

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

**2046245 ONTARIO INC., 2222228 ONTARIO INC., 2473560 ONTARIO INC. and
2473441 ONTARIO INC.**

Applicants

- and -

2244039 ONTARIO INC. and 1526400 ONTARIO INC.

Respondents

**IN THE MATTER OF AN APPLICATION PURSUANT TO SUBSECTION 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**

SUPPLEMENTARY REPORT TO THE SECOND REPORT OF THE RECEIVER

(Dated November 27, 2023)

I. INTRODUCTION

1. This supplementary report ("**Supplementary Report**") to the Receiver's second report to Court dated October 13, 2023 (the "**Second Report**") is filed by Albert Gelman Inc. ("**AGI**"), in its capacity as receiver (in such capacity, the "**Receiver**") appointed, without security, over all of the assets, undertakings and properties (together, the "**Property**") of 2244039 Ontario Inc. ("**224Co.**") and 1526400 Ontario Inc. ("**152Co.**" and, together with 224Co., the "**Companies**") by Order of the Ontario Superior Court of Justice, Commercial List (the "**Court**"), dated December 1, 2023 (the "**Appointment Order**"). The application which resulted in the Appointment Order was commenced by 2046245 Ontario Inc. ("**204**"), 2222228 Ontario Inc. ("**222**"), 2473560 Ontario Inc. ("**560**") and 2473441 Ontario Inc. ("**441**") (collectively, the "**Lenders**").

2. Any capitalized terms not defined in this Supplementary Report have the meanings ascribed to them in the Second Report.

II. MOTION FOR APPROVAL TO ASSIGN COMPANIES INTO BANKRUPTCY

3. The Receiver prepared its Second Report in respect of a motion scheduled for October 25, 2023 (the “**October 25 Motion**”) whereat the Receiver was requesting, among other things, approval to assign the Companies into bankruptcy. The basis for this motion was that the Companies were both rendered insolvent as a result of capital gains and recapture taxes which are payable to the Canada Revenue Agency (“**CRA**”) from the sale and disposition of the Cherrycrest Property and Airport Road Property (collectively, the “**Real Properties**”). The Receiver intends to use the bankruptcies of the Companies to facilitate the payment to CRA of taxes owing by the Companies.

4. On the day prior to the October 25 Motion, Mr. Howard Manis, counsel to Mr. Sajan Sandeep Tiawana (aka Sunny Tiwana) who is one of the principals of the Companies, sent an email to counsel to the Receiver advising that the Companies accountant, Mr. Anil Sharma, did not agree with the Receiver’s calculation of the capital gains and recapture taxes resulting from the sale of the Real Properties. Attached hereto as **Appendix “A”** is a copy of Mr. Manis’ October 24, 2023 email.

5. In order for the Companies’ accountant to have additional time to review the relevant documents and information and provide his analysis/calculation of the taxes resulting from the sale of the Real Properties, the Receiver consented to adjourn the October 25 Motion.

6. On November 2, 2023 representatives of the Receiver spoke to Mr. Sharma for the purpose of assisting him in obtaining the relevant documents and information that he would need to complete his analysis. During this discussion, Mr. Sharma advised the Receiver that: (a) he has never been the accountant for 152Co. (which is one of the two debtor Companies); (b) he agreed, as a courtesy to Mr. Tiawana, to assist him in understanding the calculation of capital gains and recapture prepared by the Receiver only; and, (c) he has not been engaged by either Mr. Tiawana or the Companies to review or comment on the analysis prepared by the Receiver. Attached hereto as **Appendix “B”** is email correspondence between the Receiver and Mr. Sharma wherein Mr. Sharma confirms the above.

7. Mr. Sharma’s response to the Receiver was not consistent with the purpose and rationale for the Receiver consenting to adjourn the October 25 Motion. As a result, the Receiver rescheduled the October 25 Motion which is now returnable on November 29, 2023.

8. On November 23, 2023 Mr. Manis forwarded to the Receiver an email from Mr. Tiawana which included only a link to an article written on ‘replacement property’ rules. No additional analysis or information was provided by Mr. Tiawana. Attached hereto as **Appendix “C”** is a copy of the article.

9. In Mr. Manis’ email he requested that the Receiver seek its discharge without seeking to assign the Companies into bankruptcy and return the balance of the proceeds from the sale of the Real Properties to the Companies. Mr. Manis further indicates in his email that the “debtors shall either comply with the

replacement property rules in respect of the obligation to pay capital gains tax or be liable for the payment of the tax amount owing”. Attached hereto as **Appendix “D”** is a copy of Mr. Manis’ November 23, 2023 email.

