

**IN THE MATTER OF THE BANKRUPTCY OF
GARCON BUILDING GROUP LTD.
A COMPANY DULY INCORPORATED PURSUANT TO THE LAWS
OF THE PROVINCE OF ONTARIO WITH A HEAD OFFICE IN THE
CITY OF TORONTO, IN THE PROVINCE OF ONTARIO**

TRUSTEE'S PRELIMINARY REPORT

STATUTORY INFORMATION

Garcon Building Group Ltd. (“**Garcon**” or the “**Company**”) is a privately held corporation incorporated in Ontario on June 24, 2004.

The sole officer and director of Garcon is Adam Gardin. Naomi Woznica Gardin had been a director upon Garcon’s incorporation but resigned on December 9, 2010. Adam Gardin and Naomi Woznica Gardin each own 50 issued shares of the Company. There are no other shareholders.

An Assignment for the General Benefit of Creditors was made by Garcon on January 6, 2015, and A. Farber & Partners Inc. was appointed Trustee in Bankruptcy (“**Trustee**”).

BACKGROUND & GENERAL INFORMATION

Garcon carried on business as a builder and general contractor for home additions and renovations and the head office and operations was located at Unit 2, 367 Rimrock Road, Toronto, Ontario. The facilities were leased from an arms-length party. Garcon operated in the Greater Toronto Area. Garcon moved from leased premises on Chesswood Drive, North York to larger premises on Rimrock Road, North York in late 2012.

Unfortunately, at the date of bankruptcy, a number of Garcon’s clients were left with uninhabitable homes due to outstanding work, against which they had made substantial prepayments to Garcon.

CAUSE OF INSOLVENCY

The director of Garcon advised the Trustee that the cause of the Company’s insolvency was underbidding on contracts.

The director sent an email to the clients of Garcon and a reporter on January 4, 2015 which claimed that “in its early years, Garcon was an extremely successful business that was profitable”. The director stated that “over the last year” the “business was growing at a rate that I was not able to manage and the overhead grew to a level that put my business at a significant loss.” Thereafter in the email, the director pointed to the cause for the cessation of trade as the landlord of Garcon for acting upon rent arrears and the director claimed that “Garcon invested over \$250,000 in leasehold improvements into their property.” It is understood that the landlord had already had to act in respect of rent arrears in early 2014, but payment was forthcoming to the landlord at that time.

Whilst the level of leasehold improvements may or may not be accurate, the financial reporting available for the years ending December 31, 2009 to 2013, which is summarised below, indicates that at December 31, 2013 Garcon had an accumulated deficit of more than \$1.5 million. The figures do not include the 2014 financial year, but in the previous 5 years, Garcon reportedly lost more than \$1.4 million. There are no material assets available for immediate realization at the date of bankruptcy, and thus, it is likely that Garcon did not have a profitable 2014 financial year. Sales for Garcon were reportedly increasing through 2009 to 2013 from \$745,000 to \$1.2 million, and although there are no figures available for 2014, it is noteworthy that Company records indicate that the total value of 18 projects upon which Garcon was working at the time of its cessation of trade was reportedly in excess of \$2.8 million (the Trustee has not yet determined the basis for the valuation).

Industry Canada provided Financial Performance Data for small and medium-sized businesses in Canada's Construction (NAICS 23) sector for 2011 which indicated that average cost of sales in that sector were approximately 55% of revenue and other operating indirect expenses were approximately 34% of revenue.

In the subset of residential building construction alone, Industry Canada provided Financial Performance Data for small and medium-sized businesses in Canada's Construction (NAICS 2361) sector for 2011 which indicated that average cost of sales in that sector were approximately 63% of revenue and other operating indirect expenses were approximately 27% of revenue.

During the financial years ending December 31, 2009 to 2013, Garcon's cost of sales ranged from 65% to 123% of revenue and other operating indirect expenses ranged from 28% to 52% of revenue. On average during this 5 year period, Garcon's cost of sales were 91% of reported revenue and other operating indirect expenses were 36% of reported revenue. Thus, the cost of sales to revenue ratio is very high for Garcon compared to the industry average at the mid-point of the last 5 reported years.

Garcon had been reporting substantial losses for many years according to its own financial statements. The cause of these reported losses is not clear at this time without further investigation.

In the Trustee's experience, there are few alternatives to explain the losses and disparity in the reported financial statements. As the director stated, the Company may have been under-bidding for contracts and running significant losses for more than 6 years. Alternatively, the Company may not have accurately recorded all the revenue received from clients. A number of parties have reported that payments were made to Garcon in cash, and in light of the bankruptcy, it may be that such amounts were not correctly documented by the Company. The Trustee has not attempted to trace cash received by Garcon into its books and records at this time.

