

ONTARIO
SUPERIOR COURT OF JUSTICE

B E T W E E N:

PETER VOGELZANG

Applicant

- and -

THE ESTATE OF JAMES BARNETT, BY ITS EXECUTOR, MELISSA FISHER
and 2139911 ONTARIO LIMITED

Respondents

SECOND REPORT OF BDO CANADA LIMITED, IN ITS CAPACITY
AS COURT APPOINTED LIQUIDATOR AND RECEIVER OF
2139911 ONTARIO LIMITED

September 12, 2018

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INTRODUCTION AND BACKGROUND

Introduction

1. By order of the Honourable Madam Justice Helen Macleod-Beliveau of the Ontario Superior Court of Justice (the "**Court**") made at a hearing of the within application on March 3, 2016, 2139911 Ontario Limited ("**213 Ontario**" or the "**Company in Liquidation**") was ordered to be wound up pursuant to Section 207 of the *Ontario Business Corporations Act* ("**OBCA**") and the application of 213 Ontario's director, Mr. Peter Vogelzang ("**Vogelzang**"). On or about June 9, 2016, Justice Macleod-Beliveau signed an order appointing BDO Canada Limited ("**BDO**") as liquidator (the "**Liquidator**") and receiver (the "**Receiver**" and, together with the Liquidator, the "**Liquidator/Receiver**"), without security, of the estate and effects of the Company in Liquidation for the purpose of winding up its affairs, to manage the affairs of the Company in Liquidation pending its liquidation and to distribute the Company in Liquidation's property (the "**Liquidation/Receivership Order**"). A copy of the Liquidation/Receivership Order is attached hereto as **Appendix "A"**.

Purpose of this Report

2. The purpose of this Second Report to the Court, dated September 12, 2018 (the "**Second Report**") is to seek an Order of the Court:
- a) approving this Second Report and the actions and activities of the Liquidator/Receiver set out herein;
 - b) approving the claims process, *nunc pro tunc*, conducted by the Liquidator/Receiver to solicit creditor claims against the Company in Liquidation (the "**Claims Process**");

- c) approving the Liquidator/Receiver's final schedule of receipts and disbursements (actual and projected to completion) (the "**R&D Schedule**");
- d) approving the fees and disbursements (actual and projected to completion) of the Liquidator/Receiver and its legal counsel, Gardiner Roberts LLP ("**GR LLP**"), as set out in this Second Report and the affidavits of the Receiver and its counsel as to fees, and authorizing the Liquidator/Receiver to pay all approved and unpaid fees and disbursements;
- e) providing directions with respect to responsibility for the fees and disbursements of the Liquidator/Receiver and its counsel, GR LLP attributable to dealing with the actions and omissions of Barnett in frustration of the Liquidator/Receiver's statutorily and judicially mandated responsibilities; specifically, ought these costs to be borne by the Estate of 213 Ontario or by the Respondent, the Estate of James Barnett;
- f) authorizing and approving a holdback amount of \$13,506.20 (the "**Holdback Amount**") to provide for the estimated future disbursements to complete the administration of these proceedings;
- g) authorizing and directing the Liquidator/Receiver to make a distribution to the sole creditor of the Company in Liquidation with a proven and accepted claim;
- h) authorizing and directing the Liquidator/Receiver to distribute the funds remaining in its trust account to Vogelzang in respect of his apparent 230,000 Class "A" Preference Share equity interest in 213 Ontario, after the payment of the fees and disbursements of the Liquidator/Receiver and its legal counsel, the distribution to the sole creditor, payment of all other future disbursements incidental to these proceedings and subject to the Liquidator/Receiver's retention of the Holdback Amount,;

- i) upon the filing by the Liquidator/Receiver of a certificate substantially in the form set out in Schedule "A" of the Distribution and Discharge Order (the "**Discharge Certificate**"), discharging BDO as Liquidator/Receiver of all of the assets, undertakings and properties of the Company and releasing BDO from any and all liability it now has or may have by reason of, or in any way arising out of, the acts or omissions of BDO while acting in its capacity as Liquidator/Receiver herein, save and except for any gross negligence or willful misconduct on the Liquidator/Receiver's part; and
- j) authorizing the Liquidator/Receiver to dispose of the books and records of 213 Ontario in its possession two years following the date of filing of the Certificate of Completion.

