

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

**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

EIGHTH REPORT OF THE RECEIVER

April 22, 2020

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3. Notice of Registration of Tax Arrears Certificate for 29 Laren Street
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List of Confidential Appendices¹

- A. Appraisal Report for 29 Laren Street
- B. Agreement of Purchase and Sale for 29 Laren Street
- C. Appraisal Report for 3415 Errington Avenue
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- E. Agreement of Purchase and Sale for 3415 Errington Avenue
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¹ Attached in separate Brief of Confidential Appendices

I. INTRODUCTION AND PURPOSE OF THE EIGHTH REPORT

1. The Receiver submits this Eighth Report to the Court (the “**Eighth Report**”) to supplement its Seventh Report, and subject to the same Disclaimer and defined terms. The purpose of this Eighth Report is to support the Receiver’s request for orders additional to those requested in its Seventh Report:

- (a) Approving three sale transactions for Properties additional to those described in the Seventh report, namely the 29 Laren Transaction, the 3415 Errington Transaction, and the 3419 Errington Transaction (each as defined below and, together, the “Eighth Report **Sale Transactions**”), and vesting in the respective purchasers thereunder the right, title and interest of the subject properties and authorizing the Receiver to take all steps required to complete each sale transaction;
- (b) Authorizing the distribution from the proceeds of the proposed Eighth Report Sale Transactions of \$200,000, more or less, subject to adjustments, to the City of Greater Sudbury, in payment of outstanding municipal property taxes accrued to the respective dates of closing of the Eighth Report Sale Transactions;
- (c) Sealing Confidential Appendices A, B, C, D, E and F to this Eighth Report; and
- (d) Approving this Eighth Report and the activities and conduct of the Receiver described herein.

2. In addition to the activities set out in the Seventh Report, the Receiver has worked with Re/Max Crown Realty (1989) Inc., Brokerage (the “**Sudbury Brokerage**”), to negotiate the terms of sale on each of the Eighth Report Sale Transactions.

II. SALES TO BE APPROVED

3. The Receiver has entered into agreements of purchase and sale for three Properties located in the Greater Sudbury Area, Ontario, at the following addresses: 29 Laren Street, Wahnapiatae (“**29 Laren**”), 3415 Errington Avenue, Chelmsford (“**3415 Errington**”), and 3419 Errington Avenue, Chelmsford (“**3419 Errington**”). The agreements are conditional only on Court approval. The Receiver recommends that this Court approve these sales.

4. The process the Receiver followed leading to these three purchase and sale agreements and the basis for the Receiver’s recommendation that the Court approve the corresponding sales are set out below.

A. The 29 Laren Transaction

5. 29 Laren is an eighteen (18) unit multi-residential, low-rise apartment building located in Wahnapiatae, Ontario, a part of the Greater Sudbury Area. Title is registered to the corporate Debtor, 29 Laren Street Inc., of which Tanya is the sole officer. Tanya and Sandy are both directors. A copy of the corporate profile report for 29 Laren Street Inc., dated April 26, 2019 (following the Receiver’s appointment), is attached at **Appendix 1**.

6. 29 Laren has been partially occupied since before the Receiver was authorized to take control of and manage the Managed Properties pursuant to the March Order, and was in a state of disrepair when the Receiver first took possession. Accordingly, the Receiver and its property manager undertook significant work to bring 29 Laren to a state of good repair, including the following:

- (a) Removing garbage from the general areas and vacant units;
- (b) Repairing and maintaining walls, ceilings, floors, and appliances;

- (c) Replacing broken appliances and fixtures with new purchases;
- (d) Repairing and replacing the roof;
- (e) General property maintenance, including lawn-mowing and snow removal;
- (f) Conducting fire code compliance work;
- (g) Performing electrical work; and
- (h) Performing plumbing work.

7. Currently, sixteen (16) of the eighteen (18) units are occupied, with one additional tenant scheduled to move in shortly. There are eight (8) tenants who are in arrears of rent owed to the Receiver, in three cases on a longstanding basis.

8. The City of Greater Sudbury has advised the Receiver that property taxes are significantly in arrears. The Receiver estimates that total arrears will be approximately \$120,000 at the time of closing (described in greater detail below).

