

**ONTARIO
SUPERIOR COURT OF JUSTICE
[COMMERCIAL LIST]**

BETWEEN:

**COMFORT CAPITAL INC., THE BANK OF NOVA SCOTIA TRUST COMPANY,
E. MANSON INVESTMENTS LTD., FENFAM HOLDINGS INC., 593651 ONTARIO
LTD., 1031436 ONTARIO INC., ALRAE INVESTMENTS INC., BARRY SPIEGEL,
SHARON NIGHTINGALE, DAVID SUGAR, PHYLLIS SUGAR, NATIONAL TIRE LTD.,
1119778 ONTARIO LIMITED, 1415976 ONTARIO LIMITED, ALRAE INVESTMENTS
INC., BAMBURGH HOLDINGS LTD., BEVERLEY GORDON, DIANE GRAFSTEIN,
RICHARD GRUNEIR, B. & M. HANDELMAN INVESTMENTS LTD., RIDGEWAY
OCCUPATIONAL CONSULTANTS INC., YERUSHA INVESTMENTS INC., MIHAL
TYLMAN, A. ELIEZER KIRSHBLUM, 593651 ONTARIO LIMITED, THE BANK OF
NOVA SCOTIA TRUST COMPANY IN TRUST FOR BAILEY LEVENSON, THE BANK
OF NOVA SCOTIA TRUST COMPANY IN TRUST FOR ROSEMONDE KELLY, ANNE
HANDELMAN, YERUSHA INVESTMENTS INC., CELMAR INVESTMENTS CORP.,
BEVERLEY GORDON, PHILGOR INVESTMENTS LTD., BRILLIANT INVESTCORP
INC., MAXOREN INVESTMENTS, 2227046 ONTARIO LIMITED, DAST PROPERTIES
LIMITED, TOVA MARKOVZKI, JOSEPH SUCKONIC and B. & M. HANDELMAN
INVESTMENTS LIMITED**

Applicants

- and -

**ANNIE YERETSIAN, TERRY WILSON, 2457674 ONTARIO INC.,
2399029 ONTARIO INC. and MOSS DEVELOPMENT LTD.**

Respondents

**APPLICATION UNDER SECTION 101 OF THE *COURTS OF JUSTICE ACT*, R.S.O.
1990 C. C.43, AS AMENDED AND SECTION 243(1) OF THE *BANKRUPTCY AND
INSOLVENCY ACT*, R.S.C. 1985, C. B-3, AS AMENDED**

NOTICE OF MOTION

(Receiver's Motion for Directions re: distribution, returnable June 27, 2018)

Rosen Goldberg Inc., in its capacity as receiver and manager (in such capacity, the “Receiver”) without security, of certain assets, undertakings and properties of the Respondents (each Respondent individually hereinafter being referred to as a “Debtor” and collectively, the

“Debtors”) will make a motion to a Judge presiding over the Commercial List, on Wednesday the 27th day of June 2018 at 10:00 a.m., or as soon after that time as the motion can be heard at 330 University Avenue, Toronto, Ontario.

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

THE MOTION IS FOR:

1. an Order abridging the time for service of the Receiver’s Motion Record and related Notice of Motion, validating service of the Motion Record and related Notice of Motion, and dispensing with further service thereof;
2. advice and directions regarding the distribution of funds from the net proceeds of sale of the High Point property (as defined in the Receiver’s First Report) to Canada Capital Corporation Inc., in respect of the first mortgage over High Point;
3. advice and directions regarding the distribution of funds from the net proceeds of sale of the Caldwell property (as defined in the Receiver’s First Report) to Canada Investment Corporation in respect of the first mortgage over Caldwell;
4. advice and directions regarding the distribution of funds from the net proceeds of sale of the Bridge property (as defined in the Receiver’s First Report) to the second mortgagee over Bridge; and
5. such further and other relief as counsel may advise and this Honourable Court deems just.

THE GROUNDS FOR THIS MOTION ARE:

1. by Amended Order of Justice McEwen dated February 28, 2018 (the “**Appointment Order**”), Rosen Goldberg Inc. was appointed receiver and manager of the assets, undertakings and properties of the Debtors;
2. on June 1, 2018, Justice Dunphy made a Sale Approval and Vesting Order with respect to four of the six properties that are the subject matter of this receivership proceeding and that have been sold by the Receiver, including High Point, Caldwell, Bridge and Loyalist (collectively, the “**Properties**”);
3. the sale of each of the Properties has closed;
4. on June 22, 2018, Justice Hainey made a Distribution Order in favour of the Applicants with respect to the proceeds of sale of the Properties, paying out the Applicants’ first mortgage over each of the Properties, save and except for their (i) costs, and (ii) the amount being claimed for three months’ interest under section 17 of the *Mortgages Act*, R.S.O. 1990 c. M. 40;
5. with respect to High Point, the Applicants hold an assignment of the first mortgage of Canada Capital Corporation Inc. (“**CCC**”) over High Point (*i.e.* the Applicants’ loan to CCC is secured by the first mortgage held over High Point);
6. with respect to Caldwell, the Applicants also hold an assignment of the first mortgage of Canada Investment Corporation (“**CIC**”) over Caldwell (*i.e.* the Applicants’ loan to CIC is secured by the first mortgage CIC held over Caldwell);

