

Court File No.: CV-18-599726-00CL

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

BETWEEN:

BANK OF MONTREAL

Applicant

- and -

2380630 ONTARIO INC. and 2386174 ONTARIO INCORPORATED

Respondents

**IN THE MATTER OF AN APPLICATION PURSUANT TO SECTION
243(1) OF THE *BANKRUPTCY AND INSOLVENCY ACT*, R.S.C. 1985, c. B-3,
AS AMENDED; AND SECTION 101 OF THE *COURTS OF JUSTICE ACT*,
R.S.O. 1990, c. C.43, AS AMENDED**

**SECOND REPORT OF ALBERT GELMAN INC.
IN ITS CAPACITY AS COURT-APPOINTED RECEIVER**

(Dated July 16, 2019)

I. INTRODUCTION

1. This second report ("**Second Report**") is filed by Albert Gelman Inc. ("**AGI**") in its capacity as Receiver, without security, over all of the assets, undertakings and properties ("**Property**") of 2380630 Ontario Inc. ("**OpCo**") and 2386174 Ontario Incorporated ("**LandCo**") (collectively, the "**Debtors**") acquired for, or used in relation to, a business carried on by the Debtors. The Receiver was appointed pursuant to the Order of the Honourable Justice McEwen of the Ontario Superior Court of Justice (Commercial List) dated July 3, 2018 (the "**Appointment Order**").

2. A copy of the Appointment Order along with the endorsement of Justice McEwen dated July 3, 2018 is attached hereto as **Appendix "A"**.
3. On November 14, 2019 the Receiver obtained approval of its First Report and the relief sought therein. Attached hereto as **Appendix "B"** is a copy of the Order of the Honourable Mr. Wilton-Siegel dated November 14, 2019.
4. Attached hereto as **Appendix "C"** is a copy of the Receiver's First Report, without exhibits.

II. PURPOSE OF THIS REPORT

5. The purpose of this Second Report is to:
 - a. obtain an order approving this Report, including the Interim Statement of Receipts and Disbursements of the Receiver dated July 8, 2019 ("**Interim R&D**"), as well as the actions of the Receiver described herein;
 - b. obtain an order approving the Confidential Second Report of the Receiver dated July 16, 2019 (the "**Confidential Second Report**") along with an Order sealing same until such time as the Transaction (defined below) has closed;
 - c. provide information to the Court on the Receiver's marketing efforts in relation to the Real Property and Chattels (defined below) and in relation to a proposed sale of same;
 - d. obtain an order approving the sale transaction (the "**Transaction**") contemplated by a binding Agreement of Purchase and Sale executed by the Receiver on May 24, 2019 (the "**Purchase Agreement**") between the Receiver and the Purchaser (defined in the Confidential Second Report) and vesting in the Purchaser the Receiver's right, title and interest in and to the Real Property and Chattels absolutely free and clear of and from all encumbrances;

- e. obtain an order divesting the Receiver of any interest in the Vehicles (as defined below);
- f. obtain an order approving the fees and disbursements of the Receiver for the period of October 1, 2018 to July 8, 2019, plus an accrual of \$7,500, plus HST, for the Receiver to complete its duties and mandate;
- g. obtain an order approving the fees and disbursements of the Receiver's counsel, Fred Tayar & Associates Professional Corporation, and its real estate counsel, Meyer, Wassenaar & Banach LLP ("MWB") for the period September 2018 to July 11, 2019, plus an accrual of \$8,000, plus HST, in order for counsel to assist the Receiver to complete its duties and mandate;
- h. obtain an order authorizing a final distribution to BMO as well as a distribution to Canada Revenue Agency on account of its deemed trust claims against both OpCo and LandCo;
- i. obtain an order that the Receiver be released and discharged as Receiver of the Property of the Debtors upon the filing of a Receiver's Certificate appended to the draft form of order attached as Appendix "A" thereto;
- j. obtain an order that the Receiver be released and discharged from any and all liability that the Receiver now has or may hereafter have by reason of, or in any way arising out of, the acts or omissions of the Receiver, upon the filing of the Receiver's Certificate;
- k. such further and other relief as this Honourable Court may deem just.

III. SCOPE AND TERMS OF REFERENCE

6. This Second Report has been prepared to assist the Court in making a determination of whether to approve the relief sought. Accordingly, the reader is cautioned that this Second Report may not be appropriate for any other purpose. The Receiver 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.

IV. BACKGROUND

7. 2380630 Ontario Inc. (defined above as OpCo) is a corporation incorporated under the laws of the province of Ontario on July 12, 2013. Pursuant to a corporate profile report search obtained by the Receiver on May 28, 2018, Haakem Bajwa, Shahid Mahmood and Bushra Mirza are each directors of OpCo, and Bushra Mirza is the sole officer of OpCo.

