

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

Commercial List File No. CV-14-10798-00CL

IN THE MATTER OF THE RECEIVERSHIP 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.

**SUPPLEMENTARY REPORT TO THE
NINTH REPORT OF THE RECEIVER**

Dated: May 15, 2015

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Marine Sales Limited, F.S. Crate & Sons Limited,
1330732 Ontario Limited, 1328559 Ontario Limited
1282648 Ontario Limited, 1382415 Ontario Ltd.,
and 1382416 Ontario Ltd.

TO: THE SERVICE LIST

AND TO: PRIDE MARINE GROUP LTD.
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TAB 1

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May 15, 2015

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**SUPPLEMENTARY REPORT TO THE
NINTH REPORT OF THE RECEIVER**

May 15, 2015

A. Farber & Partners Inc., in its capacity as the Court appointed Receiver (the “**Receiver**”) 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. (collectively the “**Companies**”), hereby reports to the Court as follows:

PURPOSE OF THIS REPORT

1. All capitalized terms have the meaning given to them in the Ninth Report of the Receiver dated April 28, 2015 (the “**Ninth Report**”).
2. This report (the “**Supplementary Report**”) is to:
 - a) report on matters that took place after the Ninth Report and the endorsement of the Honourable Justice Pattillo, both of which were in respect of a motion brought by the Receiver in connection with certain property and claims issues at the Lagoon City marina on April 30, 2015; and

- (b) respond to a further motion that 2122915 Ontario Inc. (“**212**”), which is the landlord of the Lagoon City marina, has brought in relation to the subject matter of the motion already heard on April 30, 2015 and the endorsement of Justice Pattillo of that date.

LIMITATION OF REVIEW

3. A. Farber & Partners Inc. in its capacity as 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, except as specifically noted in this Supplementary Report, audited, reviewed or otherwise attempted to verify the accuracy or completeness of the above information in a manner that would wholly or partially comply with Generally Accepted Assurance Standards pursuant to the Canadian Institute of Chartered Accountants Handbook. It has prepared this Supplementary Report for the sole use of the Court and of the other stakeholders in these proceedings.

A) THE MOTION ALREADY HEARD REGARDING THE LAGOON CITY MARINA AND THE COURT’S DISPOSITION

4. The Ninth Report was prepared in connection with the Receiver’s motion for directions concerning the Lagoon City marina. The issues for which directions were sought arose out of the new tenancy that 212 had granted to Pride Marine Group Ltd. (“**Pride**”) commencing May 1, 2015, which were essentially:

- a) how the Receiver could continue to administer property claims in terms of overseeing the release of approved claims to customers, collecting accounts owing to the Companies or the Receiver in connection with storage and service charges, and unclaimed items (principally boats); and
- b) what should be the disposition of certain chattels at the Lagoon City marina that the Receiver believed were the property of the Companies, but to which 212 had asserted ownership claims in the property claims process and was asking not be removed pending determination of those claims.

5. The Receivers’ role in connection with property claims is under the Property Claims Procedure Order of Mr. Justice Penny dated December 23, 2014 (the “**PCPO**”) and the Claims Order of Madam Justice Conway dated March 31, 2015 (the “**Claims Order**”). The PCPO is attached as Appendix “C” to the Ninth Report, and the Claims Order is attached as Appendix “E” to the Ninth Report.

6. The disputed property claims of 212 had been the subject of a Proof of Property Claim by 212, a Notice of Disallowance by the Receiver, and a Notice of Dispute by 212, all pursuant to the PCPO. The Receiver had also conveyed all the right, title and interest in the items subject to those disputed property claims of 212 to Krates Keswick Inc. (“**KKI**”) as assignee under an agreement of purchase and sale, which had been approved by an Approval and Vesting Order of Madam Justice Conway dated March 31, 2015, and which had closed on April 10, 2015.

7. Argument on the Receiver’s motion proceeded on April 30, 2015 before the Honourable Mr. Justice Pattillo. Counsel for the Receiver, 212 and KKI were in attendance. Pride did not attend, despite being served. The motion proceeded by several chambers attendances before His Honour, and was ultimately determined after nearly a full day at Court at approximately 5:00pm.

8. Pride appeared to attempt on April 30 to communicate its position through counsel for 212, including through an e-mail exchanged with counsel for 212 over the lunch hour, which was provided to counsel opposite and Justice Pattillo. A copy of that e-mail is attached as Exhibit “E” to the Affidavit of Maeve Callery sworn May 12, 2015 (the “**Callery Affidavit**”) in 212’s Motion Record and is therefore not reproduced here.

9. In argument before Justice Pattillo, issues were raised regarding, among other things:

- a) the terms of access of the Receiver to the Lagoon City marina after May 1, 2015 to administer the claims process, including the release of boats, the collection of outstanding receivables and the disposition of unclaimed boats;
- b) how long the Receiver would have access to the Lagoon City marina on those terms (between May 31 as requested by Pride and June 15 as requested by the Receiver);
- c) that the Receiver should be “out” of the Lagoon City Marina on or before May 31, and the intended disposition of property (boats) not claimed should occur by that time;
- d) how often during that period the Receiver should be on site at the Lagoon City marina after May 1, 2015 to assist with the property claims process (with Pride through 212 requesting daily attendance, and the Receiver resisting that),

- e) Pride's request (through counsel for 212) that a Receiver's representative be on site on May 2 and 3 in particular; and
- f) whether the disputed items subject to 212's property claims should be left on site and if so whether (and on what terms) Pride might be entitled to use the portion of those items it had set out in Exhibit "E" to the Callery Affidavit.

