

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)  
*Ontario Business Corporations Act, R.S.O., Chapter B-16***

**ABBAS MOHAMMAD**

Applicant

- and -

**STEPHEN CELESTIAL, MUSTAFA ISMAEL and  
2497486 ONTARIO LTD.**

Respondents

**FOURTH REPORT OF ALBERT GELMAN INC.  
in its capacity as court-appointed liquidator**

(Dated October 21, 2021)

**I. INTRODUCTION**

1. This fourth report ("**Fourth Report**") is filed by Albert Gelman Inc. ("**AGI**") in its capacity as liquidator (the "**Liquidator**") appointed pursuant to the Order of the Honourable Justice Conway of the Ontario Superior Court of Justice, Commercial List, dated June 20, 2017 (the "**Appointment Order**"), without security, over all of the assets, undertakings and properties (the "**Property**") of 2497486 Ontario Inc. ("**2497486**" or the "**Company**"). The application was commenced by Abbas Mohammad. A copy of the Appointment Order along with the endorsement of Justice Conway dated June 20, 2017 is attached hereto as **Appendix "A"**.

2. Prior to the date of the Appointment Order, the Liquidator (in its capacity as Proposed Liquidator at that time) prepared a report in respect of these proceedings (the "**Pre-Filing Report**"). The Pre-Filing Report contained, among other things, details regarding the principal asset of the Company being the real property municipally known as 1028 Bloor Street West, Toronto (the "**Real Property**") as well as details regarding the proposed sales process. A copy of the Pre-Filing Report (without appendices) is attached hereto as **Appendix "B"**.

3. The Appointment Order at paragraph 4.A authorized and directed the Liquidator to enter into a listing agreement with a commercial realtor for the purposes of realizing on the Real Property.
4. In accordance with the Appointment Order, the Liquidator entered into an agreement of purchase and sale with Modern City Real Estate Investment Trust Company Ltd.<sup>1</sup> (the “**Purchaser**”) dated August 31, 2017 and executed by the Liquidator on September 2, 2017, including an Amendment to Agreement of Purchase and Sale executed on September 12, 2017 (collectively, the “**Purchase Agreement**”) which contemplated the sale to the Purchaser of the Real Property (the “**Transaction**”). Attached hereto as **Appendix “C”** is a copy of the Purchase Agreement.
5. On October 30, 2017, the Honourable Justice Hailey granted an order (the “**Approval and Vesting Order**”) approving, among other things, the Transaction and vesting the Company’s right, title and interest in and to the Real Property in the Purchaser free and clear of any and all encumbrances. Attached hereto as **Appendix “D”** is a copy of the Approval and Vesting Order.
6. The Liquidator prepared a report in respect of the October 30, 2017 motion dated October 18, 2017 (the “**First Report**”), as well as a confidential report dated October 18, 2017 (the “**Confidential Report**”). Attached hereto as **Appendices “E”** and “**F**” are copies of the First Report and Confidential Report, without appendices, respectively. In accordance with the Approval and Vesting Order, the Court ordered that the Confidential Report remain sealed until completion of the Transaction. The Transaction was completed on November 24, 2017 and the Liquidator served and filed the Liquidator’s Certificate pursuant to the Approval and Vesting Order on the same day.
7. In its First Report, the Liquidator proposed a Claims Solicitation Process for the purposes of identifying any and all arm’s length creditors with claims against 2497486 which arose prior to the Claims Bar Date, being January 19, 2018. On October 30, 2017 the Honourable Justice Hailey granted an order (the “**Claims Solicitation Procedure and Bar Order**”) approving, among other things, the Claims Solicitation Process. Attached hereto as **Appendix “G”** is a copy of the Claims Solicitation Procedure and Bar Order.
8. In accordance with the Claims Solicitation Procedure and Bar Order, the Liquidator undertook and completed the Claims Solicitation Process. The Liquidator prepared a report dated October 23, 2018 (the “**Second Report**”) summarizing the Claims Solicitation Process and the claims received pursuant thereto. Attached hereto as **Appendix “H”** is a copy of the Second Report, without appendices.
9. On October 29, 2018, the Liquidator brought a motion for certain relief, and the Honourable Justice Hailey granted an order (the “**Non-Arm’s Length Claims Solicitation Process Order**”) approving the Non-Arm’s Length Claims Solicitation Process. The Non-Arm’s Length Claims Solicitation Process is set out in

---

<sup>1</sup> The Agreement of Purchase and Sale was initially entered into with Elia Mazzawi, in trust as purchaser.

detail in the Second Report. Attached hereto as **Appendix “I”** is a copy of the Non-Arm’s Length Claims Solicitation Process Order.