8. 2386174 Ontario Incorporated (defined above as LandCo) is a corporation incorporated under the laws of the province of Ontario on August 29, 2013. Pursuant to a corporate profile report obtained by the Receiver on May 28, 2018, Bushra Mirza is the sole officer and director of LandCo.

9. LandCo owns the land and buildings having a municipal address of 2093 Buckhorn Road, Selwyn, Ontario ("**Real Property**").

10. OpCo carried on business as a convenience store and gas bar at the Real Property. The last available financial statements of OpCo, dated June 30, 2016, indicate that it owned the merchandise inventory, fuel inventory and computer system within the gas bar.

11. OpCo ceased operating the convenience store and gas bar several months prior to the Receiver's appointment. The Receiver has not carried on the operations of the gas bar.

12. The merchandise inventory remaining at the date of the Receiver's appointment had no value, as most was perishable. As set out in the Receiver's First Report, the Receiver arranged for the fuel inventory to be removed from the gas storage tanks and disposed of. Based upon the Receiver's experience and judgment, the fridges, furniture and equipment inside the gas bar have negligible value.

13. The Receiver is in the process of realizing upon the equipment and chattels owned by LandCo and Opco, which consist generally of the furniture and equipment in the gas bar, the underground fuel storage tanks and fuel pumps (“Chattels”).

V. REAL PROPERTY

14. The Real Property contains several unique structures, each of which is described below.

- a. a two story commercial building consisting of a convenience store on the first floor and an office/apartment unit on the second floor, as well as a gas bar which operated under the Esso brand name;
- b. a one-storey industrial building with floor space of approximately 8,500 square feet, which is leased to an arm's-length third party; and,
- c. a one-story residential building which is rented on a month to month basis to an arm's length third party.

15. The Receiver has continued to collect rent from both tenants since the date of the First Report.

16. More details concerning the Real Property are contained in the Confidential Second Report.

VI. ACTIONS AND ACTIVITIES OF THE RECEIVER

17. The actions and activities of the Receiver since the date of the First Report are set out below.

18. The Receiver engaged Antec Appraisal Group to conduct an appraisal of the Real Property. A copy of the appraisal report is included with the Receiver's Confidential Second Report.

19. The Receiver engaged Pinchin Ltd. (“Pinchin”) to prepare a Phase II environmental site assessment (the “Phase II ESA”) of the Real Property. Pinchin's

Phase II ESA concluded that it is Pinchin's opinion that no further subsurface investigation is required for the Site in relation to the findings of the Phase I ESA.

20. The Receiver "winterized" the unoccupied gas bar for the winter months and came to an agreement with the industrial tenant whereby it would salt and keep the gas bar clear of snow.

The Sales Process

21. In accordance with the Appointment Order, the Receiver entered into a multiple listing services agreement for the Real Property and Chattels with Ball Real Estate Inc. Brokerage and World Class Realty Point Brokerage (the "Listing Agent"), on January 19, 2019.

22. The Real Property and Chattels were originally listed at \$1,250,000.

The First Offer

23. On February 20, 2019, the Listing Agent presented the Receiver with an offer ("First Offer"). A copy of the First Offer is attached to the Receiver's Confidential Second Report.

24. The First Offer included the following material terms and conditions which, in the Receiver's opinion, cast doubt on the commitment of the prospective purchaser.

- a) The Offer was conditional upon the purchaser being satisfied that the Real Property is suitable for the purchaser's requirements, after the purchaser has carried out a due diligence verification of the Real Property, including by way of example and without limitation "... the value and condition of the Real Property".
- b) The Offer was conditional on approval of the terms by the purchaser's solicitor.
- c) The Offer was conditional on the purchaser carrying out a feasibility and market need study.

25. The Receiver prepared a sign-back offer at a higher price, which included amended terms and conditions as recommended by the Receiver's legal counsel.

26. The prospective purchaser did not respond to the Receiver's sign-back offer and no further negotiations took place.

Reduction to Listing Price

27. On the recommendation of the Listing Agent, the listing price was reduced to \$999,900 on March 11, 2019.

Second Offer

28. On April 2, 2019 the Listing Agent presented the Receiver with an offer from a second prospective buyer ("**Second Offer**"). A copy of the Second Offer is attached to the Confidential Second Report.

29. The Receiver signed back the Second Offer at a higher price, which included changes and additional terms and conditions as recommended by the Receiver's legal counsel.