On December 11, 2014, the landlord of Unit 2, 267 Rimrock Road engaged a bailiff, Revin Bailiffs Inc. (“**Bailiff**”) to issue a Notice of Distress against the goods and chattels of Garcon at the premises for rent arrears. It is understood that the Bailiff did not change the locks to the premises until Sunday, December 28, 2014. Thereafter, although the director of Garcon, members of the staff and persons engaged by him continued to attend the premises at various times, it was not possible for the Company to engage in any ongoing business operations.

FINANCIAL INFORMATION

There are Notice to Reader unaudited financial statements of Garcon available for the fiscal years ending December 31, 2009, 2010, 2011 & 2012 and draft financial statement for the fiscal year ending December 31, 2013 which reveal the following:

Period ended	Net Income/(Loss) Net of Dividends	Retained earnings	Sales	Gross profit	Assets (Current & Capital)
	\$'000	\$'000	\$'000	\$'000	\$'000
December 31, 2013	(618)	(1,542)	1,215	(282)	223
December 31, 2012	(487)	(924)	1,067	67	290
December 31, 2011	(123)	(437)	1,290	239	156
December 31, 2010	14	(314)	823	291	119
December 31, 2009	(209)	(329)	745	138	61

REALIZABLE ASSETS

As at the date of bankruptcy, the Company’s statement of affairs reflects the following remaining assets:

	<u>Value</u>	<u>Basis of Valuation</u>
Accounts receivable	\$0.00	Estimated realizable value
Inventory	\$1.00	Estimated realizable value
Office fixtures & fittings	\$0.00	Estimated realizable value
Machinery, equipment & plant	\$1.00	Estimated realizable value
Vehicles	\$1.00	Estimated realizable value
Total	\$3.00	

All of the Company’s Property was encumbered in favour of its secured creditors, but no material assets are currently available for realization. The director advised the Trustee that the Company utilized the services of two banks, the Toronto Dominion Bank (“**TD**”) and Canadian Imperial Bank of Commerce (“**CIBC**”). As per a Personal Property Security Act search by the Trustee, TD appears to have registered security over the assets of Garcon, but CIBC does not appear to have registered any security. The banks have advised that there are no available funds in Garcon’s bank

accounts. Subject to the receipt of the legal opinion regarding the validity of TD's security, it is anticipated that the secured creditors will suffer a shortfall.

It should be noted that in correspondence recovered from Garcon's leased premises, the Canada Revenue Agency ("CRA" or the "Crown") was shown as being owed approximately \$170,000 of payroll source deduction arrears and HST arrears of approximately \$117,000. CRA have submitted a proof of claim which has adjusted these numbers (\$145,488 property claim, \$24,047 unsecured, and a \$117,175 unsecured HST claim) although they remain substantial, albeit without the apparent benefit of a recent trust examination. It is anticipated that the CRA will have a priority claim for proven payroll source deductions arrears, and that a deemed trust will exist in the CRA's favour for such amounts. Given the lack of realizable assets as disclosed on the Company's Statement of Affairs, it is anticipated that the Crown will suffer a shortfall.

Garcon leased several motor vehicles. Prior to the appointment of the Trustee, the director advised that all but two of these vehicles had been seized by secured creditors. The remaining vehicles were subject to purchase finance terms and in the possession of the director. The Trustee obtained an opinion on the value of the vehicles from S. Wilson & Co. Ltd. and the vehicles were of insufficient value to meet the settlement finance terms. As such, the Trustee's interest in the vehicles has been released to the finance company.

Accordingly, as matters rest at this time, there are no physical assets available to be realized and no funds are expected to be available for distribution to preferred or unsecured creditors.

CONSERVATORY AND PROTECTIVE MEASURES

- As noted above, a Notice of Distress was acted upon by a Bailiff and the locks to the Company's head office and operating location were changed on December 28, 2014.
- The Trustee received the Certificate of Appointment from the Office of the Superintendent of Bankruptcy on January 7, 2015 and immediately called and wrote via email to the Bailiff. No response was received, so the Trustee visited the premises on the morning of January 8, 2015 in order to determine if the Bailiff had completed the distraint prior to the appointment of the Trustee on January 6, 2015. The Trustee met with members of the landlord's staff who were in the premises on January 8, 2015 and they were in the process of changing the locks. The landlord's staff assisted the Trustee in making contact with the Bailiff, who was not in attendance. The Bailiff advised that the distress was not completed prior to the appointment of the Trustee on January 6, 2015.
- The landlord was changing the locks to the premises on January 8, 2015 because even though the Bailiff had previously changed locks on December 28, 2014, the director had drilled through the changed locks on December 29, 2014 and gained access thereafter. According to security reports, the landlord's staff and the Bailiff, parties continued to enter the premises throughout the period (noted December 29, 30 & 31, 2014 and January 3, 2015) until the appointment of the Trustee. Assets and records were removed from the premises in this period including but not limited to computer, monitors, hard copies, TV screens, security equipment,

