

ONTARIO

SUPERIOR COURT OF JUSTICE

B E T W E E N :

DUCA FINANCIAL SERVICES CREDIT UNION LTD.

Applicant

- and -

2203284 ONTARIO INC.

Respondent

SECOND SUPPLEMENTARY MOTION RECORD

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ONTARIO

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TAB 1



Court File No. CV-17-11827-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
(Commercial List)**

BETWEEN

DUCA FINANCIAL SERVICES CREDIT UNION LTD.

Applicant

-AND-

2203284 ONTARIO INC.

Respondent

SECOND SUPPLEMENTARY THIRD REPORT OF THE RECEIVER

May 31, 2019

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I. INTRODUCTION AND PURPOSE

1. This Second Supplementary Third Report is filed by msi Spergel Inc. ("**Spergel**") in its capacity as receiver (**the "Receiver"**) appointed pursuant to an order of the Honourable Madam Justice Conway of the Superior Court of Justice, dated June 22, 2017, (**the "Receivership Order"**), of all of the assets, undertakings and properties of 2203284 Ontario Inc. (**the "Debtor."**).

2. This Second Supplementary Third Report is in addition to the Receiver's Third Report of April 17, 2019 and its Supplementary Third Report dated May 10, 2019. Its purpose is to reply to the Responding Motion Record of the Debtor filed on May 27, 2019 and in particular, the affidavit of Mr. Luigi Santaguida sworn May 27, 2019 and contained therein, which deals, among other things, with the following:

- i. The reserve requested by Tarion Warranty Corporation ("**Tarion**") in respect of amounts secured by the Tarion Bond;
- ii. The costs and expenses of the Guarantee Company of North America ("**GCNA**");

II. RESPONSE TO AFFIDAVIT OF LUIGI SANTAGUIDA

3. The Receiver has a desire to conclude the receivership proceedings as efficiently and cost effectively as possible; however, the Court appointed Receiver has a duty to realize on all of the assets of the Debtor in order to maximize the recovery for all creditors. Given the fact the unexplained net transfer of \$3.5 million to Santerra Asset Management Inc. ("**Santerra**"), a company which appears to be owned by Mrs. Santaguida, and the concerns that the Receiver has raised with respect to the two mortgage registrations of MaryLou Santaguida in its previous reports to the Court, the Receiver has proposed a solution to the Court that would allow for all other creditors to be paid in full without pursuing a legal action to try to collect the \$3.5 million. It appears that, in principle, the Santaguidas and the Debtor are onside with the proposal, subject to the amounts to be paid.

4. As previously reported to the Court, cooperation from the Santaguidas and the Debtor has been minimal since the outset of the receivership. The lack of response to the Receiver's demands for books and records has been documented in its previous reports to the Court, commencing with its July 21, 2017 motion to the Court which led to the issuance of an Order from the Honourable Madam Justice Conway to, amongst other things, Order Mr. Santaguida to comply with the Receivership Order and, in particular, to do the following:

- a) forthwith to advise the Receiver of the existence and location of Property, and to provide to the Receiver all information he has in respect of the Respondent;
- b) forthwith to provide full access to Property which is within his possession, power or control; and,
- c) forthwith to permit the Receiver to remove Property or, at its option and where possible, to make copies of Property".

5. Madam Justice Conway also ordered Mr. Santaguida to pay costs to the Receiver in the sum of \$1,000 within 30 days as a result of the July 21, 2017 motion. The Receiver did not receive payment of that cost award from Mr. Santaguida until May 22, 2018.

6. In the First Report of The Receiver dated May 4, 2018 (the "**First Report**"), attached as Appendix "B" to the Third Report, the Receiver advised the Court of the limited information that was turned over to the Receiver by the Debtor's bookkeeper. It also reported to the Court that "no supporting documentation for any of the financial transactions was provided, nor was any information relating to the development of the Project provided. The Receiver had no information relating to the status of the site plan approval, the designs relating to the building or any other reports".