10. The Non-Arm’s Length Claims Solicitation Process Order also authorized and directed the Liquidator to distribute the remaining funds held by the Liquidator following the determination of the non-arm’s length claims, provided that the Liquidator shall not be required to make any distributions until such time as it has received a certificate from Canada Revenue Agency (“**CRA**”) certifying that no additional amounts are payable to CRA (the “**Clearance Certificate**”).

11. On October 29, 2018, the Honourable Justice Hailey also granted an order approving, among other things, the fees and activities of the Liquidator and its legal counsel. Attached hereto as **Appendix “J”** is a copy of this Order as well as the Endorsement of Justice Hailey dated the same date.

12. On February 8, 2021, the Honourable Justice Koehnen granted an order (the “**February 8 Order**”) approving, among other things, the actions and activities of the Liquidator as well as its fees and the fees of its legal counsel. A copy of the February 8 Order is attached hereto as **Appendix “K”**. The Liquidator’s report dated February 1, 2021 filed in relation to the February 8, 2021 motion (the “**Third Report**”) is attached hereto as **Appendix “L”**, without appendices.

13. This Fourth Report has been prepared in respect of the Liquidator’s motion scheduled to be heard on October 29, 2021 (the “**October 29 Motion**”) seeking an Order for, among other things, the following relief:

- a. dissolving of the Company, effective upon the filing with the Court of the certificate (the “**Dissolution Certificate**”) included as Schedule “A” to the draft form of Order which is included with the Liquidator’s October 29 Motion materials at which time the dissolution of the Company will become effective and which date will be considered the “Dissolution Date”.
- b. discharging AGI as Liquidator and releasing AGI from liabilities incurred upon the filing with the Court of the certificate (the “**Discharge Certificate**”) included as Schedule “B” to the draft form of Order which is included with the Liquidator’s October 29 Motion materials, which certificate shall be filed subsequent to the Liquidator completing the Remaining Activities (defined below) as set out below;
- c. authorizing the Liquidator to return the books and records of the Company, or any electronic copies thereof, to any one of Abbas Mohammad, Stephen Celestial or Mustafa Ismael, and that the Liquidator be required only to maintain the documents and records of the Liquidator, and in accordance with section 236(2) of the *Business Corporation Act* (Ontario), be authorized to destroy all such documents and records upon the expiry of five years from the Dissolution Date;

- d. approving the Liquidator's final statement of receipts and disbursements as of October 21, 2021 (the "**Final SRD**"), including the estimated fee accruals to complete its mandate set out on the Final SRD (defined below as the Estimated Final Accruals);
- e. approving this Fourth Report and the activities and fees of the Liquidator and its legal counsel; and,
- f. providing for such further and other relief as this Honourable Court may deem just.

## **II. PURPOSE OF THIS REPORT**

14. The purpose of this Fourth Report is to:

- a. provide details to the Court of the Liquidator's actions and activities subsequent to the date of the Third Report;
- b. set out the Liquidator's Remaining Activities (defined below) to complete its mandate;
- c. seek an order approving the relief sought by the Liquidator set out in paragraph 13 above.

## **III. SCOPE, RESTRICTIONS AND TERMS OF REFERENCE**

15. In preparing this Fourth Report, the Liquidator has obtained and relied upon certain unaudited financial information of 2497486, 2497486's books and records, and discussions with both counsel for the Applicant, Mr. Justin Jakubiak, and counsel for the Respondents (excluding the Company), Mr. Ryan Hanna.

16. While the Liquidator has reviewed the various documents provided, such review does not constitute an audit or verification of such information for accuracy, completeness or compliance with Generally Accepted Accounting Principles ("**GAAP**") or International Financial Reporting Standards ("**IFRS**"). Accordingly, the Liquidator expresses no opinion or other form of assurance pursuant to GAAP or IFRS or otherwise with respect to such information except as expressly stated herein.

17. This report has been prepared for the use of this Court to assist the Court in making a determination of whether to approve and grant the relief sought. Accordingly, the reader is cautioned that this report may not be appropriate for any other purpose. The Liquidator will not assume responsibility or liability for losses incurred by the reader as a result of the circulation, publication, reproduction or use of this report contrary to the provisions of this paragraph.

