

**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**

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

August 9, 2017

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. (“**Farber**”) was appointed receiver (the “**Receiver**”), pursuant to section 243(1) of the *Bankruptcy & Insolvency Act*, R.S.C. 1985, c. B-3 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. Mr. Evan Karras (“**Karras**”) is the sole officer and director and majority shareholder of the Debtor. A copy of the Corporate Profile Report, dated August 3, 2017, in respect of the Debtor is attached hereto as Appendix “B”.

3. 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.
4. The Debtor has no discernible operations and the Real Property is leased to the following parties:
 - (a) a boutique hotel called the bE SixFifty Hotel (the “**Hotel**”), which is operated by bE SixFifty Hotel Inc., a company related to the Debtor, pursuant to a lease dated July 27, 2016 (the “**Hotel Lease**”); and
 - (b) a bistro café called the Food Society (the “**Restaurant**”), which is operated by 2452482 Ontario Inc. pursuant to a lease between the Debtor and 2452482 Ontario Inc., dated April 1, 2017 (the “**Restaurant Lease**”).
5. The Hotel and Restaurant currently operate at the Real Property. The Receiver understands that a spa previously operated in the basement of the Real Property, however due to a flood, the spa is no longer operational.
6. The Receiver is not aware of any employees currently employed by the Debtor, however, based on its review of the limited information it has been provided to date, the Receiver understands that the Debtor previously operated the Hotel.
7. Certain background information leading up to the Receiver’s appointment is contained in the Affidavit of Zaherali Visram, sworn May 15, 2017 (the “**Visram Affidavit**”), a copy of which (without exhibits) is attached hereto as Appendix “C”.

B. PURPOSE OF THE REPORT

8. The purpose of this First Report to the Court of Farber in its capacity as Receiver of the Debtor (the “**First Report**”) is to:
 - (a) report to the Court on the Receiver’s activities from the date of the Receivership Order to the date of the First Report;
 - (b) seek an Order of the Court:

- (i) directing Evan Karras to deliver the Records (as defined in the Receivership Order) to the Receiver, no later than 5:00 p.m. on August 17, 2017. The Records include those documents and information listed in the draft Order, attached as Tab 3 to the Receiver's Motion Record;
- (ii) directing Karras to deliver to the Receiver such other documents and information in respect of the Debtor, in Karras' possession and control, as the Receiver may request, in its discretion, within three (3) business days of such request;
- (iii) approving the Sale Process (defined below) in respect of the Property;
- (iv) authorizing and directing the Receiver to implement the Sale Process and do all such things as are necessary and desirable to conduct and give effect to the Sale Process, and to carry out its obligations therein; and
- (v) authorizing the Receiver, in its discretion, to extend the timelines set forth in the Sale Process for a period of up to 30 days without further Order of the Court.

C. DISCLAIMER

9. In preparing this First Report the Receiver has relied upon the 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. Farber has not independently reviewed or verified such information. The Receiver has prepared this First Report for the sole use of the Court and of the other stakeholders in these proceedings.

D. RECEIVER'S ACTIVITIES

10. Since the issuance of the Receivership Order, the Receiver's activities have included:
- (a) attending at the Real Property to meet with Karras and walk through the premises;
 - (b) corresponding with Karras and the Debtor's legal counsel in attempts to obtain the Records;

- (c) corresponding with legal counsel regarding the matters described herein;
- (d) consulting with the Applicant's legal counsel;
- (e) reviewing pleadings with respect to two litigation matters commenced by the Debtor and one matter which names the Debtor as a defendant;
- (f) contacting the Debtor's insurer and insurance broker to obtain proof of insurance in respect of the Real Property;
- (g) contacting the Debtor's financial institution to obtain information in respect of the Debtor's bank accounts;
- (h) contacting the Alcohol and Gaming Commission to confirm whether the Restaurant and Hotel are licensed to serve liquor;
- (i) contacting the motor vehicle leasing company to confirm the insurance details with respect to the Debtor's motor vehicles;
- (j) contacting CRA regarding outstanding payroll source deductions and HST amounts owing;
- (k) attempting to contact the Debtor's accountants;
- (l) review and consideration of limited information provided by Karras, the Debtor and other sources;
- (m) review of limited documents regarding the current Hotel operations;
- (n) discussions with an interested party regarding the sale of the Property;
- (o) preparing the Receiver's website; and
- (p) preparing this First Report.

