

Court No. CV-12-9916-00CL

**IN THE MATTER OF THE RECEIVERSHIP OF
THE PROPERTY OF**

Elgin Limited Partnership I and Inpartnr Inc.

Supplementary Report to Third Report of Rosen Goldberg Inc.

Elgin Limited Partnership I and Inpartnr Inc.
Supplementary Report to Third Report of Rosen Goldberg Inc.

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TAB 1



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 AND SECTION 68(1) OF THE *CONSTRUCTION LIEN*
ACT, R.S.O. C. C.30, AS AMENDED**

BETWEEN:

KREK SOVENIAN CREDIT UNION LTD.

Applicants

-and-

ELGIN LIMITED PARTNERSHIP I AND INPARTNR INC.

Respondent

**SUPPLEMENTARY REPORT TO THE THIRD REPORT OF THE RECEIVER ROSEN
GOLDBERG INC.**

October 19, 2015

I INTRODUCTION

1. This report is to provide additional information and developments that have taken place since the Receiver's third report dated in May 13, 2015 which was filed in conjunction with the Receiver's motion for authorization and approval for the distribution of \$346, 640 in respect of holdbacks under the CLA, less the costs of the Receiver. The May 25, 2015 motion was adjourned on consent of the parties.

II DISCLAIMER

2. In preparing this Report, the Receiver has relied upon the financial records and information



provided by the Debtors as well as other information supplied by management, appraisers, accountants and advisors (“**Information**”). The Receiver has not audited, reviewed or otherwise attempted to verify the accuracy or completeness of the Information in a manner that would wholly or partially comply with General Accepted Assurance Standards pursuant to the Canadian Institute of Chartered Accountants and accordingly, the Receiver expresses no opinion or other form of assurance in respect of the Information.

III DEVELOPMENTS SINCE PREVIOUS REPORT

3. Developments since the previous report are as follows:

- a) In order to expedite the issues amongst the parties, the Receiver arranged a conference call on June 8, 2015. A copy of an email from the Receiver’s counsel, Dickinson Wright LLP (“DW”) scheduling the meeting is attached as Exhibit “A” to this report. Prior to the meeting DW forwarded to the parties a revised scheme of distribution that was prepared by the Receiver, and various cases that related to the revised distribution. The email of DW is attached as Exhibit “B” to the report. The revised scheme of distribution is discussed below.
- b) The conference call resulted in an agreement that the lien claimants would provide the Receiver with a list of additional information required. A letter from Siskinds dated June 17, 2015, on behalf of the lien claimants, setting out the information requested, is attached as Exhibit “C” to the report. A letter from DW dated July 2, 2015 with the Receiver’s response is attached as Exhibit “D” to the report.
- c) Subsequent to the exchange of information there has been no further communications from the lien claimant group despite requests from DW. On August 17, 2015, the Receiver’s counsel attended court where a timetable was established in respect of the Receiver’s motion. The endorsement of the Honourable Mr. Justice Mew is attached as Exhibit “E” to this report. No responding materials have been filed to date.

IV REVISED SCHEME OF DISTRIBUTION

4. We attach as Exhibit “F” to this report the revised scheme of distribution recommended by the Receiver. The proposed distribution is based on the following;



- a) The total holdbacks funds amount to \$346,640 as set out and approved in the Receiver's second report dated May 26, 2014.
- b) That all lien claimants are sheltered under the St. Thomas Custom Drywall Inc. action and therefore all claimants are entitled to share in distribution.
- c) The distribution is based on claimants receiving ten percent of the contract amount and estimated percentage of completion, less any amounts previously received.
- d) Any excess funds will be paid to Krek Slovenian Credit Union Ltd., the first ranking secured creditor.

VIII. RECOMMENDATION

5. The Receiver respectfully requests that this Honourable Court approve the distribution of the holdback funds as set out in Exhibit "F" to this report.

All of which is respectfully submitted.

Dated at Toronto, Ontario, this 19th day of October 2015.

**ROSEN GOLDBERG INC., IN ITS CAPACITY AS
COURT-APPOINTED RECEIVER OF
ELGIN PARTNERSHIP I AND INPARTNR INC.**



TAB 2

Brahm Rosen

From: Jennifer S. Samuels <JSamuels@dickinson-wright.com> on behalf of Lisa S. Corne <LCorne@dickinson-wright.com>
Sent: Thursday, June 04, 2015 12:50 PM
To: 'wgreenspoon@garfinkle.com'; 'bpolisuk@garfinkle.com'; 'Bissell@gsnh.com'; 'stablesam@gmail.com'; 'diane.winters@justice.gc.ca'; 'kevin.ohara@fin.gov.on.ca'; 'emicacchi@nesbittlaw.com'; 'wade.sarasin@siskinds.com'; 'mszorenyi@tillsonburglawyers.com'; 'montyfordham@4elgin.ca'; 'viet.nguyen@devrylaw.ca'; 'egan@mckenzielake.com'; 'karenthompson@gunn.on.ca'
Cc: Lisa S. Corne; David P. Preger; jm@glaholt.com; Brahm Rosen
Subject: Krek Slovenian Credit Union Ltd. v. Elgin Limited Partnership I et al. - CV-12-9916-00CL

