

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

**BETWEEN:**

**THE TORONTO-DOMINION BANK**

**Applicant**

**- and -**

**BEAVERTON LUMBER INC.**

**Respondent**

**SECOND REPORT OF ALBERT GELMAN INC.  
IN ITS CAPACITY AS COURT-APPOINTED RECEIVER  
(Dated February 26<sup>th</sup> 2016)**

**I. INTRODUCTION**

1. This Second Report to Court is filed by Albert Gelman Inc. (“AGI”) in its capacity as receiver (the “Receiver”) appointed pursuant to an Order of the Honourable Mr. Justice T McEwen of the Ontario Superior Court of Justice dated June 17, 2015 (the “Appointment Order”) over all of the assets, undertakings and properties of Beaverton Lumber Inc. (“Beaverton” or the “Company”). The receivership application was commenced by The Toronto-Dominion Bank (“TD”). Attached as **Appendix “A”** is a copy of the Appointment Order.

2. Attached as **Appendix “B”** is a copy of the First Report (defined below), without appendices.

**II. PURPOSE OF THE REPORT**

3. The purpose of this Report is:

- a) to seek approval of this Second Report as well as the actions and activities of the Receiver described herein including the Receivers Final Statement of Receipts and Disbursements (the “**Final R&D**”);
- b) to seek this Honourable Court’s approval of a distribution to the Canada Revenue Agency (the “**CRA**”) pursuant to its lien registered against title to the Premises (defined below);
- c) to seek this Honourable Court’s approval of the fees and disbursements of the Receiver from July 16, 2015 to December 31, 2015 in addition to a final accrual to attend at the discharge hearing and attend to ancillary matters of \$3,500;
- d) to seek this Honourable Court’s approval of the fees and disbursements of the Receiver’s counsel from July 29, 2015 to November 29, 2015, in addition to a final accrual to attend at the discharge hearing and attend to ancillary matters of \$4,500;
- e) to pay the funds remaining from the receivership administration to Albert Gelman Inc., in trust, in its capacity as Trustee in Bankruptcy of Beaverton;
- f) to seek this Honourable Court’s approval of the discharge of the Receiver; and,
- g) to seek such further and other relief as this Honourable Court may deem just.

### **III. TERMS OF REFERENCE**

4. Any terms not otherwise defined in this Second Report shall have the meanings ascribed to them in the First Report.

#### **IV. ACTIVITIES OF THE RECEIVER**

5. The property of the Company included the property known municipally as 488 Mara Road, Beaverton, Ontario (the "**Premises**"). The Receiver sold the Premises by Order of the Honourable Justice Penny of the Ontario Superior Court of Justice (Commercial List) dated August 12, 2015 (the "**August 12 Order**"). Attached as **Appendix "C"** is a copy of the August 12 Order.

6. Subsequent to the First Report of the Receiver dated July 30, 2015 (the "**First Report**"), the Receiver has acted as follows:

- a) Closed the Transaction between the Receiver and the Purchaser for a total realization of \$900,000. Attached hereto as **Appendix "D"** is a copy of the executed Receiver's Certificate confirming that the Transaction closed on August 13, 2015;
- b) Paid property taxes owing in respect of the Premises to The Corporation of the Township of Brock in the amount \$145,219.26;
- c) Made a full and final distribution to TD in the amount of \$644,141.57;
- d) Engaged an outside accountant to:
  - i. assist the Receiver with the preparation and completion of the accounting records of Beaverton;
  - ii. prepare the financial statements of the Company as of the date of bankruptcy; and,
  - iii. prepare and file the final pre-bankruptcy tax return for the final pre-bankruptcy period ending March 18, 2015 (the "**Pre-Bankruptcy Tax Return**"). The Pre-Bankruptcy Tax Return was filed with the CRA on October 27, 2015 and the notice of assessment from the CRA was received confirming that the return was assessed as filed.

### Settlement with Home Hardware Stores Limited (“HHSL”)

7. HHSL filed a secured claim in the amount of \$207,005 against the Premises and certain assets of Beaverton (“HHSL Claim”). The affidavit in support of the HHSL Claim set out that HHSL held security for its debt, which it valued at a total amount of \$263,866, as follows:

- i. cash withheld by HHSL and owing to Beaverton of \$105,320;
- ii. common shares of HHSL assigned by Beaverton to HHSL and having a valuation of \$88,432; and
- iii. term notes payable by HHSL to Beaverton and held by HHSL and having a valuation of \$70,114 (collectively, the “**Outside Security**”).

8. The Trustee negotiated a settlement with HHSL to:

- i. reduce the amount of the HHSL Claim by the interest charged subsequent to the date of bankruptcy; and
- ii. to pay the difference between the value of its security and the HHSL Claim to the Receiver.

