sale was temporarily stopped by a legal challenge—not by the Tjens—but by Vincent Salvatore, who claimed Pucci hadn't paid him the promised commission for arranging the Tjen sale. Sonshine told me he didn't want to know what the challenge—a lis pendens registered against the title—was about, and took the position it was up to Pucci to deal with it.

The sale closed after Pucci agreed \$200,000 of the Redstripe proceeds be paid directly to Salvatore, in care of the law firm of Prousky Lindzon and Biback. The Redstripe company got good title to the property.

But Volpe, Salvatore, and lawyer Samuel Wetston were charged by police in Peel Region—Wetston's office is in Mississauga—with defrauding the Tjens of their down payment.

What's next for Argus? Conrad Black talks to Bimonthly Reports

Conrad Black told me earlier this month what some stock analysts were already suspecting: there may soon be a third "Argus group reorganization" to complete the logic inherent in the earlier corporate shuffles.

There are two versions of what that logic is. According to Conrad Black, the reorganizations are a modernization of the Argus-group corporate structure; according to others, they represent new horizons in corporate self-dealing. In fact, both views are correct; and an analysis of the 1979 and 1981 reorganizations provides insight into the general thrust of the coming deal.

Argus Corporation in early 1978—just before Conrad and his brother Montegu Black took over after fighting off a control bid by Power Corporation—included 23% of Dominion Stores Ltd, 17% of Domtar Ltd, 23% of Hollinger Mines Ltd, 16% of Massey Ferguson Ltd, and 48% of Standard Broadcasting Ltd. All of these blocks were held directly by Argus Corporation. The Black group, through privately-held Ravelston Corporation, held 77% of the equity of Argus Corporation, and over 90% of its voting stock. The major activities of Argus Corporation since then have been to give away its Massey Ferguson stock, sell its Domtar stock, and with the proceeds buy a lot more stock, first of Hollinger, and then of Dominion Stores, and a little more Standard Broadcasting.

Turning the wheel

The series of reorganizations, ignoring companies unaffected by the deals, worked as follows. In the summer of 1979, the relevant part of the Argus road-map looked like this:

Ravelston
owned 77% of
Argus
owned 42% of
Hollinger

(Argus had sold its Domtar stock and increased its Hollinger position since the 1978 Black takeover. Hollinger stock had increased in price on rumors Argus would make a public bid for Hollinger stock. That was wrong.) What happened was that Argus gave to its shareholders, including Ravelston, its Hollinger stock as a "special dividend." That meant that Ravelston now had two direct subsidiaries, as follows:

Ravelston owned 77% of Argus and Ravelston owned 35% of Hollinger

And as part of the same deal, Hollinger bought from Ravelston its 77% block of Argus stock for a price of \$89 million, made up of 900,000 Hollinger shares and about \$50 million cash. This resulted in Ravelston being \$50 million to the good, and the following revised road-map:

Ravelston
owned 45% of
Hollinger
owned 77% of
Argus

Black says he reinvested the proceeds in market purchases of Hollinger stock to bring the Ravelston block of Hollinger stock to about 58%, and later 64%. Thus the first reorganization.

The second reorganization, which took place last August and September, was basically the same thing, only backward. Hollinger, now called Hollinger-Argus Corporation, divided up its Argus stock to its shareholders, thus creating a situation in which Ravelston again, temporarily, had two direct subsidiaries:

Ravelston owned 64% of Hollinger	and	Ravelston owned 60% of Argus owned 39% of Dominion Stores
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And as part of the same deal, Dominion Stores made an offer to all Hollinger shareholders, including Ravelston, to buy the Hollinger block, in exchange for cash and Dominion stock. Result: Ravelston obtained another approximately \$50 million cash, along with about 30% of Dominion Stores stock, and this created the following structure:

Ravelston owned 60% of Argus owned 22% of Dominion Stores owned 93% of Hollinger	and	Ravelston also directly owned 30% of Dominion Stores
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The series of deals creates the impression of a churning of assets in the Argus group in order to pump cash up to Ravelston for use in solidifying its control, or for any other purpose.

