



Court File No.

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

(Court Seal)

BRADLEY J. GRANT INVESTMENTS INC.

Plaintiff

and

NESTIG INC. and STEPHEN LEE HEIMBECKER also known as STEVE HEIMBECKER
Defendants

STATEMENT OF CLAIM

TO THE DEFENDANTS

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

IF YOU WISH TO DEFEND THIS PROCEEDING, you or an Ontario lawyer acting for you must prepare a Statement of Defence in Form 18A prescribed by the *Rules of Civil Procedure*, serve it on the Plaintiff's lawyer or, where the Plaintiff does not have a lawyer, serve it on the Plaintiff, and file it, with proof of service in this court office, **WITHIN TWENTY DAYS** after this Statement of Claim is served on you, if you are served in Ontario.

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

Instead of serving and filing a Statement of Defence, you may serve and file a Notice of Intent to Defend in Form 18B prescribed by the *Rules of Civil Procedure*. This will entitle you to ten more days within which to serve and file your Statement of Defence.

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

TAKE NOTICE: THIS ACTION WILL AUTOMATICALLY BE DISMISSED if it has not been set down for trial or terminated by any means within five years after the action was commenced unless otherwise ordered by the court.

Date _____ Issued by _____
Local Registrar

Address of court office: 7755 Hurontario Street
Brampton, Ontario
L6W 4T6

TO: **NESTIG INC.**
B4-285 Weber St North
Waterloo, ON
N2J 3H8

Defendant

AND TO: **STEPHEN LEE HEIMBECKER also known as STEVE HEIMBECKER**
2187 Arrow Ct
Burlington, ON
L7P 3P2

Defendant

CLAIM

1. The plaintiff, Bradley J. Grant Investments Inc. (“BJG”), claims:
 - (a) \$7,920,000.00 for breach of Note 1 (as that term is defined below) plus pre and post judgment interest at the contractual rate of 11.08% per annum calculated semi-annually, not in advance, from December 1, 2021, or, in the alternative, pursuant to sections 128-130 of the *Courts of Justice Act*, RSO 1990, c. C.43;
 - (b) \$28,100,000.00 for breach of Note 2 (as that term is defined below) plus pre and post judgment interest at the contractual rate of 10.03% per annum calculated semi-annually, not in advance, from December 1, 2021, or, in the alternative, pursuant to sections 128-130 of the *Courts of Justice Act*, RSO 1990, c. C.43;
 - (c) \$14,975,000.00 for breach of Note 3 (as that term is defined below) plus pre and post judgment interest at the contractual rate of 10.14% per annum calculated semi-annually, not in advance, from December 1, 2021, or, in the alternative, pursuant to sections 128-130 of the *Courts of Justice Act*, RSO 1990, c. C.43;
 - (d) \$1,861,700.00 in “Fees Paid on Maturity” under Note 1, Note 2, and Note 3 (as those terms are defined below) plus pre and post prejudgment pursuant to sections 128-130 of the *Courts of Justice Act*, RSO 1990, c. C.43;
 - (e) in addition or in the alternative, \$55,995,000.00 in general damages against both defendants, jointly and severally, for breach of contract, unjust enrichment, negligence, negligent misrepresentation, and/or breach of fiduciary duty plus pre

and post judgment interest pursuant to sections 128-130 of the *Courts of Justice Act*, RSO 1990, c. C.43;

- (f) an accounting of all funds advanced towards the Outstanding Mortgages and any payments, including fees and interest, that the defendants received from the Outstanding Mortgages, including all funds the defendants purportedly received from bundling the Outstanding Mortgages into tranches and selling the same;
- (g) an Order that the defendants disgorge all profits obtained as a result of breaching their fiduciary duties;
- (h) \$500,000.00 against both defendants, jointly and severally, for aggravated and/or punitive damages;
- (i) the costs of this proceeding, plus all applicable taxes; and
- (j) such further and other relief as to this Honorable Court may seem just.

The Parties

2. BJJ is a company incorporated pursuant to the laws of Ontario.

3. The defendant, Nestig Inc. (“Nestig”), is a company incorporated pursuant to the laws of Canada that carries on business providing credit coaching services. Nestig was formerly licensed as a mortgage brokerage under the *Mortgage Brokerages, Lenders and Administrators Act*, 2006, S.O. 2006, c. 29. As of July 5, 2022, Nestig’s mortgage brokerage license was suspended.

