

**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

**PRELIMINARY REPORT OF ALBERT GELMAN INC.
in its capacity as proposed liquidator**

(Dated June 15, 2017)

I. INTRODUCTION

1. Albert Gelman Inc. ("**AGI**") understands that Abbas Mohamad (the "**Applicant**") intends to bring a motion before the Ontario Superior Court of Justice for an Order ("**Liquidation Order**") pursuant to section 207 and 210 of the *Business Corporations Act*, R.S.O. 1990, c. B-16, as amended for an order winding up the respondent, 2497486 Ontario Ltd. ("**2497486**") and appointing AGI as liquidator ("**Liquidator**"), without security, of all of the assets, undertakings and property (the "**Property**"), owned by 2497486.

2. Albert Gelman Inc. is a licensed trustee within the meaning of section 2 of the *Bankruptcy and Insolvency Act* (Canada). AGI has consented to act as Liquidator in these proceedings in the event the Court grants the Liquidation Order. Until the

granting of the Liquidation Order and in the context of this preliminary report, AGI is referred to as the “**Proposed Liquidator**”.

II. PURPOSE OF THIS REPORT

3. The purpose of the Proposed Liquidator’s preliminary report is to provide the Court with details regarding the following:

- a. the real property municipally known as 1028 Bloor Street West, Toronto (the “**Real Property**”) owned by 2497486;
- b. the shareholders and directors of 2497486;
- c. the secured creditors of 2497486;
- d. the request for the appointment of a Liquidator;
- e. the action and activities of the Proposed Liquidator prior to the date of the hearing to appoint the Liquidator which is scheduled for June 20, 2017; and,
- f. the Sales Process (defined below) that the Proposed Liquidator proposes to undertake in order to market and sell the Real Property.

III. SCOPE AND TERMS OF REFERENCE

4. In preparing this report, the Proposed 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. David Fogel, and counsel for the Respondents, Mr. Ryan Hanna, as well as with two of the shareholders of 2497486, Mr. Stephen Celestial and Mr. Mustafa Ismael directly, and with 2497486’s accountant.

5. While the Proposed 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 Proposed 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.

6. This report has been prepared for the use of this Court and 2497486's stakeholders as general information relating to 2497486 and to assist the Court in making a determination of whether to approve the relief sought by the Applicant. Accordingly, the reader is cautioned that this report may not be appropriate for any other purpose. The Proposed 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.

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

IV. BACKGROUND INFORMATION

Real Property

8. The principal asset of 2497486 is the Real Property which it manages. The Real Property consists 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. The commercial unit and the third floor residential unit are leased. The second floor residential unit is vacant.

9. The Proposed Liquidator obtained a parcel register from Land Registry Office #66 for the Land Titles Division in respect of the Real Property dated June 9, 2017 (the "**Parcel Register**") which indicates, among other things, the following:

- a. 2497486 is the registered owner in fee simple of the Real Property;
- b. There is a charge registered against title to the Real Property in favour of Equitable Bank on December 30, 2015 in the amount of \$900,000 as Instrument No. AT4107054; and,

- c. There is a Notice of Assignment of Rents – General registered against title to the Real Property in favour of Equitable Bank on December 30, 2015 as Instrument No. AT4107055;

10. Counsel for the Respondents provided the Proposed Liquidator with an appraisal of the Real Property which was prepared by York Simcoe Appraisal Corporation and dated May 25, 2017 (the “**Appraisal**”). The value set out in the Appraisal is not being disclosed at this time to avoid negatively impacting the marketing and sale of the Real Property. The Proposed Liquidator intends to provide a copy of the Appraisal to the Court under a sealing order when approval of a sale transaction is sought. At this time, the Proposed Liquidator notes that the appraised value exceeds the face amount of the Equitable Bank charge such that there appears to be sufficient equity in the Real Property, as will be more particularly described below.

Shareholders and Directors

11. The common shares of 2497486 are owned as follows:

- a. Abbas Mohammad – 50%;
- b. Stephen Celestial – 25%; and,
- c. Mustafa Ismael – 25%.

(collectively, the “**Shareholders**”)

12. Based on information set out in a corporation profile report obtained by the Proposed Liquidator dated June 13, 2017, the Shareholders are also the directors of 247486. Attached hereto as **Appendix “A”** is a copy of the corporation profile report.

13. The Proposed 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.

Secured and Unsecured Creditors

14. Based on the information set out in the Parcel Register, Equitable Trust has a first charge on the Real Property. Counsel to the Applicant provided the Proposed Liquidator with a mortgage discharge statement in respect of the Equitable Trust mortgage which indicates that in order for Equitable Bank to agree to discharge the mortgage on June 20, 2017, Equitable Bank requires payment in the amount of \$838,291.73 (the "**Payout Statement**").

