

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

B E T W E E N:

HSBC BANK CANADA

Applicant

- and -

CHAIR-TECH 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

**FIRST REPORT OF BDO CANADA LIMITED, IN ITS CAPACITY
AS COURT APPOINTED RECEIVER OF CHAIR-TECH INC.**

January 4, 2019

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- B** Affidavit of Cheryl Lee sworn August 26, 2016
- C** Liquidation Services Agreement dated January 4, 2017
- D** Canam-Appraiz Inc. appraisal dated December 12, 2016
- E** Security Opinion of Baker & McKenzie LLP
- F** Receiver’s Statement of Receipts and Disbursements
- G** BDO Canada Limited Fee Affidavit sworn January 4, 2019
- H** Baker & McKenzie LLP Fee Affidavit sworn January 3, 2019

INTRODUCTION AND BACKGROUND

Introduction

1. By Order of the Honourable Justice Wilton-Siegel of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) dated November 14, 2016 (the “**Receivership Order**”), BDO Canada Limited (“**BDO**”), was appointed as the receiver and manager (the “**Receiver**”) of all of the assets, undertakings and properties of Chair-Tech Inc. (the “**Debtor**”) pursuant to the application of the Debtor’s senior secured creditor, HSBC Bank Canada (“**HSBC**”). A copy of the Receivership Order is attached hereto as **Appendix “A”**.

Purpose of this Report

2. The purpose of this First Report to the Court, dated January 4, 2019 (the “**First Report**”) is to seek an Order of the Court:
- a) approving this First Report and the activities of the Receiver set out herein;
 - b) approving the Receiver’s final Statement of Receipts and Disbursements (the “**Final R&D**”);
 - c) approving the fees and disbursements of the Receiver and its legal counsel, Baker & McKenzie LLP (“**Baker**”) as set out in the First Report and the affidavits of the Receiver and its counsel as to fees, and authorizing the Receiver to pay all approved and unpaid fees and disbursements;
 - d) authorizing and directing the Receiver to distribute the funds remaining in the its hands to HSBC, after the payment of the fees and disbursements of the Receiver and its counsel and subject to the

retention of the Holdback Amount (as defined herein), in partial satisfaction of the secured indebtedness owing to HSBC by the Debtor;

- e) that, upon the filing by the Receiver of a certificate, substantially in the form set out in Schedule “A” of the Distribution and Discharge Order (the “**Receiver’s Discharge Certificate**”), discharging BDO as Receiver of all of the assets, undertakings and properties of the Debtor; and
- f) that, upon the filing of the Receiver’s Discharge Certificate, releasing BDO from any and all liability it now has or may have by reason of, or in any way arising out of, the acts or omissions of BDO while acting in its capacity as Receiver herein, save and except for any gross negligence or willful misconduct on the Receiver’s part.

Disclaimer

3. This First Report is prepared solely for the use of the Court for the purpose of reporting on the administration of the receivership and assisting it in making a determination whether to authorize a distribution to HSBC and approve the discharge of BDO as Receiver and other ancillary relief being sought.

4. Unless otherwise stated, all monetary amounts contained in this First Report are expressed in Canadian dollars.

Background

5. Chair-Tech Inc. is an Ontario corporation, which operated as a wholesaler of ready to assemble furniture. The Debtor’s head office was at a leased commercial warehouse located in Richmond Hill, Ontario (the “**Richmond Hill Facility**”). The Debtor also had showrooms in (i) Mississauga, Ontario (the “**Mississauga Showroom**”), (ii) Las Vegas, Nevada (the “**Las Vegas Showroom**”), and (iii) Pomona, California (the “**Pomona Showroom**”, collectively with Las Vegas Showroom the “**US Showrooms**”).

Additionally, the Debtor had inventory stored at certain third party warehouse locations in California, North Carolina and Nevada (the “**US Warehouse Locations**”).

6. HSBC extended a credit facility in the amount of \$350,000 to finance the Debtor’s operations (the “**Credit Facility**”). The Credit Facility is secured by a general security agreement (the “**GSA**”) granted by the Debtor. As detailed below, the Receiver has an independent legal opinion confirming the validity, enforceability and priority of HSBC's security (collectively “**HSBC’s Security**”).

7. Further background facts on the enforcement steps taken by HSBC and the circumstances leading to the receivership proceedings are contained in the Affidavit of Cheryl Lee sworn August 26, 2016 in support of the receivership application. A copy of this Affidavit is attached hereto as **Appendix “B”** (without exhibits).

