

Court File No. 35-1292561T

**ONTARIO
SUPERIOR COURT OF JUSTICE
(IN BANKRUPTCY AND INSOLVENCY)**

**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:

ONTARIO WEALTH MANAGEMENT CORPORATION

Applicant

- and -

1639329 ONTARIO LTD.

Respondent

**AND IN THE MATTER OF THE TRIAL OF AN ISSUE ORDERED BY JUSTICE CAREY
ON OCTOBER 8, 2013, PURSUANT TO BANKRUPTCY RULE 187(8) OF *THE
BANKRUPTCY AND INSOLVENCY ACT* AND RULE 38.10(2) OF *THE RULES OF CIVIL
PROCEDURE***

B E T W E E N:

SF PARTNERS INC.

Plaintiff

-and-

**MEATHEADS RESTAURANTS INC. and
GOLDDIGGERS CLUBS INC.**

Defendant

SECOND REPORT OF SF PARTNERS INC.

June 2, 2014

Introduction

1. By Order of the Honourable Mr. Justice Goodman dated July 23, 2013 (the “**Appointment Order**”), SF Partners Inc. (the “**Receiver**”), was appointed as receiver and manager of the assets, property and undertaking of 1639329 Ontario Ltd. (“**163**”) pursuant to section 243(1) of the *Bankruptcy and Insolvency Act* and section 101 of the *Courts of Justice Act* . The Appointment Order is attached to this report as **Exhibit “A”**.

The Purpose of this Report

2. The purpose of this report is to:
 - (i) advise this Honourable Court of the Receiver’s activities and those of its counsel to date;
 - (ii) request an Order striking the Statement of Defence described in the Endorsement (defined and described in paragraph 28 below) pursuant to Rule 60.12 of the *Rules of Civil Procedure*;
 - (iii) request an Order granting the Receiver leave to issue a writ of possession without the requirement of a trial on the issue;
 - (iv) request an expedited Court ordered time table to determine the trial of the issue ordered by the Honourable Mr. Justice Carey on October 8, 2013 (the “**Possession Trial**”) if the relief set out in paragraph (ii) and (iii) above is not granted;
 - (v) request an Order granting the relief set out in the Motion to Approve the Sales Process (described below in paragraph 34) and an Order approving this Second Report if the relief in paragraph (ii) and (iii) above is granted; and
 - (vi) request an Order directing the Judge seized of the Possession Trial to hear submissions on the Motion to Approve the Sales Process immediately following the conclusion of the Possession Trial, if the relief in paragraph (ii) and (iii) above is not granted.

The Property

3. 163 is the registered owner of lands known municipally as 2010 Dundas Street, London, Ontario (the “**Property**”). The Property’s site is 1.01 acres and houses a building that includes a sixty room hotel (the “**Hotel**”), a restaurant (the “**Restaurant**”) and an adult

entertainment establishment (the “**Entertainment Business**”). The parcel register for the Property is attached to this report as **Exhibit “B”**.

The OW Charge

4. Ontario Wealth Management Corporation (“**OW**”) is a secured creditor of 163 and holds a Charge/Mortgage of Land in the principal amount of \$1,500,000 from 163 dated June 27, 2006 and receipted as ER439089, as amended by instrument no. ER510248 registered June 28, 2007 whereby the principal amount was increased to \$1,800,000 (the “**OW Charge**”) along with certain other security including an assignment of rents. The OW Charge is attached to this report as **Exhibit “C”**.
5. The OW charge is held in trust by OW. The beneficial owner of the OW charge is Owemanco Mortgage Trust (OMT), a mortgage mutual fund trust and the investors in OMT funded the OW Charge and it is their capital that is imperiled.
6. The municipal taxes for the Property were assessed at \$38,382.71 for the 2013 tax year. The interim tax bill for 2014 is \$15,537.32. The municipal taxes are paid by OW and are current. An interim tax certificate for 2014 and a tax certificate dated November 14, 2013 are attached to this report as **Exhibit “D”**.
7. The amount secured by the OW Charge totals \$1,980,294.26 as of May 16, 2014.
8. The arrears that have accumulated as against the OW Charge since the date of the Appointment Order total \$280,294.26.
9. The Receiver has recovered rents totaling \$30,000 since the date of the Appointment Order. A statement identifying the source and quantum of the rents recovered by the Receiver is attached to this report as **Exhibit “E”**.