15. The Proposed Liquidator conducted a search pursuant to the *Personal Property Security Act* (Ontario) ("**PPSA**") on June 13, 2017 (the "**PPSA Search**") which identified, as of June 12, 2017, Equitable Bank as having registered a financing statement on December 31, 2015. The financing statement indicates that Equitable Bank claims a security interest against 2497486 in respect of inventory, equipment, accounts and other in the amount of \$900,000 pursuant to a General Assignment of Rents and a General Security Agreement with respect to the Real Property. There were no other creditors with registered security interests identified on the PPSA Search. Attached hereto as **Appendix "B"** is a copy of the PPSA Search.

16. The Proposed Liquidator is not in a position to report on the unsecured creditors of 2497486 at this time. However, the Proposed Liquidator is advised by the directors that the quantum of any unsecured debt is significantly less than the anticipated equity available in the Real Property.

17. The Proposed Liquidator also understands that 2497486 is not in default of any of its obligations at this time, and is not otherwise insolvent within the meaning of the *Bankruptcy and Insolvency Act* (Canada).

Appointment of Liquidator

18. The Proposed Liquidator has been advised by both counsel to the Applicant and counsel to the Respondents that the parties have agreed to the winding up of 2497486 and, for the purpose of winding up the company, the appointment of the Liquidator is on consent of both the Applicant and the Respondents.

19. The Proposed Liquidator understands that the Real Property, and any associated assets arising out of the Real Property, constitutes substantially all of the assets of 2497486. As such, the Liquidator anticipates that once the Real Property has been sold, the Liquidator will seek to pay out all of the creditors in full, pending only the resolution of any disputes as between the shareholders and the characterization of any of their claims as equity or debt.

V. PRE-FILING ACTIVITIES OF THE PROPOSED LIQUIDATOR

20. Prior to the date of the Court hearing to appoint the Liquidator, the Proposed Liquidator undertook, among other things, the following activities:

- a. Met with the respondent shareholders and their legal counsel, Mr. Ryan Hanna, on June 7, 2017 at Mr. Hanna's office to discuss the appointment of a liquidator of the 2497486's property, and in particular, the Real Property;
- b. Participated in several conference calls with counsel for the Applicant and counsel for the Respondents to discuss the appointment of a liquidator;
- c. Provided the Applicant with its consent to the appointment as Liquidator. Attached hereto as **Appendix "C"** is a copy of the consent;
- d. Obtained a fee guarantee from the Applicant along with a third party deposit from the Applicant in the amount of \$50,000 in support of the guarantee;
- e. Retained Kronis, Rotsztain, Margles, Cappel LLP as its proposed legal counsel in this matter; and,
- f. Prepared this preliminary report.

VI. PROPOSED SALE PROCESS

21. The Proposed Liquidator contemplates undertaking, among other things, the following steps in order to sell the Real Property:

- a. Select a licensed commercial real estate agent (the “**Realtor**”) and enter into a listing agreement with the Realtor;
- b. In consultation with the Realtor, determine whether the Proposed Liquidator should enter into or renew lease agreements in order to fill or avoid a vacancy of any of the units of the Real Property, and whether this should be done prior to the listing and marketing of the Real Property;
- c. Instruct the Realtor to list the property on MLS and engage in any other marketing activities that it, in consultation with the Realtor, believes will improve the exposure to the market and ultimately result in the highest purchase offers;
- d. Negotiate any offer received from any prospective purchaser of the Real Property;
- e. Enter into to an agreement to sell the Real Property (the “**Transaction**”); and,
- f. Obtain an Order of this honourable Court to close the Transaction.

(collectively, the “**Sales Process**”)

22. The Proposed Liquidator anticipates that the ultimate purchaser of the Real Property will require an Order of the Court approving the Transaction and vesting in that purchaser 2497486’s right, title and interest in and to the Real Property free and clear of any encumbrances (the “**Approval and Vesting Order**”). In this regard, the Proposed Liquidator anticipates that any agreement of purchase and sale of the Real Property will be conditional on the Purchaser obtaining an Approval and Vesting Order.

VII. RECOMMENDATIONS

23. For the reasons explained herein the Proposed Liquidator respectfully recommends that this Honourable Court make an Order approving:

- a. the appointment of the Proposed Liquidator as Liquidator of 2497486;

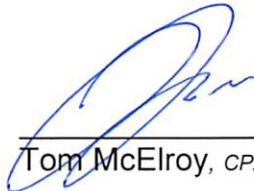
- b. this report and the activities of the Proposed Liquidator prior to the Court hearing to appoint the Liquidator described herein; and,
- c. the order sought by the Applicant, including with respect to the Sales Process.

* * *

All of which is respectfully submitted this 15th day of June, 2017.

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

Per:



Tom McElroy, CPA, CA, CBV, CIRP, LIT