

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

BETWEEN:

ROYAL BANK OF CANADA

Applicant

- and -

2180672 ONTARIO INC.

Respondents

APPLICATION UNDER SUBSECTION 243(1) OF THE *BANKRUPTCY AND
INSOLVENCY ACT*, R.S.C. 1985, C. B-3, AS AMENDED AND SECTION 101 OF THE
COURTS OF JUSTICE ACT, R.S.O. 1990, C. C.43, AS AMENDED

**FINAL AND SECOND REPORT TO THE COURT
SUBMITTED BY BDO CANADA LIMITED
IN ITS CAPACITY AS RECEIVER OF
2180672 ONTARIO INC.**

July 18, 2016

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INTRODUCTION

1. By Order of the Honourable Justice Penny dated December 18, 2015 (the “**Receivership Order**”), BDO Canada Limited was appointed as receiver (in such capacity, the “**Receiver**”), without security, of all of the assets, undertakings and properties of 2180672 Ontario Inc. (the “**Debtor**”). The Receivership Order was obtained on a motion brought by Royal Bank of Canada (“**RBC**”), the applicant in this proceeding. A copy of the Receivership Order is attached hereto as **Appendix “A”**.
2. The Debtor carries on business as a restaurant operating as a Boston Pizza franchise (the “**Restaurant**”) in the Town of Uxbridge, Ontario.
3. In the Receiver’s first report to the Court dated February 26, 2016 (the “**First Report**”), the Receiver described the sales process undertaken to sell the Debtor’s assets (the “**Assets**”). A copy of the First Report without appendices is attached hereto as **Appendix “B”**.

4. On March 8, 2016, the Honourable Mr. Justice Newbould, made an order approving the sale of the Assets and vesting title to the Assets in the purchaser free and clear of any encumbrances (the “**Approval and Vesting Order**”). A copy of the Approval and Vesting Order is attached hereto as **Appendix “C”**.
5. On March 8, 2016 the Honourable Mr. Justice Newbould also made an order approving, among other matters, distributions to Uxbridge Heights Plaza Ltd and Boston Pizza International Inc. (the “**Ancillary Order**”). A copy of the Ancillary Order is attached hereto as **Appendix “D”**.
6. The Receiver filed a supplement to the First Report dated March 16, 2016 (the “**First Report Supplement**”) for the purpose of correcting the name of the entity purchasing the Assets and amending the Approval and Vesting Order. A copy of the First Report Supplement is attached hereto without appendices as **Appendix “E”**.
7. On March 23, 2016, the Honourable Mr. Justice Wilton-Siegel, made an order amending the Approval and Vesting Order of the Honourable Justice Newbould dated March 8, 2016. A copy of the amended Approval and Vesting Order is attached hereto as **Appendix “F”**.
8. On April 11, 2016, the Receiver closed the transaction with the Purchaser. The Receiver has filed with the Court a Receiver’s Certificate in accordance with paragraph 4 of the Approval and Vesting Order. A copy of the Receiver’s Certificate is attached hereto as **Appendix “G”**.

PURPOSE OF THIS REPORT

9. The purpose of this second and final report to the Court of the Receiver (the “**Final Report**”) is to:
 - Report on the activities of the Receiver since March 16, 2016;
 - Report on the closing of the transaction providing for the sale of the Assets;
 - Provide support for the Receiver’s request for an Order:
 - I. approving the Second Report and the activities of the Receiver as set out therein;
 - II. approving the fees and disbursements of the Receiver and its legal counsel, Aird & Berlis LLP (“**Aird**”) as reflected herein, including the proposed fee accruals to the completion of these proceedings;
 - III. authorizing and directing the Receiver to distribute, after the payment of its approved fees and disbursements, to Royal Bank of Canada (“**RBC**”), without

further Order of this Court, certain funds on account of the Debtor's secured indebtedness for principal, interest and costs owing to RBC; and

- IV. discharging the Receiver, subject to the Receiver completing its administration of the receivership estate as described herein and filing a Certificate with this Honourable Court.