10. The Receiver’s preliminary understanding of the ‘replacement property’ rules are, very generally, as follows: when a business property is sold and a taxpayer uses all of proceeds from the sale of that property to purchase the same type of business property, a deferral of capital gain and recapture taxes are permitted. The rules in the *Income Tax Act* must be complied with strictly or the deferral is not permitted.

11. The Receiver has spoken, on a preliminary basis, with its accountant who has advised the Receiver that in the circumstances it is uncertain whether the ‘replacement property’ rules would apply to the Companies. Moreover, these rules apply only to defer the taxes payable (not eliminate them).

12. The Receiver believes that Mr. Tiawana’s request that the Receiver seek its discharge and remit the balance of the funds back to the Companies would cause significant prejudice to the CRA for the following reasons: (a) it is uncertain whether the ‘replacement property’ rules which Mr. Tiawana purports to rely on are applicable in the circumstances; (b) the Companies, under Mr. Tiawana’s management, have a history of non-payment of all CRA accounts for income taxes, HST and payroll source deductions; (c) the ‘replacement property’ rules provide only for a deferral of taxes which means that, in the event that these rules did apply, Mr. Tiawana would be required to remit payment to the CRA in the future; and, (d) Mr. Tiawana provided only a link to an article without any opinion or advice he received from an accountant that such rules could or would apply in these circumstances.

13. For the reasons set out above (as well as the reasons set out in its Second report) the Receiver respectfully requests that this Honourable Court authorize the Receiver to assign the Companies into bankruptcy in order to facilitate the payment to CRA of taxes owing to them.

All of which is respectfully submitted this 27th day of November 2023

**ALBERT GELMAN INC., solely in its
capacity as Court-Appointed Receiver
of each of the Companies, and not in
any other capacity**

Per:



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

APPENDIX A

Tom McElroy

From: Howard Manis <hmanis@manislaw.ca>
Sent: October 24, 2023 8:43 AM
To: jeff.larry@paliareroland.com; Tom McElroy; Joe Albert
Cc: sundip tiwana
Subject: Our Call

Gents,

In advance of our call, please see below from our client's accountant:

Received the motion record and going over TAB J, TAB H and TAB K.

In order to correctly understand the capital gain and the tax, we need to get all the accounting record including bank statements, month-end reports, lotto machine reports, fuel invoices, Imperial Invoices, Core mark invoices, closing & opening inventory details.

Also, TAB K is not very clear about the sale, as it shows close to 3 million sale in 8 months.

Also, I found out that all the huge interest & enforcement charges (3% of the Principal) & all other legal fees & charges mentioned in TAB H are business expenses which I don't think they considered in reducing estimated capital gain. So please request them to provide all the accounting record, ledger etc. and interim financial statement & income statement (till date) so that I can review it and make sure nothing is missing.

This is for discussion on the call.

Howard



Howard F. Manis

MANIS LAW

• Bankruptcy & Insolvency • Commercial & Civil Litigation • Corporate Law

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APPENDIX B

Tom McElroy

From: Anil Sharma <anil@aksharma.ca>
Sent: November 2, 2023 11:06 PM
To: Tom McElroy; Asma Sulaiman
Cc: Joe Albert; Howard Manis; jeff.larry@paliareroland.com
Subject: RE: 1526400 Ontario Inc. and 2244039 Ontario Inc.

Follow Up Flag: Follow up
Flag Status: Flagged

Categories: Urgent Matter

Hello Tom,

It was indeed pleasure speaking with you and Joe earlier today and I thank you for your immediate response.

I would like to mention herein that:

1. I have never been engaged either in the past or currently with respect to 1526400 Ontario Inc.
2. Without going into the validation of the facts stated in para 2 and 3 herein below in your email, I would state that currently I do not have any engagement with this client so as to review or comment on these matters. Accordingly I am unable to comment or advise on these matters.

However as a courtesy I can assist Sunny Tiwana to understand the said calculations if he approaches me in this regard. It is entirely up to the client -Sunny Tiwana how to proceed in this matter.

Thanks and Regards,

Anil K Sharma CPA, CA
Suite 202-808 Britannia Road West
Mississauga ON L5V0A7
905-593-6000
905-593-7000 Fax

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From: Tom McElroy <tmcelroy@albertgelman.com>
Sent: Thursday, November 2, 2023 7:26 PM
To: Anil Sharma <anil@aksharma.ca>; Asma Sulaiman <asma@aksharma.ca>
Cc: Joe Albert <jalbert@albertgelman.com>; Howard Manis <hmanis@manislaw.ca>; jeff.larry@paliareroland.com
Subject: RE: 1526400 Ontario Inc. and 2244039 Ontario Inc.

Anil, thank you for speaking with Joe and I earlier today.