My interview with Black

So I asked Black first what was the purpose of the 1979 reorganization. It was, said Black, designed to be a step in the direction of having an "operating company" as the directly-held Ravelston subsidiary, instead of Argus Corporation, with its "mediaeval layers"—its "incrustations"—of non-voting stock going back to the days of Bud McDougald and E. P. Taylor. Black said this was so the operating income of the eventual number one subsidiary could be "redeployed to strategic advantage within the group."

Since I didn't understand what that meant, I asked Black what corporate action could be done as a result of the 1979 reorganization that couldn't have been done without it. Said Black: The 1981 reorganization couldn't have been done without the 1979 reorganization!

Since Dominion Stores could have bought Hollinger with or without any of the attendant 1979 or 1981 shuffles, I asked Black exactly what he meant by that.

"To answer that question," said Black, "I would have to reveal what we are going to do next." He said by way of a hint that Ravelston is in a position to come out of the next reorganization with a greater than 60% direct interest in a "near-amalgamation" of Argus, Dominion and Hollinger.

There are many ways that could be done. Stock analyst Denis Ouellet of Levesque Beaubien Inc. wrote in a recent report: "Another scenario has Ravelston purchasing 3.3 million Dominion shares on the open market for a cost of about \$75 million. Dominion then offers to buy Argus at \$15 per share. The total cost is \$127 million of which \$76 million goes to Ravelston, which retains ownership of approximately 63% of the outstanding common shares of Dominion (which has just bought 3.4 million of its own shares through the Argus purchase.) This way Ravelston has increased its direct ownership from 42% to 63% at no cost."

Ouellet recommends buying Argus stock as a speculation, on the basis it is the least likely stock in the group to be left out of the next reorganization.

An interesting speculation

Argus stock is now trading in the range of \$5 to \$6. In 1979 when Hollinger paid Ravelston \$89 million for the Argus block, the Argus stock was valued in that deal at \$13.71. Then, before being divided up by Hollinger, Argus bought more Dominion Stores stock. For Ravelston, the Dominion purchases, and the dividending up, were useful as part of the inner logic of the reorganizations. Minority Hollinger shareholders, on the other hand, who were also given the Argus stock in the 1981 special dividend, were less pleased, and dumped the Argus stock on the market.

Having used and abandoned Argus in the earlier deals, the argument is that it will be difficult for Black to complete what he wants to do without some kind of public bid for the Argus stock. Ouellet suggests the bid might be at an asset-value of \$15 as opposed to the current market of \$5 to \$6.

Valuation of stocks on the basis of predicting the control-person's next deal wasn't unusual before modern securities legislation. In many cases, it is still how stocks are valued in Ontario. As Conrad Black told me: "It's like a good mystery."

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"A Deceptively Simple Formula"

A Selection of Joe Burnett's Financial Deals

A series of shopping-center deals financed by Joseph Burnett was reviewed in a seven-week Nova Scotia lawsuit. A CBC TV program called "The Law of the Jungle" dealt with Burnett's activities, but it wasn't seen outside Eastern Canada. It said: "Failure can be induced by manipulation." Burnett claimed damages for libel.

The program was part of a series called The MacIntyre File. "It's a deceptively simple formula," said reporter MacIntyre on the show, "and it's been used many times in Eastern Canada. A development company with obscure origins shows up. He's got a handful of cash, but reassuring backing on paper. There's a worrisome construction period, a financial catharsis, legal confusion. Then, when the dust settles, a new owner, who isn't exactly new in the overall picture. There are people who claim Burnett is in the process from the start, somehow behind the development company, even the early mortgage money. It can't be proved yet, but there are grounds to support that belief."

The judge found: "The description of the so-called 'formula' is, I find, an expression of opinion. It is on a matter of public interest and is substantially true in substance and in fact. I find it is fair comment." On the program as a whole, the judge found that the script did not libel Burnett, but a combination of Burnett's picture and voice-over at the end of the program, referring to the "dirty tricks that make big business a predatory, cut-throat game for some people," was libellous.

