

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

DONALD DAL BIANCO

Applicant

- and -

DEEM MANAGEMENT SERVICES LIMITED and THE UPTOWN INC.

Respondents

APPLICATION UNDER Section 243(1) of the *Bankruptcy and Insolvency Act*
and Section 101 of the *Courts of Justice Act*

SUPPLEMENTARY MOTION RECORD
(motion for directions regarding the third mortgage and other relief returnable
November 21, 2019)

October 30, 2019

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TO: THE SERVICE LIST

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Tab 1

File No. CV-18-598657-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

BETWEEN:

DONALD DAL BIANCO

Applicant

- and -

DEEM MANAGEMENT SERVICES LIMITED and THE UPTOWN INC.

Respondent

**SUPPLEMENTARY REPORT TO THE THIRD REPORT OF CROWE
SOBERMAN INC. in its capacity as Court-appointed Receiver of DEEM
MANAGEMENT SERVICES LIMITED and THE UPTOWN INC.**

DATED OCTOBER 30, 2019

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Appendix B	Copy of new timetable providing for a deadline for materials from the Companies as well as further evidence from Dal Bianco.
Appendix C	Copy of correspondence from counsel to the Receiver to counsel for Dal Bianco and Deem dated May 2, 2019
Appendix D	Copy of correspondence from counsel to the Receiver to counsel for Maxion dated June 11, 2019

File No. CV-18-598657-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

BETWEEN:

DONALD DAL BIANCO

Applicant

- and -

DEEM MANAGEMENT SERVICES LIMITED and THE UPTOWN INC.

Respondent

**APPLICATION UNDER SECTION 243 OF THE BANKRUPTCY AND INSOLVENCY
ACT AND SECTION 101 OF THE COURTS OF JUSTICE ACT**

FOURTH REPORT OF THE RECEIVER

OCTOBER 15, 2019

INTRODUCTION AND PURPOSE

1. This report (the “**Supplementary Report**”) is filed by Crowe Soberman Inc. in its capacity as the Receiver of the Property of the Companies (as defined below) to supplement its Third Report dated February 9, 2019 (the “**Third Report**”).
2. The orders and reports referred to in this report, together with related Court documents, are posted on the Receiver’s website, which can be found at:

<https://crowesoberman.com/insolvency/engagements/deem-management-services-limited/>

3. This Supplementary Report is subject to the same Terms of Reference as those described in the Third Report.

BACKGROUND

4. On May 31, 2018, pursuant to an order of the Honourable Mr. Justice Wilton-Siegel made on an application by Donald Dal Bianco (“**Dal Bianco**”), Crowe Soberman Inc. was appointed as Receiver (the “**Receiver**”) of:
 - a) the property known municipally as 215 and 219 Lexington Road, Waterloo, Ontario N2K 2E1 (the “**Real Property**”),
 - b) the assets and undertakings of Deem Management Services Limited (“**Deem Management**”) related to the Real Property, and
 - c) the property, assets and undertakings of the Uptown Inc. (“**Uptown**”, and together with Deem Management, the “**Companies**”).

(collectively, the “**Property**”)
5. A copy of Justice Wilton-Siegel’s Order dated May 31, 2018 is attached as Appendix “A” to the Third Report.
6. On February 8, 2019 the Receiver prepared its Third Report which reported on the closing of a transaction to sell the Property, the interim distributions made by the Receiver, the Receiver’s Interim Statement of Receipts and Disbursements, the professional fees of the Receiver and its legal counsel, and sought directions regarding the validity of a third-ranking mortgage granted by Deem to Dal Bianco on the Real Property.

ACTIVITIES SINCE THE THIRD REPORT

7. Since the date of its appointment, the Receiver has continued to work alongside all stakeholders as it carries out its primary mandate regarding the Real Property. In addition, the activities of Receiver since the date of the Third Report have included:
 - a) opening bank accounts under the Receiver’s name and arranging for the balance of the sale proceeds to be held in an interest-bearing term deposit,
 - b) establishing new statutory accounts with the CRA and coordinating the completion of HST returns for the Companies,

- c) responding to inquiries from stakeholders, including addressing questions or concerns of parties who contacted the Receiver,
- d) requesting the books and records of the Companies,
- e) assisting the Purchaser with various requests,
- f) preparing this Supplementary Report, and
- g) attending to other matters pertaining to the administration of the receivership proceedings.

PROCEDURAL MATTERS SINCE THE THIRD REPORT

8. Following the Receiver filing its Third Report, the Receiver consulted with counsel for the various parties and attended before the Honourable Justice McEwen on April 24, 2019 to establish a timetable for the delivery of evidence, reply materials, supplementary reports, factums, and examinations between all stakeholders. The parties agreed on a schedule leading up to a hearing date on July 17, 2019, a copy of which is attached as **Appendix “A”**.
9. Thereafter, the lien claimants provided evidence and adhered to the agreed upon timelines established by the consent timetable with respect to evidence of timeliness of liens. The Receiver’s review of the materials submitted indicates that at least some of the lien claims met the timeliness and validity requirements under the applicable provisions of the *Construction Act*. Since for the purpose of the motion regarding the validity of the third mortgage it was only necessary to conclude that there are other secured claims in competition with that mortgage, the Receiver has not reviewed the lien claims beyond that point.
10. Maxion also provided further records on the possible issue of its principal, Paul Michelin, being an undischarged bankrupt. Those records indicate that this does not appear to be the case.
11. On May 31, 2019, Maxion Management Services Inc. (“**Maxion**”) provided its own evidence and a Notice of Motion for an Order that the third-ranking Dal Bianco mortgage

is null and void, as it was granted without good or valid consideration and to defraud Maxion of its equitable ownership interests in the Real Property (the “**Maxion Motion**”).

12. Following the Maxion Motion, counsel for the Companies contacted the service list on June 13, 2019 to advise that it had not been advised, nor consulted on the timetable established, and wished to file responding materials and have the timetable altered to facilitate the involvement of the Companies.
13. Counsel for Dal Bianco also raised an issue that email correspondence that had been sent to the Receiver by Bryan Pilutti regarding his involvement in the Dal Bianco third mortgage should be admitted into evidence.
14. The parties re-attended before the Honourable Justice McEwen on June 21 and 28, 2019, which resulted in a new timetable being set, a copy of which is attached as **Appendix “B”**, which provided for a deadline for materials from the Companies as well as further evidence from Dal Bianco.
15. The parties attended before the Honourable Justice Hainey on October 18, 2019 to reschedule the hearing date for the Receiver’s motion to November 21, 2019.

MATERIALS FILED BY STAKEHOLDERS

16. Below is a summary of the various materials that were filed by the stakeholders.

Lien Claimants

17. By May 31, 2019, the Receiver had been provided materials by Maxion, Kieswetter Excavating Inc. (“**Kieswetter**”), EXP Services Inc. (“**EXP**”), Onespac Unlimited Inc. (“**Onespac**”), and Deep Foundations Contractors Inc. (“**Deep**”) (collectively the “**Lien Claimants**”). The Lien Claimants submitted their materials to support the timeliness of liens in order for the Receiver to confirm and quantify which claims would be considered as secured claims under the *Construction Act*. The materials provided included invoices, project log details, and time sheets. No materials were required to be in affidavit form, unless requested.

