

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

IN THE MATTER OF SECTION 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

BETWEEN:

ROMSPEN INVESTMENT CORPORATION

Applicant

- and -

206 BLOOR STREET WEST LIMITED

Respondent

MOTION RECORD

April 11, 2018

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TAB 1

**ONTARIO
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IN THE MATTER OF SECTION 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

B E T W E E N:

ROMSPEN INVESTMENT CORPORATION

Applicant

- and -

206 BLOOR STREET WEST LIMITED

Respondent

**NOTICE OF MOTION
(Sale Approval and Vesting Order and Discharge Order)**

Rosen Goldberg Inc., in its capacity as Court-appointed receiver (the “**Receiver**”) of the property, assets and undertaking of 206 Bloor West Limited (“**Bloor**”), will make a motion to a Judge of the Commercial List on Tuesday April 17, 2018 at 10:00 am, or as soon after that time as the motion can be heard, at 330 University Avenue, 8th floor, Toronto.

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

THE MOTION IS FOR:

1. An order substantially in the form attached hereto as Schedule “A”:

- (a) abridging the time for service of this Notice of Motion and the Motion Record such that the Motion is properly returnable on the hearing date and further, validating service of the Notice of Motion and Motion Record on any interested party;
 - (b) approving an agreement of purchase of sale (the “**APS**”) entered into between Bloor (with the Receiver’s authorization), as vendor, and Salim Minaj and Meenaz Minaj (collectively, the “**Purchaser**”) in respect of the penthouse unit (the “**Penthouse**”) at 206 Bloor Street West, in Toronto, together with three (3) appurtenant parking spaces and one (1) locker unit (the Penthouse, parking spaces and locker unit are hereinafter referred to, collectively, as the “**Purchased Assets**”); and
 - (c) vesting all right, title and interest of Bloor in the Purchased Assets in the Purchaser free and clear of certain encumbrances; and
 - (d) sealing the APS pending the completion of the sale transaction.
2. A further order substantially in the form of the Order attached hereto as Schedule “B”:
- (a) approving the Receiver’s activities, as set out in its Second Report dated April 10, 2018 (the “**Second Report**”) and its First Report dated October 31, 2016 (the “**First Report**”);
 - (b) approving the Receiver’s statement of receipts and disbursements appended to the Second Report;
 - (c) approving the fees and disbursements of the Receiver and its counsel as set out in the Second Report;

- (d) authorizing the Receiver to distribute the net proceeds from the sale of the Purchased Assets to Romspen Investment Corporation (“**Romspen**”) upon payment of the fees and disbursements of the Receiver and its counsel, and repayment of the Receiver’s borrowings; and
- (e) discharging and releasing Rosen Goldberg Inc. as Receiver of the undertaking, property and assets of Bloor.

3. Such further or other orders and relief as counsel may request and this Honourable Court may permit.

THE GROUNDS FOR THE MOTION ARE:

1. The Receiver was appointed the receiver of the property, assets and undertaking of Bloor pursuant to the order dated September 27, 2016 of Mr. Justice Newbould (the “**Appointment Order**”).
2. Bloor was the developer of a 19 storey, 27 unit, residential condominium project known as Museum House (the “**Project**”), located at 206 Bloor Street West, Toronto.
3. The Project encountered cost overruns and Royal Bank of Canada (“**RBC**”), the Project lender, was not prepared to make further construction advances to Bloor, unless Bloor obtained additional financing.
4. Romspen agreed to advance additional, mezzanine funding to the Project (the “**Romspen Loan**”). As part of its security, Romspen obtained from Bloor: (a) a Promissory Note in the face amount of \$5 million, (b) a General Security Agreement, which was registered under the *PPSA* and (c) a subordinate mortgage over the Project lands;

5. The Romspen Loan matured on June 1, 2016 and it was not repaid. As at July 1, 2016, the sum of \$12,265,134.34 was due and owing to Romspen and interest was accruing at the rate of 24 percent per annum.
6. Bloor had listed the Purchased Assets for sale for \$12.8 million since the inception of marketing in 2009, however, it proved to be unsaleable in a shell state.
7. The Receiver's appointment was obtained for two purposes: (1), to fund the completion of the Penthouse for the purposes of rendering it saleable; and (2), to stay enforcement of a Judgment of Mr. Justice Myers dated June 29, 2016, (the "**Judgment**") in favour of Linda Paris Faith Rosenberg ("**Rosenberg**").
8. The Judgment is an unsecured obligation of Bloor. It is partially, but not wholly satisfied. The principal sum of \$9,000 and the costs award of \$225,000 are outstanding.
9. Pursuant to an endorsement of Mr. Justice Myers dated June 29, 2016, Dickinson Wright LLP held certain funds from the proceeds of sale of another unit in the Project in trust, pending a determination of entitlement to those funds, as between Romspen under the Romspen Loan and Rosenberg, under the Judgment.
10. The priority dispute was resolved in favour of Romspen pursuant to a decision of Mr. Justice Wilton-Siegel dated February 1, 2017. The decision was appealed by Rosenberg and subsequently, the appeal was abandoned.
11. The funds were released on March 14, 2017 and were directed by Romspen to the Receiver to fund a portion of the expenses associated with completing the Penthouse.
12. Upon completion of the Penthouse, the Purchased Assets were listed for sale on MLS for \$12.8 Million. There were over 80 showings of the Penthouse but the only offer that was received during the listing period was in October, 2017 for \$9.4 million.

13. On March 1, 2018, Bloor, with the Receiver's authorization, entered into the APS. A \$500,000 deposit was provided. The completion date is scheduled for April 24, 2018.
14. Under the Appointment Order, the Receiver was authorized to borrow up to \$2 million. Its actual borrowings were \$548,147.79.
15. With the accrual of interest, as at April 2, 2018, the amount owing under the Romspen Loan was \$18,771,860.13 and interest continues to accrue.
16. Romspen will suffer a significant shortfall. Given the priority determination of Justice Wilton-Siegel, there will be no recovery for Rosenberg under the Judgment.
17. The Receiver has recommended the approval of the APS as, among other things:
 - (a) between 2009 and the Appointment Order, the Purchased Assets failed to sell for \$12.8 million;
 - (b) The Penthouse has been finished since late 2016 and listed for sale for \$12.8 million, but did not sell and only two offers were received during the Receiver's administration;
 - (c) The purchase price under the APS is considerably higher than the previous offer of \$9.4 million received in October 2017;
 - (d) Given the limited market of buyers in Toronto for similar luxury residences, it is unlikely that a better price will be forthcoming;
 - (e) Romspen, Bloor's only secured creditor, is supportive of the APS, notwithstanding it will suffer a significant shortfall.
18. The Purchased Assets represent the last of Bloor's unsold inventory. Accordingly, upon completion of the sale of the Purchased Assets, the Receiver will be in position to complete and conclude the administration of the Receivership.

19. The Appointment Order provides that the Receiver and its legal counsel shall be paid their reasonable fees and disbursements.

20. Section 243 of the *Bankruptcy and Insolvency Act*, Rules 3.02(1), 14.05(3)(d), (e), (f), (g), and (h) and 16.08 of the *Rules of Civil Procedure* and the inherent jurisdiction of this Honourable Court.

21. Such further or other grounds as counsel may advise and this Honourable Court may permit.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the motion:

1. The Second Report of the Receiver and the appendices thereto, including the First Report.

2. Such further or other materials as counsel may advise and this Honourable Court may permit.

Date: April 11, 2018

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Schedule "A"

Court File No. CV-16-11529-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

IN THE MATTER OF SECTION 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

THE HONOURABLE) DAY, THE
JUSTICE)
DAY OF APRIL, 2018

BETWEEN:

ROMSPEN INVESTMENT CORPORATION

- and -

206 BLOOR STREET WEST LIMITED

APPROVAL AND VESTING ORDER

THIS MOTION, made by Rosen Goldberg Inc. in its capacity as the Court-appointed receiver (the "Receiver") of the undertaking, property and assets of the Respondent 206 Bloor Street West Limited (the "Debtor") for an order approving the sale transaction (the "Transaction") contemplated by an agreement of purchase and sale (the "Sale Agreement") between the Receiver and Salim Minaj and Meenaz Minaj (the "Purchaser") dated March 2, 2018 and appended to the Second Report of the Receiver dated April 10, 2018 (the "Report"), and vesting in the Purchaser the Debtor's right, title and interest in and to the assets described in

the Sale Agreement (the "Purchased Assets"), was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Report and on hearing the submissions of counsel for the Receiver], no one appearing for any other person on the service list, although properly served as appears from the affidavit of _____ sworn April _____, 2018 filed:

1. THIS COURT ORDERS that the time for service of the Receiver's Motion Record is hereby abridged and validated so that this motion is properly returnable today and hereby dispenses with further service thereof
2. THIS COURT ORDERS AND DECLARES that the Transaction is hereby approved, and the execution of the Sale Agreement by the Debtor is hereby authorized and approved, with such minor amendments as the Receiver may deem necessary. The Receiver is hereby authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the Transaction and for the conveyance of the Purchased Assets to the Purchaser.
3. THIS COURT ORDERS AND DECLARES that upon the delivery of a Receiver's certificate to the Purchaser substantially in the form attached as Schedule A hereto (the "Receiver's Certificate"), all of the Debtor's right, title and interest in and to the Purchased Assets described in the Sale Agreement and listed on Schedule B hereto shall vest absolutely in the Purchaser, free and clear of and from any and all security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, levies, charges, or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise (collectively, the "Claims") including, without limiting the generality of the foregoing: (i) the Judgment of the Honourable Justice Myers dated June 29, 2016 in favour of Linda Paris Rosenberg against the Debtor in Court File No. CV-12-469391 (in Toronto) and any writ or execution filed in connection therewith; (ii) any encumbrances or charges created by the Order of the Honourable Justice Newbould dated September 27, 2016; (iii) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (Ontario) or any other personal property registry system; and (iv) those Claims listed on

Schedule C hereto (all of which are collectively referred to as the “Encumbrances”, which term shall not include the permitted encumbrances, easements and restrictive covenants listed on Schedule D) and, for greater certainty, this Court orders that all of the Encumbrances affecting or relating to the Purchased Assets are hereby expunged and discharged as against the Purchased Assets.

4. THIS COURT ORDERS that upon the registration in the Land Registry Office for the Land Titles Division of the City of Toronto (No. 66) of an Application for Vesting Order in the form prescribed by the *Land Titles Act* and/or the *Land Registration Reform Act*, the Land Registrar is hereby directed to enter the Purchaser as the owner of the subject real property identified in Schedule B hereto (the “Real Property”) in fee simple, and is hereby directed to delete and expunge from title to the Real Property all of the Claims listed in Schedule C hereto.

5. THIS COURT ORDERS AND DIRECTS the Receiver to file with the Court a copy of the Receiver’s Certificate, forthwith after delivery thereof.

6. THIS COURT ORDERS that, notwithstanding:

- (a) the pendency of these proceedings;
- (b) any applications for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act* (Canada) in respect of the Debtor and any bankruptcy order issued pursuant to any such applications; and
- (c) any assignment in bankruptcy made in respect of the Debtor;

the vesting of the Purchased Assets in the Purchaser pursuant to this Order shall be binding on any trustee in bankruptcy that may be appointed in respect of the Debtor and shall not be void or voidable by creditors of the Debtor, nor shall it constitute nor be deemed to be a fraudulent preference, assignment, fraudulent conveyance, transfer at undervalue, or other reviewable transaction under the *Bankruptcy and Insolvency Act* (Canada) or any other applicable federal or provincial legislation, nor shall it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

7. THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.

SCHEDULE A – FORM OF RECEIVER’S CERTIFICATE

Court File No. CV-16-11529-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
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IN THE MATTER OF SECTION 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

B E T W E E N:

ROMSPEN INVESTMENT CORPORATION

Applicant

- and -

206 BLOOR STREET WEST LIMITED

Respondent

RECEIVER’S CERTIFICATE

RECITALS

A. Pursuant to an Order of the Honourable Mr. Justice Newbould of the Ontario Superior Court of Justice (the “Court”) dated September 27, 2016, Rosen Goldberg Inc. was appointed as the receiver (the “Receiver”) of the undertaking, property and assets of 206 Bloor Street West Limited (the “Debtor”).

B. Pursuant to an Order of the Court dated _____, 2018, the Court approved the agreement of purchase and sale made as of March 2, 2018 (the “Sale Agreement”) between the Debtor and Salim Minaj and Meenaz Minaj (the “Purchaser”) and provided for the vesting in the Purchaser of the Debtor’s right, title and interest in and to the Purchased Assets, which vesting is to be effective with respect to the Purchased Assets upon the delivery by the Receiver to the

Purchaser of a certificate confirming (i) the payment by the Purchaser of the Purchase Price for the Purchased Assets; (ii) that the conditions to Closing of the Sale Agreement have been satisfied or waived by the Receiver and the Purchaser; and (iii) the Transaction has been completed to the satisfaction of the Receiver.

C. Unless otherwise indicated herein, terms with initial capitals have the meanings set out in the Sale Agreement.

THE RECEIVER CERTIFIES the following:

1. The Purchaser has paid and the Receiver has received the Purchase Price for the Purchased Assets payable on the Closing Date pursuant to the Sale Agreement;
2. The conditions to Closing in the Sale Agreement have been satisfied or waived by the Receiver and the Purchaser; and
3. The Transaction has been completed to the satisfaction of the Receiver.
4. This Certificate was delivered by the Receiver at _____ [TIME] on _____ April, 2018.

**ROSEN GOLDBERG INC., in its capacity as
Receiver of the undertaking, property and
assets of 206 Bloor Street West Limited, and
not in its personal capacity**

Per: _____

Name:

Title:

SCHEDULE B – PURCHASED ASSETS

UNIT 1, LEVEL 18, TORONTO STANDARD CONDOMINIUM PLAN NO. 2254 AND ITS APPURTENANT INTEREST THE NORTH LIMIT OF BLOOR STREET WEST AS CONFIRMED UNDER THE BOUNDARIES ACT BY PLAN BA-2083 AS IN CT-624306.; THE NORTH LIMIT OF BLOOR STREET WEST AS CONFIRMED UNDER THE BOUNDARIES ACT BY PLAN BA-2083 AS IN CT-624306.; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN AT3089641; CITY OF TORONTO

Being all of PIN 76254-0027 (LT)

UNIT 2, LEVEL A, TORONTO STANDARD CONDOMINIUM PLAN NO. 2254 AND ITS APPURTENANT INTEREST THE NORTH LIMIT OF BLOOR STREET WEST AS CONFIRMED UNDER THE BOUNDARIES ACT BY PLAN BA-2083 AS IN CT-624306.; THE NORTH LIMIT OF BLOOR STREET WEST AS CONFIRMED UNDER THE BOUNDARIES ACT BY PLAN BA-2083 AS IN CT-624306.; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN AT3089641; CITY OF TORONTO

Being all of PIN 76254-0029 (LT)

UNIT 3, LEVEL A, TORONTO STANDARD CONDOMINIUM PLAN NO. 2254 AND ITS APPURTENANT INTEREST THE NORTH LIMIT OF BLOOR STREET WEST AS CONFIRMED UNDER THE BOUNDARIES ACT BY PLAN BA-2083 AS IN CT-624306.; THE NORTH LIMIT OF BLOOR STREET WEST AS CONFIRMED UNDER THE BOUNDARIES ACT BY PLAN BA-2083 AS IN CT-624306.; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN AT3089641; CITY OF TORONTO

Being all of PIN 76254-0030 (LT)

UNIT 4, LEVEL A, TORONTO STANDARD CONDOMINIUM PLAN NO. 2254 AND ITS APPURTENANT INTEREST THE NORTH LIMIT OF BLOOR STREET WEST AS CONFIRMED UNDER THE BOUNDARIES ACT BY PLAN BA-2083 AS IN CT-624306.; THE NORTH LIMIT OF BLOOR STREET WEST AS CONFIRMED UNDER THE BOUNDARIES ACT BY PLAN BA-2083 AS IN CT-624306.; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN AT3089641; CITY OF TORONTO

Being all of PIN 76254-0031 (LT)

UNIT 12, LEVEL E, TORONTO STANDARD CONDOMINIUM PLAN NO. 2254 AND ITS APPURTENANT INTEREST THE NORTH LIMIT OF BLOOR STREET WEST AS CONFIRMED UNDER THE BOUNDARIES ACT BY PLAN BA-2083 AS IN CT-624306.; THE NORTH LIMIT OF BLOOR STREET WEST AS CONFIRMED UNDER THE

BOUNDARIES ACT BY PLAN BA-2083 AS IN CT-624306.; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN AT3089641; CITY OF TORONTO

Being all of PIN 76254-0089 (LT)

Land Titles Division for the Land Registry Office of the City of Toronto (No. 66)

SCHEDULE C**CLAIMS TO BE DELETED AND EXPUNGED FROM TITLE TO PIN 76254-0027 (LT),
PIN 76254-0029 (LT), 76254-0030 (LT) and PIN 76254-0031 (LT) PIN 76254-0089 (LT)**

1. Instrument AT3581991 registered 2014/05/15 – Charge in favour of Romspen Investment Corporation
2. Instrument AT3581992 registered 2014/05/15 – Notice of Assignment of Rent in favour of Romspen Investment Corporation

SCHEDULE D**PERMITTED ENCUMBRANCES, EASEMENTS AND RESTRICTIVE COVENANTS
RELATED TO PIN 76254-0027 (LT), PIN 76254-0029 (LT), 76254-0030 (LT) and PIN
76254-0031 (LT) PIN 76254-0089 (LT)****(unaffected by the Approval and Vesting Order)**

1. Instrument 64BA2083 registered 1983/10/12 – Plan Boundaries Act; D814, CT624306
2. Instrument AT882645 registered 2005/08/05 – Notice of Amended Application for Absolute Title; AT866447
3. Instrument AT1293492 registered 2006/10/30 – Notice
4. Instrument AT1350354 registered 2007/01/09 – Notice
5. Instrument AT2231743 registered 2009/11/18 – Notice
6. Instrument AT2296458 registered 2010/02/02 – Transfer Easement
7. Instrument AT2641338 registered 2011/03/14 – Notice
8. Instrument AT2641339 registered 2011/03/14 – Notice
9. Instrument AT3038551 registered 2012/06/06 – Notice
10. Instrument TCP2254 registered 2012/07/31 – Standard Condo Plan
11. Instrument AT3089641 registered 2012/07/31 – Condo Declaration
12. Instrument AT3100107 registered 2012/08/14 – Condo By-law/98 – By-law No. 1
13. Instrument AT3100115 registered 2012/08/14 – Condo By-law/98 – By-law No. 2
14. Instrument AT3100138 registered 2012/08/14 – Condo By-law/98
15. Instrument AT3100145 registered 2012/08/14 – Condo By-law/98

16. Instrument AT3100165 registered 2012/08/14 – Condo By-law/98
17. Instrument AT3100186 registered 2012/08/14 – Condo By-law/98
18. Instrument AT3100195 registered 2012/08/14 – Condo By-law/98
19. Instrument AT3100299 registered 2012/08/14 – Notice
20. Instrument AT3100362 registered 2012/08/14 – Notice
21. Instrument AT3100391 registered 2012/08/14 – Notice
22. Instrument AT3100412 registered 2012/08/14 – Notice
23. Instrument AT3180692 registered 2012/11/21 – Notice
24. Instrument AT3245808 registered 2013/02/28 – Notice
25. Instrument AT3245809 registered 2013/02/28 – Notice
26. Instrument AT3757704 registered 2014/12/03 – No Chng Addr Condo
27. Instrument AT3955078 registered 2015/07/23 – Condo Amendment

ROMSPEN INVESTMENT CORPORATION
Applicant

-and- **206 BLOOR STREET WEST LIMITED**
Respondent

Court File No. CV-16-11529-00CL

ONTARIO
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(COMMERCIAL LIST)

PROCEEDING COMMENCED AT
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APPROVAL AND VESTING ORDER

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Court-appointed Receiver

Schedule "B"

Court File No. CV-16-11529-00CL

ONTARIO
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COMMERCIAL LIST

IN THE MATTER OF SECTION 243(1) OF THE *BANKRUPTCY AND INSOLVENCY ACT*,
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ACT, R.S.O. 1990 C. C.43, AS AMENDED

THE HONOURABLE) DAY, THE
JUSTICE)
) DAY OF APRIL, 2018

BETWEEN:

ROMSPEN INVESTMENT CORPORATION
Applicant

- and -

206 BLOOR STREET WEST LIMITED
Respondent

DISCHARGE ORDER

THIS MOTION, made by Rosen Goldberg Inc. in its capacity as the Court-appointed receiver (the "Receiver") of the undertaking, property and assets of 206 Bloor Street West Limited (the "Debtor"), for an order:

- 1. approving the activities of the Receiver as set out in its First Report dated October 31, 2016 (the "First Report") and its Second Report dated April 10, 2018 (the "Second Report Report");

2. approving the fees and disbursements of the Receiver and its counsel;
3. approving the distribution of the remaining proceeds available in the estate of the Debtor;
4. discharging Rosen Goldberg Inc. as Receiver of the undertaking, property and assets of the Debtor; and
5. releasing Rosen Goldberg Inc. from any and all liability, as set out in paragraph 6 of this Order,

was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Report, the affidavits of the Receiver and its counsel as to fees (the "Fee Affidavits"), and on hearing the submissions of counsel for the Receiver, no one else appearing although served as evidenced by the Affidavit of _____ sworn April, 2018, filed;

1. THIS COURT ORDERS that the time for service of the Receiver's Motion Record is hereby abridged and validated so that this motion is properly returnable today and hereby dispenses with further service thereof
2. THIS COURT ORDERS that the activities and proposed activities of the Receiver, as set out in the First Report and the Second Report, are hereby approved.
3. THIS COURT ORDERS that the fees and disbursements of the Receiver and its counsel, as set out in the Second Report and the Fee Affidavits, are hereby approved.
4. THIS COURT ORDERS that, after payment of the fees and disbursements herein approved, and repayment of the Receiver's borrowings, the Receiver shall pay the monies remaining in its hands to Romspen Investment Corporation.
5. THIS COURT ORDERS that upon payment of the amounts set out in paragraph 4 hereof, the Receiver shall be discharged as Receiver of the undertaking, property and assets of the Debtor, provided however that notwithstanding its discharge herein (a) the Receiver shall remain Receiver for the performance of such incidental duties as may be required to complete the

administration of the receivership herein, and (b) the Receiver shall continue to have the benefit of the provisions of all Orders made in this proceeding, including all approvals, protections and stays of proceedings in favour of Rosen Goldberg Inc. in its capacity as Receiver.

6. THIS COURT ORDERS AND DECLARES that Rosen Goldberg Inc. is hereby released and discharged from any and all liability that Rosen Goldberg Inc. now has or may hereafter have by reason of, or in any way arising out of, the acts or omissions of Rosen Goldberg Inc. while acting in its capacity as Receiver herein, save and except for any gross negligence or wilful misconduct on the Receiver's part. Without limiting the generality of the foregoing, Rosen Goldberg Inc. is hereby forever released and discharged from any and all liability relating to matters that were raised, or which could have been raised, in the within receivership proceedings, save and except for any gross negligence or wilful misconduct on the Receiver's part.

ROMSPEN INVESTMENT CORPORATION
Applicant

-and- **206 BLOOR STREET WEST LIMITED**
Respondent

Court File No. CV-16-11529-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

PROCEEDING COMMENCED AT
TORONTO

DISCHARGE ORDER

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Lawyers for Rosen Goldberg Inc.,
Court-appointed Receiver

ROMSPEN INVESTMENT CORPORATION
Applicant

-and-
Respondent

206 BLOOR STREET WEST LIMITED

Court File No. CV-16-11529-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

PROCEEDING COMMENCED AT
TORONTO

NOTICE OF MOTION

BATTISTON & ASSOCIATES
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TAB 2



ROSEN GOLDBERG
INSOLVENCY & RESTRUCTURING

Court File No. CV-16-11529-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

IN THE MATTER OF SECTION 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

BETWEEN:

ROMSPEN INVESTMENT CORPORATION

Applicant

- and -

206 BLOOR STREET WEST LIMITED

Respondent

SECOND REPORT OF ROSEN GOLDBERG INC.

I. INTRODUCTION

1. By Order of Justice Newbould dated September 27, 2016 (the “**Appointment Order**”), Rosen Goldberg Inc. was appointed receiver (in such capacity, the “**Receiver**”) of the assets, undertakings and properties of the Respondent (the “**Debtor**”) pursuant to section 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. A copy of the Appointment Order is attached as **Appendix A**.



