

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

BETWEEN:

ROYAL BANK OF CANADA

Applicant

- and -

2180672 ONTARIO INC.

Respondents

APPLICATION UNDER SUBSECTION 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

**FIRST REPORT TO THE COURT
SUBMITTED BY BDO CANADA LIMITED
IN ITS CAPACITY AS RECEIVER OF
2180672 ONTARIO INC.**

February 26, 2016

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INTRODUCTION

1. By Order of the Honourable Justice Penny dated December 18, 2015 (the “**Receivership Order**”), BDO Canada Limited was appointed as receiver (in such capacity, the “**Receiver**”), without security, of all of the assets, undertakings and properties of 2180672 Ontario Inc. (the “**Debtor**”). The Receivership Order was obtained on a motion brought by Royal Bank of Canada (“**RBC**”), the applicant in this proceeding. A copy of the Receivership Order is attached hereto as **Appendix “A”**.

BACKGROUND

2. The Debtor carries on business as a restaurant operating as a Boston Pizza franchise (the “**Restaurant**”) in the Town of Uxbridge, Ontario.
3. The circumstances leading to the Receiver’s appointment over the Respondent are set out in the affidavit of David Lai, sworn December 10, 2015 (the “**Lai Affidavit**”) which was included in

the Application Record. The Lai Affidavit (without exhibits) is attached hereto as **Appendix “B”**.

PURPOSE OF THIS REPORT

4. The purpose of this first report to the Court of the Receiver (the “**First Report**”) is to:
 - a) Report on the activities of the Receiver since the granting of the Receivership Order;
 - b) Summarize the results of the sale process (the “**Sale Process**”) undertaken by the Receiver;
 - c) Provide information related to the Debtor’s secured creditors and the review of the underlying security;
 - d) Provide support for the Receiver’s request for an Order:
 - I. approving the First Report and the activities of the Receiver as set out therein;
 - II. approving the statement of Receipts & Disbursements attached as Appendix I;
 - III. approving an agreement of purchase and sale (the “**Sale Agreement**”) dated February 25, 2016 entered into between the Receiver as Vendor and 253138 Ontario Inc. as purchaser (the “**Purchaser**”) with respect to the Purchased Assets as defined in the Sale Agreement;
 - IV. vesting the Purchased Assets (as defined in the Sale Agreement) in the Purchaser free and clear of all claims and encumbrances;
 - V. directing the Receiver distribute to Uxbridge Heights Plaza Ltd. (“**Landlord**”) without further Order of this Court, certain funds on account of the Debtor’s secured indebtedness for principal, interest and costs owing to Royal Bank of Canada (“**RBC**”);
 - VI. directing the Receiver to distribute \$87,223.40 to Boston Pizza International Inc. in accordance with the BPI Agreement as described herein;
 - VII. Approving the fees and disbursements of the Receiver as set out in the Receiver’s Affidavit (as defined below) and the Receiver’s legal counsel, Aird & Berlis LLP (“**Aird**”) as set out in the Aird Affidavit (as defined below); and
 - VIII. Sealing the Confidential Supplement to this First Report until the completion of the sale transaction contemplated above, or further Order of this Court.

DISCLAIMER

5. This First Report is prepared for the use of the Ontario Superior Court of Justice (Commercial List) in the proceedings and for the information and use of stakeholders. In preparing this First Report, the Receiver has relied upon certain unaudited, draft and/or internal financial information, the Debtor's books and records, discussions with Management, and information obtained from other third party sources. The Receiver assumes no responsibility or liability for the loss or damage occasioned by any party as a result of the circulation, publication, reproduction or use of this First Report or for any use which any party makes of this First Report, or any reliance on, or a decision to be made, based upon it, other than for the express purposes set out in this First Report.
6. Capitalized terms not defined in this First Report are as defined in the Receivership Order.
7. Unless otherwise stated, all monetary amounts contained herein are in Canadian dollars.

ACTIVITIES OF THE RECEIVER

8. Since December 18, 2015, the Receiver's activities have included, among other things:
 - Attending to conservatory and protective measures, such as securing the Restaurant in Uxbridge, arranged for new bank accounts, the transfer of cash balances and future receipts and reviewing adequacy of Insurance coverage and transfer of same;
 - Engaging the law firm of Aird as counsel to the Receiver;
 - Negotiating and entering into a Management Agreement with Boston Pizza International Inc. (the "**Manager**" or "**BPI**") to assist in the daily management and operation of the Restaurant to preserve the going concern value of the business;
 - Applying for a temporary transfer of the liquor sales licence with the Alcohol and Gaming Commission of Ontario ("**AGCO**") to the Receiver;
 - Notifying banking institutions of the Receiver's appointment and provided them with instructions to forward all funds as well as future deposits to the Receiver's trust accounts;
 - Meeting with employees to explain nature of the Receiver's appointment and continuation of employment pursuant to the Receivership Order;

