

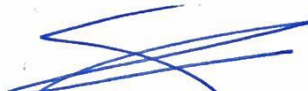
IN THE MATTER OF THE NOTICES OF INTENTION TO MAKE A PROPOSAL OF
1382769 ONTARIO LIMITED AND 1622356 ONTARIO LIMITED

Court File No. 33-3368241

04/5/26

Oral reasons were given.
Court has ^{revised} ~~revised~~ order was
by all those appearing & has been
signed.

Oral accordingly


K. S. R. N. J.

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

Proceeding Commenced at
Toronto

MOTION RECORD

MILLER THOMSON LLP

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Lawyers for Albert Gelman Inc., in its capacity as Proposal
Trustee of 1382769 Ontario Limited and 1622356 Ontario
Limited



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

THE HONOURABLE
JUSTICE KERSHMAN

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)

MONDAY, THE 5th
DAY OF OCTOBER, 2026

**IN THE MATTER OF THE NOTICES OF INTENTION
TO MAKE A PROPOSAL OF 1382769 ONTARIO
LIMITED AND 1622356 ONTARIO LIMITED**

**ORDER
(Distribution and Bankruptcy Order)**

THIS MOTION made by Albert Gelman Inc. (“AGI”) in its capacity as proposal trustee (in such capacity, the “**Proposal Trustee**”) to the notice of intention proceedings of 1382769 Ontario Limited (“**138 Co**”) and 1622356 Ontario Limited (“**162 Co**”, and together, the “**Companies**”), for an order (i) authorizing and directing the Proposal Trustee to make the Deemed Trust Distribution (as defined below) to the Canada Revenue Agency (the “**CRA**”); (ii) allocating the Net Proceeds (as defined below) between the two Companies; (iii) terminating the time for the Companies to make proposals and deeming the Companies to have made assignments in bankruptcy, with AGI as trustee in bankruptcy of each of the Companies, and discharging AGI as Proposal Trustee; (iv) discharging the Administration Charge (as defined below); granting AGI and its counsel a first-ranking charge on the property of the Companies (the “**Bankruptcy Charge**”); and (v) approving the fees and activities of the Proposal Trustee and the Proposal Trustee’s counsel Miller Thomson LLP (“**Miller Thomson**”) as described in the fifth report of

the Proposal Trustee dated September 29, 2026 and the appendices thereto (the "**Fifth Report**"), including the fee affidavits of Tom McElroy, sworn September 29, 2026 and Shahed Khalil, sworn September 29, 2026 (together, the "**Fee Affidavits**") and the Fee Accruals, as defined in the Fifth Report (the "**Fee Accruals**"), was heard this day by videoconference in Ottawa, Ontario.

ON READING the Fifth Report; and

ON HEARING the submissions of counsel for the Proposal Trustee, counsel for the Companies, and such other counsel that were present, no one else appearing for any other person although duly served as shown on the Lawyer's Certificate of Service of Matthew Cressatti sworn September 30, 2026:

SERVICE

1. **THIS COURT ORDERS** that the time for service of the notice of motion and all materials filed in respect of this motion is abridged and validated so that this motion is properly returnable today and dispenses with further service thereof.

DEEMED TRUST DISTRIBUTION

2. **THIS COURT ORDERS** that the Deemed Trust Distribution, as defined and described in the Fifth Report, is hereby approved, and the Proposal Trustee is authorized and empowered to make the Deemed Trust Distribution.

3. **THIS COURT ORDERS** that the Proposal Trustee, or any other person facilitating payments and distributions pursuant to this Order, shall be entitled to deduct and withhold from any such payment or distribution such amounts as may be required to be deducted or withheld

under any applicable law and to remit such amounts to the appropriate governmental authority or other person entitled thereto as may be required by such law. To the extent that amounts are so withheld or deducted and remitted to the appropriate governmental authority or other person entitled thereto, such withheld or deducted amounts shall be treated for all purposes as having been paid pursuant to this Order.