ROSEN GOLDBERG
INSOLVENCY & RESTRUCTURING

II. PURPOSE OF REPORT

2. This report will set out the factual background so that this Honourable Court may consider the following recommendations of the Receiver:

- (a) the approval of an agreement of purchase of sale (the “**APS**”) in respect of the penthouse unit (the “**Penthouse**”) at 206 Bloor Street West, in Toronto, together with three (3) appurtenant parking spaces and one (1) locker unit (the Penthouse, parking spaces and locker unit are hereinafter referred to, collectively, as the “**Purchased Assets**”);
- (b) the vesting of all right, title and interest of the Debtor in the Purchased Assets in the purchaser under the APS, free and clear of certain encumbrances described below;
- (c) the sealing of the APS pending the completion of the sale transaction;
- (d) the approval of the Receiver’s activities, as set out in this report and in the Receiver’s First Report dated October 31, 2016 (the “**First Report**”);
- (e) the approval of the Receiver’s statement of receipts and disbursements;
- (f) the approval of the fees and disbursements of the Receiver and its counsel;
- (g) upon completion of the sale transaction and payment of the fees and disbursements of the Receiver and its counsel, and repayment of the Receiver’s borrowings, the distribution of the net sale proceeds to Romspen Investment Corporation (“**Romspen**”); and



ROSEN GOLDBERG
INSOLVENCY & RESTRUCTURING

- (h) the discharge and release of Rosen Goldberg Inc. as Receiver of the undertaking, property and assets of the Debtor.

III. DISCLAIMER AND TERMS OF REFERENCE

3. In preparing this report, the Receiver has relied upon certain unaudited financial information of the Debtor, including the Debtor's books and records, information obtained from the Debtor's management and other sources (collectively, the "Information"). Except as described in this report, the Receiver has not audited, reviewed or otherwise attempted to verify the accuracy or completeness of the Information in a manner that would comply with Generally Accepted Assurance Standards pursuant to the CPA Canada Handbook.

IV. BACKGROUND

4. Copies of the First Report and the Receiver's Supplement thereto dated November 11, 2016 are attached (both without appendices) as **Appendix B**.

5. The Debtor is a single purpose company that was the developer of a 19 storey, 27 unit residential condominium project known as Museum House (the "Project"), which is located at 206 Bloor Street West, in Toronto (the "Property"). The Project was conceived to cater to an exclusive segment of the condominium market and marketed on the basis that buyers could select from a variety of custom finishes for their units with the assistance of an interior design firm contracted by the Debtor.

6. In May of 2011 the Project encountered approximately \$3 million in cost overruns and the Royal Bank of Canada (the "RBC"), the Debtor's construction lender, was not prepared to make further advances unless the Debtor obtained additional funding.

7. As a consequence, the Debtor obtained additional, mezzanine funding from Romspen, a non-bank commercial lender. As security for the mezzanine loan, Romspen received from the Debtor: (a) a promissory note in the face amount of \$5 million; (b) a general security agreement,



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notice of which was registered under the *PPSA* subsequent in time to RBC; and (c) a subordinate ranking mortgage over the Property.

8. The Project was registered as Toronto Standard Condominium Corporation No. 2254 on August 14, 2012.

9. Romspen's mezzanine loan matured on June 1, 2016 and was not repaid. As at July 1, 2016, Romspen was owed \$12,265,138.34 and interest was accruing thereon at the rate of 24% per annum.¹

10. At the time of Receiver's appointment on September 27, 2016, Romspen was the Debtor's only secured creditor.

11. The Debtor had listed the Purchased Assets for sale for \$12.8 million since the inception of its marketing and sale process in 2009, on the basis that the Penthouse could be extensively customized by a prospective buyer. However, it proved to be unsaleable in a shell state notwithstanding that a variety of alternative renderings had been prepared for buyers to consider.

12. The Receiver's appointment was obtained for two (2) purposes: (1) to fund completion of the Penthouse for the purpose of rendering it saleable; and (2) to stay a Judgment of Justice Myers dated June 29, 2016 (the "**Judgment**"), pursuant to which the Debtor was ordered to pay Linda Paris Faith Rosenberg ("**Rosenberg**") the sum of \$523,750, plus costs in the amount of \$225,000 inclusive of disbursements and HST.

13. The Appointment Order provides that Rosen Goldberg Inc. is a non-possessory receiver. The Debtor has remained in possession and control for the purpose of completing the finishing of the Penthouse so that it can be sold.

¹ The Receiver has an opinion from its independent counsel, Battiston and Associates, with respect to the validity and enforceability of Romspen's mortgage security, a copy of which was appended to the First Report. Subject to the customary qualifications and limitations, Battiston and Associates opined that the Romspen's mortgage security is valid and enforceable.



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14. The Judgment is an unsecured obligation of the Debtor. It is partially but not wholly satisfied. The principal sum of \$9,000 and the costs award of \$225,000 are outstanding.

15. Pursuant to an endorsement of Justice Myers dated June 29, 2016, Dickinson Wright LLP was ordered to hold certain funds from the proceeds of sale of another unit in the Project (which funds would otherwise have been payable to Romspen in partial reduction of its mezzanine loan), in trust, pending a determination of entitlement to the funds. The funds are hereinafter referred to as the “Funds”.

16. A priority dispute over the Funds between Rosenberg and Romspen was decided by Justice Wilton-Siegel, who ruled in favour of Romspen.² A copy of His Honour’s endorsement dated February 1, 2017 is attached as **Appendix C**. A copy of the Order arising from the endorsement is attached as **Appendix D**. The Order was appealed by Rosenberg, although the appeal was subsequently abandoned. Copies of the notice of appeal and notice of abandonment are attached as **Appendix E**.

17. The Funds, net of fees owing by Romspen to Dickinson Wright LLP, were released on March 14, 2017 and, upon the direction of Romspen, paid to the Receiver to fund a portion of the expenses associated with completing the Penthouse.

V. COMPLETION OF PENTHOUSE AND MARKETING OF PURCHASED ASSETS FOR SALE

18. The Penthouse is a 5,700 square feet, two (2) storey unit, with four (4) separate terraces. The terraces comprise 1,300 square feet in the aggregate.

19. The finishing of the Penthouse was completed in the late fall of 2016. The floorplan and a sheet listing the features and finishes of the Penthouse is attached as **Appendix F**.

²² Although costs submissions were delivered after Justice Wilton-Siegel’s Order was settled, no decision regarding costs of the motion has yet been released.



20. Upon completion of the Penthouse, the Purchased Assets were listed for sale on MLS through Baker Real Estate Corp. Inc. (“**Baker**”) for \$12.8 million. During Baker’s term as listing agent, there were in excess of 80 showings of the Penthouse. Only one (1) offer was received – in October of 2017, for \$9.4 million. After the offer was rejected, Baker was advised that the buyer was prepared to increase her offer to \$10 million, which was considered too low by Romspen and the Receiver. Baker was released as listing agent in February of 2018.

V. SALE OF PURCHASED ASSETS

21. Subsequently, a serious expression of interest in the Purchased Assets at a considerably higher purchase price than the previous offer was received through the Johnston & Daniel Division of Royal LePage R.E.S Ltd., real estate brokerage (“**J & D**”). To bring an offer to fruition, the Purchased Assets were listed with J & D.

22. On March 2, 2018, the Debtor, with the Receiver’s authorization, entered into the APS. A copy of the APS, with the purchase price redacted, is attached as **Appendix G**. J & D is a dual agent under the APS. Pursuant to the APS, J & D is holding a \$500,000.00 deposit in trust.

23. The purchaser’s conditions under the APS were waived on March 19, 2018. A satisfactory pre-delivery inspection was completed with the purchaser on April 2, 2018.

24. The completion date under the APS is April 24, 2018.

VI. IMPACT OF SALE ON RECOVERY FOR STAKEHOLDERS AND RECEIVER’S RECOMMENDATION

25. Under the Appointment Order, the Receiver was authorised to borrow up to \$2 million. The Receiver’s actual borrowings were \$742,000³ of which \$250,000 was repaid. A schedule of

³ With interest at ten (10%) percent per annum.



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borrowings is attached as **Appendix H**. As of March 31, 2018, the amount payable on account of Receiver's borrowings was \$548,147.79.

26. Due to the accrual of interest under Romspen's mezzanine loan, as of April 2, 2018, the amount owing to Romspen was \$18,771,860.13, with *per diem* interest of \$12,269.11 accruing.

27. Accordingly, Romspen will suffer a significant shortfall if the APS is approved and the sale is completed. Given the priority determination of Justice Wilton-Siegel with respect to the Fund, which the Receiver presumes will apply to the net proceeds from the sale of the Purchased Assets, there will be no recovery for Rosenberg under the Judgment.

28. The Receiver nonetheless recommends that this Honourable Court approve the APS for the following reasons:

- between the period of 2009 and the Appointment Order, the Purchased Assets were listed for sale for \$12.8 million but not sold;
- the Penthouse has been finished since the late fall of the 2016 and listed for sale for \$12.8 million;
- only two (2) offers for the Purchased Assets were received during the Receiver's administration;
- the purchase price payable under the APS is considerably higher than the previous offer of \$9.4 million received in October of 2017;
- given the limited market of buyers in Toronto for similar luxury penthouses, it is highly unlikely that a better offer will surface if the Purchased Assets remain listed for sale; and



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- Romspen, the Debtor's only secured creditor, who will suffer a significant shortfall under its mezzanine loan, is supportive of the APS.

29. Rosenberg has registered an execution with the Sheriff in Toronto, details of which are attached as **Appendix I**. The Receiver proposes that the Approval and Vesting Order to be granted in connection with the approval of the APS provide that the Purchased Assets be vested in the purchaser free and clear of the execution.

VII. REMAINING MATTERS INCLUDING RECEIVER'S DISCHARGE

30. As the Purchased Assets represent the last of the Debtor's unsold inventory, in connection with completing the sale, the Receiver's also seeks its discharge.

31. The Receiver's statement of receipts and disbursements covering the period of its administration is attached as **Appendix J**.

32. Pursuant to paragraph 18 of the Appointment Order, the Receiver and its counsel are required to pass their accounts.

33. The fees and disbursements of the Receiver from September 16, 2016 to April 5, 2018 amount to \$14,425.50, excluding HST. The fee affidavit of Brahm Rosen of the Receiver is attached as **Appendix K**. The Receiver estimates that its fees and disbursements in completing its administration will be \$4,000.00.

34. The fees and disbursements of the Receiver's counsel from September 23, 2016 to April 9, 2018 amount to \$22,876.05, including HST. The fee affidavit of Harold Rosenberg of Battiston & Associates is attached as **Appendix L**. Battiston & Associates estimates that its fees and disbursements in representing the Receiver in completing its administration will be \$5,000.00.



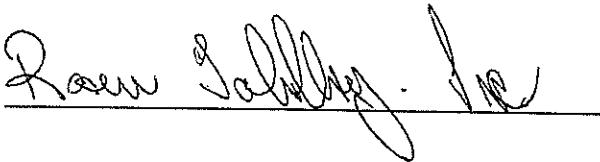
ROSEN GOLDBERG
INSOLVENCY & RESTRUCTURING

35. Upon completing the sale of the Purchased Assets, paying the outstanding fees and disbursements of the Receiver and its counsel, and repaying the Receiver's borrowings, the Receiver proposes to distribute the net sale proceeds to Romspen.

All of which is respectfully submitted,

Dated at Toronto, Ontario, this 10th day of April, 2018.

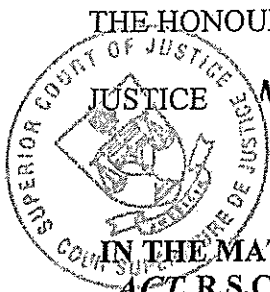
**ROSEN GOLDBERG INC., SOLELY IN ITS CAPACITY AS
COURT-APPOINTED RECEIVER OF THE ASSETS,
UNDERTAKINGS AND PROPERTIES of 206 BLOOR STREET
WEST LIMITED AND NOT IN A PERSONAL CAPACITY**



APPENDIX A

Court File No. CV-16-11529-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**



THE HONOURABLE MR.)
JUSTICE NEWBOULD)

TUESDAY, THE 27th
DAY OF SEPTEMBER, 2016

IN THE MATTER OF SECTION 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

BETWEEN:

ROMSPEN INVESTMENT CORPORATION

Applicant

- and -

206 BLOOR STREET WEST LIMITED

Respondent

ORDER

THIS APPLICATION made by Romspen Investment Corporation (the "Applicant") for an Order pursuant to section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the "BIA") and section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended (the "CJA"), appointing Rosen Goldberg Inc. as receiver (in such capacity, the "Receiver") without security, of the assets, undertakings and properties of the Respondent (the

“Debtor”) acquired for, or used in relation to a business carried on by it, was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the affidavit of Wesley Roitman sworn September 16, 2016, and the exhibits thereto, and on hearing the submissions of counsel for the Applicant, no one appearing for any other person although duly served as appears from the affidavit of service of Laura Micoli sworn, September 21, 2016 and on reading the consent of Rosen Goldberg Inc. to act as the Receiver,

SERVICE

1. THIS COURT ORDERS that the time for service of the Notice of Application and the Application Record is hereby abridged and validated so that this application is properly returnable today and hereby dispenses with further service thereof.

APPOINTMENT

2. THIS COURT ORDERS that pursuant to section 243(1) of the BIA and section 101 of the CJA, Rosen Goldberg Inc. is hereby appointed Receiver, without security, of all of the assets, undertakings and properties of the Debtor acquired for, or used in relation to a business carried on by the Debtor, including all proceeds thereof (the “Property”).

RECEIVER’S POWERS

3. THIS COURT ORDERS that the Receiver is hereby empowered and authorized, but not obligated, to act at once in respect of the Property and, without in any way limiting the generality of the foregoing, the Receiver is hereby expressly empowered and authorized to do any of the following where the Receiver considers it necessary or desirable:

- (a) to engage consultants, appraisers, agents, experts, auditors, accountants, managers, counsel and such other persons from time to time and on whatever basis, including on a temporary basis, to assist with the exercise of the Receiver’s powers and duties, including without limitation those conferred by this Order;

- 3 -

- (b) to market any or all of the Property, including advertising and soliciting offers in respect of the Property or any part or parts thereof and negotiating such terms and conditions of sale as the Receiver in its discretion may deem appropriate;
- (c) to sell, convey, transfer, lease or assign the Property or any part or parts thereof out of the ordinary course of business with the approval of this Court and in each such case notice under subsection 63(4) of the Ontario *Personal Property Security Act*, or section 31 of the Ontario *Mortgages Act*, as the case may be, shall not be required, and in each case the Ontario *Bulk Sales Act* shall not apply;
- (d) to apply for any vesting order or other orders necessary to convey the Property or any part or parts thereof to a purchaser or purchasers thereof, free and clear of any liens or encumbrances affecting such Property;
- (e) to report to, meet with and discuss with such affected Persons (as defined below) as the Receiver deems appropriate on all matters relating to the Property and the receivership, and to share information, subject to such terms as to confidentiality as the Receiver deems advisable;
- (f) to register a copy of this Order and any other Orders in respect of the Property against title to any of the Property;
- (g) to apply for any permits, licences, approvals or permissions as may be required by any governmental authority and any renewals thereof for and on behalf of and, if thought desirable by the Receiver, in the name of the Debtor;
- (h) to enter into agreements with any trustee in bankruptcy appointed in respect of the Debtor, including, without limiting the generality of the foregoing, the ability to enter into occupation agreements for any property owned or leased by the Debtor; and
- (i) to take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations

and in each case where the Receiver takes any such actions or steps, it shall be exclusively authorized and empowered to do so, to the exclusion of all other Persons (as defined below), including the Debtor, and without interference from any other Person. For greater certainty, except to the extent subsequently ordered by this Court, (i) the Receiver is not appointed as manager and shall not take possession or control of the Property or operate the business of the Debtor or employ any of the Debtor's employees, and the Debtor shall remain in possession and control of the Property until and if the Property is sold; and (ii) the Debtor shall remain in possession of and exercise control over any and all proceeds, receipts and disbursements arising out of or from the Property (other than as a result of the sale of all or any portion of the Property by the Receiver).

DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE RECEIVER

4. THIS COURT ORDERS that (i) the Debtor, (ii) all of the current and former directors, officers, employees, agents, accountants, legal counsel and shareholders, and all other persons acting on their instructions or behalf, and (iii) all other individuals, firms, corporations, governmental bodies or agencies, or other entities having notice of this Order (all of the foregoing, collectively, being "Persons" and each being a "Person") shall forthwith advise the Receiver of the existence of any Property in such Person's possession or control, shall grant immediate and continued access to the Property to the Receiver, and shall deliver all such Property to the Receiver upon the Receiver's request.

5. THIS COURT ORDERS that all Persons shall forthwith advise the Receiver of the existence of any books, documents, securities, contracts, orders, corporate and accounting records, and any other papers, records and information of any kind related to the business or affairs of the Debtor, and any computer programs, computer tapes, computer disks, or other data storage media containing any such information (the foregoing, collectively, the "Records") in that Person's possession or control, and shall provide to the Receiver or permit the Receiver to make, retain and take away copies thereof and grant to the Receiver unfettered access to and use of accounting, computer, software and physical facilities relating thereto, provided however that nothing in this paragraph 5 or in paragraph 6 of this Order shall require the delivery of Records, or the granting of access to Records, which may not be disclosed or provided to the Receiver due

to the privilege attaching to solicitor-client communication or due to statutory provisions prohibiting such disclosure.

6. THIS COURT ORDERS that if any Records are stored or otherwise contained on a computer or other electronic system of information storage, whether by independent service provider or otherwise, all Persons in possession or control of such Records shall forthwith give unfettered access to the Receiver for the purpose of allowing the Receiver to recover and fully copy all of the information contained therein whether by way of printing the information onto paper or making copies of computer disks or such other manner of retrieving and copying the information as the Receiver in its discretion deems expedient, and shall not alter, erase or destroy any Records without the prior written consent of the Receiver. Further, for the purposes of this paragraph, all Persons shall provide the Receiver with all such assistance in gaining immediate access to the information in the Records as the Receiver may in its discretion require including providing the Receiver with instructions on the use of any computer or other system and providing the Receiver with any and all access codes, account names and account numbers that may be required to gain access to the information.

NO PROCEEDINGS AGAINST THE RECEIVER

7. THIS COURT ORDERS that no proceeding or enforcement process in any court or tribunal (each, a "Proceeding"), shall be commenced or continued against the Receiver except with the written consent of the Receiver or with leave of this Court.

NO PROCEEDINGS AGAINST THE DEBTOR OR THE PROPERTY

8. THIS COURT ORDERS that no Proceeding against or in respect of the Debtor or the Property shall be commenced or continued except with the written consent of the Receiver or with leave of this Court and any and all Proceedings currently under way against or in respect of the Debtor or the Property are hereby stayed and suspended pending further Order of this Court. Notwithstanding the foregoing, the claims of and against the Debtor and the Property in the action in the Ontario Superior Court of Justice, in Court File No. CV-13-491595, in Toronto (the "Deposit Action") shall not be stayed or suspended, without further Order of this Court.

NO EXERCISE OF RIGHTS OR REMEDIES

9. THIS COURT ORDERS that all rights and remedies against the Debtor, the Receiver, or affecting the Property, are hereby stayed and suspended except with the written consent of the Receiver or leave of this Court, provided however that this stay and suspension does not apply in respect of any "eligible financial contract" as defined in the BIA, or in respect of the Deposit Action, and further provided that nothing in this paragraph shall (i) empower the Receiver or the Debtor to carry on any business which the Debtor are not lawfully entitled to carry on, (ii) exempt the Receiver or the Debtor from compliance with statutory or regulatory provisions relating to health, safety or the environment, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien.

NO INTERFERENCE WITH THE RECEIVER

10. THIS COURT ORDERS that no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the Debtor, without written consent of the Receiver or leave of this Court.

CONTINUATION OF SERVICES

11. THIS COURT ORDERS that all Persons having oral or written agreements with the Debtor or statutory or regulatory mandates for the supply of goods and/or services, including without limitation, all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation services, utility or other services to the Debtor are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Receiver, and that the Receiver shall be entitled to the continued use of the Debtor' current telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Receiver in accordance with normal payment practices of the Debtor or such other practices as may be agreed upon by the supplier or service provider and the Receiver, or as may be ordered by this Court.

RECEIVER TO HOLD FUNDS

12. THIS COURT ORDERS that all funds, monies, cheques, instruments, and other forms of payments received or collected by the Receiver from and after the making of this Order from any source whatsoever, including without limitation the sale of all or any of the Property and the collection of any accounts receivable in whole or in part, whether in existence on the date of this Order or hereafter coming into existence, shall be deposited into one or more new accounts to be opened by the Receiver (the "Post Receivership Accounts") and the monies standing to the credit of such Post Receivership Accounts from time to time, net of any disbursements provided for herein, shall be held by the Receiver to be paid in accordance with the terms of this Order or any further Order of this Court.

EMPLOYEES

13. THIS COURT ORDERS that all employees of the Debtor shall remain the employees of the Debtor until such time as the Receiver, on the Debtor's behalf, may terminate the employment of such employees. The Receiver shall not be liable for any employee-related liabilities, including any successor employer liabilities as provided for in section 14.06(1.2) of the BIA, other than such amounts as the Receiver may specifically agree in writing to pay, or in respect of its obligations under sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*.

PIPEDA

14. THIS COURT ORDERS that, pursuant to clause 7(3)(c) of the Canada *Personal Information Protection and Electronic Documents Act*, the Receiver shall disclose personal information of identifiable individuals to prospective purchasers or bidders for the Property and to their advisors, but only to the extent desirable or required to negotiate and attempt to complete one or more sales of the Property (each, a "Sale"). Each prospective purchaser or bidder to whom such personal information is disclosed shall maintain and protect the privacy of such information and limit the use of such information to its evaluation of the Sale, and if it does not complete a Sale, shall return all such information to the Receiver, or in the alternative destroy all such information. The purchaser of any Property shall be entitled to continue to use the personal information provided to it, and related to the Property purchased, in a manner which is in all

material respects identical to the prior use of such information by the Debtor, and shall return all other personal information to the Receiver, or ensure that all other personal information is destroyed.

LIMITATION ON ENVIRONMENTAL LIABILITIES

15. THIS COURT ORDERS that nothing herein contained shall require the Receiver to occupy or to take control, care, charge, possession or management (separately and/or collectively, "Possession") of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, the *Ontario Environmental Protection Act*, the *Ontario Water Resources Act*, or the *Ontario Occupational Health and Safety Act* and regulations thereunder (the "Environmental Legislation"), provided however that nothing herein shall exempt the Receiver from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Receiver shall not, as a result of this Order or anything done in pursuance of the Receiver's duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

LIMITATION ON THE RECEIVER'S LIABILITY

16. THIS COURT ORDERS that the Receiver shall incur no liability or obligation as a result of its appointment or the carrying out the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part, or in respect of its obligations under sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*. Nothing in this Order shall derogate from the protections afforded the Receiver by section 14.06 of the BIA or by any other applicable legislation.

RECEIVER'S ACCOUNTS

17. THIS COURT ORDERS that the Receiver and counsel to the Receiver shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges unless

otherwise ordered by the Court on the passing of accounts, and that the Receiver and counsel to the Receiver shall be entitled to and are hereby granted a charge (the "Receiver's Charge") on the Property, as security for such fees and disbursements, both before and after the making of this Order in respect of these proceedings, and that the Receiver's Charge shall form a first charge on the Property in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subject to sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

18. THIS COURT ORDERS that the Receiver and its legal counsel shall pass its accounts from time to time, and for this purpose the accounts of the Receiver and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

19. THIS COURT ORDERS that prior to the passing of its accounts, the Receiver shall be at liberty from time to time to apply reasonable amounts, out of the monies in its hands, against its fees and disbursements, including legal fees and disbursements, incurred at the normal rates and charges of the Receiver or its counsel, and such amounts shall constitute advances against its remuneration and disbursements when and as approved by this Court.

FUNDING OF THE RECEIVERSHIP

20. THIS COURT ORDERS that the Receiver be at liberty and it is hereby empowered to borrow by way of a revolving credit or otherwise, such monies from time to time as it may consider necessary or desirable, provided that the outstanding principal amount does not exceed \$2,000,0000 (or such greater amount as this Court may by further Order authorize) at any time, at such rate or rates of interest as it deems advisable for such period or periods of time as it may arrange, for the purpose of funding the exercise of the powers and duties conferred upon the Receiver by this Order, including interim expenditures. The whole of the Property shall be and is hereby charged by way of a fixed and specific charge (the "Receiver's Borrowings Charge") as security for the payment of the monies borrowed, together with interest and charges thereon, in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subordinate in priority to the Receiver's Charge and the charges as set out in sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

21. THIS COURT ORDERS that neither the Receiver's Borrowings Charge nor any other security granted by the Receiver in connection with its borrowings under this Order shall be enforced without leave of this Court.

22. THIS COURT ORDERS that the Receiver is at liberty and authorized to issue certificates substantially in the form annexed as Schedule "A" hereto (the "Receiver's Certificates") for any amount borrowed by it pursuant to this Order.

