

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)**

Court File No. 31-1932502

B E T W E E N:

IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF CRATE  
MARINE SALES LIMITED

Court File No. 31-1932534

B E T W E E N:

IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF F.S. CRATE &  
SONS LIMITED

Court File No. 31-1932548

B E T W E E N:

IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF 1330732  
ONTARIO LIMITED

Court File No. 31-1932557

B E T W E E N:

IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF 1328559  
ONTARIO LIMITED

Court File No. 31-1932540

B E T W E E N:

IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF 1282648  
ONTARIO LTD.

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**SECOND REPORT OF THE INTERIM RECEIVER  
DECEMBER 3, 2014**

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appointed Interim Receiver of Crate Marine Sales Limited, F.S.  
Crate & Sons Limited, 1330732 Ontario Limited, 1323559  
Ontario Limited and 1282648 Ontario Limited

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**SECOND REPORT OF THE INTERIM RECEIVER**

**DECEMBER 3, 2014**

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**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)**

**CRATE MARINE SALES LIMITED, F.S. CRATE & SONS LIMITED  
1330732 ONTARIO LIMITED, 1328559 ONTARIO LIMITED AND 1282648 ONTARIO  
LIMITED**

**SECOND REPORT OF THE INTERIM RECEIVER**

**December 3, 2014**

**A. Farber & Partners Inc.**, in its capacity as the Court-Appointed Interim Receiver (the “**Interim Receiver**”) of Crate Marine Sales Limited, F.S. Crate & Sons Limited, 1330732 Ontario Limited, 1323559 Ontario Limited and 1282648 Ontario Limited (collectively the “**Companies**”) hereby reports to the Court as follows:

**INTRODUCTION**

1. On November 14, 2014, the Companies each filed a Notice of Intention to Make a Proposal (the “**NOI’s**”) pursuant to the *Bankruptcy and Insolvency Act* (Canada) (the “**BIA**”), and named Dodick Landau Inc. as proposal trustee (“**Proposal Trustee**”).
2. On November 20, 2014, the currently-known largest secured creditor, Crawmet Corp. (“**Crawmet**”) filed motion material for a November 21, 2014 hearing seeking to (i) have the NOI’s immediately terminated; (ii) appoint the Interim Receiver as a receiver over the properties, assets and undertakings of the Companies and (iii) to substitute the Interim Receiver to become the bankruptcy trustee of the Companies. At the November 21, 2014 hearing, this motion was adjourned to December 1, 2014.



3. At the November 21, 2014 hearing, the Interim Receiver was appointed Interim Receiver pursuant to section 47.1 of the *Bankruptcy and Insolvency Act* (the “**BIA**”) of the Companies to preserve and protect the assets, undertakings and properties of the Companies acquired for, or used in relation to the business carried on by the Companies, including all proceeds thereof (the “**Property**”) pursuant to the November 21, 2014 Order of the Honourable Mr. Justice Penny (the “**Appointment Order**”). A copy of the Appointment Order is attached at **Appendix “A”**. A copy of the endorsement dated November 21, 2014 is attached at **Appendix “B”**.

4. At the December 1, 2014 hearing, the powers of the Interim Receiver were expanded and the Court made certain directions regarding the business and financial affairs of the Companies pending the next hearing on December 9, 2014. A copy of the endorsement of Mr. Justice Penny of that date, along with an unofficial typed transcription prepared by counsel for the Interim Receiver, is attached at **Appendix “C”**.

#### **PURPOSE OF THIS REPORT**

5. This is the second report of the Interim Receiver (the “**Second Report**”). Its purpose is to report to the Court and the stakeholders of the Companies regarding certain facts and matters recently discovered by the Interim Receiver, which the Interim Receiver believes are of an urgent and material nature such that they require immediate disclosure in advance of the scheduled hearing on December 9, 2014.