7. Also contained in the First Report is a summary of the initial issues relating to Santerra and Mrs. Santaguida, the spouse of Luigi Santaguida, and the lack of any response from Mr. or Mrs. Santaguida with respect to the Receiver's requests for information relating to transactions involving Santerra and Mrs. Santaguida.

8. In response to the Receiver's motion and its First Report, the Honourable Mr. Justice Dunphy issued an Order for both Mr. and Mrs. Santaguida to attend to examinations before the Receiver and for Mrs. Santaguida to "provide the Receiver with a complete explanation and accounting of all funds received by Santerra from the Debtor, including supporting documentation to substantiate the value of services and work performed by Santerra, if any".

9. Pursuant to correspondence dated April 23, 2018, the Receiver's counsel wrote to the counsel for the Debtor and Mr. and Mrs. Santaguida, attached as Appendix "O" to the Third Report. It was agreed that the examinations would take place shortly after the requested information was supplied to the Receiver so that the Receiver could have time to review the information and conduct a meaningful examination.

10. Counsel for the Debtor and the Santaguida's did not deliver any documentation to the Receiver until January 29, 2019. Following the Receiver's review of that information and request for further information, counsel for the Debtor and the Santaguida's delivered further information on February 8, 2019. Attempts were made to schedule examinations thereafter but due to scheduling difficulties by the Santaguidas, no examinations have taken place. It is the Receiver's understanding that their counsel was planning to bring a motion to Court on the various issues, which ultimately did not happen, and for that reason the Receiver did not continue to try to arrange examination dates. The Receiver subsequently filed its Third Report to the Court which included a motion to seek directions from the Court with respect to the issues involving the Santaguidas and Santerra.

11. The Receiver has reviewed the affidavit of Mr. Santaguida and points out the following:

- **Paragraph 2** – This is the first provision of documentation to the Receiver from Mr. Santaguida with respect to the ownership of the shares of the Debtor. For the purpose of filing tax returns, the Receiver had obtained and relied on shareholder information from the 2015 and 2016 annual tax returns that had been filed by the Debtor with the Canada Revenue Agency ("**CRA**") indicating that the sole shareholder of the Debtor was Mrs. Santaguida. As a result of this disclosure, all tax returns that the Receiver has reviewed and filed will have to be corrected, something which may have implications on the amount of tax owing if Mr. Santaguida controlled other taxable corporations during the years 2015 through 2019. The Receiver has requested details from Mr. Santaguida's

accountant as to the sharing of the small business deduction among Mr. Santaguida's corporations during those years in order to file amended tax returns.

- **Paragraph 3** – As explained in the Third Report, the documentation provided to the Receiver with respect to the purchase and funding of 98 James Street South, Hamilton (the “**Property**”) indicated that it was purchased and funded by 2274889 Ontario Inc. (“**227**”) and not Mrs. Santaguida. The Discharge Statement dated January 15, 2019 and provided to the Receiver on January 29, 2019 was issued by 227 rather than Mrs. Santaguida. Accordingly, Mrs. Santaguida does not appear to hold a mortgage for the initial purchase funding of the Property.
- **Paragraph 7** – The issues with respect to the mortgages registered by Mrs. Santaguida have been explained in the Third Report.
- **Paragraph 8** – The Receiver did not prepare “financial statements” but did provide its internal working papers consisting of an excel schedule used for the preparation of the 2017, 2018 and 2019 corporate tax returns. The interest charge used by the Receiver was pursuant to the schedule presented as Appendix “X” in the Third Report and was capitalized as interest on the “Shareholder Loan” on the balance sheet in the working papers, consistent with the categorization used by the Debtor, not the Receiver, in its financial statements of prior years. Attached as **Appendix “A”** are copies of the annual statements of the Debtor for fiscal 2014 and 2015 that indicate a “Loan Payable” but no “Mortgage Payable”, presumably relating to the purported mortgages of Mrs. Santaguida. The Receiver has already acknowledged that Mrs. Santaguida advanced \$1,115,500 to the Debtor and interest would accrue regardless if it was a loan or mortgage.
- **Paragraph 8** – The meeting was initiated by Mr. Luna. As previously noted, the Debtor had never provided the Receiver with the supporting documentation for the general ledger entries. The Receiver requested the records to support the tax return filings that the Receiver prepared based on the Debtor's general ledger. The Receiver attended at Mr. Luna's office on May 27 to retrieve two boxes of records and answer any questions with respect to the corporate tax returns filed by the Receiver. Mr. Luna had no questions. The Receiver asked for the minute book but was told by Mr. Luna that he did

not have it. The Receiver was advised by Mr. Luna today that the minute book will be provided by counsel for the Santaguidas.