The Receiver and its counsel would like to schedule a conference call with all counsel on the afternoon of Monday June 8 to discuss the proposed revised distribution which we have prepared in response to the new material recently received from various lien claimants . Please let me know whether you are available for a call at 2 pm on Monday or any time after 2 pm.

Thank you

Lisa S. Corne Partner

199 Bay Street Phone 416-646-4608
Suite 2200 Fax 416-865-1398
Commerce Court West Email LCorne@dickinsonwright.com
Toronto ON M5L 1G4

[Profile](#) | [V-Card](#)

DICKINSON WRIGHT LLP

MICHIGAN ARIZONA KENTUCKY NEVADA OHIO TENNESSEE WASHINGTON D.C. TORONTO

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TAB 3

Brahm Rosen

From: Brahm Rosen
Sent: Monday, June 08, 2015 1:41 PM
To: Kevin Egan (McKenzie Lake Lawyers)
Subject: Fw: Teleconference re Krek Slovenian Credit Union Ltd. v. Elgin Limited Partnership I et al. - CV-12-9916-00CL
Attachments: Elgin Holdback Distribution.pdf; 2015onsc2070.pdf; 2012onsc3350.pdf; TORONTO-#841320-v1-Dufferin_Concrete_Products_v__Waterbrooke_Development....pdf

You appear to have been included in this email

Brahm

Sent from my BlackBerry 10 smartphone on the Rogers network.

From: Lisa S. Corne
Sent: Friday, June 5, 2015 12:19
To: Lisa S. Corne; 'wgreenspoon@garfinkle.com'; 'bpolisuk@garfinkle.com'; 'stabilesam@gmail.com'; 'diane.winters@justice.gc.ca'; 'kevin.ohara@fin.gov.on.ca'; 'emicacchi@nesbittlaw.com'; 'wade.sarasin@siskinds.com'; 'mszorenyi@tillsonburglawyers.com'; 'montyfordham@4elgin.ca'; 'viet.nguyen@devrylaw.ca'; 'egan@mckenzielake.com'; 'keown@devrylaw.ca'
Cc: David P. Preger; Brahm Rosen; John Margie <JohnMargie@glaholt.com> (JohnMargie@glaholt.com)
Subject: Teleconference re Krek Slovenian Credit Union Ltd. v. Elgin Limited Partnership I et al. - CV-12-9916-00CL

In connection with the teleconference on Monday at 2pm, please find attached an updated schedule showing the revised distribution proposed by the Receiver after considering the material and case law received in response to the Receiver's Third Report. Also attached are copies of the cases relied upon.

Lisa S. Corne Partner

199 Bay Street
Suite 2200
Commerce Court West
Toronto ON M5L 1G4
Phone 416-646-4608
Fax 416-865-1398
Email LCorne@dickinsonwright.com



DICKINSON WRIGHT LLP

MICHIGAN ARIZONA KENTUCKY NEVADA OHIO TENNESSEE WASHINGTON D.C. TORONTO

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TAB 4

EMAIL sarasin.team@siskinds.com

FILE NO. 835180/WWS/ag

Delivered by Email

June 17, 2015

Mr. David P. Preger
Ms. Lisa S. Corne
Dickinson Wright LLP
199 Bay Street
Suite 2200, P.O. Box 447
Commerce Court Postal Station
Toronto, ON M5L 1G4

Dear Sir/Madam:

**Re: Krek Slovenian Credit Union Ltd., v. Elgin Limited Partnership I, et al
Our Client, Prouse Electric Limited and Prouse Mechanical Ltd.**

We are writing further to our conference call of Monday, June 8, 2015, and the adjournment of the Receiver's Motion.

We confirm that a 9:30 a.m. Chambers appointment has been scheduled for July 14, 2015, for the purpose of rescheduling the motion.

We further confirm the Receiver's revised position arising from the decision in *Deslaurier v. Le Groupe Brigil, 2012, OSNC 3350*. As the St. Thomas Drywall lien action was set down for trial, the other lien actions are thereby sheltered under the action. Further, to the extent that lien actions that were previously dismissed are successful in setting aside their dismissal orders, those lien claimants will further benefit from the Receiver's revised position arising from the *Deslaurier* decision.