4. The defendant, Stephen Heimbecker also known as Steve Heimbecker, is an individual residing in Ontario. He is Nestig’s president. Between April 1, 2021 and March 31, 2022, Mr.

Heimbecker was licensed as Nestig's principal mortgage broker under the *Mortgage Brokerages, Lenders and Administrators Act*, 2006, S.O. 2006, c. 29. His license has since expired.

The Mortgage Investment Deal

5. Mr. Heimbecker and BJB's principal, Bradley Grant, are both active members in Ontario's horse racing community. In late 2018, through a mutual contact, Mr. Heimbecker approached BJB to propose a joint venture for the purchase and resale of mortgages.

6. Mr. Heimbecker's proposed joint venture involved the following elements:

- (a) BJB would provide lump-sum financing to Nestig. Nestig and Mr. Heimbecker would then use these funds to offer private mortgages to various borrowers (referred to as the "**Underlying Mortgages**"). Nestig would execute a promissory note, guaranteed by Mr. Heimbecker, in the amount of the lump-sum financing;
- (b) Nestig would match BJB's lump-sum financing and thereafter hold half the value of each mortgage in trust for BJB; and
- (c) Nestig would bundle the Underlying Mortgages into tranches and resell the tranches in the secondary real estate market (the "**Mortgage Investment Deal**").

7. Mr. Heimbecker represented himself as a mortgage broker with decades of experience. Nestig represented itself as a licensed mortgage brokerage. Accordingly, BJB believed that Mr. Heimbecker and Nestig would perform their obligations to the standard a reasonable mortgage broker/ brokerage in similar circumstances.

8. On December 21, 2018, BJB provided its first lump-sum financing under the Mortgage Investment Deal. Between December 2018 and November 2021, BJB and Nestig engaged in over 80 similar transactions. In each case, Nestig repaid its promissory note in a timely manner, including interest, which reflected a portion of BJB's profit under the Mortgage Investment Deal.

9. Throughout the course of the Mortgage Investment Deal, Mr. Heimbecker and Nestig represented that they had or were matching funds advanced by BJB, registering the Underlying Mortgages, bundling the Underlying Mortgages into tranches, and reselling the same.

The Outstanding Amount

10. On December 1, 2021, BJB provided further lump-sum financing to Nestig pursuant to three promissory notes in the total principal amount of \$55,995,000.00. This was the largest single-day transfer over the course of Mortgage Investment Deal (the "**Outstanding Amount**").

11. Mr. Heimbecker guaranteed each promissory note in his personal capacity.

12. The three promissory notes ("**Note 1**", "**Note 2**" and, "**Note 3**") state as follows:

	Note 1	Note 2	Note 3
Date Executed	December 1, 2021	December 1, 2021	December 1, 2021
Principal Loan	\$7,920,000.00	\$28,100,000.00	\$14,975,000.00
Interest Rate	11.08% per annum calculated semi- annually, not in advance	10.03% per annum calculated semi- annually, not in advance	10.14% per annum calculated semi- annually, not in advance
Maturity Date	January 4, 2022	January 7, 2022	January 7, 2022
Fee Paid on Maturity	\$751,000.00	\$684,900.00	\$425,800.00

13. Despite Nestig representing that it had matched BJJ's contributions, purchased and bundled Underlying Mortgages, and attempted to sell the same, both Nestig and Mr. Heimbecker have either neglected or refused to (a) repay the Outstanding Amount; (b) disclose any financial documentation evidencing Nestig's equal contribution of \$55,995,000.00; or (c) disclose any Underlying Mortgages that Nestig claims to have purchased, bundled, and attempted to sell in accordance with the Mortgage Investment Deal.

Breach of Contract and Unjust Enrichment

14. Despite BJJ's numerous demands and follow-ups, Nestig and Mr. Heimbecker have not paid the Outstanding Amount. They are liable for the same.

15. In addition or in the alternative, BJJ relies upon the doctrine of unjust enrichment and pleads that:

(a) it has suffered a deprivation equal to the value of Note 1, Note 2, and Note 3;

(b) Nestig has benefitted from the value of Note 1, Note 2, Note 3; and

(c) there is no juristic reason for either BJJ's deprivation or Nestig's benefit.

