

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)  
*Ontario Business Corporations Act, R.S.O., Chapter B-16***

**ABBAS MOHAMMAD**

Applicant

- and -

**STEPHEN CELESTIAL, MUSTAFA ISMAEL and  
2497486 ONTARIO LTD.**

Respondents

**FIRST REPORT OF ALBERT GELMAN INC.  
in its capacity as court-appointed liquidator**

(Dated October 18, 2017)

**I. INTRODUCTION**

1. This first report ("**First Report**") is filed by Albert Gelman Inc. ("**AGI**") in its capacity as liquidator (the "**Liquidator**") appointed pursuant to the Order of the Honourable Justice Conway of the Ontario Superior Court of Justice, Commercial List, dated June 20, 2017 (the "**Appointment Order**"), without security, over all of the assets, undertakings and properties (the "**Property**") of 2497486 Ontario Inc. ("**2497486**" or the "**Company**"). The application was commenced by Abbas Mohammad. A copy of the Appointment Order along with the endorsement of Justice Conway dated June 20, 2017 is attached hereto as **Appendix "A"**.

2. Prior to the date of the Appointment Order the Liquidator (in its capacity as Proposed Liquidator at that time) prepared a report in respect of these proceedings (the "**Pre-Filing Report**"). The Pre-Filing Report contained, among other things, details

regarding the principal asset of the Company being the real property municipally known as 1028 Bloor Street West, Toronto (the "**Real Property**") as well as details regarding the proposed sales process (the "**Sales Process**"). A copy of the Pre-Filing Report (without appendices) is attached hereto as **Appendix "B"**.

3. 2497486 is a corporation incorporated under the laws of the province of Ontario.

4. The common shares of 2497486 are owned by Abbas Mohammad (50%), Stephen Celestial (25%) and Mustafa Ismael (25%) (collectively, the "**Shareholders**").

5. Based on information set out in a corporation profile report obtained by the Liquidator dated June 13, 2017, the Shareholders are also the directors of 2497486.

6. The Liquidator understands that the Shareholders are divided with Abbas Mohammad on one side, and Stephen Celestial and Mustafa Ismael on the other, resulting in a deadlock situation. The appointment of the Liquidator was on consent of both the Applicant and the Respondents.

7. As was noted above, the principal asset of 2497486 is the Real Property which it manages. The Real Property consists of a three story building with a commercial unit on the first floor and separate residential units on each of the second and third floors. The commercial unit and the third floor residential unit are leased. The second floor residential unit is vacant.

## **II. PURPOSE OF THIS REPORT**

8. The purpose of the First Report is to seek an order:

- a. approving this First Report as well as the actions and activities of the Liquidator described herein, including the Liquidator's interim statement of receipts and disbursements as of October 17, 2017 (the "**Interim SRD**");
- b. approving and authorizing the Liquidator to enter into and carry out the terms of the sale transaction (the "**Transaction**") contemplated by a binding Agreement of Purchase and Sale executed by the Liquidator on September

2, 2017, including an Amendment to Agreement of Purchase and Sale executed on September 12, 2017 (collectively, the “**Purchase Agreement**”) between the Liquidator and the Purchaser (defined in the Confidential First Report) and vesting in the Purchaser, the Company’s right, title and interest in the Real Property;

- c. approving the Liquidator’s proposed Claims Solicitation Process (defined below);
- d. approving the Confidential First Report (defined below);
- e. sealing the Confidential First Report until the Transaction has been completed;
- f. approving the fees and disbursements of the Liquidator to October 17, 2017;
- g. approving the fees and disbursements of the Liquidator’s counsel, Kronis, Rotsztain, Margles, Cappel LLP to October 17, 2017; and,
- h. providing for such further and other relief as this Honourable Court may deem just.

### **III. SCOPE AND TERMS OF REFERENCE**

9. In preparing this First Report, the Liquidator has obtained and relied upon certain unaudited financial information of 2497486, 2497486’s books and records, and discussions with both counsel for the Applicant, Mr. David Fogel, and counsel for the Respondents (excluding the Company), Mr. Ryan Hanna, as well as with two of the shareholders of 2497486, Mr. Stephen Celestial and Mr. Mustafa Ismael directly, and with 2497486’s accountant, Mr. Errol Chapman.

10. While the Liquidator has reviewed the various documents provided, such review does not constitute an audit or verification of such information for accuracy, completeness or compliance with Generally Accepted Accounting Principles (“**GAAP**”)

or International Financial Reporting Standards (“IFRS”). Accordingly, the Liquidator expresses no opinion or other form of assurance pursuant to GAAP or IFRS or otherwise with respect to such information except as expressly stated herein.

