

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

FIFTH REPORT OF THE RECEIVER
October 2, 2019

Table of Contents

I. INTRODUCTION AND PURPOSE OF THE FIFTH REPORT	1
II. DISCLAIMER	2
III. APPOINTMENT OF RECEIVER AND PRIOR ORDERS	3
IV. RECEIVER’S ACTIVITIES.....	4
V. SALES TO BE APPROVED	7
A. THE 1573 HOUSTON TRANSACTION	7
B. THE 1479 MAPLE TRANSACTION	10
VI. DEBTS SECURED BY THE FURTHER SALEABLE PROPERTIES	13
A. HILLMOUNT.....	13
B. PROPERTY TAX	15
C. DINA BRIK.....	15
VII. PARTIES’ AGREEMENT RESPECTING PAYMENT TO MERIDIAN	16
VIII. PROPOSED DISTRIBUTIONS	17
IX. SEALING ORDER	17
X. FEES OF THE RECEIVER AND ITS COUNSEL.....	18
XII. RECOMMENDED RELIEF	18

I. INTRODUCTION AND PURPOSE OF THE FIFTH REPORT

1. On February 28, 2019, Justice Penny appointed A. Farber & Partners Inc. as interim receiver (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 (collectively, the “**Debtors**”), including certain real property (the “**Properties**”). A copy of Justice Penny’s order dated February 28, 2019, is attached at **Appendix 1**.

2. As detailed below, Justice Penny continued and expanded the Receiver’s appointment through subsequent Orders and a Judgment, and has authorized the Receiver’s marketing and sale of certain of the Properties.

3. The Receiver files this fifth report (the “**Fifth Report**”) to advise the Court of its activities since its Fourth Report dated August 13, 2019 (the “**Fourth Report**”) and to support its request for orders:

- (a) Approving two sale transactions for Properties, the marketing and sale of which this Court previously authorized: the 1479 Maple Transaction and the 1573 Houston Transaction (each as defined below and, together, the “**Further Innisfil 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) Sealing Confidential Appendices A, B, C, and D to this Fifth Report;
- (c) Authorizing the distribution of the following funds from the proceeds of the Further Innisfil Sale Transactions as follows:
 - (i) \$200,000, plus interest, to Hillmount Capital Inc. (“**Hillmount**”);

- (ii) \$526,000 to Meridian Credit Union Limited (“**Meridian**”), more or less, in exchange for Meridian’s assignment of its mortgage held against title to the real property known as 33 Theodore Place, Thornhill (Vaughan), Ontario (“**33 Theodore**”); and
- (iii) \$40,782.00, more or less, subject to adjustments, to the Town of Innisfil, in payment of outstanding municipal property taxes accrued to the respective dates of closing of the Further Innisfil Sale Transactions;
- (d) Approving this Fifth Report and the activities and conduct of the Receiver described herein; and
- (e) Approving the fees and disbursements of the Receiver from July 1, 2019 to August 31, 2019, and of the Receiver’s counsel, Naymark Law, from August 1, 2019 to August 31, 2019.

II. DISCLAIMER

4. In preparing this Fifth 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. The Receiver has not independently reviewed or verified such information. The Receiver has prepared this Fifth 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 Fifth Report. Any use which any party, other than the Court, makes of this Fifth Report or any reliance on or a decision made based upon it is the responsibility of such party.

5. Unless otherwise specifically noted, all dollar amounts referred to in this Fifth Report are in Canadian funds.

III. APPOINTMENT OF RECEIVER AND PRIOR ORDERS

6. 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 (the "**Managed Properties**"). A copy of the order of Justice Penny, dated March 18, 2019 (the "**March Order**") is attached at **Appendix 2**.

7. 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**.

8. On June 7, 2019, Justice Penny further expanded the list of Properties over which the Receiver's appointment is extended, approved the sale of a Saleable Property, vesting in the respective purchaser, and authorized the distribution of the sale proceeds. A copy of Justice Penny's order, dated June 7, 2019 (the "**June Order**") is attached at **Appendix 4**.

9. On July 5, 2019, Justice Penny issued a judgment, on consent, recognizing the judgments of the United States District Court for the Eastern District of Pennsylvania, entered on October 11, 2018 and December 19, 2018 in Case Civ. No. 18-692 in favour of the Applicants and against the Respondents Sandy Hutchens ("**Sandy**") and Tanya Hutchens ("**Tanya**"), in the amount of US\$26,774,736.09, owed jointly and severally, temporarily stayed enforcement, and continued the

Receivership and the terms of the above orders. A copy of Justice Penny's Judgment, dated July 5, 2019 (the "**Judgment**"), attached at **Appendix 5**.

