

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

IN BANKRUPTCY AND INSOLVENCY

**IN THE MATTER OF THE PROPOSAL OF 1482241 ONTARIO LIMITED,
OF THE CITY OF TORONTO, IN THE PROVINCE OF ONTARIO**

**MOTION RECORD OF THE PROPOSAL TRUSTEE
(motion returnable February 7th, 2022)**

Date: February 2, 2022

AIRD & BERLIS LLP
Barristers and Solicitors
Brookfield Place
181 Bay Street, Suite 1800
Toronto, ON M5J 2T9

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*Lawyers for Crowe Soberman Inc. in its
capacity as the proposal trustee of 1482241
Ontario Limited*

TO: ATTACHED SERVICE LIST

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

IN BANKRUPTCY AND INSOLVENCY

**IN THE MATTER OF THE PROPOSAL OF 1482241 ONTARIO LIMITED,
OF THE CITY OF TORONTO, IN THE PROVINCE OF ONTARIO**

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TAB DOCUMENT

1. Notice of Motion dated February 2, 2022
2. Tenth Report of the Receiver dated February 2, 2022

Appendices to the Tenth Report

- A Sale Process Order dated November 3, 2017
- B Order dated March 16, 2018
- C Proposal of the Debtor dated May 3, 2018
- D Proposal Approval Order dated June 12, 2018
- E Endorsement of Justice Hainey dated September 20, 2018
- F Endorsement of Justice Chiappetta dated January 24, 2019
- G Adjudication Process Order of Justice Pattillo dated December 6, 2019
- H Endorsement of Justice Conway dated January 17, 2020
- I Order of Justice Conway dated February 24, 2020
- J Endorsement of Justice Conway dated February 24, 2020
- K Endorsement of Justice Conway dated March 11, 2020
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- M Letter from counsel for the Proposal Trustee to the Debtor dated January 5, 2022
- N Eighth Report of the Proposal Trustee dated May 23, 2019
- O Order and Endorsement of Justice Conway dated June 6, 2019

TAB DOCUMENT

3. Fee Affidavit of Receiver sworn February 2, 2022
4. Fee Affidavit of Counsel to Receiver sworn February 2, 2022
5. Draft Discharge Order
6. Service List

TAB 1

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

IN BANKRUPTCY AND INSOLVENCY

**IN THE MATTER OF THE PROPOSAL OF 1482241 ONTARIO LIMITED,
OF THE CITY OF TORONTO, IN THE PROVINCE OF ONTARIO**

NOTICE OF MOTION
(Returnable February 7th, 2022)

Crowe Soberman Inc. (“**Crowe**”), in its capacity as the proposal trustee (in such capacity, the “**Proposal Trustee**”) of 1482241 Ontario Limited. (the “**Debtor**”), will make a motion to a judge presiding over the Commercial List on February 7, 2022 at 12:30 p.m. or as soon after that time as the motion can be heard, via judicial videoconference at Toronto, Ontario. Please refer to the conference details attached as **Schedule “A”** hereto in order to attend the motion and advise if you intend to join the motion by emailing Miranda Spence at mspence@airdberlis.com.

PROPOSED METHOD OF HEARING: The motion is to be heard orally.

1. **THE MOTION IS FOR :**

- (a) an Order substantially in the form of draft order attached as Tab “5” of the Motion Record, *inter alia*, for:
- (i) if necessary, abridging the time for service and filing of this notice of motion and the motion record or, in the alternative, dispensing with same;
 - (ii) approving the activities of the Proposal Trustee as set out in the Proposal Trustee’s Eighth Report dated May 10, 2019 (the “**Eighth Report**”), the Supplement to the Eighth Report dated May 23, 2019 (the “**Supplement to the Eighth Report**”), and the Tenth Report dated February 2, 2022 (the “**Tenth Report**”);

- (iii) approving the fees and disbursements of the Proposal Trustee and its counsel;
- (iv) authorizing the Proposal Trustee to make certain distributions as described in the Tenth Report;
- (v) discharging Crowe as Proposal Trustee of the Debtor;
- (vi) releasing Crowe from any and all liability; and
- (vii) such further and other relief as counsel may advise and this Court may permit.

2. **THE GROUNDS FOR THE MOTION ARE:**

- (a) the Debtor's asset, being the lands at the address municipally known as 240 Ducan Mill Road, Toronto, Ontario (the "**Property**"), has been sold as part of this proceeding;
- (b) the Proposal Trustee is holding the proceeds of the sale of the Property (the "**Sale Proceeds**") in trust, and requires the approval and authorization of the Court to release such funds for any purpose;
- (c) the Debtor's proposal has been approved by the creditors and the Court, and has been substantially completed;
- (d) the last remaining step in the administration of the Debtor's proposal is the payment of the remaining approved unsecured creditors' claims;
- (e) the Debtor has not objected to the Proposal Trustee's recommendation to pay the remaining approved unsecured creditors' claims;
- (f) the Proposal Trustee seeks the Court's approval to pay from the Sale Proceeds the remaining approved unsecured creditors' claims, the levy owing to the Superintendent in

Bankruptcy, its fees and its counsel's fees, and to distribute the remaining Sale Proceeds to the Debtor;

(g) the Proposal Trustee seeks a final order to approve its activities and for its release and discharge; and

(h) such further and other grounds as counsel may advise and this Honourable Court may permit.

3. **THE FOLLOWING DOCUMENTARY EVIDENCE** will be used at the hearing of the motion:

(a) the Eighth Report, the Supplement to the Eighth Report, and the Tenth Report and the appendices thereto, filed herewith;

(b) the Fee Affidavit of Hans Rizarri sworn February 2, 2022;

(c) the Fee Affidavit of Ian Aversa sworn February 2, 2022; and

(d) such further and other material as counsel may submit and this Court may permit.

Date: February 2, 2022

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Brookfield Place
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*Lawyers for Crowe Soberman Inc. in its
capacity as the proposal trustee of
1482241 Ontario Limited*

TO: ATTACHED SERVICE LIST

SCHEDULE "A"

Join Zoom Meeting

<https://us06web.zoom.us/j/89179875788?pwd=a0RnQ3BFZzZ4bmd4WVM3VG8vTnFpZz09>

Meeting ID: 891 7987 5788

Passcode: 305660

One tap mobile

+16475580588,,89179875788#,,,,*305660# Canada

+17789072071,,89179875788#,,,,*305660# Canada

Dial by your location

+1 647 558 0588 Canada

+1 778 907 2071 Canada

+1 204 272 7920 Canada

+1 438 809 7799 Canada

+1 587 328 1099 Canada

+1 647 374 4685 Canada

Meeting ID: 891 7987 5788

Passcode: 305660

Find your local number: <https://us06web.zoom.us/u/keBMKkurJ8>

**IN THE MATTER OF THE PROPOSAL OF 1482241 ONTARIO LIMITED,
OF THE CITY OF TORONTO, IN THE PROVINCE OF ONTARIO**

Court File No. 31-2303814
Estate No. 31-2303814

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST
(IN BANKRUPTCY AND INSOLVENCY)**

Proceedings commenced at Toronto

NOTICE OF MOTION

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*Lawyers for Crowe Soberman Inc. in its capacity as the proposal
trustee of 1482241 Ontario Limited*

TAB 2

Court File No. 31-2303814
Estate No. 31-2303814

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

IN BANKRUPTCY AND INSOLVENCY

**IN THE MATTER OF THE PROPOSAL OF 1482241 ONTARIO LIMITED,
OF THE CITY OF TORONTO, IN THE PROVINCE OF ONTARIO**

TENTH REPORT OF THE PROPOSAL TRUSTEE
February 2, 2022

CROWE SOBERMAN INC.
Licensed Insolvency Trustee
2 St Clair Avenue East, Suite 1200
Toronto, Ontario, M4T 2T5

Telephone: 416.929.2500
Fax: 416.929.2555

Court File No. 31-2303814
Estate No. 31-2303814

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

IN BANKRUPTCY AND INSOLVENCY

**IN THE MATTER OF THE PROPOSAL OF 1482241 ONTARIO LIMITED,
OF THE CITY OF TORONTO, IN THE PROVINCE OF ONTARIO**

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- Appendix J - Endorsement of Justice Conway dated February 24, 2020
- Appendix K - Endorsement of Justice Conway dated March 11, 2020
- Appendix L - Order of Justice Conway dated July 27, 2020
- Appendix M - Letter from counsel for the Proposal Trustee to the Debtor dated January 5, 2022
- Appendix N - Eighth Report of the Proposal Trustee dated May 23, 2019
- Appendix O - Order and Endorsement of Justice Conway dated June 6, 2019

Court File No. 31-2303814
Estate No. 31-2303814

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

IN BANKRUPTCY AND INSOLVENCY

**IN THE MATTER OF THE PROPOSAL OF 1482241 ONTARIO LIMITED,
OF THE CITY OF TORONTO, IN THE PROVINCE OF ONTARIO**

**TENTH REPORT OF THE PROPOSAL TRUSTEE
February 2, 2022**

INTRODUCTION

1. This report (the “**Tenth Report**”) is filed by Crowe Soberman Inc. (“**Crowe**”) in its capacity as the proposal trustee (in such capacity, the “**Proposal Trustee**”) of 1482241 Ontario Limited (the “**Debtor**” or “**148**”). Unless otherwise noted, the defined terms used in this Tenth Report have the same meanings ascribed to them in the Proposal Trustee’s First Report through to the Ninth Report.

PURPOSE

2. The purpose of this Tenth Report is to:
- (a) advise the Court of the Proposal Trustee’s activities since the filing of the Ninth Report dated December 2, 2019; and
 - (b) provide support for the Proposal Trustee’s request for an Order of this Honourable Court:
 - (i) approving the activities and conduct of the Proposal Trustee and its counsel as described in this Tenth Report;

- (ii) approving the activities and conduct of the Proposal Trustee and its counsel as described in the Eighth Report and the Supplement to the Eighth Report previously filed in these proceedings;
- (iii) authorizing the Proposal Trustee to make the distributions proposed in this Tenth Report from the Sale Proceeds (defined below);
- (iv) approving the fees and disbursements of the Proposal Trustee and its counsel from the Sale Proceeds;
- (v) effective upon the Proposal Trustee certifying that all outstanding matters to be attended to in connection with the proposal proceeding have been completed to the satisfaction of the Proposal Trustee, discharging Crowe as the Proposal Trustee and granting certain ancillary relief in relation thereto; and
- (vi) such further and other relief as counsel may advise and this Court may permit.

3. Copies of the materials previously filed in this proceeding, including the First through Ninth Reports are available on the Proposal Trustee's website at <https://www.crowe.com/ca/crowesoberman/insolvency-engagements/1482241-ontario-limited>.

DISCLAIMER

4. In preparing this Tenth Report, the Proposal Trustee has relied upon certain unaudited, draft and/or internal financial information, the Debtor's books and records, discussions with third party consultants to the Debtor, management and employees, and information from other third

party sources. The Proposal Trustee assumes no responsibility or liability for loss or damage occasioned by any party as a result of the circulation, publication, re-production or use of this First Report. Any use which any party, other than the Court, makes of this First Report, or any reliance on, or any decisions to be made, based upon it, is the responsibility of such party.

BACKGROUND

The Debtor and the Property

5. 148 is an Ontario corporation incorporated on June 21, 2001. It is a single purpose corporation whose sole asset was legal and beneficial title to certain lands at the address municipally known as 240 Duncan Mill Road, Toronto, Ontario (the “**Property**”).

6. Situated on the Property is an eight-storey multi-tenant commercial building (the “**Building**”) and associated parking facilities. The Building was constructed in approximately 1971, and contains commercial units. 148 carried on business as the operator of the Building.

7. 148 filed a notice of intention to make a proposal on October 13, 2017 (the “**NOI Filing Date**”). At that time, 148 was embroiled in several legal disputes with creditors including tenants of the Building, along with parties who claimed an interest in the Property. As at the NOI Filing Date, the Property was encumbered by a certificate of pending litigation, an injunction order that restrained its sale, two mortgages, property tax arrears and a writ of seizure and sale.

The Sale Process and AVO

8. The primary purpose of the Debtor’s proposal proceeding was to find a purchaser for the Debtor’s business and/or assets, and to effect a sale of the Property for the benefit of the Debtor’s creditors. By way of an order dated November 3, 2017 (the “**Sale Process Order**”), among other things, the Court approved a sale process to be conducted by the Proposal Trustee, and authorized

the Proposal Trustee to engage a property manager. A copy of the Sale Process Order is attached as **Appendix A**.

9. The Proposal Trustee conducted the sale process in accordance with the November 2017 Order, and entered into a sale transaction with the successful bidder, subject to court approval. By way of an order dated March 16, 2018 (the “**AVO**”), the Court approved the sale transaction. A copy of the AVO is attached as **Appendix B**.

10. In light of the particular circumstances of the Debtor and the Property, paragraph 5 of the AVO provided as follows:

THIS COURT ORDERS that the Proposal Trustee shall hold the Sale Proceeds in trust, pending further Order of the Court. For greater certainty, the Proposal Trustee shall not make any distributions from the Sale Proceeds except for such distributions as are expressly approved by the Court.

11. Paragraph 5 of the AVO has been reaffirmed in subsequent court orders. The remaining proceeds of the sale of the Property (the “**Sale Proceeds**”) are held in trust by counsel to the Proposal Trustee, and each distribution, including to pay professional fees, has been expressly approved by the Court.

The Proposal

12. On April 13, 2018, the Debtor filed a proposal. The proposal, as amended by way of an amendment dated May 3, 2018 (the “**Proposal**”), was approved by the requisite majorities of creditors at a meeting held at the Proposal Trustee’s office on May 4, 2018. A copy of the Proposal is attached as **Appendix C**.

13. On June 12, 2018, the Court issued an order approving the Proposal (the “**Proposal Approval Order**”). A copy of the Proposal Approval Order is attached as **Appendix D**.

14. The Proposal provided that all approved claims would be paid in full from the Sale Proceeds. The Proposal also contemplated that the Debtor would have the right to challenge the validity and/or quantum of many of the claims that the Debtor anticipated would be filed.

The Disputed Claims

15. Following the issuance of the Proposal Approval Order, the administration of the Debtor's estate focused largely on addressing the various disputes between the Debtor and the creditors as to the validity of their claims. The most significant of these disputes were resolved by the Court, as follows:

- (a) on September 20, 2018, the Honourable Justice Hainey issued an endorsement dismissing a motion by the second mortgagee for payment of an "over-holding fee" out of the Sale Proceeds; and
- (b) on January 24, 2019, the Honourable Justice Chiappetta issued an endorsement dismissing Jamshid Hussaini and Neelofar Ahmadi's appeal from the Proposal Trustee's disallowance of their filed claims. These were the creditors who had filed a certificate of pending litigation and injunction relating to the Property.

16. Copies of these endorsements are attached as **Appendices E** and **F**, respectively.

17. As previously reported to the Court in the Seventh through Ninth Reports, all secured claims to the Sale Proceeds have now been paid. In addition, a number of the unsecured claims filed pursuant to the Proposal have been resolved and paid.

18. In order for the Proposal Trustee to certify that the Proposal has been fully performed, the last remaining step is to address the unsecured claims that remain "disputed" by the Debtor.

THE PROPOSAL TRUSTEE'S ACTIVITIES SINCE THE NINTH REPORT

19. As at the date of the Ninth Report filed December 2, 2019, the following claims remained “disputed” by the Debtor (collectively, the “**Disputed Claims**”):

Daiken Applied Canada Inc. (“ Daiken ”)	\$12,353.69
Devry Smith Frank LLP	\$128,153.49
GDI Services (Canada) LP	\$95,746.42
North York Family Physicians Holdings Inc.	\$46,442.42
Quality Allied Elevator	\$18,247.23
Rogers Retail Proposals	\$871.56
YYZ Plumbing	\$17,960.20
Allevio Clinic #1 Toronto Inc. o/a Allevio Inc. (“ Allevio ”)	\$486,050.06
Total	\$805,825.07

20. By way of an order dated December 6, 2019 (the “**Adjudication Process Order**”), the Honourable Justice Pattillo ordered a process for the adjudication of the Disputed Claims (the “**Adjudication Process**”), as recommended by the Proposal Trustee in the Ninth Report. A copy of the Adjudication Process Order is attached hereto as **Appendix G**.

21. The Adjudication Process contemplated that the Debtor and the relevant creditor (each, a “**Disputed Creditor**”) would seek to resolve the Disputed Claim, failing which the Debtor would argue the Disputed Claims before the Court.

22. The Disputed Claims are essentially disputes between the Debtor and the Disputed Creditors. Accordingly, the Adjudication Process did not contemplate that the Proposal Trustee would participate as a party or litigant, to avoid an unnecessary accrual of professional fees.

23. Since the issuance of the Adjudication Process Order, the following steps have occurred:
- (a) on January 17, 2020, the Honourable Justice Conway ordered a timetable for the adjudication of the remaining Disputed Claims. A copy of the January 17 endorsement is attached hereto as **Appendix H**;
 - (b) on February 24, 2020, the Honourable Justice Conway:
 - (i) authorized and directed the Proposal Trustee to release the sum of \$16,950 to fund a retainer for the Debtor's new counsel at Macdonald Sager Manis LLP. A copy of the February 24 order is attached hereto as **Appendix I**; and
 - (ii) ordered a revised timetable for the Debtor's new counsel to review the Disputed Claims. A copy of the February 24 endorsement is attached hereto as **Appendix J**;
 - (c) on March 11, 2020, the Honourable Justice Conway scheduled a case conference for April 17, 2020, to address a potential resolution of the remaining Disputed Claims. A copy of the March 11 endorsement is attached hereto as **Appendix K**;
 - (d) the April 17 case conference did not proceed due to the suspension of non-urgent court matters in the early days of the Covid-19 pandemic; and
 - (e) on July 27, 2020, the Honourable Justice Conway issued an order, on consent, authorizing the release of funds to the Disputed Creditors Allevio and Daiken, along

with a distribution of funds to the Debtor. A copy of the July 27 order is attached hereto as **Appendix L**.

24. Since the Debtor reached an agreement with Allevio and Daiken in July 2020, the Proposal Trustee has not received any further updates regarding the Debtor's efforts to resolve the Disputed Claims. Counsel for the Proposal Trustee reached out to counsel for the Debtor for an update several times in the fall of 2021.

25. On January 5, 2022, counsel for the Proposal Trustee wrote to counsel for the Debtor to advise that the Proposal Trustee intended to seek the Court's approval to pay the remaining Disputed Claims in full on February 7, 2022. Counsel requested that the Debtor advise of any objection to this proposal by no later than January 21, 2022. A copy of this correspondence is attached as **Appendix M**.

26. Counsel for the Proposal Trustee did not receive any response to this letter.

27. Accordingly, the Proposal Trustee seeks the Court's approval to pay the remaining Disputed Claims, in full (collectively, the "**Outstanding Disputed Claims**"), as follows:

Devry Smith Frank LLP	\$128,153.49
GDI Services (Canada) LP	\$95,746.42
North York Family Physicians Holdings Inc.	\$46,442.42
Quality Allied Elevator	\$18,247.23
Rogers Retail Proposals	\$871.56
YYZ Plumbing	\$17,960.20
Total	\$307,421.32

PROFESSIONAL FEES

28. Pursuant to the Sale Approval Order, the Proposal Trustee and its counsel were granted an Administrative Charge against the Property as security for their fees and disbursements.

29. From November 23, 2019 to February 1, 2022 the total fees and disbursements incurred by the Proposal Trustee were \$43,491.72 inclusive of disbursements and HST. Attached separately as part of the Proposal Trustee's motion record is the affidavit of Hans Rizarri sworn February 2, 2022 (the "**Rizarri Affidavit**"), which attaches a copy of the accounts rendered by the Proposal Trustee for this time period.

30. From November 25, 2019 to December 20, 2021, the fees incurred by the Proposal Trustee's counsel totaled \$22,607.87, inclusive of disbursements and HST. Attached separately as part of the Proposal Trustee's motion record is the affidavit of Ian Aversa sworn February 2, 2022 (the "**Aversa Affidavit**"), which attaches a copy of the accounts rendered by the Proposal Trustee's counsel for this time period.

31. The Proposal Trustee estimates that its fees and those of its counsel associated with completing this proposal proceeding will not exceed \$25,000, inclusive of taxes and disbursements (the "**Fee Accrual**").

PROPOSED DISTRIBUTION AND DISCHARGE

32. Counsel for the Proposal Trustee is currently holding Sale Proceeds on behalf of the Debtor in the amount of \$503,585.43. The Proposal Trustee requests that it be authorized and directed to distribute this amount as follows:

- (a) to pay the Outstanding Disputed Claims referred to at paragraph 27 above;

- (b) to pay any amounts owing to the Superintendent in Bankruptcy for levy associated with creditor claims paid in this proposal proceeding;
- (c) to pay the professional fees detailed in the Rizarri Affidavit and the Aversa Affidavit;
- (d) to pay the fee accrual; and
- (e) to pay the Sale Proceeds remaining after payment of the amounts set out above to the Debtor.

33. As set out above, the Proposal Trustee has been charged with holding the Sale Proceeds throughout the administration of this proposal proceeding. This is not typical for a proposal proceeding, where a debtor typically remains in possession of its property.

34. In light of the additional responsibility entrusted to the Proposal Trustee in this proceeding, the Proposal Trustee considers it appropriate to ask that the Court formally discharge and release it upon completion of its mandate.

35. Subsequent to the date of this Tenth Report, the Proposal Trustee proposes to attend to the following:

- (a) payment of the distributions identified above;
- (b) filing of the certificate of completion of the Proposal;
- (c) filing of the final statement of receipts and disbursements;

- (d) other residual and/or administrative matters in connection with the Proposal Trustee's appointment; and
- (e) filing of the Proposal Trustee's certificate of discharge.

APPROVAL OF THE PROPOSAL TRUSTEE'S ACTIVITIES

36. In reviewing its file, the Proposal Trustee has determined that its Eighth Report was not previously approved by the Court. A copy of the Eighth Report dated May 10, 2019, together with the Supplement to the Eighth Report dated May 23, 2019, is attached hereto as **Appendix N**.

37. Copies of the Order and Endorsement of the Honourable Justice Conway dated June 6, 2019, which were granted on the basis of the Eighth Report, are attached hereto as **Appendix O**.

38. The Proposal Trustee seeks this Honourable Court's approval of the Eighth Report, the Supplement to the Eighth Report, along with this Tenth Report.

SUMMARY AND RECOMMENDATIONS

39. For all of the above reasons, the Proposal Trustee respectfully requests that this Honourable Court grant the relief sought in this Ninth Report.

All of which is respectfully submitted this 2nd day of February, 2022.

CROWE SOBERMAN INC.

Trustee acting under a Notice of Intention to Make a Proposal for
1482241 Ontario Limited, and not in its personal capacity

Hans Rizari  LIT, CIRP

APPENDIX “A”



Court File No. 31-2303814
Estate File No. 31-2303814

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

THE HONOURABLE)
)
MR. JUSTICE HAINEY) FRIDAY, THE 3RD DAY
) OF NOVEMBER, 2017

IN BANKRUPTCY AND INSOLVENCY

**IN THE MATTER OF THE PROPOSAL OF 1482241 ONTARIO LIMITED, OF THE
CITY OF TORONTO, IN THE PROVINCE OF ONTARIO**

ORDER

THIS MOTION made by 1482241 Ontario Limited (“**Debtor**”) for an Order *inter alia*:
(a) granting a charge in respect of the fees and expenses of counsel to the Debtor, Crowe Soberman Inc. in its capacity as Licensed Insolvency Trustee with respect to the Debtor (in this capacity, “**Proposal Trustee**”), and Proposal Trustee’s counsel; (b) approving a sale solicitation process (“**Sale Process**”) with respect to the assets and business of the Debtor; (c) approving the interim financing of the Debtor and the DIP Term Sheet (defined below) and granting the DIP Lender’s Charge (as defined below); and (d) extending the time within which a Proposal must be filed to and including December 27, 2017, was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Affidavit of Alain Checroune, sworn October 26, 2017, the First Report of the Proposal Trustee, dated October 27, 2017 (“**First Report**”), the Supplemental Report of the Proposal Trustee, dated November 2, 2017, and on hearing the submissions of

counsel for the Debtor and counsel for the Proposal Trustee, and those other parties present, no one appearing for any other person on the service list, although duly served as appears of the affidavit of service of Alexandra Teodorescu, filed.

SERVICE

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion and the Motion Record is hereby abridged and validated so that this Motion is properly returnable today and hereby dispenses with further service thereof.

ADMINISTRATION CHARGE

2. **THIS COURT ORDERS** that counsel to the Debtor, the Proposal Trustee and counsel to the Proposal Trustee (“**Administrative Parties**”) shall be entitled to the benefit of and are hereby granted a charge (the “**Administration Charge**”) on all property, assets and undertakings of the Debtor (“**Property**”), as security for the fees and disbursements of the Administrative Parties, incurred at their standard rates and charges and on the terms set forth in their respective engagement letters, both before and after the making of this Order.

DIP FINANCING

3. **THIS COURT ORDERS** that the Debtor is hereby authorized and empowered to obtain and borrow under a credit facility pursuant to the Debtor-in-Possession Term Sheet (“**DIP Term Sheet**”) between the Debtor and the lender (“**DIP Lender**”) in the form attached hereto as Schedule “A”, provided that the borrowings by the Debtor under the DIP Term Sheet shall not exceed \$750,000 unless permitted by further Order of this Court.

4. **THIS COURT ORDERS** that the DIP Lender shall be entitled to the benefit of and is hereby granted a charge (“**DIP Lender’s Charge**”) on the Property as security for any and all obligations, including on account of principal, interest, fees, expenses and other liabilities, under the DIP Term Sheet (“**DIP Obligations**”), which DIP Lender’s Charge shall be in the aggregate amount of the DIP Obligations outstanding at any given time under the DIP Term Sheet.

VALIDITY AND PRIORITY OF CHARGES CREATED BY THIS ORDER

5. **THIS COURT ORDERS** that the priorities of the Administration Charge and the DIP Lender’s Charge (collectively, the “**Charges**”), as among them, shall be as follows:

First - the Administration Charge; and


Second - the DIP Lender’s Charge

6. **THIS COURT ORDERS** that the filing, registration or perfection of the Charges shall not be required, and that the Charges shall be valid and enforceable for all purposes, including as against any right, title or interest filed, registered, recorded or perfected subsequent to the Charges coming into existence, notwithstanding any such failure to file, register, record or perfect.

7. **THIS COURT ORDERS** that each of the Charges shall constitute a charge on the Property and such Charges shall rank in priority to all other security interests, trusts, liens, charges, encumbrances and claims of secured creditors, statutory or otherwise, except will not rank in priority to any lien for unpaid realty taxes in connection with the Property and will also not rank in priority to the following two charges (provided that the charges are otherwise valid and enforceable):

- (a) A first charge granted by the Debtor in favour of Computershare Trust Company of Canada in the amount of \$11,250,000, and registered on title to the Property on September 29, 2005 as Instrument No. AT935525, which was subsequently transferred to Dan Realty Limited, E. Manson Investments Limited and Copperstone Investments Limited (collectively, the “**First Mortgagees**”) on June 2, 2016, and registered as Instrument No. AT4236037; and
- (b) A second in position charge granted by the Debtor in favour of Janodee Investments Ltd. and Meadowshire Investments Ltd. (collectively, the “**Second Mortgagees**”) in the amount of \$1,420,000, registered on September 21, 2016 as Instrument No. AT4349221.

APPROVAL OF SALE PROCESS

 8. **THIS COURT ORDERS** that the Sale Process, as described in Appendix ^C~~B~~ to ~~the~~ ^{this order} ~~First Report~~, be and is hereby approved.

9. **THIS COURT ORDERS** that the Proposal Trustee be and is hereby authorized and directed to perform its obligations under and in accordance with the Sale Process, and to take such further steps as it considers necessary or desirable in carrying out the Sale Process.

10. **THIS COURT ORDERS** that, in accordance with its obligations under the Sale Process, the Proposal Trustee is hereby empowered and authorized, but not obligated, to do any of the following where the Proposal Trustee considers it necessary or desirable:

- (a) to engage, in consultation with the First Mortgagees, consultants, managers, property managers, real estate agents, brokers, listing agents, 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 Proposal Trustee's powers and duties conferred by this Order;

- (b) in accordance with the Sale Process, to market any and all of the Property, including advertising and soliciting offers in respect of the Property, and negotiating such terms and conditions of sale as the Proposal Trustee in its discretion may deem appropriate;
- (c) to sell, convey, transfer, lease or assign the Property or any part or parts thereof out of the ordinary course of business with the approval of this Court and in each such case notice under subsection 63(4) of the Ontario *Personal Property Security Act* or section 31 of the Ontario *Mortgages Act*, as the case may be is hereby waived;
- (d) to apply for any vesting order or other orders necessary to convey the Property or any part or parts thereof to a purchaser or purchasers thereof, free and clear of any liens or encumbrances affecting such Property and vesting same in the proceeds; and
- (e) 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 Proposal Trustee takes such actions or steps, it shall be exclusively authorized and empowered to do so, to the exclusion of any other individual, firm, corporation, governmental body or agency or any other entity (each being a "**Person**") including the Debtor,

and without interference from any other Person. For clarity, the Proposal Trustee will have unfettered discretion in connection with the Sale Process, and will not be influenced by or obligated to follow the instructions or directions, if any, of any of the Debtor, Alain Checroune, and/or any related party.

11. **THIS COURT ORDERS** that the Proposal Trustee and its affiliates, partners, directors, employees, agents and controlling persons shall have no liability with respect to any and all losses, claims, damages or liabilities, of any nature or kind, to any person in connection with or as a result of the Sale Process, except to the extent such losses, claims, damages or liabilities result from gross negligence or willful misconduct on the Proposal Trustee in performing its obligations under the Sale Process.

12. **THIS COURT ORDERS** that in connection with the Sale Process and pursuant to clause 7(3)(c) of the *Personal Information and Electronic Documents Act* (Canada), the Proposal Trustee is authorized and permitted to disclose personal information of identifiable individuals to prospective purchasers or offerors and to their advisors, but only to the extent desirable or required to negotiate and attempt to complete one or more transactions (each, a “**Transaction**”). Each prospective purchaser or offeror to whom such information is disclosed shall maintain and protect the privacy of such information and shall limit the use of such information to its evaluation of the Transaction, and if it does not complete a Transaction, shall: (i) return all such information to the Proposal Trustee, as applicable; (ii) destroy all such information, or (iii) in the case of such information that is electronically stored, destroy all such information to the extent it is reasonably practical to do so. The transacting party with respect to any of the Property shall be entitled to continue to use the personal information provided to it, and related to the Property purchased, in a manner which is in all material respects identical to the prior use of such

information by the Debtor, and shall return all other personal information to the Proposal Trustee, as applicable, or ensure that all other personal information is destroyed.

EXTENSION OF TIME TO FILE PROPOSAL

13. **THIS COURT ORDERS** that the time in which the Debtor is required to file a proposal is hereby extended to and including December 22, 2017.

GENERAL

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

15. **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 Debtor, the Proposal Trustee and their respective 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 Debtor and the Proposal Trustee as may be necessary or desirable to give effect to this Order, or to assist the Debtor and the Proposal Trustee and their respective agents in carrying out the terms of this Order.

16. **THIS COURT ORDERS** that Confidential Appendix A to the Supplemental Report of the Proposal Trustee, dated November 2, 2017, be and is hereby sealed until further Order of this Court.

A handwritten signature in blue ink, appearing to read "Hainey J.", is written over a horizontal line. The signature is cursive and includes a large, stylized initial "J" at the end.



SINGAPORE
HONG KONG
CANADA

November 1, 2017

To: **1482241 Ontario Limited**

240 Duncan Mills Road,
Toronto, Canada M3B-3S6

Attention: Mr. Alain Checroune

Dear Mr. Checroune, Alain:

**Re: Debtor in Possession funding of the Proposal of 1482241 Ontario Limited
["148"] in the amount of up to \$750,000 (the "Loan")**

We are advised that 148 has filed for protection from its creditors by filing a notice of intention to make a proposal in accordance with the Bankruptcy and Insolvency Act (the "NOI Process") Caruda Holdings Ltd. ("Lender") is prepared to advance funds up to the amount of \$750,000 to 148 by way of a court-approved Debtor on Possession loan, provided that the funds advanced are secured by a court-ordered charge as set out in the draft order attached hereto as Appendix "A", which loan shall in any event be in priority to all entities other than the First and Second Mortgagees and amount owing for Property Taxes as set out therein, and subject to the other terms set out herein.

The terms of the loan are as follows:

**Amount and Nature
and Purpose
of Loan:**

Up to \$750,000 to be advanced to 148 in the increments set out on the Cash Flow attached as Appendix "B" or in such larger or other amounts as 148 requests and Crowe Soberman Inc. in its capacity as proposal trustee of 148 (the "Proposal Trustee") approves, up to the maximum amount of the Loan, provided that in no event will any single advance in any month be greater than \$100,000 without the lenders express consent, which may be withheld. The funds may be used to pay outstanding interest owed to the First and Second Mortgagees.

Two handwritten signatures in black ink, one appearing to be "Abk" and the other "Alf", positioned above a horizontal line.

First Right to Further Loans In the event that during the NOI Process 148 requires further funds in order to operate or should it elect to repay any of its other obligations, the Lender shall be given the first opportunity to provide that loan, on terms substantially similar to the terms set out herein, although the Lender is not obliged to do so. 148 will provide the Lender with written notice of its request for further funding and the purpose for such funds and the Lender shall have 5 business days to agree to make said loan.

Security and Draws: Funds to be advanced as requested in writing by 148 by way of cheque or wire transfer into 148 accounts. All advances will be made with notice to the Proposal Trustee. The Loan and all other amounts due to the lender hereunder will be secured by a court-ordered charge in the form set out in the Order attached as Appendix A

Holdback: \$50,000 of the Loan to be held back to establish the interest reserve (the "Interest Reserve") for interest due hereunder and for the costs of the Lender.

Interest and Payment: 8% per annum compounded monthly, not in advance, payable monthly from the interest reserve to the extent that funds are available therefrom. The Loan is repayable on Demand, and 148 hereby consents to the lifting of the stay in its NOI Process, if required, in order to allow the loan and security to be enforced. The loan shall be immediately due and payable upon the bankruptcy of 148. The Loan and all amounts due hereunder shall not be compromised in any proposal of 148 and the Lender shall be treated as an unaffected creditor in these proceedings.

Amortization: Interest only.



Term: Commencing on the execution of this agreement and expiring on April 30th, 2018

Privileges: Open to early pre-payment in full at any time, provided, however, that if pre-payment occurs before the three month anniversary of the initial advance, the Lender shall still be entitled to interest in respect of that three month period.

Prior Encumbrances: The Administration Charge, and the amounts owing in respect of Property Taxes, and the amounts properly due and owing and validly secured in favour of the First and Second Mortgagees

Lender Fee: \$25,000 payable (a) as to \$15,000 on the date the first amount is drawn under the Loan by 148 and (b) as to the balance of \$10,000, on the date that the Lender is repaid hereunder.

Brokerage Fee: None

Further Condition: It is understood that an Order approving this Loan, approving the Administration Charge, ordering a sale process and extending 148's NOI process is being sought on November 3rd. This Loan and the Lender's obligation hereunder is conditional upon the order being granted authorizing the Loan and granting the charge described hereof so that the Loan is in priority to all interests other than the Prior Encumbrances on November 3rd, 2017 and on a sale process being ordered by the court in respect of which a sale agreement will be entered into no later than January 30, 2017.



SINGAPORE
HONG KONG
CANADA

Assignment: The Lender shall be entitled to assign this Agreement and the Loan to any other person.

Legal Fees: The reasonable and documented legal fees, disbursements and HST incurred by the Lender in connection therewith, including without limitation in respect of any enforcement of its rights hereunder, shall be secured by the Order.

The foregoing constitutes a formal offer to provide financing. Nothing in this loan agreement shall prevent the Lender from bidding on or funding an entity bidding on the assets of 148 in the proposed sale process or otherwise.

Yours truly,

CARUDA HOLDINGS LTD.

Per: _____

Andy Degan

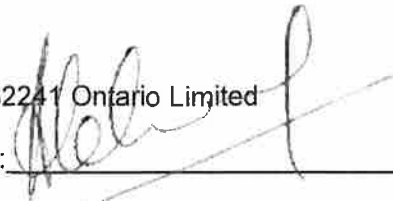
Chief Financial Officer, Secretary
Member of the Board
Shareholder





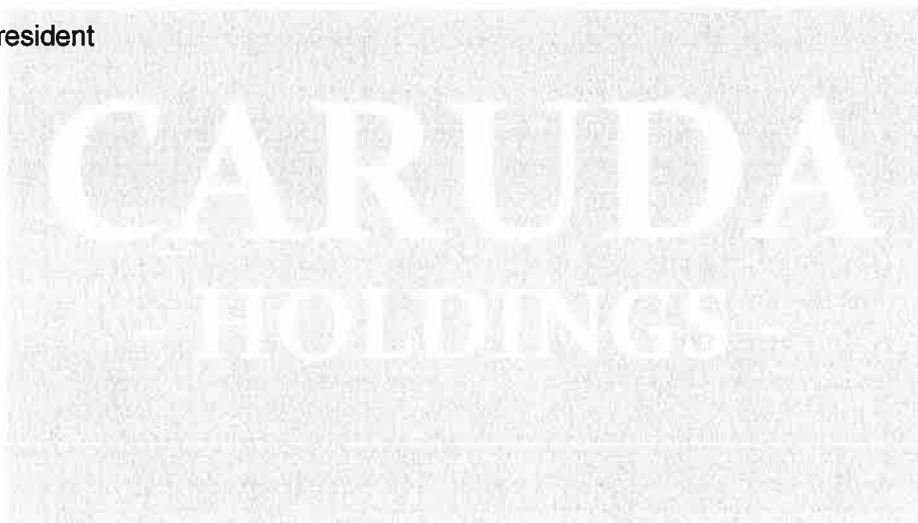
SINGAPORE
HONG KONG
CANADA

The foregoing is agreed to by the undersigned

1482241 Ontario Limited
Per: 

Name: Alain Checroune

Title: President



APPENDIX "A"

Court File No. 31-2303814
Estate File No. 31-2303814

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

THE HONOURABLE

)

FRIDAY, THE 3RD DAY

)

)

OF NOVEMBER, 2017

IN BANKRUPTCY AND INSOLVENCY

**IN THE MATTER OF THE PROPOSAL OF 1482241 ONTARIO LIMITED, OF THE
CITY OF TORONTO, IN THE PROVINCE OF ONTARIO**

**CROWE SOBERMAN INC., in its capacity as
Licensed Insolvency Trustee of 1482241 Ontario Limited**

ORDER

THIS MOTION made by 1482241 Ontario Limited ("**Debtor**") for an Order *inter alia*:
(a) granting a charge in respect of the fees and expenses of counsel to the Debtor, Crowe Soberman Inc. in its capacity as Licensed Insolvency Trustee with respect to the Debtor (in this capacity, "**Proposal Trustee**"), and Proposal Trustee's counsel; (b) approving a sale solicitation process ("**Sale Process**") with respect to the assets and business of the Debtor; (c) approving the interim financing of the Debtor and the Debtor in Possession Term Sheet (defined below) and granting the DIP Lender's Charge (as defined below); and extending the time within which a Proposal must be filed to and including December 27, 2017, was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Affidavit of Alain Checroune, sworn October 26, 2017, the First Report of the Proposal Trustee, dated October 27, 2017 (“**First Report**”), the Supplemental Report of the Proposal Trustee, dated ●, 2017, and on hearing the submissions of counsel for the Debtor and counsel for the Proposal Trustee, and those other parties present, no one appearing for any other person on the service list, although duly served as appears of the affidavit of service of Alexandra Teodorescu, filed.

SERVICE

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion and the Motion Record is hereby abridged and validated so that this Motion is properly returnable today and hereby dispenses with further service thereof.

ADMINISTRATION CHARGE

2. **THIS COURT ORDERS** that counsel to the Debtor, the Proposal Trustee and counsel to the Proposal Trustee (“**Administrative Parties**”) shall be entitled to the benefit of and are hereby granted a charge (the “**Administration Charge**”) on all property, assets and undertakings of the Debtor (“**Property**”), as security for the fees and disbursements of the Administrative Parties, incurred at their standard rates and charges and on the terms set forth in their respective engagement letters, both before and after the making of this Order.

DIP FINANCING

3. **THIS COURT ORDERS** that the Debtor is hereby authorized and empowered to obtain and borrow under a credit facility pursuant to the Debtor-in-Possession Term Sheet (“**DIP Term Sheet**”) between the Debtor and the lender (“**DIP Lender**”) in the form attached hereto as

Schedule "A", provided that the borrowings by the Debtor under the DIP Term Sheet shall not exceed \$750,000 unless permitted by further Order of this Court.

4. **THIS COURT ORDERS** that the DIP Lender shall be entitled to the benefit of and is hereby granted a charge ("**DIP Lender's Charge**") on the Property as security for any and all obligations, including on account of principal, interest, fees, expenses and other liabilities, under the DIP Term Sheet ("**DIP Obligations**"), which DIP Lender's Charge shall be in the aggregate amount of the DIP Obligations outstanding at any given time under the DIP Term Sheet.

VALIDITY AND PRIORITY OF CHARGES CREATED BY THIS ORDER

5. **THIS COURT ORDERS** that the priorities of the Administration Charge and the DIP Lender's Charge (collectively, the "**Charges**"), as among them, shall be as follows:

First - the Administration Charge; and

Second - the DIP Lender's Charge

6. **THIS COURT ORDERS** that the filing, registration or perfection of the Charges shall not be required, and that the Charges shall be valid and enforceable for all purposes, including as against any right, title or interest filed, registered, recorded or perfected subsequent to the Charges coming into existence, notwithstanding any such failure to file, register, record or perfect.

7. **THIS COURT ORDERS** that each of the Charges shall constitute a charge on the Property and such Charges shall rank in priority to all other security interests, trusts, liens, charges, encumbrances and claims of secured creditors, statutory or otherwise, except will not

rank in priority to any lien for unpaid realty taxes in connection with the Property and will also not rank in priority to the following two charges (provided that the charges are otherwise valid and enforceable):

- (a) A first charge granted by the Debtor in favour of Computershare Trust Company of Canada in the amount of \$11,250,000, and registered on title to the Property on September 29, 2005 as Instrument No. AT935525, which was subsequently transferred to Dan Realty Limited, E. Manson Investments Limited and Copperstone Investments Limited (collectively, the “**First Mortgagees**”) on June 2, 2016, and registered as Instrument No. AT4236037; and
- (b) A second in position charge granted by the Debtor in favour of Janodee Investments Ltd. and Meadowshire Investments Ltd. in the amount of \$1,420,000, registered on September 21, 2016 as Instrument No. AT4349221.

APPROVAL OF SALE PROCESS

- 8. **THIS COURT ORDERS** that the Sale Process, as described in Appendix “E” to the First Report, be and is hereby approved.
- 9. **THIS COURT ORDERS** that the Proposal Trustee be and is hereby authorized and directed to perform its obligations under and in accordance with the Sale Process, and to take such further steps as it considers necessary or desirable in carrying out the Sale Process.
- 10. **THIS COURT ORDERS** that, in accordance with its obligations under the Sales Process, the Proposal Trustee is hereby empowered and authorized, but not obligated, to do any of the following where the Proposal Trustee considers it necessary or desirable:

- (a) to engage, in consultation with the First Mortgagees, consultants, managers, property managers, real estate agents, brokers, listing agents, 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 Proposal Trustee's powers and duties conferred by this Order;
- (b) in accordance with the Sale Process, to market any and all of the Property, including advertising and soliciting offers in respect of the Property, and negotiating such terms and conditions of sale as the Proposal Trustee in its discretion may deem appropriate;
- (c) to sell, convey, transfer, lease or assign the Property or any part or parts thereof out of the ordinary course of business with the approval of this Court and in each such case notice under subsection 63(4) of the Ontario *Personal Property Security Act* or section 31 of the Ontario *Mortgages Act*, as the case may be is hereby waived;
- (d) to apply for any vesting order or other orders necessary to convey the Property or any part or parts thereof to a purchaser or purchasers thereof, free and clear of any liens or encumbrances affecting such Property and vesting same in the proceeds;
and
- (e) 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 Proposal Trustee takes such actions or steps, it shall be exclusively authorized and empowered to do so, to the exclusion of any other individual, firm, corporation, governmental body or agency or any other entity (each being a “**Person**”) including the Debtor, and without interference from any other Person.