Maxion Materials

18. As part of the Maxion Motion, an Affidavit from Michelin sworn May 31, 2019 (the “**Michelin Affidavit**”) was included. The Michelin Affidavit stated that the amounts advanced by Dal Bianco, were never a loan, but instead payment for 7,852,043 preferred shares of the Uptown (the “**Preferred Shares**”). To support this point, the Michelin Affidavit included the financial statements of the Uptown for the years 2015 and 2016 that are said to reflect the issuance of the Preferred Shares.
19. The second argument advanced in the Michelin Affidavit centres on the ownership of the Real Property. Despite the fact that Deem owns title to the Real Property, the Michelin Affidavit states that Maxion is the equitable owner of 50% of the equity in the Project and the Real Property pursuant to an oral agreement.
20. Following the Michelin Affidavit, a second affidavit was filed to correct certain statements dated June 5, 2019 (the “**Correction Affidavit**”). Specifically, the Correction Affidavit sought to clarify the ownership argument by clarifying that Deem holds title to the Real property in trust for Uptown, and that Deem holds 50% of the common shares of Uptown in trust for Maxion, or its nominee.

Bryan Pilutti Materials

21. Bryan Pilutti (“**Pilutti**”) is the accountant for Dal Bianco and the Companies. He sought to clarify certain aspects of the financial statements of the Companies as described in the Michelin Affidavit. Various memos, emails, and notes made by Pilutti were distributed on June 21, 2019, (the “**Piliutti Materials**”). The Pilutti Materials appear to indicate that the Companies were wrestling with the various options as to how the amounts advanced by Dal Bianco to Deem should be treated. This was done in the context of attempting to secure construction financing from various third party lenders for the Project. Pilutti’s materials do not confirm that the Preferred Shares were ever issued.

Responding Record of the Companies

22. On July 31, 2019, the Companies provided their responding materials, including the Affidavit of Rob Dal Bianco sworn July 31, 2019 (the “**Rob Affidavit**”). The Rob Affidavit denies the ownership claims in the Michelin Affidavit, and comments that while various structures were discussed, nothing was ever formally agreed upon coupled with the challenges facing the Project.
23. The Rob Affidavit contains various emails and documents that were used to obtain construction financing, described as placeholder agreements. The Rob Affidavit also raises concerns about the accounting and use of funds by Maxion and how the Companies were billed.

Affidavit of Reg Meechum

24. Mr. Reg Meechum is a portfolio manager at Scotia Wealth and acts as the financial advisor to Dal Bianco. Mr Meechum swore an affidavit dated August 3, 2019 (the “**Meechum Affidavit**”). The Meechum Affidavit provides a response to the Michelin Affidavit where Mr. Meechum states that no Preferred Shares were ever issued or received by Dal Bianco.
25. Mr. Meechum further attests that he advised Dal Bianco to take steps to enforce on his debt based on factors other than the state of the Project, primarily estate planning.

Michelin Reply Materials

26. Michelin provided a reply affidavit sworn September 10, 2019 (the “**Michelin Responding Affidavit**”). The Michelin Responding Affidavit sought to refute the claims surrounding the ownership of the Real Property raised in the Rob Affidavit, the options surrounding the presentation of the Dal Bianco debt raised in the Pilutti Materials, and the denial of the issuance of Preferred Shares raised in the Meechum Affidavit.

ATTEMPTS BY THE RECEIVER TO SECURE THE COMPANIES' RECORDS

27. In response to requests and information from stakeholders, the Receiver has attempted to secure certain corporate and financial records of the Companies, because those records appear to relate to matters in dispute among Maxion, the Companies, and Dal Bianco.
28. After being advised by counsel for Maxion that the corporate records of the Companies were in the possession of Dal Bianco or Deem, counsel for the Receiver wrote to counsel for Dal Bianco and Deem, respectively, on May 2, 2019, to request production of certain financial and corporate records, or information where such records could be found. A copy of that correspondence is attached as **Appendix "C"**.
29. The Receiver was thereafter advised by counsel for Dal Bianco and Deem that the corporate records were not in the possession of Dal Bianco or Deem, and that they had been in the possession of Richard Lardner as the previous accountant for the Companies and may thereafter have been given to Michelin. Counsel for the Receiver accordingly wrote to counsel for Maxion on June 11, 2019 to ask for production of those records, a copy of which is attached as **Appendix "D"**. The Receiver is unaware of any response to that request.

REVIEW OF THE STAKEHOLDERS' MATERIALS AND ISSUES ARISING FROM THEM

30. The Receiver's review of the materials filed as well the issues that it believes are before the Court is set out in its factum.

All of which is respectfully submitted this 30th day of October, 2019

**Crowe Soberman Inc.
in its capacity as Court-appointed
Receiver of Deem Management Services Limited
and The Uptown Inc., and not in its personal capacity**



Per: Hans Rizarri CPA, CA, CIRP

TAB A

Timetable for Receiver's Motion for Directions re: validity of the Third Mortgage

	Step	Date
1.	Deadline for lien claimants to provide evidence of timeliness of liens (in order to be sure that those are secured claims to compete with the third mortgage and engage s. 78 of the <i>Construction Act</i>). <i>Note: Only documentation need be provided, so do not do an affidavit unless/until requested.</i>	May 31, 2019
2.	Deadline for any motion materials from any other party.	May 31, 2019
3.	Deadline for any reply materials from any party to materials served in item 2.	June 14, 2019
4.	Cross-examinations and any examinations pursuant to Rule 39.03	June 24 and 25 (place TBD based on attending witnesses)
5.	Deadline for any supplementary report of the Receiver.	July 8, 2019
6.	Factum of the Receiver	July 8, 2019
7.	Facta of any other parties	July 11, 2019
8.	All motion materials to be filed with the Court by each party <i>Note: Include soft copies of affidavits, reports and facta either on the Digital Hearing Workspace or on USB keys as directed by the Commercial List Office</i>	July 12, 2019
9.	Hearing (all day; booked with the Commercial List)	July 17, 2019

Further notes:

- a) Counsel for Maxion to provide evidence in their possession as to discharge from bankruptcy of Paul Michelin (the possible sole director of Maxion) by May 15
- b) Justice McEwen has seized himself of any issues in relation to examination or cross-examination of Don Dal Bianco (as third mortgagee) and is sitting the week of June 17, so if needed a 9:30 appointment on that issue can be sought before His Honour then

TAB B

June 28, 2019

Timetable for Receiver's Motion for Directions re: validity of the Third Mortgage