23. THIS COURT ORDERS that the monies from time to time borrowed by the Receiver pursuant to this Order or any further order of this Court and any and all Receiver's Certificates evidencing the same or any part thereof shall rank on a *pari passu* basis, unless otherwise agreed to by the holders of any prior issued Receiver's Certificates.

SERVICE AND NOTICE

24. THIS COURT ORDERS that the E-Service Protocol of the Commercial List (the "Protocol") is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Protocol (which can be found on the Commercial List website at <http://www.ontariocourts.ca/scj/practice/practice-directions/toronto/e-service-protocol/>) shall be valid and effective service. Subject to Rule 17.05 this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the Rules of Civil Procedure. Subject to Rule 3.01(d) of the Rules of Civil Procedure and paragraph 21 of the Protocol, service of documents in accordance with the Protocol will be effective on transmission. This Court further orders that a Case Website shall be established in accordance with the Protocol with the following URL: http://www.rosengoldberg.com/company-files.php?company_id=28.

25. THIS COURT ORDERS that if the service or distribution of documents in accordance with the Protocol is not practicable, the Receiver is at liberty to serve or distribute this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery or facsimile transmission to the Debtor's creditors or other interested parties at their respective addresses as last shown on the records of the Debtor and that any such service or distribution by courier, personal delivery or facsimile transmission shall be deemed to be received on the next business

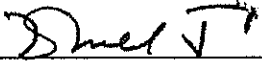
day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

GENERAL

26. THIS COURT ORDERS that the Receiver may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.
27. THIS COURT ORDERS that nothing in this Order shall prevent the Receiver from acting as a trustee in bankruptcy of the Debtor.
28. THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.
29. THIS COURT ORDERS that the Receiver be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and that the Receiver is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.
30. THIS COURT ORDERS that the Applicant shall have its costs of this application, up to and including entry and service of this Order, provided for by the terms of the Applicant's security or, if not so provided by the Applicant's security, then on a substantial indemnity basis to be paid by the Receiver from the Debtor's estates with such priority and at such time as this Court may determine.
31. THIS COURT ORDERS that any interested party may apply to this Court to vary or amend this Order on not less than seven (7) days' notice to the Receiver and to any other party

- 12 -

likely to be affected by the order sought or upon such other notice, if any, as this Court may order.



ENTERED AT / INSCRIT À TORONTO
ON / BOOK NO:
LE / DANS LE REGISTRE NO:

SEP 27 2016

PER / PAR: 

SCHEDULE "A"
RECEIVER CERTIFICATE

CERTIFICATE NO. _____

AMOUNT \$ _____

1. THIS IS TO CERTIFY that Rosen Goldberg Inc., the receiver (the "Receiver") of the assets, undertakings and properties 206 Bloor Street West Limited acquired for, or used in relation to a business carried on by the Debtor, including all proceeds thereof (collectively, the "Property") appointed by Order of the Ontario Superior Court of Justice (Commercial List) (the "Court") dated the 27th day of September, 2016 (the "Order") made in an action having Court file number CV-16-11529-00CL, has received as such Receiver from the holder of this certificate (the "Lender") the principal sum of \$ _____, being part of the total principal sum of \$ _____ which the Receiver is authorized to borrow under and pursuant to the Order.

2. The principal sum evidenced by this certificate is payable on demand by the Lender with interest thereon calculated and compounded [daily][monthly not in advance on the _____ day of each month] after the date hereof at a notional rate per annum equal to the rate of _____ per cent above the prime commercial lending rate of Bank of _____ from time to time.

3. Such principal sum with interest thereon is, by the terms of the Order, together with the principal sums and interest thereon of all other certificates issued by the Receiver pursuant to the Order or to any further order of the Court, a charge upon the whole of the Property, in priority to the security interests of any other person, but subject to the priority of the charges set out in the Order and in the Bankruptcy and Insolvency Act, and the right of the Receiver to indemnify itself out of such Property in respect of its remuneration and expenses.

4. All sums payable in respect of principal and interest under this certificate are payable at the main office of the Lender at Toronto, Ontario.

5. Until all liability in respect of this certificate has been terminated, no certificates creating charges ranking or purporting to rank in priority to this certificate shall be issued by the Receiver to any person other than the holder of this certificate without the prior written consent of the holder of this certificate.

6. The charge securing this certificate shall operate so as to permit the Receiver to deal with the Property as authorized by the Order and as authorized by any further or other order of the Court.

7. The Receiver does not undertake, and it is not under any personal liability, to pay any sum in respect of which it may issue certificates under the terms of the Order.

DATED the ____ day of _____, 20__.

ROSEN GOLDBERG INC., solely in its capacity as Receiver of the Property, and not in its personal capacity

Per:

_____ Name:

Title:

ROMSPEN INVESTMENT CORPORATION
Applicant

-and- **206 BLOOR STREET WEST LIMITED**
Respondent

Court File No. CV-16-11529-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

PROCEEDING COMMENCED AT
TORONTO

ORDER

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Lawyers for the Applicant

TORONTO 52719-1 1197716v4

APPENDIX B

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

IN THE MATTER OF SECTION 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

BETWEEN:

ROMSPEN INVESTMENT CORPORATION

Applicant

- and -

206 BLOOR STREET WEST LIMITED

Respondent

FIRST REPORT OF ROSEN GOLDBERG INC.

INTRODUCTION

1. By Order of the Honourable Mr. Justice Newbould dated September 27, 2016 (the "Appointment Order"), Rosen Goldberg Inc. was appointed receiver (in such capacity, the "Receiver") of the assets, undertakings and properties of the Respondent (the "Debtor") pursuant to section 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. A copy of the Appointment Order is attached as Appendix "A".



ROSEN GOLDBERG
INSOLVENCY & RESTRUCTURING

PURPOSE OF REPORT

2. This Report is being filed for the purpose of seeking directions regarding the competing priority claims of Romspen Investment Corporation ("Romspen") and Linda Paris Rosenberg ("Rosenberg") to the sum of \$350,000 (the "Funds"). The Funds are being held in the trust account of the law firm of Dickinson Wright LLP, from the proceeds of sale of a condominium unit. Romspen is a mortgagee. Rosenberg is a judgment creditor.

3. The factual narrative which should assist the Court in determining the issue of priority is set out below. The Receiver's legal submissions, which support of the view that Romspen has priority over the Funds, will be summarized in the Receiver's factum.

DISCLAIMER AND TERMS OF REFERENCE

4. In preparing this Report, the Receiver has relied upon certain unaudited financial information of the Debtor, including the Debtor's books and records, information obtained from the Debtor's management and other sources (collectively, the "Information"). Except as described in this Report, the Receiver has not audited, reviewed or otherwise attempted to verify the accuracy or completeness of the Information in a manner that would comply with Generally Accepted Assurance Standards pursuant to the CPA Canada Handbook.

THE PROJECT

5. The Debtor was the developer of a 19 storey, 27 unit residential condominium project known as Museum House (the "Project"), which is located at 206 Bloor Street West, in Toronto (the "Property").



ROSEN GOLDBERG
INSOLVENCY & RESTRUCTURING
PROJECT FUNDING

6. In order to finance the development of the Project, the Debtor obtained construction financing from Royal Bank of Canada ("RBC"). RBC's funding was secured by, among other things, a \$50 million mortgage against the Property (the "RBC Charge"). A copy of the RBC Charge, registered on September 10, 2008, is attached as Appendix "B".
7. Lombard General Insurance Company of Canada ("Lombard") provided the Debtor with a condominium deposit insurance facility (the "Lombard Bond"), which was secured by a second-ranking mortgage in the principal amount of \$30 million (the "Lombard Charge").¹ A copy of the Lombard Charge, registered on September 12, 2008, is attached as Appendix "C".
8. In May of 2011 the Project encountered approximately \$3 million in cost overruns and RBC was not prepared to make further advances unless the Debtor obtained additional funding. An excerpt of Report No. 30 as at June 30, 2011, prepared by Altus Group Consulting & Project Management, who acted as RBC's costs consultant in respect to the Project, which evidences the \$3 million increase in the Project budget, is attached as Appendix "D".
9. As a consequence, the Debtor obtained additional, mezzanine funding from Romspen, a non-bank commercial lender, pursuant to a term sheet dated June 1, 2011, a copy of which is attached as Appendix "E."
10. As security for its mezzanine loan, Romspen received from the Debtor:
- (a) a promissory note in the face amount of \$5 million dated June 1, 2011, as extended by agreements dated June 1, 2013, June 1, 2014, and June 1, 2015 (collectively, the "Promissory Note");

¹ Lombard is now Northbridge General Insurance Corporation.



ROSEN GOLDBERG
INSOLVENCY & RESTRUCTURING

- (b) a general security agreement dated June 2011 ("GSA"); and
- (c) a third-ranking mortgage over the Property (the "Romspen Charge").

Copies of the Promissory Note and GSA are attached as Appendices "F" and "G", respectively.

11. The Romspen Charge, although granted in 2011, was not registered until later for the reasons described below. A copy of the Romspen Charge (unregistered) is attached as Appendix "H".

12. Three directors and officers of the Debtor, namely, Sheldon Esbin, Arthur Resnick and Wesley Roitman, are also directors and officers of Romspen. Indirect shareholders of Romspen hold approximately 22% of the shares of the Debtor as a passive investment. The remaining shares of the Debtor are owned directly or indirectly by other business people who have no direct or indirect relationship with Romspen.

13. At RBC's request, the Debtor agreed not to register the Romspen Charge without RBC's prior written consent. A copy of the Undertaking given by the Debtor to RBC is attached as Appendix "I". RBC also required that Romspen enter into an Interlender Agreement, pursuant to which Romspen agreed, among other things, to subordinate the Romspen Charge in favour of RBC. A copy of the Interlender Agreement is attached as Appendix "J".

14. Lombard also refused to consent to the registration of the Romspen Charge on terms that were acceptable to the Debtor. Lombard insisted that approximately \$400,000 from the sale of each condominium unit be held in trust in order to cover its exposure under the Lombard Bond. A copy of correspondence from Lombard to the Debtor imposing that term is attached as Appendix "K". As Lombard's requirement regarding the application of sales proceeds was unacceptable to the Debtor, the registration of the Romspen Charge was deferred.



ROSEN GOLDBERG

INSOLVENCY & RESTRUCTURING

15. The Project was registered as Toronto Standard Condominium Corporation No. 2254 on August 14, 2012.

16. On January 17, 2013, the Debtor's unsold inventory was refinanced with a mortgage from United Overseas Bank Limited ("UOB") and in the principal amount of \$10 million to UOB (the "UOB Charge") and the RBC Charge was discharged. A copy of the UOB Charge is attached as Appendix "L". The UOB Charge prohibited the Debtor from further encumbering the Property.

17. The UOB Charge was refinanced on February 28, 2014 with a mortgage from Home Trust Company in the principal amount of \$4 million (the "Home Trust Charge"), a copy of which is attached as Appendix "M".

18. The Romspen Charge was not registered until May of 2014, after the Debtor had satisfied its obligations to Lombard and UOB, and the Lombard Charge and the UOB Charge were discharged. A copy of the Romspen Charge registered on May 15, 2014 is attached as Appendix "N". A copy of the parcel register in respect of condominium unit 901 at the Project ("Unit 901"), which evidences the dates when the Lombard Charge and the UOB Charge were discharged, is attached as Appendix "O".

ADVANCES AND USE OF PROCEEDS UNDER ROMSPEN CHARGE

19. The Receiver has reviewed the books and records of the Debtor to consider whether funds were in fact advanced to the Debtor under the Romspen Charge and to consider the use of such funds by the Debtor.² It is clear that on the following dates, the following sums were advanced:

² More specifically, the Receiver reviewed the Debtor's bank statements, cheque register and general ledger.



ROSEN GOLDBERG

INSOLVENCY & RESTRUCTURING

Dates of Advance	Amount Advanced
June 2 to 6, 2011	\$1,489,719.74
July 5 to 18, 2011	\$1,225,280.26
August 9 to 14, 2012	\$550,000.00
October 25 to November 1, 2013	\$1,000,000.00
Total Principal Advanced	\$4,265,000.00

20. The Receiver further determined that all of the funds advanced under the Romspen Charge were applied on account of the Project and no distributions were made to the Debtor's shareholders. In reviewing the flow of funds, the Receiver noted that during the course of the Project, the Debtor disbursed approximately \$26 million to Yorkville Construction Corporation ("Yorkville"). Yorkville administered many of the Debtor's payables in connection with the Project. The Receiver then reviewed Yorkville's disbursements and confirmed that the funds Yorkville received from the Debtor were applied on account of the Project.

MATURITY AND NON-PAYMENT OF ROMSPEN CHARGE

21. As Romspen's loan to the Debtor matured on June 1, 2016 and was not repaid, on July 19, 2016, Romspen made formal demand for repayment and delivered a Notice of Intention to Enforce Security pursuant to section 244 of the BIA. Copies of the demand and Notice of Intention to Enforce Security are attached as Appendix "P".

22. As at July 1, 2006, the sum of \$12,265,138.34 was due and owing to Romspen by the Debtor.



ROSENBERG

INSOLVENCY & RESTRUCTURING

VALIDITY AND ENFORCEABILITY OF ROMSPEN CHARGE

23. The Receiver has obtained an opinion from its independent counsel, Battiston and Associates, with respect to the validity and enforceability of the Romspen Charge. A copy of the opinion is attached as Appendix "Q".

24. Subject to the customary qualifications and limitations contained therein, it is Battiston and Associates' opinion that the Romspen Charge is valid and enforceable security as against Unit 901.

JUDGMENT IN FAVOUR OF ROSENBERG

25. Pursuant to a Judgment of the Honourable Mr. Justice Myers dated June 29, 2016, the Debtor was ordered to pay Rosenberg the sum of \$523,750, plus costs in the amount of \$225,000 inclusive of disbursements and HST. A copy of the Judgment is attached as Appendix "R". Copies of the reasons of Justice Myers released on January 4, 2016 and His Honour's reasons with respect to costs released on February 10, 2016 are attached as Appendix "S".

26. The Debtor's liability to Rosenberg under the Judgment arose from a dispute regarding a deposit paid under an agreement of purchase and sale in respect Unit 901 between the Debtor, as vendor, and Rosenberg, as purchaser (the "APS"). A copy of the APS is attached as Appendix "T".

27. Subsection 4(e) of Schedule A to the APS provides that Rosenberg's rights under the APS are subordinated and postponed to any mortgages on the Property arranged by the Debtor and any advances made thereunder.

28. The Judgment has been partially but not wholly satisfied. On April 13, 2016, Rosenberg received \$494,750 in partial satisfaction of the Judgment. Prior to being paid, the



ROSEN GOLDBERG

INSOLVENCY & RESTRUCTURING

funds had been held by Miller Thomson LLP as cash collateral security for excess condominium deposit insurance.

29. A further sum of \$20,000 was received by Rosenberg on account of the Judgment from Tarion Warranty Corporation in late June of 2016. Accordingly, the principal sum of \$9,000 under the Judgment and the costs award of \$225,000 remain outstanding.

30. On May 12, 2016, Rosenberg caused a Caution to be registered against title to Unit 901.

THE FUNDS AND THE ISSUE OF PRIORITY

31. Pursuant to an endorsement of the Honourable Mr. Justice Myers dated June 29, 2016, the land registrar in Toronto was directed to delete and expunge the Caution and Dickinson Wright LLP was ordered to hold the Funds from the proceeds of sale of Unit 901 (which Funds would otherwise have been payable to Romspen in partial reduction of its mezzanine loan), in trust, pending a determination of entitlement to the Funds. A copy of the endorsement is attached as Appendix "U".

32. Dickinson Wright LLP continues to hold the Funds.

33. The only remaining condominium unit in the Project which has not been sold is the penthouse. There are 3 unsold parking units and storage locker appurtenant to the penthouse.³ The penthouse unit is partially but not completely finished and is unsaleable in its current state. Romspen is the only mortgagee of the penthouse and the appurtenant parking units and storage locker.

³ PINs 76254-0029 (LT), 76254-0030 (LT), 76254-0031 (LT) and 76254-0089 (LT).



ROSEN GOLDBERG

INSOLVENCY & RESTRUCTURING

34. In order to fund the completion of the penthouse unit and stay Rosenberg from executing on the Judgment, Romspen obtained the Appointment Order. The Appointment Order provides that Rosen Goldberg Inc. is a non-possessory receiver; the Debtor remains in possession and control and can complete the finishing of the penthouse unit so that it can be sold.

35. Each of Romspen and Rosenberg appear eager to have the issue of priority over the Funds determined. If the Funds are adjudged payable to Romspen, they will be advanced to the Debtor to fund the costs of finishing the penthouse unit so that it can be sold. If the Funds are payable to Rosenberg, the judgment will be satisfied in full.

36. The Receiver's legal submissions, which support of the view that Romspen has priority over the Funds, will be summarized in the Receiver's factum.

37. The Receiver anticipates that any determination the Court may make with respect to the Funds will apply equally to the proceeds of sale of the penthouse unit and the appurtenant parking units and storage locker, once sold.

All of which is respectfully submitted,

Dated at Toronto, Ontario, this 31st day of October, 2016:

**ROSEN GOLDBERG INC., SOLELY IN ITS CAPACITY AS
COURT-APPOINTED RECEIVER OF THE ASSETS,
UNDERTAKINGS AND PROPERTIES of 206 BLOOR STREET
WEST LIMITED AND NOT IN A PERSONAL CAPACITY**

Rosen Goldberg Inc.

ROSEN GOLDBERG
INSOLVENCY & RESTRUCTURING

Court File No. CV-16-11529-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

IN THE MATTER OF SECTION 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

BETWEEN:

ROMSPEN INVESTMENT CORPORATION

Applicant

- and -

206 BLOOR STREET WEST LIMITED

Respondent

**SUPPLEMENTARY REPORT TO FIRST REPORT
OF ROSEN GOLDBERG INC.**

INTRODUCTION

1. This Report is Supplementary to the Receiver's First Report dated October 31, 2016 (the "First Report") and is being filed in response to the Affidavit of Rosenberg sworn November 8, 2016. Capitalized terms used but not defined herein shall have the meaning ascribed to them in the First Report. Given the exigencies of the timetable imposed with respect to this matter, only several issues raised in the Rosenberg Affidavit are addressed herein. A number of the issues raised in the Rosenberg Affidavit are addressed in the First Report and do not bear repeating herein.

RELATIONSHIP BETWEEN ROMSPEN AND 206

2. It is suggested in paragraph 22 of the Rosenberg Affidavit that Romspen was the developer of the Project. As stated in paragraph 12 of the First Report, indirect shareholders of Romspen hold approximately 22% of the shares of the Debtor as a passive investment. A copy of the shareholders' register in 206's Minute Book is attached as **Appendix "A"**. The indirect Romspen shareholders listed therein are: 2059930 Ontario Inc. (a holding company of Wesley Roitman or his family), Renovay Investments Limited (a holding company of Sheldon Esbin or his family) and Romspen Holdings Inc.¹ Collectively, the shares of the indirect Romspen shareholders comprise 2,250 out of 9,999 issued and outstanding shares in 206. The other shareholders listed in the shareholders' register are not related, directly or indirectly, to Romspen or its principals.

APPLICATION OF SALES PROCEEDS BETWEEN JUNE 2014 AND JULY 2016

3. In paragraph 25 of her Affidavit, Rosenberg notes that she has not seen evidence regarding the application of proceeds from the sale of units between June 2014 and July 2016. The Receiver has reviewed statements from the files of Miller Thomson LLP respecting the application of sale proceeds in relation to the four (4) units that were sold during the period of June 6, 2014 through June 30, 2015. Copies of the statements are attached as **Appendix "B"**.

4. The statements reveal that, net of transaction related costs and HST (for which 206 was liable on the completion of the sale of the units), the proceeds from the sale of the first two (2) units (June 6, 2014 and July 31, 2014) were paid to Home Trust in reduction of 206's indebtedness to Home Trust under Home Trust's first mortgage. On the closing of the sale of Suite 1401 (the third closing of the four (4) units, on June 30, 2016), the balance outstanding

¹ Romspen Holdings Inc. is 74% owned by companies controlled by Wesley Roitman and Sheldon Esbin, both principals of Romspen, and 26% controlled by Arthur Resnick ("Resnick"). Resnick is not a direct or indirect shareholder of Romspen.

ROSEN GOLDBERG

INSOLVENCY & RESTRUCTURING

-3-

under the Home Trust mortgage of \$1,058,409.50 was paid, and 206 received \$233,295.99. The funds which 206 received were subsequently used towards finishing the penthouse.

5. Upon the completion of the sale of the last of the four (4) units, namely, Suite 901, on June 30, 2015, the proceeds were applied as follows:

Description	Amount
Funds paid to Dickinson Wright LLP in trust accordance with Justice Myers' endorsement of June 29, 2016	\$350,000.00
Paid to Dickinson Wright LLP in connection with fees in representing 206 in the Rosenberg action regarding her deposit	\$203,535.93
Paid to Dickinson Wright LLP in connection with the motion before Justice Myers on June 29, 2016 to delete the caution registered by Rosenberg	\$15,000.00
Hold back for estimated real estate commission on sale of Suite 901	\$70,700.00
Hold back for Miller Thomson LLP's estimated legal fees and disbursements on sale of Suite 901	\$15,000.00
Balance of closing proceeds paid to 206	\$1,106,606.88

6. Although Miller Thomson LLP's statement respecting the sale of Suite 901 refers to the net sale proceeds being paid to Romspen, in fact the funds were paid to 206, and the statement is incorrect in this respect. A copy of Miller Thomson LLP's trust cheque in the amount \$1,106,606.88 (the "Proceeds") payable to 206 is attached as Appendix "C".

ROSEN GOLDBERG

INSOLVENCY & RESTRUCTURING

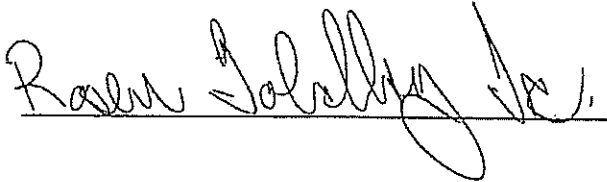
-4-

7. Due to the Project's cost overruns and the unanticipated delays 206 encountered in selling the units, the penthouse became the ultimate source for Romspen's recovery under the Romspen Charge. Therefore, Romspen agreed to discharge the Romspen Charge over Suite 901 without payment as the Proceeds were needed to pay 206's expenses toward finishing the penthouse and ultimately rendering saleable.

All of which is respectfully submitted,

Dated at Toronto, Ontario, this 11th day of November, 2016.

**ROSEN GOLDBERG INC., SOLELY IN ITS CAPACITY AS
COURT-APPOINTED RECEIVER OF THE ASSETS,
UNDERTAKINGS AND PROPERTIES of 206 BLOOR STREET
WEST LIMITED AND NOT IN A PERSONAL CAPACITY**



APPENDIX C

CITATION: Romspen Investment Corporation v. 206 Bloor Street West Limited, 2016 ONSC 7314
 COURT FILE NO.: CV-16-11529-00CL
 DATE: 20170201

**SUPERIOR COURT OF JUSTICE – ONTARIO
 COMMERCIAL LIST**

IN THE MATTER OF SECTION 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

RE: Romspen Investment Corporation, Applicant

AND:

206 Bloor Street West Limited, Respondent

BEFORE: Mr. Justice H.J. Wilton-Siegel

COUNSEL: *Harold Rosenberg*, for the Applicant, Rosen Goldberg Inc.

David Preger, for Romspen Investment Corporation

R. Donald Rollo, for Linda Rosenberg

HEARD: November 23, 2016

ENDORSEMENT

[1] On this motion, the court-appointed receiver of 206 Bloor Street West Limited (“206”), Rosen Goldberg Inc. (the “Receiver”), seeks a declaration of the Court regarding the competing priority claims of Romspen Investment Corporation (“Romspen”) and Linda Rosenberg (“Rosenberg”) to certain funds currently held in trust pursuant to the order of Myers J. dated June 29, 2016 (the “Myers Order”). By cross-motion, Rosenberg seeks, among other things, a declaration that she has a priority interest in such funds and an order requiring payment by 206 of such funds to her.

Factual Background

[2] 206 was the developer of a 19 storey, 27 unit residential condominium project known as “Museum House” (the “Project”).

[3] The Project was initially financed by a construction loan from the Royal Bank of Canada (“RBC”), which had a first mortgage. Lombard General Insurance Company of Canada (“Lombard”) had a second mortgage to secure condominium deposits.

The Romspen Loan and the Romspen Mortgage

[4] In 2011, as a result of cost overruns that increased the budget for the Project by \$3 million, 206 obtained further financing from Romspen. In this regard, 206 issued Romspen a promissory note dated June 1, 2011 in the principal amount of \$5 million (the "Promissory Note") together with a general security agreement and a third mortgage (the "Romspen Mortgage"), which secured amounts outstanding under the Promissory Note. The Romspen financing is herein referred to as the "Romspen Loan".