- Corresponding with utilities and other service providers to ensure services are not disrupted and continuation of supply of goods and services;
- Notifying all parties of the Receivership Order and preparing the Receiver's Report pursuant to sections 245 and 246 of the *Bankruptcy and Insolvency Act*;
- Corresponding with the landlord and making arrangements for payment of ongoing rent during the Receivership period;
- Arranging for appraisals on the assets;
- Monitoring receipts and disbursements, arranging for payment of employees payroll, coordinating Receiver's Borrowings, liaising with various stakeholders as appropriate;
- Planning and implementing the marketing and sales process for the Debtor and commissioning appraisals for the assets;
- Preparing relevant documents for use in the sales process including a confidentiality agreement, investment summary and template form of agreement of purchase and sale to be provided to all prospective purchasers;
- Corresponding with prospective purchasers and other key stakeholders;
- Negotiating agreement of purchase and sale and all collateral documents;
- Various discussions with legal counsel; and,
- Updating the relevant stakeholders during the administration of to the date of the First Report;

MANAGEMENT OF THE RESTAURANT

9. In consultation with BPI and RBC, the Receiver determined that continuing the operations of the Debtor's business as a Boston Pizza franchise restaurant in Uxbridge would maintain employment for 45 employees, reduce the impact to the Landlord and maximize realization to affected stakeholders.

10. As set out above, the Receiver engaged Boston Pizza International Inc. to act as day to day manager of the Restaurant on behalf of the Receiver pursuant to a Management Agreement (the “**BPI Agreement**”) dated December 18, 2015. A copy of the BPI Agreement is attached as **Appendix “C”**.
11. Salient terms of the BPI Agreement include:
 - BPI will manage the day to day operations of the Debtor;
 - The Receiver is paying the payroll of the employees on behalf of the Debtor based on revenues from the business;
 - monthly reporting to the Receiver from BPI regarding the operation of the Debtor’s business;
 - management Fee of 90% of an amount equal to net balance of funds available at the date of termination of the agreement;
 - BPI is funding operating losses during the term of the BPI Agreement; and
 - Either BPI or the Receiver can give ten calendar days notice to terminate the BPI Agreement
12. BPI assigned a full-time regional general manager to oversee the day to day operations of the Restaurant.

FUNDING OF RECEIVERSHIP

13. Pursuant to paragraph 22 of the Receivership Order, the Receiver is permitted to borrow such monies as are necessary or desirable to fund the receivership. The borrowing limit is not to exceed \$150,000.
14. Upon the Receiver’s appointment, payroll for the employees of the Restaurant for period ending December 20, 2015 were to be remitted on December 22, 2015. The total payroll due for this period was \$28,005.21, of which 11 days represented pre-receivership wages and 3 days represented post receivership wages. The Receiver in consultation with RBC agreed to fund the payroll.
15. As the Receiver was without sufficient funds, RBC agreed to advance funds under the Receiver’s certificate in the amount of \$35,000 in order to meet the December 22, 2015 payroll. No further

funds have been borrowed from RBC as at the date of the First Report and no payments have been made to RBC in respect to the advance evidenced by the certificate.

BANK ACCOUNTS

16. Immediately following its appointment, the Receiver contacted CIBC to request that they suspend all disbursements from the Debtor's bank accounts and remit all balances including future deposits to the Receiver.
17. The CIBC account was closed on January 8, 2016 and a cheque from CIBC in the amount of \$105,764.12 was deposited into the Receiver's Trust Account. The additional funds deposited into the CIBC account after the date of the Receivership related to revenues from debit and credit card sales in relation to the ongoing operations of the Restaurant.
18. Pursuant to the BPI Agreement, a separate bank account was to be maintained by the Manager ("**Manager's Operating Account**") for the deposit of all revenues and payment of all expenses in relation to the operations of the Restaurant after the date of the Receivership.
19. The BPI Agreement indicates that any funds deposited into the Debtor's Account after the date of the Receivership are to be transferred to the Manager's Operating Account, subject to the approval of RBC and the Court. This provision accounted for the lag in time required to transfer credit and debit payments from the Debtor's accounts to the Manager's Operating Account.
20. The Receiver has reconciled the funds received from the CIBC (subject to adjustments for debit and credit card deposits) and has determined that \$12,539.60 represents pre-receivership funds and the balance of \$93,224.52 represents revenues received after the date of Receivership which are to be remitted to BPI.
21. As discussed above, the Receiver funded certain post-receivership payroll in the amount of \$6,001.12 which was for the account of BPI under the BPI Agreement. Accordingly, the Receiver is recommending an adjustment to the amount to be turned over to BPI which results in a net payment of \$87,223.40 to BPI pursuant to paragraph 4.3 of the BPI Agreement. RBC has provided their approval for remittance of these funds to BPI.

