

**ONTARIO
SUPERIOR COURT OF JUSTICE**

B E T W E E N:

FIRST NATIONAL FINANCIAL GP CORPORATION

Applicant

- and -

GOLDEN DRAGON HO 10 INC. and GOLDEN DRAGON HO 11 INC.

Respondents

APPLICATION UNDER Section 47 of the *Bankruptcy and Insolvency Act*
R.S.C. 1985, C. B-3, as amended

**MOTION RECORD
(returnable December 21, 2018)**

December 17, 2018

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TAB 1

Court File No. 17-73967

**ONTARIO
SUPERIOR COURT OF JUSTICE**

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FIRST NATIONAL FINANCIAL GP CORPORATION

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NOTICE OF MOTION

The Applicant, First National Financial GP Corporation (“**FN**”), and the Interim Receiver, Deloitte Restructuring Inc. (“**Deloitte**” or the “**Interim Receiver**”), will make a motion to The Honourable Justice Hackland on Friday, December 21, 2018, at 10:00 a.m., or as soon after that time as the motion can be heard, at 161 Elgin Street, 2nd Floor, Ottawa, Ontario.

PROPOSED METHOD OF HEARING: The motion is to be heard orally.

THE MOTION IS FOR

1. if necessary, abridging the time for service of the Notice of Motion and Motion Record herein, validating service of the Notice of Motion and Motion Record, and dispensing with further service thereof;

2. advice and directions regarding if, how and to what extent the Interim Receiver can communicate with Canada Revenue Agency (“**CRA**”) about the tax evasions charges against Chi Van Ho to the extent they relate to, or potentially relate to, the Property (as defined below), and authorizing CRA to engage in such communications with the Interim Receiver; and,
3. such further and other relief as to this Honourable Court seem just.

THE GROUNDS FOR THE MOTION ARE:

1. pursuant to an Order (the “**Appointment Order**”) of Justice Hackland of the Ontario Superior Court of Justice (the “**Court**”) dated September 22, 2017 (the “**Interim Receivership Date**”), following an application made on behalf FN, Deloitte was appointed as Interim Receiver of certain real property of Golden Dragon Ho 10 Inc. (“**GDH 10**”) municipally known as 347 Barber Street, Ottawa, Ontario (formerly known as 347 Clarence Street) (“**347 Barber**”), and of certain real property of Golden Dragon Ho 11 Inc. (“**GDH 11**”) municipally known as 345 Barber Street, Ottawa, Ontario (formerly known as 345 Clarence Street) (“**345 Barber**”) (collectively, with 347 Barber, referred to herein as the “**Property**”);
2. Chi Van Ho has sworn under oath in these proceedings that he is the directing minds of the Respondents (GDH 10 and GDH 11);
3. the Appointment Order authorizes the Interim Receiver to, among other things:
 - (i) take possession of and exercise control over the Property and any and all proceeds, receipts and disbursements arising out of or from the Property;

- (ii) undertake any renovations and make any repairs to the Property necessary to ensure that the Property is well maintained and rentable and is in compliance with the applicable laws and building codes; and,
 - (iii) market available rental units, enter into new rental agreements or renew expiring rental agreements where applicable;
4. Term 5 of the Appointment Order provides that:
- ...all Persons shall forthwith advise the Receiver of the existence of any books, documents, securities, contracts, orders, corporate and accounting records, and any other papers, records and information of any kind related to the business or affairs of the Respondents in respect of the Property, and any computer programs, computer tapes, computer disks, or other data storage media containing any such information (the foregoing, collectively, the "**Records**") in that Person's possession or control, and shall provide to the Receiver or permit the Receiver to make, retain and take away copies thereof and grant to the Receiver unfettered access to and use of accounting, computer, software and physical facilities relating thereto, provided however that nothing in this paragraph 5 or in paragraph 6 of this Order shall require the delivery of Records, or the granting of access to Records, which may not be disclosed or provided to the Receiver due to the privilege attaching to solicitor-client communication or due to statutory provisions prohibiting such disclosure".
5. the Interim Receiver has sought the advice of Blaneys, counsel to FN, for general legal matters that have arisen in respect of the interim receivership. Where the Interim Receiver has required independent legal advice, the Interim Receiver has sought the counsel of Dickinson Wright LLP ("**DW**");