4. **THIS COURT ORDERS** that, notwithstanding (a) the pendency of these proceedings; (b) any motions or applications for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, (as amended, the "BIA") in respect of the Companies and any bankruptcy order issued pursuant to any such application; and (c) any assignments in bankruptcy made in respect of the Companies, any payment or distributions made pursuant to this Order are final and irreversible and shall be binding on any trustee in bankruptcy that has or may be appointed in respect of the Companies and shall not be void or voidable by creditors of such entity, nor shall it constitute nor be deemed to be a fraudulent preference, assignment, fraudulent conveyance, transfer at undervalue, or other reviewable transaction under the BIA or any other applicable federal or provincial legislation, nor shall they constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

5. **THIS COURT ORDERS** that in carrying out the terms of the Deemed Trust Distribution and/or this Order, the Proposal Trustee (a) shall have all the protections provided to it as an officer of the Court, including the protections granted pursuant to the BIA and other Orders granted in these proceedings and (b) shall incur no liability or obligation as a result of carrying out any duties or work in connection with the Deemed Trust Distribution, whether in its personal

capacity or its capacity as Proposal Trustee, save and except for any gross negligence or willful misconduct on its part.

ALLOCATION

6. **THIS COURT ORDERS** that the Net Proceeds, as defined in the Fifth Report, be allocated evenly, in a 50-50 manner, between the two Companies.

TERMINATION OF PERIOD TO MAKE PROPOSAL

7. **THIS COURT ORDERS** that, upon making the Deemed Trust Distribution the Proposal Trustee shall file a Trustee's Distribution Certificate substantially in the form attached hereto as Schedule "A" certifying that, to its knowledge, the Deemed Trust Distribution is complete. Upon filing the Trustee's Distribution Certificate:

- a) the NOI proceedings bearing Estate File Numbers 33-3368242 and 33-3368241 shall be terminated without any further act or formality pursuant to subsection 50.4(11) of the BIA;
- b) the Companies will be deemed to have made assignments in bankruptcy as of the date of the filing of such Trustee's Distribution Certificate pursuant to subsection 50.4(8) of the BIA;
- c) AGI shall be discharged from its duties as Proposal Trustee and shall have no further duties, obligations, or responsibilities as Proposal Trustee; and
- d) AGI shall be appointed as trustee in bankruptcy for the Companies.

8. **THIS COURT ORDERS** that, following the filing of the Trustee's Distribution Certificate, AGI is authorized to transfer the Remaining Proceeds, including any unused amount of the Priority Payables (each term as defined in the Fifth Report) to the bankruptcy estate accounts for each of the Companies.

DISCHARGE OF ADMINISTRATION CHARGE

9. **THIS COURT ORDERS** that the Administration Charge, as defined in the Fifth Report, shall be terminated, released, and discharged upon the payment of the amounts due to the Professionals, as defined in the Fifth Report, secured by the Administration Charge, without any further act or formality.

BANKRUPTCY CHARGE

10. **THIS COURT ORDERS** that AGI and its counsel (together, the "**Beneficiaries**") shall be entitled to the benefit of and is hereby granted a charge (the "**138 Co Bankruptcy Charge**") on 138 Co's assets, undertakings and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof (together, the "**138 Co Property**") which charge shall not exceed an aggregate amount of \$75,000, as security for the Beneficiaries' reasonable professional fees, disbursements, and HST incurred at their standard rates in the administration of 138 Co's bankruptcy proceedings. The 138 Co. Bankruptcy Charge shall take effect from the filing of the Trustee's Distribution Certificate without any further act or formality.

11. **THIS COURT ORDERS** that the Beneficiaries shall be entitled to the benefit of and is hereby granted a charge (the "**162 Co Bankruptcy Charge**", and together with the 138 Co Bankruptcy Charge, the "**Bankruptcy Charges**") on 162 Co's assets, undertakings and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof (together, the "**162 Co Property**" and together with the 138 Co Property, the "**Property**") which charge shall not exceed an aggregate amount of \$75,000, as security for their professional fees, disbursements, and HST incurred at their standard rates in the administration of 162 Co's bankruptcy proceedings. The 162 Co. Bankruptcy Charge shall take effect from the filing of the Trustee's Distribution Certificate without any further act or formality.

