

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

FOURTH REPORT OF THE RECEIVER

August 13, 2019

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I. INTRODUCTION AND PURPOSE OF THE FOURTH 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. 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 “**Income Producing Properties**”). A copy of the order of Justice Penny, dated March 18, 2019 (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. 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**.

5. 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**.

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

- (a) Authorizing the following sale transactions: 1790 Cross Transaction, the 1889 Simcoe Transaction, and the 1779 Cross Transaction (each as defined below), 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, D, E and F (each as defined below);
- (c) Authorizing the distribution of the following funds from the Innisfil Sale Transactions (defined below) as follows:
 - (i) \$200,000, plus interest, to Hillmount Capital Inc. (“**Hillmount**”);
 - (ii) \$581,809.14, plus \$20,688.70 in legal fees, to Meridian Credit Union Limited (“**Meridian**”); and
 - (iii) \$14,170.00, 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 Innisfil Sale Transactions;

- (d) Granting leave to the Receiver to have a Writ of Possession issued in respect of the Saleable Properties municipally known as 1779 Cross Street, Innisfil, Ontario; and
- (e) Approving this Fourth Report and (i) the activities and conduct of the Receiver described herein; and (ii) the fees and disbursements of the Receiver to June 30, 2019, in the amount of \$575,193.01, plus HST; and (iii) the fees and disbursements of the Receiver's counsel to July 31, 2019, in the amount of \$234,013.71, plus HST.

II. DISCLAIMER

7. In preparing this Fourth 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 Fourth 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 Fourth Report. Any use which any party, other than the Court, makes of this Fourth Report or any reliance on or a decision made based upon it is the responsibility of such party.

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

III. RECEIVER'S ACTIVITIES

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

- (a) Managing the remaining Income Producing 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
- (b) Responding to ongoing queries from secured creditors and parties claiming to have interest in and to the Properties;
- (c) Selecting a real estate brokerage to handle the sale of the three (3) Saleable Properties in Innisfil, Ontario and the one (1) Saleable Properties in Thornhill, Ontario;
- (d) Working with Meridian on multiple listings on Saleable Properties, on which Meridian holds a first mortgage;
- (e) Working with Royal LePage Your Community Realty Inc. to market and sell three (3) of the Saleable Properties in Innisfil, Ontario (collectively, the “**Innisfil Properties**”):
 - (i) 1790 Cross Street (“**1790 Cross**”);
 - (ii) 1889 Simcoe Boulevard (“**1889 Simcoe**”); and
 - (iii) 1779 Cross Street (“**1779 Cross**”);
- (f) Negotiating terms of sale for the Innisfil Properties with their respective purchasers;
- (g) Discussions with the Debtors’ legal counsel with respect to Sandy’s and his family’s ongoing efforts to obstruct the Receiver’s efforts to sell the Innisfil Properties;

- (h) Maintaining and updating the Receiver's case website, including the posting of Court reports, motion materials and updated service list;
- (i) Working with the interested parties to provide monthly living expenses to Sandy and Tanya based on an agreed upon budget; and
- (j) Conducting ongoing investigations and monitoring of cash flow of the Respondents;
- (k) Obtaining a revolving credit facility from Hillmount, as authorized by the March Order, to fund the Receiver's ongoing obligations.

IV. SALES OF INNISFIL PROPERTIES TO BE APPROVED

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

- (a) “[C]onvey [or] transfer... the Saleable Properties [defined as including, *inter alia*, the Innisfil Properties] or any part or 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)).

11. The sale process followed and the basis for the Receiver's recommendation to approve the sale of the Innisfil Properties are below.

12. The Receiver requested comprehensive listing proposals and marketing outlines from four (4) real estate brokerages, and received comprehensive proposals from three (3) brokerages. Each

of the proposals included similar commission structures. The Receiver chose Royal LePage Your Community Realty Brokerage, in consultation with Meridian, the first position mortgagee of the Innisfil Properties, as the listing brokerage (the **“Innisfil Broker”**) for the Innisfil Properties.

