

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

B E T W E E N :

PACE SAVINGS & CREDIT UNION LIMITED

Applicant

- and -

ISMAL MARINA INC., ISABELLE MCCARTHY and
ALEXANDER MCCARTHY, a.k.a. Sandy McCarthy

Respondents

**APPLICATION UNDER s. 243(1) of the *Bankruptcy and Insolvency Act*,
R.S.C., 1985 c-B-3, and Rules 14.05(2) and (3)(d), (g) and (h) of the *Rules of Civil
Procedure***

**A. FARBER & PARTNERS INC.
FIRST REPORT OF THE RECEIVER
OCTOBER 8, 2015**

INTRODUCTION

1. By Order of the Honourable Mr. Justice Hainey of the Ontario Superior Court of Justice (Commercial List) dated September 24, 2015 (the “**Appointment Order**”), A. Farber & Partners Inc. (“**Farber**”) was appointed as the Receiver (in such capacity, the “**Receiver**”) of all of the assets, undertakings and properties (the “**Property**”) of Ismac Marina Inc. (“**Ismac**” or the “**Debtor**”). Attached hereto as **Appendix “A”** is the Appointment Order.
2. Ismac operates a 90 slip marina (the “**Marina**”) located on the eastern shores of Georgian Bay, due west of Penetanguishene, Ontario. Ismac owns the real property from which the marina operates at 15 Sunset Court, Tiny, Ontario (the “**Real Property**”).
3. Ismac provides recreational boating customers with slip rentals, fuel, maintenance and repair services, spring launch and winterization services, and boat storage.
4. There are two residential homes situated on the Real Property. One of the homes is unoccupied and in the process of being renovated. The other home is occupied by Isabelle McCarthy (“**Isabelle**”) and her children. In addition to the homes, there are a storage shed, mechanic shop, fuel dock and a small store on the Real Property.
5. The appointment of the Receiver was sought by Pace Savings and Credit Union Limited (“**Pace**”). Pace is the primary secured lender of the Debtor having provided financing through numerous financing instruments since approximately 2004.

PURPOSES OF THIS REPORT

6. The purpose of this First Report of the Receiver (the “**First Report**”) is to:
 - i) report on the activities of the Receiver since the issuance of the Appointment Order and seek approval of the Receiver’s activities to date; and

- ii) seek approval of a proposed marketing and sales process (the “**Sales Process**”) in respect of the Property.

DISCLAIMER AND TERMS OF REFERENCE

7. 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 First 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 First Report or for any use which any person or entity makes of this First Report, or any reliance on or a decision made based upon this First Report, other than for the express purposes as set out in this First Report.
8. Capitalized terms not defined in this First Report are as defined in the Appointment Order.
9. Unless otherwise stated, all references to dollars are in Canadian currency.
10. A copy of this First 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/ismac-marina-inc>.

ACTIVITIES OF THE RECEIVER

11. Immediately upon the issuance of the Appointment Order the Receiver attended at the Marina to meet with Isabelle and staff.
12. The Receiver then:

- i) arranged for locks to be changed on the mechanic shop and the store;
 - ii) measured and recorded the fuel level in the onsite underground fuel tank, with the assistance of staff;
 - iii) met with the only employee retained by Ismac on a full time basis, its harbour master. This employee and Isabelle have been retained by the Receiver to assist with operating the business;
 - iv) prepared a listing of all boats and trailers situated on the Real Property;
 - v) obtained a copy of Ismac's accounting data file from its accounting system;
 - vi) notified Ismac's insurer of its appointment and requested to be added to the insurance policy as named insured; and
 - vii) notified Ismac's bank, Royal Bank of Canada ("**RBC**"), of the appointment and requested to have the sole bank account frozen.
13. Customers of the Marina pay their annual slip rental fees in one of two ways: lump sum or monthly payments split evenly over 12 months. The Receiver has been collecting the monthly slip rental payments since its appointment. These are typically paid by pre-authorized credit card payments.
14. The Receiver prepared and filed the Notice and Statement of Receiver in accordance with s245(1) and s246(1) of the BIA.
15. Ismac's books and records had not been maintained by management for 2014 or 2015. One of Isabelle's initial tasks as an employee of the Receiver was to update the records to allow preparation of a suitable list of creditors and collectible accounts receivable.

INTERIM STATEMENT OF RECEIVER'S RECEIPTS AND DISBURSEMENTS

16. Attached as **Appendix "B"** is the Receiver's Interim Statement of Receipts and Disbursements for the period September 24, 2015 to October 6, 2015.

17. The Receiver presently has \$7,616.11 in its trust account and \$7,137.40 in Ismac's RBC account.
18. The Receiver is presently seeking to recover \$6,500 in cheques that have been allowed to clear subsequent to the Receiver's service of the Appointment Order on RBC.