[5] The Romspen Loan was extended on several occasions. The Romspen Mortgage was not registered, however, until May 15, 2014, after the RBC construction loan and the Lombard condominium deposit insurance arrangements had been fully satisfied. The Romspen Mortgage matured on June 1, 2016, in accordance with the terms of the most recent extension agreement dated June 1, 2015, and was not repaid.

[6] In the Receiver's First Report dated October 31, 2016 (the "First Report"), the Receiver states that based on its review, a total of \$4,265,000 was advanced by Romspen between June 2, 2011 and November 1, 2013 pursuant to the Romspen Loan. The Receiver also states that it has determined that all of the funds advanced by Romspen under the Romspen Loan were applied on account of the Project and no distributions were made to the shareholders of 206.

[7] As of July 1, 2016, the amount owing under the Romspen Loan was \$12,265,138.34.

Rosenberg's Judgment against 206

[8] Rosenberg entered into an agreement with 206 to purchase unit 901 in the Project. In that connection, she paid a deposit of \$514,750. A dispute arose regarding work to be done by 206 with respect to unit 901. Ultimately, the dispute was addressed in litigation. Rosenberg commenced an action against 206 in December 2012. Rosenberg was successful after a trial conducted by Myers J. He held that 206 had terminated the agreement with Rosenberg and therefore was required to return her deposit to her. Rosenberg obtained a judgment against 206 in the amount of \$523,750 plus costs of \$225,000 (the "Judgment").

[9] On April 13, 2016, Rosenberg received \$494,750 pursuant to the Lombard deposit insurance arrangements in partial satisfaction of the Judgment. In addition, in June 2016, Rosenberg received a further \$20,000 from Tarion Warranty Corporation ("Tarion"). As a result of these payments, only the principal sum of \$9,000 and the full amount of the costs award of \$225,000 remain outstanding. The amount of \$9,000 represents a payment made by Rosenberg to 206 in respect of certain work to be performed by 206 that was not insured by the Lombard or Tarion arrangements.

[10] Immediately after the release of the decision of Myers J. holding that 206 was required to return Rosenberg's deposit to her, 206 listed unit 901 for sale and subsequently entered into an agreement of purchase and sale with a third party. Rosenberg registered a caution against unit 901, which came to the attention of 206 at the time of the closing of the sale of unit 901. Pursuant to the Myers Order, made on an emergency motion brought by 206, the sale was authorized free of the caution subject to payment of \$350,000 into the trust account of the solicitors of 206 pending "resolution of the entitlement of [Rosenberg] to priority payment".

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These words refer to the fact that, as expressed in the endorsement of Myers J., “[Rosenberg] has claims for an equitable lien, a fraudulent conveyance, and an oppression remedy, among other things, to establish priority or a right *against others*” (italics added).

[11] The sale of unit 901 closed and the solicitors for 206 currently hold the amount of \$350,000 in trust pursuant to the Myers Order.

The Receivership

[12] On July 19, 2016, Romspen made a formal demand for repayment of the amount outstanding under the Romspen Loan. 206 did not repay the amount of the Romspen Loan. The Receiver was appointed by order of Newbould J. dated September 27, 2016 (the “Receivership Order”) upon the application of Romspen (the “Receivership Application”). Under the Receivership Order, 206 remains in possession and control of the Project and is proceeding to finish the remaining unsold unit in the Project, being the penthouse, for sale.

Preliminary Issue

[13] The motion record of the Receiver includes the First Report and the Receiver’s Supplementary Report dated November 11, 2016 (the “Second Report”) (collectively, the “Receiver’s Report”).

[14] Rosenberg argues that, while the Receiver’s Report is admissible, some of the evidence therein is hearsay, argumentative or without foundation. In particular, Rosenberg submits that the Court should not give any weight to paragraphs 4 and 34 of the First Report or to paragraph 7 of the Second Report. I have the following comments regarding these paragraphs.

[15] Paragraph 4 of the First Report indicates that the Receiver received information from 206 management. Rosenberg says that whoever provided that information would have been a “principal” in both Romspen and 206. The relationship between 206 and Romspen is addressed below. I think the submission is that, given this relationship, the information obtained by the Receiver from management of 206 should not be relied upon. However, this relationship is not, by itself, sufficient to render any particular information unreliable. Moreover, as noted below, Rosenberg actually relies on much of this information. More generally, a general allegation of this nature is not, by itself, sufficient to support exclusion of any particular statement in the Receiver’s Report.

[16] Paragraph 34 of the First Report states that Romspen applied for the Receivership Order to prevent Rosenberg from executing on the Judgment. Rosenberg says this statement is not attributed and should not be given any weight. It is, however, self-evident, although it may not be a complete statement of Romspen’s intentions in applying for the Receivership Order. Moreover, Rosenberg also relies upon this statement in her own argument. I am therefore not prepared to exclude this statement.

[17] Paragraph 7 of the Second Report states that the penthouse unit in the Project became the ultimate source of Romspen’s recovery under the Romspen Mortgage as a result of the Project’s cost overruns and delays in selling the units. It states that Romspen agreed to discharge the

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Romspen Mortgage in respect of unit 901 without payment as 206 required the proceeds to pay expenses toward finishing the penthouse and rendering it saleable.

[18] Rosenberg says there is no foundation for these statements, that they are hearsay, and that they are incorrect insofar as the proceeds of the sale of unit 901 were used to pay litigation and closing costs. The complete use of the sales proceeds of unit 901 is set out in paragraph 5 of the Second Report based on the records of the legal counsel for 206 on the sale. It indicates that \$203,535.93 was paid to legal counsel for 206 in the litigation with Rosenberg, \$15,000 was paid to such counsel for legal fees in connection with the motion before Myers J. respecting the sales proceeds of unit 901, the \$350,000 was paid into trust as described above, approximately 85,700 was held back for costs associated with the sale, and the balance of the proceeds, representing approximately \$1,457,000, was paid to 206.

[19] More generally, the evidence is entirely consistent with Romspen having decided to refrain from enforcing the Romspen Mortgage in order that 206 could use the proceeds of sale of the remaining units to fund the completion of the penthouse. As the penthouse is the only remaining asset of 206, it is in Romspen's interest to maximize the sale price of the penthouse in order to recover as much as possible of the amount advanced under the Romspen Loan. In fact, rather than disputing these facts, Rosenberg accepts them and relies on them in support of her own position. I have therefore accepted these statements in paragraph 7 as accurate.

Overview and Observations Regarding Rosenberg's Position

[20] It is instructive to set out Rosenberg's argument at the outset. Rather than paraphrase that argument with the risk of some lack of precision, I have set out the following paragraphs from her Factum, which describe her position:

33. Romspen's interest runs afoul of fraudulent conveyance law when it retained the receiver to convey 206's equity to the receiver. After the decision of Justice Myers on June 29, 2016, Romspen could not have asserted its interest over the funds because 206 was the party that received the funds from the sale of 901 and decided not to pay down the debt owed.

34. Why Romspen did not demand repayment of the money advanced to the project is unknown, but by conveying the equitable interest of 206 in the project, they are attempting to place funds beyond the reach of the judgment creditor. In law, the transaction is a sham transaction.

...

37. It is respectfully submitted that Romspen, by placing the mortgage in default and giving notice under the *Bankruptcy Act*, is doing indirectly what cannot be done directly by either 206 or Romspen. Romspen cannot secure the funds for itself because Rosenberg is a judgment creditor and the money is in law for the creditor an exigible asset. Romspen cannot secure the money for itself directly because it had no right to the money. 206 received the money from the sale of unit 901, and once those funds were placed in trust by Court Order they were beyond the reach of the mortgagee, Romspen.

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38. Once Romspen realized it had no right to the funds and its claim, along with the claim of 206, would be defeated, Romspen and 206 then triggered the receivership artificially by design claiming the mortgage was in default, issuing the Notice under section 244 of the *Bankruptcy and Insolvency Act*, then using enhanced rights accorded to a receiver under the Statute to claim priority.

[21] There are seven problems with this analysis that are relevant to the Court's determination herein.

[22] First, while Romspen discharged unit 901 from the Romspen Mortgage when unit 901 was sold, it did not discharge the sales proceeds from the charge under the Romspen Mortgage. Similarly, the fact that Romspen allowed 206 to use the sales proceeds received on the sale of units of the Project, including the sales proceeds of unit 901, to fund the costs of finishing the penthouse and readying it for sale does not mean that Romspen released such sales proceeds, or the asset to which the proceeds were applied, being the penthouse. All monies in the hands of 206 remain subject to the charge under the Romspen Mortgage.

[23] Second, as a related matter, the fact that, out of the sales proceeds, \$350,000 was placed in trust pursuant to the Myers Order does not mean that the funds are "beyond the reach" of Romspen as a mortgagee. The funds remain subject to any charge or other security interest granted over the assets of 206, including the Romspen Mortgage, for the reasons addressed above. Romspen could have realized on the assets of 206, including its interest in the funds in trust, at any time, notwithstanding the Myers Order, to the extent that the Romspen Mortgage is otherwise valid and ranks prior to unsecured claims. Moreover, Romspen did not need to be a party to the litigation between 206 and Rosenberg to have an interest in the trust monies or, more accurately, to have the right to assert that its security under the Romspen Mortgage extended to such monies.

[24] Third, the fact that Romspen did not enforce the Romspen Mortgage at any earlier time did not prevent it from making demand and, if it so chose, enforcing the Romspen Mortgage at any time after the Judgment. It is perfectly reasonable for a secured creditor having confidence in its debtor to allow the debtor to complete construction of a building project rather than to enforce its security and take over responsibility for the remaining construction or to sell the uncompleted project to another builder.

[25] Fourth, the appointment of the Receiver did not constitute a conveyance of 206's equity to the Receiver. Under receivership law, the debtor remains the owner of its property. The effect of a receivership order is to give a receiver the authority to deal with the debtor's property to the extent provided for in the order. In addition, in this case, the Receivership Order limited the Receiver's authority to the power to sell the assets of 206. Accordingly, Rosenberg's ability to execute the Judgment against the funds in trust depends upon the relative priorities of the Judgment and the Romspen Mortgage as they existed immediately prior to the appointment of the Receiver. These priorities are not affected by the Receivership Order.

[26] Fifth, it appears that Rosenberg considers the appointment of the Receiver to be a sham transaction because she considers that 206 and Romspen are effectively the same corporation. I accept for this purpose the definition of sham transaction proposed by Rosenberg in her factum,

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based on the decision of the Supreme Court in *Minister of National Revenue v. Cameron*, [1974] S.C.R. 1062, 28 D.L.R. (3d) 477, at p. 1068:

The appellant's submission really rests upon the contention that the agreement between Campbell Limited and Independent was nothing but a sham. Both counsel cited the definition of that word by Diplock L.J. in *Snook v. London & West Riding Investments, Ltd.* [[1967] 1 All E.R. 518, p. 528.]:

As regards the contention of the plaintiff that the transactions between himself, Auto-Finance, Ltd. and the defendants were a "sham", it is, I think, necessary to consider what, if any, legal concept is involved in the use of this popular and pejorative word. I apprehend that, if it has any meaning in law, it means acts done or documents executed by the parties to the "sham" which are intended by them to give to third parties or to the court the appearance of creating between the parties legal rights and obligations different from the actual legal rights and obligations (if any) which the parties intend to create.

[27] The present circumstances do not qualify as a sham transaction by this definition. In this case, the appointment of the Receiver was authorized by the court and had real consequences for 206's ability to deal with its assets.

[28] As a legal matter, the evidence indicates that Romspen and 206 are separate corporations with different shareholders, although there are common directors and shareholders. In the Receiver's Report, the Receiver states that 22 percent of the issued and outstanding shares of 206 are owned by a holding corporation of Sheldon Esbin ("Esbin") or his family, a holding corporation of Wesley Roitman ("Roitman") or his family, and a corporation, Romspen Holdings Inc., owned as to 74 percent by companies controlled by Roitman and Esbin and as to 26 percent by Arthur Resnick ("Resnick"). It is understood that Esbin and Roitman control Romspen. Esbin, Roitman and Resnick are also three of the four directors of 206 as well as officers of 206. Neither this shareholding arrangement nor the common directors of 206 and Romspen constitute Romspen an "affiliate" of 206 for the purposes of the *Business Corporations Act*, R.S.O. 1990, c. B.16 (the "OBCA") and, in particular, for the purposes of Rosenberg's claim of oppression under the OBCA. As a related matter, the issue of whether 206 and Romspen are at arm's length for the purposes of the *Income Tax Act*, R.S.C. 1985, c. 1 (5th Supp.) is irrelevant for present purposes.

[29] On the other hand, Rosenberg is correct, in a sense, to say that 206 and Romspen have a common economic interest. It is, however, more accurate to say that Romspen effectively owns all of the remaining equity in 206, if it is assumed that the interest rate under the Promissory Note is enforceable and that the realizable value of the penthouse is approximately \$10.5 million as Rosenberg suggests and, therefore, less than the amount owing to Romspen. In these circumstances, to the extent that the directors of 206, including Esbin, Roitman and Resnick, cause 206 to take actions that maximize the value of the remaining asset of 206, they also further the interests of the creditors, including in particular Romspen. I will return to the significance of the Romspen Mortgage later in this Endorsement.

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[30] Sixth, given the foregoing, it is incorrect to say that, by placing the Romspen Mortgage in default and giving notice under s. 244 of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, Romspen is doing indirectly what cannot be done directly by either 206 or Rosenberg. In particular, the appointment of the Receiver did not change the priorities of Rosenberg and Romspen in the funds in trust.

[31] Lastly, Rosenberg's claim in respect of the trust funds turns on the validity of, and the amount outstanding under, the Romspen Mortgage, not on the appointment of the Receiver. However, Rosenberg does not challenge the fact that the Romspen Mortgage was validly given for good consideration in the form of advances totaling \$4,265,000. In addition, while she suggests that the 24 percent interest rate payable under the Promissory Note is a "badge of fraud" or of a sham transaction as discussed below, she does not suggest that it is unenforceable such that the amount secured by the Romspen Mortgage is less than the amount asserted by Romspen.

Analysis and Conclusions

[32] I will address in turn three submissions addressed at hearing of this motion after first addressing three general matters.

[33] First, the appointment of the Receiver has removed the need for a hearing before Myers J. regarding the entitlement of Rosenberg to the trust monies insofar as this motion for directions of the Receiver is directed toward a determination of the same issue that would have been before Myers J. I do not agree, however, with Rosenberg's argument that the hearing contemplated by Myers J. would have been limited to a consideration of the relative entitlements of 206 and Rosenberg to the trust monies. The italicized words in the endorsement of Myers J. set out above clearly contemplated the assertion of claims to the trust monies by parties other than the parties to the litigation, including Romspen. Moreover, there would have been no dispute to be determined by Myers J. if the only two parties under consideration were Rosenberg, as a judgment creditor, and 206, as the debtor.

[34] Second, Rosenberg's position is essentially that the Receiver must pay her if it has the funds rather than apply the trust monies toward the completion of the penthouse unit. That is not, however, in accordance with the law. The effect of the Receivership Order is to stay any enforcement proceedings by Rosenberg in respect of the Judgment. The Receiver's obligation is to maximize the value of the assets of 206 for distribution to the creditors in accordance with the priority of their claims against 206. The Receiver believes that the assets of 206 will be maximized by completion and sale of the penthouse unit. There is no evidence in the record to the contrary and no motion before the Court challenging the Receiver's actions. Accordingly, given the appointment of the Receiver, the issue of priority to the trust monies originally contemplated by the endorsement of Myers J. becomes an issue of the relative priorities of the Judgment and the Romspen Mortgage to any future distribution by the Receiver.

[35] Third, I have some difficulty in identifying the intended legal significance of Rosenberg's arguments given the context described above. I have indicated my understanding of the legal significance to be attached to each argument below. I also note that, while Rosenberg's notice of cross-motion also asserts a claim for an equitable lien against the Project, she did not make this claim in her factum or in the oral submissions on the hearing of the motion.

Fraudulent Conveyances Act

[36] Rosenberg's principal submission is that the actions of Romspen in causing the appointment of the Receiver constituted a fraudulent conveyance for the purposes of the *Fraudulent Conveyances Act*, R.S.O. 1990, c. F.29 (the "FCA"). Although Rosenberg does not expressly state this, I think the argument is directed to setting aside the Receivership Order.

[37] The relevant provision in the FCA is section 2, which reads as follows:

Every conveyance of real property or personal property and every bond, suit, judgment and execution heretofore or hereafter made with intent to defeat, hinder, delay or defraud creditors or others of their just and lawful actions, suits, debts, accounts, damages, penalties or forfeitures are void as against such persons and their assigns.

[38] Rosenberg's submission based on the *FCA* cannot succeed for four principal reasons.

[39] First, as mentioned, there was no conveyance of property upon the appointment of the Receiver. It is not correct to say, as Rosenberg argues, that "the legal authority over the undertaking of 206 [was] transferred ... from 206 to the receiver", for the reasons addressed above. Moreover, as mentioned, in this case the Receivership Order essentially limited the powers of the Receiver to selling the remaining unsold units of the Project, which sales were effected on behalf of 206.

[40] Second, there was no "intent to defeat creditors" involved in the appointment of the Receiver. The fact that, in the receivership proceeding, Romspen intended to assert the priority of the Romspen Mortgage over Rosenberg's interest as a judgment creditor is not evidence of an intent to defeat creditors. The concept of intention to defeat creditors involves the attempt to establish, or improve, a priority position to the detriment of another creditor. In this case, the appointment of the Receiver did not alter the priorities as between Romspen and Rosenberg. Moreover, it is incorrect to say that the Receiver is asserting a superior right to the funds in trust. While the Receiver initially took a position on this motion, the Receiver is merely seeking a determination of the relative priorities of the Judgment and the Romspen Mortgage within the receivership proceeding. As mentioned, in the absence of a receivership, such a determination would have been made in the context of litigation directly between Rosenberg and Romspen.

[41] Third, the "badges of fraud" upon which Rosenberg relies to establish an intention of fraud are not evidence of any intent to defeat 206's creditors in the circumstances of this proceeding. In particular, as discussed above, it is not correct to say that, because no demand had been made by Romspen prior to July 19, 2016, there was an element of secrecy that evidences a fraudulent transaction. Nor is the relationship between 206 and Romspen, as described above, or the common economic interest of these companies given 206's current financial circumstances, evidence of any intent to defraud creditors for the reasons discussed above.

[42] Fourth, for the reasons set out above, it is incorrect to say that the effect of the receivership was to place the trust funds beyond the reach of judgment creditors. Whether or not the trust funds are available to judgment creditors is entirely dependent on the validity and

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priority of the Romspen Mortgage as it existed prior to the receivership. As mentioned, Rosenberg does not challenge the amount secured by the Romspen Mortgage.

[43] I would observe, as well, that, for the reasons set out above, even if the Court were to set aside the Receivership Order as a fraudulent conveyance, this would not result in the relief in favour of Rosenberg that she seeks on this motion. The question of the relative priorities of the Judgment and the Romspen Mortgage to the monies held in trust pursuant to the Myers Order would remain.

Assignments and Preferences Act

[44] An alternative argument, that was addressed in oral submissions although it was not set out in Rosenberg's factum, is that the actions of Romspen in causing the appointment of the Receiver constituted a fraudulent conveyance for the purposes of the *Assignments and Preferences Act*, R.S.O. 1990, c. A.33 (the "APPA"). This submission is also directed to setting aside the Receivership Order.

[45] The applicable provision of the APPA is section 4, the relevant portions of which read as follows:

4. (1) Subject to section 5, every gift, conveyance, assignment or transfer, delivery over or payment of goods, chattels or effects, or of bills, bonds, notes or securities, or of shares, dividends, premiums or bonus in any bank, company or corporation, or of any other property, real or personal, made by a person when insolvent or unable to pay the person's debts in full or when the person knows that he, she or it is on the eve of insolvency, with intent to defeat, hinder, delay or prejudice creditors, or any one or more of them, is void as against the creditor or creditors injured, delayed or prejudiced.

(2) Subject to section 5, every such gift, conveyance, assignment or transfer, delivery over or payment made by a person being at the time in insolvent circumstances, or unable to pay his, her or its debts in full, or knowing himself, herself or itself to be on the eve of insolvency, to or for a creditor with the intent to give such creditor an unjust preference over other creditors or over any one or more of them is void as against the creditor or creditors injured, delayed, prejudiced or postponed.

(3) Subject to section 5, if such a transaction with or for a creditor has the effect of giving that creditor a preference over the other creditors of the debtor or over any one or more of them, it shall, in and with respect to any action or proceeding that, within sixty days thereafter, is brought, had or taken to impeach or set aside such transaction, be presumed, in the absence of evidence to the contrary, to have been made with the intent mentioned in subsection (2), and to be an unjust preference within the meaning of this Act whether it be made voluntarily or under pressure.

[46] This submission cannot succeed for the four reasons that were discussed above in rejecting the application of the FCA to the appointment of the Receiver. In addition, even if

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successful, this request to set aside the Receivership Order would not result in the relief requested by Rosenberg for the reasons addressed above in respect of the claim based on the FCA.

Business Corporations Act

[47] Rosenberg's third submission is that the actions of 206 and Romspen constituted oppressive conduct for the purposes of section 248 of the OBCA. The relevant provision of the OBCA is subsection 248(2), which provides as follows:

248. (2) Where, upon an application under subsection (1), the court is satisfied that in respect of a corporation or any of its affiliates,

- (a) any act or omission of the corporation or any of its affiliates effects or threatens to effect a result;
- (b) the business or affairs of the corporation or any of its affiliates are, have been or are threatened to be carried on or conducted in a manner; or
- (c) the powers of the directors of the corporation or any of its affiliates are, have been or are threatened to be exercised in a manner,

that is oppressive or unfairly prejudicial to or that unfairly disregards the interests of any security holder, creditor, director or officer of the corporation, the court may make an order to rectify the matters complained of.

[48] Rosenberg submits that, because of the "significant amount of overlap in both ownership and in terms of the directors", it was beneficial for Romspen to place a "commercially unreasonable mortgage" on the unsold units of 206 and then trigger an artificial default in order to appoint the Receiver. She suggests that these steps have the effect of attempting to prevent 206 from paying an unsecured creditor. She says that the actions of Romspen caused unfair prejudice to, and unfairly disregarded, her interests as an unsecured creditor of 206. I understand this submission to be that the actions of 206 and Romspen disregarded Rosenberg's reasonable expectations as a judgment creditor.

[49] Before addressing this claim, I wish to make the following four observations.

[50] First, it is important to clarify the relief that could result if Rosenberg were successful on this submission. In such an event, I do not think that Rosenberg would be entitled to an order setting aside the Receivership Order for the reason that the oppression action is limited to actions of 206 and Romspen that are alleged to have disregarded unfairly the interests of Rosenberg only and the alleged oppressive conduct could be addressed without setting aside the Order. Rather, the appropriate relief would be an order subordinating the Romspen Mortgage to Rosenberg's claim in respect of the Judgment on the basis that the conduct of 206 and Romspen was oppressive for the purposes of section 248.

[51] Second, Rosenberg's claim for relief in the form of such subordination is asserted in the context of the oppression remedy in section 248 of the OBCA. For clarity, I do not address

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herein whether Rosenberg would be entitled to a remedy if a claim of equitable subordination were known at law outside the oppression remedy in section 248 of the OBCA for the reason that Rosenberg does not assert a claim of this nature in the present proceeding.

[52] Third, as a related matter, while the Romspen Loan, including the issuance of the Romspen Mortgage, would appear to have been a transaction to which section 132 of the OBCA applied, Rosenberg does not assert a claim under that provision. Nor is there any evidence before the Court that any directors of 206 who were also directors and shareholders of Romspen in 2011 failed to comply with the requirements of section 132 at the time of the transaction. In any event, the matter of compliance with section 132, and any consequences of non-compliance, are not before the Court in this proceeding. In addition, even if there had been non-compliance, it is not clear that Rosenberg would be entitled to any remedy under that provision as a creditor of 206.

[53] Fourth, there is no dispute regarding Rosenberg's status as a "complainant" in respect of 206 for the purposes of her oppression claim. However, section 248 requires a demonstration that actions of the corporation or its affiliates, or that the conduct of the business or affairs of the corporation or its affiliates, unfairly disregarded the interests of the complainant. Romspen is not an affiliate of 206 for this purpose. Accordingly, actions of Romspen, for example its actions in applying for the Receivership Order, cannot constitute oppressive conduct in respect of the business and affairs of 206 for the purposes of section 248. This is not a mere technicality. The OBCA draws a very clear limit on the class of corporations whose conduct can fall within section 248. In respect of any claim of oppression pertaining to 206, the only parties whose actions would be relevant would therefore be 206 and its affiliates. It is therefore necessary to analyse whether the actions of 206 constitute oppressive conduct on their own without regard to the actions of Romspen, rather than on the basis that 206 and Romspen are effectively the same entity.

