

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE MR.)
JUSTICE D. BROWN)
MONDAY, THE 24TH
DAY OF MARCH, 2014

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

ORDER

THIS MOTION made by A. Farber & Partners Inc. in its capacity as court-appointed receiver (the "**Receiver**") of the debtors referred to at Schedule "A" attached hereto (collectively, the "**Debtors**") for an order *inter alia*: (i) declaring that the time for service of the Notice of Motion and the Motion Record is hereby abridged so that the motion is properly returnable; (ii) approving the eleventh report to Court of the Receiver dated March 17, 2014 (the "**Eleventh Report**") and the activities of the Receiver set out therein; (iii) authorizing the Receiver to consolidate the Segregated Accounts (as defined in paragraph 3 of the Order of Justice Campbell made on October 17, 2012 (the "**Receivership Order**")) for any Property (as defined in the Receivership Order) for which the secured creditors with a mortgage registered over such Property have been paid in full into one account for the corporation in which such Property was held including at at this time, the consolidation of the following Segregated Accounts into a general

account for Dondeb Inc. (“**Dondeb**”): Ontario Street, Coldwater, Devonshire Place, 240 Yeoman Street, Brechin and Dorset Place (the “**Dondeb General Account**”); (iv) authorizing the Receiver to transfer the amount of \$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 amounts owing by Dondeb, and subject to deemed trust provisions, to Canada Revenue Agency (the “**CRA**”) which were paid to the CRA pursuant to the Order of Justice Morawetz made on February 13, 2013; (v) authorizing the Receiver to distribute the amount of \$180,000 to Faithlife Financial (previously The Lutheran Life Insurance Society of Canada) (“**Faithlife**”) in partial satisfaction of the charge/mortgage granted by 2009031 Ontario Inc. (“**2009031**”) in favour of Faithlife (the “**Faithlife Charge**”) in the original principal sum of \$2,450,000.00 registered on November 28, 2007 as Instrument No. SC606133 against the property municipally known as 127 Peter Street North in Orillia, Ontario (the “**Tudhope Manor Property**”) from the funds held by the Receiver in the account maintained for the Tudhope Manor Property; (vi) authorizing the Receiver to distribute \$180,000 to CRA in partial satisfaction of amounts deemed to be held in trust by 1182689 Ontario Inc. (“**118**”) in favour of CRA pursuant to subsection 227(4) of the Income Tax Act (Canada), subsection 23(3) of the Canada Pension Plan, subsection 57(2) of the Unemployment Insurance Act (Canada), subsection 86(2) of the employment Insurance Act (Canada) and the Excise Tax Act from the proceeds of sale of the business and property municipally known as 547 Laclie Street, Orillia Ontario (the “**Orillia Prep School Property**”) formerly owned by 118; (vii) authorizing the Receiver to distribute \$160,000 to Empire Life Insurance Company (“**Empire**”) in partial satisfaction of the charge/mortgage granted by Dondeb in favour of Empire (the “**Empire Charge**”), in the original principal sum of \$625,000.00 registered on March 16, 2006 as Instrument No. DR483226, against the business and property municipally known as 301 Byron Street South in Whitby, Ontario (the “**Hatch House Montessori School Property**”) the following amount from the proceeds of sale of the Hatch House Montessori School Property previously owned by 118; (viii) authorizing the Receiver to distribute from the proceeds of sale in respect of the property municipally known as 525 Memorial Avenue, Orillia, Ontario, formerly owned by Dondeb (the “**Tim Hortons / Wendy’s Property**”) the amount of \$12,500.00

to Sun Life Assurance Company of Canada (formerly Clarica Life Insurance Company) (“**Sun Life**”) in full and final satisfaction of all amounts, including without limitation, certain prepayment obligations, secured by the charge/mortgage granted by Dondeb in favour of Sun Life (the “**Sun Life Charge**”), in the original principal sum of \$800,000 registered on March 23, 2001 as Instrument No. RO1453616 against the Tim Hortons / Wendy’s Property; (viii) authorizing the Receiver to distribution 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 by a charge/mortgage granted by 2339506 Ontario Inc. in favour of BNS in the original principal sum of \$1,600,000 registered on August 23, 2012 as Instrument No. SC1006304 against the Tim Hortons / Wendy’s Property (the “**BNS Charge**”); (ix) declaring that the distributions contemplated by the order be without prejudice to any rights of subrogation, marshaling, apportionment or assessment that any subordinate creditors may have; and (x) declaring that nothing in the Order prevents a person from challenging the amount and allocation of the holdbacks and reserves being retained by the Receiver at a future date; was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Notice of Motion dated March 17, 2014 and the Eleventh Report, and upon hearing the submissions of the counsel for the Receiver, no other party appearing, although duly served, as appears from the Affidavits of Service of Monique Sassi sworn March 17 and 18, 2014, filed,