The Restaurant

10. The Restaurant is occupied by Meatheads Restaurant Inc. (“**Meatheads**”). Meatheads carries on business as Meatheads Steak and Burger House. A screen shot from Meatheads’ website (www.meatheadsrestaurants.com) is attached to this report as **Exhibit “F”**.
11. The corporate profile report for Meatheads identifies George Nikopoulos (“**Nikopoulos**”) as the sole director of Meatheads. The corporate profile for Meatheads is attached to this report as **Exhibit “G”**.
12. On August 15, 2012 (with amendments dated November 23, 2012 and June 19, 2013), 163 entered into a five (5) year lease agreement with Meatheads (the “**Meatheads Lease**”). The Meatheads Lease is attached to this report as **Exhibit “H”**. The pertinent terms of the Meatheads Lease are set out below:

Term of Lease: 5 years from September 1, 2012.

Rent: \$2,500 per month (the “**Base Rent**”). In addition to the Base Rent the tenant will pay its proportional share of realty taxes to the landlord as additional rent as this is a net net lease to the landlord.
The Base Rent will increase to \$2,625 for the last three years of the lease.

Permitted Use: Restaurant with liquor licence to be obtained.

Lease Premises: The commercial restaurant facilities at 2010 Dundas Street East [approximately 1,200 square feet].

The Entertainment Business

13. The Entertainment Business is occupied by Golddiggers Clubs Inc. (“**Golddiggers**”). Golddiggers carries on business as Golddiggers Naked Night Club. A screen shot from

Golddiggers' website (www.golddiggersclubs.com) is attached to this report as **Exhibit "I"**.

14. The corporate profile report for Golddiggers identifies Nikopoulos as the sole director of Golddiggers. The corporate profile for Golddiggers is attached to this report as **Exhibit "J"**.

15. On April 8, 2013, 163 entered into a five (5) year lease agreement with Golddiggers (the "**Golddiggers Lease**"). The Golddiggers Lease is attached to this report as **Exhibit "K"**.

The pertinent terms of the Golddiggers Lease are set out below:

- | | |
|-----------------|--|
| Term of Lease: | 5 years from the date of commencement of business as an adult entertainment with liquor licence/licenced bar/nightclub |
| Rent: | \$5,000 plus HST per month for the first year which will include TMI. For first year, all utilities shall be included in the rent. After first year, the rent shall increase to \$7,500 plus HST which shall include TMI. After the first year, the landlord shall install at the landlord's expense separate hydro, gas and water meters and the tenants shall assume responsibility to pay all utilities. |
| Permitted Use: | Adult entertainment facility with liquor licence and bar/licenced bar/night club. |
| Lease Premises: | <p>Mean the premises located at 2010 Dundas Street East including: (i) the upper level on the main floor and the complete lower level [approximately 12,000 square feet]; and (ii) rooms 212 and 213 as well as the office on the main floor; but excluding:</p> <ul style="list-style-type: none"> (a) Laundry facility which is for common usage by all tenants; (b) Mechanical rooms; and (c) Room 102 as it now exists. <p>1 to 10 rooms on the main floor of the hotel at 2010 Dundas Street East at a 30% discount.</p> |

(the Golddiggers Lease and the Meatheads Lease are hereinafter collectively referred to as the “Leases”)

The Hotel

16. There are approximately seventeen (17) long term occupants of hotel rooms who pay a monthly rent of approximately \$600 on average (the “**Long Term Occupants**”). There are approximately two (2) rooms occupied by weekly patrons, who pay weekly rent of approximately \$220 on average (the “**Weekly Rentals**”). There are no written agreements with the Long Term Occupants or the Weekly Rentals. The Receiver wishes to have the Long Term Occupants and the Weekly Rentals (collectively hereinafter referred to as the “**Undocumented Occupants**”) vacate the Property as their continued occupation impairs the Receiver’s ability to market and sell the Property.

17. The Hotel is managed by Nikopoulos pursuant to an Undocumented Management Agreement with 163 (the “**Undocumented Management Agreement**”). The Undocumented Management Agreement is described in the Nikopoulos Affidavit attached to this report as **Exhibit “L”**.