9. The Receiver engaged Charles Bell Real Estate Appraisals Ltd. (the “**Charles Bell REAL**”), a commercial and multi-residential property appraiser with expertise in the Sudbury region, to appraise 29 Laren. Charles Bell REAL appraised the property as of February 25, 2020. A copy of the appraisal report for 29 Laren is attached at **Confidential Appendix A**.

10. From February 1, 2020 to February 24, 2020, the Sudbury Brokerage engaged in a sale process that included a social media campaign and advertisement of the listing on several real estate websites, including a standard MLS listing on www.realtor.ca. The publicly listed sale price for 29 Laren was \$1,999,000. During this period, the Sudbury Brokerage showed 29 Laren to seven (7) prospective purchasers, including the current purchaser.

11. The Receiver received four (4) offers to purchase 29 Laren. From those, the Receiver considered one to be the best offer because it provided the highest purchase price and the fewest conditions in favour of the purchaser. The Receiver entered into further negotiations with the offeror, L & L Group Inc. (the “**29 Laren Purchaser**”).

12. On February 28, 2020, the Receiver entered into an Agreement of Purchase and Sale in respect of 29 Laren (the “**29 Laren Transaction**”), conditional on, *inter alia*, the purchaser arranging satisfactory financing within 15 business days and on the Receiver obtaining this Court’s approval.

13. On March 17, 2020, the Province of Ontario declared a state of emergency in response to the COVID-19 pandemic (the “**Pandemic**”). The next day, the Receiver and the 29 Laren Purchaser agreed to amend the terms to extend the 29 Laren Purchaser’s condition for financing to April 15, 2020 and to extend the closing date to May 28, 2020.

14. In spite of the extension, on April 14, 2020, the 29 Laren Purchaser proposed reducing the purchase price by 12.5% in exchange for removing the financing condition, because its cost of obtaining private financing had increased significantly due to the following circumstances created by the Pandemic:

- (a) conventional mortgage financiers are now discounting values of rental properties due to the uncertainty of rental revenue and cash flow;
- (b) all mortgage financiers have recently raised rates to combat cash flow issues resulting from deferred and defaulted mortgage payments; and
- (c) rental income may be significantly reduced for an indeterminate amount of time.

15. Even with a 12.5% reduction in purchase price, the 29 Laren Purchaser's offer remained higher than the pre-Pandemic appraisal value, and was less than 1% lower than the next highest offeror. (That offeror then declined to negotiate further due to the existence of a conditional offer already in place.) After further negotiations with the 29 Laren Purchaser, the Receiver accepted the proposed amendments.

16. Copies of the Agreement of Purchase and Sale and corresponding amendments are attached at **Confidential Appendix B**. The key terms are as follows:

- (a) A purchase price over 12% higher than the appraised value provided by Charles Bell REAL, pre-Pandemic;
- (b) No further substantive conditions in favour of the purchaser;
- (c) A closing date of May 28, 2020; and
- (d) A deposit of \$50,000.00, which the Sudbury Brokerage currently holds in trust. 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 purchaser.

17. The Receiver recommends that this Court approve the 29 Laren Transaction because:

- (a) The Receiver selected the Sudbury Brokerage to market and sell 29 Laren through a competitive selection process, as described in the Seventh Report;
- (b) The Sudbury Brokerage marketed 29 Laren for sale to the public over a three-week period and showed it to seven prospective purchasers;

- (c) The final purchase price is over 12% higher than the appraised value of the property and is equal to or greater than two other offers received from prospective purchasers;
- (d) The purchase price is sufficient to discharge the outstanding property tax arrears due to the municipality;
- (e) The purchaser is arm's length from the parties;
- (f) The purchaser has acknowledged that it is purchasing 29 Laren on an 'as is' basis;
- (g) 29 Laren is a rental property with uncertain rental income to cover holding costs and operational costs during and after the Pandemic;
- (h) The Receiver wishes to recoup the funds invested in repairs, renovations, and other holding and operating costs, borrowed from the net proceeds of other Properties via the issuance of Receiver's Certificates, and to preserve the value of the receivership assets by curtailing property management costs;
- (i) The Sudbury Brokerage recommends the 29 Laren Transaction; and
- (j) The Receiver is concerned that the Pandemic may make it more difficult to market 29 Laren in the near future if the sale is not approved.