10. Justice Pattillo held, among other things, that:

- a) the terms of access by the Receiver should be substantially those as set out in the letter from counsel for the Receiver to counsel for 212 dated April 17, 2015, a copy of which was attached as Appendix "I" to the Ninth Report, with modifications that:
 - i) the term of access would only be until May 31, 2015,
 - ii) a representative of the Receiver should be on site on May 2 and 3, but thereafter on reasonable periods and by appointment made by customers after notice was given to them to do so, and
 - iii) the issue of whether occupation rent should be payable for that period;
- b) the Receiver need not have a representative on site full time after May 2 and 3;
- c) Pride could book a 9:30 appointment before His Honour on May 4 or 5 to deal with this issue, as it had not attended Court that day.

11. A copy of Justice Pattillo's handwritten endorsement of April 30, 2015 is attached as **Appendix "A"**. A typed transcription is attached as **Appendix "B"**.

12. During the motion, Justice Pattillo specifically did not accept argument by counsel for 212 that the Receiver had not taken appropriate steps to notify potential boat owners or other property claimants of either the receivership proceedings or the need to make claims. His Honour directed the Receiver orally to be sure to have all unclaimed items out of the facility by May 31, 2015.

B) EVENTS AFTER THE MOTION ON APRIL 30, 2015

The Receiver's further attempts to contact Lagoon City customers

13. As directed by the April 30, 2015 endorsement, the Receiver prepared and mailed a

letter to all known former customers of Crate Marine at the Lagoon City marina to advise them of the process to retrieve their boats, including the need to make an appointment to do so after May 2 and 3. A copy of the letter sent to all such customers dated May 5, 2015 (the “May 5th Letter”) is attached as **Appendix “C”**.

14. As is further discussed below regarding the status of claims at Lagoon City, there remain 84 unclaimed boats. The Receiver has the customer’s name for 62 of those boats, and obtained phone numbers for 51 of those customers and has called each such phone number.

15. All of the foregoing is in addition to the previous steps taken by the Receiver in compliance with the PCPO, as outlined in the Seventh Report (at paragraphs 19 and 20), a copy of which is attached (without appendices) as Appendix “D” to the Ninth Report. The actions in the Seventh Report were approved by Madam Justice Conway on March 31, 2015 in the Claims Order, a copy of which is attached as Appendix “E” to the Ninth Report. No objection was made by 212 to that Order.

The Receiver’s representative and times he was on site

16. The Receiver engaged a representative, Walter Howells, to perform the various on-site duties set out in the April 30, 2015 endorsement of the Court. Mr. Howells was a prior employee or contractor at the Lagoon City facility when it was operated by Crate Marine, and had previously provided security services to the Receiver after appointment in order to attempt to ensure the safety and security of the company and customer property at the Lagoon City location.

17. Mr. Howells attended the inspection of the equipment at Lagoon City referred to in Schedule “A” to the April 30, 2015 endorsement on May 1, 2015 as directed.

18. Mr. Howells also attended the Lagoon City marina on May 2 and 3, 2015 as directed.

19. Mr. Howells attended the Lagoon City for the following amount of time on the following dates up to May 12:

Date	Time
May 1	3 hours (equipment inspection and report)
May 2	7 hours
May 3	4 hours
May 4	1 hour
May 5	4 hours
May 6	1 hour
May 7	4 hours
May 8	4 hours
May 9	7 hours
May 10	4 hours
May 12	4 hours

20. The times at which Mr. Howells attended the Lagoon City marina were more than had been initially agreed upon between the Receiver (via Mr. Howells) and Pride, which had been intended to be from 9:00am to 4:00pm on Saturdays, and from noon until 4:00pm Sundays, Tuesdays and Thursdays. The additional times at which Mr. Howells was at the Lagoon City marina as noted above were due to special requests by customers.

The decision making by the Receiver

21. Mr. Howells has been provided with a list of the claims at the Lagoon City marina that have been accepted by the Receiver. He has also been provided with a list of the boats at the Lagoon City marina for which there are accounts receivable (either to Crate Marine or to the Receiver) for storage or other services prior to May 1, 2015.

22. Mr. Howells has been instructed by the Receiver to release property subject to claims that have been approved to the appropriate claimants, subject to provision of appropriate

identification. Mr. Howells has also been instructed not to release any such property if there are accounts receivable unless those accounts have been paid or resolved.

23. Where there is an issue with a customer disputing some or all of an account receivable, or any other issue in connection with a claim, Mr. Howells has the cell phone contact information for the licenced practitioner at the Receiver who is overseeing the property claims process at Lagoon City. That practitioner has been regularly fielding calls from Mr. Howells and customers over the past two weekends.

