

**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

B E T W E E N:

WEST END MOTORS AND TRAILER PARK LIMITED

Applicant

-and-

189 DUNDAS STREET WEST INC.

Respondent

**SUPPLEMENTARY MOTION RECORD
OF ROSEN GOLDBERG INC.**

February 26, 2020

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| 1 | Supplementary Second Report of Rosen Goldberg Inc. dated February 26, 2020 |
| A. | Appendix "A" Amendments to the APS dated February 26, 2020 |

TAB 1



ROSEN GOLDBERG
INSOLVENCY & RESTRUCTURING

Court File No. CV-18-601159-CL

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:

WEST END MOTORS AND TRAILER PARK LIMITED

Applicant

-and-

189 DUNDAS STREET WEST INC.

Respondent

SUPPLEMENTARY SECOND REPORT OF ROSEN GOLDBERG INC.

February 26, 2020



ROSEN GOLDBERG

INSOLVENCY & RESTRUCTURING

I. INTRODUCTION

1. Capitalized terms used herein have the same meanings ascribed to them in the Second Report of the Receiver dated February 12, 2020 (the “**Second Report**”).
2. On February 13, 2020, the Honourable Mr. Justice Koehnen scheduled the Receiver’s motion to approve the sale of the Property and distribute funds.
3. Following their attendance before Justice Koehnen, counsel for the Receiver, counsel for the Debtor, counsel for the First Mortgagee and counsel for the Second Mortgagees engaged in discussions with the aim of agreeing on terms of a consent order providing for the following:
 - (a) Approval of the Transaction;
 - (b) Partial distribution of the net sale proceeds; and
 - (c) A transfer of the Brampton Action to the Commercial List.

II PURPOSE OF THE REPORT

4. The purpose of this Supplementary Second Report is to:
 - (a) Advise the Court of discussions and the agreement between the parties as to the terms of the Approval and Vesting Order and Interim Distribution and Administration Order; and
 - (b) Advise the Court of the revised terms of the Transaction based on an amendment to the APS dated February 26, 2020 (the “**Amendment to the APS**”).



III. AMENDMENT TO THE APS

5. In the Second Report, the Receiver proposed that in order to facilitate the closing of the Transaction, allow for partial distribution of the net sale proceeds and preserve the Debtor's claim in the Brampton Action, the Receiver would hold a first ranking VTB mortgage over the Property following closing for an amount sufficient to protect the Debtor's claims regarding the amount owing under Second Mortgage.

6. All of the interested parties have now consented to the following:

- (a) Approval of the Transaction;
- (b) The registration of a first mortgage on title to the Property in favour of the Receiver in a principle amount sufficient to cover the value of the Debtor's claim in the Brampton Action;
- (c) Transfer of the Brampton Action to the Commercial List; and
- (d) The quantum of the Directed Amount.

7. The Directed Amount is calculated as follows: (i) \$3,487,011 being the amount advanced by the Second Mortgagees, plus (ii) \$642,550 being the protected disbursement paid by the Second Mortgagees on account of the First Mortgage, less (iii) \$814,141.26 being the amounts paid to the Second Mortgagees.

8. Attached as **Appendix A** is a copy of the Amendment to the APS which provides for the Receiver's VTB mortgage in the principle amount of \$4,200,000.



ROSEN GOLDBERG
INSOLVENCY & RESTRUCTURING

IV. PROPOSED DISTRIBUTION

9. The Receiver recommends that upon closing of the Transaction, the net sale proceeds be distributed as follows:

- (a) Payment to the First Mortgagee in an amount necessary to satisfy the First Mortgage;
- (b) Repayment of the Receiver's borrowings;
- (c) Payment of realty taxes; and
- (d) Payment of the Directed Amount to the Second Mortgagees.

10. The Receiver recommends holding a reserve in the amount of approximately \$250,000 in respect of the fees and expenses of the receiver and its legal counsel to date, and approximately \$150,000 in respect of future professional fees to complete its administration.

All of which is respectfully submitted,

Dated at Toronto, Ontario, this 26th day of February, 2020.

**ROSEN GOLDBERG INC.,
SOLELY IN ITS CAPACITY AS
COURT-APPOINTED RECEIVER,
AND NOT IN ITS PERSONAL CAPACITY**

APPENDIX A

AMENDMENT AGREEMENT

THIS AGREEMENT made as of February 26, 2020.

BETWEEN:

ROSEN GOLDBERG INC. in its capacity as court-appointed receiver and manager of all of the assets, undertakings and properties of 189 Dundas Street West Inc. (the "**Debtor**") pursuant to an order of the Honourable Mr. Justice McEwan of the Ontario superior court of justice, dated May 3, 2019, and not in its personal capacity or corporate capacity ("**Vendor**")

- and -

2723718 ONTARIO LTD.

(the "**Purchaser**")

WHEREAS the Vendor and the Purchaser entered into an agreement of purchase and sale dated as of January 27, 2020 (the "**APS**") for the purchase and sale of the Property as defined therein;

AND WHEREAS the APS incorrectly identified the Purchaser as 2723718 Ontario Inc. rather than by the correct corporate name of 2723718 Ontario Ltd.

