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March 8, 2019

TO THE CREDITORS OF
2283942 ONTARIO INC.

**Re: Estate of 2283942 Ontario Inc., a bankrupt (the "Bankrupt")
Update on Trustee's litigation**

Further to our correspondence dated September 25, 2018, we wish to take this opportunity to provide the creditors of the Bankrupt an update on the estate's litigation and general administrative matters.

1. Court File No. CV-14-513935 - 3320-3330 Midland Avenue, Toronto, Ontario (the "Midland Litigation")

We previously reported that the attempted mediation to investigate a potential settlement in the Midland Litigation was adjourned, in part because, 2433591 Ontario Inc. ("591"), 2435982 Ontario Inc. ("982") and Herman Kuang's (collectively the "Defendants") production of documents was inadequate.

Subsequent to the mediation, Ms. Diana Young, counsel for 982 has brought at least six court motions in the civil proceedings to, among other things, have Miller Thompson LLP ("Miller") removed as counsel to the Bankrupt estate. Ms. Young also brought three motions in the Bankruptcy proceedings. The motions were frivolous and had little or no chance of success but were going to take up time and money, as we had to respond. At the same time, BDO Canada Limited (the "Trustee") has advised Ms. Young that it intended to bring a motion to remove her as counsel to 982, as she will be a key witness at trial and as such cannot continue as counsel.

Accordingly, a Case Management Conference was held before Mr. Justice Archibald (the "Judge"), on October 9, 2018. The Judge confirmed the motions to remove Ms. Young and Miller as respective counsels were to proceed. All of Ms. Young's other motions were adjourned pending the outcome of the hearing of the motions to remove respective counsels. The Judge further made it clear that he expected the trial, scheduled to begin January 14, 2019, would most likely need to be adjourned as Ms. Young will be a key witness and new counsel will have to be found to take over her file.

It is difficult for the Trustee to estimate the length of time the trial would be delayed for, however, given the difficulty we received in obtaining the January 9 date, and the amount of litigation currently before the courts we are confident a new trial will not be scheduled for 6 - 9 months at a very minimum. We assumed that the trial would likely not start until the fall of 2019.

Accordingly, the Trustee and Defendants continued settlement discussions, and we are happy to report a global settlement has been reached with the Defendants, averting the need for a trial. The monetary details and reasons for acceptance are outlined below.



2. Defendants Offer to Settle

If you recall the Defendants presented the Trustee with an Offer to Settle to resolve the litigation (“Settlement Offer”). The Settlement Offer was substantially below the estimated equity of \$2,600,000 in 3320-3330 Midland Avenue, Toronto, Ontario (the “Property”).

Through various discussions with the estate Inspectors and counter offers to the Defendants, on October 29, 2018, a final offer of \$2,500,000 was submitted by the Defendants to settle all matters, including the Midland Litigation. The Trustee reviewed the offer with Miller, who advised as follows:

1. It took a great deal of effort to get the Defendants to the number now presented in the Settlement Offer. The lawyers for the Defendants have made it clear that they pushed their clients very hard to get to the number now presented and that their clients are not prepared to add any further amounts to the Settlement Offer. We believe the lawyers for the Defendants when they say that the Settlement Offer contains their clients’ best offer.
2. The trial of this action was scheduled for January 14, 2019. The Case Management Judge advised us that it was a certainty that the trial would not proceed as scheduled due to various reasons including the likelihood that Ms. Young would be removed from the record and her replacement would need time to learn the file and prepare for trial. Given that Ms. Young was a key witness on the real estate transactions, there was no way for her to continue as counsel.
3. The delay in the trial would result in substantial additional costs which would be factored into any additional recovery that may have been available. Ms. Young had served approximately nine Notices of Motion to date. Even if she is not the lawyer of record going forward, there is little doubt that Ms. Young will still be directing the litigation for 982. All of these motions, however weak and unlikely to succeed, will still have to be responded to. It is also clear that 982, Action for Peace and Fame Weekly will continue to harass the Trustee in the bankruptcy proceedings. Ms. Young has already made it clear that she intends to bring a motion to replace the Inspectors and BDO Canada Limited as the Trustee. A group of Inspectors appointed by Ms. Young, Action for Peace or Fame Weekly would likely direct a trustee to accept a much lower offer to settle. Furthermore, any trustee would run up significant additional professional fees to get up to speed. Lastly, the court proceedings to try to prevent Ms. Young from replacing the Inspectors or the Trustee will be very expensive. All of this had to be factored into evaluating the Settlement Offer.
4. In addition to the trial of this action being delayed, the outcome of a trial is not necessarily the end of the matter. There is an automatic right of appeal from any trial decision to the Court of Appeal. Given the history to date and Ms. Young’s activities, it is most certain the Defendants would appeal any unfavourable decision at trial. This would further delay any realization and increase professional costs. The increased professional fees would erode any judgment in excess of the Settlement Offer. A settlement today eliminates any possibility of an appeal and provides certainty.