	Step	Date
1.	Deadline for lien claimants to provide evidence of timeliness of liens (in order to be sure that those are secured claims to compete with the third mortgage and engage s. 78 of the <i>Construction Act</i>). <i>Note: Only documentation need be provided, so do not do an affidavit unless/until requested.</i>	May 31, 2019 (done)
2.	Deadline for any motion materials from any other party.	May 31, 2019 (done)
3.	Deadline for any reply materials from any party to materials served in item 2.	June 14, 2019
4.	Deadline for reply materials from Deem Management to materials served in item 2 (i.e. Paul Michelin Affidavit)	July 31, 2019
5.	Deadline for any reply materials from any other party	July 31, 2019
6.	Deadline for any surreply materials from Maxion in response to item 4 and item 5 (if applicable)	August 31, 2019
7.	Chambers attendance to deal with any issues in connection with cross-examinations or Rule 39.03 summonses	Week of Sept. 3
8.	Cross-examinations and any examinations pursuant to Rule 39.03	September 11-13 (place TBD based on attending witnesses)
9.	Deadline for any supplementary report of the Receiver.	Sept. 23, 2019
10.	Factum of the Receiver	Sept. 30, 2019
11.	Facta of any other parties	Oct. 9, 2019
12.	Reply facta of the Receiver or of any other party to any factum delivered in item 11.	Oct. 16, 2019
13.	All motion materials to be filed with the Court by each party <i>Note: Include soft copies of affidavits, reports and facta either on the Digital Hearing Workspace or on USB keys as directed by the Commercial List Office</i>	Noon on Oct. 18, 2019
14.	Hearing (all day; booked with the Commercial List)	Oct. 24 for a full day.

Further notes: Justice McEwen has indicated that if available he will hear the interlocutory issues in relation to getting this motion on for hearing, but if he is not available then any such issues may be brought before any judge.

TAB C

Brendan Bissell

From: Brendan Bissell
Sent: Thursday, May 02, 2019 1:00 PM
To: David Ullmann (DULLmann@blaney.com); bphillips@wagnersidlofsky.com
Cc: Hans Rizarri; Graeme Hamilton
Subject: Re: Deem Management Services Inc. and The Uptown Inc.
Attachments: Order dated May 31, 2018 (Appointing Receiver).pdf

David & Brad: As you know, I act for Crowe Soberman Inc. in its capacity as the court appointed receiver (the "Receiver") of The Uptown Inc. ("Uptown") and of Deem Management Services Inc. ("Deem") in relation to the property at 215 and 229 Lexington Road in Waterloo.

You respectively act for Don Dal Bianco as a creditor and the Applicant in this proceeding, and for Deem.

The Receiver would like to obtain copies of the following:

- a) The financial statements for each of Deem and Uptown from 2012 to date;
- b) The name(s) of the accountant(s) who reviewed the financial statements referred to in item (a);
- c) The corporate minute books for each of Deem and Uptown; and
- d) The T2 income tax returns for each of Deem and Uptown from 2012 to date, along with copies of any Notices of Assessment or Reassessment received from CRA in respect of those returns.

Could you please advise if either of your firms has any of those documents or information in its possession, and if so produce them (within the meaning of paragraphs 4-6 of the order appointing receiver in this case, attached)?

If your firms do not have any of those documents or information, please inquire of your clients whether they do or whether they know the location(s) where it can be found and advise us of your clients' response.

Regards,

R. Brendan Bissell



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TAB D

Brendan Bissell

From: Brendan Bissell
Sent: Tuesday, June 11, 2019 9:32 AM
To: Eric Gionet; Benjamin Salsberg
Cc: Andrew Wood; Frank Miceli; Ed D'Agostino; Eddy Battiston; Tara Lee; Harold Rosenberg; David Ullmann (DULLmann@blaney.com); John C. Wolf; Hans Rizarri; Graeme Hamilton
Subject: RE: Deem Management Services Ltd. et al. - Court File No. CV-18-598657-00CL

Eric & Ben: In the course of reviewing with counsel for Don Dal Bianco and for Deem Management the request for documents that Eric made, the Receiver has been advised that neither of them has the corporate records or minute book for Deem Management. The information from Deem Management is that those records were previously held by Richard Lardner as the (then) accountant for the company, but the records were subsequently given to Paul Michelin of Maxion.

In light of this, the Receiver hereby requests that Maxion and Mr. Michelin provide those records, as contemplated by paragraph 5 of the Appointment Order dated May 31, 2018.

Regards,

R. Brendan Bissell



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From: Eric Gionet <EGionet@dllaw.ca>
Sent: Wednesday, June 05, 2019 1:05 PM
To: Brendan Bissell <bissell@gsnh.com>
Cc: Benjamin Salsberg <Ben@bensalsberglaw.com>; Andrew Wood <awood@dllaw.ca>; Frank Miceli <fmiceli@westonlaw.ca>; Ed D'Agostino <edagostino@watlaw.com>; Eddy Battiston <e.battiston@battistonlaw.com>; Tara Lee <tlee@kmlaw.ca>; Harold Rosenberg <h.rosenberg@battistonlaw.com>; David Ullmann (DULLmann@blaney.com) <DULLmann@blaney.com>; John C. Wolf <jwolf@blaney.com>; Hans Rizarri <Hans.Rizarri@CroweSoberman.com>; Graeme Hamilton <Graeme.Hamilton@CroweSoberman.com>
Subject: RE: Deem Management Services Ltd. et al. - Court File No. CV-18-598657-00CL

Hi Brendan,

At this point, I do not anticipate delivering any additional affidavit materials. I am content to rely upon the affidavit of Paul Michelin that was already delivered by Ben Salsberg.

As you know, I will be addressing the Construction Lien priority arguments on behalf of Maxion. I have already articulated my legal position to counsel. In short, the Dal Bianco mortgage does not have priority over the construction liens under section 78 of the CLA. The factual evidence I will be relying upon, to a large extent, overlaps with the factual evidence Ben Salsberg will be relying upon for his mortgage invalidity arguments. That is why we will be relying upon the same affidavit material.

I have not prepared any formal "Notice of Motion" pertaining to the CLA arguments, as I understood that I was essentially responding to the Receiver's motion. Do you have the same view or understanding? If you (or any other counsel) believe I require a formal Notice of Motion, please let me know.

Lastly, I reiterate that I require copies of Blaney's (redacted) legal accounts so that I can consider whether or not my client will be challenging the amounts paid by the Receiver for the payout of the prior Dal Bianco mortgage. I am uncertain at this point in time how this issue will "play out" at the upcoming motion, since I do not know whether copies of the accounts will be provided, or whether a court order compelling production will be required. I am simply giving you the "heads-up" that I will not be consenting to court approval of the Receiver's payment of the prior Dal Bianco mortgage until the issue of Blaney's legal accounts has been resolved.

Let me know.

Thank you,
Eric O. Gionet, Partner
egionet@dllaw.ca



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From: Brendan Bissell [<mailto:bissell@gsnh.com>]
Sent: Wednesday, June 05, 2019 11:44 AM
To: Eric Gionet <EGionet@dllaw.ca>
Cc: Benjamin Salsberg <Ben@bensalsberglaw.com>; Andrew Wood <awood@dllaw.ca>; Frank Miceli <fmiceli@westonlaw.ca>; Ed D'Agostino <edagostino@watlaw.com>; Eddy Battiston <e.battiston@battistonlaw.com>; Tara Lee <tlee@kmlaw.ca>; Harold Rosenberg <h.rosenberg@battistonlaw.com>; David Ullmann <DULLmann@blaney.com> <DULLmann@blaney.com>; John C. Wolf <jwolf@blaney.com>; Hans Rizarri <Hans.Rizarri@CroweSoberman.com>; Graeme Hamilton <Graeme.Hamilton@CroweSoberman.com>
Subject: RE: Deem Management Services Ltd. et al. - Court File No. CV-18-598657-00CL

Hi Eric: Thanks for your email.