ACTIVITIES OF THE RECEIVER

8. Pursuant to the Receivership Order, the following is a summary of the activities of the Receiver:

- (a) taking possession and changing locks at the Richmond Hill facility;
- (b) coordinating the release of inventory sold to the public by the Debtor in a warehouse sale just prior to the Receivership Order being granted;
- (c) arranging for the relocation of the inventory at the Richmond Hill Facility and the Mississauga Showroom;
- (d) arranging for the relocation of certain of the inventory at the Pomona Showroom;

- (e) abandoning certain of the inventory located at the US Showrooms and US Warehouse Locations where the realizable value of such inventory was less than the outstanding rental arrears and estimated shipping costs to relocate and consolidate the inventory in order to hold a sale as discussed in greater detail in paragraph 18 below;
- (f) corresponding with the Debtor's principal, Michael Rewucki, to locate the available books and records;
- (g) identifying third party owned goods and releasing such goods to third parties once proof of ownership was established;
- (h) responding to creditor and employee inquiries;
- (i) preparing and issuing the prescribed Notices and Statements of the Receiver pursuant to sections 245(1) and 246(1) of the *Bankruptcy and Insolvency Act*, which were forwarded to the Office of the Superintendent of Bankruptcy and the known creditors;
- (j) setting up an estate case website at <http://www.extranets.bdo.ca/Chair-Tech/>;
- (k) collecting accounts receivables;
- (l) filing statutory government returns;
- (m) sending notices, instructions and proofs of claim to the former employees of the Debtor pursuant to the prescribed requirements of the *Wage Earner Protection Program Act*, S.C. 2005, c. 47, s. 1, as amended (the "WEPPA");

- (n) reviewing the Debtors' books and records to identify potential priority claims;
- (o) negotiating with the landlord at the Richmond Hill location to occupy the premise for the time period required to remove the assets and inventory;
- (p) arranging to insure the Debtor's assets;
- (q) arranging for an inventory count of the Debtor's assets;
- (r) engaging Canam Appraiz Inc. ("Canam") to coordinate the removal of the Debtor's assets from the Richmond Hill Facility, the Mississauga Showroom and the Pomona Showroom;
- (s) entering into the Liquidation Services Agreement attached hereto as **Appendix "C"** with Canam dated January 4, 2017, to conduct an auction of the Debtor's assets (as listed in the Liquidation Services Agreement);
- (t) review and reconciliation of Canam's sale listing against the inventory listing to confirm the proceeds payable to the estate; and
- (u) providing regular updates to HSBC on the receivership administration.

PRE-RECEIVERSHIP WAREHOUSE SALE

9. The Debtor conducted an inventory sale to the public from its warehouse the weekend prior to the Receivership Order being granted on Monday, November 14, 2016. The sale transactions with the public were completed with cash, debit and credit card payments. Debit and credit card payments were processed through the Debtor's point-of-sale banking terminal.

10. At the receivership date, there was \$18,277.25 in cash on the premises and \$35,095.47 worth of transactions that had just been processed through the point-of-sale terminal and were present in the Debtor's operating bank account.

11. Upon its appointment, the Receiver had to sort through numerous sales orders arising from this weekend sale and arrange the packing of goods so that purchasers could collect their purchased goods from the warehouse.

MARKETING AND SALE PROCESS

12. Among the powers set out in the Receivership Order, the Receiver is empowered and authorized in Paragraph 3(j) to market any or all of the Debtor's property, including advertising and soliciting offers in respect of the property or any part or parts thereof and negotiate terms and conditions of sale as the Receiver in its discretion may deem appropriate.

13. Further to this end, the Receiver engaged Canam to conduct a complete inventory count and appraisal of all of the inventory and equipment located at the Richmond Hill Facility and the Mississauga Showroom. Canam's appraisal was received on December 12, 2016 and reported an appraised liquidation value of the inventory and equipment to be \$167,170. A copy of the Canam appraisal is attached hereto as **Appendix "D"**.

14. Canam determined that a sale of the inventory would take between 120 to 180 days to complete. Given the exorbitant lease cost of roughly \$20,000 per month for the Richmond Hill Facility in comparison to the realizable value of the inventory, it was necessary for the Receiver to relocate the inventory to the liquidator's premises to conduct a sale.

15. Due to the nature and product mix of the inventory, the Receiver and Canam determined that the most efficient way to sell the inventory to maximize recoveries would be by way of: (i) approaching the Debtor's previous customers to offer the product on bulk; (ii) a public liquidation sale held at Canam's premises; and (iii) any remaining inventory to be sold by way of an online public auction.