A. The 1790 Cross Transaction

13. On or around July 10, 2019, the Receiver entered into an Agreement of Purchase and Sale in respect of 1790 Cross (the **“1790 Cross Transaction”**), conditional on Court approval. No other conditions remain. The sale’s original scheduled closing date was August 8, 2019, which the Receiver subsequently extended to September 12, 2019, via agreement between counsel. Copies of the Agreement of Purchase and Sale and correspondence between counsel extending the closing date are attached at **Confidential Appendix “A”**.

14. From June 18, 2019 to July 2, 2019, the Innisfil Broker engaged in a sale process that included a social media campaign and the advertisement the listing on several real estate websites, including MLS standard listing on www.realtor.ca. The Innisfil broker showed the 1790 Cross property to ten prospective purchasers.

15. The Receiver obtained formal appraisals of the 1790 Cross property, as of June 14, 2019, which appraised the property on both a ‘power of sale’ basis and a ‘fair market value’ basis (the **“1790 Cross Appraisals”**). A copy of the 1790 Cross Appraisals is attached at **Confidential Appendix “B”**.

16. The Receiver received one offer to purchase 1790 Cross. After several days of negotiations, the agreement for purchase and sale was finalized on July 10, 2019, subject to Court approval, and included the following key terms:

- (a) A purchase price between 0% and 3% higher than the appraised fair market value, and between 24% and 28% higher than the appraised power of sale value.
- (b) Several conditions in favour of the purchaser, including ones relating to financing, insurance and inspection;
- (c) The assumption of the current tenant; and
- (d) A flexible closing date, tentatively scheduled approximately 45 days from the issuance of the agreement of purchase and sale.

17. Based on advice from the Innisfil Broker and on the 1790 Cross Appraisals, the Receiver accepted this the offer, which was from an arm's length party.

18. As of the date of this Fourth Report, the purchase of 1790 Cross has provided the Innisfil Broker with a deposit of \$20,000.00 , which is being held in trust by the Innisfil 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 purchaser.

19. The Receiver recommends that this Court approve the 1790 Cross Transaction because:

- (a) The Receiver selected a listing brokerage for the 1790 Cross Property through a competitive proposals process;
- (b) The Innisfil Broker marketed 1790 Cross for sale to the public and showed it to ten prospective purchasers;
- (c) The Innisfil Broker has advised the Receiver that there have been no further requests for showings;

- (d) The 1790 Cross Transaction provides for the continued tenancy of the current tenants, being arms' length parties to the Debtors and a family comprising two adults and two children under the age of majority;
- (e) The purchase price is higher than the power of sale value and the fair market value;
- (f) The purchase price is sufficient to discharge the secured liability of the Debtors to Meridian, the first mortgagee registered on title. Meridian consents to the 1790 Cross Transaction;
- (g) The purchase price is sufficient to discharge the secured liability of the Debtors for outstanding property taxes due to the municipality;
- (h) The Innisfil Broker has advised the Receiver that the optimal season for selling cottage-type properties such as 1790 Cross is spring and summer; and
- (i) The Innisfil Broker recommended the 1790 Cross Transaction.

B. The 1889 Simcoe Transaction

20. On or around July 2, 2019, the Receiver entered into an Agreement of Purchase and Sale in respect of 1889 Simcoe (the “**1889 Simcoe Transaction**”), conditional on Court approval. No other conditions remain and the sale is scheduled to close on September 5, 2019. A copy of the Agreement of Purchase and Sale is attached at **Confidential Appendix “C”**.

21. The Receiver obtained formal appraisals of 1889 Simcoe, as of June 17, 2019, which appraised the property on both a ‘power of sale’ basis and a ‘fair market value’ basis (the “**1889 Simcoe Appraisals**”). A copy of the 1889 Simcoe Appraisals is attached at **Confidential Appendix “D”**.

22. From June 18, 2019 to July 2, 2019, the Innisfil Broker engaged in a sale process that included a social media campaign, the advertisement of the listing on several real estate websites, including MLS standard listing on www.realtor.ca, and setting an offer presentation date of June 27, 2019. The Innisfil broker showed 1889 Simcoe to nineteen prospective purchasers. The Receiver received ten offers by June 27, 2019 and asked the three offerors who submitted the highest and best offers to submit a second round of offers. From those, the Receiver considered one to be the best because it provided:

- (a) A purchase price between 0% and 2% higher than the appraised fair market value, and between 24% and 27% higher than the appraised power of sale value; and
- (b) No conditions (making it the only unconditional offer received).