We are writing on behalf of all lien claimants in order to seek further additional information and documentation from the Receiver and/or Krek Slovenian Credit Union in regards to the Keystone Village project. We request as follows:

DIRECT
TELEPHONE (519) 660-7888
FACSIMILE (519) 660-7889

HEAD OFFICE
TELEPHONE (519) 672-2121
FACSIMILE (519) 672-6065

2651883.3

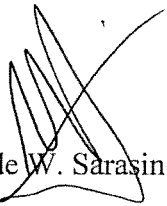
1. Payment Certificate No. 11 (this payment certificate appears to be missing from the Certificates previously delivered on Friday, June 5, 2015. It was indicated that his certificate may not be in the records obtained from the Debtors);
2. Details and particulars to the “self-supply product” that is referenced initially in Certificate for payment No. 8. There is a further reference in Certificate No. 10 in the amounts of \$67,231.00. Further in Certificate No. 12, the amount is increased to \$122,651.00;
3. Confirmation that the only Form 7 Certificate of Completion of Subcontract contained in the project records is the Certificate dated August 7, 2010 in regards to the subcontract of Bruce Dinsmore Demolition;
4. Confirmation that the holdback amount released to Bruce Dinsmore Demolition pursuant to the Form 7 Certificate is the sum of \$40,000.00;
5. Any further particulars, documentation or information with respect to the release of other holdback amounts with respect to Canadian Geothermal, Jake Zacharias Excavating, and R Good Concrete;
6. Evidence that the Form 7 Certificate for the subcontract of Bruce Dinsmore Demolition dated August 7, 2010, was delivered to the subcontractor, owner and general contractor in accordance with Section 33 of the *Construction Lien Act*;
7. Documentation evidencing the dates and amounts of all the advances of the Keystone Village project made by Krek Slovenian Credit Union;
8. Particulars with respect to paragraph 17 of the Third Report with respect to \$23,000.00 requested to be set aside from holdback funds for fees and costs incurred by the Receiver and its legal counsel;
9. The legal authority for the position of the Receiver and its legal counsel that any fees and costs are permitted to be set off as against holdback funds;
10. Any and all site visit reports completed by Cynthia Zahoruk Architect Inc.;
11. Any documentation, records, information, or other evidence in the Receiver’s possession, control or power with respect to the value of the work performed subsequent to May 26, 2011, the date of Certificate for Payment No. 12.

680 Waterloo Street, London, ON N6A 3V8

We look forward to your prompt response.

Yours very truly

Siskinds LLP


Wade W. Sarasin

Per:

WWS/ag

TAB 5



199 BAY STREET, SUITE 2200
P.O. BOX 447, COMMERCE COURT POSTAL STATION
TORONTO, ON CANADA M5L 1G4
TELEPHONE: (416) 777-0101
FACSIMILE: (416) 865-1398
<http://www.dickinsonwright.com>

LISA S. CORNE
LCorne@dickinsonwright.com
(416) 646-4608

July 2, 2015

VIA EMAIL

Wade W. Sarasin
Siskinds LLP
680 Waterloo Street
London ON N6A 3V8

Dear Mr. Sarasin:

**Re: KREK Slovenian Credit Union Ltd. (“Krek”) v. Elgin Limited Partnership I (“Elgin”) and InPartnr Inc. (“InPartnr”)
Court File No: CV-12-9916-00CL
Our File No.: 41225-130**

As you know, we act for Rosen Goldberg Inc. in its capacity as Receiver and Construction Lien Trustee of Elgin and InPartnr (collectively, the “**Receiver**”).

In response to the information and documentation requested in your letter of June 17, 2015, we advise as follows:

1. A copy of Certificate No. 11 is attached at **Tab A**;
2. The Receiver has no information regarding the “self-supply product”;
3. The Certificate of Completion dated August 7, 2010 regarding Bruce Dinsmore Demolition is the only Form 7 Certificate in the Receiver’s possession;
4. The Receiver’s information is that the hold-back amount released to Bruce Dinsmore Demolition pursuant to the Form 7 Certificate was \$40,000;
5. Copies of additional documentation in the Receiver’s possession include:
 - (a) Certificates of Substantial Performance under Section 32 of the *Construction Lien Act*;
 - (b) Declarations of Last Supply under Section 31(5) of the *Construction Lien Act*
 - (c) Site Visit Reports;

Wade W. Sarasin
July 2, 2015
Page 2

- (d) Statutory Declaration of Progress Payments; and
- (e) spread-sheet in relation to the Release of Hold-Back.

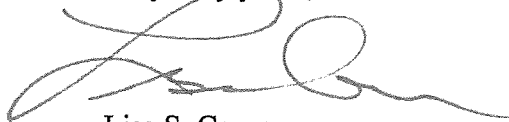
Copies of these documents are attached at **Tab B**.