#### **LIMITATION OF REVIEW**

6. The Interim Receiver has relied upon the financial records and information provided by the Companies, as well as other information supplied by management, appraisers, accountants, auditors and advisors, and has not independently reviewed or verified such information. The Interim Receiver has prepared this Second Report for the sole use of the Court and of the other stakeholders in these proceedings.

## A) FACTS AND MATTERS RECENTLY DISCOVERED BY THE INTERIM RECEIVER

### Disbursements by the Companies on November 28, 2014

7. The Interim Receiver called the Companies on the afternoon of November 28, 2014 enquiring if any cheques needed approval as the Interim Receiver understood that a payroll was expected to be released. The Interim Receiver was advised that payroll cheques had been approved by the Proposal Trustee and were already released. The Interim Receiver was advised that its pre-approval was inadvertently missed and that a list of cheques released on November 28, 2014 would be emailed to the Interim Receiver.

8. The list of cheques released on November 28 was only provided after 4:00pm on December 1, 2014 after follow up requests made by the Interim Receiver. The Interim Receiver has not been provided with any explanation for the delay in providing that information. The information provided revealed that the Companies had issued many payments on November 28, 2014. A listing of the payments made is attached as **Appendix “D”**.

9. The disbursements made in Appendix “D” were not approved by the Interim Receiver. This departed from the procedures established since the appointment of the Interim Receiver pursuant to which all other disbursements that the Companies had wished to make had been presented to the Interim Receiver for approval and, where approval had not been granted, the disbursements in question had not been made (confirmed by subsequent review of the banking activity as described in the First Report). An exception to this procedure was the disbursement to Dickinson Wright LLP made on November 27, 2014 and described in more detail in the First Report.

10. The Interim Receiver has also not been provided with information from the Companies about the degree to which, if any, the payments made on November 28 were in respect of “ordinary living expenses” within the meaning of paragraph 7 of the November 21, 2014 Order (attached as Appendix “A”).

11. The Interim Receiver inquired of the Proposal Trustee, and was advised that the Proposal Trustee had also not approved the disbursements made in Appendix “D”. A copy of the communications with the Proposal Trustee in that regard is attached as **Appendix “E”**.

**Banking Issues Relevant to the Disbursements by the Companies on November 28, 2014**

12. The Interim Receiver’s review of the funds available in the Companies’ bank accounts as compared to the total of the disbursements made on November 28, 2014 and also the cheques previously written but which have not yet cleared the Companies’ banks suggests that the Companies have written cheques in a greater amount than the funds on hand. The amount by which the Companies are short for honouring all cheques written was approximately \$60,000 on November 28, 2014, comprised as follows:

- Balance in BMO operating account	\$111,000
<u>- Balance in other bank accounts</u>	<u>\$27,000</u>
Less:	
- November 21 cheques not yet cleared	\$33,000
- November 25 cheque requests approved but not yet cleared	\$40,000
<u>- November 28 cheques released (w/o approval)</u>	<u>\$125,000</u>
 <u>Shortfall</u>	 <u>\$60,000</u>

13. The Interim Receiver understands that not all the cheques that have been written have been released and that the Companies were expecting additional receipts in December. The accounting employees of the Companies have acknowledged the shortfall, but the management of the Companies have not, to date, provided details about how this shortfall in funds for cheques already written will be addressed.

14. Inquiries by the Interim Receiver’s counsel to counsel for the Companies have not resulted in a substantive answer. The e-mail exchange on that is attached as **Appendix “F”**, but no further information or advice has been received from counsel for the Companies either.

15. The funds available for payment of disbursements that the Companies have made, or need to make, is further complicated by the extent of 2015 boat slip rental income that has already been received by the Companies. The Interim Receiver has been advised that \$642,251.03 of 2015 slip rental fees for the Keswick facility have already been received, and a copy of the Companies' report on that is attached as **Appendix "G"**. The Companies are presently unable to advise of the amounts of 2015 slip rental income that has been received for the Lagoon City or Willow facilities. The extent to which any of this \$642,251.03 relates to payments received post-NOI on November 14, 2014 is not yet known and is under review by the Interim Receiver.