23. Based on advice from the Innisfil Broker and on the 1889 Simcoe Appraisals, the Receiver accepted this offer, which was from an arm's length party.

24. As of the date of this Fourth Report, the purchaser of 1889 Simcoe has provided the Innisfil Broker with a deposit of \$50,000.00, which is being held in trust by the Innisfil 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 purchaser.

25. The Receiver recommends that this Court approve the 1889 Simcoe Transaction because:

- (a) The Receiver selected a listing brokerage for the 1889 Simcoe through a competitive proposals process;
- (b) The Innisfil Broker marketed the 1889 Simcoe for sale to the public and showed it to nineteen prospective purchasers;

- (c) The Receiver received nine other offers with lower purchase prices and with less desirable other terms;
- (d) The purchase price is higher than the power of sale value and equal to, or greater than, the fair market value;
- (e) The purchase price is sufficient to discharge the secured liability of the Debtors to Meridian, the only mortgagee registered on title. Meridian consents to the 1889 Simcoe Transaction;
- (f) The purchase price is sufficient to discharge the secured liability of the Debtors for outstanding property taxes due to the municipality;
- (g) The Innisfil Broker has advised the Receiver that the optimal season for selling cottage-type properties such as 1889 Simcoe is spring and summer; and
- (h) The Innisfil Broker recommended the 1889 Simcoe Transaction.

C. The 1779 Cross Transaction

26. On or around July 2, 2019, the Receiver entered into an Agreement of Purchase and Sale in respect of 1779 Cross (the “**1779 Cross Transaction**”), conditional on Court approval and the Receiver’s provision of vacant possession. The sale is set to close on September 12, 2019. If the Receiver fails to provide vacant possession by the closing date, the Receiver has sole discretion to postpone the closing date for up to fifty (50) days, after which the Agreement of Purchase and Sale is rendered null and void and the Receiver must return the purchaser’s deposit in full. A copy of the Agreement of Purchase and Sale is attached at **Confidential Appendix “E”**.

27. The Receiver obtained formal appraisals of 1779 Cross, as of June 24, 2019, which appraised the property on both a ‘power of sale’ basis and a ‘fair market value’ basis (the “**1779**

Cross Appraisals”). A copy of the 1779 Cross Appraisals are attached at **Confidential Appendix “F”**.

28. Sandy has apparently resided at 1779 Cross without paying rent since prior to the Receiver’s appointment. The March Order, to which Sandy consented, authorized the Receiver to take exclusive possession of the Property without interference from Sandy.¹ The Receiver permitted Sandy to remain at the property rent-free until June 30, 2019, when it requested that he vacate the property. Sandy has failed to do so as of the date of this Fourth Report, in violation of the Receiver’s request and of the March Order and the Judgment continuing the March Order.

29. The Receiver’s efforts to market and sell 1779 Cross have also been significantly impeded by the actions of Sandy and/or members of his family.

30. At the start of the sale process,

- (a) Sandy told prospective realtors that he had a right to maintain an office at 1779 Cross;
- (b) the Innisfil Broker placed a ‘For Sale’ sign at the front of the property, but it was advised by a neighbour that Sandy’s sons had removed the sign shortly after it had

¹ Paragraph 2 of the March Order (continued by the Judgment) states, in relevant part:

2. THIS COURT ORDERS that the Receiver is hereby empowered and authorized, but not required, to act at once in respect of the Property and without in any way limiting the generality of the foregoing, the Receiver is hereby expressly empowered and authorized to do any of the following where the Receiver considers it necessary or desirable:

...

- (d) to take possession of and exercise control over [enumerated Properties including 1779 Cross]

...

and in each case where the Receiver takes any such actions or steps, it shall be exclusively authorized and empowered to do so, to the exclusion of all other Persons [defined as including the Debtors, including Sandy, and all other persons with notice of the March Order] and without interference from any other Person.

been erected. As of the date of this Fourth Report, the 'For Sale' sign has not been recovered;

- (c) The Innisfil Broker made multiple appointments with Sandy for access to the property's interior so that it could take pictures for the sale listing, but was never able to do so because on each occasion Sandy either cancelled the meeting at the last minute or failed to be present at the appointed meeting time; and
- (d) Sandy refused to permit showings of 1779 Cross without his personal attendance.