- **Paragraph 9** – The information therein speaks to the complexity, intertwining, and poor record keeping of the operations of the various corporations owned by the Santaguidas. The opinion on the registration of a mortgage is one issue but the claiming of an amount secured by that mortgage is another. The second Charge states that it was “collateral security securing a bond issued by the Chargee in favour of Terrasan 327 Royal York Rd. Limited with respect to vacating a lien registered as Instrument No. AT4183314 in favour of Limen Group Ltd. from the property described in PIN 07617-0050 LT”. There is a bond in the responding record as Exhibit B, but it is not issued by Mrs. Santaguida and there is nothing in it that links it to an amount owing to Mrs. Santaguida, except that the amount is the same. The Bond was issued by GCNA to the Accountant of the Ontario Court. The Principal is Terrasan 327 Royal York Road Ltd. No evidence has been provided to indicate that Mrs. Santaguida advanced \$701,583 to 220 with respect to the vacating of a lien for Terrasan 327 Royal York Rd. Limited (“**Terrasan**”). Furthermore, Mr. Santaguida appears to provide contradictory statements within this paragraph stating firstly that Mrs. Santaguida “advanced monies to another company- Terrasan” and then later that “she advanced those funds to 220”.
- **Paragraph 15** – The successful closing of the sales transaction was questionable and difficult, requiring three extensions of the closing date, as detailed in the Second and Third Reports of the Receiver. The Receiver was not certain that the transaction would close until it actually did in October, 2018 and the Receiver was not in a position to consider any further distribution to creditors until the completion of the claims process in February, 2019, with respect to the unit purchasers. During that time, the Receiver was still waiting for the Santaguidas to provide the requested information with respect to Santerra and Mrs. Santaguida’s purported mortgages and attempting to schedule a date for their examinations.
- **Paragraph 16** – The examinations were requested because of a lack of cooperation and response by the Santaguidas in providing information. As previously mentioned herein,

their counsel agreed to provide the Receiver with the requested information in April, 2018 but did not do so until January 31, 2019 and February 8, 2019. Subsequent efforts to arrange dates of examination did not work out and accordingly, the Receiver filed its Third Report to the Court to seek directions based on the information it has received and reviewed.

- **Paragraph 19 and 20** –Mrs. Santaguida and therefore the amount payable is an unsecured liability due to 227.
- **Paragraph 24** –Based on the evidence provided and reported, the payment was made by 227.
- **Paragraph 26 and 27** –The Receiver notes that information on the advances of Mrs. Santaguida were not provided until January 31, 2019 and February 8, 2019 and that Mr. Santaguida provided the bank statements that were in his possession on May 27, 2019. Although there remains one advance in the amount of \$80,000 that has not been supported with proof of deposit into the Debtor’s bank account, the Receiver is satisfied on the balance of probabilities that the advance was likely deposited in the Debtor’s account.
- **Paragraph 33** – The Receiver also desires an efficient process to address the residual matters in the receivership and for that reason has sought an order from the Court with respect to a claims process for the unsecured creditors.
- **Paragraph 34** – The Receiver has relied on the books and records of the Debtor. The Receiver has not been provided with complete tax returns filed by the Debtor prior to the receivership and is therefore unaware how long the incorrect shareholder information has been provided to CRA. The Receiver requires further information from Mr. Santaguida in order to amend the corporate tax filings, as previously explained herein.
- **Paragraph 39** – Presumably Mr. Santaguida is referring to the entry recorded in the Debtor’s general ledger account of Santerra which was provided as Appendix “L” in the Third Report. The Receiver did not record anything inaccurately, as stated by Mr. Santaguida. The Receiver merely reported to the Court how the transaction was recorded in the books and records of the Debtor, which by Mr. Santaguida’s owns admissions were

not well kept. These records show a payment from the Debtor to Santerra as related to a loan to Mrs. Santaguida.