6. as noted in the First through Fourth Reports and the Supplemental Third Report, the Property is comprised of two adjoining six-story multi-unit apartment buildings that consist of 110 units in total. 80 of these units are located in 345 Barber, and the remaining 30 units are located in 347 Barber. These buildings operate as one complex as they are connected on every floor except the basement, and they share common areas and facilities. Of the 110 units, 30 units are to be used for affordable housing purposes pursuant to agreements with the City of Ottawa (the “**City**”) and the Ontario Ministry of Housing (the “**MOH**”). These 30 units are referred to herein as below market rent (“**BMR**”) units.
7. upon the appointment of the Interim Receiver, the Property was approximately 60% occupied. The low occupancy was primarily the result of the Respondents’ plan to convert 345 Barber to student housing by increasing the number of bedrooms in certain units and by making certain modifications to the lobby and the basement, without FN’s knowledge or consent. In order to carry out this plan, the Respondents arranged for certain market rate tenants to move from 345 Barber to 347 Barber in order to free up units so that renovations could be undertaken;
8. on October 20, 2017, Justice Hackland granted an order (the “**October 20 Order**”) approving the Interim Receiver’s actions as described in its First Report, approving the Interim Receiver’s Interim Statement of Receipts and Disbursements for the period from September 22 to October 13, 2017, and extending the appointment of the Interim Receiver until further order of this Court;
9. on December 20, 2017, Justice Hackland granted an order (the “**December 20 Order**”) approving the Interim Receiver’s actions as described in its Second Report, approving the

Interim Receiver's Interim Statement of Receipts and Disbursements for the period from September 22 to November 30, 2017, and approving the fees and disbursements of the Interim Receiver for the period from September 18, 2017 to December 1, 2017, the fees and disbursements of DW for the period from September 20, 2017 to October 17, 2017, and the fees and disbursements of Blaneys for the period from July 4, 2017 to November 30, 2017;

10. on June 11, 2018, FN and the Interim Receiver brought a motion to, among other things, approve the Third Report of the Interim Receiver dated May 29, 2018 (the "**Third Report**"), and the Interim Receiver's actions and activities set out in the Third Report, authorize the Interim Receiver to retain a contractor to undertake repairs on 17 un-rentable units (the "**17 Unit Repairs**"), seek an order discharging and deleting from title to 345 Barber a third mortgage registered as Instrument Number OC1933770 (the "**Third Mortgage**"), approve the Receiver's Interim Statement of Receipts and Disbursements for the period from September 22, 2017 to April 30, 2018, and to approve the fees and disbursements of the Interim Receiver from December 2, 2017 to April 6, 2018, and of Blaneys from December 1, 2017 to April 30, 2018;
11. based on the Third Report and submissions made to the Court by counsel for FN and the Receiver, and by counsel to the Respondents, on June 11, 2018, the Court granted an order (the "**June 11 Order**") approving the relief sought, except for the approval to engage the contractor to carry out the 17 Unit Repairs, which approval was granted but the implementation of which was not to occur until June 30, 2018, to permit Chi Van Ho to file before that date a notice of motion providing an alternative proposal for the remediation work;

12. on June 29, 2018, the Respondents filed a Notice of Motion seeking, among other things, an Order allowing them to carry out the 17 Unit Repairs instead of the Receiver and pay the arrears under the FN Mortgage over 345 Barber by September 1, 2018 (the “**Respondents’ Motion**”). In support of the Respondents’ Motion, Chi Van Ho swore an Affidavit dated June 29, 2018 wherein he swore that evidence of ability to fund would be provided in a further affidavit, but no additional affidavit was delivered;
13. on July 9, 2018, the Interim Receiver brought a motion for, among other things, advice and directions regarding the Respondents’ Motion and an Order declaring that the Interim Receiver could retain the contractor recommended in its Third Report to undertake the 17 Unit Repairs (the “**July 9 Motion**”). In support of the July 9 Motion, the Receiver filed with the Court its Supplemental Report to the Third Report dated July 3, 2018 (the “**Supplemental Third Report**”). Based on the Third Report and the Supplemental Third Report and submissions made to the Court by counsel for the Interim Receiver on July 9, 2018, the Court made an Endorsement (the “**July 9 Endorsement**”) authorizing the Interim Receiver to proceed with retaining the contractor recommended in the Third Report;

