

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

**IN THE MATTER OF AN APPLICATION PURSUANT TO SECTION 243(1) OF
THE BANKRUPTCY AND INSOLVENCY ACT, R.S.C. 1985, C. B-3, AS
AMENDED AND**

**IN THE MATTER OF SECTION 101 OF THE COURTS OF JUSTICE ACT,
R.S.O. 1990 C. C.43, AS AMENDED WITH RESPECT TO DONDEB INC. AND
ALL THE DEBTORS LISTED AT SCHEDULE "A" HERETO**

**A. FARBER & PARTNERS INC.
COURT APPOINTED RECEIVER**

FOURTEENTH REPORT OF THE RECEIVER

SEPTEMBER 3, 2014

1. INTRODUCTION

1. By Court Order dated October 18, 2012, A. Farber & Partners Inc. (“**Farber**”) was appointed receiver (“**Receiver**”) of all of the assets, undertakings and properties of Dondeb Inc. (“**Dondeb**”), and those debtors listed on **Appendix “A”** (collectively, the “**Debtors**”). The Court Order was subsequently amended and restated to be dated October 17, 2012 consistent with the endorsement of the Honourable Justice Campbell (hereinafter referred to as the “**Receivership Order**”), which is attached as **Appendix “B”**. A copy of the reasons of the Honourable Justice Campbell released on November 22, 2012 is attached hereto as **Appendix “C”**.
2. The Debtors were in the primary business of acquiring or developing properties for rent or sale. The Debtors’ properties and operations were located throughout Southern Ontario.
3. The global receivership encompasses 12 legal entities which owned 25 known real properties (collectively the “**Properties**” and each a “**Property**”). The 24 Properties known at the time of the Receivership Order included: four retirement homes and/or independent living homes; two multiple unit apartment buildings; two private schools; five commercial properties; one residential condo unit; one golf course; and nine properties under development comprising vacant land. The list of known properties and assigned numbers is attached as **Appendix “D”**. Property numbers and names as defined in Appendix “D” are used throughout this report. Subsequent to the date of the Receivership Order being granted one additional Property was located, being a vacant piece of land located at 20 Scotia Road in Emsdale Ontario (Township of Perry) owned by 1281515 Ontario Inc. (the “**Scotia Road Property**”), as described in a previous report to the Court.
4. By Order dated October 26, 2012, the Court, among other matters, authorized Receiver Borrowings, with the consent of the mortgagees, by way of a revolving credit up to \$500,000, secured by the Properties, with the foregoing limit excluding borrowings for the completion of the Barrie Business Centre (Property #9). The Receiver was also granted authority, without the consent of The Empire Life

Insurance Company (“**Empire Life**”), to borrow by way of revolving credit of up to \$60,000 for the purpose of funding interim expenditures in respect of the real property located at 301 Byron Street South, Whitby, Ontario and the Hatch House Montessori School operated thereon (Property #13). Collectively, such borrowings were to be secured by way of a fixed and specific charge (“**Receiver’s Borrowing Charge**”) as security for payment of monies, in priority to all security interests, trusts and lien claims including but not limited to deemed trust claims under subsection 227(4) and (4.1) of the *Income Tax Act*, subsection 23(3) and (4) of the *Canada Pension Plan* and subsection 86(2) and (2.1) of the *Employment Insurance Act*, but subordinate in priority to the Receiver’s Charge (as defined in the Receivership Order) and the charges as set out in sections 14.06(7), 81.4(4), and 81.6(2) of the *Bankruptcy and Insolvency Act* (the “**BIA**”).