30. The Second Offer was fully accepted on April 17, 2019, subject to approval of this Court.

31. The purchaser subsequently defaulted in providing the deposit required pursuant to the terms and conditions of the accepted Second Offer.

32. The Receiver issued a Notice of Breach and Termination of Contract as a result of the prospective buyers default on May 3, 2019.

Third Offer

33. On May 17, 2019, the Listing Agent presented the Receiver with an offer from a third prospective buyer (the "**Third Offer**").

34. The Receiver negotiated a higher price, as well as changes and additions to the terms and conditions, as recommended by the Receiver's legal counsel.

35. The Third Offer was fully accepted on May 20, 2019, conditional on certain terms for the benefit of the prospective buyer. The prospective buyer fully waived all conditions on June 21, 2019 and provided the Receiver with the deposit contemplated in the agreement. A copy of the Third Offer is attached to the Receiver's Confidential Second Report.

36. The sale of the Real Property and Chattels pursuant to the accepted Third Offer is the Transaction which the Receiver seeks an order approving.

37. As more fully explained in the Confidential Second Report, it is the opinion of the Receiver that this Transaction represents the best and highest realization available for the Real Property and Chattels.

VII. SECURED CREDITORS

Canada Revenue Agency ("CRA")

38. CRA has filed a claim with the Receiver in relation to \$329 in HST owing by LandCo, of which \$280 represents a deemed trust claim against all of the assets of LandCo. A copy of the claim is attached as **Appendix "D"**.

39. LandCo does not have a payroll deductions account with CRA.

40. CRA has filed a claim with the Receiver in relation to \$8,898.60 in HST owing by OpCo, of which \$4,030.48 represents a deemed trust claim against all of the property of OpCo. A copy of the claim is attached as **Appendix "E"**.

41. The claim against OpCo is based upon amounts owing up to March 31, 2017. OpCo has not filed HST returns, nor has CRA made an assessment of HST owing, for the period of March 1, 2017 to July 3, 2018. The Receiver does not have sufficient accounting records of OpCo to enable it to file the HST returns in arrears.

42. CRA has filed a claim with the Receiver in relation to \$14,262.43 in payroll deductions owing by OpCo, of which \$8,795.90 represents a deemed trust claim against all of the property of OpCo. A copy of the claim is attached as **Appendix "F"**.

PPSA Registry Search

43. Pursuant to a PPSA search conducted by the Receiver on October 4, 2018, the following creditors have registered financing statements against OpCo.

Registration Date	Creditor	Collateral Classification
December 4, 2013	Bank of Montreal	Inventory, Equipment, Accounts, Other, Motor Vehicle
November 9, 2017	Bank of Montreal	Inventory, Equipment, Accounts, Other, Motor Vehicle
June 21, 2018	Nissan Canada Financial Services Inc.	Equipment, Other, Motor Vehicle
June 21, 2018	Nissan Canada Financial Services Inc.	Equipment, Other, Motor Vehicle
June 27, 2018	Ford Credit Canada Company	Equipment, Other, Motor Vehicle
June 27, 2018	Ford Credit Canada Company	Equipment, Other, Motor Vehicle
September 18, 2018	Nissan Canada Financial Services Inc.	Equipment, Other, Motor Vehicle
September 18, 2018	Nissan Canada Financial Services Inc.	Equipment, Other, Motor Vehicle

44. Attached hereto as **Appendix "G"** is a copy of the PPSA search.

45. According to a PPSA search respecting LandCo conducted by the Receiver on February 26, 2019, BMO is the only registrant. Attached hereto as **Appendix "H"** is a copy of the PPSA search.

Bank of Montreal

46. BMO is the senior secured lender to both OpCo and LandCo.

47. BMO has provided a loan payout statement to the Receiver which sets out that OpCo is indebted to BMO in the amount of \$7,485 as at May 15, 2019. As security for the loan, OpCo granted BMO a General Security Agreement over all of its assets, property and undertaking.

48. BMO has provided a loan payout statement to the Receiver which sets out that LandCo is indebted to BMO in the amount of \$750,075 as at July 2, 2019. As security for the loan, LandCo granted BMO a General Security Agreement over all of its assets,

property and undertaking, as well as a mortgage in respect of the Real Property. A copy of this payout statement is attached as **Appendix "I"**.

49. The Receiver's independent legal counsel, Fred Tayar & Associates Professional Corporation, has provided the Receiver with a legal opinion which affirms the validity and enforceability (subject to certain standard assumptions and qualifications) of BMO's security over the Debtors' property, including the Real Property (the "**Legal Opinion**"). Attached as **Appendix "J"** is a copy of the Legal Opinion.