[54] Similarly, it is necessary to consider the actions of Romspen on their own without regard to the actions of 206.

[55] As described above, Rosenberg's claim is asserted in a very general manner. I have considered below a number of possible claims based on the facts upon which Rosenberg relies.

[56] First, and most important, I understand Rosenberg's principal submission to be that Romspen's actions in applying for the Receivership Order constituted oppressive conduct on the part of each of 206 and Romspen under section 248. This claim is based primarily on the alleged artificial nature of the default relied upon by Romspen to support its application for the Receivership Order. There are a number of difficulties with this submission.

[57] With respect to 206, that corporation essentially took no action in respect of the Receivership Application and is taking no action in respect of the contest between Rosenberg and Romspen. There is no basis on which 206's response to the application of Romspen can constitute oppressive behaviour.

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[58] Insofar as Rosenberg's oppression claim pertains to Romspen's conduct in declaring a default under the Romspen Loan and applying for the Receivership Order, there are three principal problems with this submission.

[59] First, the oppression remedy is grounded in the concept of an action of a corporation that results in a breach of a party's reasonable expectations. In the present circumstances, it was reasonable for Rosenberg to expect that she would have a claim against the assets of 206 as a judgment creditor. It was not reasonable, however, for her to expect that the claim would rank ahead of all amounts secured under a valid mortgage, including the Romspen Mortgage. In this regard, it is also relevant that, although Rosenberg says that Romspen had notice of her action when it registered the Romspen Mortgage on May 15, 2014, she does not assert any priority of the Judgment over the Romspen Mortgage on the basis of such notice. In any event, the law is well established that an equitable mortgage in land takes priority over an execution creditor: see *Jellett v. Wilkie* (1896), 26 S.C.R. 282, 16 C.L.T. 260 and *Kerr v. Ruttle and Cruickshank*, [1952] O.R. 835, [1953] 1 D.L.R. 266 (H.C.J.). It was also unreasonable for her to expect that Romspen would not assert its priority, when she attempted to enforce the Judgment against the sales proceeds of unit 901, notwithstanding that Romspen was otherwise prepared to allow 206 to use those proceeds to complete the Project. Accordingly, any alleged breach of such expectations would not trigger a remedy under section 248.

[60] Second, Rosenberg has not established that Romspen's actions in applying for the Receivership Order were commercially unreasonable or that the default under the Romspen Mortgage was "artificial" in the sense of non-existent. Romspen's actions were directed to obtaining recovery under the Romspen Mortgage. There is no suggestion of any illegality involved on the part of Romspen. In furthering its own interest, Romspen may be said to be disregarding Rosenberg's interests in the colloquial sense of preferring Romspen's interests to Rosenberg's. However, in enforcing its security, Romspen is not "unfairly" disregarding Rosenberg's interests as a judgment creditor for the purposes of section 248 of the OBCA.

[61] Third, in the absence of any relationship between Romspen and Rosenberg, I do not think that Rosenberg would qualify as a "complainant" under section 245 of the OBCA in respect of an oppression claim against Romspen under section 248. It is difficult to envisage a situation in which one creditor could be a complainant in respect of the actions of another creditor. While there is an element of circularity, it is possible that such status could be established by demonstration that actions of a secured creditor were specifically directed toward establishing a priority over an unsecured claim that would not otherwise exist. However, in any event, such evidence is lacking in this case.

[62] Accordingly, I conclude that Rosenberg's oppression claim based on the argument that Romspen's demand under the Romspen Loan and application for the Receivership Order constituted, or resulted in, oppressive conduct by Romspen or 206 must fail.

[63] However, when viewing the circumstances in the larger context without regard to the receivership, I have sympathy for Rosenberg's position. She has had to pursue litigation against 206 to obtain a return of her deposit at considerable financial cost which cannot be recovered given the amount secured under the Romspen Mortgage, which effectively renders 206 insolvent.

Further, there was nothing that Rosenberg could have done to protect herself against this situation.

[64] Moreover, the reason why Rosenberg cannot expect any such recovery is easily identified. It is not the appointment of the Receiver in 2016 but the terms of the Romspen Mortgage as it was agreed to by 206 in 2011, specifically the 24 percent interest rate. Given that interest rate, the amount secured under the Romspen Mortgage has increased substantially from the amount secured originally. The equity remaining in the Project – only approximately \$10.5 million on Rosenberg's estimation – is insufficient to satisfy the Judgment if the Romspen Mortgage is enforceable. This engages the relevance for any oppression claim of Rosenberg's assertion that the Romspen Mortgage was "commercially unreasonable" on a standalone basis.

[65] A complication in respect of Rosenberg's submission is that, while she has asserted that the Romspen Mortgage was "commercially unreasonable", she has not, however, asserted any specific legal claim based on this assertion, apart from the claim discussed above that the terms of the Romspen Mortgage were an element of the oppressive conduct of 206 and/or Romspen in respect of the appointment of the Receiver. In particular, as mentioned above, Rosenberg does not suggest that the interest rate provided for in the Romspen Mortgage renders the Mortgage unenforceable on some basis. I have, however, given consideration to whether the actions of 206 in agreeing to the terms of the Romspen Mortgage, or of Romspen in requiring a 24 percent interest rate as a condition of granting the Romspen Mortgage, constituted conduct that is oppressive for the purpose of section 248. For this purpose, it is necessary to consider the actions of 206 and Romspen in 2011 at the time of the issuance of the Romspen Mortgage.

[66] With respect to 206, I conclude that the record is not sufficient to establish oppressive conduct on the part of 206 in agreeing to the Romspen Mortgage in 2011, even assuming there is no issue of a limitation period. In order to find that such actions of 206 constituted actions that unfairly disregarded Rosenberg's interests under subsections 248(2)(a) or (b) of the OBCA, it would be necessary to establish that comparable financing was available to 206 in 2011 at a rate of interest materially less than 24 percent such that there would have remained sufficient equity in the Project to repay such financing and the Judgment upon completion of the Project. There is, however, no basis in the record for such a conclusion.

[67] While Rosenberg included in her motion materials an opinion letter from MCAP Financial Corporation to the effect that the 24 percent interest rate was "above a commercially reasonable range", the opinion letter is deficient in two respects. First, it speaks to May 15, 2014, being the date of registration of the Romspen Mortgage, rather than the date of issuance of the Mortgage. In addition, it is not in any way informed by the actual circumstances of the Project in 2011, relying instead upon an assumed property value in 2014 for which there is no evidentiary support and reasoning entirely on the basis of the resulting loan-to-value ratio in respect of the Project.

[68] With respect to the claim against Romspen there are two difficulties.

[69] First, for the same reasons, I also do not think that the record is sufficient to establish that Romspen's participation in the transaction in 2011 giving rise to the Romspen Mortgage constituted oppressive conduct. The reason for the interest rate is not in evidence. Ultimately,

- Page 14 -

that is an issue between 206 and Romspen. There is, however, no evidence that the non-Romspen-related investors in 206 raised any objection to the terms of the Romspen Loan. In addition, there is no evidence that, at the time the Romspen Mortgage was issued in 2011, Romspen or 206 agreed to the 24 percent interest rate with the intention of defeating claims by unsecured creditors. Moreover, Rosenberg's claim was not asserted until well after the Romspen Mortgage was executed by 206.

[70] Second, I do not think that Rosenberg would qualify as a "complainant" under section 245 of the OBCA in respect of an oppression claim against Romspen under section 248, for the reasons discussed above.

[71] Accordingly, I find that Rosenberg has not established a basis for a finding that any actions of 206 or of Romspen constituted oppressive conduct for the purposes of section 248 of the OBCA based on Rosenberg's assertion that the Romspen Mortgage was "commercially unreasonable".

Conclusion

[72] Based on the foregoing, I find that the Romspen Mortgage has priority over the claim of Rosenberg constituted by the Judgment in respect of the monies held in trust pursuant to the Myers Order. Accordingly, Rosenberg's motion for an order that such monies be paid to her is dismissed.



Wilton-Siegel J.

Date: February 1, 2017

APPENDIX D

Court File No. CV-16-11529-00CL

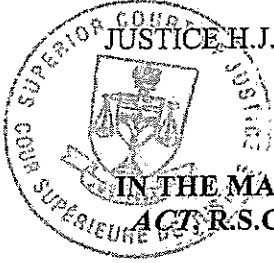
**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE MR.)

WEDNESDAY, THE 1st

JUSTICE H.J. WILTON-SIEGEL)

DAY OF FEBRUARY, 2017



**IN THE MATTER OF SECTION 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**

BETWEEN:

ROMSPEN INVESTMENT CORPORATION

Applicant

- and -

206 BLOOR STREET WEST LIMITED

Respondent

ORDER

THIS MOTION made by Rosenberg Goldberg Inc. in its capacity as the Court-appointed receiver (the “Receiver”) of the assets, undertakings and properties of the Respondent (the “Debtor”) acquired for, or used in relation to a business carried on by the Debtor, pursuant to section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the

"BIA"), and section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended, for directions regarding the competing priority claims of Romspen Investment Corporation ("Romspen") and Linda Paris Rosenberg ("Rosenberg") to a fund of \$350,000.00 held in the trust account of Dickinson Wright LLP (the "Fund"), was heard on November 23, 2016, at 330 University Avenue, in Toronto, Ontario.

ON READING the Receiver's Notice of Motion, the First Report of the Receiver dated October 31, 2016, and the Appendices thereto (the "First Report"), Rosenberg's Notice of Motion, the Affidavit of Rosenberg sworn November 8, 2016, and the Exhibits thereto, the Receiver's Supplementary Report to the First Report dated November 11, 2016, and the Appendices thereto, the Receiver's Factum and Rosenberg's Factum, and on hearing the submissions of counsel for the Romspen, counsel for the Receiver and counsel for Rosenberg,

1. THIS COURT ORDERS AND DECLARES that Romspen has priority to the Fund over Rosenberg.

2. THIS COURT ORDERS that Dickinson Wright LLP shall pay the Fund to Romspen, or as it may otherwise in writing direct.

~~3. THIS COURT ORDERS AND DECLARES that Romspen shall have priority over Rosenberg to the proceeds of sale of the penthouse unit owned by the Debtor and the appurtenant parking units and storage locker, when sold.~~ ALWS

4. THIS COURT ORDERS that Rosenberg's Motion, for among other things, a declaration that she has priority to the Fund over Romspen is hereby dismissed in its entirety.

W. Han - W.T.

ENTERED AT / INSCRIT À TORONTO
ON / BOOK NO:
LE / DANS LE REGISTRE NO:

MAR 23 2017

PER / PAR: W

ROMSPEN INVESTMENT CORPORATION
Applicant

-and- **206 BLOOR STREET WEST LIMITED**
Respondent

Court File No. CV-16-11529-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST
PROCEEDING COMMENCED AT
TORONTO

ORDER

DICKINSON WRIGHT LLP
Barristers & Solicitors
199 Bay Street
Suite 2200, P.O. Box 447
Toronto, Ontario. M5L 1G4

DAVID P. PREGGER (36870L)
Email: dpregger@dickinsonwright.com
Tel: (416) 646-4606

LISA S. CORNE (27974M)
Email: lcorne@dickinsonwright.com
Tel: (416) 646-4608

Lawyers for the Applicant

APPENDIX E

Court of Appeal File No: _____
Court File No. CV-16-11529-00CL

COURT OF APPEAL FOR ONTARIO

BETWEEN:

ROMSPEN INVESTMENT CORPORATION

Plaintiff (Respondent)

-and-

206 BLOOR STREET WEST LIMITED

Defendant

NOTICE OF APPEAL

THE APPELLANT, Linda Rosenberg, an interested party, Appeals to the Court of Appeal from the Order of the Honourable Mr. Justice H. J. Wilton-Siegel dated February 1, 2017 made at Toronto, Ontario.

THE APPELLANT asks that the Order of the Honourable Mr., Justice H. J. Wilton-Siegel be varied as follows: a declaration that Linda Rosenberg has a first priority interest in the money held in trust by counsel for 206 Bloor Street West Limited and an Order to pay to Linda Rosenberg the funds she is entitled to.

THE GROUNDS FOR THE APPEAL:

1. The learned Judge erred in law by failing to properly consider the law of fraudulent conveyance under the *Fraudulent Conveyances Act*, R.S.O. 1990, c. F. 29, and existing jurisprudence, and apply it to the facts of this case.
2. The learned Judge erred in law by failing to properly consider the law of fraudulent conveyance under the *Assignment and Preferences Act*, R.S.O. 1990, c. A.33, and existing jurisprudence, and apply it to the facts of this case.
3. The learned Judge erred in law by failing to properly consider the law of oppressive conduct under the *Business Corporations Act*, R.S.O. 1990, c. B.16, and existing jurisprudence, and apply it to the facts of this case.

4. The learned Judge erred by failing to properly consider the interrelatedness of Romspen Investment Corporation and 206 Bloor Street West Limited in determining whether or not the transaction was a sham.

5. The learned Judge erred by failing to properly consider the fact that 206 Bloor Street West Limited demonstrated a preference for creditors other than Linda Rosenberg.

THE BASIS OF THE APPELLATE COURT'S JURISDICTION IS:

1. The decision appealed from is final;
2. An appeal lies to this Court pursuant to s. 6(1)(b) of the *Courts of Justice Act*;
3. The amount ordered in payment is in excess of \$50,000.00, exclusive of costs; and
4. Leave to appeal is not required.

Dated: February 17, 2017

AMR LLP
Barristers & Solicitors
300 - 145 Wellington Street West
Toronto, ON M5J 2L6

R. Donald Rollo
LSUC# 27075G
Tel: 416-369-9393 Ext. 244
Fax: 416-369-0665

Lawyers for the Interested Party (Appellant),
Linda Rosenberg

TO: **BATTISTON & ASSOCIATES**
Barristers and Solicitors
202 - 1013 Wilson Avenue
Toronto, ON M3K 1G1

Harold Rosenberg
LSUC# 24219T
Tel: 416-630-7151
Fax: 416-630-7472

Lawyers for the Court-Appointed Receiver, Rosen Goldberg Inc.

AND TO: DICKINSON WRIGHT LLP
Barristers and Solicitors
2200 – 199 Bay Street
P.O. Box 447
Commerce Court Postal Station
Toronto, ON M5L 1G4

David P. Preger
LSUC# 36870L
Tel: 416-646-4606
Fax: 416-865-1398

Lawyers for the Respondent, Romspen Investment Corporation

AND TO: THE HONOURABLE COURT

OMSPEN INVESTMENT CORPORATION
Plaintiff

-and- 206 BLOOR STREET WEST LIMITED
Defendant

Court of Appeal File N.:
Court File No. CV-16-11529-00CL

COURT OF APPEAL FOR ONTARIO
PROCEEDING COMMENCED AT
TORONTO

NOTICE OF APPEAL

AMR LLP
300-145 Wellington Street West
Toronto, Ontario M5J 1H8

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LSUC# 27075G
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Fax: 416-369-0665

Lawyers for the Interested Party (Appellant), Linda
Rosenberg

COURT OF APPEAL FILE NO: _____
COURT FILE NO. CV-16-11529-00CL

Courts of Justice Act

NOTICE OF ABANDONMENT OF APPEAL OR CROSS-APPEAL
COURT OF APPEAL FOR ONTARIO

BETWEEN:

ROMSPEN INVESTMENT CORPORATION

Plaintiff (Respondent)

-and-

206 BLOOR STREET WEST LIMITED

Defendant

NOTICE OF ABANDONMENT

The appellant, Linda Rosenberg, an interested party, abandons this appeal.

March 9, 2017

AMR LLP
Barristers & Solicitors
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M5J 1H8

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David P. Preger
LSUC# 36870L
Tel: 416-646-4606
Fax: 416-865-1398

Lawyers for the Respondent, Romspen Investment Corporation

AND TO: **THE HONOURABLE COURT**

NOTE: If there is a cross-appeal, the appellant by cross-appeal should consider rule 61.15, under which the cross-appeal may be deemed to be abandoned.

RCP-E 61K (July 1, 2007)

APPENDIX F

MUSEUMHOUSE

The Finest House on Bloor Street

UNIQUE FEATURES

This one of a kind two-storey mansion in the sky boasts 5,700 square feet of indoor living space and 1,300 square feet of terraces. The finest materials and detailing throughout have been hand-picked by the architect and team of designers to create ultra luxury. The views and the building are unmatched in the City.

- | | | |
|---|---|--|
| <p>1. An elegant tower clad in limestone, metal and glass – a classic limeless urban landmark.</p> <p>2. Only twenty-seven exclusive residences on half floor and full floor layouts. The spectacular penthouse occupies the entire top two floors, with four stone terraces.</p> <p>3. An elegant entrance from Bloor Street and a hotel-style porte-cochère provides vehicular drop-off for residents, visitors and limousines.</p> | <p>4. 24/7 concierge and valet provide unrivalled luxury and service for just twenty-seven privileged residences.</p> <p>5. Individual access elevator to each residence, and an internal private elevator for the penthouse.</p> <p>6. Stunning, unmatched panoramic views both to the north and south, overlooking historically protected properties – "forever views."</p> | <p>7. Main rooms with 10' ceiling heights on half floors and up to 12' ceiling heights for the penthouse.</p> <p>8. Unprecedented emergency standby generators for the entire building provides full seamless power in the event of blackouts.</p> <p>9. A few select residences remain with areas between 1,600 sq.ft. and 5,700 sq.ft.</p> |
|---|---|--|

FEATURES & FINISHES

SECURITY

This luxury building has only 27 Suites on either full or half floors – there are no transients or short term rentals. The 24-hour Concierge is familiar with all the residents and provides excellent personal service.

As parking is by valet, access to a residence is through the concierge to an elevator which is camera monitored by the 24-hour concierge. The Suite is wired with a security system with control panels at the exits.

EXTERIOR FACADE

Cladding in high quality curtain-wall with thick lightly tinted, double glazed, sealed units for quiet enjoyment and acoustic isolation.

FLOORS

While stone is used in specific locations, floors are generally wood throughout both floors composed of 2 layers of plywood screwed in place at right angles to prevent "squeaking". There is a top final layer of 3/4" thick x 6" engineered oak plank, designed to avoid shrinkage and cupping, in a warm gray low lustre urethane finished on site.

WALLS

Walls are generally finished in full height bleached, rift cut, white oak wood panelling with matching baseboards or in white primed drywall. All window sills in white composite stone. Wood doors are generally 1 3/4" thick x 10' high solid core.

CEILINGS

Ceiling heights vary from 10 feet up to 12 feet in living areas.

Flat finished drywall ceilings on furring channels on main floor to allow flexibility for running wires for lighting and communication, etc. Double acoustic ceilings on the upper level.

ENVIRONMENTAL CONTROL & COMFORT

Six heat pumps provide zoned heating and/or cooling to each zone as required on demand with both humidification in winter and dehumidification in summer. Perimeter in-floor electrical heating is provided for all window walls for additional comfort. High efficiency air filtration systems ensure clean air throughout.

WATER PURIFICATION

All water for the penthouse is on its own water filtration and purification system.

UNINTERRUPTED POWER SUPPLY

The entire building has a back-up gas fired generator which is designed to power up every light bulb and outlet in the building, ensuring no disruptions during electrical blackouts for any length of duration. A feature unique to this residential building.

LIGHTING

High quality square pot-lights with LED bulbs. Ceiling coves generally wired for LED cove lighting if desired. Chandeliers by purchaser.

A master switch allows all lights throughout the Suite to be shut off at once when leaving the Suite.

FOUR STONE TERRACES

The "forever views" from the penthouse to the glittering Toronto Skyline and Lake Ontario to the south are uniquely across the street from historically designated museums (Royal Ontario Museum and Royal Conservatory of Music), Philosopher's Walk and the University of Toronto, as well as historic Queen's Park and the Provincial Government to the south. The railings are in clear structural glass with no verticals to allow for unobstructed views.

The view north is over the historically designated low-rise residential communities of the Annex and Forest Hill which are not zoned for high-rise construction.

The 4 full width terraces serve the living room to the south and the kitchen/dining room to the north on the main level, as well as the master bedroom and ensuite spa to the south and two additional bedrooms to the north on the upper level.

The terraces are levelled limestone slabs and are provided with gas hookups for BBQ, water, and power in appropriate locations.

GRAND CIRCULAR STAIRWAY AND PRIVATE ELEVATOR

The main living level and the upper bedroom level of the 2-storey mansion are linked by a grand circular staircase, with full size Portobello marble slabs for treads and risers, with a polished stainless handrail.

The private elevator cab is fully panelled in oak, with the floor in a patterned honed Escarpment Light stone.

FOYER

The elevator and security door opens directly into the foyer revealing the incredible southerly view of the glittering City Skyline to Lake Ontario. The floor is in patterned Portobello marble slabs and the ceiling is in a matching pattern of wood panelling.

LIVING ROOM

Expansive glass window wall room with incredible views, with multiple seating and lounging areas, as well as room for a grand piano. Two pairs of French doors lead to the terrace. Linear gas fireplace in a book-matched Portobello marble wall.

DINING ROOM

Luxurious room with square proportions in curtain wall and full height wood panelling with coved ceiling. Bar unit with shelving, LED lighting, and 2 wine coolers. A pair of flush height pivot doors can close off the view to the kitchen as preferred.

KITCHEN

This exquisite custom built kitchen is finished in bleached white rift cut oak to match the wall panelling. A concealed flush door panel provides access to the service corridor and service elevator for catering and deliveries, etc. All appliances by Miele including a side-by-side refrigerator/freezer, double ovens, gourmet gas cooktop and disappearing kitchen exhaust hood. Feature splashback wall in matched Statuario marble with feature lighting. Eat at island finished in matching Statuario marble with white composite stone on the main countertop.

MEDIA ROOM/STUDY

The spacious media room has been designed to include an office/study and is wired to take various communications and media.

MASTER BEDROOM SUITE AND SPA

The master feature wall has wood panelling and polished granite with a linear see-through gas fireplace, operated by remote control. The glass facade faces the spectacular south view with a pair of French doors leading to the private terrace from the master bedroom. The "headboard wall" is finished in leather panelling with built in leather wrapped shelving.

The Spa comprises a generous washroom with his and hers stone vanities, a freestanding oval tub with fireplace, a glass enclosed combination WC/bidet room with Kohler toilet, a wood faced sauna with bench seating and a large shower room for two with multiple body sprays and a stunning view facing south. The mirrors at both vanities are roughed-in to take behind the mirror concealed TV monitors. The floor, walls and curved feature wall behind the tub are all in a rich honed Escarpment Light stone with a pair of French doors leading to the master bedroom's private terrace.

The entire master bedroom and spa has underfloor heating for additional comfort.

His and hers generous dressing-rooms with a pass through linen closet and make-up vanity, with built in counter, drawer, mirrors, and vanity lighting. A wall safe is built into his walk-in dressing-room.

BEDROOMS

There are 3 additional bedrooms at the north end of the Suite. Bedrooms 2 and 3 each have double French doors to the expansive north terrace.

WASHROOMS

All bathrooms have heated floors and each is uniquely designed and finished in different marbles and granites, with chrome fixtures and accessories.

LOW VOLTAGE CONTROLS & COMMUNICATIONS

Rough-in power has been provided for electronic drapes and window shades throughout. Speaker wire has been roughed in for ceiling speakers throughout, as well as for Data, Television and Telephone lines

CENTRAL VACUUM SYSTEM

A Central Vacuum system has been installed with wall outlets throughout both levels.

To arrange your private viewing, please contact:
info@MuseumHouseonBloor.com

206 Bloor Street West, Toronto
MuseumHouseonBloor.com
A Yorkville Corporation Development

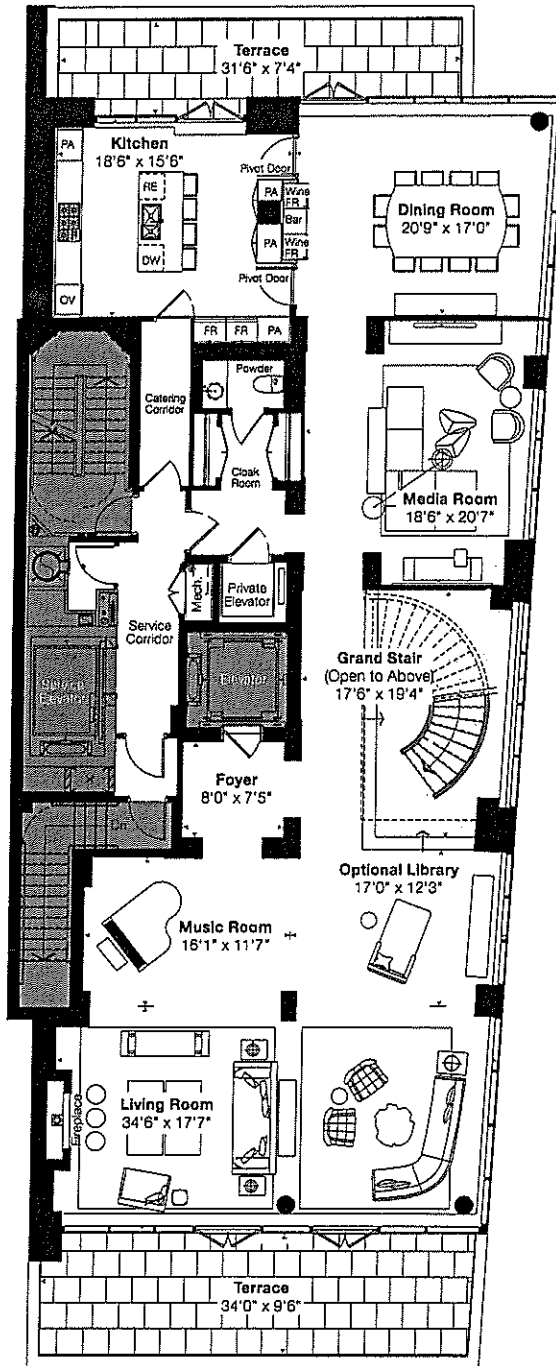
Prices and specifications subject to change without notice. Rendering is artist's impression. E. & O. E. Builders protected.