Repairing the Property and Preparing Units for Rent

14. the Second and Third Reports detailed, among other things, repair work the Interim Receiver had undertaken at the Property (including repairs to the roof, fire doors, the elevator, the boiler, etc.), a strategy to offer up vacant units in 345 Barber to non-BMR Unit tenants in 347 Barber, and the categorization of vacant units in the Property in need of repair, so that certain of those units requiring minimal work could be repaired and rented

out. The Second Report also set out a plan for completion of renovations to the lobby that had been started by the Respondents. The Third Report set out the proposals received from contractors to undertake the 17 Unit Repairs, and the Receiver's recommendation to proceed with Proposal #1 submitted by a local contractor (the "**Contractor**");

15. the Interim Receiver has undertaken significant activities in accordance with the terms of the Appointment Order, the October 20 Order, the December 20 Order, the June 11 Order and the July 9 Endorsement, which are detailed in the Fourth Report. Among other things, the Interim Receiver has:

- (i) followed up with the property manager, CLV Group Inc. ("**CLV**") to rent the vacant units in 345 Barber to the general public, and to rent the vacant units in 347 Barber to BMR tenants identified through various City programs;
- (ii) negotiated and entered into a CCDC 2 Stipulated Price Contract with the Contractor for the renovations of 17 units in 345 Barber at contract price of \$369,594.41 before HST (the "**Construction Contract**");
- (iii) engaged Deloitte LLP's Capital Projects Group to act as Consultant under the Construction Contract, whose role is to provide administration of the Construction Contract. This involves, among other things, the review and authorization of progress bills for payment, and determination of the date of substantial performance of the work;

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- (iv) worked with CLV to deal with serious problems that arose at the Property (such as a sewer back-up in the sub-basement mail room, a flood in the boiler room, etc.);
- (v) arranged, through CLV, for the City Building Inspector to inspect the work of the Contractor to remedy the building code violations noted in the Third Report. The Building Inspector was satisfied with the work and withdrew the previously issued Order to Comply (to remove walls installed by the Respondents in several units to create second bedrooms);
- (vi) approved the purchase of 17 refrigerators and 16 stoves (through competitive quotes) for the 17 units being repaired. The original appliances either did not work, or were moldy due to improper storage by the Respondents;
- (vii) solicited and approved a quote from the Contractor to remove the existing mailboxes from the sub-basement (most of which are old and worn out) and to install new mailboxes in the lobby of the Property (while complying with Canada Post regulations), where they were originally located before the Respondents started their unauthorized student housing renovation conversion. This will allow the sub-basement to be used for its original purpose of storing maintenance tools and supplies and reposition the mailboxes in a well-lit, safer location. The maintenance items are currently being stored in one of the gutted units, which is not a long term solution;

- (viii) participated in conference calls with the City and the MOH regarding the status of the interim receivership and the status of the BMR units. Details of the BMR units are provided below under the heading “BMR Units”;
- (ix) reviewed the monthly Property accounting prepared by CLV, and prepared the Interim Receiver’s Interim Statement of Receipts and Disbursements;
- (x) prepared cash flow forecasts and determined the Interim Receiver’s anticipated funding requirements. The Interim Receiver’s Forecast Cash Flow from October 2018 to July 2019 are attached to the Fourth Report as Appendix “G”. The Interim Receiver determined that, given the cost to complete the renovations discussed below, additional funding of \$250,000 was required to meet its obligations under the Construction Contract. As a result, it arranged for additional borrowings of \$250,000 from FN by way of a Receiver’s Certificate;
- (xi) responded to information requests from parties interested in the Property;
and;
- (xii) responded to tenant and creditor inquiries;

Rental Status and Status of Repairs

16. as at the date of the Appointment Order, there were 65 occupied units (out of 110 total units), due to the fact that many of the 45 unoccupied units were in the midst of repairs/renovations for unauthorized conversion to student housing, and were therefore un-rentable. In addition, the Interim Receiver was appointed during the fall of 2017, which

CLV advised was a slow rental period and in their experience, the spring period provides the busiest rental market;