5. On January 8, 2013, the Receiver filed its Second Report to Court (the “**Original Second Report**”) seeking, among other things, approval of agreements of purchase and sale for the following four Properties: (i) Devonshire Place property (Property #4); (ii) Tim Hortons/Wendy’s property (Property #10); (iii) Dorset Place property (Property #22); and (iv) Preston Springs Gardens property (Property #24).
6. On January 11, 2013, the Receiver filed a supplement to its Second Report (the “**First Supplement**”) addressing minor amendments to the transactions involving the Tim Hortons/Wendy’s and the Preston Springs Gardens Properties.
7. On January 14, 2013, (i) without objection from any party, the Court granted the approval and vesting order approving the Devonshire Place property sale; and (ii) the Debtors advised the Court that they were in the process of retaining new counsel and requested an adjournment of one week for the remaining relief; Justice Morawetz granted an adjournment until January 15, 2013 for the approval of the remaining agreements of purchase and sale.
8. On the morning of January 15, 2013, the Debtors, having retained new counsel, filed a responding affidavit and in reply the Receiver filed a second supplement to

the Second Report (the “**Second Supplement**” and together with the Original Second Report and the First Supplement, the “**Second Report**”).

9. After hearing submissions on January 15, 2013, Justice Morawetz delivered his endorsement orally (the “**January 15 Endorsement**”), *inter alia* (i) approving the Tim Hortons/Wendy’s, the Dorset Place and the Preston Springs Gardens agreements of purchase and sale; and (ii) adjourning the requested approval of the Receiver’s activities as set out in the Second Report so that new counsel for the Debtors had time to consider the matters addressed therein with such approval to be brought back before the Court within 60 days. A copy of the January 15 Endorsement is attached as **Appendix “E”** hereto.
10. The Tim Hortons/Wendy’s property transaction closed on January 17, 2013. The Dorset Place property transaction closed on January 22, 2013. The Preston Springs Gardens property transaction closed on January 28, 2013.
11. By Court Order dated February 13, 2013, among other matters, the Receiver’s activities were approved as set out in the Second Report and the Third Report of the Receiver dated February 6, 2013, and interim distributions of proceeds held for the Dorset Place, Preston Springs Gardens and Tim Hortons/Wendy’s Properties were approved. Approval and vesting orders were also granted on February 13, 2013, in respect of transactions involving the Coldwater (Property #3) and Brechin (Property #12) Properties. The Coldwater property transaction closed on February 15, 2013. The Brechin property transaction closed on February 28, 2013. The Devonshire Place property transaction closed on March 1, 2013.
12. On March 25, 2013, the Court granted orders (i) approving an interim distribution in respect of the Coldwater and Devonshire Place Properties; and (ii) approving the activities of the Receiver set out in the Fourth Report of the Receiver dated March 15, 2013. In addition, on March 25, 2013, the Court granted approval and vesting orders as requested by the Receiver in respect of transactions for the sale of the Sussex Place (Property #8) and the Georgian Manor (Property #17) Properties.

13. The Georgian Manor property transaction closed on March 27, 2013. The Sussex Place property transaction closed on April 24, 2013.
14. On May 10, 2013, the Court granted orders (i) approving the Agreements of Purchase of Sale of the following properties: Ontario Street, Hatch House Montessori School and Tudhope Manor; (ii) approving an Auction Agreement for certain panelization equipment, as well as approval of a stalking horse sales agreement for the Ace Self Storage property and business and Stalking Horse sales process for same; (iii) approving the distribution of funds held in respect of the Georgian Manor and Sussex Place Properties; and (iv) approving the activities of the Receiver set out in the Fifth Report of the Receiver dated May 3, 2013.
15. The Ontario Street property transaction closed on May 15, 2013 and the Hatch House Montessori School transaction closed on May 21, 2013.
16. On May 29, 2013, the Court granted (i) an order approving an interim distribution in respect of the Ontario Street and Hatch House Montessori School properties; and (ii) an approval and vesting order in respect of the sale of the Lafontaine Terrace property.
17. On June 11, 2013, following a contested hearing, Justice Newbould made two Orders which, among other things, declared that Empire Life was not entitled to an interest differential on four properties: Dorset Place, Sussex Place, Hatch House and Leons, and approved interim distributions on the Tudhope Manor and Lafontaine Terrace properties, which had closed on May 30 and June 4, 2013 respectively.
18. In a motion originally returnable on July 30, 2013, the Receiver sought an approval and vesting order in respect of the Ace Self Storage business and property. Melvyn A. Dancy (“**Dancy**”) appeared in person at the hearing and advised the Court that he was attempting to retain new counsel and requested an adjournment of the Receiver’s motion. Justice Morawetz granted an adjournment until August 6, 2013. At the return of the Motion on August 6, 2013, Dancy advised that he had still not been able to retain new counsel. Notwithstanding same, the approval and vesting

