

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:

ROMSPEN INVESTMENT CORPORATION

Applicants

-and-

1514904 ONTARIO LIMITED, 2000396 ONTARIO INC.,  
1278502 ONTARIO INC., 1259121 ONTARIO INC.  
and ALMONTE LAND MANAGEMENT INC.

Respondents

FIRST REPORT OF SF PARTNERS INC.

May 11, 2010

I INTRODUCTION

1. This First Report of SF Partners Inc., in its capacity as the Court-appointed receiver and receiver and manager (the “**Receiver**”) of the assets of the Respondents, should provide grounds upon which this Honourable Court may grant the following relief:

- (a) approval of the Receiver's activities to date and proposed actions as set out in this report;
- (b) an Order sealing appraisals commissioned by the Receiver of the eight (8) parcels of real estate (the "**Properties**") which are the subject of the Receiver's administration in this proceeding, until such time as the transactions contemplated by the proposed sales process are completed;
- (c) approval of a stalking horse sales process, including the bidding procedures described herein, in respect to the Properties; and
- (d) an Order compelling the Respondents and its principal Wilson Bassile to immediately deliver to the Receiver copies of all consultant's reports and surveys pertaining to the Properties in their possession, power and control.

## II **DISCLAIMER**

- 2. The Receiver has relied upon the financial records and information provided by the Respondents, as well as other information supplied by management, appraisers, accountants and advisors. The Receiver assumes no responsibility or liability for loss or damages occasioned by any party as a result of the circulation, publication, re-production or use of this report. Any use which any party, other than the Court, makes of this report, or any reliance on or a decision to be made based upon it is the responsibility of such party.

## III **BACKGROUND**

- 3. On February 3, 2010, the Honourable Mr. Justice Rick Leroy appointed SF Partners Inc. the Receiver of the assets of the Respondents pursuant to section 243(1) of the *Bankruptcy and Insolvency Act* (the "**BIA**") and section 101 of the *Courts of Justice Act*. A copy of the Endorsement of R. Leroy J. is attached as Appendix "A" to this report.

4. The Receiver's appointment was initiated by Romspen Investment Corporation ("**Romspen**") under Romspen's first security mortgage, which had matured on July 15, 2008 and was in financial default. After Romspen afforded the Respondents significant time to refinance the Properties and no refinancing materialised, Romspen issued the requisite s. 244(1) BIA notices on October 5, 2009.
5. The application to appoint the Receiver was initially returnable before R. Leroy J. in Ottawa on December 17, 2009. On the basis of a request for an adjournment made on behalf of the Respondents in order to marshal and file materials and conduct cross-examinations, His Honour adjourned the receivership application to January 22, 2010 for hearing in Cornwall. No cross-examinations were ultimately pursued by the Respondents, although they did file brief materials on the eve of the application.
6. The application was heard on January 22, 2010 and Reasons were released on February 3, 2010 whereby the Receiver was appointed.
7. As R. Leroy J. noted in his Reasons, a second-ranking mortgagee, 1067278 Ontario Inc. who holds a mortgage over the Properties securing a principal face amount of \$5,500,000, consented to the Receiver's appointment.
8. On February 22, 2010, the Respondents served motion materials on short notice to obtain a stay of the Receiver's appointment. The stay motion was heard in Ottawa by the Honourable Mr. Justice Kane on February 25, 2010. On March 4, 2010 His Honour released Reasons dismissing the Respondents' stay motion. A copy of the Reasons of Kane J. is attached as Appendix "B" to this report.
9. On March 3, 2010, the Respondents served a notice of appeal of the February 3, 2010 decision of R. Leroy J. appointing the Receiver. A copy of the notice of appeal is attached as Appendix "C" to this report.
10. On April 23, 2010, the Respondents served a notice of abandonment of the appeal. A copy of the notice of abandonment is attached as Appendix "D" to this report.