24. A dispute regarding an account receivable requires that the Receiver attempt to discuss any such issues with KKI, because all accounts receivable (whether owing to Crate Marine or the Receiver) have been assigned to KKI under the agreement of purchase and sale that closed on April 10, 2015. The Receiver has noted that KKI has taken reasonable approaches to the resolution of any issues, including having regard to the sometimes problematic nature of the Crate Marine invoicing or accounting systems, which the Receiver has otherwise noted in previous Reports to the Court.

25. Where customers have not made a property claim and speak to Mr. Howells, he has been instructed to advise such customers of the need to make such a claim and where all the necessary materials may be found on the Receiver's website. Mr. Howells also makes a copy of the May 5th Letter available to such customers.

Customer interactions

26. Mr. Howells has reported to the Receiver that in his dealings with customers, most people simply agree to do what is required under the PCPO process.

27. Mr. Howells and the Receiver's practitioner report that the few customer complaints that have been received about the PCPO process are from customers who claim to own "dockominiums", and who question whether their boat was in the possession of Crate Marine within the meaning of the PCPO.

28. The Receiver has reviewed the issue of dockominiums and the lease under which Crate Marine appears to have been operating at Lagoon City (noting that the lease is in favour

of Steven Crate and Greg Crate personally in trust for a company to be incorporated, but that did not happen), a copy of which is attached as Exhibit "A" to the Callery Affidavit and is therefore not attached here. The lease, by its terms, was for the "entire Marina" as defined in the lease to include, among other things, 277 boat slips. The lease also provided in section 2.2 under the heading "dockominiums" that 77 boat slips were already subject to long-term leases and that the tenant agreed to assume the obligations of the Landlord under such leases and to receive the maintenance fees payable under such long-term leases. The Receiver has therefore consistently taken the position that all boats (in dockominium arrangements or otherwise) were in the possession of Crate Marine as of the appointment of the Receiver on December 8, 2014, particularly since all such boats were in winter storage.

29. Mr. Howells and the Receiver's practitioner are also aware of claims by some customers that there was damage or improper storage in connection with their boats. The Receiver has advised all such customers that any such claims are unsecured claims in the estate of Crate Marine (which are unlikely to be paid), since all such storage or damage was occasioned when Crate Marine was dealing with those boats prior to December 8, 2014. The Receiver only passively protected the property at Lagoon City after December 8, 2014 and has not conducted any business or operations since that time.

The status of claims at Lagoon City

30. As at May 1, 2015, there were 134 unclaimed boats at Lagoon City. Since that time, 50 claims have come in response to the May 5 Letter sent by the Receiver and attached as Appendix "C".

31. There remain 84 unclaimed boats. The Receiver has the customer's name for 62 of those boats, and has obtained phone numbers for 51 of those customers and has called each such phone number. Of those 51, 13 further claims have been submitted, and another 13 claim packages have been e-mailed out to potential claimants. Messages have been left for 14 possible claimants. Three customers have abandoned their boats and the balance have not been reached.

32. There have been no claims disallowed at Lagoon City since the Seventh Report of the Receiver on March 29, 2015.

33. As at May 1, 2015 there were 222 approved claims for items at Lagoon City. There are now 268 approved claims, of which 149 have been released to customers as of May 11, 2015.

Correspondence with 212 and Pride after April 30, 2015

34. On May 1, 2015, Pride wrote to the Receiver to request that all remaining assets be removed by May 5, that the Receiver do a final clean, and that a list of boats that need to be segregated be provided. A copy of this e-mail is attached as Exhibit “H” to the Callery Affidavit and is therefore not attached here.

35. On May 1, 2015, counsel for the Receiver responded to Pride to indicate that the retrieval of items not subject to a dispute by 212 was for KKI to do, that the Receiver was not the tenant and would not be doing a clean up, and that all boats were subject to the PCPO process and the April 30, 2015 endorsement such that all boats were subject to instructions to Pride by the Receiver in terms of whether and when they should be released. A copy of this e-mail is attached as Exhibit “I” to the Callery Affidavit and is therefore not attached here.

36. On May 7, 2015, Pride wrote again to the Receiver to set out a number of assertions and demands. A copy of this e-mail is below the May 8, 2015 e-mail of counsel for the Receiver (in response to the May 7 2015 Pride e-mail) at Exhibit “K” to the Callery Affidavit.

37. On May 8, 2015, counsel for the Receiver responded to Pride’s May 7, 2015 e-mail by letter. A copy of that letter is attached as Exhibit “L” to the Callery Affidavit and is therefore not attached here.

38. There are two pieces of correspondence that were not included in the Callery Affidavit.

39. The first is the e-mail from counsel for 212 dated May 8, 2015, in which he asserted that *“this apparent foot dragging seems to at this point be intentional, and if one was to be sceptical, somewhat conspiratorial...”*. A copy of that e-mail is attached as **Appendix “D”**.

40. The second is the e-mail from counsel for the Receiver in reply on May 8, 2015. A copy is attached as **Appendix “E”**.