31. On May 12, 2019, Receiver's counsel, Daniel Naymark, sent an email to Sandy's counsel, Phil Smith, stating:

It appears... that [Sandy] has told agents (a) not to attend at the Theodore property [33 Theodore, discussed below] as scheduled tomorrow; and (b) that he has a right to continue to occupy the Theodore and Cross properties post-sale. I do not need to explain to you the jeopardy to which he exposes himself by so doing. Without waiving any possible consequences of what he has done already, I ask that you please caution your client in strongest terms not to interfere further in the sales process.

Given that the assertion of continuing tenancy rights has only been made from Mr. Hutchens to these agents and not from you to me, I am proceeding on the assumption that it is not a position he is actually taking formally. If it is, he should bring a motion urgently and expect it will be opposed.

A copy of Mr. Naymark's email (without attachments) is attached at **Appendix 6**.

32. Mr. Smith did not respond to this email and Sandy did not bring a motion as invited.

33. On June 17, 2019, Mr. Naymark wrote to Mr. Smith advising of the missed appointments, lack of cooperation, and the removal of the For Sale Sign. A copy of the letter is attached at **Appendix 7**.

34. On June 18, 2019, Mr. Smith responded to explain that Sandy had missed an appointment with the Innisfil Broker because his car had broken down, and that his sons had acted on their own accord to remove the For Sale sign. Mr. Smith advised that Sandy would agree to provide the Innisfil Broker with a key (kept inside a lockbox on the front door), to keep the property in a “tidy condition”, and vacate the premises for showing as long as he was given 24 hours’ notice. A copy of Mr. Smith’s email, dated June 18, 2019, is attached at **Appendix 8**.

35. From June 18, 2019 to June 28, 2019, the Innisfil Broker booked thirty-seven showings of the property. However, the Innisfil Broker was only able to show the property 20 times because Sandy failed to confirm seventeen showings.

36. The Innisfil Broker advised the Receiver that prospective purchasers and/or their realtors reported that the house was in extremely poor condition for scheduled showings, including:

- (a) The presence of alcohol, drug paraphernalia, food, garbage, dirty laundry, and smoke;
- (b) The obstruction of the entrance to the property by garbage; and
- (c) An odour in the house from rotting food, alcohol, garbage and other substances left out in the open, which so unbearable that prospective purchasers refused to walk through the house.

37. On multiple occasions, even though the Innisfil Broker had confirmed the showing with Sandy, his sons (who reside with Tanya at 33 Theodore Place) were present at the property and claimed that they were not informed of the showing. In addition to the poor condition of the

premises, prospective purchasers reported being told that the property was not for sale and being yelled at for trespassing. Multiple prospective purchasers decided, upon arrival, not to view the property because they felt unsafe due to the presence of a loud, unleashed dog, and/or because there was someone home who refused to answer the door.

38. Attached at **Appendix 9** are three email reports, dated June 24, 2019, June 25, 2019 and June 28, 2019, from the Innisfil Broker summarizing the experiences of various prospective purchasers who attended at 1779 Cross.

39. On June 20, 2019, Mr. Smith emailed Mr. Naymark to express Sandy's concerns with the Receiver's sale process for 1779 Cross. Mr. Naymark responded by email on June 24, 2019, and included a copy of the Innisfil Broker's initial submission to the Receiver of his opinion of the value of 1779 Cross. A copy of this email chain, without attachments, is attached at **Appendix 10**.

40. The Receiver received no offers by the offer presentation deadline of 12:00 p.m. on June 28, 2019. A prospective buyer's agent notified the Receiver that on that day, a large amount of garbage was placed on the porch of the Property around the entryway, preventing access to the lockbox on the door.

41. On June 30, 2019, Mr. Naymark emailed Mr. Smith to advise him of the continued obstruction of the Receiver's attempt to sell 1779 Cross, and that the Receiver could not sell the property for fair market value without taking possession, pursuant to the March Order, by July 15, 2019. A copy of Mr. Naymark's email to Mr. Smith, dated June 30, 2019, is attached at **Appendix 11**.

