

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

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

(Dated February 1, 2021)

I. INTRODUCTION

1. This third report ("**Third 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. included approval of 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.¹ (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 Hainey 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

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

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

10. 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.

11. This Third Report has been prepared in respect of the Liquidator's motion returnable February 8, 2021.

II. PURPOSE OF THIS REPORT

12. The purpose of this Third Report is to:
 - a. provide details to the Court of the Liquidator's actions and activities subsequent to the date of the Second Report;
 - b. provide the Court with an update with respect to the Liquidator's undertaking of the Non-Arm's Length Claims Solicitation Process including providing copies of the Claims, correspondence with the Parties (defined below) legal counsel and other documents received by the Liquidator in respect of same;
 - c. seek an order:
 - i. approving this Third Report as well as the actions and activities of the Liquidator described herein, including the Liquidator's interim statement of receipts and disbursements as of January 25, 2021 (the "**Interim SRD**");
 - ii. approving the fees and disbursements of the Liquidator for the period from September 20, 2018 to January 24, 2021;
 - iii. approving the fees and disbursements of the Liquidator's counsel, Kronis, Rotsztain, Margles, Cappel LLP ("**KRMC**"), for the period from October 1, 2018 to October 30, 2018
 - iv. approving the fees and disbursements of the Liquidator's counsel, WeirFoulds LLP, for the period from December 18, 2018 to December 24, 2020
 - v. providing for such further and other relief as this Honourable Court may deem just.

III. SCOPE, RESTRICTIONS AND TERMS OF REFERENCE

13. In preparing this Third 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. Robert Macdonald and Mr. Justin Jakubiak, and counsel for the Respondents (excluding the Company), 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 external accountant, Mr. Errol Chapman.

14. 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.

15. This report has been prepared for the use of this Court to assist the Court in making a determination of whether to approve 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.

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

17. Terms not otherwise defined herein shall have the meanings ascribed to them in the First Report, Second Report and draft form of Court Order included with the Liquidator's Motion Record for the motion returnable February 8, 2021.

IV. BACKGROUND INFORMATION

18. 2497486 is a corporation incorporated under the laws of the province of Ontario.

19. The common shares of 2497486 are owned by Abbas Mohammad (50%), Stephen Celestial (25%) and Mustafa Ismael (25%) (the “Parties” or, individually, a “Party”).

20. 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.

21. 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.

22. 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.

23. 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

24. The actions and activities of the Liquidator since the date of the Second Report, and as reflected in the Interim SRD, are, *inter alia*, as follows:

- a. Undertook the Non-Arm’s Length Claims Solicitation Process, as further described below, and, ultimately, issued its Notice of Determination to the Parties on March 27, 2020 in accordance with the Non-Arm’s Length Claims Solicitation Process Order.
- b. Engaged the Company’s external accountant, Errol Chapman of Errol Chapman Professional Corporation (“**ECPC**”), to prepare the Company’s financial statements and tax filings for the years ended December 31, 2018 and 2019;

- c. Engaged the accounting firm VC Partners LLP (“**VC**”) to: (a) prepare the Company’s financial statements and tax filings for the year ended December 31, 2020; and, (b) assist the Liquidator in obtaining a certificate from the Canada Revenue Agency (“**CRA**”) confirming that no amounts are owing by the Company to the CRA, which certificate is commonly referred to as a ‘Clearance Certificate’; and,
- d. Investigated the potential for the Company to issue a Capital Dividend (defined below) to the Parties on a tax-free basis and had discussions regarding same with counsel to each Party. This is described in more detail below.

VI. CLAIMS SOLICITATION PROCESS - NON-ARM’S LENGTH CREDITORS

25. The Liquidator has undertaken the Non-Arms’ Length Claims Solicitation Process and its activities in respect of same are set out below.

- a. On December 20, 2018 the Liquidator, through its counsel, extended the timeframe for the Parties to file proofs of claim from December 28, 2018 to January 28, 2019. Each Party consented.
- b. On January 3, 2019 the Liquidator received a proof of claim from Abbas Mohammad (the “**Mohammad Claim**”). The Mohammad Claim is attached hereto as **Appendix “K”**.
- c. On December 17, 2018 the Liquidator received a request for copies of bank statements from inception to the date of the Appointment Order from Mr. Ryan Hanna (legal counsel to Mustafa Ismael and Stephen Celestial). The Liquidator requested copies of these bank statements from representatives of the Canadian Imperial Bank of Commerce which it received on January 18, 2019. The Liquidator provided copies of these bank statements to both Mr. Hanna and Mr. Robert MacDonald (legal counsel to Abbas Mohammad) the same day.

