

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

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

(Dated October 23, 2018)

I. INTRODUCTION

1. This second report ("**Second 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. A copy of the Pre-Filing Report (without appendices) is attached hereto as **Appendix “B”**.

3. The Appointment Order at paragraph 4.A. included approval of the Liquidator to enter into a listing agreement with a commercial realtor for the purposes of realizing on the Real Property.

4. In accordance with the Appointment Order, the Liquidator entered into an agreement of purchase and sale with Modern City Real Estate Investment Trust Company Ltd.¹ (the “**Purchaser**”) dated August 31, 2017 and 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**”) which contemplated the sale to the Purchaser of the Real Property (the “**Transaction**”). Attached hereto as **Appendix “C”** is a copy of the Purchase Agreement.

5. On October 30, 2017 the Honourable Justice Hainey granted an order (the “**Approval and Vesting Order**”) approving, among other things, the Transaction and vesting the Company’s right, title and interest in and to the Real Property in the Purchaser free and clear of any and all encumbrances. Attached hereto as **Appendix “D”** is a copy of the Approval and Vesting Order.

6. The Liquidator prepared a report in respect of the October 30, 2017 motion dated October 18, 2017 (the “**First Report**”) and well as a confidential report dated October 18, 2017 (the “**Confidential Report**”). Attached hereto as **Appendices “E”** and “**F**” are copies of the First Report and Confidential Report, without appendices, respectively. In accordance with the Approval and Vesting Order, the Court ordered that the Confidential Report remain sealed until completion of the Transaction. As described in further detail below, the Transaction was completed on November 24, 2017.

¹ The Agreement of Purchase and Sale was initially entered into with Elia Mazzawi, in trust as purchaser.

7. It its First Report the Liquidator proposed a Claims Solicitation Process for the purposes of identifying any and all arm's length creditors with claims against 2497486 which arose prior to the Claims Bar Date, being January 19, 2018. On October 30, 2017 the Honourable Justice Hainey granted an order (the "**Claims Solicitation Procedure and Bar Order**") approving, among other things, the Claims Solicitation Process. Attached hereto as **Appendix "G"** is a copy of the Claims Solicitation Procedure and Bar Order.

II. PURPOSE OF THIS REPORT

8. The purpose of this Second Report is to:

- a. provide details to the Court of the Liquidator's actions and activities subsequent to the date of the First Report;
- b. seek an order approving this Second 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 22, 2018 (the "**Interim SRD**");
- c. seek an order approving the proposed Non-Arm's Length Claims Solicitation Process (defined below);
- d. seek an order approving the fees and disbursements of the Liquidator for the period from October 18, 2017 to September 20, 2018;
- e. seek an order approving the fees and disbursements of the Liquidator's counsel, Kronis, Rotsztain, Margles, Cappel LLP for the period from October 18, 2017 to September 30, 2018; and,
- f. seek an order providing for such further and other relief as this Honourable Court may deem just.

III. SCOPE, RESTRICTIONS AND TERMS OF REFERENCE

9. In preparing this Second 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 external 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.

13. Terms not otherwise defined herein shall have the meanings ascribed to them in the First Report and draft form of Court Order included with the Liquidator's Motion Record for the motion returnable October 29, 2018.

IV. BACKGROUND INFORMATION

14. 2497486 is a corporation incorporated under the laws of the province of Ontario.

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

16. Based on information set out in a corporation profile report obtained by the Liquidator dated September 10, 2018, the Shareholders are also the directors of 2497486.

17. 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.

18. As was noted above, prior to the appointment of the Liquidator the principal asset of 2497486 was the Real Property which it managed. The Real Property consisted 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.

19. The Real Property was sold by the Liquidator and the Transaction closed on November 24, 2017 in accordance with the Approval and Vesting Order.

V. ACTIONS AND ACTIVITIES OF THE LIQUIDATOR

20. The actions and activities of the Liquidator since the date of the First Report, and as reflected in the Interim SRD, are, among other things, as follows:

- a. Closed the Transaction, as further described below, including issuing and filing the Liquidator’s Certificate on November 24, 2017 in accordance with paragraph 6 of the Approval and Vesting Order;
- b. Undertook the Claims Solicitation Process, as further described below;
- c. Engaged the Company’s external accountant, Errol Chapman of Errol Chapman Professional Corporation (“**ECPC**”), to prepare the Company’s financial statements and tax filings for the year ended December 31, 2017;

