

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

BETWEEN:

ZAHERALI VISRAM

Applicant

- and -

2220277 ONTARIO INC.

Respondent

**APPLICATION UNDER SUBSECTION 243(1) OF THE *BANKRUPTCY AND
INSOLVENCY ACT*, R.S.C. 1985, c. B-3, AS AMENDED, AND SECTION 101 OF THE
COURTS OF JUSTICE ACT, R.S.O. 1990, c. C.43, AS AMENDED**

**THIRTEENTH REPORT TO THE COURT OF A. FARBER & PARTNERS INC. IN ITS
CAPACITY AS COURT APPOINTED RECEIVER OF 2220277 ONTARIO INC.**

January 9, 2019

A. GENERAL BACKGROUND

1. On August 1, 2017, pursuant to an order (the “**Receivership Order**”) of this Honourable Court (the “**Court**”), A. Farber & Partners Inc. was appointed receiver (the “**Receiver**”), pursuant to section 243(1) of the *Bankruptcy & Insolvency Act*, R.S.C. 1985, c. B-3 (“**BIA**”) and Section 101 of the *Courts of Justice Act*, R.S.O. 1990 over all of the assets, undertakings and properties (the “**Property**”) of 2220277 Ontario Inc. (the “**Debtor**”). A copy of the Receivership Order is attached hereto as Appendix “A”.
2. The Debtor is a corporation incorporated pursuant to the laws of the Province of Ontario.
3. Evan Karras (“**Karras**”) is the sole director and officer of the Debtor.

4. The Property includes, without limitation, the real property municipally known as 650 Bay Street and 55 Elm Street located in Toronto, Ontario (the “**Real Property**”). The Debtor acquired the Real Property on November 13, 2009.
5. At the time of the Receiver’s appointment, a hotel and restaurant occupied the Real Property pursuant to leases entered into with the Debtor. The Receiver terminated both leases for non-payment of rent and the premises are now vacant.
6. The Debtor has multiple secured and unsecured creditors. Eight parties hold mortgages/charges registered against the Real Property with a total face value of approximately \$13.25 million (additional amounts are alleged to be secured by the mortgages increasing the total indebtedness to approximately \$15 to \$20 million). In addition to the amounts owing to the mortgagees, there are various PPSA registrations against the Debtor, approximately \$54,498.90 of source deduction amounts and \$42,146.22 of HST arrears owing to the Canada Revenue Agency (“**CRA**”), approximately \$140,000 of property taxes owing to the City of Toronto, and various unsecured creditors.

B. PURPOSE OF THE REPORT

7. The purpose of this Thirteenth Report to the Court of A. Farber & Partners Inc. (the “**Thirteenth Report**”), is to report to the Court on the Receiver’s activities since the Tenth Report to the Court of the Receiver, dated October 23, 2018 (the “**Tenth Report**”), and seek
 - (a) an Order:
 - (i) Approving the Receiver’s Twelfth Report to the Court, dated November 19, 2018 (the “**Twelfth Report**”), attached hereto as Appendix “B” (without appendices), and this Thirteenth Report, and the activities and conduct of the Receiver described in each report;
 - (ii) Approving the Receiver’s Statement of Receipts and Disbursements, dated January 3, 2019 (the “**R&D**”);

- (iii) Approving the fees and disbursements of the Receiver and its counsel, as described herein and the affidavits as to fees filed in respect of the Receiver's motion;
 - (iv) Amending paragraph 20 of the Receivership Order to increase the Receiver's borrowing limit from \$700,000 to \$750,000 and, in the event that the Transaction (defined below) does not close on or before February 28, 2019, further amending paragraph 20 of the Receivership Order to increase the Receiver's borrowing limit from \$750,000 to \$950,000;
 - (v) Authorizing the Receiver to file an assignment in bankruptcy for and on behalf of the Debtor, and directing the Receiver, upon the trustee's appointment, to pay \$30,000 to the trustee in bankruptcy to fund the administration of the bankruptcy;
 - (vi) Authorizing and directing the Receiver to distribute \$6,500,000 to Zaherali Visram ("**Visram**") out of the proceeds from the closing of the Transaction, on a without prejudice basis and subject to a future accounting;
 - (vii) Authorizing the Receiver, *nunc pro tunc*, to redact the confidential appendices to the Thirteenth Report served on any party other than this Honourable Court and sealing the confidential appendices from the public record until the closing of the Transaction or further order of the Court;
- (b) An Order:
- (i) Approving the transaction (the "**Transaction**") contemplated by the Agreement of Purchase and Sale, dated December 4, 2018, as amended by Amending Agreement, dated December 14, 2018, Waiver and Amending Agreement, dated December 19, 2018, and Amending Agreement, dated January 9, 2019 (collectively, the "**Sale Agreement**"), between Lanterra Developments Ltd. (the "**Purchaser**"), and the Receiver, ratifying the Receiver's execution of the Sale Agreement and authorizing the Receiver to take such steps and execute such