Township of Selwyn

50. Pursuant to a Tax Bill dated June 20, 2019 from the Township of Selwyn, LandCo is in arrears in respect of property tax in the amount of \$77,362. A copy of the Tax Bill is attached as **Appendix "K"**.

Ford Credit Canada Company ("Ford")

51. The PPSA search respecting OpCo shows that two financing statements were registered by Ford seven days prior to the date of the Appointment Order, as below.

Make / Model	Year	VIN
Ford Escape	2018	1FMCU9GD4JUB77137
Ford Escape	2018	1FMCU9GD3JUB00422

Nissan Canada Financial Services Inc. ("Nissan")

52. The PPSA search of OpCo shows that there were two financing statements registered by Nissan 13 days prior to the Appointment Order, and two additional financing statements registered by Nissan more than two months after the date of the Appointment Order. These vehicles, as described in the PPSA result, are as follows.

Make / Model	Year	VIN
Nissan Sentra	2018	3N1AB7APXJY262220
Nissan Sentra	2018	3N1AB7AP2JY279092
Nissan Rogue	2018	5N1AT2MT1JC823799
Nissan Rogue	2018	5N1AT2MT8JC833455

(The Ford and Nissan vehicles are hereinafter the “**Vehicles**”)

53. The existence of the Vehicles and their corresponding PPSA registrations were not disclosed by the Debtors and were not delivered to the Receiver in accordance with the Appointment Order. The Receiver does not have possession of or knowledge of the whereabouts of these vehicles.

54. In the Receiver’s First Report the Receiver advised the court that it was not aware as to whether there was any insurance in place in respect of any or all of the Vehicles and that it did not have any knowledge of their whereabouts. As a result, the Receiver requested the ability to examine the officers and/or directors of the Debtors for the purposes of determining the status and whereabouts of the Vehicles. The Court granted this relief as part of its November 14, 2018 Court Order.

55. On November 20, 2018 the Receiver wrote to Haakem Bajwa, Bushra Mirza and Shahid Mahmood to advise that they were to be examined under oath in accordance with the November 14, 2018 Court Order, and to schedule a date for the Receiver’s counsel to perform that examination. Attached hereto as **Appendix “L”** are copies of the letter.

56. On November 22, 2018 the Receiver received a letter from Muhammad Bajwa (who the Receiver understands is the spouse of Haakem Bajwa) in respect of the Vehicles. The letter did not address the Receiver’s request to schedule examinations. Further, the Receiver could not make sense of the letter. Attached hereto as **Appendix “M”** is a copy of the letter.

57. On November 26, 2018 the Receiver wrote to Muhammad Bajwa demanding that each of the Vehicles be returned to the Receiver immediately. On November 28, 2018, Muhammad Bajwa advised the Receiver that “[his] company demands \$10000.00 against each [Vehicle] that potential profit was to be made by my company in the coming years Or leave the cars here in agreement in force”. The Receiver did not respond. Copies of this correspondence are attached hereto as **Appendices “N” and “O”**.

58. On November 20, 2018 counsel to the Receiver wrote to Mr. David Dolson, counsel to the Debtors, for the purposes of scheduling examinations in accordance with the November 14, 2018 Court Order. Mr. Dolson responded to say that he would speak with his clients and would advise of possible examination dates. As of the date of this report, the Receiver's counsel has received no further correspondence from Mr. Dolson in respect of the examinations. Copies of these emails are attached hereto as **Appendices "P" and "Q"**.

59. On November 28, 2018, the Receiver wrote to Ford advising that it was not in possession of, and did not claim an interest in, the Ford vehicles and therefore released its interest in them. Attached hereto as **Appendix "R"** is a copy of the letter. On February 25, 2019 the Receiver received a letter from Ford stating that the Ford vehicles had been transferred to Kings Financial Service Inc., (a company purportedly controlled by Muhammad Bajwa.) Attached hereto as **Appendix "S"** is a copy of the letter.

60. On January 17, 2019, a representative of Nissan contacted the Receiver and advised that one of the Nissan vehicles had been reported stolen and that another of the Nissan vehicles had been involved in an accident in November 2018.

61. On January 21, 2019, the Receiver wrote to Nissan advising that it was not in possession of, and did not claim in interest in, the Nissan vehicles and therefore released its interest in the Nissan vehicles. Attached hereto as **Appendix "T"** is a copy of the letter. Subsequent to the date of this letter the Receiver received correspondence from Nissan advising its intent to sell certain of the Nissan vehicles as a result of delinquency in the relevant accounts. The Receiver did not receive a direct response to its January 21, 2019 letter from Nissan.