MUSEUMHOUSE

The Finest House on Bloor Street

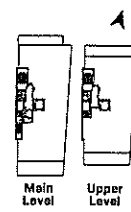
THE PENTHOUSE

Floors 19 + 20
Floor Area: 5,700 square feet
Terrace: 1,310 square feet
Total Area: 7,010 square feet



Penthouse Main Level

South Facing Views of The City and The Lake



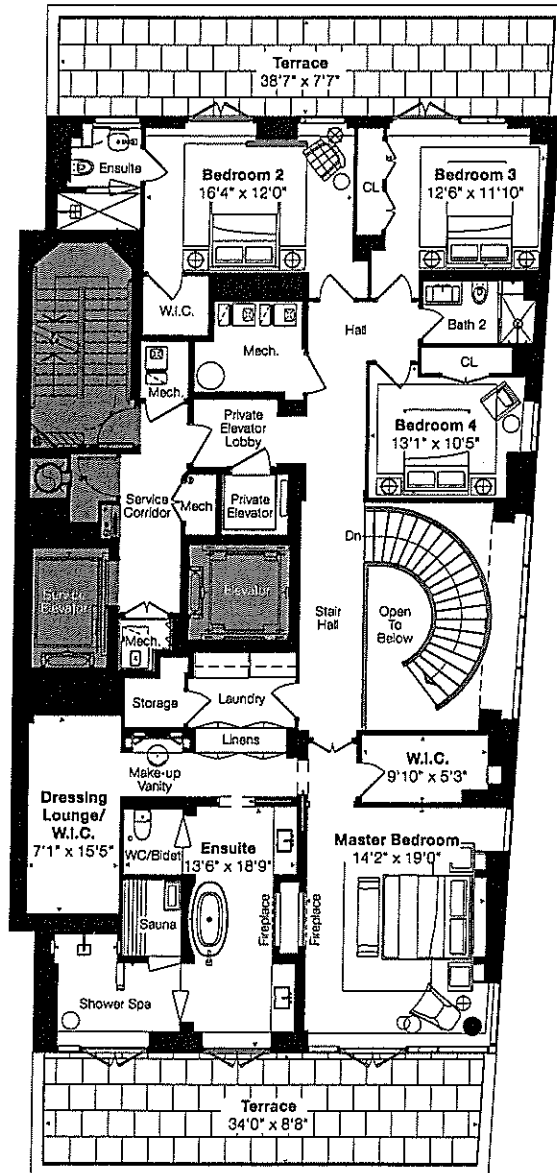
Proposed arrangement. Refer to schedules C&D to agreement of sale for included items. Dimensions shown are subject to minor change.

MUSEUMHOUSE

The Finest House on Bloor Street

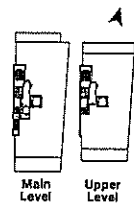
THE PENTHOUSE

Floors 19 + 20
 Floor Area: 5,700 square feet
 Terrace: 1,310 square feet
 Total Area: 7,010 square feet



Penthouse Upper Level

South Facing Views of The City and The Lake



Proposed arrangement. Refer to schedules C&D to agreement of use for included items.
 Dimensions shown are subject to minor change.

APPENDIX G

10/11/2011

Agreement of Purchase and Sale Condominium Resale

This Agreement of Purchase and Sale dated this 2nd day of March, 2018.

BUYER, Salim Manji and Meenaz Manji, agrees to purchase from
(Full legal names of all Buyers)

SELLER, 206 Bloor Street West Limited, the following
(Full legal names of all Sellers)

PROPERTY:
a unit in the condominium property known as Suite No. Penthouse
(Apartment/Townhouse/Suite/Unit)

located at 206 Bloor Street West, Penthouse

in the City of Toronto

being Toronto Standard Condominium Corporation #2254 Condominium Plan No. 2254
(Legal Name of Condominium Corporation)

Unit Number 01 Level No. 18 Building No. 206 Bloor St. W. together with ownership

or exclusive use of Parking Space(s) three (3) owned parking spaces - Level A, Unit 2,3 &4, together with ownership or exclusive use of
(Number(s), Level(s))

locker(s) one (1) owned locker - Level E, Unit 12, together with Seller's proportionate undivided tenancy-in-common interest
(Number(s), Level(s))

in the common elements appurtenant to the Unit as described in the Declaration and Description including the exclusive right to use such other parts of the common elements appurtenant to the Unit as may be specified in the Declaration and Description; the Unit, the proportionate interest in the common elements appurtenant thereto, and the exclusive use portions of the common elements, being herein called the "Property"

PURCHASE PRICE: [REDACTED] Dollars (CDN\$) [REDACTED]

DEPOSIT: Buyer submits as otherwise described in this Agreement (Schedule A)
(Herewith/Upon Acceptance/as otherwise described in this Agreement)

Five Hundred Thousand Dollars (CDN\$) 500,000.00

by negotiable cheque payable to See Schedule A "Deposit Holder" to be held in trust pending completion or other termination of this Agreement and to be credited toward the Purchase Price on completion. For the purposes of this Agreement, "Upon Acceptance" shall mean that the Buyer is required to deliver the deposit to the Deposit Holder within 24 hours of the acceptance of this Agreement. The parties to this Agreement hereby acknowledge that, unless otherwise provided for in this Agreement, the Deposit Holder shall place the deposit in trust in the Deposit Holder's non-interest bearing Real Estate Trust Account and no interest shall be earned, received or paid on the deposit.

Buyer agrees to pay the balance as more particularly set out in Schedule A attached.

SCHEDULE(S) A: See Schedule A attached hereto form(s) part of this Agreement.

1. **IRREVOCABILITY:** This offer shall be irrevocable by Buyer until 9:00 PM on the 2nd day of March
(Seller/Buyer)

day of March, 2018, after which time, if not accepted, this offer shall be null and void and the deposit shall be returned to the Buyer in full without interest.

2. **COMPLETION DATE:** This Agreement shall be completed by no later than 6:00 p.m. on the 30th day of April

2018. Upon completion, vacant possession of the property shall be given to the Buyer unless otherwise provided for in this Agreement.

INITIALS OF BUYER(S): [Handwritten initials]

INITIALS OF SELLER(S): [Handwritten initials]

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3. **NOTICES:** The Seller hereby appoints the Listing Brokerage as agent for the Seller for the purpose of giving and receiving notices pursuant to this Agreement. Where a Brokerage (Buyer's Brokerage) has entered into a representation agreement with the Buyer, the Buyer hereby appoints the Buyer's Brokerage as agent for the purpose of giving and receiving notices pursuant to this Agreement. Where a Brokerage represents both the Seller and the Buyer (multiple representation), the Brokerage shall not be appointed or authorized to be agent for either the Buyer or the Seller for the purpose of giving and receiving notices. Any notice relating hereto or provided for herein shall be in writing. In addition to any provision contained herein and in any Schedule hereto, this offer, any counteroffer, notice of acceptance thereof or any notice to be given or received pursuant to this Agreement or any Schedule hereto (any of them, "Document") shall be deemed given and received when delivered personally or hand delivered to the Address for Service provided in the Acknowledgement below, or where a facsimile number or email address is provided herein, when transmitted electronically to that facsimile number or email address, respectively, in which case, the signature(s) of the party (parties) shall be deemed to be original.

FAX No.: (for delivery of Documents to Seller) FAX No.: (for delivery of Documents to Buyer)
Email Address: (for delivery of Documents to Seller) Email Address: (for delivery of Documents to Buyer)

4. **CHATELS INCLUDED:**.....
All Existing Appliances: Two (2) Miele Ovens, Miele Dishwasher, Miele Fridge & Freezer, Miele Gas Cooktop, Two (2) Wine Fridges, Washer & Dryer, Central Vacuum & Attachments; All Existing Window Coverings.

Unless otherwise stated in this Agreement or any Schedule hereto, Seller agrees to convey all fixtures and chattels included in the Purchase Price free from all liens, encumbrances or claims affecting the said fixtures and chattels.

5. **FIXTURES EXCLUDED:**.....
None.

6. **RENTAL ITEMS (including Lease, Lease to Own):** The following equipment is rented and not included in the Purchase Price. The Buyer agrees to assume the rental contract(s), if assumable:
None.


The Buyer agrees to co-operate and execute such documentation as may be required to facilitate such assumption.

7. **COMMON EXPENSES:** Seller warrants to Buyer that the common expenses presently payable to the Condominium Corporation in respect of the Property are approximately \$ per month, which amount includes the following:
as per Status Certificate
water, heat, building insurance, common elements maintenance, parking and locker maintenance

8. **PARKING AND LOCKERS:** Parking and lockers are as described above or assigned as follows: ..[as described above].....
..... of an additional cost of: \$0.00

INITIALS OF BUYER(S): 

INITIALS OF SELLER(S): 

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9. **HST:** If the sale of the Property (Real Property as described above) is subject to Harmonized Sales Tax (HST), then such tax shall be included in _____ the Purchase Price. If the sale of the Property is not subject to HST, Seller agrees to certify on or before _____ (included in/in addition to) _____ closing, that the sale of the Property is not subject to HST. Any HST on chattels, if applicable, is not included in the Purchase Price.

10. **TITLE SEARCH:** Buyer shall be allowed until 6:00 p.m. on the 16th day of April, 2018, (Requisition Date) to examine the title to the Property at Buyer's own expense and until the earlier of: (i) thirty days from the later of the Requisition Date or the date on which the conditions in this Agreement are fulfilled or otherwise waived or; (ii) five days prior to completion, to satisfy Buyer that there are no outstanding work orders or deficiency notices affecting the Property, and that its present use (single family residential) may be lawfully continued. If within that time any valid objection to title or to any outstanding work order or deficiency notice, or to the fact the said present use may not lawfully be continued, is made in writing to Seller and which Seller is unable or unwilling to remove, remedy or satisfy or obtain insurance save and except against risk of fire (Title Insurance) in favour of the Buyer and any mortgagee, (with all related costs at the expense of the Seller), and which Buyer will not waive, this Agreement notwithstanding any intermediate acts or negotiations in respect of such objections, shall be at an end and all monies paid shall be returned without interest or deduction and Seller, Listing Brokerage and Co-operating Brokerage shall not be liable for any costs or damages. Save as to any valid objection so made by such day and except for any objection going to the root of the title, Buyer shall be conclusively deemed to have accepted Seller's title to the Property. Seller hereby consents to the municipality or other governmental agencies releasing to Buyer details of all outstanding work orders and deficiency notices affecting the Property, and Seller agrees to execute and deliver such further authorizations in this regard as Buyer may reasonably require.

11. **TITLE:** Buyer agrees to accept title to the Property subject to all rights and easements registered against title for the supply and installation of telephone services, electricity, gas, sewers, water, television cable facilities and other related services; provided that title to the Property is otherwise good and free from all encumbrances except: (a) as herein expressly provided; (b) any registered restrictions, conditions or covenants that run with the land provided such have been complied with; (c) the provisions of the Condominium Act and its Regulations and the terms, conditions and provisions of the Declaration, Description and By-laws, Occupancy Standards By-laws, including the Common Element Rules and other Rules and Regulations; and (d) any existing municipal agreements, zoning by-laws and/or regulations and utilities or service contracts.

12. **CLOSING ARRANGEMENTS:** Where each of the Seller and Buyer retain a lawyer to complete the Agreement of Purchase and Sale of the Property, and where the transaction will be completed by electronic registration pursuant to Part III of the Land Registration Reform Act, R.S.O. 1990, Chapter L4 and the Electronic Registration Act, S.O. 1991, Chapter 44, and any amendments thereto, the Seller and Buyer acknowledge and agree that the exchange of closing funds, nonregistrable documents and other items (the "Requisite Deliveries") and the release thereof to the Seller and Buyer will (a) not occur at the same time as the registration of the transfer/deed (and any other documents intended to be registered in connection with the completion of this transaction) and (b) be subject to conditions whereby the lawyer(s) receiving any of the Requisite Deliveries will be required to hold same in trust and not release same except in accordance with the terms of a document registration agreement between the said lawyers. The Seller and Buyer irrevocably instruct the said lawyers to be bound by the document registration agreement which is recommended from time to time by the Law Society of Upper Canada. Unless otherwise agreed to by the lawyers, such exchange of the Requisite Deliveries will occur in the applicable Land Titles Office or such other location agreeable to both lawyers.


13. **STATUS CERTIFICATE AND MANAGEMENT OF CONDOMINIUM:** Seller represents and warrants to Buyer that there are no special assessments contemplated by the Condominium Corporation, and there are no legal actions pending by or against or contemplated by the Condominium Corporation. The Seller consents to a request by the Buyer or the Buyer's authorized representative for a Status Certificate from the Condominium Corporation. Buyer acknowledges that the Condominium Corporation may have entered into a Management Agreement for the management of the condominium property.

14. **DOCUMENTS AND DISCHARGE:** Buyer shall not call for the production of any title deed, abstract, survey or other evidence of title to the Property except such as are in the possession or control of Seller. Seller agrees to deliver to Buyer, if it is possible without incurring any costs in so doing, copies of all current condominium documentation of the Condominium Corporation, including the Declaration, Description, By-laws, Common Element Rules and Regulations and the most recent financial statements of the Condominium Corporation. If a discharge of any Charge/Mortgage held by a corporation incorporated pursuant to the Trust And Loan Companies Act (Canada), Chartered Bank, Trust Company, Credit Union, Caisse Populaire or Insurance Company and which is not to be assumed by Buyer on completion, is not available in registrable form on completion, Buyer agrees to accept Seller's lawyer's personal undertaking to obtain, out of the closing funds, a discharge in registrable form and to register same, or cause same to be registered, on title within a reasonable period of time after completion, provided that on or before completion Seller shall provide to Buyer a mortgage statement prepared by the mortgagee setting out the balance required to obtain the discharge, and, where a real-time electronic cleared funds transfer system is not being used, a direction executed by Seller directing payment to the mortgagee of the amount required to obtain the discharge out of the balance due on completion.

15. **MEETINGS:** Seller represents and warrants to Buyer that at the time of the acceptance of this Offer the Seller has not received a notice convening a special or general meeting of the Condominium Corporation respecting: (a) the termination of the government of the condominium property; (b) any substantial alteration in or substantial addition to the common elements or the renovation thereof; OR (c) any substantial change in the assets or liabilities of the Condominium Corporation; and Seller covenants that if Seller receives any such notice prior to the date of completion Seller shall forthwith notify Buyer in writing and Buyer may thereupon or Buyer's option declare this Agreement to be null and void and all monies paid by Buyer shall be refunded without interest or deduction.

INITIALS OF BUYER(S): 

INITIALS OF SELLER(S): 

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- 16. INSPECTION:** Buyer acknowledges having had the opportunity to inspect the Property and understands that upon acceptance of this offer there shall be a binding agreement of purchase and sale between Buyer and Seller. The Buyer acknowledges having the opportunity to include a requirement for a property inspection report in this Agreement and agrees that except as may be specifically provided for in this Agreement, the Buyer will not be obtaining a property inspection or property inspection report regarding the Property.
- 17. APPROVAL OF THE AGREEMENT:** In the event that consent to this sale is required to be given by the Condominium Corporation or the Board of Directors, the Seller will apply forthwith for the requisite consent, and if such consent is refused, then this Agreement shall be null and void and the deposit monies paid hereunder shall be refunded without interest or other penalty to the Buyer.
- 18. INSURANCE:** The Unit and all other things being purchased shall be and remain at the risk of the Seller until completion. In the event of substantial damage to the Property Buyer may at Buyer's option either permit the proceeds of insurance to be used for repair of such damage in accordance with the provisions of the Insurance Trust Agreement, or terminate this Agreement and all deposit monies paid by Buyer hereunder shall be refunded without interest or deduction. If Seller is taking back a Charge/Mortgage, or Buyer is assuming a Charge/Mortgage, Buyer shall supply Seller with reasonable evidence of adequate insurance to protect Seller's or other mortgagee's interest on completion.
- 19. DOCUMENT PREPARATION:** The Transfer/Deed shall, save for the Land Transfer Tax Affidavit, be prepared in registrable form at the expense of Seller, and any Charge/Mortgage to be given back by the Buyer to Seller at the expense of the Buyer.
- 20. RESIDENCY:** (a) Subject to (b) below, the Seller represents and warrants that the Seller is not and on completion will not be a non-resident under the non-residency provisions of the Income Tax Act which representation and warranty shall survive and not merge upon the completion of this transaction and the Seller shall deliver to the Buyer a statutory declaration that Seller is not then a non-resident of Canada; (b) provided that if the Seller is a non-resident under the non-residency provisions of the Income Tax Act, the Buyer shall be credited towards the Purchase Price with the amount, if any, necessary for Buyer to pay to the Minister of National Revenue to satisfy Buyer's liability in respect of tax payable by Seller under the non-residency provisions of the Income Tax Act by reason of this sale. Buyer shall not claim such credit if Seller delivers on completion the prescribed certificate.
- 21. ADJUSTMENTS:** Common Expenses; realty taxes, including local improvement rates; mortgage interest; rentals; unmetered public or private utilities and fuel where billed to the Unit and not the Condominium Corporation; are to be apportioned and allowed to the day of completion, the day of completion itself to be apportioned to the Buyer. There shall be no adjustment for the Seller's share of any assets or liabilities of the Condominium Corporation including any reserve or contingency fund to which Seller may have contributed prior to the date of completion.
- 22. PROPERTY ASSESSMENT:** The Buyer and Seller hereby acknowledge that the Province of Ontario has implemented current value assessment and properties may be re-assessed on an annual basis. The Buyer and Seller agree that no claim will be made against the Buyer or Seller, or any Brokerage, Broker or Salesperson, for any changes in property tax as a result of a re-assessment of the Property, save and except any property taxes that accrued prior to the completion of this transaction.
- 23. TIME LIMITS:** Time shall in all respects be of the essence hereof provided that the time for doing or completing of any matter provided for herein may be extended or abridged by an agreement in writing signed by Seller and Buyer or by their respective lawyers who may be specifically authorized in that regard.
- 24. TENDER:** Any tender of documents or money hereunder may be made upon Seller or Buyer or their respective lawyers on the day set for completion. Money shall be tendered with funds drawn on a lawyer's trust account in the form of a bank draft, certified cheque or wire transfer using the Large Value Transfer System.
- 25. FAMILY LAW ACT:** Seller warrants that spousal consent is not necessary to this transaction under the provisions of the Family Law Act, R.S.O. 1990 unless the spouse of the Seller has executed the consent hereinafter provided.
- 26. UFFI:** Seller represents and warrants to Buyer that during the time Seller has owned the Property, Seller has not caused any building on the Property to be insulated with insulation containing ureaformaldehyde, and that to the best of Seller's knowledge no building on the Property contains or has ever contained insulation that contains ureaformaldehyde. This warranty shall survive and not merge on the completion of this transaction, and if the building is part of a multiple unit building, this warranty shall only apply to that part of the building which is the subject of this transaction.
- 27. LEGAL, ACCOUNTING AND ENVIRONMENTAL ADVICE:** The parties acknowledge that any information provided by the brokerage is not legal, tax or environmental advice.
- 28. CONSUMER REPORTS:** The Buyer is hereby notified that a consumer report containing credit and/or personal information may be referred to in connection with this transaction.
- 29. AGREEMENT IN WRITING:** If there is conflict or discrepancy between any provision added to this Agreement (including any Schedule attached hereto) and any provision in the standard pre-set portion hereof, the added provision shall supersede the standard pre-set provision to the extent of such conflict or discrepancy. This Agreement including any Schedule attached hereto, shall constitute the entire Agreement between Buyer and Seller. There is no representation, warranty, collateral agreement or condition, which affects this Agreement other than as expressed herein. For the purposes of this Agreement, Seller means vendor and Buyer means purchaser. This Agreement shall be read with all changes of gender or number required by the context.
- 30. TIME AND DATE:** Any reference to a time and date in this Agreement shall mean the time and date where the Property is located.

INITIALS OF BUYER(S):

INITIALS OF SELLER(S):



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31. SUCCESSORS AND ASSIGNS: The heirs, executors, administrators, successors and assigns of the undersigned are bound by the terms herein.

SIGNED, SEALED AND DELIVERED in the presence of:

IN WITNESS whereof I have hereunto set my hand and seal:

(Witness)

(Buyer) Salim Manji

(Seal)

DATE Mar 2/2018

(Witness)

(Buyer) Meenaz Manji

(Seal)

DATE Mar 2/2018

I, the Undersigned Seller, agree to the above offer. I hereby irrevocably instruct my lawyer to pay directly to the brokerage(s) with whom I have agreed to pay commission, the unpaid balance of the commission together with applicable Harmonized Sales Tax (and any other taxes as may hereafter be applicable), from the proceeds of the sale prior to any payment to the undersigned on completion, as advised by the brokerage(s) to my lawyer.

SIGNED, SEALED AND DELIVERED in the presence of:

IN WITNESS whereof I have hereunto set my hand and seal:

(Witness)

(Seller) A.S.O. 206 Bloor Street West Ltd.

(Seal)

DATE 3/2/18

(Witness)

(Seller)

(Seal)

DATE

SPOUSAL CONSENT: The undersigned spouse of the Seller hereby consents to the disposition evidenced herein pursuant to the provisions of the Family Law Act, R.S.O. 1990, and hereby agrees to execute all necessary or incidental documents to give full force and effect to the sale evidenced herein.

(Witness)

(Spouse)

(Seal)

DATE

CONFIRMATION OF ACCEPTANCE: Notwithstanding anything contained herein, to the contrary, I confirm this Agreement with all changes both typed and written was finally accepted by all parties at 7:00 a.m. p.m. on the 2nd day of March 2018.

(Signature of Seller & Buyer)

INFORMATION ON BROKERAGE(S)	
Listing Brokerage	Royal LePage R.E.S. Ltd., Johnston & Daniel Division Tel.No. (416) 489-2121
	Kevin Crigger (Salesperson / Broker Name)
Coop/Buyer Brokerage	Royal LePage R.E.S. Ltd., Johnston & Daniel Division Tel.No. (416) 489-2121
	Kevin Crigger (Salesperson / Broker Name)

ACKNOWLEDGEMENT

I acknowledge receipt of my signed copy of this accepted Agreement of Purchase and Sale and I authorize the Brokerage to forward a copy to my lawyer.

I acknowledge receipt of my signed copy of this accepted Agreement of Purchase and Sale and I authorize the Brokerage to forward a copy to my lawyer.

(Seller) A.S.O. 206 Bloor Street West Limited DATE

(Buyer) Salim Manji DATE

(Seller) DATE

(Buyer) Meenaz Manji DATE

Address for Service

Address for Service

Tel.No.

Tel.No.

Seller's Lawyer Marc Lean

Buyer's Lawyer Ronald Melvin

Address Dickinson Wright LLP

Address Rose, Persiko, Rakowsky, Melvin LLP

Email

Email rbmelvin@rpmlaw.com

Tel.No. FAX No.

(416) 868-1908 Tel.No. FAX No.

Property Manager (Name) (Address)

(Tel.No., FAX No.)

