

ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST  
(IN BANKRUPTCY AND INSOLVENCY)

**IN THE MATTER OF SECTION 47(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**

BETWEEN:

**ROMSPEN INVESTMENT CORPORATION**

Applicant

-and-

**HORSESHOE VALLEY LANDS LTD.**

Respondent

**CROSS-MOTION RECORD OF LOTCO LIMITED**

(Motion of the Receiver Rosen Goldberg Inc. - Returnable December 22, 2016)

December 20, 2016

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ONTARIO  
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BETWEEN:

**ROMSPEN INVESTMENT CORPORATION**

Applicant

-and-

**HORSESHOE VALLEY LANDS LTD.**

Respondent

**NOTICE OF MOTION**

**LOTCO LIMITED** will make a motion before a Judge of the Ontario Superior Court of Justice, Commercial List, on **December 22, 2016 at 10:00 a.m.**, or as soon after that time as the motion can be heard, at 330 University Avenue, 7<sup>th</sup> Floor, Toronto, Ontario.

**PROPOSED METHOD OF HEARING:** The Motion is to be heard orally.

**THE MOTION IS FOR:**

1. an Order, inter alia:



- (a) abridging the time for service and filing of this Notice of Motion and Cross-Motion Record, if necessary, and declaring that this Cross-Motion is properly returnable on December 22, 2016, and dispensing with further service thereof;
- (b) dispensing with the requirement to serve and file a Factum on this Cross-Motion;
- (c) to adjourn the Motion of the Receiver, also returnable on December 22, 2016, to a date and time following the examination and cross-examination of witnesses on the Motion;
- (d) allowing counsel for Lotco Limited (“Lotco”) access to the unredacted Affidavits which have been sealed, for the purposes of cross-examinations and argument of the Motion and this Cross-Motion;
- (e) confirming that the Receiver is required to complete the transaction contemplated by the Agreement of Purchase and Sale dated July 21, 2016, entered into by Horseshoe Valley Lands Limited (“Horseshoe”) and Garo Bostajian, in trust for a company being incorporated (Lotco) with respect to 29 single family lots on a residential development site owned by the Debtor Horseshoe (the “Single Family Lots”);
- (f) authorizing Lotco to conduct examinations and/or cross-examinations on **Friday, December 23, 2016 at 10:00 a.m. or at such time as may be convenient to all parties** at Network Reporting & Mediation, 100 King Street West, Suite 3600, Toronto, Ontario, M5X 1E3 of:
  - (i) Mark Hilson on his Affidavits sworn July 22, 2016 and November 15, 2016;
  - (ii) Bill Ulicki on his Affidavit sworn November 21, 2016;
  - (iii) Jim Cooper on his Affidavit sworn November 16, 2016;
  - (iv) Brendan Bissell who was the lawyer representing the Applicant, Romspen Investment Corporation (“Romspen”) at the Settlement Meeting on July 28, 2016 (the “Settlement Meeting”) and who thereafter negotiated the terms of the

Forbearance Agreement dated August 1, 2016, attached as Exhibit “A” to the Affidavit of Mark Hilson sworn November 15, 2016 (the “Forbearance Agreement”);

- (v) William Friedman who was the lawyer representing the Respondent, Horseshoe Valley Lands Limited at the Settlement Meeting and negotiated the terms of the Forbearance Agreement; and
- (vi) such further and other relief as counsel may advise and this Honourable Court seem just.

**THE GROUNDS FOR THE MOTION ARE:**

1. The Respondent, Horseshoe and the Moving Party, Lotco, entered into an Agreement of Purchase and Sale dated July 21, 2016, the terms of which were known to the Applicant, Romspen (the “Lotco Agreement”).
2. Romspen gave expressed or implied consent to Horseshoe to complete the transaction with Lotco.
3. Romspen and Horseshoe provided in the Forbearance Agreement that the transaction between Horseshoe and Lotco for the Single Family Lots would close in accordance with the Agreement of Purchase and Sale between Lotco and Horseshoe.
4. Subsequent to Lotco removing all conditions in the Agreement of Purchase and Sale, Romspen engaged in further negotiations in respect of the Single Family Lots with a view to selling same to Lotco or another purchaser for an increased price.
5. The value of the Single Family Lots has “sky-rocketed” since Horseshoe entered into the Lotco Agreement.

