

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

B E T W E E N:

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

NOTICE OF MOTION

A. Farber & Partners Inc. (“**Farber**”), in its capacity as the court-appointed receiver (the “**Receiver**”) of the assets, undertakings and properties (the “**Property**”) of 2220277 Ontario Inc. (the “**Debtor**”), appointed pursuant to the Order of the Honourable Justice Mesbur, dated August 1, 2017 (the “**Receivership Order**”), will make a motion to a judge presiding over the Commercial List on a date to be scheduled by the Commercial List on October 16, 2017 at 9:30 a.m., at 330 University Avenue, Toronto, Ontario.

THE PROPOSED METHOD OF HEARING: The motion is to be heard orally.

THE MOTION IS FOR:

1. An Order:
 - (a) If necessary, abridging the time for service of the Notice of Motion and the Motion Record and validating service thereof;

- (b) Authorizing the Receiver, upon 30 days written notice, to terminate the leases in respect of the Real Property (the “**Leases**”), including, but not limited to, the leases listed in Schedule “A” hereto; and
- (c) Directing any lessee who receives a notice of termination issued by the Receiver to, on or before the expiry of the 30 day notice period, deliver vacant possession of the Real Property to the Receiver;

2. An Order:

- (a) If necessary, abridging the time for service of the Notice of Motion and the Motion Record and validating service thereof;
- (b) Approving the Receiver’s Fifth Report to the Court, to be filed (the “**Fifth Report**”), and the activities of the Receiver described therein;
- (c) Approving the Agreement of Purchase and Sale, dated October 3, 2017 (the “**Stalking Horse Bid**”), between 650 Bay Holdco Inc. (the “**Stalking Horse Bidder**”) and the Receiver and authorizing the Receiver to execute the Stalking Horse Bid with such minor amendments as the Receiver may deem appropriate;
- (d) Approving the stalking horse sale process (the “**Stalking Horse Sale Process**”), to be appended to the Fifth Report;
- (e) Authorizing and directing the Receiver to implement the Stalking Horse Sale Process and do all such things as are necessary and desirable to conduct and give effect to the Stalking Horse Sale Process, and to carry out its obligations therein;
- (f) Authorizing the Receiver, in its discretion, to extend any of the timelines set forth in the Stalking Horse Sale Process for a period of up to 30 days, in the aggregate, without further Order of this Honourable Court;
- (g) Vacating paragraphs 3-5 of the Order of the Honourable Justice Hainey, issued in the within proceeding on September 26, 2017 (the “**Original Sale Process Order**”);

- (h) Authorizing the Receiver, *nunc pro tunc*, to redact from the Fifth Report all confidential and commercially sensitive information and sealing the unredacted version of the Fifth Report from the public record until the closing of a sale transaction in respect of the Real Property; and
3. Such further and other relief that the Receiver may request and this Honourable Court may consider just.

THE GROUNDS FOR THE MOTION ARE:

Background

1. Pursuant to the Receivership Order, Farber was appointed as Receiver of the Property;
2. The Debtor is a corporation incorporated pursuant to the laws of the Province of Ontario. Evan Karras (“**Karras**”) is the sole director, (unpaid) employee and a shareholder of the Debtor;
3. The Property includes the real property municipally known as 650 Bay Street and 55 Elm Street located in downtown Toronto, Ontario (the “**Real Property**”);
4. Eight parties, including the Applicant, hold mortgages/charges (the “**Mortgages**”) 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);
5. There are also various PPSA registrations against the Debtor, source deduction amounts owing to Canada Revenue Agency, property taxes outstanding and various unsecured creditors;