18. Unless otherwise noted, all monetary amounts referenced herein are expressed in Canadian dollars.

19. Terms not otherwise defined herein shall have the meanings ascribed to them in the First Report, Second Report, Third Report and draft form of Court Order included with the Liquidator's Motion Record for the motion returnable October 29, 2021.

#### IV. BACKGROUND INFORMATION

20. 2497486 is a corporation incorporated under the laws of the province of Ontario.
21. The common shares of 2497486 are owned by Abbas Mohammad (50%), Stephen Celestial (25%) and Mustafa Ismael (25%) (the “Parties” or, individually, a “Party”).
22. Based on information set out in a corporation profile report obtained by the Liquidator dated September 10, 2018, the Shareholders are also the directors of 2497486.
23. The Liquidator understands that the Shareholders are divided with Abbas Mohammad on one side, and Stephen Celestial and Mustafa Ismael on the other, resulting in a deadlock situation. The appointment of the Liquidator was on consent of both the Applicant and the Respondents.
24. As was noted above, prior to the appointment of the Liquidator the principal asset of 2497486 was the Real Property which it managed. The Real Property consisted of a three-story building with a commercial unit on the first floor and separate residential units on each of the second and third floors.
25. The Real Property was sold by the Liquidator and the Transaction closed on November 24, 2017 in accordance with the Approval and Vesting Order.

#### V. ACTIONS AND ACTIVITIES OF THE LIQUIDATOR

26. The actions and activities of the Liquidator since the date of the Third Report, and as reflected in the Final SRD, are, *inter alia*, as follows:
  - a. engaged VC Partners LLP (“VC”) to prepare and file the T2 corporate tax return for the Company for the year ended December 31, 2020;
  - b. in its Third Report the Liquidator indicated that it could undertake a process to enable the Company to issue a ‘Capital Dividend’ to the shareholders on a tax-free basis. As reported in its Third Report, all three shareholders consented to this process. Subsequent to the date of its Third Report the Liquidator undertook the following activities related specifically to the Capital Dividend:
    - i. its counsel prepared the required corporate documents including, among other things, the Receipt and Acknowledgements, Promissory Notes and Director Resolution in respect of the Capital Dividend; and,
    - ii. On April 22, 2021 VC, on behalf of the Liquidator, submitted the Capital Dividend Election form to the CRA; and,

- c. continued its discussions with its legal counsel and VC in respect of, among other things, (a) the timing and other relevant matters related to the dissolution of the Company; (b) preparing and filing the final T2 corporate tax return (which tax return is commonly referred to as the “Terminal Return”); and (c) the process for obtaining a certificate from the CRA confirming that no amounts are owing by the Company to the CRA as of the Dissolution Date, which certificate is commonly referred to as a “Clearance Certificate”.

## VI. DISTRIBUTION - NON-ARM'S LENGTH CREDITORS

27. In accordance with paragraphs 7 of the Non-Arm's Length Claims Solicitation Process Order the Liquidator issued its Notice of Determination in respect of the claims of the non-arm's length creditors (defined above as the “Parties” or, individually, a “Party”). As the Liquidator reported in its Third Report the Notice of Determination set out the Claims of each Party as follows:

Type of Claim	Abbas Mohammad	Stephen Celestial	Mustafa Ismael
Shareholder loans	\$ 229,316.00	\$ 105,000.00	\$ 105,000.00
Other claims (if any)	n/a	n/a	n/a
Inter-shareholder Claim	Nil	n/a	n/a
Equity claims	[50% of balance]	[25% of balance]	[25% of balance]

28. None of the Parties disputed the Liquidators determination within the prescribed timeframe.

29. As set out in the Final SRD the Liquidator estimates that, after accounting for the Estimated Final Accruals (defined below), there will be \$691,072 (the “Remaining Funds”) to be distributed to the Parties.

30. In accordance with paragraph 10 of the Non-Arm's Length Claims Solicitation Process Order the Remaining Funds will be distributed to repay each Party's respective shareholder loan and then the balance will be distributed to each of the Parties based on their relative percentage shareholdings (which are set out in the schedule above and on the Notice of Determination). It is anticipated that the following amounts will be distributed to each of the three Parties:

	Abbas Mohammad	Stephen Celestial	Mustafa Ismael
Shareholder Loan Repayment	\$ 229,316	105,000	105,000
Capital Dividend	125,878	62,939	62,939
Total	\$ 355,194	167,939	167,939

31. The amounts set out above may differ slightly depending on the actual amount of the Estimated Final Accruals required to complete the Liquidator's mandate.