- d. On January 28, 2019 the Liquidator received a proof of claim from Mustafa Ismael (the “**Ismael Claim**”). The Ismael Claim is attached hereto as **Appendix “L”**.
- e. On January 28, 2019 the Liquidator received a proof of claim from Stephen Celestial (the “**Celestial Claim**”). The Celestial Claim is attached hereto as **Appendix “M”**.
- f. On January 30, 2019 the Liquidator, through its counsel, received a supplementary letter from Mr. Hanna (the “**Hanna Supplementary Letter**”) which was prepared to “provide some additional background information” with respect to the Mohammad Claim. Attached hereto as **Appendix “N”** is a copy of the Hanna Supplementary Letter.
- g. On February 20, 2019 the Liquidator, through its counsel, received a supplementary letter from Mr. MacDonald as well as affidavits sworn by Nicolas Spingos and Angelos Spingos (the “**MacDonald Supplementary Documents**”) in response to the Hanna Supplementary Letter. Attached hereto as **Appendix “O”** are the MacDonald Supplementary Documents.
- h. The Liquidator is not summarizing the contents of each of the Hanna Supplementary Letter or the MacDonald Supplementary Documents given, as will be discussed below, that all disputes as between each of the Parties’ claims were eventually settled to the satisfaction of each Party.
- i. On February 26, 2019 the Liquidator, through its counsel, wrote to both Mr. Hanna and Mr. Macdonald requesting additional information with respect to the claims submitted by their respective clients. Attached hereto as **Appendix “P”** are copies of the email correspondence to both Mr. Hanna and Mr. Macdonald.
- j. On March 8, 2019 the Liquidator, through its counsel, received a letter from Mr. Hanna responding to its February 26, 2019 request for additional information. Attached hereto as **Appendix “Q”** is a copy of the letter.

- k. On April 12, 2019 the Liquidator, through its counsel, received a letter from Mr. Macdonald responding to its February 26, 2019 request for additional information. Attached hereto as **Appendix “R”** is a copy of the letter.
- l. The Liquidator reviewed the claim of each Party as well as the supplementary material provided by both Mr. Hanna and Mr. Macdonald and communicated to both counsel what it believed were the items of each claim which were in dispute.
- m. On July 8, 2019 the Liquidator, through its counsel, received a letter from Mr. Macdonald addressing the Liquidator’s “proposal for resolving this matter”. Attached hereto as **Appendix “S”** is a copy of the letter.
- n. Following the July 8, 2019 letter from Mr. Macdonald, the Liquidator had numerous discussions, through its counsel, with both Mr. Hanna and Mr. Macdonald in an effort to resolve the disputed amounts included in each Party’s claim, or to agree upon a process to determine the dispute.
- o. On January 10, 2020, the Liquidator, through its counsel, received confirmation from Mr. Hanna that each Party’s shareholder loan claim was agreed to as between the Parties and, therefore, the only disputed claim was Abbas Mohammad’s inter-shareholder claim as against Mustafa Ismael in the amount of \$61,464 (the “**Inter-Shareholder Claim**”). Attached hereto as **Appendix “T”** is the email correspondence from Mr. Hanna.
- p. On January 17, 2020, the Liquidator, through its counsel, sent correspondence to both Mr. Hanna and Mr. Justin Jakubiak (now acting legal counsel for Mr. Abbas) to confirm its understanding that only the Inter-Creditor Claim was now in dispute. Both Mr. Hanna and Mr. Jakubiak subsequently confirmed that only the Inter-Shareholder Claim was in dispute. Attached hereto as **Appendix “U”** is the email correspondence sent to both Mr. Hanna and Mr. Jakubiak from the Liquidators counsel, together with emails from Mr. Hanna and Mr. Jakubiak confirming same.

- q. In accordance with paragraph 5 of the Non-Arm’s Length Claims Solicitation Process Order the Liquidator reviewed and determined the Inter-Shareholder Claim. On March 27, 2020, pursuant to paragraph 7 of the Non-Arm’s Length Claims Solicitation Order the Liquidator issued its Notice of Determination and provided a copy of same to Mr. Hanna and Mr. Jakubiak on March 30, 2020. Attached hereto as **Appendix “V”** is a copy of the Liquidator’s Notice of Determination.
- r. The Notice of Determination sets 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]

- s. As noted above, the shareholder loan claim of each Party was agreed to by each other Party. Therefore, the only claim for which the Liquidator was required to make a determination was the Inter-Shareholder Claim (claimed by Abbas Mohammad against Mustafa Ismael). The Liquidator disallowed the Inter-Shareholder Claim in full for the reasons set out in the Notice of Determination.
- t. Pursuant to paragraph 8 of the Non-Arm’s Length Claims Solicitation Process Order “any Party that objects to the Notice of Determination, shall deliver to the Liquidator a Notice of Dispute within 30 days of receipt of the Notice of Determination, or, if no Party delivers a Notice of Dispute within such time, the value of such Parties’ respective Claims shall be deemed to be final and binding as set out in the Notice of Determination”. The Liquidator did not receive a Notice of Dispute from any Party within the prescribed time period or thereafter.

26. The Liquidator notes that its discussion above regarding the Non-Arms’ Length Claims Solicitation Process is a summary of how the process was undertaken and does

not include all communications with the Parties' legal counsel. In the Liquidator's opinion a complete detailed account of all communication with counsel is not practical in the circumstances and is not relevant to the Court with respect to the relief being sought by the Liquidator.

