

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

B E T W E E N:

GARY STEVENS, LINDA STEVENS and 1174365 ALBERTA LTD.

Applicants

-and-

SANDY HUTCHENS, also known as SANDY CRAIG HUTCHENS, also known as S. CRAIG HUTCHENS, also known as CRAIG HUTCHENS, also known as MOISHE ALEXANDER BEN AVROHOM, also known as MOISHE ALEXANDER BEN AVRAHAM, also known as MOSHE ALEXANDER BEN AVROHOM, also known as FRED HAYES, also known as FRED MERCHANT, also known as ALEXANDER MACDONALD, also known as MATHEW KOVCE, also known as ED RYAN, and TANYA HUTCHENS, also known as TATIANA HUTCHENS, also known as TATIANA BRIK, also known as TANYA BRIK-HUTCHENS

Respondents

THIRD REPORT OF THE RECEIVER

June 3, 2019

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I. INTRODUCTION AND PURPOSE OF THE THIRD REPORT

1. On February 28, 2019, Justice Penny appointed A. Farber & Partners Inc. as interim receiver (**“Farber”** or the **“Receiver”**), without security, of all the assets undertakings and properties of Sandy Hutchens, Tanya Hutchens, and certain entities referred to in Schedule “A” of the Interim Appointment Order (collectively, the **“Debtors”**), including certain real property (the **“Properties”**). A copy of Justice Penny’s February 28, 2019 order (the **“Interim Appointment Order”**) is attached at **Appendix 1**.

2. On March 18, 2019, Justice Penny continued the Receiver’s appointment, expanded the list of Properties over which it extended, and expanded the Receiver’s powers to include control and management of certain of the properties that produced rental income. A copy of Justice Penny’s March 18, 2019 order (the **“March Order”**) is attached at **Appendix 2**.

3. On April 25, 2019, Justice Penny authorized and empowered the Receiver to sell five of the Properties (the **“Saleable Properties”**), and ordered a broader freezing of the Debtors’ assets subject to provisions for their living expenses and legal fees. A copy of Justice Penny’s April 25, 2019 order (the **“April Order”**) is attached at **Appendix 3**.

4. The Receiver files this third report (the **“Third Report”**) with the Court to advise of the Receiver’s activities and to support its request for an order:

- (a) Authorizing the Sale Transaction (defined below), vesting in the respective purchaser thereunder the right, title and interest of the subject property and authorizing the Receiver to take all steps required to complete the Sale Transaction;
- (b) Sealing Confidential Appendices A and B until further order of the Court;

- (c) Authorizing the distribution of \$80,319.60, more or less, from the Sale Transaction to Ronald Henderson, in payment of his loan to Sandy Hutchens secured by a mortgage registered on title to the subject property;
- (d) Specifying that the Receiver is appointed over the Additional Properties (defined below) in accordance with the March Order, including but not limited to the powers of management and control set out at ¶¶2(e)-(g) of that order in respect of such of the Additional Properties that are currently earning rental income; and
- (e) Empowering and authorizing the Receiver to market and sell the Additional Saleable Properties (defined below).

II. DISCLAIMER

5. In preparing this Third Report, the Receiver has relied upon the unaudited, draft and/or internal financial and other information provided by the Debtors, their advisors, and other third-party sources. Farber has not independently reviewed or verified such information. The Receiver has prepared this Third Report for the sole use of the Court and of the other stakeholders in these proceedings. The Receiver assumes no responsibility or liability for loss or damage occasioned by any party as a result of the circulation, publication, re-production or use of this Third Report. Any use which any party, other than the Court, makes of this Third Report or any reliance on or a decision made based upon it is the responsibility of such party.

III. BACKGROUND

A. The Parties

6. The individual Applicants, Gary and Linda Stevens, are residents of Mayerthorpe, Alberta. The corporate Applicant, 1174365 Alberta Ltd., is an Alberta corporation, of which Gary and Linda are the sole shareholders.

7. The Respondents, Sandy Hutchens (“**Sandy**”) and Tatiana (Tanya) Hutchens (“**Tanya**”, together with Sandy, the “**Hutchens**”), are residents of Innisfil, Ontario and Vaughan, Ontario respectively. The United States District Court for the Eastern District of Pennsylvania has found the Hutchens liable to the Applicants for fraud in the amount of US\$26,774,736.09, pursuant to orders for default judgment entered on October 11, 2018 and December 19, 2018 (together the “**Pennsylvania Judgments**”, attached at **Appendices 4 and Appendix 5**, respectively). The Receiver understands that the Hutchens have appealed the Pennsylvania Judgments. Their appeals are outstanding as of the date of this Third Report.

