

Court File No. CV-23-93324

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

BUSINESS DEVELOPMENT BANK OF CANADA

Applicant

- and -

2698408 ONTARIO INC.

Respondent

FIRST REPORT OF THE RECEIVER

DATED OCTOBER 8, 2024

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EXHIBITS

- A** Appointment Order of the Honourable Justice Sylvia Corthorn dated October 19, 2023
- B** Notice and Statement of the Receiver dated October 30, 2023
- C** Title search for Real Property
- D** List of Personal Property
- E** Projected Interim Statement of Receipts and Disbursements for the receivership of the Debtor for the period from October 19, 2023, to October 8, 2024
- F** Affidavit of Stanley Loiselle, sworn October 8, 2024
- G** Affidavit of Roxanne Chapman, sworn October 7, 2024
- H** Personal Property Security Act registry
- I** Legal opinion of BDC's security dated September 20, 2024.
- J** Secured creditor's indebtedness
- K** Receiver's Certificate dated November 2, 2023

CONFIDENTIAL EXHIBITS

- A** Agreement of Purchase and Sale dated October 6, 2023
- B** M.W. Cotman & Associates Real Property appraisal
- C** S. Rayner & Associates Real Property appraisal
- D** Summary of listing proposals

INTRODUCTION

1. By Order of the Ontario Superior Court of Justice (the “**Court**”) dated October 19, 2023 (the “**Appointment Order**”), Raymond Chabot Inc. (“**RCI**”) was appointed as receiver (the “**Receiver**”) of the assets, undertakings and properties, including the real property (the “**Real Property**” and, collectively with the foregoing, the “**Property**”) owned by the Respondent, 2698408 Ontario Inc. (the “**Debtor**”), acquired for or used in relation to a business carried on by the Debtor. The Appointment Order is attached hereto as **Exhibit A**.
2. The Appointment Order authorizes the Receiver to, among other things, take possession of, and exercise control over, the Property, and all proceeds, receipts, and disbursements, arising out of, or from, the Property. In addition, the Receiver is authorized to sell, convey, transfer, lease or assign the Property or any part or parts thereof out of the ordinary course of business:
 - a. without the approval of the Court in respect of any transaction not exceeding \$50,000, provided that the aggregate consideration for all such transactions does not exceed \$250,000; and
 - b. with the approval of the Court in respect of any transaction in which the purchase price or the aggregate purchase price exceeds the foregoing amounts.
3. Following the issuance of the Appointment Order, the Receiver issued a Notice and Statement of the Receiver (the “**Notice to Creditors**”) pursuant to subsections 245(1) and 246(1) of the *Bankruptcy and Insolvency Act* (Canada) (the “**BIA**”) in respect of the Debtor. The Notice to Creditors is attached hereto as **Exhibit B**.
4. The Appointment Order, together with the Notice to Creditors and this First Report to the Court (the “**Report**”) have been posted on the Receiver’s website at <https://www.raymondchabot.com/public-records/>.
5. The Receiver retained Soloway Wright LLP (“**SW**”) as its independent legal counsel in respect of this matter.

PURPOSE OF REPORT

6. The purpose of this Report is to:
 - a. provide a summary of the Receiver's activities to date;
 - b. provide details of the sales and marketing activities undertaken by the Receiver with respect to the sale of the Real Property and the Debtor's personal property (the "**Personal Property**");
 - c. provide the Court with the evidentiary basis in support of the Receiver's requests for the following Orders:
 - i. authorizing and directing the Receiver to enter into and carry out the terms of an agreement of purchase and sale dated May 28, 2024 (the "**APS**"), and attached hereto as **Confidential Exhibit A**, as between the Receiver as vendor and the purchaser, together with any further amendments thereto deemed necessary by the Receiver, and vesting in the purchaser title to the Real Property and the Personal Property described in the APS free of any encumbrances;
 - ii. approving the activities and conduct of the Receiver as described in this Report, including, without limitation, the steps taken by the Receiver in respect of the marketing and sales process in relation to the Real Property and the Personal Property;
 - iii. authorizing the Receiver to transfer funds in the amount of \$10,000 from the receivership account to cover the professional fees related to the administration of the Debtor's bankruptcy;
 - iv. approving the Receiver's projected interim statement of receipts and disbursements (the "**Projected Interim SRD**") for the period of October 19, 2023, to October 8, 2024, and approving the professional fees and disbursements of the Receiver and of its legal counsel set out herein, and authorizing the Receiver to pay all such fees and disbursements from available Receivership Funds (as defined below);
 - v. authorizing and directing the Receiver to pay from available Receivership Funds a distribution to Canada Revenue Agency ("**CRA**"), on account of its priority deemed trust claim attaching to the Debtor's Personal Property in the amount of \$2,990.00; and
 - vi. authorizing and directing the Receiver to make a first interim distribution to Business Development Bank of Canada ("**BDC**") in the amount of \$175,000.00,

which amount does not to exceed the BDC Indebtedness (as defined below) owing by the Debtor to BDC, from the Receivership Funds (and together with the distribution to CRA, the “**Proposed Distributions**”).