16. Nestig is liable for unjust enrichment.

Negligence

17. Nestig owed a duty of care to BJJ to act as a reasonably prudent mortgage brokerage in the circumstances.

18. Nestig breached its duty of care to BJJ as follows, without limitation:

(a) Nestig falsely represented to BJG that it had purchased, bundled, and attempted to sell the Underlying Mortgages despite knowing the same to be false, misleading, or untrue, contrary to its obligations under O. Reg 188/08, s 14.2 filed pursuant to the *Mortgage Brokerages, Lenders and Administrators Act*, 2006, S.O. 2006, c. 29;

(b) despite BJG's numerous requests, Nestig has neglected or refused to comply with its disclosure obligations under O Reg 188/08, ss 31 and 36;

(c) Nestig solicited and received funds from BJG in connection with an activity requiring a brokerage license despite having neglected or refused to identify any existing mortgages on specific properties, contrary to section O Reg 188/08, s 38; and

(d) Nestig did not establish or implement any policies or procedures to ensure that it, its brokers, or its agents complied with the *Mortgage Brokerages, Lenders and Administrators Act*, 2006, S.O. 2006, c. 29, contrary to O Reg 188/08, s 40.

19. Mr. Heimbecker owed a duty of care to BJG to act as a reasonably prudent mortgage broker in the circumstances.

20. Mr. Heimbecker breached his duty of care to BJG as follows, without limitation:

(a) Mr. Heimbecker falsely represented to BJG that he had purchased, bundled, and attempted to sell the Underlying Mortgages despite knowing the same to be false, misleading, or untrue, contrary to his obligations under O. Reg 187/08, ss 3 and

3.1 filed pursuant to the *Mortgage Brokerages, Lenders and Administrators Act*, 2006, S.O. 2006, c. 29; and

(b) Mr. Heimbecker did not act as a reasonably prudent mortgage broker in the circumstances.

21. Nestig and Mr. Heimbecker's acts and omissions have caused and continue to cause BJG to suffer damages. They are liable for the same.

Negligent Misrepresentation

22. Nestig and Mr. Heimbecker owed a duty of care to BJG based upon a special relationship to take reasonable care in ensuring that their representations were not false, misleading, nor untrue.

23. In breach of this duty, Nestig and Mr. Heimbecker made the following representations that were false, misleading, or untrue, without limitation:

- (a) Nestig and Mr. Heimbecker represented that that they had purchased, bundled, and attempted to sell the Underlying Mortgages;
- (b) Nestig and Mr. Heimbecker represented that they had registered the Underlying Mortgages;
- (c) Nestig and Mr. Heimbecker represented that they required "consents" from various alleged borrowers prior to complying with their disclosure obligations to BJG under the *Mortgage Brokerages, Lenders and Administrators Act*, 2006, S.O. 2006, c. 29;

- (d) Nestig and Mr. Heimbecker represented that they had equalled BJJ's contributions to the Mortgage Investment Deal;
 - (e) Nestig and Mr. Heimbecker represented that they had used the Outstanding Amount exclusively for the Mortgage Investment Deal; and
 - (f) Nestig and Mr. Heimbecker represented that they would comply with their payment obligations under Note 1, Note 2, and Note 3.
-

24. BJJ reasonably relied on the above-noted representations to its detriment. Nestig and Mr. Heimbecker are liable for the same.

Breach of Fiduciary Duty

25. The parties' relationship in the Mortgage Investment Deal was characterized by BJJ's trust, confidence, and loyalty:

- (a) upon receiving BJJ's financing, Mr. Heimbecker and Nestig exercised unfettered day-to-day control of the Mortgage Investment Deal. Mr. Heimbecker and Nestig determined, *inter alia*, which Underlying Mortgages to purchase, from whom, which Underlying Mortgages to bundle into tranches and sell, to whom, the price of these tranches, and the distribution of profits;
- (b) Mr. Heimbecker and Nestig exercised unilateral day-to-day control of the Mortgage Investment Deal. Their decisions impacted BJJ's legal and practical interests in the Mortgage Investment Deal;

(c) BJG relied upon Mr. Heimbecker and Nestig exercising their direction honestly, in utmost good faith, and in BJG's best interests. BJG particularly relied upon Mr. Heimbecker and Nestig conveying timely and accurate information such that BJG could understand its position and assess its risk; and

(d) by their words and conduct, Mr. Heimbecker and Nestig either expressly or implicitly agreed to act in accordance with a duty of loyalty to BJG.