42. From June 18, 2019 to July 9, 2019, the Innisfil Broker engaged in a sale process that included a social media campaign, the advertisement of the listing on several real estate website,

including MLS standard listing on www.realtor.ca, and setting an offer presentation date of June 28, 2019.

43. Following the offer presentation deadline, the Receiver received four offers between June 28, 2019 and July 2, 2019. In response, the Innisfil Broker requested a second round of offers. All four prospective purchasers complied with this request. From the pool of second-round offers, the Receiver considered one to be the best because it provided:

- (a) The highest purchase price;
- (b) The highest deposit; and
- (c) No conditions (making it the only unconditional offer received).

44. The Receiver continued negotiations with the purchaser to improve the purchase price. During the negotiations, the purchaser advised that its legal counsel had reviewed the various Court Orders and materials posted on the Receiver's case website and had become concerned about the Receiver's ability to provide vacant possession. In response, the Receiver agreed that it would exercise best efforts to provide vacant possession by the closing date. If unable to do so, the Receiver has sole discretion to extend the closing date for up to fifty days, after which the Agreement of Purchase and Sale would be rendered null and void and the Receiver would have to return the deposit in full.

45. Based on advice from the Innisfil Broker and on the 1779 Cross Appraisals, the Receiver accepted the terms of the 1779 Cross Transaction, which was from an arm's length party.

46. As of the date of this Fourth Report, the purchaser has provided the Innisfil Broker with a deposit of \$50,000.00, which is being held in trust by the Innisfil 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 purchaser.

47. On July 11, 2019, Mr. Naymark emailed Mr. Smith to advise that the Receiver had finalized the 1779 Cross Transaction and, because the closing date was September 12, 2019, Sandy could stay at the premises until July 31, 2019. A copy of the email from Mr. Naymark to Mr. Smith is attached at **Appendix 12**.

48. Sandy has not substantively responded to the Receiver's requests that he vacate 1779 Cross, and as of the date of this Fourth Report, he has not done so. The Receiver accordingly seeks leave to issue a writ of possession to remove him from the property.

49. On or around July 23, 2019, Sandy commenced an application before the Landlord Tenant Board, naming Paul Denton of the Receiver as the respondent "landlord", seeking to impose certain restrictions on the Receiver's ability to sell 1779 Cross. A copy of the Notice of Hearing is attached at **Appendix 13**.

50. Sandy's application violated the March Order (continued by the Judgment), which prohibited proceedings against the Receiver or in respect of enumerated properties including 1779 Cross. Through counsel, the Receiver advised Sandy that it intended to bring contempt proceedings in respect of his continuing violation of the March Order and to seek a penalty of incarceration in order to avoid further obstruction of property sales. In response, on August 9, 2019, Sandy agreed to withdraw his Landlord Tenant Board application. As of the date of this Fourth Report, Sandy has not withdrawn the application. Copies of the corresponding emails between counsel for the Receiver and counsel for Sandy are attached at **Appendix 14**.

51. Sandy did not assert a residential tenancy right to remain in 1779 Cross prior to consenting to the March Order, paragraph 2(d) of which authorizes and empowers the Receiver to take exclusive possession of 1779 Cross, or the April Order authorizing and empowering the Receiver to market and sell the Property. Nor did Sandy assert the existence of a residential lease agreement or rental payments in respect of 1779 Cross prior to issuing the Landlord Tenant Board application. To the contrary, Sandy's information provided to the Receiver pursuant to the March Order was that he has paid no rent in respect of 1779 Cross, and he asserted only a right to maintain an office at 1779 Cross (not a residential tenancy right) to prospective realtors as described above, an assertion he did not formally make or maintain in this proceeding in response to Mr. Naymark's May 12, 2019 email attached above at Appendix 6.