AND WHEREAS the amount of the "Quincy Indebtedness" as defined in the APS is currently in dispute by the Debtor and is the subject of litigation pending in the Ontario Superior Court of Justice in Brampton (the "**Litigation**");

AND WHEREAS the Debtor claims that the Quincy Indebtedness is limited to \$3,315,420.00;

AND WHEREAS Quincy claims that the Quincy Indebtedness is \$8,559,190.20 as of February 13, 2020, including \$642,550.51 paid by Quincy as a protective disbursement to satisfy amounts owing by the Debtor to the first mortgagee, West End Motors and Trailer Park Limited;

AND WHEREAS the Purchaser has agreed to grant a mortgage to the Vendor to secure payment of any amount determined to be owing by the Purchaser to the Debtor pursuant to a final order of the court in the Litigation;

NOW THEREFORE, in consideration of the mutual covenants and agreements set forth in this Agreement and the sum of Ten Dollars (\$10.00) paid by each of the Vendor and the Purchaser to the other and for other good and valuable consideration (the receipt and sufficiency of which is hereby acknowledged), the parties hereto covenant and agree as follows:

1.1 Definitions

Capitalized Terms where used herein shall have the meanings ascribed to such terms in the APS, unless otherwise defined herein or the context expressly or by necessary implication otherwise requires.

1.2 Vendor Takeback Mortgage

Section 3 of the APS is hereby amended by adding the following:

“The Purchaser shall grant a first ranking mortgage (the “**Mortgage**”) in favour of the Vendor to secure payment of any amount determined to be owing by the Purchaser to the Debtor in the action pending in the Ontario Superior Court of Justice in Brampton between Quincy and the Debtor in Court File No.: CV-18-1157-00.

The Mortgage shall be in the principal amount of \$4,200,000; bear interest at the rate of 1% per annum; and be payable on demand, provided that no demand shall be made until the court issues a final order in the Litigation pursuant to which the Purchaser is ordered to pay an amount to the Debtor, the appeal period in respect of that final order has expired and no appeal or application for leave to appeal is filed or the Debtor and Purchaser consent in writing to settle the Litigation upon payment of an amount by the Purchaser to the Debtor”

1.3 Purchaser’s Closing Deliveries

Section 20 of the APS is hereby amended by adding the following:

“(g) the Mortgage”

1.4 Other Terms and Conditions Remain

The parties agree to complete the purchase and sale of the Property on the terms and conditions otherwise specified in the APS.

1.5 Counterparts

This Agreement may be executed by the parties hereto in any number of separate counterparts and all of the said counterparts taken together shall be deemed to constitute one and the same instrument.

1.6 Governing Law

This Agreement shall be governed by the laws of the Province of Ontario and the federal laws of Canada applicable therein.

1.7 No Other Amendments

Except as amended hereby, the APS shall continue in full force and effect and time shall remain

of the essence.

IN WITNESS WHEREOF the parties hereto have executed this Agreement by their properly authorized signatory in that behalf as of the day and year first above written.

2723718 ONTARIO LTD.

By: _____

Name:

Title:

I have authority to bind the corporation.

ROSEN GOLDBERG INC.

in its capacity as court-appointed receiver and manager of all of the assets, undertakings and properties of 189 Dundas Street West Inc. pursuant to an order of the Honourable Mr. Justice McEwan of the Ontario superior court of justice, dated May 3, 2019, and not in its personal capacity or corporate capacity

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Fax: (416) 224.4330

E-mail: brosen@rosengoldberg.com

By:  _____

Name: Brahm Rosen

Title: President

I have authority to bind the corporation.

of the essence.

IN WITNESS WHEREOF the parties hereto have executed this Agreement by their properly authorized signatory in that behalf as of the day and year first above written.

2723718 ONTARIO LTD.

By: _____

Name: Scott Jacobi
Title: ASO

I have authority to bind the corporation.

ROSEN GOLDBERG INC.

in its capacity as court-appointed receiver and manager of all of the assets, undertakings and properties of 189 Dundas Street West Inc. pursuant to an order of the Honourable Mr. Justice McEwan of the Ontario superior court of justice, dated May 3, 2019, and not in its personal capacity or corporate capacity

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By: _____

Name: Brahm Rosen

Title: President

I have authority to bind the corporation.

WEST END MOTORS AND TRAILER PARK LIMITED
Applicant

-and- **189 DUNDAS STREET WEST INC.**
Respondent

Court File No. CV-18-601159-CL

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PROCEEDING COMMENCED AT
TORONTO

SUPPLEMENTARY MOTION RECORD
OF ROSEN GOLDBERG INC.

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