Court File No. CV-16-11369-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

B E T W E E N:

CANADIAN IMPERIAL BANK OF COMMERCE

Applicant

and

1299746 ONTARIO INC. o/a COMPUQUEST2000 and
2252709 ONTARIO INC.

Respondent

FACTUM OF
GRANT THORNTON LIMITED,
(in its capacity as Receiver and Trustee)
(hearing August 23, 2017)

August 21, 2017

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TO: **The Service List**

#2951769

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PART I - OVERVIEW

1. Grant Thornton Limited ("GTL", the "Receiver" or the "Trustee") is the Court-Appointed Receiver of 1299746 Ontario Inc. o/a Compuquest2000 ("Compuquest") and 2252709 Ontario Inc. ("225"), the Receiver of a real property municipally known as 7472 Ashburn Road, Whitby, Ontario (the "Ashburn Property") and Trustee in Bankruptcy of Compuquest and Gary Bodimeade ("Gary") personally.

2. Canadian Imperial Bank of Commerce ("CIBC") is Compuquest's primary secured creditor, owed approximately $1,750,000. Gary guaranteed CIBC's debts.

3. The Receiver has uncovered substantial evidence of fraud in Compuquest's operations, including the diversion of Compuquest's assets and funds to Gary and his estranged wife, Aimee Bodimeade ("Aimee"), false financial statements and financial records, potential customs fraud,[1] misrepresentations to creditors, circular cheque transactions and fraudulent conveyances and preferences.[2] The Receiver's investigation is incomplete.

4. The Ashburn Property is Gary's and Aimee's matrimonial home. The Ashburn Property was purchased in 2007 with proceeds of a previous jointly held matrimonial home and financing from Bank of Nova Scotia ("BNS"). Thereafter, Gary and Aimee constructed a lavish new home, pool, RV garage, riding stable and barn at the Ashburn Property using Compuquest's funds. On motion by CIBC, GTL was appointed as Receiver of the Ashburn Property on January 25, 2017.

5. Norris was allegedly Compuquest's main supplier. According to Salem's spreadsheets, he and Norris were owed USD $1,283,797.35 as of December 31, 2015.[3] These debts were not reflected in Compuquest's books.

6. Salem and Norris are claiming an "equitable mortgage" over the Ashburn Property pursuant to a purported Revolving Line of Credit ("RLOC") Agreement executed by Gary on December 31, 2015 and by Aimee on March 3, 2016, on the eve of Compuquest's and Gary's bankruptcies.

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[1] Seventh Report, paras. 78-79
[2] These findings are documents in all of the Receiver's reports
[3] Cross-examination of Dean Salem July 26, 2017.

7. After the receivership of Compuquest and the bankruptcies, Salem and Norris issued an Application against Aimee (the “Norris Application”) and obtained an *ex parte* Certificate of Pending Litigation (“CPL”) and Order of Mr. Justice Glustein (the “Glustein Order”), both of which were registered against the Ashburn Property.

8. The Receiver’s position is that the purported RLOC Agreements constitute fraudulent conveyances and/or preferences and that Salem and Norris acted improperly in obtaining the CPL and Glustein Order without notice to the Receiver and Trustee. The Receiver has brought a motion to dismiss the Norris Application and for a declaration that the RLOC Agreements are void against the Receiver and Trustee.

9. The Receiver has sold the Ashburn Property. The sale was approved by the court on July 17, 2017 and closes on September 12, 2017.

10. The Receiver’s motion to dismiss the Norris Application was also originally returnable on July 17, 2017. Due to the late delivery of Salem’s and Norris’s responding material, the motion was adjourned to August 10, 2017. Aimee also brought a cross-motion returnable on August 10, 2017 seeking the interim distribution of $1 million from the sale proceeds to her. Due to the volume of material, both motions were adjourned to November 6, 2017.

11. This created a serious problem for the Receiver and Aimee, who is required to provide vacant possession of the Ashburn Property on or before closing. Following the adjournment of the motions, the Receiver negotiated a settlement of Aimee’s motion for an interim distribution of funds, as well as the distribution of funds to

the Receiver, with the consent of CIBC. The Receiver requires a formal Order authorizing the interim distribution of funds.