16. Canam approached certain of the Debtor's customers and competitors to complete inventory sales, however, there was not much interest in the existing inventory on hand. The Debtor's product mix was invested in highly contemporary product that was less desirable to the general marketplace and the remaining inventory had no depth in the most commercial product that would have been desirable to "off-price" retailers such as Homesense, Winners, etc. Consequently, it was determined that a liquidation sale to the public from the liquidator's premises or online was necessary to maximize recovery from the inventory.

17. The Receiver and Canam subsequently entered into the Liquidation Services Agreement which included the following terms key terms:

- (a) Canam was entitled to charge a 15% commission on all gross sale proceeds from the public liquidation auction held at Canam's premises;
- (b) Canam was entitled to charge a 13% online sales charge on all gross sale proceeds from the online public auction which online sales charge was to be paid directly by the online purchasers to Canam;

(c) Canam would place insurance coverage, at its sole cost, over the inventory at a value equal to the inventory's liquidation value; and

(d) Canam would arrange for the inventory located at the Mississauga Showroom and the Pomona Showroom to be transported to Canam's facility for inclusion in the auction sales.

18. Given the poor product mix and lack of depth in the more saleable inventory, Canam advised that the anticipated recoveries on the majority of the inventory located in the US Showrooms and US Warehouse Locations would be less than the rental arrears and estimated shipping costs to relocate and consolidate the inventory to rationalize holding a sale. As a result, the Receiver elected to abandon certain inventory.

19. Canam commenced the auction sales on January 5, 2017 and finished in and around May 31, 2017. On June 19, 2017, Canam delivered to the Receiver the final accounting for the auctions, which reported \$182,940 in gross sales proceeds excluding HST, less \$87,398.33 in auctioneers costs and commissions, including HST, which returned net proceeds of \$95,541.67 to the Receiver. Canam paid the net amount of \$95,541.67 to the receiver on July 6, 2017.

SECURITY OPINION

20. The Receiver engaged Baker as independent legal counsel and requested that it provide the Receiver with a security opinion on the validity and enforceability of HSBC's Security. The Receiver received a security opinion from Baker, which subject

to the assumptions and qualifications set out in the security opinion of Baker, confirms the validity and enforceability of HSBC's Security. A copy of the Baker security opinion is attached hereto as **Appendix "E"**. HSBC appears, subject to the assumptions and qualifications set out in the security opinion, to have a valid and enforceable security interest registered first in time under the *Personal Property Security Act* against the Debtor's assets.

DEEMED TRUST AND PRIORITY CLAIMS

21. The Receiver arranged for the Canada Revenue Agency (the "CRA") to conduct a payroll audit of the Debtor's records. The CRA issued a payroll examination statement of account on September 12, 2017 reporting a refund owing to the Debtor's estate in the amount of \$5,665.18.

22. The Receiver has filed the Debtor's outstanding HST returns. The amount owing on the Debtor's HST account was approximately \$13,423. The CRA applied a portion of the Debtor's corporate tax refunds and the payroll account refund against the HST liability. On February 18, 2018 the CRA issued a proof of claim with respect to the HST liability in the amount of \$2,180.76, however, upon further review of the Debtor's accounts, the CRA withdrew the HST proof of claim by way of letter to the Receiver dated May 14, 2018.

23. As noted above, the Receiver administered WEPPA for the Debtor's former employees. The secured portion of the WEPPA claims, which rank ahead of HSBC's Security, totals \$1,900.69. The Receiver has paid this priority claim.

RECEIPTS AND DISBURSEMENTS & PROPOSED DISTRIBUTION

24. The Receiver's Final R&D, appended hereto as **Appendix "F"**, reports net receipts over disbursements for the period of \$27,547.68 after provision for payment of outstanding professional fees. The Receiver seeks approval to distribute all remaining estate funds to HSBC (the "**Final Distribution**") as partial satisfaction of the amounts owed to the bank. The Receiver filed a corporate tax return claiming tax loss carrybacks for subsequent years which generated a refund of \$38,061.33 (the "**Corporate Tax Refund**"). The CRA issued the Corporate Tax Refund by way of direct deposit directly into the Debtor's former HSBC account and the Receiver has received confirmation from HSBC that the Corporate Tax Refund was received. As the Receiver did not directly come into possession of the Corporate Tax Refund, the Receiver has not included the Corporate Tax Refund in the Final R&D.