During our call you advised us as follows:

1. you have never been engaged, either in the past or currently, with respect to 1526400 Ontario Inc.;
2. you have agreed, as a courtesy to Mr. Sundip Tiwana (“Sunny”), to assist him with understanding whether the taxes payable relating to recapture on the sale of the 35 Cherrycrest, Brampton property (calculated by the Receiver to be approximately \$350,000) are correct and whether non-capital losses (potentially) incurred during the receivership administration can be applied against the tax resulting from the recapture; and,
3. it is your understanding that non-capital losses, if any, incurred during the receivership administration cannot be applied against any capital gain arising from the sale of the 35 Cherrycrest, Brampton property (i.e. non-capital losses cannot be applied against capital gains).

Please confirm that the above is correct.

In order to assist you with your review I have attached a copy of the Receiver’s motion record which includes the Receiver’s Second Report to Court. Please refer Appendix K, the Receiver’s statement of receipts and disbursements, and Appendices H and I, which include the Lender’s payout statements.

As discussed, we are willing to have a further call with you to go through and further explain the attached documents if you would like.

We require that you advise us by no later than November 6, 2023 if you have any further questions or require any further documents and that you further advise us by no later than November 8, 2023 that you have completed your assistance to Sunny as set out in item “2” above.

Thank you.

Tom McElroy, CPA, CA, CBV, CIRP, LIT
Managing Director (Ontario)



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From: Asma Sulaiman <asma@aksharma.ca>
Sent: Wednesday, November 1, 2023 6:25 PM
To: Tom McElroy <tmcelroy@albertgelman.com>; Anil Sharma <anil@aksharma.ca>
Cc: jeff.larry@paliaroland.com; Howard Manis <hmanis@manislaw.ca>
Subject: RE: 1526400 Ontario Inc. and 2244039 Ontario Inc.

Hi Tom,

You may briefly call Mr. Sharma at any time at his direct number 416-841-5070 to briefly discuss this matter.

Thank you.

Regards,

Asma Sulaiman, CPA

Anil K Sharma CPA CA

808 Britannia Rd. West
Suite 202 (Britannia & Mavis)
Mississauga, ON, L5V 0A7
Phone#905-593-6000
Fax#905-593-7000

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From: Tom McElroy <tmcelroy@albertgelman.com>
Sent: Wednesday, November 1, 2023 6:15 PM
To: Anil Sharma <anil@aksharma.ca>
Cc: Asma Sulaiman <asma@aksharma.ca>; jeff.larry@paliareroland.com; Howard Manis <hmanis@manislaw.ca>
Subject: 1526400 Ontario Inc. and 2244039 Ontario Inc.

Good evening Anil,

We understand that your client, Sunny Tiwana, does not agree with our accountants calculation of the eventual recapture and capital gains which will arise from the sale of the two properties owned by the above noted companies and that he would like us to discuss this further with you.

Please advise if you are available either tomorrow (Thursday) at 3 p.m. or Monday, November 6 at 11 a.m. for a call to discuss this matter.

I have attached copies of our accountants preliminary draft calculations for your review prior to our call.

Thank you.

Tom McElroy, CPA, CA, CBV, CIRP, LIT
Managing Director (Ontario)



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APPENDIX C

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INTERMEDIATE CANADIAN TAX

CONTENTS

18. What are the 'replacement property' rules? Why do they exist? What are the tax implications?

TAYLOR CHOW AND JASMINE LEBLANC

What are they?

Replacement property rules allow taxpayers, when applicable, to defer capital gains and/or capital cost allowance when replacing property that was disposed of either voluntarily or involuntarily. Qualifying for replacement property rules lets taxpayers

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Qualifying for replacement property rules:

Voluntary Disposition: Assets that have been voluntarily disposed of can only qualify if it is land and fixtures, and was not a rental property.

Involuntary Disposition: Assets that were not disposed of voluntarily such as being stolen, damaged beyond repair, or expropriated.

Timeframes for replacing property (per “IT Folio S3-F3-C1”)

“For involuntary dispositions, the replacement property must be acquired before the later of:

- the end of the second tax year following the initial year; and
- 24 months after the end of the initial year.

For voluntary dispositions, the replacement property must be acquired before the later of:

- the end of the first tax year following the initial year; and
- 12 months after the end of the initial year.

For purposes of the replacement property rules, the **initial year** is the tax year in which an amount has become receivable as POD (proceeds of disposition) for the former property.”

Qualifying replacement property:

- The new replacement property must be used to replace the disposed business property.
- The new replacement property must be used in a similar or identical manner as the property it is replacing.
- If the property being replaced was used to earn business income, the new replacement property must also be used to earn business income.

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and it is to be replaced with a similar property so that the proceeds can be used to purchase a replacement property.