12. Given the pending closing, it is urgent to obtain an Order authorizing an interim distribution of funds, in accordance with the settlement. As a courtesy, the Receiver provided a copy of the draft Order to Salem and Norris. Salem and Norris objected to the distribution of funds. As a result, the Receiver booked an urgent date to address the issue. The Receiver's position is that Salem and Norris have no standing to object. Their position is unaffected by the distribution.

PART II - SUMMARY OF FACTS

CIBC Financing to Compuquest

13. Commencing in 2008, CIBC provided credit facilities to Compuquest and, later, 225. Gary on behalf of Compuquest executed a Security Agreement in favour of CIBC dated November 21, 2008.[4]

14. In February 2016, CIBC became concerned about the operation of Compuquest's account at CIBC. On February 25, 2016, management of Compuquest's accounts was transferred to CIBC's Special Loans department.[5]

15. On March 24, 2016, CIBC, through counsel, issued formal demand letters to Compuquest and Gary.[6]

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[4] CIBC Application Record, including the Affidavit of Douglas MacLaine sworn April 28, 2016; Fifth Report, Appendix 13
[5] CIBC Application Record; Fifth Report, Appendix 12
[6] CIBC Application Record

16. On April 12, 2016, Gary/Compuquest consented to the appointment of GTL as consultant. GTL visited Compuquest's premises and discovered inventory on hand had a value of less than $50,000.[7]

17. On April 28, 2016, CIBC issued an Application Record to appoint GTL as Interim Receiver. GTL was appointed as Interim Receiver on April 29, 2016.[8]

18. On May 3, 2016, CIBC issued bankruptcy applications against each of Compuquest and Gary.[9]

19. On May 13, 2016, GTL issued its First Report as Interim Receiver. GTL reported that there had been limited business for several months, limited inventory and minimal accounts receivable. On May 17, 2016, by Order of Mr. Justice Newbould, GTL was appointed as Receiver of Compuquest and 225.[10]

20. On May 25, 2016, bankruptcy orders were issued against Compuquest and Gary. On June 1, 2016, GTL as Trustee registered Gary's bankruptcy order against the Ashburn Property.[11]

21. The Receiver has been unable to collect any accounts receivable. The Receiver realized only $120,000.00 from an online auction that included all inventory, furniture and equipment of Compuquest.[12]

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[7] CIBC Application Record
[8] Second Report at paras. 62-63, Appendix 2
[9] Second Report, Appendix 4
[10] CIBC Application Record; Fifth Report, Appendix 12
[11] Second Report, Appendices 4 and 15
[12] Second Report at paras. 56-57.

The Ashburn Property

22. On September 28, 2007, the Ashburn Property was purchased in Aimee's name for $638,000.[13] Gary and Aimee financed the purchase using approximately $230,000 from sale proceeds of their former jointly-held home. In addition, they sought and received mortgage financing from BNS. Title to the Ashburn Property was registered in Aimee's name on September 28, 2007. Both Aimee and Gary were listed on the mortgage documentation with BNS.[14]

23. Since 2007, the Ashburn Property has been subject to significant improvements.[15]

The Receiver's Investigation

24. After its appointment, the Receiver identified a chain of emails dated April 6, 2016 between Gary, Aimee and Compuquest's accountant, in which Gary admitted that "*everything*" was paid for with Compuquest funds.[16]

25. The Receiver also found an email from Gary estimating the cost of the improvements to the Ashburn Property as $3,065,000.00.[17]

26. The Receiver conducted an investigation into the use of Compuquest's funds during the period for which records were available from CIBC (after 2008). The

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[13] Second Report at para. 20.
[14] Affidavit of Aimee Bodimeade sworn January 6, 2017, para. 3, Exhibits A, B and D; Exhibit 1 to Aimee's January 13, 2017 cross-examination; Cross-examination of Gary January 13, 2017 at Q. 18; Second Report at para. 14; Receiver's Third Report, Appendix 3
[15] Second Report at para 15.
[16] Second Report at para. 32, Appendix 19.
[17] Third Report at 24, Appendix 4.