Order was granted for the sale of the Ace Self Storage business and property to Pace Savings & Credit Union Limited (“**Pace**”), which sales transaction was the culmination of a previously approved stalking horse sales process. Upon closing of the Ace Self Storage transaction, \$6.2 million was authorized to be distributed to the purchaser, Pace. In addition, an Order of the Court was granted on August 6, 2013 which, among other matters, approved interim distributions to the secured creditor of the Coldwater Property and the Brechin Property and reallocation of proceeds from 2338067 Ontario Inc. to Dondeb Inc., related to the sale of the Dorset Place property.

19. On December 2, 2013, the Court granted (i) an order approving a distribution from the remaining proceeds of sale of the Lafontaine Terrace Property; (ii) approval and vesting orders in respect of the sales of the Orillia Prep School, Orillia Retirement Residence, Whispering Pines, Pepper/Palmer and the 240 Yeoman Street properties; and (iii) an order that the motion brought by Dancy seeking leave to file a complaint against Farber be dismissed on a with prejudice basis and without costs unless Dancy provided written notice on or before January 10, 2014 of his intention to bring on the motion. Dancy did not provide such notice.
20. On March 24, 2014, the Court granted an order (i) authorizing the Receiver to consolidate the Segregated Accounts for Ontario Street, Coldwater, Devonshire Place, Sussex Place, 240 Yeoman Street, Brechin and Dorset Place into one account (the “**Dondeb General Account**”); (ii) authorizing the Receiver to transfer \$108,565.68 from the Dondeb General Account to the Tim Hortons/Wendy’s property Segregated Account to reimburse the Tim Hortons/Wendy’s property in respect of deemed trust amounts owing by Dondeb to Canada Revenue Agency (the “**CRA**”) which were paid to the CRA pursuant to the Order of Justice Morawetz made on February 13, 2013; (iii) authorizing the Receiver to distribute \$180,000 to Faithlife Financial in partial satisfaction of the charge/mortgage granted by 2009031 Ontario Inc. in favour of Faithlife Financial against the Tudhope Manor property; (iv) authorizing the Receiver to distribute \$180,000 to CRA in partial satisfaction of amounts deemed to be held in trust by 118 in favour of CRA;

(v) authorizing the Receiver to distribute the amount of \$160,000 to Empire Life in partial satisfaction of the charge/mortgage granted by Dondeb in favour of Empire Life from the proceeds of the Hatch House Montessori School property; (vi) authorizing the Receiver to distribute from the proceeds of sale in respect of the Tim Hortons/Wendy's property the amount of \$12,500 to Sun Life Assurance Company of Canada ("**Sun Life**") in full and final satisfaction of all amounts owing to Sun Life by Dondeb; and (vii) authorizing the Receiver to distribute from the proceeds of sale in respect of the Tim Hortons/Wendy's property the amount of \$100,000 to The Bank of Nova Scotia, Trustee ("**BNS**") in full and final satisfaction of all amounts secured in respect by a charge/mortgage granted by 2339506 Ontario Inc. in favour of BNS as against the Tim Hortons/Wendy's Property. Also on March 24, 2014 approval and vesting orders in respect of the sales of the Rockin Boats, Remo's Ristoronti, Scotia Rd. and Barrie Business Centre properties were granted. As well, an approval and vesting order in respect of a transaction involving the Feed-in-Tariff contract ("**FIT Contract**") between Dondeb and Ontario Power Authority related to the Rockin Boats property was made.