SALES AND MARKETING PROCESS

19. In order to expose the opportunity of the Marina and the Real Property to the marketplace and the possibility of securing offers that will maximize realization for all stakeholders, the Receiver proposes to conduct the Sale and Investment Solicitation Process ("**SISP**"), which is set out in detail in the SISP document (the "**SISP Outline**") attached as **Appendix "C"** and summarized below.
20. Subject to approval of the Honourable Court of the Sales Process, the Receiver will canvass the market for a period of four (4) weeks culminating in an offer deadline of **5:00 P.M. EST Tuesday, November 17, 2015** (the "**Offer Deadline**"), to invite Prospective Offerors (as defined in the SISP Outline) to conduct due diligence and submit bids for the Property.
21. The Receiver shall in its sole discretion (i) determine whether any person is a Prospective Offeror; (ii) coordinate the efforts of any Prospective Offerors in conducting their due diligence investigations; (iii) receive offers from any Prospective Offerors; and (iv) negotiate any offers made to purchase the Property.
22. In support of the SISP and efforts to canvass the market, the Receiver intends to:
 - (i) prepare a list of potential interested parties (the "**Interested Parties**") to contact;
 - (ii) prepare a "teaser" notice on the opportunity and send to the Interested Parties;
 - (iii) provide a confidentiality agreement to be signed by Interested Parties;
 - (iv) make arrangements to set up a virtual data room with password access to be provided to Prospective Offerors to allow due diligence to be conducted; and
 - (v) prepare an advertisement to be placed in a local newspaper and a national edition of a Canadian newspaper.

23. The SISP Outline and the terms and conditions of sale, including a base line agreement of purchase and sale (the “APS”) will be made available to Prospective Offerors.
24. Qualified Offers must include a proposed agreement of purchase and sale showing edits black-lined against the APS.
25. If multiple Qualified Offers have been received by the Receiver the Receiver may choose to:
 - i) accept one (or more if for distinct transactions) Qualified Offer(s) (the “**Successful Offer**” and each Qualified Offeror making the Successful Offer(s) being a “**Successful Offeror**”) and take such steps as are necessary to finalize and complete an agreement for the Successful Offer(s) with the Successful Offeror(s); or
 - ii) continue negotiations with a selected number of offerors (collectively, “**Selected Offerors**”) with a view to finalizing one or more agreements with one or more Selected Offerors.
26. The Receiver shall be under no obligation to accept the highest or best offer and the selection of the Successful Offer(s) and the Selected Offeror(s) shall be entirely in the discretion of the Receiver.
27. The Receiver contemplates that a sales approval motion will be sought on or before November 26, 2015 and that the anticipated closing of a transaction would occur no later than November 30, 2015. A timetable of the Sales Process is contained in **Appendix “C”**.

RECEIVER COMMENTS

28. The Receiver believes that the Sales Process to attract a going concern buyer will generate a better recovery for the stakeholders than a liquidation of the assets. Further, the Receiver believes that the value of the Premises is enhanced with an

operating marina in place given the central role that the Marina plays in the overall use of the Real Property.

29. The Receiver has been made aware of several parties that have an interest in acquiring the Property. The Sales Process provides a higher level of certainty regarding the ability to effect a going concern sale, continued operations to ensure no interruption of service to customers and the preservation of several jobs in the community. At the same time, the process provides a forum and deadline to permit and encourage any serious bidders to come forward with offers to increase realizations for stakeholders.
30. The Receiver has consulted with Pace with respect to the proposed timeline and Sales Process.
31. The Receiver believes the Sales Process is the most appropriate strategy to maximize recovery for the benefit of all stakeholders.

RECOMMENDATIONS

32. The Receiver respectfully recommends that this Honourable Court issue an Order:
 - i) approving the Receiver's activities described in this First Report;
 - ii) approving the Receiver's Interim Statement of Receipts and Disbursements for the period September 24, 2015 to October 6, 2015; and
 - iii) approving the SISP.

All of which is respectfully submitted this 8th day of October, 2015.

**A. FARBER & PARTNERS INC. IN ITS CAPACITY AS
COURT APPOINTED RECEIVER OF ISMAC MARINA INC.**

A. Farber & Partners Inc.

APPENDIX "A"

APPOINTMENT ORDER OF J. HAINEY DATED SEPTEMBER 24, 2015

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE) THURSDAY, THE 24TH
JUSTICE *HAINES*) DAY OF SEPTEMBER, 2015

PACE SAVINGS & CREDIT UNION LIMITED

Applicant

and

ISMAR MARINA INC., ISABELLE MCCARTHY and
ALEXANDER MCCARTHY, a.k.a. Sandy McCarthy

Respondents

APPLICATION UNDER s. 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985 c-B-3,
and Rules 14.05(2), (3) (d), (g) and (h) of the *Rules of Civil Procedure*

