

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

B E T W E E N :

CIT FINANCIAL LTD.

Applicant

- and -

**RENE EMIL BOLJKOVAC, 1735509 ONTARIO LIMITED, and
NORTHERN DENTAL CENTRES INC.**

Respondents

**APPLICATION UNDER s. 243(1) of the *Bankruptcy and Insolvency Act*,
R.S.C., 1985, s. 101 of the *Courts of Justice Act*, R.S.O., 1990, c. C-43 and Rules
14.05(2) and (3) of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, as amended**

**A. FARBER & PARTNERS INC.
THIRD REPORT OF THE RECEIVER
SEPTEMBER 22, 2014**

INTRODUCTION

1. By Order of the Honourable Mr. Justice McEwen dated April 15, 2014 (the “**Appointment Order**”), A. Farber & Partners Inc. (“**Farber**” or the “**Receiver**”) was appointed as the Receiver of all of the assets, undertakings and properties of Rene Emil Boljkovac (“**Boljkovac**”), 1735509 Ontario Limited (“**173 Co.**”) and Northern Dental Centres Inc. (collectively the “**Debtor**”) Attached hereto as **Appendix “A”** is the Appointment Order.
2. Boljkovac is a licensed dental surgeon who operated a dentistry practice (the “**Dental Practice**”) located at 100 East Street South, Bobcaygeon, Ontario (the “**Real Property**”).
3. The Real Property is owned by 173 Co., a company owned and controlled by Boljkovac. The Real Property is comprised of a 9,980 square foot free standing building located on a 2.08 acre parcel of land.
4. The Dental Practice occupies approximately 25% of the rentable space in the Real Property, along with three additional rent-paying tenants who are arm’s-length from the Debtor.
5. The appointment of the Receiver was initiated by CIT Financial Ltd. (“**CIT**”). CIT is the primary secured lender of the Debtor, having provided financing through numerous financing instruments since approximately 2006.

6. On April 17, 2014, the Receiver filed its First Report (the “**First Report**”) with the Court in support of a motion to seek an order compelling Boljkovac to return all equipment, furniture, tools, supplies and patient records that he had removed from the Dental Practice immediately prior to the Receiver’s appointment. A copy of the First Report is attached hereto as **Appendix “B”**.
7. On April 22, 2014, the Honourable Mr. Justice Wilton-Siegel issued an Order (the “**Property Return Order**”) to compel Boljkovac to return the property as outlined in the First Report (the “**Removed Property**”) to the Receiver. A copy of the Property Return Order is attached as **Appendix “C”**.
8. On June 13, 2014, the Receiver filed its Second Report (the “**Second Report**”) with the Court in support of a motion to seek approval of a sales and marketing process to sell the Real Property and the Dental Practice (the “**Sales Process**”). A copy of the Second Report is attached as **Appendix “D”**.
9. On June 19, 2014. The Honourable Mr. Justice McEwen issued an order (the “**Sales Process Approval Order**”) approving of the Receiver conducting the Sales Process as outlined in the Second Report. A copy of the Sales Process Approval Order is attached as **Appendix “E”**.

PURPOSES OF THIS REPORT

10. The purpose of this Third Report of the Receiver (the “**Third Report**”) is to:
 - i) report to the Court on the conduct and results of the Sales Process;

- ii) report on the activities of the Receiver since the Second Report and seek approval of the Receiver's activities to date;
- iii) seek approval of the Receiver's Interim Statement of Receipts and Disbursements for the period April 15, 2014 to September 18, 2014;
- iv) seek approval for the Receiver to enter into an asset purchase agreement (the "**APA**") with L. Newton and R. Salama Dentistry Professional Corporation ("**Newton**"), Bobcaygeon Family Hygiene Corp. ("**Bobcaygeon**") and RPL Property Holdings Inc. ("**RPL**") (collectively the "**Purchaser**") as identified through the Sales Process and close the transaction contemplated in the APA (the "**Sale**");
- v) seek an order vesting in the Purchaser all of the Debtor's and the Receiver's right, title and interest, if any, in and to the assets described in the APA, free and clear of any encumbrances, except permitted encumbrances;
- vi) seek approval from the Court to make an interim distribution to CIT from funds on hand subsequent to closing the Sale, and further authorizing the Receiver to make future distributions to CIT, provided that the sum of all such distributions does not exceed the amount owed by the Debtor to CIT;
and
- vii) seek an order sealing Confidential Appendices "A" and "B" of this Third Report until further order of this Court.