For Information Purposes

3. In addition to the details of the liquidation and receivership proceedings provided for in this Second Report, a copy of the Liquidator/Receiver's first report dated November 7, 2017 (the "**First Report**"), without appendices, is attached hereto as **Appendix "B"**.

Disclaimer

4. This Second Report is prepared solely for the use of the Court and solely for the purpose of seeking its authorization and approval of: (i) the Liquidator/Receiver's actions and conduct as set out herein; (ii) the Receiver's Claims Process and recommended creditor distributions arising therefrom; (iii) retention by the Liquidator/Receiver of the Holdback Amount; (iv) the professional fees and future fee estimates of the Liquidator/Receiver and that of its legal counsel; (v) a final distribution from the surplus property of the Company in Liquidation to its preferred shareholder;

(vi) BDO's discharge as Liquidator/Receiver of the estate of 213 Ontario after completion of the Remaining Activities; and (vii) any other ancillary relief being sought.

5. Unless otherwise stated, all monetary amounts contained in this Second Report are expressed in Canadian dollars.

Background

6. 213 Ontario was incorporated pursuant to the provisions of the OBCA on June 20, 2007. 213 Ontario operated as a land developer. The registered office address of the Company in Liquidation is 862 Woodside Drive, Kingston, Ontario, K7P 1T2, which was also indicated as the address of the Respondent, the late Mr. James Barnett ("**Barnett**").

7. Due to apparent ongoing and irreconcilable differences between the two directors of 213 Ontario, Vogelzang and Barnett, Vogelzang commenced an application on August 21, 2015, to have 213 Ontario wound up.

8. The application of Vogelzang was heard on March 3, 2016. The Liquidation/Receivership Order was not signed, however, until June 9, 2016, and this is when BDO was actually appointed as Liquidator/Receiver. To ensure that the Liquidator/Receiver was in compliance with its filed requisite notices under both the *Bankruptcy and Insolvency Act* ("**BIA**") and the OBCA, on December 7, 2017, the Honourable Justice Abrams issued an order that the Liquidation/Receivership Order dated March 3, 2016 be varied with respect to its date to June 9, 2016 (the "**Date Revision Order**"). A copy of the Date Revision Order is attached hereto as **Appendix "C"**.

9. Prior to the Liquidation/Receivership Order, the principal asset of the Company in Liquidation consisted of land in the City of Quinte West, Ontario, which had been acquired by 213 Ontario in 2007 and 2011 and consisted of approximately 2.27 acres. The 2.27 acres of land was purchased for residential townhouse development purposes.

A small portion of the 2.27 acres of land (approximately 0.15 acres) was sold on April 5, 2014 for the sum of \$170,000 plus HST of \$19,500 (the "**April 5th Sale**"), which sum was held in trust by the law firm Howard Kelford & Dixon of Smith Falls, Ontario. Of the total \$189,500 sale proceeds, the amount of \$109,051.93 was disbursed for certain of 213 Ontario's obligations, such as HST, professional fees and property taxes as well as a dividend payment to a shareholder. The balance of the sale proceeds (\$80,448.07) was then held by Howard Kelford & Dixon until it was later delivered to the Liquidator/Receiver on June 21, 2016.

10. Upon completing the April 5th Sale, the remaining land held by 213 Ontario for residential townhouse development purposes totaled approximately 2.12 acres (the "**Vacant Land**"). Upon its appointment, the Liquidator/Receiver took possession and control of the Vacant Land and engaged Ekort Realty to market and sell the Vacant Land. Through Ekort Realty's marketing and sales efforts, two offers were received by the Liquidator/Receiver.

11. Upon review of the two offers, the Liquidator/Receiver entered into an agreement of purchase and sale (the "**Sale Agreement**") with 1710070 Ontario Limited (a company controlled by Vogelzang) to purchase the Vacant Land at a price of \$249,900 plus HST, if applicable, subject to approval of the Court. By order of the Honourable Justice Abrams dated December 7, 2017, the Sale Agreement was subsequently approved (the "**Approval and Vesting Order**"). A copy of the Approval and Vesting Order is attached hereto as **Appendix "D"**.