- d. Issued payment to the Receiver General of Canada in the amount of \$94,329.59 for payment of corporate income taxes which resulted from the sale of the Real Property in the fiscal year ended December 31, 2017;
- e. Issued payment to Mr. Abbas Mohammad on December 5, 2017 in the amount of \$50,000 as a repayment of the third party funds provided to the Liquidator by Mr. Mohammad to guarantee the Liquidator's fees and disbursements in its capacity as Liquidator of the Company (defined as the "Guarantee" in the First Report);
- f. Cancelled the Company's insurance policies in respect of the Real Property following the closing of the Transaction; and,
- g. Engaged, through its counsel, with counsel to both the Applicant and the Respondents, for the purpose of determining an agreed upon process to determine the quantum of the claims of non-arm's length parties, including the claims of the Shareholders. The Liquidator understands that the proposed Non-Arm's Length Claims Solicitation Process (defined below) has been proposed to the Applicant and the Respondents in advance of this motion and that neither party has indicated that they oppose the relief being sought by the Liquidator in respect of this proposed process.

VI. CLOSING OF THE TRANSACTION

21. The Approval and Vesting Order, at paragraph 1, authorized the Liquidator to complete (or close) the Transaction with the Purchaser and that the completion of the Transaction would occur when the Liquidator issued and filed with the Court the Liquidator's certificate.

22. In accordance with paragraph 6 of the Approval and Vesting Order and the Liquidator being satisfied the all steps had been taken in order to complete the Transaction, the Liquidator issued and filed with the Court the Liquidator's certificate on November 24, 2017. Attached hereto as **Appendix "H"** is a copy of the executed Liquidator's Certificate.

23. The Liquidator issued payment to Equitable Bank in accordance with its payout statement dated October 16, 2017 in order to satisfy the outstanding debt obligation of Equitable Bank and, as a result, Equitable Bank discharged its mortgage against title to the Real Property on December 5, 2017. Attached hereto as **Appendix “I”** is a copy of the registered discharge of Equitable Bank’s mortgage.

VII. CLAIMS SOLICITATION PROCESS - ARM’S LENGTH CREDITORS

24. In accordance with the Claims Solicitation Procedure and Bar Order the Liquidator was empowered and authorized to undertake a process to identify, resolve and bar any and all claims against the Company, excluding the non-arm’s length claims of the Shareholder and other related parties (the “**Claims Solicitation Process**”).

25. The Claims Solicitation Process required that all claims were to be provided to the Liquidator prior to 5:00 p.m. eastern standard time on January 19, 2018 (the “**Claims Bar Date**”) and that if a creditor did not file a claim by the Claims Bar Date it would be forever barred from doing so and its claim against the Company would be extinguished.

26. In respect of the Claims Solicitation Process approved by the Court the Liquidator undertook the following activities:

- a. Published a notice in both the National Post and the Toronto Star on December 8, 2017 describing the Claims Solicitation Process and advising all creditors of 2497486 of the Claims Bar Date. Attached hereto as **Appendix “J”** are copies of the notices.
- b. Sent via electronic mail 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**”); and,

c. Posted the Proof of Claim Document Package on the Liquidator's website.

27. In undertaking the Claims Solicitation Process the Liquidator received the following claims prior to the Claims Bar Date:

a. Wilk Law sworn January 11, 2018 in the amount of \$4,536.95; and,

b. Safetech Environmental Limited sworn January 9, 2018 in the amount of \$3,333.50.

(collectively, the "**Received Claims**")

28. Attached hereto as **Appendix "K"** are copies of the Received Claims.

29. There were no claims received by the Liquidator subsequent to the Claims Bar Date.

30. The Liquidator accepted both of the Received Claims. There were no claims received by the Liquidator which were disputed.

31. The Liquidator issued payment to the claimants in respect of each of the Received Claims in the amounts set out therein.

VIII. PROPOSED CLAIMS SOLICITATION PROCESS - NON-ARM'S LENGTH CREDITORS

32. As was noted above, the Shareholders are divided. As a result, the Liquidator believes a fulsome process should be conducted to determine the respective claims of each of the non-arm's length creditors prior to any distribution.

33. The Liquidator recommends the Court approve the process set out below, developed by the Liquidator, for the purpose of determining the nature and quantum of the claims of the non-arm's length creditors of 2497486 being Abbas Mohammad, Stephen Celestial and Mustafa Ismael. The Liquidator believes that the proposed claims solicitation process is efficient, expedient, fair and reasonable in the circumstances.

34. The draft form of Order included with the Liquidator's motion records indicates that if the Liquidator does not receive a proof of claim from any of the non-arm's length creditors before the Determination Date then the Net Proceeds shall be distributed as follows:

- a. \$217,123.13 to Abbas Mohammad ("**Mohammad**") in full and final satisfaction of his shareholder loan claim;
- b. \$125,411.57 to Stephen Celestial ("**Celestial**") in full and final satisfaction of his shareholder loan claim;
- c. \$106,900.00 to Mustafa Ismael ("**Ismael**") in full and final satisfaction of his shareholder loan claim; and,
- d. the balance of the Net Proceeds to be distributed to each of the Parties in accordance with the percentage of each Party's shareholding, which for greater certainty shall be: 50% to Mohammad; 25% to Celestial; and 25% to Ismael.