DISCLAIMER AND TERMS OF REFERENCE

11. The Receiver has relied upon the financial records and information provided by the Debtor, in addition to other information supplied by the Debtor's management, appraisers, accountants, auditors and advisors. The Receiver has not independently audited, reviewed, or otherwise attempted to verify the accuracy or completeness of such information. Accordingly, the Receiver expresses no opinion or other form of assurance with respect to the information contained in this Third Report. The Receiver assumes no responsibility or liability for any loss or damage incurred by or caused to any person or entity as a result of the circulation, publication, reproduction or use of or reliance upon this Third Report or for any use which any person or entity makes of this Third Report, or any reliance on or a decision made based upon this Third Report, other than for the express purposes as set out in this Third Report.
12. Capitalized terms not defined in this Third Report are as defined in the Appointment Order.
13. Unless otherwise stated, all references to dollars are in Canadian currency.
14. A copy of this Third Report and all Court materials, Orders and Endorsements issued in these proceedings are available on the Receiver's website at: <http://www.farberfinancial.com/insolvency-engagements/bid/382716/Rene-Emil-Boljkovac-1735509-Ontario-Inc-and-Northern-Dental-Centres-Inc>.

ACTIVITIES OF THE RECEIVER

15. On April 28, 2014, the Receiver submitted its Notice and Statement of Receiver in accordance with sections 245 and 246 of the BIA.

Sales Process

16. Upon issuance of the Sales Process Approval Order on June 19, 2014, the Receiver commenced the Sales Process. Specific marketing steps taken by the Receiver were:
 - i) Placed an advertisement in the June 25, 2014 national print edition of the Globe and Mail. A copy of the advertisement is attached as **Appendix “F”**.
 - ii) Placed an advertisement in the online and July print editions of the Oral Health Group, a prominent dental trade publication. A copy of the advertisement that appeared online is attached as **Appendix “G”**.
 - iii) Created an invitation for offers, along with summary information about the opportunity, which was placed on the Receiver’s website and directly emailed, faxed or mailed, as required, to sixty-six (66) dental practices in the Kawartha Lakes/Peterborough region.
 - iv) Created a secure online data room (the “**Data Room**”) wherein the Receiver posted historical financial information, lease agreements, staff information and other documents to facilitate due diligence by interested parties.

17. An additional fifteen (15) interested parties approached the Receiver as a result of the advertising.
18. Eighteen (18) parties signed confidentiality agreements with the Receiver and were given access to the Data Room. Eight (8) parties conducted site visits.
19. The Receiver received six (6) offers by the bid deadline of 5:00 PM, July 24, 2014. Of these six offers, there were two offers that the Receiver felt were superior to the other four offers. The Receiver contacted the two respective superior offerors and gave them one final opportunity to resubmit their bids with their best price and terms. The deadline to do so was set at noon on July 29th. Both parties submitted revised offers with increased purchase prices. A summary of the final offers is attached as **Confidential Appendix “A”**.
20. The Receiver initially accepted the bid of a bidder that was not the Purchaser as the highest and best bid (the “**First Offer**”), subject to Court approval. However, the First Offer was subject to a financing condition that was not satisfied or waived within the stipulated time period.
21. The Receiver commenced to negotiate with the Purchaser to try and secure an acceptable offer. The Purchaser’s original bid, as reported in Confidential Appendix “A” had expired by the time the First Offer became null and void. The Receiver received an offer from the Purchaser and continued to negotiate terms and the purchase price to seek a higher amount. Subsequently the Receiver received an offer at a price that, while slightly lower than the original offer by the Purchaser, reflected a price which was acceptable to the Receiver and the APA was executed.

