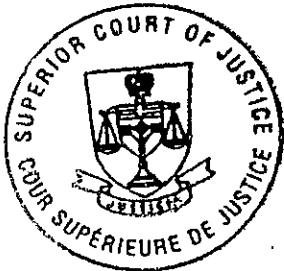


ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE)
JUSTICE S.F. DUNPHY)

THURSDAY, THE 16TH
DAY OF AUGUST, 2018



FISGARD CAPITAL CORPORATION

Applicant

- and -

ISLAM JASSEM (aka ISLAM HAMMADI JASSEM) and ASIA KAZEM

Respondents

APPLICATION UNDER SECTION 101 OF THE *COURTS OF JUSTICE ACT*,
R.S.O. 1990, c. C.43

ORDER
(appointing Non-CCAA Monitor)

THIS APPLICATION made by the applicant for an Order pursuant to section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended (the "**CJA**") appointing Albert Gelman Inc. ("**Albert Gelman**") as non-CCAA Monitor (in such capacities, the "**Monitor**") without security, in the terms set out below, was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the affidavit of Angela Bull sworn July 25, 2018, and the Exhibits thereto, the supplementary affidavit of Victoria Gifford, sworn August 15, 2018, and the Exhibits thereto, and the factum and book of authorities of the applicant and on hearing the submissions of counsel for the applicant, on being advised by counsel for the applicant that the Ontario Provincial Police take no position on the relief sought in the Amended Notice of Application, no one appearing for either of the Respondents or any

other proper party although duly served as appears from the affidavits of service of Victoria Gifford sworn August 8, August 10, and August 15, 2018, and on reading the consent of Albert Gelman to act as the Monitor,

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 motion is properly returnable today and hereby dispenses with further service thereof.

APPOINTMENT

2. **THIS COURT ORDERS** that pursuant to section 101 of the CJA, Albert Gelman Inc. is hereby appointed Monitor, without security, and with only the powers granted below, of the real property known municipally as 218 Jerseyville Road, Brantford, Ontario, which is more particularly described at **Schedule "A"** to this Order, together with the contents contained therein (the "**Property**"), which is the property of Islam Jassem (aka Islam Hamadi Jassem) ("**Jassem**").

MONITOR NOT IN POSSESSION OF THE ASSETS

3. **THIS COURT ORDERS** that the Monitor shall not take possession of the Property without further Order of the Court.

4. **THIS COURT ORDERS** Jassem shall remain in possession of the Property, but shall not take any steps to dissipate the Property.

MONITOR'S POWERS

5. **THIS COURT ORDERS** that the Monitor is hereby empowered and authorized, but not obligated, to act at once in respect of the Property and is hereby expressly empowered and authorized to do any of the following where the Monitor considers it necessary or desirable:

- (a) to engage consultants, appraisers, agents, experts, 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 Monitor's powers and duties, including without limitation those conferred by this Order;

(b) to report to, meet with and discuss with such affected Persons (as defined below) as the Monitor deems appropriate on all matters relating to the Property and the Monitor, and to share information, subject to such terms as to confidentiality as the Monitor deems advisable; and

(c) 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 Monitor 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 Jassem, and without interference from any other Person.

DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE MONITOR

6. **THIS COURT ORDERS** that (i) Jassem, (ii) all of their current and former agents, accountants, legal counsel 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 grant immediate and continued access to the Property to the Monitor.

7. **THIS COURT ORDERS** that all Persons shall forthwith advise the Monitor 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 Jassem, 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 Monitor or permit the Monitor to make, retain and take away copies thereof and grant to the Monitor unfettered access to and use of accounting, computer, software and physical facilities relating thereto, provided however that nothing in this paragraph 7 or in paragraph 8 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 Monitor due to the privilege attaching to solicitor-client communication or due to statutory provisions prohibiting such disclosure.

8. **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 Monitor for the purpose of allowing the Monitor 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 Monitor in its discretion deems expedient, and shall not alter, erase or destroy any Records without the prior written consent of the Monitor. Further, for the purposes of this paragraph, all Persons shall provide the Monitor with all such assistance in gaining immediate access to the information in the Records as the Monitor may in its discretion require including providing the Monitor with instructions on the use of any computer or other system and providing the Monitor with any and all access codes, account names and account numbers that may be required to gain access to the information.