8. The Applicants have brought the within Application for foreign recognition and enforcement of the Pennsylvania Judgments in Ontario, and for the appointment of a receiver in aid of enforcement.

B. The Pennsylvania Action and Judgments

9. In their Pennsylvania District Court action, the Applicants alleged that the Hutchens created and controlled a company, Westmoreland Equity Fund, LLC, which issued commitments for mortgage loans to prospective borrowers that it had neither the capacity nor intention to fund. Prospective borrowers were required to pay advance fees as a condition for closing. Once the loan application process was far enough along, Westmoreland would find fault with the loan application, impose additional terms, and often require additional fees. Westmoreland would invariably find that the prospective borrower had failed to abide by these new terms and terminate the loan application process. Upon termination of the loan application, Westmoreland would keep all the monies advanced (the “**Loan Fraud**”).

10. The District Court did not make factual findings in entering the Pennsylvania Judgments as the case proceeded by way of default. However, it concluded that the fraud claim was meritorious (*i.e.*, would support recovery if established at trial), that no *bona fide* defence had been raised by the Hutchens, and that their evidence of “innocence” was “clearly fraudulent”.¹ The allegations of fraud against the Hutchens are detailed in the Amended Federal Complaint, dated March 15, 2018 (attached at **Appendix 6**).

C. The Colorado Action

11. On May 1, 2017, a unanimous jury of the United States District Court for the District of Colorado found the Hutchens, as well as their daughter, Jennifer Hutchens, liable in a class action for a similar fraudulent scheme to the Loan Fraud, during an earlier period of time (the “**Colorado Class Action**”). The jury awarded class members compensatory damages in the amount of US\$8,421,367.00. On July 16, 2018, the Colorado District Court awarded treble damages, attorneys’ fees, costs of bringing suit, pre-judgment interest, and post-judgment interest in the total amount of US\$24,239,101.00 (the “**Colorado Judgment**”, attached at **Appendix 7**). The Colorado Judgment also imposed a constructive trust over various properties in Ontario. It is currently under appeal to the Tenth Circuit Court.

12. The plaintiffs in the Colorado Class Action have commenced a proceeding in the Ontario Superior Court of Justice (London) to recognize and enforce the Colorado Judgment (the “**Colorado Enforcement Action**”). As of the date of this Third Report, no judgment has been issued in the Colorado Enforcement Action.

¹ Pennsylvania Judgment, dated December 19, 2018, at p.10

IV. SALE TO BE APPROVED

13. On or around May 15, 2019, the Receiver entered into an agreement of purchase and sale (the “**Sale Transaction**”) in respect of one of the Saleable Properties, known municipally as 42 Clemow Avenue, Sudbury, Ontario (“**42 Clemow**”). A copy of the agreement of purchase and sale is attached at **Confidential Appendix “A”**. The Sale Transaction is scheduled to close on June 14, 2019.

14. The April Order authorizes and empowers the Receiver to:

- (a) “[C]onvey [or] transfer... the Saleable Properties or any part of parts thereof out of the ordinary course of business” without notice pursuant to the *Personal Property Security Act* or *Mortgages Act* (para. 1(b)); and
- (b) “[A]pply for any vesting order or other orders necessary to convey the Saleable Properties or any part or parts thereof to a purchaser or purchasers thereof, free and clear of any liens or encumbrances affecting such Saleable Property” (para. 1(c)).

15. Although the Receiver is not required to seek Court approval for the Sale Transaction as its amount is below the approval threshold set out in the April Order, the Receiver prefers to obtain an approval and vesting order to simplify closing of the Sale Transaction.

16. The sale process followed and the basis for the Receiver’s recommendation to approve the Sale Transaction are set out below.

17. The Receiver requested listing proposals and marketing outlines from two Sudbury real estate brokerages. Given the state of disrepair, limited rental revenue, and unwillingness of the

tenant to cooperate with the Receiver or its agent, both brokerages suggested similarly conservative listing prices.