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion and the Motion Record is hereby abridged so that this motion is properly returnable today and hereby dispenses with further service thereof.
2. **THIS COURT ORDERS** that the Eleventh Report and the activities of the Receiver set out therein, be and are hereby approved.
3. **THIS COURT ORDERS** that the Receiver is authorized to consolidate the Segregated Accounts for any Property for which the secured creditors with a mortgage registered over such Property have been paid in full into one account for the corporation

in which such Property was held. Specifically, the Receiver is authorized to consolidate the Segregated Accounts for the following Properties into a new Dondeb General Account: Ontario Street, Coldwater, Devonshire Place, 240 Yeoman Street, Brechin and Dorset Place.

4. **THIS COURT ORDERS** that the Receiver is authorized to transfer the amount of \$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 amounts owing by Dondeb, and subject to deemed trust provisions, to CRA which were paid to the CRA pursuant to the Order of Justice Morawetz made on February 13, 2013.

5. **THIS COURT ORDERS** that the Receiver is authorized to distribute the amount of \$180,000 to Faithlife in partial satisfaction of the Faithlife Charge from the funds held by the Receiver in the account maintained for the Tudhope Manor Property.

6. **THIS COURT ORDERS** that the Receiver is authorized to distribute the amount of \$180,000 to CRA in partial satisfaction of amounts deemed to be held in trust by 118 in favour of CRA pursuant to subsection 227(4) of the Income Tax Act (Canada), subsection 23(3) of the Canada Pension Plan, subsection 57(2) of the Unemployment Insurance Act (Canada), subsection 86(2) of the employment Insurance Act (Canada) and the Excise Tax Act from the proceeds of sale of the Orillia Prep School Property.

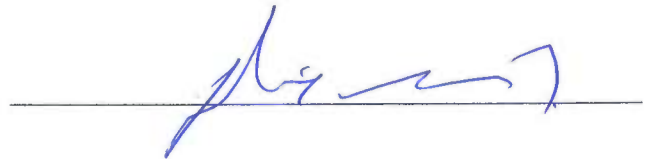
7. **THIS COURT ORDERS** that the Receiver is authorized to distribute the amount of \$160,000 to Empire in partial satisfaction of the Empire Charge from the funds held by the Receiver in the account maintained for the Hatch House Montessori School Property.

8. **THIS COURT ORDERS** that the Receiver is authorized to distribute the amount of \$12,500 to Sun Life in full and final satisfaction of all amounts, including without limitation, certain prepayment obligations, secured by the Sun Life Charge from the funds held by the Receiver in the account maintained for the Tim Hortons / Wendy's Property.

9. **THIS COURT ORDERS** that the Receiver is authorized to distribute the amount of \$100,000 to BNS in full and final satisfaction of all amounts secured by the BNS Charge over the Tim Hortons / Wendy's Property.

10. **THIS COURT ORDERS AND DECLARES** that the distributions contemplated by this Order be without prejudice to any rights of subrogation, marshaling, apportionment or assessment that any subordinate creditors may have.

11. **THIS COURT ORDERS** that nothing in this Order prevents a person from challenging the amount and allocation of the holdbacks and reserves being retained by the Receiver at a future date.



ENTERED AT / INSCRIT A TORONTO
ON / BOOK NO:
LE / DANS LE REGISTRE NO.:

MAR 24 2014



SCHEDULE "A"

1281515 Ontario Inc.

2338067 Ontario Inc.

2198392 Ontario Ltd.

King City Holdings Ltd.

Guelph Financial Corporation

Briarbrook Apartments Inc.

2009031 Ontario Inc.

1267818 Ontario Ltd.

1711060 Ontario Ltd.

1182689 Ontario Inc.

Ace Self Storage and Business Centre Inc.

Court File No: CV-12-9794-00CL
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

ONTARIO

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

PROCEEDING COMMENCED AT TORONTO

**ORDER
(March 24, 2014)**

DENTONS CANADA LLP
77 King Street West, Suite 400,
Toronto Ontario, M5K 0A1

CASSELS BROCK & BLACKWELL LLP
2100 Scotia Plaza, 40 King Street West,
Toronto Ontario M5H 3C2

Lawyer: Neil S. Rabinovitch / Jane O. Dietrich
LSUC: 33442F / 49302U
E-mail: neil.rabinovitch@dentons.com /
jdietrich@casselsbrock.com

Tele: 416 863-4656 / 416 860-5223
Fax: 416 863-4592 / 416 640-3144

LAWYERS FOR THE RECEIVER