documents as may be necessary or desirable for the completion of the Transaction; and

- (ii) Vesting in the Purchaser all of the Debtor's right, title and interest in and to the Purchased Assets (as defined in the Sale Agreement) free and clear of all encumbrances, except certain permitted encumbrances.

C. DISCLAIMER

8. In preparing this Thirteenth Report, the Receiver has relied upon unaudited, draft and/or internal financial and other information provided by the sole director and officer of the Debtor, its advisors, and other third-party sources. The Receiver has not independently reviewed or verified such information. The Receiver has prepared this Thirteenth Report for the sole use of the Court and of the other stakeholders in these proceedings.

D. RECEIVER'S ACTIVITIES

9. The Receiver's activities since the Tenth Report include:
 - (a) continuing to conduct the Second Sale Process (defined below);
 - (b) finalizing the Receiver's Tenth Report, drafting and filing the Receiver's Eleventh and Twelfth Reports and attending Court on October 30, November 13, November 29 and December 5, 2018 regarding same;
 - (c) responding to ongoing queries from creditors including CRA, the City of Toronto and secured creditors ranking subsequent to the Applicant on the status of the Second Sale Process and preliminary consideration of the relative priority amongst the various claims;
 - (d) responding to queries from prospective purchasers, arranging for access to the data room and organizing site visits at the Real Property;
 - (e) discussions and negotiations of offers submitted by various parties, following up on potential credit bid by Visram and negotiating and finalizing the terms of the Sale Agreement;

- (f) coordinating various site supervision and maintenance duties of the Real Property, which include, but are not limited to, security site visits, alarm system monitoring, general property maintenance, minor property repairs and ongoing insurance and utility coverage;
- (g) reviewing and monitoring estate funding, deposits held in trust and projected funding required to the expected date of closing of the Transaction;
- (h) ongoing discussions with legal counsel to Karras regarding the disgorgement of about \$810,000 in insurance funds paid by Intact Insurance Company (“**Intact**”) to parties related to the Debtor prior to the receivership, the accounting thereof and the payment of another \$453,000 in settlement funds by Intact related to a business interruption claim as ordered by this Court;
- (i) ongoing discussions with legal counsel, the Debtor’s insurer and insurance broker to obtain the release of the \$453,000 Intact settlement ordered by this Court;
- (j) reviewing information and documentation provided to the Receiver by Karras in respect of the \$810,000 in Intact insurance proceeds paid out prior to the receivership, meeting with Karras to discuss same and following up with Karras regarding missing/additional information to be provided;
- (k) ongoing discussions with legal counsel regarding the \$200,000 trust funds held by Goldman Hine LLP and their cross-motion;
- (l) maintaining and updating the website including posting of Court reports, motion materials and updated service list;
- (m) initial drafting of this Thirteenth Report; and
- (n) ongoing estate banking and monitoring and HST filing compliance.

E. FIRST SALE PROCESS

10. Pursuant to the Order of the Honourable Justice McEwan, dated November 2, 2017 (the “**Stalking Horse Order**”), this Honourable Court approved a stalking horse sale process

(the “**Stalking Horse Sale Process**”) in respect of the Real Property and an Agreement of Purchase and Sale, dated October 3, 2017, between the Receiver and 650 Bay Holdco Inc. (the “**Stalking Horse Bidder**”).