Example

Brewed Awakening Coffeehouse had been operating in Lower Lonsdale for 3 years until the owners decided to sell the property and relocate. Brewed Awakening has a December 31st year-end. Brewed Awakening was sold on November 26, 2018, for \$320,000 and had an adjusted cost base of \$105,000. On January 3, 2019, the owners bought a new property for Brewed Awakening in White Rock for \$289,000. How much capital gains, if any, would the owners of Brewed Awakening have to report for the 2018 taxation year?

Capital Gains to be reported, lesser of:

Actual capital gain (Proceeds from Sale – Adjusted Cost Base)

$$\$320,000 - \$105,000 = \$215,000$$

Proceeds not reinvested (Proceeds from Sale – Cost of Replacement Property)

$$\$320,000 - \$289,000 = \$31,000$$

The owners of Brewed Awakening would have to report capital gains of \$31,000.

Impact on Taxable Income

The purpose of the replacement property rule is to allow the taxpayer to defer the capital gains or recapture of CCA when a business property has been disposed of and it is to be replaced with a similar property so that the proceeds can be used to purchase a replacement property. In the example above, the taxpayer is able to defer \$184,000 of capital gains as they reinvested that amount when purchasing the replacement property. This results in a lower taxable income for the taxpayer in the year of disposition.

Interactive content (Author: Shelvin Chand, January 2020)

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Gain Deferred
- Capital
Cost





the property
= New ACB of

Voluntary
Disposition

Voluntary
Disposition

Time spent: 0:00
Card turns: 0

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Interactive content (Author: Melany Rivera Moran, January 2020)

Drag the amounts into the correct boxes

Katur Accessories Inc. sold a property for \$500,000 on August 2019, which had an Adjusted Cost Base of \$360,000. On November 2019, the company acquired a replacement property for \$450,000. Calculate the following items and drag the amounts into the correct boxes.

Original property: Proceeds from sale

Original property: Adjusted Cost Base

Capital Gain before Replacement Property Rule 

Cost of replacement property

Deferred Amount of capital gain 

2019 Capital Gains 

ACB of replacement property will be \$360,000, the purchase price of the replacement property less the deferred capital gain.

- \$ 360,000
- \$ 90,000
- \$ 50,000
- \$ 450,000
- \$ 500,000
- \$ 140,000

Check

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Interactive content (Author: Panveer Kaur, January 2020)

3C's Inc has the year ending March 31st and it sold the land and building costing \$1 million for \$1.5 million on September 30th, 2018. For the replacement property rules to apply, the property to replace the former property must be acquired on or before

March 31st,2021

March 31st, 2020

September 30th,2020

Check



Question: 1 of 2 questions

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Interactive content (Author: Chris Rush, January 2020)

When a Capital Property, other than shares of capital stock, is disposed of, whether voluntarily or involuntarily, ITA s44(1) may allow the deferral of all or part of the capital gain on disposition.

True

False

Check



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References and Resources

- ITA – 44(5), 13(4.1)
- [Article – “Income Tax Folio S3-F3-C1, Replacement Property” \(Author: Government of Canada\)](#)
- [Article – “Replacement Property Rules” \(Author: HTK Academy\)](#)

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Next: What is a capital gains reserve? How is it calculated? Why does it exist?

January 2020

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APPENDIX D

Tom McElroy

Subject: FW: What are the 'replacement property' rules? Why do they exist? What are the tax implications? – Intermediate Canadian Tax

Jeff,

Please see the link below in respect of the issue of capital gains tax.

As such, we reiterate our request as follows:

1. the Receiver remit the balance owing to the mortgagees so that all debts owing will be repaid; 2. the Receiver seek its discharge without filing assignments in bankruptcy for the two corporations; 3. the Receiver remit the balance of the funds in the Receiver's possession to the debtors; 4. the debtors shall either comply with the replacement property rules in respect of the obligation to pay capital gains tax or be liable for the payment of the tax amounts owing;

Given the information contained in the said Bulletin, the obligation to pay capital gains tax has a two year time period.

Please seek instructions and confirm the position of the Receiver.

I would appreciate hearing from you tomorrow if possible as if we cannot agree, we will need to deliver an Affidavit of our client in respect of these issues in response to the Receiver's motion.

Howard

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-----Original Message-----

From: sundip tiwana <sundip05@hotmail.com>

Sent: Monday, November 6, 2023 4:10 PM

To: Howard Manis <hmanis@manislaw.ca>

Subject: What are the 'replacement property' rules? Why do they exist? What are the tax implications? – Intermediate Canadian Tax

<https://kpu.pressbooks.pub/intercdntax/chapter/what-are-the-replacement-property-rules-why-do-they-exist-what-are-the-tax-implications/>

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