11. As at February 22, 2010, the sum of \$11,295,720.60 was owing to Romspen under its mortgage security and per diem interest of \$3,755.25 was accruing thereon. A copy of a loan statement dated February 22, 2010 is attached as Appendix "E" to this report.
12. Romspen has not subsequently received any payment on account of its loan.

#### **IV. EFFORTS TO ASSIST WILSON BASSILE TO RETAIN CONTROL**

13. Wilson Bassile is the principal of the Respondents. Although Mr. Bassile has proven to be tenacious in resisting the proceedings to date, he and Romspen's principals have been in ongoing communication since the Receiver's appointment to explore means by which Mr. Bassile might retain control of the Properties.
14. Initially, Mr. Bassile purported to wish to buy the Properties from the Receiver and was highly critical of the Receiver's refusal to entertain offers to purchase the Properties without first obtaining appraisals of the Properties. Copies of emails exchanged between Mr. Bassile and the Receiver's counsel on March 10, 2010 are attached as Appendix "F" to this report. The emails convey Mr. Bassile's impatience with and criticism of the Receiver and the receivership process.
15. The Receiver obtained appraisals of the Properties from Janterra Real Estate Advisors on March 12, 2010. In order to preserve the integrity of the sales process hereinafter proposed by the Receiver, copies of the appraisals are not attached as appendices to this report.
16. The Receiver, after reviewing the appraisals and discussing with Romspen potential sales of the Properties to persons or entities controlled by Mr. Bassile and being advised of various discussions between Mr. Bassile and Romspen's principals in which the Receiver did not participate, prepared three (3) separate offers to purchase seven (7) of the Properties. The offers were prepared and forwarded to Mr. Bassile between March 23

and March 31, 2010. Copies of the covering emails which accompanied the offers and the pages of the offers containing the material commercial terms are attached as Appendix “G” to this report.

17. Notwithstanding Mr. Bassile’s purported impatience with the Receiver in preparing and delivering the offers to him, the Receiver did not receive any comments or signbacks from Mr. Bassile in respect of the offers he received from the Receiver until April 16, 2010. On April 16, 2010 the Receiver met with Mr. Bassile who advised that the offers did not reflect the terms he had discussed with Romspen.
18. On April 22, 2010, after continued discussions with Mr. Bassile, Romspen issued an offer to Mr. Bassile to reinstate its loan to the Respondents and seek the Receiver’s discharge. A copy of the letter of April 22, 2010, with Mr. Wilson’s handwritten amendments thereto, is attached as Appendix “H” to this report.
19. The letter contemplated a non-refundable deposit of \$410,764.22 being paid by Mr. Bassile to Romspen by April 30, 2010. The deposit was to be on account of a paydown of \$4,107,642.18 in respect of Romspen’s loan, which Romspen was to receive by June 30, 2010. The Receiver was not a party to the letter and the letter specifically provided that notwithstanding the letter the Receiver would continue to proceed with its marketing and sale process until the paydown of \$4,107,642.18 was received.
20. In any event, Mr. Bassile’s handwritten amendments to the letter were never accepted by Romspen in writing and the deposit of \$410,764.22 was never paid to Romspen.
21. The Receiver is now firmly of the view that no stakeholder, including Romspen, will be served by holding off with initiating a formal sales process to the marketplace.

## **V. THE PROPERTIES**

22. All of the Properties are located in the Town of Mississippi Mills, in Lanark County, which is approximately 50 kilometers west of Ottawa. The Properties consist of:

- (a) a 74 acre residential subdivision site which is currently draft plan approved to allow in Phase 1 for a development of 155 residential units (the “**Subdivision Property**”);
- (b) a retail plaza situated on 5.3 acres, municipally known as 430 Ottawa Street. The plaza is 60,230 square feet with 48,736 square feet of leasable space. It contains 12 retail units and one second floor office unit of 3,000 square feet. Five (5) of the retail units are presently leased; and
- (c) six (6) vacant lots of varying sizes and commercial value.