ORDER
(Appointing Receiver)

THIS APPLICATION made by the Applicant, Pace Savings & Credit Union Limited ("Pace") for, *inter alia*, an Order pursuant to section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the "BIA") and section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended (the "CJA") appointing A. Farber & Partners Inc. as receiver [and manager] (in such capacities, the "Receiver") without security, of all of the assets, undertakings and properties of Ismarc Marina Inc. o/a AC Marina (the "Debtor") acquired for, or used in relation to a business carried on by the Debtor, was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the affidavit of Suzanne Hyde sworn September 15, 2015 and the Exhibits thereto and on hearing the submissions of counsel for the Applicant, no one appearing

for the Respondents although duly served as appears from the affidavit of service of Josset Johnson sworn September 17, 2015 and on reading the consent of A. Farber & Partners Inc. to act as the Receiver,

SERVICE

1. THIS COURT ORDERS that the time for service of the Notice of Application and the Application is hereby abridged and validated so that this Application is properly returnable today and hereby dispenses with further service thereof.

2. THIS COURT ORDERS that the adjudication of claims against the Respondents, Isabelle McCarthy and Alexander McCarthy in respect of their guarantees in favour of the Applicant are hereby adjourned to a date to be set by the Commercial List Office.

APPOINTMENT

3. THIS COURT ORDERS that pursuant to section 243(1) of the BIA and section 101 of the CJA, A. Farber & Partners Inc. is hereby appointed Receiver, without security, of all of the assets, undertakings and properties of the Debtor acquired for, or used in relation to a business carried on by the Debtor, including all proceeds thereof (the "Property").

RECEIVER'S POWERS

4. THIS COURT ORDERS that the Receiver is hereby empowered and authorized, but not obligated, to act at once in respect of the Property and, without in any way limiting the generality of the foregoing, the Receiver is hereby expressly empowered and authorized to do any of the following where the Receiver considers it necessary or desirable:

- (a) to take possession of and exercise control over the Property and any and all proceeds, receipts and disbursements arising out of or from the Property;
- (b) to receive, preserve, and protect the Property, or any part or parts thereof, including, but not limited to, the changing of locks and security codes, the relocating of Property to safeguard it, the engaging of independent

security personnel, the taking of physical inventories and the placement of such insurance coverage as may be necessary or desirable;

- (c) to manage, operate, and carry on the business of the Debtor, including the powers to enter into any agreements, incur any obligations in the ordinary course of business, cease to carry on all or any part of the business, or cease to perform any contracts of the Debtor;
- (d) to engage consultants, appraisers, agents, experts, auditors, accountants, managers, counsel and such other persons from time to time and on whatever basis, including on a temporary basis, to assist with the exercise of the Receiver's powers and duties, including without limitation those conferred by this Order;
- (e) to purchase or lease such machinery, equipment, inventories, supplies, premises or other assets to continue the business of the Debtor or any part or parts thereof;
- (f) to receive and collect all monies and accounts now owed or hereafter owing to the Debtor and to exercise all remedies of the Debtor in collecting such monies, including, without limitation, to enforce any security held by the Debtor;
- (g) to settle, extend or compromise any indebtedness owing to the Debtor;
- (h) to execute, assign, issue and endorse documents of whatever nature in respect of any of the Property, whether in the Receiver's name or in the name and on behalf of the Debtor, for any purpose pursuant to this Order;
- (i) to initiate, prosecute and continue the prosecution of any and all proceedings and to defend all proceedings now pending or hereafter instituted with respect to the Debtor, the Property or the Receiver, and to settle or compromise any such proceedings. The authority hereby

conveyed shall extend to such appeals or applications for judicial review in respect of any order or judgment pronounced in any such proceeding;

- (j) 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;
- (k) to sell, convey, transfer, lease or assign the Property or any part or parts thereof out of the ordinary course of business,
 - (i) without the approval of this Court in respect of any transaction not exceeding \$100,000, provided that the aggregate consideration for all such transactions does not exceed \$500,000; and
 - (ii) with the approval of this Court in respect of any transaction in which the purchase price or the aggregate purchase price exceeds the applicable amount set out in the preceding clause;

and in each such case notice under subsection 63(4) of the Ontario *Personal Property Security Act*, [or section 31 of the Ontario *Mortgages Act*, as the case may be,] shall not be required, and in each case the Ontario *Bulk Sales Act* shall not apply.