At the time of the deals in question, Burnett ran and was half-owner of CNA Investments Ltd with CNA Financial Corporation, the Chicago insurance group. The real estate projects all failed financially under their various original owners. An individual named Leslie Faludy—who attended the trial but wasn't called to testify—figured in all the projects. He is someone Burnett said didn't work for him—he worked for the owners. Burnett said he made sure as financier he didn't get involved in "an ownership position;" he didn't control the owners; and he didn't control Faludy, although he had known Faludy for a long time.

The main reason Burnett didn't want to be in "an ownership position" was the following. Mortgage financing advanced before there is notice of any mechanics liens ranks in priority to the unpaid claims of the building trades on liquidation of a project. If the project is only worth the amount of the mortgage debt, or even less, that priority can mean the difference between getting paid and not getting paid. But if the mortgage lender is in an "ownership position," then he loses that priority.

Wipeout

Someone who knew Faludy even longer than Burnett was Avram J. Bennett, of the legendary Principal Investments Ltd Bennetts. (Principal, probably the largest Canadian landholder in the 1950s and early 1960s, was li-

quidated in a massive receivership that started in 1963. AJ, as he is called, acquired many of the Principal Investments properties from the receiver, including several downtown Toronto commercial sites.)

A. J. Bennett owned one of the deals in question, Penhorn Mall Ltd in Dartmouth, Nova Scotia. Burnett said he had authorization in the CNA arrangement to make loans of up to \$10 million without seeking board approval. He arranged for CNA to advance to Penhorn \$6.45 million to complete its shopping mall. Faludy was Burnett's development manager.

Shortly before completion of the mall, Burnett wrote in a memo: "If we start foreclosing at this stage, we will only create problems and possibly not finish the center. I believe that we should continue to disburse funds until such time as the center is totally completed, and at that point in time, take our appropriate action."

After completion, the general contractor filed a lien claim for \$750,000, and Burnett started foreclosure proceedings. According to the CBC lawyer, Burnett's plan was disclosed in another memo, in which Burnett had told lawyers to start foreclosure proceedings. "Also," Burnett had written, "it is necessary that we wipe out everybody behind us, and in this fashion we can sell the property to Sobey's."

("Behind" Burnett were the general contractor's lien, another lien, and possibly another mortgage. If the foreclosure sale were for less than the amount of the CNA mortgage debt, they would be "wiped out," and the property could then be re-sold minus those encumbrances.)

"Is that," asked the CBC lawyer, "how you conduct yourself?"

As for the possible later sale to Sobey's Stores, Burnett wrote: "I have assigned the job to Leslie Faludy, to get all the data together and to meet them and negotiate it."

"That's the Leslie Faludy," asked the CBC lawyer, "that doesn't work for you, that works for Bennett?" To the CBC, it went to demonstrate that Burnett was acting as if he were the owner, even before he started foreclosure proceedings.

The CBC lawyer read another part of the earlier memo that suggested a foreclosure was planned from the time the mortgage originated. There were two mortgages to CNA, and Burnett wrote, "Mind you, the reason for setting up the two mortgages is that we can foreclose under our second and not touch our first."

Burnett: "That is not what it means. It means we can foreclose under one and not the other. It doesn't mean anything, really."

— It speaks for itself, doesn't it, Mr Burnett?

— No, I don't think so.

Reporter Linden MacIntyre, on discussing the Pen-

horn case at the time of his research, made himself a note, produced at trial: "The primary necessity must be to have control without apparent ownership."

Avram Bennett, as such

The foreclosure sale was not conducted until 1978. The Burnett entities were then owed over \$8 million, including fees and accrued interest, and Burnett himself was the successful bidder at \$5.9 million. "Now, it sort of looks like economic nonsense at that stage, doesn't it," the CBC lawyer observed. The transaction created a substantial tax-loss that could be used to offset other income.