41. The letter that was sent by counsel for 212 to the Receiver on May 12, 2015 and attached at Exhibit “M” to the Callery Affidavit, was sent by e-mail at 2:25pm that day. The Motion Record of 212 was served at 4:23pm that day, so the Receiver had no opportunity to respond to that letter before this motion was brought.

C) RESPONSE TO THE MOTION BY 212

42. In addition to the foregoing matters to report to the Court, the Receiver wishes to add the following information and comment.

Times when the Receiver’s representative is or should be on site

43. The Callery Affidavit appears to assert (para. 21(a)) that a Ms. Shepard of Pride has advised that the Receiver’s representative has only attended Tuesdays, Thursdays, Saturdays and Sundays from noon to 4:00pm. The motion by 212 goes on to request attendance by the Receiver seven days a week.

44. There are four comments on this.

45. First, the schedule described in the Callery Affidavit was what was set in discussions with Pride.

46. Second, as noted above, Mr. Howells has in fact been on site every day from May 1 to 12 (which is last date for which the Receiver has a report from Mr. Howells as to his attendance) except for two days on May 6 and 11. The Receiver has attempted to accommodate Pride in addition to what was previously agreed. As noted above, 149 of 268 approved claims have been released to customers. For halfway through May, when the boating season begins, this is progress.

47. Third, 212 and Pride are acting inconsistently on the issues of administration of the claims process. Prior to the April 17, 2015 letter, the Receiver inquired if Pride would be prepared to assist the Receiver by agreeing to administer the claims process on site under a

stipulated process (which has been discussed with KKI at the Willow Beach and Keswick marinas). 212 responded that Pride was not prepared to do so because that might set up adverse dealings with customers. Pride cannot on the one hand reject a less intrusive way for the Receiver to administer claims at Lagoon City but then complain when the Receiver needs to make arrangements to administer the claims without the assistance of Pride. Pride's request for the lists of claims and property would have made sense had it agreed to assist the Receiver as requested, but has no basis now that Pride has insisted on the Receiver separately administering the claims process.

48. Fourth, 212 now wishes to argue that the Receiver should attend at the site full time, but this was already argued and rejected by Justice Pattillo on April 30, 2015 and it is an abuse of process to return a motion on short notice to re-litigate that issue.

Whether customers do not know about the receivership or claims process

49. The Callery Affidavit again appears to rely on advice from Ms. Shepard of Pride that in turn she appears to have been implicitly advised by customers that they had no idea that a receivership is underway.

50. There are three comments about this.

51. First, this is double hearsay. At the very least, Pride should have provided an affidavit from Ms. Shepard so that this evidence might be admissible. Pride appears to have the economic interest in this matter but has not brought this motion nor attended court on this matter previously on April 30.

52. Second, 212 is again attempting to re-litigate an issue that was already discussed before Justice Pattillo as to the adequacy of the notices and attempts made by the Receiver to notify customers. It is telling that 212 relies on exactly the same facts about how many boats were unclaimed as had been reported in the Ninth Report (notwithstanding that those numbers have gone down as noted above), because that is indeed the same argument as was made before Justice Pattillo.

53. Third, the Receiver has already taken substantial efforts to notify potential claimants of the receivership and the claims process, as described in the Seventh Report and with further steps since May 1 as noted above. If the customers are not aware of the receivership at this point after all these notices, that should not be the fault of the Receiver. It may be the fault of the customers.

Having a “decision-maker” on site

54. Pride and 212 seem to want the Receiver to have a licenced practitioner of the Receiver on site seven days a week.

55. This would, however, be a tremendous cost for which there is no funding in the estate now that the asset sale to KKI has closed.

56. Further, as noted in the letter from counsel for the Receiver dated May 8, 2015 to Pride (Exhibit “L” to the Callery Affidavit), the claims process is detailed. It is being done by a team of professionals at the Receiver’s office in Toronto. Where there is an issue with a claim, it is impractical and likely dangerous to the rights of the customers at issue (or to possible claims against the Receiver) to seek to do it *ad hoc* as Pride and 212 seem to wish.

57. As noted above on the issue of whether boat owners know about the receivership or claims process, the real issue here seems to be that people somehow still are not aware of this. That is not the fault of the Receiver and it is not appropriate for Pride and 212 to seek to impose significant (further) costs on the Receiver to fix a problem created by boat owners whom Pride and 212 do not want inconvenienced as a result of that problem.

The hydraulic trailer

58. The May 12, 2015 letter from counsel for 212 to counsel for the Receiver, which was essentially delivered concurrently with the Motion Record, requests advice from the Receiver as to when it released the hydraulic trailer to KKI.

59. The Receiver did not release the trailer to KKI. The information provided to the Receiver by its agent was that KKI removed the hydraulic trailer on April 23, 2015, before the April 30, 2015 endorsement was made.

60. The Receiver has not been in occupation or in business at the Lagoon City marina at any time, including prior to May 1, 2015. The Receiver had arranged for insurance, heat, and security by way of periodic review. Further, all interest of Crate Marine in the personal property at Lagoon City had been conveyed to KKI at closing of the agreement of purchase and sale on April 10, 2015, so the Receiver was no longer itself seeking to control any such personal property at Lagoon City.