12. **THIS COURT ORDERS** that the filing, registration or perfection of the Bankruptcy Charges shall not be required, and that the Bankruptcy Charges shall be valid and enforceable for all purposes, including as against any security interests, trusts, and other encumbrances (together, "**Encumbrances**"), right, title or interest filed, registered, recorded or perfected prior to or subsequent to the Bankruptcy Charges coming into existence, notwithstanding any such failure to file, register, record or perfect.

13. **THIS COURT ORDERS** that the Bankruptcy Charges shall constitute a first charge on the applicable Property and shall rank in priority to all other Encumbrances in favour of any individual, firm, corporation, governmental body or agency, or any other entities (all of the foregoing, collectively being "**Persons**" and each being a "**Person**") in the amount of \$75,000 over the 138 Co Property and 162 Co Property, respectively.

14. **THIS COURT ORDERS** that except as otherwise expressly provided for herein, or as may be approved by this Court, the Companies shall not grant any Encumbrances over any Property that ranks in priority to, or *pari passu* with, the Bankruptcy Charges, unless the Companies also obtains the prior written consent of the Beneficiaries or a further Order of this Court.

15. **THIS COURT ORDERS** that the Bankruptcy Charges shall not be rendered invalid or unenforceable and the rights and remedies of the beneficiaries thereunder shall not otherwise be limited or impaired in any way by (i) the pendency of these proceedings and the declarations of insolvency made herein; (ii) any application(s) for bankruptcy order(s) issued pursuant to BIA, or any bankruptcy order made pursuant to such applications; (iii) the filing of any assignments for the general benefit of creditors made pursuant to the BIA; (iv) the provisions of any federal or provincial statutes; or (v) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of Encumbrances, contained in any existing loan documents, lease, sublease, offer to lease or other agreement (each, an "**Agreement**") which binds the Companies, and notwithstanding any provision to the contrary in any Agreement: (a) the creation of the Bankruptcy Charges shall not create or be deemed to constitute a breach by the Companies of any Agreement to which they are a party; (b) the Beneficiaries shall not have any liability to any person whatsoever as a result of any breach of any Agreement caused by or resulting from the creation of the Bankruptcy Charges; and (c) the payments made by the Companies pursuant to this Order, and the granting of the Bankruptcy Charges, do not and will not constitute preferences, fraudulent conveyances, transfers at undervalue, oppressive conduct, or other challengeable or voidable transactions under any applicable law.

16. **THIS COURT ORDERS** that the Bankruptcy Charges shall, with respect to leases of real property in Canada, only be a charge in the Companies' interest in such real property leases.

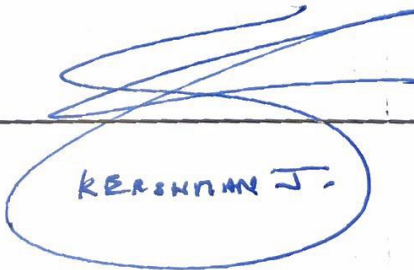
APPROVAL OF PROPOSAL TRUSTEE'S REPORTS, FEES AND ACTIVITIES

17. **THIS COURT ORDERS** that the Fifth Report, as well as the activities, conduct, and decisions of the Proposal Trustee described therein, are hereby approved, provided, however, that only the Proposal Trustee in its personal capacity and only with respect to its own personal liability, shall be entitled to rely upon or utilize in any way such approval.

18. **THIS COURT ORDERS** that the professional fees and disbursements of the Proposal Trustee and Miller Thomson, as set out in the Fifth Report and the fee affidavits appended thereto, be and are hereby approved.