21. On May 2, 2014, the Court granted an Order (i) approving the Twelfth Report and the activities of the Receiver set out therein; (ii) authorizing the Receiver to distribute the amount of \$2,630,000 to First Source Mortgage Corporation and Mark Cosman ("**First Source/Cosman**") and in partial satisfaction of the charge/mortgage granted by Dondeb, in favour of First Source/Cosman in the original principal sum of \$7,100,000 registered on September 1, 2011 as Instrument No. SC928251 (the "**First Source BBC Charge**") against the BBC property from the funds held by the Receiver in the account maintained for the BBC property; (iii) authorizing the Receiver to distribute the amount of \$160,000 to First Source/Cosman in partial satisfaction of the charge/mortgage granted by Dondeb, in favour of First Source/Cosman in the original principal sum of \$150,000 registered on August 24, 2012 as Instrument No. SC1006304 (the "**First Source Tim Hortons Charge**") against the Tim Hortons/Wendy's property from the funds held by the Receiver in the account maintained for the Remo's Ristoronti property; and (iv) authorizing the Receiver to distribute the amount of \$250,000 to The Toronto-

Dominion Bank (“**TD**”) in partial satisfaction of the charge/mortgage granted by Dondob to The Canada Trust Company as custodian for TD in the original principal amount of \$712,000, registered on November 1, 2005 as Instrument No. SC382515, against the Rockin Boats property from the proceeds of sale of the Rockin Boats property.

22. On July 28, 2014, the Court granted Orders (i) approving the thirteenth report to Court of the Receiver and the activities of the Receiver set out therein; (ii) approving the completion of the sale transaction, related to the property at 92 Davidson Avenue, Barrie, ON, contemplated by the agreement of purchase and sale between the Receiver as vendor and Solara Sustainable Energy Company Limited as purchaser made as of July 8, 2014 and related relief; and (iii) approving Farber’s fees and disbursements as Receiver for the period October 17, 2012 to May 31, 2014 and the fees and disbursements of Farber’s independent legal counsel, counsel Dentons LLP (“**Dentons**”), for the period October 17 2012 to May 31, 2014 and Cassels, Brock & Blackwell LLP for the period March 2, 2014 to May 31, 2014 for the following 13 properties: Ace Self Storage and Business Centre Inc., 240 Yeoman, Brechin, Coldwater, Devonshire, Dorset Place, Georgian Manor, King City Holdings (Belleville – Pepper/Palmer), Ontario Street, Orillia Independent Living, Preston Springs, Sussex Place and Tudhope Manor.
23. In summary, to date, of the 25 Properties, sales have been completed in respect of the following 23 Properties: Tim Hortons/Wendy’s, Dorset Place, Preston Springs Gardens, Devonshire Place, Coldwater, Brechin, Georgian Manor, Sussex Place, Ontario Street, Hatch House Montessori School, Tudhope Manor, the Lafontaine Terrace, the Ace Self Storage, Orillia Prep School, Orillia Retirement Residence, Whispering Pines, Pepper/Palmer, Yeomen Street, Rockin Boats, Remo’s Ristoronti property, Scotia Road, and the Barrie Business Centre.

2. PURPOSE OF REPORT

24. The Purpose of this fourteenth report to the Court of the Receiver (the “**Fourteenth Report**”) is to report to the Court on the activities of the Receiver since the filing of

the Receiver's Thirteenth Report to the Court and to provide support for the Receiver's request for an Order:

- (i) approving the Fourteenth Report and the activities of the Receiver set out therein; and
- (ii) approving the completion of the sale transaction (the "**OIL Transaction**") contemplated by the agreement of purchase and sale in respect of the real property municipally known as 20 Simcoe Street, Orillia, ON and the business located thereon known as Orillia Independent Living ("**OIL**"), between the Receiver as vendor and Retirement Suites (Simcoe) Ltd (the "**OIL Purchaser**") as assignee of Nitin Mendiratta In Trust for company to be incorporated as purchaser made as of July 21, 2014, as amended (the "**OIL APS**"); vesting in the OIL Purchaser the Property (as defined in the OIL APS) free and clear of encumbrances, other than Permitted Encumbrances (as defined in the OIL APS); and sealing and treating as confidential **Confidential Appendix 1** to the Fourteenth Report until closing of the OIL Transaction or further order of the Court and providing that the relief set out in the order be subject to provisional execution.