- **Paragraph 42, 43 and 44** –The Receiver recommended the implementation of the reserve by way of cash collateral rather than continuation of the Tarion bond in order to avoid the cost of the annual bond premiums; thereby resulting in more funds available for final distribution to creditors or to the Debtor.
- **Paragraph 45 and 46** – The Receiver has reviewed GNCA’s legal fee invoices and has found them to be reasonable. There is no requirement for those fees to be taxed by the Court.
- **Paragraph 49** – The Receiver proposes a claims process by which unsecured creditors, including CORfinancial Corp., are provided the opportunity to prove their alleged claims, something particularly important given Mr. Santaguida’s evidence with respect to poor record keeping. Until that process is complete, it is prudent to include the amount as a reserve.
- **Paragraph 52** – The Receiver agrees with the concept in general but not the amounts. The Receiver agrees that the tax liability should be paid but cautions that the amount may increase as a result of the change in shareholder information and depending on the information we are awaiting from Mr. Santaguida and his related corporations. The issue of Santerra is not moot as Mr. Santaguida states. It only becomes moot if all other creditors of the Debtor are paid in full.

This Report is respectfully submitted this 31st day of May, 2019

msi Spergel Inc.,

In its capacity as Court Appointed Receiver of
2203284 Ontario Inc., and not in its personal or corporate capacity

Per:



Deborah Hornbostel, CPA, CA, CFE, CIRP, LIT

APPENDIX "A"

**2203284 Ontario Inc.
Financial Statements
March 30, 2014**

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Notice to Reader
Balance Sheet

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Iman & Iman Inc.

For all your accounting, management & Revenue Canada requirements

**To the Management:
2203284 Ontario Inc.**

NOTICE TO READER

We have compiled the balance sheet of 2203284 Ontario Inc. as at March 31, 2014 and the statement of earnings for the year then ended from information provided by the management. We have not audited, reviewed or otherwise attempted to verify the accuracy or completeness of such information.

Accordingly, readers are cautioned that these statements may not be appropriate for their purposes.

Brampton, Ontario
September 8, 2014

Belal Uddin, RPA, CGMA
Chartered Management Accountant
Iman & Iman Inc.

2203284 Ontario Inc.
 Balance Sheet as at March 30, 2014
 (Unaudited)

Page 2

| | 2014 \$ |
|--|--------------------------------|
| ASSETS | |
| Cash & Bank | 2,635 |
| Accounts Receivable | 11,851 |
| Real estate under development | 839,516 ✓ |
| | <u>854,002</u> |
| TOTAL ASSETS | <u><u>854,002</u></u> ===== |
| LIABILITIES AND EQUITY | |
| Loan payable | 783,324 |
| Accounts payable & accrued liabilities | 70,578 |
| | <u>853,902</u> |
| SHAREHOLDERS' EQUITY | |
| ISSUED: | |
| 100 Common Shares | 100 |
| RETAINED EARNINGS | |
| Balance, beginning of year | 0 |
| Net income/(loss) for the year | Nil |
| Balance, end of year | <u>0</u> |
| TOTAL SHAREHOLDERS' EQUITY | <u>100</u> |
| LIABILITIES AND EQUITY | <u><u>854,002</u></u> ===== |

On behalf of the board.....Director

The accompanying notes are an integral part of these financial statements.

Note 1: THE COMPANY

2203284 Ontario Inc. was incorporated under the Ontario Business Corporation Act

These notes form an integral part of the financial statements.

**2203284 Ontario Inc.
Financial Statements
March 31,2015**

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Iman & Iman Inc.

