

**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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**THIRD REPORT OF THE INTERIM RECEIVER  
DECEMBER 7, 2014**

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Crate & Sons Limited, 1330732 Ontario Limited, 1323559  
Ontario Limited and 1282648 Ontario Limited

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**TAB 1**

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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**

**THIRD REPORT OF THE INTERIM RECEIVER**

**December 7, 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 (the “**Crawmet Motion**”). 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. The Crawmet Motion was also adjourned to that date. 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”**.

5. The Interim Receiver served and filed its Second Report and Supplementary Report to the Second Report on December 3 and 4, respectively, regarding certain facts and matters that had been recently discovered by the Interim Receiver, and which the Interim Receiver believed were of an urgent and material nature such that they required immediate disclosure in advance of the scheduled hearing on December 9, 2014. The Proposal Trustee also served and filed its Second Report on similar issues, which it reported constituted material adverse changes.

6. A hearing was held at the request of Crawmet on December 4, 2014 to renew the Crawmet Motion. The Honourable Justice Newbould directed the Interim Receiver to notify all banks holding accounts of Crate Marine Sales Ltd. that no disbursements were to be made without the prior written authorization of the Interim Receiver and further directed that the hearing that had been previously scheduled for December 9 instead proceed on December 8, 2014 before His Honour. A copy of the endorsement of Mr. Justice Newbould of that date, along with an unofficial typed transcription prepared by counsel for the Interim Receiver, is attached at **Appendix “D”**.

## **PURPOSE OF THIS REPORT**

7. This is the third report of the Interim Receiver (the “**Third Report**”). Its purpose is to report to the Court and the stakeholders of the Companies regarding certain facts and matters that have come to the attention of the Interim Receiver since the Second Report and Supplementary Report to the Second Report.

## **LIMITATION OF REVIEW**

8. 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 Third Report for the sole use of the Court and of the other stakeholders in these proceedings.

## **A) DISENGAGEMENT OF MANAGEMENT OF THE COMPANIES**

9. Following the December 4, 2014 hearing before Mr. Justice Newbould, the Interim Receiver continued its mandate to preserve and protect the Property and to review salient issues for further report to the Court. In particular, on the afternoon of December 4, 2014 the Interim Receiver provided the notifications to the Companies’ banks directed to be given by Mr. Justice Newbould. Such notifications were provided by telephone followed by e-mails and letters sent via e-mail.

10. After that hearing, however, the employees of the Companies appear to have been left without direction of senior management, and in particular by Steven Crate. The employees reported in several instances to the Interim Receiver that Mr. Crate had advised that he was “giving up”, or words to that effect. Steven Crate left the Keswick facility at 9:30am on Friday December 5 and did not return. Lynn Marko and Greg Crate have not been at the facility for several days before that.

11. The Interim Receiver itself has encountered significant difficulty in getting Mr. Crate to respond to inquiries about the Companies, including direction for cheques and payments

that the Companies wanted the Interim Receiver to approve and straightforward operational issues such as whether the Companies intend to operate on the weekend of December 6 (such that the Interim Receiver would open and close the premises as described in the First Report).

12. The Interim Receiver has observed that the controller has successfully been able to contact Steven Crate by phone during the periods where he has not responded to the Interim Receiver. She was able to call him and have him discuss with the Interim Receiver a Ford vehicle that had been transferred from the Companies to his wife shortly before or after the NOI filings (the details of which are still under review by the Interim Receiver).

13. The Interim Receiver raised the issue of lack of response from Steven Crate with counsel for the Companies, who stated that Mr. Crate would do so after finishing with motion materials in process, but that did not happen. Mr. Crate has not responded to e-mails or calls from the Interim Receiver after leaving the Keswick facility at 9:30am on Friday December 5, 2014, aside from the one instance when the controller got him on the phone for the Interim Receiver noted above.

14. The Interim Receiver has concerns that the going concern nature of the business and undertakings of the Companies may be in jeopardy as a result of the lack of response and supervision of management.

## **B) LACK OF MAINTENANCE OF TWO LOCATIONS**

15. The Interim Receiver has been advised by its agents, and also by the landlord of the Lagoon City facility, that the propane tanks used for heating at the Lagoon City and Quebec locations are running low such that heat may cease at those locations over the weekend of December 6, 2014.

16. The landlord of the Lagoon City facility has, through its counsel, in particular raised concerns of damage to the building and contents if the temperature drops below freezing, for example by pipes bursting.

17. The Interim Receiver has attempted to raise these issues with management for the Companies, without response.

18. The Interim Receiver has in particular raised the issue of ongoing heating at the Lagoon City facility with Steven and Greg Crate, who the landlord of that facility asserts are the tenant (and who appear to have acknowledged that in letters contained in the landlord's affidavit material, but have otherwise not commented on that allegation in the affidavits of Steven Crate), also without success.