3. DISCLAIMER

25. Farber has relied upon the financial records and information provided by the Debtors, as well as other information supplied by management, appraisers, accountants, auditors and advisors.

4. RECEIVER'S ACTIVITIES

26. Since July 21, 2014, the Receiver's activities have included, among other things:
 - Monitoring receipts and disbursements, coordinating debt service payments where cash flow permits and liaising with mortgagees, as appropriate;

- Following up the transactions previously approved by the Court in respect of the sale of certain feed – in – tariff contracts and steps to conclude and close those transactions;
- Overseeing and monitoring of ongoing operations at OIL, in concert with the current business managers and review and negotiation of offers;
- Attending to due diligence requirements of the OIL Purchaser; and
- Corresponding by email and telephone with the Debtors’ creditors.

5. APPROVAL OF SALE OF 20 SIMCOE STREET, ORILLIA, ONTARIO

27. OIL is a 32 unit independent living retirement home located in Orillia, Ontario. The property is owned by 2198392 Ontario Inc. The first and second mortgagees of record are: Addenda Capital Inc., (“**Addenda**”) and Cameron Stephens Financial Corporation (“collectively, the “**OIL Mortgagees**”). A title abstract for the real property associated with OIL is attached hereto as **Appendix “F”**.
28. Independent counsel to the Receiver, Dentons (formerly Fraser Milner Casgrain LLP) has reviewed the security registered against the OIL Property and delivered an opinion to the Receiver that the OIL Mortgages are valid, subject to typical qualifications and assumptions. A copy of the security review for the OIL Property is attached hereto as **Appendix “G”**.
29. The OIL real property is situated on one of three adjacent lots that were owned by different Dondeb entities, which formed part of the Global Receivership. The other adjoining properties are: Orillia Retirement Residence (“**ORR**”) located at 24 Simcoe Street, Orillia which was owned by Dondeb and had been vacant for most of the receivership proceedings, the sale of which was ultimately approved by the Court on December 2, 2013 and closed on December 13, 2013; and Remos Restaurant (vacant) located at 480 West Street, Orillia which was owned by Dondeb. The sale of Remos Restaurant property was approved by the Court on March 24, 2014 and closed on March 28, 2014.

30. Throughout the Receivership proceedings, OIL continued to operate with relatively high occupancy. There was a need at the onset of the receivership to stabilize operations and manage ongoing operations and occupancy, including marketing of the facility.
31. At the commencement of the receivership, the Receiver sought proposals from two realtors who specialize in the retirement home sector for sale and marketing of the OIL Property. Ultimately, the OIL Property was listed with Sean Jensen Realty Inc. (“**Jensen Realty**”) on January 18, 2013 for \$6.445 million with the consent of the OIL Mortgagees. The listing term was originally until July 31, 2013, however a series of extensions ensued through to May 31, 2014. There was a reduction in the listing price to \$5.5 million in August 2013.
32. Jensen Realty’s marketing process included: compilation of a comprehensive information package for distribution to interested parties who signed a Confidentiality Agreement (“CA”), the listing was posted to Loop Net, an electronic announcement was sent to 1,200 contacts registered in the Jensen proprietary database and newspaper advertisements were placed in *The Globe and Mail* on February 19 and 21, 2013. With various extensions to the listing, the parties who had signed CA’s were contacted by way of follow up notices and advised of the ongoing status of the OIL Property.
33. A total of 181 parties provided expressions of interest, 84 parties signed CA’s and were provided information packages, with 23 parties completing tours and inspections of the premises. Ten offers/proposals received by the end of May 2014 with a further offer received in the holder over period in June 2014. Some of these offers proposals were en bloc offers for the three properties (OIL, ORR and Remos Restaurant) or the two homes (ORR and OIL).
34. Through the period December 2013 to early June 2014, the Receiver had been in extensive negotiations with four other parties in respect of OIL. Throughout that time, the Receiver entered into agreements of purchase and sale with two parties which were conditional upon, among other things purchaser due diligence and court

approval. The purchase price of both of those conditional agreements was slightly higher (less than 3%) than that provided for in the OIL APS for which approval is now sought. However, the purchasers in each of those conditional agreements failed to satisfy or waive the due diligence and/or financing conditions, such that those agreements terminated prior to the Receiver seeking Court approval of such.