6. The Receiver's information is that there was no general contractor in respect of this project. The Receiver believes that the owner received the Form 7 Certificate but has no direct information or evidence thereof.
7. The advances by Krek Slovenian Credit Union are set out in the spread-sheets attached at **Tab C**.
8. The \$23,000 was based on professional fees to date and an estimate of professional fees to be incurred in connection with distribution of the hold-back fund. Copies of the Receiver's time summary and accounts of its legal counsel to date in connection with the hold-back are attached at **Tab D**.
9. Paragraph 17 of the Order dated February 11, 2013 grants the Receiver a first charge on the assets, property, and undertakings of Elgin and InPartnr, to secure payments of its fees and disbursements, "in priority to all security interests, liens, charges and encumbrances, statutory or otherwise, but subject to Sections 14.06(9), 81.4(4) and 81.6(2) of the *BIA*." In *Ontario Securities Commission v. Consortium Construction Inc.*, 1992 CarswellOnt 176, the Ontario Court of Appeal held that in receiverships, there is authority on the court to impose a receiver's proper fees and disbursements upon trust assets not belonging to the person against whom the receiving order is made. In addition, Section 68 of the *Construction Lien Act* provides that all liens are charges upon amounts recovered by the trustee, "after payment of the reasonable expenses incurred by the trustee". Finally, pursuant to Section 61 of the *Trustee Act* (Ontario), a trustee is entitled to payment out of trust assets of its reasonable fees in the administration of the trust.
10. Copies of the site visit reports are attached at **Tab E**.

Wade W. Sarasin
July 2, 2015
Page 3

11. The Receiver has no such information or documentation in its possession, control or power.

Very truly yours,

A handwritten signature in black ink, appearing to read "Lisa S. Come", written in a cursive style.

Lisa S. Come

LSC/jss
Encls.
TORONTO 41225-130 1056251v4

TAB 6

1

FILE/DIRECTION/ORDER

BEFORE JUDGE MEW ACTION # 12-CV-9916-00CL

KREK SLOVENIAN CREDIT UNION

Plaintiff(s)

-v-

PROVSE ELECTRIC.

Defendant(s)

CASE MANAGEMENT: YES [] NO []

COUNSEL: _____ PHONE NO. _____
_____ PHONE NO. _____
_____ PHONE NO. _____

ORDER [] DIRECTION FOR REGISTRAR

[] REPORTED SETTLED ADJOURNED TO TRIAL SCHEDULING COURT _____
[] NO ONE APPEARED ADJOURNED TO TO BE SPOKEN TO COURT _____

Motion for directions to receive re distribution of funds.

Date set for motion: 26 October 2015 (2 hours).

Timetbk: 15 Sept 15 - Responding material
25 Sept 15 - Reply materials
10 Oct 15 - Completion of cross-examinations
(if required).

17 August 2015.
DATE

[Signature]
JUDGE'S SIGNATURE

TAB 7

Elgin Limited Partnership I

Proposed Holdback Distribution

Prepared June 5, 2015

	Accounts Payable	Holdback Per AP	Contract Amount	Maximum Holdback Per Contract	Estimated Percentage of Completion	Holdback as per Contract	Interim Payment	Final Distribution
589013 Ontario Ltd.	110,906	27,112	217,757	21,776	100%	21,776		21,776
Into Electronics	68,557	7,630	98,871	9,887	70%	6,921		6,921
Jake Zacharias Excavating	92,736	51,132	320,000	32,000	100%	32,000	23,690	8,310
Prouse Electric	339,437	32,452	1,174,000	117,400	70%	82,180		82,180
Prouse Mechanical	575,907	12,760	623,000	62,300	70%	43,610		43,610
St. Thomas Custom Drywall	482,639	60,095	625,000	62,500	60%	37,500		37,500
	1,670,182	191,181	3,058,628	284,087		223,987		200,297

Notes

1. The total holdback funds are \$346,640
2. The last construction advance was June 3, 2011 and therefore the holdback claims were calculated as of that date.
3. The Receiver has reviewed the books and records that were available, and does not believe that they are completely reliable.
4. The Receiver proposes a distribution of the holdback funds based on ten percent of the contract amount and estimated percentage of completion, less any amount previously released.
5. This schedule is based on Jake Zacharias Excavating and Into Electronics obtaining Orders setting aside the dismissal of their actions
6. Schedule reflects that all lien actions are sheltered under St. Thomas action pursuant to *Destaurier* decision
7. Contractors are entitled to a maximum of 10% of value of goods and services provided pursuant to *RSG* and *Dufferin Concrete* decisions.