22. The Receiver recommends that the offer of the Purchaser be accepted as the highest and best offer for the Dental Practice, the Real Property and all other purchased assets, as set out in the APA. Attached as **Confidential Appendix “B”** is the APA between the Purchaser and the Receiver, which remains subject to Court approval.

Operations

23. The Receiver has been operating the dental practice since April 29, 2014. The practice is open three to four days per week, depending on patient scheduling. The Receiver has retained a licensed dentist and a staff of five comprised of hygienists, dental assistants and receptionists to operate the dental practice and retain patients.
24. The Receiver has been receiving payments from patients and their benefits providers and in turn has been paying wages, supplies and other operating expenses from the operating cashflow generated.
25. Continued operation of the practice during the receivership was necessary to preserve enterprise value, ensure patient retention and enhance the outcome of the Sales Process.
26. The Receiver will continue operating the Practice until the Sale closes.

INTERIM STATEMENT OF RECEIVER’S RECEIPTS AND DISBURSEMENTS

27. Attached as **Appendix “H”** is the Receiver’s Interim Statement of Receipts and Disbursements for the period April 15, 2014 to September 18, 2014.
28. The Receiver presently has \$75,988.22 in its trust account.

RECEIVER'S BORROWINGS

29. Pursuant to paragraph 21 of the Appointment Order the Receiver was empowered to borrow up to \$50,000.00 to fund the operations of the Dental Practice.
30. On April 28, 2014, the Receiver borrowed \$40,000.00 from CIT and issued a Receiver's Certificate in favour of CIT. This funding was necessary to allow the Receiver to fund payroll and the purchase of supplies and equipment required to operate the Dental Practice.
31. The Receiver will repay CIT the amount of the Receiver's Certificate plus applicable interest from the proceeds of the Sale.

SECURITY OPINION

32. The Receiver has obtained an independent security opinion of the validity and enforceability of the security of CIT from Torkin Manes LLP ("**Torkin**"), which acts as independent counsel to the Receiver. Torkin has opined that, subject to the usual qualifications and assumptions in opinions of this nature, the security interests granted by the Debtor to CIT represent valid and enforceable security interests in the property of the Debtor.
33. As at September 10, 2014, the Debtor was indebted to CIT in the amount of \$1,362,366.55. Interest is accruing at \$277.76 per diem. CIT has incurred professional and legal expenses which are not included in this amount.

PROPOSED DISTRIBUTION

34. The Receiver proposes to distribute \$850,000.000 (the “**Interim Distribution**”) to CIT subject to the approval of this Honourable Court and forthwith following closing the sale transaction with the Purchaser. The Interim Distribution is reflective of the cash balance on hand as illustrated in Appendix H, plus funds to be received on closing of the Sale, less provisions for potential prior ranking payables and professional fees.
35. CIT has been provided with the proposed distribution calculations and consents to the Receiver distributing the funds as proposed.
36. Based on the Receiver’s Interim Statement of Receipts and Disbursements and the anticipated receipts from closing the Sale, CIT will not be repaid in full and will suffer a shortfall.
37. In addition to requesting the approval of this Court for the Interim Distribution, the Receiver seeks the authority of the Court to distribute any remaining funds or such further funds which the Receiver may receive in respect of the Debtor to CIT (up to the amount of its debt), net of any priority claims described in this report, if any, without further order of the Court. Such potential further recoveries are most likely to come from the collection of accounts receivable, over which CIT has first-ranking security.