11. The Receiver notes that considerable time was incurred seeking information from third parties, as noted above, given the lack of any documentation provided by Karras before he left for Europe.

E. DOCUMENT PRODUCTION REQUESTS

12. The Receivership Order empowers and authorizes the Receiver to, *inter alia*:
 - (a) take possession of and exercise control over the Property and any and all proceeds, receipts and disbursements arising out of or from the Property; and
 - (b) receive, preserve, and protect the Property.
13. The Receivership Order obliges the Debtor and Karras, among others, to:
 - (a) forthwith advise the Receiver of the existence of any Property in such person's possession or control, grant immediate and continued access to the Property to the Receiver, and deliver all such Property to the Receiver upon the Receiver's request; and
 - (b) forthwith advise the Receiver of the existence of any books, documents, securities, contracts, orders, corporate and accounting records, and any other papers, records and information of any kind related to the business or affairs of the Debtor (the "**Records**") and to provide or permit the Receiver to make, retain and take away copies of such Records.
14. On August 1, 2017, the date of the Receivership Order, the Receiver met with Karras at the Real Property. At this time, the Receiver requested that Karras provide, in accordance with the Receivership Order, the following documents:
 - (a) tax returns;
 - (b) financial statements;
 - (c) bank statements and correspondence including cancelled cheques, cheque register and any undeposited post-dated tenant cheques;

- (d) contracts and leases with the Debtor's tenants and operators;
 - (e) a recent general ledger or trial balance;
 - (f) employee information including T-4 summaries and any correspondence with the Canada Revenue Agency and any assessments and statements thereof;
 - (g) leases relating to leased assets, including vehicle assets;
 - (h) mortgage files;
 - (i) insurance files;
 - (j) lists of creditors including, but not limited to, secured creditors, unsecured creditors, utilities, government accounts, and accruals;
 - (k) appraisals and sales effort files;
 - (l) Harmonized Sales Tax filings including any correspondence with the Canada Revenue Agency and any assessments and statements thereof; and
 - (m) related party transaction files.
15. Karras advised the Receiver that he would be unable to provide all of the requested documents due to a planned trip abroad commencing the next day, and the fact that the Debtor's records are not held at the Real Property or another central location.
16. In an effort to accommodate Karras' travel plans, the Receiver provided a list of documents urgently required by the Receiver prior to Karras' departure, with the remaining documentation to be delivered upon his return. The urgently requested documents consisted of the following (collectively, the "**Urgent Records**"):
- (a) tax returns for the most recent tax year;
 - (b) financial statements;
 - (c) bank account details;

- (d) copies of the leases entered into with any tenants at the Real Property (the “Leases”);
 - (e) insurance information with respect to the Real Property; and
 - (f) motor vehicle details, including proof of insurance.
17. The next morning, on August 2, 2017, the Receiver followed up with Karras with respect to its document requests and reiterated the necessity to have the Urgent Records without delay.
18. In the afternoon of August 2, 2017, the Receiver again followed up with Karras regarding delivery of the Urgent Records. At this time, the Receiver advised Karras that the Receivership Order requires him to produce the Urgent Records forthwith. The Receiver also requested the contact information for a representative of the Debtor that the Receiver could contact during the period of Karras’s absence.
19. Karras disputed the Receiver’s characterization of the agreement regarding delivery of the Urgent Records but confirmed that he would provide the Leases that same day. Karras did not provide contact details for any other person with whom the Receiver could correspond with to obtain the outstanding documents.
20. The Receiver understands from the Applicant’s counsel that, on June 20, 2017, during cross-examination on his affidavit, Karras undertook to provide copies of the Leases to the Applicant. Accordingly, the Receiver’s request for copies of the Leases was not the first time the Karras was requested to produce same.
21. By the evening of August 2, 2017, the Receiver had not received any documentation including the Leases or any of the remaining Urgent Records. At that time, the Receiver reiterated to Karras that the Receivership Order requires him to forthwith provide access to the Records and that the Receivership Order is an order of the Court that must be complied with in a timely manner.