A request has been made to both counsel for Don Dal Bianco and for Deem Management for the records in question. I have been advised that the records will be provided either as part of reply materials, or to the Receiver in that same time period.

To the extent that the records are not served as part of reply materials, it is my expectation that the Receiver will answer questions 4-6, but I will get final instructions on that once we have the records in hand.

On a related point, could you please let me know if you were planning on serving any materials on behalf of Maxion (i.e. in addition to those from Ben)? I wasn't sure, and if your trial has delayed any materials you were going to provide then we should discuss how to accommodate things within the schedule so that we stay on track for the hearing date.

Regards,
Brendan

R. Brendan Bissell



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Sent: Tuesday, June 04, 2019 12:10 PM
To: Brendan Bissell <bissell@gsnh.com>
Cc: Benjamin Salsberg <Ben@bensalsberglaw.com>; Andrew Wood <awood@dllaw.ca>; Frank Miceli <fmiceli@westonlaw.ca>; Ed D'Agostino <edagostino@watlaw.com>; Eddy Battiston <e.battiston@battistonlaw.com>; Tara Lee <tlee@kmlaw.ca>; Harold Rosenberg <h.rosenberg@battistonlaw.com>
Subject: RE: Deem Management Services Ltd. et al. - Court File No. CV-18-598657-00CL

Brendan,

I am now back in office.

As per your email below, can you please let me know if the Receiver will be responding to items 4-6?

Also, have the corporate documentation (including Minute books, tax filings, tax returns, etc.) been secured by the Receiver?

Thank you,
Eric O. Gionet, Partner
egionet@dllaw.ca



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Sent: Tuesday, April 30, 2019 4:06 PM

To: Eric Gionet <EGionet@dllaw.ca>

Cc: Benjamin Salsberg <Ben@bensalsberglaw.com>; Andrew Wood <awood@dllaw.ca>; Frank Miceli <fmiceli@westonlaw.ca>; Ed D'Agostino <edagostino@watlaw.com>; Eddy Battiston <e.battiston@battistonlaw.com>; Tara Lee <tlee@kmlaw.ca>; Harold Rosenberg <h.rosenberg@battistonlaw.com>

Subject: RE: Deem Management Services Ltd. et al. - Court File No. CV-18-598657-00CL

Eric: Thanks for your email. And also for the clarification on the two bases on which Maxion will be challenging the third mortgage. I had understood the s. 78 *Construction Act* point previously, but didn't fully grasp that you (or Ben) will be arguing the conversion of equity to debt point as well.

Let me review the requests at items 4-6 of your prior email further with the Receiver and get back to you. As I indicated, I suspect that there will be an impetus on a separate basis to get the records requested into the Receiver's possession (because I don't think they are, or not all of them, yet) given the suggestion of altering documents.

In terms of the Blaneys accounts, I don't yet have them from Blaneys. I will reiterate the request. To be clear, though, I hadn't been approaching that issue as part of the timetable, so in my view that can (and probably should) operate in parallel to the third mortgage proceeding, because to be fair you really cannot start to do more with that until you get the redacted accounts from Blaneys (not that you are tying yourself to those, but as a starting point).

Let me know if you want to chat on that latter point more?

Regards,
Brendan

R. Brendan Bissell



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From: Eric Gionet <EGionet@dllaw.ca>

Sent: Tuesday, April 30, 2019 2:47 PM

To: Brendan Bissell <bissell@gsnh.com>

Cc: Benjamin Salsberg <Ben@bensalsberglaw.com>; Andrew Wood <awood@dllaw.ca>; Frank Miceli <fmiceli@westonlaw.ca>; Ed D'Agostino <edagostino@watlaw.com>; Eddy Battiston <e.battiston@battistonlaw.com>; Tara Lee <tlee@kmlaw.ca>; Harold Rosenberg <h.rosenberg@battistonlaw.com>

Subject: RE: Deem Management Services Ltd. et al. - Court File No. CV-18-598657-00CL

Hi Brendan,

At our recent attendance at Court, I reiterated “the big picture” regarding my client’s concerns pertaining to the Dal Bianco mortgage.

Again, briefly stated, when Don Dal Bianco contributed his money into the project, it was on the basis, understanding and agreement that his contributions were equity. He was to receive preferred shares. He was to become a shareholder. Recall that Dal Bianco provided his funds between April, 2012 - January, 2015. Some of the financial statements I have reviewed for 2015 and 2016 shows \$7.8 - \$8 Million in preferred shareholdings for Mr. Dal Bianco.

The Dal Bianco mortgage was registered 3 years after the final “advance” was made by Mr. Dal Bianco, and almost 6 years after his first “advance” to the project. The mortgage was granted and registered on title a mere 3 months before Receivership.

It is Maxion’s position that Mr. Dal Bianco improperly converted his equity position to a secured creditor position on the eve of Receivership.

Mr. Salsberg will be advancing the primary argument on behalf of Maxion that the mortgage is legally “invalid”, while I will be advancing the secondary argument that the mortgage (if it is valid) does not rank in priority to the lien claimants under section 78 of the Construction Act. As I mentioned to you previously, in simple terms, this section 78 priority argument derives not just from the fact that the Dal Bianco’s mortgage is a “subsequent mortgage” under section 78. But, more importantly, Mr. Dal Bianco did not advance his money “...in respect of [that] mortgage”. Mr. Dal Bianco could not have advanced any of his money “in respect of” his mortgage, because the mortgage was only registered 3 years after he made all his advances. Rather, Mr. Dal Bianco advanced his money in respect of his anticipated equity position, or in respect of some other financial arrangement between him and his son (Rob), but regardless, Don Dal Bianco certainly did not advance in respect of his mortgage (which did not even exist for another 3 years).

Therefore, in light of our discussion at Court, and my comments above, to ensure its neutrality and avoid any appearance of partisanship, will the Receiver now provide substantive responses to my questions 4-6 as set out below?

I have already provided you with Rychard Lardner’s memo, in which he summarizes the request made to him to revise the earlier financial statements to change the preferred shares to a liability (“due to related party”). Whether or not the Receiver provides an answer to questions 4-6, at the very least will you confirm that the Receiver has possession and control of the corporate and financial records, for safe keeping?

Furthermore, may I please have copies of the Blaney’s legal accounts (\$350,613.76) that were paid by the Receiver? I am agreeable to receive the redacted accounts for now, but I expressly reserve my right to challenge such redactions after I have had a chance to review those accounts. Given our timetable, to deliver responding materials, may I please have these redacted accounts without further delay?