B. Sale of the Errington Properties

18. 3415 Errington and 3419 Errington (together, the "**Errington Properties**") are both low-rise, multi-residential properties located in Chelmsford, Ontario, a part of the Greater Sudbury Area. The Errington Properties are directly adjacent to each other and share driveway and parking facilities. The Errington Properties each have eight (8) residential units.

19. Title to 3415 Errington and 3419 Errington are registered to the corporate debtors, 3415 Errington Avenue Inc. and 3419 Errington Avenue Inc., respectively. Tanya is the sole officer and

Tanya and Sandy are both directors of each corporation. A copy of the corporate profile reports for 3415 Errington Avenue Inc. and 3419 Errington Avenue Inc., both dated April 17, 2020, is attached at **Appendix 2**.

20. Both of the Errington Properties have been partially occupied since before the Receiver was authorized to control and manage the Managed Properties pursuant to the March Order. Both properties were in a state of disrepair when the Receiver first took possession. Accordingly, the Receiver and its property manager undertook significant work to bring the Errington Properties to states of good repair, including the following:

- (a) Removing garbage from the common areas, parking lot, yard and vacant units;
- (b) Repairing and maintaining walls, ceilings, floors, appliances;
- (c) Painting walls and railings in common area hallways;
- (d) Replacing broken appliances and fixtures with new purchases;
- (e) General property maintenance, including snow removal;
- (f) Conducting fire code compliance work;
- (g) Performing electrical work; and
- (h) Performing plumbing work.

21. Four of the eight units in 3415 Errington are currently occupied. Two tenants are currently in arrears of rent owed to the Receiver. Six of the eight units in 3419 Errington are currently occupied. Two tenants of those tenants are in arrears of rent owed to the Receiver.

22. The City of Greater Sudbury has advised the Receiver that the property tax accounts on the Errington Properties are both significantly in arrears. The Receiver estimates that total arrears will

be approximately \$40,000 for each of the Errington Properties at the time of closing (described in greater detail below).

23. The Receiver engaged Charles Bell REAL to appraise the Errington Properties, which appraised both properties as of January 28, 2020. A copy of the appraisal report for 3415 Errington and 3419 Errington is attached at **Confidential Appendix C and D**, respectively.

24. From February 1, 2020 to March 5, 2020, the Sudbury Brokerage engaged in a sale process that included a social media campaign and advertisement of the listings on several real estate websites, including a standard MLS listing on www.realtor.ca. The publicly listed sale prices for 3415 Errington and 3419 Errington were \$350,000 each. During this period, the Sudbury Brokerage showed 3415 Errington to fifteen (15) prospective purchasers and 3419 Errington to fifteen (15) prospective purchasers, including the current purchaser, 2504897 Ontario Inc. (the “**Errington Purchaser**”).

25. There were no offers to purchase either 3415 Errington or 3419 Errington separately. The Receiver received offers to purchase both of the Errington Properties from three (3) prospective purchasers. From those offers, the Receiver considered the offers from one prospective purchaser to be the best offers because they provided the highest purchase price and the fewest conditions in favour of the purchaser.

26. On March 6, 2020, the Receiver entered into Agreements of Purchase and Sale for each of 3415 Errington (the “**3415 Errington Transaction**”) and 3419 Errington (the “**3419 Errington Transaction**”). Both agreements were conditional on, *inter alia*, the purchaser arranging satisfactory financing within 30 calendar days and on the Receiver obtaining this Court’s approval.

27. On April 6, 2020, the Sudbury Brokerage advised the Receiver that the Errington Purchaser was unable to obtain satisfactory financing to support the initial purchase prices offered for similar Pandemic-related reasons to the 29 Laren Purchaser. The Errington Purchaser proposed reducing the purchase prices for both the 3415 Errington Transaction and the 3419 Errington Transaction to by approximately 9.1% in exchange for removing the financing conditions.

28. The Receiver reviewed all other offers received during the sale process and noted that the proposed amended sale prices for the Errington Properties were still ~9% greater than the next best offer and their appraisal values. All of the other offers also had similar financing conditions. After further negotiations with the Errington Purchaser, the Receiver accepted the proposed amendment.