6. Neither Romspen nor the Receiver, Rosen Goldberg Inc. (the “Receiver”) is prepared to close the Lotco Agreement.

7. The Receiver was initially appointed by Romspen to act in the best interests of Horseshoe who was prepared to close the Lotco Agreement.

8. Before becoming a Court appointed Receiver, the Receiver and Romspen determined that the Lotco Agreement would not close.

9. The Receiver has not considered the interests of the various stakeholders including Horseshoe and Lotco. The Receiver has not taken into account the equitable considerations and interests of all stakeholders, including Lotco and Horseshoe.

10. The Receiver has a duty to maintain the good will of the Debtor company, Horseshoe, and to disregard the contract made by Horseshoe before the appointment of the Receiver is inconsistent with that duty.

11. The evidence suggests that, when the remaining assets of Horseshoe are sold (after the Lotco Agreement closes), Horseshoe’s debt to Romspen will be satisfied.

12. To disclaim the Lotco Agreement will result in significant loss and damages to Lotco, including lost profits and opportunity.

13. Counsel for Romspen has indicated that the difference between the selling price for the Single Family Lots (the Lotco Agreement) versus the First View Homes (Scarborough) Inc. Agreement is not materially different as to suggest that the Lotco Offer was not entered into a fair market value.

14. Counsel for the Receiver has previously acted as counsel for Romspen, whose interests are being preferred over those of the other stakeholders, including Lotco and Horseshoe.

15. The Affidavit evidence submitted on behalf of Romspen incorrectly suggests that the Forbearance Agreement did not authorize Horseshoe to complete the Lotco Agreement. The Forbearance Agreement includes the following paragraphs:

3. The Debtor (Horseshoe) agrees that it shall pay to the Lender (Romspen) on or before September 30, 2016, \$3,200,000.00 less all applicable costs including, without limitation, real estate commissions, and legal fees and disbursements arising out of **the sale of property subject to the security** or otherwise and to be applied against the outstanding loan (*emphasis added*).
4. The Debtor agrees that, if any land or lot sales take place during this Agreement **in addition to those contemplated in paragraph 3**, the value of those sales, net of all costs shall also be paid to the Lender (*emphasis added*).

20. Lotco has not received a satisfactory explanation from counsel for Romspen as to what sale of property was contemplated in paragraph 3 of the Forbearance Agreement and only confirmed that it is reference to the Single Family Lots. Lotco requires the opportunity to cross-examine the deponents of the Affidavits made in the within Application as well as the lawyers who attended at the Settlement Meeting on July 28, 2016, and thereafter negotiated the terms of the Forbearance Agreement.

**THE FOLLOWING DOCUMENTARY EVIDENCE** will be used at the hearing of the Cross-Motion:

1. Application Record (Motion Appointing Receiver – August 2, 2016) including the Affidavit of Mark Hilson sworn July 22, 2016 and cross-examination to be conducted thereon;
2. Supplementary Application Record (returnable November 17, 2016) including the Supplementary Affidavit of Mark Hilson sworn November 15, 2016 and cross-examination to be conducted thereon;

3. Second Supplementary Application Record (Volumes 1 and 2), including the Affidavit of Bill Ulicki sworn November 21, 2016 and cross-examination to be conducted thereon;
4. Affidavit of Jim Cooper sworn November 16, 2016 and cross-examination to be conducted thereon;
5. Affidavit of Paul Grespan sworn November 25, 2016;
6. Cross-examination of Brendan Bissell, to be conducted;
7. Cross-examination of William Friedman, to be conducted; and
8. such further and other material as counsel may advise and this Honourable Court may permit.

December 20, 2016

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ROMSPEN INVESTMENT CORPORATION -and- HORSESHOE VALLEY LANDS LTD.

Court File No.: CV-16-11468-00CL

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Proceeding commenced at TORONTO

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LOTCO LIMITED**

(Motion of the Receiver Rosen Goldberg Inc. -  
Returnable December 22, 2016)

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