61. As indicated in the letter from counsel for the Receiver on May 8, 2015 to Pride (Exhibit "L" to the Callery Affidavit), the Receiver regards the hydraulic lift as a matter for Pride to take up with KKI if so advised. Counsel for KKI has done so in a letter attached at Exhibit "A" to 212's Supplementary Motion Record served on May 14, 2014 at 2:44pm.

D) CONCLUSION

62. The Receiver accordingly requests that this motion be either dismissed or remitted for further hearing before the Honourable Mr. Justice Pattillo, who already spent significant judicial resources hearing and adjudicating all of these issues on April 30 and is therefore in the best position to deal with any (asserted) new issues.

All of which is respectfully submitted this 15th day of May, 2015.

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



Per: Stuart Mitchell
Senior Vice President

TAB A

Superior Court of Justice
Commercial List

FILE/DIRECTION/ORDER

CRATE Marine

Plaintiff(s)

AND

Defendant(s)

Case Management Yes No by Judge: _____

Counsel	Telephone No:	Facsimile No:
R.B. Bunnell - for Receiver		
James McReynolds - for 2124915 Ont. dnc. (landlord)		
M. Poliak - for CRATE Krate Kenwick dnc ("KRI")		

- Order Direction for Registrar (No formal order need be taken out)
- Above action transferred to the Commercial List at Toronto (No formal order need be taken out)
- Adjourned to: _____
- Time Table approved (as follows):

Receiver's motion concerning issues at Lagoon City location. 2124915 Ontario dnc. is the landlord of the property. ^(landlord) It has entered into a lease with Pride Marine Group ("Pride") beginning May 1, 2015. Pride has notice of this motion but has not appeared. Nevertheless, Mr. McReynolds, on behalf of the landlord, has been in touch with Pride.

There is a dispute with respect to the ownership of some of the equipment at Lagoon City between the landlord and the Receiver. Pride has identified some of the

April 30/15
Date

[Signature]
Judge's Signature

Additional Pages 3

Superior Court of Justice
Commercial List

FILE/DIRECTION/ORDER

Judges Endorsment Continued

disputed equipment (items (a) to (v)) in the current exchange between Mr. McReynolds and Mr. Smith from Pride dated April 30, 2015 (attached as Sch. "A").

Pending resolution of the equipment dispute and upon provision by Pride of a duly executed undertaking as to responsibility for any damage occurring to the

Schedule A equipment as well as a certificate of insurance ^{* for both the landlord and KKI *} confirming coverage for it, Pride shall be

entitled to use the equipment ~~and~~ its operation at the Lagoon City Marina. ^① The Receiver, the Landlord, ^{"Pride"} and KKI (the purchaser) shall all meet at Lagoon City on Friday May 1, 2015 at an agreed time to inspect the Schedule "A" equipment and agree on its state of repair as a baseline in the event an issue of damage arises.

The Receiver shall ~~also~~ advise both the Landlord and Pride in respect of the property which it asserts belongs to Crote and over which the Landlord has not claimed an interest in the claims process. KKI shall attend at Lagoon City, on reasonable notice on or before May 5, 2015 in order to pick up the

* ^① In the absence thereof, the Schedule A equipment ~~and~~ ^{"in addition to"} all other disputed equipment shall be segregated on the Lagoon City moorings. ^{JP}

JP.
JP.

JP

Superior Court of Justice
Commercial List

FILE/DIRECTION/ORDER

Judges Endorsment Continued

undisputed property. The landlord and Pride shall allow KKI access to the Lagoon City property to retrieve such property.

The Receiver is granted access to the Lagoon City property for the purpose of dealing with both the claimed and unclaimed customer's boats. Such access shall be in force from May 1 to May 31, 2015. ^{Y.P.} ~~It~~ and in accordance with the terms set out in Mr. Bursell's letter to Mr. McReynolds dated April 17, 2015, ^(Motion Record, Tab 2) ~~and~~ respect as to period access and the issue of occupation rent. Further, ^{Y.P.} the Receiver shall have a representative⁽¹⁾ present on the Lagoon City property on May 2 and 3/15. The Receiver and Pride shall discuss and agree on reasonable periods when the Receiver's representative should be present (not full time) and the Receiver will notify all customers that they should book an appointment to get their boat during one of those time periods.

The issue of whether the Receiver should pay

Superior Court of Justice
Commercial List

FILE/DIRECTION/ORDER

Judges Endorsment Continued

Occupation rest is to be determined on July 9, 2015 (90 minutes). Date confirmed. All material to be filed by July 6, 2015.

As noted, Pride did not attend today although given notice. If it wishes to contest any part of this order, it should book a 9:30 am appointment before me on May 4 or 5, 2015 to deal with the issue.

Brendan Bissell

From: James McReynolds <JMcReynolds@srglegal.com>
Sent: April-30-15 3:31 PM
To: Brendan Bissell; Maya Poliak
Subject: Fw: Crates Receivership
Attachments: image001.jpg; image002.jpg

From: Mike Smith <msmith@pridemarinegroup.com>
Sent: Thursday, April 30, 2015 12:48 PM
To: James McReynolds
Cc: mcallery@taliskercorp.com; Mandy Scully (mscully@taliskercorp.com)
Subject: RE: Crates Receivership

Yes your email correctly reflects Pride Marine Group's position.