11. The Receiver implemented the Stalking Horse Sale Process in accordance with the Stalking Horse Process Order. No qualified bids, other than the bid from the Stalking Horse bidder, were received. Pursuant to the Order of the Honourable Justice Hainey, dated January 29, 2018, this Court approved the vesting of the Real Property in and to the Stalking Horse Bidder. Ultimately, after requesting three separate extensions to the closing date, the Stalking Horse Bidder failed to close the transaction and forfeited its deposit to the Receiver.

F. SECOND SALE PROCESS

12. After the Stalking Horse Bidder failed to close the stalking horse transaction, this Honourable Court approved a second sales process in respect of the Real Property (the “**Second Sale Process**”) pursuant to the Order of the Honourable Justice Hainey, dated April 12, 2018 (the “**Second Sale Process Order**”). A copy of the Second Sale Process Order is attached hereto as Appendix “C”.
13. The Second Sale Process commenced on April 12, 2018. It initially contemplated the marketing of the Real Property over a 90-day time period with bids accepted at any time. Upon expiry of the initial 90-day term, on July 11, 2018, the Receiver had the authority to extend the sale process for an additional 90 days and the Receiver exercised its discretion to extend the Second Sale Process for an additional 90-day period.
14. The Second Sale Process ran over a six (6) month period, with bids accepted at anytime, and expired on October 8, 2018, without the execution of a purchase agreement. During the Second Sale Process:
 - (a) the opportunity was advertised in the Toronto Star and National Post on April 27, 2018 and in the Globe & Mail on May 1, 2018;
 - (b) by email dated May 2, 2018, Hotelier sent an ad to its distribution list;

- (c) the opportunity was noted in the Assets for Sale section of the Insolvency Insider's weekly email to the insolvency community;
 - (d) teasers were sent by the Receiver to 189 interested parties including real-estate developers, property management companies, real-estate agents and brokers, hotel owners, hotel operators, and lawyers;
 - (e) the Receiver set up and populated the data room;
 - (f) a total of 30 prospective purchasers executed NDAs and accessed the data room; and
 - (g) various parties conducted site visits as requested.
15. As a result of the Receiver's efforts, over the course of the six (6) month Second Sale Process, the Receiver received:
- (a) one unconditional bid, which the Receiver, after discussion with Visram, countered at a higher price but was not accepted;
 - (b) a number of highly conditional offers, most with lengthy due diligence periods and deposits less than the requisite 10%, none of which the Receiver could recommend to this Honourable Court; and
 - (c) a conditional offer which the Receiver, after discussion with Visram, countered at a higher price, however, the Receiver's counter-offer was not accepted and ultimately expired.
16. The Receiver brought a motion returnable September 12, 2018 to extend the timeline of the Second Sale Process to January 31, 2019. However, just prior to the return date of the motion, Visram notified the Receiver that he intended to submit a credit bid in respect of the Real Property. After a one-week adjournment, a draft credit bid was submitted to the Receiver on September 18, 2018. Accordingly, the Receiver did not proceed with its request to extend the Second Sale Process.

17. The Receiver reviewed the bid and provided comments on the agreement to Visram's counsel. The Receiver subsequently followed up with Visram's counsel and requested that Visram finalize his credit bid and submit same to the Receiver so that it could proceed with Court approval of same. As of the date of this Thirteenth Report, Visram has not submitted a final credit bid to the Receiver.
18. Pursuant to the Order of the Honourable Justice Haaney, dated October 30, 2018 (the "**October 30 Order**"), the Second Sale Process was reinstated, with certain amendments, including a veto in favour of Visram in respect of any offer for less than \$8 million. A copy of the October 30 Order is attached hereto as Appendix "D". Pursuant to the Endorsement of the Honourable Justice Haaney, dated October 30, 2018, the Second Sale Process, as reinstated, was held in abeyance until November 13, 2018.
19. On November 13, 2018, the Receiver recommenced the Second Sale Process and reached out to prospective purchasers who had previously indicated an interest in the Real Property.
20. Upon and subsequent to the reinstatement of the Second Sale Process, the Receiver:
 - (a) sent updated teasers to the previously noted 189 prospective offerors to advise of the Second Sale Process reinstatement;
 - (b) sent updated teasers in respect of the opportunity to an additional 18 prospective offerors;
 - (c) advertised the opportunity in the Toronto Star on November 23, 2018, and in the Globe & Mail on November 28, 2018; and
 - (d) the opportunity was noted in the Assets for Sale section of the Insolvency Insider's weekly email to the insolvency community.
21. Seven (7) additional prospective purchasers executed NDAs and accessed the data room. Three (3) additional parties conducted site visits at the Real Property.
22. The Receiver also entered into negotiations with the Purchaser. On December 4, 2018, the Receiver and the Purchaser executed the Sale Agreement and the Purchaser paid the