25. As at the date referenced in HSBC's demand letter and notice of intention of enforce security, June 15, 2016, HSBC was owed approximately \$239,562 USD. HSBC has provided the Receiver with an updated payout amount of \$327,952.68 CAD as of January 4, 2019, which is inclusive of interest and costs and less all amounts received by the bank.

DISCHARGE

26. To the best of the Receiver's knowledge, the Receiver has completed the realization of substantially all of Debtor's assets.

27. All of the Receiver's duties as set out in the Receivership Order will be completed upon: i) filing the final estate HST returns to recover any unclaimed input tax credits estimated to be up to approximately \$4,250.46; ii) filing the final corporate tax returns; iii) making the Final Distribution; and iv) filing the Receiver's

final report pursuant to S. 246(3) of the *Bankruptcy and Insolvency Act* with the Office of the Superintendent of Bankruptcy. Once the Receiver has completed these activities, the Receiver proposes to file the Receiver's Discharge Certificate with the Court certifying same to obtain a discharge and release over the undertaking, property and assets of the Debtor.

FEES AND DISBURSEMENTS

28. Pursuant to the Receivership Order, the Receiver has provided services and incurred disbursements which are more particularly described in the Affidavit of Matthew Marchand, sworn January 4, 2019 and detailed invoices attached hereto as **Appendix "G"**.

29. The detailed time descriptions contained in the invoices provide a fair and accurate description of the services provided and the amounts charged by BDO as Receiver. Included with each separate invoice is a summary of the time charges of partners and staff, whose services are reflected in the invoices, including the total fees and hours billed.

30. The Receiver requests that the Court approve its accounts for the period from November 7, 2016 to December 31, 2018 in the amount of \$97,852.45 for fees and disbursements including HST of \$12,720.82 for a total of \$110,573.27, plus the estimated amount of \$5,200.00, plus HST, to complete the administration of the estate.

31. The Receiver has incurred legal fees of its counsel, Baker in respect of these proceedings, as per the Affidavit of Michael Nowina, affirmed January 3, 2019 (the **"Nowina Affidavit"**).

32. The Receiver has reviewed the Nowina Affidavit attached hereto as **Appendix “H”** and believes the fees and disbursements set out therein to be fair and reasonable in the circumstances.

33. The Receiver requests that the Court approve the accounts of Baker, for the period from November 15, 2016 to December 31, 2018, in the amount of \$7,970.50 plus disbursements of \$63.37, plus HST of \$1,041.29, for a total of \$9,075.16, plus the amount of \$2,500.00, plus HST, to complete the administration of the estate.

34. As stated, the Receiver estimates that it could incur \$7,700.00 in future professional fees to complete the administration of the estate consisting of \$5,200.00 and \$2,500.00 in future professional fees of the Receiver and its counsel, respectively, plus HST of \$676.00 and \$325.00, respectively (the **“Holdback Amount”**). The Receiver requests that the Court approve the Holdback Amount, for which the Receiver and the Receiver’s counsel will only draw upon based on actual time and disbursements incurred.

SUMMARY AND RECOMMENDATIONS

35. Based on the foregoing, the Receiver recommends that the Court grant an Order:

- a) approving this First Report and the activities of the Receiver set out therein;
- b) approving the Receiver’s Final R&D;
- c) approving the fees and disbursements, including the Holdback Amount, of the Receiver and Baker, as set out in the First Report and the affidavits of the Receiver and Baker as to fees, and authorizing the Receiver to pay all approved and unpaid fees and disbursements;

- d) authorizing and directing the Receiver to distribute the funds remaining in the its hands to HSBC, after the payment of the fees and disbursements of the Receiver and its counsel and subject to the retention of the Holdback Amount, in partial satisfaction of the secured indebtedness owing to HSBC by the Debtor;
- e) that, upon the filing by the Receiver of the Receiver's Discharge Certificate, substantially on the form set out in Schedule "A" of the Distribution and Discharge Order, discharging BDO as Receiver of all of the assets, undertakings and properties of the Debtor; and
- f) that, upon the filing of the Receiver's Discharge Certificate, releasing BDO from any and all liability it now has or may have by reason of, or in any way arising out of, the acts of omissions of BDO while acting in its capacity as Receiver herein, save and except for any gross negligence or willful misconduct on the Receiver's part.

All of which is respectfully submitted this 4th day of January, 2019.

**BDO CANADA LIMITED, Court-Appointed Receiver of
Chair-Tech Inc.**

Per:



Name: Gary Cerrato, CIRP, LIT
Title: Vice-President