62. On March 19, 2019 a representative of CAA Insurance contacted the receiver to advise that one of the Nissan vehicles had been in an accident and that a motor vehicle accident claim respecting a personal injury had been commenced as a result of the accident. He further advised that CAA Insurance is the insurer of the other party involved in the accident. The CAA Insurance representative requested details of the

Nissan vehicle insurance which, as the Receiver mentioned in its First Report, was not in its possession.

63. The Receiver has determined that there is no equity in any of these vehicles for the creditors of OpCo. Further, the Receiver is not in possession or control of any of the vehicles and, accordingly, the Receiver seeks an Order divesting the Receiver of any interest in the vehicles and discharging it of any liability in respect of any claim which has arisen or may arise in the future in respect of any of the Vehicles.

VIII. RECEIVER'S BORROWING CHARGE

64. In Accordance with paragraph 21 of the Appointment Order, BMO has advanced \$200,000 to the Receiver under the Receiver's Borrowing Charge (defined in the Appointment Order) to fund the Receiver's fees and disbursements. This amount is set out in the Interim R&D. Copies of the certificates issued to BMO dated July 19, 2018, September 17, 2018, November 26, 2018 and January 11, 2019 (the "Borrowing Certificates") in respect of this advance are attached hereto as Appendix "U".

IX. RECEIVER'S INTERIM STATEMENT OF RECEIPTS AND DISBURSEMENTS

65. Attached hereto at Appendix "V" is the Interim R&D.

X. RECEIVER'S PROPOSED DISTRIBUTION

66. The Receiver proposes that the net proceeds from the closing of the Transaction and the funds on hand in the Receiver's Trust Account be distributed i) to BMO to repay the Borrowing Certificates, ii) to CRA to pay the deemed trust claims and iii) to the Township of Selwyn to pay the property tax arrears as adjusted at the closing date.

67. The remaining balance, net of the Receiver's fees and those of its independent legal counsel, would be distributed to BMO pursuant to their outstanding mortgage on title to the Real Property.

68. BMO will be suffering a shortfall on its loans to LandCo and OpCo.

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XI. ACCOUNTS OF THE RECEIVER AND ITS COUNSEL

69. Attached hereto as **Appendix "W"** is the Affidavit of Joe Albert regarding the Receiver's fees for the period October 1, 2018 to July 8, 2019, accompanied by supporting time dockets.
70. Attached hereto as **Appendices "X" and "Y"** are the Affidavit of Mindy Tayar regarding the fees and disbursements of the Receiver's counsel, Fred Tayar & Associates Professional Corporation, to July 11, 2019, accompanied by supporting time dockets, and the Affidavit of Joseph Fried of MWB relating to real estate legal services provided to the Receiver by MWB to July , 2019.
71. The Receiver believes that its fees and disbursements, as well as the fees and disbursements of its legal counsel are fair and reasonable.

XII. RECEIVER'S REQUEST FOR RELIEF


72. The Receiver respectfully requests an Order of this Honourable Court:
- a. approving this Second Report of the Receiver and the actions and activities of the Receiver described herein;
 - b. approving the Confidential Second Report of the Receiver dated July 8, 2019, and sealing it until such time as the Transaction has closed, or further order of the Court;
 - c. approving the Transaction and vesting in the Purchaser the Receiver's right, title and interest in and to the Real Property and Chattels absolutely free and clear of, and from, all encumbrances;
 - d. divesting the Receiver of any interest in the Vehicles and releasing and discharging the Receiver from any and all liability that it now has or may hereafter have by reason of, or in any way arising out of the Vehicles;

- e. approving the fees and disbursements of the Receiver for the period of October 1, 2018 to July 8, 2019, plus an accrual of \$7,500 plus HST for the Receiver to complete its duties and mandate;
- f. approving the fees and disbursements of the Receiver's counsel, Fred Tayar & Associates Professional Corporation, and its real estate counsel, Meyer, Wassenaar & Banach LLP ("MWB"), plus an accrual of \$8,000 plus HST for counsel to assist the Receiver to complete its duties and mandate;
- g. authorizing a distribution in accordance with the recommended distribution as set out in this Second Report.
- h. releasing and discharging the Receiver upon the filing the Receiver's Certificate; and,
- i. an order releasing and discharging the Receiver from any and all liability that the Receiver now has or may hereafter have by reason of, or in any way arising out of, the acts or omissions of the Receiver.

All of which is respectfully submitted this 16th day of July, 2019.

**ALBERT GELMAN INC., solely in its
capacity as the Court-Appointed Receiver of
2380630 Ontario Inc. and 2386174 Ontario
Incorporated and not in its Personal Capacity**

Per: _____


Joe Albert CPA, DIFA, LIT