35. On June 26, 2014, the OIL Purchaser, who had submitted an earlier offer for the OIL property in May 2014, came forward with an offer from cooperating brokers, Avison Young Commercial Real Estate (Ontario) Inc. and Sutton Group Incentive Realty Group Inc. Ultimately, as a result of negotiations undertaken through late June and July 2014, the Receiver entered into the OIL APS, subject to Court approval, with the OIL Purchaser on July 21, 2014. Subsequent amendments to the OIL APS extended the due diligence condition date and the date by which Court approval was required.
36. The purchase price in respect of the OIL APS (and in respect of all offers/proposals received for the OIL property) is not sufficient to satisfy amounts owing to the OIL Mortgagees in full.
37. Key terms of the OIL APS include: (i) a purchase price which comprised a substantial deposits and cash payment of the full purchase price on closing; (ii) waiver of due diligence the period by August 22, 2014 (and later as amended to August 27, 2014); (iii) Court approval on or by September 10, 2014 (and later amended to September 12, 2014); (iv) a Closing Date of the second business day following the granting of the approval and vesting order, should such be granted.

Evaluation of the OIL APS

38. A copy of the OIL APS with the purchase price redacted is attached as **Appendix “H”**. A copy of the unredacted OIL APS is attached as Confidential Appendix “1”. Consistent with other transactions wherein Court approval is being sought, the Receiver is seeking a sealing order of the Confidential Appendix pending the earlier of the completion of the transaction contemplated by the OIL APS or further Order of the Court in order to ensure that value of the Property (as

defined in the OIL APS) is not impacted if the transaction contemplated by the OIL APS does not close.

39. Key terms of the OIL APS include:
- i. a substantial deposit slightly in excess of 10% of the purchase price has been paid to the Receiver;
 - ii. The Receiver understands that the OIL Purchaser has financing in place in order to pay the balance of Purchase Price in cash at closing;
 - iii. a condition requiring the granting of an approval and vesting order by September 12, 2014; and
 - iv. a closing date of no later than two business days after Court Approval unless an extension is mutually agreed to by the parties.
40. The Receiver is of the view that the OIL APS should be approved by the Court as: (i) the Receiver is of the view that the market was extensively canvassed and a competitive process undertaken; (ii) the purchase price is commercially reasonable in the circumstances; (iii) the OIL Mortgagees have consented to the transaction; and (iv) employment will be preserved at the OIL facility and there will be increased certainty for tenants with exit from the Receivership proceeding.

6. STATUS OF MARKETING AND SALE PROCESS OF THE REMAINING PROPERTIES

41. Only one remaining real Property (Leon's, 555 Memorial Ave., Orillia, Ontario) remains to be sold. The Receiver continues to market this property through a listing agent. There have been a number of enquiries and offers submitted, however, no acceptable offer has been received to date.
42. In addition, the Receiver continues efforts to realize upon the remaining three FIT Contracts. Agreements of purchase and sale have been previously approved by the Court for two of the remaining FIT Contracts (those formerly associated with the Rockin Boats and Barrie Business Centre properties). The Receiver continues to

work with the purchasers of those FIT Contracts to satisfy the conditions to closing of the relevant agreements. As well, with respect the FIT Contract associated with the Leon's Property, the Receiver continues its efforts to market such for sale with the goal of entering into an agreement of purchase and sale for such contract as well.

7. RECOMMENDATION

43. The Receiver respectfully recommends that this Court grant an order for the relief requested in Section 2 hereof.

A. FARBER & PARTNERS INC.
In its capacity as Receiver of the Debtors
Listed on Appendix A and not in its personal capacity

A. Farber & Partners Inc