12. Pursuant to its mandate to wind up 213 Ontario, the Liquidator/Receiver made numerous attempts to obtain the Company in Liquidation's books and records from Barnett. Barnett, however, refused to deliver the books and records to the Liquidator/Receiver interfered in the sales process with respect to the Vacant Land and

appears to have deliberately frustrated the Liquidator/Receiver's attempts to comply with its statutorily and judicially mandated responsibilities. Due to his refusal to deliver the books and records of the Company in Liquidation to the Liquidator/Receiver and his interference in the sales process, the Liquidator/Receiver commenced (after fair warning) the preparation of motion materials to have Barnett found in contempt of the Liquidation/Receivership Order (the "**Contempt Motion Materials**"). The Contempt Motion Materials are attached hereto as **Appendix "E"**. As a consequence of the Contempt Motion the Liquidator/Receiver spent a considerable amount of time that otherwise would not have been necessary. The Contempt Motion Materials detail the extent of the additional time expended by the Liquidator/Receiver and explains Barnett's conduct. It is recommended that these materials be reviewed in connection with the request on this motion for the Court's direction with respect to the associated costs incurred. After having established a court date and after having drafted complete motion materials, including a factum, the Liquidator/Receiver was in the process of attempting to serve Barnett with the Contempt Motion Materials when the Liquidator/Receiver's learned that Barnett had passed away on August 17, 2017.

13. Upon the Liquidator/Receiver being made aware of Barnett's passing, the Liquidator/Receiver filed a requisition to have the proceedings continue with Barnett's estate trustee (the "**Estate Trustee**") as a named Respondent and that the title of the proceeding in all documents issued, served or filed be changed accordingly. On September 7, 2017 the Local Registrar at the Court office located at 5 Court Street, Kingston, Ontario issued such an order (the "**Order to Continue**"). A copy of the Order to Continue is attached hereto as **Appendix "F"**.

ACTIVITIES OF THE RECEIVER

14. The following is a general summary of the more salient activities of the Liquidator/Receiver since the First Report:

- (a) completing the transaction contemplated by the Sale Agreement and filing a Liquidator/Receiver's certificate with the court confirming the satisfaction or waiver of the conditions precedent in the Sale Agreement;
- (b) filing all outstanding statutory government excise sales tax returns from October 2014 to the date of the Date Revision Order;
- (c) preparing financial statements for the Company in Liquidation for the fiscal years 2015, 2016, and 2017;
- (d) filing all outstanding statutory government income tax returns for the fiscal years 2015, 2016 and 2017;
- (e) filing all of the statutory government returns associated with the Liquidator/Receiver's activities;
- (f) obtaining from the Estate Trustee and reviewing all of the books and records of 213 Ontario;
- (g) conducting a claims process to solicit potential creditor claims against the Company in Liquidation;
- (h) reviewing the creditor claims received and correspondence with creditors with regards to their filed claims;
- (i) payment of general expenses incidental to the administration of these proceedings;
- (j) complying with and providing information to the Canada Revenue Agency (the "CRA") with respect to an excise sales tax audit of the Liquidator/Receiver's accounts; and

(k) drafting this Second Report.

BOOKS AND RECORDS

15. Following the Order to Continue, GR LLP engaged in a discussion with the Estate Trustee and requested that the Liquidator/Receiver be provided with the books and records of the Company in Liquidation. After several months of communication with the Estate Trustee and her counsel, on or around November 20, 2017 the Estate Trustee began providing the Liquidator/Receiver with the books and records of the Company in Liquidation, which were in the Estate Trustee's possession. The books and records received from the Estate Trustee included: (i) bank statements from 2009 through to 2016; (ii) various vendor invoices from 2007 through to 2015; (iii) corporate income tax returns and CRA notice of assessments from 2009 through to 2013; (iv) excise sales tax returns and CRA notice of assessments from 2007 through to 2016; (v) property tax statements from 2007 through to 2017 including municipal tax arrears notices; (vi) various other corporate documents including, among other items, director resolutions and minutes of meetings of the shareholders; and (vii) a copy of the lien registration documents registered by the CRA on the real property of the Company in Liquidation for failure to file and remit excise sales taxes.