- (l) to apply for any vesting order or other orders necessary to convey the Property or any part or parts thereof to a purchaser or purchasers thereof, free and clear of any liens or encumbrances affecting such Property;
- (m) to report to, meet with and discuss with such affected Persons (as defined below) as the Receiver deems appropriate on all matters relating to the Property and the receivership, and to share information, subject to such terms as to confidentiality as the Receiver deems advisable;
- (n) to register a copy of this Order and any other Orders in respect of the Property against title to any of the Property;

- (o) to apply for any permits, licences, approvals or permissions as may be required by any governmental authority and any renewals thereof for and on behalf of and, if thought desirable by the Receiver, in the name of the Debtor;
- (p) to enter into agreements with any trustee in bankruptcy appointed in respect of the Debtor, including, without limiting the generality of the foregoing, the ability to enter into occupation agreements for any property owned or leased by the Debtor;
- (q) to exercise any shareholder, partnership, joint venture, statutory or other lien *in rem* or other rights which the Debtor may have;
- (r) to file an assignment in bankruptcy on behalf of the Debtor; and
- (s) to take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations.

and in each case where the Receiver takes any such actions or steps, it shall be exclusively authorized and empowered to do so, to the exclusion of all other Persons (as defined below), including the Debtor, and without interference from any other Person.

DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE RECEIVER

5. THIS COURT ORDERS that (i) the Debtor, (ii) all of its current and former directors, officers, employees, agents, accountants, legal counsel and shareholders, and all other persons acting on its instructions or behalf, and (iii) all other individuals, firms, corporations, governmental bodies or agencies, or other entities having notice of this Order (all of the foregoing, collectively, being "Persons" and each being a "Person") shall forthwith advise the Receiver of the existence of any Property in such Person's possession or control, shall grant immediate and continued access to the Property to the Receiver, and shall deliver all such Property to the Receiver upon the Receiver's request.

6. THIS COURT ORDERS that all Persons shall 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, and any computer programs, computer tapes, computer disks, or other data storage media containing any such information (the foregoing, collectively, the "Records") in that Person's possession or control, and shall provide to the Receiver or permit the Receiver to make, retain and take away copies thereof and grant to the Receiver unfettered access to and use of accounting, computer, software and physical facilities relating thereto, provided however that nothing in this paragraph 5 or in paragraph 6 of this Order shall require the delivery of Records, or the granting of access to Records, which may not be disclosed or provided to the Receiver due to the privilege attaching to solicitor-client communication or due to statutory provisions prohibiting such disclosure.

7. THIS COURT ORDERS that if any Records are stored or otherwise contained on a computer or other electronic system of information storage, whether by independent service provider or otherwise, all Persons in possession or control of such Records shall forthwith give unfettered access to the Receiver for the purpose of allowing the Receiver to recover and fully copy all of the information contained therein whether by way of printing the information onto paper or making copies of computer disks or such other manner of retrieving and copying the information as the Receiver in its discretion deems expedient, and shall not alter, erase or destroy any Records without the prior written consent of the Receiver. Further, for the purposes of this paragraph, all Persons shall provide the Receiver with all such assistance in gaining immediate access to the information in the Records as the Receiver may in its discretion require including providing the Receiver with instructions on the use of any computer or other system and providing the Receiver with any and all access codes, account names and account numbers that may be required to gain access to the information.

NO PROCEEDINGS AGAINST THE RECEIVER

8. THIS COURT ORDERS that no proceeding or enforcement process in any court or tribunal (each, a "Proceeding"), shall be commenced or continued against the Receiver except with the written consent of the Receiver or with leave of this Court.

NO PROCEEDINGS AGAINST THE DEBTOR OR THE PROPERTY

9. THIS COURT ORDERS that no Proceeding against or in respect of the Debtor or the Property shall be commenced or continued except with the written consent of the Receiver or with leave of this Court and any and all Proceedings currently under way against or in respect of the Debtor or the Property are hereby stayed and suspended pending further Order of this Court.

NO EXERCISE OF RIGHTS OR REMEDIES

10. THIS COURT ORDERS that all rights and remedies against the Debtor, the Receiver, or affecting the Property, are hereby stayed and suspended except with the written consent of the Receiver or leave of this Court, provided however that this stay and suspension does not apply in respect of any "eligible financial contract" as defined in the BIA, and further provided that nothing in this paragraph shall (i) empower the Receiver or the Debtor to carry on any business which the Debtor is not lawfully entitled to carry on, (ii) exempt the Receiver or the Debtor from compliance with statutory or regulatory provisions relating to health, safety or the environment, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien.

NO INTERFERENCE WITH THE RECEIVER

11. THIS COURT ORDERS that no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the Debtor, without written consent of the Receiver or leave of this Court.

CONTINUATION OF SERVICES

12. THIS COURT ORDERS that all Persons having oral or written agreements with the Debtor or statutory or regulatory mandates for the supply of goods and/or services, including without limitation, all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation services, utility or other services to the Debtor are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Receiver, and that the Receiver shall be entitled to the continued use of the Debtor's current

telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Receiver in accordance with normal payment practices of the Debtor or such other practices as may be agreed upon by the supplier or service provider and the Receiver, or as may be ordered by this Court.