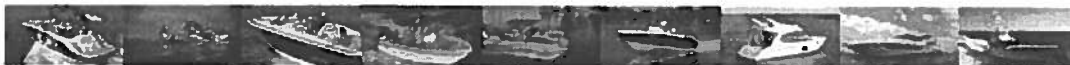
Thanks
Mike

Mike Smith

Pride Marine Group Ltd.
Direct / Cell / Fax – 705 242-3382
Toll Free – 800-991-3006 Ext 143
Email - msmith@pridemarinegroup.com

pride
marine group

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WALKABOUTS

Toll Free: 1-800-991-3006

Web: pridemarinegroup.com



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From: James McReynolds [mailto:JMcReynolds@srglegal.com]
Sent: Thursday, April 30, 2015 12:42 PM
To: Mike Smith
Cc: mcallery@taliskercorp.com; Mandy Scully (mscully@taliskercorp.com)
Subject: Crates Receivership

Dear Mr. Smith:

Thank you for speaking with me today at 12:25 pm.

I confirm I advised you that I had been in court before the Honourable Mr. Justice Patillo, on a motion brought by the Receiver, which deals with issues regarding equipment in dispute at Lagoon City and the presence of the Receiver on and after May 1, 2015, when Pride Marine Group ("Prides") commences its tenancy.

I confirm your advice that our letter to the counsel for the Receiver dated April 22, 2015, sets out the terms Prides accepts for a continuing presence by the Receiver. Prides does not agree with the terms set out in the Receiver's letter dated April 17, 2015.

I confirm your advice that, with regard to the equipment in dispute, Prides considers some of the equipment vital to the operation of the Marina this weekend. To that end, Prides has identified a list of key items, as follows:

all fixtures are the property of 2124915 Ontario Inc., including, but not limited to:

- a. fuel pump at Cabana;
- b. gas pump located at channel entrance to Lagoon City, hoses and incidental pieces to pumps;
- c. two gas pumps on Dock (Petro Canada) and all hoses and other incidental pieces to pumps; and,
- d. all equipment servicing pool.

as well as the following items, in addition to the Marine Travel Lift (movable), capacity 70,000.00 pounds 35 BFMSN: 21751087, already conceded by the Receiver to be the property of the landlord:

- e. Magna two horse power air compressor model M1O4CO200-20A SN: L1420019;
- f. Fuel tank for Travel Lift (which Travel Lift has already been released by the Receiver);
- g. three Inglis commercial coin dryers TO-81001 SN; 9CM38640, 9DB32121, 9CM38616;
- h. three GE commercial coin washers WCCB1030J1WC, SN HR145501G, HT 145513G, ST116562G;
- i. one Taylor Forklift (red);
- j. boat straps (approximately 8) in boat slip area in mini cabin;
- k. four 3-ton chain fall hoist in boat slip area attached at 234;
- l. four 5-ton chain fall hoist in boat slip area attached at 216;
- m. mobile waste trailer and pumper;
- n. park benches/ picnic table (approximately 200 plus);
- o. electric boat lift for lifting boats in water (5 foot);

- p. sailboat mast crane (motorized) SN 34JC43-071G1;
- q. one Conolift Hydraulic Trailer;
- r. blocks and metal boat stands for holding boats: many hundreds.

For these items, Prides agrees to inspect these items with a representative of the Receiver on May 1, 2015, for the purpose of reaching agreement as to the items current status. For these items listed above, Prides will give an undertaking respecting damages, so that it will pay damages for any of the above items which become damaged on or after May 1, 2015, which ultimately turn out to belong to the purchaser of the assets of Crates Marine Sales Limited.

The remaining disputed assets can be securely stored at the Marina by the Receiver.

Please confirm by return email that the above correctly reflects Prides intentions in this matter.

Yours very truly,

James P. McReynolds

Solmon Rothbart Goodman LLP
Barristers
375 University Avenue
Suite 701
Toronto, Ontario
M5G 2J5

Tel: (416) 947-1093

Fax: (416) 947-0079

This electronic message is directed in confidence to the person named above, and may not otherwise be distributed, copied or disclosed. The contents of this electronic message may also be subject to solicitor-client privilege and all rights to that privilege are expressly claimed and not waived. If you have received this electronic mail message in error, please notify me immediately by telephone at 416-947-1093, ext. 338 and destroy this electronic mail message, without making a copy. Thank you for your assistance.

TAB B

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

IN THE MATTER OF THE RECEIVERSHIP 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.

**ENDORSEMENT OF MR. JUSTICE PATTILLO
DATED APRIL 30, 2015 (UNOFFICIAL TYPED TRANSCRIPTION)**

R. B. Bissell – for Receiver

James McReynolds – for 2124915 Ontario Inc. (landlord)

M. Poliak – for Crawmet and Krates Keswick Inc. (“KKI”)

Receiver’s motion concerning issues at Lagoon City location. 2124915 Ontario Inc. is the landlord of the property (“Landlord”). It has entered into a lease with Pride Marine Group (“Pride”) beginning May 1, 2015. Pride has notice of this motion but has not appeared. Nevertheless, Mr. McReynolds, on behalf of the Landlord, has been in touch with Pride.