10. On August 19, 2019, Justice Penny issued two Orders. The first (the "**First August Order**") approved the sales of three Saleable Properties, to be vested in their respective purchasers on closing, and authorized a distribution of the sale proceeds to the municipality for outstanding property taxes and to the first mortgagee on each of the Saleable Properties sold, Meridian Credit Union Limited ("**Meridian**"). The second Order (the "**Second August Order**") authorized and empowered the Receiver to sell two additional Properties (the "**Further Saleable Properties**"). Copies of the First and Second August Orders, are attached at **Appendices 6 and 7**, respectively.

11. On September 3, 2019, Justice Penny approved the fees and disbursements of the Receiver and its counsel, Naymark Law, up to June 30, 2019 and July 31, 2019, respectively. A copy of Justice Penny's Order, dated September 3, 2019 (the "**September Order**"), is attached at **Appendix 8**.

IV. RECEIVER'S ACTIVITIES

12. The Receiver's activities directly relating to the preservation, protection and realization of the Properties since the Fourth Report include:

- (a) Managing the remaining Managed Properties, including:
 - (i) overseeing necessary clean-up;
 - (ii) undertaking and arranging for necessary repairs, as needed;
 - (iii) maintaining the premises;
 - (iv) collecting rents and attending to general landlord-tenant matters;

- (v) liaising with public utilities and other service providers to ensure continued services;
 - (vi) ensuring and maintaining adequate insurance coverage on all Properties; and
 - (vii) addressing a claim by a tenant of one of the Managed Properties for damages relating to an alleged trip and fall accident which occurred on August 5, 2019;
- (b) Attending to municipal by-law concerns over a boathouse structure that collapsed during a storm at the real property known as 1479 Maple Road, Innisfil, Ontario (“**1479 Maple**”);
- (c) Attending to improvements at 1479 Maple to address safety and by-law concerns, including:
 - (i) the demolition of the above-noted boathouse; and
 - (ii) the trimming and removal of certain trees by an arborist.
- (d) Responding to ongoing queries from secured creditors and parties claiming to have interests in the Properties;
- (e) Working with Sandy’s counsel and Barbara C. Hughes & Associates Ltd., the appraiser selected by Sandy’s counsel, to obtain new appraisals of the Saleable Properties known as 1790 Cross Street, Innisfil (“**1790 Cross**”), 1889 Simcoe Boulevard, Innisfil (“**1889 Simcoe**”) and 1779 Cross Street, Innisfil (“**1779 Cross**”, together with 1790 Cross and 1889 Simcoe, the “**Innisfil Properties**”), pursuant to the First August Order;

- (f) Working with the respective purchasers of 1790 Cross and 1889 Simcoe to close the sale transactions of same;
- (g) Working with the purchases of 1779 Cross to formalize an agreement to postpone the closing date of same to October 31, 2019;
- (h) Liaising with Sandy's legal counsel in regard of Sandy's obligation to vacate the premises of 1779 Cross on, or prior to, September 30, 2019;
- (i) Working with Meridian to complete distributions of sale proceeds from 1790 Cross and 1889 Simcoe, on which Meridian holds a first mortgage;
- (j) Distributing sale proceeds from 1790 Cross and 1889 Simcoe to Hillmount pursuant to the First August Order;
- (k) Selecting a real estate brokerage to handle the sale of the two Further Saleable Properties in Innisfil, Ontario;
- (l) Working with Lifestyle Realty Associates Inc., Brokerage ("**Lifestyle Realty**"), to market and sell the Further Saleable Properties in Innisfil, Ontario, namely:
 - (i) 1479 Maple; and
 - (ii) 1573 Houston Avenue ("**1573 Houston**");
- (m) Negotiating terms of sale for the Further Saleable Properties;
- (n) Maintaining and updating the Receiver's case website, including the posting of Court reports, motion materials and updated service list;
- (o) Working with interested parties to provide monthly living expenses to Sandy and Tanya based on an agreed upon budget; and
- (p) Conducting ongoing investigations and monitoring of cash flow of the Respondents.

V. SALES TO BE APPROVED

13. The Second August Order authorized and empowered the Receiver to market and sell the Further Saleable Properties, *nunc pro tunc* to August 1, 2019. The Receiver has since entered into agreements of purchase and sale for each of the Further Saleable Properties, conditional on Court approval. The Receiver recommends that this Court approve each of those sales.