DEALINGS WITH MR. BARNETT

16. As briefly addressed above, while the Liquidator/Receiver was attempting to comply with its mandate, Barnett continually refused to provide the Liquidator/Receiver with the books and records of the Company in Liquidation. Both the Liquidator/Receiver and GR LLP made numerous attempts to obtain the books and records of the Company in Liquidation from Barnett. GR LLP specifically warned Barnett that an ongoing refusal to cooperate would result in a contempt motion being brought against Barnett. On

several occasions Barnett informed GR LLP that he understood and intended to comply with his obligations to deliver to the Liquidator/Receiver all books and records of the Company in Liquidation. However, Barnett's actions ran contrary to these statements. As can be seen in the report of the Liquidator/Receiver prepared in connection with the contempt motion and attached to this Second Report as **Appendix "E"**, Barnett appears to have intentionally misrepresented the location of the books and records of 213 Ontario and intentionally obfuscated the attempts of the Liquidator/Receiver to root out their true location.

17. On or around July 25, 2017, having still not received the books and records of the Company in Liquidation from Barnett, the Liquidator/Receiver commenced the preparation of the Contempt Motion Materials.

18. Subsequent to preparation of the Contempt Motion Materials and Barnett's passing in August 2017, the Liquidator/Receiver came upon further evidence of Barnett's contempt for the Liquidation/Receivership Order. As noted above, the Liquidator/Receiver in November 2017 began receiving documents from the Estate Trustee. Included in these materials was an agreement of purchase and sale for the Vacant Lands, dated March 9, 2017 executed by Barnett, purporting to act on behalf of 213 Ontario, a letter from a planner to Barnett regarding development plans with respect to the Vacant Land, an "Authorization to All Governmental Agencies and Municipal Bodies Having Jurisdiction" with respect to the purported sale of the Vacant Land, and a release with respect to the purported sale of Vacant Land, again signed by Barnett purporting to act on behalf of 213 Ontario. Each of the above mentioned documents is attached hereto as **Appendix "G"**. While there is a great deal of uncertainty as to just what Barnett was attempting to do and why in March and April 2017, the Liquidator/Receiver had no choice but to carefully review these materials to

ensure that no external party might believe 213 Ontario to have been bound by Barnett's actions. The evidence indicates direct and willful interference with the mandate of the Liquidator/Receiver and actions deliberately contemptuous of the Liquidation/Receivership Order.

19. The time expended by the Liquidator/Receiver and GR LLP with respect to dealings with Barnett, include:

- (a) efforts to locate Barnett and request access to the books and records;
- (b) drafting letters to Barnett requesting access to the books and records, including the risk of contempt;
- (c) review of options in light of books and records being withheld;
- (d) phone calls with Barnett wherein he openly admitted to intending to attack these proceedings and apparently misled the Liquidator/Receiver and its counsel regarding the location of the books and records of the Company in Liquidation;
- (e) interpreting Barnett's cryptic voicemail responses;
- (f) preparation of the Contempt Motion Materials and the draft first report of the Liquidation/Receiver (the draft first report was never filed with the Court), scheduling of motion and serving of the Contempt Motion Materials;
- (g) review of subsequently obtained materials indicating an attempt by Barnett to deal with the Vacant Land and illegally bind the Company in Liquidation; and
- (h) all additional correspondence between the Liquidator/Receiver and GR LLP related to Barnett's refusal to provide the Liquidator/Receiver access to the books and records of the Company in Liquidation.

20. Due to all of these issues, the Liquidator/Receiver is seeking the direction of this Honourable Court with respect to the costs incurred by the Liquidator/Receiver as a result of Barnett's intransigent actions and omissions. The Liquidator/Receiver and its counsel have conservatively estimated these costs in the total amount of \$13,222.40, including HST. This amount is comprised of the fees associated with the time expended by the Liquidator/Receiver and GR LLP in the amounts of \$6,319.64 and \$6,902.76, respectively, in dealing with Barnett and his efforts to frustrate these proceedings. To calculate these costs, both the Liquidator/Receiver and its counsel reviewed their dockets from the relevant time periods and divided and tallied their fees connected with Barnett's intransigence with as much exactitude as was reasonably possible. Attached hereto as **Appendix "H"** and **Appendix "I"** are the marked up time dockets of the Liquidator/Receiver and GR LLP, respectively, evidencing these costs.

CLAIMS PROCESS & CREDITORS

21. Pursuant to the Liquidator/Receiver's mandate to windup the affairs and distribute the property of the Company in Liquidation, the Liquidator/Receiver commenced the Claims Process to solicit creditor claims against the Company in Liquidation. A claims submission deadline for the Claims Process was set for May 31, 2018 (the "**Claims Submission Deadline**").