RECEIVER TO HOLD FUNDS

13. THIS COURT ORDERS that all funds, monies, cheques, instruments, and other forms of payments received or collected by the Receiver from and after the making of this Order from any source whatsoever, including without limitation the sale of all or any of the Property and the collection of any accounts receivable in whole or in part, whether in existence on the date of this Order or hereafter coming into existence, shall be deposited into one or more new accounts to be opened by the Receiver (the "Post Receivership Accounts") and the monies standing to the credit of such Post Receivership Accounts from time to time, net of any disbursements provided for herein, shall be held by the Receiver to be paid in accordance with the terms of this Order or any further Order of this Court.

EMPLOYEES

14. THIS COURT ORDERS that all employees of the Debtor shall remain the employees of the Debtor until such time as the Receiver, on the Debtor's behalf, may terminate the employment of such employees. The Receiver shall not be liable for any employee-related liabilities, including any successor employer liabilities as provided for in section 14.06(1.2) of the BIA, other than such amounts as the Receiver may specifically agree in writing to pay, or in respect of its obligations under sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*.

PIPEDA

15. THIS COURT ORDERS that, pursuant to clause 7(3)(c) of the Canada *Personal Information Protection and Electronic Documents Act*, the Receiver shall disclose personal information of identifiable individuals to prospective purchasers or bidders for the Property and to their advisors, but only to the extent desirable or required to negotiate and attempt to complete one or more sales of the Property (each, a "Sale"). Each prospective purchaser or bidder to

whom such personal information is disclosed shall maintain and protect the privacy of such information and limit the use of such information to its evaluation of the Sale, and if it does not complete a Sale, shall return all such information to the Receiver, or in the alternative destroy all such information. The purchaser of any Property shall be entitled to continue to use the personal information provided to it, and related to the Property purchased, in a manner which is in all material respects identical to the prior use of such information by the Debtor, and shall return all other personal information to the Receiver, or ensure that all other personal information is destroyed.

LIMITATION ON ENVIRONMENTAL LIABILITIES

16. THIS COURT ORDERS that nothing herein contained shall require the Receiver to occupy or to take control, care, charge, possession or management (separately and/or collectively, "Possession") of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, the *Ontario Environmental Protection Act*, the *Ontario Water Resources Act*, or the *Ontario Occupational Health and Safety Act* and regulations thereunder (the "Environmental Legislation"), provided however that nothing herein shall exempt the Receiver from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Receiver shall not, as a result of this Order or anything done in pursuance of the Receiver's duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

LIMITATION ON THE RECEIVER'S LIABILITY

17. THIS COURT ORDERS that the Receiver shall incur no liability or obligation as a result of its appointment or the carrying out the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part, or in respect of its obligations under sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*. Nothing in this Order

shall derogate from the protections afforded the Receiver by section 14.06 of the BIA or by any other applicable legislation.

RECEIVER'S ACCOUNTS

18. THIS COURT ORDERS that the Receiver and counsel to the Receiver shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges unless otherwise ordered by the Court on the passing of accounts, and that the Receiver and counsel to the Receiver shall be entitled to and are hereby granted a charge (the "Receiver's Charge") on the Property, as security for such fees and disbursements, both before and after the making of this Order in respect of these proceedings, and that the Receiver's Charge shall form a first charge on the Property in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subject to sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

19. THIS COURT ORDERS that the Receiver and its legal counsel shall pass its accounts from time to time, and for this purpose the accounts of the Receiver and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

20. THIS COURT ORDERS that prior to the passing of its accounts, the Receiver shall be at liberty from time to time to apply reasonable amounts, out of the monies in its hands, against its fees and disbursements, including legal fees and disbursements, incurred at the standard rates and charges of the Receiver or its counsel, and such amounts shall constitute advances against its remuneration and disbursements when and as approved by this Court.

FUNDING OF THE RECEIVERSHIP

21. THIS COURT ORDERS that the Receiver be at liberty and it is hereby empowered to borrow by way of a revolving credit or otherwise, such monies from time to time as it may consider necessary or desirable, provided that the outstanding principal amount does not exceed \$250,000 (or such greater amount as this Court may by further Order authorize) at any time, at such rate or rates of interest as it deems advisable for such period or periods of time as it may arrange, for the purpose of funding the exercise of the powers and duties conferred upon the Receiver by this Order, including interim expenditures. The whole of the Property shall be and

is hereby charged by way of a fixed and specific charge (the "Receiver's Borrowings Charge") as security for the payment of the monies borrowed, together with interest and charges thereon, in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subordinate in priority to the Receiver's Charge and the charges as set out in sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

22. THIS COURT ORDERS that neither the Receiver's Borrowings Charge nor any other security granted by the Receiver in connection with its borrowings under this Order shall be enforced without leave of this Court.