14. The process the Receiver followed leading to these two 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 1573 Houston Transaction

15. 1573 Houston is a waterfront, residential, cottage-style property located in Innisfil, Ontario. It is registered under Tanya's name and has been unoccupied since prior to the Receiver's taking possession of the Property. Tanya advised the Receiver that she began but did not complete a renovation of 1573 Houston, which is consistent with its physical state. The property is not presently habitable. The municipality of Innisfil has advised the Receiver that property taxes have not been paid in several years.

16. Tanya listed 1573 Houston with the brokerage Lifestyle Realty prior to the Receiver's appointment, at a list price of \$1.2 million. Between January 27, 2019 and May 19, 2019, Lifestyle Realty showed 1573 Houston to eight unique prospective purchasers, none of whom presented an offer.

17. The Receiver engaged York Simcoe Appraisal Corporation ("YSAC"), an appraiser with expertise in the Innisfil region, to appraise 1573 Houston. YSAC appraised the property as of June 14, 2019, on both a 'power of sale' basis and a 'fair market value' basis (the "**1573 Houston**

Appraisals”). The appraised values were materially below the prior listing price. Copies of the 1573 Houston Appraisals are attached at **Confidential Appendix “A”**.

18. The Receiver engaged in discussions with Heather Jones of Lifestyle Realty, the agent who Tanya had previously retained to sell 1573 Houston, and ultimately signed a new listing agreement with Lifestyle Realty on August 6, 2019. Lifestyle Realty reduced the list price from the previous listing to reflect the appraisal valuations obtained by the Receiver.

19. From August 6, 2019 to August 19, 2019, Lifestyle Realty engaged in a sale process that included a social media campaign and advertisement of the listing on several real estate websites, including MLS standard listing on www.realtor.ca., the Toronto Real Estate Board website and the Barrie Real Estate Board website. From August 7, 2019 to August 14, 2019, Lifestyle Realty showed 1573 Houston to eight prospective purchasers, not including the current purchaser.

20. The Receiver received three offers to purchase 1573 Houston. 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 offeror. The Receiver entered into further negotiations with the offeror.

21. On August 19, 2019, after several days of negotiations, the Receiver entered into an Agreement of Purchase and Sale in respect of 1573 Houston (the **“1573 Houston Transaction”**), conditional on, among other things, Court approval. As of the date of this Fifth Report, no other conditions remain. Copies of the Agreement of Purchase and Sale and corresponding waivers are attached at **Confidential Appendix “B”**. Additional terms include:

- (a) A purchase price between 6% and 9% higher than the appraised fair market value, and between 22% and 32% higher than the appraised power of sale value.
- (b) No substantive conditions in favour of the purchaser;

- (c) A closing date seven business days (excluding Fridays and Jewish holidays) after Court approval; and
 - (d) A deposit of \$100,000.00, which Lifestyle Realty 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.
22. The Receiver recommends that this Court approve the 1573 Houston Transaction because:
- (a) Lifestyle Realty marketed 1573 Houston for sale to the public for approximately seven months and showed it to sixteen prospective purchasers, with eight of those showings occurring since the Receiver took over the sale process on August 7, 2019;
 - (b) The purchase price is higher than the power of sale value and the fair market value;
 - (c) The purchase price is sufficient to discharge the secured liability of the Debtors for outstanding property tax arrears due to the municipality;
 - (d) The purchaser is arm's length from the parties;
 - (e) The purchaser has acknowledged that it is purchasing 1573 Houston on an 'as is' basis;
 - (f) The optimal season for selling waterfront properties in Innisfil, such as 1573 Houston, is spring and summer, a factor that reduces the probability that the Receiver could obtain a higher or even comparable sale price in the near term;
 - (g) 1573 Houston is a vacant property with no rental income to offset ongoing carrying costs, including for property management, utilities, repairs and the accrual of property taxes; and
 - (h) Lifestyle Realty recommended the 1573 Houston Transaction.

B. The 1479 Maple Transaction

23. 1479 Maple is a waterfront, residential, cottage-style property located in Innisfil, Ontario. 1479 Maple is registered under Tanya's name and has been unoccupied since prior to the Receiver's taking possession of the Property. Since the Receiver's involvement with 1479 Maple, the Receiver has had to undertake two significant improvements to the property, as outlined earlier in this Fifth Report, to address safety and by-law concerns, costing the Receiver over \$14,000 in extraordinary out-of-pocket disbursements.