32. As of the date of this Fourth Report, the Remaining Funds are invested in an interest-bearing term deposit with the Toronto-Dominion Bank (the “**Term Deposit**”) which will mature on November 17, 2021. The Liquidator is unable to remove the funds from the Term Deposit prior to the maturity date.

## VII. FINAL ACTIVITIES OF THE LIQUIDATOR

33. In order to complete its mandate, the Liquidator intends to, *inter alia*, do the following:

- a. file the Dissolution Certificate in order to effect the dissolution of the Company and cause the Dissolution Date to occur forthwith after the maturity of the Term Deposit;
- b. notwithstanding section 218(2) of the *Business Corporation Act* (Ontario), within ten days after the date of the Dissolution Date, file with the Director a copy of the Order and Dissolution Certificate and shall forthwith publish notice of the order in The Ontario Gazette;
- c. retain VC to prepare and file the Company’s final corporate tax filings and commence the process for obtaining the Clearance Certificate from the CRA. The Liquidator understands that prior to requesting the Clearance Certificate, the Company must first be dissolved, and the Remaining Funds moved into a non-interest bearing account;
- d. subsequent to its receipt of the Clearance Certificate, distribute the Remaining Funds in the Liquidator’s trust bank account, net of the estimated fees and disbursements of the Liquidator to complete its mandate (defined below as the Estimated Final Accruals), in accordance with the Notice of Determination, which distribution is described in further detail above;
- e. return the Company’s books and records, as the Court may direct. The Liquidator requests that the Court authorize it to return the books and records of the Company, or any electronic copies thereof, to any one of Abbas Mohammad, Stephen Celestial or Mustafa Ismael and that the Liquidator be required only to maintain the documents and records of the Liquidator, and accordance with section 236(2) of the *Business Corporation Act* (Ontario), be authorized to destroy all such documents and records upon the expiry of five years from the Dissolution Date; and,
- f. undertake such other administrative activities as are required to complete its mandate.

(collectively, the “**Remaining Activities**”)

34. Upon the Liquidator completing the Remaining Activities set out above it shall file with the Court the Discharge Certificate in order to effect its discharge as Liquidator of the Company.

## VIII. LIQUIDATOR’S FINAL SRD

35. Attached hereto at **Appendix “M”** is the Liquidator’s Final SRD.

**IX. ACCOUNTS OF THE LIQUIDATOR AND ITS COUNSEL**

36. Attached hereto as **Appendix “N”** is the Affidavit of Tom McElroy regarding the Liquidator’s fees for the period from January 25 to October 20, 2021 accompanied by the supporting time dockets (the **“Liquidator’s Fees”**).

37. Attached hereto as **Appendix “O”** is the Affidavit of Wojtek Jaskiewicz regarding the fees and disbursements of WeirFoulds LLP for the period from December 25, 2020 to October 20, 2021 accompanied by the supporting time dockets.

38. The Liquidator believes that its fees and disbursements, as well as the fees and disbursements of its counsel, WeirFoulds LLP, are fair and reasonable.

39. Set out on the Final SRD are the Liquidator’s estimated fee and disbursement accruals required to complete its mandate which accruals include its estimated fees, the estimate fees of WeirFoulds LLP, the estimated fees of VC Partners LLP, the accountant retained by the Liquidator to prepare its final tax filings and obtain the clearance certificate, as well as the estimated administrative disbursements of the Liquidator (the **“Estimated Final Accruals”**). The Liquidator is of the view that the estimated fee accruals are reasonable in the circumstances and is requesting that this Court approve the Estimated Final Accruals.

**X. LIQUIDATOR’S REQUEST FOR APPROVAL**

40. The Liquidator respectfully requests an Order of this Honourable Court providing for the relief set out in paragraph 13 of this Fourth Report.

All of which is respectfully submitted this 21st day of October 2021

**ALBERT GELMAN INC., solely in its  
capacity as the Court-Appointed Liquidator  
of 2497486 Ontario Ltd. and not in its  
Personal or any other Capacity**

Per:   
\_\_\_\_\_  
Tom McElroy, CPA, CA, CBV, CIRP, LIT