9. **THIS COURT ORDERS** that the Monitor shall have access to the Property at any time or times, including evenings, weekends and holidays, and Jassem shall take all reasonable steps to ensure that the Monitor will have such access, provided however that the Monitor shall exercise its access to the Property in such a manner as to minimally interfere with the affairs of Jassem.

10. **THIS COURT ORDERS** that, for greater certainty and without limiting the generality of the forgoing, the Monitor's authorized access to the Property includes but is not limited to access to inspect and appraise it, to perform environmental and narcotics testing on any parts of it, including testing of its water supply, ground water, septic system, and soil, and any other investigative measures necessary to determine the extent of any contamination of the Property.

11. **THIS COURT ORDERS** that, notwithstanding that the Monitor is non-possessory, if the Monitor determines that the Property has been abandoned, or that the Monitor cannot get access to the Property from Jassem, the Monitor is hereby authorized and directed to seek the assistance of the Brantford County Ontario Provincial Police in gaining access to the Property.

NO PROCEEDINGS AGAINST THE MONITOR

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

NO PROCEEDINGS AGAINST JASSEM OR THE PROPERTY

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

14. **THIS COURT ORDERS** that notwithstanding paragraph 13, the Applicant may issue a demand letter, Notice of Intention to Enforce Security pursuant to section 244(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, C. B-3 (the "BIA"), and/or a Notice of Sale Under Charge/Mortgage pursuant to section 26(1) and 31(1) of the *Mortgages Act*, R.R.O. 1990, c. M.40, without further Order of this Court.

NO EXERCISE OF RIGHTS OR REMEDIES

15. **THIS COURT ORDERS** that all rights and remedies against Jassem, the Monitor, or affecting the Property, are hereby stayed and suspended except with the written consent of the Monitor 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 Monitor or Jassem to carry on any business which Jassem is not lawfully entitled to carry on, (ii) exempt the Monitor or Jassem 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 MONITOR

16. **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 Jassem, without written consent of the Monitor or leave of this Court.

EMPLOYEES

17. **THIS COURT ORDERS** that all employees of Jassem (if any) shall remain the employees of Jassem until such time as Jassem may terminate the employment of such employees. The Monitor 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 Monitor 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*.

LIMITATION ON ENVIRONMENTAL LIABILITIES

18. **THIS COURT ORDERS** that the Monitor shall not 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 Monitor from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Monitor shall not, as a result of this Order or anything done in pursuance of the Monitor'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 MONITOR'S LIABILITY

19. **THIS COURT ORDERS** that the Monitor 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. Nothing in this Order shall derogate from the protections afforded the Monitor by section 14.06 of the BIA or by any other applicable legislation.

MONITOR'S ACCOUNTS

20. **THIS COURT ORDERS** that the Monitor and counsel to the Monitor 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 Monitor and counsel to the Monitor shall be entitled to and are hereby granted a charge (the "**Monitor'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 Monitor'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 (if applicable).

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

FUNDING OF THE MONITOR

22. **THIS COURT ORDERS** that the Monitor 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 \$150,000.00 (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 Monitor 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 "**Monitor'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 Monitor's Charge and the charges as set out in sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

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

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

25. **THIS COURT ORDERS** that the monies from time to time borrowed by the Monitor pursuant to this Order or any further order of this Court and any and all Monitor'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 Monitor's Certificates.

SERVICE AND NOTICE

26. **THIS COURT ORDERS** that the e-mail service of documents shall be valid and effective service on transmission.

27. **THIS COURT ORDERS** that if the service or distribution of documents in accordance with paragraph 26 is not practicable, the Monitor 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 Jassem's creditors or other

interested parties at their respective addresses as last shown on the records of Jassem 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

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

29. **THIS COURT ORDERS** that nothing in this Order shall prevent the Monitor from acting as a possessory receiver or trustee in bankruptcy of Jassem.

30. **THIS COURT ORDERS** that for greater certainty, the Monitor need not send notices under section 245 of the BIA.

31. **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 Monitor 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 Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Monitor and its agents in carrying out the terms of this Order.