Thank you,
Eric O. Gonet, Partner
egonet@dllaw.ca



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From: Brendan Bissell [<mailto:bissell@gsnh.com>]

Sent: Thursday, March 28, 2019 11:02 AM

To: Eric Gionet <EGionet@dllaw.ca>

Cc: Jeffrey A. Armel <jarmel@kmlaw.ca>; dullmann@blaney.com; ateodorescu@blaney.com; bphillips@wagnersidlofsky.com; edagostino@watlaw.com; fmiceli@westonlaw.ca; diane.winters@justice.gc.ca; kevin.ohara@ontario.ca; ben@bensalsberglaw.com; Katie Parent <parent@gsnh.com>; Karen Jones <jones@gsnh.com>; Andrew Wood <awood@dllaw.ca>; Eddy Battiston <e.battiston@battistonlaw.com>; Harold Rosenberg <h.rosenberg@battistonlaw.com>

Subject: RE: Deem Management Services Ltd. et al. - Court File No. CV-18-598657-00CL

Eric: Thank you for your email.

Some of your questions, such as items 1-3, seem to be directed at issues other than the third mortgage validity. That is fine, but the Receiver would also like to ensure that the third mortgage issue moves along as well, so while I can provide some responses on those issues here, those issues should not hold up the third mortgage issue as well.

I would therefore ask that you and the other stakeholders (who are all copied here) please comment on the steps for a timetable I proposed in my email of February 8 along with suggested timing for those steps. If there is disagreement, or if this issue remains unaddressed, then a 9:30 appointment to resolve it may be helpful. Note that out of town counsel (such as yourself) can attend via Court Call if that will allow you to avoid a commute that probably isn't pleasant and may not be necessary for something like scheduling.

Some of your questions, such as items 4-6, are ones where it may make sense to understand the issues that the parties are going to raise on the motion about the third mortgage, including through responding materials, in order to consider.

Therefore, to reply using your numbering:

1. No, the amounts payable for the Blaneys fees under the second mortgage were not paid twice. The statement of receipts and disbursements recorded the payment to Blaneys for legal fees under the second mortgage (which was made directly, and hence is its own line item in that statement) as if they were of the same class of professional fees as the Receiver and its counsel or broker, which is not the case. When added to the amounts paid to "Second Mortgage & Receiver Certificates" the Blaneys fees add up to the proper amounts payable to Mr. Dal Bianco under the second mortgage and those Receiver's borrowings.
2. Yes, the Receiver and its counsel considered that issue and concluded that the arrears and their calculation were in order.
3. The Receiver has requested that Blaneys provide a redacted version of their accounts that Mr. Dal Bianco would be prepared to disclose to other parties. When that is received, we will provide it. The issue of redactions can be reserved as you suggest.

4-6. Please see my comment about these questions, above. The Receiver will respond further subsequently.

Regards,
Brendan

R. Brendan Bissell



Suite 1600 | 480 University Avenue | Toronto ON | M5G 1V2

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From: Brendan Bissell
Sent: Thursday, March 14, 2019 12:26 PM
To: Eric Gionet <EGionet@dllaw.ca>
Cc: Jeffrey A. Armel <jarmel@kmlaw.ca>; dullmann@blaney.com; ateodorescu@blaney.com; bphillips@wagnersidlofsky.com; edagostino@watlaw.com; fmiceli@westonlaw.ca; diane.winters@justice.gc.ca; kevin.ohara@ontario.ca; ben@bensalsberglaw.com; Katie Parent <parent@gsnh.com>; Karen Jones <jones@gsnh.com>; Andrew Wood <awood@dllaw.ca>; Eddy Battiston <e.battiston@battistonlaw.com>; Harold Rosenberg <h.rosenberg@battistonlaw.com>
Subject: Re: Deem Management Services Ltd. et al. - Court File No. CV-18-598657-00CL

Eric: I'm away. I'll respond to your email later in the week of the 18th or early in the week of the 25th.

R. Brendan Bissell
Office: [\(416\) 597-6489](tel:4165976489) | Mobile: [\(416\) 992-4979](tel:4169924979)
Sent from my iPhone

On Mar 13, 2019, at 12:59 PM, Eric Gionet <EGionet@dllaw.ca> wrote:

Hi Brendan,

I am just following up on my email of February 28th (see below).

I have not heard anything from you in return. Can you please let me know when we may expect to receive a response?

Thanks!

Eric O. Gionet, Partner
egionet@dllaw.ca

<image001.jpg>

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From: Eric Gionet

Sent: Thursday, February 28, 2019 4:53 PM

To: 'Brendan Bissell' <bissell@gsnh.com>

Cc: Jeffrey A. Armel <jarmel@kmlaw.ca>; dullmann@blaney.com; ateodorescu@blaney.com; bphillips@wagnersidlofsky.com; edagostino@watlaw.com; fmiceli@westonlaw.ca; diane.winters@justice.gc.ca; kevin.ohara@ontario.ca; ben@bensalsberglaw.com; Katie Parent <parent@gsnh.com>; Karen Jones <jones@gsnh.com>; Andrew Wood <awood@dllaw.ca>; Eddy Battiston <e.battiston@battistonlaw.com>; Harold Rosenberg <h.rosenberg@battistonlaw.com>

Subject: RE: Deem Management Services Ltd. et al. - Court File No. CV-18-598657-00CL

Hi Brendan,

I have now had a chance to review your responses below, and the documents you attached.

I have a couple follow-up questions:

- 1) Can you please confirm exactly how much funds are currently being held by the Receiver? The Third Report says \$5,457,198.90, and this is shown in the Interim Statement that the Receiver included at Tab "I" of the Third Report, however unless I am mistaken, the Receiver has deducted the \$350,613.76 for Blaney's legal accounts twice. As I understand, the Blaney's amount was included in the Dal Bianco mortgage payout calculations, and then the Receiver included it again as a separate line item in the Interim Statement under "Professional Disbursements". If my understanding is correct, then the Receiver has miscalculated the funds it is retaining by at least \$350,000. Am I correct? Please verify, and let us know exactly how much funds the Receiver is currently holding.
- 2) Did the Receiver undertake any review to determine if Dal Bianco was entitled to "arrears of monthly interest" as claimed in the Mortgage Discharge Statement, and whether Dal Bianco's calculation of \$127,745.58 for interest arrears was correct?
- 3) Yes, please provide me with copies of the legal accounts from Blaney's that the Receiver reviewed and approved for payment as part of the payout of Dal Bianco's mortgage (ie. the \$350,613.76). I do not believe it is proper for the Receiver to redact any portions of those accounts, but I will reserve my right to challenge the redactions (if any) once I have reviewed the accounts.
- 4) Would you please provide me with copies of the 2016 and 2017 Financial Statements for (1) Deem Management Services Ltd. and (2) The Uptown Inc.? I know in 2015 the Financial Statements were audited, but I do not know if they were audited in subsequent years. If any of these Financial Statements were subsequently amended or revised, then I would like to be made aware of that, and to receive copies of the original and the amended or revised Financial Statements.
- 5) Would you please provide me with the 2015, 2016 and 2017 corporate income tax returns for (1) Deem Management Services Ltd. and (2) The Uptown Inc.?