BOOKS AND RECORDS

22. All of the books and records and electronic accounting files are maintained by the principal Dave Granic at his personal residence. The Receiver has requested from Mr. Granic all books and records in his possession as well as a back-up of the electronic accounting records.
23. The Receiver has received limited books and records and is currently undertaking a review of same.

THE SALE PROCESS

Overview

24. Paragraph 3(j) of the Receivership Order authorizes the Receiver to market for sale any or all of the assets of the Debtor and to negotiate the terms and conditions of sale as the Receiver deems appropriate.
25. In an effort to maximize realizations, the Receiver immediately began preparations to commence a sale process for the Restaurant.
26. The Receiver in conjunction with the key stakeholders reviewed the appropriate course of action to market and sell the Restaurant taking into account the current status of the Restaurant, market conditions for same and the cost of continued operations of the Debtor's business.
27. As a condition of sale to a interested party who was not an existing Boston Pizza franchisee, the Franchisor provided the Receiver with the following conditions that would need to be met:
 - Minimum net worth of \$1.5M which includes \$350,000 of unencumbered cash for soft costs, training and working capital;
 - Ability to invest up to \$250,000 in store upgrades by the end 2017;
 - Completion of the Boston Pizza Franchisee Application;
 - Completion of Boston Pizza's management eight week training program in Oakville;
 - Complete a Business Plan prior to Franchisors formal approval meeting;
 - Execution of Franchise Agreement (including personal guarantees)
 - Secure a new lease with the Landlord; and
 - Ability to provide the Landlord with a reasonable commercial covenant

28. The Receiver's sale process commenced on or about January 6, 2016, without a published asking price. The Receiver targeted the following parties:
- franchisees within the Boston Pizza network;
 - advertisements were placed in the Globe and Mail (the "**Globe Ad**") on January 12 and 14, 2016, a copy of the Globe Ad is attached as **Appendix "D"**;
 - an internal electronic announcement was sent to professionals within the BDO network (approximately 350 people); and
 - various parties who expressed an interest directly to the Receiver in response to the above, details of which are contained in the confidential supplement
29. The sale package included a compilation of information distributed to interested parties who signed a Confidentiality Agreement ("**CA**"), non-binding expression of interest form ("**Letter of Intent**"), the franchisors application process, a template form of Agreement of Purchase and Sale ("**APS**") The APS was provided to the prospective purchasers to ensure as far as possible, terms and conditions of sale were standardized and easily comparable.
30. The Receiver, in consultation with its counsel established a deadline for receipt of expressions of interest of February 1, 2016.
31. Throughout the sales process the Receiver addressed various enquiries from interested parties, provided that they had executed CA's as described above.

Results of Sale Process

32. During the sales process, the Receiver followed up with each interested party who executed a CA in order to obtain updates on the status of their due diligence and to enquire into each party's level of interest.
33. Shortly after the deadline to submit expressions of interest, the Receiver began negotiating the terms of an APS with the proposed purchaser.

The Sale Agreement

34. An unredacted copy of the Sale Agreement entered into between the Receiver as Vendor and 253138 Ontario Inc. as Purchaser is attached as Confidential Appendix 3. A copy of the Sale Agreement with

financial terms redacted is attached as **Appendix “E”**. The Purchaser has paid a \$10,000 deposit to the Receiver towards the purchase price, the balance of the purchase price is due on closing.

35. The following summarizes the key terms of the Sale Agreement:
- the purchase of all of the Debtor’s assets on an “as is, where is” basis;
 - conditional on approval as a Boston Pizza franchisee from the franchisor;
 - conditional on obtaining a commercial lease from the landlord;
 - conditional on obtaining a transfer of the liquor licence to the Purchaser on Closing;
 - payment of full consideration plus applicable taxes but less deposit upon closing;
 - closing is scheduled for April 11, 2016; and
 - conditional on obtaining court approval and a vesting order for the assets
36. Consistent with other transactions where court approval is being sought, the Receiver is seeking a sealing order of the Confidential Supplement to the First report pending the earlier of the completion a sale or further Order of the Court. The Confidential Supplement contains commercially sensitive information, the release of which, would detrimentally affect the return to stakeholders.