23. THIS COURT ORDERS that the Receiver is at liberty and authorized to issue certificates substantially in the form annexed as Schedule "A" hereto (the "Receiver's Certificates") for any amount borrowed by it pursuant to this Order.

24. THIS COURT ORDERS that the monies from time to time borrowed by the Receiver pursuant to this Order or any further order of this Court and any and all Receiver's Certificates evidencing the same or any part thereof shall rank on a *pari passu* basis, unless otherwise agreed to by the holders of any prior issued Receiver's Certificates.

SERVICE AND NOTICE

25. THIS COURT ORDERS that the E-Service Protocol of the Commercial List (the "Protocol") is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Protocol (which can be found on the Commercial List website at <http://www.ontariocourts.ca/scj/practice/practice-directions/toronto/e-service-protocol/>) shall be valid and effective service. Subject to Rule 17.05 this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the Rules of Civil Procedure. Subject to Rule 3.01(d) of the Rules of Civil Procedure and paragraph 21 of the Protocol, service of documents in accordance with the Protocol will be effective on transmission. This Court further orders that a Case Website shall be established in accordance with the Protocol.

26. THIS COURT ORDERS that if the service or distribution of documents in accordance with the Protocol is not practicable, the Receiver is at liberty to serve or distribute this Order, any other materials and orders in these proceedings, any notices or other correspondence, by

forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery or facsimile transmission to the Debtor's creditors or other interested parties at their respective addresses as last shown on the records of the Debtor and that any such service or distribution by courier, personal delivery or facsimile transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

GENERAL

27. THIS COURT ORDERS that the Receiver may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

28. THIS COURT ORDERS that nothing in this Order shall prevent the Receiver from acting as a trustee in bankruptcy of the Debtor.

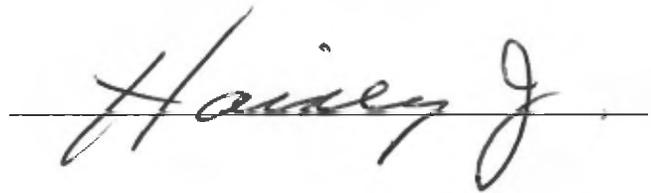
29. THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.

30. THIS COURT ORDERS that the Receiver be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and that the Receiver is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

31. THIS COURT ORDERS that the Applicant shall have its costs of this motion, up to and including entry and service of this Order, provided for by the terms of the Applicant's security or, if not so provided by the Applicant's security, then on a substantial indemnity basis to be paid

by the Receiver from the Debtor's estate with such priority and at such time as this Court may determine.

32. THIS COURT ORDERS that any interested party may apply to this Court to vary or amend this Order on not less than seven (7) days' notice to the Receiver and to any other party likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

A handwritten signature in cursive script, reading "Hailey J.", is written over a horizontal line. The signature is written in black ink and is centered on the page.

SCHEDULE "A"

RECEIVER CERTIFICATE

CERTIFICATE NO. _____

AMOUNT \$ _____

1. THIS IS TO CERTIFY that A. Farber & Partners Inc., the receiver (the "Receiver") of the assets, undertakings and properties Ismac Marina Inc. acquired for, or used in relation to a business carried on by the Debtor, including all proceeds thereof (collectively, the "Property") appointed by Order of the Ontario Superior Court of Justice (Commercial List) (the "Court") dated the 24th day of September, 2015 (the "Order") made in an action having Court file number CV-15-11108-00CL, has received as such Receiver from the holder of this certificate (the "Lender") the principal sum of \$ _____, being part of the total principal sum of \$ _____ which the Receiver is authorized to borrow under and pursuant to the Order.

2. The principal sum evidenced by this certificate is payable on demand by the Lender with interest thereon calculated and compounded [daily][monthly not in advance on the _____ day of each month] after the date hereof at a notional rate per annum equal to the rate of _____ per cent above the prime commercial lending rate of Bank of _____ from time to time.

3. Such principal sum with interest thereon is, by the terms of the Order, together with the principal sums and interest thereon of all other certificates issued by the Receiver pursuant to the Order or to any further order of the Court, a charge upon the whole of the Property, in priority to the security interests of any other person, but subject to the priority of the charges set out in the Order and in the *Bankruptcy and Insolvency Act*, and the right of the Receiver to indemnify itself out of such Property in respect of its remuneration and expenses.

4. All sums payable in respect of principal and interest under this certificate are payable at the main office of the Lender at Toronto, Ontario.

5. Until all liability in respect of this certificate has been terminated, no certificates creating charges ranking or purporting to rank in priority to this certificate shall be issued by the Receiver to any person other than the holder of this certificate without the prior written consent of the holder of this certificate.

6. The charge securing this certificate shall operate so as to permit the Receiver to deal with the Property as authorized by the Order and as authorized by any further or other order of the Court.