tools, trailer and lumber. The alarm monitoring company advised the Trustee that their services were cancelled at the direction of Adam Gardin on December 31, 2014.

- The director advised that he also gained access to the premises on January 8, 2015 and this is noted below.
- The Trustee did not occupy or take possession of the leased premises of Garcon. Upon entering the premises on the morning of January 8, 2015, the Trustee took some photographs of the premises. However, given that it was not clear upon entry whether the distraint had been completed or what the situation was regarding the extancy of the lease itself, these were limited in number. The landlord, Trustee and Bailiff agreed to meet on the morning of January 9, 2015 and that the Trustee could remove a box of hard copy records and an old laptop computer on the visit of January 8, 2015 for safekeeping. The Trustee left the premises at approximately 11.00 a.m. on January 8, 2015 and the landlord's locksmith continued to change the locks.
- Redirected mail.
- Attended at the Company's head office to recover physical and electronic records of the Company on January 9, 2015. There was no cash at the Company's premises for the Trustee to take possession of. The Trustee met the Bailiff on site and the Bailiff advised that he had not completed an inventory of assets, nor obtained a valuation. The Bailiff advised that he had permitted a number of creditors to remove third party owned assets from the premises, because the creditors had paid for these and provided proof of payment to him. The Bailiff also advised that the director, together with Garcon staff and a moving company, had removed assets and records.
- Upon entering the premises, the Bailiff noted that a box stored by the reception area had disappeared. The Trustee checked the photographs from the previous day (January 8, 2015), and concluded that the Bailiff was correct. The box was not found on the premises. Via email at 2.51 p.m. on January 9, 2015, when asked about the missing box by the Trustee, the director advised that on January 8, 2015, he "was at the building about 1pm or so. It was open. I don't have a key or any way to get in. I only walked thru to see how things looked inside." The director verbally advised the Trustee that he had been to the premises several times since the locks had been changed by the Bailiff and found the front door open.
- The Trustee removed one box of hard copy Company records and an old laptop computer on January 9, 2015 in agreement with the Bailiff.
- On January 12, 2015 the Trustee and Bailiff exchanged emails and calls to determine the net value of any assets at the Company premises to the bankrupt estate. The determination considers the best method of asset realization, occupation rent, forklift condition and safeguarding records/computers/security equipment and reports. The landlord was keen that the premises be vacated or that the Trustee undertake payment of occupation rent if there was no immediate resolution of the use of the premises. It was estimated that the per diem occupation rent, prior to taxes and utilities, was approximately \$235 per day. It was not

possible for the Trustee to delay such a determination until the Meeting of Creditors on January 26 due to the requirements of the landlord and possible liabilities that may have accrued. The Trustee had no funds available to meet occupation rents, but wished to safeguard all company records still on site.

- On January 12, 2015 the director advised that there was a need for attendance at Court for a Small Claims matter relating to Garcon at 8 a.m. on January 13, 2015. The director did not provide details of the case to the Trustee upon request. The Trustee was therefore unable to attend or advise the court. Accordingly, the director attended at 8 a.m. on January 13, 2015 with direction from the Trustee to advise the Court of the bankruptcy of Garcon and seek an adjournment. The Trustee requested a listing of all lawsuits outstanding but this has not yet been received.
- Calls, emails re removal of records from leased premises for January 13, 2015. Engage services of S. Wilson & Co. Ltd (“**Wilson**”) to act as agent in removal of records, due to desire to avoid occupation rent if possible. The estate has no funds. Provide letter of authority and indemnity to agent re actions on premises at direction of Trustee. Request Wilson to determine if any value in two F150 trucks in the possession of the director.
- Copy materials re forklift for Wilson to determine if any value, and attempts to contact Blue Chip Leasing who provided finance for forklift but no security shown on PPSA searches. Call with Blue Chip Leasing re financing of a forklift purchase and send Notice of Bankruptcy package.
- Request net minimum guarantees for liquidation of all assets and leave premises in broom-swept condition from Bailiff and Wilson.
- On January 13, 2015 attend premises, locate site of alarm and video system with alarm monitoring security firm. Note missing video system. Meet Wilson at site and determine value of assets remaining, and search records for removal and storage.
- Calls with landlord and to/from CRA re assets on site and vacation of premises.
- Emails re Ford pay-outs for two F150 trucks in director's possession.
- Emails with Blue Chip Leasing re Forklift and lack of security.
- Mail collection from site as redirection not yet in operation by Canada Post.
- Director unexpectedly turned up at leased premises, and entry restricted/monitored presence by Trustee and Wilson. Met director later at Trustee's office and director provided some missing records and server removed from site. Arrange safe storage of items. Liaise re items taken by Garcon staff and recover iPad and cellphone.