11. This report has been prepared for the use of this Court to assist the Court in making a determination of whether to approve the relief sought. Accordingly, the reader is cautioned that this report may not be appropriate for any other purpose. The Liquidator will not assume responsibility or liability for losses incurred by the reader as a result of the circulation, publication, reproduction or use of this report contrary to the provisions of this paragraph.

12. Unless otherwise noted, all monetary amounts referenced herein are expressed in Canadian dollars.

#### **IV. ACTIONS AND ACTIVITIES OF THE LIQUIDATOR**

13. The actions and activities of the Liquidator since the date of the Appointment Order, and as reflected in the Interim SRD, are, among other things, as follows:

- a. Undertook the Sales Process (defined below) which is described in more detail below;
- b. Changed the locks to the second floor residential unit which is vacant;
- c. Contacted the Canadian Imperial Bank of Commerce (“CIBC”) to notify of our appointment and request the account be converted to deposit only;
- d. Contacted the Equitable Bank, the mortgagee of the Real Property, to notify of our appointment and make arrangement to continue to make the monthly mortgage payments;
- e. Retained Onyx-Fire Protection Services Inc. to conduct an inspection of the Real Property and to bring the Real Property up to code by installing the necessary equipment on site, such as smoke and carbon monoxide detectors, fire extinguishers, etc.

- f. Obtained an appraisal of the Real Property prepared by Mpire Appraisers as of July 13, 2017 (the "**Appraisal**"). A copy of the Appraisal is enclosed with the Confidential First Report;
- g. Met with several roofing contractors to discuss the sagging back roof as there was severe pooling of water. Further, the Equitable Bank required remediation of the roof as part of the mortgage before December 2018 and, as a result, at the time the mortgage was obtained by the Company, Equitable Bank withheld approximately \$75,000 which was to be used exclusively for the purposes of fixing the sagging roof (the "**Holdback**"). The Liquidator decided not to proceed with any repairs to the roof as the Purchaser purchased the property on an "as is, where is" basis. The payout statement received by the Liquidator from Equitable Bank dated October 16, 2017 indicates that the Holdback will be deducted from the payout amount;
- h. Met with a representative of AECO Group, a certified asbestos abatement company, to confirm the existence of, and obtain a quote for the removal of, asbestos pipe wrapping and asbestos ceiling tiles in the basement of the Real Property. The Liquidator obtained confirmation from AECO Group that, unless disturbed, the asbestos was not a health risk and as such it decided not to proceed with the abatement as it would require vacancy of the Real Property for a period of time. Furthermore, the Purchaser did not require abatement of the asbestos as a condition of its purchase;
- i. Registered a copy of the Appointment Order on title to the Real Property in accordance with paragraph 4(n) of the Appointment Order;
- j. Contacted the Company's insurance broker to be added to the Company's existing insurance policy with Coachman Insurance Company (policy no. C84686951-7) in order to continue with the Company's insurance policies;
- k. Redirected the Company's mail to the offices of the Liquidator;

- l. Inspected the premises upon taking possession and, at that time, took pictures and videos of the premises;
- m. Engaged a property manager to attend at the Real Property twice per week to address maintenance and other property management tasks;
- n. Met with Mustafa Ismael at the Real Property to obtain a tour of the Real Property and discuss matters relating the repairs and maintenance of the Real Property;
- o. Contacted the Company's external accountant, Errol Chapman of Errol Chapman Professional Corporation ("ECPC"), to obtain copies of the Company's financial statements and tax filings for the year ended December 31, 2016 and instructed the accountant to proceed with corporate tax and HST filings for the period ended June 20, 2017;
- p. Obtained copies of the company's books and records including the commercial lease, residential lease, accountings records, etc.;
- q. In accordance with subsection 210(4) of the *Business Corporations Act* (Ontario) (the "Act") posted a notice of the appointment of the Liquidator in volume 150 issue 28 of the Ontario Gazette which was published on July 15, 2017. Attached hereto as **Appendix "C"** is a copy of the notice; and,
- r. Notified the commercial tenant and residential tenants of the appointment of the Liquidator, arranged for collection of monthly rent from all tenants, and communicated with the tenants to deal with garbage removal, pest control, and general maintenance of the Real Property.