In spite of the Penhorn "loss," Burnett said he has continued to lend money to A. J. Bennett.

—Why would you continue to lend Bennett more money after the Penhorn experience?

—Avram Bennett, as such, in his various companies, is a fairly substantial individual. . . . We have made many loans to Mr Bennett or his companies.

—And you were prepared to do that, notwithstanding the Penhorn experience?

—I always felt Avie Bennett would pull the Penhorn deal out of the fire, but because of a number of factors, whatever they may be, he never did.

Burnett said he has had so many deals with Bennett that it would be impossible to list them all.

At the time of trial earlier this year—two years after the "loss" occurred—Burnett said he hadn't yet sued Bennett on his personal covenant in one of the Penhorn mortgages, but he certainly intended to.

Burnett/McCormick

The Corner Brook, Newfoundland campus of Memorial University was constructed by Newfoundland businessman Wesley K. Andrews, with mortgage financing of \$8.7 million from CNA, arranged by Burnett. It involved a land-lease by the Newfoundland government to Andrews, and a lease-back of the whole project to the Newfoundland government, for about \$1 million per year.

Burnett arranged for the general contractor to be Group Building Systems Ltd, a company owned by John H. McCormick of Burlington, Ontario. Burnett had arranged a CNA loan to McCormick for the construction of the courthouse in Thunder Bay, Ontario, and Burnett said the structure of the Corner Brook leaseback was based on the Thunder Bay deal. Burnett arranged to get half the gross profits of Group Building over \$750,000. He also received fees of some \$750,000 out of the advances to Andrews, including \$500,000 as a fee for guaranteeing the performance of Andrews' company—a unique arrangement.

Andrews hired the inevitable Faludy to be his development manager. "Why," asked the CBC lawyer, "would Andrews need Faludy down in Corner Brook?" Burnett said Andrews chose to hire Faludy.

—On your recommendation?

—No, he had met Mr Faludy on my recommendation in Grand Falls. Yes, I did recommend Mr Faludy, but from that point on they were dealing directly together

and I did not recommend Mr Faludy for this job.

Burnett's \$500,000 fee for guaranteeing the Andrews company performance was documented as part of Faludy's fee, which Faludy turned over to Burnett.

Another Burnett memo found its way into evidence, in which Burnett gave his vice-president Faludy's expense claims "regarding the Newfoundland deals." Burnett wrote, "See me on this and we will see how we can get them paid." Burnett said Faludy was working for the owner.

General contractor McCormick's superintendent on the Corner Brook job said it was his impression that Faludy was "Burnett's man" because he seemed to be the one approving the mortgage advances. He said the interior construction of the project was poor, and he left McCormick's firm because his reputation was being hurt by late or no payments by McCormick to the trades on various projects. He was asked:

—Do you know where John McCormick is now?

—No. Many people in Newfoundland would like to know.

Burnett/Boloten

In Kirkland Lake, Ontario, Burnett caused CNA to advance a \$1.4 million mortgage loan to a company ostensibly headed by a local insurance broker, Robert E. (Ted) Evans, who was president of Kirkland Lake Plaza Ltd. General contractor was a company run by local builder Floyd Hembruff. Hembruff relied on Evans; he said, "Evans was a very respectable man in the community, and I took his word for what their company was." But fringe developer Herbert Boloten was also an officer of the Kirkland Lake Plaza company, and he was apparently the principal.

A Burnett memo indicates Burnett was in the Kirkland Lake picture at the land assembly stage. "The land in this project," he wrote, "has been picked up in three parcels. The first piece we require is for \$80,000. I have agreed to lay out the \$80,000, plus other incidental charges. . . ."

In direct examination, Burnett was asked:

—Were you involved in the early mortgage money of Kirkland Lake?

—No.

And in cross-examination, confronted with the memo: —At that point in Kirkland Lake Plaza you were behind the mortgage money?

—In the acquisition of land, yes.