18. The Receiver chose Royal LePage Realty Team Brokerage as the listing brokerage (the **“Clemow Broker”**) because its listing proposal included a lower total commission rate than the other proposal. On May 9, 2019, the Clemow Broker publicly listed 42 Clemow sale at its suggested list price of \$114,900.

19. From May 9, 2019 to May 13, 2019, the Clemow Broker showed 42 Clemow 22 times. The Receiver received three offers to purchase 42 Clemow. From these, the Receiver considered one to be the best because it provided:

- (a) the highest purchase price;
- (b) no conditions (making it the only unconditional offer received);
- (c) the assumption of the current tenant; and
- (d) the shortest closing date of the three offers.

20. The Receiver also obtained a formal appraisal of 42 Clemow, as of May 15, 2019, which appraised the property to be worth approximately 8% lower than the purchase price under the Sale Transaction. A copy of the May 15, 2019 appraisal for 42 Clemow is attached at **Confidential Appendix “B”**.

21. Based on advice from the Clemow Broker and on the appraisal report, the Receiver accepted this offer, which was from an arm’s length party (the **“Clemow Purchaser”**).

22. As of the date of this report, the Clemow Purchaser has provided the Clemow Broker with a deposit of \$2,000, which is being held in trust by the Clemow Broker. The deposit is payable to

the Receiver as liquidated damages should the transaction not close due to default or failure to perform on the part of the Clemow Purchaser.

23. The Receiver recommends that this Court approve the Sale Transaction because:

- (a) The carrying costs incurred to manage 42 Clemow have been higher than the total rental revenue collected by the Receiver to date. Since the Receiver took over management of the Clemow Property, the tenant residing at 42 Clemow has only paid \$300 of the total \$3,600 rent due;
- (b) The Receiver selected a listing brokerage for 42 Clemow through a competitive proposals process;
- (c) The realtor marketed 42 Clemow for sale to the public and showed it to 22 prospective purchasers;
- (d) The Receiver received two other offers for lower purchase prices and with less desirable other terms;
- (e) The purchase price in the Sale Transaction is higher than the appraised value of the property; and
- (f) The purchase price of the Sale Transaction is sufficient to discharge the liability of the only mortgagee on title (set out in further detail below), who supports the Receiver closing the Sale Transaction.

V. PROPOSED PAYMENT TO MORTGAGEE

24. There is one mortgage registered on title to 42 Clemow. The mortgagee, Ronald Henderson, is arm's length from the Debtors and has documented his mortgage loan to the Receiver's satisfaction. The Respondents have confirmed Mr. Henderson's information. The

Receiver has obtained a security opinion to the effect that Mr. Henderson's mortgage is valid and enforceable to the extent of all monies advanced thereunder. A copy of the security opinion confirming Mr. Henderson's mortgage, dated May 8, 2019, is attached at **Appendix 8**.

25. The Receiver anticipates that the net proceeds of the Sale Transaction will exceed the amount of the mortgage loan, with accrued interest. The Receiver proposes to repay the full outstanding amount of the mortgage loan from the net proceeds of the Sale Transaction given this mortgagee's priority and in order to stop the accrual of loan interest. As of June 14, the scheduled closing date of the Sale Transaction, the amount payable to Mr. Henderson including interest will be \$80,319.60.

VI. ADDITIONAL PROPERTIES

26. The Receiver has identified the four properties at the following municipal addresses (the "Additional Properties"), not listed in Schedule B to the March Order, which are legally or beneficially owned by Tanya. The following table lists their addresses, registered owners, and Purview-estimated value of each Additional Property:

Hutchens et al				
Additional Properties of Interest				
Property	Registered Owner	Notes	Estimated Value	Comments
1573 Houston Ave, Innisfil	Tatiana Hutchens	1	932,700	Purchased May 27, 2016 for \$760,000. No mortgages on title
1760 Cross Street, Innisfil	Tatiana Hutchens	1	430,900	Purchased June 28, 2013 for 228,000. No mortgages on title
175 Hilda Ave, Suite 1015, Thornhil	Tatiana Hutchens	1	457,200	Purchased June 10, 2011 for 259,000. No mortgages on title
131 Beecroft Avenue Unit 62, Toronto	Dina Brik	1, 2	700,000	Purchased October 15, 1998. No Mortgages on title
Total			2,520,800	
Notes				
[1] Purchase date, amount and estimated market value based on Purview. For 131 Beecroft there was no market value so the original cost was used: \$230,000.				
[2] This Beecroft Avenue property pursuant to examination of Tanya Hutchens was purchased in trust for her by her mother Dina Brik. Further information has been requested to confirm the true beneficial owner of this property. Recent (2018) Purview comparative sales show a current market value of around \$700,000.				

