Court File No. 31-2128389

ONTARIO
SUPERIOR COURT OF JUSTICE
IN BANKRUPTCY AND INSOLVENCY

IN THE MATTER OF THE BANKRUPTCY OF 1299746 ONTARIO INC.
OF THE CITY OF PICKERING, IN THE PROVINCE OF ONTARIO

MOTION RECORD

(hearing scheduled January 8, 2018)

November 7, 2017

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OF THE CITY OF PICKERING, IN THE PROVINCE OF ONTARIO

A N D B E T W E E N:

Court File No. 31-2128393

ONTARIO
SUPERIOR COURT OF JUSTICE
IN BANKRUPTCY AND INSOLVENCY

IN THE MATTER OF THE BANKRUPTCY OF GARY WAYNE BODIMEADE
OF THE TOWN OF BROOKLIN, IN THE PROVINCE OF ONTARIO

NOTICE OF MOTION

GRANT THORNTON LIMITED ("GTL" or the "Trustee") in its capacity as Trustee in Bankruptcy of 1299746 Ontario Inc. o/a Compuquest2000 ("Compuquest") and Gary Bodimeade ("Gary") will make a motion to The Honourable Mr. Justice McEwen on January 8, 2018 at 10:00 a.m. or as soon after that time as the matter can be heard at the court house, 330 University Avenue, Toronto, Ontario, M5G 1R7.

PROPOSED METHOD OF HEARING: The Motion is to be heard:

[ ] in writing under subrule 37.12.1(1);

[ ] in writing as an opposed motion under subrule 37.12.1(4);

[X] orally.

THE MOTION IS FOR:

1. A declaration that the following payments and/or transfers of property to Dean Salem ("Salem") are fraudulent preferences and/or fraudulent conveyances and are void and unenforceable against the Trustee:

(a) 3/4/2016 USD $200,000.00

(b) 4/12/2016 USD $52,300.00

2. A declaration that the following payments and/or transfers of property to Norris Technologies LLC ("Norris") are fraudulent preferences and/or fraudulent conveyances and are void and unenforceable against the Trustee:

(a) 3/22/2016 USD $70,000.00 Wire to Comerica NCP acct

(b) 3/23/2016 USD $14,847.09 C2K Inv 710047 - Memory/CPU's

(c) 3/25/2016 USD $30,000.00 Wire to Chase NT acct

(d) 4/12/2016 USD $253,000.00 Wire to Chase NT acct

3. An Order requiring Salem to pay to the Trustee the equivalent in Canadian dollars of USD $252,300.00, together with interest thereon to the date of payment.

4. An Order requiring Norris to pay to the Trustee the equivalent in Canadian dollars of USD $367,847.00, together with interest thereon to the date of payment.

5. Such further and other relief as to this Honourable Court may deem just.

THE GROUNDS FOR THE MOTION ARE:

1. Compuquest was engaged in the business of purchasing used electronics and selling them as refurbished units, or disassembling the units to salvage key parts for resale. Each of Gary and his wife, Aimee Bodimeade ("Aimee") owned 50% of the shares of Compuquest.

2. Canadian Imperial Bank of Commerce ("CIBC") was Compuquest's primary secured creditor. CIBC provided a revolving line of credit to Compuquest and held registered security against Compuquest in priority to all other creditors.

3. Gary personally guaranteed the debts of Compuquest to CIBC. Gary also guaranteed other debts of Compuquest.

4. Norris was a supplier to Compuquest. Salem is the principal of Norris.

5. Gary and Aimee separated in the fall of 2015.

6. As of December 31, 2015, Compuquest and Gary were insolvent.

7. On December 31, 2015, Gary on his own behalf and on behalf of Compuquest signed a Revolving Line of Credit Agreement (the "RLOC Agreement") with

Salem and Norris, purporting to pledge assets to Salem and Norris in support of indebtedness which Compuquest owed to them. Gary did not hold legal title to any of the assets listed in the RLOC Agreement.

8. The principal asset was the matrimonial home of Gary and Aimee at 7472 Ashburn Road, Whitby, Ontario (the “Ashburn Property”), which was held in Aimee’s name.

9. Commencing in early January 2016, Salem began pressuring Aimee to sign a similar RLOC Agreement. Aimee refused to do so.

10. By letter dated February 11, 2016, CIBC expressed concerns regarding Compuquest’s financial performance.

11. In February 2016, Salem, Norris and Gary (Compuquest) were involved in circular chequing-writing activities using Compuquest’s US dollar account at CIBC and bank accounts held by Salem at two different US financial institutions.

12. CIBC’s Fraud, Loss Prevention & Investigations department detected the unusual activity in Compuquest’s accounts, including the circular transactions with Salem, and advised Gary/Compuquest of these concerns.

13. Compuquest’s accounts were transferred to CIBC’s Special Loans group on February 25, 2016. On February 25, 2016, CIBC instructed the branch holding Compuquest’s accounts to place a “hold all” policy on cheques.