11. **THIS COURT ORDERS** that the Proposal Trustee and its affiliates, partners, directors, employees, agents and controlling persons shall have no liability with respect to any and all losses, claims, damages or liabilities, of any nature or kind, to any person in connection with or as a result of the Sale Process, except to the extent such losses, claims, damages or liabilities result from gross negligence or willful misconduct on the Proposal Trustee in performing its obligations under the Sale Process.

12. **THIS COURT ORDERS** that in connection with the Sale Process and pursuant to clause 7(3)(c) of the *Personal Information and Electronic Documents Act* (Canada), the Proposal Trustee is authorized and permitted to disclose personal information of identifiable individuals to prospective purchasers or offerors and to their advisors, but only to the extent desirable or required to negotiate and attempt to complete one or more transactions (each, a “**Transaction**”). Each prospective purchaser or offeror to whom such information is disclosed shall maintain and protect the privacy of such information and shall limit the use of such information to its evaluation of the Transaction, and if it does not complete a Transaction, shall: (i) return all such information to the Proposal Trustee, as applicable; (ii) destroy all such information, or (iii) in the case of such information that is electronically stored, destroy all such information to the extent it is reasonably practical to do so. The transacting party with respect to any of the Property shall be entitled to continue to use the personal information provided to it, and related to the Property purchased, in a manner which is in all material respects identical to the prior use of such

information by the Debtor, and shall return all other personal information to the Proposal Trustee, as applicable, or ensure that all other personal information is destroyed.

EXTENSION OF TIME TO FILE PROPOSAL

13. **THIS COURT ORDERS** that the time in which the Debtor is required to file a proposal is hereby extended to and including December 22, 2017.

GENERAL

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

15. **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 Debtor, the Proposal Trustee and their respective 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 Debtor and the Proposal Trustee as may be necessary or desirable to give effect to this Order, or to assist the Debtor and the Proposal Trustee and their respective agents in carrying out the terms of this Order.

APPENDIX "B"

**In the matter of the Proposal of 1482241 Ontario Limited ("148")
Statement of Projected Cash flow for the Period October 2017 to March 2018**

	Oct-17	Nov-17	Dec-17	Jan-18	Feb-18	Mar-18	Totals
CASH INFLOWS							
Rental Income	\$85,213	\$85,213	\$85,213	\$85,213	\$85,213	\$85,213	\$391,280
Parking	\$20,195	\$20,195	\$20,195	\$20,195	\$20,195	\$20,195	\$121,170
Tenant Recoveries	\$79,703	\$79,703	\$79,703	\$79,703	\$79,703	\$79,703	\$478,221
Sale of Building (NOTE 1)	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Court Approved Interim Financing / DIP Loan	\$0	\$84,000	\$81,000	\$87,000	\$87,000	\$188,000	\$535,000
TOTAL INCOME	\$185,112	\$249,112	\$266,112	\$282,112	\$282,112	\$351,112	\$1,525,871
CASH OUTFLOWS							
Snow Removal	\$0	\$0	\$2,889	\$2,889	\$2,889	\$2,889	\$11,556
Insurance	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Property Taxes	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Utilities (Electricity, Gas, Water)	\$27,891	\$59,891	\$59,891	\$59,891	\$59,891	\$97,334	\$327,345
Cleaning/Janitorial	\$11,061	\$11,061	\$11,061	\$11,061	\$11,061	\$11,061	\$66,366
Repairs & Maintenance	\$34,788	\$34,788	\$34,788	\$34,788	\$34,788	\$34,788	\$208,608
Property Management Fees	\$10,500	\$10,500	\$10,500	\$10,500	\$10,500	\$10,500	\$63,000
Office Administration	\$2,845	\$2,845	\$2,845	\$2,845	\$2,845	\$2,845	\$17,072
HST Remittance	\$15,000	\$15,000	\$15,000	\$15,000	\$15,000	\$15,000	\$90,000
Payroll Expenses	\$21,828	\$21,828	\$21,828	\$21,828	\$21,828	\$21,828	\$129,768
Professional Fees - Legal (NOTE 2)	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Professional Fees - Proposal Trustee (NOTE 2)	\$5,000	\$0	\$0	\$0	\$0	\$0	\$5,000
Professional Fees - Accounting/Consulting	\$9,000	\$9,000	\$9,000	\$9,000	\$9,000	\$9,000	\$54,000
Vehicle expense	\$1,873	\$1,873	\$1,873	\$1,873	\$1,873	\$1,873	\$11,238
TOTAL EXPENSES	\$138,668	\$166,668	\$169,455	\$189,455	\$189,455	\$268,789	\$1,081,287
Net cash	\$46,444	\$82,444	\$96,657	\$92,657	\$92,657	\$82,323	\$444,584
Repayment of 1st Mortgage	\$0	\$88,750	\$88,750	\$88,750	\$88,750	\$88,750	\$343,750
Repayment of 2nd Mortgage	\$0	\$15,187	\$15,187	\$15,187	\$15,187	\$15,187	\$75,833
NET cash after repayment of mortgage	\$46,444	\$67,267	\$107,907	\$77,467	\$77,467	\$67,136	\$368,751
	\$25,646	\$24,175	\$26,814	\$25,654	\$24,304	\$24,800	

**1482241 Ontario Limited - Proposal to Creditors
Statement of Projected Cash flow**

The following ASSUMPTIONS form part of this Statement of Projected Cash flow.

ASSUMPTIONS

Rental Income

Collections of rental income is assumed to be consistent with previous periods based on a 52% occupancy rate / 47% vacancy rate. The occupancy rate is unlikely to improve significantly in the short term.

Payroll

Has been reduced for cost savings.

Payables

Listed on a COD basis

Sale of Building (NOTE 1)

148's restructuring and proposal will be based on the sale and marketing of real property located 240 Duncan Mill Road, Toronto, Ontario. It is forecasted that a sales process and marketing will run for approximately 45-80 days with a closing scheduled for January or February 2018.

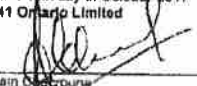
Professional Fees (NOTE 2)

In order to conserve cash through the restructuring, Professional Fees of the Proposal Trustee and legal counsel for 148 will accrue to be paid upon the sale of the building.

CERTIFICATION

THE PURPOSE of this Statement of Projected Cash flow is to provide creditors with sufficient information to make an informed decision regarding the Proposal, and to fully disclose to the Trustee and the Official Receiver, the state of 1482241 Ontario Limited financial affairs. This Statement of Projected Cash flow is prepared pursuant to the requirements of sections 50.4(2)(a) and 50(6)(a) of the Bankruptcy and Insolvency Act and solely for that purpose.


Dated this 19th day of October 2017
1482241 Ontario Limited

Per: 
Alan Ouellet

Dated this 19th day of October 2017.

CROWE SOBERMAN INC.

Licensed Insolvency Trustee Acting In re: Proposal of 1482241 Ontario Limited

Per: 
Hans Rehm, CMA, CA, CFP, LIT



Government
of Canada

Gouvernement
du Canada

Update filing - update is confirmed

Welcome **Hans Rizarri** | [Preferences](#) | [E-Filing helpdesk](#) | [Instructions](#) | [Logout](#)

Estate Information

Please Note: The following estate(s) were updated:

- **Estate Number:** 31-2303814
- **Estate Name:** 1482241 ONTARIO LIMITED

Document(s) submitted

The following document(s) have been successfully submitted

- Form 30: Report on Cash-flow Statement by the Person Making the Proposal
- Form 29: Trustee's Report on Cash-flow Statement

Reference

- The Reference Number for this transaction is: **13744748**.
- Submitted by Hans Rizarri.
- 2017-10-23 13:53 EDT

Submit another document for this estate.

If you would like to submit a document against a different estate, please click on the **Update** link in the left hand side menu.

Date modified: 2017-07-28



Government
of Canada

Gouvernement
du Canada

Update filing - update is confirmed

Welcome **Hans Rizarri** | [Preferences](#) | [E-Filing helpdesk](#) | [Instructions](#) | [Logout](#)

Estate Information

Please Note: The following estate(s) were updated:

- **Estate Number:** 31-2303814
- **Estate Name:** 1482241 ONTARIO LIMITED

Document(s) submitted

The following document(s) have been successfully submitted

- Cash Flow Statement

Reference

- The Reference Number for this transaction is: **13744756**.
- Submitted by Hans Rizarri.
- 2017-10-23 13:53 EDT

[Submit another document for this estate.](#)

If you would like to submit a document against a different estate, please click on the **Update** link in the left hand side menu.

Date modified: 2017-07-28

Appendix "C"

APPENDIX A

1482241 ONTARIO LIMITED

SALES PROCESS – OCTOBER 26, 2017

	Event	Timing
1.	The Proposal Trustee will select and retain a Listing Agent to assist the Proposal Trustee with the marketing and solicitation of offers for the Property.	On or before November * 2018
2.	Compile a list of interested parties through consultation with the Debtor, the Listing Agent, and the Crowe Network of advisors and investors in real estate. <u>The list of interested parties shall be kept confidential from the Debtor, Alain Checroune, and/or any related party (collectively the "Debtor Parties"), unless and until the Debtor Parties declare their intention not to submit an Offer, as described in section 6 below.</u>	On or before November * 2018
3.	Send a teaser (the "Teaser") and confidentiality agreement ("CA") to all parties identified by Crowe as potentially having an interest in the business and assets (the "Property").	Immediately following the Sale Process Approval Date
4.	Information pertaining to this opportunity will be posted on the Proposal Trustee's website: www.crowesoberman.com/insolvency/engagements which will include: <ul style="list-style-type: none"> • An Invitation for Offers to purchase the Debtor's Property; • The Proposed Terms and Conditions of Sale, which is on an "as is, where is" basis with no representations or warranties; and • A CA from the Proposal Trustee. 	Within 10 business days of issuance of the Sale Process Approval Date
5.	The Proposal Trustee shall advertise the Property and Sales Process in <i>The Globe and Mail</i> (National Edition).	Within 10 business days of the Sale Process Approval Date but by no later than Nov 20, 2017
6.	<u>The Debtor Parties shall declare to the Proposal Trustee, in writing, whether they intend to make an Offer in the Sale Process. If the Debtor Parties advise the Proposal Trustee that they intend to make an Offer, then no further information regarding the Sale Process shall be provided to them, and they will be treated in the same manner as any other Interested Party. If the Debtor Parties advise the Proposal Trustee that they do not intend to make an Offer, they shall thereafter be prohibited from doing so.</u>	<u>On or before December 15, 2017</u>
7.	Interested Parties expressing an interest in participating in the Sale Process will be required to execute the CA, upon which Interested Parties will receive available information in respect of the Property and Sale Process, including access to an electronic data room, once established, which will also include a Confidential Information	Through to no later than January 15, 2018

	Memorandum (“CIM”) setting out the investment and/or purchase opportunity. In addition parties wishing to undertake further due diligence will be provided with an opportunity to conduct site visits and review further additional information not available from the electronic data room.	
7.8.	Interested Parties will have until 5:00 pm Eastern Standard Time on Monday, January 15, 2018 (the “ Bid Deadline ”) to submit a (binding) offer (hereinafter called “ Offer ”), which must include a cash deposit equal to 10% of the total purchase price for the Property subject to the Offer (the “ Deposit ”). The Deposit will be refunded in the event an Offer, as submitted, is not accepted by the Proposal Trustee.	On or before 5:00 PM (EST), January 15, 2018
8.9.	Offers are to be made using the Agreement of Purchase and Sale (“ APS ”) template and are to be made without conditions, other than a condition for Court Approval. Offers shall remain open for acceptance by the Proposal Trustee until at least 5:00 pm Eastern Standard Time, Friday January 19, 2018.	On or prior to 5:00pm (EST) January 19, 2018
9.10.	Following the Bid Deadline, the Proposal Trustee will review and assess all Offers received, if any. In order to be a “ Qualified Offer ”, the offer must: <ul style="list-style-type: none"> a) Be received by the Proposal Trustee no later than the Bid Deadline; b) Be accompanied with a cash deposit equal to 10% of the consideration in the APS; c) Contain no conditions other than the requirement that the Proposal Trustee obtain an Approval Order; d) Contains evidence of the anticipated sources of capital and/or evidence of availability of such capital, or such other form of financial disclosure and credit support or enhancement that will allow the Proposal Trustee and its legal and financial advisors, to make, in their reasonable business or professional judgement, a reasonable determination as to the potential bidder’s financial and other capabilities to complete the sale transaction; and e) <u>Provide for consideration that the Proposal Trustee considers commercially reasonable.</u> 	January 16, 2018
10.11.	If more than one Qualified Offers Offer, as determined pursuant to # 9 10 above are received by the Bid Deadline, the Proposal Trustee will conduct an auction involving each of the Qualified Offerors, the procedures for which will be announced no less than 3 days before the date of the auction in order to determine one successful offer (the “ Successful Offer ”). All Qualified Offerors shall be responsible for their own fees and costs relating to any transaction.	January 16, 2018
11.12.	Auction (if necessary) and selection of Successful Offer, <u>which shall be conducted in a manner to be further particularized by the Proposal Trustee in advance of the auction.</u>	January 18, 2018

12.13.	Execution of Binding Agreement with Successful Offer	January 31, 2018
13.14.	Seek Court approval of agreement of purchase and sale and obtain a vesting order (" Approval Order ") for sale of the Property on or prior to February 15, 2018	On or prior to February 15, 2018
14.15.	Close sale to successful purchaser on or prior to February 28, 2018	On or prior to February 28, 2018

Note: All capitalized terms used and not otherwise defined herein shall have the meaning ascribed to them in the motion material dated October 26, 2017.

| [30836285.2](#)

DRAFT

IN BANKRUPTCY AND INSOLVENCY

IN THE MATTER OF THE PROPOSAL OF 1482241 ONTARIO LIMITED, OF THE CITY OF TORONTO, IN THE PROVINCE OF ONTARIO

CROWE SOBERMAN INC., in its capacity as Licensed Insolvency Trustee of 1482241 Ontario Limited

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

Proceeding commenced at TORONTO

ORDER

BLANEY McMURTRY LLP
Barristers and Solicitors
1500 - 2 Queen Street East
Toronto, ON M5C 3G5

David Ullmann (LSUC #423571)
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Fax: (416) 594-2437
dullmann@blaney.com

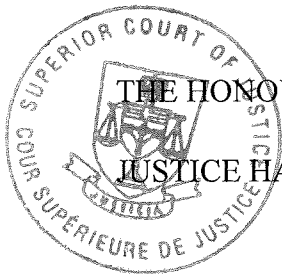
Alexandra Teodorescu (LSUC #63889D)
Tel: (416) 596-4279
Fax: (416) 594-2506
ATEodorescu@blaney.com

Lawyers for 1482241 Ontario Limited

APPENDIX “B”

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

IN BANKRUPTCY AND INSOLVENCY



THE HONOURABLE)

FRIDAY, THE 16TH

JUSTICE HAINEY)

DAY OF MARCH, 2018

**IN THE MATTER OF THE PROPOSAL OF 1482241 ONTARIO LIMITED, OF THE
CITY OF TORONTO, IN THE PROVINCE OF ONTARIO**

APPROVAL AND VESTING ORDER

THIS MOTION, made by Crowe Soberman Inc., in its capacity as the proposal trustee (in such capacity, the “**Proposal Trustee**”) of 1482241 Ontario Limited (the “**Debtor**”), for an order, *inter alia*, approving the sale transaction (the “**Transaction**”) contemplated by an agreement of purchase and sale between the Proposal Trustee, as vendor pursuant to the Order of the Honourable Mr. Justice Hainey of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) made November 3, 2017 (the “**Sale Process Order**”), and 1979119 Ontario Inc. (“**197**”), as purchaser, dated February 26, 2018 (the “**Sale Agreement**”), a copy of which is attached as Confidential Appendix “4” to the Fourth Report of the Proposal Trustee dated March 7, 2018 (the “**Fourth Report**”), as such Sale Agreement is to be assigned by 197 to AZDM Inc. (the “**Purchaser**”) in accordance with the terms of the Sale Agreement, and vesting in the Purchaser the Debtor’s right, title and interest in and to the Purchased Assets (as defined in the Sale Agreement), was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Fourth Report and appendices thereto, the affidavit of Alain Checroune sworn March 13, 2018 and the appendices thereto, the affidavit of Ivan Mitchell Merrow sworn March 14, 2018 and the appendices thereto, and the Supplement to the Fourth Report of the Proposal Trustee dated March 15, 2018 and the appendices thereto, and on hearing the submissions of counsel for the Proposal Trustee, counsel for the Debtor and such other counsel as were present, no one appearing for any other person on the service list, although properly served as appears from the affidavits of service of Diana Saturno and Diana McMillen sworn March 8, 2018, filed,

1. **THIS COURT ORDERS AND DECLARES** that the Transaction is hereby approved, and the execution of the Sale Agreement by the Proposal Trustee is hereby authorized, ratified and approved, with such minor amendments as the Proposal Trustee may deem necessary. The Proposal Trustee is hereby authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the Transaction and for the conveyance of the Purchased Assets to the Purchaser, or as it may direct.

2. **THIS COURT ORDERS AND DECLARES** that upon the delivery of a Proposal Trustee's certificate to the Purchaser substantially in the form attached as Schedule A hereto (the "**Proposal Trustee's Certificate**"), all of the Purchased Assets, including, without limitation, the Real Property (as defined herein) listed on Schedule "B" hereto, shall vest absolutely in the Purchaser or in whomever it may direct or nominate, free and clear of and from any and all assessments or reassessments, equitable interests, preferential arrangements, rights of others, notices of lease, sub-leases, licenses, judgments, debts, liabilities, certificates of pending litigation, agreements of purchase and sale, reservation contracts, leases, title retention



(save and except for those leases forming part of the Purchased Assets)

agreements, adverse claims, exceptions, reservation easements, encroachments, servitudes, restrictions on use, title, any matter capable of registration against title, options, rights of first offer or refusal or similar right, restrictions on voting (in the case of any voting or equity interest), right or pre-emption or privilege or any contract creating any of the foregoing, and any and all security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, writs, levies, charges, or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise (collectively, the “**Claims**”) including, without limiting the generality of the foregoing: (i) any encumbrances or charges created by the Sale Process Order and any other orders of the Court in these proceedings including, without limitation, the Administration Charge, the DIP Lenders’ Charge and the Tax DIP Lenders’ Charge (as those terms are defined in the Orders of Mr. Justice Hainey dated November 3, 2017 and December 20, 2017 made in these proceedings); (ii) all charges, security interests, leases or claims evidenced by registrations pursuant to the *Personal Property Security Act* (Ontario), the *Land Titles Act* (Ontario), or any other personal or real property registry system; (iii) those Claims listed on **Schedule “C”** hereto (all of which are collectively referred to as the “**Encumbrances**”, which term shall not include the permitted encumbrances, easements and restrictive covenants listed on **Schedule “D”**); and (iv) any other claims against the Debtor or any of the Purchased Assets registered or otherwise existing, potential or contingent arising out of circumstances prior to the registration of this Order (the “**Additional Encumbrances**”) and, for greater certainty, this Court orders that all of the Encumbrances and Additional Encumbrances affecting or relating to the Purchased Assets are hereby expunged and discharged as against the Purchased Assets.

3. **THIS COURT ORDERS** that upon the registration in the Land Registry Office for the appropriate Land Titles Division of an Application for Vesting Order in the form prescribed by the *Land Titles Act* and/or the *Land Registration Reform Act*, the Land Registrar is hereby directed to enter the Purchaser and/or whomever the Purchaser may nominate or direct as the owner(s) of the subject real property identified in **Schedule "B"** hereto (the "**Real Property**") in fee simple, and is hereby directed to delete and expunge from title to the Real Property all of the Claims listed in **Schedule "C"** hereto.

4. **THIS COURT ORDERS** that for the purposes of determining the nature and priority of Claims, the net proceeds from the sale of the Purchased Assets (the "**Sale Proceeds**") shall stand in the place and stead of the Purchased Assets, and that from and after the delivery of the Proposal Trustee's Certificate all Claims, Encumbrances and Additional Encumbrances shall attach to the net proceeds from the sale of the Purchased Assets with the same priority as they had with respect to the Purchased Assets immediately prior to the sale, as if the Purchased Assets had not been sold and remained in the possession or control of the person having that possession or control immediately prior to the sale.

5. **THIS COURT ORDERS** that the Proposal Trustee shall hold the Sale Proceeds in trust, pending further Order of the Court. For greater certainty, the Proposal Trustee shall not make any distributions from the Sale Proceeds except for such distributions as are expressly approved by the Court.

6. **THIS COURT ORDERS AND DIRECTS** the Proposal Trustee to file with the Court a copy of the Proposal Trustee's Certificate, forthwith after delivery thereof.

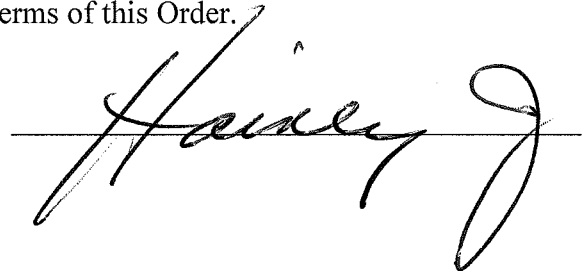
7. **THIS COURT ORDERS AND DECLARES** that no current or former tenants of the Real Property shall be entitled to withhold rental payments, set off any claim with respect to any over-payment of rent (including, without limitation, overpayment of additional rent), or claim remedies as against the Purchaser with respect to any sums that may be owing to them pursuant to their respective leases, if any, for any period prior to the Closing Date (as defined in the Sale Agreement) of the Transaction (collectively, the “**Tenant Claims**”) and that the Tenant Claims shall be included as Claims subject to the provisions of paragraph 2 of this Order.

8. **THIS COURT ORDERS** that, notwithstanding:

- (a) the pendency of these proceedings;
- (b) any applications for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act* (Canada) in respect of the Debtor and any bankruptcy order issued pursuant to any such applications; and
- (c) any assignment in bankruptcy made in respect of the Debtor,

the vesting of the Purchased Assets in the Purchaser, or as it may direct, pursuant to this Order shall be binding on the Proposal Trustee and any other licensed insolvency trustee that may be appointed in respect of the Debtor and shall not be void or voidable by creditors of the Debtor, nor shall it constitute nor be deemed to be a fraudulent preference, assignment, fraudulent conveyance, transfer at undervalue or other reviewable transaction under the *Bankruptcy and Insolvency Act* (Canada) or any other applicable federal or provincial legislation, nor shall it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

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

A handwritten signature in cursive script, reading "Hainey J.", is written over a horizontal line. The signature is fluid and stylized, with a large, sweeping initial 'H' and a distinct 'J' at the end.

Schedule “A” – Form of Proposal Trustee’s Certificate

Court File No. 31-2303814


**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

IN BANKRUPTCY AND INSOLVENCY

**IN THE MATTER OF THE PROPOSAL OF 1482241 ONTARIO LIMITED, OF THE
CITY OF TORONTO, IN THE PROVINCE OF ONTARIO**

PROPOSAL TRUSTEE’S CERTIFICATE

RECITALS

- I. Pursuant to a notice of intention to make a proposal under the *Bankruptcy and Insolvency Act* (Canada) filed by 1482241 Ontario Limited (the “**Debtor**”) on October 13, 2017, Crowe Soberman Inc. was named as the Debtor’s proposal trustee (in such capacity, the “**Proposal Trustee**”).
- II. Pursuant to an Order of the Honourable Mr. Justice Hainey of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) made November 3, 2017 (the “**Sale Process Order**”), the Court approved a sale solicitation process with respect to the assets and business of the Debtor to be conducted by the Proposal Trustee.
- III. Pursuant to an Order of the Court dated , 2018, the Court approved the agreement of purchase and sale between the Proposal Trustee, as vendor pursuant to the Sale Process Order, and 1979119 Ontario Inc. (“**197**”), as purchaser, dated February 26, 2018 (the “**Sale Agreement**”), as such Sale Agreement was assigned by 197 to AZDM Inc. (the “**Purchaser**”) in accordance with the terms of the Sale Agreement, and provided for the vesting in the Purchaser

of all the right, title and interest in and to the Purchased Assets (as defined in the Sale Agreement), which vesting is to be effective with respect to the Purchased Assets upon the delivery by the Proposal Trustee to the Purchaser of a certificate confirming: (i) the payment by the Purchaser of the purchase price for the Purchased Assets; (ii) that the conditions to closing as set out in the Sale Agreement have been satisfied or waived by the Proposal Trustee and the Purchaser; and (iii) that the Transaction has been completed to the satisfaction of the Proposal Trustee.

IV. Unless otherwise indicated herein, terms with initial capitals have the meanings set out in the Sale Agreement.

THE RECEIVER CERTIFIES the following:

1. The Purchaser has paid and the Proposal Trustee has received the Purchase Price for the Purchased Assets payable on the Closing Date pursuant to the Sale Agreement;
2. The conditions to Closing as set out in the Sale Agreement have been satisfied or waived by the Proposal Trustee and the Purchaser;
3. The Transaction has been completed to the satisfaction of the Proposal Trustee; and
4. This Proposal Trustee's Certificate was delivered by the Proposal Trustee at _____ [TIME] on _____ [DATE].

CROWE SOBERMAN INC., solely in its capacity as the proposal trustee of the Debtor, and not in its personal capacity or in any other capacity

Per: _____

Name: Hans Rizarri

A-3

Title: Partner

SCHEDULE "B"
LEGAL DESCRIPTION OF THE REAL PROPERTY

PIN 10088-0069 (LT)

LT 82-83 PL 7607 NORTH YORK; PT LT 84 PL 7607 NORTH YORK PT 2, RS1284;
TORONTO (N YORK), CITY OF TORONTO

SCHEDULE "C"
ENCUMBRANCES

a) **Instruments to be deleted from PIN No. 10088-0069 (LT)**

Reg. No.	Registration Date	Instrument Type	Amount	Parties From	Parties To
AT935525	2005/09/29	CHARGE	\$11,250,000	1482241 ONTARIO LIMITED	COMPUTERSHARE TRUST COMPANY OF CANADA
AT935526	2005/09/29	NO ASSGN RENT GEN		1482241 ONTARIO LIMITED	COMPUTERSHARE TRUST COMPANY OF CANADA
AT2418963	2010/06/21	RESTRICTION S ORDER		ONTARIO SUPERIOR COURT OF JUSTICE	NORTH YORK FAMILY PHYSICIANS HOLDINGS INC.
AT3606967	2014/06/13	APL (GENERAL)		HUSSAINI, JAMSHID AHMADI, NEELOFAR	
AT4222577	2016/05/19	APL AMEND ORDER		ONTARIO SUPERIOR COURT OF JUSTICE	1482241 ONTARIO LIMITED
AT4225538	2016/05/25	CERTIFICATE		ALLEVIO CLINIC #1 TORONTO INC.	
AT4236037	2016/06/02	TRANSFER OF CHARGE		COMPUTERSHARE TRUST COMPANY OF CANADA	DAN REALTY LIMITED E. MANSON INVESTMENTS LIMITED COPPERSTONE INVESTMENTS LIMITED
AT4236049	2016/06/02	NO ASSGN RENT GEN		1482241 ONTARIO LIMITED	DAN REALTY LIMITED E. MANSON INVESTMENTS LIMITED COPPERSTONE INVESTMENTS LIMITED
AT4261850	2016/06/29	NO ASSGN RENT GEN		COMPUTERSHARE TRUST COMPANY OF CANADA	1482241 ONTARIO LIMITED

AT4349221	2016/09/21	CHARGE	\$1,420,000	1482241 ONTARIO LIMITED	JANODEE INVESTMENTS LTD. MEADOWSHIRE INVESTMENTS LTD.
AT4349222	2016/09/21	NO ASSGN RENT GEN		1482241 ONTARIO LIMITED	JANODEE INVESTMENTS LTD. MEADOWSHIRE INVESTMENTS LTD.
AT4350034	2016/09/22	NOTICE		1482241 ONTARIO LIMITED	JANODEE INVESTMENTS LTD. MEADOWSHIRE INVESTMENTS LTD.
AT4729622	2017/11/09	APL COURT ORDER		ONTARIO SUPERIOR COURT OF JUSTICE	1482241 ONTARIO LIMITED

b) **Other Encumbrances**(1) **PPSA**

	File No./Registration No.	Current Debtor	Current Secured Party	Current Collateral Classification	Current General Collateral Description and other Particulars
1.	717145821/ 20160531 1146 1862 7560 20160531 1235 1862 7580	1482241 Ontario Limited	Dan Realty Corporation 1120 Finch Avenue West Suite 100 Toronto, ON M3J 3H7 E. Manson Investments Limited 620 Wilson Avenue, Suite 401 Toronto, ON M5N 1S4 Copperstone Investments Limited 620 Wilson Avenue, Suite 401 Toronto, ON M5N 1S4	Inventory, Equipment, Accounts, Other, Motor Vehicle Included	Expiry Date: May 31, 2019 An amendment was registered on May 31, 2016 to amend the address of the debtor.
2.	697416678/ 20140625 1012 1862 4827	1482241 Ontario Limited	Mann Engineering Ltd. 101 - 150 Bridgeland Avenue Toronto, ON M6A 1Z5	Inventory, Equipment, Accounts, Other No Fixed Maturity Date	Expiry Date: June 25, 2019 <u>General Collateral Description:</u> General security agreement

(2) Writs of Execution

Execution No.	Debtor Name
15-0007457* in favour of Devry Smith Frank LLP	1482241 Ontario Limited Alain Checroune A. Checroune Realty Corporation

* writ of execution registered at land titles

(3) Judgments

Case Number	Case Opened Date	Case Status	Plaintiff/Appellant	Defendant/Respondent	Case Type	Amount	Last Event Result Information
1. CV04CV2799 730000	December 1, 2004	Inactive	Omni Facility Services Canada Corp.	1482241 Ontario Limited 1428203 Ontario Limited Checroune, Elaine	Contract law	500.01	April 26, 2005 - Motion - Dismiss Action
2. CV05CV2816 110000	January 5, 2005	Inactive	Cvitak, Katica Cvitak, Lilly Cvitak, Slavik Cvitak, Steve	1482241 Ontario Ltd. Checroune, Alain Truserve Groundscare Inc.	Other	500.01	May 2, 2008 - Order Dismissing Action No SCFiled
3. CV06CV3231 050000	November 28, 2006	Inactive	4047257 Canada Inc.	1482241 Ontario Limited	Real Property (incl. Leases; excl mortgage/charge)	500.01	May 31, 2007 - Order - Dismissing Action
4. CV07CV3283 000000	February 23, 2007	Active	4047257 Canada Inc.	1482241 Ontario Limited	Contract Law	N/A	February 28, 2007 - Case conference
5. CV10003991 110000	March 15, 2010	Inactive	DTZ Barnicke Limited (formerly JJ Barnicke Limited)	1482241 Ontario Limited	Contract Law	94,000.00	June 27, 2011 - Order case dismissed (on

	Case Number	Case Opened Date	Case Status	Plaintiff/Appellant	Defendant/Respondent	Case Type	Amount	Last Event Result Information
								consent)
6.	CV10004010 730000	April 14, 2010	Inactive	North York Family Health Team Inc.	1482241 Ontario Limited	Real Property (incl. Leases, excl mortgage/charg e)	0	November 29, 2012 - Order case dismissed
7.	CV10004030 670000	May 13, 2010	Inactive	North York Family Physicians Holdings Inc.	1482241 Ontario Limited	Real Property (incl. Leases, excl mortgage/charg e)	0	March 22, 2011 - Judgment
8.	CV10004103 300000	Sept. 13, 2010	Active	7063580 Canada Inc.	1482241 Ontario Limited	Construction Lien NN	43,223.50	September 20, 2016 - Motion (unopposed consent)
9.	CV10004163 530000	December 13, 2010	Inactive	Constellation NewEnergy Canada Inc.	1482241 Ontario Limited	Contract law	439,109.51	May 9, 2016 - order case dismissed
10.	CV10004165 170000	December 15, 2010	Active	2144688 Ontario Ltd.	1482241 Ontario Limited	Contract law	1.00	January 3, 2018 - motion on notice January 3, 2018 - order
11.	CV12004625 420000	August 30, 2012	Active	North York Family Physicians Holdings Inc.	1482241 Ontario Limited	Real Property (incl. Leases; excl. mortgage/charg e)	0	January 3, 2018 - Motion on notice January 3, 2018 - Order
12.	CV14005063 050000	June 13, 2014	Active	Homelife Dreams Realty Inc.	1482241 Ontario Limited	Real Property (incl. Leases; excl.	5.00	January 3, 2018 - Motion on

	Case Number	Case Opened Date	Case Status	Plaintiff/Appellant	Defendant/Respondent	Case Type	Amount	Last Event Result Information
				Ahmadi, Neelofar Hussaini, Jamshid	Checroune, Alain	mortgage/charge)		notice January 3, 2018 - order
13.	CV14005129 060000	September 26, 2014	Inactive	Mann Engineering Ltd.	1482241 Ontario Limited	Construction lien NN	0	September 26, 2016 - order
14.	CV15005258 090000	April 10, 2015	Active	Allevio Inc.	1482241 Ontario Limited	Real Property (incl. Leases, excl. mortgage/charge)	0	April 13, 2015 - case conference
15.	CV15005295 200000	June 3, 2015	Active	Yoo, Chang-Soon	1482241 Ontario Limited Husky Landscaping Services Inc. North York Family Physicians Holdings Inc.	Contract Law	800,000.00	June 8, 2017 - Order
16.	CV15005309 730000	June 23, 2015	Inactive	Hudson Energy Canada Corp.	1482241 Ontario Limited	Collection of liquidated debt	137,179.00	April 24, 2017 - Order case dismissed (on consent)
17.	CV15005334 110000	July 30, 2015	Active	Devry Smith Frank LLP	1482241 Ontario Limited A. Checroune Realty Corporation Checroune, Alain	Solicitors Act (solicitor/client assessment) NN	0	January 25, 2016 - Preliminary Assessment Appointment (Tor SCJ only)
18.	CV15005377 080000	October 2, 2015	Active	Allevio Clinic #1 Toronto Inc. O/A Allevio Pain Management	1482241 Ontario Limited Checroune, Alan	Real Property (incl. Leases, excl. mortgage/charge)	11,000,000.00	January 3, 2018 - motion on notice

	Case Number	Case Opened Date	Case Status	Plaintiff/Appellant	Defendant/Respondent	Case Type	Amount	Last Event Result Information
						e)		January 3, 2018 - Order
19.	CV15005400640000	November 9, 2015	Inactive	Holesh, Sharron	1482241 Ontario Limited Husky Landscaping Service Inc.	Tort personal injury (other than from MVA)	100,000.00	December 2, 2016 - Order case dismissed (on consent)
20.	CV16005471020000	February 22, 2016	Inactive	Hudson Energy Canada Corp.	1482241 Ontario Limited	Collection of liquidated debt	137,179.74	April 24, 2017 - Order case dismissed (on consent)
21.	CV16005532830000	May 20, 2016	Inactive	Royal Bank of Canada	1482241 Ontario Limited 2144688 Ontario Ltd. 7063580 Canada Inc. Allevio Clinic #1 Toronto Inc. o/a Allevio Pain Management Mann Engineering Ltd. Ahmadi, Neelofar Checroune, Alain Hussaini, Jamshid YYZ Plumbing Inc.	Real Property (incl. Leases, excl. mortgage/charge)	0	N/A
22.	CV16005604100000	September 13, 2016	Inactive	Himelfarb Proszanski	1482241 Ontario Limited Checroune, Alain	Contract Law	55,438.00	October 26, 2016 - Order case dismissed (on consent)

	Case Number	Case Opened Date	Case Status	Plaintiff/Appellant	Defendant/Respondent	Case Type	Amount	Last Event Result Information
23.	CV16005608 150000	September 20, 2016	Active	YYZ Plumbing Inc.	1482241 Ontario Limited	Construction lien NN	0	September 20, 2016 - Motion (unopposed consent)
24.	CV18005900 390000	January 15, 2018	Active	Steinberg, Daniel	1482241 Ontario Limited Husky Landscaping	Tort personal injury (other than from MVA)	150,000.00	N/A
25.	CV18005916 750000	February 7, 2018	Active	Gowling WLG (Canada) LLP	1482241 Ontario Limited	Solicitors Act (solicitor/client assessment) NN	0	July 16, 2018 - Preliminary Assessment Appointment (Tor SCJ only)

(4) Other Interests:

- (a) All outstanding municipal taxes, fines, interest and penalties.
- (b) Trust Declaration dated September 21, 2005 between 1482241 Ontario Limited and Alain Checroune
- (c) Agreement of Purchase and Sale dated June 6, 2012 between Jamshid Hussaini and Neelofar Ahmadi, and Alain Checroune, as amended by an Amendment to Agreement dated June 18, 2012
- (d) Amended Trust Declaration dated June 22, 2012 between 1482241 Ontario Limited, Alain Checroune, Jamshid Hussaini and Neelofar Ahmadi
- (e) Order of Justice Whitaker dated October 27, 2014 in the proceedings having Court File No. CV-14-506305.
- (f) Agreement of Purchase and Sale dated August 24, 2017 between Torgan Properties Inc and 1482241 Ontario Limited.

SCHEDULE "D"
PERMITTED ENCUMBRANCES, EASEMENTS AND RESTRICTIVE COVENANTS

a) **Assumed Encumbrances from PIN 10088-0069 (LT)**

Reg. No.	Registration Date	Instrument Type	Parties From	Parties To
NY522733Z	1967/10/20	REST COV APPL ANNEX		
NY579166	1970/07/20	BYLAW EX PART LOT		
RS1284	1970/11/17	PLAN REFERENCE		
64BA1088	1977/11/10	PLAN BOUNDRIES ACT		
AT2448796	2010/07/16	NOTICE OF LEASE	NORTH YORK FAMILY PHYSICIANS HOLDINGS INC.	NORTH YORK FAMILY PHYSICIANS HOLDINGS INC.

IN THE MATTER OF THE PROPOSAL OF 1482241 ONTARIO LIMITED, OF THE CITY OF TORONTO, IN THE PROVINCE OF ONTARIO

Court File No. 31-2303814

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

IN BANKRUPTCY AND INSOLVENCY
Proceedings commenced at Toronto

APPROVAL AND VESTING ORDER

AIRD & BERLIS LLP
Barristers and Solicitors
Brookfield Place
181 Bay Street, Suite 1800
Toronto, ON M5J 2T9

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Email: mspence@airdberlis.com

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APPENDIX “C”

**ONTARIO
SUPERIOR COURT OF JUSTICE
IN BANKRUPTCY AND INSOLVENCY**

IN THE MATTER OF THE PROPOSAL OF 1482241 ONTARIO LIMITED, OF THE
CITY OF TORONTO, IN THE PROVINCE OF ONTARIO

PROPOSAL OF 1482241 ONTARIO LIMITED ("148")

148 hereby submits the following Proposal to all of its Unsecured Creditors pursuant to Part III of the *Bankruptcy and Insolvency Act* (Canada).

ARTICLE 1

DEFINITIONS

1.1 Definitions

In this Proposal:

- (a) **"Administrative Charge"** means the Administrative Charge created by the Charging Order
- (b) **"Administrative Fees and Expenses"** means the fees, expenses and legal fees and disbursements of the Trustee, and the Debtor incurred in relation to the Notice of Intention to File Proposal proceedings and in respect of on and incidental to the negotiation, preparation, presentation, consideration and implementation of the Proposal, and all proceedings and matters relating to or arising out of the Proposal;
- (c) **"Approval Date"** is the date upon which the Approval Order is granted;
- (d) **"Approval Order"** means an order of the Court approving the Proposal;
- (e) **"Avison Young Recovery"** means such amounts as Avison Young may be required to reimburse to 148 related to rental amounts received by Avison Young during its period as manager of the building;
- (f) **"BIA"** means the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c.B-3, as amended and in force as at the Date of Filing;

- (g) **"Business Day"** means a day, other than a Saturday or Sunday, on which banks are generally open for business in Toronto, Ontario;
- (h) **"Canada Pension Plan"** means the *Canada Pension Plan*, R.S.C. 1985, c. C-8, as amended;
- (i) **"Charging Order"** means the Order of Justice Hainey in these proceedings dated November 3, 2017 under which the Administrative Charge and the DIP Charge was created;
- (j) **"Claim"** means any right of any Person against the Debtor in connection with any indebtedness, liability or obligation of any kind of the Debtor which indebtedness, liability or obligation is in existence at the Date of Filing, whether or not reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, unsecured, present, future, known, unknown, by guarantee, by surety or otherwise and whether or not such a right is executory in nature, including, without limitation, the right or ability of any Person to advance a claim for contribution or indemnity or otherwise with respect to any matter, action, cause or chose in action, whether existing at present or commenced in the future based in whole or in part on facts which exist prior to or at the time of the Implementation Date including, without limitation any, claims that would have been claims provable in bankruptcy had the Debtor become bankrupt on the Date of Filing, and including, without limitation any claims in respect of unpaid goods and services provided to the Debtor which arose after the Date of Filing other than those services in respect of which the Administrative Charge has been granted in these proposal proceedings;
- (k) **"Collateral"**, in respect of a Secured Creditor, means the assets and property of the Debtor in which the Secured Creditor holds a valid and enforceable security interest;
- (l) **"Company"** shall mean the Debtor;
- (m) **"Court"** means the Ontario Superior Court of Justice (in Bankruptcy and Insolvency);
- (n) **"Creditor"** means any Person, having a Claim and may, if the context requires, mean a trustee, receiver, receiver-manager or other Person acting on behalf or in the name of such Person;
- (o) **"Creditors' Meeting"** means the meeting of the Unsecured Creditors called for the purpose of considering and voting upon the Proposal;
- (p) **"Creditors' Meeting Date"** means such date and time as may be called by the Trustee, but in any event shall be no later than twenty-one (21) days following the Date of the Proposal;
- (q) **"Date of Filing"** means October 13, 2017, the date of the filing of the Notice of Intention to Make a Proposal with the Official Receiver;
- (r) **"Date of the Proposal"** means April 12, 2018, the date that the Proposal was lodged with the Trustee;

- (s) **"Debtor"** means 148;
- (t) **"DIP Charge"** shall mean the charge in favour of the DIP Lender as set out in the Charging Order;
- (u) **"DIP Lender"** shall mean Caruda Holdings Ltd.
- (v) **"DIP Remainder"** means the claim of DIP Lender against the Company, any amount not covered by the DIP Charge for any reason;
- (w) **"Employment Insurance Act"** means the *Employment Insurance Act*, S.C. 1996 c. 23, as amended;
- (x) **"Excluded Claim"** any claim by any party who is the beneficiary of any charge created in the Charging Order, including the DIP Charge;
- (y) **"Implementation Date"** means the date upon which the conditions set forth in Article 7.4 have been satisfied;
- (z) **"Income Tax Act"** means *Income Tax Act*, R.S.C. 1985, c. 1 (5th Supp.), as amended;
- (aa) **"Inspectors"** means one or more inspectors appointed pursuant to the BIA as provided for in the Proposal;
- (bb) **"Official Receiver"** shall have the meaning ascribed thereto in the BIA;
- (cc) **"Ordinary Creditors"** means Creditors with Proven Claims, except for those Claims:
 - (i) that the Trustee determines not to be a provable claim in accordance with Section 135 (1.1) of the BIA;
 - (ii) that have been finally and conclusively disallowed in accordance with the BIA;
 - (iii) that are Claims by Preferred Creditors;
 - (iv) that are Claims by a Secured Creditor; or
 - (v) that are Claims in respect of an equity interest.
- (dd) **"Performance"** means full performance of this Proposal as set out in Article 6 paragraph 6.1 hereof;
- (ee) **"Person"** means any individual, partnership, joint venture, trust, corporation, unincorporated organization, government or any agency or instrumentality thereof, or any other entity howsoever designated or constituted, including, without limitation, Canada Revenue Agency;
- (ff) **"Postponed Related Party Claims"** means those Claims of the Related Parties which will be postponed by the Related Parties as communicated by the related parties to the Creditors at the Creditors' Meeting and finalized on or before the Implementation Date.

