

Court File No. 31-2822739
Estate No. 31-2822739

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF
TOBMAR INVESTMENTS INC., OF THE CITY OF TORONTO IN THE PROVINCE OF
ONTARIO

SUPPLEMENTARY REPORT TO THE FIRST REPORT OF ALBERT GELMAN INC.
IN ITS CAPACITY AS PROPOSAL TRUSTEE
DATED MAY 9, 2022

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capacity as Proposal Trustee of
Tobmar Investments Inc.**

ONTARIO
SUPERIOR COURT OF JUSTICE
(IN BANKRUPTCY AND INSOLVENCY)

**In the Matter of the Notice of Intention to Make a Proposal of
Gateway Market Canada Inc. of the city of Toronto
in the Province of Ontario**

**And In the Matter of the Notice of Intention to Make a Proposal of
Tobmar Investments Inc. of the city of Toronto
in the Province of Ontario**

**And In the Matter of the Notice of Intention to Make a Proposal of
Tobmar Investments International Inc. of the city of Toronto
in the Province of Ontario**

**SUPPLEMENTARY REPORT TO THE FIRST REPORT OF ALBERT GELMAN INC.
IN ITS CAPACITY AS PROPOSAL TRUSTEE**

(Dated May 9, 2022)

I. INTRODUCTION

1. This Supplementary Report ("**Supplementary Report**") to the Proposal Trustee's First Report to Court dated May 4, 2022 ("**First Report**") is filed by Albert Gelman Inc. ("**AGI**") in its capacity as proposal trustee (the "**Proposal Trustee**") in connection with a Notice of Intention to Make a Proposal ("**NOI**") filed by Gateway Market Canada Inc. ("**Gateway Market**"), Tobmar Investments Inc. ("**Tobmar Investments**") and Tobmar Investments International Inc. ("**Tobmar International**"; and together with Gateway and Tobmar Investments, the "**Gateway Group**") on April 19, 2022 under Section 50.4(1) of the *Bankruptcy and Insolvency Act* (Canada) (the "**BIA**").

2. Gateway Group are making a motion to the Court, to be heard jointly, returnable May 10, 2022 (the "**May 10 Motion**") seeking various relief.

II. SCOPE AND TERMS OF REFERENCE

3. This Supplementary Report has been prepared for the use of this Court and Gateway Group's stakeholders as general information relating to the Gateway Group and to assist the Court in making a

determination of whether to approve the relief sought. Accordingly, the reader is cautioned that this Supplementary Report may not be appropriate for any other purpose.

4. Terms not otherwise defined herein shall have the meanings ascribed to them in the First Report.

III. LANDLORDS

5. As set out at paragraph 49 of the First Report, the extension is being sought, in part, to allow Gateway Group to make a determination as to which locations are not viable and to disclaim the respective commercial leases and franchise agreements. As set out at paragraph 15 of the First Report, six locations that had closed prior to the NOI have already been disclaimed.

6. The Trustee has attended two video conference meetings held with Gateway's legal counsel and lawyers representing five landlords that hold the head leases for 20 of the approximately 90 locations of Tobmar Investments ("**Landlord Counsel**").

7. During those meetings, and among other matters discussed, Landlord Counsel expressed the following concerns:

- a. that Tobmar Investments does not have the cash flow available, nor does the Tobmar Investments Cash Flow Forecast provide for payment of rent owing for the 30-day notice period in relation to leases that have been or will be disclaimed by Tobmar Investments; and
- b. that Tobmar Investments does not have the cash flow available, nor does the Tobmar Investments Cash Flow Forecast provide for payment of rent to the landlords in instances where the sub-tenants may default on their rent obligations subsequent to the filing of the NOI ("**Unpaid Rent**").

8. Due to these concerns, and among other reasons, Landlord Counsel requested that all landlords of Gateway Group be granted a charge ("**Landlords' Charge**") on the property of Gateway Group as security for the payment of all unpaid rent accruing due from the date of the NOI.

IV. PROPOSAL TRUSTEE'S RECOMMENDATION

9. The Proposal Trustee is of the opinion that landlords may be prejudiced, but not "materially prejudiced" (as that term applies to section 50.4(9) of the BIA), in relation to Unpaid Rent for the following reasons:

- a. It is the intention of Tobmar Group to disclaim commercial leases for non-viable locations and has shown good faith and due diligence in already disclaiming six commercial leases; and

- b. in instances where neither the sub-tenant nor Tobmar Group pay rent post-NOI, and the lease has not been disclaimed, the landlords have their own remedies to terminate the lease for non-payment of rent, if they should so choose.

10. Notwithstanding the foregoing, the Proposal Trustee supports a Landlords' Charge, subject to the following:

- a. The terms of a Landlords' Charge are acceptable to Gateway Group; and
- b. No secured creditor of Gateway Group will be materially prejudiced by the Landlords' Charge, or such secured creditor otherwise does not oppose the Landlords' Charge.

All of which is respectfully submitted this 9th day of May 2022

**ALBERT GELMAN INC., solely in its
capacity as Trustee of re the Notice of
Intention to Make a Proposal of Gateway
Market Canada Inc., Tobmar Investments Inc.
and Tobmar Investments International Inc.
and not its Personal or any other Capacity**
Per:



Joe Albert, CPA, DIFA, CIRP, LIT

IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF TOBMAR INVESTMENTS INC., OF THE CITY OF TORONTO IN THE PROVINCE OF ONTARIO

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PROCEEDING COMMENCED AT
TORONTO

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