- Emails from director and ex-director re storage of client furniture by PODS and advice that client furniture was to be sold for non-payment of rental fees. Calls and emails with PODS to advise of bankruptcy and Garcon clients' situation.
- On January 14, 2015, trace client whose furniture was at risk by PODS potential sale, because Statement of Affairs had incorrect contact details. Calls and emails to client with additional information for correcting Statement of Affairs. Emails re Notice of Bankruptcy and PODS for 3rd party asset retrieval, discussion re dividend prospects.
- Calls, email with T Delgado (Garcon employee) for return of computer, cellphone & discuss possible WEPP entitlement.
- Calls, emails with director re return of computers, other correspondence.
- Arrange Wilson visit to determine if any equity in F150s held by director.
- Require estimate from Bailiff and Wilson as soon as possible re estimated costs and realizations, and timeline to leave broom-swept condition of the premises.
- Neither Bailiff nor Wilson were willing to provide a net minimum guarantee for asset realization.
- Report to CRA re possible asset realizations under a presumed deemed trust from assets held on premises, and costs of realization.
- Reached agreement with landlord that no occupation rent would be incurred and in exchange, all assets and records will be removed from premises by Wilson and that premises would be left in broom-swept condition and a disclaimer or surrender of the lease would be provided by the Trustee.
- Bailiff unable to act in short timeframe. Reached agreement with Wilson that costs for clearing premises (including environmentally friendly disposal of chemicals and paints) and storing certain company records at the direction of the Trustee would be borne by any realizations from the assets, with any surplus to be disbursed by the Trustee as appropriate. Direct Wilson to act on January 15, 2015.
- On January 15, 2015 emails, calls with CRA re assets potentially subject to deemed trust. Attendance at site to safeguard available records and introduce Wilson to landlord for clean up of premises, removal of assets.
- Given that there were no funds available to the estate for occupation rent, records protection and removal, or for utilities, and it had become apparent after appointment that the records were potentially at risk, the Trustee took such action by entering into agreements with the landlord and Wilson deemed necessary in the interests of the estate of the bankrupt, and advised the CRA of the intended course of action.

- On January 15, 2015, when the Trustee attended the premises to liaise with S. Wilson & Co. Ltd. to safeguard records and assets, a member of Wilson's staff identified that a door to the warehouse could be opened without a key from outside the building, even though the lock had been changed. The door initially appeared to be closed to a casual observer, but it could be opened if mild force was applied and the door was situated next to an alarm keypad. Wilson's staff member suggested that the door's lock mechanism appeared to have been tampered with.
- Recover some hard copy payroll records. Records of employment not found.
- Direction re release of two F150 trucks to Ford Credit as no value to estate.
- Meet director for items claimed to be "personal" or that related to AIG Holdings, LLC, a US company and other entities whose records were stored on site.
- On January 16, 2015 call with Securely Yours, creditor and alarm monitoring company for premises.
- Calls, emails, texts with Wilson regarding media interest, and answers available without compromising recovery efforts or safeguarding of records.
- Digital back-up of project management website records.
- Additional creditor details determined and provided with notice of bankruptcy and meeting of creditors.
- Calls with Wilson to monitor clearance of premises, collection of mail.
- Issued lease disclaimer to landlord on January 21, 2015, effective date of appointment, January 6, 2015.
- Review available records and begin collation thereof.
- Upon appointment, contacted TD and CIBC (as earlier discussed) at which the company potentially held investments or accounts. As noted above, there were no funds held at TD or CIBC for the Trustee to take possession of. Advised each bnk that no withdrawals from the accounts should be allowed without the authority of the Trustee. Directed the banks to forward residual funds to the Trustee for the benefit of the bankrupt's estate.
- Provide Notice of meeting of creditors via mail, advertisement in a national newspaper and upon the Trustee's website.
- Upon appointment, provide the director with Notice to Officer of Bankrupt Corporation of Duties and associated extracts of the Bankruptcy and Insolvency Act. Draw the director's particular attention to section 158 of the Bankruptcy and Insolvency Act by email on January 11 and 20, 2015.