17. the repair work to the 17 units under the Construction Contract is now substantially complete, and rental prices for these units has been increased over their previous rates given the significant improvements;
18. the re-installation of mailboxes in the lobby of the building is the only significant outstanding matter to be completed (which will be completed when the mailboxes are delivered in early 2019). Occupancy has increased from 60% at the date of the receivership (65 of 110 units) to 90% (99 of 110 units) as of the date of the Receiver's Fourth report.
19. as set out in the Third Report, three gutted units on the first floor of 345 Barber remain un-renovated due to the substantial work and associated costs that would be required to bring them back into rentable condition;
20. as at October 1, 2018, the Property was generating monthly rental income of \$72,590, as compared to \$50,655 at the date of the Appointment Order (not including monthly affordability payments payable by the City and the MOH, which are monthly subsidies paid in respect of the BMR units). Beginning January 1, 2019, this Property will likely be generating monthly rental income amount of approximately \$89,000, and generating projected positive monthly cash flow of \$36,000 (and eventually increasing to approximately \$65,000 by April 2018 once the balance of the capital expenditures are completed and funded), not including professional fee expenses or revenue from the monthly affordability payments payable by the City and MOH;

The BMR Units

21. as set out in the Second, Third and Fourth Reports, the Interim Receiver is attempting to increase the number of units in 347 Barber rented to BMR tenants. The Municipal Housing Project Facilities Agreement with the City and the Provincial Contribution Agreement with the MOH, as amended (collectively, the “**BMR Agreements**”), require that 30 of the Property’s units are to be used for affordable housing purposes. As at the date of the Appointment Order, only 23 units at the Property contained BMR tenants, of which three were located in 345 Barber and 20 were located in 347 Barber. At the time of the Second Report, the number of units with BMR tenants at the Property dropped to 22 as the result of a BMR tenant in 347 Barber moving out. As at May 22, 2018, there were 25 units at the Property containing BMR tenants, of which three were still located in 345 Barber and 22 were located in 347 Barber. As of October 1, 2018, there were 27 BMR units at the Property, three of which are located in 345 Barber and 24 of which are in 347 Barber;

Discharge of the Interim Receiver and Chi Ho/Golden Dragon CRA Issues

22. since the Property is now almost been fully stabilized, the Interim Receiver had commenced discussions with FN with respect to the terms and conditions under which the interim receivership would be terminated, and the Property returned to the Respondents;
23. however, the Interim Receiver recently became aware through a CRA news release dated November 22, 2018, that six rental properties and an automobile “belonging to [Chi Ho and his partner Than Ha Thi Nguyen (“**Nguyen**”)] were seized and/or restrained using the proceeds of crime provisions of the Criminal Code” (the “**CRA News Release**”);

24. furthermore, according to the CRA News Release, on October 23, 2018, Chi Van Ho and Nguyen were charged with tax evasion under the Income Tax Act and are alleged to have underreported their income by over \$3 million from January 2008 to December 2013, thereby evading over \$500,000 in federal income tax. There were both arrested and released with court imposed conditions;
25. the CRA News Release goes on to state that Chi Van Ho and Nguyen “are the listed shareholders, directors and/or corporate officers of multiple corporations in the business of residential and commercial real estate rentals, and property renovation and development”, and that “the criminal charges against Ho and Nguyen allege that from 2008 to 2013, multiple schemes were utilized to under-report their taxable income. The schemes included appropriating funds from multiple corporations under their control for personal purposes, appropriating corporate rental income, and manipulation of supplier invoices”;
26. In a CBC news story dated December 11, 2018, it was alleged that “the CRA has been crossing swords with Ho and Nguyen and three of their companies, which operate under the name Golden Dragon Ho, in the Tax Court of Canada since 2015”;
27. section 195 of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B.3;
28. Rules 1.05, 2.03, 3.02, 25.11, 37 and 61.16 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194; and
29. such further and other grounds as counsel may advise and this Honourable Court may permit.

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

1. the First Report to the Court of the Interim Receiver dated May 29, 2018;
2. the Second Report to the Court of the Interim Receiver dated May 29, 2018
3. the Third Report to the Court of the Interim Receiver dated May 29, 2018;
4. the Supplemental Report to the Third Report to the Court of the Interim Receiver dated July 3, 2018; and
5. the Fourth Report to the Court of the Interim Receiver dated October 15, 2018;
6. the Fifth Report to the Court of the Interim Receiver dated December 17, 2018; and,
7. such further and other evidence as counsel may advise and this Honourable Court permit.