The judge said Boloten was a "business associate" of Burnett.

Hembruff finished with an unpaid bill of \$372,000.

Faludy also got involved.

In all cases, Burnett said CNA fully funded its mortgage commitments, and any problems were between owner and general contractor. Faludy was expected to testify, and he was present in the courthouse for part of the trial, but Burnett's lawyer didn't call him.

Even though lawyer-turned-financier Burnett has gone on to become himself one of the largest Canadian shopping-center developers, no newspaper covered the trial.

Orenstein Partners play rough

The well-known accounting partnership of Perlmutter Orenstein Newman Giddens and Co. lost three of its partners to the Olympia and York group of companies last spring, and the remaining partners took the occasion to reorganize the accounting partnership. The resulting dispute with Mark Perlmutter, 64, younger brother of the late Nathan Perlmutter, founder of the firm, has led to the court appointment of a receiver. At the height of the disagreement, last August, the partners shipped Perlmutter's files to storage, and changed his office locks, to try to force him out of the office. However, with the appointment of receiver Clarkson Co. earlier this fall, the dispute is being settled peacefully.

Perlmutter, who joined the firm in 1941, handled various liquidation files, is a licenced trustee in bankruptcy, and had three staff people in the Perlmutter firm assigned to him. He referred in a court filing to "discontent [on the part of the other partners] with the operations of the bankruptcy department," and said that the partners purported to reduce his share of the partnership profits for 1979 from 7.9%—the normal percentage for each of the ten senior partners—to 2.5%. Unfruitful discussions followed, and then for the 1980 year, Perlmutter says, the partnership draft financial statement "excluded me from all share of profit whatsoever."

Then in May 1981, when partners Gilbert Newman, Gary Goodman and Bernard Baum accepted jobs with Olympia and York, the partners told Perlmutter the partnership was being reorganized and he wasn't invited to continue. The Perlmutter Orenstein partnership had existed and operated without any written partnership agreement. Ten of the partners announced in May the termination of the partnership, and the establishment of the successor firm, Orenstein and Partners. Negotiations on how to handle Mark Perlmutter's 200 or so liquidation files broke down.

On June 30, the ongoing partners delivered letters to the three employees assigned to Perlmutter, telling them that effective the next day, they would be employed not by the partnership but by Perlmutter personally. Then on July 20, one of these staff persons, now being paid by Perlmutter, found the office locks changed and access barred to the files.

On July 22, Perlmutter's lawyer got a letter from Harvey Kotler of the law firm of Robins and Partners: "...It is not to anyone's advantage to continue Mr Perlmutter's presence in the suite. His offices are required for other purposes."

On August 3, Perlmutter got another letter from the partnership: "As you did not vacate our premises on July 31 1981 as requested, we have taken the liberty of shipping your files to Tippet-Richardson. Further, please be advised that we have sent telegrams to your employees advising them that you no longer have an office in our premises and that they should call you for further instructions."

However, on August 6, the negotiating relationship changed dramatically. Perlmutter's lawyer, Gordon Marantz of the firm of Smith Lyons, obtained an order from Supreme Court of Ontario Judge McLeod Craig appointing Clarkson Co. receivers of the "purportedly dissolved" accounting partnership of Perlmutter Orenstein.

It was done via a procedure which is not unusual in Supreme Court of Ontario, but which the public seldom finds out about, commonly called a "walk-in." It is a hearing arranged by private discussion with the Judge, and not disclosed anywhere, rather than by the normal application to court staff, who keep publicly available records, and a publicly posted docket sheet for each court day.

All but one of the other ex-partners were represented before Judge Craig. But Joseph Bergman of Robins and Partners objected to the procedure.

However, the appointment of a receiver resulted in the return of the files from storage, the return of Perlmutter to the office, arrangements for an orderly transfer from the old partnership to the new, and a financial settlement acceptable to Perlmutter.

Perlmutter said he is fully satisfied with the settlement, but neither side would comment on the original cause of the dispute, or the terms of the settlement.

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