TERMS OF REFERENCE

7. In preparing this Report, the Receiver has been provided with, and has relied upon, unaudited, draft and/or internal financial information, the Debtor’s books and records, discussions with management of the Debtor, and information from third-party sources (collectively, the “**Information**”). Except as described in this Report:
 - a. the Receiver has reviewed the Information for reasonableness, internal consistency and use in the context in which it was provided. However, the Receiver has not audited or otherwise attempted to verify the accuracy or completeness of the Information in a manner that would wholly or partially comply with Canadian Auditing Standards (“**CAS**”) pursuant to the Chartered Professional Accountants Canada Handbook and, accordingly, the Receiver expresses no opinion or other form of assurance contemplated under CAS in respect of the Information; and
 - b. the Receiver has prepared this Report in its capacity as a Court-appointed officer to support the Court’s approval of the sale of the Property of the Debtor and the other relief being sought. Parties using the Report, other than for the purposes outlined herein, are cautioned that it may not be appropriate for their purposes.
8. Unless otherwise stated, all dollar amounts contained in the Report are expressed in Canadian dollars.
9. Unless otherwise provided, all other capitalized terms not otherwise defined in this Report are as defined in the Appointment Order.

BACKGROUND

10. The Debtor was incorporated on May 28, 2019, and previously operated a tack shop. It purchased the Real Property located at 308 Simmons Road, Odessa, Ontario, on or around February 10, 2019, though at the time of the Receiver’s appointment, the Debtor was no longer carrying on business from the Real Property and had ceased all operations.

11. The Debtor owns the Real Property, as confirmed by the title search, a copy of which is attached hereto as **Exhibit C**.
12. The Debtor also owns the Personal Property, which is comprised of the chattels located within and being sold with the Real Property, as described in the summary attached hereto as **Exhibit D**.
13. The Applicant creditor, BDC, is a Crown corporation and is the Debtor's primary and senior secured creditor.

TAKING POSSESSION AND SAFEGUARDING ASSETS

14. The Receiver has undertaken the following activities in accordance with the terms of the Appointment Order:
 - a. Established the Receiver's website and issued the Notice to Creditors in respect of the Debtor;
 - b. Reviewed the Debtor's available books and records;
 - c. Instructed its legal counsel to register the Appointment Order on title to the Real Property;
 - d. Obtained an independent legal opinion regarding the validity and enforceability of BDC's security;
 - e. Arranged to have hydro at the Real Property transferred to the Receiver's account;
 - f. Obtained independent appraisals of the Personal Property and the Real Property;
 - g. Requested listing proposals and opinions of value from listing agents;
 - h. Insured the Property; and
 - i. Mandated the services of Capital Asset Management to secure the premises, perform weekly site visits and general upkeep.

MARKETING AND SALE PROCESS OF THE REAL PROPERTY

15. As the Receiver was empowered and authorized by the Court and the Appointment Order to sell the Real Property, the Receiver obtained two appraisals. The appraisals were provided by M.W. Cotman & Associates, and S. Rayner & Associates, copies of which are attached hereto as **Confidential Exhibit B** and **Confidential Exhibit C**, respectively.

16. The Receiver also obtained four listing proposals and opinions of value from listing agents. The listing proposals were provided by Gentry Real Estate Services Limited, Rogers & Trainor Commercial Realty Inc., and Royal LePage Commercial (“**Royal LePage**”). A summary of the listing proposals is attached hereto as **Confidential Exhibit D**.
17. Ultimately, with the support of BDC, the Receiver entered into a listing agreement with Royal LePage on January 23, 2024, and the Real Property was listed for sale on January 31, 2024.
18. Before the first offer was received, the Real Property had been exposed to the market for more than 5 months on Realtor.ca, Royal LePage’s social networks and websites, LoopNet and CoStar.com. Royal LePage has also conducted targeted email campaigns and LinkedIn communications.
19. According to Royal LePage, there was limited interest in the Real Property giving the current zoning and permitted uses. The current zoning is labelled rural industrial (M2). Pursuant to the Loyalist Township bylaws, this zoning is particularly restrictive with respect to non-residential uses permitted on the property. Consequently, there were only 6 showings during this period, and only one offer was received.
20. After consultation with BDC and the listing agent, there were numerous rounds of counteroffers before an offer was ultimately accepted by the Receiver.
21. As outlined above, the Receiver is of the view that it has conducted a thorough, impartial and complete marketing process for the sale of the Real Property. The Receiver has consulted with BDC, which has not raised any issue or objection to the marketing process undertaken by the Receiver. As such, the Receiver is recommending that the Court approve the sale of the Real Property and authorize and direct the Receiver to enter into and carry out the terms of the APS attached hereto as **Confidential Exhibit A**, as between the Receiver as vendor and the purchaser, together with any further amendments thereto deemed necessary by the Receiver, and vesting in the purchaser title to the Real Property and the Personal Property described in the APS free of any encumbrances.
22. The Receiver is also recommending that the transaction contemplated by the APS be approved by the Court for the following reasons:
 - a. The Real Property was exposed widely to the marketplace in a manner that is common for properties of this nature;
 - b. The APS is unconditional except for requiring the Court’s approval;