deposit. The Sale Agreement provided for an environmental due diligence condition (the “**Due Diligence Condition**”) in favour of the Purchaser, which was to be satisfied or waived on or before December 14, 2018. The Receiver subsequently agreed to extend the deadline for satisfaction or waiver of the Due Diligence Condition to December 19, 2018.

23. On December 19, 2018, pursuant to the Waiver and Amending Agreement, the Purchaser waived the Due Diligence Condition and the closing date for the Transaction was set as the later of the fifth (5th) business day following the granting of the Approval and Vesting Order, and February 15, 2019. However, as the original closing date before signing the Waiver and Amending Agreement would have been the 20th day after court approval there will be a closing adjustment in favour of the Receiver to cover the carrying costs for the additional days.
24. Pursuant to the Amending Agreement, dated January 9, 2019, the Sale Agreement was further amended to clarify the assets and liabilities excluded from the Transaction and set out the Receiver’s obligation regarding the payment of property tax and utility arrears.
25. The Receiver now seeks an order approving the Sale Agreement and vesting the Purchased Assets in and to the Purchaser free and clear of all encumbrances, except certain permitted encumbrances. A copy of the Sale Agreement with the commercially sensitive terms redacted is attached hereto as Appendix “E”. An unredacted copy of the Sale Agreement is attached hereto as Confidential Appendix “1”.
26. The Receiver recommends the approval of the Sale Agreement for the following reasons:
 - (a) the Second Sale Process was carried out in accordance with the terms of the Second Sale Process Order and the October 30 Order;
 - (b) the Receiver has conducted two sale processes in respect of the Real Property, first the Stalking Horse Sale Process and then the Second Sale Process, which ran over a six (6) month period, expired without an executed purchase agreement, and was subsequently reinstated;

- (c) the Real Property has been exposed to the market for a lengthy period of time and the market has been canvassed;
 - (d) the Sale Agreement represents the best and highest offer for the Real Property;
 - (e) the Purchase Price (as defined in the Sale Agreement) is supported by the third-party appraisals in respect of the Real Property;
 - (f) the sale is on an “as is, where is” basis and the conditions to closing, as contained in the Sale Agreement, are customary for a transaction of this nature; and
 - (g) the Transaction is in the best interests of the stakeholders and for the benefit of the estate.
27. A summary of the offers received in respect of the Real Property during the course of the Second Sale Process is attached hereto as Confidential Appendix “2”. Copies of the appraisals obtained by the Receiver in respect of the Real Property are attached hereto as Confidential Appendix “3”.

G. DISTRIBUTION

28. Visram, the Applicant in this proceeding, holds the first and second mortgages registered on title to the Real Property. The total quantum of Visram’s claim has been contested in this proceeding.
29. The Receiver obtained an opinion from its legal counsel that, subject to the usual assumptions and qualifications, the two mortgages registered in favour of Visram are each valid and enforceable. A copy of the subsearch in respect of the Real property, dated January 2, 2019, is attached hereto as Appendix “F”.
30. Pursuant to the Order of the Honourable Justice Hainey, dated February 22, 2018 (the “**Distribution Order**”), this Honourable Court authorized a distribution to Visram (out of the proceeds of the stalking horse transaction) in the total amount of \$8,000,000, without prejudice and subject to a future accounting. A copy of the Distribution Order is attached hereto as Appendix “G”.