## V. SALE PROCESS

14. In its Pre-Filing Report the Liquidator outlined its proposed Sales Process. In accordance with the various provisions of the Appointment Order and, specifically, paragraph 4.A. the Liquidator undertook the following activities to market and sell the Real Property:

- a. Obtained listing proposals from two separate real estate agents licensed to sell mixed used commercial/residential real estate in Toronto;
- b. Entered into a listing agreement with Michael Switzer of Forest Hill Real Estate Inc. (the "**Realtor**") to act as agent to the Liquidator to sell the Real Property for the reasons set out in the Liquidator's Confidential Report;
- c. In consultation with the Realtor, determined that the Liquidator should not try and find a tenant for the second floor unit, as it would be best for the ultimate purchaser to make this decision. The third floor residential lease agreement as well as the first floor commercial lease agreement both extend beyond the date of this First Report and, therefore, the Liquidator was not tasked with either finding new tenants for these units or renewing the existing lease agreements during its appointment; and,
- d. Instructed the Realtor to list the property on MLS which it did on or around August 9, 2017. The listing price of the Real Property was \$1,998,000.

15. During the Sales Process, the Realtor received numerous enquiries from prospective purchasers and fifteen (15) prospective purchaser groups toured the Real Property.

16. During the Sales Process the Liquidator received four (4) offers from prospective purchasers. Details regarding the offers received and the negotiations undertaken by the Realtor and the prospective purchasers are contained in the Confidential First Report. As described in the Confidential First Report, the Liquidator ultimately entered into an agreement of purchase and sale with the one of the prospective purchasers, being the Purchaser.

17. The Liquidator is not aware of any non-arm's length relation between the Purchaser and the Company or its shareholders, and believes the Purchaser and the Company are not related persons within the meaning of the Act.

18. The Transaction is conditional upon this Honourable Court approving the Transaction and vesting in the Purchaser all of 2497486's right, title and interest in and to the Real Property free and clear of any encumbrances.

19. On or around October 17, 2017 the Liquidator provided each of the Shareholders, through their respective legal representatives, with confirmation of the quantum of the purchase price contained in the Purchase Agreement. As of the date of this First Report, the Liquidator has not received a response from the Shareholders, or their respective counsel, in respect of the Liquidator's disclosure to them of the purchase price.

## **VI. RECOMMENDATION IN RELATION TO THE PURCHASE AGREEMENT**

20. The Liquidator recommends that this Honourable Court authorize and approve the Liquidator's completion of the Transaction contemplated by the Purchase Agreement and grant a vesting order in favour of the Purchaser for the following reasons:

- a. the process undertaken by the Liquidator to market and sell the Real Property as described above and in the Confidential First Report is consistent with:
  - i. the Sales Process outlined in the Pre-Filing Report; and,
  - ii. the provisions of the Appointment Order and, specifically, paragraph 4.A.
- b. as expanded upon in the Confidential First Report, in the Liquidator's opinion the Transaction represents the highest and best realization for the Real Property under the circumstances; and,
- c. it is the Liquidator's opinion that approval of the Purchase Agreement is fair and reasonable.

## **VII. OTHER ASSETS AND LIABILITIES OF THE COMPANY**



## Other Assets

Based on the financial statements prepared by ECPC for the fiscal year ended December 31, 2016, the Company's other assets consisted of a nominal amount of cash and prepayments as well as the Holdback which is recorded as a current asset in the amount of \$75,659. As noted above, the Holdback will be netted against the amount owing to Equitable Bank when the Real Property is sold and the Equitable Bank mortgage is paid.

## Creditors secured against the Real Property

21. The Liquidator obtained a parcel register from Land Registry Office #66 for the Land Titles Division in respect of the Real Property dated October 4, 2017 (the "**Parcel Register**") which indicates, among other things, the following:

- a. 2497486 is the registered owner in fee simple of the Real Property;
- b. there is a charge registered against title to the Real Property in favour of Equitable Bank on December 30, 2015 in the amount of \$900,000 as Instrument No. AT4107054. Pursuant to the payout statement provided by Equitable Bank dated October 16, 2017, the balance to be paid to Equitable Bank at the time the Transaction closes is approximately \$817,000, which is net of the Holdback and includes a penalty of \$29,766 for breaking the mortgage early;
- c. there is a Notice of Assignment of Rents – General registered against title to the Real Property in favour of Equitable Bank on December 30, 2015 as Instrument No. AT4107055; and,
- d. The Appointment Order was registered against title to the Real Property on July 17, 2017 as Instrument No. AT4628906.