FOR OFFICE USE ONLY	COMMISSION TRUST AGREEMENT
To: Co-operating Brokerage shown on the foregoing Agreement of Purchase and Sale:	
In consideration for the Co-operating Brokerage procuring the foregoing Agreement of Purchase and Sale, I hereby declare that all moneys received or receivable by me in connection with the transaction as contemplated in the MLS [®] Rules and Regulations of my Real Estate Board shall be receivable and held in trust. This agreement shall constitute a Commission Trust Agreement as defined in the MLS [®] Rules and shall be subject to and governed by the MLS [®] Rules pertaining to Commission Trust.	
DATED as of the date and time of the acceptance of the foregoing Agreement of Purchase and Sale.	Acknowledged by:
(Authorized to bind the Listing Brokerage)	(Authorized to bind the Co-operating Brokerage)

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Form 101
for use in the Province of Ontario

Schedule A

Agreement of Purchase and Sale - Condominium Resale



This Schedule is attached to and forms part of the Agreement of Purchase and Sale between:

BUYER, Salim Manji and Meenaz Manji....., and

SELLER, 206 Bloor Street West Limited.....

for the purchase and sale of 206 Bloor Street West Penthouse Toronto

MSS 1T8 dated the 2nd day of March 20 18

elements on six (6) occasions prior to closing, provided that the Buyer gives the Seller at least twenty-four (24) hours' notice. During these visits, the Buyer shall be permitted to take measurements and to bring consultants to obtain quotations. The Seller further acknowledges that the Buyer shall have the option to complete their last access visit up to and including the day prior to the date of closing.

The Seller hereby acknowledges and agrees that in the event the Buyer requires the subject Unit to be appraised for mortgage purposes and/or inspected for insurance purposes, the Seller will grant access to the subject Unit and common elements with twenty-four (24) hours' notice. Access for these purposes shall be provided in addition to the access visits noted above.

The Seller represents and warrants that all chattels, fixtures and equipment included in this Agreement of Purchase and Sale, and as viewed by the Buyer at the time of making this Offer, are now and on the closing date will be in good working order, will not be substituted, and will be free from all liens and encumbrances on completion. The Parties agree that this representation and warranty shall survive and not merge on completion of this transaction, but apply only to those circumstances existing at the completion of this transaction.

The Seller represents and warrants that, with respect to the condominium units comprising the Property, the Condominium Act (Ontario) and the Declaration, bylaws and rules of the Condominium Corporation have been complied with, and that, except with the required written consent of the Condominium Corporation, no improvements, additions, alterations or repairs that require the consent of the Condominium Corporation have been carried out in the said units, the exclusive use areas or the common elements. This representation and warranty shall survive and not merge on the completions of this transaction.

Until closing
vs
X.M. Manji

The Seller shall be responsible for any special assessment or increase in common expenses or any other costs or charges relating to the subject Unit as indicated in the Status Certificate unless disclosed in the Agreement of Purchase and Sale at the time the Agreement was entered into and accepted by both parties. The Seller shall also be responsible for any special assessment which may be levied between the date of the Status Certificate and the date of closing. Such amount shall be credited to the Buyer as an adjustment on closing or paid by direction from the proceeds of closing.

The Seller shall, on or before closing and at the Seller's expense, discharge all mortgages, charges, liens, security agreements or other encumbrances and satisfy all work orders or deficiency notices now or at any time prior to closing registered against or otherwise affecting the Property.

This form must be initialed by all parties to the Agreement of Purchase and Sale.

INITIALS OF BUYER(S):

INITIALS OF SELLER(S):

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Schedule A
Agreement of Purchase and Sale -
Condominium Resale

This Schedule is attached to and forms part of the Agreement of Purchase and Sale between:

BUYER, Salim Manji and Meenaz Manji, and

SELLER, 206 Bloor Street West Limited

for the purchase and sale of **206 Bloor Street West, Penthouse** **Toronto**

M5S 1T8 dated the **2nd** day of **March**, 20 **18**

Buyer agrees to pay the balance as follows:

The Buyer agrees to provide a bank draft or certified cheque for the deposit within two (2) business days after final acceptance of this Agreement, the Buyer shall pay the Deposit by certified cheque, bank draft or wire transfer to the Buyer's solicitors, Rose, Persiko, Rakowsky, Melvin LLP, in Trust and as initial Deposit Holder; provided that upon waiver of the Buyer's conditions set out in this Schedule A, the Parties hereby irrevocably authorize and direct the Buyer's solicitors to pay the Deposit by uncertified solicitors trust cheque to Royal LePage R.E.S. Ltd., Johnston & Daniel Division, Brokerage, which shall thereafter continue as the Deposit Holder for the purposes of this Agreement, and upon doing so the Buyer's solicitors shall be and are hereby relieved of all responsibility and liability for and in respect of the Deposit. The Parties to this Agreement hereby acknowledge that the Deposit Holder shall place the Deposit in its non-interest bearing real estate trust account and no interest shall be accrued, earned, received or paid on the Deposit.

The Buyer agrees to pay the balance of the purchase price, subject to adjustments, to the Seller on completion of this transaction, with funds drawn on a lawyer's trust account in the form of a bank draft, certified cheque, or wire transfer using the Large Value Transfer System.

For the purposes of this Agreement, the terms "banking days" or "business days" shall mean any day, other than a Saturday, Sunday or a Statutory Holiday in Toronto, Ontario, Canada.


This Offer is conditional upon the Buyer reviewing the Status Certificate and associated documents and finding the Status Certificate and associated documents satisfactory in the Buyer's Solicitor's sole and absolute discretion. The Seller agrees to request at the Seller's expense, the Status Certificate and associated documents from the Condominium Corporation within two (2) business days of acceptance of this Offer, and to deliver the Status Certificate and associated documents to the Buyer's Solicitor within two (2) business days of the documents being produced by the Condominium Corporation. Unless the Buyer gives notice in writing to the Seller personally or in accordance with any other provisions for the delivery of notice in this Agreement of Purchase and Sale or any Schedule thereto not later than 8:00 p.m. on the fifth (5th) business day following receipt by the Buyer's Solicitor of the Status Certificate and associated documents, that this condition is fulfilled, this Offer shall be null and void and the deposit shall be returned to the Buyer in full without deduction. This condition is included for the benefit of the Buyer and may be waived at the Buyer's sole option by notice in writing to the Seller as aforesaid within the time period stated herein.

The Seller hereby acknowledges and agrees to provide the Buyer with access to the subject Unit and common

This form must be initialed by all parties to the Agreement of Purchase and Sale.

INITIALS OF BUYER(S): 

INITIALS OF SELLER(S): 

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OREA Ontario Real Estate Association
Form 101
for use in the Province of Ontario

Schedule A
Agreement of Purchase and Sale -
Condominium Resale

Toronto
Real Estate
Board

This Schedule is attached to and forms part of the Agreement of Purchase and Sale between:

BUYER, Salim Manji and Meenaz Manji....., and

SELLER, 206 Bloor Street West Limited.....

for the purchase and sale of **206 Bloor Street West, Penthouse**..... **Toronto**.....

M5S 1T8..... dated the **2nd**..... day of **March**....., 20**18**.....

The Seller represents and warrants that the said suite and its builder are both registered under the Ontario New Home Warranty Program. The Parties agree that this representation and warranty shall form an integral part of this Agreement and survive the completion of this transaction. The Seller shall provide documents attesting to these registrations to the Buyer no later than 6:00 p.m. on the second (2nd) business day after acceptance of this Offer. This Offer is conditional upon the Buyer's Solicitor reviewing said documents and finding said documents satisfactory in the Buyer's Solicitor's sole and absolute discretion. Unless the Buyer gives notice in writing to the Seller personally or in accordance with any other provisions for the delivery of notice in this Agreement of Purchase and Sale or any Schedule thereto not later than 8:00 p.m. on the fifth (5th) business day following receipt by the Buyer's Solicitor of said documents, that this condition is fulfilled, this Offer shall be null and void and the deposit shall be returned to the Buyer in full without deduction. This condition is included for the benefit of the Buyer and may be waived at the Buyer's sole option by notice in writing to the Seller as aforesaid within the time period stated herein.


The Seller represents that it is not aware of any material defects in the construction of the Property or the adjoining balconies, including but not limited to structural, electrical, mechanical, life safety defects or the existence at any time of any water penetration.

The Buyer acknowledges having received the Disclosure Statement from the Seller.

This form must be initialed by all parties to the Agreement of Purchase and Sale.

INITIALS OF BUYER(S): 

INITIALS OF SELLER(S): 

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306 BLOOR STREET WEST

SCHEDULE "E"

HST INCLUDED IN AGREEMENT OF PURCHASE AND SALE PRICE

HST

1. The Purchaser acknowledges and agrees that:

The Purchase Price is inclusive of HST and the Vendor shall remit the HST to the relevant governmental authorities as and when required under the *Excise Tax Act* (Canada) S.C. 1990, as amended (the "ETA");

A new housing rebate is available to the Purchaser for the HST (the "Rebate" and/or "Rebates") where:

- (i) for HST purposes, the purchase price for the Residential Unit (the "Residential Price") after deducting the HST included therein does not exceed \$450,000.00; and
- (ii) the Purchaser is a natural person acquiring the Property with the intention of being the sole beneficial owner thereof on Closing.

2. The Residential Price has been established on the basis that the Rebate or Rebates, as applicable, will be assigned on Closing by the Purchaser to the Vendor in addition to the Residential Price. The Purchaser, forthwith upon the request of the Vendor and in any event prior to Closing, shall furnish evidence satisfactory to the Vendor confirming that the Purchaser is entitled to the Rebate and shall execute all requisite documents including without limitation, Form GST 190E (01) and do such acts as may be required in order for the Vendor to receive the entire Rebate (the "Rebate Form").

3. If the rate of HST is altered or the HST exemptions presently existing are changed between the date of this Agreement and the Closing Date so that the total HST to be remitted by the Vendor is increased, then the Purchaser shall pay such increase as an adjustment by certified cheque delivered on closing to the Vendor. The statutory declaration of an officer of the Vendor stating the amount of the alteration and/or the amount of the changed exemption is conclusive and binding on the Purchaser.

If the rate of HST is reduced between the date of this Agreement and the Closing Date such that the total HST to be remitted by the Vendor is not decreased but the Purchaser becomes entitled to a rebate or other adjustment to net HST payable in its favour (the "Adjustment"), then by this Agreement the Purchaser assigns to the Vendor all of the Purchaser's rights, interests and entitlement to the Adjustment. In connection with the Adjustment, the Purchaser shall execute and deliver to the Vendor, forthwith upon the Vendor's request for same, all requisite documents, assignments and assurances that the Vendor may reasonably require in order to enable the Vendor to obtain the benefit of the Adjustment.

4. The Purchaser warrants and represents that he/she has not claimed (and hereby covenants that the Purchaser shall not hereafter claim) for the Purchaser's own account, any part of the Rebate.
5. The Purchaser covenants and agrees to indemnify and save the Vendor harmless from and against any loss, cost, damage and/or liability (including HST plus penalties and interest thereon and any reasonable legal costs in connection therewith) which the Vendor may suffer, incur or be charged with, as a result of the Purchaser's failure to qualify for the Rebate and/or Rebates, or as a result of the Purchaser having qualified initially but being subsequently disqualified to the Rebate and/or Rebates. This indemnity shall survive indefinitely the completion or termination of the Agreement. It is further understood and agreed by the parties hereto that should the Purchaser not qualify for the Rebate and/or Rebates, and/or fail to deliver to the Vendor the Rebate Form(s) (duly executed by the Purchaser) by the Closing Date, then notwithstanding anything contained herein (or in the Agreement) to the contrary, the Purchaser shall be obliged to pay to the Vendor, by certified cheque delivered on the Closing Date, an amount equivalent to the Rebate and/or Rebates, in addition to the outstanding balance of the Purchase Price subject to the adjustments contemplated by the Agreement.
6. The Purchaser's failure to pay or remit to the Vendor on the Closing Date the HST payable in connection with this transaction, and/or if required pursuant to this Schedule "E" to deliver to the Vendor the Rebate Form, duly executed by the Purchaser, and/or if required pursuant to this Schedule "E" to pay to the Vendor by certified cheque an amount equivalent to the Rebate and/or Rebates shall constitute a fundamental breach of contract, entitling the Vendor to immediately terminate this Agreement and to retain any Deposit theretofore paid (together with all amounts paid for any extras or changes requested to be made to the Residential Unit) as its liquidated damages and not as a penalty, without prejudice to any other rights or remedies available to the Vendor at law or in equity.
7. Without inrolling any of the foregoing provisions, the Purchaser further covenants and agrees that in the event that any amendment to the Purchase Agreement, novation to the Purchase Agreement, re-issuance of the Purchase Agreement or the acquisition of any upgrades or extras results in the Rebate and/or Rebates not being capable of being assigned, in whole, by the Purchaser to the Vendor, then the Purchaser shall pay to the Vendor such forgone amount by certified cheque on closing in the same manner as hereinbefore contemplated for repayment where purchasers do not qualify for the Rebate and/or Rebates.

Confirmation of Co-operation and Representation

BUYER: Salim Manji and Meenaz Manji

SELLER: 206 Bloor Street West Limited

For the transaction on the property known as: 206 Bloor Street West, Penthouse Toronto M5S 1T8

DEFINITIONS AND INTERPRETATIONS: For the purposes of this Confirmation of Cooperation and Representation: "Seller" includes a vendor, a landlord, or a prospective, seller, vendor or landlord and "Buyer" includes a purchaser, a tenant, or a prospective, buyer, purchaser or tenant, "sale" includes a lease, and "Agreement of Purchase and Sale" includes an Agreement to Lease. Commission shall be deemed to include other remuneration.

The following information is confirmed by the undersigned salesperson/broker representative(s) of the Brokerage(s). If a Co-operating Brokerage is involved in the transaction, the Brokerages agree to co-operate, in consideration of, and on the terms and conditions as set out below.

DECLARATION OF INSURANCE: The undersigned salesperson/broker representative(s) of the Brokerage(s) hereby declare that he/she is insured as required by the Real Estate and Business Brokers Act, 2002 (REBBA 2002) and Regulations.

1. LISTING BROKERAGE

- a) The Listing Brokerage represents the interests of the Seller in this transaction. It is further understood and agreed that:
 - 1) The Listing Brokerage is not representing or providing Customer Service to the Buyer. (If the Buyer is working with a Co-operating Brokerage, Section 3 is to be completed by Co-operating Brokerage)
 - 2) The Listing Brokerage is providing Customer Service to the Buyer.
- b) **MULTIPLE REPRESENTATION:** The Listing Brokerage has entered into a Buyer Representation Agreement with the Buyer and represents the interests of the Seller and the Buyer, with their consent, for this transaction. The Listing Brokerage must be impartial and equally protect the interests of the Seller and the Buyer in this transaction. The Listing Brokerage has a duty of full disclosure to both the Seller and the Buyer, including a requirement to disclose all factual information about the property known to the Listing Brokerage. However, the Listing Brokerage shall not disclose:
 - That the Seller may or will accept less than the listed price, unless otherwise instructed in writing by the Seller;
 - That the Buyer may or will pay more than the offered price, unless otherwise instructed in writing by the Buyer;
 - The motivation of or personal information about the Seller or Buyer, unless otherwise instructed in writing by the party to which the information applies, or unless failure to disclose would constitute fraudulent, unlawful or unethical practice;
 - The price the Buyer should offer or the price the Seller should accept;
 - And; the Listing Brokerage shall not disclose to the Buyer the terms of any other offer.

However, it is understood that factual market information about comparable properties and information known to the Listing Brokerage concerning potential uses for the property will be disclosed to both Seller and Buyer to assist them to come to their own conclusions.

Additional comments and/or disclosures by Listing Brokerage: (e.g. The Listing Brokerage represents more than one Buyer offering on this property.)

The Listing Brokerage confirms that it will be entirely compensated by the Seller.

and Buyer M Manji

2. PROPERTY SOLD BY BUYER BROKERAGE - PROPERTY NOT LISTED

- The Brokerage (does) (does not) represent the Buyer and the property is not listed with any real estate brokerage. The Brokerage will be paid
 - by the Seller in accordance with a Seller Customer Service Agreement
 - or: by the Buyer directly

Additional comments and/or disclosures by Buyer Brokerage: (e.g. The Buyer Brokerage represents more than one Buyer offering on this property.)

INITIALS OF BUYER(S)/SELLER(S)/BROKERAGE REPRESENTATIVE(S) (Where applicable)

[Handwritten initials]
BUYER

[Empty oval]
CO-OPERATING/BUYER BROKERAGE

[Handwritten initials]
SELLER

[Empty oval]
LISTING BROKERAGE

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3. Co-operating Brokerage completes Section 3 and Listing Brokerage completes Section 1.

CO-OPERATING BROKERAGE- REPRESENTATION:

- a) The Co-operating Brokerage represents the interests of the Buyer in this transaction.
- b) The Co-operating Brokerage is providing Customer Service to the Buyer in this transaction.
- c) The Co-operating Brokerage is not representing the Buyer and has not entered into an agreement to provide customer service(s) to the Buyer.

CO-OPERATING BROKERAGE- COMMISSION:

- a) The Listing Brokerage will pay the Co-operating Brokerage the commission as indicated in the MLS® information for the property to be paid from the amount paid by the Seller to the Listing Brokerage.
(Commission As Indicated in MLS® Information)
- b) The Co-operating Brokerage will be paid as follows:

Additional comments and/or disclosures by Co-operating Brokerage: (e.g., The Co-operating Brokerage represents more than one Buyer offering on this property.)

Commission will be payable as described above, plus applicable taxes.

COMMISSION TRUST AGREEMENT: If the above Co-operating Brokerage is receiving payment of commission from the listing Brokerage, then the agreement between Listing Brokerage and Co-operating Brokerage further includes a Commission Trust Agreement, the consideration for which is the Co-operating Brokerage procuring an offer for a trade of the property, acceptable to the Seller. This Commission Trust Agreement shall be subject to and governed by the MLS® rules and regulations pertaining to commission trusts of the Listing Brokerage's local real estate board, if the local board's MLS® rules and regulations so provide. Otherwise, the provisions of the OREA recommended MLS® rules and regulations shall apply to this Commission Trust Agreement. For the purpose of this Commission Trust Agreement, the Commission Trust Amount shall be the amount noted in Section 3 above. The Listing Brokerage hereby declares that all monies received in connection with the trade shall constitute a Commission Trust and shall be held, in trust, for the Co-operating Brokerage under the terms of the applicable MLS® rules and regulations.

SIGNED BY THE BROKER/SALESPERSON REPRESENTATIVE(S) OF THE BROKERAGE(S) (Where applicable)

Royal LePage R.E.S. Ltd., Johnston & Daniel Division
(Name of Co-operating/Buyer Brokerage)

477 Mount Pleasant Road Toronto

Tel.: (416) 489-2121 Fax: (416) 489-6297

Date:
(Authorized to bind the Co-operating/Buyer Brokerage)

Kevin Crigger
(Print Name of Broker/Salesperson Representative of the Brokerage)

Royal LePage R.E.S. Ltd., Johnston & Daniel Division
(Name of Listing Brokerage)

477 Mount Pleasant Road Toronto

Tel.: (416) 489-2121 Fax: (416) 489-6297

Date:
(Authorized to bind the Listing Brokerage)

Kevin Crigger
(Print Name of Broker/Salesperson Representative of the Brokerage)

CONSENT FOR MULTIPLE REPRESENTATION (To be completed only if the Brokerage represents more than one client for the transaction)

The Buyer/Seller consent with their initials to their Brokerage representing more than one client for this transaction.



BUYER'S INITIALS



SELLER'S INITIALS

ACKNOWLEDGEMENT

I have received, read and understand the above information.


(Signature of Buyer) Salim Manji Date: MAR 2 / 18


(Signature of Buyer) Meenaz Manji Date: MAR 2 / 18


(Signature of Seller) A.S.O. 206 Bloor Street West Limited Date: 3/2/18

(Signature of Seller) Date:

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APPENDIX H

Rosen Goldberg Inc.; Receiver of 206 Bloor Street West Limited
 Calculation of Receiver's Borrowings from Emarma Corporation
 Prepared April 6, 2018

	Opening Balance	Advances	Interest	Repayments	Closing Balance
30-Nov-16	-	350,000.00	2,109.59		352,109.59
31-Dec-16	352,109.59		2,990.52		355,100.11
31-Jan-17	355,100.11	180,000.00	4,100.85		539,200.96
28-Feb-17	539,200.96		4,136.34		543,337.30
31-Mar-17	543,337.30	70,000.00	3,828.88	250,000.00	367,166.18
30-Apr-17	367,166.18		3,017.80		370,183.98
31-May-17	370,183.98		3,144.03		373,328.01
30-Jun-17	373,328.01		3,068.45		376,396.46
31-Jul-17	376,396.46		3,196.79		379,593.25
31-Aug-17	379,593.25		3,223.94		382,817.20
30-Sep-17	382,817.20	60,000.00	3,179.32		445,996.52
31-Oct-17	445,996.52		3,787.92		449,784.43
30-Nov-17	449,784.43		3,696.86		453,481.29
31-Dec-17	453,481.29		3,851.48		457,332.77
31-Jan-18	457,332.77	82000	4,198.72		543,531.49
28-Feb-18	543,531.49		4,616.29		548,147.79
31-Mar-18	548,147.79		4,655.50		552,803.29

APPENDIX I

EXECUTION CERTIFICATE / CERTIFICAT D'EXÉCUTION FORCÉE

SHERIFF OF / SHÉRIF DE : CITY OF TORONTO (TORONTO)

CERTIFICATE # /
N° DE CERTIFICAT : 33698214-3942424BDATE OF CERTIFICATE /
DATE DU CERTIFICAT : 2018-APR-03**SHERIFF'S STATEMENT**

THIS CERTIFIES THAT LISTED BELOW ARE ALL WRITS OF EXECUTION, ORDERS AND CERTIFICATES OF LIEN FILED AND ENTERED INTO THE ELECTRONIC DATABASE MAINTAINED BY THIS OFFICE IN ACCORDANCE WITH SECTION 10 OF THE EXECUTION ACT AT THE TIME OF SEARCHING AGAINST THE REAL AND PERSONAL PROPERTY OF:

DÉCLARATION DU SHÉRIF

LE PRÉSENT CERTIFICAT ATTESTE QUE TOUTES LES ORDONNANCES ET TOUS LES BREFS D'EXÉCUTION FORCÉE ET CERTIFICATS DE PRIVILÈGE ÉNUMÉRÉS CI-DESSOUS ONT ÉTÉ DÉPOSÉS ET INSCRITS DANS LA BASE DE DONNÉES ÉLECTRONIQUE MAINTENUE PAR CE BUREAU AUX TERMES DE L'ARTICLE 10 DE LA LOI SUR L'EXÉCUTION FORCÉE AU MOMENT DE LA RECHERCHE VISANT LES BIENS MEUBLES ET IMMEUBLES DE :

NAME SEARCHED / NOM RECHERCHÉ

PERSON OR COMPANY / PERSONNE OU SOCIÉTÉ	NAME OR SURNAME, GIVEN NAME(S) / NOM OU NOM DE FAMILLE, PRÉNOM(S)
COMPANY / SOCIÉTÉ	206 BLOOR STREET WEST LIMITED

SEARCH RESULTS / RÉSULTATS DE LA RECHERCHE

EXECUTION # / N° D'EXÉCUTION FORCÉE	DEBTOR NAME(S) / NOM(S) DU(DES) DÉBITEUR(S)
17-0003333*	206 BLOOR STREET WEST LIMITED

CAUTION TO PARTY REQUESTING SEARCH:

1. IT IS THE RESPONSIBILITY OF THE REQUESTING PARTY TO ENSURE THAT THE NAME SEARCHED IS CORRECT.
2. WRITS, ORDERS OR CERTIFICATES OF LIEN MAY BE REMOVED FROM THE SHERIFF'S INDEX ANYTIME AFTER THIS SEARCH AND THEREFORE MAY NOT APPEAR ON A SUBSEQUENT SEARCH FOR THE SAME NAME ON THIS DATE OR IN FUTURE.
3. WRITS FILED WITH THE SHERIFF DO NOT BECOME EFFECTIVE WITHIN THE WRITS SYSTEM UNTIL THE FOLLOWING BUSINESS DAY.

AVERTISSEMENT À LA PARTIE QUI DEMANDE LA RECHERCHE :

1. IL INCOMBE À LA PARTIE QUI DEMANDE LA RECHERCHE DE S'ASSURER QUE LE NOM RECHERCHÉ EST EXACT.
2. LES BREFS D'EXÉCUTION FORCÉE, LES ORDONNANCES OU LES CERTIFICATS DE PRIVILÈGE PEUVENT ÊTRE RETIRÉS DU RÉPERTOIRE DU SHÉRIF EN TOUT TEMPS APRÈS CETTE RECHERCHE ET, PAR CONSÉQUENT, ILS PEUVENT NE PAS

WRIT DETAILS REPORT / RAPPORT DES DÉTAILS DU BREF
SHERIFF OF / SHÉRIF DE : CITY OF TORONTO (TORONTO)

**CERTIFICATE # /
N° DE CERTIFICAT :** 33698294-8715318B

**DATE OF CERTIFICATE /
DATE DU CERTIFICAT :** 2018-APR-03

SHERIFF'S STATEMENT

IT IS HEREBY CERTIFIED THAT THE INFORMATION CONTAINED BELOW IS A TRUE REPRESENTATION OF INFORMATION WITHIN THE ELECTRONIC DATABASE MAINTAINED BY THIS OFFICE IN ACCORDANCE WITH SECTION 10 OF THE *EXECUTION ACT*, AT THE TIME OF THE REPORT REQUEST.