December 17, 2018

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TO: **SERVICE LIST**

Applicant

Respondents

**ONTARIO
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at **OTTAWA**

NOTICE OF MOTION

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TAB 2

Court File No. 17-73967

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

FIRST NATIONAL FINANCIAL GP CORPORATION

Applicant

and

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Respondents

FIFTH REPORT OF THE INTERIM RECEIVER

DATED DECEMBER 17, 2018

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APPENDICES

- A** Email correspondence between Eric Golden of Blaney McMurtry LLP and Martin Diegel between November 1 and 12, 2018
- B** CBC News article titled "CRA employs new weapons against tax evasion: Freezing assets, seizing property" dated December 10, 2018
- C** Canada Revenue Agency press release dated November 22, 2018

INTRODUCTION

1. By Order of the Ontario Superior Court of Justice (the “**Court**”) dated September 22, 2017 (the “**Appointment Order**”), Deloitte Restructuring Inc. was appointed as the interim receiver (the “**Receiver**”) of certain real property of Golden Dragon Ho 10 Inc. (“**GDH 10**”) municipally known as 347 Barber Street, Ottawa, Ontario (formerly known as 347 Clarence Street, Ottawa) (“**347 Barber**”) and of certain real property of Golden Dragon Ho 11 Inc. (“**GDH 11**”) municipally known as 345 Barber Street Ottawa, Ontario (formerly known as 345 Clarence Street, Ottawa) (“**345 Barber**”) (collectively, with 347 Barber, referred to herein as the “**Property**”).
2. The Appointment Order authorized the Receiver to, among other things:
 - (a) take possession of and exercise control over the Property and any and all proceeds, receipts and disbursements arising out of or from the Property;
 - (b) undertake any renovations and make any repairs to the Property necessary to ensure that the Property is well maintained and rentable and is in compliance with the applicable laws and building codes; and
 - (c) market available rental units, enter into new rental agreements or renew expiring rental agreements where applicable.
3. As set out in the Receiver’s previous reports, since its appointment, the Receiver has taken steps to repair and renovate the Property in order to market available rental units and increase occupancy. Those repairs have been substantially complete, with the re-installation of mailboxes in the lobby of the Property being the only significant outstanding matter to be completed (which will be completed when the mailboxes are delivered in early 2019). Occupancy has increased from 60% at the date of the receivership (65 of 110 units) to 90% (99 of 110 units) as of the date of this report.
4. Beginning January 1, 2019, this Property is expected to generate monthly rental income of approximately \$89,000, and positive monthly cash flow of approximately \$36,000 (which is forecast to increase to approximately \$65,000 by April 2019 once the balance of the capital expenditures are completed and funded), not including professional fee expenses or revenue

from monthly affordability payments payable by the City of Ottawa and the Ministry of Municipal Affairs and Housing, which are monthly subsidies paid in respect of the approximately 30 below market rent (“BMR”) units at the Property. This compares to \$50,655 of monthly rental income at the date of the Appointment Order, and negative cash flow.

CRA CHARGES AND SEIZURES

5. First National Financial GP Corporation (“FN”), the first mortgagee and the Applicant in these proceedings, had previously advised the Receiver that upon stabilization of the Property, it had envisioned entering into discussions with the Respondent for the terms of a forbearance agreement that would permit the Property to be taken out of the interim receivership proceedings and returned to the Respondent. Attached hereto and marked as **Appendix “A”** is a series of emails between Eric Golden of Blaney McMurtry LLP, counsel for FN, and Martin Diegel, counsel for the Respondents, which, among other things, reflect initial discussions of some of the terms of such a potential forbearance agreement.
6. However, the Receiver and FN have recently been made aware of a CBC news article which reported that in late October 2018, charges were brought by Canada Revenue Agency (“CRA”) against Chi Van Ho, who has sworn under oath in these proceedings that he is the directing mind of the Respondents, and a woman alleged to be his partner, Thanh Ha Thi Nguyen, for tax evasion under the *Income Tax Act*. Among other things, the CBC article indicates that the couple have been “accused of under-reporting their income between January 2008 and December 2013 by \$3.1 million, evading \$523,532 in taxes” and references “three of their companies, which operate under the name Golden Dragon Ho”. As of result of those charges, CRA has apparently used the proceeds of crime provisions in the *Criminal Code* to seize and/or restrain from use certain of Chi Van Ho’s assets. A copy of the CBC news article posted December 10, 2018 is attached hereto as **Appendix “B”**. A copy of a press release issued by CRA on November 22, 2018 initially announcing the charges and the seizures is attached hereto as **Appendix “C”**.
7. These charges against Chi Van Ho and the asset seizures are troubling and of serious concern to both the Receiver and FN, as the discharge of the Receiver was premised on the control