29. Copies of the Agreements of Purchase and Sale and corresponding amendments for the 3415 Errington Transaction and the 3419 Errington Transaction are attached at **Confidential Appendices E and F**, respectively. The key terms for both transactions include, *inter alia*:

- (a) Purchase prices over 9% higher than the appraised values;
- (b) No further substantive conditions in favour of the Errington Purchaser;
- (c) Closing dates of May 27, 2020; and
- (d) Deposits of \$25,000.00 for each property, which the Sudbury Brokerage currently holds in trust. The deposits are each payable to the Receiver as liquidated damages should the corresponding transactions not close due to default or failure to perform on the part of the purchaser.

30. The Receiver recommends that this Court approve the 3415 Errington Transaction and the 3419 Errington Transaction because:

- (a) The Receiver selected the Sudbury Brokerage to market and sell the Errington Properties through a competitive selection process, as described in the Seventh Report;
- (b) The Sudbury Brokerage marketed the Errington Properties for sale to the public for over four weeks and showed them to twenty prospective purchasers;
- (c) The final purchase price is over 9% higher than the appraised value of the property and is greater than the two other offers received from prospective purchasers;
- (d) The purchase price is sufficient to discharge the outstanding property tax arrears due to the municipality;
- (e) The purchaser is arm's length from the parties;
- (f) The Errington Purchaser has acknowledged that it is purchasing the Errington Properties on an 'as is' basis;
- (g) The Errington Properties are rental properties with uncertain rental income to cover holding costs and operational costs during and after the Pandemic;
- (h) The Receiver wishes to recoup the funds invested in repairs, renovations, and other holding and operating costs, borrowed from the net proceeds of other Properties via the issuance of Receiver's Certificates, and to preserve the value of the receivership assets by curtailing property management costs;
- (i) The Sudbury Brokerage recommends the 3415 Errington Transaction and the 3419 Errington Transaction; and
- (j) The Receiver is concerned that the Pandemic may make it more difficult to market the Errington Properties in the near future if the sales are not approved.

III. DEBTS SECURED BY 29 LAREN, 3415 ERRINGTON AND 3419 ERRINGTON

31. Each of 29 Laren, 3415 Errington, and 3419 Errington are subject to the following charges against title:

- (a) The Receiver's Charge (as defined in the March order) securing the fees and disbursements of the Receiver and its counsel;
- (b) The Receiver's Borrowing Charge (as defined in the March Order) securing amounts that the Receiver has borrowed pursuant to the March Order from the net proceeds of other Properties;
- (c) Certain mortgages (described below); and
- (d) Tax Arrears Certificates filed by the City of Greater Sudbury (described below).

A. 29 Laren*Mortgages*

32. There are three mortgages registered on title to 29 Laren:

- (a) A first position mortgage charge registered in favour of Tanya, with a face value of \$800,000.00;
 - (b) A second position mortgage charge registered in favour of 146 Whittaker Street Inc. (a corporate Debtor), for \$210,000; and
 - (c) A third position mortgage in favour of Adroit Advocates, LLC, a Colorado Limited Liability Company, and DBA Klenda Gessler & Blue LLC (collectively "**Adroit**").
- As noted in the Seventh Report, the Receiver understands that this firm represents the Hutchens in respect of the Colorado proceeding. It has registered \$2 million charges against six Properties.

33. The mortgage on 29 Laren in favour of Tanya is a mortgage that she assumed from the Bank of Montreal on or about March 24, 2016. Tanya asserts that she assumed this mortgage in trust for her children. She has produced a corresponding trust agreement that refers in its preamble to her having paid \$597,180.53 to the Bank of Montreal in exchange its interest in the mortgage. The Applicants challenge the validity of these trusts, which is to be determined on a motion in this proceeding currently scheduled to be heard June 18, 2020.

34. Tanya and Sandy are both directors of the second position mortgagee, 146 Whittaker Street Inc. That company registered a mortgage in 2010, approximately 20 months after 29 Laren Street Inc. acquired the Property. It postponed its mortgage in favour of the Bank of Montreal's at the time the latter mortgage was registered in 2012.

35. The Receiver does not recommend making any distribution on account of these mortgages pending a determination of their validity and the validity of any related trust claims.

Property Taxes

36. 29 Laren appears to have one tax roll account with the City of Greater Sudbury. Its annual property tax levy in 2019 was \$24,755.41. Notwithstanding the stay of proceedings against the property of the Debtors, on or about November 15, 2019, the City of Greater Sudbury registered a Tax Arrears Certificate, pursuant to the *Municipal Act, 2001*, on title to 29 Laren for municipal tax arrears owing as at December 31, 2018. A copy of the Notice of Registration of Tax Arrears Certificate is attached at **Appendix 3**.