31. That distribution was never made, save for a small distribution of \$600,000 from the deposit forfeited by the Stalking Horse Bidder. The \$600,000 distribution was ratified pursuant to the Second Sale Process Order.
32. The Receiver is proposing an interim distribution in the total amount of \$6,500,000, which allows for a sufficient holdback to pay property taxes and utilities, outstanding professional fees, closing costs and a contingency in the event of unforeseen expenses. The Receiver has secured time on March 19, 2019, to, among other things, seek authority to distribute additional funds once the closing costs and other matters are finalized.

H. OTHER MATTERS

33. In addition to the real estate matters discussed above, the Receiver continues to deal with a number of non-real estate matters including:
 - (a) the \$70,000 received from Goldman Hine LLP held in trust by the Receiver pursuant to the Order of the Honourable Justice Haaney, dated November 22, 2018;
 - (b) the \$810,000 in insurance funds paid by Intact to parties related to the Debtor prior to the receivership and the accounting thereof to be provided by Karras pursuant to Order of the Honourable Justice Penny, dated September 20, 2018 (the “**September 20 Order**”), a copy of which is attached hereto as Appendix “H”, and the November 29, 2018 Endorsement of the Honourable Justice Chiapetta, attached hereto as Appendix “I”;
 - (c) meeting with Karras regarding the accounting described above and the documentation to be provided in support of same, pursuant to the Endorsement of Justice Chiapetta, dated December 5, 2018, a copy of which is attached hereto as Appendix “J” (Her Honour ordered the parties to appear before her on January 23, 2019, to update the Court in respect of Karras’ compliance with the September 20 Order);
 - (d) the \$453,189.90 in funds paid by Intact which the Receiver is holding in trust pursuant to the September 20 Order;

- (e) the outstanding rent owed by bE SixFifty Hotel Inc. to the Debtor pursuant to the Lease, dated July 27, 2016, between the Debtor and bE SixFifty Hotel Inc.; and
 - (f) the claim filed by the Receiver with the CRA for HST ITC refunds of approximately \$149,737.
34. The Receiver will report further on these matters in future reports. Depending on the resolution of these other matters, the Receiver may need to review the relative priorities of the CRA deemed trust claims, the non-real estate security of the Applicant and the other secured creditors.

I. BANKRUPTCY

35. The Receiver is seeking authority to have the discretion to assign the Debtor into bankruptcy. After the sale of the Real Property, and the determination of the respective entitlements of the Debtor and others to the money held by the Receiver in trust, there will be outstanding claims to be administered. Accordingly, a bankruptcy may be required to efficiently finalize the administration of the Debtor's estate.
36. If the decision is made to proceed with a bankruptcy, then the Receiver proposes to transfer a retainer of \$30,000 from the receivership to cover the administrative costs in connection with a bankruptcy.

J. BORROWING CAPACITY

37. Pursuant the Receivership Order, the Receiver was authorized to borrow such monies from time to time as it may consider necessary or desirable, provided that the outstanding principal amount did not exceed \$250,000 (or such greater amount as this Court may by further Order authorize).
38. Initially, the Receiver borrowed \$50,000 from Visram to cover the carrying costs of the Real Property while it ran the original sale process. That loan was evidenced by a Receiver's Certificate, dated August 18, 2017.
39. Upon termination of the Stalking Horse Agreement the Receiver applied the \$1.5 million forfeited deposit to accrued and outstanding carrying costs and professional fees. In

addition, pursuant to the Sale Process Order, the Receiver distributed \$600,000 to Visram as an interim distribution. The Receiver held back certain of the forfeited deposit funds to cover the ongoing carrying costs of the Real Property.