7. upon repayment of the High Point loan to the Applicants, CCC has the option to have the Applicants transfer the first mortgage over High Point back to CCC, or have it discharged;
8. upon repayment of the Caldwell loan to the Applicants, CIC has the option to have the Applicants transfer the first mortgage over Caldwell back to CIC, or have it discharged;
9. the security opinions the Receiver obtained in respect of the first mortgage over High Point and the first mortgage over Caldwell confirmed that these mortgages are legal, valid and binding obligation of the Debtors who held title to those properties, enforceable against them, as applicable in accordance with the terms of the first mortgages. Furthermore, assuming that there are no other postponements or other agreements among the parties to the mortgages registered against title other than those that appear on the parcel register for High Point and Caldwell, they are the first ranking mortgages registered against title to High Point and Caldwell;
10. the security opinion the Receiver obtained in respect of the second mortgage over Bridge confirmed that it is a legal, valid and binding obligation of the Debtor who held title to Bridge, enforceable against it, as applicable in accordance with the terms of the second mortgage. Furthermore, assuming that there are no other postponements or other agreements among the parties to the second mortgage registered against title other than those that appear on the parcel register for Bridge, it is a second ranking mortgage registered against title to Bridge. However, the Bridge opinion in respect of the second mortgage is subject to the second mortgagee confirming what is owing in respect of a mortgage registered on March 31, 2016, against the property municipally known as 395

County Road 1, Prince Edward, Ontario, granted by Christopher Graham Rogers and Norah Doreen Rogers to and in favour of the D. & A. MacLeod Company Ltd. in the original principal amount of \$2,000,000 (this was a collateral charge);

11. on June 8 2018, the Receiver requested that all stakeholders holdings mortgages (or construction liens) over the Properties produce detailed evidence of their claims. The evidence produced by the Applicants was set out in the Receiver's Second Supplement to its First Report;
12. on June 21, 2018, the Receiver's counsel shared with all stakeholders that are on the Service List in this proceeding most of the documentation its counsel had received in response to its requests for evidence on June 8, 2018, including the statements delivered by counsel for CIC and CCC in respect of their loans secured by the first mortgages over High Point and Caldwell;
13. as of April 30, 2018, CCC alleges that it is owed \$10,211.670.07 in respect of its loan secured by the first mortgage over High Point;
14. as of April 30, 2018, CIC alleges that it is owed \$2,500,919.95 in respect of its loan secured by the first mortgage over Caldwell;
15. based on the Receiver's Statement of Receipts of Disbursements dated June 15, 2018, for High Point (\$8,367,342.00), and the amount claimed by the Applicants on their first mortgage over High Point as of May 15, 2018 excluding legal costs (\$3,471.206.47), CCC will incur a shortfall on its loan secured by the first mortgage over High Point;

16. based on the Receiver's Statement of Receipts of Disbursements dated June 15, 2018, for Caldwell (\$1,784,157.00), and the amount claimed by the Applicants on their first mortgage over Caldwell as of May 11, 2018 excluding legal costs (\$663,490.62), CCC will also incur a shortfall on its loan secured by the first mortgage over Caldwell;
17. as a result, there will not be any surplus funds available to any stakeholders in High Point that rank behind CCC, or in Caldwell that rank behind CIC;
18. the Receiver accepts the position of the lawyers for CIC and CCC that the payments the Applicants are receiving from the sales of High Point and Caldwell pursuant to the Distribution Order of Justice Hainey made June 22, 2018, are only to be credited to the CIC and CCC statements for their loans secured by the first mortgages over High Point and Caldwell on the back end (i.e. upon payment to the Applicants), and not on the front end (i.e. when the CIC and CCC mortgages were assigned to the Applicants);
19. the Receiver also accepts the position of the lawyers for CIC and CCC that their loans secured by their first mortgages on High Point and Caldwell accrue in accordance with the terms of those mortgages;
20. the Receiver has not yet taken a position on the quantum owing under the CIC and CCC statements for their loans secured by the first mortgages on High Point and Caldwell (other than the point at which the funds received by the Applicants from the sale of High Point and Caldwell are to be applied to the CCC and CIC loans secured by these first mortgages). Those amounts are to be determined based on the terms of the CIC and CCC first mortgages securing those loans, and any evidence CIC, CCC and any stakeholders in High Point and Caldwell deliver to the Court for the Receiver's motion on June 27, 2018;

21. section 249 of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B.3;
22. Rules 2.03, 3.02, 37 and 41.05 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194;
and
23. such further and other grounds as counsel may advise and this Honourable Court may permit.

THE FOLLOWING DOCUMENTARY EVIDENCE WILL BE USED ON THE HEARING OF THE MOTION:

1. the affidavit of Gary Gruneir sworn in support of the Appointment Order;
2. the First Report of the Receiver;
3. the Supplement to the First Report of the Receiver
4. the Second Supplement to the First Report of the Receiver; and
5. such further and other grounds as counsel may advise and this Honourable Court may permit.

June 22, 2018

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TO: SERVICE LIST

Applicants

COMFORT CAPITAL INC., ET AL.

Respondents

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

Proceeding commenced at Toronto

NOTICE OF MOTION
(Motion for Directions returnable June 27, 2018)

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