37. Based on information from the City of Greater Sudbury, the Receiver estimates that, including arrears and 2020 interim tax levies, the outstanding municipal tax payable on 29 Laren at the time of closing will be approximately \$120,000.00, including arrears, penalties and interest.

B. 3415 and 3419 Errington*Mortgages*

38. On title to 3415 Errington, there is a first position mortgage charge registered in favour of Dina Brik (Tanya's mother) for \$150,000 and a second position mortgage in favour of Adroit for the aforementioned \$2 million charge.

39. On title to 3419 Errington, there is a first position mortgage charge registered in favour of Dina Brik for \$150,000 and a second position mortgage in favour of Adroit for the aforementioned \$2 million charge.

40. The Receiver has not received any documentation in respect of the mortgage charges in favour of Dina Brik.

41. The Receiver does not recommend making any distribution on account of these mortgages pending a determination of their validity.

Property Taxes

42. 3415 Errington has one tax roll account with the City of Greater Sudbury. Its annual property tax levy in 2019 was \$7,955.58. Notwithstanding the stay of proceedings against the property of the Debtors, on or about December 23, 2019, the City of Greater Sudbury registered a Tax Arrears Certificate, pursuant to the *Municipal Act, 2001*, on title to 3415 Errington for municipal tax arrears owing as at December 31, 2018. A copy of the Notice of Registration of Tax Arrears Certificate is attached at **Appendix 4**.

43. Based on information from the City of Greater Sudbury, the Receiver estimates that, including arrears and 2020 interim tax levies, the outstanding municipal tax payable on 3415

Errington at the time of closing will be approximately \$40,000.00, including arrears, penalties and interest.

44. 3419 Errington has one tax roll account with the City of Greater Sudbury. Its annual property tax levy in 2019 was \$7,955.58. Notwithstanding the stay of proceedings against the property of the Debtors, on or about November 15, 2019, the City of Greater Sudbury registered a Tax Arrears Certificate, pursuant to the *Municipal Act, 2001*, on title to 3419 Errington for municipal tax arrears owing as at December 31, 2018. A copy of the Notice of Registration of Tax Arrears Certificate is attached at **Appendix 5**.

45. Based on information from the City of Greater Sudbury, the Receiver estimates that, including arrears and 2020 interim tax levies, the outstanding municipal tax payable on 3419 Errington at the time of closing will be approximately \$40,000.00, including arrears, penalties and interest.

IV. PROPOSED DISTRIBUTIONS

46. As detailed in the preceding section, the Receiver proposes to distribute the proceeds from the Eighth Report Sale Transactions to pay any amounts due to the municipality of Greater Sudbury in respect of outstanding property taxes, pro-rated to the closing date, or alternatively to adjust the purchase price to account for the pro-rated amount due by the Debtors, as may be agreed between the Receiver and respective purchasers. The Receiver will hold the remaining funds in trust pending the resolution of the Debtors' trust and/or mortgage claims, Dina Brik's mortgage claims, and Adroit's claim, other than application to amounts secured by the Receiver's Charge and Receiver's Borrowing Charge.

V. SEALING ORDER

47. Confidential Appendices A and B contain information disclosing the appraised value and agreed sale price of 29 Laren. Confidential Appendices C and E contain information disclosing the appraised value and agreed sale price of 3415 Errington. Confidential Appendices D and F contain information disclosing the appraised value and agreed sale price of 3419 Errington. The Receiver expects that disclosure of this information prior to the closing of the Eighth Report Sale Transactions may prejudice its negotiating position in the sale processes for these properties that would be required if these transactions are not approved or do not close for any reason. It therefore seeks an order sealing these confidential appendices pending the filing of Receiver's certificates following closing of the transactions.

VI. RECOMMENDED ORDERS

48. Based on the foregoing, the Receiver respectfully recommends that this Court make the orders noted in paragraph 1 of this Eighth Report, in addition to the orders noted in the Seventh Report.

All of which is respectfully submitted this 22nd day of April, 2020.

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



STEVENS *et al.*
Applicants

-and-

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Proceeding commenced at Toronto

EIGHTH REPORT OF THE RECEIVER

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