6) Can you please advise if the Receiver, at any time after its appointment, obtained possession of the corporate Minute Books for (1) Deem Management Services Ltd. and (2) The Uptown Inc.? If so, would you please provide me with a copy of the Shareholders' Register for (1) Deem Management Services Ltd. and (2) The Uptown Inc.

I look forward to hearing back from you at your earliest opportunity.

Thank you,
Eric O. Gionet, Partner
egionet@dllaw.ca

<image003.jpg>

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From: Brendan Bissell [<mailto:bissell@gsnh.com>]

Sent: Saturday, February 16, 2019 11:49 AM

To: Eric Gionet <EGionet@dllaw.ca>; Harold Rosenberg <h.rosenberg@battistonlaw.com>

Cc: Jeffrey A. Armel <jarmel@kmlaw.ca>; dullmann@blaney.com; ateodorescu@blaney.com;

bphillips@wagnersidlofsky.com; edagostino@watlaw.com; fmiceli@westonlaw.ca;

diane.winters@justice.gc.ca; kevin.ohara@ontario.ca; ben@bensalsberglaw.com; Katie Parent

<parent@gsnh.com>; Karen Jones <jones@gsnh.com>; Andrew Wood <awood@dllaw.ca>; Eddy

Battiston <e.battiston@battistonlaw.com>

Subject: RE: Deem Management Services Ltd. et al. - Court File No. CV-18-598657-00CL

Eric: This is in response to the five numbered points in your email of Feb. 13 at 11:35 am (below) about details arising from the Third Report and appendices for which you would like more information and/or documentation. The overall point about involvement of the receiver that you raised has already been addressed and, as you have aptly put, it does not seem to make any sense to debate that further through correspondence. To respond the detailed points, and using your numbering:

- 1) There were three (3) Receiver's Borrowing Certificates issued for loans made by Mr. Dal Bianco to the Receiver. Two of those were mentioned in the Second Report at para. 9(b) and were attached as Appendix "D" to that report. As noted in that report, the purpose was to pay the monthly mortgage amounts owing to IMC, which it was insisting upon and which would in any event have been part of the amounts secured by the first-ranking mortgage in favour of IMC had they not been paid. The third such Certificate was issued at the end of July (after the Second Report) for the mortgage payment due August 1, and a copy of that is attached.
- 2) The payout statement received from IMC is attached. The payout statement from IMC was for \$8,289,169.18 as of Sept. 1, but since the payment was made on Sept. 4 the *per diem* of \$2,544.35 applied for four days, to yield the total noted.

The payout statement received from Mr. Dal Bianco on the second mortgage is also attached. The amounts paid under that statement were as follows:

1	Principal	\$4,517,511.41
2	Interest arrears	\$127,745.58
3	Three months' interest bonus	\$0 (under discussion with the cred

4	Late payment fees	\$0
5	Fee payable as a result of default	\$500
6	Mortgage discharge statement fee	\$150
7	Fees of Blaney McMurtry LLP	\$339,875.73 (note, increased account provided after the payout statement)
8	Fees of Bryan Pillauti, CPA	\$9,040.00
9	Fees of GSP Group Inc.	\$1,698.03
10	Per diem	\$5,090.70
	Total	\$5,001,611.45

There was again *per diem* interest of \$5,090.70 payable on the amounts owing because the payment was made on Sept. 4 rather than Sept. 1, 2018.

I should note that the Third Report indicated at paragraph 28(c) that the Dal Bianco second mortgage was paid out in the amount of \$5,002,656.45. That is incorrect, and is overstated by \$1,045 because the correct number is as indicated in the chart above.

3) The reference to professional disbursements to Blaney McMurtry LLP is mistaken. Those amounts are properly included in the payout of the second mortgage. The \$350,613.76 was the amount directly paid to the Blaney McMurtry LLP trust account under direction from Mr. Dal Bianco for items 7, 8, and 9, above in the second mortgage payout. No professional services were rendered by Blaney McMurtry LLP to the Receiver.

I am not sure if that answers your question such that the request for accounts of Blaney McMurtry LLP is no longer necessary, but if it is I can advise that the Receiver asked for and was given unredacted copies of all the accounts, and reviewed and discussed them with Blaney McMurtry LLP to determine whether they were reasonably secured by the second mortgage, and concluded (after discussion with counsel – me) that they were. If copies of the accounts are still requested, please advise, but please also note that redacted copies will only be provided so that the privileged information in them is not provided to parties who are potentially adverse in interest.

4) This results from the records of the Office of the Superintendent in Bankruptcy. Since evidence that Mr. Michelin is no longer a bankrupt would logically come from him (and he is affiliated with your client, Maxion) and since this issue is, as noted, not before the Court right now, we ask you or Mr. Michelin to provide the evidence to which you refer so that the Receiver can include that in its considerations on that issue when it become necessary to do so.

5) Quite right – the third mortgage was not granted until February of 2018. The reference to 2014 was a typo.

Regards,
Brendan

R. Brendan Bissell

<image004.jpg>

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Sent: Thursday, February 14, 2019 5:21 PM
To: 'Eric Gonet' <EGonet@dllaw.ca>; Harold Rosenberg <h.rosenberg@battistonlaw.com>
Cc: Jeffrey A. Armel <jarmel@kmlaw.ca>; dullmann@blaney.com; ateodorescu@blaney.com; bphillips@wagnersidlofsky.com; edagostino@watlaw.com; fmiceli@westonlaw.ca; diane.winters@justice.gc.ca; kevin.ohara@ontario.ca; ben@bensalsberglaw.com; Katie Parent <parent@gsnh.com>; Karen Jones <jones@gsnh.com>; Andrew Wood <awood@dllaw.ca>; Eddy Battiston <e.battiston@battistonlaw.com>
Subject: RE: Deem Management Services Ltd. et al. - Court File No. CV-18-598657-00CL

Thanks, Eric. I'm expecting you will have those answers tomorrow or Tuesday. Hope that's ok.

Regards,

R. Brendan Bissell

<image004.jpg>

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Subject: RE: Deem Management Services Ltd. et al. - Court File No. CV-18-598657-00CL

Okay, that's fine Brendan. When you have a better idea, let us know when you expect those answers will be ready.

Thanks for the quick response.

Thank you,
Eric O. Gonet, Partner
egonet@dllaw.ca

<image005.jpg>

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Cc: Jeffrey A. Armel <jarmel@kmlaw.ca>; dullmann@blaney.com; ateodorescu@blaney.com; bphillips@wagnersidlofsky.com; edagostino@watlaw.com; fmiceli@westonlaw.ca; diane.winters@justice.gc.ca; kevin.ohara@ontario.ca; ben@bensalsberglaw.com; Katie Parent <parent@gsnh.com>; Karen Jones <jones@gsnh.com>; Andrew Wood <awood@dllaw.ca>; Eddy Battiston <e.battiston@battistonlaw.com>
Subject: RE: Deem Management Services Ltd. et al. - Court File No. CV-18-598657-00CL

Eric: Since getting your initial email, I was preparing for and then at two hearings out of town today, so the responses to your particular questions are in process and will come shortly.