Receiver traced approximately $1 million of Compuquest's funds during this time period (i.e. after 2008) directly into the Ashburn Property.[18]

27. The Receiver also identified many other suspicious payments and transactions during this time period.[19]

28. The Receiver's investigation into the diversion of Compuquest's assets, including the use of funds to construct the Ashburn Property, is ongoing. Among other things, the Receiver requires production of third party records to complete its investigation.[20]

GTL's Appointment as Receiver of the Ashburn Property

29. After learning of the diversion of Compuquest's funds into the Ashburn Property, CIBC brought a motion originally returnable on November 30, 2016 to appoint GTL as Receiver of the Ashburn Property. The motion was adjourned pending delivery of responding material and cross-examinations. On January 25, 2017, Conway J. appointed GTL as Receiver of the Ashburn Property.

30. Paragraph 11 of the Order expressly provided that the Order was without prejudice to Aimee's or any other party's right to address distribution of funds on any motion to address approval of the sale of the Ashburn Property.

[18] Second Report; Third Report, Appendix 5
[19] Second Report at paras. 42-43, 65, Appendices 25 and 34; Third Report at paras. 45, 47, 50-52, 61-63, Appendices 7-11, 14,15
[20] Per the Order of Mr. Justice Hainey dated February 21, 2017

Issues with Salem and Norris

31. On December 31, 2015, Gary signed the RLOC Agreement.[21]

32. On February 4, 2016, Gary registered notice of his spousal interest on title to the Ashburn Property.[22] Gary's interest in the Ashburn Property has vested in the Trustee.[23]

33. On March 3, 2016, Aimee signed a modified form of RLOC Agreement with Salem/Norris, which was limited by a side letter to "*Gary's share*" of the Ashburn Property.[24] Aimee refused to execute a mortgage as she did not agree to mortgage her interest in the Ashburn Property.[25]

34. On May 18, 2016, Aird & Berlis LLP, counsel for CIBC, wrote to Salem's real estate lawyer advising that CIBC had brought a bankruptcy application against Gary returnable on May 24, 2016 and that any attempt to encumber the Ashburn Property would be improper.[26]

35. In June 2016, after the bankruptcy, Salem and Norris issued the Norris Application and obtained and registered the *ex parte* CPL on title to the Ashburn Property.[27]

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[21] Second Report at Appendix 27.
[22] Second Report at para. 13.
[23] Third Report at paras 15-16.
[24] Second Report, Appendix 28.
[25] Cross-examination of Aimee Bodimeade January 13, 2017 at Qs. 253, 263-265
[26] Affidavit of Dean Salem sworn July 20, 2017, Exhibit "F"
[27] Second Report at paras. 27-28, Appendices 16-17

36. On July 29, 2016, Salem and Norris filed unsecured proofs of claim in each of Gary's and Compuquest's bankruptcies. Salem claimed USD $106,200.00 and Norris claimed USD $697,385.49.[28]

37. On August 12, 2016, Salem and Norris obtained and registered the Glustein Order on title to the Ashburn Property, without notice to CIBC, the Receiver or the Trustee.[29]

38. By Order of Mr. Justice Hainey dated November 30, 2016, the Norris Application was transferred to the Commercial List, to be dealt with in conjunction with this proceeding.

The Receiver's Examination of Gary

39. On February 22, 2017, pursuant to an Order of Hainey J. dated February 21, 2017, the Receiver examined Gary in respect of the assets, operations and receivership of Compuquest and 225, the bankruptcies of Compuquest and Gary personally, the Ashburn Property and the Norris Application.[30]

Scheduling of the July 17, 2017 Motion

40. Immediately following Gary's examination, the Receiver advised counsel for Salem and Norris that it would be scheduling a motion to discharge the CPL and Glustein Order and dismiss the Norris Application.[31]

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[28] Second Report at para. 46, Appendix 26
[29] Second Report at paras. 29-30, Appendix 18
[30] Order of Mr. Justice Hainey dated February 21, 2017
[31] Fifth Report, Appendix 25

41. On April 17, 2017, the Receiver followed up to schedule the motion and provided Gary's transcript and the exhibits to his examination.[32] The Receiver advised of urgency in having these matters determined.[33]

42. The motion was scheduled for July 17, 2017. The Receiver agreed to provide an additional report and requested further information from Salem and Norris for this purpose.[34]

43. On May 15, 2017 and June 3, 2017, the Receiver followed up for this information. Partial responses were provided on June 6 and 7, 2017.[35]

44. In the meantime, the Receiver sold the Ashburn Property. On June 19, 2017, the Receiver brought a motion returnable on July 17, 2017 for approval of the sale, removal of encumbrances on title and dismissal of the Norris Application.