32. **THIS COURT ORDERS** that the Monitor 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 Monitor 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.

33. **THIS COURT ORDERS** that Fisgard shall have its costs of this Application, up to and including entry and service of this Order, provided for by the terms of Fisgard's security or, if not so provided by the Fisgard's security, then on a substantial indemnity basis to be paid by the Monitor from Jassem's estates with such priority and at such time as this Court may determine.

34. **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 Monitor 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.

ADDITIONAL RELIEF TO CORRECT NAME ON PARCEL REGISTER

35. **THIS COURT ORDERS** that the Land Registrar for the Land Titles Division of Brant (No. 2) (the "Land Registrar") is authorized and directed to amend the following registrations against the Property to show the Chargor and the Assignor as "ISLAM JASSEM":

(a) Charge registered as Instrument No. BC320787 on July 20, 2017, in favour of Fisgard Capital Corporation securing the principal sum of \$780,000; and

(b) General Assignment of Rents registered as Instrument No. SC1468521 on July 20, 2017, in favour of Fisgard Capital Corporation,

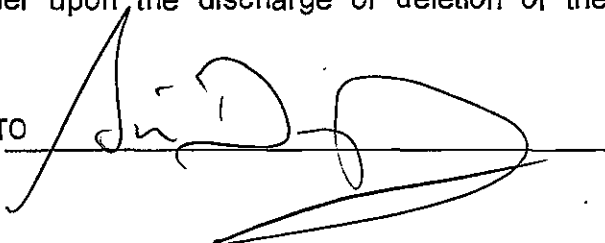
which registrations incorrectly described the Chargor and Assignee as "ISLAM JASSAM" as a result of a typographical error on the aforesaid registrations.

36. **THIS COURT FURTHER ORDERS** that the Land Registrar is authorized to delete from the Parcel Register this Order upon the discharge or deletion of the aforesaid registrations.

ENTERED AT / INSCRIT À TORONTO
ON / BOOK NO:
LE / DANS LE REGISTRE NO:

AUG 16 2018

PER / PAR: RW



SCHEDULE "A"

PT LT 53, CON 3 TWP BRANTFORD, PT 2, 2R6680; COUNTY OF BRANT

PIN 32226-0152 (LT)

Being municipally known as 218 Jerseyville Road, Brantford, Ontario

SCHEDULE "B"

MONITOR CERTIFICATE

CERTIFICATE NO. _____

AMOUNT \$ _____

37. THIS IS TO CERTIFY that Albert Gelman Inc, the non-CCAA Monitor (the "**Monitor**") of the real property known municipally as 218 Jerseyville Road, Brantford, Ontario (the "**Property**"), which is the property of Islam Jassem (aka Islam Hamadi Jassem) ("**Jassem**"), appointed by Order of the Ontario Superior Court of Justice (Commercial List) (the "**Court**") dated the ___ day of _____, 20__ (the "**Order**") made in an action having Court file number CV-18-602596-00CL, has received as such Monitor from the holder of this certificate (the "**Lender**") the principal sum of \$ _____, being part of the total principal sum of \$ _____ which the Monitor is authorized to borrow under and pursuant to the Order.

1. 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.

2. 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 Monitor 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 Monitor to indemnify itself out of such Property in respect of its remuneration and expenses.

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

4. 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 Monitor to any person other than the holder of this certificate without the prior written consent of the holder of this certificate.

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

6. The Monitor 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 _____, 20__.

Albert Gelman Inc, solely in its capacity
as Monitor of the Property, and not in its
personal capacity

Per: _____

Name:

Title:

FISGARD CAPITAL CORPORATION
Applicant and ISLAM JASSEM et al.
Respondents

Court File No.: CV-602596-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

Proceeding commenced at **TORONTO**

**ORDER
(Appointment of Non-CCAA Monitor)**

LERNERS LLP
130 Adelaide Street West, Suite 2400
Toronto, ON M5H 3P5

Domenico Magisano LS#: 45725E
dmagisano@lernalers.ca
Tel: 416.601.4121
Fax: 416.601.4123

Christopher Shorey LS#: 70135B
cshorey@lernalers.ca
Tel: 416.601.2389
Fax: 416.867.2448

Lawyers for the Applicant