## VI. INITIALS ACTIONS

23. In addition to the actions hereinabove described, the Receiver has undertaken the following activities:
- Sending Receiver’s notices pursuant to the BIA;
  - Dealing with ongoing maintenance of the retail plaza;
  - Ongoing dealings with tenants of the retail plaza;
  - Dealing with insurance;
  - Ongoing communications with stakeholders, including Mr. Bassile;
  - Communication with the Town of Mississippi Mills;
  - Taking steps to control rents payable;
  - Taking control of the Respondents’ books and records;
  - Ongoing discussions with counsel.

## VII. APPRAISALS OF THE PROPERTIES

24. As part of its due diligence, the Receiver obtained appraisals of the Properties from Janterra Real Estate Advisors on March 12, 2010.

25. The appraisals indicate that the value of the Properties, if liquidated, are likely to produce significantly less proceeds than the amount owing to secured creditors.
26. In order to preserve the integrity of the sales process hereinafter proposed by the Receiver, copies of the appraisals are not attached as appendices to this report, and the Receiver recommends that the appraisals be sealed by this Honourable Court, until such time as the transactions contemplated by the proposed sales process are completed.

#### **VIII. PROPOSED STALKING HORSE SALE PROCESS**

27. After considering its options in terms of achieving maximum realizations for the Respondents' estates in a timely manner, and reviewing its concerns with Romspen, the Receiver concluded that a stalking horse process presents the best opportunity to generate recoveries in excess of liquidation values in a timely and cost effective manner.
28. The Regional Group, an Ottawa-based real estate developer, expressed an interest to the Receiver in acquiring the Subdivision Property. To that end, Menzie Almonte Inc. ("Menzie") was recently incorporated.
29. As of the time of signing of this report, although Menzie and the Receiver have not yet executed an agreement, the Receiver and Menzie have agreed on commercial terms and the Receiver expects that Menzie will submit, prior to the return of the Receiver's motion in Ottawa on May 14, 2010, a stalking horse bid to buy the Subdivision Property for a purchase price of \$5,000,000 which the Receiver is agreeable to accepting.
30. A copy of a stalking horse bid from Menzie which the Receiver expects to receive from Menzie imminently, without material amendments, is attached as Appendix "I" to this report.

31. Romspen expressed an interest to the Receiver in acquiring the remaining Properties. To that end, 2241497 Ontario Limited (“224”) was recently incorporated and submitted seven (7) separate stalking horse bids to buy the remaining Properties.
32. The above-referenced offers are summarized in the table below. Copies of all of stalking horse bids are attached as appendices to this report in the order referred to in the lefthand column.

Appendix	PIN No.	Respondent/Owner	Description	Stalking Horse Bidder	Amount of Bid
“T”	05089-0178(LT)	2000396 Ontario Inc.	Vacant residential zoned subdivision lands, 74 acres	Menzie Almonte Inc.	\$5,000,000
“J”	05089-0147(LT)	1514904 Ontario Ltd.	Commercial plaza on 5.3 acres, 430 Ottawa Street	2241497 Ontario Limited	\$4,200,000
“K”	05089-0175(LT)	2000396 Ontario Inc.	1.83 acre lot, northeast corner of Ottawa St. and Menzie St.	2241497 Ontario Limited	\$680,000
“L”	05090-0247(LT)	1514904 Ontario Ltd.	1.03 acre lot, south side of Ottawa St.	2241497 Ontario Limited	\$220,000
“M”	05090-0251(LT)	1514904 Ontario Ltd.	1.03 acre lot, south side of Ottawa St.	2241497 Ontario Limited	\$220,000
“N”	05090-0249(LT)	1514904 Ontario Ltd.	1.03 acre lot, south side of Ottawa St.	2241497 Ontario Limited	\$220,000
“O”	05090-0204(LT)	1278502 Ontario Inc.	.77 acre vacant commercial lot, 5 Houston Dr.	2241497 Ontario Limited	\$35,000
“P”	05090-0206(LT)	1278502 Ontario Inc.	.7 acre vacant commercial lot, 5 Houston Dr.	2241497 Ontario Limited	\$35,000

33. Each of the above-noted stalking horse bids contemplate the Receiver paying to the stalking horse bidder liquidated damages in an amount equivalent to 4% of the purchase price (the “Break Fee”) in the event that a materially higher amount than the purchase price offered by such bidder is obtained for a Property pursuant to the stalking horse sale

process. The Receiver is of the view that the proposed Break Fee of 4% represents a reasonable commercial balance between its potential negative effect as an auction inhibitor and its potential positive effect as an auction stimulator.