For all your accounting, management & Revenue Canada requirements

**To the Management:
2203284 Ontario Inc.**

NOTICE TO READER

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Accordingly, readers are cautioned that these statements may not be appropriate for their purposes.

Brampton, Ontario
September 10, 2015

Belal Uddin, RPA, CGMA
Chartered Management Accountant
Iman & Iman Inc.

2203284 Ontario Inc.
 Balance Sheet as at March 31, 2015
 (Unaudited)

Page 2

| | 2015 | 2014 |
|--|------------------|----------------|
| | \$ | \$ |
| CURRENT ASSETS | | |
| Cash & Bank | 12,195 | 2,635 |
| Accounts Receivable | 12,564 | 11,851 |
| sales tax Receivable | 5,927 | Nil |
| TOTAL CURRENT ASSETS | 30,686 | 14,486 |
| NON CURRENT ASSETS | | |
| Security deposits | 42,800 | Nil |
| Real estate under development | 3,008,700 | 839,516 |
| TOTAL NON CURRENT ASSETS | 3,051,500 | 854,002 |
| TOTAL ASSETS | 3,082,186 | 854,002 |
| | ===== | ===== |
| LIABILITIES AND EQUITY | | |
| Loan payable | 2,810,185 | 783,324 |
| Accounts payable & accrued liabilities | 271,535 | 70,578 |
| TOTAL LIABILITIES | 3,081,720 | 853,902 |
| SHAREHOLDERS' EQUITY | | |
| ISSUED: | | |
| 100 Common Shares | 100 | 100 |
| RETAINED EARNINGS | | |
| Balance, beginning of year | 0 | 0 |
| Net income/(loss) for the year | 366 | Nil |
| Balance, end of year | 366 | 0 |
| TOTAL SHAREHOLDERS' EQUITY | 466 | 100 |
| LIABILITIES AND EQUITY | 3,082,186 | 854,002 |
| | ===== | ===== |

On behalf of the board.....Director

The accompanying notes are an integral part of these financial statements.

2203284 Ontario Inc.
Statement of Earnings
For the year ended March 31,2015
(Unaudited)

Page 3

| | 2015 | 2014 |
|---|---------------------|-------------------|
| | \$ | \$ |
| INCOME FROM SERVICES | Nil | Nil |
| Other Income | 366 | Nil |
| | | |
| Cost Of Goods Sold | Nil | Nil |
| | | |
| TOTAL COST OF SERVICES | <u>0</u> | <u>0</u> |
| | | |
| GROSS MARGIN | 0 | 0 |
| | | |
| EXPENSES | | |
| Professional fees | Nil | Nil |
| Office expenses | Nil | Nil |
| Bank Charges | Nil | Nil |
| Bad Debt Expenses | Nil | Nil |
| General and administrative expenses | Nil | Nil |
| WSIB Premiums | Nil | Nil |
| Depreciation/amortization | Nil | Nil |
| Consulting fees | Nil | Nil |
| Telephone | Nil | Nil |
| Salaries and wages | Nil | Nil |
| | | |
| TOTAL EXPENSES | <u>0</u> | <u>0</u> |
| | | |
| NET INCOME (LOSS) FOR THE YEAR | <u>366</u> | <u>0</u> |
| | | |
| LESS: PROVISION FOR CORP TAXES | Nil | Nil |
| | | |
| NET INCOME (LOSS) FOR THE YEAR AFTER TAX | <u>366</u> ===== | <u>0</u> ===== |

The accompanying notes are an integral part of these financial statements.

2203284 Ontario Inc.
Notes to the financial statements
March 31,2015

Page 3

Note 1: THE COMPANY

2203284 Ontario Inc. was incorporated under the
Ontario Business Corporation Act

These notes form an integral part of the financial statements.

DUCA FINANCIAL SERVICES CREDIT UNION LTD.
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2203284 ONTARIO LTD.
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Court File No.: CV-17-11827-00CL

ONTARIO

SUPERIOR COURT OF JUSTICE

Proceeding commenced at

TORONTO

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MOTION RECORD**

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