Events Prompting the Motion for Leave to Issue a Writ of Possession

18. On September 2, 2013, the Receiver met with Nikopoulos at the Receiver’s offices to address the following concerns of Receiver:
 - (i) Golddiggers and Meatheads (collectively hereinafter referred to as the “**Commercial Tenants**”) were occupying the Property without paying rent;
 - (ii) the quantum of the rents;
 - (iii) Nikopoulos was completing renovations to the Property without the concurrence of, or authorization from, 163;
 - (iv) Nikopoulos and the Commercial Tenants appear to be not at arm’s length from 163; and
 - (v) the Leases were not registered and were subordinate to the OW Charge.

19. The Receiver is authorized to collect rents from the Commercial Tenants and any other tenants occupying the Property pursuant to section 3(f) of the Appointment Order.
20. On September 4, 2013, the Receiver delivered a demand to the Commercial Tenants for the rents owing to 163 (the “**Demand for Rent**”). The Demand for Rent is attached to this report as **Exhibit “M”**.
21. The Commercial Tenants refused to pay rent under the Leases until the Restaurant and Adult Entertainment Business were operating.
22. On September 13, 2013, the Receiver delivered notices to the Commercial Tenants and the Undocumented Occupants of the Property asking for possession of same on or before September 20, 2013 (the “**Request for Possession**”). The Request for Possession is attached to this report as **Exhibit “N”**.
23. The Request for Possession was refused.
24. On October 8, 2013, the Receiver brought a motion for leave to issue a writ of possession as result of the refusal of the Commercial Tenants to deliver up possession of the Property (the “**Motion for Possession**”). The Motion for Possession is attached to this report as **Exhibit “O”**.
25. The Receiver filed two affidavits in support of the Motion for Possession:
 - (i) Brahm Rosen swore an affidavit on behalf of the Receiver on September 20, 2013 (the “**Rosen Affidavit**”). The Rosen Affidavit is attached to this report as **Exhibit “P”**; and
 - (ii) Jonah Bonn swore an affidavit on September 20, 2013 (the “**Bonn Affidavit**”) on behalf of OW. The Bonn Affidavit is attached to this report as **Exhibit “Q”**.

26. The Commercial Tenants retained Siskinds LLP and filed the affidavit of Nikopoulos (sworn October 7, 2013) as a responding record (the “**Nikopoulos Affidavit**”). The Nikopoulos Affidavit is attached to this report as **Exhibit “L”**.
27. The Nikopoulos Affidavit:
 - (i) outlines the alleged improvements to the Property undertaken by Nikopoulos on behalf of the Commercial Tenants to support the “equitable lien claims” of same; and
 - (ii) confirms that Nikopoulos has taken defacto control of the entire Property including the Hotel pursuant to the Undocumented Management Agreement.
28. The Honourable Mr. Justice Carey ordered the Possession Trial to determine the rights of the Receiver and the Commercial Tenants to possession of the Property in his endorsement dated October 8, 2013 (the “**Endorsement**”). The Endorsement is attached to this report as **Exhibit “R”**.
29. The Receiver’s counsel transcribed the Endorsement into a formal order (the “**Trial Order**”) and delivered same to Siskinds LLP on April 2, 2014 with a request that same be approved as to form and content. The Trial Order is attached to this report as **Exhibit “S”**. The Trial Order has not been approved by the Commercial Tenants.

Activities of the Receiver Subsequent to the Endorsement

30. The Receiver continued discussions to sell the Property to Nikopoulos subsequent to the Endorsement. Nikopoulos submitted an offer to purchase the Property to the Receiver on January 16, 2014 (the “**Nikopoulos Offer**”). The Nikopoulos Offer was accepted by the Receiver and was conditional on payment of a deposit within three (3) days of acceptance (the “**Nikopoulos APS**”).
31. The deposit referenced above in paragraph 30 was not paid to the Receiver. The Nikopoulos APS is null and void.

Activities of the Receiver Subsequent to the Nikopoulos APS

32. The Receiver is of the opinion that the Leases and Undocumented Management Agreement effectively grant Nikopoulos complete control over the Property and that same would be an impediment to a sale of the Property.
33. In the Receiver's first report dated March 31, 2014 (the "**First Report**") the Receiver:
- (i) recommended a sales process that targeted a sale to an owner/operator with vacant possession of the Property (the "**Sales Process**"); and
 - (ii) recommended the completion of the following repairs to the Property prior to marketing same for sale:
 - a. remove and replace the existing flat roof; and
 - b. remove and replace the existing HVAC system.