22. Through the Liquidator/Receiver's review of the documentation received by the Estate Trustee, only ten parties (the "**Vendors**") were identified as either having transacted business, or likely to have transacted business with the Company in Liquidation between the years 2007 and 2015. On March 27, 2018, the Liquidator/Receiver sent letters, including a blank proof of claim form, to the Vendors and the CRA informing each of the Claims Process and the Claims Submission Deadline.

Copies of the letters sent to the Vendors and the CRA are attached hereto as **Appendix "J"**.

23. Additionally, the Liquidator/Receiver placed an advertisement informing the public of these proceedings in two regional newspapers. More specifically, the advertisements requested that any party that believed itself to have a claim against the Company in Liquidation should submit a claim to the Liquidator/Receiver by the Claims Submission Deadline. The advertisements were published in the Kingston Whig-Standard and the Trentonian on Thursday March 29, 2018. Copies of the tear sheets for two advertisements placed by the Liquidator/Receiver are attached hereto as **Appendix "K"**.

24. Only two parties responded to the advertisements published and the letters sent by the Liquidator/Receiver, the CRA and Bond & Hughes - a law firm based in Perth, Ontario. On April 9, 2018, a trust claim was received from the CRA in the amount of \$35,904.80 with respect to unpaid HST by the Company in Liquidation (the "**CRA Claim**"). The CRA Claim pertained to unpaid HST on notionally assessed amounts due to the failure of the Company in Liquidation to file HST returns for the period October 2014 through to the date of the Date Revision Order, June 9, 2016. The Liquidator/Receiver determined, based on the review of the Company in Liquidation's available books and records, that the Company in Liquidation did not have any sales during this unreported period and therefore was not liable for any HST. Upon the Liquidator/Receiver filing the necessary HST returns with the CRA, the CRA formally withdrew its trust claim in the amount of \$35,904.80 on April 10, 2018. A copy of the CRA Claim and claim withdrawal letter are attached hereto as **Appendix "L"**.

25. On April 16, 2018, an unsecured claim from Bond & Hughes in the amount of \$682.53 for unpaid legal services invoiced on December 4, 2014 was received. The

Liquidator/Receiver has reviewed the Bond & Hughes claim and believes the claim to be a valid claim against the Company in Liquidation. A copy of the Bond & Hughes claim is attached hereto as **Appendix "M"**. The Liquidator/Receiver requests authorization and approval to distribute \$682.53 to Bond & Hughes in full satisfaction of its unsecured claim against the Company in Liquidation.

26. In addition to the two aforementioned claimants, the Liquidator/Receiver was also made aware of outstanding realty taxes owed by the Company in Liquidation to the City of Quinte West. The realty taxes owing totaled \$10,505.65 as at December 12, 2017, and were paid to the City of Quinte West as part of the process in completing the transaction contemplated by the Sale Agreement.

ENTITLEMENTS ON DISSOLUTION OPINION

27. GR LLP has opined with respect to the share structure and holdings thereof in relation to 213 Ontario, and how redemption of the Company in Liquidation's shares may proceed upon liquidation of 213 Ontario and distribution of its property, subject to the satisfaction of debts to creditors (the "**Opinion Letter**"). A copy of the Opinion Letter is attached hereto as **Appendix "N"**.

28. Based on GR LLP's review of the corporate records for the Company in Liquidation, it appears that, while Vogelzang and Barnett are the holders of equal numbers of Common Shares in the Company in Liquidation, Vogelzang is the only holder of any Preference Shares of the Company in Liquidation. To the extent that there is any surplus property available following the satisfaction of the Company in Liquidation's debts to its creditors, Vogelzang is entitled to a return of the redemption price of his 230,000 Class "A" Preference Shares, set at \$100 per share (\$23,000,000 for all 230,000 Class "A" Preference Shares) in preference to any class of Common Shares. To the

extent that any such assets remain subsequent to the redemption of Vogelzang's Class "A" Preference Shares, the remaining assets of the Company in Liquidation should be divided evenly as between Vogelzang and Barnett (or his estate) in respect of their respective holdings of Class "A" Common Shares of the Company in Liquidation.