The Leases

6. The Real Property is leased to the following parties:

- (a) bE SixFifty Hotel Inc. (“**bE SixFifty**”), which operates a boutique hotel pursuant to a Lease, dated July 27, 2016, between the Debtor and bE SixFifty (the “**Hotel Lease**”); and
 - (b) 2452482 Ontario Inc. o/a Food Society (the “**Food Society**”), which operates a restaurant pursuant to a Lease, dated April 1, 2017, between the Debtor and the Food Society (the “**Restaurant Lease**”);
7. The Receiver has determined that, in order to maximize value for the Real Property, it may be necessary to deliver the Real Property to the ultimate purchaser free and clear of the Leases;
 8. Authority to terminate the Leases would permit the Receiver to expose the Real Property to the widest possible market including purchasers acquiring the building for investment purposes as well as purchasers who wish to redevelop the Real Property;
 9. The Stalking Horse Bid includes, as a condition to closing, the termination of the Leases;
 10. In order to recommend for approval the Stalking Horse Bid and effectively market the Real Property to purchasers acquiring it for redevelopment purposes, the Receiver is seeking authority to offer the Real Property free and clear of the Leases;
 11. The Receiver seeks an order that it be authorized, not bound, to terminate the Leases in respect of the Real Property as termination may not ultimately be necessary;
 12. Pursuant to Section 93(3) of the *Land Titles Act* (Ontario), the Mortgages take priority over the interests, if any, of the lessees as the Leases are dated subsequent to seven of the Mortgages and none of the Leases, including the Hotel Lease and Restaurant Lease, are registered against title to the Real Property;
 13. The Hotel Lease and Restaurant Lease each contain clauses subordinating them to all mortgages against the Real Property;
 14. The Receiver is not aware of any non-disturbance agreements entered into between the lessees and the Mortgagees;

15. Karras, the directing mind of the Debtor, is also the sole director of the hotel operator bE SixFifty;
16. In the circumstances, the equities do not justify overriding the mortgagees legal priority;

Stalking Horse Bid and Sale Process

17. Pursuant to the Original Sale Process Order, this Honourable Court approved a sale process (the “**Sale Process**”) in respect of the Real Property;
18. The Original Sale Process Order set the Commencement Date for the Sale Process to be no later than October 16, 2017 to allow time for the Receiver to negotiate with a potential stalking horse bidder;
19. The Original Sale Process Order authorized the Receiver to return to Court, prior to the Commencement Date to seek approval of a stalking horse bid;
20. Subsequent to the Original Sale Process Order the Receiver continued discussions the Stalking Horse Bidder and is now seeking Court approval of the Stalking Horse Bid;
21. Pursuant to the Receivership Order, the Receiver is authorized 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;
22. The proposed Stalking Horse Sale Process is designed to implement an open and efficient process to solicit offers for the purchase of the Real Property and obtain the best offer in the circumstances;
23. The Stalking Horse Bid sets a “floor price” for the Real Property and ensures a minimum recovery for the Debtor’s creditors;
24. The Receiver will apply to the Court for an approval and vesting order with respect to the agreement of purchase and sale entered into with the ultimate successful bidder;
25. Section 243 of the *Bankruptcy and Insolvency Act* (Canada);

26. The provisions of the *Land Titles Act* (Ontario), including Sections 93(3) and 44(1)(4);
27. Rules 2.03, 3.02, 16.01 and 37 of the *Rules of Civil Procedure* (Ontario); and
28. Such further and other grounds as counsel may advise and this Honourable Court may permit.

THE FOLLOWING DOCUMENTARY EVIDENCE WILL BE USED AT THE HEARING OF THE MOTION:

1. The Fifth Report; and
2. Such further and other material as counsel may advise and this Honourable Court may permit.

October 5, 2017

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*Lawyers for A. Farber & Partners Inc., Court
Appointed Receiver of 2220277 Ontario Inc.*

TO: SERVICE LIST

Schedule "A" – Leases

1. Lease, dated April 1, 2017 between 2220277 Ontario Inc. and 2452482 Ontario Inc. o/a Food Society
2. Lease, dated July 27, 2016, between 2220277 Ontario Inc. and bE SixFifty Hotel Inc.
3. Commercial Lease, dated July 27, 2016, between 2220277 Ontario Inc. and 9845496 Canada Inc. o/a bE SixFifty Hotel

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(as at October 4, 2017)

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PROCEEDING COMMENCED AT TORONTO

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