- (gg) **"Preferred Creditors"** means Creditors with Proven Claims that are proven and which are required by the BIA to be paid in priority to all other Claims under a proposal made by a debtor and including, without limitation:
- (i) employees and former employees of the Debtor, not to include independent commissioned sales agents or contractors, for amounts equal to the amounts that they would be qualified to receive under paragraph 136(1)(d) of the BIA if the Debtor became bankrupt on the Date of Filing, as well as wages, salaries, commissions or compensation for services rendered after that date and before the Court approval of the Proposal, together with, in the case of travelling salesmen, disbursements properly incurred by those salesmen in and about the Debtor's business during the same period; and
 - (ii) Her Majesty in Right of Canada or a Province for all amounts that were outstanding at the time of the filing of the notice of intention or of the Date of Filing and are of a kind that could be subject to a demand under:
 - (a) subsection 224(1.2) of the Income Tax Act;
 - (b) any provision of the Canada Pension Plan or of the Employment Insurance Act that refers to subsection 224(1.2) of the Income Tax Act and provides for the collection of a contribution, as defined in the Canada Pension Plan, or an employee's premium, or employer's premium, as defined in the Employment Insurance Act, and of any related interest, penalties or other amounts; or
 - (c) any provision of provincial legislation that has a similar purpose to subsection 224(1.2) of the Income Tax Act, or that refers to that subsection, to the extent that it provides for the collection of a sum, and of any related interest, penalties or other amounts, where the sum
 - (i) has been withheld or deducted by a person from a payment to another person and is in respect of a tax similar in nature to the income tax imposed on individuals under the Income Tax Act, or
 - (ii) is of the same nature as a contribution under the Canada Pension Plan if the province is a "province providing a comprehensive pension plan" as defined in subsection 3(1) of the Canada Pension Plan and the provincial legislation establishes a "provincial pension plan" as defined in that subsection.
- (hh) **"Proof of Claim"** shall mean the proof of claim required by the BIA to be mailed to each known Creditor prior to the Creditors' Meeting;
- (ii) **"Proposal"** means the Proposal lodged with the Trustee on April 12, 2018, together with any amendments or additions thereto;

- (jj) "**Proposal Fund**" shall mean an amount equal to 100% of the Proven Claims (including any Proven Claim by a Related Party) to a maximum of \$6.7 million, which will be paid by the Proposal Trustee on behalf of the Debtor from the Sale Proceeds on the Implementation Date, plus any amount realized from the Avison Young Recovery realized thereafter.
- (kk) "**Proven Claim**" of a Creditor means the amount of the Claim of such Creditor finally determined in accordance with the provisions of the BIA;
- (ll) "**Related Party**" means Alain Checroune, Alain Checroune Realty Inc., and any Creditor related to the Debtor within the meaning of Section 4 of the BIA;
- (mm) "**Sale Proceeds**" are the unencumbered proceeds held by the Proposal Trustee from the sale of the property known municipally at 240 Duncan Mills Road, which property was sold on March 29th, 2018 in accordance with the Approval and Vesting Order of Justice Hainey dated March 16, 2018;
- (nn) "**Secured Creditor**" means any creditor holding a valid and perfected security interest against the Debtor;
- (oo) "**Trustee**" means Crowe Soberman Inc., or its duly appointed successor or successors;
- (pp) "**Unsecured Creditors**" means, collectively, the Preferred Creditors and the Ordinary Creditors; and
- (qq) "**Voting Letter**" shall mean the voting letter required by subsection 51(I) of the BIA to be mailed to each known Creditor prior to the Unsecured Creditors' Meeting.

1.2 Articles of Reference

The terms "hereof", "hereunder", "herein" and similar expressions refer to the Proposal and not to any particular article, section, subsection, clause or paragraph of the Proposal and include any agreements supplemental hereto. In this Proposal, a reference to an article, section, subsection, clause or paragraph will, unless otherwise stated, refer to an article, section, subsection, clause or paragraph of the Proposal.

1.3 Interpretation Not Affected by Headings

The division of the Proposal into articles, sections, subsections, clauses or paragraphs and the insertion of a table of contents and headings are for convenience of reference only and will not affect the construction or interpretation of this Proposal.

1.4 Date for Any Action

In the event that any date on which any action is required to be taken hereunder is not a Business Day, such action will be required to be taken on the next succeeding day which is a Business Day.

1.5 Time

All times expressed herein are local time in Toronto, Ontario, Canada unless otherwise stipulated. Where the time for anything pursuant to the Proposal on a particular date is unspecified herein, the time shall be deemed to be 5:00 p.m. local time in Toronto, Ontario, Canada, or in accordance with the Superintendent of Bankruptcy Directive #9R3.

1.6 Numbers

In the Proposal, where the context requires, a word importing the singular number will include the plural and *vice versa* and a word or words importing gender will include all genders.

1.7 Currency

Unless otherwise stated herein, all references to currency in the Proposal are to lawful money of Canada.

1.8 Statutory References

Except as otherwise provided herein, any reference in the Proposal to a statute includes all regulations made thereunder, all amendments to such statute or regulation(s) in force from time to time, and any statute or regulation that supplements or supersedes such statute or regulation(s).

1.9 Successors and Assigns

The Proposal will be binding upon and will enure to the benefit of the heirs, administrators, executors, legal personal representatives, successors and assigns of any Person named or referred to in the Proposal.

ARTICLE 2

CLASSIFICATION OF CREDITORS

2.1 Classes of Creditors

For the purposes of voting on the Proposal, only Unsecured Creditors will be entitled to vote on the Proposal. There shall be one class of Unsecured Creditors.

ARTICLE 3

TREATMENT OF CREDITORS

3.1 Secured Creditors

Secured Creditors shall be paid in accordance with the respective agreement(s) between each Secured Creditor and the Debtor or as otherwise agreed between said Secured Creditor and the Debtor. To the extent that there is insufficient Collateral to repay the secured indebtedness, the Secured Creditor will file the balance of its claim as an Unsecured Creditor and participate in this Proposal as same.

3.2 Preferred Creditors

The Proven Claims of the Preferred Creditors are to be paid by the Trustee in full in priority to all the Proven Claims of Ordinary Creditors in accordance with the BIA and the Proposal.

3.3 Ordinary Creditors

The Ordinary Creditors with Proven Claims (including the Proven Claims of Related Parties) will be paid 100% of their Proven Claims from the Proposal Fund to a maximum of \$6.7 million, once the claims of Preferred Creditors are satisfied as provided for in this Proposal.

3.4 Related Parties

The Related Parties will advise the Proposal Trustee and the Creditors of the Claims they intend to postpone at the Creditors' Meeting. The Postponed Related Party Claims will not be paid or compromised in the Proposal.

The Related Party Claims which are not identified as Postponed Related Party Claims will be paid from the Proposal Fund as a Proven Claim on the same basis as the Proven Claims of the other Ordinary Creditors as set out in 3.3 above.

3.5 Claims Against Directors

Any Claims against the Debtor by any Creditor that are also Claims against the directors of the Debtor that relate to obligations of the Debtor where directors are under any law liable in their capacity as directors for the payment of such obligations shall be, and upon Court approval of this Proposal, are hereby, to the extent permitted by the Act, compromised and released and forever discharged as against the directors of the Debtor upon acceptance of this Proposal by the Creditors and approval by the Court.

ARTICLE 4

PROCEDURE FOR VALIDATION OF CLAIMS

4.1 Filing of Proofs of Claim

Each Creditor must file a Proof of Claim as required by the BIA to vote on, or receive a distribution under, the Proposal.

4.2 Allowance or Disallowance of Claims by the Trustee

Upon receipt of a completed Proof of Claim, the Trustee shall examine the Proof of Claim and shall deal with each claim in accordance with the provisions of the BIA. The procedure for valuing Claims of the Unsecured Creditors and resolving disputes with respect to such Claims will be as set forth in the BIA. In the event of any contingent claim against the Company arising out of existing litigation against the Company, the Proposal Trustee shall allow the Company and its counsel to defend such Claims, with input from the Proposal Trustee. The Company and/or the Trustee reserve the right to seek the assistance of the Court in valuing any Claim, if required, to ascertain the result of any vote on the Proposal or the amount payable or to be distributed to such Creditor under the Proposal, as the case may be.

4.3 Claims Bar Process

Forthwith after the Implementation Date, the Trustee shall give notice pursuant to s.149 of the BIA to every person with a claim the Trustee has notice or knowledge but whose claim has been filed or proved that if such person does not prove his claim within a period of thirty (30) days after the mailing of the notice ("Claims Bar Date"), the Trustee will proceed to declare a final dividend without regard to such person's claim; the dividend referred to in said notice shall be deemed a final dividend and any person so notified who does not provide his claim within the said thirty (30) days shall be barred from making a claim in this Proposal or sharing in any dividend hereunder, subject to any exceptions set out in Sections 149(2)(3) and (4) of the BIA.

ARTICLE 5

MEETING OF CREDITORS

5.1 Unsecured Creditors' Meeting

On the Creditors' Meeting Date, the Trustee shall hold the Creditors' Meeting in order for the Creditors to consider and vote upon the Proposal.

5.2 Time and Place of Meeting

Unless otherwise ordered by the Court, the Creditors' Meeting shall be held at a time and place to be established by the Official Receiver, or the nominee thereof, and confirmed in its notice of meeting to be mailed pursuant to the BIA. All Proofs of Claim shall be delivered in accordance with the provisions of the Proposal, the BIA and any Order which may be issued by the Court in respect of the procedure governing the Creditors' Meeting.

5.3 Conduct of Meetings

The Proposal Trustee shall preside as the chair of the Creditors' Meeting and will decide all matters relating to the conduct of the Creditors' Meeting. The only persons entitled to attend the Creditors' Meeting are those persons, including the holders of proxies, entitled to vote at the Creditors' Meeting, the Secured Creditors and their respective legal counsel, if any, and the officers, directors, auditors, and legal counsel of the Debtor, together with such representatives of the Trustee as the Trustee may appoint in its discretion, and such scrutineers as may be duly appointed by the chair of such meeting. Any other person may be admitted on invitation of the chair of the Creditors' Meeting or with the consent of the Unsecured Creditors.

5.4 Adjournment of Meetings

The Creditors' Meeting may be adjourned in accordance with Section 52 of the BIA.

5.5 Voting by Creditors

To the extent provided for herein, each Unsecured Creditor will be entitled to vote to the extent of the amount which is equal to that Creditor's Proven Claim. Any Proof of Claim in respect of a Claim that is not a Proven Claim as at the Creditors' Meeting Date will be marked as objected to in accordance with Section 108(3) of the BIA and may be valued by the Trustee at the meeting and voted in that amount.

5.6 Approval by Creditors

In order that the Proposal be binding on all of the Unsecured Creditors of the Debtor in accordance with the BIA, it must first be accepted by the Unsecured Creditors as prescribed by this Proposal by a majority in number of the Unsecured Creditors who actually vote upon the Proposal (in person or by proxy) at the Creditors' Meeting or by a Voting Letter, representing two-thirds in value of the Proven Claims of the Unsecured Creditors who actually vote upon the Proposal (whether in person or by proxy) at the Creditors' Meeting or by a Voting Letter.

ARTICLE 6

DISTRIBUTION OF PROCEEDS

6.1 Implementation of Proposal

- (a) After the Approval of the Proposal but prior to the Implementation Date, the Proposal Trustee shall pay any outstanding Administrative Fees and Expenses in full from the Sale Proceeds. In the event of any dispute as to the amount of such fees, the Proposal Trustee shall make a motion to the Court for approval and payment of said fees.
- (b) On the Business Day that is 10 Business Days after the Claims Bar Date or after the Payment of the Administrative Fees and Expenses, whichever is later, the Proposal Trustee, on behalf of the Debtor, will distribute their *pro rata* share of the Proposal Fund provided that no Affected Creditor shall be entitled to receive more than 100% of that Unsecured Creditor's Proven Claim.

Upon payment of the Proposal Proceeds to the Trustee, the Debtor's obligation under the Proposal shall be fully performed and the Trustee shall issue a certification of full performance to the Debtor in accordance with section s.65.3 of the BIA. Payments to each Preferred and Ordinary Creditor shall be net of any applicable levy payable to the Office of the Superintendent of Bankruptcy as required by the BIA.

6.2 Payment of Administrative Fees and Expenses

Administrative Fees and Expenses of the Proposal Trustee include that of the Proposal Trustee's legal counsel's fees and disbursements, incurred at the standard rates and charges of the Proposal Trustee or its legal counsel.

Administrative Fees and Expenses shall be paid pursuant to section 60(2) of the Act. The Proposal Trustee shall be at liberty from time to time to apply reasonable amounts, out of the monies paid in the Proposal pursuant to Section 5, against its Administrative Fees and Expenses, and such amounts shall constitute advances against the Administrative Fees and Expenses when and as approved by the Court.

Notwithstanding the above, should the Proposal Trustee be required to perform work beyond that normally associated with a Proposal of this type, it shall be at liberty to seek creditors' approval for such incremental fees and disbursements as may be incurred.

If the Debtor should default on payment of the proposal amount in Section 5 hereof, the Trustee may, in absolute priority, call upon all funds accumulated in the Proposal to satisfy its proper Administrative Fees and Expenses.

6.3 Distribution to Preferred Creditors

The Preferred Creditors shall be paid in full the amount of the Proven Claim out of the Proposal Proceeds.

6.4 Distribution to Ordinary Creditors

The Ordinary Creditors with Proven Claims shall be paid their *pro rata* share of the remaining Proposal Fund, following payment of the Claims as described in paragraph 6.1, based on the proportion which the Proven Claim of such Ordinary Creditor bears to the aggregate amount of the Proven Claims of all Ordinary Creditors.

6.5 Operating Expenses

The Proposal Trustee shall fund the operating expenses of the Debtor from the Sale Proceeds up to an amount of \$200,000 per month pending the Implementation Date.

6.6 Proposal Default Fund

From the Proposal Fund, and prior to any distributions to any creditors in the administration, an amount of \$15,000 will be retained by the Trustee ("**Proposal Default Fund**"). The sole purpose of the Proposal Default Fund will be to fund an application to annul the Proposal in the event of default, which has not been remedied by the Debtor. Despite, a Certificate of Full Performance being issued to the Debtor, this provision of this Proposal will apply and the Proposal Default Fund will remain unavailable for distribution to the creditors in the estate until all the payments required under this Proposal have been made.

6.7 Discharge of Trustee

Upon payment by the Trustee of the amounts contemplated in this Article 6, the Trustee shall have discharged its duties as Trustee, the Trustee's obligation under its Proposal shall be fully performed and the Trustee shall be entitled to apply for its discharge as Trustee hereunder. For greater certainty, the Trustee will not be responsible or liable for any obligations of the Debtor and will be exempt from any personal liability in fulfilling any duties or exercising any powers conferred upon it by this Proposal unless such acts have been carried out in bad faith and constitute a wilful or wrongful act or default. In the event the Proposal Fund is found to be greater than the amount necessary to pay the Proven Claims in full, the balance of the Proposal Fund shall be returned to the Sale Proceeds.

ARTICLE 7

MISCELLANEOUS

7.1 Compromise Effective for all Purposes

The distributions contemplated hereunder will be binding upon each Creditor, other than Secured Creditors. a Creditor holding an Excluded Claim and Related Party Creditors holding a

Postponed Related Party Claim, their heirs, executors, administrators, successors and assigns, for all purposes.

7.2 Modification of Proposal

The Debtor or any Unsecured Creditor may propose an alteration or modification to the Proposal prior to the vote taking place on the Proposal.

7.3 Consents, Waivers and Agreements

As at 12:01 a.m. on the Implementation Date, each Creditor, other than Secured Creditors and Related Party Creditors holding a Postponed Related Party Claim, their heirs, will be deemed:

- (a) to have executed and delivered to the Debtor all consents, releases, assignments and waivers, statutory or otherwise, required to implement and carry out this Proposal in its entirety;
- (b) to have waived any default by the Debtor in any provision, express or implied, in any agreement or other arrangement, written or oral, existing between such Creditor and the Debtor that has occurred on or prior to the Implementation Date;
- (c) to have agreed, in the event that there is any conflict between the provisions, express or implied, of any agreement or other arrangement, written or oral, existing between such Creditor and the Debtor as at the Implementation Date (other than those entered into by the Debtor on, or with effect from, the Implementation Date) and the provisions of this Proposal, that the provisions of this Proposal shall take precedence and priority and the provisions of such agreement or other arrangement shall be amended accordingly; and
- (d) to have released the Debtor, the Trustee and all of their respective affiliates, employees, agents, directors, officers, shareholders, advisors, consultants and solicitors from any and all demands, claims, actions, causes of action, counter-claims, suits, debts, sums of money, accounts, covenants, damages, judgements, expenses, executions, liens, set off rights and other recoveries on account of any liability, obligation, demand or cause of action of whatever nature which any Person may be entitled to assert, whether known or unknown, matured or unmatured, foreseen or unforeseen, existing or hereafter arising based in whole or in part on any act or omission, transaction, dealing or other occurrence existing or taking place on or prior to the Implementation Date, relating to or arising out of or in connection with the matters herein.

7.4 Conditions Precedent to Proposal Implementation

The implementation of the Proposal by the Debtor will be conditional upon the fulfilment or satisfaction of the following conditions:

- (a) acceptance of the Proposal by the Unsecured Creditors; and
- (b) payment of the Administrative Fees and Expenses in accordance with paragraph 6.1(a);

- (c) approval of the Proposal by the Court pursuant to a final Order and the expiry of ten (10) day appeal period under the BIA with no appeal having been filed within said ten (10) day period; and
- (d) payment by the Proposal Trustee of the Proposal Funds from the Sale Proceeds

7.5 Effect of Proposal Generally

As at 12:01 a.m. on the Implementation Date, the treatment of all Claims under the Proposal shall be final and binding on the Debtor and all Creditors, other than Secured Creditors and Related Party Creditors holding a Postponed Related Party Claim, their heirs, (along with their respective heirs, executors, administrators, legal personal representatives, successors and assigns) and the Proposal shall constitute (i) a full, final and absolute settlement of all rights of the holders of the Claims affected hereby; and (ii) an absolute release and discharge of all indebtedness, liabilities and obligations of the Debtor of or in respect of such Claims. Sections 95 to 101 of the BIA shall not apply.

7.6 Notices

Any notices or communication to be made or given hereunder shall be in writing and shall refer to this Proposal and may, subject as hereinafter provided, be made or given by personal delivery, by prepaid mail or by telecopier (except for Proofs of Claim which may only be sent by personal delivery, telecopier or registered mail) addressed to the respective parties as follows:

- (a) if to the Debtor:
1482241 Ontario Inc.

Attention : Mr. Alain Checroune
- (b) if to an Unsecured Creditor, to the address or telecopier number for such Unsecured Creditor specified in the Proof of Claim filed by such Unsecured Creditor or, if no Proof of Claim has been filed, to such other address or telecopier number at which the notifying party may reasonably believe that the Unsecured Creditor may be contacted; and
- (c) if to the Trustee:

Crowe Soberman LLP.
2 St. Clair Avenue East, Suite 1100
Toronto ON, M4T 2T5
Attention : Hans Rizarri

Telephone: 416-963 -7175
Facsimile: (416) 929-2555
Email: hans.rizarri@crowesoberman .com

or to such other address or telecopier number as any party may from time to time notify the others in accordance with this section. In the event of any strike, lock-out and other event which interrupts postal service in any part of Canada, all notices and

communications during such interruption may only be given or made by personal delivery or by telecopier and any notice or other communication given or made by prepaid mail within the five (5) Business Day period immediately preceding the commencement of such interruption will be deemed not to have been given or made. All such notices and communications will be deemed not to have been received, in the case of notice by telecopier or by delivery prior to 5:00 p.m.(local time) on a Business Day, when received or if received after 5:00 p.m. (local time) on a Business Day or at any time on a non-Business Day, on the next following Business Day and in to case of notice mailed as aforesaid, on the fifth (5th) Business Day following the date on which such notice or other communication is mailed. The unintentional failure to give a notice contemplated hereunder to any particular Creditor will not invalidate this Proposal or any action taken by any Person pursuant to this Proposal.

7.7 Foreign Currency Obligations

For purposes of this Proposal, Claims denominated in a currency other than Canadian funds will be converted to Canadian Dollars at the closing spot rate of exchange of the Bank of Canada on the Date of Filing.

7.8 Applicable Law

This Proposal shall be construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein and shall be treated in all respects as an Ontario contract.

7.9 Non Severability

It is intended that all provisions of this Proposal shall be fully binding on and effective between all Persons named or referred to in this Proposal and in the event that any particular provision or provisions of this Proposal is or are found to be void, voidable or unenforceable for any reason whatever, then the remainder of this Proposal and all other provisions shall be void and of no force or effect

7.10 Deeming Provisions

In this Proposal the deeming provisions are not rebuttable and are conclusive and irrevocable.

DATED at the City of Toronto, in the Province of Ontario, this 3rd day of May, 2018

1482241 ONTARIO INC.

Per: _____

Alain Checrone

IN THE MATTER OF THE PROPOSAL OF
1482241 ONTARIO INC.

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST
(IN BANKRUPTCY AND INSOLVENCY)
(PROCEEDING COMMENCED AT TORONTO)

PROPOSAL

APPENDIX “D”

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

IN BANKRUPTCY AND INSOLVENCY

THE HONOURABLE) TUESDAY, THE 12TH
)
JUSTICE HAINEY) DAY OF JUNE, 2018
)

**IN THE MATTER OF THE PROPOSAL OF 1482241 ONTARIO LIMITED, OF THE
CITY OF TORONTO, IN THE PROVINCE OF ONTARIO**

ORDER re PROPOSAL APPROVAL

THIS MOTION, made by Crowe Soberman Inc., in its capacity as the proposal trustee (in such capacity, the “**Proposal Trustee**”) of 1482241 Ontario Limited (the “**Debtor**”), for an order, *inter alia*, (a) approving the fifth report of the Proposal Trustee dated April 13, 2018 (the “**Fifth Report**”) and the activities of the Proposal Trustee described therein; (b) approving the sixth report of the Proposal Trustee dated May 31, 2018 (the “**Sixth Report**”) and the activities of the Proposal Trustee described therein; (c) approving the Company’s proposal dated April 13, 2018, as amended on May 3, 2018 (the “**Proposal**”); (d) establishing a dispute resolution process for any objections raised by the Debtor relating to claims filed in the proposal; and (e) approving the fees and disbursements of the Proposal Trustee, the Proposal Trustee’s counsel, and the Debtor’s counsel, was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Sixth Report of the Proposal Trustee dated May 31, 2018 (the “**Sixth Report**”) and the appendices thereto, the fee affidavit of Hans Rizarri sworn May 29, 2018 (the “**Rizarri Affidavit**”), the fee affidavit of Ian Aversa sworn May 31, 2018 (the “**Aversa**

Affidavit”), and the affidavit of Alain Checroune sworn June 8, 2018, and on hearing the submissions of counsel for the Proposal Trustee, counsel for the Debtor and such other counsel as were present, no one appearing for any other person on the service list, although properly served as appears from the affidavit of service of Miranda Spence sworn June 1, 2018, filed,

1. **THIS COURT ORDERS** that the time for service of the notice of motion and the motion record is hereby abridged and validated so that this motion is properly returnable today and hereby dispenses with further service thereof.


2. **THIS COURT ORDERS** that the Fifth Report and the activities of the Proposal Trustee described therein be and are hereby approved.

3. **THIS COURT ORDERS** that the Sixth Report and the activities of the Proposal Trustee described therein be and are hereby approved.

4. **THIS COURT ORDERS** that the Amended Proposal be and is hereby approved.

5. **THIS COURT ORDERS** that any objections raised by the Company to claims filed by creditors shall be addressed as follows:

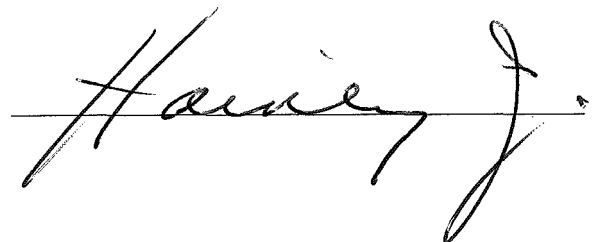
- (a) the Proposal Trustee will make an initial determination as to whether a claim ought to be admitted or disallowed, and will advise the Company of its determination in this regard;
- (b) the Company will communicate any objection to the admitted claims to the Proposal Trustee, in writing, including the basis for the objection, within seven days of the issuance of the Proposal Trustee’s decision in paragraph (a) above;

- (c) the Proposal Trustee will consider the objection raised by the Company, and will advise the Company and the relevant creditor of its determination of the claim having regard for the Company's objection;
- (d) if the Proposal Trustee admits a claim after having reviewed the Company's objection, the Company may seek to have its objection adjudicated on motion to the Court ~~upon posting, with counsel for the Proposal Trustee, security for costs sufficient to cover the relevant creditor's substantial indemnity costs associated with the objection proceeding; and~~ 
- (e) the Proposal Trustee will work with the Company to schedule any objection motions, with the goal of minimizing the number of Court attendances required to address any such motions.

6. **THIS COURT ORDERS** that the fees and disbursements of the Proposal Trustee as described in the Sixth Report and as set out in the Rizarri Affidavit, be and are hereby approved, and the Proposal Trustee is hereby authorized to pay such fees from the Sale Proceeds.

7. **THIS COURT ORDERS** that the fees and disbursements of the Proposal Trustee's counsel as described in the Sixth Report and as set out in the Aversa Affidavit, be and are hereby approved, and the Proposal Trustee is hereby authorized to pay such fees from the Sale Proceeds.

8. **THIS COURT ORDERS** that the fees and disbursements of the Debtor's counsel in the sum of \$75,562.61, be and are hereby approved, and the Proposal Trustee is hereby authorized to pay such fees from the Sale Proceeds.



IN THE MATTER OF THE PROPOSAL OF 1482241 ONTARIO LIMITED, OF THE CITY OF TORONTO, IN THE PROVINCE OF ONTARIO

Court File No. 31-2303814

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

IN BANKRUPTCY AND INSOLVENCY
Proceedings commenced at Toronto

ORDER re PROPOSAL APPROVAL

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APPENDIX “E”

CITATION: 1482241 Ontario Limited (Re:), 2018 ONSC 5925
COURT FILE NO.: 31-2303814
ESTATE FILE NO.: 31-2303814
DATE: 2018/10/10

SUPERIOR COURT OF JUSTICE – ONTARIO

COMMERCIAL LIST

RE: IN THE MATTER OF THE PROPOSAL OF 1482241 ONTARIO LIMITED, OF THE CITY OF TORONTO, IN THE PROVINCE OF ONTARIO

BEFORE: Hainey J.

COUNSEL: *Emily Y. Fan, Domenico Magisano* for the Petitioners, Janodee Investments Ltd. and Meadowshire Investments Ltd.

Lea Nebel for the Respondent, 1482241 Ontario Ltd.

Miranda Spence, for the Proposal Trustee

HEARD: September 20, 2018

ENDORSEMENT

OVERVIEW

[1] Janodee Investments Ltd. (“Janodee”) and Meadowshire Investments Ltd. (“Meadowshire”) move for an order requiring 1482241 Ontario Limited (“148”) to pay to them an over-holding fee of \$63,900.

FACTS

[2] The moving parties are the second mortgagees (“Second Mortgagees”) of a property at 240 Duncan Mill Road, Toronto (“Property”). The second mortgage on the Property, which was granted by 148, the owner of the Property, was for the principal amount of \$1,420,000 (“Second Mortgage”).

[3] The relevant terms of the Second Mortgage were as follows:

- (a) It had a six-month term.
- (b) It provided for interest-only payments paid in monthly installments of \$15,383.33.

- (c) The Second Mortgage matured on March 21, 2017 (“Maturity Date”) at which time the principal together with any unpaid interest and any other amounts owing were due.
- (d) If the Second Mortgage was not renewed on or before the Maturity Date, the Second Mortgagees could charge an over-holding fee equivalent to three months’ interest (“Over-Holding Fee”).

[4] The Maturity Date lapsed on March 21, 2017 and the Second Mortgage was not repaid or renewed. As a result, the Second Mortgagees claim that the Over-Holding Fee became payable;

[5] In October 2017, 148 filed a notice of intention to file a proposal (“NOI”) under the *Bankruptcy and Insolvency Act*. Crowe Soberman Inc. was appointed proposal trustee for the company (“Proposal Trustee”).

[6] In March 2018 the court approved the sale of the Property. The order approving the sale required the sale proceeds to be held in trust by the Proposal Trustee pending further order of the Court.

[7] All amounts owing under the Second Mortgage have now been paid to the Second Mortgagees except the Over-Holding fee of \$63,900. 148 has not paid the Over-Holding Fee because it maintains that it is an interest penalty that is contrary to the *Interest Act*.

ISSUE

[8] Is 148 required to pay the Over-Holding Fee of \$63,900 to the Second Mortgagees?

POSITION OF THE PARTIES

[9] The Second Mortgagees submit that the Over-Holding Fee is an independent fee that the Second Mortgage clearly indicates is payable by 148 as compensation for 148’s ability to treat the Second Mortgage as an open mortgage after the Maturity Date. The Second Mortgagees therefore submit that the Over-Holding Fee does not constitute an interest penalty and therefore it cannot offend the *Interest Act*.

[10] 148 submits that the Over-Holding Fee amounts to a penalty and is therefore contrary to s. 8 of the *Interest Act*. Further, according to 148, the payment of the Over-Holding Fee will be detrimental to the unsecured creditors of 148 who are otherwise entitled to the proceeds from the sale of the Property.

ANALYSIS

[11] The Second Mortgage provides for the Over-Holding Fee as follows:

...the Chargor agrees that should the charge not be renewed or discharged on the maturity date, that the Chargee, at its option, shall be entitled to charge an additional fee equivalent to three (3) months interest.

[12] The Second Mortgagees submit that as a result of this clause, 148 had the option of continuing with the mortgage on a month-to-month basis for a fee. According to the Second Mortgagees, the Over-Holding Fee was “the fee payable for exercising this opportunity”. Ms. Fan, on behalf of the Second Mortgagees, described it as “compensation” for the use by 148 of the principal amount of the Second Mortgage beyond the Maturity Date.

[13] 148’s principal submission is that the Overholding Fee is a penalty that is contrary to s. 8(1) of the *Interest Act* which prohibits the payment of a fine, penalty or bonus on arrears that is more than the rate of interest charged in the normal course.

[14] The Over-Holding Fee may be charged regardless of the costs to the Second Mortgagees of 148’s failure to discharge or renew the Second Mortgage upon its Maturity date.

[15] Further, there is no evidence in the record of any costs or loss to the Second Mortgagees arising from 148’s failure to discharge or renew the Second Mortgage.

[16] The principles that determine what constitutes a penalty are set out in the House of Lords’ decision in *Dunlop Pneumatic Tyre Co. v. New Garage & Motor Co.* [1915] A.C. 79 at para 3 as follows:

(a) The essence of a penalty is a payment of money stipulated interrorem of the offending party; the essence of liquidated damages is a genuine covenanted pre-estimate of damage.

(b) The question whether a sum stipulated is penalty or liquidated damages is a question of construction to be decided upon the terms and inherent circumstances of each particular contract, judged as at the time of the making of the contract, not as at the time of the breach.

(c) There is a presumption that it is a penalty when a single lump sum is made payable by way of compensation, on the occurrence of one or more or several of events, some of which may occasion serious and others but trifling damages.

[17] I have concluded that the Over-Holding Fee is a penalty that contravenes s. 8 of the *Interest Act* for the following reasons:

(a) It is arbitrary and at the discretion of the Second Mortgagees;

(b) On its face, the Over-Holding Fee is not a genuine pre-estimate of damage. In fact, in this case The Second Mortgagees have not suffered any loss and have been made whole from the sale proceeds;

(c) The Second Mortgagees have not expended any resources or incurred any costs as a result of the Second Mortgage not being discharged or renewed upon its Maturity Date; and

(d) The Over-Holding Fee has the effect of overcompensating the Second Mortgagees while depleting the assets available to the other creditors.

CONCLUSION

[18] For these reasons I have concluded that the Over-Holding Fee is contrary to s. 8 of the *Interest Act* and therefore cannot be enforced. The Second Mortgagees' motion is dismissed.

COSTS

[19] If the parties cannot settle the issue of costs they may schedule a 9:30 a.m. attendance with me to determine costs.

[20] I thank counsel for their helpful submissions.

Hainey J.

Date: October 10, 2018

APPENDIX “F”

CITATION: Hussaini v. Crowe Soberman Inc., 2019 ONSC 642
COURT FILE NO.: 31-2303814
ESTATE FILE NO.: 31-2303814
DATE: 20190124

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

**IN BANKRUPTCY AND INSOLVENCY
 IN THE MATTER OF THE PROPOSAL OF 1482241 ONTARIO LIMITED, OF THE
 CITY OF TORONTO, IN THE PROVINCE OF ONTARIO**

BETWEEN:

JAMSHID HUSSAINI AND NEELOFAR
 AHMADI

Appellants

- and -

CROWE SOBERMAN INC., TRUSTEE
 ACTING IN THE PROPOSAL OF
 1482241 ONTARIO LIMITED ("148")

Respondent

Craig A. Mills & Ivan Merrow, counsel for
 the Appellants Jamshid Hussaini, Neelofar
 Ahmadi

*Mervyn D. Abramowitz, David T. Ullmann,
 & Alexandra Teodorescu*, counsel for the
 Respondent 1482241 Ontario Limited

Steven L. Graff & Miranda Spence, counsel
 for the Respondent Crowe Soberman Inc. in
 its capacity as the Proposal Trustee for
 1482241 Ontario Limited

HEARD: December 4 and 5, 2018, January
 9, 2019

V.R. CHIAPPETTA J.

Overview

[1] The appellants, Jamshid Hussaini ("Hussaini") and Neelofar Ahmadi ("Ahmadi") (collectively "the Claimants"), appeal the disallowance of their claims in the bankruptcy proposal proceeding of 1482241 Ontario Limited ("148" or the "Debtor"). The Claimants are

both real estate agents in the Toronto area. They are the principals of Homelife Dreams Reality Inc., which is a corporation incorporated pursuant to the laws of Ontario ("Homelife").

[2] In 2012, the Claimants wanted to purchase a commercial property located at 240 Duncan Mill Road in Toronto, Ontario (the "Property"). The registered legal owner of the Property was 148, an Ontario corporation wholly owned by Alain Checroune ("Checroune") that carried on business buying, selling and managing commercial properties. 148 held the Property as trustee for Checroune.

[3] The Claimants attempted to purchase the Property from 148, but were unsuccessful because of issues with financing and title. In a second attempt to ultimately acquire the Property, the Claimants entered into an agreement with Checroune to buy 100% of 148's shares.

[4] By way of Share Purchase Agreement signed on June 22, 2012, the Claimants and Checroune agreed that Checroune would transfer 20% of the shares of 148 to the Claimants immediately, and that the balance of the shares would be transferred upon payment in full, with an October 1, 2015 closing date (the "June 22 Agreement"). By way of Amended Trust Declaration signed on the same day, the Claimants and Checroune agreed that Checroune would transfer and assign 20% of his beneficial interest in the Property to the Claimants (the "Amended Trust").

[5] The sale of the balance of the shares did not close.

[6] On June 13, 2014, the Claimants commenced an action against 148 and Checroune, seeking in part a declaration that they are beneficial owners of a 20% interest in the Property. A Fresh as Amended Claim was issued in November 14, 2016. Homelife was added as a party. The Claimants sought in part a declaration that Checroune's conduct as alleged therein was oppressive. This action was stayed when on October 13, 2017, 148 filed a Notice of Intention to Make a Proposal (the "Proposal Proceedings") pursuant to s. 67 of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 (the "BIA").

[7] Crowe Soberman Inc. was appointed as the Proposal Trustee (the "Proposal Trustee"). The Proposal Trustee sold the Property to an arms-length purchaser at the end of February 2018. This agreement was approved by the Court on March 16, 2018. 148 submitted a proposal to its creditors on April 13, 2018. A requisite majority of creditors voted in favour of the proposal at a meeting held on May 4, 2018. The proposal was also approved by Court on June 12, 2018.

[8] The Claimants advanced two claims in the Proposal Proceedings: two property proofs of claim (collectively the "Property Claim") collectively claiming a 20% beneficial interest in the Property (or the proceeds from sale) based on the Amended Trust and an unsecured proof of claim (the "Litigation Claim") seeking damages for lost opportunity and lost profit based on 148's alleged oppressive conduct, along with legal fees incurred related to the 2014 litigation.

[9] The Proposal Trustee disallowed the Property Claim by way of Notice of Disallowance dated May 17, 2018.

[10] Although the Proposal Trustee has not disallowed the Litigation Claim, Justice Dunphy ordered that the Litigation Claim may be treated as disallowed for the purposes of this hearing.

[11] The Claimants appeal the disallowances, seeking a declaration that both the Property Claim and the Litigation Claim are valid and enforceable claims in the Proposal Proceedings. For reasons set out below, I have concluded that the Claimants have failed to establish a proprietary interest in the Property either by way of express trust or constructive trust, such that the Property Claim is neither valid nor enforceable. Further, the Claimants have failed to prove that 148 acted in a manner that was oppressive to their interests such that the Litigation claim is neither valid nor enforceable.

Factual Background

Negotiation of the June 22 Agreement

[12] By Trust Declaration dated September 21, 2005, 148 held legal title to the Property in trust as a bare trustee for Checroune as the beneficiary (the "2005 Trust Declaration"). Pursuant to the 2005 Trust Declaration, 148 agreed to remit to Checroune all revenue owing from the Property and Checroune agreed to indemnify 148 for all liabilities relating to the Property.

[13] On February 8, 2012, the Claimants submitted an Agreement of Purchase and Sale to purchase the Property for \$15 million (the "APS"). The Claimants intended to purchase the Property themselves, without partners. The Claimants were unable to purchase the property as contemplated by the APS. The Claimants encountered issues with assuming the first mortgage without a penalty considering a maturity date of October 2015, with a Certificate of Pending Litigation that was registered against the property and with financing the purchase.

[14] In consultation with their lawyer at the time, the Claimants developed a different way to achieve their end goal of owning the Property: they would purchase 100% of the shares of 148, the owner of the property, for \$15 million.

[15] On June 6, 2012, the Claimants and Checroune entered into a written agreement whereby the Claimants would purchase Checroune's shares in 148 (the "June 6 Agreement"). 148 was not a party to the June 6 Agreement. The June 6 Agreement reads in relevant part:

- (a) 148 is the registered owner of the Property and the Property is subject to a mortgage in the amount of \$9 million.
- (b) Checroune will sell the Claimants 36.67% of the issued shares of 148 with the further 63.33% to be made available by Checroune to the Claimants and to be transferred after all payments are made.
- (c) The price payable for the purchased shares will be based on the sum of \$6 million as the value of 148 subject to adjustments.
- (d) The Claimants shall pay a deposit of \$200,000 and a further sum of \$2 million upon closing.

- (e) Closing means 10 days after the Claimants sign the offer. If for any reason the transaction does not close, the offer becomes null and void and the deposit will be returned to the Claimants.
- (f) The Claimants shall have the rights of a 36.67% shareholder following closing and will be entitled to vote on the election of the board of directors, the appointment of officers of the corporation and to share in the distribution of the profits of 148 to the extent of their shareholding.
- (g) The Claimants have the right to manage the Property, collect rents and enter into leases with Checroune's written consent.
- (h) Until the Claimants buy the full 100% of the shares in 148 as contemplated in the Agreement, they will not be permitted or entitled to manage the business of 148, retain profits, sell or re-mortgage the Property.
- (i) Upon payment in full, Checroune will transfer the balance of the shares to the Claimants.
- (j) Any liabilities arising out of matters occurring on or before the closing date or from existing litigation shall remain the responsibility of Checroune.
- (k) The Claimants agree to accept title to the shares subject to the litigation brought by 214688 Ontario Ltd., provided that Checroune pay all costs related to this litigation and any damages resulting from this litigation.

[16] On June 22, the parties amended the June 6 Agreement to reflect the following:

- (a) The Closing Date means Thursday June 21, 2012.
- (b) The Claimants agree to purchase only 20% of the issued shares of 148 from Checroune for a total of \$1.2 million upon closing, \$200,000 of which has already been paid. Upon payment of this sum, Checroune shall transfer to the Claimants 20% of the shares of 148.
- (c) The Claimants shall have the rights of a 20% shareholder following closing.
- (d) The Claimants can thereafter purchase the remaining 80% of the shares of 148 from Checroune. The purchase price for the remainder of the shares shall be \$4.8 million (the remaining \$13.8 million price adjusted by the \$9 million existing mortgage). The closing date for the transfer of the balance of the shares shall be October 1, 2015, however, if the property can be refinanced without penalty then the closing date shall be October 1, 2014.
- (e) Until the Claimants purchase 100% of Checroune's shares, they will not be entitled to manage the business of the corporation, retain profits, sell or re-mortgage the property owned by the business.

- (f) The litigation shall be finally resolved by the date of the transfer of the balance of shares.

[17] On June 21, 2012, the Claimants paid Checroune \$1 million, in addition to the \$200,000 deposit previously paid on June 6, 2012.

[18] On June 21 and 22, 2012 a number of documents were exchanged between the parties including:

- (a) A director's resolution, signed by Checroune as sole director of 148, transferring 20% of his shares in 148 to the Claimants,
- (b) Share Certificates in respect of 20% of the shares of 148,
- (c) An Undertaking signed by Checroune to sell the remaining 80% of the shares to the Claimants, and
- (d) The Amended Trust Declaration.

[19] The Amended Trust Declaration amends the 2005 Trust Declaration wherein 148 as legal title-holder to the Property granted Checroune a 100% beneficial interest in the property. The Amended Trust assigns 20% of Checroune's beneficial interest in the Property to the Claimants. The Amended Trust Declaration was not registered on title and not referenced in the June 22 Agreement.

Subsequent Disputes between the Claimants and Checroune

[20] Subsequent to the June 22 Agreement, the Claimants began to lease the 6th floor of the Property from 148 as office space for Homelife. In or about June 2014, the Claimants came to believe that Checroune intended to sell the Property to another purchaser. This prompted them to commence the 2014 Litigation. The Claimants state that in August 2014, Checroune began a campaign of intimidation and harassment so that they would no longer wish to purchase the balance of the shares. They allege that Checroune turned off the lights, elevators and heating during business hours and canceled valid access cards and parking passes. Checroune denies that he engaged in such conduct. There is no third-party evidence before the Court.

[21] In October 2014, 148 terminated Homelife's tenancy, alleging that it breached the terms of its lease with 148 by not obtaining Checroune's consent prior to entering into sublease agreements. The Claimants deny this.

[22] On October 27, 2014, Justice Whitaker granted an injunction order restraining 148 and Checroune from disrupting Homelife's business as well as from selling, mortgaging, encumbering or dealing with the Property or shares in 148 without the Claimants' consent. Checroune nonetheless obtained a second mortgage on the Property, which was registered on title on September 21, 2016, without the Claimants' knowledge.

[23] On October 1, 2015, Checroune tendered to the Claimants in an effort to close the transfer of the remaining 80% of the shares. The Claimants refused to close. Their position is that they did not close on the purchase of the remaining 80% of the shares because Checroune failed to discharge the Certificate of Pending Litigation from title to the Property, as required by the June 22 Agreement. The Claimants did not attempt to extend the closing date and did not waive that condition of closing.

[24] In July 2016, Homelife left the Property and was no longer a tenant of 148.

148's Bankruptcy

[25] On October 13, 2017, 148 commenced restructuring proceedings by filing a Notice of Intention to Make a Proposal. Crowe Soberman Inc. was appointed as trustee with respect to the proposal.

[26] On November 3, 2017, the Court authorized the Proposal Trustee to sell the Property in accordance with a court-approved sale process. The Court expressly stated that its authorization did not determine the validity or enforceability of the agreements to which the Claimants were a party with Checroune.

[27] At the end of February 2018, the Proposal Trustee entered into an Agreement of Purchase and Sale with respect to the Property with an arms-length purchaser. This agreement was approved by the Court on March 16, 2018. The approval order provided that the sale proceeds should be held by the Proposal Trustee in trust.

[28] On April 13, 2018, 148 submitted a Proposal to its creditors.

[29] On April 25, 2018, the Claimants advanced the following claim in the Proposal Proceedings, which is subject to this appeal:

Two property proofs of claim collectively claiming a 20% beneficial interest (15% for Hussaini and 5% for Ahmadi) in what are now proceeds from the sale of the Property based on the language of the Amended Trust Declaration (the Property Claim).

[30] On May 3, 2018, the Claimants advanced the following claim in the Proposal Proceedings, which is also subject to this appeal:

Two unsecured proofs of claim seeking damages in the amount of approximately \$42 million (the Litigation Claim).