40. It took longer than expected to sell the Real Property and, pursuant to a Receiver's Certificate, dated July 6, 2018, the Receiver borrowed an additional \$200,000 from a third-party lender to cover the ongoing carrying costs of the Real Property.
41. Pursuant to the September 20 Order, the Receivership Order was amended and the Receiver was authorized to borrow such monies from time to time as it may consider necessary or desirable, provided that the outstanding principal amount does not exceed \$700,000 (or such greater amount as this Court may by further Order authorize). A copy of the September 20 Order is attached hereto as Appendix "H".
42. Pursuant to a Receiver's Certificate, dated September 28, 2018, the Receiver borrowed an additional \$450,000 from a third-party lender to cover the ongoing carrying costs of the Real Property and pay outstanding and accruing professional fees.
43. The Receiver estimates the estate's cash needs (not including professional fees) to be approximately \$25,000 per month in Real Property carrying costs, including utilities, security and insurance. In addition, the boiler at the Real Property required repair work to ensure the property remains heated in the winter months, which costs are estimated to be \$1,500.
44. The Receiver's R&D is attached hereto as Appendix "K". The R&D indicates approximately \$45,125.65 cash remains in the estate account, excluding the \$453,189.90 Intact proceeds and the \$70,000 from Goldman Hine LLP held in trust pending further order of this Court. The Receiver also holds the Purchaser's deposit separately in trust pending the closing of the Transaction.
45. The Receiver does not intend to pay accrued property taxes or any CRA deemed trust claims until the closing of the Transaction. Accrued property taxes will be paid out of the closing proceeds. The amount of the CRA deemed trust claims will be held back pending a determination as to whether it has priority over Visram's (or others) mortgage claim.

46. The Receiver estimates that the available \$45,125.65 should be sufficient to cover the out-of-pocket carrying costs of the Real Property to the February 15, 2019 scheduled closing of the Transaction. However, the Receiver requests a small increase of \$50,000 in its borrowing capacity to cover any unexpected expenses or repairs and the carrying costs of the Real Property to the end of February in the event the closing of the Transaction is delayed.
47. The Transaction is currently scheduled to close on February 15, 2019. In the event that the Transaction does not close as scheduled, the Receiver requests an additional increase in its borrowing capacity to \$950,000 to pay accrued and unpaid professional fees and ongoing carrying costs of the Real Property.

K. FEES AND R&D

48. The Receiver's R&D, dated January 3, 2019, is attached hereto as Appendix "K".
49. The total fees of the Receiver during the period from October 5, 2018, to December 31, 2018, amount to \$114,192.50, together with disbursements of \$1,285.80 and HST in the amount of \$14,845.30, totalling \$130,323.33. The fees and disbursements of the Receiver are more particularly described in the Affidavit of John Hendriks, sworn January 4, 2018, and filed in support of the Receiver's motion.
50. The legal fees incurred by the Receiver during the period from October 1, 2018, to December 31, 2018, for services provided by the Receiver's legal counsel, Dentons Canada LLP ("**Dentons**"), amount to \$107,765.00, together with expenses and disbursements of \$3,784.42 and HST in the amount of \$14,459.83, totalling \$126,009.25. The fees and disbursements of Dentons are more particularly described in the Affidavit of Michael Davies, sworn January 7, 2019, and filed in support of the Receiver's motion.
51. The privileged and commercially sensitive information contained in the Affidavit of John Hendriks has been redacted. The Receiver respectfully submits that the Receiver's fees and disbursements and Dentons' fees and disbursements are reasonable in the circumstances and have been validly incurred in accordance with the provisions of the Receivership Order.

L. SEALING

52. The Confidential Appendices contain confidential and commercially sensitive information that if, disclosed, could jeopardize the Receiver's efforts to sell the Real Property. Accordingly, the Receiver requests that the Confidential Appendices to be sealed from the public record until the closing of the Transaction.


M. RECOMMENDATIONS

53. The Receiver respectfully requests that this Honourable Court make an order granting the relief sought by the Receiver in its Notice of Motion, dated January 9, 2019.

**ALL OF WHICH IS RESPECTFULLY SUBMITTED
THIS 9th DAY OF JANUARY, 2019.**

**A. Farber & Partners Inc. in its capacity
as Court-appointed Receiver of 2220277 Ontario Inc.
and not in its personal or corporate capacity**

Per: _____


Name: John Hendriks
Title: Managing Director

ZAHERALI VISRAM
Applicant

- and -

2220277 ONTARIO INC.
Respondent

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

PROCEEDING COMMENCED AT TORONTO

**THIRTEENTH REPORT OF A. FARBER & PARTNERS
INC. IN ITS CAPACITY AS COURT APPOINTED
RECEIVER OF 2220277 ONTARIO INC.**

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