35. The above noted amounts were provided to the Liquidator by the Company's external accountant and represent the shareholder loan amounts owing to the Shareholders as they are recorded in the Company's accounting books and records. Attached hereto as **Appendix "L"** are the fiscal year ended December 31, 2017 financial statements along with the transactions detail reports for each of the three shareholder loan accounts.

36. The Liquidator will retain a properly qualified tax professional to assist the Liquidator to obtain a certificate from the Canada Revenue Agency ("CRA") certifying that the Liquidator is not liable to pay any additional amounts to the CRA in its capacity as Liquidator of the Company which certificate is commonly referred to as a "Clearance Certificate". The Liquidator will not be obligated to distribute any portion of the Net Proceeds until such time as it has received a Clearance Certificate and paid the specified amounts owing to the CRA, if any. The Liquidator notes that as part of the

Claims Solicitation Process previously undertaken and described above, it provided a Proof of Claim Document Package to the CRA and did not receive a response.

37. If any of the non-arm's length creditors disagree with the proposed distribution of the Net Proceeds as set out above they shall be permitted to file a Proof of Claim with the Liquidator on or before the Determination Date. The Determination Date shall be the date that is 30 days from the date of the Court Order approving this claims process (the "**Determination Date**").

38. In the event that the Liquidator does receive a Proof of Claim before the Determination Date and such claim differs from the amount(s) noted above, the following process shall be undertaken to determine the Claims of each of the non-arm's length creditor:

- a. The Liquidator shall review such Proof of Claim received and shall review the nature of the Claim set out therein and may investigate the Company's records and request further evidence or information from the Parties;
- b. The Liquidator may attempt to consensually resolve the amount of the Proof of Claim with the Parties or, upon completion of its investigation, shall send a Notice of Determination to the Parties as soon as is practicable after the Determination Date;
- c. any Party that objects to the Notice of Determination, shall deliver to the Liquidator a Notice of Dispute within 15 days of the issuance of the Notice of Determination, or, if no Party delivers the Notice of Dispute within such time, the value of such Parties' respective Claims shall be deemed to be as set out in the Notice of Determination;
- d. any Party who delivers a Notice of Dispute to the Liquidator in accordance with this Order, shall, unless otherwise agreed by the Liquidator in writing, by no later than 5:00 p.m. on the day that is 15 days after the service of the Notice of Dispute, serve, and file with this Court, a Notice of Motion seeking to appeal the Liquidator's determination, returnable on a date to be fixed by

this Court, and in any event, no later than 60 days from the date of the service of the Notice of Motion. If a Notice of Motion seeking to appeal is not filed within such period, then the Notice of Determination shall, subject to further order of this Court, be deemed to be final and binding.

(collectively, the “**Non-Arm’s Length Claims Solicitation Process**”)

39. The Liquidator is requesting that this Honourable Court approve the proposed Non-Arm’s Length Claims Solicitation Process.

IX. LIQUIDATOR’S INTERIM SRD

40. Attached hereto at **Appendix “M”** is the Liquidator’s Interim SRD.

X. ACCOUNTS OF THE LIQUIDATOR AND ITS COUNSEL

41. Attached hereto as **Appendix “N”** is the Affidavit of Tom McElroy regarding the Liquidator’s fees for the period from October 18, 2017 to September 20, 2018 accompanied by the supporting time dockets (the “**Liquidator’s Fees**”).

42. Attached hereto as **Appendix “O”** is the Affidavit of Mark Lieberman regarding the fees and disbursements of Kronis, Rotsztain, Margles, Cappel LLP (“**KRMC**”) for the period from October 18, 2017 to September 30, 2018 accompanied by the supporting time dockets.

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

XI. LIQUIDATOR’S REQUEST FOR APPROVAL

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

- a. approving this Second Report of the Liquidator, as well as the actions and activities of the Liquidator described herein, including the Interim R&D;
- b. approving the proposed Non-Arm’s Length Claims Solicitation Process;

- c. approving the fees and disbursements of the Liquidator for the period from October 18, 2017 to September 20, 2018;
- d. approving the fees and disbursements of KRMC for the period from October 18, 2017 to September 30, 2018; and,
- e. providing for such further and other relief as this Honourable Court may deem just.

All of which is respectfully submitted this 23rd day of October, 2018.

**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