

**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.
SECOND REPORT OF THE RECEIVER
DECEMBER 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, near Penetanguishene, Ontario. Ismac owns the real property from which the marina operates at 15 Sunset Court, Tiny, Ontario (the “**Real Property**”).

3. 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.

4. On October 9, 2015, the Receiver served its first report (the “**First Report**”) in support of its motion to obtain court approval to, *inter alia*, conduct a sale and investment solicitation process (the “**SISP**”) to attract a buyer of the Property. Attached hereto as **Appendix “B”** is a copy of the First Report without appendices.

5. On October 19, 2015, the Honourable Mr. Justice Penny issued an order (the “**SISP Approval Order**”) approving and authorizing the Receiver to, *inter alia*, conduct the SISP. A copy of the SISP Approval Order is attached hereto as **Appendix “C”**.

PURPOSES OF THIS REPORT

6. The purposes of this Second Report of the Receiver (the “**Second Report**”) are to:

- (a) report on the activities of the Receiver since the issuance of the First Report and seek approval of the Receiver’s activities to date, including reporting on the results of the SISP undertaken by the Receiver;
- (b) provide support for an order as requested by the Receiver:
 - (i) approving this Second Report and the activities set out herein;
 - (ii) approving the Receiver’s Interim Statement of Receipts and Disbursements to December 7, 2015;
 - (iii) approving the asset purchase agreement dated December 7, 2015 (the “**APA**”) between the Receiver and Pace (the “**Purchaser**”) for the purchase and sale of the Property;
 - (iv) vesting in the Purchaser all of the Debtor’s and the Receiver’s right, title and interest, if any, in the Purchased Assets (as defined in the APA), free and clear of any encumbrances, except permitted encumbrances;

- (v) authorizing the Receiver to make a distribution to Pace upon closing of the transaction contemplated by the APA (the “**APA Transaction**”);
- (vi) approving of the fees and disbursements of the Receiver and its legal counsel, Fogler Rubinoff LLP (“**Foglers**”), as set out in Affidavit of Peter Crawley of Farber sworn on December 7, 2015 (the “**Crawley Affidavit**”) and the Affidavit of Greg Azeff of Foglers sworn on December 4, 2015 (the “**Azeff Affidavit**”);
- (vii) sealing Confidential Appendix “A” and Confidential Appendix “B” of this Second Report until further order of this Court; and
- (viii) such other relief as this Honourable Court deems appropriate.

DISCLAIMER AND TERMS OF REFERENCE

7. In preparing this Second Report, the Receiver has relied upon unaudited financial information, the Debtor's records and financial information. While the Receiver has reviewed the Debtor's records such work does not constitute an audit or verification of such information for accuracy, completeness or compliance with Generally Accepted Accounting Principles or International Financial Reporting Standards. Accordingly, the Receiver expresses no opinion or other form of assurance with respect to such information except as expressly stated herein. This Second Report has been prepared for use by the Court and the Debtor's stakeholders as general information relating to the

Debtor and for the purpose of assisting the Court in making a determination of whether to approve the relief sought.

8. Capitalized terms not defined in this Second 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 Second 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

Operations

11. During the receivership the Receiver retained the services of two employees and a subcontract marine mechanic to attend to winterizing and shrink-wrapping customer boats in preparation for winter.

12. The Receiver hired the services of a crane company and a specialized boat trailering company to assist with placing certain larger boats and the floating docks on land for the winter.

13. All customer boats were winterized by the middle of November and the employees have been laid off. There are presently forty-six (46) boats stored on the Real Property for the winter.

14. The mechanic assisted the Receiver with three boat repairs that the Receiver was able to invoice customers for, as well as ensuring proper winterization of customer boats. This generated additional service revenue for the receivership.

15. The Receiver borrowed \$10,000.00 from Pace and issued a Receiver's Certificate to Pace in accordance with paragraph 21 of the Appointment Order. This advance was obtained to fund the Receiver's initial operating expenses.

16. The Receiver has also maintained insurance during the receivership under Ismac's prior insurance policy wherein the Receiver was added to the policy as named insured.