22. Karras promptly responded that certain documents were in the process of being scanned and sent to the Receiver. A copy of the email chain between Karras and John Hendriks of Farber, dated August 2, 2017 is attached hereto as Appendix “D”.
23. On the morning of August 3, 2017, the Receiver had not received any of the Urgent Records or other requested documentation from Karras. The Receiver was advised by its technology support team that no email transmissions from known e-mail addresses of Karras or the Debtor had attempted to contact the Receiver’s email servers. As such, if any emails were initiated by the Debtor or Karras to the Receiver, the emails failed to send entirely and the Receiver’s email servers did not receive or reject any emails from these parties due to spam, file size, type of file attachments or any other reason.
24. On August 3, 2017, the Receiver’s legal counsel wrote to Karras and copied the Debtor’s legal counsel demanding Karras immediately deliver the Urgent Records. A copy of the letter from the Receiver’s counsel to Karras, dated August 3, 2017, is attached hereto as Appendix “E”. The Receiver also sent a text message to Karras’ known cell phone number to advise that the letter was emailed to him and the Debtor’s legal counsel and to check his email for same.
25. The Receiver’s counsel did not receive a response from Karras to its letter, however the Debtor’s legal counsel did verbally undertake to provide certain documentation in his possession the following morning and to attempt to contact Karras to follow up on the production of the Urgent Records.
26. On the morning of August 4, 2017, the Debtor’s legal counsel provided the Receiver with copies of the Restaurant Lease as well as copies of issued statements of claim in respect of two pending actions commenced by the Debtor, among others.
27. A few days later, on August 8, 2017, bE SixFifty Hotel Inc. provided to the Receiver a copy of the Hotel Lease. The corporate profile report in respect of bE SixFifty Hotel Inc., dated August 3, 2017, a copy of which is attached hereto as Appendix “F”, lists Karras as the sole director and officer of the company.

28. The remaining Urgent Records and other Records have not been provided to the Receiver despite its repeated requests for same.
29. The Receiver requires the Records, without delay, in order to, *inter alia*:
 - (a) properly discharge its duties and obligations as set forth in the Receivership Order and the *Bankruptcy and Insolvency Act* (Canada);
 - (b) take possession and control of the Property, including confirming that adequate insurance is in place;
 - (c) determine the nature and quantum of the Debtor's pre-receivership liabilities and notify all creditors of its appointment as Receiver;
 - (d) ascertain whether the ongoing Hotel and Restaurant operations at the Real Property are covered by appropriate liability insurance and comply with all regulatory and licensing requirements including, without limitation, building codes, health and safety requirements, and liquor licence requirements; and
 - (e) ascertain whether the ongoing Hotel and Restaurant operations are in compliance with their obligations under the Leases, including the payment of all rent amounts.
30. The refusal of Karras to provide the Records is in direct contravention of the Receivership Order. The Receiver cannot properly and competently undertake and discharge its duties as Receiver without this information.

F. SECURED CREDITORS AND CRA

31. The Real Property is charged to and in favour of eight (8) mortgagees, including the Applicant. The principal amounts of the mortgages registered against title to the Real Property total approximately \$13.25 million. The Visram Affidavit states that the Debtor owes the Applicant approximately \$10 million pursuant to two mortgages, which the Receiver understands is inclusive of interest and extension fees. The face amounts of the other registered mortgages total approximately \$9.95 million.