RECEIPTS AND DISBURSEMENTS

29. The Liquidator/Receiver's R&D Schedule, attached hereto as **Appendix "O"**, reports net receipts over disbursements, before consideration of any proposed distributions, for the period March 3, 2016, to September 11, 2018, of \$189,423.63 after a provision for payment of outstanding professional fees and disbursements, costs associated with the dissolution documents which must be filed with the Ministry and subject to the Holdback Amount. The R&D Schedule reports total receipts and total disbursements of \$344,125.63 and \$154,702.00, respectively.

PROPOSED DISTRIBUTION TO SHAREHOLDER

30. The Liquidator/Receiver seeks approval to distribute all remaining estate funds to Vogelzang (the "**Final Distribution**"), after the payment of the sole creditor claim, the fees and disbursements of the Liquidator/Receiver and its legal counsel, the receipt of any estimated future HST refunds and subject to the retention of the Holdback Amount, in respect of Vogelzang's apparent 230,000 Class "A" Preference Share equity interest in 213 Ontario.

DISCHARGE

31. To the best of the Liquidator/Receiver's knowledge, the Liquidator/Receiver has completed the realization of substantially all of the Company in Liquidation's assets.

32. All of the Liquidator/Receiver's duties as set out in the Liquidation/Receivership Order will be completed upon: (i) distributing to the sole creditor of the Company in Liquidation the amount approved herein; (ii) paying all outstanding professional fees and disbursements and costs associated with the dissolution of the Company in Liquidation; (iii) filing the final estate HST returns to recover any unclaimed input tax credits estimated to be approximately \$3,813.52; (iv) making the Final Distribution; (v) filing the final corporate income tax return; (vi) filing all requisite dissolution documents with the Ministry; and (vii) filing the Receiver's final report pursuant to S. 246(3) of the BIA with the Office of the Superintendent of Bankruptcy (collectively the "**Remaining Activities**").

33. Once the Liquidator/Receiver has completed the Remaining Activities, the Liquidator/Receiver proposes to file the Discharge Certificate with the Court certifying same to obtain a complete discharge and release from its responsibilities as Liquidator/Receiver, subject only to its duty to retain the books and records of 213 Ontario for a reasonable period of time, which the Liquidator/Receiver is requesting to be limited to no more than two years subsequent to its filing of the Discharge Certificate.

FEES AND DISBURSEMENTS

34. Pursuant to the Liquidation/Receivership Order, the Liquidator/Receiver has provided services and incurred disbursements which are more particularly described in the Affidavit of Mr. Gary Cerrato, sworn September 12, 2018 (the "**Cerrato Affidavit**") and detailed invoices attached thereto as **Appendix "P"**.

35. The detailed time descriptions contained in the invoices provide a fair and accurate description of the services provided and the amounts charged by BDO as

Liquidator/Receiver. Included with the invoices is a summary of the time charges of partners and staff, whose services are reflected in the invoices, including the total fees and hours billed.

36. The Liquidation/Receivership Order states, at paragraph 17, that “the Liquidator/Receiver and counsel to the Liquidator/Receiver shall be paid their reasonable fees and disbursements” and, at paragraph 18, that “the Liquidator/Receiver shall be at liberty from time to time to apply reasonable amounts, out of the monies in its hands, against its fees and disbursements, including legal fees and disbursements, incurred at the standard rates and charges of the Liquidator/Receiver or its counsel, and such amounts shall constitute advances against its remuneration and disbursements when and as approved by this Court.”

37. The Liquidator/Receiver requests that the Court approve its accounts for the period from May 18, 2016 to September 5, 2018 in the amount of \$47,759.45 for fees and disbursements plus HST of \$6,208.73 for a total of \$53,968.18. The Liquidator/Receiver also requests that the Court approve the estimated amount of \$6,240.00, plus HST, being the Liquidator/Receiver’s estimate of its future fees and disbursements from and after September 5, 2018, in order to complete the administration of these proceedings.

38. The Liquidator/Receiver has incurred legal fees of its counsel, GR LLP, in respect of these proceedings, as per the affidavit of Jonathan Wigley, affirmed September 7, 2018 (the “**GR Affidavit**”), and exhibits attached hereto as **Appendix “Q”**.