27. The Receiver considers that the Additional Properties are subject to the Receivership pursuant to the March Order, which appoints Farber as Receiver over “all of the assets, undertakings and properties... of the Debtors.” The Receiver wishes to clarify this by expressly adding the Additional Properties to the Properties listed in Schedule B to the March Order.

28. Tanya is the registered owner of the first three properties at 1573 Houston Ave., Innisfil, 1760 Cross St., Innisfil, and 1015-175 Hilda Ave., Thornhill. Title searches indicate no registered mortgages on these properties.

29. Tanya’s mother, Dina Brik, appears to hold title to the condominium located at 131 Beecroft Avenue, Toronto, which was Tanya’s former residence. Both Tanya and Ms. Brik confirmed that Ms. Brik held this property in trust for Tanya. It therefore appears that Tanya holds a current beneficial interest in this property. During Tanya’s examination, she advised that this property was sold, but no such sale is registered on title and Tanya has not answered an undertaking to provide documentation of that sale as of the date of this Third Report. A copy of the parcel register and Purview (Teranet) search report are attached at **Appendix 9**.

30. The Debtors do not occupy any of the Additional Properties as residences. Two (1573 Houston Avenue and 1760 Cross Street) are vacant, one (1015-175 Hilda Avenue) is rented to a residential tenant, and the Receiver is uncertain as to whether the fourth (62-131 Beecroft) is rented. Paragraphs 2(e)-(g) of the March Order empowered and authorized the Receiver to take possession of, exercise control over and manage properties that do or might generate rental income. Consistent with the March Order and the Receiver’s subsequent identification of the Additional Properties, the Receiver recommends that it be similarly empowered and authorized with respect to the one or two Additional Properties that are rented to tenants.

VII. ADDITIONAL SALES

31. Paragraph 2 of the March Order empowers and authorizes the Receiver to take possession of, and exercise control over, certain of the Properties that produce rental income. Since the March Order, the Receiver has taken steps to possession and/or manage these properties, which are set out in detail in the Receiver's Second Report, dated May 15, 2019. The Receiver proposes to sell seven of these Properties and one Additional Property in addition to the Saleable Properties that the April Order empowered it to sell (the "**Additional Saleable Properties**"), namely the Properties located at:

- (a) 3415 Errington Avenue, Sudbury;
- (b) 3419 Errington Avenue, Sudbury;
- (c) 331 Regent Street, Sudbury;
- (d) 110-114 Pine Street, Sudbury;
- (e) 367-369 Howey Drive, Sudbury;
- (f) 1479 Maple Road, Innisfil; and
- (g) 1573 Houston Avenue, Innisfil.

32. The Receiver recommends the marketing and sale of the Additional Saleable Properties because:

- (a) Each has negative projected cash flow from operations, taking into account extraordinary repairs required due to the poor physical condition of most of the Properties;
- (b) Excluding extraordinary repair expenses (which may have to be incurred even if the properties are to be sold), each has projected cash flow from operations that is

either negative or below +\$1,000/month, such that cash flow is likely to be negative after management fees;

- (c) Each is an investment property and none is presently used as a residence;
- (d) To the Receiver's knowledge, none serve any purpose or has value to the Debtors other than as an investment;
- (e) In the case of 1479 Maple Road and 1573 Houston Avenue, Mrs. Hutchens listed them for sale prior to the Receiver's appointment. There are interested prospective purchasers in each.