Sales Process

17. Immediately upon the issuance of the SISP Approval Order the Receiver began conducting the SISP. Specific marketing steps taken by the Receiver were:

- (a) Prepared an information summary (the "**Teaser**"), a confidentiality agreement (the "**CA**"), a confidential information memorandum (the "**CIM**"), and a secure online data room (the "**Data Room**") to offer prospective purchasers the opportunity to conduct due diligence on the business opportunity of the Debtor;
- (b) Compiled a list of prospective interested parties;
- (c) Placed an advertisement in the National Edition of the **Globe and Mail** on October 22, 2015, a copy of which is attached hereto as **Appendix "D"**;

(d) Placed an advertisement in the Midland Mirror, a publication in the locale of the Debtor, on October 22, 2015, a copy of which is attached hereto as **Appendix “E”**;

(e) Arranged for notice of the SISP to be published online and in the October 27, 2015 e-newsletter of the online industry site www.boatingindustry.ca, a copy of which is attached hereto as **Appendix “F”**;

18. As a result of the SISP advertising efforts and discussions with management of Ismac, fifty-five (55) parties were invited to participate in the SISP. Management of Ismac provided the Receiver with the names of several known interested parties whom the Receiver contacted directly to invite to participate in the SISP.

19. The Receiver received signed CA’s from fourteen (14) parties and each such party was given access to the Data Room.

20. The bid deadline was initially established as November 17, 2015 (the “**Initial Bid Deadline**”) in accordance with the SISP Approval Order. The Receiver received two bids prior to that time. Neither of these bids were acceptable to the Receiver or Pace, the primary stakeholder that would be affected by the acceptance of any bid, on the basis that the amount offered in each bid was insufficient to satisfy Pace’s requirements.

21. At the Initial Bid Deadline there were four parties known to the Receiver to still be working on preparing their bids. Pursuant to the terms of the SISP, the Receiver had the discretion to extend the sales process by up to two weeks without court approval. The

Receiver elected to extend the bid deadline by two weeks to December 1, 2015 (the “**Second Bid Deadline**”).

22. A schedule listing the parties contacted and the responses received is attached hereto as **Confidential Appendix “A”**.

23. The Receiver contacted the two parties that had submitted bids by the Initial Bid Deadline and gave them the opportunity to improve their bids. Neither bidder chose to do so.

24. Pace indicated to the Receiver that it was not prepared to consent to the Receiver’s acceptance of either of the two bids received by the Initial Bid Deadline.

25. The four additional prospective bidders indicated to the Receiver that they were not going to be able to submit offers that would be considered acceptable. Thus, no further bids were received by the Second Bid Deadline.

26. Pace indicated to the Receiver that it was prepared to submit its own offer for the Property. An offer from Pace (the “**Pace Offer**”) was received on December 7, 2015. The Pace Offer, which is the same as the aforementioned APA, is attached hereto as **Confidential Appendix “B”**.

The APA

27. Pace has indicated that if the APA is approved, then Pace will hire a property manager and operator to operate the marina during the 2016 boating season for the benefit of Ismac’s customers while it explores other avenues to deal with its security.

28. – **REDACTED** -

29. While the Pace Offer was received after the Second Bid Deadline, the other 2 bids received were inferior to the Pace Offer and Pace is the primary stakeholder that would have suffered a shortfall had one of those other offers been accepted.

30. The Receiver has undertaken a thorough marketing process, has made substantial efforts to obtain the best price for the Property, and has not acted improvidently. In making its recommendations, the Receiver has considered the interests of all stakeholders as well as the efficacy and integrity of the SISP. The Receiver is of the view that no party would be unfairly prejudiced by acceptance of the Pace Offer.

31. The Receiver recommends that the Court approve and authorize the Receiver to enter into the APA with Pace as this offer is the highest offer made for the Property and is the only offer that would be acceptable to Pace, the only party with any economic interest in the outcome of the sale process.

32. Should the Receiver have any surplus cash available from operations or otherwise at the conclusion of the receivership, these funds would be returned to Pace with an according adjustment to the Purchase Price.

INTERIM STATEMENT OF RECEIVER’S RECEIPTS AND DISBURSEMENTS

33. Attached as **Appendix “H”** is the Receiver’s Interim Statement of Receipts and Disbursements for the period September 24, 2015 to December 7, 2015.