22. The Liquidator has conducted a search on the City of Toronto website Property Tax Lookup which indicated as at October 16, 2017 that the unpaid balance of

municipal property taxes was \$0 as at that date. Any balances owing to the City of Toronto for property tax will be paid in full on closing of the Transaction.

### Personal Property

23. The Liquidator conducted a search pursuant to the *Personal Property Security Act* (Ontario) (“PPSA”) on October 2, 2017 (the “PPSA Search”) which identified, as of October 2, 2017, Equitable Bank as having registered a financing statement on December 31, 2015. The financing statement indicates that Equitable Bank claims a security interest against 2497486 in respect of inventory, equipment, accounts and other in the amount of \$900,000 pursuant to a General Assignment of Rents and a General Security Agreement with respect to the Real Property. There were no other creditors with registered security interests identified on the PPSA Search. Attached hereto as **Appendix “D”** is a copy of the PPSA Search.

### Unsecured Creditors

24. Based on the Liquidator’s review of the Company’s financial information, the Liquidator believes that all unsecured creditors (excluding any direct or indirect claims of the shareholders of the Company) will be paid 100% of their claims against the Company from the proceeds of the Transaction.

## **VIII. CONFIDENTIAL REPORT OF THE LIQUIDATOR**

25. The Liquidator has prepared a confidential report to its First Report dated October 18, 2017 (the “**Confidential First Report**”) which includes, among other things, the Purchase Agreement as well as two appraisals of the Real Property.

26. The Liquidator is seeking an Order sealing the Confidential First Report from the general public until the closing of the Transaction or further Court order, as it contains sensitive commercial information about the value of the Real Property, the release of which could negatively affect future marketing efforts should the Transaction not close.

27. For the reasons outlined in the Confidential First Report, the Liquidator is of the opinion that the proposed sale of the Real Property represents the highest and best

realization and is fair and reasonable to all stakeholders. Closing the Transaction also reduces the carrying costs and risks associated with the Real Property as outlined herein.

## **IX. PROPOSED CLAIMS SOLICITATION PROCESS**

28. The Liquidator has developed the process set out below in order to identify any and all arm's length creditors with claims against 2497486 which arose prior to the date of the completion of the Transaction (collectively, the "**Claims**" or singularly, each "**Claim**"). The proposed claims solicitation process is substantially consistent with the process prescribed by the Act but dispenses with the meeting of creditors as no creditor's Claim is expected to be compromised or prejudiced. The Liquidator believes that the proposed claims solicitation process is efficient, expedient, fair and reasonable in the circumstances.

29. The Claims shall not include those obligations owing to creditors which were incurred by the Liquidator during its administration of the estate. These creditors shall be paid in the ordinary course of business by the Liquidator from the assets of the estate and they shall not be required to file a proof of claim with the Liquidator.

30. The process to identify and quantify the Claims of non-arm's length creditors, namely the Shareholders and companies controlled directly or indirectly by the Shareholders, shall be determined and reported to this Honourable Court at a later date.

31. The proposed process to be undertaken by the Liquidator upon the completion of the Transaction to identify the arm's length Claims is as follows:

- a. Publish a notice in the National Post and the Toronto Star, describing the Claims Solicitation Process and advising all creditors of 2497486 that the deadline for submissions of proof of their Claim is January 19, 2018 at 5:00 p.m. Eastern Standard Time (the "**Claims Bar Date**");
- b. Send via ordinary mail, electronic mail or facsimile, which method shall be at the sole and unfettered discretion of the Liquidator, to all known creditors of

2497486 (as either identified by the Liquidator during these proceeding or as contained in the Company's books and records) a proof of claim form to be sworn by the creditor under oath as well as instructions regarding the proper completion of the proof of claim form (together the "**Proof of Claim Document Package**");

- c. Cause the Proof of Claim Document Package to be posted on the Liquidator's website from forthwith following completion of the Transaction until one business day after the Claims Bar Date.
- d. The Liquidator will review all proofs of claim delivered to the Liquidator prior to the Claims Bar Date and shall accept, revise or reject each Claim. If the Liquidator disputes a Claim in whole or in part, the Liquidator may:
  - i. attempt to consensually resolve the quantum of the disputed Claim with the respective creditor; or,
  - ii. if the quantum of the disputed Claim cannot be resolved consensually, send a Notice of Revision or Disallowance to the creditor with the disputed Claim by no later than twenty-one (21) days after the Claims Bar Date;
- e. Any creditor who receives a Notice of Revision or Disallowance and who objects to same shall deliver to the Liquidator a Notice of Dispute within fifteen (15) days of the issuance of the Notice of Revision or Disallowance. If a creditor receives a Notice of Revision or Disallowance and does not file a Notice of Dispute by the deadline noted above the value of such creditors Claim shall be deemed to be as set out in the Notice of Revision or Disallowance;
- f. Any creditor who delivers a Notice of Dispute to the Liquidator by the above noted deadline shall, not less than fifteen (15) days after the service of the Notice of Dispute for determination of the Claim in dispute, unless otherwise agreed by the Liquidator in writing, serve on the Liquidator, and file in the