39. The Liquidator/Receiver has reviewed the GR Affidavit and believes the fees and disbursements set out therein to be fair and reasonable in the circumstances.

40. The Liquidator/Receiver requests that the Court approve the accounts of GR LLP, for the period from June 14, 2016 to August 31, 2018, in the amount of \$49,422.16, plus HST of \$6,370.50, for a total of \$55,792.66. The Liquidator/Receiver also requests that the Court approve the estimated amount of \$3,500, plus HST, being the GR LLP estimate of its future fees and disbursements from and after August 31, 2018 in order to complete the administration of these proceedings.

41. Additional time will be required to complete the Liquidator/Receiver's mandate. The Liquidator/Receiver estimates that it will incur \$11,006.20, including HST in future professional fees to complete the administration of the estate consisting of \$7,051.20 and \$3,955.00 in future professional fees of the Liquidator/Receiver and its counsel, respectively, plus a contingency of \$2,500.00, all comprising the Holdback Amount of \$13,506.20.

42. The Liquidator/Receiver respectfully submits that the Liquidator/Receiver's fees and the fees and disbursements of GR LLP are reasonable in the circumstances and have been validly incurred in accordance with the provisions of the Liquidation/Receivership Order.

SUMMARY AND RECOMMENDATIONS

43. Based on the foregoing, the Liquidator/Receiver recommends that this Honourable Court grant an Order:

- a) approving this Second Report and the actions and activities of the Liquidator/Receiver set out herein;
- b) approving the claims process, *nunc pro tunc*, conducted by the Liquidator/Receiver to solicit creditor claims against the Company in Liquidation;

- c) authorizing and directing the Liquidator/Receiver to make a distribution to the sole creditor of the Company in Liquidation, Bond & Hughes , with a proven and accepted claim in the amount of \$682.53;
- d) approving the Liquidator/Receiver's R&D Schedule;
- e) approving the fees and disbursements of the Liquidator/Receiver and its legal counsel, GR LLP, as set out in this Second Report and the affidavits of the Receiver and its counsel as to fees, and authorizing the Liquidator/Receiver to pay all approved and unpaid fees and disbursements;
- f) authorizing and approving a Holdback Amount of \$13,506.20 to provide for the estimated future disbursements to complete the administration of these proceedings;
- g) authorizing and directing the Liquidator/Receiver to distribute the funds remaining in its trust account to Vogelzang, after the payment of the fees and disbursements of the Liquidator/Receiver and its legal counsel, the distribution to the sole creditor, the payment of all other future disbursements incidental to these proceedings and subject to the retention of the Holdback Amount, in respect of Vogelzang's apparent 230,000 Class "A" Preference Share equity interest in 213 Ontario.;
- h) providing directions with respect to responsibility for the fees and disbursements of the Liquidator/Receiver and its counsel, GR LLP attributable to dealing with the actions and omissions of Barnett in frustration of the Liquidator/Receiver's statutorily and judicially mandated responsibilities; specifically, ought these costs to be borne by the Estate of 213 Ontario or by the Respondent, the Estate of James Barnett;
- i) that, upon the filing by the Receiver of the Discharge Certificate, substantially in the form set out in Schedule "A" of the Distribution and Discharge Order, discharging BDO as Liquidator/Receiver of all of the assets, undertakings and properties of the Company in Liquidation and

releasing BDO from any and all liability it now has or may have by reason of, or in any way arising out of, the acts or omissions of BDO while acting in its capacity as Liquidator/Receiver herein, save and except for any gross negligence or willful misconduct on the Liquidator/Receiver's part; and

- j) authorizing the Liquidator/Receiver to dispose of the books and records of 213 Ontario in its possession two years following the date of filing of the Discharge Certificate.

All of which is respectfully submitted this 12th day of September, 2018.

**BDO CANADA LIMITED Court Appointed Liquidator and
Receiver of 2139911 Ontario Limited**

Per:



Name: Gary Cerrato, CIRP, LIT
Title: Vice-President

PETER VOGELZANG

and **THE ESTATE OF JAMES BARNETT, BY ITS EXECUTOR, MELISSA FISHER AND
2139911 ONTARIO LIMITED**

Applicant

Respondents

ONTARIO
SUPERIOR COURT OF JUSTICE

FIRST REPORT OF BDO CANADA LIMITED
(Dated September 12, 2018)

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