24. Tanya listed 1479 Maple with the brokerage Lifestyle Realty prior to the Receiver's appointment, at a list price of \$999,000. Between January 23, 2019 and July 10, 2019, Lifestyle Realty showed 1479 Maple to nine unique prospective purchasers. It received one offer, dated March 11, 2019, which was subject to various conditions including a home inspection. Neither Tanya nor the Receiver had authority of the Court to accept the offer at the time.

25. The Receiver engaged YSAC to appraise 1479 Maple. YSAC appraised the property as of June 14, 2019, on both a 'power of sale' basis and a 'fair market value' basis (the "**1479 Maple Appraisals**"). Copies of the 1479 Maple Appraisals are attached at **Confidential Appendix "C"**.

26. The Receiver engaged in discussions with Heather Jones of Lifestyle Realty, the agent who Tanya had previously retained to sell 1479 Maple, and ultimately signed a new listing agreement with Lifestyle Realty on August 6, 2019. Lifestyle Realty reduced the list price from the previous listing to reflect the appraisal valuations obtained by the Receiver.

27. From August 6, 2019 to September 13, 2019, Lifestyle Realty engaged in a sale process that included a social media campaign and the advertisement of the listing on several real estate websites, including MLS standard listing on www.realtor.ca, the Toronto Real Estate Board

website and the Barrie Real Estate Board website. From August 6, 2019 to September 7, 2019, Lifestyle Realty showed 1479 Maple to 23 prospective purchasers, including the current purchaser.

28. The Receiver received one offer on August 14, 2019, from the same prospective purchaser who had offered to purchase 1479 Maple on March 11, 2019 but for a lower amount. The Receiver delivered a counteroffer on August 16, 2019 in the amount of the offeror's original offer, which the offeror declined. The offeror indicated that having viewed the property further, he was unwilling to pay his originally offered purchase price due to its condition. However, the offeror submitted a second offer to purchase on September 4, 2019 with a purchase price between those in its first and second offers. The Receiver signed it back with minimal changes, which the purchaser accepted, and on September 13, 2019, the Receiver entered into an Agreement of Purchase and Sale in (the "**1479 Maple Transaction**"), conditional on Court approval. A copy of the Agreement of Purchase and Sale is attached at **Confidential Appendix "D"**. Additional terms include:

- (a) A purchase price between 3% and 5% higher than the appraised fair market value, and between 24% and 31% higher than the appraised power of sale value; and
- (b) A home inspection condition in favour of the purchaser, which the purchaser waived on September 20, 2019. No other conditions remain aside from Court approval;
- (c) A flexible closing date of the later of ten business days after Court approval and November 15, 2019, provided that the closing shall take place no later than December 15, 2019; and
- (d) A deposit of \$40,000.00, which Lifestyle Realty 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. If the 1479 Maple Transaction does not close by December 15, 2019, the deposit will be returned in full to the purchaser without interest or deduction.

29. The Receiver recommends that this Court approve the 1479 Maple Transaction because:
- (a) Lifestyle Realty marketed 1479 Maple for sale to the public for seven months and showed it to thirty-two (32) prospective purchasers, with twenty-three (23) of those showings occurring since the Receiver took over the sale process on August 6, 2019;
 - (b) Despite significant interest, the Receiver received only one offer and Lifestyle Realty has advised that no further offers are expected;
 - (c) The purchase price is higher than the power of sale value and the fair market value;
 - (d) Under the provisions of the listing agreement with Lifestyle Realty, the purchaser of 1479 Maple is an “excluded party” and, as such, the commission payable on the closing of the 1479 Maple Transaction will be substantially lower than the full 4.5% commission, resulting in a higher net result;
 - (e) The purchase price is sufficient to discharge the secured liability of the Debtors for outstanding property taxes due to the municipality;
 - (f) The purchaser is arm’s length from the parties;
 - (g) The purchaser has acknowledged that it is purchasing 1479 Maple on an ‘as is’ basis;
 - (h) The optimal season for selling waterfront properties in Innisfil, such as 1479 Maple, is spring and summer, a factor that reduces the probability that the Receiver could obtain a higher or even comparable sale price in the near term;

- (i) 1479 Maple is a vacant property with no rental income to offset ongoing holding costs, including for property management, utilities, repairs and the accrual of property taxes; and
- (j) Lifestyle Realty recommended the 1479 Maple Transaction.