VII. CANADA REVENUE AGENCY - CLEARANCE CERTIFICATE

27. On March 30, 2020 the Liquidator, through its counsel, advised both Mr. Hanna and Mr. Jakubiak that, in accordance with paragraph 11 of the Non-Arm's Length Claims Solicitation Process Order, it will not make any distribution of funds to any Party until and unless it has received the Clearance Certificate from CRA.

28. As noted earlier in this Third Report, the Liquidator has retained VC to assist it with, among other things, obtaining a Clearance Certificate from CRA confirming that no amounts are owing by the Company to the CRA.

29. As part of the process of completing its final tax return, obtaining a Clearance Certificate, and distributing the remaining funds in the Liquidator's trust bank account to the Parties, VC advised the Liquidator that, if applied for and administered properly, the Company may be able to distribute funds to the Parties as a "capital dividend" on a tax-free basis (the "**Capital Dividend**") resulting in, potentially, significant income tax saving to each of the Parties.

30. On April 29, 2020 the Liquidator advised Mr. Hanna and Mr. Jakubiak of the opportunity for the Company to issue a Capital Dividend to each Party and how the process of doing so would affect the ultimate timing of a distribution to each of the Parties.

31. On May 28, 2020 Mr. Hanna advised the Liquidator that both Mustafa Ismael and Stephen Celestial would like to proceed with the issuance of a Capital Dividend. On June 1, 2020, Mr. Jakubiak advised the Liquidator that Abbas Mohammad opposed the process of issuing a Capital Dividend.

32. On June 30, 2020 VC wrote to the CRA to request confirmation of the Company's Capital Dividend balance. Attached hereto as **Appendix "W"** is a letter from the CRA dated September 9, 2020 confirming the Capital Dividend balance of \$306,528.

33. Over the period of several months there was continuous communication and discussions between counsel to each Party and the Liquidator with respect to this matter. On December 24, 2020 Mr. Jakubiak advised the Liquidator that Abbas Mohammad was agreeable with proceeding with the issuance of a Capital Dividend as well.

VIII. FINAL ACTIVITIES OF THE LIQUIDATOR

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

- a. Undertake the necessary activities so that the Company is in the position to issue a Capital Dividend;
- b. Retain VC to prepare the Company's final corporate tax filings and commence the process for obtaining a "clearance certificate" from the CRA;
- c. After receipt of the 'clearance certificate' distribute the remaining funds in the Liquidators trust bank account, net of the estimated fees and disbursements of the Liquidator to complete its mandate, in accordance with the Notice of Determination;
- d. Apply to this Honourable Court at a later date for an Order dissolving the Company pursuant to section 218 of the *Business Corporations Act* (Ontario) and discharging the Liquidator;
- e. Address storage of certain books and records of the Company which are required to be maintained by the Liquidator and destruction of those books and records of the Company not required to be maintained by the Liquidator; and,

- f. Undertake such other administrative activities as are required to complete its mandate.

IX. LIQUIDATORS LEGAL COUNSEL

35. The principal lawyer at KRMC who was assisting the Liquidator with its mandate, Mr. Philip Cho, moved his practice to WeirFoulds LLP effective on December 10, 2018. As a result, the Liquidator retained WeirFoulds LLP which replaced KRMC as its legal counsel.

X. LIQUIDATOR'S INTERIM SRD

36. Attached hereto at **Appendix "X"** is the Liquidator's Interim SRD.

XI. ACCOUNTS OF THE LIQUIDATOR AND ITS COUNSEL

37. Attached hereto as **Appendix "Y"** is the Affidavit of Tom McElroy regarding the Liquidator's fees for the period from September 20, 2018 to January 24, 2021 accompanied by the supporting time dockets (the "**Liquidator's Fees**").

38. Attached hereto as **Appendix "Z"** is the Affidavit of Onofrio Ferlisi regarding the fees and disbursements of KRMC for the period from October 1, 2018 to October 30, 2018 accompanied by the supporting time dockets.

39. Attached hereto as **Appendix "AA"** is the Affidavit of Philip Cho regarding the fees and disbursements of WeirFoulds LLP for the period from December 18, 2018 to December 24, 2020 accompanied by the supporting time dockets.

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

XII. LIQUIDATOR'S REQUEST FOR APPROVAL

41. The Liquidator respectfully requests an Order of this Honourable Court:

- a. approving this Third Report of the Liquidator, as well as the actions and activities of the Liquidator described herein, including the Interim SRD;

- b. approving the fees and disbursements of the Liquidator for the period from September 21, 2018 to January 24, 2021;
- c. approving the fees and disbursements of KRMC for the period from October 1, 2018 to October 30, 2018
- d. approving the fees and disbursements of WeirFoulds LLP for the period from December 18, 2018 to December 24, 2020 and,
- e. providing for such further and other relief as this Honourable Court may deem just.

All of which is respectfully submitted this 1st day of February 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