

Cv 17-11811-00CL

Court File No.

**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

NOTICE OF APPLICATION

TO THE RESPONDENT

A LEGAL PROCEEDING HAS BEEN COMMENCED by the Applicant. The claim made by the Applicant appears on the following page.

THIS APPLICATION will come on for a hearing on a date to be scheduled at a chambers appointment returnable 9:30 am on Friday May 19, 2017, or such other date and time as agreed to by the parties to this application, before a Judge presiding over the Commercial List at 330 University Avenue, 7th Floor, Toronto, Ontario M5G 1R7.

IF YOU WISH TO OPPOSE THIS APPLICATION, to receive notice of any step in the application or to be served with any documents in the application you or an Ontario lawyer acting for you must forthwith prepare a notice of appearance in Form 38A prescribed by the *Rules of Civil Procedure*, serve it on the Applicant's lawyer or, where the Applicant does not have a lawyer, serve it on the Applicant, and file it, with proof of service, in this court office, and you or your lawyer must appear at the hearing.

IF YOU WISH TO PRESENT AFFIDAVIT OR OTHER DOCUMENTARY EVIDENCE TO THE COURT OR TO EXAMINE OR CROSS-EXAMINE WITNESSES ON THE APPLICATION, you or your lawyer must, in addition to serving your notice of appearance, serve a copy of the evidence on the Applicant's lawyer or, where the Applicant does not have a lawyer, serve it on the Applicant, and file it, with proof of service, in the court office where the application is to be heard as soon as possible, but at least four days before the hearing.

IF YOU FAIL TO APPEAR AT THE HEARING, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO OPPOSE THIS APPLICATION BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

Date May 18, 2017

Issued by _____


Local Registrar

Address of court office: Superior Court of Justice
330 University Avenue, 7th Floor
Toronto, Ontario M5G 1R7

TO: **2220277 ONTARIO INC.**
650 Bay Street
Toronto, Ontario M5G 1M8

Attention: Evan Karras

APPLICATION

1. The Applicant makes an application for:
 - (a) an order appointing A. Farber and Partners Inc. (“**Farbers**”) as receiver, without security, of the property, assets and undertakings of the Respondent, 2220277 Ontario Inc. (the “**Debtor**” or the “**Company**”);
 - (b) the costs of this proceeding on a full indemnity basis, plus all applicable taxes; and
 - (c) such further and other relief as this Honourable Court may deem just.
2. The grounds for the application are:

The Debtor and the Property

- (a) The Debtor is an Ontario corporation with its registered office located in Toronto, Ontario.
- (b) Mr. Evan Karras is the sole officer and the director of the Company.
- (c) The Debtor is the registered owner of commercial property located at the south-west corner of the intersection of Bay Street and Elm Street in Toronto, Ontario and municipally known as 650 Bay Street and 55 Elm Street, Toronto (the “**Property**”).
- (d) A boutique hotel known as “bE Sixfifty Hotel” (the “**Hotel**”) and a cafe/bistro are located on the Property.

- (e) It is not known to the Applicant whether the Debtor operates the Hotel and café/bistro or is only the owner of the Property.

Second Mortgage

- (f) Pursuant to a Charge/Mortgage in the principal amount of \$1.2 million granted by the Company in favour of the Applicant, and registered against title to the Property on March 6, 2012 as Instrument No. AT2960459 (the “**Second Mortgage**”), the Applicant advanced \$1.2 million to the Company as bridge financing.
- (g) The Applicant is entitled to the appointment of a receiver by the Court upon the occurrence of an event of default under the Second Mortgage.
- (h) The Second Mortgage originally matured on April 18, 2012. The Company and the Applicant agreed to extend the term to October 18, 2012 and increase the loan amount from \$1.2 million to \$1.9 million.
- (i) Prior to the Second Mortgage maturing, the Company requested a further extension and an increase in the loan amount. The Company and the Applicant agreed to extend the term to March 15, 2013 and increase the loan amount from \$1.9 million to \$3.0 million.

Forbearance

- (j) Following maturity of the Second Mortgage on March 15, 2013, the Applicant gave the Company approximately 18 months to try to find a buyer for the Property or a replacement lender, but the Company was unable to do so.

- (k) In September 2014, the Applicant commenced an action against the Company seeking payment of amounts owing under the Second Mortgage and possession of the Property.
- (l) In May 2015, the Company and the Applicant entered into a forbearance agreement, wherein the Company agreed, among other thing, that the amount owing under the Second Mortgage to the Applicant was \$4,289,760 for principal, interest, fees and costs.
- (m) At the same time, the Applicant redeemed the first mortgage over the Property and the Company agreed to increase the principal amount owing under the first mortgage from \$2.1 million to \$2.6 million to account for payments made by the Applicant.

Subsequent Mortgagees

- (n) From March 2012 to March 2017, the Company granted seven mortgages against the Property, having a total face principal amount of \$10,350,000.
- (o) In January 2017, the sixth mortgagee issued a notice of sale in the total amount of \$3,492,449. The redemption period under the notice expired on February 20, 2017.

Defaults and Demands

- (p) Both prior to and since the time the forbearance agreement was entered into, the Company has persistently failed to make the payments owed to the Applicant in connection with the mortgages.
- (q) The mortgages matured on April 15, 2017.

- (r) On April 18, 2017, the Applicant, through counsel, demanded payment from the Company under the First Mortgage in the amount of \$3,219,486.50 and under the Second Mortgage in the amount of \$6,610,514, and delivered notices of intention to enforce security.

Need for Appointment of a Receiver

- (s) The Debtor owes the Applicant approximately \$10 million under the first and second mortgages. The Company is in default of its sixth mortgage. The sixth mortgagee claims to be owed approximately \$3.5 million. The face principal amounts of the other registered mortgages (excluding the first, second and sixth mortgages) total approximately \$7.85 million.
- (t) In the circumstances, it is just and convenient, and in the best interests of the Debtor's creditors generally, that a receiver be appointed to market and sell the Property in a manner that is open and transparent under Court supervision.
- (u) Farbers is a licensed insolvency trustee and has agreed to accept the appointment.

Statutory and Other Grounds

- (v) Section 243 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.
- (w) Rules 1.04(1), 1.05, 2.01, 2.03, 3.02, and 38 of the *Rules of Civil Procedure*.
- (x) Such further and other grounds as counsel may advise and this Honourable Court permits.

3. The following documentary evidence will be used at the hearing of the application:

- (a) the Affidavit of Zaherali Visram sworn May 15, 2017 and the exhibits thereto;
- (b) Consent of Farbers; and
- (c) such further and other evidence as counsel may advise and this Honourable Court may permit.

May 18, 2017

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Lawyers for the Applicant

ZAHERALI VISRAM
Applicant

-and-

2220277 ONTARIO INC.

Respondent

Court File No. CV-17-1811-CV

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

PROCEEDING COMMENCED AT
TORONTO

NOTICE OF APPLICATION

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