Regards,

R. Brendan Bissell

<image004.jpg>

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Subject: RE: Deem Management Services Ltd. et al. - Court File No. CV-18-598657-00CL

Brendan,

The way things are headed, we may need a Judge's ruling to assist us in determining what role the Receiver should play in this fight between the lien claimants and Dal Bianco. I'm not going to engage in an email argument with you.

In any event, please advise when we can expect to receive the Receiver's answers to the very specific and discreet questions I posed in my prior email. The information sought should be immediately available to the Receiver and should be very easy to provide to the parties. There should be no reason for delay. I want to see those answers (and requested documents) before I decide and obtain instructions from my client on how we ought to proceed.

My goal, and my general overriding instructions, are to proceed forward as swiftly as possible for the benefit of all lien claimants.

Please confirm when we will receive the Receiver's responses.

Thank you,
Eric O. Gonet, Partner
egonet@dllaw.ca

<image006.jpg>

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Subject: RE: Deem Management Services Ltd. et al. - Court File No. CV-18-598657-00CL

Harold: Thank for your email. I am not going to repeat what I said yesterday, and my position is not going to change on this issue. The only additional point I would note is that in referring to certain paragraphs of the Third Report, you did not refer to paragraph 37, which stated:

37. In preparing this Third Report, the Receiver has discussed with the stakeholders that it would set out its review to-date of the relevant facts, after which the stakeholders may submit evidence, reply evidence to that of other stakeholders, and conduct any cross-examinations felt to be necessary. Following those further steps, the Receiver will provide a further report to attempt to provide further information and, if appropriate, recommendations regarding the issues raised.

A position, if appropriate, was expressly being deferred because the parties seemed to be telegraphing that not all the information may yet be in hand. When it is, if a position is appropriate the Receiver will take it.

I suggest that the parties start addressing the request for timetable that has been noted when the report was originally contemplated and repeated below. If that is not going to be addressed in the proximate future, the Receiver will convene a 9:30 appointment to get it and a hearing date set. To continue on this exchange of correspondence is not a productive use of time.

Regards,

R. Brendan Bissell

<image004.jpg>

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From: Harold Rosenberg <h.rosenberg@battistonlaw.com>
Sent: Thursday, February 14, 2019 2:49 PM
To: Brendan Bissell <bissell@gsnh.com>
Cc: Jeffrey A. Armel <jarmel@kmlaw.ca>; Eric Gionet <EGionet@dllaw.ca>; dullmann@blaney.com; ateodorescu@blaney.com; bphillips@wagnersidlofsky.com; edagostino@watlaw.com; fmiceli@westonlaw.ca; diane.winters@justice.gc.ca; kevin.ohara@ontario.ca; ben@bensalsberglaw.com; Katie Parent <parent@gsnh.com>; Karen Jones <jones@gsnh.com>; Andrew Wood <awood@dllaw.ca>; Eddy Battiston <e.battiston@battistonlaw.com>
Subject: Re: Deem Management Services Ltd. et al. - Court File No. CV-18-598657-00CL

Hi Brendan.

I just returned from a break and I'm playing catch-up. I made a brief review of your motion record and the Receiver's 3d Report and the emails that were exchanged yesterday.

From my client's standpoint (***Deep Foundations***), it supports any measures that will help preserve the funds available for distribution to creditors and agrees with Eric's point about minimizing the costs of the receivership.

I don't have sufficient information concerning your comment about the existence of a few scenarios of how the distribution of proceeds will play out and the position of unsecured creditors. However, it seems to me that Eric was addressing one discreet issue: Priority as between the remaining Dal Bianco mortgage and the liens.

Eric's position seems to me to be supported by paragraphs 34 to 36 of the Receiver's 3d Report, as to how the issue is framed. The Receiver, in the 3d Report, reviewed several relevant documents but did not come down in support of one side or

the other. The same noncommittal view appears to be expressed in the *caveat* contained in GSNH opinion dated February 8, 2019, at Appendix DD (page 446) of the Motion Record.

It appears that the Receiver has left the issue to be dealt with by the stakeholders with an immediate interest, which is the point that Eric is making. Approaching the issue that way will also keep down the costs of the Receivership.

Harold Rosenberg

Battiston & Associates

Suite 202, 1013 Wilson Avenue
Toronto, Ontario, M3K 1G1

phone: (416) 630-7151 x 237
(number to call in event of transmission failure)

fax: (416) 630-7472
email: h.rosenberg@battistonlaw.com

On Wed, Feb 13, 2019 at 2:57 PM Brendan Bissell <bissell@gsnh.com> wrote:

All: Before the stakeholders get invested on Eric's rhetorical point, it may be of assistance to know that it is a non-starter for a few reasons.

One is that the Court will expect some assistance from the Receiver, which it can provide in ways that parties cannot (Jeffrey and Eric's musings notwithstanding).

Another is that there are more than a few scenarios of how distribution of proceeds will play out in which there may or will be funds that are payable to unsecured creditors. Those creditors are not (entirely or at all) represented in these proceedings, and the Receiver therefore has an obligation to have regard to their legitimate interests. In other words, even if the current parties to the Service List were to 100% agree on how the distribution of funds should proceed, the Receiver will have an independent role in assessing the reasonableness of that and whether the Court should accept it or not.

A kernel of what Eric notes may, however, be valid, which is that where the *pro* and *contra* positions on an issue are adequately represented by the stakeholders, the court officer can consider not taking an advocacy role towards one outcome or another. We will pay attention to whether that is appropriate here as this matter progresses. That is not, however, merely being an "observer" as Eric implied.

I will respond to Eric's more detail-oriented questions later.

Regards,

R. Brendan Bissell

<image004.jpg>

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From: Jeffrey A. Armel <jarmel@kmlaw.ca>
Sent: Wednesday, February 13, 2019 2:34 PM
To: 'Eric Gionet' <EGionet@dllaw.ca>; Brendan Bissell <bissell@gsnh.com>; dullmann@blaney.com; jwolf@blaney.com; ateodorescu@blaney.com; bphillips@wagnersidlofsky.com; f.battiston@battistonlaw.com; h.rosenberg@battistonlaw.com; edagostino@watlaw.com; fmiceli@westonlaw.ca; diane.winters@justice.gc.ca; kevin.ohara@ontario.ca; ben@bensalsberglaw.com
Cc: Graeme Hamilton <Graeme.Hamilton@CroweSoberman.com>; Julia Reznichenko <Julia.Reznichenko@CroweSoberman.com>; Katie Parent <parent@gsnh.com>; Karen Jones <jones@gsnh.com>; Andrew Wood <awood@dllaw.ca>
Subject: RE: Deem Management Services Ltd. et al. - Court File No. CV-18-598657-00CL

All,

I am in full agreement with Eric's comments below. I don't see how the Receiver's further involvement in the mortgage priority fight will benefit any party nor, in my view, will it provide any assistance to the Court. I am certain that counsel for all parties involved will be fully capable of preparing the requisite motion materials and making the appropriate submissions on behalf of their respective clients to the Court. I anticipate that there will be cross examinations and extensive documentary production. It does not make sense to have an additional set of costs incurred.