45. On June 23, 2017, Salem and Norris resubmitted their claims as secured proofs of claim. The Receiver and Salem/Norris agreed that the validity of the purported security would be determined on July 17, 2017 and that the issue of quantification would be deferred.[36]

46. On July 14, 2017, after an unsuccessful attempt to adjourn the motion, Salem/Norris delivered a 1,900 page responding motion record.[37]

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[32] Fifth Report, Appendix 25
[33] Fifth Report, Appendix 25
[34] Fifth Report, Appendix 25
[35] Fifth Report, paras 88-94. Appendices 25 and 26
[36] Receiver's Sixth Report dated July 6, 2017, paras. 20, 22-24, Appendix 5
[37] Salem/Norris Responding Motion Record

47. On July 17, 2017, Conway J. approved the sale of the Ashburn Property. Due to the late filing of Salem's responding affidavit, the balance of the Receiver's motion, including Aimee's request for an interim distribution of funds, was adjourned to August 10, 2017.

48. On July 20, 2017, Aimee delivered a cross-motion seeking the distribution of $1 million from the sale proceeds to her, supported by a further lengthy affidavit.

49. Cross-examinations of Aimee and Salem were held on July 24, 2017 and July 26, 2017 respectively.

50. The parties were ready to proceed on August 10, 2017. However, Mr. Justice Lederman determined that, given the volume of materials and disputed evidence, there was insufficient time to hear the motions. The motions were adjourned to a full day hearing on November 6, 2017.

51. Following the adjournment, the Receiver settled Aimee's motion for an interim distribution of funds, with the consent of CIBC. Pursuant to the settlement, the agreed distributions are as follows:

(a) All sums required to discharge CIBC's $1 million first mortgage against the Ashburn Property;

(b) $250,000.00 to Aimee or as she may direct;

(c) $500,000.00 to GTL in its capacity as Receiver of Compuquest and 225;

(d) The balance to be deposited into the Ashburn Property Account as defined in the Order of Conway J. dated January 25, 2017, to be held by the Receiver pending any further Order of the Court.

(e) The distribution of funds pursuant to subparagraphs (b) and (c) is without prejudice to the rights of all parties.

52. The Receiver requires a formal Order authorizing the interim distribution of funds.

PART III - STATEMENT OF ISSUES, LAW & ARGUMENT

53. Paragraph 4(k) of the Order appointing GTL as Receiver of the Ashburn Property authorizes the Receiver to take any steps reasonably incidental to the exercise of its powers. The Receiver has the power to negotiate the settlement of Aimee's motion for an interim distribution of funds and to obtain an Order authorizing the distribution of funds to CIBC, Aimee and the Receiver.

54. The CIBC first mortgage is $1 million. This is separate from the indebtedness owing by Compuquest and Gary to CIBC. There is no issue that CIBC has first priority to the sale proceeds and that the CIBC first mortgage has to be paid.

55. The proposed interim distribution of $250,000 to Aimee is in the Receiver's opinion fair and reasonable.

56. The Receiver has filed reports tracing at least $1 million of Compuquest funds to date into the Ashburn Property. The proposed interim distribution to the Receiver of Compuquest is $500,000, half this amount. This is fair and reasonable.

57. The validity of Norris's and Salem's purported secured claims in the estates of Gary and Compuquest and the Receiver's motion to dismiss the Norris Application will be determined at or following the November 6, 2017 hearing. If Norris and Salem prove their claims, quantification and priority issues will be determined at a later date.

58. The proposed distribution of funds is without prejudice to the rights of all parties. In the event that Norris and Salem ultimately prove that they are entitled to an equitable mortgage over the Ashburn Priority in priority to the rights and interests of Aimee, the Trustee and the Receiver, then their interests are protected. Their claims do not entitle them to dispute an interim distribution of funds that does not affect them.

PART IV - ORDER REQUESTED

59. It is respectfully requested that an Order be issued authorizing the interim distribution of funds.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 21st day of August, 2017.

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