

Nov. 24, 2015

Court File No. CV-14-10470-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST
PROCEEDING COMMENCED AT
TORONTO

MOTION RECORD

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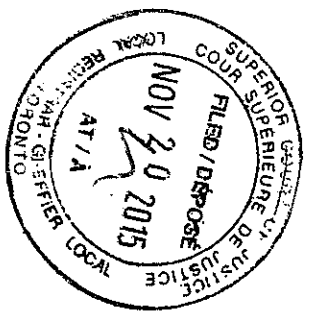
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Lawyers for the Receiver,
Rosen Goldberg Inc.

November 24, 2015
Mr. Preger + Ms. Corne for the
Receiver
Mr. Goeden for Romspen
Mr. Benschler for the
Individual Debtors.

In consent, discharge
order to go in terms of
draft order I have signed
② order to go requiring
Romspen to deliver a

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discharge of its security
on the "Cambridge bonds"
on the closing of the
Kawara transaction + the
refinancing of the house for
part by Goldy Metals.

This leaves the
question of whether the
purchase price for the
Kawara bonds should
be reduced by \$500,000
representing the letter of
credit re the Midland
bonds. The respondent
suggests that it should.
I disagree.

The sale of The Midland
Roads lands was approved
by Capt. Peter J. Conway.
The offer to purchase
contained in the Receiver's
Second Report (Appendix F)
is the one that was
approved. That offer to
purchase stated the
purchase price to be \$4
million, made up of
\$3.5 million for the land
& buildings & \$500,000
for the letter of credit.
The debtors' debt has
been reduced by these
sums, including the letter

of credit. The debtors
are not entitled to a
further reduction of the
debt on account of
the letter of credit again.
The thrust of the debtors'
argument centres on
earlier documents/terms
sheets & use on the
actual transaction that
received court approval.
I cannot look behind
the transaction. The court
approved & must
conclude the debtors
have already received
credit for the letter of

credit & are not entitled
to any further reduction
in their indebtedness
to Romseper on that
account.

This order is without
prejudice to the issues
& claims Romseper has
set out in Schedule 'A'
attached, & without
prejudice to the debtors'
rights to assert an
accounting from Romseper
or any other claims
they may have
against Romseper.

Meslur J.

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SCHEDULE "A" *to endorsement of WU24*

any discharge of Romspen's real and/or personal security over the Respondents and their property as a result of the payout is without prejudice to Romspen's position that (i) each and every Borrower under the Romspen loans made to the Respondents (or any of them) remains liable to Romspen under the covenants given by the Borrowers in the loan commitments, loan agreements and security documents, and (ii) each and every Covenantor under the Romspen loans made to the Respondents (or any of them), remains liable to Romspen under the personal guarantees given by the Covenantors in the loan commitments, loan agreements and/or security documents, with such liability covering any shortfall under the Romspen loans made to the Respondents, and extending to any and all costs Romspen incurs in responding to any past, present or future legal proceedings or threats thereof made by or on behalf the Borrowers (or any of them) and/or the Covenantors (or any of them) in any way relating to the Romspen loans made to the Respondents including the amounts owing thereunder, or otherwise. For greater certainty, Romspen's position is that the covenants given to Romspen by the Borrowers in the loan commitments, loan agreements and security documents and the personal guarantees given to Romspen by the Covenantors in the loan commitments, loan agreements and/or security documents, survive any discharge of Romspen's real and/or personal security over the Respondents and their property as a result of the payout.

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