34. The Receiver proposes to conduct its stalking horse sales process as follows:
- It will distribute to prospective purchasers identified by the Receiver a brief interest solicitation letter detailing these opportunities;
  - It will advertise the opportunities in the *Globe and Mail* (National Edition) and *Ottawa Citizen*;
  - It has prepared a brief information package which provides an overview of the Properties;
  - Prospective purchasers will have an opportunity to review additional information in an online “data room” maintained on the Receiver’s website;
  - It will facilitate due diligence efforts by arranging site visits for *bona fide* prospective purchasers;
  - Prospective purchasers will be provided with a hard copy and soft copy of a Competing Offer form (the “**Competing Bid**”) to be filled out and submitted to the Receiver.
35. The proposed bidding procedures with respect to each of the Properties would be as follows:
- Any Competing Bid must be on substantially the same terms and conditions as the terms and conditions contained in the stalking horse bid, except with respect to price (any Competing Bid(s) that are accepted by the Receiver as superior bid(s) to a stalking horse bid are referred to herein as the “**Superior Bids**”);

- In order for a Competing Bid to be accepted it must meet all of the following minimum criteria:
  - It must be received by the Receiver by no later than 5:00 p.m. E.S.T. on July 15, 2010;
  - It must be accompanied with a black lined version of the Competing Bid form, showing all variations to the Competing Bid form and a deposit, payable by way of certified cheque or bank draft, which shall not be less than the sum of: (i) 10% of the first one million dollars of the purchase price offered pursuant to the terms of the subject Competing Bid; plus (ii) 5% of the balance of the purchase price in excess of one million dollars, if any, offered pursuant to the terms of the subject Competing Bid;
  - It must be irrevocable and remain open for acceptance and completion until a bid has been accepted by the Receiver following the completion of the sale process;
  - It must be on terms no less favourable and no more burdensome or conditional than the terms of the stalking horse bid;
  - It must not contain any contingency relating to due diligence or financing or any other material conditions precedent to the bidder's obligation to close;
  - It must be made by one or more bidders who can demonstrate, in the aggregate in the event that the Competing Bid is made by more than one bidder, the financial ability to consummate the transaction contemplated by the Competing Bid on the terms specified therein; and

- It must be for a purchase price at least equal to the aggregate of the purchase price, the Break Fee and a minimum overbid amount of at least 1% of the purchase price.
- In the event that the Receiver receives one or more Superior Bids, then on or before July 30, 2010, the Receiver will distribute to the stalking horse bidder and the makers of the Superior Bids, the following documentation:
  - an invitation to an auction of the Property (the “**Auction**”) to be held within five (5) business days (or such other date as the Receiver may designate) at the offices of the Receiver's lawyers, Solomon, Grosberg LLP;
  - a copy of the bid that the Receiver, acting in its sole and unfettered discretion, having regard to all of the features of the bids, considers to be the most favourable bid as between the stalking horse bid and all of the Superior Bids (the “**Lead Bid**”); and
  - a copy of a set of rules for the conduct of the Auction, established by the Receiver, acting in its sole and unfettered discretion, with a view of maximizing the purchase price for the Property (the “**Auction Rules**”), The Auction Rules will provide, *inter alia*, that:
    - A. all bids made at the Auction shall be in accordance with the terms and conditions of the Lead Bid, except for the aggregate purchase price which will be subject to improvement through bidding in the Auction;
    - B. each bid made in the course of the Auction shall exceed the aggregate purchase price payable pursuant to the preceding bid (or, in the case of the first bid made at the Auction, the Lead Bid) by no less than 1% of the purchase price solely for the purpose of

determining the successful bid at the Auction;

- C. any bid made by the stalking horse bidder at the Auction shall have added to it the Break Fee; and
- D. the highest bid received at the Auction shall be the “winning bid” (the “**Winning Bid**”).