[31] On May 4, 2018, a requisite majority of creditors voted in favour of the Proposal. The Claimants did not vote as their claims were treated as contingent claims.

[32] On June 12, 2018, the Proposal was approved by the Court. The Claimants did not oppose the approval of the Proposal or appeal the order approving it.

[33] For the purposes of this appeal, the Claimants have reduced their Litigation Claim from 42 million to 4 million, being the difference between the price they offered for the Property under the June 22 Agreement (\$15 million) and the price the Proposal Trustee secured for the Property in the sale concluded in the Proposal (\$19 million).

Issues

[34] The parties agree that this appeal presents to the Court the following issues:

- (1) Do the Claimants each have a trust claim against 148 pursuant to s.67 of the BIA in respect of the Sale Proceeds of the Property currently held by the Proposal Trustee in trust?
- (2) Should the Court find that a constructive trust arose benefitting the Claimants in respect of the Sale Proceeds of the Property currently held by the Proposal Trustee in trust or in respect of the \$1.2 million paid by them to Checroune?
- (3) If the Claimants each have trust claims with respect to the Sale Proceeds, what priority, if any, should be afforded to those trust claims?
- (4) Do the Claimants have an unsecured claim for damages against 148 with respect to the breaches alleged in the Litigation Claim?

Analysis

1. *Do the Claimants each have a trust claim against 148 pursuant to s.67 of the BIA in respect of the Sale Proceeds of the Property currently held by the Proposal Trustee in trust?*

[35] I have concluded that the Claimants do not have a trust claim against 148 pursuant to s.67 of the BIA in respect of the proceeds of the Property currently held by the Proposal Trustee in trust.

[36] The Claimants assert that the language of the Amended Trust created an express trust. The Amended Trust states that Checroune transfers and assigns 20% of his 100% beneficial interest in the Property to the Claimants. Despite this language however, it cannot be said that there was sufficient certainty of intention to create a trust with respect to the Property. The language of the 2012 Amended Trust Declaration must be interpreted contextually, considering the whole of the circumstances, including the factual matrix within which it was made and the conduct of the parties thereafter: *Antle v. Canada*, 2010 FCA 280, 413 N.R. 128, leave to appeal refused, [2010] S.C.C.A. No. 462 at paras. 11-14.

Law of Express Trust

[37] Certainty of intention is one of the three certainties necessary to create a trust. In order for a trust to have certainty of intention, the language used must show that the settlor intended that the recipient must hold the property on trust for the benefit of the beneficiary: Donovan

W.M. Waters, *Waters' Law of Trusts in Canada*, 4th ed (Toronto: Carswell, 2012) at 140. However, there is no magic in the word "trust". Intention is a matter of substance over form, and language alone cannot create a trust: *Willis (Litigation Guardian of) v. Willis Estate* (2006), 23 E.T.R (3d) 292 (Ont. S.C.J.), affirmed, 2007 ONCA 552, 33 E.T.R. (3d) 187. It is important to interpret the words of a document purporting to create a trust in context. As stated by the Federal Court of Appeal in *Antle* at para. 12: "A test that requires one to look at all of the circumstances, and not just the words of the trust deed, is an approach that appears to have been adopted by Canadian courts generally."

[38] The other two certainties are certainty of object and certainty of subject-matter. Certainty of object is the requirement that the beneficiary of the trust must be ascertainable. Certainty of subject-matter is the requirement that the property to be held on trust must be clearly identifiable at the time the trust comes into existence. The beneficial interest which each beneficiary should have in that property must also be clearly identifiable. These certainties are required so that trustees, courts, and settlors can be sure that a trust is being properly administered according to its terms.

Application

[39] 148 submits that the Claimants have failed to satisfy their onus in proving certainty of subject matter. It notes that the Amended Trust refers to the Property including Assets such as chattels, fixtures, equipment, and leases and rental agreements. This, it argues, is not only ambiguous in and of itself but is also inconsistent with the property the Claimants set out to acquire, namely 100% of the shares of 148. I disagree. The Amended Trust agreement adopts the definition of the Property in the 2005 Trust Agreement and provides further certainty of subject-matter in terms of what a proprietary interest in the Property would include. It is not inconsistent with the Claimants' intended ownership of 100% of the shares of 148, as 148 holds legal title to the Property and its assets.

[40] 148 further submits that the Claimants have not demonstrated certainty of intention to create a trust with respect to the Property. The Claimants' position is that they have discharged this burden. They submit that the explicit language of the Amended Trust is the best evidence in determining certainty of intention. Certainty of intention is satisfied, it is argued, by the unambiguous language of the Amended Trust, which clearly assigns 20% of Checroune's beneficial interest in the Property to the Claimants. I disagree.

[41] Certainty of intention relates to a clear intention that the trustee should hold property for the benefit of someone else. No particular form of words is required or determinative: *Willis (Litigation Guardian of) v. Willis Estate*, 2007 ONCA 552, 33 E.T.R. (3d) 187 at para. 2. In this case, it is important to consider the language of the 2012 Amended Trust Declaration contextually with the parties' stated and consistent intention for executing the Amended Trust and their conduct thereafter.

[42] The Claimants' intent was always to own the Property outright. They had no intention to be joint owners of the Property with Checroune. Checroune's intent was always to sell the Property outright. He had no intention to sell only part of the Property.

[43] It was only when the Claimants were unable to purchase the Property that they turned their efforts to owning 100% of the shares of 148. The Claimants had no intention to be minority shareholders of the business of 148. They did not want any partners. They wanted to own 148 outright so they could ultimately own the Property. Checroune's intent was always to sell 100% of his shares of 148. He had no intent to work with a minority shareholder. If he could not sell the Property outright, he wanted to sell all of the shares of 148.

[44] Ahmadi testified that the Claimants' lawyer put together the strategy to purchase 100% of Checroune's shares in 148 because the Claimants wanted to own the Property but were unable to purchase it outright. The parties intended that the Claimants would acquire 100% of the shares of 148 for \$15 million. The share transaction was subsequently structured so the Claimants initially acquired 36.67% of the shares (later amended to 20% of the shares) and were obligated to purchase the balance at a later date, to be transferred upon further payment. On cross examination, Ahmadi admitted that the parties made this arrangement because the Claimants could not obtain financing to purchase 100% of the shares outright, considering the Certificate of Pending Litigation registered on the Property. The share purchase was therefore structured in two tranches, but it was always the parties' shared intention that Checroune would sell 100% of his shares in 148 to the Claimants.

[45] It was in this context, upon the purchase of the first 20% of the shares and prior to the full completion of the intended share purchase, that the Amended Trust was executed.

[46] Ahmadi testified that the Claimants did not understand the details of the documents and did not understand the specifics relating to the Amended Trust, including the differences between beneficial and legal interests. Her evidence is that the Claimants understood that the purpose of the Amended Trust was "to protect our interest and to become the owners." It provided a measure of security to ensure that Checroune did not sell the Property without the Claimants' knowledge, pending the completion of the sale of the remaining shares pursuant to the June 22 Agreement. It therefore further served as an incentive to Checroune to comply with his obligations as defined in the June 22 Agreement in facilitating the sale of the remaining shares.

[47] Ahmadi described the Amended Trust as "extra security" to protect the Claimants' interests in ultimately acquiring 100% of the shares of 148 and, as a result, 100% of the Property. There is no evidence to suggest that at the time of the Amended Trust, the Claimants intended to receive a 20% proprietary or beneficial interest in the Property. Rather, the evidence is that the Claimants intended the Amended Trust to serve as security towards the close of the sale of the remaining 80% of the shares, and nothing more.

[48] Similarly, Checroune's evidence is that the Amended Trust was intended to act as "security" or to provide "additional security" pending the intended transfer of the remaining 80% of the shares. He states that he never intended to convey any part of the Property until the Claimants paid in full for 100% of the shares as contemplated by the June 22 Agreement.

[49] The parties' stated shared intention in creating the Amended Trust is demonstrated by their conduct subsequent its execution. At no time did the parties act in a manner consistent with the Claimants' enjoying a beneficial interest in the Property. For over three years, the Claimants

did not contribute to the ongoing expenses related to the Property, including maintenance and any payments toward the existing \$9 million mortgage, despite the obligation of the beneficial owner pursuant to the 2005 Trust Declaration to indemnify 148 for all liabilities relating to the Property. Similarly, at no time did the Claimants receive a share of profits derived from the Property, despite 148's obligation pursuant to the 2005 Trust Declaration to remit all revenue owing from the Property to the beneficial owner. Significantly, this conduct is also consistent with the parties' intention as reflected in the June 22 Agreement that until the Claimants purchased 100% of Checroune's shares, the Claimants would not be entitled to retain profits.

[50] The parties' demonstrated conduct fails to indicate the Amended Trust was intended to transfer a partial proprietary interest. Rather, it underscores their stated intention that the Amended Trust was intended to protect the Claimants' contractual agreement with Checroune to complete the purchase of the remaining shares.

[51] For these reasons, I have concluded the Amended Trust does not constitute an express trust as the Claimants have not demonstrated that there was certainty of intention.

The Amended Trust post-October 2015

[52] The transfer of the remaining shares as intended by the parties and contracted by the June 22 Agreement did not close on October 1, 2015. I agree with 148 that the Amended Trust, intended by the parties to secure the closing, is therefore rendered moot as of October 2015 as there is nothing more to secure.

[53] The Claimants paid Checroune \$1.2 million for 20% of the shares of 148 in furtherance of their intention as set out in the June 22 Agreement to acquire 100% of the shares. Today, they own 20% of the shares of a bankrupt company. At no time did they wish to own only 20% of the shares. The Claimants may have legal recourse against Checroune in this regard as a party to the June 22 Agreement. They do not have a claim against 148, however, with respect to any rights arising from the Amended Trust.

2. *Should the Court find that a constructive trust arose benefitting the Claimants in respect of the Sale Proceeds of the Property currently held by the Proposal Trustee in trust or in respect of the \$1.2 million paid by them to Checroune?*

[54] In the alternative, the Claimants submit that a constructive trust ought to be imposed over the sale proceeds in order to recognize their beneficial interest. It is their position that unless this remedy is applied, 148 and its creditors will be unjustly enriched at the Claimants' expense.

Law of Constructive Trust

[55] A constructive trust arises by operation of law as a means for equity to combat behaviour that is contrary to good conscience. It is a remedy for unconscionable transactions: *Soulos v. Korkontzilas*, [1997] 2 S.C.R. 217 at paras. 18, 32, 45. Constructive trusts can arise in many circumstances, including to remedy an unjust enrichment; or to confiscate profits flowing from a wrong.

[56] The Claimants advance arguments based on both circumstances. They claim that 148 has been unjustly enriched, and that 148 has wrongfully breached an equitable duty to them and profited as a result.

[57] The elements of an unjust enrichment claim are: a benefit to one party, a corresponding deprivation to the other, and no juridical reason for the transfer of value: *Kerr v. Baranow*, 2011 SCC 10, [2011] 1 S.C.R. 249 at para. 32. The enrichment must correspond with a deprivation from the plaintiff. The purpose of the unjust enrichment doctrine is to reverse unjust transfers. Accordingly, it must first be determined whether wealth has moved from the plaintiff to the defendant: *Professional Institute of the Public Service of Canada v. Canada*, 2012 SCC 71, [2012] 3 S.C.R. 660 at paras. 151-152. In order for a constructive trust to arise to remedy the unjust enrichment, monetary damages must be inadequate to compensate the plaintiff, and there must be a link between the benefit alleged to have been provided and the property over which the constructive trust is claimed: *Peter v. Beblow*, [1993] 1 S.C.R. 980 at para. 31.

[58] The Supreme Court in *Soulos* at para. 45 outlined four conditions that should generally be satisfied in order for a constructive trust based on wrongful conduct to arise:

- (1) The defendant must have been under an equitable obligation, that is, an obligation of the type that courts of equity have enforced, in relation to the activities giving rise to the assets in his hands;
- (2) The assets in the hands of the defendant must be shown to have resulted from deemed or actual agency activities of the defendant in breach of his equitable obligation to the plaintiff;
- (3) The plaintiff must show a legitimate reason for seeking a proprietary remedy, either personal or related to the need to ensure that others like the defendant remain faithful to their duties; and
- (4) There must be no facts which would render the imposition of a constructive trust unjust in all the circumstances of the case.

Application

[59] The Claimants argue that 148 has been enriched by its breach of its duty as trustee to the Claimants. They argue that it has utilized the Property for its own benefit both prior to and after the filing of the Notice of Intention to Make a Proposal without regard to the Claimants' beneficial interest in the Property. This position, however, presumes that the Claimants enjoy a beneficial interest in the Property. For the reasons outlined above, I have concluded that they do not. 148 does not owe an equitable duty as trustee to the Claimants. Therefore, the first condition outlined by the Supreme Court in *Soulos* is not met.

[60] The Claimants further argue that 148 has been unjustly enriched to the extent that Checroune used the \$1.2 million he received from the Claimants to satisfy amounts purportedly owed by Homelife to 148. This submission confuses the various contractual relationships of the Claimants, Homelife, Checroune and 148. The payment by the Claimants of \$1.2 million was

made to Checroune pursuant to the June 22 Agreement. If there is an enrichment, it is to Checroune personally. Neither Homelife nor 148 were parties to the contract pursuant to which the Claimants paid Checroune the \$1.2 million.

[61] The Claimants submit that they have been deprived of the funds they paid in good faith in furtherance of their intention to acquire 100% of the shares of 148, the security they relied upon in the form of the Amended Trust and any benefits agreed upon in the June 22 Agreement. Again, if there is a deprivation it is at the hands of Checroune personally and not 148. The Claimants' alleged deprivation does not correspond to 148's alleged enrichment.

[62] Finally, the Claimants argue that there is no justification at law for 148 to retain "these benefits". For reasons noted above, however, it cannot be said that 148 was enriched as a non-party to the June 22 Agreement.

3. *If the Claimants each have trust claims with respect to the Sale Proceeds, what priority, if any, should be afforded to those trust claims?*

[63] I have concluded that the Claimants do not have trust claims with respect to the sale proceeds. I will nonetheless analyze the issue of priority, in case I am incorrect in this conclusion.

[64] The Claimants argue that if it is found that the Amended Trust grants them a proprietary interest, they are entitled to 20% of the sale proceeds, excluding all amounts paid under the Second Mortgage and any amounts paid to 148 and its counsel under the Proposal.

[65] 148 argues that if it is found that the Claimants are beneficiaries in accordance with the Amended Trust, 148's liabilities in respect of the Property are properly deducted from the sale proceeds before any residual benefit is paid to the Claimants or Checroune.

[66] I agree with 148. The 2005 Trust Declaration provides that 148 holds legal title to the Property as bare trustee for Checroune, who holds the entire beneficial interest in the Property. It further states that Checroune as beneficiary shall fully indemnify 148 as trustee from all liabilities, obligations, claims, charges, encumbrances and responsibilities, as well as all costs and expenses in connection with the Property including legal expenses. These terms were not altered in the Amended Trust. The terms of the trust itself are such that the Claimants do not have a right to the sale proceeds until 148's obligations are otherwise satisfied.

[67] This is consistent with the nature of a beneficiary's rights to the trust property. The beneficiary has no rights over the trust property, only rights over the trustee's actions with regard to the trust property. The trustee is the legal owner of the trust property, and has the rights necessary to direct trust assets to pay trust creditors. A trustee further has a right to reimburse himself or herself out of trust assets. For that purpose, trustees have priority as against beneficiaries in the trust property: Lionel Smith, "Trust and Patrimony", (2009) 28 ETPJ, 332.

[68] Where a trust directs that the trustee should make certain payments to a beneficiary, the beneficiary usually receives that benefit subject to deductions for the expenses of the trust property. This issue commonly arises in cases where there is a dispute between successive

beneficiaries about from where trust expenses should be deducted. If a beneficiary is entitled to the income produced by trust capital for life, for example, they usually receive that income subject to deduction for ordinary, recurring expenses such as repairs or property taxes. Major occasional improvements or expenditures are usually paid out of the trust capital, which may be subject to the beneficial interest of a different beneficiary. In all cases, it is always open to the settlor to dictate how the trust expenses are to be paid: *Waters' Law of Trusts in Canada* at 1028.

[69] If the Claimants are beneficiaries under the Amended Trust therefore, the nature of the Claimants' rights are such that 148's liabilities are deducted from the sale proceeds before any residual benefit is paid to the Claimants or Checroune. To do otherwise would be to ignore the express language of the Amended Trust and grant a priority contrary to that recognized in law.

4. *Do the Claimants have an unsecured claim for damages against 148 with respect to the breaches alleged in the Litigation Claim?*

[70] As shareholders of 148, the Claimants are permitted to apply for a court order under the oppression remedy provisions of the *Business Corporations Act (Ontario)*, R.S.O. 1990, c. B. 16, s.248 (the "OBCA"). The oppression remedy provisions of the OBCA state that where a court is satisfied that the business or affairs of the corporation have been carried on or conducted in a manner that is oppressive or unfairly prejudicial to or that unfairly disregards the interests of a shareholder, the court may make an order to rectify the matters complained of (s.248(2)).

[71] The Litigation Claim is based on the allegations as set out in the Fresh as Amended Statement of Claim dated November 14, 2016. In that Claim, the Claimants seek a declaration of oppressive conduct or damages for oppressive conduct as against Checroune personally, not 148. The Claimants plead therein that 148 was an agent for Checroune and that Checroune is personally liable for the actions of 148.

[72] The allegations of improper conduct before the Court are similarly restricted to allegations about Checroune's actions. Ahmadi states (and Checroune denies) that Checroune turned off the lights and the elevators in the building at the Property and that he harassed subtenants.

[73] The onus is on the complainant pleading oppressive conduct to identify the expectation that he or she claims has been breached by the conduct in question and to establish that such expectations are reasonable: *BCE Inc. v. 1976 Debentureholders*, 2008 SCC 69, [2008] 3 S.C.R. 460 at para. 70.

[74] The Claimants have not provided any evidence in terms of their reasonable expectations. Ahmadi states that Checroune never involved the Claimants in the management of 148, never invited them to a shareholders' meeting and kept them in the dark about 148's operations and finances. She did not state that this amounted to a breach of a reasonable expectation.

[75] Practically speaking, there were only two shareholders of 148. It defies commercial reality that a shareholders' meeting would be called, particularly as the Claimants did not request a meeting and the parties spoke daily about the business of 148. Contrary to Ahmadi's evidence,

Checroune testified that he provided the Claimants with financial information about 148 and access to information in general.

[76] The Claimants argue that the June 22 Agreement created reasonable expectations that they would gain the associated rights of a 20% shareholder. The Agreement clearly states, however, that until the Claimants became 100% shareholders of 148, they could not manage the business, retain profits from the business, or mortgage or sell the business.

[77] In my view, therefore, the Claimants have failed to demonstrate that 148 engaged in oppressive conduct or breached their reasonable expectations.

Damages

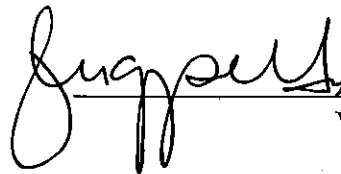
[78] For the purpose of damages, the Claimants argue that they reasonably expected that they would become the owners of the Property. It is appropriate, they submit, to therefore award them damages in the amount of \$4 million, being the difference between the price that they proposed to pay under the June 22 Agreement and the price the Property ultimately sold for under the Proposal.

[79] The Claimants have failed to consistently state their reasonable expectations. They have failed to explain how this remedy is connected to their reasonable expectations pursuant to the June 22 Agreement or the alleged oppressive conduct of 148. The Claimants' damages would only be based on the difference between the price in their agreement and the price the Property ultimately sold for if the agreement had been for the purchase of the Property. There is no evidence of this. In fact, the Claimants concluded an agreement to purchase 100% of Checroune's shares in 148, not the Property. If oppressive conduct was found, which it was not, damages would appropriately flow from the failed June 22 Agreement, and would reflect the impact of the oppressive conduct on the price of 148's shares.

Disposition

[80] It is for these reasons the appeal is dismissed.

[81] The parties are encouraged to agree on an appropriate costs award. If unable to do so, I will receive submissions of not more than three pages in writing. 148 shall submit their submissions within 30 days. The Claimants shall submit their submissions in response within 20 days thereafter. A Reply, if any, shall be submitted within 10 days thereafter.



V.R. Chiappetta J.

CITATION: Hussaini v. Crowe Soberman Inc., 2019 ONSC 642
COURT FILE NO.: 31-2303814
ESTATE FILE NO.: 31-2303814
DATE: 20190124

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:

JAMSHID HUSSAINI AND NEELOFAR AHMADI

Appellants

– and –

CROWE SOBERMAN INC., TRUSTEE ACTING IN
THE PROPOSAL OF 1482241 ONTARIO LIMITED
("148")

Respondent

REASONS FOR JUDGMENT

V.R. Chiappetta J.

APPENDIX “G”

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

IN BANKRUPTCY AND INSOLVENCY

THE HONOURABLE **MR.**

)

FRIDAY, THE 6TH

JUSTICE **PATTILLO**

)

DAY OF DECEMBER, 2019

)



**IN THE MATTER OF THE PROPOSAL OF 1482241 ONTARIO LIMITED, OF THE
CITY OF TORONTO, IN THE PROVINCE OF ONTARIO**

ORDER

THIS MOTION, made by Crowe Soberman Inc., in its capacity as the proposal trustee (in such capacity, the “**Proposal Trustee**”) of 1482241 Ontario Limited (the “**Debtor**”), for an order, *inter alia*, (a) approving the ninth report of the Proposal Trustee dated December 2, 2019 (the “**Ninth Report**”) and the activities of the Proposal Trustee described therein; (b) approving a process to address the Debtor’s objections to certain of the claims filed in the proceeding, as set out in the Ninth Report; and (c) approving the fees and disbursements of the Proposal Trustee, the Proposal Trustee’s counsel, and the Debtor’s counsel, was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Ninth Report and the appendices thereto, the fee affidavit of Hans Rizarri sworn December 2, 2019 (the “**Rizarri Affidavit**”), and the fee affidavit of Ian Aversa sworn December 2, 2019 (the “**Aversa Affidavit**”), and on hearing the submissions of counsel for the Proposal Trustee, counsel for the Debtor and such other counsel as were present, no one

appearing for any other person on the service list, although properly served as appears from the affidavit of service of Miranda Spence sworn December 3, 2019, filed,

1. **THIS COURT ORDERS** that the time for service of the notice of motion and the motion record is hereby abridged and validated so that this motion is properly returnable today and hereby dispenses with further service thereof.

2. **THIS COURT ORDERS** that the Ninth Report and the activities of the Proposal Trustee described therein be and are hereby approved.

3. **THIS COURT ORDERS** that the Proposal Trustee is hereby authorized to make the following distributions to creditors from the Sale Proceeds, without further Order of the Court:

- (a) the sum of \$199,934.53 to Toronto Hydro;
- (b) the sum of \$26,375.57 to Canada Revenue Agency;
- (c) the sum of \$3,197.25 to the City of Toronto; and
- (d) such further and other amounts as may be agreed to, in writing, by each of the Proposal Trustee, the Debtor and the applicable creditor.

4. **THIS COURTS ORDERS** that the Proposal Trustee is hereby authorized to make a distribution from the Sale Proceeds to the Debtor, in the sum of \$350,000.

5. **THIS COURT ORDERS** that the fees and disbursements of the Proposal Trustee as described in the Ninth Report and as set out in the Rizarri Affidavit, be and are hereby approved, and the Proposal Trustee is hereby authorized to pay such fees from the Sale Proceeds.

6. **THIS COURT ORDERS** that the fees and disbursements of the Proposal Trustee's counsel as described in the Ninth Report and as set out in the Aversa Affidavit, be and are hereby approved, and the Proposal Trustee is hereby authorized to pay such fees from the Sale Proceeds.

7. **THIS COURT ORDERS** that the fees and disbursements of the Debtor's counsel as described in the Ninth Report, be and are hereby approved, and the Proposal Trustee is hereby authorized to pay such fees from the Sale Proceeds.

8. THIS COURT ORDERS that the process for the adjudication of the Disputed Creditors' claims set out at paragraph 17 of the Ninth Report be and is hereby approved.

9. This Court Orders that further scheduling of the claims process set for January 17, 2020 (1/2 hour).

[Signature]
L. Santillo, J.

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

**IN BANKRUPTCY AND INSOLVENCY
Proceedings commenced at Toronto**

ORDER

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APPENDIX “H”

COUNSEL SLIP

COURT FILE

NO.: BK-17-02303814-003)

DATE:

JAN 17 2020

NO. ON LIST 5

TITLE OF PROCEEDING

In the matter of Bankruptcy 1482241
ONTARIO Limited.

COUNSEL FOR:

- PLAINTIFF(S)
- APPLICANT(S)
- PETITIONER(S)

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Jessica Wuthmann Limited

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COUNSEL FOR:

- DEFENDANT(S)
- RESPONDENT(S)

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JAMIE SPOTSWOOD FOR
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Michael Brzezinski,
North York Family Physicians Holdings Inc.

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416-865-1398
mbrzezinski@dickinsonwright.com

Larry Keown
Deury Smith Frank.

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418 449 7071
larry.keown@gmail.com

Jan 17/20

I am putting over the issue of releasing the funds to
'482241 Ontario Limited (which is 1482241-0005-01)

number of creditors) to permit a claims process to play out according to the timetable in Sch A. Counsel to return to a 9:30 before me on Feb 24/20 - confirmed. At that time, I will decide whether & when to schedule this motion re releasing funds to the co &/or motions re the claims of the Disputed Creditors (as def'd in Sch A) if they have not resolved by then.

Conway J -

Sch A.
-3-

CLAIMS PROCESS

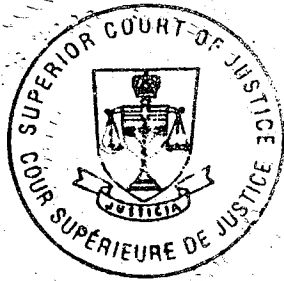
4. **THIS COURT ORDERS** that the process for the adjudication of the remaining Disputed Creditors' claims (as defined in Alain Checroune's affidavit sworn January 13, 2020) will proceed as follows:

- (a) each of the Disputed Creditors will provide any and all documentation in support of its claim to the Debtor by January 31, 2020;
- (b) on or before February 14th, 2020, the Debtor will contact a representative of each of the Disputed Creditors to discuss whether a settlement can be reached between the parties;
- (c) if the Debtor and a Disputed Creditor are unable to reach a settlement by February 21, 2020, the Debtor and Disputed Credit shall agree to a motion date and corresponding timetable for a motion to determine the amount of the Disputed Creditor's claim. If the Disputed Creditor and Debtor cannot agree to a schedule, the parties will seek the direction of this Court; and
- (d) at any time after January 31, 2020, any party may seek the further advice and direction of the Court as necessary.

(which for purposes of this Timetable includes Allevio Clinic #1 Toronto Lnc)
BC

5. **THIS COURT ORDERS** that nothing in this Order alters in any way the terms of the Proposal, or the obligations or responsibilities of any party thereunder.

APPENDIX “I”



**ONTARIO
SUPERIOR COURT OF JUSTICE
IN BANKRUPTCY AND INSOLVENCY
(COMMERCIAL LIST)**

THE HONOURABLE)

MONDAY, THE 24th DAY

JUSTICE *CONWAY*)

OF FEBRUARY, 2020

**IN THE MATTER OF THE PROPOSAL OF 1482241 ONTARIO LIMITED, OF THE
CITY OF TORONTO, IN THE PROVINCE OF ONTARIO**

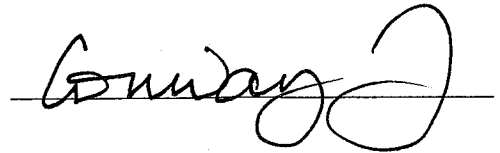
ORDER

THIS MOTION made by 1482241 Ontario Limited (“**Debtor**”) for an Order authorizing the release of funds in the hands of Crowe Soberman Inc., in its capacity as Licensed Insolvency Trustee with respect to the Debtor (in such capacity, the “**Proposal Trustee**”), to the Debtor was heard this day at 330 University Avenue, 8th Floor, Toronto, Ontario.

ON READING the Affidavit of Alain Checroune dated January 13, 2020, and on hearing the submissions of counsel for the Debtor, counsel for the Proposal Trustee, and those other parties present, and noting that no one appearing for any other person on the service list, although duly served as appears in the affidavit of service of Ariyana Botejue sworn January 14, 2020, filed.

1. **THIS COURT ORDERS** that the Proposal Trustee is hereby authorized and directed to release the sum of \$16,950.00 from the funds in its hands derived from the sale of 240 Duncan Mills Road (the "**Sale Proceeds**") to Macdonald Sager Manis LLP, new counsel for the Debtor.

2. **THIS COURT ORDERS** that nothing in this Order alters in any way the terms of the Proposal, or the obligations or responsibilities of any party thereunder.

A handwritten signature in cursive script, appearing to read "Conway J.", is written over a horizontal line. The signature is located in the lower right quadrant of the page.

IN THE MATTER OF THE PROPOSAL OF 1482241
ONTARIO LIMITED, OF THE CITY OF
TORONTO, IN THE PROVINCE OF ONTARIO

Court File No.: 31-2303814

Ontario
**SUPERIOR COURT OF JUSTICE
IN BANKRUPTCY AND INSOLVENCY
(COMMERCIAL LIST)**

ORDER

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Howard Manis
LSO #: 34366V
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Lawyer for the Debtor, 1482241 Ontario Limited

APPENDIX “J”

COUNSEL SLIP

COURT FILE NO.: BK-17-02303814-0031

DATE: February 24, 2020

NO. ON LIST 2

TITLE OF PROCEEDING 1402241 Ontario limited vs Fasken Martineau DuMoulin LLP et al

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- APPLICANT(S)
- PETITIONER(S)

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- RESPONDENT(S)

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Larry Krown
for Davy Smith Frank

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Feb 24/20

required
Conway

Mr Manis is new counsel for debtor. He wants to review the claims of the Disputed Creditors. He will set out the Debtor's position 10 days after he receives the materials. Counsel to discuss resolution after that & return to a 30 before me on March 11/20 to see if further steps are

→ I have signed an unopp'd order re release
of funds to Debtor's Counsel for legal fees.

Conway

APPENDIX “K”

COUNSEL SLIP

COURT FILE NO BK-17-02303814-0031

DATE March 11, 2020

NO ON LIST 2

TITLE OF
PROCEEDING

1482241 Ontario Limited vs Fasken Martineau
DuMoulin LLP

COUNSEL FOR:

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APPLICANT(S)
PETITIONER(S)

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Miranda Spence for Proposal Trustee

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Michael Breezinski for
North York Family Physicians Holdings Inc.

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416-865-1398

mbreezinski@dickinsonwright.com

March 11, 2020

Some of the disputed claims have been resolved but others remain.

The only matter I am prepared to schedule right now ->

is re the Micro claim re an amt > \$400K. However, there may be cred'y issues that would require VV evidence. At this point, a LC makes more sense to see if it can be resolved. Debtor to file resp'g materials on March 31/20. CC scheduled before me - with clients -

on April ~~15~~¹⁷ 20 - 1 HR, confirmed. 2 page briefs TBD by April 15. Re DSF matter, counsel to address the

acc'g issues before anything is scheduled. Re NY Family Physicians there is a 40K claim v. a larger set off claim. I am not sched'ing anything yet. I direct counsel to seek a resolution of this matter w/o future court attendance.

At this point, any distribution of funds to the PT to the debtor is on hold pending further order.

Conway J.

APPENDIX “L”

1. **THIS COURT ORDERS** that the Proposal Trustee is hereby authorized and directed to release the sum of \$28,250.00 from the funds in its hands derived from the sale of 240 Duncan Mills Road (the "**Sale Proceeds**") to the Debtor's lawyers, namely MacDonald Sager Manis LLP.
2. **THIS COURT ORDERS** that the Proposal Trustee is hereby authorized and directed to release the sum of \$200,000.00 to the lawyers for Allevio Clinic #1 Toronto Inc. o/a Allevio Inc. namely Clyde & Co Canada LLP in Trust.
3. **THIS COURT ORDERS** that the Proposal Trustee is hereby authorized and directed to release the sum of \$6,500.00 to the lawyers for Daiken Applied Canada Inc., namely Wagner, Falconer & Judd, Ltd.
4. **THIS COURT ORDERS** that the Proposal Trustee is hereby authorized and directed to release the sum of \$236,000.00 to the Debtor's lawyers, namely Macdonald Sager Manis LLP, which amount reflects the uncontested portion of the claims of Allevio Clinic #1 Toronto Inc. o/a Allevio Inc. and Daiken Applied Canada Inc., less the levy payable to the Office of the Superintendent in Bankruptcy.
5. **THIS COURT ORDERS** that the Proposal Trustee is hereby authorized and directed to retain in trust the balance of the full amount of the claims of the remaining contested claims pending further Order of the Court.
6. **THIS COURT ORDERS** that the Proposal Trustee's fees, and those of its counsel, which have been approved by the Court to date, shall not be subject to further challenge by the Debtor or review by the Court.

7. **THIS COURT ORDERS** that nothing in this Order alters in any way the terms of the Proposal or the obligations or responsibilities of any party thereunder.

A handwritten signature in blue ink, appearing to read "Conway J.", is written over a horizontal line.

40822864.2

IN THE MATTER OF THE PROPOSAL OF 1482241
ONTARIO LIMITED, OF THE CITY OF
TORONTO, IN THE PROVINCE OF ONTARIO

Court File No.: 31-2303814

Ontario
**SUPERIOR COURT OF JUSTICE
IN BANKRUPTCY AND INSOLVENCY
(COMMERCIAL LIST)**

ORDER

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Lawyer for the Debtor, 1482241 Ontario Limited

APPENDIX “M”



Miranda Spence
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January 5, 2022

VIA EMAIL (hmanis@manislaw.ca)

Manis Law
2300 Yonge Street
Suite 1600
Toronto, ON M4P 1E4

Attention: Howard Manis

Dear Mr. Manis:

**RE: In the matter of the proposal of 1482241 Ontario Limited (the “Debtor”),
bearing Court File No. 31-2303814 (the “Proposal Proceedings”)**

As you are aware, we are counsel to Crowe Soberman Inc., in its capacity as proposal trustee of the Debtor (in such capacity, the “Trustee”). We write by way of a follow up to the Trustee’s letter of July 17, 2019, a copy of which is enclosed (the “Trustee’s Initial Determination”), and our subsequent communications.

As set out in the Trustee’s Initial Determination, the Trustee proposed to admit in full certain filed claims. By way of a letter dated October 22, 2019 from the Debtor’s former counsel, the Debtor objected to the payment of all but four of the claims the Trustee proposed to admit in full.

Following that exchange of correspondence, the parties attended before Justice Pattillo and Justice Conway to address a process to adjudicate the outstanding disputes between the Debtor and certain creditors. At our last attendance on March 11, 2020, Justice Conway directed that the Debtor engage in discussions with the creditors to seek to resolve the disputed claims before any further court attendances would be scheduled.

We understand that the Debtor subsequently reached resolutions with Allevio Clinic #1 Toronto Inc. o/a Allevio Inc. and Daiken Applied Canada Inc., which were memorialized in a consent order dated July 27, 2020.

Currently, the following claims remain outstanding (the “Outstanding Claims”):

(a)	Devy Smith Frank LLP:	\$128,153.49
(b)	GDI Services (Canada) LP:	\$95,746.42
(c)	North York Family Physicians Holdings Inc.:	\$46,442.42
(d)	Quality Allied Elevator:	\$18,247.23
(e)	Rogers:	\$871.56

As the Debtor has not made any progress towards resolving the outstanding claims since July 2020, the Trustee has scheduled a motion on February 7, 2022 before Justice Conway. On that date, the Trustee intends to seek the Court's approval to pay the Outstanding Claims, in full, and seek its discharge.

Should the Debtor intend to maintain its objection to any of the Outstanding Claims, we would appreciate hearing from you by no later than **January 21, 2022**.

Yours very truly,

AIRD & BERLIS LLP



Miranda Spence
MS/
Encl.

cc: Hans Rizarri

38011262.1



Crowe Soberman Inc.

Crowe Soberman Inc.
Licensed Insolvency Trustee
Member Crowe Global

2 St. Clair Avenue East, Suite 1100
Toronto, ON M4T 2T5
416 929 2500
416 929 2555 Fax
1 877 929 2501 Toll Free
www.crowesobermaninc.com

July 17, 2019

1482241 Ontario Limited
c/o Blaney McMurtry LLP
2 Queen Street East
Suite 1500
Toronto, ON,
M5C 3G5

Attention: Mr. David Ullman

Dear Sir:

Re: In the matter of the Proposal of 1482241 Ontario Limited (the “Debtor”)

We write further to the Order of the Honourable Justice Hailey dated June 12, 2018 (the “Order”), which sets out the procedure and process for the Debtor to object to claims filed by creditors in the Proposal proceedings.

Please be advised that the Proposal Trustee has completed its initial review of the claims received, and has made the following determinations as to whether those claims ought to be admitted, disallowed, or partially disallowed. Please note that as per the Order, the Debtor has seven days to communicate any objections to the admitted claims in writing, including the detailed basis for the Debtor’s objection.

Unsecured Creditor Claims Fully Admitted

<i>Creditor Name</i>	<i>Claim Amount</i>
1- Canada Revenue Agency	\$3,972.76
2- Canada Revenue Agency	\$17,699.61
3- Daikin Applied Canada Inc.	\$12,353.69
4- Devry Smith Frank LLP	\$128,153.49
5- GDI Services (Canada) LP	\$95,746.42
6- North York Family Physician Holdings Inc.	\$46,442.42
7- Quality Allied Elevator	\$18,247.23
8- Rogers	\$871.56
9- Toronto Hydro- Electrical Systems Limited	\$199,934.53

10- Treasurer- City of Toronto	\$3,197.25
11- YYZ Plumbing	\$17,960.20
Total Unsecured Claims Admitted	\$544,579.16

The Proposal Trustee notes that the Debtor has already been provided physical copies of the claims referenced above.

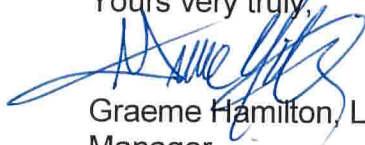
Unsecured Creditor Claim Partially Admitted

The Creditor Allevio Clinic #1 Toronto Inc., has submitted an unsecured claim in the amount of \$486,030.06. The Proposal Trustee will be admitting the partial amount of \$284,126.08 and disallowing the partial amount of \$201,903.98. The Proposal Trustee will be preparing the disallowance notice to be sent following the expiry of the seven day period identified above.

Unsecured Creditor Claim Disallowed

The Creditors Neelofar Ahmadi and James Hussaini have jointly submitted an equity claim asserting a 20% interest to any remaining funds available after the claims of creditors have been paid. The Proposal Trustee will be disallowing the claim in full. The Proposal Trustee will be preparing the disallowance notices to be sent following the expiry of the seven day period identified above.

Yours very truly,



Graeme Hamilton, LIT, CIRP
Manager

Crowe Soberman Inc.
Licensed Insolvency Trustee
Direct Line: 416 963 7140
Email: graeme.hamilton@crowesoberman.com

APPENDIX “N”

Court File No. 31-2303814
Estate No. 31-2303814

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

IN BANKRUPTCY AND INSOLVENCY

**IN THE MATTER OF THE PROPOSAL OF 1482241 ONTARIO LIMITED,
OF THE CITY OF TORONTO, IN THE PROVINCE OF ONTARIO**

**EIGHTH REPORT OF THE PROPOSAL TRUSTEE
MAY 10, 2019**

CROWE SOBERMAN INC.
Licensed Insolvency Trustee
2 St Clair Avenue East, Suite 1200
Toronto, Ontario, M4T 2T5

Telephone: 416.929.2500
Fax: 416.929.2555

Court File No. 31-2303814
Estate No. 31-2303814

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)
IN BANKRUPTCY AND INSOLVENCY**

**IN THE MATTER OF THE PROPOSAL OF 1482241 ONTARIO LIMITED,
OF THE CITY OF TORONTO, IN THE PROVINCE OF ONTARIO**

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- A. Reasons for Decision by the Honourable Justice Chiappetta- January 24, 2019
- B. Notice of Appeal- February 1, 2019
- C. Endorsement of the Honourable Justice Hailey- February 13, 2019
- D. Draft Schedule
- E. Proposal Approval Order of the Honourable Justice Hailey- June 12, 2018
- F. Various emails on agreed sum for costs
- G. Proof of Claim and Affidavit of Neelofar Ahmadi
- H. Schedule Re Preliminary View on Claims

Court File No. 31-2303814
Estate No. 31-2303814

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

IN BANKRUPTCY AND INSOLVENCY

IN THE MATTER OF THE PROPOSAL OF 1482241 ONTARIO LIMITED,
OF THE CITY OF TORONTO, IN THE PROVINCE OF ONTARIO

EIGHTH REPORT OF THE PROPOSAL TRUSTEE
MAY 10, 2019

INTRODUCTION

1. This report (the “**Eighth Report**”) is filed by the Proposal Trustee. Unless otherwise noted, the defined terms used in this Eighth Report have the same meanings ascribed to them in the First Report through to the Seventh Report and the Supplemental Reports thereof.

PURPOSE

- 2. The purpose of this report (the “**Eighth Report**”) is to provide the Court with the following:
 - a. an update as to completing the administration of the estate and effecting a distribution to the Company’s creditors;
 - b. an update as to the discussions held between the Debtor and the Proposal Trustee as to the appropriate quantum of the Sale Proceeds to be released to the Debtor, and the appropriate amount to be held back to finalize the administration of the estate;
 - c. support for the Proposal Trustee’s motion for an Order of this Honourable Court:
 - (i) approving the activities of the Proposal Trustee as described in this Eighth Report of the Proposal Trustee;
 - (ii) approving the Proposal Trustee’s recommended interim dividends and interim distribution to the Debtor; and
 - (iii) directing the Debtor to commence the proposed disallowance of claim procedures as outlined in the Sixth Report of the Proposal Trustee.

REQUEST FOR THE SALE PROCEEDS AND CONTINUED ADMINISTRATION

3. On October 15, 2018, the Company served an Amended Motion Record wherein it sought an Order, inter alia, directing the Proposal Trustee to disburse the entire Sale Proceeds to the Company. As at that date, a hearing to determine the Property Claimants' appeal from the Proposal Trustee's disallowance of their Property Claim (the "**Property Claim Appeal**"), had been scheduled to take place beginning December 3, 2018.
4. The Property Claim Appeal was heard December 4 and 5, 2018, and January 9, 2019 before the Honourable Justice Chiappetta. By reasons released January 24, 2019 (the "**Chiappetta Decision**"), Justice Chiappetta dismissed the Property Claim Appeal. A copy of the Chiappetta Decision is attached hereto as **Appendix "A"**.
5. The Property Claimants served a Notice of Appeal of the Chiappetta Decision on February 1, 2019. A copy of the Notice of Appeal is attached hereto as **Appendix "B"**. After the Notice of Appeal was filed, the Proposal Trustee was advised that the Property Claimants had retained new counsel.
6. On February 13, 2019, counsel for each of the Proposal Trustee, the Company, and the Property Claimants attended a 9:30 appointment before the Honourable Justice Hainey to address the distribution of the Sale Proceeds to the Company. Justice Hainey endorsed as follows:

Mr. Paris [the Property Claimants' new counsel] shall file an application for a stay of Justice Chiappetta's decision within a week and report back when the stay application has been scheduled. I will not order any funds to be released while the stay application is pending.

A copy of the Endorsement of the Honourable Justice Hainey dated February 13, 2019 is attached hereto as **Appendix "C"**.
7. The Property Claimants did not initiate the stay application contemplated in the endorsement. Following the passing of that deadline, the Proposal Trustee began to consider what quantum of Sale Proceeds could be immediately distributed to the Company, while retaining sufficient funds in trust to satisfy the proven claims and complete the administration of the Proposal.