52. The Receiver recommends that this Court approve the 1779 Cross Transaction because:

- (a) The carrying costs incurred to preserve 1779 Cross will continue to accrue with no off-setting revenue, as it has been occupied by Sandy who has not paid any rent;
- (b) The Receiver selected a listing brokerage for 1779 Cross through a competitive proposals process;
- (c) The Innisfil Broker used best efforts to market 1779 Cross for sale to the public, which was kept in poor condition and poor repair by Sandy;
- (d) Despite Sandy's and his sons' lack of cooperation with and obstruction of the marketing and sale process described above, the Innisfil Broker arranged for 1779 Cross to be showed to twenty prospective purchasers;
- (e) The Receiver received three other offers for lower purchase prices and with less desirable other terms;

- (f) The purchase price in the 1779 Cross Transaction is within 1-2% of the property's appraised fair market value, and 13-15% higher than its appraised power of sale value;
- (g) The 1779 Cross Transaction provides for the highest and best sale price of all offers;
- (h) The purchase price is sufficient to discharge the secured liability of the Debtors to Meridian, the only mortgagee registered on title. Meridian consents to the 1779 Cross Transaction;
- (i) The purchase price is sufficient to discharge the secured liability of the Debtors for outstanding property taxes due to the municipality;
- (j) As reflected in the email exchange attached above at Appendix 10 above, the Receiver does not credit Sandy's assertion that the value of 1779 Cross is higher because of the listing price of a neighbouring property. The property in question consists of a larger lot with more desirable physical features and a larger cottage building, and Sandy points to its listing price (at which it has been listed for over a year) rather than a sale price;
- (k) The Innisfil Broker has advised the Receiver that the optimal season for selling cottage-type properties such as 1779 Cross is spring and summer; and
- (l) The Innisfil Broker recommended the 1779 Cross Transaction.

53. The Receiver further recommends that this Court grant leave to issue a Writ of Possession in respect of the 1779 Cross property as soon as possible because:

- (a) The 1779 Cross Transaction will not close unless the Receiver is able to provide vacant possession;

- (b) The Receiver will most likely not be able to obtain a comparable offer or purchase price if the 1779 Cross Transaction does not close as scheduled, or at all, because the prime season for property sales in Innisfil will have lapsed for the year;
- (c) Sandy has obstructed the Receiver's efforts to sell 1779 Cross, both directly and indirectly through the actions of his sons; and
- (d) Sandy has sufficient notice of the March Order, to which he consented, authorizing the Receiver to take exclusive possession of 1779 Cross; and
- (e) In the event that a Sheriff is to proceed with an eviction, adequate time will be required to conclude such process and clear 1779 Cross of belongings and waste in time to meeting the closing date.

V. UPDATE ON SALE PROCESS FOR 33 THEODORE PLACE

54. The April Order authorized and empowered the Receiver to market and sell two Properties in addition to the Innisfil Properties. The Receiver has closed the sale of one such property, located at 42 Clemow Avenue, Sudbury, pursuant to the June Order. The other Property is municipally known as 33 Theodore Place, Thornhill, Ontario ("**33 Theodore**").

55. Tanya resides at 33 Theodore with her and Sandy's three children: two sons, aged 18 and 20, and a daughter aged 16. The Receiver is advised that there is at least one, but as many as three, dogs living at 33 Theodore. Meridian is the first mortgagee registered on title to 33 Theodore and has advised the Receiver that it wishes to realize on its security for the underlying loan, which is in default, immediately.

56. Since the issuance of the April Order, the Receiver has encountered considerable obstacles in its attempt to sell 33 Theodore.

57. The Receiver sought listing proposals and marketing outlines from three real estate brokerages and received comprehensive proposals from each. Each of the realtors who attended at 33 Theodore encountered similar hindrances to those that were experienced by the Innisfil Broker, prospective purchasers and their agents at 1779 Cross. For example, one realtor advised the Receiver that a growling dog prevented him from viewing the upstairs of the property and that Tanya refused to move the dog. Another realtor advised the Receiver that one of Sandy's and Tanya's sons was present during his property visit, that the son was aggressive with the agent and refused to allow the agent to tour the home, and that he told the agent he was acting pursuant to his father's instructions. None of the realtors attending at 33 Theodore Property were permitted full access to the premises.

58. In addition, all three realtors who visited 33 Theodore advised the Receiver that the Property was in a critically poor state of repair and maintenance. All the realtors advised the Receiver that the Property's current condition would significantly depress its market value.