34. The Receiver presently has \$1,647.26 in its trust account and \$25,878.64 in Ismac's RBC account.

35. RBC has returned \$6,500 in funds to the Receiver in respect of cheques that were allowed to clear subsequent to the Receiver's service of the Appointment Order on RBC.

PRIORITY PAYABLE AMOUNTS

Canada Revenue Agency

36. Canada Revenue Agency ("CRA") staff attended at Ismac on November 12, 2015 to conduct a trust examination of Ismac's payroll source deduction account and H.S.T. filings.

37. Attached as **Appendix "I"** is a copy of the Examiner's Statement of Account in respect of payroll deductions indicating an amount owing of \$30,328.35. CRA has confirmed to the Receiver in writing that the portion of this amount that is a deemed trust obligation is \$20,908.60 (the "**Source Deduction Deemed Trust**"). This amount must be paid in advance of a distribution to Pace.

38. Attached as **Appendix "J"** is a copy of the GST/HST Examination Statement of Account indicating \$122,466.07 owing by Ismac. The Receiver is in the process of assigning Ismac into bankruptcy in accordance with paragraph 4 (r) of the Appointment Order, with the consent of Pace, in order to subordinate the CRA HST liability to the Pace Indebtedness.

Township of Tiny – Property Tax Arrears

39. Attached as **Appendix “K”** is a Certificate of Taxes issued by the Township of Tiny in respect of the Real Property. The property tax arrears owing as at November 13, 2015 is \$46,791.17 (the “**Property Tax Arrears**”). This amount must be paid in priority to the Pace Indebtedness.

FEES AND DISBURSEMENTS OF THE RECEIVER AND RECEIVER’S COUNSEL

40. As set out in the Crawley Affidavit attached as **Appendix “L”**, for the period September 1, 2015 to November 20, 2015, the Receiver has expended 182.3 hours, amounting to fees of \$70,400.50 and disbursements of \$1,270.02 (before H.S.T.).

41. As set out in the Azeff Affidavit, attached as **Appendix “M”**, for the period September 2, 2015 to December 3, 2015, Foglers, independent legal counsel for the Receiver, has expended 22.8 hours, amounting to fees and disbursements of \$10,438.31 (before H.S.T.).

42. The Receiver respectfully requests that this Court approve the fees and disbursements of Farber and Foglers as set out in the Crawley Affidavit and the Azeff Affidavit as, in the Receiver’s view, such are reasonable in the circumstances.

43. As previously stated herein, the professional fees of the Receiver and its counsel have been provided for in arriving at the Purchase Price to be paid by Pace upon closing of the APA Transaction.

PROPOSED DISTRIBUTION

44. The Receiver has received a security opinion with respect to the security held in favour of Pace from its independent counsel, Foglers. Foglers has opined that, subject to the usual qualifications, Pace's security is valid and enforceable.

45. The Receiver proposes to make a distribution (the "**Distribution**") to Pace in the amount of the Pace Indebtedness shortly after the closing of the APA Transaction. The Distribution is reflective of the cash balance anticipated to be on hand upon the closing of the APA Transaction less payment of the Source Deduction Deemed Trust and Property Tax Arrears, and provision for the professional fees of the Receiver and Foglers.

46. The Distribution will not exceed the amount of the Pace Indebtedness and will be at the discretion of the Receiver.

47. Pace has been provided with the distribution calculations and consents to the Receiver making the distribution as proposed.

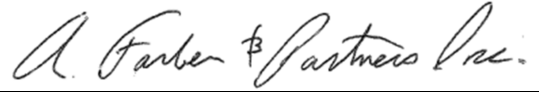
48. A search of the Personal Property Security Act registration system indicates that Pace is the only party with a registered security interest.

RECOMMENDATIONS

49. The Receiver respectfully recommends that this Honourable Court issue an Order for the relief sought in paragraph 6(b) hereof.

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

Date: December 8, 2015

A handwritten signature in cursive script that reads "A. Farber & Partners Inc." with a small "P" symbol between "Partners" and "Inc.".

A. FARBER & PARTNERS INC., in its capacity as the Court-appointed receiver of Ismac Marina Inc. and not in its personal or corporate capacity