PROVABLE CLAIMS

The following claims have been filed with the Trustee:

<u>Nature of Claim</u>	<u>Per Statement of Affairs</u>	<u>Filed with Trustee</u>
Secured	\$ 0.00	\$ 195,955.70
Preferred	0.00	132,506.79
Unsecured	973,946.31	1,806,737.96
Contingent	0.00	0.00
	<u>\$ 973,946.31</u>	<u>\$ 2,135,200.45</u>

The Trustee is considering what, if any, outstanding amounts may be owed to employees of Garcon, and will then assess the extent of claims available under WEPPA or section 81(3) of the BIA.

ANTICIPATED REALIZATION AND PROJECTED DISTRIBUTION

As noted above, all of the assets of the Company are encumbered in favour of the CRA and secured creditors, but there are no realizable physical assets, except as described earlier in the report, available to meet the indebtedness of Garcon.

The estate may also recover some funds from general and litigation receivables, however the quantum is not yet known.

Given the lack of realizable physical assets, at this time it is not expected that any surplus funds will be available for distribution to preferred or unsecured creditors.

The Trustee, CRA and any Inspectors appointed by the creditors will consider what actions may be taken in order to potentially generate recovery of funds for the benefit of the creditors of Garcon.

LEGAL MATTERS

The Trustee has not retained legal counsel.

No legal proceedings have been initiated by or against the Trustee as of the date of this report.

There are believed to be a number of legal matters outstanding with Garcon both as a plaintiff or a defendant, and these are primarily Small Claims Court matters. Where possible, the Trustee will seek to adjourn the hearings at this time in order that the creditors and Trustee can consider what ongoing actions should be taken, if any.

BOOKS AND RECORDS

The Trustee took possession of certain of the Company's books and records, which were written up to December 31, 2013.

The Trustee took possession of certain of the Company's computers which were on site. These consisted of an old laptop and 2 desktop units, with one monitor. All other computer items had been removed, including a 16 channel DVR security camera recording unit.

The director provided the return of a server, and other desktop computers on January 13, 2015 together with 4 record boxes, and arranged the return of an iPad and cellphone from an employee. The iPad had been wiped. Another employee returned records, a desktop computer and a cellphone. This employee retains a Lenovo laptop computer which she advises was a personal gift to her from the director, but she is willing to allow the Trustee to mirror the contents and she has advised that no alterations or wiping of the laptop's contents relating to Garcon will be allowed whilst the laptop computer is in her possession.

PREFERENCES AND TRANSFERS AT UNDERVALUE

The Trustee has not completed a review of the books and records of the Company. The Trustee will conduct a review as directed and with further information from creditors and Estate Inspectors. If the review reveals any preferences or transfers at undervalue, as understood by sections 95 and 96 of the Bankruptcy and Insolvency Act, then the Trustee will seek direction from the Estate Inspectors, if any.

FUNDS ON DEPOSIT FOR TRUSTEE'S COMPENSATION

In consideration for the Trustee's acceptance to act in this Estate, a \$5,000 deposit was obtained from Frances & Thomas Goldstein, and a US \$5,000 deposit was obtained from Gloria & Joseph Gardin, which amounts the Trustee is holding in trust. The funds remitted are third party funds and did not, directly or indirectly, in whole or in part, come from assets which would otherwise be estate assets.

AIG Holdings, LLC (a US company in which the director has an interest) and Adam Gardin, the director of Garcon, undertook to provide a total of \$15,000 plus HST for the payment of Trustee's fees and disbursements relating to the estate. Adam Gardin acted as an Authorised Signing Officer for AIG Holdings LLC. Such funds to be remitted will be third party funds and do not, directly or indirectly, in whole or in part, come from assets which would otherwise be estate assets. These funds, when received by the Trustee are intended to provide that the deposit funds previously received from Mr. & Mrs. Goldstein and Mr. & Mrs. Gardin would be returned to them.

OTHER MATTERS

There are no other matters at this time.

DATED AT TORONTO this 22nd day of January, 2015.

**A. FARBER & PARTNERS INC.
IN ITS CAPACITY AS TRUSTEE IN BANKRUPTCY
OF GARCON BUILDING GROUP LTD.**



Per: Michael N. W. Baigel FCA (UK), FIPA, CIRP