OTHER POTENTIAL PRIORITY PAYABLES

38. The Receiver has contacted Canada Revenue Agency (the “CRA”) to arrange a trust examination. At the time of writing this report the CRA had yet to arrange a trust examination. However, the Receiver is aware that the Debtor had remitted source deductions in respect of payroll paid up to March 31, 2014. Per the Debtor’s records, the amount owing to CRA in respect of source deductions for April 2014 is \$3,199.63.
39. The Receiver is also aware that 1735509 Ontario Inc. may have an H.S.T. liability owing in respect of 2013 and 2014. The amount of this liability will not be determined until CRA conducts its trust examination. The Receiver proposes to holdback sufficient funds from the proceeds of the Sale, if appropriate.
40. While operating the business, the Receiver has been paid all source deduction and other government liabilities as they became due.
41. The Receiver does not have reporting obligations under the Wage Earner Protection Program. The Receiver was advised by Boljkovac’s bookkeeper that all employees were paid their vacation pay and that wages for the two weeks ending April 11, 2014 remained owing. Accordingly, on April 28, 2014 the Receiver paid a total of \$3,676.89 to three unpaid employees on account of their entitlement to claim under Section 81.4 of the BIA.

CONDUCT OF DR. BOLJKOVAC

42. As mentioned at paragraph 46 (b) of the affidavit of Maria Gucciardi of CIT dated March 12, 2014, the general security agreements in favour of CIT contain non-compete clauses that precluded Dr. Boljkovac from competing with the Dental Practice within a geographic area that is within a 20 kilometre radius of the Dental Practice.
43. Paragraph 6B of the Appointment Order orders that *“the Debtor is restrained from soliciting or contacting existing patients of the dental practice without the prior written consent of the Receiver.”*
44. The Receiver advises the Court as follows:
 - i) Dr. Boljkovac is working as a dentist in a dental practice located at 189 Kent Street West in Lindsay, approximately 34 kilometers from the Dental Practice. This is a practice that Dr. Boljkovac operated one day per week prior to the receivership. The Receiver has been advised that Dr. Boljkovac is working as an associate dentist, having no ownership in the practice.
 - ii) On June 13, 2014, the Receiver was advised by staff in Bobcaygeon that an advertisement for Dr. Boljkovac appeared in the local newspaper, The Promoter, which is delivered to residents in the Bobcaygeon area. A copy of the advertisement is attached as **Appendix “I”**. The Receiver had its legal counsel send Dr. Boljkovac a cease and desist letter. The advertisement did not appear in the next issue of the Promoter.

iii) On July 29, 2014, the Receiver was advised that a post card mailer had been delivered to residents in Bobcaygeon advertising Dr. Boljkovac's practice in Lindsay. **A copy of the post card is attached as Appendix "J"**. Again, the Receiver had its legal counsel send Dr. Boljkovac a cease and desist letter.

iv) Dr. Boljkovac did not seek nor obtain the consent of the Receiver prior to conducting the aforementioned advertising in the Bobcaygeon community. The Receiver is currently not aware of the financial effect, if any, that the actions of Boljkovac may have had on the Dental Practice.

RECOMMENDATIONS

The Receiver respectfully recommends that this Honourable Court issue an Order:

- i) approving the Receiver's activities described in this Third Report;
- ii) authorizing the Receiver to enter into the APA with the Purchaser and close the transaction contemplated therein;
- iii) vesting in the Purchaser all of the Debtor's and the Receiver's right, title and interest, if any, in and to the purchased assets described in the APA, free and clear of any encumbrances;
- iv) approving the Receiver's Interim Statement of Receipts and Disbursements for the period April 15, 2014 to September 18, 2014; and

- v) authorizing the Receiver to make an interim distribution to CIT of \$850,000.00 from funds on hand after the closing of the Sale, and to make such further distributions to CIT as funds become available.

All of which is respectfully submitted this 22nd day of September, 2014

**A. FARBER & PARTNERS INC. IN ITS CAPACITY AS
COURT APPOINTED RECEIVER OF RENE EMIL BOLJKOVAC,
1735509 ONTARIO LIMITED AND NORTHERN DENTAL CENTRES INC.**

A. Farber & Partners Inc.