(collectively hereinafter referred to as the "**Repairs**")

The quotations for the Repairs are attached to this Report as **Exhibit "T"**.

34. The motion to approve the First Report and the Sales Process was originally returnable in the London Ontario Superior Court of Justice on April 15, 2014 (the "**Motion to Approve the Sales Process**"). The Motion to Approve the Sales Process was adjourned to May 13, 2014 due to the fact that the Honourable Madame Justice Mitchell issued an Order removing Siskinds LLP as solicitors of record for the Commercial Tenants on April 24, 2014. The Honourable Madam Justice Mitchell ordered the Commercial Tenants to retain new counsel within thirty (30) days of April 29, 2014 (the "**April 29 Order**").
35. The Commercial Tenants failed to retain new counsel contrary to the terms of the April 29 Order.
36. The Motion to Approve the Sales Process was adjourned *sine die* on May 13, 2014 due to

the fact that:

- (i) the Commercial Tenants were still unrepresented; and
- (ii) the Sales Process and the Repairs cannot be undertaken without unfettered access to the Property by the Receiver.

Conclusions and Recommendations

37. The Commercial Tenants have failed to comply with the April 29 Order. The Receiver requests an order striking the Statement of Defence and an Order granting the Receiver leave to issue a writ of possession as against the Commercial Tenants. If the Commercial Tenants retain counsel prior to the return of this motion and this Honourable Court directs the trial of the issue to proceed, then the Receiver recommends the orders in paragraphs (i) to (ix) below and the timetable in paragraph (x) to (xiv) below to supplement the Trial Order:

- (i) an order directing the Commercial Tenants to serve a copy of this Order on the Undocumented Occupants that are in possession of the Property as of the date of this Order;
- (ii) an order that the Undocumented Occupants identify themselves to the Receiver on or before June 13, 2014;
- (iii) an order authorizing the Undocumented Occupants that identify themselves to the Receiver to be added as Defendants in the Possession Trial if the Undocumented Occupants object to the Receiver's request for vacant possession of the Property;
- (iv) an order directing Nikopoulos to advise any individuals that take possession of the Property after the date of this Order they are required to vacate the Property on 48 hours notice;
- (v) an order directing Meatheads to pay monthly rent in the amount of \$2,500 to the Receiver on June 1, 2014 and on the first of every month thereafter until further order of this Court plus any additional rent or property taxes demanded by the Receiver in accordance with the terms of the Meatheads Lease;
- (vi) an order directing Golddiggers to pay monthly rent in the amount of \$5,000 to the Receiver on June 1, 2014 and on the first of every month thereafter until further order of this Court plus any additional rent or property taxes demanded by the Receiver in accordance with the terms of the Golddiggers Lease;

- (vii) an order directing the Commercial Tenants to grant the Receiver immediate and unfettered access to the Property to complete the Repairs if the Receiver deems it necessary to complete the Repairs at any time prior to the Possession Trial;
- (viii) an order directing Nikopoulos and the Commercial Tenants to provide the Receiver with an accounting of rents received from the Undocumented Occupants from July 23, 2013 to June 1, 2014 and every month thereafter pending a further order of this Court (the “Rents”);
- (ix) an order directing Nikopoulos and the Commercial Tenants to pay the Rents to the Receiver commencing June 1, 2014 and every month thereafter pending a further order of this Court;

Timetable for the Trial Order

- (x) affidavit of documents to be exchanged by June 20, 2014;
- (xi) examinations for discovery to be completed on or before Friday July 11, 2014;
- (xii) undertakings from the examinations for discovery to be exchanged on or before Friday August 11, 2014;
- (xiii) motions arising from the examinations for discovery and/or outstanding undertakings to be completed by Friday August 22, 2014;
- (xiv) a three (3) day trial to be scheduled by the trial coordinator in September of 2014 or on the first available hearing date after August 22, 2014.

All of which is respectfully submitted.

Dated at Toronto, Ontario, this 2nd day of June 2014

**SF PARTNERS INC., IN ITS CAPACITY AS
COURT APPOINTED RECEIVER AND MANAGER OF
1639329 ONTARIO LTD.**

 