- c. The purchase price is in line with the appraised value of the Real Property;
- d. The current zoning of the Real Property limits its potential uses. As such, any uses contrary to the existing zoning would require prospective buyers attempt to have the zoning designation changed. This presents significant uncertainty for prospective purchasers regarding the future usability and financing of the Real Property. The Receiver does not believe that further marketing of the Real Property will result in a superior offer given its current zoning; and
- e. The transaction that is the subject of the APS is provident and the most favourable outcome for the estate and followed a thorough, impartial, and fair sales process that fully tested the market.

VOLUNTARY ASSIGNMENT

- 23. The Debtor filed a voluntary assignment in bankruptcy on September 10, 2024. Raymond Chabot Inc. is also acting as the Licensed Insolvency Trustee for these bankruptcy proceedings.
- 24. The Receiver will be selling all of the assets of the Debtor and there are no current operations.
- 25. The Debtor still has in excess of \$525,000 in unsecured debt, such that it is insolvent and unable to meet its obligations as they become due.
- 26. A portion of this outstanding debt is due to CRA on account of the Debtor's payroll obligations. Following a trust examination of the Debtor's payroll account, an amount of \$72,770.29 is due to CRA, of which \$39,373.44 is a deemed trust claim.
- 27. CRA has not conducted an examination of the sales tax account. As such, the quantum of the debt owing to CRA on account of sales tax is unknown at this time.
- 28. The Debtor's voluntary assignment had the effect of reversing the priority of the non-deemed trust portion of CRA's payroll claim as well as any potential sales tax owing.
- 29. Further, the bankruptcy releases the obligations of the Receiver and the Debtor to continue filing income tax and other returns following the date of bankruptcy.
- 30. With the consent of BDC, the Receiver is seeking the authorization of the Court to transfer \$10,000 from the receivership proceeding to the bankruptcy proceeding in order to cover the costs of administration of the bankruptcy.

STATEMENT OF RECEIPTS AND DISBURSEMENTS

31. Attached as **Exhibit E** is the Projected Interim SRD for the receivership of the Debtor for the period from October 19, 2023, to October 8, 2024 (the “**Receivership Period**”). As at October 8, 2024, the projected closing cash balance was \$108,760.57, (the **Receivership Funds**”).
32. Total receipts of \$530,000.00 are comprised of:
- a. \$75,000.00 in advances from the secured creditor, BDC;
 - b. \$455,000.00 from the sale of Real Property.
33. Total disbursements of \$429,132.15 are primarily comprised of:
- a. \$6,018.41 for services rendered relating to the Real Property;
 - b. \$17,338.64 for insurance;
 - c. \$7,100.00 for real estate appraisal;
 - d. \$38,899.38 for property taxes
 - e. \$3,971.39 for utilities;
 - f. \$75,000.00 to reimburse the advance of the secured creditor, BDC;
 - g. \$10,000.00 to be transferred to the Debtor’s bankruptcy;
 - h. \$42,332.50 in Receiver fees;
 - i. \$6,667.50 in legal fees and disbursements;
 - j. \$11,985.39 in sales taxes; and
 - k. \$177,990.00 to be distributed to secured creditors.
34. The Projected Interim SRD includes the proposed sale of the Real Property and the Proposed Distributions by the Receiver, as set out below.

PROFESSIONAL FEES

35. The Receiver, and its legal counsel, SW, have maintained detailed records of their professional time and costs since the issuance of the Appointment Order. Pursuant to paragraph 19 of the Appointment Order, the Receiver and its legal counsel were directed to pass their accounts from time to time before this Honourable Court and were granted a Receiver’s Charge over the Property.
36. The total fees of the Receiver for the period ended October 5, 2024, amount to \$42,332.50 plus HST totalling \$47,835.72. The time spent by the Receiver is more particularly described in the

Affidavit of Stanley Loiselle, sworn October 8, 2024 (the “**Loiselle Affidavit**”) in support hereof and attached hereto as **Exhibit F**.