There is a dispute with respect to the ownership of some of the equipment at Lagoon City between the Landlord and the Receiver. Pride has identified some of the disputed equipment (items (a) to (r) in the e-mail exchange between Mr. McReynolds and Mr. Smith from Pride dated April 30, 2015 (attached as Schedule “A”)). Pending determination of the equipment dispute and upon provision by Pride of a duly executed undertaking as to responsibility for any damage occurring to the Schedule A equipment as well as a certificate of insurance confirming coverage for it for both the Landlord and KKI, Pride shall entitled to use the equipment in its

operations at the Lagoon City marina. In the absence thereof, the Schedule "A" equipment in addition to other disputed equipment shall be segregated on the Lagoon City property. The Receiver, the Landlord, Pride and KKI (the purchaser) shall all meet at Lagoon City on Friday May 1, 2015 at an agreed time to inspect the Schedule "A" equipment and agree on its state of repair as a baseline in the event an issue of damage arises.

The Receiver shall advise both the Landlord and Pride in respect of the property which it asserts belongs to Crate and over which the Landlord has not claimed an interest in the claims process. KKI shall attend at Lagoon City, on reasonable notice on or before May 5, 2015 in order to pick up the undisputed property. The Landlord and Pride shall allow KKI access to the Lagoon City property to retrieve such property.

The Receiver is granted access to the Lagoon City property for the purpose of dealing with both the claimed and unclaimed customer boats. Such access shall be in force from May 1 to May 31, 2015 and in accordance with the terms set out in Mr. Bissell's letter to Mr. McReynolds dated April 17, 2015 (Motion Record, Tab I) save and except as to period of access and the issue of occupation rent. Further, the Receiver shall have a representative (1) present on the Lagoon City property on May 2 and 3, 2015. The Receiver and Pride shall discuss and agree on reasonable periods when the Receiver's representative should be present (not full time) and the Receiver will notify all customers that they should book an appointment to get their boat during one of those time periods.

The issue of whether the Receiver should pay occupation rent is to be determined on July 9, 2015 (90 minutes). Date confirmed. All material to be filed by July 6, 2015.

As noted, Pride did not attend today although given notice. If it wishes to contest any part of this order, it should book a 9:30 a.m. appointment before me on May 4 or 5, 2015 to deal with the issue.

"Pattillo J."

T A B C

May 5, 2015

Dear Sir/Madam,

In the matter of the Court-appointed Receivership of Crate Marine Sales Limited et al. ("CMSL") – Lagoon City Boat Owners

As per previous correspondence, A. Farber & Partners Inc. is the Court appointed Receiver of CMSL. We are advised that effective May 1, 2015, the Lagoon City marina location is being operated by Pride Marine Group ("**Pride**").

As you know, the Court ordered the Receiver to complete a Property Claim Process whereby customers can establish ownership to boats stored at (among other places) Lagoon City.

On April 30, 2015, a further Court Order was made providing that, "the Receiver is granted access to the Lagoon City property for the purpose of dealing with both the claimed and unclaimed customer's boats. Such access shall be in force from May 1 to May 31, 2015." Also, the Order provided that, after May 2 and 3 when the Receiver will have a representative on site, "the Receiver and Pride shall discuss and agree on reasonable periods where the Receiver's representative should be present (not full time) and the Receiver will notify all customers that they should book an appointment to get their boat during one of those time periods." The Order may be viewed on the Receiver's website at:

<http://www.farberfinancial.com/insolvency-engagements/crate-marine-sales-limited-et-al>

Accordingly, all Lagoon City boat owners must take the following steps, prior to May 31, 2015, in order for their boats to be released by the Receiver:

1. If not already done, submit a Proof of Property Claim to the Receiver. Copies of the Proof of Property Claims may be downloaded from the Receiver's website (see website address above). Claim forms must be E-mailed to cratemarine@farberfinancial.com. Boats will not be released until a Claim has been submitted to and approved by the Receiver. Claims that were not made by the January 30, 2015 deadline under the Court Order will be considered and, if appropriate, allowed in the discretion of the Receiver.

2. Any amounts owing by boat owners for services, including storage, provided by CMSL and/or the Receiver must be paid.
3. Meet with a representative of the Receiver at the Lagoon City Marina to permit the release of customer boats at a time arranged by the Receiver and Pride Marine. Contact Gena Lowe at cratemarine@farberfinancial.com or 416-496-3762 for meeting schedule information. The meeting must take place no later than May 24, 2015.
4. At the meeting, provide the Receiver's representative with:
 - a. A copy of documentation showing the Receiver has approved your claim; **and**,
 - b. Original valid and current identification such as:
 - i) driver's license with a photograph of the Claimant; or,
 - ii) if the Claimant is a corporation:
 - (1) an originally signed letter on the Claimant's letterhead addressed to the Receiver authorizing the Receiver to release the corresponding Third Party Property to such representative, and,
 - (2) personal identification for the representative as per (i) above

Please understand that boats will not be released at Lagoon City Marina other than in accordance with the terms of this letter due to the Receiver's obligations under the Property Claims Procedure Order and otherwise. Thank you for your kind cooperation and understanding. We shall endeavour to work with you to make this as simple a process as possible in the circumstances.