33. The Additional Saleable Properties in Sudbury are in very poor condition. Many require urgent repairs to bring them into compliance with municipal and provincial fire, health and safety and by-law requirements. A copy of a report from North Key Property Management, a third party, Sudbury-based property manager that has been retained by the Receiver (the "**Sudbury Property Manager**") summarizing these issues is attached at **Appendix 10**. The issues include:

- (a) Insect and rodent infestations;
- (b) Household and other waste littering internal common areas;
- (c) Household waste, old furniture and other waste littering external areas, resulting in potential contravention of municipal by-laws and health and safety standards;
- (d) Overwhelming odours, which may be the result of mold or other contaminants;
- (e) Buildings not being up to fire code and/or a lack of evidence that legally required fire code checks were completed;
- (f) Vacant units being in a general state of disrepair (including issues with floors, drywall, cabinetry, roof leakage, plumbing, electrical, garbage), making them unrentable;

- (g) Leaking pipes causing water damage and other issues; and
- (h) Broken doors and windows that that present security risks.

34. The Sudbury Property Manager has sourced cost quotes from various service providers to bring the Sudbury Additional Saleable Properties up to fire code and to a state of repair that is commensurate with health and safety standards, municipal by-laws and general cleanliness. The Receiver has arranged these repairs on an urgent basis.

35. The Receiver has not taken possession of either of the two Additional Saleable Properties located in Innisfil and so does not have precise information as to their physical state. However, since both Properties are unrented, they are necessarily cash flow negative.

36. The Receiver has prepared a weekly consolidated cash flow forecast for the Additional Saleable Properties, that includes the cash requirements for these extraordinary costs of repair, which is attached at **Appendix 11**. Its figures are subject to the confirmation of property tax arrears, which the Receiver is in the process of obtaining from the appropriate municipalities. As detailed in the cash flow forecast, the estimated extraordinary repair costs for each of the Additional Saleable Properties are as follows:

Property	Waste Removal	Clean-Up	Pest Control	Fire Code	Building Repairs	Total
110-114 Pine Street	\$ 15,000	\$ 2,000	\$ 7,000	\$ 5,000		\$ 29,000
367-369 Howey Drive	\$ 2,200	\$ 1,500		\$ 5,000	\$ 3,000	\$ 11,700
331 Regent Street	\$ 2,200	\$ 1,000	\$ 3,000	\$ 5,000		\$ 11,200
3415 Errington Avenue	\$ 1,100	\$ 500		\$ 2,500		\$ 4,100
3419 Errington Avenue	\$ 1,100	\$ 500		\$ 2,500		\$ 4,100
1479 Maple Road		\$ 500			\$ 5,650	\$ 6,150
1573 Houston Avenue		\$ 500				\$ 500
Total	\$ 21,600	\$ 6,500	\$ 10,000	\$ 20,000	\$ 8,650	\$ 66,750

VIII. SEALING ORDER

37. Confidential Appendices A and B contain information disclosing the agreed sale price and appraised value, respectively, of 42 Clemow. The Receiver expects that disclosure of this information prior to the closing of the Sale Transaction may prejudice its negotiating position in the sale process for 42 Clemow that would be required if the Sales Transaction is not approved or do not close for any reason.

IX. RELIEF REQUESTED

38. Based on the foregoing, the Receiver respectfully requests that this Court issue an order:

- (a) Authorizing the Sale Transaction, vesting in the purchasers thereunder the right, title and interest of the subject property and authorizing the Receiver to take all steps required to complete the Sale Transaction;
- (b) Sealing Confidential Appendices A and B unless and until the Receiver files a certificate confirming that the Sale Transaction has closed.
- (c) Authorizing the distribution of \$80,319.60, more or less, from the Sale Transaction to Ronald Henderson, in payment of his loan to Sandy Hutchens secured by a mortgage registered on title to the subject property;
- (d) Specifying that the Receiver is appointed over the Additional Properties (defined below) in accordance with the March Order, including but not limited to the powers of management and control set out at ¶¶2(e)-(g) of that order in respect of such of the Additional Properties that are currently earning rental income; and
- (e) Empowering and authorizing the Receiver to market and sell the Additional Saleable Properties.

All of which is respectfully submitted this 3rd day of June, 2019.

**A. FARBER & PARTNERS INC.
IN ITS CAPACITY AS COURT APPOINTED
INTERIM RECEIVER OF HUTCHENS *ET AL.*
AND NOT IN ITS PERSONAL OR CORPORATE CAPACITY.**

A handwritten signature in black ink, appearing to read "PCRE" with a stylized flourish at the end.

STEVENS *et al.*
Applicants

-and-

HUTCHENS *et al.*
Respondents

Court File No. CV-18-608271-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

Proceeding commenced at TORONTO

THIRD REPORT OF THE RECEIVER

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