37. The total legal fees incurred by the Receiver during the period ended September 30, 2024, for services provided by SW together with disbursements amount to \$6,667.50 plus HST totalling \$7,534.28. The time spent by SW personnel is more particularly described in the Affidavit of Roxanne Chapman, sworn October 7, 2024 (the “**Chapman Affidavit**”) in support hereof and attached hereto as **Exhibit G**.

38. The Receiver is of the view that the professional fees and disbursements set out in the fee affidavits are reasonable in the circumstances.

PROPOSED DISTRIBUTIONS

Legal Opinion

39. The proceeds resulting from the sale of the Real Property subject to the APS together with the sale of the Personal Property will result in a shortfall to BDC and subsequent secured creditors.

40. The search results of the *Personal Property Security Act* (the “**PPSA**”) registry in respect of the Debtor are attached hereto as **Exhibit H** and current to September 8, 2024, and confirm a single PPSA registration by BDC.

41. As previously noted, CRA has conducted a trust examination of the Debtor’s payroll account, which resulted in a deemed trust claim of \$39,373.44. This claim did not exist when BDC registered its mortgage security on title to the Real Property. As such, the Receiver’s position is that CRA’s deemed trust claim in respect of unremitted source deductions only attaches to the Debtor’s Personal Property.

42. CRA, however, has reserved its rights with respect to the Receiver’s position in this regard. As such, the Receiver recommends making a distribution of \$2,990.00 to CRA on account of its deemed trust claim with respect to the Personal Property, and to withhold the remaining amount of CRA’s deemed trust claim, \$36,383.44, in its trust account and to attempt resolve the issue and report to the Court accordingly at a later date.

43. Based on an appraisal of the Personal Property described in Exhibit D, completed on January 12, 2024, the fair market value of the Personal Property was appraised at \$2,990.00, thereby limiting CRA’s deemed trust claim to the amount of \$2,990.00.

44. A title search in respect of the Real Property is attached hereto as Exhibit C and current to July 19, 2023, and confirm registrations by the following creditors:
- a. BDC; and
 - b. Sharpe Farm Supplies Ltd. (“**SFS Ltd.**”)
45. The Receiver obtained an independent legal opinion from Robert A. Lewis Professional Corporation (the “**Opinion**”), regarding the validity and enforceability of BDC’s security, a copy of which is attached hereto as **Exhibit I**.
46. The Opinion provides that, subject to the customary assumptions and qualifications, the security on the Real Property held by BDC is valid and enforceable.
47. The Receiver has obtained confirmation from BDC and SFS Ltd. of the indebtedness owing to them by the Debtor as indicated the summary attached hereto as **Exhibit J**.
48. The amount of \$851,113.78 remains outstanding to BDC (the “**BDC Indebtedness**”).

Proposed Distribution

49. The Receiver is satisfied that the BDC Indebtedness, as set out above, is a correct accounting of the amount owing to BDC by the Debtor.
50. The Receiver therefore recommends making a first interim distribution to BDC in the amount of \$175,000.00.
51. The Receiver obtained an initial advance from BDC and accordingly issued a Receiver’s Certificate in the amount of \$75,000.00, a copy of which is attached hereto as **Exhibit K**. The initial advance will be repaid to BDC following the completion of the APS.
52. The Receiver shall keep approximately \$109,000 in its trust account to address CRA’s potential claim as set out above, and to ensure there are adequate funds to cover the future fees of both the Receiver and its legal counsel in resolving this issue and finalizing the Debtor’s receivership.

CONFIDENTIAL EXHIBITS

53. The Receiver is of the view that **Confidential Exhibits A to D** should be sealed and remain sealed until the earlier of the completion of the transactions described herein, or further order of the Court,

as the information contained therein is commercially sensitive and could prejudice the sale of the Debtor's Property in the event the said transaction does not close. The Receiver does not believe that any party will suffer prejudice if the Confidential Exhibits are sealed in this manner.

RECEIVER'S RECOMMENDATIONS

54. For the reasons set out above, the Receiver recommends that the Court grant the relief set out in Section 6 above.

All of which is respectfully submitted at Ottawa, Ontario this 8th day of October 2024.

RAYMOND CHABOT INC.

Receiver of the assets, undertakings and property of
2698408 Ontario Inc.,
and not in its personal capacity.

Per: 
Stanley Loiselle, CIRP, LIT