7. The Receiver does not undertake, and it is not under any personal liability, to pay any sum in respect of which it may issue certificates under the terms of the Order.

DATED the ____ day of September, 2015.

A. FARBER & PARTNERS INC., solely in its capacity as Receiver of the Property, and not in its personal capacity

Per: _____

Name:

Title:

PACE SAVINGS & CREDIT UNION LIMITED
Applicant

-and- ISMAC MARINA INC. et al.
Respondents

Court File No. CV-15-11108-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

PROCEEDING COMMENCED AT TORONTO

ORDER
(Appointing Receiver)

TORKIN MANES LLP
Barristers & Solicitors
151 Yonge Street, Suite 1500
Toronto, ON M5C 2W7

Jeffrey J. Simpson (39663M)
jsimpson@torkinmanes.com
Tel: 416-777-5413
Fax: 1-888-587-9143

Lawyers for the Applicant, Pace Savings & Credit Union
Limited

APPENDIX "B"

INTERIM STATEMENT OF RECEIPTS & DISBURSEMENTS

IN THE MATTER OF THE RECEIVERSHIP OF
ISMAR MARINA INC. O/A AC MARINA
INTERIM STATEMENT OF RECEIPTS & DISBURSEMENTS
As at October 6, 2015

Receipts

Accounts receivable	\$ 15,227.05
Service revenue	724.50
HST Collected	<u>94.19</u>
Total Receipts	<u>16,045.74</u>

Disbursements

Bank Charges	542.54
Filing fee paid to Official Receiver	70.00
Wages	<u>679.69</u>
Total Disbursements	<u>1,292.23</u>

Gross Receipts over Disbursements \$ 14,753.51

Funds on-hand

Balance in Receiver's trust bank account at Oct. 6, 2015	7,616.11
Balance in Debtor's general bank account at Oct. 6, 2015	<u>7,137.40</u>
Total funds on-hand	<u>\$ 14,753.51</u>

APPENDIX "C"

SALES AND INVESTMENT SOLICITATION PROCESS

Sale and Investment Solicitation Process

Purpose

1. The purpose of the Sale and Investment Solicitation Process ("**SISP**") is to identify one or more purchasers of, and/or investors in, the business and/or assets of Ismac Marina Inc. o/a AC Marina ("**Ismac**"). The SISP will be conducted by A. Farber & Partners Inc. in its capacity as the court appointed receiver of Ismac (the "**Receiver**").
2. It is contemplated that the Receiver will seek an order (the "**Order**") of the Ontario Superior Court of Justice (Commercial List) (the "**Court**"), among other things, approving the SISP on or about October 19, 2015.
3. Unless otherwise indicated herein any event that occurs on a day that is not a business day shall be deemed to occur on the next business day.

SISP Procedures

4. The Receiver will compile a list of prospective investors and purchasers (together with any other party expressing an interest in the business and/or assets of Ismac, the "**Interested Parties**"). The Receiver will make best efforts to canvass the interest of all Interested Parties.
5. The SISP will be conducted by the Receiver and will provide Interested Parties with the opportunity to submit offers to purchase some or all of Ismac's business and/or assets or to invest in the business.
6. The Receiver shall cause a notice of the SISP to be published in a local newspaper and The Globe and Mail (National Edition) within five (5) days following the date of the Order.
7. As soon as possible after the issuance of the Order, the Receiver will distribute to Interested Parties an interest solicitation letter which will provide an overview of this opportunity and Ismac's business and assets. A form of confidentiality agreement ("**CA**") will be attached to the interest solicitation letter that Interested Parties will be required to

sign in order to gain access to confidential information and to commence performing due diligence (each Interested Party who signs a CA being referred to herein as, a "**Prospective Offeror**"). All CA's shall enure to the benefit of any purchaser of or investor in Ismac's business and/or assets.

8. The Receiver will provide to each Prospective Offeror (i) a confidential information memorandum, (ii) access to an electronic data room (which will include certain financial and other information with respect to Ismac), and (iii) a proposed form of agreement of purchase and sale (the "**APS**"). The Receiver will also facilitate diligence by Prospective Offerors, including arranging site visits, as the Receiver determines to be appropriate. The Receiver will attend such site visits as it considers appropriate.
9. Notwithstanding paragraph 8 above, the Receiver shall have the right to limit any Prospective Offeror's access to confidential information. This will include limiting access, if deemed appropriate, to parties who the Receiver reasonably believes are not likely to be serious offerors.