DÉCLARATION DU SHÉRIF

IL EST CERTIFIÉ, PAR LA PRÉSENTE, QUE LES RENSEIGNEMENTS CI-APRÈS REPRODUISENT EXACTEMENT L'INFORMATION CONTENUE DANS LA BASE DE DONNÉES ÉLECTRONIQUE MAINTENUE PAR CE BUREAU AUX TERMES DE L'ARTICLE 10 DE LA *LOI SUR L'EXÉCUTION FORCÉE* AU MOMENT DE LA DEMANDE DE RAPPORT.

FILE DETAILS / DÉTAILS DU DOSSIER

EXECUTION # / N° D'EXÉCUTION FORCÉE : 17-0003333
ISSUE DATE / DATE DE DÉLIVRANCE : 2017-MAY-19
EFFECTIVE DATE / DATE DE PRISE D'EFFET : 2017-MAY-24
COURT FILE OR REFERENCE # / N° DE DOSSIER DU TRIBUNAL OU DE RÉFÉRENCE : CV-12-469391
COURT TYPE / TYPE DE TRIBUNAL : SCJ - CIVIL
JURISDICTION / TERRITOIRE DE COMPÉTENCE : TORONTO

DEBTOR SEARCH NAME(S) / NOM(S) DU(DES) DÉBITEUR(S) RECHERCHÉ(S)

#	DEBTOR TYPE / TYPE DE DÉBITEUR	DEBTOR NAME(S) / NOM(S) DU(DES) DÉBITEUR(S)
1.	COMPANY / SOCIÉTÉ	206 BLOOR STREET WEST LIMITED
2.	COMPANY / SOCIÉTÉ	MUSEUMHOUSE

PARTY DETAILS / COORDONNÉES DES PARTIES
DEFENDANT / DÉFENDEUR

1.	NAME / NOM	206 BLOOR STREET WEST LIMITED COB MUSEUMHOUSE
----	------------	---

CREDITOR / CRÉANCIER
 C/O LAWYER/AGENT / A/S PROCUREUR/AGENT

1.	PERSON / PERSONNE	ROSENBERG, LINDA PARIS FAITH
	ADDRESS / ADRESSE :	487 ST. GERMAIN AVENUE, TORONTO, ONTARIO, CANADA, M5M 1W9

NAME / NOM	ROLLO, R. DONALD
FIRM NAME / NOM DE L'ENTREPRISE	AMR LLP
ADDRESS / ADRESSE	300 - 145 WELLINGTON STREET TORONTO, ON M5J 1H8 416-369-9393

JUDGMENT/COST DETAILS (FROM ORIGINAL WRIT) / DÉTAILS DU JUGEMENT/DÉPENS (DU BREF ORIGINAL)

#	JUDGMENT OR COSTS / JUGEMENT OU DÉPENS	AMOUNT / MONTANT	INTEREST RATE / TAUX D'INTÉRÊT	START DATE / DATE DE DÉBUT
1.	JUDGMENT / JUGEMENT	CDN 0.00	0.0000%	
	COSTS / DÉPENS	CDN 225,000.00	2.0000%	2016-FEB-12
	AGAINST DEBTORS / CONTRE LES DÉBITEURS	ALL DEBTORS / TOUS LES DÉBITEURS		

FINANCIAL TRANSACTIONS / OPÉRATIONS FINANCIÈRES

#	FEE OR PAYMENT / FRAIS OU PAIEMENT	TRANSACTION DATE / DATE D'OPÉRATION	AMOUNT / MONTANT	REFERENCE OR NOTES / RÉFÉRENCE OU NOTES
1.	FEE / FRAIS	2017-MAY-19	CDN 50.00	LAWYER'S FEE FOR ISSUANCE
2.	FEE / FRAIS	2017-MAY-19	CDN 70.00	ISSUANCE FEE
3.	FEE / FRAIS	2017-MAY-23	CDN 100.00	FILING FEE

COMMENTS / REMARQUES

2017-05-23 - \$9000.00 REMAINS OUTSTANDING

THE TOTAL AMOUNT OF THE JUDGMENT IS \$523,750.

PAYMENTS HAVE BEEN MADE AS FOLLOWS:

- \$494,750 ON APRIL 13, 2016

- \$20,000 IN LATE JUNE 2016

CAUTION:

ENSURE THAT THE NAME AND EXECUTION# (NUMBER) MATCH YOUR REQUEST.

AVERTISSEMENT :

ASSUREZ-VOUS QUE LE NOM ET LE NUMÉRO DU DOSSIER D'EXÉCUTION FORCÉE SONT LES MÊMES QUE CEUX QUI SE TROUVENT DANS VOTRE DEMANDE.

CHARGE FOR THIS REPORT / FRAIS POUR CE RAPPORT : CDN 6.35

REQUESTER REFERENCE / REFERENCE CONCERNANT L'AUTEUR DE LA DEMANDE : 52719-5

APPARAÎTRE LORS D'UNE RECHERCHE SUBSÉQUENTE VISANT LE MÊME NOM À CETTE DATE OU À L'AVENIR. 112
3. LES BREFS D'EXÉCUTION FORCÉE DÉPOSÉS AUPRÈS DU SHÉRIF NE PRENNENT EFFET DANS LE SYSTÈME DE BREFS
QUE LE PROCHAIN JOUR OUVRABLE

CHARGE FOR THIS CERTIFICATE CDN 11.65
/ FRAIS POUR CE CERTIFICAT :

SEARCHER REFERENCE / 52719-5
REFERENCE CONCERNANT
L'AUTEUR DE LA DEMANDE :

(*) WRIT REGISTERED AT LAND TITLES / BREF ENREGISTRÉ AU BUREAU D'ENREGISTREMENT DES DROITS IMMOBILIERS

APPENDIX J

Rosen Goldberg Inc.; Court Appointed Receiver and Manager of
 206 Bloor Street West Limited
Statement of Receipts and Disbursements
 For the period September 27, 2016 to April 5, 2018

Receipts

Receiver's borrowings	742,000
Proceeds from funds held by Dickinson Wright LLP	366,084
	<u>1,108,084</u>

Disbursements

Construction and maintenance costs	742,000
Repayment of Receiver's borrowings	250,000
Receiver's fees	12,000
HST paid	1,560
	<u>1,005,560</u>
	102,524
Payment To Romspen Investment Corporation	81,526
Excess of receipts over disbursements before the undernoted	<u><u>20,998</u></u>

The schedule does not reflect the Receiver's current obligations ,if any.

APPENDIX K

Court File No. CV -16-11529-00CL

IN THE MATTER OF THE RECEIVERSHIP OF
206 BLOOR STREET WEST LIMITED

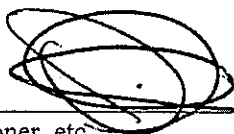
AFFIDAVIT OF FEES

I, Brahm Rosen, Chartered Accountant and Licensed Trustee in Bankruptcy, of the City of Toronto, Province of Ontario, make oath and say as follows:

1. I am President of Rosen Goldberg Inc., the Receiver of the above mentioned estate, and as such have knowledge of the administration.
2. The total time charges of the Receiver relating to the administration of the estate amounted to \$14,425.50, exclusive of HST, as of April 5, 2018.
3. Attached as Exhibit "A" and "B" to this Affidavit are schedules of time spent with standard rates of those employed by the Receiver for the period from September 16, 2016 to April 5, 2018 in its capacity as Receiver and a summary of services rendered, which describes in detail the services rendered by the Receiver in connection with the administration of the estate.

DATED at Toronto, Ontario this 6th day of April 2018.

SWORN before me at the
City of Toronto, Province of Ontario,
this 6th day of April 2018.



A commissioner, etc.



Brahm Rosen

*Julie Elisa Schincariol, a Commissioner, etc.
Province of Ontario, for Rosen Goldberg Inc.
Expires September 25, 2020*

Exhibit "A"

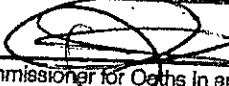
Court File No. CV -16-11529-00CL

IN THE MATTER OF THE RECEIVERSHIP OF
206 BLOOR STREET WEST LIMITED

Summary of Total Time Charges
For the Period from September 16, 2016 to April 5, 2018

B. Rosen	30.44	hrs at	\$ 450.00 /hr	\$ 13,698.00
E. Bowles	2.15	hrs at	\$ 150.00 /hr	\$ 322.50
P. Ferreira	6.75	hrs at	\$ 60.00 /hr	\$ 405.00

Total time charges	<u>39.34</u>			<u>\$ 14,425.50</u>
--------------------	--------------	--	--	---------------------

This is Exhibit " A " referred to
in the Affidavit of
BRADY ROSEN
Sworn before me this 6th day
of APRIL, 2018

A Commissioner for Oaths In and for Ontario

Julie Elisa Schincariol, a Commissioner, etc.
Province of Ontario, for Rosen Goldberg Inc
Expires September 25, 2020

IN THE MATTER OF RECEIVERSHIP OF
206 BLOOR WEST LIMITED

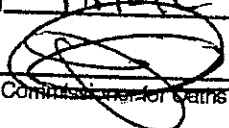
Summary of Services Rendered by Rosen Goldbert Inc. in its capacity of Receiver of
206 Bloor Street Limited
For September 16 2016 to April 05, 2018

Last Name	Date	Description	Hours
Rosen	09/16/2016	review material and response	0.33
Rosen	09/26/2016	draft statement of claim from Rosenberg; set up case site	0.60
Rosen	10/06/2016	emails to/ from Ross Lyndon re cash flow and borrowings	0.50
Bowles	10/07/2016	draft notice of receiver, faxed order to osb for certificate to be issued.	0.75
Rosen	10/07/2016	review and finalize receiver's statutory report	0.50
Bowles	10/11/2016	complete mailing and affidavit of notice of receiver, email to osb to followup on receipt of the cert of appointment	0.75
Bowles	10/13/2016	followup email to OSB for issuance of the Recvrship appoint certificate to open a bank account.	0.40
Rosen	10/13/2016	emails re Rosenberg matter	0.25
Rosen	10/18/2016	emails from Harold Rosenberg	0.25
Rosen	10/21/2016	review claim	0.60
Rosen	10/24/2016	review initial draft of report	0.33
Rosen	10/25/2016	review banking of 206	1.33
Ferreira	10/26/2016	prepared spreadsheet	3.45
Rosen	10/26/2016	review disbursements for 206 and Yorkville; review bank statements; email to Ross Lyndon re information; review loan advances	2.25

Last Name	Date	Description	Hours
Rosen	10/27/2016	trace receipts; email to . from Ross Lyndon draft paragraph re financial review; call with David Preger; email from Harold Rosenberg	1.45
Rosen	10/28/2016	call with David Preger and Harold Rosenberg re receiver's motion; emails to/ from Ross Lyndon; email to from Harold Rosenberg	0.45
Rosen	10/31/2016	emails to /from Harold Rosenberg/ emails to/ from David Preger; review security opinion/ finalize First report	1.40
Rosen	11/04/2016	emails re borrowings	0.16
Rosen	11/08/2016	dealing w borrowings and receiver's certificate; response to Rosenberg affidavit; emails with Ross Lyndon	1.60
Rosen	11/09/2016	review responding material from Linda Rosenberg; update case site; review 206's accounting re proceeds from sale of condos and disbursement of funds; email communications with Ross Lyndon, Harold Rosenberg	2.60
Rosen	11/10/2016	re review of proceeds; supp report	0.40
Rosen	11/11/2016	various emails from Harold Rosenberg re Supp report and finalization of same	0.50
Rosen	11/12/2016	emails re supplementary report; review report	0.50
Rosen	11/12/2016	finalize supplementary report; maintain case website	1.00
Rosen	11/14/2016	Borrowings; update motion material on case site	1.00
Rosen	11/15/2016	emails from Harold Rosenberg re report	0.16
Rosen	11/16/2016	supplementary report	0.70
Rosen	11/17/2016	review draft factum	0.60
Rosen	11/18/2016	email communication with Harold Rosenberg re factum	0.20
Rosen	11/21/2016	emails to/ from Harold Rosenberg re motion material; update case site	0.33

Last Name	Date	Description	Hours
Rosen	11/22/2016	reweiw factum of receiver and certain cases; reweiw factum of Linda Rosenberg	1.25
Rosen	11/23/2016	attendamce in court for motion	3.00
Rosen	01/09/2017	ReceIver's certificate 2	0.10
Rosen	02/06/2017	reweiw Wilton -Siegel decision and update case website	0.50
Rosen	03/03/2017	Borrowing certificate; interim report	0.25
Ferreira	03/13/2017	email with Brahm Rosen, fax and email with BMO to open new account	1.00
Rosen	03/24/2017	email from Harold Rosenberg re 9:30 and follow up email	0.16
Bowles	03/29/2017	fax interim recvr report 206.	0.25
Ferreira	03/29/2017	fax, email with BMO to open bank accounts	1.30
Rosen	03/29/2017	prepare interim report and srd; statement of account	0.85
Ferreira	03/31/2017	emails with BMO regarding wire transfer	1.00
Rosen	05/03/2017	reweiw cost submissions and email to Harold Rosenberg re use of funds	0.50
Rosen	05/09/2017	reweiw cost submissiosn	0.16
Rosen	08/21/2017	prepare scheudle for accountants re Emarma borrowings and email to Richter et al	0.50
Rosen	09/26/2017	reweiw receiver's interim report; email to Wes Roitman re advances	0.50
Rosen	09/29/2017	prepare receiver's certificate 5; uodate loan schedule	0.16
Rosen	10/17/2017	email from Wes Roitman and Ross Lyndon; update borrowings schedule	0.33

Last Name	Date	Description	Hours
Rosen	01/16/2018	receiver's certificate	0.16
Rosen	02/07/2018	emails re Tarion issue	0.10
Rosen	03/05/2018	emaild from Wes Roitman and David Preger re vesting order	0.10
Rosen	03/30/2018	call with David Preger re court approval of sale	0.33
Rosen	03/31/2018	reveiw offer and emails	0.67
Rosen	04/02/2018	Various emails re court approval of sale	0.33
Rosen	04/05/18	Review receivers loan	0.50
			39.34

This is Exhibit " B " referred to
in the Affidavit of
BLAINE ROSEN
Sworn before me this 6th day
of April, 2018

A Commissioner for Courts in and for Ontario

Julie Elisa Schincariol, a Commissioner, etc.
Province of Ontario, for Rosen Goldberg Inc
Expires September 25, 2020

APPENDIX L

Court File No. CV-16-11529-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

IN THE MATTER OF SECTION 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

BETWEEN:

ROMSPEN INVESTMENT CORPORATION

Applicant

- and -

206 BLOOR STREET WEST LIMITED

Respondent

FEE AFFIDAVIT OF HAROLD ROSENBERG

(Sworn April 10, 2018)

I, **HAROLD ROSENBERG**, of the City of Toronto, in the Province of Ontario, **MAKE OATH AND SAY AS FOLLOWS:**

1. I am a lawyer with the law firm of Battiston & Associates. Battiston & Associates has acted as independent counsel to Rosen Goldberg Inc. (the "Receiver"), in its capacity as Court-appointed receiver of the assets, undertaking and property of 206 Bloor Street West Limited. I have knowledge of the matters to which I hereinafter depose.
2. My firm's account for the period from September 23, 2016 through April 9, 2018 (the "Account"), inclusive of fees, disbursements and HST, was \$22,876.05. A true copy of the Account is attached as **Exhibit "A"**.

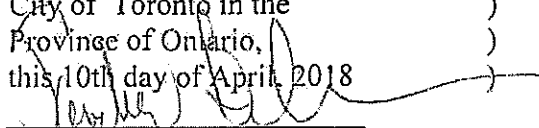
3. Additionally, I estimate a further sum of \$5,000 may be expended by myself after today's date, in respect to the Receiver's motion for approval of sale and other relief, discharge of the Receiver and other miscellaneous matters that may arise, at my hourly rate of \$350.00.
4. The expertise and area of practice of the lawyers involved in rendering services to the Receiver, the hourly rates charged to the Receiver, as well as the number of hours charged, are as follows:

Name	Year of Call	Hours Billed	Hourly Rate	Amount Billed
Harold Rosenberg (Commercial Litigation)	1984	54.9	\$350.00	\$19,215.00
Flavio Battiston (Litigation, Commercial Transactions)	1981	2.0	\$425.00	\$ 850.00

The hourly rates charged to the Receiver by my firm are our normal hourly rates.

5. The Account includes a total of 56.9 hours recorded by my firm in connection with advising the Receiver.

SWORN BEFORE ME at the)
City of Toronto in the)
Province of Ontario,)
this 10th day of April, 2018)


A Commissioner, etc


Sandra Bellissimo, a Commissioner, etc.,
City of Toronto, for Battiston & Associates,
Barristers and Solicitors,
Expires May 1, 2019.


HAROLD ROSENBERG

This is

Exhibit A

mentioned and referred to in
the affidavit of **Harold Rosenberg**
sworn before me this 10th day of April, 2018.



A Commissioner, etc.

Sandra Bellissimo, a Commissioner, etc.,
City of Toronto, for Battiston & Associates,
Barristers and Solicitors,
Expires May 1, 2019.

BATTISTON & ASSOCIATES

STATEMENT OF ACCOUNT
HST #R121914741

TO:
ROSEN GOLDBERG INC.
 5255 Yonge Street, Suite 804
 Toronto, Ontario, M2N 6P4

Attention: Brahm Rosen

April 9, 2018

Account Number:

RE: 206 Bloor Street West Receivership

To all professional services rendered in respect to this matter from September 23, 2016 to April 9, 2018:

Professional Fees

DATE	DESCRIPTION	HOUR	LAWYER
September 23, 2016	Receive and Review of Application; emails with Receiver;	1.0	HR
September 26, 2016	Email from Romspen counsel, emails with Receiver;	0.25	HR
September 27, 2016	Email from Romspen counsel with Appointment Order; Review order;	0.25	HR
September 28, 2016	Emails Romspen counsel and Rosenberg counsel;	0.17	HR
October 5, 2016	Emails with counsel re: scheduling	0.17	HR
October 13, 2016	Telephone conference call with Romspen counsel, receiver re: scheduling; receipt of Claim by Rosenberg;	0.5	HR
October 14, 2016	Email to Rosenberg counsel re: stay of proceedings; Emails with Commercial Court; Emails to Counsel;	0.92	HR

October 18, 2016	Emails with Preger re: 9:30 appointment; Review of Application Record for appointment of Receiver; Preparation of 9:30 Request Form; Serve and email to Commercial List Office ;	0.5	HR
October 24, 2016	Email from Receiver; Teleconference with Romspen counsel; Review of file; Email counsel advising of 9:30 appointment; Receiving draft report of Receiver;	1.5	HR
October 25, 2016	Review of previous decisions by Myers, J.; emails Commercial Court office; emails to counsel;	1.5	HR
October 26, 2016	Attendance before Justice Newbould for scheduling; Email to Counsel; Email to Receiver; Preparation of Notice of Motion;	2.0	HR
October 27, 2016	Emails with Receiver;	0.17	HR
October 28, 2016	Teleconference with Receiver; Email Flavio Battiston re: opinion on security required; Conference with Flavio Battiston; Email Receiver; Emails with Counsel to Rosenberg;	1.5	HR
October 31, 2016	Preparation and review of draft Motion materials; Review draft Report; Review of Opinion letter; Finalizing and service of Motion materials;	2.5	HR
October 31, 2016	Review of loan and security documentation and provision of opinion letter concerning security;	2.0	FB
November 8, 2016	Emails from Receiver, counsel to Rosenberg	0.17	HR
November 9, 2016	Receipt and review of Responding Motion materials; Email Receiver re: finances of project, responding materials; Research and review case law on priority;	2.5	HR
November 11, 2016	Teleconference with counsel to Romspen; Emails with Receiver;		

	Review of draft supplementary report;	1.25	HR
November 12, 2016	Emails with receiver re: supplementary report; Serve report;	0.5	HR
November 14, 2016	Emails with counsel;	0.25	HR
November 15, 2016	Review of supplementary record; Memo for filing at Commercial Court;	0.17	HR
November 16, 2016	Emails with Counsel to Romspen; Research re: Assignments and Preferences Act	2.0	HR
November 18, 2016	Drafting and review of Factum; Emails with Receiver;	2.5	HR
November 19, 2016	Reviewing law, further drafting and amending of Factum;	1.5	HR
November 21, 2016/November 22, 2016	Finalizing Factum and Brief; Reviewing legal briefs in preparation for attendance; Receipt and Review of Responding Materials; Preparing for Motion;	10.0	HR
November 23, 2016	Preparation for, and attendance before Justice Wilton- Siegel for hearing;	4.0	HR
November 24, 2016	Report to Receiver;	0.33	HR
February 1, 2017	Receipt and review of decision of Justice Wilton- Siegel;	0.5	HR
February 10, 2017	Emails with Receiver regarding Appeal period;	0.17	HR
February 17, 2017	Receipt and Review of Notice of Appeal from Rosenberg, letter from counsel, Certificate of Evidence; emails with Receiver; Review of Bankruptcy Act re: Stays pending appeal, Appeal Routes;	1.0	HR
February 22, 2017	Receipt and review of draft Order prepared by counsel to Romspen;	0.17	HR
February 27, 2017	Communicating approval of draft Order; Receipt and Review of correspondence concerning appeal routes and stay;	0.08	HR
March 1, 2017	Correspondence re: scheduling chambers appointment	0.08	HR

	to settle order;		
March 9, 2017	Emails regarding Appeal; Receipt of offer to settle from counsel to Rosenberg; emails Receiver;	0.5	HR
March 10, 2017	Emails from counsel to Rosenberg re: Offer; Emails with Receiver;	0.17	HR
March 14, 2017	Receipt of correspondence and Notice of Abandonment of Appeal from counsel for Rosenberg; email to Receiver;	0.25	HR
March 22, 2017	Emails regarding attendance to settle order; Review draft order and endorsement;	0.33	HR
March 23, 2017	Attendance before Justice Wilton-Siegel to settle Order;	1.0	HR
March 24, 2017	Email to Receiver;	0.17	HR
March 29, 2017	Reviewing dockets;	0.33	HR
April 11, 2017	Drafting costs submissions;	1.5	HR
April 12, 2017	Email counsel to Romspen; Deliver Costs Submissions of the Receiver; Receive and review costs submissions of Romspen;	0.5	HR
April 27, 2017	Receive and review Costs Submissions of Rosenberg; Email to Receiver;	0.5	HR
May 3, 2017	Emails with Receiver; Prepare Reply Cost Submissions	1.25	HR
May 10, 2017	Deliver Reply Cost Submissions	0.17	HR
January 24, 2018	Receive Notice of Intention to Act in Person from Linda Rosenberg; Email to Receiver	0.08	HR
March 21, 2018	Email from counsel to Romspen	0.08	HR
April 8, 2018	Review file, prepare accounts, emails Receiver and counsel to Rompsen	2.5	HR
April 9, 2018	Prepare Fee Affidavit, Motion, emails Receiver	3.0	HR

Summary of Counsel Fees

Lawyer	Hours/Rate		Fee
Harold Rosenberg	54.9	\$350.00	\$19,215.00
Flavio Battiston	2.0	\$425.00	\$ 850.00

Summary of Disbursements

Disbursements	HST	Total
1. \$127.00 Paid for Motion	\$ --	\$127.00
2. \$ 60.00 Paralegal to file motion	\$ 7.80	\$ 67.80
\$187.00	\$ 7.80	\$194.80

SUMMARY

Counsel Fees	\$20,065.00
HST 13%	\$ 2,608.45
Disbursements	\$ 194.80
HST 13%	\$ 7.80
Total Fees, Disbursements and HST	\$22,876.05
AMOUNT DUE	\$22,876.05

BATTISTON & ASSOCIATES

Barriers and Solicitors


Harold Rosenberg

E + OE

Any disbursements not posted to your account on the date of the account will be billed at a later date.

Account is due when rendered. In accordance with the Solicitors Act, interest will be charged on any unpaid balance at the rate of 1 per cent per annum commencing one month after the delivery of this account.

ROMSPEN INVESTMENT CORPORATION
Applicant

-and- **206 BLOOR STREET WEST LIMITED**
Respondent

Court File No. CV-16-11529-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

PROCEEDING COMMENCED AT
TORONTO

MOTION RECORD

BATTISTON & ASSOCIATES
Barristers & Solicitors
1013 Wilson Avenue
Suite 202
Toronto, Ontario M3K 1G1

H. Rosenberg (LSUC# 24219T)
(416) 630-7151 (phone)
(416) 630-7472 (fax)
email: h.rosenberg@battistonlaw.com

Lawyers for Rosen Goldberg Inc.,
Court-appointed Receiver