8. As part of its analysis, the Proposal Trustee has met with the principal of the Company and provided various banking and accounting records, copies of the proof of claims received, and other requested materials from the administration of the estate.
9. On or about March 21, 2019, the Company advised the Proposal Trustee that it had retained new counsel at McCague Borlock LLP.
10. The Proposal Trustee and its counsel met with Mr. Eric Turkienicz of McCague Borlack on April 5, 2019, on without prejudice basis, to discuss the outstanding issues that must be addressed in order to complete the administration of the estate, with a view to determining the amount of Sale Proceeds to be immediately paid to the Company.
11. At the April 5 meeting, the Proposal Trustee tabled a draft schedule setting out a proposal for dealing with the remaining Sale Proceeds. The draft schedule provides for the following:
 - payment of interim dividends to creditors whose claims are not disputed by the Company;
 - a holdback of a sum sufficient to pay, in full, the claims submitted by creditors that are disputed by the Company. The Proposal Trustee does not propose to distribute any amounts to these creditors until such time as any objection motions are determined or settled;
 - payment to the City of Toronto of an agreed settlement amount arising from two fire code violations issued against the Company and Avison Young in relation to the Duncan Mill Property;
 - payment of agreed settlement amounts relating to the legal costs incurred by the First Mortgagee and the Second Mortgagee;
 - payment of outstanding professional fees to the end of March 2019; and
 - a holdback of a sum sufficient to cover future professional fees and ancillary matters, on the understanding that the only remaining matters to be addressed are (a) effecting distributions to creditors, and (b) seeking the Proposal Trustee's discharge. The Proposal Trustee understands that the Company will take carriage of any opposition

motions arising from the disallowance or partial disallowance of any proofs of claim, in accordance with the process for addressing such objections set out in the Order dated June 12, 2018 (the “**Proposal Approval Order**”); and

- payment to the Company of \$2,800,000, reflecting the balance of the Sale Proceeds after the payments and holdbacks referred to above. This figure reflects the amount available as at April 5, 2019, and will be reduced by any distributions made to the Company for monthly operating expenses after April 5, 2019.

A copy of the draft schedule is attached hereto as **Appendix “D”**. A copy of the Proposal Approval Order is attached hereto as **Appendix “E”**, for reference purposes.

12. To date, the Company has refused to accept the Proposal Trustee’s proposed distribution of Sale Proceeds as set out in the draft schedule. The Proposal Trustee has advised the Company that there are no discretionary items in the draft schedule that can be further adjusted.
13. The nature of the discussions to date have also given the Proposal Trustee cause to be concerned that the Company intends to raise further issues that may result in further disputes and work to be conducted by the Proposal Trustee and its counsel. For example, as of the date of this report, the Company has not confirmed its agreement to an order permitting the Proposal Trustee to distribute to each of the First Mortgagee and the Second Mortgagee an agreed sum for costs. This is despite having been provided with evidence that each of these parties, through counsel, has already come to an agreement with the Company regarding these amounts. Copies of emails reflecting these agreements are attached hereto as **Appendix “F”**.
14. The Proposal Trustee understands that the Company has other concerns with the draft schedule. The Proposal Trustee has requested that the Company articulate its response in writing, in order to better understand the factual and legal basis for the objections. As of the date of this report, the Proposal Trustee has not received such a written response from the Company.

15. On May 8, 2019, the Proposal Trustee received a new proof of claim filed by the Property Claimants, who now assert a 20% interest in any funds that are to be returned to the Company from the Sale Proceeds after creditors have been paid, on the basis of the Chiappetta Decision. A copy of the proof of claim is attached hereto as **Appendix "G"**.
16. As a result of having received this new proof of claim, the Proposal Trustee is of the view that the proposed payment to the Company reflected in the draft schedule must be reduced by a further 20%, to account for an appropriate holdback.

PROOFS OF CLAIM

17. In accordance with the Proposal Approval Order, the Proposal Trustee prepared and provided to the Company a schedule summarizing the proofs of claim that have been submitted, and setting out the Proposal Trustee's preliminary views with regard to which claims should be admitted, or fully or partially disallowed. The Proposal Trustee also provided the Company with copies of the proofs of claim. A copy of the schedule is attached hereto as **Exhibit "H"**.
18. On April 9, 2019, the Company provided the Proposal Trustee with a responding schedule setting out its objection to the Proposal Trustee's proposed admissions.
19. The Proposal Trustee must now move forward with formalizing its position with regard to the filed claims, having the Company formalize its objections, and communicating with creditors in order to schedule opposition motions, as contemplated by the Proposal Approval Order.

All of which is respectfully submitted this 10th day of May, 2019.

CROWE SOBERMAN INC.

Trustee acting under a Notice of Intention to Make a Proposal for
1482241 Ontario Limited, and not in its personal capacity



Graeme Hamilton LIT, CIRP

APPENDIX “A”

both real estate agents in the Toronto area. They are the principals of Homelife Dreams Reality Inc., which is a corporation incorporated pursuant to the laws of Ontario ("Homelife").

[2] In 2012, the Claimants wanted to purchase a commercial property located at 240 Duncan Mill Road in Toronto, Ontario (the "Property"). The registered legal owner of the Property was 148, an Ontario corporation wholly owned by Alain Checroune ("Checroune") that carried on business buying, selling and managing commercial properties. 148 held the Property as trustee for Checroune.

[3] The Claimants attempted to purchase the Property from 148, but were unsuccessful because of issues with financing and title. In a second attempt to ultimately acquire the Property, the Claimants entered into an agreement with Checroune to buy 100% of 148's shares.

[4] By way of Share Purchase Agreement signed on June 22, 2012, the Claimants and Checroune agreed that Checroune would transfer 20% of the shares of 148 to the Claimants immediately, and that the balance of the shares would be transferred upon payment in full, with an October 1, 2015 closing date (the "June 22 Agreement"). By way of Amended Trust Declaration signed on the same day, the Claimants and Checroune agreed that Checroune would transfer and assign 20% of his beneficial interest in the Property to the Claimants (the "Amended Trust").

[5] The sale of the balance of the shares did not close.

[6] On June 13, 2014, the Claimants commenced an action against 148 and Checroune, seeking in part a declaration that they are beneficial owners of a 20% interest in the Property. A Fresh as Amended Claim was issued in November 14, 2016. Homelife was added as a party. The Claimants sought in part a declaration that Checroune's conduct as alleged therein was oppressive. This action was stayed when on October 13, 2017, 148 filed a Notice of Intention to Make a Proposal (the "Proposal Proceedings") pursuant to s. 67 of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 (the "BIA").

[7] Crowe Soberman Inc. was appointed as the Proposal Trustee (the "Proposal Trustee"). The Proposal Trustee sold the Property to an arms-length purchaser at the end of February 2018. This agreement was approved by the Court on March 16, 2018. 148 submitted a proposal to its creditors on April 13, 2018. A requisite majority of creditors voted in favour of the proposal at a meeting held on May 4, 2018. The proposal was also approved by Court on June 12, 2018.

[8] The Claimants advanced two claims in the Proposal Proceedings: two property proofs of claim (collectively the "Property Claim") collectively claiming a 20% beneficial interest in the Property (or the proceeds from sale) based on the Amended Trust and an unsecured proof of claim (the "Litigation Claim") seeking damages for lost opportunity and lost profit based on 148's alleged oppressive conduct, along with legal fees incurred related to the 2014 litigation.

[9] The Proposal Trustee disallowed the Property Claim by way of Notice of Disallowance dated May 17, 2018.

[10] Although the Proposal Trustee has not disallowed the Litigation Claim, Justice Dunphy ordered that the Litigation Claim may be treated as disallowed for the purposes of this hearing.

[11] The Claimants appeal the disallowances, seeking a declaration that both the Property Claim and the Litigation Claim are valid and enforceable claims in the Proposal Proceedings. For reasons set out below, I have concluded that the Claimants have failed to establish a proprietary interest in the Property either by way of express trust or constructive trust, such that the Property Claim is neither valid nor enforceable. Further, the Claimants have failed to prove that 148 acted in a manner that was oppressive to their interests such that the Litigation claim is neither valid nor enforceable.

Factual Background

Negotiation of the June 22 Agreement

[12] By Trust Declaration dated September 21, 2005, 148 held legal title to the Property in trust as a bare trustee for Checroune as the beneficiary (the "2005 Trust Declaration"). Pursuant to the 2005 Trust Declaration, 148 agreed to remit to Checroune all revenue owing from the Property and Checroune agreed to indemnify 148 for all liabilities relating to the Property.

[13] On February 8, 2012, the Claimants submitted an Agreement of Purchase and Sale to purchase the Property for \$15 million (the "APS"). The Claimants intended to purchase the Property themselves, without partners. The Claimants were unable to purchase the property as contemplated by the APS. The Claimants encountered issues with assuming the first mortgage without a penalty considering a maturity date of October 2015, with a Certificate of Pending Litigation that was registered against the property and with financing the purchase.

[14] In consultation with their lawyer at the time, the Claimants developed a different way to achieve their end goal of owning the Property: they would purchase 100% of the shares of 148, the owner of the property, for \$15 million.

[15] On June 6, 2012, the Claimants and Checroune entered into a written agreement whereby the Claimants would purchase Checroune's shares in 148 (the "June 6 Agreement"). 148 was not a party to the June 6 Agreement. The June 6 Agreement reads in relevant part:

- (a) 148 is the registered owner of the Property and the Property is subject to a mortgage in the amount of \$9 million.
- (b) Checroune will sell the Claimants 36.67% of the issued shares of 148 with the further 63.33% to be made available by Checroune to the Claimants and to be transferred after all payments are made.
- (c) The price payable for the purchased shares will be based on the sum of \$6 million as the value of 148 subject to adjustments.
- (d) The Claimants shall pay a deposit of \$200,000 and a further sum of \$2 million upon closing.

- (e) Closing means 10 days after the Claimants sign the offer. If for any reason the transaction does not close, the offer becomes null and void and the deposit will be returned to the Claimants.
- (f) The Claimants shall have the rights of a 36.67% shareholder following closing and will be entitled to vote on the election of the board of directors, the appointment of officers of the corporation and to share in the distribution of the profits of 148 to the extent of their shareholding.
- (g) The Claimants have the right to manage the Property, collect rents and enter into leases with Checroune's written consent.
- (h) Until the Claimants buy the full 100% of the shares in 148 as contemplated in the Agreement, they will not be permitted or entitled to manage the business of 148, retain profits, sell or re-mortgage the Property.
- (i) Upon payment in full, Checroune will transfer the balance of the shares to the Claimants.
- (j) Any liabilities arising out of matters occurring on or before the closing date or from existing litigation shall remain the responsibility of Checroune.
- (k) The Claimants agree to accept title to the shares subject to the litigation brought by 214688 Ontario Ltd., provided that Checroune pay all costs related to this litigation and any damages resulting from this litigation.

[16] On June 22, the parties amended the June 6 Agreement to reflect the following:

- (a) The Closing Date means Thursday June 21, 2012.
- (b) The Claimants agree to purchase only 20% of the issued shares of 148 from Checroune for a total of \$1.2 million upon closing, \$200,000 of which has already been paid. Upon payment of this sum, Checroune shall transfer to the Claimants 20% of the shares of 148.
- (c) The Claimants shall have the rights of a 20% shareholder following closing.
- (d) The Claimants can thereafter purchase the remaining 80% of the shares of 148 from Checroune. The purchase price for the remainder of the shares shall be \$4.8 million (the remaining \$13.8 million price adjusted by the \$9 million existing mortgage). The closing date for the transfer of the balance of the shares shall be October 1, 2015, however, if the property can be refinanced without penalty then the closing date shall be October 1, 2014.
- (e) Until the Claimants purchase 100% of Checroune's shares, they will not be entitled to manage the business of the corporation, retain profits, sell or re-mortgage the property owned by the business.

- (f) The litigation shall be finally resolved by the date of the transfer of the balance of shares.

[17] On June 21, 2012, the Claimants paid Checroune \$1 million, in addition to the \$200,000 deposit previously paid on June 6, 2012.

[18] On June 21 and 22, 2012 a number of documents were exchanged between the parties including:

- (a) A director's resolution, signed by Checroune as sole director of 148, transferring 20% of his shares in 148 to the Claimants,
- (b) Share Certificates in respect of 20% of the shares of 148,
- (c) An Undertaking signed by Checroune to sell the remaining 80% of the shares to the Claimants, and
- (d) The Amended Trust Declaration.

[19] The Amended Trust Declaration amends the 2005 Trust Declaration wherein 148 as legal title-holder to the Property granted Checroune a 100% beneficial interest in the property. The Amended Trust assigns 20% of Checroune's beneficial interest in the Property to the Claimants. The Amended Trust Declaration was not registered on title and not referenced in the June 22 Agreement.

Subsequent Disputes between the Claimants and Checroune

[20] Subsequent to the June 22 Agreement, the Claimants began to lease the 6th floor of the Property from 148 as office space for Homelife. In or about June 2014, the Claimants came to believe that Checroune intended to sell the Property to another purchaser. This prompted them to commence the 2014 Litigation. The Claimants state that in August 2014, Checroune began a campaign of intimidation and harassment so that they would no longer wish to purchase the balance of the shares. They allege that Checroune turned off the lights, elevators and heating during business hours and canceled valid access cards and parking passes. Checroune denies that he engaged in such conduct. There is no third-party evidence before the Court.

[21] In October 2014, 148 terminated Homelife's tenancy, alleging that it breached the terms of its lease with 148 by not obtaining Checroune's consent prior to entering into sublease agreements. The Claimants deny this.

[22] On October 27, 2014, Justice Whitaker granted an injunction order restraining 148 and Checroune from disrupting Homelife's business as well as from selling, mortgaging, encumbering or dealing with the Property or shares in 148 without the Claimants' consent. Checroune nonetheless obtained a second mortgage on the Property, which was registered on title on September 21, 2016, without the Claimants' knowledge.

[23] On October 1, 2015, Checroune tendered to the Claimants in an effort to close the transfer of the remaining 80% of the shares. The Claimants refused to close. Their position is that they did not close on the purchase of the remaining 80% of the shares because Checroune failed to discharge the Certificate of Pending Litigation from title to the Property, as required by the June 22 Agreement. The Claimants did not attempt to extend the closing date and did not waive that condition of closing.

[24] In July 2016, Homelife left the Property and was no longer a tenant of 148.

148's Bankruptcy

[25] On October 13, 2017, 148 commenced restructuring proceedings by filing a Notice of Intention to Make a Proposal. Crowe Soberman Inc. was appointed as trustee with respect to the proposal.

[26] On November 3, 2017, the Court authorized the Proposal Trustee to sell the Property in accordance with a court-approved sale process. The Court expressly stated that its authorization did not determine the validity or enforceability of the agreements to which the Claimants were a party with Checroune.

[27] At the end of February 2018, the Proposal Trustee entered into an Agreement of Purchase and Sale with respect to the Property with an arms-length purchaser. This agreement was approved by the Court on March 16, 2018. The approval order provided that the sale proceeds should be held by the Proposal Trustee in trust.

[28] On April 13, 2018, 148 submitted a Proposal to its creditors.

[29] On April 25, 2018, the Claimants advanced the following claim in the Proposal Proceedings, which is subject to this appeal:

Two property proofs of claim collectively claiming a 20% beneficial interest (15% for Hussaini and 5% for Ahmadi) in what are now proceeds from the sale of the Property based on the language of the Amended Trust Declaration (the Property Claim).

[30] On May 3, 2018, the Claimants advanced the following claim in the Proposal Proceedings, which is also subject to this appeal:

Two unsecured proofs of claim seeking damages in the amount of approximately \$42 million (the Litigation Claim).

[31] On May 4, 2018, a requisite majority of creditors voted in favour of the Proposal. The Claimants did not vote as their claims were treated as contingent claims.

[32] On June 12, 2018, the Proposal was approved by the Court. The Claimants did not oppose the approval of the Proposal or appeal the order approving it.

[33] For the purposes of this appeal, the Claimants have reduced their Litigation Claim from 42 million to 4 million, being the difference between the price they offered for the Property under the June 22 Agreement (\$15 million) and the price the Proposal Trustee secured for the Property in the sale concluded in the Proposal (\$19 million).

Issues

[34] The parties agree that this appeal presents to the Court the following issues:

- (1) Do the Claimants each have a trust claim against 148 pursuant to s.67 of the BIA in respect of the Sale Proceeds of the Property currently held by the Proposal Trustee in trust?
- (2) Should the Court find that a constructive trust arose benefitting the Claimants in respect of the Sale Proceeds of the Property currently held by the Proposal Trustee in trust or in respect of the \$1.2 million paid by them to Checroune?
- (3) If the Claimants each have trust claims with respect to the Sale Proceeds, what priority, if any, should be afforded to those trust claims?
- (4) Do the Claimants have an unsecured claim for damages against 148 with respect to the breaches alleged in the Litigation Claim?

Analysis

1. *Do the Claimants each have a trust claim against 148 pursuant to s.67 of the BIA in respect of the Sale Proceeds of the Property currently held by the Proposal Trustee in trust?*

[35] I have concluded that the Claimants do not have a trust claim against 148 pursuant to s.67 of the BIA in respect of the proceeds of the Property currently held by the Proposal Trustee in trust.

[36] The Claimants assert that the language of the Amended Trust created an express trust. The Amended Trust states that Checroune transfers and assigns 20% of his 100% beneficial interest in the Property to the Claimants. Despite this language however, it cannot be said that there was sufficient certainty of intention to create a trust with respect to the Property. The language of the 2012 Amended Trust Declaration must be interpreted contextually, considering the whole of the circumstances, including the factual matrix within which it was made and the conduct of the parties thereafter: *Antle v. Canada*, 2010 FCA 280, 413 N.R. 128, leave to appeal refused, [2010] S.C.C.A. No. 462 at paras. 11-14.

Law of Express Trust

[37] Certainty of intention is one of the three certainties necessary to create a trust. In order for a trust to have certainty of intention, the language used must show that the settlor intended that the recipient must hold the property on trust for the benefit of the beneficiary: *Donovan*

W.M. Waters, *Waters' Law of Trusts in Canada*, 4th ed (Toronto: Carswell, 2012) at 140. However, there is no magic in the word "trust". Intention is a matter of substance over form, and language alone cannot create a trust: *Willis (Litigation Guardian of) v. Willis Estate* (2006), 23 E.T.R. (3d) 292 (Ont. S.C.J.), affirmed, 2007 ONCA 552, 33 E.T.R. (3d) 187. It is important to interpret the words of a document purporting to create a trust in context. As stated by the Federal Court of Appeal in *Antle* at para. 12: "A test that requires one to look at all of the circumstances, and not just the words of the trust deed, is an approach that appears to have been adopted by Canadian courts generally."

[38] The other two certainties are certainty of object and certainty of subject-matter. Certainty of object is the requirement that the beneficiary of the trust must be ascertainable. Certainty of subject-matter is the requirement that the property to be held on trust must be clearly identifiable at the time the trust comes into existence. The beneficial interest which each beneficiary should have in that property must also be clearly identifiable. These certainties are required so that trustees, courts, and settlors can be sure that a trust is being properly administered according to its terms.

Application

[39] 148 submits that the Claimants have failed to satisfy their onus in proving certainty of subject matter. It notes that the Amended Trust refers to the Property including Assets such as chattels, fixtures, equipment, and leases and rental agreements. This, it argues, is not only ambiguous in and of itself but is also inconsistent with the property the Claimants set out to acquire, namely 100% of the shares of 148. I disagree. The Amended Trust agreement adopts the definition of the Property in the 2005 Trust Agreement and provides further certainty of subject-matter in terms of what a proprietary interest in the Property would include. It is not inconsistent with the Claimants' intended ownership of 100% of the shares of 148, as 148 holds legal title to the Property and its assets.

[40] 148 further submits that the Claimants have not demonstrated certainty of intention to create a trust with respect to the Property. The Claimants' position is that they have discharged this burden. They submit that the explicit language of the Amended Trust is the best evidence in determining certainty of intention. Certainty of intention is satisfied, it is argued, by the unambiguous language of the Amended Trust, which clearly assigns 20% of Checroune's beneficial interest in the Property to the Claimants. I disagree.

[41] Certainty of intention relates to a clear intention that the trustee should hold property for the benefit of someone else. No particular form of words is required or determinative: *Willis (Litigation Guardian of) v. Willis Estate*, 2007 ONCA 552, 33 E.T.R. (3d) 187 at para. 2. In this case, it is important to consider the language of the 2012 Amended Trust Declaration contextually with the parties' stated and consistent intention for executing the Amended Trust and their conduct thereafter.

[42] The Claimants' intent was always to own the Property outright. They had no intention to be joint owners of the Property with Checroune. Checroune's intent was always to sell the Property outright. He had no intention to sell only part of the Property.

[43] It was only when the Claimants were unable to purchase the Property that they turned their efforts to owning 100% of the shares of 148. The Claimants had no intention to be minority shareholders of the business of 148. They did not want any partners. They wanted to own 148 outright so they could ultimately own the Property. Checroune's intent was always to sell 100% of his shares of 148. He had no intent to work with a minority shareholder. If he could not sell the Property outright, he wanted to sell all of the shares of 148.

[44] Ahmadi testified that the Claimants' lawyer put together the strategy to purchase 100% of Checroune's shares in 148 because the Claimants wanted to own the Property but were unable to purchase it outright. The parties intended that the Claimants would acquire 100% of the shares of 148 for \$15 million. The share transaction was subsequently structured so the Claimants initially acquired 36.67% of the shares (later amended to 20% of the shares) and were obligated to purchase the balance at a later date, to be transferred upon further payment. On cross examination, Ahmadi admitted that the parties made this arrangement because the Claimants could not obtain financing to purchase 100% of the shares outright, considering the Certificate of Pending Litigation registered on the Property. The share purchase was therefore structured in two tranches, but it was always the parties' shared intention that Checroune would sell 100% of his shares in 148 to the Claimants.

[45] It was in this context, upon the purchase of the first 20% of the shares and prior to the full completion of the intended share purchase, that the Amended Trust was executed.

[46] Ahmadi testified that the Claimants did not understand the details of the documents and did not understand the specifics relating to the Amended Trust, including the differences between beneficial and legal interests. Her evidence is that the Claimants understood that the purpose of the Amended Trust was "to protect our interest and to become the owners." It provided a measure of security to ensure that Checroune did not sell the Property without the Claimants' knowledge, pending the completion of the sale of the remaining shares pursuant to the June 22 Agreement. It therefore further served as an incentive to Checroune to comply with his obligations as defined in the June 22 Agreement in facilitating the sale of the remaining shares.

[47] Ahmadi described the Amended Trust as "extra security" to protect the Claimants' interests in ultimately acquiring 100% of the shares of 148 and, as a result, 100% of the Property. There is no evidence to suggest that at the time of the Amended Trust, the Claimants intended to receive a 20% proprietary or beneficial interest in the Property. Rather, the evidence is that the Claimants intended the Amended Trust to serve as security towards the close of the sale of the remaining 80% of the shares, and nothing more.

[48] Similarly, Checroune's evidence is that the Amended Trust was intended to act as "security" or to provide "additional security" pending the intended transfer of the remaining 80% of the shares. He states that he never intended to convey any part of the Property until the Claimants paid in full for 100% of the shares as contemplated by the June 22 Agreement.

[49] The parties' stated shared intention in creating the Amended Trust is demonstrated by their conduct subsequent its execution. At no time did the parties act in a manner consistent with the Claimants' enjoying a beneficial interest in the Property. For over three years, the Claimants

did not contribute to the ongoing expenses related to the Property, including maintenance and any payments toward the existing \$9 million mortgage, despite the obligation of the beneficial owner pursuant to the 2005 Trust Declaration to indemnify 148 for all liabilities relating to the Property. Similarly, at no time did the Claimants receive a share of profits derived from the Property, despite 148's obligation pursuant to the 2005 Trust Declaration to remit all revenue owing from the Property to the beneficial owner. Significantly, this conduct is also consistent with the parties' intention as reflected in the June 22 Agreement that until the Claimants purchased 100% of Checroune's shares, the Claimants would not be entitled to retain profits.

[50] The parties' demonstrated conduct fails to indicate the Amended Trust was intended to transfer a partial proprietary interest. Rather, it underscores their stated intention that the Amended Trust was intended to protect the Claimants' contractual agreement with Checroune to complete the purchase of the remaining shares.

[51] For these reasons, I have concluded the Amended Trust does not constitute an express trust as the Claimants have not demonstrated that there was certainty of intention.

The Amended Trust post-October 2015

[52] The transfer of the remaining shares as intended by the parties and contracted by the June 22 Agreement did not close on October 1, 2015. I agree with 148 that the Amended Trust, intended by the parties to secure the closing, is therefore rendered moot as of October 2015 as there is nothing more to secure.

[53] The Claimants paid Checroune \$1.2 million for 20% of the shares of 148 in furtherance of their intention as set out in the June 22 Agreement to acquire 100% of the shares. Today, they own 20% of the shares of a bankrupt company. At no time did they wish to own only 20% of the shares. The Claimants may have legal recourse against Checroune in this regard as a party to the June 22 Agreement. They do not have a claim against 148, however, with respect to any rights arising from the Amended Trust.

2. *Should the Court find that a constructive trust arose benefitting the Claimants in respect of the Sale Proceeds of the Property currently held by the Proposal Trustee in trust or in respect of the \$1.2 million paid by them to Checroune?*

[54] In the alternative, the Claimants submit that a constructive trust ought to be imposed over the sale proceeds in order to recognize their beneficial interest. It is their position that unless this remedy is applied, 148 and its creditors will be unjustly enriched at the Claimants' expense.

Law of Constructive Trust

[55] A constructive trust arises by operation of law as a means for equity to combat behaviour that is contrary to good conscience. It is a remedy for unconscionable transactions: *Soulos v. Korkontzilas*, [1997] 2 S.C.R. 217 at paras. 18, 32, 45. Constructive trusts can arise in many circumstances, including to remedy an unjust enrichment; or to confiscate profits flowing from a wrong.

[56] The Claimants advance arguments based on both circumstances. They claim that 148 has been unjustly enriched, and that 148 has wrongfully breached an equitable duty to them and profited as a result.

[57] The elements of an unjust enrichment claim are: a benefit to one party, a corresponding deprivation to the other, and no juridical reason for the transfer of value: *Kerr v. Baranow*, 2011 SCC 10, [2011] 1 S.C.R. 249 at para. 32. The enrichment must correspond with a deprivation from the plaintiff. The purpose of the unjust enrichment doctrine is to reverse unjust transfers. Accordingly, it must first be determined whether wealth has moved from the plaintiff to the defendant: *Professional Institute of the Public Service of Canada v. Canada*, 2012 SCC 71, [2012] 3 S.C.R. 660 at paras. 151-152. In order for a constructive trust to arise to remedy the unjust enrichment, monetary damages must be inadequate to compensate the plaintiff, and there must be a link between the benefit alleged to have been provided and the property over which the constructive trust is claimed; *Peter v. Beblow*, [1993] 1 S.C.R. 980 at para. 31.

[58] The Supreme Court in *Soulos* at para. 45 outlined four conditions that should generally be satisfied in order for a constructive trust based on wrongful conduct to arise:

- (1) The defendant must have been under an equitable obligation, that is, an obligation of the type that courts of equity have enforced, in relation to the activities giving rise to the assets in his hands;
- (2) The assets in the hands of the defendant must be shown to have resulted from deemed or actual agency activities of the defendant in breach of his equitable obligation to the plaintiff;
- (3) The plaintiff must show a legitimate reason for seeking a proprietary remedy, either personal or related to the need to ensure that others like the defendant remain faithful to their duties; and
- (4) There must be no facts which would render the imposition of a constructive trust unjust in all the circumstances of the case.

Application

[59] The Claimants argue that 148 has been enriched by its breach of its duty as trustee to the Claimants. They argue that it has utilized the Property for its own benefit both prior to and after the filing of the Notice of Intention to Make a Proposal without regard to the Claimants' beneficial interest in the Property. This position, however, presumes that the Claimants enjoy a beneficial interest in the Property. For the reasons outlined above, I have concluded that they do not. 148 does not owe an equitable duty as trustee to the Claimants. Therefore, the first condition outlined by the Supreme Court in *Soulos* is not met.

[60] The Claimants further argue that 148 has been unjustly enriched to the extent that Checroune used the \$1.2 million he received from the Claimants to satisfy amounts purportedly owed by Homelife to 148. This submission confuses the various contractual relationships of the Claimants, Homelife, Checroune and 148. The payment by the Claimants of \$1.2 million was

made to Checroune pursuant to the June 22 Agreement. If there is an enrichment, it is to Checroune personally. Neither Homelife nor 148 were parties to the contract pursuant to which the Claimants paid Checroune the \$1.2 million.

[61] The Claimants submit that they have been deprived of the funds they paid in good faith in furtherance of their intention to acquire 100% of the shares of 148, the security they relied upon in the form of the Amended Trust and any benefits agreed upon in the June 22 Agreement. Again, if there is a deprivation it is at the hands of Checroune personally and not 148. The Claimants' alleged deprivation does not correspond to 148's alleged enrichment.

[62] Finally, the Claimants argue that there is no justification at law for 148 to retain "these benefits". For reasons noted above, however, it cannot be said that 148 was enriched as a non-party to the June 22 Agreement.

3. *If the Claimants each have trust claims with respect to the Sale Proceeds, what priority, if any, should be afforded to those trust claims?*

[63] I have concluded that the Claimants do not have trust claims with respect to the sale proceeds. I will nonetheless analyze the issue of priority, in case I am incorrect in this conclusion.

[64] The Claimants argue that if it is found that the Amended Trust grants them a proprietary interest, they are entitled to 20% of the sale proceeds, excluding all amounts paid under the Second Mortgage and any amounts paid to 148 and its counsel under the Proposal.

[65] 148 argues that if it is found that the Claimants are beneficiaries in accordance with the Amended Trust, 148's liabilities in respect of the Property are properly deducted from the sale proceeds before any residual benefit is paid to the Claimants or Checroune.

[66] I agree with 148. The 2005 Trust Declaration provides that 148 holds legal title to the Property as bare trustee for Checroune, who holds the entire beneficial interest in the Property. It further states that Checroune as beneficiary shall fully indemnify 148 as trustee from all liabilities, obligations, claims, charges, encumbrances and responsibilities, as well as all costs and expenses in connection with the Property including legal expenses. These terms were not altered in the Amended Trust. The terms of the trust itself are such that the Claimants do not have a right to the sale proceeds until 148's obligations are otherwise satisfied.

[67] This is consistent with the nature of a beneficiary's rights to the trust property. The beneficiary has no rights over the trust property, only rights over the trustee's actions with regard to the trust property. The trustee is the legal owner of the trust property, and has the rights necessary to direct trust assets to pay trust creditors. A trustee further has a right to reimburse himself or herself out of trust assets. For that purpose, trustees have priority as against beneficiaries in the trust property: Lionel Smith, "Trust and Patrimony", (2009) 28 ETPJ, 332.

[68] Where a trust directs that the trustee should make certain payments to a beneficiary, the beneficiary usually receives that benefit subject to deductions for the expenses of the trust property. This issue commonly arises in cases where there is a dispute between successive

beneficiaries about from where trust expenses should be deducted. If a beneficiary is entitled to the income produced by trust capital for life, for example, they usually receive that income subject to deduction for ordinary, recurring expenses such as repairs or property taxes. Major occasional improvements or expenditures are usually paid out of the trust capital, which may be subject to the beneficial interest of a different beneficiary. In all cases, it is always open to the settlor to dictate how the trust expenses are to be paid: *Waters' Law of Trusts in Canada* at 1028.

[69] If the Claimants are beneficiaries under the Amended Trust therefore, the nature of the Claimants' rights are such that 148's liabilities are deducted from the sale proceeds before any residual benefit is paid to the Claimants or Checroune. To do otherwise would be to ignore the express language of the Amended Trust and grant a priority contrary to that recognized in law.

4. *Do the Claimants have an unsecured claim for damages against 148 with respect to the breaches alleged in the Litigation Claim?*

[70] As shareholders of 148, the Claimants are permitted to apply for a court order under the oppression remedy provisions of the *Business Corporations Act (Ontario)*, R.S.O. 1990, c. B. 16, s.248 (the "OBCA"). The oppression remedy provisions of the OBCA state that where a court is satisfied that the business or affairs of the corporation have been carried on or conducted in a manner that is oppressive or unfairly prejudicial to or that unfairly disregards the interests of a shareholder, the court may make an order to rectify the matters complained of (s.248(2)).

[71] The Litigation Claim is based on the allegations as set out in the Fresh as Amended Statement of Claim dated November 14, 2016. In that Claim, the Claimants seek a declaration of oppressive conduct or damages for oppressive conduct as against Checroune personally, not 148. The Claimants plead therein that 148 was an agent for Checroune and that Checroune is personally liable for the actions of 148.

[72] The allegations of improper conduct before the Court are similarly restricted to allegations about Checroune's actions. Ahmadi states (and Checroune denies) that Checroune turned off the lights and the elevators in the building at the Property and that he harassed subtenants.

[73] The onus is on the complainant pleading oppressive conduct to identify the expectation that he or she claims has been breached by the conduct in question and to establish that such expectations are reasonable: *BCE Inc. v. 1976 Debentureholders*, 2008 SCC 69, [2008] 3 S.C.R. 460 at para. 70.

[74] The Claimants have not provided any evidence in terms of their reasonable expectations. Ahmadi states that Checroune never involved the Claimants in the management of 148, never invited them to a shareholders' meeting and kept them in the dark about 148's operations and finances. She did not state that this amounted to a breach of a reasonable expectation.

[75] Practically speaking, there were only two shareholders of 148. It defies commercial reality that a shareholders' meeting would be called, particularly as the Claimants did not request a meeting and the parties spoke daily about the business of 148. Contrary to Ahmadi's evidence,

Checroune testified that he provided the Claimants with financial information about 148 and access to information in general.

[76] The Claimants argue that the June 22 Agreement created reasonable expectations that they would gain the associated rights of a 20% shareholder. The Agreement clearly states, however, that until the Claimants became 100% shareholders of 148, they could not manage the business, retain profits from the business, or mortgage or sell the business.

[77] In my view, therefore, the Claimants have failed to demonstrate that 148 engaged in oppressive conduct or breached their reasonable expectations.

Damages

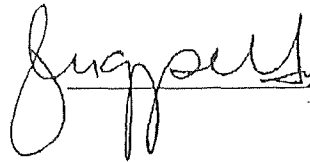
[78] For the purpose of damages, the Claimants argue that they reasonably expected that they would become the owners of the Property. It is appropriate, they submit, to therefore award them damages in the amount of \$4 million, being the difference between the price that they proposed to pay under the June 22 Agreement and the price the Property ultimately sold for under the Proposal.

[79] The Claimants have failed to consistently state their reasonable expectations. They have failed to explain how this remedy is connected to their reasonable expectations pursuant to the June 22 Agreement or the alleged oppressive conduct of 148. The Claimants' damages would only be based on the difference between the price in their agreement and the price the Property ultimately sold for if the agreement had been for the purchase of the Property. There is no evidence of this. In fact, the Claimants concluded an agreement to purchase 100% of Checroune's shares in 148, not the Property. If oppressive conduct was found, which it was not, damages would appropriately flow from the failed June 22 Agreement, and would reflect the impact of the oppressive conduct on the price of 148's shares.

Disposition

[80] It is for these reasons the appeal is dismissed.

[81] The parties are encouraged to agree on an appropriate costs award. If unable to do so, I will receive submissions of not more than three pages in writing. 148 shall submit their submissions within 30 days. The Claimants shall submit their submissions in response within 20 days thereafter. A Reply, if any, shall be submitted within 10 days thereafter.



V.R. Chiappetta J.

CITATION: Hussaini v. Crowe Soberman Inc., 2019 ONSC 642
COURT FILE NO.: 31-2303814
ESTATE FILE NO.: 31-2303814
DATE: 20190124

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:

JAMSHID HUSSAINI AND NEELOFAR AHMADI

Appellants

- and -

CROWE SOBERMAN INC., TRUSTEE ACTING IN
THE PROPOSAL OF 1482241 ONTARIO LIMITED
("148")

Respondent

REASONS FOR JUDGMENT

V.R. Chiappetta J.

APPENDIX “B”



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Attention: Miranda Spence

Dear Sirs/Madam:

Re: Hussani et al. v. 1482241 Ontario Limited et al.
Court File No. 31-2303814

Enclosed please find the Notice of Appeal and Appellant's Certificate Respecting Evidence which are being served upon you pursuant to the **Rules of Civil Procedure**.

Yours truly,

MILLER THOMSON LLP

Per:

Craig A. Mills
CAM/mm

Enclosures
37090546.1

Court File No. 31-2303814
Court of Appeal No.

COURT OF APPEAL FOR ONTARIO

BETWEEN :

JAMSHID HUSSAINI and NEELOFAR AHMADI

Appellants
(Appellants in Appeal)

- and -

1482241 ONTARIO LIMITED AND CROWE SOBERMAN INC.,
IN ITS CAPACITY AS THE PROPOSAL
TRUSTEE FOR 1482241 ONTARIO LIMITED

Respondents
(Respondents in Appeal)

NOTICE OF APPEAL

THE APPELLANTS, Jamshid Hussaini and Neelofar Ahmadi, **APPEAL** to the Court of Appeal from the order of The Honourable Madam Justice Chiappetta dated January 24, 2019 (the "Order") made at Toronto.

THE APPELLANTS ASK that the Order be set aside and an order be granted as follows:

1. an order declaring that the Appellants have a valid trust claim pursuant to s. 67 of the *Bankruptcy and Insolvency Act* ("BIA") against 1482241 Ontario Limited ("148").
2. in the alternative, an order declaring that the Appellants have a constructive trust claim in respect of the Sale Proceeds of the Property (as defined below);
3. an order declaring that the Appellants' trust claims rank in priority to the creditors of 148 in respect of the Sale Proceeds;

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4. an order declaring that the Appellants have a valid unsecured claim for damages against 148 pursuant to s. 248 of the *Business Corporations Act* (Ontario) ("**Unsecured Claim**");
5. an order for costs of this Appeal in favour of the Appellants.

THE GROUNDS OF APPEAL are as follows:

1. In the proposal proceedings of 148, the Appellants appealed the disallowance of their property claims by Crowe Soberman Inc., the trustee acting under the proposal of 148 (the "**Trustee**"). Their unsecured claims filed with the Trustee were also deemed to be disallowed by the Court and, accordingly, were subject to the Appellants' appeal.
2. The Motion Judge dismissed the Appellants' appeal based on her conclusion that the Appellants do not have trust claims pursuant to s. 67 of the BIA in respect to the property located at 240 Duncan Mill in Toronto (the "**Property**") or the sale proceeds resulting from the sale of the Property ("**Sale Proceeds**"). The Motion Judge also dismissed their appeal of the deemed disallowance of their Unsecured Claim.
3. The decision of the Motion Judge is a final determination of the Appellants' economic interests. The decision results in a significant loss to the Appellants as it forecloses the Appellants' claim to a beneficial interest in the Property and the resulting Sale Proceeds and negates their ability to recover the \$1,200,000 they paid in good faith to acquire the shares of 148 and a 20% beneficial interest in the Property and their claim for damages pursuant to the *Business Corporations Act* (Ontario).

4. The effect of the Motion Judge's decision is that 148 will have been able to use the BIA proposal regime to discharge the Appellants' valid trust claims and evade the ramifications of its wrongful conduct – a result which is both commercially unreasonable and inequitable.

Express Trust

5. The Appellants respectfully submit that the Motion Judge made the following errors in finding that the Amended Trust Declaration dated June 22, 2012 (the "**Amended Trust**") did not establish an express trust:

- (a) The Motion Judge erred in law in failing to apply the general principles for interpreting a commercial contract established in *Sattva Capital Corp. v. Creston Moly Corp.*, 2014 SCC 53;
- (b) The Motion Judge erred in failing to consider: (1) the clear language of the Amended Trust establishing the mutual intention of the parties to grant the Appellants' a beneficial interest in the Property; (2) the objective evidence available to the Court underlying the negotiation and execution of the Amended Trust; (3) the purpose that the Amended Trust served in the context of the underlying transaction; and (4) the parties' mutual evidence that the Amended Trust was to serve as additional security or protection for the Appellants pending the closing of the Appellants' acquisition of the balance of the shares in 148;
- (c) the Motion Judge erred by failing to interpret the Amended Trust in a manner that accords with commercial principles and good business sense;

- (d) The Motion Judge improperly relied upon the subjective intention of Alain Checroune ("**Checroune**") and the conduct subsequent to the execution of the Amended Trust as opposed to the surrounding circumstances known to the parties at the time of the formation of the contract;
- (e) The Motion Judge erred in imposing an implied term to the Amended Trust that it was rendered moot due to the parties' failure to close under the share purchase agreement ("**SPA**") on October 1, 2015, based on the fact that: (1) the Amended Trust contains no term or provision to this effect, and (2) the failure to close was solely due to the failure of 148 and Mr. Checroune to resolve all outstanding litigation as of that date as required by the terms of the SPA. The effect is that the Motion Judge created a new agreement;
- (f) The Motion Judge erred in relying upon the Appellants' evidence that they did not intend to be minority shareholders or partners with Mr. Checroune indefinitely to conclude that they did not intend to acquire a beneficial interest in the Property. The Appellants' uncontradicted evidence was that they always intended to become owners of the Property;
- (g) The Motion Judge, in assessing the intention of the parties, erred in disregarding the terms of the SPA that entitled the Appellants to manage the Property, enter into leases and collect rents;

6. The Appellants respectfully submit that the Motion Judge's conclusion that they did not have any claim against 148 with respect to any rights arising from the Amended Trust is: (i) inconsistent with her finding that the Appellants own 20% of the shares of

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148; and (ii) disregards the clear and unambiguous wording of the Amended Trust which states that the Appellants hold a 20% beneficial interest in the Property;

Constructive Trust

7. The Motion Judge erred in concluding that 148 did not owe an equitable obligation as trustee to the Appellants in the face of the unambiguous wording of the Amended Trust;

8. The Motion Judge erred in failing to find that 148 was enriched by: (i) its contravention of the Order of Justice Whitaker dated October 27, 2014 (the "**Injunction Order**") in granting a second mortgage in September 2016 on the Property in the amount of \$1.42 million (the "**Second Mortgage**"); and (ii) being able to utilize the Property and the resulting Sale Proceeds both prior to filing its proposal and as the central component to its BIA proposal without regard for the Appellants' beneficial interest;

9. The Motion Judge erred in failing to consider the inequitable result that arises from the Appellants' beneficial interest being disallowed due to the wrongful conduct of 148 and its principal, including the failure to satisfy a term in the SPA (which was in their sole control) and their oppressive conduct toward the Appellants and their company;

10. The Motion Judge erred in failing to consider the inequity resulting from 148 benefitting from being able to apply the \$1.2 million personally paid by the Appellants to amounts owed by the Appellants' company, while the Appellants are deprived of their beneficial interest in the Property and the Sale Proceeds;

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Priority

11. The Motion Judge erred in finding that, if the Appellants have valid trust claims, 148's liabilities are properly deducted from the Sale Proceeds prior to any amounts being paid to the Appellants;

12. The Motion Judge erred by finding that the Amended Trust creates an obligation for the Appellants to indemnify 148 as trustee in respect to all of its liabilities despite the fact that the only party identified in the trust documents as having an obligation to indemnify was Mr. Checroune;

13. The Motion Judge erred by disregarding the fact that Checroune specifically agreed to assume responsibility for various liabilities of 148, including legal fees, pursuant to the terms of the SPA.

Unsecured Claim

14. The Motion Judge erred in concluding that Ms. Ahmadi's evidence that the Appellants were: (1) never permitted to exercise their rights as a 20% shareholder, including voting on the election of the board of directors or the appointment of officers of 148; (2) never invited to shareholders' meetings; and (3) never consulted about 148's operations, finances, and expenses, was not sufficient evidence of their reasonable expectations as minority shareholders in respect to their oppression claim.

15. The Motion Judge erred in disregarding 148's refusal to allow the Appellants to participate in the management of the Property, the collection of rents and leasing units in the building despite the clear terms of the SPA as evidence of 148's oppressive conduct;

16. The Motion Judge erred by failing to consider 148's contravention of the Injunction Order by permitting the registration of the Second Mortgage in determining whether oppressive conduct;

17. Such further and other grounds as counsel may advise and this Honourable Court permit.

THE BASIS OF THE APPELLATE COURT'S JURISDICTION IS:

- (a) Section 6(1)(b) of the *Courts of Justice Act*, R.S.O. 1990 c. C43, as amended, as the order under appeal is a final order of a judge of the Superior Court of Justice and is not an order referred to in section 19(1)(a) or an order from which an appeal lies to the Divisional Court under another Act;
- (b) Section 193(c) of the *BIA*, and leave to appeal is not required; and
- (c) In the alternative, if leave to appeal is required under section 193(e) of the *BIA* is required, the Appellants seek leave to appeal and staying the Order pending disposition of the appeal.