DISCLAIMER

10. This Final Report is prepared for the use of the Ontario Superior Court of Justice (Commercial List) in the proceedings and for the information and use of stakeholders. In preparing this Final Report, the Receiver has relied upon certain unaudited, draft and/or internal financial information, the Debtor's books and records, discussions with Management, and information obtained from other third party sources. The Receiver assumes no responsibility or liability for the loss or damage occasioned by any party as a result of the circulation, publication, reproduction or use of this Final Report or for any use which any party makes of this Final Report, or any reliance on, or a decision to be made, based upon it, other than for the express purposes set out in this Final Report.
11. Capitalized terms not defined in this First Report are as defined in the Receivership Order.
12. Unless otherwise stated, all monetary amounts contained herein are in Canadian dollars.

ACTIVITIES OF THE RECEIVER

13. Since March 16, 2016, the Receiver's activities have included, among other things:
- Monitoring receipts and disbursements and liaising with various stakeholders, as appropriate;
 - Attending to the distributions approved by the Court on March 8, 2016;
 - Preparing for and attendance in Court on March 23, 2016;
 - Attending to the closing of the sale of assets on April 11, 2016;
 - Addressing post-closing issues;
 - Attending to the updating of the books and records of the Debtor in order to prepare and file corporate tax returns for 2015;
 - Corresponding by email and telephone from creditors and suppliers;
 - Addressing various Ministry of Labour claims;

- Liaising with Boston Pizza International Inc. (the “**Manager**” or “**BPI**”) in respect of completing its duties under the management agreement; and
- Liaising with legal counsel on various matters.

MANAGEMENT OF THE RESTAURANT

14. As outlined in the First Report, the Receiver engaged BPI to act as day to day manager of the Restaurant pursuant to a Management Agreement (the “**BPI Agreement**”).
15. As described above, the Ancillary Order authorized the Receiver to distribute \$87,223.40 pursuant to the terms of the BPI Agreement described in the First Report.
16. The Receiver and BPI have amended the balance owing to BPI further to unaccounted credit card deposits and charges and adjustments for inventory balances on closing of the transaction. The Receiver has paid \$71,115.75 to BPI further to the adjustments noted above.
17. The BPI Agreement provided for a management fee of 90% of the net balance of funds available at the date of termination of the agreement.
18. The Receiver expects to receive \$2,160 from BPI representing the surplus of the funds remaining after payment of its management fee referred to above and expenses incurred during the receivership.
19. The BPI Agreement was terminated on April 11, 2016.

FUNDING OF RECEIVERSHIP

20. Pursuant to paragraph 22 of the Receivership Order, the Receiver is permitted to borrow such monies as are necessary or desirable to fund the receivership. The borrowing limit is not to exceed \$150,000.
21. As outlined in the First Report, RBC advanced funds under the Receiver’s certificate in the amount of \$35,000.
22. The Receiver’s borrowings were repaid to RBC with the proceeds realized from the sale of Assets.

BOOKS AND RECORDS

23. The Receiver has obtained certain Books and Records of the Debtor and is preparing company financial information in order to prepare and file the corporate tax return for 2015.
24. The filing of the outstanding corporate tax return is necessary in order to obtain HST tax refunds claimed during the Receivership administration.

STATEMENT OF RECEIPTS AND DISBURSEMENTS

25. The Receiver has prepared the Final SRD reflecting the activity in the receivership from December 18, 2015 to July 18, 2016. As at July 18, 2016, The balance in the Receiver's trust account was \$73,470. The Final SRD is attached hereto as **Appendix "H"**.

PRIORITY CLAIMS

26. As discussed in the First Report, the Receiver communicated with Canada Revenue Agency ("**CRA**") regarding the status of the source deduction/payroll and HST accounts. CRA advised that there were no source deductions owing however there are HST arrears owing in the amount of \$98,000.
27. On application of Royal Bank of Canada, a Bankruptcy Order was granted by the Bankruptcy Court on March 22, 2016 appointing BDO Canada Limited ("**BDO**") as Trustee in Bankruptcy in respect of the estate of the Debtor. A copy of the Bankruptcy Order is attached as **Appendix "I"**. The Receiver therefore understands that CRA's deemed trust claim is now unsecured.
28. There are no priority secured claims by former employees of the Debtor pursuant to the Wage Earner Protection Program Act ("**WEPPA**").