14. On February 29, 2016, CIBC staff met with Gary at Compuquest's premises and delivered a letter advising of the transfer of Compuquest's accounts to Special Loans and requesting the appointment of GTL to review Compuquest's records.

15. At the meeting, Gary told CIBC that Compuquest and Salem's companies jointly purchased large lots of computer equipment which they divided for resale in accordance with their respective customer base requirements. He advised that these dealings resulted in the circular flow of funds. Gary provided a copy of the RLOC Agreement to CIBC.

16. CIBC became concerned that Gary was improperly encumbering or dealing with assets over which CIBC held security.

17. On March 2, 2016, CIBC advised Gary that his personal accounts and the Compuquest accounts were restricted. CIBC specifically told Gary that all non-personal business accounts must remain at CIBC and all business banking activity must be conducted through those accounts until he had made alternate credit arrangements with another lender to liquidate all Compuquest's loans at CIBC.

18. One of the "assets" listed on the RLOC Agreement was a luxury King Aire Motor Home the ("King Aire") that was leased by Compuquest from Pfaff Leasing. All of the lease payments were made by Compuquest. Compuquest was paying $9,488.07 per month in lease payments to Pfaff Leasing for the King Aire.

19. On or about March 2, 2016, Gary arranged to sell the King Aire, with the intention of paying the net proceeds of sale to Salem and/or Norris, rather than to CIBC, Compuquest's primary secured creditor. Salem was fully aware of these arrangements.

20. At the time, both Gary and Salem knew that Compuquest was in financial difficulty and that CIBC had transferred Compuquest's accounts to Special Loans. Salem was actively involved in coaching Gary on his dealings with CIBC.

21. On March 3, 2016, under pressure from Salem and Gary, Aimee signed a version of the RLOC Agreement, which was negotiated between Gary and Aimee through counsel. Aimee signed the RLOC Agreement on the express written conditions, among others, that:

(a) Aimee was not personally guaranteeing the debt of Compuquest to Salem and Norris;

(b) Any security over Gary's and Aimee's matrimonial home was limited to "Gary's share";

(c) The proceeds of the King Aire would be split between Gary and Aimee.

22. Salem was aware of these conditions and representations. Gary sent the letter from Aimee's lawyer to Salem before Aimee signed the RLOC Agreement.

23. On or about March 4, 2016, Compuquest wired USD $200,000.00 to Salem personally from its US dollar account at CIBC.

24. On or about March 9, 2016, CIBC sent a formal letter to Compuquest, to Gary's attention, reiterating CIBC's concerns about Compuquest's operations. CIBC advised, among other things, that:

(a) It required the appointment of GTL as consultant to review Compuquest, such review to commence immediately;

(b) All business banking must be conducted at CIBC and in particular all accounts receivable must be deposited at CIBC;

(c) Compuquest should be seeking alternative credit arrangements.

25. Gary advised that he was aggressively talking with multiple financial institutions with regards to securing another line and requested more time.

26. Gary and Compuquest initially retained Stephen Seon (“Seon”) of Seon, Gutstadt, Lash LLP to advise them. Gary stalled CIBC pending meeting with Seon.

27. On or about March 22, 2016, Compuquest wired USD $70,000.00 to Norris from its US dollar account at CIBC.

28. On or about March 23, 2016, Compuquest delivered inventory valued at USD $14,847.09 to Norris to credit against the indebtedness owing to Norris.

29. On March 24, 2016, CIBC, through counsel, issued formal demand letters to Compuquest and Gary.

30. On or about March 25, 2016, after CIBC issued its demand letters, Compuquest wired USD $30,000.00 to Norris from its US dollar account at CIBC.

31. Shortly thereafter, Salem/Norris and Gary/Compuquest jointly retained Fogler Rubinoff LLP (“Fogler”) to assist them in dealing with Compuquest’s financial difficulties and with CIBC.

32. On or before March 31, 2016, Gary opened up a secret bank account at the Toronto-Dominion Bank (“TD”/ the “TD Account”) in the name of Compuquest and began diverting Compuquest funds to the TD Account. This was in breach of the terms of Compuquest’s banking arrangements with CIBC and the emails and letters from CIBC expressly requiring that all of Compuquest’s transactions be conducted at CIBC.

33. On April 1, 2016, Gregory Azeff (“Azeff”) of Fogler advised CIBC’s counsel that his clients were amenable to GTL going in as part of a forbearance arrangement. Azeff request a draft agreement. CIBC’s counsel asked for Gary to sign the GTL engagement letter.

34. Gary stalled signing the engagement letter until April 12, 2016. On the morning of April 12, 2016, Azeff sent over the signature page for the engagement letter.

35. While stalling the appointment of GTL to conduct a review of Compuquest, Gary was diverting Compuquest funds to the TD Account and completing the sale of the King Aire.

36. On April 6, 2016, Compuquest authorized TD to wire the net proceeds of sale of the King Aire to Norris.

37. On April 12, 2016, the same day as Gary/Compuquest, through Azeff, sent the GTL engagement letter to counsel for CIBC, TD wired USD $253,000.00 to Norris’s bank account in the United States.