Evaluation of the Sale Agreement

37. The proposed sale price represents the highest price offered for the assets.
38. The purchaser is an existing franchisee within the Boston Pizza franchise network and approval from the franchisor has been received.
39. The Sale Agreement is conditional upon the proposed Purchaser and the Landlord entering into a commercial lease for the premises. The landlord and the proposed Purchaser have finalized a letter of intent and expect to have a final lease completed prior to the scheduled closing. The landlord has agreed to enter into a new lease with the Purchaser subject to payment of \$60,000 towards the arrears it claims in respect of the lease with the Debtor. BPI has agreed to pay \$30,000 and RBC is prepared to pay a further \$30,000 from closing proceeds assuming the transaction outlined herein closes. The Receiver will be disclaiming the original lease on behalf of the Debtor on Closing.
40. Assuming the transaction closes, the Receiver will be terminating all employees subject to the Purchaser offering employment to those employees it wishes to retain. The Sale Agreement

contemplates that the Purchaser will provide notice to those employees it wishes to offer employment ten days before closing of the transaction.

41. The Receiver and the Purchaser will work on affecting a transfer of the liquor licence from AGCO. The Purchaser, through its counsel, has confirmed that it is making application for the transfer of the liquor licence which is expected to take two to four weeks.
42. The Receiver has consulted with RBC, being the primary secured creditor and the franchisor, who each support the proposed transaction.
43. Given the foregoing, the Receiver respectfully requests that this Honourable Court issue an order, inter alia, approving the Sale Agreement and directing the Receiver to complete the sale transaction with the Purchaser (and any ancillary documents necessary to complete the Sale Agreement) and vesting the Debtor's right, title, interest in and to the Purchaser free and clear of all claims and encumbrances.

SECURED CREDITORS AND PRIORITY CLAIMS

44. Based on a review of PPSA registrations, as of December 29, 2015, only RBC has filed registrations against the Debtor. A copy of the PPSA registration is attached as **Appendix "F"**.
45. A General Security Agreement granted to the Royal Bank of Canada on September 10, 2008 ("**GSA**"), covering all of the property, assets and undertaking of the Debtor. A copy of the GSA is attached as **Appendix "G"**. As at December 9, 2015, the loan outstanding to RBC was in the amount of \$760,621.34 based on the Lai Affidavit in support of the within application.
46. The Receiver's counsel, Aird, has reviewed the security documents related to RBC (the "**Security Review**"), and has provided an opinion to the Receiver, subject to customary qualifications and assumptions, that the RBC security is valid and enforceable in accordance with their terms. A copy of the Security Review is attached as **Appendix "H"**.
47. The Receiver has contacted CRA in order for trust examinations to be completed on the Debtor's source deduction/payroll account as well as its harmonized sales tax account. CRA has not conducted its trust examinations to date, but has advised that there are no known source deduction/payroll arrears as the date of this report. CRA has advised the Receiver that there is currently, subject to the trust examination, an outstanding HST account balance due of

approximately \$98,000. RBC has advised that it will be issuing an application for a bankruptcy which will result in the HST claims becoming unsecured.

48. The Receiver has completed its review and analysis pursuant to the WEPPA and has concluded that there are no priority secured claims against the Debtor's current assets given that operations continued beyond the Receivership and payroll has been made. In any event the Sale Agreement does not represent a sale of current assets.
49. Should the Court approve the proposed transaction contemplated in the Sale Agreement, the Receiver is seeking the Court's approval to distribute \$30,000 to the landlord from the net sale proceeds as discussed above.
50. The balance of the net sale proceeds will be held back to complete the administration of the estate and distribution to RBC pending determination of the priority position between the HST claim and RBC.

RECEIVER'S RECEIPTS AND DISBURSEMENTS

51. The Receiver's Interim Statement of Receipts and Disbursements for the period December 18, 2015 to February 23, 2016 is attached hereto as **Appendix "I"**.

PROFESSIONAL FEES

52. The Receiver's fees and disbursements for services rendered for the period December 15, 2015, 2015 to February 24, 2016 are particularized in the Affidavit of Brian Pritchard sworn February 26, 2016 (the "**Receiver's Affidavit**"). Receiver's fees for this period total \$55,829.27 plus applicable HST. A copy of the Receiver's Affidavit in support of approval of its accounts is attached hereto as **Appendix "J"**.
53. The fees and disbursements incurred by Aird during the period December 11, 2015 to February 22, 2016 are particularized in the Affidavit of Jeremy Nemers sworn February 25, 2016 (the "**Aird Affidavit**"). The total amount of the fees for this period is \$27,633.02 inclusive of HST (the "**Aird Fees**"). A copy of the Aird Affidavit containing Aird's accounts is attached hereto as **Appendix "K"**.
54. The Receiver has reviewed the invoices of Aird and finds the work performed and charges to be appropriate and reasonable.

RELIEF REQUESTED

55. Based upon the foregoing the Receiver respectfully requests that this Honourable Court issue an order for the relief outlined in paragraph 4(d) herein.

All of which is respectfully submitted this 26th day of February, 2016

BDO CANADA LIMITED
In its capacity as Court Appointed Receiver of
2180672 Ontario Inc.

Per:



Stella Millis, CIRP
Vice President