26. Mr. Heimbecker and Nestig each owed a fiduciary duty to BJG.

27. Mr. Heimbecker and Nestig breached their fiduciary duties as follows, without limitation:

(a) Mr. Heimbecker and Nestig either neglected or failed to disclose important information regarding the Mortgage Investment Deal to permit BJG to make informed decisions about its best course of action;

(b) Mr. Heimbecker and Nestig withheld important information regarding the Mortgage Investment Deal. To date, Mr. Heimbecker and Nestig have failed to disclose the Underlying Mortgages, from whom they were purchased, whether any of the Underlying Mortgages were bundled into tranches and sold, to whom they were sold, and/or the price of the same; and

(c) Mr. Heimbecker and Nestig used BJG's financing for their own self-dealing without accounting to BJG or considering BJG's interests. The full particulars of this allegation are, by their nature, known only to the defendants.

28. Mr. Heimbecker and Nestig are liable for breach of fiduciary duty.

Mr. Heimbecker's Personal Liability

29. BJG pleads that Mr. Heimbecker, as Nestig's founder, director, and president, completely dominated and controlled Nestig's actions. Mr. Heimbecker has attempted to use Nestig to shield himself from liability for improper and wrongful conduct.

30. BJG states that it is just and appropriate to disregard Nestig's separate legal personality and apportion liability between the defendants, jointly and severally.

Punitive Damages

31. BJG was vulnerable due to its role in the Mortgage Investment Deal and reliance on Mr. Heimbecker and Nestig performing their contractual, common law, and equitable obligations honestly and in good faith.

32. Mr. Heimbecker and Nestig abused their position in the Mortgage Investment Deal. Their conduct is highly reprehensible and a marked departure from any ordinary standard of decency. Compensatory damages are insufficient to meet the Court's objective of deterrence, denunciation, and retribution.

33. BJG pleads that punitive damages of \$500,000.00 are both rational and proportionate.

34. BJG requests that this matter be tried in the City of Brampton.

BRADLEY J. GRANT INVESTMENTS INC

Plaintiff

-and-

**NESTIG INC. and STEPHEN LEE HEIMBECKER also known as
STEVE HEIMBECKER**
Defendants

Court File No.

**ONTARIO
SUPERIOR COURT OF JUSTICE**

**PROCEEDING COMMENCED AT
BRAMPTON**

STATEMENT OF CLAIM

THOMPSON, MACCOLL & STACY LLP

Barristers and Solicitors
1020 Matheson Boulevard East
Suite 5
Mississauga, Ontario
L4W 4J9

Matthew Bradley (75381W)
mbradley@tmslaw.com
Tel: (905) 625-5591 ext. 237

Lawyers for the Plaintiff

Court File No. CV-22-00002925-0000

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

BRADLEY J. GRANT INVESTMENTS INC.

Plaintiff

and

**NESTIG INC. and STEPHEN LEE HEIMBECKER
also known as STEVE HEIMBECKER**

Defendants

NOTICE OF INTENT TO DEFEND

The Defendants intends to defend this action.

October 15, 2022

SORBARA, SCHUMACHER, MCCANN LLP
31 Union Street East
Waterloo, ON N2J 1B8

Justin Heimpel
LSO# 43807W

T: 519-741-8010 ext. 224
E: justin@sorbaralaw.com

Lawyers for the Defendants

-2-

TO: **THOMPSON, MACCOLL & STACY LLP**
Barristers and Solicitors
1020 Matheson Boulevard East
Suite 5
Mississauga, ON L4W 4J9

Matthew Bradley
LSO#75381W

T: 905-625-5591 ext. 237

E: mbradley@tmslaw.com

Lawyers for the Plaintiff

RCP-E 18B (July 1, 2007)

BRADLEY J. GRANT INVESTMENTS INC.
Plaintiff

-and-

NESTIG INC. et al.
Defendants

Court File No. CV-22-00002925-0000

ONTARIO
SUPERIOR COURT OF JUSTICE
PROCEEDING COMMENCED AT
BRAMPTON

NOTICE OF INTENT TO DEFEND

SORBARA, SCHUMACHER, MCCANN LLP
31 Union Street East
Waterloo, ON N2J 1B8

Justin Heimpel
LSO# 43807W

T: 519-741-8010 ext. 224
E: justin@sorbaralaw.com

Lawyers for the Defendants

RCP-F 4C (September 1, 2020)