59. Unlike 1779 Cross, the March Order does not authorize and empower the Receiver to take exclusive possession of 33 Theodore. The Receiver requested that Tanya move out of 33 Theodore so that it can be repaired and staged for sale in order to recognize the asset's full value. Tanya has refused to do so. So long as Tanya continues to reside at 33 Theodore, the Receiver expects it will be unable to sell this Property except at a significant discount to its value.

60. Tanya instead proposed that the Receiver be authorized to market and sell two other Properties (1573 Houston Avenue, Innisfil and 1479 Maple Road, Innisfil), to use the proceeds of sale of those Properties to buy out Meridian's mortgage on 33 Theodore, and to forebear on the sale of 33 Theodore pursuant to the stay of enforcement set out in the Judgment. The Receiver and

the other parties to this proceeding have consented to Tanya's proposal, and no other member of the Service List opposes it. As of the date of this Fourth Report, the Receiver has circulated a detailed draft order in respect of that proposal to the Service List and expects to seek that order on consent at the next chambers appointment in this matter, presently scheduled for August 19, 2019.

VI. ONGOING EFFORTS TO OBSTRUCT SALES; URGENCY OF PROPOSED SALES

61. The Receiver seeks an order permitting the above sale transactions on an urgent basis due to:

- (a) The impending scheduled closing dates of the transactions, which it may not be possible to extend;
- (b) The fact that the market for the Innisfil Properties is a seasonal one, peaking in spring and summer, and that the optimal selling window will accordingly soon end if the contemplated sales do not close;
- (c) Sandy's and Tanya's ongoing efforts to frustrate the sales.

62. With respect to (c), in addition to the obstruction of the sales of 1779 Cross and 33 Theodore described above, the Receiver has recently received reports of efforts to obstruct the 1889 Simcoe Transaction and 1790 Cross Transaction. The Receiver is concerned by this conduct. Specifically:

- (a) On June 14, 2019, the Receiver's realtor advised that the "For Sale" sign placed at 1790 Cross had been removed. It was later located in a nearby ditch;
- (b) On July 18, 2019, the Receiver's realtor for 1790 Cross advised that Tanya was calling that Property's tenant, and that the tenant did not wish to speak with Tanya and was unsure what to do;

- (c) On July 22, 2019, the tenant of 1889 Simcoe advised the Receiver that Tanya was calling him repeatedly and that she advised him she was trying to find a way to save the properties; and
- (d) On July 23, 2019, the tenant of 1790 Cross advised the Receiver that Tanya had arrived uninvited at the Property and pressured the tenant to sign a two-year tenancy agreement, which the tenant declined to sign. The tenant advised the Receiver that she was fearful and that she did not want to have contact with Tanya and asked if she could block Tanya's number. The Receiver advised that Tanya had no authority to enter into a tenancy agreement in respect of the Property. In response to the tenant's questions, the Receiver advised the tenant that she was not obligated to speak with Tanya.

63. At this time, the Receiver has made no determination as to whether to initiate contempt proceedings against Sandy or Tanya. The Receiver's focus is on fulfilling its mandate to preserve the Debtors' assets and to monetize them through sales where authorized, and wishes to do so without incurring unnecessary expense. However, the Receiver may elect to initiate contempt proceedings if Sandy's and Tanya's obstruction continues.

VII. PROPOSED DISTRIBUTION TO SECURED CREDITORS

64. The Innisfil Properties are subject to the following charges against title:

- (a) All three Innisfil 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 three Innisfil 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 Capital Inc. ("**Hillmount**");

- (c) Meridian is the first registered mortgagee on all three Innisfil Properties, and the only mortgagee registered on title to each of 1779 Cross and 1889 Simcoe;
- (d) There is a second mortgages registered on title to 1790 Cross in favour of Dina Brik, Tanya's mother; and
- (e) All three of the Innisfil Properties have outstanding property taxes due to the Town of Innisfil.

A. Hillmount

65. 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 15**.

66. 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.

B. Meridian

67. Meridian is arm's length from the Debtors and has documented its security and mortgage loans (the "**Meridian Security**") to the Receiver's satisfaction. The Receiver has obtained a security opinion, which concluded that the Meridian Security 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 16**.