16. Deposits (net of returned items) to the Companies' accounts for December 1 and 2 appear to be approximately \$21,000. The Companies have stated that none of these deposits relate to 2015 slip rentals that would not be available for current operations pursuant to the December 1 Endorsement in Appendix "C".

#### **Non-payment of CRA source deductions on payroll**

17. The Interim Receiver has also learned late in the day on December 2, 2014 that the Companies have not made two source deduction payments during the NOI period in respect of payroll issued to employees.

18. The Interim Receiver has been advised by the Companies' accounting and controller employees that payroll source deductions are due the week following payments to employees. The Companies have made payments to employees on November 14, 2014 and on November 28, 2014 (some of the disbursements in Appendix "D" were for payroll) for which the applicable source deductions have not been provided for or remitted.

19. The Interim Receiver authorized a disbursement requested by the Companies on November 25, 2014 for payroll source deductions in the amount of \$39,320.07. This amount was comprised of conventional source deduction obligations of \$35,948.79 plus a further amount of \$3,371.28 for Family Responsibility Office garnishments against funds payable to employees. The Interim Receiver has not seen any records to indicate that this payment has in fact been made and this amount has not been presented to the banks for payment.

20. In addition, the Companies estimate that a further \$33,818.88 of source deductions will be due this week relating to the payroll released on November 28, 2014; accordingly, based on advice from the Companies' accounting employees, the total post-NOI the outstanding source deduction payments that have arisen after November 14, 2014 are approximately \$69,767.

21. In addition to the \$60,000 shortfall (described at paragraph 12 above) to cover the cheques already written (one of which is the \$39,320.07 for payroll source deductions noted at paragraph 19, above), the Interim Receiver therefore believes that the Companies must also pay a further \$33,818.88 of priority source deduction obligations to CRA and there are also no funds at this time to cover those required payments. The same response from the Companies noted in paragraph 13, above, (about whether and if so how the shortfall in funds for cheques already written is to be made up) applies to these unpaid source deductions, and in particular the accounting employees have indicated a desire to pay the source deduction obligations today but acknowledge a lack of funds to do so. As a result the Interim Receiver is unable to conclude that the Companies will be in a position to comply with these obligations before December 9, 2014.

22. The Interim Receiver believes that the non-payment of source deduction obligations post-NOI terminates the stay against CRA in respect of all source deduction arrears, including pre-NOI arrears (which are approximately \$220,000 for the Ontario payrolls of the Companies according to the notes to the cash flows prepared by the Proposal Trustee) pursuant to subsection 69(3) of the *Bankruptcy and Insolvency Act*. CRA is therefore entitled to exercise all collection powers available to it.

23. As a result of the circumstances described above:

- a) it is unclear how the Companies will be able to fund the payment of necessary expenses for the period ending December 9, 2014; and
- b) there is now a significant priority amount owed to CRA ranking ahead of the interests of existing creditors, which is a deterioration in position since the filing of the NOI.

**B) CONCLUSION**

24. The Interim Receiver accordingly reports on these matters to the Court and to the stakeholders of the Companies on an urgent basis for such discussion and direction as may be appropriate.

All of which is respectfully submitted this 3<sup>rd</sup> day of December, 2014.

**A. FARBER & PARTNERS INC.  
COURT-APPOINTED INTERIM RECEIVER OF CRATE MARINE SALES LIMITED,  
F.S. CRATE & SONS LIMITED, 1330732 ONTARIO LIMITED, 1328559 ONTARIO  
LIMITED and 1282648 ONTARIO LIMITED**

A handwritten signature in black ink that reads "Stuart Mitchell". The signature is written in a cursive, flowing style.

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Per: Stuart Mitchell  
Senior Vice President