VI. DEBTS SECURED BY THE FURTHER SALEABLE PROPERTIES

30. The Further Saleable Properties are subject to the following charges against title:

- (a) All Properties are subject to the Receiver's Charge (as defined in the March order) securing the fees and disbursements of the Receiver and its counsel;
- (b) All Properties are subject to a Receiver's Borrowing Charge (as defined in the March Order) securing amounts that the Receiver has borrowed pursuant to the March Order from Hillmount;
- (c) There are no mortgages registered on title to 1573 Houston;
- (d) There is a first mortgage registered on title to 1479 Maple in favour of Dina Brik, Tanya's mother; and
- (e) Both of the Further Saleable Properties have outstanding property taxes due to the Town of Innisfil.

A. Hillmount

31. The March Order granted the Receiver authority to borrow up to \$750,000.00 to fund the receivership, secured by a Receiver's Borrowing Charge (as defined in the March Order) ranking as a second charge on the Properties in priority to all other interests, aside from the Receiver's Charge. On May 15, 2019, pursuant to the March Order, the Receiver borrowed \$400,000.00 from Hillmount (of a maximum of \$750,000), on terms that include interest compounding monthly at

the greater of 9.75% per annum or the posted Royal Bank of Canada Prime Rate + 5.3% (the “**Hillmount Receiver Loan**”). Copies of the Receiver’s certificate and the term sheet in respect of the Hillmount Receiver Loan (the “**Receiver’s Certificate Commitment**”) are attached at **Appendix 9**.

32. The Receiver’s Certificate Commitment also provides that:

- (a) The Receiver shall pay the Hillmount Receiver Loan in proportionate paydowns upon the sale of the Properties;
- (b) The Receiver shall not distribute funds to any creditors without the consent of Hillmount, save for the Receiver’s Charge as contemplated by the March Order;
- (c) The Receiver must obtain Hillmount’s prior written consent before seeking Court approval for distribution to secured creditors with charges ranking subordinate to the Receiver’s Borrowing Charge in favour of Hillmount.

33. As indicated at paragraphs 74 of the Fourth Report, Hillmount consented to the Receiver paying \$200,000 of the Hillmount Receiver Loan from the proceeds of prior Property sales, and using the proceeds of those sales to pay other debts secured by those Properties. The Receiver has committed to pay the balance of the Hillmount Receiver Loan - \$200,000 plus accrued interest – using the proceeds of the Further Innisfil Sale Transactions. By the terms of the Receiver’s Certificate Commitment, the Receiver would require Hillmount’s consent and approval prior to seeking Court approval of a distribution, or effecting such distribution, to creditors ranking subordinate to the Receiver’s Borrowing Charge.

B. Property Tax

34. The annual property tax levies issued by the Town of Innisfil for 2019 on each of the Further Saleable Properties are:

- (a) On 1479 Maple: \$5,855.44; and
- (b) On 1573 Houston: \$8,752.03.

35. The Receiver's information is that no installment payments have been made to the Town of Innisfil in respect of property taxes, and that property taxes on 1573 Houston have not been paid for several years, with the total balance due to the Town of Innisfil being approximately \$35,000.00.

36. On closing of the Further Innisfil Sale Transactions, the Receiver will authorize the release of payment to the Town of Innisfil for the amount of property taxes outstanding, pro-rated to the closing date; or, alternatively, adjust the purchase price, as may be agreed between the Receiver and respective purchasers, to account for the pro-rated amount due by the Debtors.

C. Dina Brik

37. Dina Brik is Tanya's mother and therefore a non-arm's length party to the Debtors. Ms. Brik has a registered charge on 1479 Maple, registered on February 10, 2012, in the amount of \$200,000.00. Accordingly, Ms. Brik's security, if valid and enforceable, ranks only subsequent to the priority of the Receiver's Charge and the Receiver's Borrowings Charge.

38. To date, the Receiver has not been provided with any evidence or documentation related to the security or indebtedness, if any, in favour of Ms. Brik. The Receiver does not recommend any distribution of funds from the proceeds of the 1479 Maple Transaction to Ms. Brik at this time. The validity and priority of any claim by Ms. Brik can be determined in future, and the vesting

order sought will contain standard language to the effect that claims against 1479 Maple apply as against the proceeds of sale thereof.

VII. PARTIES' AGREEMENT RESPECTING PAYMENT TO MERIDIAN

39. At paragraphs 54 to 60 of the Fourth Report, the Receiver described the difficulty it had encountered selling one of the Saleable Properties, municipally known as 33 Theodore Place, Vaughan, Ontario ("**33 Theodore**"), and the related agreement of the parties to (a) authorize the Receiver to sell 1479 Maple and 1573 Houston; (b) apply proceeds of those sales to acquire Meridian's mortgage on 33 Theodore; and (c) for the Receiver to forbear on the previously authorized sale of 33 Theodore pursuant to the stay of enforcement set out in the Judgment. A copy of the Fourth Report (without appendices) is attached as **Appendix 10**.