68. As of the scheduled closing dates of each of the Innisfil Sale Transactions, payments due to Meridian on its mortgages will total approximately \$581,809.14, as of August 19, 2019, plus \$20,688.70 in legal fees. This figure is based on payout balances provided to the Receiver by Meridian on August 9, 2019, as follows:

- (a) on the 1779 Cross property, approximately \$301,175.13;
- (b) on the 1790 Cross property, approximately \$80,046.89; and
- (c) on the 1889 Simcoe property, approximately \$200,587.12.

69. The Receiver expects to receive an updated payout statement from Meridian with final figures prior to paying out the balance of these mortgages

70. Meridan has advised the Receiver that as of June 3, 2019, it has incurred \$38,598.32 in legal fees with respect to these three properties and 33 Theodore Place. For the purposes of this report, the Receiver has allocated \$20,688.70 of Meridian's legal fees incurred based on the proportion of the mortgage balance of these three properties compared to the total balance of all

four mortgages. Meridian consents to this approach, but advises that it may have additional legal fees post-June 3, 2019 that need to be accounted for in the future.

C. Property Tax

71. The annual property tax levies issued by the Town of Innisfil for 2019 on each of the Innisfil Properties are as follows:

- (a) On the 1779 Cross property: \$5,938.14;
- (b) On the 1790 Cross property: \$3,250.86; and
- (c) On the 1889 Simcoe property: \$4,718.75.

72. As of the date of this Fourth Report, the Receiver believes that no instalment payments have been made by the Debtors to the Town of Innisfil in respect of property taxes. On closing of the 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.

D. Dina Brik

73. Dina Brik is Tanya's mother and therefore a non-arm's length party to the Debtors. Ms. Brik has a registered charge on the 1790 Cross Property, registered as instrument number SC962560 on February 10, 2012, in the amount of \$80,750. On April 26, 2012, Ms. Brik registered a postponement of her charge in favour of Meridian. Accordingly, Ms. Brik's security, if valid and enforceable, ranks subsequent to the priority of the Meridian Security. A copy of the parcel register for the 1790 Cross property, dated November 16, 2018, is attached as **Appendix 17**.

74. 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 1790 Cross 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 1790 Cross apply as against the proceeds of sale thereof.

E. Proposed Distributions

75. With Hillmount's consent, the Receiver proposes to distribute from the net proceeds of sale of the Innisfil Properties (together, the **"Innisfil Sale Transactions"**):

- (a) Amounts due to the Town of Innisfil in respect of outstanding property taxes levied against the respective Innisfil Properties, from the sale of each; then
- (b) \$200,000, plus interest, to Hillmount on account of the Receiver's Certificate Commitment; then
- (c) The balance of Meridian's loans in respect of each Innisfil Property, up to the amounts for which those loans are secured by mortgages registered against each Innisfil Property. The Receiver anticipates that the net proceeds of the Innisfil Sale Transactions after the above distributions will exceed the amount of Meridian's loans in respect of the Innisfil Properties.

76. The Receiver and its counsel are content to postpone the payment of their fees and disbursements to the above payments.

VIII. SEALING ORDER

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

IX. FEES OF THE RECEIVER AND ITS COUNSEL

78. The Receiver seeks approval of its fees and disbursements and those of its counsel, pursuant to the Interim Appointment Order and the March Order.

79. Attached at **Appendix 18** is an affidavit of the Receiver setting out its fees and disbursements to June 30, 2019. The Receiver's detailed statements of account for this period are attached as exhibits to its affidavit. The total quantum of the amounts incurred and for which approval is sought is fees of \$560,653.00, together with HST on fees of \$72,884.92 and disbursements (including HST) of \$16,430.13, for a total of \$649,968.10.

80. Attached at **Appendix 19** is an affidavit of counsel to the Receiver in this proceeding, Naymark Law, setting out its fees and disbursements to July 31, 2019. Counsel's detailed statements of account for this period are attached as exhibits to that affidavit. The total quantum of the amounts incurred and for which approval is sought is fees and disbursements of \$234,013.71, plus HST of \$29,795.28, for a total of \$263,808.99.

X. RELIEF REQUESTED

81. Based on the foregoing, the Receiver respectfully recommends that this Court provide the relief noted in paragraph 6 of this Fourth Report.

All of which is respectfully submitted this 13th day of August, 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. 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

FOURTH REPORT OF THE RECEIVER

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