19. The Interim Receiver is accordingly taking steps to ensure that the propane at these locations is kept in adequate supply to ensure that heat stays on until the next hearing on December 8, 2014.

### **C) YACHT BEING HELD IN PICKERING**

20. In the First Report, the Interim Receiver advised the Court regarding a 50' yacht that was on the Companies' inventory list with a book value of \$1,178,665, and that was removed from the Keswick facility on the morning of the NOI filing. This yacht was provided to the Companies by Marquis Yachts, and Northpoint Commercial Finance appears to have provided financing of \$1,014,445 for this yacht as recorded on the Companies' balance sheet as at November 22, 2014.

21. The First Report also advised that the yacht was in the process of being transported to Florida, which Marquis/Northpoint advised was for purposes of (re)sale to a third party, but at the request of the Interim Receiver the trucking company has held the yacht at its yard in Pickering while discussions took place between the Interim Receiver and counsel for Marquis and Northpoint Commercial Finance, Borden Ladner Gervais LLP ("**BLG**"), regarding the payment of proceeds of sale of the yacht to the Interim Receiver to be held pending agreement or adjudication as to entitlement to those proceeds.

22. In the course of its preservative duties as mandated by the November 21, 2014 Order, the Interim Receiver is of the view that the yacht should not be released without adequate security for its value or projected sale proceeds.

23. The discussions between the Interim Receiver and BLG that had been ongoing at the time of the First Report have reached an impasse, as Marquis/Northpoint is only willing to provide an unsecured guarantee that the proceeds of the yacht will be paid after the yacht is taken across the border. The Interim Receiver is not prepared to allow removal of the yacht from the jurisdiction without some form of security for its value, which Marquis/Northpoint is not willing to provide.

#### **D) FURTHER REPORTS FROM CUSTOMERS OF THE COMPANIES REGARDING BOAT SALES**

24. In its First Report, the Interim Receiver advised of information that had been provided to it by customers of the Companies regarding transactions involving the Companies in the sale of boats on behalf of customers without remitting the proceeds to the boat owner, or sales of boats with financing encumbrances that have not been discharged and that now remain outstanding against the original boat owner (and possibly the boat).

25. The Interim Receiver has not been provided with any explanation by Steven Crate or management of the Companies regarding the information set out in the First Report, whether by affidavit or otherwise, including the boat sales discussed in the preceding paragraph. The Interim Receiver was provided with a small stack of documents by the controller for the Companies that are said to relate to the boat sales, but without explanation or elaboration. The Interim Receiver is reviewing those documents, but without an explanation of the underlying transactions the Interim Receiver has been unable to form a view as to what the documents mean as of the date of this Third Report.

26. Since the First Report, the Interim Receiver has been approached by two further customers of the Companies with further concerns, the details of which are as follows:

- a) Slava Levin sent an e-mail to the Interim Receiver to advise that he sold a

38' Searay boat through the Companies in August/September of 2011 for which the proceeds were converted into a loan. A further loan was made for \$172,500, which involved \$52,000 still outstanding from the first loan and was stated to be for the financing of Regal boats. Mr. Levin advises that \$219,125 is now outstanding despite an extended term and post-dated cheques having been given. It is not presently clear whether Mr. Levin asserts that the loan arrangements with Mr. Crate were entered into voluntarily or not. Mr. Levin's e-mail is attached as **Appendix "E"**. The Interim Receiver has reviewed the records of the Companies and the information found to-date suggests that the 38' Searay that Mr. Levin refers to may be the same boat that was later sold by the Companies on behalf of Rocco Morra and for which he is owed \$62,000 as advised by Greg Crate (as set out in more detail in paragraph 42(b) of the First Report).

- b) Bill Labanovich advised that he bought a boat in a transaction brokered by Companies (on behalf of a third party owner) in October, but was asked to provide payment of the \$145,000 purchase price through a \$103,000 bank draft payable to Crate Marine and a \$42,000 payment to "S. Crate". Copies of those bank drafts as received from Mr. Labanovich are attached as **Appendix "F"**. Mr. Labanovich also advises that he has not yet been provided with a bill of sale. The Companies have to date been unable to locate a copy of the sales contract, and the transaction was not recorded as paid for in the accounting system (see printout attached as **Appendix "G"**). Employees of the Companies advised that Steven Crate became involved in the transaction in addition to existing agents for the purchaser and vendor.

27. The Interim Receiver has not been able to complete an independent review of the Companies' records or with employees of the Companies regarding the advice it received as set out above. The Interim Receiver cannot accordingly verify the accuracy or lack thereof of the information that it has been provided.

**E) CONCLUSION**

28. The Interim Receiver will request at the hearing on December 8, 2014 that the Second Report, the Supplementary Report to the Second Report, and this Third Report, and the activities of the Interim Receiver and its counsel as described in those reports, be approved.

All of which is respectfully submitted this 7<sup>th</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 style with a horizontal line striking through the middle of the name.

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Per: Stuart Mitchell  
Senior Vice President