32. The subsearch in respect of the Real Property, dated May 3, 2017, attached hereto as Appendix “G” shows charges registered in favour of the Applicant and the following parties:
- (a) 932005 Ontario Inc.;
 - (b) Harbour First Mortgage Fund GP Inc.;
 - (c) Goldcard Inc.;
 - (d) CVC Ardellini Investments Inc.;
 - (e) Accomplish Capital Inc.;
 - (f) 9480536 Canada Inc.; and
 - (g) Am-Stat Corporation.
33. The PPSA search results in respect of the Debtor, dated May 2, 2017, attached hereto as Appendix “H” show registrations in favour of the Applicant and following additional parties:
- (a) Am-Stat Corporation;
 - (b) Thinking Capital;
 - (c) Holand Leasing (1995) Ltd.;
 - (d) Gold Card Leasing o/b Goldcard Inc.
34. As the Receiver has not yet been provided with the Records, it is not able at this time to comment on the amounts owing by the Debtor to each of the secured creditors.
35. The Receiver corresponded with the Canada Revenue Agency (“**CRA**”) who advised that, pursuant to an audit completed in March, 2016, approximately \$90,000 in employee payroll deductions are owed by the Debtor to CRA. The CRA further advised that, since the date of the audit, the Debtor has been non-compliant with filing its payroll and HST

returns and, consequently, additional assessments are required. CRA expects to send the Receiver a summary of the CRA's position by August 11, 2017.

G. SALE PROCESS

36. The Receivership Order authorizes the Receiver to market any or all of the Property, including advertising and soliciting offers in respect of the Property or any part or parts thereof and negotiating such terms and conditions of sale as the Receiver in its discretion may deem appropriate.
37. Attached hereto as Appendix "I" is the proposed sale process, including the sale process terms and conditions (collectively, the "**Sale Process**"), in respect of the Property.
38. The purpose of the Sale Process is to identify one or more purchasers for the Property. The Sale Process will be run by the Receiver with bids from all interested parties due six (6) weeks from the date of the Order approving the Sale Process.
39. The Receiver will apply to the Court for an order approving the final agreement of purchase and sale entered into with the successful bidder, and vesting the assets identified in the purchase agreement in and to the purchaser.
40. A chart summarizing the material terms and deadlines for the proposed Sale Process is set out below:

Sale Process	Date
Sale Process Order	August 15, 2017
Teaser and confidentiality agreement sent to all identified interested parties	Immediately following Sale Process Order
Advertisement in Globe and Mail, Toronto Star, National Post and hotel industry publications	Within 5 days of Sale Process Order
Deadline for Submissions of Offers	September 26, 2017
Selection of Offer	October 3, 2017
Execution of Agreement of Purchase and Sale	October 10, 2017
Court Approval and Granting of Vesting Order	Week of October 16, 2017
Closing	As soon as practicable following Vesting Order

41. The Receiver respectfully recommends that the Court approve the Sale Process as it exposes the Property to the market for a reasonable period of time.
42. The Receiver is confident that it has the experience and network to effectively market the Property without the necessity of retaining a real estate brokerage and paying the additional costs of commission. It intends to reach out directly to Toronto real estate developers and brokerages regarding the Sale Process.
43. The Receiver is empowered by the Receivership Order to market the Debtor's assets for sale. Any sale of the Property will be subject to future Court approval.
44. The Receiver has been advised by Karras and counsel for a prospective purchaser that, prior to the receivership proceedings, the Debtor and the prospective purchaser entered into negotiations for the purchase and sale of the shares of the Debtor. Counsel to the prospective purchaser has advised the Receiver that their client remains interested in the opportunity to purchase the Property and the Receiver intends to invite them to participate in the Sale Process.

H. RECOMMENDATIONS

45. The Receiver respectfully requests that this Honourable Court grant an Order in the form attached as Tab 3 to the Receiver's Motion Record.

**ALL OF WHICH IS RESPECTFULLY SUBMITTED
THIS 9th DAY OF AUGUST, 2017.**

**A. Farber & Partners Inc. in its capacity as Court
Appointed Receiver of 222027 Ontario Inc.
and not in its personal or corporate capacity**

Per: _____

Name: Stuart Mitchell

Title: Senior Vice President

Court File No: CV-17-11811-00CL

ZAHERALI VISRAM
Applicant

- and -

2220277 ONTARIO INC.
Respondent

**ONTARIO
SUPERIOR COURT OF JUSTICE**

PROCEEDING COMMENCED AT TORONTO

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

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