February 1 , 2019

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Email: mspence@airdberlis.com

Lawyers for the Respondent, Crowe Soberman Inc

JAMSHID HUSSAINI et al.
Appellants (Appellants in Appeal)

and

1482241 ONTARIO LIMITED et al.
Respondents (Respondents in Appeal)

Court File No. 31-2303814
Court of Appeal No.

COURT OF APPEAL FOR ONTARIO

Proceeding commenced at Toronto

NOTICE OF APPEAL

MILLER THOMSON LLP
Scotia Plaza
40 King Street West, Suite 5800
P.O. Box 1011
Toronto, ON Canada M5H 3S1

Craig A. Mills LSUC#: 40947B
Email: cmills@millerthomson.com
Tel: 416.595.8596
Fax: 416.595.8695

Ivan Merrow LSO#: 70064U
Tel: 905.415.6737
imerrow@millerthomson.com

Lawyers for the Appellants

Court File No. 31-2303814
Court of Appeal No.

COURT OF APPEAL FOR ONTARIO

BETWEEN:

JAMSHID HUSSAINI and NEELOFAR AHMADI

Appellants
(Appellants in Appeal)

- and -

1482241 ONTARIO LIMITED AND CROWE SOBERMAN INC.,
IN ITS CAPACITY AS THE PROPOSAL
TRUSTEE FOR 1482241 ONTARIO LIMITED

Respondents
(Respondents in Appeal)

APPELLANTS' CERTIFICATE

The Appellants certify that the following evidence is required for the appeal, in the Appellants' opinion:

1. Motion Record of the Moving Parties, Neelofar Ahmadi, Jamshid Hussaini and Homelife Dreams Reality Inc. dated September 28, 2018;
2. Motion Record of 1482241 Ontario Limited dated October 26, 2018;
3. Reply Affidavits of the Moving Parties, Neelofar Ahmadi, Jamshid Hussaini and Homelife Dreams Reality Inc. dated November 13, 2018; and
4. Transcripts of the oral evidence of Neelofar Ahmadi and Alain Checroune dated December 4 and 5, 2018.

February 1, 2019

MILLER THOMSON LLP
Scotia Plaza
40 King Street West, Suite 5800
P.O. Box 1011

- 2 -

Toronto, ON Canada M5H 3S1

Craig A. Mills LSUC#: 40947B
Email: cmills@millerthomson.com
Tel: 416.595.8596
Fax: 416.595.8695

Ivan Merrow LSO#: 70064U
Tel: 905.415.6737
imerrow@millerthomson.com

Lawyers for the Appellants

TO: **BLANEY McMURTRY LLP**
Barristers and Solicitors
1500 - 2 Queen Street East
Toronto, ON M5C 3G5

Mervyn Abramowitz
Tel: 416.597.4887
416.593.3396
Email: mabramowitz@blaney.com

David Ullmann (LSUC #423571)
Tel: (416) 596-4289
Fax: (416) 594-2437
Email: dullmann@blaney.com

Lawyers for 1482241 Ontario Limited

AND TO: **AIRD BERLIS LLP**
Brookfield Place
181 Bay Street, Suite 1800
Toronto, ON M5J 2T9

Miranda Spence
Tel: (416) 865-3414
Fax (416) 863-1515
Email: mspence@airdberlis.com

Lawyers for the Respondent, Crowe Soberman Inc.

JAMSHID HUSSAINI et al.
Appellants
(Appellants in Appeal)

1482241 ONTARIO LIMITED et al.
Respondents
(Respondents in Appeal)

Court File No. 31-2303814
Court of Appeal No.

COURT OF APPEAL FOR ONTARIO

Proceeding commenced at TORONTO

APPELLANT'S CERTIFICATE

MILLER THOMSON LLP
SCOTIA PLAZA
40 KING STREET WEST, SUITE 5800
P.O. BOX 1011
TORONTO, ON CANADA M5H 3S1

Craig A. Mills LSUC#: 40947B
Email: cmills@millertthomson.com
Tel: 416.595.8596
Fax: 416.595.8695

Ivan Merrow LSO#: 70064U
Tel: 905.415.6737
imerrow@millertthomson.com

Lawyers for the Appellants

APPENDIX “C”

9:30 A.M.

H

COUNSEL SLIP

COURT FILE NO 31-2303814

DATE FEB 13, 2019

NO ON LIST 1

1482241 ONTARIO LIMITED

TITLE OF PROCEEDING

COUNSEL FOR:
PLAINTIFF(S)
APPLICANT(S)
PETITIONER(S)

David Ullmann for 148

PHONE & FAX NOS

416-596-4289
416-593-2437

COUNSEL FOR:
DEFENDANT(S)
RESPONDENT(S)

PHONE & FAX NOS

Miranda Spina For [unclear] 416-593-1500

416-593-1500

Mel Pora For James [unclear] Ahmad

416-593-1515

[unclear]

February 13/19

Mr. [unclear] shall file an application for a stay of Justice Chappet's decision within a week and report back to the

when the stay application
has been scheduled.

I would not order any
penalty to be released
while the stay application
is pending.

Haring

APPENDIX “D”

Analysis of Proposed Interim Dividends and Distribution to Debtor

				Reviewed by Crowe			Analysis as of March 27 2019		
Secured Creditors		Amounts	Filed Prior to Deadline	PoC with schedule "A"	Opposed by Debtor	Deferred NOTE 1	Disputed NOTE 2	Proposed Interim Dividend	
1	Caruda Holdings	\$ 804,726.03	Yes	No	No	\$ 804,726.03			
2	Canada Revenue Agency	\$ 3,972.76	Yes	Yes	No			\$ 3,972.76	
Unsecured Creditors		Amounts	Filed Prior to Deadline	Opposed by Debtor					
1	A Checroume Realty Corporation	\$ 553,015.08	Yes	No	No	\$ 553,015.98			
2	Alain Checroume	\$ 4,350,000.00	Yes	No	No	\$ 4,350,000.00			
3	Alain Checroume	\$ 1,440,000.00	Yes	No	No	\$ 1,440,000.00			
4	Alain Checroume	\$ 12,000,000.00	Yes	No	No	\$ 12,000,000.00			
5	Allevia Clinic #1	\$ 486,050.05	Yes	Partially- See Schedule	NOTE 3		\$ 486,050.05		
6	Caruda Holdings	\$ 1,318,321.64	Yes	No	No	\$ 1,318,321.64			
7	Caruda Holdings	\$ 136,588.65	Yes	No	No	\$ 136,588.65			
8	Canada Revenue Agency	\$ 17,699.61	Yes	Yes	No			\$ 17,699.61	
9	Daikin Applied Canada Inc.	\$ 12,353.69	Yes	Yes	Yes		\$ 12,353.69		
10	Devry Smith LLP	\$ 128,153.49	Yes	Yes	Yes		\$ 128,153.49		
11	GDI Services Canada LP	\$ 95,746.42	Yes	Yes	Yes		\$ 95,746.42		
12	Geving WLG	\$ 401,284.89	Yes	Yes	No			\$ 401,284.89	
13	North York Family Physicians Holding	\$ 46,442.42	Yes	Yes	Yes		\$ 46,442.42		
14	Qualified Elevator Repair	\$ 18,247.23	Yes	Yes	Yes		\$ 18,247.23		
15	Rogers	\$ 871.56	Yes	Yes	Yes		\$ 871.56		
16	Toronto Hydro	\$ 199,934.53	Yes	Yes	No			\$ 199,934.53	
17	Treasurer- City of Toronto	\$ 3,197.25	Yes	Yes	No			\$ 3,197.25	
18	VYZ Plumbing	\$ 17,960.20	Yes	Yes	Yes		\$ 17,960.20		
Contingent Creditors		Amounts	Filed Prior to Deadline	Admitted by Crowe	Opposed by Debtor				
1	Chang-Soon Yoo	\$ 800,000.00	No	No	No				
2	Clear Custom Brokers	\$ 500,000.00	Yes	Contingent	NOTE 4				
3	Home Life Dreams Realty	\$ 42,750,000.00	Yes	Contingent	Yes				
4	Jamshid Hussaini	\$ 42,750,000.00	Yes	Contingent	Yes				
5	Neulofar Ahmedi	\$ 42,750,000.00	Yes	Contingent	Yes				
						<u>\$ 19,797,926.27</u>	<u>\$ 805,825.07</u>	<u>\$ 622,116.29</u>	
Balance in trust account as of						28-Feb-19		\$ 4,643,671.61	
Fire Code Violation Fine							\$ (15,000.00)		
First and Second mortgage settlement						NOTE 5	\$ (50,000.00)		
Blaney (D.Ullmann) invoice Oct 31, 2018						NOTE 6	\$ (26,046.92)		
Blaney (D.Ullmann) invoice Jan 31, 2019						NOTE 6	\$ (139,086.51)		
Blaney (D.Ullmann) time to Mar 27, 2019						NOTE 6	\$ (28,250.00)		
Aird&Berlis invoice Mar 18, 2019						NOTE 6	\$ (15,102.72)		
Crowe Soberman Inc. time Mar 22, 2019						NOTE 6	\$ (38,421.41)	\$ (311,906.66)	
Proposed interim dividends						NOTE 7	\$ (622,116.28)		
Holdback for Disputed by debtor claims						NOTE 7	\$ (805,825.07)	\$ (1,427,941.35)	
Subtotal								\$ 2,903,823.60	
Proposed payment to debtor						NOTE 8	\$ 2,800,000.00		
Net in trust account after above holdback/distribution								\$ 103,823.60	

E&OE

NOTE 1 Claimants are to agree to be deferred, not participate in a dividend, and agree to the dividend payments

NOTE 2 Claims are to be disallowed by the Trustee and/or Debtor pursuant to protocol determined by Court

NOTE 3 Partial claim supported per review by Trustee, balance contingent

NOTE 4 Possible agreement between claimant and debtor - outstanding

NOTE 5 First and second mortgage agreement, Court Order outstanding

NOTE 6 To be paid by Court Order

NOTE 7 Actual dividend and holdbacks to be determined by actual results in notes above

NOTE 8 Actual payment to debtor to be determined by actual results in notes above

APPENDIX “E”

Court File No. 31-2303814

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

IN BANKRUPTCY AND INSOLVENCY

THE HONOURABLE) TUESDAY, THE 12TH
JUSTICE HAINEY) DAY OF JUNE, 2018

**IN THE MATTER OF THE PROPOSAL OF 1482241 ONTARIO LIMITED, OF THE
CITY OF TORONTO, IN THE PROVINCE OF ONTARIO**

ORDER re PROPOSAL APPROVAL

THIS MOTION, made by Crowe Soberman Inc., in its capacity as the proposal trustee (in such capacity, the **“Proposal Trustee”**) of 1482241 Ontario Limited (the **“Debtor”**), for an order, *inter alia*, (a) approving the fifth report of the Proposal Trustee dated April 13, 2018 (the **“Fifth Report”**) and the activities of the Proposal Trustee described therein; (b) approving the sixth report of the Proposal Trustee dated May 31, 2018 (the **“Sixth Report”**) and the activities of the Proposal Trustee described therein; (c) approving the Company’s proposal dated April 13, 2018, as amended on May 3, 2018 (the **“Proposal”**); (d) establishing a dispute resolution process for any objections raised by the Debtor relating to claims filed in the proposal; and (e) approving the fees and disbursements of the Proposal Trustee, the Proposal Trustee’s counsel, and the Debtor’s counsel, was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Sixth Report of the Proposal Trustee dated May 31, 2018 (the **“Sixth Report”**) and the appendices thereto, the fee affidavit of Hans Rizarri sworn May 29, 2018 (the **“Rizarri Affidavit”**), the fee affidavit of Ian Aversa sworn May 31, 2018 (the **“Aversa**

Affidavit"), and the affidavit of Alain Checroune sworn June 8, 2018, and on hearing the submissions of counsel for the Proposal Trustee, counsel for the Debtor and such other counsel as were present, no one appearing for any other person on the service list, although properly served as appears from the affidavit of service of Miranda Spence sworn June 1, 2018, filed,

1. **THIS COURT ORDERS** that the time for service of the notice of motion and the motion record is hereby abridged and validated so that this motion is properly returnable today and hereby dispenses with further service thereof.

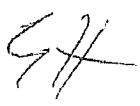
2. **THIS COURT ORDERS** that the Fifth Report and the activities of the Proposal Trustee described therein be and are hereby approved.

3. **THIS COURT ORDERS** that the Sixth Report and the activities of the Proposal Trustee described therein be and are hereby approved.

4. **THIS COURT ORDERS** that the Amended Proposal be and is hereby approved.

5. **THIS COURT ORDERS** that any objections raised by the Company to claims filed by creditors shall be addressed as follows:

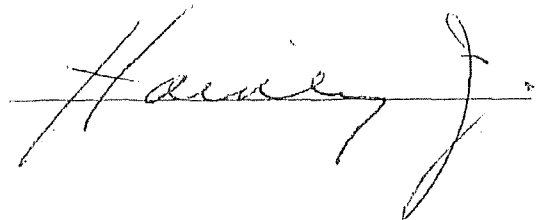
- (a) the Proposal Trustee will make an initial determination as to whether a claim ought to be admitted or disallowed, and will advise the Company of its determination in this regard;
- (b) the Company will communicate any objection to the admitted claims to the Proposal Trustee, in writing, including the basis for the objection, within seven days of the issuance of the Proposal Trustee's decision in paragraph (a) above;

- (c) the Proposal Trustee will consider the objection raised by the Company, and will advise the Company and the relevant creditor of its determination of the claim having regard for the Company's objection;
- (d) if the Proposal Trustee admits a claim after having reviewed the Company's objection, the Company may seek to have its objection adjudicated on motion to the Court ~~upon posting, with counsel for the Proposal Trustee, security for costs sufficient to cover the relevant creditor's substantial indemnity costs associated with the objection proceeding; and~~ 
- (e) the Proposal Trustee will work with the Company to schedule any objection motions, with the goal of minimizing the number of Court attendances required to address any such motions.

6. **THIS COURT ORDERS** that the fees and disbursements of the Proposal Trustee as described in the Sixth Report and as set out in the Rizarrì Affidavit, be and are hereby approved, and the Proposal Trustee is hereby authorized to pay such fees from the Sale Proceeds.

7. **THIS COURT ORDERS** that the fees and disbursements of the Proposal Trustee's counsel as described in the Sixth Report and as set out in the Aversa Affidavit, be and are hereby approved, and the Proposal Trustee is hereby authorized to pay such fees from the Sale Proceeds.

8. **THIS COURT ORDERS** that the fees and disbursements of the Debtor's counsel in the sum of \$75,562.61, be and are hereby approved, and the Proposal Trustee is hereby authorized to pay such fees from the Sale Proceeds.



IN THE MATTER OF THE PROPOSAL OF 1482241 ONTARIO LIMITED, OF THE CITY OF TORONTO, IN THE PROVINCE OF ONTARIO

Court File No. 31-2303814

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

IN BANKRUPTCY AND INSOLVENCY
Proceedings commenced at Toronto

ORDER re PROPOSAL APPROVAL

AIRD & BERLIS LLP
Barristers and Solicitors
Brookfield Place
181 Bay Street, Suite 1800
Toronto, ON M5J 2T9

Steven L. Graff (LSUC # 31871V)
Tel: (416) 865-7726
Fax: (416) 863-1515
Email: sgraff@airdberlis.com

Miranda Spence (LSUC # 60621M)
Tel: (416) 865-3414
Fax: (416) 863-1515
Email: mspence@airdberlis.com

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APPENDIX “F”

Graeme Hamilton

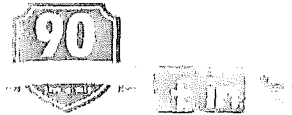
From: Emily Y. Fan <efan@lernalers.ca>
Sent: February-20-19 10:56 AM
To: Miranda Spence
Cc: 'David T. Ullmann'
Subject: 148 Ontario re Janodee

Miranda – I advise that the parties have resolved the costs issue for my clients' September, 2018 motion. 148 Ontario agrees to pay my clients the sum of \$25,000 on account of costs. Would be grateful if the funds could be released to Lernalers LLP in Trust in short order.

Many thanks,
 Emily

Emily Y. Fan | Lernalers LLP | Lawyer | phone: (416) 593-7796 | direct: (416) 267-7433 | efan@lernalers.ca | 110 Adelaide Street West, Suite 1900 | Toronto, Ontario | M5H 3P5

LERNERS
 LAWYERS



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Please consider the environment before printing this email.

Graeme Hamilton

From: Emily Y. Fan <efan@lernalers.ca>
Sent: February-20-19 10:54 AM
To: 'David T. Ullmann'
Cc: Lea Nebel
Subject: RE: 148 - Costs

We accept the offer for 148 Ontario to pay our clients \$25k. I will send an email to the proposal trustee, copying you, asking that the funds be released to us in short order.

Emily Y. Fan | Lernalers LLP | Partner | phone: 416-601-7700 | direct line: 416-596-2437 | efan@lernalers.ca | 100 Adelaide Street West, Suite 1109 | Toronto, Ontario | L5H 4P5



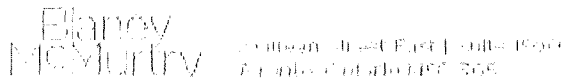
From: David T. Ullmann
Sent: February 11, 2019 9:40 AM
To: Emily Y. Fan
Cc: Lea Nebel
Subject: 148 - Costs

Emily,

I have instructions to offer \$25,000 to resolve the costs issue.

Regards,

David



David T. Ullmann
 Partner

416-596-4289 | 416-594-2437



This communication is intended only for the party to whom it is addressed, and may contain information which is privileged or confidential. Any other delivery, distribution, copying or disclosure is strictly prohibited

Graeme Hamilton

From: George Benchetrit <George@chaitons.com>
Sent: April-09-19 12:10 PM
To: Miranda Spence
Subject: FW: Cleaning up 148

Here's the settlement agreement.

George Benchetrit
Partner | Chaitons LLP | Tel: 416.218.1141

From: George Benchetrit
Sent: Wednesday, January 23, 2019 10:27 AM
To: David T. Ullmann
Subject: Re: Cleaning up 148

David,

My clients accept your offer and I understand that the proposal trustee approves of the settlement. I will follow up with Miranda regarding payment of the settled amount from the funds held by the proposal trustee, which I am hoping can be done quickly and without further court attendances.

George Benchetrit
Partner | Chaitons LLP | Tel: 416.218.1141

----- Original message -----

From: "David T. Ullmann" <DUllmann@blaney.com>
Date: 2019-01-22 9:33 AM (GMT-05:00)
To: George Benchetrit <George@chaitons.com>
Subject: RE: Cleaning up 148

George,

Thanks for the follow up. I confirm that I have instructions to settle the matter of the balance owing under the penalty provision in the mortgage for \$25,000. Each party will bear their own costs. I remind you that since we began debating this matter the court has released at least two decisions (including one in this matter) which render the position you have taken in your materials untenable. *We are quite confident that the court will not provide any recovery for your client if this was contested and likely award costs in our favour if this matter were to proceed.* That being said, the settlement offer reflects our awareness that nothing is certain and the value to our client in resolving this matter sooner than later. I encourage your clients to take the opportunity to resolve this on these terms.

This offer is subject to approval by the Proposal Trustee (who is holding the funds and has to release them) . I am not anticipating that to be an issue on these terms, but I expect it would become one if any higher amount was sought, given the change in the law.

APPENDIX “G”

Crowe Soberman Inc.
2 St. Clair Ave East, Suite 1100
Toronto ON M4T 2T5
Phone: (416) 929-2500 Fax: (416) 929-2555
E-mail: Frances.Doria@CroweSoberman.com

District of Ontario
Division No. 99 - Toronto
Court No. 31-2303814
Estate No. 31-2303814

FORM 31
Proof of Claim
(Sections 50.1, 51.5, 51.6, Subsections 65.2(4), 61.2(1), 61.3(8), 61.4(8), 102(2), 121(2), 128(1),
and Paragraphs 51(1)(e) and 66.14(b) of the Act)

In the matter of the proposal of
1482241 ONTARIO LIMITED
of the City of Toronto
in the Province of Ontario

All notices or correspondence regarding this claim must be forwarded to the following address:

Paris r Company Professional Corporation
161 Bay Street, Suite 2700, Toronto M5T 2S1

In the matter of the proposal of 1482241 ONTARIO LIMITED of the City of Toronto in the Province of Ontario and the claim of James Hussaini and Neelkar Ahnadi, creditor,
James Hussaini & Neelkar Ahnadi (name of creditor or representative of the creditor), of the city of Toronto in the province of Ontario, do hereby certify:

- 1. That I am a creditor of the above named debtor (or I am _____ (position/title) of _____ creditor).
- 2. That I have knowledge of all the circumstances connected with the claim referred to below.
- 3. That the debtor was, at the date of proposal, namely the 13th day of October 2017, and still is, indebted to the creditor in the sum of \$ _____, as specified in the statement of account (or affidavit) attached and marked Schedule 'A', after deducting any counterclaims to which the debtor is entitled. (The attached statement of account or affidavit must specify the vouchers or other evidence in support of the claim.)

4. (Check and complete appropriate category.)
 A. UNSECURED CLAIM OF \$ As set out in affidavit
(other than as a customer contemplated by Section 262 of the Act)

That in respect of this debt, I do not hold any assets of the debtor as security and
(Check appropriate description.)

- Regarding the amount of \$ _____, I claim a right to a priority under section 136 of the Act.
- Regarding the amount of \$ _____, I do not claim a right to a priority.
(Set out on an attached sheet details to support priority claim.)

B. CLAIM OF LESSOR FOR DISCLAIMER OF A LEASE \$ _____
That I hereby make a claim under subsection 65.2(4) of the Act, particulars of which are as follows:
(Give full particulars of the claim, including the calculations upon which the claim is based.)

C. SECURED CLAIM OF \$ _____
That in respect of this debt, I hold assets of the debtor valued at \$ _____ as security, particulars of which are as follows:
(Give full particulars of the security, including the date on which the security was given and the value at which you assess the security, and attach a copy of the security documents.)

D. CLAIM BY FARMER, FISHERMAN OR AQUACULTURIST OF \$ _____
That I hereby make a claim under subsection 81.2(1) of the Act for the unpaid amount of \$ _____
(Attach a copy of sales agreement and delivery receipts.)

FORM 31 -- Concluded

- E. CLAIM BY WAGE EARNER OF \$ _____
- That I hereby make a claim under subsection 81.3(8) of the Act in the amount of \$ _____.
- That I hereby make a claim under subsection 81.4(8) of the Act in the amount of \$ _____.
- F. CLAIM BY EMPLOYEE FOR UNPAID AMOUNT REGARDING PENSION PLAN OF \$ _____
- That I hereby make a claim under subsection 81.5 of the Act in the amount of \$ _____.
- That I hereby make a claim under subsection 81.6 of the Act in the amount of \$ _____.
- G. CLAIM AGAINST DIRECTOR \$ _____

(To be completed when a proposal provides for the compromise of claims against directors.)
 That I hereby make a claim under subsection 50(13) of the Act, particulars of which are as follows:
(Give full particulars of the claim, including the calculations upon which the claim is based.)

- H. CLAIM OF A CUSTOMER OF A BANKRUPT SECURITIES FIRM \$ _____

That I hereby make a claim as a customer for net equity as contemplated by section 262 of the Act, particulars of which are as follows:
(Give full particulars of the claim, including the calculations upon which the claim is based.)

5. That, to the best of my knowledge, I _____ (is/am not), (or the above-named creditor _____ (is/s not)) related to the debtor within the meaning of section 4 of the Act, and _____ (he/she/it has/have/it has not) dealt with the debtor in a non-arm's-length manner.

6. That the following are the payments that I have received from, and the credits that I have allowed to, and the transfers at undervalue within the meaning of subsection 2(1) of the Act that I have been privy to or a party to with the debtor within the three months (or, if the creditor and the debtor are related within the meaning of section 4 of the Act or were not dealing with each other at arm's length, within the 12 months; immediately before the date of the initial bankruptcy event within the meaning of Section 2 of the Act: (Provide details of payments, credits and transfers at undervalue.)

7. *(Applicable only in the case of the bankruptcy of an individual.)*

- Whenever the trustee reviews the financial situation of a bankrupt to redetermine whether or not the bankrupt is required to make payments under section 68 of the Act, I request to be informed, pursuant to paragraph 60(4) of the Act, of the new fixed amount or of the fact that there is no longer surplus income.
- I request that a copy of the report filed by the trustee regarding the bankrupt's application for discharge pursuant to subsection 170(1) of the Act be sent to the above address.

Dated at Toronto, this 2nd day of May, 2019.

 Witness

N. G. [Signature]

Creditor
 Phone Number: _____
 Fax Number: _____
 E-mail Address: _____

NOTE: An affidavit of witnesses should have been made before a notary public in the affidavit.
 REFERENCES: A trustee may, pursuant to subsection 122(1) of the Act, require a security or payment to the trustee in order to be released, at a period of 1 year, by the insured creditor.
 Subsection 121(1) of the Act provides a remedy for recovery of the claim, asset, reduction or treatment of liability.

District of: Ontario
Division No. 09 - Toronto
Court No. 31-2303814
Estate No. 31-2303814

In the matter of the proposal of
1482241 ONTARIO LIMITED
of the City of Toronto
in the Province of Ontario

AFFIDAVIT OF NEELOFAR AHMADI

I, Neelofar Ahmadi, of the City of Toronto, in the Province of Ontario, MAKE OATH
AND SAY:

1. On June 22, 2012, my business partner, Jamshid Hussaini, and I jointly purchased a 20% equity interest in 1482241 Ontario Limited ("148") under a share purchase agreement.
2. Mr. Hussaini and I filed two earlier proofs of claim in this proceeding, and pursuant to appeals of the denial of those proofs of claim, Justice Chiappetta of the Ontario Superior Court of Justice issued reasons for decision on January 24th, 2019, recognizing our ownership interest in 148 (**Exhibit "A"**).
3. Among other things, Justice Chiappetta recognized our equity interest in the company, and concluded at paragraph 53 of Her Honour's reasons for decision that "The Claimants paid Checroune \$1.2 million for 20% of the shares of 148 in furtherance of their intention as set out in the June 22 Agreement to acquire 100% of the shares. Today, they own 20% of the shares of a bankrupt company." [**underlining added**]

4. Mr. Hussaini and I are therefore entitled to a 20% share in any remaining monies left over after creditors have been paid, from 148's liquidated assets.

SWORN BEFORE ME at the City of
Toronto, in the Province of Ontario on May
..... 2019



Commissioner for Taking Affidavits
(or as may be)



NEELOFAR AHMADI

This is Exhibit "A" referred to in the Affidavit of Neelofar Ahmadi
sworn May 2, 2019



Commissioner for Taking Affidavits (or as may be)

NEIL PARIS

CITATION: Hussaini v. Crowe Soberman Inc., 2019 ONSC 642
COURT FILE NO.: 31-2303814
ESTATE FILE NO.: 31-2303814
DATE: 20190124

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

IN BANKRUPTCY AND INSOLVENCY
IN THE MATTER OF THE PROPOSAL OF 1482241 ONTARIO LIMITED, OF THE
CITY OF TORONTO, IN THE PROVINCE OF ONTARIO

BETWEEN:)	
)	
JAMSHID HUSSAINI AND NEELOFAR)	<i>Craig A. Mills & Ivan Merrow</i> , counsel for
AHMADI)	the Appellants Jamshid Hussaini, Neelofar
)	Ahmadi
Appellants)	
)	
- and -)	
)	
CROWE SOBERMAN INC., TRUSTEE)	<i>Mervyn D. Abramowitz, David T. Ullmann,</i>
ACTING IN THE PROPOSAL OF)	<i>& Alexandra Teodorescu</i> , counsel for the
1482241 ONTARIO LIMITED ("148"))	Respondent 1482241 Ontario Limited
)	
Respondent)	<i>Steven L. Graff & Miranda Spence</i> , counsel
)	for the Respondent Crowe Soberman Inc. in
)	its capacity as the Proposal Trustee for
)	1482241 Ontario Limited
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)	HEARD: December 4 and 5, 2018, January
)	9, 2019
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V.R. CHIAPPETTA J.

Overview

[1] The appellants, Jamshid Hussaini ("Hussaini") and Neelofar Ahmadi ("Ahmadi") (collectively "the Claimants"), appeal the disallowance of their claims in the bankruptcy proposal proceeding of 1482241 Ontario Limited ("148" or the "Debtor"). The Claimants are

both real estate agents in the Toronto area. They are the principals of Homelife Dreams Reality Inc., which is a corporation incorporated pursuant to the laws of Ontario ("Homelife").

[2] In 2012, the Claimants wanted to purchase a commercial property located at 240 Duncan Mill Road in Toronto, Ontario (the "Property"). The registered legal owner of the Property was 148, an Ontario corporation wholly owned by Alain Checroune ("Checroune") that carried on business buying, selling and managing commercial properties. 148 held the Property as trustee for Checroune.

[3] The Claimants attempted to purchase the Property from 148, but were unsuccessful because of issues with financing and title. In a second attempt to ultimately acquire the Property, the Claimants entered into an agreement with Checroune to buy 100% of 148's shares.

[4] By way of Share Purchase Agreement signed on June 22, 2012, the Claimants and Checroune agreed that Checroune would transfer 20% of the shares of 148 to the Claimants immediately, and that the balance of the shares would be transferred upon payment in full, with an October 1, 2015 closing date (the "June 22 Agreement"). By way of Amended Trust Declaration signed on the same day, the Claimants and Checroune agreed that Checroune would transfer and assign 20% of his beneficial interest in the Property to the Claimants (the "Amended Trust").

[5] The sale of the balance of the shares did not close.

[6] On June 13, 2014, the Claimants commenced an action against 148 and Checroune, seeking in part a declaration that they are beneficial owners of a 20% interest in the Property. A Fresh as Amended Claim was issued in November 14, 2016. Homelife was added as a party. The Claimants sought in part a declaration that Checroune's conduct as alleged therein was oppressive. This action was stayed when on October 13, 2017, 148 filed a Notice of Intention to Make a Proposal (the "Proposal Proceedings") pursuant to s. 67 of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 (the "BIA").

[7] Crowe Soberman Inc. was appointed as the Proposal Trustee (the "Proposal Trustee"). The Proposal Trustee sold the Property to an arms-length purchaser at the end of February 2018. This agreement was approved by the Court on March 16, 2018. 148 submitted a proposal to its creditors on April 13, 2018. A requisite majority of creditors voted in favour of the proposal at a meeting held on May 4, 2018. The proposal was also approved by Court on June 12, 2018.

[8] The Claimants advanced two claims in the Proposal Proceedings: two property proofs of claim (collectively the "Property Claim") collectively claiming a 20% beneficial interest in the Property (or the proceeds from sale) based on the Amended Trust and an unsecured proof of claim (the "Litigation Claim") seeking damages for lost opportunity and lost profit based on 148's alleged oppressive conduct, along with legal fees incurred related to the 2014 litigation.

[9] The Proposal Trustee disallowed the Property Claim by way of Notice of Disallowance dated May 17, 2018.

[10] Although the Proposal Trustee has not disallowed the Litigation Claim, Justice Dunphy ordered that the Litigation Claim may be treated as disallowed for the purposes of this hearing.

[11] The Claimants appeal the disallowances, seeking a declaration that both the Property Claim and the Litigation Claim are valid and enforceable claims in the Proposal Proceedings. For reasons set out below, I have concluded that the Claimants have failed to establish a proprietary interest in the Property either by way of express trust or constructive trust, such that the Property Claim is neither valid nor enforceable. Further, the Claimants have failed to prove that 148 acted in a manner that was oppressive to their interests such that the Litigation claim is neither valid nor enforceable.

Factual Background

Negotiation of the June 22 Agreement

[12] By Trust Declaration dated September 21, 2005, 148 held legal title to the Property in trust as a bare trustee for Checroune as the beneficiary (the "2005 Trust Declaration"). Pursuant to the 2005 Trust Declaration, 148 agreed to remit to Checroune all revenue owing from the Property and Checroune agreed to indemnify 148 for all liabilities relating to the Property.

[13] On February 8, 2012, the Claimants submitted an Agreement of Purchase and Sale to purchase the Property for \$15 million (the "APS"). The Claimants intended to purchase the Property themselves, without partners. The Claimants were unable to purchase the property as contemplated by the APS. The Claimants encountered issues with assuming the first mortgage without a penalty considering a maturity date of October 2015, with a Certificate of Pending Litigation that was registered against the property and with financing the purchase.

[14] In consultation with their lawyer at the time, the Claimants developed a different way to achieve their end goal of owning the Property: they would purchase 100% of the shares of 148, the owner of the property, for \$15 million.

[15] On June 6, 2012, the Claimants and Checroune entered into a written agreement whereby the Claimants would purchase Checroune's shares in 148 (the "June 6 Agreement"). 148 was not a party to the June 6 Agreement. The June 6 Agreement reads in relevant part:

- (a) 148 is the registered owner of the Property and the Property is subject to a mortgage in the amount of \$9 million.
- (b) Checroune will sell the Claimants 36.67% of the issued shares of 148 with the further 63.33% to be made available by Checroune to the Claimants and to be transferred after all payments are made.
- (c) The price payable for the purchased shares will be based on the sum of \$6 million as the value of 148 subject to adjustments.
- (d) The Claimants shall pay a deposit of \$200,000 and a further sum of \$2 million upon closing.

- (e) Closing means 10 days after the Claimants sign the offer. If for any reason the transaction does not close, the offer becomes null and void and the deposit will be returned to the Claimants.
- (f) The Claimants shall have the rights of a 36.67% shareholder following closing and will be entitled to vote on the election of the board of directors, the appointment of officers of the corporation and to share in the distribution of the profits of 148 to the extent of their shareholding.
- (g) The Claimants have the right to manage the Property, collect rents and enter into leases with Checroune's written consent.
- (h) Until the Claimants buy the full 100% of the shares in 148 as contemplated in the Agreement, they will not be permitted or entitled to manage the business of 148, retain profits, sell or re-mortgage the Property.
- (i) Upon payment in full, Checroune will transfer the balance of the shares to the Claimants.
- (j) Any liabilities arising out of matters occurring on or before the closing date or from existing litigation shall remain the responsibility of Checroune.
- (k) The Claimants agree to accept title to the shares subject to the litigation brought by 214688 Ontario Ltd., provided that Checroune pay all costs related to this litigation and any damages resulting from this litigation.

[16] On June 22, the parties amended the June 6 Agreement to reflect the following:

- (a) The Closing Date means Thursday June 21, 2012.
- (b) The Claimants agree to purchase only 20% of the issued shares of 148 from Checroune for a total of \$1.2 million upon closing, \$200,000 of which has already been paid. Upon payment of this sum, Checroune shall transfer to the Claimants 20% of the shares of 148.
- (c) The Claimants shall have the rights of a 20% shareholder following closing.
- (d) The Claimants can thereafter purchase the remaining 80% of the shares of 148 from Checroune. The purchase price for the remainder of the shares shall be \$4.8 million (the remaining \$13.8 million price adjusted by the \$9 million existing mortgage). The closing date for the transfer of the balance of the shares shall be October 1, 2015, however, if the property can be refinanced without penalty then the closing date shall be October 1, 2014.
- (e) Until the Claimants purchase 100% of Checroune's shares, they will not be entitled to manage the business of the corporation, retain profits, sell or re-mortgage the property owned by the business.

- (f) The litigation shall be finally resolved by the date of the transfer of the balance of shares.

[17] On June 21, 2012, the Claimants paid Checroune \$1 million, in addition to the \$200,000 deposit previously paid on June 6, 2012.

[18] On June 21 and 22, 2012 a number of documents were exchanged between the parties including:

- (a) A director's resolution, signed by Checroune as sole director of 148, transferring 20% of his shares in 148 to the Claimants,
- (b) Share Certificates in respect of 20% of the shares of 148,
- (c) An Undertaking signed by Checroune to sell the remaining 80% of the shares to the Claimants, and
- (d) The Amended Trust Declaration.

[19] The Amended Trust Declaration amends the 2005 Trust Declaration wherein 148 as legal title-holder to the Property granted Checroune a 100% beneficial interest in the property. The Amended Trust assigns 20% of Checroune's beneficial interest in the Property to the Claimants. The Amended Trust Declaration was not registered on title and not referenced in the June 22 Agreement.

Subsequent Disputes between the Claimants and Checroune

[20] Subsequent to the June 22 Agreement, the Claimants began to lease the 6th floor of the Property from 148 as office space for Homelife. In or about June 2014, the Claimants came to believe that Checroune intended to sell the Property to another purchaser. This prompted them to commence the 2014 Litigation. The Claimants state that in August 2014, Checroune began a campaign of intimidation and harassment so that they would no longer wish to purchase the balance of the shares. They allege that Checroune turned off the lights, elevators and heating during business hours and canceled valid access cards and parking passes. Checroune denies that he engaged in such conduct. There is no third-party evidence before the Court.

[21] In October 2014, 148 terminated Homelife's tenancy, alleging that it breached the terms of its lease with 148 by not obtaining Checroune's consent prior to entering into sublease agreements. The Claimants deny this.

[22] On October 27, 2014, Justice Whitaker granted an injunction order restraining 148 and Checroune from disrupting Homelife's business as well as from selling, mortgaging, encumbering or dealing with the Property or shares in 148 without the Claimants' consent. Checroune nonetheless obtained a second mortgage on the Property, which was registered on title on September 21, 2016, without the Claimants' knowledge.

[23] On October 1, 2015, Checroune tendered to the Claimants in an effort to close the transfer of the remaining 80% of the shares. The Claimants refused to close. Their position is that they did not close on the purchase of the remaining 80% of the shares because Checroune failed to discharge the Certificate of Pending Litigation from title to the Property, as required by the June 22 Agreement. The Claimants did not attempt to extend the closing date and did not waive that condition of closing.

[24] In July 2016, Homelife left the Property and was no longer a tenant of 148.

148's Bankruptcy

[25] On October 13, 2017, 148 commenced restructuring proceedings by filing a Notice of Intention to Make a Proposal. Crowe Soberman Inc. was appointed as trustee with respect to the proposal.

[26] On November 3, 2017, the Court authorized the Proposal Trustee to sell the Property in accordance with a court-approved sale process. The Court expressly stated that its authorization did not determine the validity or enforceability of the agreements to which the Claimants were a party with Checroune.

[27] At the end of February 2018, the Proposal Trustee entered into an Agreement of Purchase and Sale with respect to the Property with an arms-length purchaser. This agreement was approved by the Court on March 16, 2018. The approval order provided that the sale proceeds should be held by the Proposal Trustee in trust.

[28] On April 13, 2018, 148 submitted a Proposal to its creditors.

[29] On April 25, 2018, the Claimants advanced the following claim in the Proposal Proceedings, which is subject to this appeal:

Two property proofs of claim collectively claiming a 20% beneficial interest (15% for Hussaini and 5% for Ahmadi) in what are now proceeds from the sale of the Property based on the language of the Amended Trust Declaration (the Property Claim).

[30] On May 3, 2018, the Claimants advanced the following claim in the Proposal Proceedings, which is also subject to this appeal:

Two unsecured proofs of claim seeking damages in the amount of approximately \$42 million (the Litigation Claim).

[31] On May 4, 2018, a requisite majority of creditors voted in favour of the Proposal. The Claimants did not vote as their claims were treated as contingent claims.

[32] On June 12, 2018, the Proposal was approved by the Court. The Claimants did not oppose the approval of the Proposal or appeal the order approving it.

[33] For the purposes of this appeal, the Claimants have reduced their Litigation Claim from 42 million to 4 million, being the difference between the price they offered for the Property under the June 22 Agreement (\$15 million) and the price the Proposal Trustee secured for the Property in the sale concluded in the Proposal (\$19 million).

Issues

[34] The parties agree that this appeal presents to the Court the following issues:

- (1) Do the Claimants each have a trust claim against 148 pursuant to s.67 of the BIA in respect of the Sale Proceeds of the Property currently held by the Proposal Trustee in trust?
- (2) Should the Court find that a constructive trust arose benefitting the Claimants in respect of the Sale Proceeds of the Property currently held by the Proposal Trustee in trust or in respect of the \$1.2 million paid by them to Checroune?
- (3) If the Claimants each have trust claims with respect to the Sale Proceeds, what priority, if any, should be afforded to those trust claims?
- (4) Do the Claimants have an unsecured claim for damages against 148 with respect to the breaches alleged in the Litigation Claim?

Analysis

1. *Do the Claimants each have a trust claim against 148 pursuant to s.67 of the BIA in respect of the Sale Proceeds of the Property currently held by the Proposal Trustee in trust?*

[35] I have concluded that the Claimants do not have a trust claim against 148 pursuant to s.67 of the BIA in respect of the proceeds of the Property currently held by the Proposal Trustee in trust.

[36] The Claimants assert that the language of the Amended Trust created an express trust. The Amended Trust states that Checroune transfers and assigns 20% of his 100% beneficial interest in the Property to the Claimants. Despite this language however, it cannot be said that there was sufficient certainty of intention to create a trust with respect to the Property. The language of the 2012 Amended Trust Declaration must be interpreted contextually, considering the whole of the circumstances, including the factual matrix within which it was made and the conduct of the parties thereafter: *Antle v. Canada*, 2010 FCA 280, 413 N.R. 128, leave to appeal refused, [2010] S.C.C.A. No. 462 at paras. 11-14.

Law of Express Trust

[37] Certainty of intention is one of the three certainties necessary to create a trust. In order for a trust to have certainty of intention, the language used must show that the settlor intended that the recipient must hold the property on trust for the benefit of the beneficiary: *Donovan*

W.M. Waters, *Waters' Law of Trusts in Canada*, 4th ed (Toronto: Carswell, 2012) at 140. However, there is no magic in the word "trust". Intention is a matter of substance over form, and language alone cannot create a trust: *Willis (Litigation Guardian of) v. Willis Estate* (2006), 23 E.T.R. (3d) 292 (Ont. S.C.J.), affirmed, 2007 ONCA 552, 33 E.T.R. (3d) 187. It is important to interpret the words of a document purporting to create a trust in context. As stated by the Federal Court of Appeal in *Antle* at para. 12: "A test that requires one to look at all of the circumstances, and not just the words of the trust deed, is an approach that appears to have been adopted by Canadian courts generally."

[38] The other two certainties are certainty of object and certainty of subject-matter. Certainty of object is the requirement that the beneficiary of the trust must be ascertainable. Certainty of subject-matter is the requirement that the property to be held on trust must be clearly identifiable at the time the trust comes into existence. The beneficial interest which each beneficiary should have in that property must also be clearly identifiable. These certainties are required so that trustees, courts, and settlors can be sure that a trust is being properly administrated according to its terms.

Application

[39] 148 submits that the Claimants have failed to satisfy their onus in proving certainty of subject matter. It notes that the Amended Trust refers to the Property including Assets such as chattels, fixtures, equipment, and leases and rental agreements. This, it argues, is not only ambiguous in and of itself but is also inconsistent with the property the Claimants set out to acquire, namely 100% of the shares of 148. I disagree. The Amended Trust agreement adopts the definition of the Property in the 2005 Trust Agreement and provides further certainty of subject-matter in terms of what a proprietary interest in the Property would include. It is not inconsistent with the Claimants' intended ownership of 100% of the shares of 148, as 148 holds legal title to the Property and its assets.

[40] 148 further submits that the Claimants have not demonstrated certainty of intention to create a trust with respect to the Property. The Claimants' position is that they have discharged this burden. They submit that the explicit language of the Amended Trust is the best evidence in determining certainty of intention. Certainty of intention is satisfied, it is argued, by the unambiguous language of the Amended Trust, which clearly assigns 20% of Checroune's beneficial interest in the Property to the Claimants. I disagree.

[41] Certainty of intention relates to a clear intention that the trustee should hold property for the benefit of someone else. No particular form of words is required or determinative: *Willis (Litigation Guardian of) v. Willis Estate*, 2007 ONCA 552, 33 E.T.R. (3d) 187 at para. 2. In this case, it is important to consider the language of the 2012 Amended Trust Declaration contextually with the parties' stated and consistent intention for executing the Amended Trust and their conduct thereafter.

[42] The Claimants' intent was always to own the Property outright. They had no intention to be joint owners of the Property with Checroune. Checroune's intent was always to sell the Property outright. He had no intention to sell only part of the Property.

[43] It was only when the Claimants were unable to purchase the Property that they turned their efforts to owning 100% of the shares of 148. The Claimants had no intention to be minority shareholders of the business of 148. They did not want any partners. They wanted to own 148 outright so they could ultimately own the Property. Checroune's intent was always to sell 100% of his shares of 148. He had no intent to work with a minority shareholder. If he could not sell the Property outright, he wanted to sell all of the shares of 148.

