

Court File No.:

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

A. FARBER & PARTNERS INC. IN ITS CAPACITIES AS THE COURT
APPOINTED RECEIVER AND AS THE TRUSTEE IN BANKRUPTCY OF
CRATE MARINE SALES LIMITED, F.S. CRATE & SONS LIMITED,
1330732 ONTARIO LIMITED, 1328559 ONTARIO LIMITED,
1282648 ONTARIO LIMITED, 1382415 ONTARIO LTD.,
and 1382416 ONTARIO LTD.

Applicant

-and-

RYAN GREGORY CRATE

Respondent

Application pursuant to Rules 14.05(3)(d), (e), and (h) of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194 as amended, section 248(1) of the *Business Corporations Act*, R.S.O, 1990, c. B.16 as amended, and section 96(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 as amended

MOTION RECORD OF THE APPLICANT
(returnable January 30, 2015 for a Certificate of Pending Litigation)

January 28, 2015

—
GOLDMAN SLOAN NASH & HABER LLP
Barristers & Solicitors
480 University Avenue, Suite 1600
Toronto, Ontario
M5G 1V2

Michael B. Rotsztain [LSUC No.: 17086M]
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Lawyers for the Applicant

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NOTICE OF MOTION

THE APPLICANT will bring a motion without notice to a judge of the Commercial List on January 30, 2015 at 10:00 a.m., or as soon after that time as the motion can be heard at the courthouse located at 330 University Ave., Toronto, Ontario.

THE PROPOSED METHOD OF HEARING: The motion is to be heard:

~~in writing under subrule 37.12.1(1) because it is (insert one of on consent, unopposed or made without notice);~~

~~in writing as an opposed motion under subrule 37.12.1(4);~~

orally.

THE MOTION IS FOR:

1. An order that the Registrar issue certificates of pending litigation against the lands and premises legally described in Schedule “A” (the “**Property**”); and
2. such further and other relief as this Court may deem just.

THE GROUNDS FOR THE MOTION ARE:

1. The Applicant has commenced an Application against the Respondent in which an interest in land is in question;
2. The Applicant is the court-appointed receiver and trustee in bankruptcy of a number of related companies that operate, among other things, a large marina in Keswick, Ontario;
3. The Applicant’s review of the books and records of the insolvent companies suggest that the purchase and carrying costs of a number of properties have been paid for by one of the companies under receivership, Crate Marine Sales Limited (“**CMS**”);
4. Some of the properties at issue are adjacent to the main marina lands used by the Companies in Keswick, and the Applicant has already obtained a certificate of pending litigation against these properties;
5. In its further review of the records of the insolvent companies, the Applicant has identified the Property as another property which CMS appears to have paid all of the funds required to purchase and maintain it;
6. The Applicant has commenced an application which claims, among other things, a certificate of pending litigation against the Property;
7. The Property has been listed for sale;

8. A certificate of pending litigation is required so that the Property is preserved until its proper ownership is adjudicated;
9. Rules 1.04(1), 37, and 42 of the *Rules of Civil Procedure*, R.R.O. 1990, Regulation 194, as amended;
10. Section 103 of the *Courts of Justice Act*, R.S.O. 1990, c. C. 43, as amended; and
11. Such further and other grounds as counsel may advise and this Honourable Court may permit.

**THE FOLLOWING DOCUMENTARY EVIDENCE WILL BE USED AT THE
HEARING OF THE MOTION:**

1. The affidavit of Andy Fisher sworn January 28, 2015 and the exhibits attached thereto;
and
2. Such further and other evidence as counsel may advise and this Court permits.

January 28, 2015

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Lawyers for the Applicant

SCHEDULE "A"

PIN 40465 – 0022 (LT)

Registered Owner: Ryan Gregory Crate

Municipal Address: 14 Highland Ave., Belleville, Ontario

Legal Description: PT LT 33 PL 9 THURLOW AS IN QR299054; BELLEVILLE ;
COUNTY OF HASTINGS

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