19. **THIS COURT ORDERS** that the Fee Accruals in connection with the completion by the Proposal Trustee and its counsel of their remaining duties and the administration of these NOI Proceedings is hereby approved, and the Proposal Trustee and its counsel shall not be required to pass their accounts in respect of any further fees and disbursements, up to the amount of the Fee Accrual, incurred in connection with the completion by the Proposal Trustee of its remaining duties up to the filing of the Trustee's Distribution Certificate.

20. **THIS COURT ORDERS** that this Order is effective as of 12:01 (a.m.) Ottawa time on the date it is made and is enforceable without any need for entry and filing.


KERSHMAN J.

SCHEDULE A

Form of Trustee's Distribution Certificate

Court File No. 33-3368241

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

**IN THE MATTER OF THE NOTICES OF INTENTION
TO MAKE A PROPOSAL OF 1382769 ONTARIO
LIMITED AND 1622356 ONTARIO LIMITED**

TRUSTEE'S DISTRIBUTION CERTIFICATE

RECITALS

- A. 1382769 Ontario Limited operating as Kelsey's Gardiners Restaurant ("**KelseyCo**") and 1622356 Ontario Limited operating as Montana's Restaurant ("**MontanaCo**") (collectively, the "**Companies**") filed Notices of Intention to Make Proposals on May 1, 2026 naming Albert Gelman Inc. ("**AGI**") as their proposal trustee (in such capacity, the "**Proposal Trustee**").
- B. Pursuant to an order of the Court made on October 5, 2026 (the "**Distribution and Bankruptcy Order**"), AGI was discharged as Proposal Trustee of the Companies, the NOI proceedings bearing Estate File Numbers 33-3368242 and 33-3368241 were terminated, and AGI was appointed as trustee in bankruptcy for the Companies, to be effective upon the filing by the Proposal Trustee of a certificate with the Court confirming that the Deemed Trust Distribution (as defined in the Distribution and Bankruptcy Order) had been completed to the satisfaction of the Proposal Trustee

- C. Unless otherwise indicated herein, terms with initial capitals have the meanings set out in the Distribution and Bankruptcy Order.

THE PROPOSAL TRUSTEE CERTIFIES the following:

1. The Deemed Trust Distribution has been made.
2. This certificate was delivered by the Proposal Trustee at _____ [TIME] on _____ [DATE].

ALBERT GELMAN INC.

solely in its capacity as Trustee in the Notices of Intention to make a Proposal of both 1382769 Ontario Limited o/a Kelsey's Gardiners Restaurant and 1622356 Ontario Limited o/a Montana's Restaurant and not in its personal or corporate capacity

Per: _____

Name: Tom McElroy, *CIRP, LIT*

Title: Managing Director (Ontario)

IN THE MATTER OF THE NOTICES OF INTENTION TO MAKE A
PROPOSAL OF 1382769 ONTARIO LIMITED AND 1622356 ONTARIO
LIMITED

Court File No. 33-3368241

ONTARIO
SUPERIOR COURT OF JUSTICE
(EAST REGION COMMERCIAL LIST)
Proceeding commenced at Ottawa

TRUSTEE'S DISTRIBUTION
CERTIFICATE

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Tel: 416.597.4311

Lawyers for Albert Gelman Inc., in its
capacity as Proposal Trustee of 1382769
Ontario Limited and 1622356 Ontario
Limited

IN THE MATTER OF THE NOTICES OF INTENTION TO MAKE A
PROPOSAL OF 1382769 ONTARIO LIMITED AND 1622356 ONTARIO
LIMITED

Court File No. 33-3368241

ONTARIO
SUPERIOR COURT OF JUSTICE

IN THE MATTER OF THE NOTICES OF INTENTION TO MAKE A
PROPOSAL OF 1382769 ONTARIO LIMITED AND 1622356 ONTARIO
LIMITED

Court File No. 33-3368241

ONTARIO
SUPERIOR COURT OF JUSTICE
(EAST REGION COMMERCIAL LIST)

Proceeding commenced at Ottawa

ORDER
(DISTRIBUTION AND BANKRUPTCY)

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Proposal Trustee of 1382769 Ontario Limited and
1622356 Ontario Limited