PROPOSED DISTRIBUTION

29. As indicated in the First Report, the Receiver obtained an independent legal opinion from Aird advising that subject to the usual qualifications, RBC holds validly perfected security interest in the Debtors' Assets. At the commencement of the receivership proceedings, the loan outstanding to RBC was in the amount of \$760,621.34 according to the affidavit of David Lai sworn December 10, 2015.
30. Registration against the Debtor pursuant to the Personal Property Security Act (Ontario) ("**PPSA**") indicate that RBC is the only party having made a registration against the Debtor.

31. Further to the Ancillary Order dated March 8, 2016, the Receiver was authorized to distribute \$30,000 to Uxbridge Heights Plaza Ltd on partial account of the Debtors' secured indebtedness to RBC.
32. The Receiver proposes to distribute to RBC all funds remaining in the Receiver's trust account, after payment of its final fees and legal fees. The Receiver presently estimates that the final payment to RBC will be in the amount of approximately \$30,000. After taking into account this payment, RBC will suffer a loss of over \$700,000 on their loan to the Debtor.
33. As the Receiver may collect nominal additional amounts, the Receiver is requesting that it be authorized, without further Court Order, to make subsequent distributions to RBC up to the amount of its secured indebtedness.

PROFESSIONAL FEES

34. The Receiver and its legal counsel have maintained detailed records of their professional time and disbursements since the Receivership Order was granted.
35. The fees and expenses of the Receiver upto February 26, 2016 and its legal counsel Aird upto February 22, 2016 were approved by this Court, by the Ancillary Order dated March 8, 2016.
36. The Receiver is now seeking the approval of the Court with respect to the fees and expenses of the Receiver since February 27, 2016 and its counsel since February 22, 2016 as well as their proposed fee accruals to discharge.
37. The total fees and disbursements of the Receiver during the period February 27, 2016 to July 15, 2016 is \$27,206.05 together with HST in the amount of \$3,536.79 for a total of \$30,742.84. The time spent by the Receiver is particularized in the Affidavit of Stella Millis sworn July 18, 2016 (the "**Receiver's Affidavit**"). A copy of the Receiver's Affidavit in support of approval of its accounts as well as the proposed fee accrual to discharge is attached hereto as **Appendix "J"**.
38. The total fees and disbursements incurred by Aird during the period February 23, 2016 to July 14, 2016 is \$23,208.53 together with HST in the amount of \$3,014.84 for a total of \$26,223.37. The time spent by Aird is particularized in the Affidavit of Sam Babe sworn July 18, 2016 (the "**Aird Affidavit**"). A copy of the Aird Affidavit in support of approval of its accounts as well as the proposed fee accrual to discharge is attached hereto as **Appendix "K"**.

39. The Receiver and its counsel estimate that they will each incur fees in the amount of \$5,000 plus HST, to the conclusion of the receivership. This estimate includes time associated with preparing the Final Report and the motion record, attending at Court, finalizing the distribution, filing of final tax returns, closure of various government accounts and dealing with ancillary matters to the receivership.
40. The Receiver has reviewed the invoices of Aird and finds the work performed and charges to be appropriate and reasonable.

RECEIVER'S DISCHARGE

41. The Receiver has realized on the assets of the Debtor and has substantially completed the administration of the estate, subject to the completion of the matters set out above.

RELIEF REQUESTED

42. Based upon the foregoing the Receiver respectfully requests that this Honourable Court issue an order for the relief outlined in paragraph 9(c) herein.

All of which is respectfully submitted this 18th day of July, 2016

BDO CANADA LIMITED
In its capacity as Court Appointed Receiver of
2180672 Ontario Inc.

Per:



Stella Millis, CIRP
Vice President