40. As noted in the Fourth Report, Meridian is arm's length from the Debtors; Meridian has documented its security and mortgage loans (the "**Meridian Security**") to the Receiver's satisfaction; and the Receiver has obtained a security opinion, which concluded that the Meridian Security, including the mortgage registered against title to 33 Theodore, is valid and enforceable to the extent of all monies advanced thereunder. A copy of the security opinion relating to the Meridian Security, dated May 8, 2019, is attached at **Appendix 11**.

41. As of September 30, 2019, the outstanding amount owing to Meridian in respect of its mortgage against title to 33 Theodore was \$525,347.65, inclusive of legal fees. This figure is based on payout balances Meridian provided to the Receiver on September 26, 2019. The Receiver expects to receive an updated payout statement from Meridian with final figures including accruals since September 30, 2019 prior to paying out the balance of this mortgage. In accordance with the parties' agreement, the Receiver intends to enter into an agreement with Meridian to acquire an

assumption of its mortgage against 33 Theodore in exchange for payment of this outstanding balance. The Receiver will consider that mortgage to be a priority claim of the 'estates' of 1479 Maple and 1573 Houston to any future proceeds of sale of 33 Theodore, in accordance with the ring-fencing provisions of paragraph 3 of the March Order, as continued by the Judgment.

VIII. PROPOSED DISTRIBUTIONS

42. The Receiver proposes to distribute from the proceeds of the Further Innisfil Sale Transactions:

- (a) \$200,000, plus interest and fees, to Hillmount to discharge the Hillmount Receiver Loan; then
- (b) Amounts due to the Town of Innisfil in respect of outstanding property taxes levied against the respective Further Saleable Properties, from the proceeds of sale of each; then
- (c) \$526,000 to Meridian, more or less, in exchange for an assignment of its mortgage against title to 33 Theodore.

IX. SEALING ORDER

43. Confidential Appendices A, B, C and D contain information disclosing the agreed sale prices and appraised values, respectively, of the Further Saleable Properties. The Receiver expects that disclosure of this information prior to the closing of the Further Innisfil Sale Transactions may prejudice its negotiating position in the sale process for the Further Saleable Properties that would be required if the Further Innisfil Sale Transactions are not approved or do not close for any reason.

X. FEES OF THE RECEIVER AND ITS COUNSEL

44. The Receiver seeks approval of its fees and disbursements and those of its counsel, pursuant to the March Order. This Court approved the professional fees and disbursements of the Receiver up to June 30, 2019 pursuant to the September Order. Attached at **Appendix 12** is an affidavit of the Receiver setting out its fees and disbursements from July 1, 2019 to August 31, 2019 and exhibiting the Receiver's detailed statements of account for this period. The total quantum of the amounts incurred and for which approval is sought is fees of \$186,860, together with HST on fees of \$24,291.80 and disbursements (including HST) of \$3,145.66, for a total of \$214,297.46.

45. This Court approved the professional fees and disbursements of the Receiver's legal counsel, Naymark Law, up to July 31, 2019 pursuant to the September Order. Attached at **Appendix 13** is an affidavit of counsel to the Receiver in this proceeding, Naymark Law, setting out its fees and disbursements from August 1, 2019 to August 31, 2019 and exhibiting counsel's detailed statements of account for this period. The total fees incurred and for which approval is sought \$20,339, plus disbursements of \$489.00 and HST of \$2,666.04, for a total of \$23,494.04.

XI. RECOMMENDED RELIEF

46. Based on the foregoing, the Receiver respectfully recommends that this Court provide the relief noted in paragraph 3 of this Fifth Report.

All of which is respectfully submitted this 2nd day of October, 2019.

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

A. Farber & Partners Inc.

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

FIFTH REPORT OF THE RECEIVER

NAYMARK LAW
171 John Street, Suite 101
Toronto, ON M5T 1X3

Daniel Z. Naymark LSO#: 56889G
Tel: (416) 640-6078
Fax: (647) 660-5060
dnaymark@naymarklaw.com

Terrence Liu LSO#: 64130M
Tel: (416) 640-2256
Fax: (647) 660-5060
tliu@naymarklaw.com

Lawyers for the Receiver,
A. Farber & Partners Inc.