9. The final settlement reached with HHSL resulted in a payment to the Receiver of \$64,340.62 on January 8, 2016.

### Life Insurance Policy

10. As set out in the Receiver’s First Report, on June 1, 2015 the Private-Receiver became aware of a corporate owned business credit life insurance policy which insured the lives of both George Tripp and the late Barbara Tripp. Barbara Tripp, in fact, passed away on the same day that the Receiver became aware of the insurance policy.

11. The Trustee proceeded to file a claim with TD Insurance on June 17, 2015.

12. The insurer notified Mr. Tripp and the Trustee that the terms of the policy are such that the insurance coverage automatically ended on the date when the business was declared bankrupt; being March 18, 2015. Furthermore, premiums were also in arrears for more than three months. Accordingly, the claim filed by the Trustee was denied by the insurer.

13. The Receiver will not be taking any further actions in respect of this life insurance policy.

## **V. SECURED CREDITORS – PREMISES**

14. On December 1, 2015 the CRA sent a letter to the Receiver claiming a secured interest in the Property in the amount of \$98,491.30 plus daily accruing interest of \$13.49 per day (the “CRA Claim”). Attached hereto as **Appendix “E”** is a copy of the CRA Claim.

15. As noted in the First Report, the CRA Claim ranks subordinate to the secured claims of TD against the Premises, as confirmed pursuant to the Third Legal Opinions (defined in the First Report) prepared by the Receiver’s counsel. Attached hereto as **Appendix “F”** are copies of the Third Legal Opinions.

16. Given that the TD claim was paid in full, the Receiver is requesting this Court’s approval to make a distribution to CRA for the full amount of their secured claim plus accrued interest subsequent to December 1, 2015.

## **VI. RECEIVER’S DISCHARGE**

17. Since its appointment, the Receiver has closed the sale of the Premises as well as the sale of the equipment and inventory of the Company. The Receiver does not believe that there are any remaining assets of the Company to be realized upon.

18. Therefore, the Receiver believes that it is no longer necessary for it to remain as Receiver of the Company and requests this Court’s approval to be discharged as Receiver of Beaverton, with the surplus of funds held by the Receiver to be paid to Albert Gelman Inc., in trust, in its capacity as Trustee in Bankruptcy of Beaverton.

19. TD, the Applicant creditor to this proceeding, is in favour of the discharge of the Receiver.

## **VII. FEES AND DISBURSEMENTS OF THE RECEIVER AND ITS COUNSEL**

20. Attached as **Appendix "G"** is the Affidavit of Joe Albert sworn February 11, 2016 regarding the Receiver's fees for the period of July 16 to December 31, 2015 accompanied by supporting time docketts.

21. Attached as **Appendix "H"** is the Affidavit of Bobby Sachdeva sworn February 25<sup>th</sup>, 2016 regarding the fees and disbursements of Pallett Valo LLP for the period of July 29, 2015, to November 29, 2015, accompanied by supporting time docketts.

22. The Receiver believes that the fees and disbursements indicated in Appendices "G" and "H" are reasonable and requests approval of its fees and disbursements, and the fees and disbursements of Pallett Valo LLP.

## **VIII. STATEMENT OF RECEIPTS AND DISBURSEMENTS**

23. Attached as **Appendix "I"** is the Receiver's Final R&D.

24. The Receiver anticipates that there will be residual funds of approximately \$1,619.62 remaining from the sale of Beaverton's assets. The Receiver is requesting this Court's approval to transfer these funds to Albert Gelman Inc. in its capacity as Trustee in Bankruptcy of Beaverton.

## **IX. CONCLUSION**

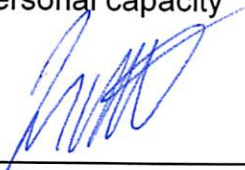
25. The Receiver respectfully requests an Order of this Honourable Court:

- a) approving this Second Report and the activities of the Receiver;
- b) approving the Final R&D;
- c) approving a final distribution to the CRA of their secured claim amount;

- d) approving the fees and disbursements of the Receiver;
- e) approving the fees and disbursements of the Receiver's counsel, Pallet Valo LLP;
- f) authorizing the Receiver to pay the remaining funds from the Receivership administration to Albert Gelman Inc., in trust, in its capacity as Trustee in Bankruptcy of Beaverton;
- g) discharging the Receiver; and,
- h) providing for such further and other relief as this Honourable Court may deem just.

All of which is respectfully submitted this 26<sup>th</sup> day of February, 2016.

**ALBERT GELMAN INC.**, solely in its  
capacity as Court-appointed Receiver of Beaverton Lumber Inc.  
and not in its personal capacity

Per:   
\_\_\_\_\_  
Joe Albert, CPA, CA, CIRP, Licensed Insolvency Trustee