court, a Notice of Motion returnable on a date to be fixed by the court, but in any event, no later than thirty (30) days from the date of the issuance of the Notice of Revision or Disallowance, failing which the value of such creditor's Claim shall be deemed to be set out in the applicable Notice of Revision or Disallowance;

- g. Any Claim that is not received by the Claims Bar Date will be forever barred and extinguished;
- h. All Claims received and accepted by the Liquidator prior to the Claims Bar Date shall be considered "Accepted Claims". Accepted Claims shall be paid by the Liquidator from the assets of the estate of the Company after the expiry of the Claims Bar Date; and,
- i. Claims denoted in foreign currency are to be converted to Canadian Dollars as at November 23, 2017 (the anticipated closing date of the Transaction) using the Bank of Canada spot rate.

(collectively, the "**Claims Solicitation Process**")

32. The Liquidator is requesting that this Honourable Court approve the proposed Claims Solicitation Process.

33. Subsequent to the completion of the proposed Claims Solicitation Process, if approved by this Honourable Court, the Liquidator will report back to the Court on the outcome, including details regarding the accepted, revised and rejected Claims received by the Liquidator.

**X. LIQUIDATOR'S INTERIM STATEMENT OF RECEIPTS AND DISBURSEMENTS AS AT OCTOBER 17, 2017 ("INTERIM R&D")**

34. Attached hereto at **Appendix "E"** is the Liquidator's Interim R&D as at October 17, 2017.

35. As set out in the R&D, Abbas Mohammad advanced \$50,000 to the Liquidator prior to the date of the Appointment Order in order to fund interim disbursements of the Liquidator. Furthermore, Mr. Abbas Mohammad has provided the Liquidator with a guarantee of its fees and disbursements in these proceedings up to a maximum amount of \$50,000 (the “**Guarantee**”).

## **XI. ACCOUNTS OF THE LIQUIDATOR AND ITS COUNSEL**

36. Attached hereto as **Appendix “F”** is the Affidavit of Tom McElroy regarding the Liquidator’s fees to October 17, 2017 accompanied by the supporting time dockets (the “**Liquidator’s Fees**”).

37. Attached hereto as **Appendix “G”** is the Affidavit of Dov Tal regarding the fees and disbursements of Kronis, Rotsztain, Margles, Cappel LLP (“**KRMC**”) to October 17, 2017 accompanied by the supporting time dockets.

38. The Liquidator believes that its fees and disbursements, as well as the fees and disbursements of its counsel, KRMC, are fair and reasonable.

## **XII. LIQUIDATOR’S REQUEST FOR APPROVAL**

39. The Liquidator respectfully requests an Order of this Honourable Court:

- a. approving this First Report and the Confidential First Report of the Liquidator, as well as the actions and activities of the Liquidator described herein, including the Interim R&D;
- b. approving and authorizing the Liquidator to carry out the terms of the Transaction and Purchase Agreement;
- c. vesting in the Purchaser, all right, title and interest in and to the Real Property;
- d. approving and authorizing the Liquidator to implement the Claims Solicitation Process;

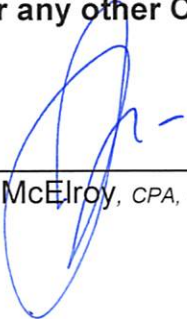
- e. sealing the Confidential First Report until the Transaction has been completed and the funds are received by the Liquidator;
- f. approving the fees and disbursements of the Liquidator to October 17, 2017;
- g. approving the fees and disbursements of the Liquidator's counsel, Kronis, Rotsztain, Margles, Cappel LLP, to October 17, 2017; and,
- h. providing for such further and other relief as this Honourable Court may deem just.

\* \* \*

All of which is respectfully submitted this 18th day of October, 2017.

**ALBERT GELMAN INC., solely in its  
capacity as the Court-Appointed Liquidator  
of 2497486 Ontario Ltd. and not in its  
Personal or any other Capacity**

Per:

  
\_\_\_\_\_  
Tom McElroy, CPA, CA, CBV, CIRP, LIT