[44] Ahmadi testified that the Claimants' lawyer put together the strategy to purchase 100% of Checroune's shares in 148 because the Claimants wanted to own the Property but were unable to purchase it outright. The parties intended that the Claimants would acquire 100% of the shares of 148 for \$15 million. The share transaction was subsequently structured so the Claimants initially acquired 36.67% of the shares (later amended to 20% of the shares) and were obligated to purchase the balance at a later date, to be transferred upon further payment. On cross examination, Ahmadi admitted that the parties made this arrangement because the Claimants could not obtain financing to purchase 100% of the shares outright, considering the Certificate of Pending Litigation registered on the Property. The share purchase was therefore structured in two tranches, but it was always the parties' shared intention that Checroune would sell 100% of his shares in 148 to the Claimants.

[45] It was in this context, upon the purchase of the first 20% of the shares and prior to the full completion of the intended share purchase, that the Amended Trust was executed.

[46] Ahmadi testified that the Claimants did not understand the details of the documents and did not understand the specifics relating to the Amended Trust, including the differences between beneficial and legal interests. Her evidence is that the Claimants understood that the purpose of the Amended Trust was "to protect our interest and to become the owners." It provided a measure of security to ensure that Checroune did not sell the Property without the Claimants' knowledge, pending the completion of the sale of the remaining shares pursuant to the June 22 Agreement. It therefore further served as an incentive to Checroune to comply with his obligations as defined in the June 22 Agreement in facilitating the sale of the remaining shares.

[47] Ahmadi described the Amended Trust as "extra security" to protect the Claimants' interests in ultimately acquiring 100% of the shares of 148 and, as a result, 100% of the Property. There is no evidence to suggest that at the time of the Amended Trust, the Claimants intended to receive a 20% proprietary or beneficial interest in the Property. Rather, the evidence is that the Claimants intended the Amended Trust to serve as security towards the close of the sale of the remaining 80% of the shares, and nothing more.

[48] Similarly, Checroune's evidence is that the Amended Trust was intended to act as "security" or to provide "additional security" pending the intended transfer of the remaining 80% of the shares. He states that he never intended to convey any part of the Property until the Claimants paid in full for 100% of the shares as contemplated by the June 22 Agreement.

[49] The parties' stated shared intention in creating the Amended Trust is demonstrated by their conduct subsequent its execution. At no time did the parties act in a manner consistent with the Claimants' enjoying a beneficial interest in the Property. For over three years, the Claimants

did not contribute to the ongoing expenses related to the Property, including maintenance and any payments toward the existing \$9 million mortgage, despite the obligation of the beneficial owner pursuant to the 2005 Trust Declaration to indemnify 148 for all liabilities relating to the Property. Similarly, at no time did the Claimants receive a share of profits derived from the Property, despite 148's obligation pursuant to the 2005 Trust Declaration to remit all revenue owing from the Property to the beneficial owner. Significantly, this conduct is also consistent with the parties' intention as reflected in the June 22 Agreement that until the Claimants purchased 100% of Checroune's shares, the Claimants would not be entitled to retain profits.

[50] The parties' demonstrated conduct fails to indicate the Amended Trust was intended to transfer a partial proprietary interest. Rather, it underscores their stated intention that the Amended Trust was intended to protect the Claimants' contractual agreement with Checroune to complete the purchase of the remaining shares.

[51] For these reasons, I have concluded the Amended Trust does not constitute an express trust as the Claimants have not demonstrated that there was certainty of intention.

The Amended Trust post-October 2015

[52] The transfer of the remaining shares as intended by the parties and contracted by the June 22 Agreement did not close on October 1, 2015. I agree with 148 that the Amended Trust, intended by the parties to secure the closing, is therefore rendered moot as of October 2015 as there is nothing more to secure.

[53] The Claimants paid Checroune \$1.2 million for 20% of the shares of 148 in furtherance of their intention as set out in the June 22 Agreement to acquire 100% of the shares. Today, they own 20% of the shares of a bankrupt company. At no time did they wish to own only 20% of the shares. The Claimants may have legal recourse against Checroune in this regard as a party to the June 22 Agreement. They do not have a claim against 148, however, with respect to any rights arising from the Amended Trust.

2. *Should the Court find that a constructive trust arose benefitting the Claimants in respect of the Sale Proceeds of the Property currently held by the Proposal Trustee in trust or in respect of the \$1.2 million paid by them to Checroune?*

[54] In the alternative, the Claimants submit that a constructive trust ought to be imposed over the sale proceeds in order to recognize their beneficial interest. It is their position that unless this remedy is applied, 148 and its creditors will be unjustly enriched at the Claimants' expense.

Law of Constructive Trust

[55] A constructive trust arises by operation of law as a means for equity to combat behaviour that is contrary to good conscience. It is a remedy for unconscionable transactions: *Soulos v. Korkontzilas*, [1997] 2 S.C.R. 217 at paras. 18, 32, 45. Constructive trusts can arise in many circumstances, including to remedy an unjust enrichment; or to confiscate profits flowing from a wrong.

[56] The Claimants advance arguments based on both circumstances. They claim that 148 has been unjustly enriched, and that 148 has wrongfully breached an equitable duty to them and profited as a result.

[57] The elements of an unjust enrichment claim are: a benefit to one party, a corresponding deprivation to the other, and no juridical reason for the transfer of value: *Kerr v. Baranow*, 2011 SCC 10, [2011] 1 S.C.R. 249 at para. 32. The enrichment must correspond with a deprivation from the plaintiff. The purpose of the unjust enrichment doctrine is to reverse unjust transfers. Accordingly, it must first be determined whether wealth has moved from the plaintiff to the defendant: *Professional Institute of the Public Service of Canada v. Canada*, 2012 SCC 71, [2012] 3 S.C.R. 660 at paras. 151-152. In order for a constructive trust to arise to remedy the unjust enrichment, monetary damages must be inadequate to compensate the plaintiff, and there must be a link between the benefit alleged to have been provided and the property over which the constructive trust is claimed: *Peter v. Beblow*, [1993] 1 S.C.R. 980 at para. 31.

[58] The Supreme Court in *Soulos* at para. 45 outlined four conditions that should generally be satisfied in order for a constructive trust based on wrongful conduct to arise:

- (1) The defendant must have been under an equitable obligation, that is, an obligation of the type that courts of equity have enforced, in relation to the activities giving rise to the assets in his hands;
- (2) The assets in the hands of the defendant must be shown to have resulted from deemed or actual agency activities of the defendant in breach of his equitable obligation to the plaintiff;
- (3) The plaintiff must show a legitimate reason for seeking a proprietary remedy, either personal or related to the need to ensure that others like the defendant remain faithful to their duties; and
- (4) There must be no facts which would render the imposition of a constructive trust unjust in all the circumstances of the case.

Application

[59] The Claimants argue that 148 has been enriched by its breach of its duty as trustee to the Claimants. They argue that it has utilized the Property for its own benefit both prior to and after the filing of the Notice of Intention to Make a Proposal without regard to the Claimants' beneficial interest in the Property. This position, however, presumes that the Claimants enjoy a beneficial interest in the Property. For the reasons outlined above, I have concluded that they do not. 148 does not owe an equitable duty as trustee to the Claimants. Therefore, the first condition outlined by the Supreme Court in *Soulos* is not met.

[60] The Claimants further argue that 148 has been unjustly enriched to the extent that Checroune used the \$1.2 million he received from the Claimants to satisfy amounts purportedly owed by Homelife to 148. This submission confuses the various contractual relationships of the Claimants, Homelife, Checroune and 148. The payment by the Claimants of \$1.2 million was

made to Checroune pursuant to the June 22 Agreement. If there is an enrichment, it is to Checroune personally. Neither Homelife nor 148 were parties to the contract pursuant to which the Claimants paid Checroune the \$1.2 million.

[61] The Claimants submit that they have been deprived of the funds they paid in good faith in furtherance of their intention to acquire 100% of the shares of 148, the security they relied upon in the form of the Amended Trust and any benefits agreed upon in the June 22 Agreement. Again, if there is a deprivation it is at the hands of Checroune personally and not 148. The Claimants' alleged deprivation does not correspond to 148's alleged enrichment.

[62] Finally, the Claimants argue that there is no justification at law for 148 to retain "these benefits". For reasons noted above, however, it cannot be said that 148 was enriched as a non-party to the June 22 Agreement.

3. *If the Claimants each have trust claims with respect to the Sale Proceeds, what priority, if any, should be afforded to those trust claims?*

[63] I have concluded that the Claimants do not have trust claims with respect to the sale proceeds. I will nonetheless analyze the issue of priority, in case I am incorrect in this conclusion.

[64] The Claimants argue that if it is found that the Amended Trust grants them a proprietary interest, they are entitled to 20% of the sale proceeds, excluding all amounts paid under the Second Mortgage and any amounts paid to 148 and its counsel under the Proposal.

[65] 148 argues that if it is found that the Claimants are beneficiaries in accordance with the Amended Trust, 148's liabilities in respect of the Property are properly deducted from the sale proceeds before any residual benefit is paid to the Claimants or Checroune.

[66] I agree with 148. The 2005 Trust Declaration provides that 148 holds legal title to the Property as bare trustee for Checroune, who holds the entire beneficial interest in the Property. It further states that Checroune as beneficiary shall fully indemnify 148 as trustee from all liabilities, obligations, claims, charges, encumbrances and responsibilities, as well as all costs and expenses in connection with the Property including legal expenses. These terms were not altered in the Amended Trust. The terms of the trust itself are such that the Claimants do not have a right to the sale proceeds until 148's obligations are otherwise satisfied.

[67] This is consistent with the nature of a beneficiary's rights to the trust property. The beneficiary has no rights over the trust property, only rights over the trustee's actions with regard to the trust property. The trustee is the legal owner of the trust property, and has the rights necessary to direct trust assets to pay trust creditors. A trustee further has a right to reimburse himself or herself out of trust assets. For that purpose, trustees have priority as against beneficiaries in the trust property; Lionel Smith, "Trust and Patrimony", (2009) 28 ETPJ, 332.

[68] Where a trust directs that the trustee should make certain payments to a beneficiary, the beneficiary usually receives that benefit subject to deductions for the expenses of the trust property. This issue commonly arises in cases where there is a dispute between successive

beneficiaries about from where trust expenses should be deducted. If a beneficiary is entitled to the income produced by trust capital for life, for example, they usually receive that income subject to deduction for ordinary, recurring expenses such as repairs or property taxes. Major occasional improvements or expenditures are usually paid out of the trust capital, which may be subject to the beneficial interest of a different beneficiary. In all cases, it is always open to the settlor to dictate how the trust expenses are to be paid: *Waters' Law of Trusts in Canada* at 1028.

[69] If the Claimants are beneficiaries under the Amended Trust therefore, the nature of the Claimants' rights are such that 148's liabilities are deducted from the sale proceeds before any residual benefit is paid to the Claimants or Checroune. To do otherwise would be to ignore the express language of the Amended Trust and grant a priority contrary to that recognized in law.

4. *Do the Claimants have an unsecured claim for damages against 148 with respect to the breaches alleged in the Litigation Claim?*

[70] As shareholders of 148, the Claimants are permitted to apply for a court order under the oppression remedy provisions of the *Business Corporations Act (Ontario)*, R.S.O. 1990, c. B. 16, s.248 (the "OBCA"). The oppression remedy provisions of the OBCA state that where a court is satisfied that the business or affairs of the corporation have been carried on or conducted in a manner that is oppressive or unfairly prejudicial to or that unfairly disregards the interests of a shareholder, the court may make an order to rectify the matters complained of (s.248(2)).

[71] The Litigation Claim is based on the allegations as set out in the Fresh as Amended Statement of Claim dated November 14, 2016. In that Claim, the Claimants seek a declaration of oppressive conduct or damages for oppressive conduct as against Checroune personally, not 148. The Claimants plead therein that 148 was an agent for Checroune and that Checroune is personally liable for the actions of 148.

[72] The allegations of improper conduct before the Court are similarly restricted to allegations about Checroune's actions. Ahmadi states (and Checroune denies) that Checroune turned off the lights and the elevators in the building at the Property and that he harassed subtenants.

[73] The onus is on the complainant pleading oppressive conduct to identify the expectation that he or she claims has been breached by the conduct in question and to establish that such expectations are reasonable: *BCE Inc. v. 1976 Debentureholders*, 2008 SCC 69, [2008] 3 S.C.R. 460 at para. 70.

[74] The Claimants have not provided any evidence in terms of their reasonable expectations. Ahmadi states that Checroune never involved the Claimants in the management of 148, never invited them to a shareholders' meeting and kept them in the dark about 148's operations and finances. She did not state that this amounted to a breach of a reasonable expectation.

[75] Practically speaking, there were only two shareholders of 148. It defies commercial reality that a shareholders' meeting would be called, particularly as the Claimants did not request a meeting and the parties spoke daily about the business of 148. Contrary to Ahmadi's evidence,

Checroune testified that he provided the Claimants with financial information about 148 and access to information in general.

[76] The Claimants argue that the June 22 Agreement created reasonable expectations that they would gain the associated rights of a 20% shareholder. The Agreement clearly states, however, that until the Claimants became 100% shareholders of 148, they could not manage the business, retain profits from the business, or mortgage or sell the business.

[77] In my view, therefore, the Claimants have failed to demonstrate that 148 engaged in oppressive conduct or breached their reasonable expectations.

Damages

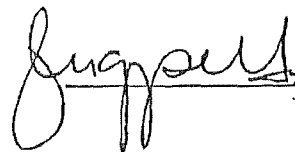
[78] For the purpose of damages, the Claimants argue that they reasonably expected that they would become the owners of the Property. It is appropriate, they submit, to therefore award them damages in the amount of \$4 million, being the difference between the price that they proposed to pay under the June 22 Agreement and the price the Property ultimately sold for under the Proposal.

[79] The Claimants have failed to consistently state their reasonable expectations. They have failed to explain how this remedy is connected to their reasonable expectations pursuant to the June 22 Agreement or the alleged oppressive conduct of 148. The Claimants' damages would only be based on the difference between the price in their agreement and the price the Property ultimately sold for if the agreement had been for the purchase of the Property. There is no evidence of this. In fact, the Claimants concluded an agreement to purchase 100% of Checroune's shares in 148, not the Property. If oppressive conduct was found, which it was not, damages would appropriately flow from the failed June 22 Agreement, and would reflect the impact of the oppressive conduct on the price of 148's shares.

Disposition

[80] It is for these reasons the appeal is dismissed.

[81] The parties are encouraged to agree on an appropriate costs award. If unable to do so, I will receive submissions of not more than three pages in writing. 148 shall submit their submissions within 30 days. The Claimants shall submit their submissions in response within 20 days thereafter. A Reply, if any, shall be submitted within 10 days thereafter.



V.R. Chiappetta J.

CITATION: Hussaini v. Crowe Soberman Inc., 2019 ONSC 642
COURT FILE NO.: 31-2303814
ESTATE FILE NO.: 31-2303814
DATE: 20190124

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:

JAMSHID HUSSAINI AND NEELOFAR AHMADI

Appellants

- and -

CROWE SOBERMAN INC., TRUSTEE ACTING IN
THE PROPOSAL OF 1482241 ONTARIO LIMITED
("148")

Respondent

REASONS FOR JUDGMENT

V.R. Chiappetta J.

In the matter of the proposal of
1482241 ONTARIO LIMITED
of the City of Toronto
in the Province of Ontario

Court File No. 31-2303814

SUPERIOR COURT OF ONTARIO

PROCEEDING COMMENCED AT
TORONTO

AFFIDAVIT OF NEELOFAR AHMADI

PARIS & COMPANY

161 Bay Street, Suite 2700
Toronto ON M5J 2S1

Neil Paris LSO# 48139G

nparis@parislaw.ca

Tel: 416-304-1717

Fax: 647.931.4718

Lawyers for the Applicants (Appellants)

APPENDIX “H”

148 Ontario Claims Register

Secured Creditors	Amounts	Proven	Filed Prior to Deadline	Admitted by Crowe	Opposed by Debtor
1 Caruda Holdings	\$ 804,726.03	No	Yes	No	
2 Canada Revenue Agency	\$ 3,972.76	Yes	Yes	Yes	

Unsecured Creditors	Amounts	Proven	Filed Prior to Deadline	Admitted by Crowe	Opposed by Debtor
1 A Checroune Realty Corporation	\$ 553,015.98	No	Yes	No	
2 Alain Checroune	\$ 4,350,000.00	No	Yes	No	
3 Alain Checroune	\$ 1,440,000.00	No	Yes	No	
4 Alain Checroune	\$ 12,000,000.00	No	Yes	No	
5 Allevio Clinic #1	\$ 486,050.06	No	Yes	Partially- See Schedule	
6 Caruda Holdings	\$ 1,318,321.64	No	Yes	No	
7 Caruda Holdings	\$ 136,588.65	No	Yes	No	
8 Canada Revenue Agency	\$ 17,699.61	Yes	Yes	Yes	
9 Daikin Applied Canada Inc.	\$ 12,353.69	Yes	Yes	Yes	
10 Devry Smith LLP	\$ 128,153.49	Yes	Yes	Yes	
11 GDI Services Canada LP	\$ 95,746.42	Yes	Yes	Yes	
12 Gowling WLG	\$ 401,284.89	Yes	Yes	Yes	
13 North York Family Physicians Holdings Inc.	\$ 46,442.42	Yes	Yes	Yes	
14 Quallied Elevator Repair	\$ 18,247.23	Yes	Yes	Yes	
15 Rogers	\$ 871.56	Yes	Yes	Yes	
16 Toronto Hydro	\$ 199,934.53	Yes	Yes	Yes	
17 Treasurer- City of Toronto	\$ 3,197.25	Yes	Yes	Yes	
18 YYZ Plumbing	\$ 17,960.20	Yes	Yes	Yes	

Contingent Creditors	Amounts	Proven	Filed Prior to Deadline	Admitted by Crowe	Opposed by Debtor
1 Chang-Soon Yoo	\$ 800,000.00	No	No	No	
2 Clear Custom Brokers	\$ 500,000.00	No	Yes	Contingent	
3 Home Life Dreams Realty	\$ 42,750,000.00	No	Yes	Contingent	Yes
4 Jamshid Hussaini	\$ 42,750,000.00	No	Yes	Contingent	Yes
5 Neelofar Ahmadi	\$ 42,750,000.00	No	Yes	Contingent	Yes

APPENDIX “O”



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

THE HONOURABLE)

THURSDAY, THE 6TH DAY

)

~~MR. JUSTICE HAINEY~~ CONWAY)

OF JUNE, 2019

IN BANKRUPTCY AND INSOLVENCY

**IN THE MATTER OF THE PROPOSAL OF 1482241 ONTARIO LIMITED, OF THE
CITY OF TORONTO, IN THE PROVINCE OF ONTARIO**

ORDER

THIS MOTION made by 1482240 Ontario Limited (the “**Debtor**”) for an order directing Crowe Soberman Inc. in its capacity as proposal trustee for the Debtor (in such capacity, the “**Proposal Trustee**”) to disburse certain funds from the proceeds from the sale of the property municipally known as 240 Duncan Mill Road, Toronto, Ontario (the “**Sale Proceeds**”) to the Company, was heard October 31, 2018, at 330 University Avenue, Toronto, Ontario.

ON READING the affidavit of Alain Checroune sworn June 8, 2018, the affidavit of Alain Checroune sworn October 5, 2018, and the exhibits thereto, the Fourth Report of the Proposal Trustee dated March 7, 2018, and the exhibits thereto, the Second Supplement to the Sixth Report of the Proposal Trustee dated October 24, 2018, and the appendices thereto, the Eighth Report of the Proposal Trustee dated May 10, 2019, and the appendices thereto, and the Supplement to the Eighth Report of the Proposal Trustee dated May 23, 2019, the appendices

thereto (the “**Supplement to the Eighth Report**”), including the affidavit of Steven L. Graff sworn May 22, 2019 (the “**Graff Affidavit**”) and the affidavit of Hans Rizarri sworn May 23, 2019 (the “**Rizarri Affidavit**”), and the affidavit of Alexandra Teodorescu sworn May 23, 2019 (the “**Teodorescu Affidavit**”), and on hearing the submissions of counsel for the Company, the Proposal Trustee and such other counsel as were present, no one appearing for any other person on the service list, although duly served as appears from the affidavits of service of Miranda Spence sworn June 5, 2019, filed, and on being advised that the Company and the Proposal Trustee consent to the relief sought herein,

1. **THIS COURT ORDERS** that the Proposal Trustee be and is hereby authorized, without further Order of this Court, to distribute to the Company the sum of \$2,200,000.00 from the Sale Proceeds.

2. **THIS COURT ORDERS** that the fees and disbursements of the Proposal Trustee’s counsel as described in the Supplement to the Eighth Report and as set out in the Graff Affidavit, be and are hereby approved, and the Proposal Trustee is authorized to pay such fees and disbursements from the Sale Proceeds.

3. **THIS COURT ORDERS** that the fees and disbursements of the Proposal Trustee as described in the Supplement to the Eighth Report and as set out in the Rizarri Affidavit, be and are hereby approved, and the Proposal Trustee is authorized to pay such fees and disbursements from the Sale Proceeds.

4. **THIS COURT ORDERS** that the fees and disbursements of the Debtor’s counsel as set out in the Teodorescu Affidavit, be and are hereby approved, and the Proposal Trustee is authorized to pay such fees and disbursements from the Sale Proceeds.

5. **THIS COURT ORDERS** that the Proposal Trustee shall continue to hold the remaining Sale Proceeds in trust, pending further Order of the Court.

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

JUN 06 2019

PER / PAR:

R

Conway

IN THE MATTER OF THE PROPOSAL OF 1482241 ONTARIO LIMITED, OF THE CITY OF TORONTO, IN THE PROVINCE OF ONTARIO

Court File No. 31-2303814

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

**IN BANKRUPTCY AND INSOLVENCY
Proceedings commenced at Toronto**

ORDER

AIRD & BERLIS LLP
Barristers and Solicitors
Brookfield Place
181 Bay Street, Suite 1800
Toronto, ON M5J 2T9

Steven L. Graff (LSUC # 31871V)

Tel: (416) 865-7726

Fax: (416) 863-1515

Email: sgraff@airdberlis.com

Miranda Spence (LSUC # 60621M)

Tel: (416) 865-3414

Fax: (416) 863-1515

Email: mspence@airdberlis.com

(Com)
C9:30am

COUNSEL SLIP

COURT FILE NO. BK-17-0230381

JUN 06 2019

DATE _____
NO ON LIST 1

TITLE OF PROCEEDING 1482241 Ont. vs. Fasken Martineau - Dumoulin

COUNSEL FOR:		PHONE & FAX NOS
PLAINTIFF(S)	<u>D. Ullmann for 148</u>	416 596-2437 596-4289
APPLICANT(S)	<u>E. Turkievicz for 148</u>	416 593-2437
PETITIONER(S)	<u>(416-860-3845)</u> <u>(416-860-0003)</u>	

COUNSEL FOR:		PHONE & FAX NOS
DEFENDANT(S)	<u>Miranda Spence</u>	416-865-3717
RESPONDENT(S)	<u>for Proposal Trustee</u>	416-863-1515
		<u>mspence@airdberlis.com</u>

Counsel for Gowling WLG	(T) 416-862-4369
Christopher Stanek	(F) 416-862-7661

June 6/19

A distribution order has been worked out on consent/ unopposed ~~from~~ pursuant to which \$2.2 million of the sale proceeds will be distributed to the Company. Counsel have advised that this amount has been calculated on the basis that the Proposal Trustee will continue to hold ~~100%~~ sale proceeds sufficient to cover 100% of the known debts of the company, for distribution at a later date. Re the indisputed debt of ~~\$401,284.89~~ \$401,284.89 to Gowling, all have agreed that it can be distributed to Gowling by the Prop Trustee now & I approve same. OTC as signed by Mr. Conway.

TAB 3

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)
IN BANKRUPTCY AND INSOLVENCY**

**IN THE MATTER OF THE PROPOSAL OF
1482241 ONTARIO LIMITED
OF THE CITY OF TORONTO
IN THE PROVINCE OF ONTARIO**

**AFFIDAVIT OF HANS RIZARRI
SWORN FEBRUARY 2, 2022**

I, **Hans Rizarri**, of the City of Toronto, in the Province of Ontario, **AFFIRM** and **STATE THE FOLLOWING TO BE TRUE:**

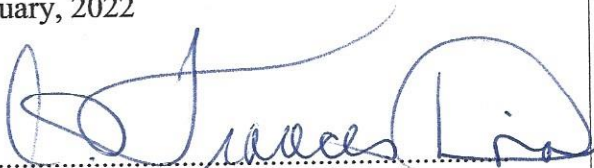
1. I am a Licensed Insolvency Trustee with the firm of Crowe Soberman Inc. ("**Crowe**"), the Proposal Trustee of 1482241 Ontario Limited (the "**Company**"), and as such have personal knowledge of the matters deposed to herein.
2. On October 13, 2017 the Company filed a Notice of Intention to make a Proposal pursuant to Section 50.4 (1) of the *Bankruptcy and Insolvency Act*, Crowe was appointed as the Proposal Trustee by the Official Receiver.

3. This affidavit is made in support of a motion to be made by the Proposal Trustee that seeks, *inter alia*, approval of the fees and disbursements of Crowe in its capacity as Proposal Trustee in respect of services provided in connection with these proceedings.

4. Crowe's detailed statement(s) of account which form the period November 23, 2019 through February 1, 2022, disclose in detail (i) the names, hourly rates and time expended by each person who rendered services, and (ii) description of services rendered for the relevant time period. A chart that summarizes the Trustee's fees and detailed time sheets are attached as Exhibit "1" to this Affidavit.

5. I have been actively involved in this matter. I have reviewed the Crowe detailed statement of account and I consider the time expended and the fees charged to be reasonable in light of the services performed and the prevailing market rates for such services.

Affirmed before me at the City of Toronto
in the Province of Ontario, on this 2nd day of
February, 2022



Commissioner for Taking Affidavits, etc.

Alfonsina Frances Doria, a Commissioner, etc.,
Province of Ontario, for Crowe Soberman Inc.,
and its affiliates.
Expires June 29, 2024.

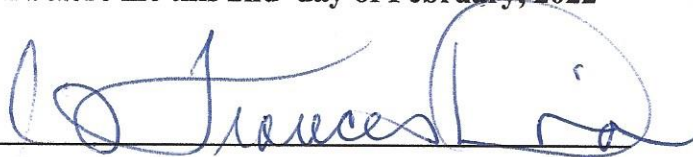


HANS RIZARRI, LIT, CIRP

This is Exhibit "1" referred to

in the Affidavit of Hans Rizarri

Sworn before me this 2nd day of February, 2022

A handwritten signature in blue ink, appearing to read "Alfonsina Frances Doria", written over a horizontal line.

A Commissioner for Taking Oaths, in and for

The Province of Ontario

Alfonsina Frances Doria, a Commissioner, etc.,
Province of Ontario, for Crowe Soberman Inc.,
and its affiliates.
Expires June 29, 2024.

From: 11/23/2019

To: 2/1/2022

Project: 022744		1482241 Ontario Limited Re: 240 Duncan Mills Rd					
Date	Workcode	Description	Type	Empl ID	Hours	Rate	Amount
11-25-2019	5702	Admin work file - General (description mandatory) call with counsel, review of letter, court date confirmation	Hour	GRH	0.50	360.00	180.00
11-29-2019	5702	Admin work file - General (description mandatory) trustee time sheet, WIP	Hour	GRH	0.25	360.00	90.00
12-2-2019	5711	Reports report and motion record, fee aff, prep appendices	Hour	GRH	2.50	360.00	900.00
12-3-2019	5702	Admin work file - General (description mandatory) service, motion record, positing, questions re fee request and system	Hour	GRH	0.60	360.00	216.00
12-4-2019	5710	Banking - File Specific prep Oct 2019 Bank Rec	Hour	FX	0.25	240.00	60.00
12-4-2019	5705	Creditor/Debtor Inquiries/Assistance Dis with D.Ullmann re debtor's position on proposal trustee court motion Friday, review of material and consideration	Hour	HMR	0.70	610.00	427.00
12-5-2019	5702	Admin work file - General (description mandatory) emails re comig opposition to trustee's motion, email on same, call with counsel	Hour	GRH	0.50	360.00	180.00
12-5-2019	5705	Creditor/Debtor Inquiries/Assistance D.Ullmann email re various matters trustee motion tomorrow; review thereof, dis with M.Spence on same as to proposal trustee's position	Hour	HMR	0.80	610.00	488.00
12-6-2019	5702	Admin work file - General (description mandatory) court attendance, fee approval,	Hour	GRH	3.50	360.00	1,260.00
12-9-2019	5702	Admin work file - General (description mandatory) updated accounting, emails on transfer of funds, request for staff review on same, calls w counsel	Hour	GRH	0.70	360.00	252.00
12-10-2019	5702	Admin work file - General (description mandatory) various re banking, sending documents, accounting, fees w staff, court order and endorsement and posting to site	Hour	GRH	0.70	360.00	252.00
12-11-2019	5702	Admin work file - General (description mandatory) various emails w debtor and call w debtor counsel on accounting	Hour	GRH	0.15	360.00	54.00
12-16-2019	5702	Admin work file - General (description mandatory) initial creditor response to debtor note re claim	Hour	GRH	0.15	360.00	54.00
12-17-2019	5702	Admin work file - General (description mandatory) creditor inquiry	Hour	GRH	0.15	360.00	54.00
12-17-2019	5710	Banking - File Specific review of banking and reporting to manager	Hour	FX	0.25	240.00	60.00
12-18-2019	5710	Banking - File Specific review of banking and reporting to manager	Hour	FX	0.25	240.00	60.00
1-2-2020	5702	Admin work file - General (description mandatory) various correspondence re claimants	Hour	GRH	0.10	360.00	36.00
1-6-2020	5702	Admin work file - General (description mandatory) various creditor emails re claim review	Hour	GRH	0.10	360.00	36.00
1-13-2020	5713	Receivership Receipt and review of Motion Record of the debtor returnable January 17 2020, follow up with M. Spence and S. Graff	Hour	HMR	1.20	610.00	732.00
1-14-2020	5702	Admin work file - General (description mandatory)	Hour	GRH	0.50	360.00	180.00

From: 11/23/2019

To: 2/1/2022

Project: 022744		1482241 Ontario Limited Re: 240 Duncan Mills Rd					
Date	Workcode	Description	Type	Empl ID	Hours	Rate	Amount
		review of motion record of debtor, emails w counsel on same					
1-16-2020	5702	Admin work file - General (description mandatory)	Hour	GRH	1.50	360.00	540.00
		prep for court hearing, various conf calls, emails, statement prep,					
1-16-2020	5705	Creditor/Debtor Inquiries/Assistance	Hour	HMR	1.20	610.00	732.00
		Distr request by debtor incl claimants possible funds; accounting update with GH, available funds, corresp from parties opposing; consider position of proposal trustee on distr request; amend court order options					
		M.Spence per D.Ullmann to resolve					
1-17-2020	5702	Admin work file - General (description mandatory)	Hour	GRH	2.50	360.00	900.00
		court attendance re debtors motion					
1-17-2020	5705	Creditor/Debtor Inquiries/Assistance	Hour	HMR	0.80	610.00	488.00
		Debtor motion for funds on hand to be paid, review of opposition incl Devry Smith Affidavit, proposal trustee position thereof, dis with GH pre and post court attendance					
1-21-2020	5702	Admin work file - General (description mandatory)	Hour	GRH	0.20	360.00	72.00
		Review continuing issues w HMR					
1-23-2020	5710	Banking - File Specific	Hour	FX	0.50	240.00	120.00
		process distribution of dividend to creditors per court order dated Dec 6, 2019					
1-23-2020	5702	Admin work file - General (description mandatory)	Hour	GRH	0.35	360.00	126.00
		instructions re dividends, review and same					
1-29-2020	5714	Div I Proposal	Hour	HMR	0.20	610.00	122.00
		Review matters to date and debtor's position					
1-31-2020	5702	Admin work file - General (description mandatory)	Hour	GRH	0.50	360.00	180.00
		distribution to creditors, Diakin affidavit					
2-5-2020	5704	Review	Hour	FX	0.25	240.00	60.00
		review of banking and reporting to manager					
2-6-2020	5702	Admin work file - General (description mandatory)	Hour	GRH	0.50	360.00	180.00
		review of claim re Desjardins, after claim bar date, not admitted, emails w counsel on Court attendance, CRA voicemail					
2-10-2020	5720	CRA / Audit / Filings	Hour	GRH	0.20	360.00	72.00
		CRA updates on closing, dividends paid, calls from debtor on meeting					
2-12-2020	5702	Admin work file - General (description mandatory)	Hour	GRH	0.70	360.00	252.00
		call with counsel, updated accounting, meet w HMR on next steps					
2-12-2020	5705	Creditor/Debtor Inquiries/Assistance	Hour	HMR	1.60	610.00	976.00
		Debtor letter of Feb 11/20 re debtor position on creditors; review of claims process as ordered by Justice Patillo Dec 2019 and Justice Conway Jan 2020, review of corresp to/from creditors, review of Allevio disallowance appeal motion, prep mtg w debtor					
2-13-2020	5705	Creditor/Debtor Inquiries/Assistance	Hour	HMR	1.70	610.00	1,037.00
		Meeting at 1482241, review of debtor Feb 11 20 letter re position on various creditors, review of supporting documents thereof, request for trustee to negotiate same with creditors, planning thereof					
2-13-2020	5700	Client Interview/Consult	Hour	HMR	1.50	610.00	915.00
		Meeting with principals as requested re Caruda Holdings claim against 1482241					
2-14-2020	5702	Admin work file - General (description mandatory)	Hour	GRH	0.10	360.00	36.00
		creditor inquiries on settlement status					
2-17-2020	5702	Admin work file - General (description mandatory)	Hour	GRH	0.15	360.00	54.00
		creditor inquiries					

From: 11/23/2019

To: 2/1/2022

Project: 022744		1482241 Ontario Limited Re: 240 Duncan Mills Rd					
Date	Workcode	Description	Type	Empl ID	Hours	Rate	Amount
2-18-2020	5714	Div I Proposal	Hour	HMR	0.80	610.00	488.00
Dis with Daiken lawyer M.Anderson; dis with Larry Keown re Devry Smith claim: as requested by debtor							
2-21-2020	5702	Admin work file - General (description mandatory)	Hour	GRH	0.50	360.00	180.00
calls and emails w counsel re Monday hearing, debtor requests, new counsel, retainer							
2-23-2020	5702	Admin work file - General (description mandatory)	Hour	GRH	0.50	360.00	180.00
various calls and emails re court attendance							
2-24-2020	5702	Admin work file - General (description mandatory)	Hour	GRH	1.75	360.00	630.00
court attendance, various emails follow up re retainer, next steps, order, creditor inquiries							
2-24-2020	5705	Creditor/Debtor Inquiries/Assistance	Hour	HMR	0.80	610.00	488.00
Feb 23: dis with GH, corresp M.Spence re Monday court hearing; resolution attempted to date with creditors as per Alain, no business solution obtained as of yet; corresp from proposed new lawyer Howard Manis; follow up planning							
2-26-2020	5702	Admin work file - General (description mandatory)	Hour	GRH	0.20	360.00	72.00
various re Daikin creditor claim							
2-26-2020	5705	Creditor/Debtor Inquiries/Assistance	Hour	HMR	0.30	610.00	183.00
Corresp creditor supporting documents, corresp with Howard Manis on same; Howard Manis requesting status of creditors claims							
2-26-2020	5705	Creditor/Debtor Inquiries/Assistance	Hour	HMR	0.20	610.00	122.00
Short dis D.Ullmann re funds in trust approx. 70k and to return to 1482241							
2-27-2020	5702	Admin work file - General (description mandatory)	Hour	GRH	0.40	360.00	144.00
various w City of Toronto, review and respond to correspondence							
2-28-2020	5702	Admin work file - General (description mandatory)	Hour	GRH	0.15	360.00	54.00
city of toronto inquiries							
2-28-2020	5705	Creditor/Debtor Inquiries/Assistance	Hour	HMR	0.10	610.00	61.00
Gowlings, court office request to discontinue assessment previously set							
3-2-2020	5702	Admin work file - General (description mandatory)	Hour	GRH	0.15	360.00	54.00
AB Bill of Costs, Gowlings notice re assessment							
3-5-2020	5714	Div I Proposal	Hour	HMR	1.00	610.00	610.00
Attend meeting with Alain Checroune re creditors claims to date, settlements, position of company							
3-5-2020	5705	Creditor/Debtor Inquiries/Assistance	Hour	HMR	1.80	610.00	1,098.00
Attend meeting at debtor's office Yonge-Sheppard per debtor request review in detail creditor claims and settlement position of debtor; review of legal claims owed to debtor; review of additional 150k distribution to debtor							
3-6-2020	5702	Admin work file - General (description mandatory)	Hour	GRH	1.25	360.00	450.00
various calls and emails w counsel, updated accounting/wip fee recovery analysis, review w HMR							
3-6-2020	5705	Creditor/Debtor Inquiries/Assistance	Hour	HMR	0.80	610.00	488.00
Dis H.Manis re payout request for 150k; accounting thereof with GH, M.Spence; letter from H.Manis to 148 re comments on creditor claims to date							
3-9-2020	5702	Admin work file - General (description mandatory)	Hour	GRH	1.25	360.00	450.00
review of all fee affidavits and court orders, shortfall on remittances,							
3-9-2020	5705	Creditor/Debtor Inquiries/Assistance	Hour	HMR	1.50	610.00	915.00
Meeting with debtor and H.Manis re creditor claims							
3-10-2020	5702	Admin work file - General (description mandatory)	Hour	GRH	0.75	360.00	270.00

From: 11/23/2019

To: 2/1/2022

Project: 022744		1482241 Ontario Limited Re: 240 Duncan Mills Rd					
Date	Workcode	Description	Type	Empl ID	Hours	Rate	Amount
call with counsel, prep for court attendance, multiple emails from company to remaining creditors on position re claim							
3-10-2020	5705	Creditor/Debtor Inquiries/Assistance	Hour	HMR	0.60	610.00	366.00
Creditors claim position of 1482241 from H.Manis corresp to creditors counsel, follow up with M.Spence for court attendance tomorrow							
3-11-2020	5702	Admin work file - General (description mandatory)	Hour	GRH	2.00	360.00	720.00
court attendance re debtor request for funds and creditor claim status,							
3-11-2020	5705	Creditor/Debtor Inquiries/Assistance	Hour	HMR	0.80	610.00	488.00
Corresp from creditors legal counsel re position of H.Manis yesterdays email; court results with GH; review of H.Manis reporting and court order, position of proposal trustee and involvement							
3-13-2020	5702	Admin work file - General (description mandatory)	Hour	GRH	0.15	360.00	54.00
creditor inquiries							
3-23-2020	5705	Creditor/Debtor Inquiries/Assistance	Hour	HMR	0.20	610.00	122.00
Creditor corresp re settlement							
3-30-2020	5702	Admin work file - General (description mandatory)	Hour	GRH	0.35	360.00	126.00
fee review and analysis							
4-2-2020	5702	Admin work file - General (description mandatory)	Hour	GRH	0.25	360.00	90.00
call with counsel on status of settlement discussion with debtor counsel and creditors							
4-3-2020	5702	Admin work file - General (description mandatory)	Hour	GRH	0.70	360.00	252.00
fee, disbursement review, reconcile gap between fee approved, disbursements							
4-6-2020	5710	Banking - File Specific	Hour	FX	0.25	240.00	60.00
review of banking and reporting to manager							
4-7-2020	5702	Admin work file - General (description mandatory)	Hour	GRH	0.20	360.00	72.00
call with former staff, counsel							
4-7-2020	5705	Creditor/Debtor Inquiries/Assistance	Hour	HMR	0.40	610.00	244.00
Laxmi call re information provided by Alain Checroune may not have been correct or truthful, further investigation required							
4-20-2020	5702	Admin work file - General (description mandatory)	Hour	GRH	0.20	360.00	72.00
call with counsel on status of closing,							
4-21-2020	5710	Banking - File Specific	Hour	FX	0.25	240.00	60.00
review of banking and reporting to manager							
5-5-2020	5702	Admin work file - General (description mandatory)	Hour	GRH	0.40	360.00	144.00
call with tenants re rent arrears, review of lease and email with counsel							
5-11-2020	5702	Admin work file - General (description mandatory)	Hour	GRH	0.40	360.00	144.00
call with counsel re tenant concerns, role of proposal trustee, updates on settlement discussions							
5-12-2020	5702	Admin work file - General (description mandatory)	Hour	GRH	0.20	360.00	72.00
call with tenant							
6-12-2020	5705	Creditor/Debtor Inquiries/Assistance	Hour	HMR	0.20	610.00	122.00
Settlement with Daikin Canada							
6-12-2020	5710	Banking - File Specific	Hour	FX	0.25	240.00	60.00
review of banking and reporting to manager							
6-15-2020	5705	Creditor/Debtor Inquiries/Assistance	Hour	HMR	0.20	610.00	122.00
Review in prep for call w M.Spence							
6-16-2020	5704	Review	Hour	HMR	0.70	610.00	427.00

From: 11/23/2019

To: 2/1/2022

Project: 022744		1482241 Ontario Limited Re: 240 Duncan Mills Rd					
Date	Workcode	Description	Type	Empl ID	Hours	Rate	Amount
Status review w M.Spence, review of lawsuit Alain v. Caruda							
6-19-2020	5705	Creditor/Debtor Inquiries/Assistance	Hour	HMR	0.20	610.00	122.00
Daikin lawyer f/up re release letter, fwd M.Spence							
6-29-2020	5705	Creditor/Debtor Inquiries/Assistance	Hour	HMR	0.30	610.00	183.00
Settlement dis with claimants incl Allevio 200k offer							
7-6-2020	5705	Creditor/Debtor Inquiries/Assistance	Hour	HMR	0.10	610.00	61.00
Corresp Howard Manis and lawyer for re Daikin settlement							
7-13-2020	5710	Banking - File Specific	Hour	HMR	0.70	610.00	427.00
M.Spence re payouts next round, analysis thereof; review of prvs court order							
7-14-2020	5710	Banking - File Specific	Hour	HMR	1.20	610.00	732.00
Review of bank balances, reconcile payments, request from parties additional pynts, corresp M.Spence thereof							
7-15-2020	5710	Banking - File Specific	Hour	HMR	0.60	610.00	366.00
Review accounts and coordinate reconciliation bw FX and M.Spence							
7-16-2020	5704	Review	Hour	FX	1.00	240.00	240.00
review Aird & Berlis trust ledger, and our trust ledger, and report, review and revised July 15, 2020 reconciliations and tele discussion with Miranda to verify disbursement paid, other items							
7-16-2020	5710	Banking - File Specific	Hour	HMR	1.00	610.00	610.00
Banking review, reconciliation w FX, distribution to date, additional distr request H.Manis							
7-21-2020	5710	Banking - File Specific	Hour	HMR	0.60	610.00	366.00
Continuing review w FX, M.Spence re payments, levy to be paid to OSB; draft court order from M.Spence							
7-22-2020	5710	Banking - File Specific	Hour	HMR	3.60	610.00	2,196.00
M.Spence re draft court order, distribution request by Howard Manis for debtor; distribution schedule analysis, rec of bank statement and prvs distribution, levies paid and o/s to date w FX, planning for next distr recommendation by proposal trustee							
7-23-2020	5705	Creditor/Debtor Inquiries/Assistance	Hour	HMR	0.70	610.00	427.00
Debtor lawyer H.Manis corresp, M.Spence re draft order, distribution of settlements thereof, legal fees							
7-27-2020	5705	Creditor/Debtor Inquiries/Assistance	Hour	HMR	0.80	610.00	488.00
Court order obtained settlement with creditors, distribution of funds planning, update analysis							
7-30-2020	5710	Banking - File Specific	Hour	FX	0.25	240.00	60.00
review of banking and reporting to manager							
8-6-2020	5711	Reports	Hour	HMR	0.70	610.00	427.00
Review disbursement schedule, next round, planning trustee report							
8-19-2020	5710	Banking - File Specific	Hour	FX	0.25	240.00	60.00
review of banking and reporting to manager							
8-24-2020	5705	Creditor/Debtor Inquiries/Assistance	Hour	HMR	0.50	610.00	305.00
Disbursement review and timing, payment of creditor claims							
8-31-2020	5705	Creditor/Debtor Inquiries/Assistance	Hour	HMR	0.20	610.00	122.00
Status distribution, banking review							
9-2-2020	5710	Banking - File Specific	Hour	FX	0.25	240.00	60.00
review of banking and reporting to manager							
9-22-2020	5705	Creditor/Debtor Inquiries/Assistance	Hour	HMR	0.20	610.00	122.00
Howard Manis corresp re claim							