Timeline

10. A chart summarizing material deadlines for the SISP is set out below:

	Event	Timing
1	The Receiver shall contact potential purchasers.	Immediately upon approval of Sale Process
2	Information pertaining to this opportunity will be posted on the Receiver's website: www.farberfinancialgroup.com , which will include <ul style="list-style-type: none"> • Invitation for Offers to purchase the Property; • Confidentiality Agreement. 	Initial information to be posted within 1 Day of obtaining approval of the Sales Process
3	Advertise the sale of the Property in a recognized online publication, a local newspaper and in the Globe and Mail (National Edition), as considered appropriate by the Receiver.	Within 5 business days of obtaining approval of the Sales Process

4	Interested parties given access to additional data, data room and be provided with an opportunity to conduct site visits (subject to receipt of a signed confidentiality agreement).	Monday, October 19 to Tuesday, November 17, 2015 (5 weeks)
5	Deadline for submission of Offers	5:00 PM (EST) Tuesday, November 17, 2015
6	Selection of Successful Offer and execute binding APS	On or before Thursday, November 19, 2015
7	Seek Court approval of APS and obtain a vesting order.	On or prior to Thursday, November 26, 2015
8	Close sale to successful purchaser(s).	On or prior to Monday, November 30, 2015
9	Unsuccessful bidders to return all confidential materials to the Receiver, and applicable deposits refunded.	Friday, December 4, 2015

Submission of Offers

11. The Receiver shall seek binding offers from Prospective Offerors in accordance with the timeline above that:
 - (a) provides the identity of each person or entity (including its shareholders) that is sponsoring or participating in the offer and the complete terms of such participation, evidence of corporate authority, and proof of such offeror's financial ability to perform the proposed transaction to the satisfaction of the Receiver, acting reasonably;
 - (b) are in the form of a binding offer capable of acceptance, irrevocable until December 4, 2015;

- (c) at the discretion of the Receiver, are accompanied by a cash deposit (the "**Deposit**") in the form of a wire transfer (to a bank account specified by the Receiver), in an amount equal to 10% of the consideration in the offer and otherwise on terms acceptable to the Receiver;
- (d) in the case of a proposed purchase of Ismac's business and/or assets, is substantially in the form of the APS, with any changes to the offer blacklined against the APS;
- (e) includes: an acknowledgement and representation that the offeror: (i) has relied solely upon its own independent review, investigation and/or inspection of any documents and/or the assets to be acquired and liabilities to be assumed in making its bid; and (ii) did not rely upon any written or oral statements, representations, promises, warranties or guaranties whatsoever, whether express or implied (by operation of law or otherwise), regarding the business and/or assets to be acquired or liabilities to be assumed or the completeness of any information provided in connection therewith, except as expressly stated in any definitive documents;
- (f) is not conditional upon:
 - (i) the outcome of unperformed due diligence; or
 - (ii) obtaining financing; and
- (g) states any conditions to closing.

12. Each offer submitted in accordance with paragraph 11 above shall be a "**Qualified Offer**" and each such offeror a "**Qualified Offeror**".

Post-Offer Procedure

13. If one or more Qualified Offers are received, the Receiver may choose to:

- (a) accept one (or more if for distinct transactions) Qualified Offer(s) (the "**Successful Offer**" and each Qualified Offeror making the Successful Offer(s)

being a "**Successful Offeror**") and take such steps as are necessary to finalize and complete an agreement for the Successful Offer(s) with the Successful Offeror(s);
or

(b) continue negotiations with a selected number of offerors (collectively, "**Selected Offerors**") with a view to finalizing one or more agreements with one or more Selected Offerors.

14. The Receiver shall be under no obligation to accept the highest or best (or any) offer and any selection of the Successful Offer(s) and the Selected Offeror(s) shall be entirely in the discretion of the Receiver. For greater certainty, the Receiver shall be permitted to decline acceptance of all offers.
15. No party shall be allowed any break, termination or similar fee. For greater certainty, Interested Parties and Qualified Offerors shall be responsible for their own fees and costs relating to any transaction.

Other Terms

16. If a Successful Offeror breaches its obligations under the terms of its offer, its Deposit shall be forfeited to the Receiver as liquidated damages and not as a penalty.
17. Notwithstanding anything else contain herein, if it becomes evident to the Receiver that no Qualified Offers will be received, the Receiver may terminate the SISP.
18. The Receiver shall apply to the Court (the "**Approval Motion**") for an order approving the Successful Offer(s) and authorizing the Receiver to undertake such actions as may be necessary or appropriate to give effect to the Successful Offer.
19. The Receiver will schedule the Approval Motion on the earliest reasonably possible date following the determination of the Successful Offer.
20. At any time during the SISP, the Receiver may, upon reasonable notice to the service list, apply to the Court for advice and directions with respect to the discharge of its powers and duties hereunder.

21. There shall be no amendments to this SISP, including, for greater certainty the process and procedures set out herein, without further order of the Court. Notwithstanding the foregoing, the Receiver shall be permitted to extend the dates in the SISP by a total of up to two (2) weeks without further order of the Court.