- Upon acceptance of the Winning Bid at the Auction, there shall be a binding agreement of purchase and sale between the successful winning bidder and the Receiver.
- Thereafter, the Receiver will make a motion to the Court as soon as reasonably practicable in order to obtain the Approval and Vesting Order with respect to the stalking horse bid or the Winning Bid, as the case may be.

36. The Receiver considers the stalking horse sale process hereinabove described to be reasonable in the circumstances for the following reasons:

- (a) It is a commonly used method to sell distressed assets and is being utilized more frequently in Canadian insolvency proceedings;
- (b) It will avoid the Properties being tied up during the due diligence periods that typically accompany offers to purchase investment properties;
- (c) It will accelerate the realization of the Properties;
- (d) It is of sufficient length to enable interested parties to perform due diligence and to submit offers and therefore provides an opportunity for superior realizations to those contemplated by the stalking horse bids;

- (e) The duration and nature of the process should alleviate any uncertainty on the part of stakeholders as to whether a higher realization could otherwise be achieved.
- (f) The proposed Break Fee of 4% represents a reasonable commercial balance between its potential negative effect as an auction inhibitor and its potential positive effect as an auction stimulator; and
- (g) It will not foreclose Mr. Wilson from the opportunity to purchase the Properties by submitting Competing Bids.

## **IX. CONSULTANTS REPORTS AND SUREYS PERTAINING TO PROPERTIES**

- 37. In anticipation of preparing its online “data room” for prospective purchasers to conduct due diligence and provide prospective purchasers with as much information regarding the Properties as possible, the Receiver has made several written requests of Mr. Bassile to produce surveys, soil reports, geotechnical reports and other consultants reports pertaining to the Properties.
- 38. A copy of a written request the Receiver emailed to Mr. Bassile on April 30, 2010 is attached as Appendix “Q” to this report.
- 39. A copy of a follow up email which the Receiver sent to Mr. Bassile on May 10, 2010 is attached as Appendix “R” to this report.
- 40. In order to maximize the pool of potential Competing Bids for submission by providing prospective purchasers with as much information regarding the Properties as possible, the Receiver seeks an Order compelling the Respondents and Mr. Bassile to immediately deliver to it copies of all consultant’s reports and surveys pertaining to the Properties.

**X. CONCLUSION AND RECOMMENDATIONS**

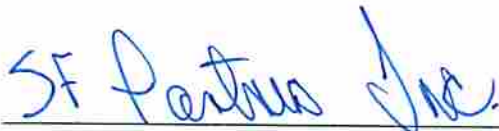
41. Based on the above, the Receiver respectfully requests that this Honourable Court grant an Order which provides for the following:
- (a) approval of the Receiver's activities and proposed actions as set out in this report;
  - (b) the sealing of appraisals commissioned by the Receiver of the Properties, until such time as the transactions contemplated by the proposed sales process are completed
  - (c) approval of a stalking horse sales process outlined above; and
  - (d) the Respondents and Mr. Bassile being compelled to immediately deliver to the Receiver copies of all consultant's reports and surveys pertaining to the Properties in their possession, power and control.

All of which is respectfully submitted.

Dated at Toronto, Ontario, this 11<sup>th</sup> day of May, 2010.

Per:

**SF PARTNERS INC., IN ITS CAPACITY AS  
COURT-APPOINTED RECEIVER AND MANAGER OF  
1514904 ONTARIO LIMITED, 2000396 ONTARIO INC.,  
1278502 ONATRIO INC., 1259121 ONTARIO INC.  
and ALMONTE LAND MANGEMENT INC.**

  
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