From: 11/23/2019

To: 2/1/2022

Project: 022744		1482241 Ontario Limited Re: 240 Duncan Mills Rd					
Date	Workcode	Description	Type	Empl ID	Hours	Rate	Amount
10-21-2020	5710	Banking - File Specific review of banking and reporting to manager	Hour	FX	0.25	240.00	60.00
11-17-2020	5710	Banking - File Specific review of banking and reporting to manager	Hour	FX	0.25	245.00	61.25
12-21-2020	5710	Banking - File Specific review of banking and reporting to manager	Hour	FX	0.25	245.00	61.25
1-13-2021	5710	Banking - File Specific review of Nov 2020 banking, review with Trustee	Hour	FX	0.25	245.00	61.25
2-3-2021	5704	Review review of Dec 2020 banking, review with Trustee	Hour	FX	0.25	245.00	61.25
2-8-2021	5704	Review Status and update request to H.Manis	Hour	HMR	0.20	620.00	124.00
2-26-2021	5710	Banking - File Specific review of Jan 2021 banking, review with Trustee	Hour	FX	0.25	245.00	61.25
3-17-2021	5704	Review Short dis w David Ullmann	Hour	HMR	0.20	620.00	124.00
4-7-2021	5710	Banking - File Specific review of Feb 2021 banking, review with Trustee	Hour	FX	0.25	245.00	61.25
4-20-2021	5704	Review Miranda Spence re status, consider proposal trustee's position to close matters	Hour	HMR	0.20	620.00	124.00
5-13-2021	5710	Banking - File Specific review of Mar 2021 banking, review with Trustee	Hour	FX	0.25	245.00	61.25
6-16-2021	5710	Banking - File Specific review of Apr 2021 banking, review with Trustee	Hour	FX	0.25	245.00	61.25
7-8-2021	5710	Banking - File Specific review of May 2021 banking	Hour	FX	0.25	245.00	61.25
7-28-2021	5704	Review Review of o/s matters, planning considerations to close and discharge as proposal trustee	Hour	HMR	0.60	620.00	372.00
8-10-2021	5710	Banking - File Specific review of June 2021 banking	Hour	FX	0.25	245.00	61.25
8-19-2021	5704	Review Corresp from creditor lawyer; corresp M.Spence	Hour	HMR	0.20	620.00	124.00
8-24-2021	5704	Review Review of file, status on continuing matters in prep for and attend to call with M.Spence (Aird&Berlis)	Hour	HMR	0.70	620.00	434.00
8-26-2021	5704	Review Short dis w legal counsel, review of accounts and last report of proposal trustee	Hour	HMR	0.40	620.00	248.00
9-15-2021	5710	Banking - File Specific review of monthly banking, review with Trustee	Hour	FX	0.25	245.00	61.25
9-15-2021	5710	Banking - File Specific Review banking, creditors outstanding matters, status of all matters in prep for next steps M.Spence	Hour	HMR	0.60	620.00	372.00
10-14-2021	5710	Banking - File Specific review of monthly banking, review with Trustee	Hour	FX	0.25	245.00	61.25
11-1-2021	5704	Review	Hour	HMR	0.90	630.00	567.00

From: 11/23/2019

To: 2/1/2022

Project: 022744		1482241 Ontario Limited Re: 240 Duncan Mills Rd					
Date	Workcode	Description	Type	Empl ID	Hours	Rate	Amount
Corresp M.Spence Aird Berlis; call A.Degan Caruda re status of proceedings; review of file, planning thereof							
11-11-2021	5710	Banking - File Specific	Hour	FX	0.25	250.00	62.50
review of monthly banking, review with Trustee							
12-9-2021	5710	Banking - File Specific	Hour	FX	0.25	250.00	62.50
review of monthly banking, review with Trustee							
12-13-2021	5704	Review	Hour	HMR	0.70	630.00	441.00
Miranda Spence corresp re status, position of proposal trustee on remaining funds and claims disputed by company, planning thereof							
12-23-2021	5710	Banking - File Specific	Hour	FX	0.25	250.00	62.50
review of monthly banking, review with Trustee							
1-4-2022	5704	Review	Hour	HMR	0.30	630.00	189.00
M.Spence re letter to Howard Manis lawyer for debtor							
1-18-2022	5714	Div I Proposal	Hour	DPR	1.00	275.00	275.00
reviewed communications with HManis and MSpence and brief review of file re upcoming court hearing							
1-28-2022	5710	Banking - File Specific	Hour	FX	0.25	250.00	62.50
review of monthly banking, review with Trustee							
1-31-2022	5711	Reports	Hour	HMR	1.60	630.00	1,008.00
Proposal trustee report draft, review of file incl distributions and applicable levy; planning for upcoming court hearing							
2-1-2022	5711	Reports	Hour	HMR	2.30	630.00	1,449.00
Review file, 10th report of trustee, draft court order w D.Posner outstanding matters to date; review of banking and prvs accounting, instr thereof to DP, planning to court hearing							
2-1-2022	5702	Admin work file - General (description mandatory)	Hour	DPR	3.75	275.00	1,031.25
Reviewed multiple recent PT Reports to gain an understanding of the current status of these proceedings: prepared analysis re amounts paid to creditors/disputed creditors and levy calculation							
Project: 022744					82.25		38,488.25

TAB 4

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

IN BANKRUPTCY AND INSOLVENCY

**IN THE MATTER OF THE PROPOSAL OF 1482241 ONTARIO LIMITED,
OF THE CITY OF TORONTO, IN THE PROVINCE OF ONTARIO**

AFFIDAVIT OF IAN AVERSA
(sworn February 2nd, 2022)

I, **IAN AVERSA**, of the City of Toronto, in the Province of Ontario, **MAKE OATH AND SAY AS FOLLOWS:**

1. I am a partner at Aird & Berlis LLP and, as such, I have knowledge of the matters to which I hereinafter depose. Aird & Berlis LLP is acting as counsel for Crowe Soberman Inc. in its capacity as proposal trustee of 1482241 Ontario Limited (in such capacity, the “**Proposal Trustee**”).
2. Aird & Berlis LLP has prepared statements of account in connection with its mandate as counsel to the Proposal Trustee, detailing its services rendered and disbursements incurred, namely:
 - (a) an account dated February 24, 2020 in the amount of \$9,715.83 in respect of the period from November 25, 2019 to February 12, 2020;
 - (b) an account dated May 25, 2020 in the amount of \$3,995.84 in respect of the period from February 21, 2020 to May 11, 2020;
 - (c) an account dated August 31, 2020 in the amount of \$5,309.93 in respect of the period from June 14, 2020 to July 28, 2020;

Attached is Exhibit "A"

Referred to in the

AFFIDAVIT OF IAN AVERSA

Sworn before me

this 2nd day of February, 2022

Miranda Spence

Commissioner for taking Affidavits, etc

IN ACCOUNT WITH:

AIRD BERLIS

Brookfield Place, 181 Bay Street, Suite 1800
Toronto, Ontario, Canada M5J 2T9
T 416.863.1500 F 416.863.1515
airdberlis.com

Crowe Soberman Inc.
1100-2 St. Clair Avenue East
Toronto, ON
M4T 2T5

Attention: Hans M. Rizarri

Account No.: 661719

PLEASE WRITE ACCOUNT NUMBERS
ON THE BACK OF ALL CHEQUES

File No.: 48389/141309

February 24, 2020

Re: Proposal of 1482241 Ontario Limited and 240 Duncan Mill Road

FOR PROFESSIONAL SERVICES RENDERED on your behalf throughout the period ended February 12, 2020

LAWYER	DATE	RATE/ HOUR	TIME	VALUE	DESCRIPTION
MES	25/11/19	\$475.00	0.70	\$332.50	Draft letter to D. Ullmann and discuss with G. Hamilton; Revise and issue letter to D. Ullmann; Correspondence with counsel and court re: scheduling attendance; Address fee affidavit and report for motion
MES	27/11/19	\$475.00	0.10	\$47.50	Telephone call with D. Ullmann re: finalizing report
MES	28/11/19	\$475.00	0.10	\$47.50	Email to D. Ullmann requesting information for report
MES	29/11/19	\$475.00	0.40	\$190.00	Exchange emails with D. Ullmann re: report for motion on December 6, and correspondence with G. Hamilton re: same
MES	01/12/19	\$475.00	0.10	\$47.50	Exchange emails with D. Ullmann re: motion
MES	02/12/19	\$475.00	2.80	\$1,330.00	Revise and finalize Ninth Report; Draft and finalize notice of motion; Draft order for use at motion; Telephone calls and exchange of emails with G. Hamilton; Serve motion record for motion returnable Dec. 6

LAWYER	DATE	RATE/ HOUR	TIME	VALUE	DESCRIPTION
MES	03/12/19	\$475.00	0.20	\$95.00	Exchange emails re: filing of materials
MES	04/12/19	\$475.00	0.20	\$95.00	Address filing of materials with the court
PLW	04/12/19	\$190.00	0.60	\$114.00	Filed Motion Record for December 6, 2019
MES	05/12/19	\$475.00	0.80	\$380.00	Exchange of emails and telephone calls with H. Rizarri and G. Hamilton re: debtor's position for Dec 6 motion; Telephone call and email to D. Ullmann re: same
JGP	06/12/19	\$295.00	1.00	\$295.00	Travel to and attend Commercial List Court to enter order for M. Spence
MES	06/12/19	\$475.00	3.00	\$1,425.00	Prepare for and attend at court to address motion seeking process for adjudication of disputes, and payment of fees
MES	09/12/19	\$475.00	0.80	\$380.00	Arrange for wires and communications with G. Hamilton, debtor's representatives re: same; Exchange emails with J. Spotswood re: next steps
MES	10/12/19	\$475.00	0.20	\$95.00	Email to service list; Exchange emails with J. Lalande re: payment to debtor
MES	13/12/19	\$475.00	0.30	\$142.50	Exchange emails with D. Ullmann, G. Hamilton re issuance of debtor disallowance notices
MES	17/12/19	\$475.00	0.10	\$47.50	Receive email from H. Rizarri re: creditor response to debtor denial of claim
MES	05/01/20	\$525.00	0.10	\$52.50	Receive email from M. Brzezinski re: North York Family Physicians claim
SLG	13/01/20	\$850.00	0.20	\$170.00	Consider motion to finalize receivership and for distribution; discussion with M. Spence

LAWYER	DATE	RATE/ HOUR	TIME	VALUE	DESCRIPTION
MES	13/01/20	\$525.00	0.50	\$262.50	Receive and review motion record of the Debtor, and exchange emails with H. Rizarri and S. Graff re: same
MES	14/01/20	\$525.00	0.30	\$157.50	Exchange emails with H. Rizarri re: motion record of the debtor
MES	15/01/20	\$525.00	0.40	\$210.00	Telephone calls with H. Rizarri and G. Hamilton re: motion January 17
MES	16/01/20	\$525.00	1.80	\$945.00	Address various matters relating to January 17 court attendance, including telephone calls and exchanges of emails with G. Hamilton, D. Ullmann, M. Brzezinski, L. Keown, J. Spotswood; Review materials and prepare draft release language
MES	17/01/20	\$525.00	2.00	\$1,050.00	Prepare for and attend at court to address Debtor's motion for payment of funds, and scheduling of disputes with creditors
MES	20/01/20	\$525.00	0.10	\$52.50	Receive email enclosing order and endorsement from January 17
MES	21/01/20	\$525.00	0.10	\$52.50	Receive email from H. Rizarri re: cost assessment
MES	06/02/20	\$525.00	0.40	\$210.00	Exchange emails with G. Hamilton and D. Ullmann re: court date
MES	12/02/20	\$525.00	0.40	\$210.00	Review emails from H. Rizarri and G. Hamilton re: meeting with A. Checroune to review claims, and telephone call with G. Hamilton re: same
TOTAL:			<u>17.70</u>	<u>\$8,436.50</u>	

Name	Hours	Rate	Value
Miranda E. Spence (MES)	15.90	\$494.18	\$7,857.50
Patrick L. Williams (PLW)	0.60	\$190.00	\$114.00
John G. Pappas (JGP)	1.00	\$295.00	\$295.00
Steven L. Graff (SLG)	0.20	\$850.00	\$170.00

OUR FEE	\$8,436.50
HST at 13%	\$1,096.75

DISBURSEMENTS

COST INCURRED ON YOUR BEHALF AS AN AGENT

Notice of Motion/Application	\$50.00	
Wire Charges	\$45.00	
Total Agency Costs		\$95.00

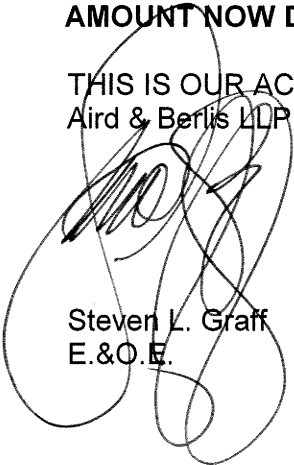
Subject to HST

Photocopies	\$36.00	
Imaging/Scanning	\$23.00	
Binding and Tabs	\$14.50	
Photocopies - Local	\$4.00	
Total Disbursements		\$77.50
HST at 13%		\$10.08

AMOUNT NOW DUE

\$9,715.83

THIS IS OUR ACCOUNT HEREIN
Aird & Berlis LLP



Steven L. Graff
E.&O.E.

PAYMENT OF THIS ACCOUNT IS DUE ON RECEIPT

IN ACCORDANCE WITH THE SOLICITORS ACT, ONTARIO, INTEREST WILL BE CHARGED AT THE RATE OF 2.0% PER ANNUM ON UNPAID AMOUNTS CALCULATED FROM A DATE THAT IS ONE MONTH AFTER THIS ACCOUNT IS DELIVERED.

GST / HST Registration # 12184 6539 RT0001

NOTE: This account may be paid by wire transfer in Canadian funds to our account at The Toronto-Dominion Bank, TD Centre, 55 King Street West, Toronto, Ontario, M5K 1A2. Account number 5221521, Transit number 10202, Swift Code TDOMCATTOR. Please include the account number as reference.

IN ACCOUNT WITH:



Brookfield Place, 181 Bay Street, Suite 1800
Toronto, Ontario, Canada M5J 2T9
T 416.863.1500 F 416.863.1515
airdberlis.com

Crowe Soberman Inc.
1100-2 St. Clair Avenue East
Toronto, ON
M4T 2T5

Attention: Hans M. Rizarri

Account No.: 671633

PLEASE WRITE ACCOUNT NUMBERS
ON THE BACK OF ALL CHEQUES

File No.: 48389/141309

May 25, 2020

Re: Proposal of 1482241 Ontario Limited and 240 Duncan Mill Road

FOR PROFESSIONAL SERVICES RENDERED on your behalf throughout the period ended May 11, 2020

LAWYER	DATE	RATE/ HOUR	TIME	VALUE	DESCRIPTION
MES	21/02/20	\$525.00	1.00	\$525.00	Exchange emails and telephone calls with H. Manis, D. Ullmann, G. Hamilton re: court attendance
MES	23/02/20	\$525.00	0.30	\$157.50	Exchange emails with H. Rizarri, G. Hamilton, L. Keown re: court attendance on February 24
MES	24/02/20	\$525.00	1.50	\$787.50	Attend 9:30 appointment, and exchange emails with H. Manis, G. Hamilton, H. Rizarri re: delivery of funds to H. Manis
MES	25/02/20	\$525.00	0.20	\$105.00	Telephone call with D. Ullmann re: status
MES	28/02/20	\$525.00	0.20	\$105.00	Exchange emails with H. Rizarri re: Gowlings assessment
MES	05/03/20	\$525.00	0.30	\$157.50	Exchange emails with H. Rizarri re: March 11 attendance; Review email from H. Manis and exchange emails with G. Hamilton re: same
MES	06/03/20	\$525.00	0.30	\$157.50	Telephone call with G. Hamilton re: March 11 court attendance

LAWYER	DATE	RATE/ HOUR	TIME	VALUE	DESCRIPTION
MES	09/03/20	\$525.00	0.30	\$157.50	Telephone call with G. Hamilton and email to service list re: Debtor's request for funds
MES	10/03/20	\$525.00	0.50	\$262.50	Review emails re debtor's position on claims; Discussion with G. Hamilton re: position at 9:30 appointment
MES	11/03/20	\$525.00	1.00	\$525.00	Attend at court to address scheduling of disputed claims
MES	06/04/20	\$525.00	0.10	\$52.50	Discussion with G. Hamilton re: approach
MES	07/04/20	\$525.00	0.10	\$52.50	Telephone call with G. Hamilton
MES	16/04/20	\$525.00	0.10	\$52.50	Email to H. Manis re: status
MES	20/04/20	\$525.00	0.30	\$157.50	Review email from H. Manis, and telephone call with G. Hamilton re: next steps
MES	05/05/20	\$525.00	0.20	\$105.00	Exchange emails with G. Hamilton re: tenant request
MES	11/05/20	\$525.00	0.20	\$105.00	Telephone call with G. Hamilton re: tenant issues
TOTAL:			6.60	\$3,465.00	

Name	Hours	Rate	Value
Miranda E. Spence (MES)	6.60	\$525.00	\$3,465.00

OUR FEE \$3,465.00
 HST at 13% \$450.45

DISBURSEMENTS

COST INCURRED ON YOUR BEHALF AS AN AGENT

Taxation – Bill of Costs	\$50.00
Wire Charges	\$15.00

Subject to HST

Deliveries/Parss	\$13.62
HST at 13%	\$1.77

AMOUNT NOW DUE

\$3,995.84

THIS IS OUR ACCOUNT HEREIN
Aird & Berlis LLP



Steven L. Graff
E.&O.E.

PAYMENT OF THIS ACCOUNT IS DUE ON RECEIPT

IN ACCORDANCE WITH THE SOLICITORS ACT, ONTARIO, INTEREST WILL BE CHARGED AT THE RATE OF 2.0% PER ANNUM ON UNPAID AMOUNTS CALCULATED FROM A DATE THAT IS ONE MONTH AFTER THIS ACCOUNT IS DELIVERED.

GST / HST Registration # 12184 6539 RT0001

NOTE: This account may be paid by wire transfer in Canadian funds to our account at The Toronto-Dominion Bank, TD Centre, 55 King Street West, Toronto, Ontario, M5K 1A2. Account number 5221521, Transit number 10202, Swift Code TDOMCATTOR. Please include the account number as reference.

40150434.1

IN ACCOUNT WITH:



Brookfield Place, 181 Bay Street, Suite 1800
Toronto, Ontario, Canada M5J 2T9
T 416.863.1500 F 416.863.1515
airdberlis.com

Crowe Soberman Inc.
1100-2 St. Clair Avenue East
Toronto, ON
M4T 2T5

Attention: Hans M. Rizarri

Invoice No.: 680725

PLEASE WRITE INVOICE NUMBERS
ON THE BACK OF ALL CHEQUES
File No.: 48389/141309
Client No.: 48389
Matter No.: 141309

August 31, 2020

Re: Proposal of 1482241 Ontario Limited and 240 Duncan Mill Road

FOR PROFESSIONAL SERVICES RENDERED on your behalf throughout the period ended July 28, 2020

LAWYER	DATE	RATE/ HOUR	TIME	VALUE	DESCRIPTION
MES	14/06/20	\$525.00	0.10	\$52.50	Receive and respond to email from H. Rizarri
MES	15/06/20	\$525.00	0.10	\$52.50	Exchange emails with H. Rizarri re: settlement
MES	16/06/20	\$525.00	0.30	\$157.50	Telephone call with H. Rizarri re: Caruda/Checroune dispute
MES	19/06/20	\$525.00	0.10	\$52.50	Receive email from H. Rizarri re: settlement of small claim
MES	22/06/20	\$525.00	0.20	\$105.00	Receive email from H. Rizarri attaching form of release and respond to same
MES	29/06/20	\$525.00	1.20	\$630.00	Review Caruda postponement of debt and exchange emails with H. Rizarri re same; Revise release for Daikin claim; Review emails re: settlement of Allevio claim
MES	30/06/20	\$525.00	0.20	\$105.00	Exchange emails with H. Manis re: release of funds for settlement payments
MES	02/07/20	\$525.00	0.20	\$105.00	Exchange emails with J. Spotswood re: settlement with Allevio

LAWYER	DATE	RATE/ HOUR	TIME	VALUE	DESCRIPTION
MES	06/07/20	\$525.00	0.30	\$157.50	Exchange emails with H. Manis, J. Spotswood re: form of order to release funds
MES	08/07/20	\$525.00	0.60	\$315.00	Exchange emails with J. Spotswood, H. Manis re: release of settlement funds; Telephone call with H. Rizarri re: same
MES	09/07/20	\$525.00	0.10	\$52.50	Review email from H. Manis re: settlement with Allevio
MES	10/07/20	\$525.00	0.10	\$52.50	Exchange emails with H. Manis
MES	13/07/20	\$525.00	0.40	\$210.00	Exchange emails with H. Rizarri re: form of order for release of funds, and review relevant court orders
MES	14/07/20	\$525.00	0.50	\$262.50	Telephone call with H. Rizarri re: distribution, and exchange emails re: current status of funds
MES	15/07/20	\$525.00	0.40	\$210.00	Exchange emails with H. Rizarri re: analysis of funds held in trust
MES	16/07/20	\$525.00	0.70	\$367.50	Telephone call with F. Xue re: reconciling accounts; Exchange emails with F. Xue, H. Rizarri, H. Manis, J. Spotswood re: request for release of funds
MES	17/07/20	\$525.00	0.20	\$105.00	Exchange emails with H. Manis, J. Spotswood re: settlement and form of order
MES	20/07/20	\$525.00	0.70	\$367.50	Revise draft order and exchange emails with H. Rizarri re: same; Exchange emails with J. Spotswood and H. Manis re: status of order
MES	21/07/20	\$525.00	0.40	\$210.00	Telephone call with H. Manis re: release of funds; Exchange emails with H. Rizarri re: same
MES	22/07/20	\$525.00	0.50	\$262.50	Exchange emails and telephone call with H. Rizarri re: proposed distribution to debtor
MES	23/07/20	\$525.00	0.50	\$262.50	Exchange emails with H. Rizarri, H. Manis, J. Spotswood re: form of order for release of funds

LAWYER	DATE	RATE/ HOUR	TIME	VALUE	DESCRIPTION
MES	24/07/20	\$525.00	0.10	\$52.50	Exchange emails re: form of order re: release of funds
MES	26/07/20	\$525.00	0.10	\$52.50	Review emails re: correspondence with court re: order
MES	27/07/20	\$525.00	0.40	\$210.00	Review emails re: issued order and disbursement of funds
MES	28/07/20	\$525.00	0.50	\$262.50	Arrange for issuance of wires and cheques to pay creditors, and exchange emails re: same

TOTAL: 8.90 \$4,672.50

Name	Hours	Rate	Value
Miranda E. Spence (MES)	8.90	\$525.00	\$4,672.50

OUR FEE \$4,672.50
HST at 13% \$607.43

DISBURSEMENTS

COST INCURRED ON YOUR BEHALF AS AN AGENT

Wire Charges \$30.00

AMOUNT NOW DUE

\$5,309.93

THIS IS OUR ACCOUNT HEREIN
Aird & Berlis LLP



Steven L. Graff
E.&O.E.

PAYMENT OF THIS ACCOUNT IS DUE ON RECEIPT

IN ACCORDANCE WITH THE SOLICITORS ACT, ONTARIO, INTEREST WILL BE CHARGED AT THE RATE OF 2.0% PER ANNUM ON UNPAID AMOUNTS CALCULATED FROM A DATE THAT IS ONE MONTH AFTER THIS ACCOUNT IS DELIVERED.

GST / HST Registration # 12184 6539 RT0001

NOTE: This account may be paid by wire transfer in Canadian funds to our account at The Toronto-Dominion Bank, TD Centre, 55 King Street West, Toronto, Ontario, M5K 1A2. Account number 5221521, Transit number 10202, Swift Code TDOMCATTOR. Please include the account number as reference.

IN ACCOUNT WITH:

AIRD BERLIS

Brookfield Place, 181 Bay Street, Suite 1800
Toronto, Ontario, Canada M5J 2T9
T 416.863.1500 F 416.863.1515
airdberlis.com

Crowe Soberman Inc.
1100-2 St. Clair Avenue East
Toronto, ON
M4T 2T5

Attention: Hans M. Rizarri

Invoice No.: 722683

PLEASE WRITE INVOICE NUMBERS
ON THE BACK OF ALL CHEQUES
File No.: 48389/141309
Client No.: 48389
Matter No.: 141309

October 29, 2021

Re: Proposal of 1482241 Ontario Limited and 240 Duncan Mill Road

FOR PROFESSIONAL SERVICES RENDERED on your behalf throughout the period ended September 29, 2021

LAWYER	DATE	RATE/ HOUR	TIME	VALUE	DESCRIPTION
MES	11/08/20	\$525.00	0.20	\$105.00	Exchange emails re: receipt of funds by Daikin
MES	03/09/20	\$525.00	0.20	\$105.00	Exchange emails with H. Rizarri, H. Manis re: status of file
MES	07/09/20	\$525.00	0.20	\$105.00	Exchange emails with H. Rizarri re: proposed response to H. Manis
MES	21/09/20	\$525.00	0.20	\$105.00	Review emails re YYZ plumbing claim
JTN	15/10/20	\$435.00	0.10	\$43.50	Email exchange with client re status update and next steps
JTN	25/10/20	\$435.00	0.10	\$43.50	Email exchange with H. Rizarri re status
ACCT	13/01/21	\$50.00	0.30	\$15.00	Arrange with bank for the roll-over of a trust term deposit; provide written authorization to bank; confirm interest calculations. Jan 13/21: GIC #4321-8619402-02 - Interest of \$4,978.58 from Jan 14/20 to Jan 13/21 at the interest rate of 1.00%

LAWYER	DATE	RATE/ HOUR	TIME	VALUE	DESCRIPTION
JTN	05/02/21	\$475.00	0.10	\$47.50	Email to client re status update
JTN	07/02/21	\$475.00	0.10	\$47.50	Receipt and review of email from H. Rizarri
MES	24/02/21	\$550.00	0.10	\$55.00	Exchange emails with L. Keown re status
MES	20/04/21	\$550.00	0.30	\$165.00	Telephone call with H. Manis re: status of proceeding and next steps, and email to H. Rizarri re: same
MES	24/08/21	\$550.00	0.50	\$275.00	Review underlying documents, discussion with K. Plunkett re claim against guarantor and instruct H. Wong re same
MES	31/08/21	\$550.00	0.30	\$165.00	Exchange emails with court office, H. Rizarri, H. Manis re court date for discharge motion
MES	01/09/21	\$550.00	0.10	\$55.00	Correspondence with court re scheduling hearing date
MES	29/09/21	\$550.00	0.30	\$165.00	Arrange to schedule discharge hearing and emails to H. Manis and H. Rizarri re same
TOTAL:			3.10	\$1,497.00	

Name	Hours	Rate	Value
Miranda E. Spence (MES)	2.40	\$541.67	\$1,300.00
Jeremy T. Nemers (JTN)	0.40	\$455.00	\$182.00
Accounting Department (ACCT)	0.30	\$50.00	\$15.00

OUR FEE \$1,497.00
 HST at 13% \$194.61

DISBURSEMENTS

Subject to HST

Deliveries	\$26.69
HST at 13%	\$3.47

AMOUNT NOW DUE

\$1,721.77

THIS IS OUR ACCOUNT HEREIN
Aird & Berlis LLP



Steven L. Graff

E.&O.E.

PAYMENT OF THIS ACCOUNT IS DUE ON RECEIPT

IN ACCORDANCE WITH THE SOLICITORS ACT, ONTARIO, INTEREST WILL BE CHARGED AT THE RATE OF 1.0% PER ANNUM ON UNPAID AMOUNTS CALCULATED FROM A DATE THAT IS ONE MONTH AFTER THIS ACCOUNT IS DELIVERED.

GST / HST Registration # 12184 6539 RT0001

NOTE: This account may be paid by wire transfer in Canadian funds to our account at The Toronto-Dominion Bank, TD Centre, 55 King Street West, Toronto, Ontario, M5K 1A2. Account number 5221521, Transit number 10202, Swift Code TDOMCATTOR. Please include the account number as reference.

IN ACCOUNT WITH:

AIRD BERLIS

Brookfield Place, 181 Bay Street, Suite 1800
Toronto, Ontario, Canada M5J 2T9
T 416.863.1500 F 416.863.1515
airdberlis.com

Crowe Soberman Inc.
1100-2 St. Clair Avenue East
Toronto, ON
M4T 2T5

Attention: Hans M. Rizarri

Invoice No.: 736217

PLEASE WRITE INVOICE NUMBERS
ON THE BACK OF ALL CHEQUES
File No.: 48389/141309
Client No.: 48389
Matter No.: 141309

January 31, 2022

Re: Proposal of 1482241 Ontario Limited and 240 Duncan Mill Road

FOR PROFESSIONAL SERVICES RENDERED on your behalf throughout the period ended December 20, 2021

LAWYER	DATE	RATE/ HOUR	TIME	VALUE	DESCRIPTION
MES	07/12/21	\$550.00	1.50	\$825.00	Draft 10th report re status of proceedings; Email to L. Keown re status of claim
MES	08/12/21	\$550.00	0.70	\$385.00	Review terms of proposal re payments to creditors; Call with L. Keown re status of DSF claim; Draft email to H. Rizarri re recommendation for upcoming motion
MES	13/12/21	\$550.00	0.50	\$275.00	Telephone call with H. Manis re approach to case conference; Correspondence with court re rescheduling date; Email to H. Rizarri re same
MES	14/12/21	\$550.00	0.20	\$110.00	Correspondence with court re rescheduling discharge motion; Exchange emails with H. Rizarri re strategy
MES	20/12/21	\$550.00	0.10	\$55.00	Address scheduling of motion
TOTAL:			<hr/> 3.00	<hr/> \$1,650.00	

Name	Hours	Rate	Value
Miranda E. Spence (MES)	3.00	\$550.00	\$1,650.00

OUR FEE	\$1,650.00
HST at 13%	\$214.50
AMOUNT NOW DUE	\$1,864.50

THIS IS OUR ACCOUNT HEREIN
Aird & Berlis LLP



Steven L. Graff
E.&O.E.

PAYMENT OF THIS ACCOUNT IS DUE ON RECEIPT

IN ACCORDANCE WITH THE SOLICITORS ACT, ONTARIO, INTEREST WILL BE CHARGED AT THE RATE OF 1.0% PER ANNUM ON UNPAID AMOUNTS CALCULATED FROM A DATE THAT IS ONE MONTH AFTER THIS ACCOUNT IS DELIVERED.

GST / HST Registration # 12184 6539 RT0001

NOTE: This account may be paid by wire transfer in Canadian funds to our account at The Toronto-Dominion Bank, TD Centre, 55 King Street West, Toronto, Ontario, M5K 1A2. Account number 5221521, Transit number 10202, Swift Code TDOMCATTOR. Please include the account number as reference. 47377921.2

Attached is Exhibit "B"

Referred to in the

AFFIDAVIT OF IAN AVERSA

Sworn before me

this 2nd day of February, 2022

Miranda Spence

Commissioner for taking Affidavits, etc

STATEMENT OF RESPONSIBLE INDIVIDUALS

Aird & Berlis LLP's professional fees herein are made with respect to the following individuals

Lawyer	Call to Bar	Hrly Rate	Total Time	Value
Graff, S. L	1991	\$850.00 – 2020	0.2	\$170.00
Spence, M. E	2011	\$475.00 – 2019	9.8	\$4,655.00
		\$525.00 – 2020	22.4	\$11,760.00
		\$550.00 - 2021	4.6	\$2,530.00
Jeremy T. Nemers	2014	\$435.00 - 2020	0.2	\$87.00
		\$475.00 - 2021	0.2	\$95.00
Clerk/Student	Call to Bar	Avg Hrly Rate	Total Time	Value
John G. Pappas	N/A	\$295.00 – 2019	1.0	\$295.00
Williams, P.	N/A	\$190.00 – 2019	0.6	\$114.00
Accounting	N/A	\$50.00 – 2021	0.3	\$15.00

**Standard hourly rates listed. However, in certain circumstances adjustments to the account were made.*

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST
(IN BANKRUPTCY AND INSOLVENCY)**

Proceedings commenced at Toronto

AFFIDAVIT OF FEES

AIRD & BERLIS LLP
Barristers and Solicitors
Brookfield Place
181 Bay Street, Suite 1800
Toronto, ON M5J 2T9

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Miranda Spence (LSUC # 60621M)
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Email: mspence@airdberlis.com

Lawyers for Crowe Soberman Inc. in its capacity as the proposal trustee of 1482241 Ontario Limited

TAB 5

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

IN BANKRUPTCY AND INSOLVENCY

THE HONOURABLE) MONDAY, THE 7TH
)
JUSTICE) DAY OF FEBRUARY, 2022

**IN THE MATTER OF THE PROPOSAL OF 1482241 ONTARIO LIMITED,
OF THE CITY OF TORONTO, IN THE PROVINCE OF ONTARIO**

DISTRIBUTION AND DISCHARGE ORDER

THIS MOTION, made by Crowe Soberman Inc. (“**Crowe**”) in its capacity as the proposal trustee (in such capacity, the "**Proposal Trustee**") of 1482241 Ontario Limited (the "Debtor" or "**148**"), for an order (a) approving the activities of the Proposal Trustee as set out in the Proposal Trustee’s Eighth Report dated May 10, 2019 (the "**Eighth Report**"), the Supplement to the Eighth Report dated May 23, 2019 (the "**Supplement to the Eighth Report**"), and the Tenth Report dated February 2, 2022 (the "**Tenth Report**"); (b) approving the fees and disbursements of the Proposal Trustee and its counsel; (c) authorizing the Proposal Trustee to make certain distributions as described in the Tenth Report; (d) discharging Crowe as Proposal Trustee of the Debtor; and (e) releasing Crowe from any and all liability, was heard this day by judicial videoconference.

ON READING the Tenth Report and the appendices thereto, the affidavit of Hans Rizarri sworn February 2, 2022 (the "**Rizarri Affidavit**"), the affidavit of Ian Aversa sworn February 2, 2022 (the "**Aversa Affidavit**"), and on hearing the submissions of counsel for the Proposal Trustee, and such other counsel as were present and listed on counsel slip, no one else appearing although served as evidenced by the Affidavit of [NAME] sworn [DATE], filed;

SERVICE

1. **THIS COURT ORDERS AND DECLARES** that the time for service of this Motion and the Motion Record herein is abridged such that the Motion is properly returnable today, and hereby dispenses with further service thereof.

APPROVAL OF THE REPORTS

2. **THIS COURT ORDERS** that the Eighth Report and the conduct and activities of the Proposal Trustee described therein be and are hereby approved.

3. **THIS COURT ORDERS** that the Supplement to the Eighth Report and the conduct and activities of the Proposal Trustee described therein be and are hereby approved.

4. **THIS COURT ORDERS** that the Eighth Report and the conduct and activities of the Proposal Trustee described therein be and are hereby approved.

APPROVAL OF THE FEES AND DISBURSEMENTS

5. **THIS COURT ORDERS** that the fees and disbursements of the Proposal Trustee as set out in the Rizarri Affidavit are hereby approved, and the Proposal Trustee is authorized to pay such fees from the proceeds of sale of the lands at the address municipally known as 240 Duncan Mill Road, Toronto, Ontario (the “**Sale Proceeds**”).

6. **THIS COURT ORDERS** that the fees and disbursements of the Proposal Trustee’s counsel as set out in the Aversa Affidavit are hereby approved, and the Proposal Trustee is authorized to pay such fees from the Sale Proceeds.

7. **THIS COURT ORDERS** that the fee accrual of \$25,000, inclusive of fees and disbursements, representing the Proposal Trustee’s and its counsel’s fees to the completion of these proceedings, is hereby approved, and the Proposal Trustee is authorized to pay such fee accrual from the Sale Proceeds.

APPROVAL OF DISTRIBUTIONS

8. **THIS COURT ORDERS** that the Proposal Trustee is authorized to pay from the Sale Proceeds the following amounts to the Proposal Trustee’s creditors, less applicable levy owing to the Superintendent in Bankruptcy:

Devry Smith Frank LLP	\$128,153.49
GDI Services (Canada) LP	\$95,746.42
North York Family Physicians Holdings Inc.	\$46,442.42
Quality Allied Elevator	\$18,247.23
Rogers Retail Proposals	\$871.56
YYZ Plumbing	\$17,960.20

9. **THIS COURT ORDERS** that the Proposal Trustee is authorized to pay from the Sale Proceeds any amounts owing to the Superintendent in Bankruptcy for levy, on account of distributions to creditors made in this proceeding.

10. **THIS COURT ORDERS** that, after payment of the amounts authorized to be paid pursuant to paragraphs 5, 6, 7, 8 and 9 herein, the Proposal Trustee shall distribute the remaining Sale Proceeds to the Debtor.

DISCHARGE AND RELEASE

11. **THIS COURT ORDERS** that upon payment of the amounts set out in paragraphs 5 through 10 above and the filing of the Discharge Certificate by the Proposal Trustee in the form attached hereto as **Schedule “A”**, Crowe shall be discharged as Proposal Trustee of the Debtor, provided however that notwithstanding its discharge herein (a) Crowe shall remain the Proposal Trustee for the performance of such incidental duties as may be required to complete the administration of its mandate, and (b) the Proposal Trustee shall continue to have the benefit of the provisions of all Orders made in this proceeding, including all approvals, protections and stays of proceedings in favour of Crowe in its capacity as Proposal Trustee.

12. **THIS COURT ORDERS AND DECLARES** that, upon the Proposal Trustee filing the Discharge Certificate, Crowe is hereby released and discharged from any and all liability that

Crowe now has or may hereafter have by reason of, or in any way arising out of, the acts or omissions of Crowe while acting in its capacity as Proposal Trustee herein, save and except for any gross negligence or wilful misconduct on the Proposal Trustee's part. Without limiting the generality of the foregoing, Crowe is hereby forever released and discharged from and all liability relating to matters that were raised, or which could have been raised, in the within proceedings, save and except for any gross negligence or wilful misconduct on the Proposal Trustee's part.

13. **THIS COURT ORDERS** that, notwithstanding Rule 59.05, this Order is effective from the date it is made, and it is enforceable without any need for entry and filing. In accordance with Rules 77.07(6) and 1.04, no formal order need be entered and filed unless an appeal or motion for leave to appeal is brought to an appellate court. Any party may nonetheless submit a formal order for original, signing, entry and filing, as the case may be, when the Court returns to regular operations.

SCHEDULE “A”

Court File No. 31-2303814
Estate No. 31-2303814

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

IN BANKRUPTCY AND INSOLVENCY

**IN THE MATTER OF THE PROPOSAL OF 1482241 ONTARIO LIMITED,
OF THE CITY OF TORONTO, IN THE PROVINCE OF ONTARIO**

PROPOSAL TRUSTEE’S DISCHARGE CERTIFICATE

RECITALS

(A) 1482241 Ontario Limited (the “**Debtor**”) filed a notice of intention to make a proposal on October 13, 2017, and Crowe Soberman Inc. (“**Crowe**”) was appointed as the proposal trustee (in such capacity, the “**Proposal Trustee**”).

(B) Pursuant to an Order of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) made February 7, 2022 (the “**Distribution and Discharge Order**”), Crowe was discharged as the Proposal Trustee of the Debtor to be effective upon the filing by the Proposal Trustee with the Court of a certificate confirming that all matters to be attended to in connection with the proposal proceeding of the Debtor have been completed to the satisfaction of the Proposal Trustee, provided, however, that notwithstanding its discharge: (a) the Proposal Trustee will remain the Proposal Trustee for the performance of such incidental duties as may be required to complete the administration of this proposal proceeding; and (b) the Proposal Trustee will continue to have the benefit of the provisions of all Orders made in these proceedings, including all approvals, protections and stays of proceedings in favour of Crowe, in its capacity as the Proposal Trustee.

(C) Unless otherwise indicated herein, terms with initial capitals have the meanings set out in the Distribution and Discharge Order.

THE PROPOSAL TRUSTEE CERTIFIES the following:

1. all matters to be attended to in connection with the proposal proceedings of the Debtor have been completed to the satisfaction of the Proposal Trustee; and

2. this Certificate was filed by the Proposal Trustee with the Court on the _____ day of _____, 2022.

Crowe Soberman Inc. solely in its capacity as the proposal trustee of the Debtor, and not in its personal capacity

Per:

Name:

Title:

TAB 6

SERVICE LIST
(as of February 1, 2022)

TO: **AIRD & BERLIS LLP**
Barristers and Solicitors
Brookfield Place
181 Bay Street, Suite 1800
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Miranda Spence (LSO # 60621M)
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Fax: (416) 863-1515
Email: mspence@airdberlis.com

*Lawyers for Crowe Soberman Inc. in its capacity as the proposal trustee of
1482241 Ontario Limited*

AND TO: **MANIS LAW**
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Howard Manis (LSO #34366V)
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Email: hmanis@manislaw.ca

Lawyers for 1482241 Ontario Limited

AND TO: **DICKINSON WRIGHT LLP**
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Michael Brzezinski

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AND TO: **YONGE-NORTON LAW CHAMBERS**
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M4B 3C2

A. Paul Gribilas

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AND TO: **CHAITONS LLP**
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*Counsel for Dan Realty Corporation, E. Manson Investments Limited,
Copperstone Investments Limited*

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Email: efan@lernalers.ca

Counsel for Janodee Investments Ltd. and Meadowshire Investments Ltd.

AND TO: **TREASURER, CITY OF TORONTO**
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North York Civic Centre, Lower Level
5100 Yonge Street
North York, ON M2N 5V7

Fax: (416) 395-6703
Email: gcharoc@toronto.ca

AND TO: **DEPARTMENT OF JUSTICE**
The Exchange Tower
130 King Street West
Suite 3400
Toronto, ON M5X 1K6

Diane Winters
Tel: (416) 973-3172
Fax: (416) 373-0810
Email: diane.winters@justice.gc.ca

AND TO: **HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF ONTARIO AS REPRESENTED BY THE MINISTER OF FINANCE (Income Tax, PST)**

P.O. Box 620
33 King Street West, 6th Floor
Oshawa, ON L1H 8E9

Kevin J. O'Hara

Tel: (905) 433-6934
Fax: (905) 436-4510
Email: kevin.ohara@ontario.ca

AND TO: **GOWLING WLG**
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Christopher Stanek

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Natasha Carew

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AND TO: **DEVRY SMITH FRANK LLP**
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Larry Keown

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Counsel for Clear Customs Brokers Ltd.

AND TO: **CLYDE & CO. CANADA LLP**
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Jamie Spotswood
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Fax: (416) 366-6110
Email: Jamie.Spotswood@clydeco.ca

Counsel for Allevio Clinic #1 Toronto Inc. o/a Allevio Inc.

Additional Parties with Litigation Claims Against the Debtor

AND TO: **AMY, APPLEBY & BRENNAN**
Barristers, Solicitors & Notaries
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Waterloo, ON N2L 1W6

William R. Appleby
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Counsel for 7063580 Canada Inc.

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Rene Clonfero
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Counsel for Chang-Soon Yoo

AND TO: **JEFFREY D. GRAY**
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Counsel for Daniel Steinberg

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Email: mb@mblegal.ca

Counsel for YYZ Plumbing Inc.

AND TO: **YYZ PLUMBING INC.**
3199 Bathurst Street, Unit 212
Toronto, ON M6A 2B2

AND TO: **COMPUTERSHARE TRUST COMPANY OF CANADA**
100 University Avenue
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Toronto, ON M5J 2Y1

SERVICE BY EMAIL:

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larry.keown@devrylaw.ca; neil.rabinovitch@dentons.com
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32016859.6

**IN THE MATTER OF THE PROPOSAL OF 1482241 ONTARIO LIMITED,
OF THE CITY OF TORONTO, IN THE PROVINCE OF ONTARIO**

Court File No. 31-2303814
Estate No. 31-2303814

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST
(IN BANKRUPTCY AND INSOLVENCY)**

Proceedings commenced at Toronto

**MOTION RECORD OF THE PROPOSAL
TRUSTEE
(motion returnable February 7th, 2022)**

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