Yours very truly,

A. FARBER & PARTNERS INC.

Court-appointed Receiver of Crate Marine Sales Limited, et al.

TAB D

Brendan Bissell

From: Randall Rothbart <rrothbart@srglegal.com>
Sent: May-08-15 12:32 PM
To: Brendan Bissell
Cc: James McReynolds; Michelle Galluzzo; Stuart Mitchell; Michael Rotsztain
Subject: RE: LCM

Brendan

Problem is that we can't have any delay on this---steps have to be taken immediately to remedy these circumstances for this weekend as this is affecting our clients marina and its relationships with the boaters and its tenant. There is no need for there to have to be further lawsuits concerning how this situation is unravelling. It can easily be corrected now. Unless we have immediate assurances today we will be requesting time from commercial court this afternoon for as early as possible next week to bring these circumstances to the attention of the court and obtain directions and relief. This apparent foot dragging seems to at this point be intentional and if one was to be skeptical , somewhat conspiratorial given the fact that the receiver has a close relationship with the owners of the Keswick marina which are now our clients competitor. This conduct must stop immediately and if not we will have no alternative but to request serious consequences.

Randall

From: Brendan Bissell [mailto:bissell@gsnh.com]
Sent: May-08-15 12:22 PM
To: Randall Rothbart
Cc: Brendan Bissell (bissell@gsnh.com); James McReynolds; Michelle Galluzzo; Stuart Mitchell; Michael Rotsztain
Subject: Re: LCM

Randall: I'm out at the moment, but the Receiver got an email from Mike Smith of Pride yesterday, for which a response is in process. That is probably worth having in hand before any discussions.

Regards,

R. Brendan Bissell
Office: (416) 597-6489 | Mobile: (416) 992-4979
Sent from my iPhone

On May 8, 2015, at 10:37 AM, Randall Rothbart <rrothbart@srglegal.com> wrote:

Brendan

Trying to reach you urgently. There are serious issues relating to problems at the LCM which must be dealt with today.
Please confirm a time this am when we can speak.

Randall

T A B L E

Brendan Bissell

From: Brendan Bissell <bissell@gsnh.com>
Sent: May-08-15 4:02 PM
To: Randall Rothbart
Cc: James McReynolds; Michelle Galluzzo; Stuart Mitchell; Michael Rotsztain
Subject: RE: LCM
Attachments: image002.jpg

Randall: Thank you for your e-mail. I have replied on behalf of the Receiver to Mr. Smith at Pride Marine, and have copied you (in lieu of copying Ms. Scully and Ms. Callery, who were copied on Mr. Smith's initial e-mail).

There seems to be substantial misapprehension by Pride as to what is going on at Lagoon City and why. This is not assisted by the fact that they appear to be substantially unrepresented. To the extent that you and Mr. McReynolds have been helping them in any manner, I imagine any such continued effort will assist in making what is by any measure a challenging situation easier to deal with for all parties.

Your e-mail is unfortunately silent on the "steps [that] have to be taken immediately". I am assuming that those are what Mr. Smith set out in his e-mail, in which case you have the Receiver's reply. If there is something different, please advise.

I would be remiss if I did not, however, comment on the statements you have chosen to put in your correspondence regarding "intentional" and "conspiratorial" conduct by the Receiver. We utterly reject any such assertion. It is inappropriate to attempt to make such allegations without foundation, and the innuendo in your e-mail is a transparent attempt to avoid the consequences of that. If you intend to raise such allegations, do so with proper evidence and without hiding behind words, but understand that this will be met with full response.

I must furthermore caution you on writing directly to the Receiver as our client. While the Receiver is a sophisticated party that is perhaps different from the ordinary client and certain correspondence can and should be directly with the Receiver, correspondence such as your e-mail of 12:32pm below should not be sent directly to our client. Kind refrain from this in the future if writing other than mechanical or logistical issues (for which direct participation by the Receiver in e-mails will be more expedient).

Regards,

R. Brendan Bissell



Suite 1600 | 480 University Avenue | Toronto ON | M5G 1V2

Direct [416 597 6489](tel:4165976489) | Fax [416 597 3370](tel:4165973370) | Mobile: [416 992 4979](tel:4169924979) | www.gsnh.com

Assistant | Annessa Cenerini | [416 597 9922 ext. 126](tel:4165979922) | cenerini@gsnh.com

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To: Randall Rothbart

Cc: Brendan Bissell (bissell@gsnh.com); James McReynolds; Michelle Galluzzo; Stuart Mitchell; Michael Rotsztain

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Sent from my iPhone

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Randall

**IN THE MATTER OF THE RECEIVERSHIP 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.**

Commercial List File No. CV-14-10798-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)
Proceedings commenced at
Toronto**

**SUPPLEMENTARY REPORT TO THE
NINTH REPORT OF THE RECEIVER**

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appointed Receiver 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.