Jeffrey

<image007.png> **Jeffrey A. Armel**

T: +1 416-595-2069 | F: +1 416-204-2826 | E: jarmel@kmlaw.ca

Koskie Minsky LLP, 20 Queen Street West, Suite 900, Toronto, ON. M5H 3R3

kmlaw.ca

From: Eric Gionet [<mailto:EGionet@dllaw.ca>]

Sent: February-13-19 11:35 AM

To: Brendan Bissell; dullmann@blaney.com; jwolf@blaney.com; ateodorescu@blaney.com; bphillips@wagnersidlofsky.com; f.battiston@battistonlaw.com; h.rosenberg@battistonlaw.com; edagostino@watlaw.com; fmiceli@westonlaw.ca; Jeffrey A. Armel; diane.winters@justice.gc.ca; kevin.ohara@ontario.ca; ben@bensalsberglaw.com

Cc: Graeme Hamilton; Julia Reznichenko; Katie Parent; Karen Jones; Andrew Wood

Subject: RE: Deem Management Services Ltd. et al. - Court File No. CV-18-598657-00CL

Brendan,

Thank you for your email of February 8, 2019 attaching the Receiver's Motion Record.

I have a few quick preliminary questions, which I will pose below, but I want to reiterate a point that I raised the last time we were in Court.

From my perspective, the issues pertaining to the validity and priority position of the remaining Dal Bianco mortgage is really a "fight" between the lien claimants and Dal Bianco. I believe it would be much more efficient, expedient and a lot less costly, if the Receiver were to step aside in this fight, and allow the lien claimants and Dal Bianco to litigate these issues directly. I do not see why the parties require the Receiver and its legal counsel to incur more fees by getting involved in this fight. It seems to me to make the most sense, now that the Receiver has delivered its Third Report, for the Receiver to essentially stand aside and let the parties litigate the issues. In that sense, the Receiver would be an observer, and would ultimately follow the direction and ruling from the Court. However, there is no need for the Receiver to remain actively involved in this fight. We don't need the Receiver's active involvement, and we certainly don't need the additional fees to be incurred, which will only reduce the amount available for all the parties.

I invite feedback from other counsel whether they see any practical need or benefit in having the Receiver continue to be actively involved in this mortgage dispute. In short, I propose to have the motion proceed directly between the lien claimants and Dal Bianco, and we can get that motion scheduled with the Commercial Court within the Receivership proceedings. Thoughts?

While we await responses to the above suggestion, I would ask that the Receiver please provide some quick responses to the following questions:

- 1) Paragraph 23 (a) of the Third Report refers to Receiver's Certificates of \$293,694.55 paid to Donald Dal Bianco, but I could not find any details or copies of such Certificates. Would you please provide copies of those Certificates (or advise where I may find them). Why was Dal Bianco paid these funds?
- 2) Would you please provide the detailed payout statements that show how the amounts were arrived at for the IMC (\$8,299,346.58) and the Dal Bianco mortgage (\$5,002,656.45) that were paid out as referenced in paragraph 23 (b) and (c)?
- 3) Paragraph 27 refers to the Receiver's Interim Statement, which is attached at Appendix "I". In that Interim Statement under the heading for "Professional Disbursements" is included the amount of \$350,613.76 for "Blaney's". I have read the Third Report a couple of times, and I could find no explanation or details as to why the Receiver is seeking court approval to pay Blaney's \$350,613.76. Furthermore, unless I have missed it somewhere, I could find no accounts included in the Receiver's report to support such disbursement request. Therefore, please provide an explanation why the Receiver is seeking court approval to pay Blaney's, and provide copies of the accounts supporting the amount sought (ie. \$350,6134.76).
- 4) Paragraph 33 (e) refers to the Receiver having "determined" that Paul Michelin is an undischarged bankrupt, however the Receiver provides no support or explanation for such assertion. It is my understanding and information that Mr. Michelin has, in fact, been fully discharged, and I am seeking to obtain those discharge documents. In any event, please provide the Receiver's support for the assertion that the Receiver has "determined" that Mr. Michelin is undischarged.
- 5) Paragraph 38, in the first sentence, refers to the third-ranking mortgage being granted on February 14, 2014. I assume this must be a typo, since the documentation at Appendix "J" clearly indicate it was signed on February 14, 2018, and paragraph 42 confirms that there were no documents prior to February, 2018. Accordingly, please confirm that the reference to 2014 in paragraph 38 is a typo, and the proper date is 2018.

I look forward to hearing from other counsel and to receiving the Receiver's quick responses to the above preliminary questions.

Thank you,

Eric O. Gionet, Partner

egionet@dllaw.ca

<image008.jpg>

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Sent: Friday, February 08, 2019 7:06 PM
To: dullmann@blaney.com; jwolf@blaney.com; ateodorescu@blaney.com; bphillips@wagnersidlofsky.com; f.battiston@battistonlaw.com; h.rosenberg@battistonlaw.com; edagostino@watlaw.com; fmiceli@westonlaw.ca; jarmel@kmlaw.ca; Eric Gionet <EGionet@dllaw.ca>; diane.winters@justice.gc.ca; kevin.ohara@ontario.ca; ben@bensalsberglaw.com
Cc: Graeme Hamilton <Graeme.Hamilton@CroweSoberman.com>; Julia Reznichenko <Julia.Reznichenko@CroweSoberman.com>; Katie Parent <parent@gsnh.com>; Karen Jones <jones@gsnh.com>
Subject: Re: Deem Management Services Ltd. et al. - Court File No. CV-18-598657-00CL

TO THE SERVICE LIST:

Enclosed please find the Motion Record and Third Report of the Receiver, for a motion to be set on a date to be set at a 9:30 appointment.

When this matter was last discussed at a 9:30, the stakeholders wanted to have these materials in hand in order to determine what steps they may wish to take, and how long they may want in order to take them. May we therefore suggest that stakeholders consider the timing for the following steps:

1. Deadline for lien claimants to provide evidence of timeliness of liens (in order to be sure that those are secured claims to compete with the third mortgage)
2. Deadline for any motion materials from any other party.
3. Deadline for any reply materials from any party to materials served in item 2.
4. Deadline for cross-examinations.
5. Deadline for any supplementary report of the Receiver.
6. Hearing date for the motion (assume a half-day; facts to be served in accordance with the Rules unless otherwise stipulated).

Regards,

R. Brendan Bissell

<image004.jpg>

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DONALD DAL BIANCO

and

DEEM MANAGEMENT SERVICES LIMITED and THE UPTOWN INC.

Applicant

Respondents

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST
Proceeding commenced TORONTO**

SUPPLEMENTARY MOTION RECORD
(motion for directions regarding the third mortgage
and other relief returnable November 21, 2019)

GOLDMAN SLOAN NASH & HABER LLP
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