For the reasons above, it was recommended that Settlement Offer presented the best possible option at this stage of the litigation.

The Trustee communicated the Settlement Offer with the Inspectors, and it was agreed that it was in the best interest of the estate to accept the Settlement Offer and its terms and conditions. As such, the Settlement Offer was accepted and we are happy to report that Miller currently holds \$2,500,000 in its trust account for the benefit of the estate.

3. Next Steps

Before a distribution is made to the proven unsecured creditors, the Trustee must ensure all proof of claims submitted are complete and proven so they are admitted in the estate to participate in the distribution. We will be communicating with those creditors whose proof of claims were submitted to the Trustee, however remain deficient. We will work with those creditors to have any deficiencies remedied and so that their proof of claim is admitted into the estate.

Once the vetting of the proof of claims is completed, the Trustee will draft a final accounting in the administration, along with a projected distribution to those proven unsecured creditors. The Trustee is required to forward this information to the Canadian government - Office of the Superintendent in Bankruptcy - for their review and approval of our actions and activities. Once that is received, we are required to proceed to court to have the court approve the accounting and our actions as well. Upon receipt of court approval, we will be in a position to make a final distribution to the proven and admitted claims. We anticipate this may take approximately 6 months; however, we will endeavour to expedite the process as much as possible.

4. Defendant Claims

We previously reported that 982 had submitted two unsecured proof of claims in the estate in the respective amounts of \$5,000,000 and \$10,000,000, which the Trustee had disallowed. Subsequently, 982 has submitted an unsecured claim for \$16,950 (the "982 Claim"). Additionally, 591 has submitted an unsecured claim with the Trustee for \$4,112,145.84 (the "591 Claim"). The Trustee and Miller have reviewed the 982 Claim and the 591 Claim and are satisfied they have proven their claims against the estate. Accordingly, the Trustee has admitted these claims in the bankruptcy administration. However, as a part of the Settlement Offer, it was agreed the 982 Claim and the 591 Claim would not participate in any distribution of the proceeds received under the Settlement Offer. These claims were submitted so that these two defendants could participate as creditors in the Fame Weekly proceeding (with which the Trustee has nothing to do with).

The Trustee now holds the settlement funds of \$2,500,000 in Miller Thomson's trust account in an interest bearing term deposit. The Trustee will now take steps all of the administrative steps necessary to establish proven claims of the creditors prepare and file the necessary reporting with the Canadian administrative regulator for bankruptcies and then proceed to Court to obtain approval of all receipts and disbursements by the Trustee as well as all of the professional fees incurred in the bankruptcy. All of this will be done on notice to the Inspectors and Creditors.

We would ask that all of the creditors ensure that they have filed their executed proofs of claim with all supporting documents. A separate notice will go out to all creditors to that effect but you may wish to start putting your paperwork together now if you have not already submitted it.



We appreciate your continued patience in this difficult time. If you have any questions or comments, please do not hesitate to contact the writer.

Yours very truly,
BDO CANADA LIMITED
Trustee
Per:

A handwritten signature in blue ink, appearing to read 'P. Naumis', written over a light blue horizontal line.

Peter Naumis, B. Comm., CIRP, LIT
Vice-President