38. On April 12, 2016, Compuquest also wired USD $52,300.00 from the TD Account to Salem personally.

39. GTL conducted an initial site visit on April 15, 2016 and discovered inventory on hand had a value of less than $50,000.

40. Gary repeatedly stalled in providing information required by GTL for its review.

41. As of April 26, 2016, Compuquest owed CIBC $1,748,900.18 on its line of credit.

42. On April 28, 2016, CIBC brought an application to appoint GTL as Interim Receiver of Compuquest and 2252709 Ontario Inc. ("225"), a related entity which owned the building where Compuquest carried on business.

43. On April 29, 2016, by Order of Madam Justice Mesbur, GTL was appointed as Interim Receiver of Compuquest and 225.

44. On May 3, 2016, CIBC issued bankruptcy applications against Compuquest and Gary. Compuquest and Gary were each adjudged bankrupt on May 25, 2016. GTL was appointed as Trustee of each of Compuquest and Gary.

45. On May 17, 2016, GTL was appointed as Receiver of Compuquest and 225.

46. Following its appointments as consultant, Interim Receiver, Receiver and Trustee, GTL has uncovered substantial fraud in the operations of Compuquest, including materially misstated financial statements and records and the disappearance of Compuquest's business operations.

47. The date of the Initial Bankruptcy Event for each of Compuquest and Gary is May 3, 2016.

48. Salem and Norris were not creditors of Gary prior to Gary's execution of the RLOC Agreement on December 31, 2015.

49. Salem and Norris did not hold any security over any assets of either Compuquest or Gary on the date of Compuquest's and Gary's bankruptcy.

50. The RLOC Agreements were prepared and executed at a time when both Compuquest and Gary were insolvent and unable to pay their obligations as they came due, with a view to transferring Compuquest's and Gary's assets to Salem and Norris in fraud of the creditors of Compuquest and Gary.

51. Gary/Compuquest and Salem/Norris were not dealing with each other at arm's length. Among other things:

(a) Salem was coaching Gary on his matrimonial proceedings with Aimee and on his dealings with CIBC;

(b) Gary/Compuquest and Salem/Norris jointly retained Fogler as legal counsel;

(c) Gary and Salem/Norris have an ongoing business and personal relationship.

52. In a separate proceeding, GTL as Receiver and Trustee is seeking a declaration that the RLOC Agreements are void and unenforceable against the Receiver and Trustee.

53. All of the payments and transfers referenced in paragraphs 1 and 2 of the Notice of Motion were made less than three months prior to the date of the Initial Bankruptcy Event and the bankruptcies of Compuquest and Gary.

54. All of the payments and transfers were made after CIBC transferred Compuquest's accounts to Special Loans, with full knowledge by Gary that he and Compuquest were insolvent and unable to pay their obligations as they came due.

55. The April 12, 2016 payments to Salem and Norris were made after CIBC formally demanded its loans, after CIBC sought the appointment of GTL as consultant, on the very day of GTL's appointment, and less than a month before the date of the Initial Bankruptcy Event.

56. The payments were made with the express intention of preferring the interests of Salem and Norris over Compuquest's other creditors and in fraud of Compuquest's other creditors, including CIBC as secured creditor.

57. Each of the said payments are fraudulent and void against Trustee.

58. *Assignments and Preferences Act*, R.S.O. 1990, c. A.33;

59. *Fraudulent Conveyances Act*, R.S.O. 1990, c. F.29;

60. Sections 95 and 96 of the *Bankruptcy and Insolvency Act*;

61. Such further and other grounds as the lawyers may advise.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the Motion:

1. The pleadings and proceedings in Court File No. CV-16-11369-00CL, including but not limited to:

(a) First Report of the Interim Receiver dated May 13, 2016 and the Appendices attached thereto;

(b) First Report of the Receiver dated September 16, 2016 and the Appendices attached thereto;

(c) Second Report of the Receiver dated November 24, 2016 and the Appendices attached thereto;

(d) Third Report of the Receiver dated January 11, 2017 and the Appendices attached thereto;

(e) Fourth Report of the Receiver dated June 9, 2017 and the Appendices attached thereto;

(f) Fifth Report of the Receiver dated June 19, 2017 and the Appendices attached thereto;

(g) Sixth Report of the Receiver dated July 6, 2017 and the Appendices attached thereto;

(h) Seventh Report of the Receiver dated July 17, 2017 and the Appendices attached thereto;

(i) Eighth Report of the Receiver dated August 21, 2017 and the Appendices attached thereto;

(j) Transcript of the examination of Gary Bodimeade held February 22, 2017;

(k) Transcript of the cross-examination of Dean Salem held July 26, 2017;

(l) The documents included in the Receiver's compendium;

(m) Oral evidence provided at the hearing scheduled for January 8 – 10, 2018.

2. Such further and other evidence as the lawyers may advise and this Honourable Court permits.

September 27, 2017
(Amended November 7, 2017)

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ONTARIO
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Proceeding commenced at Toronto

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Proceeding commenced at Toronto

MOTION RECORD

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