of the Property being returned to the Respondents and by extension Chi Van Ho. In order to assess if it is still viable to enter into a forbearance agreement with the Respondents and Chi Van Ho, FN is seeking the Court's permission for the Receiver to (i) contact CRA to better understand the charges, the seizures and/or restraints that have occurred to date, and the potential impact to the Property if the interim receivership is terminated, and (ii) authorize CRA to discuss these issues with the Receiver to the extent they relate, or potentially relate to, the Property. The Receiver agrees that it is necessary to obtain further details from CRA before a plan can be formulated, finalized and put in place to take the Property out of these proceedings, and how such a plan would or could involve Chi Van Ho. I am advised by Eric Golden that counsel for the Respondents has raised concerns about the Receiver contacting CRA directly, and in any event, CRA will likely not be prepared to discuss the relevant issues with the Receiver unless it is authorized to do so by the Court.

RECEIVER'S REQUEST

8. The Receiver is respectfully seeking an Order authorizing it to contact CRA to obtain further information on the nature of the charges against Chi Van Ho and CRA's seizure of his assets as it relate to, or potentially relates to, the Property, and authorizing CRA to discuss these issues with the Receiver.

All of which is respectfully submitted at Ottawa, Ontario this 17th day of December, 2018.

DELOITTE RESTRUCTURING INC.,
solely in its capacity as the Court-
appointed Interim Receiver of certain real
property of Golden Dragon Ho 10 Inc. and
Golden Dragon Ho 11 Inc., and without
personal or corporate liability

Deloitte Restructuring Inc.

Paul Casey, CPA, CA, FCIRP, LIT
Senior Vice-President

John Saunders, CPA, CA, CIRP, LIT
Senior Vice-President

TAB A

APPENDIX A

Eric Golden

From: Martin Diegel <martin@martindiegel.com>
Sent: November 12, 2018 8:08 AM
To: Eric Golden
Cc: Chad Kopach; jsaunders@deloitte.ca; 'Bricks, Hartley (CA - Toronto)'
Subject: Re: Barber

Thanks Eric
 I appreciate the points you raise
 Likewise I do not want to waste anyone's time
 Consequently I have not pursued the Filament proposal

In respect of next steps I do not have a fundamental issue with what you have set out. I believe there is significant interest in this property and have reviewed a couple of offers. However to again avoid wasting anyone's time I am checking them out to make sure they are viable and could ultimately close. No tire kickers

Consequently it would be helpful to provide the current rent roll as well as a payout on the FN encumbrances. Also whoever presents an offer might well want to assume the FN encumbrances but will have to obviously pass muster with FN. however if there is no appetite at all for any assumption then please let me know so I can screen out any such offer.

Martin

[Get Outlook for iOS](#)

From: Eric Golden <egolden@blaney.com>
Sent: Friday, November 9, 2018 12:44:50 PM
To: Martin Diegel
Cc: Chad Kopach; jsaunders@deloitte.ca; 'Bricks, Hartley (CA - Toronto)'
Subject: RE: Barber

Martin,

This time it's my fault you missed an email from me. I just realized that Hartley was both the recipient and one of the cc's on the Nov 4 email (I don't think I've ever done that before – getting old). My mistake and sorry. So please get back to me after you have reviewed.

Eric Golden
 Partner
 Co-chair, Business Reorganization & Insolvency Group
 egolden@blaney.com
 ☎ 416-593-3927 | ☎ 416-596-2049

From: Martin Diegel [mailto:martin@martindiegel.com]
Sent: November 09, 2018 12:39 PM
To: Eric Golden
Cc: Chad Kopach; jsaunders@deloitte.ca; 'Bricks, Hartley (CA - Toronto)'
Subject: Re: Barber

Eric I will discuss this with my client
 I must have missed your November 4 email as I had not seen it before
 Martin

Martin Diegel
 Barrister and Solicitor
 342 MacLaren Street
 Ottawa, Ontario, K2P 0M6

Telephone: 613-567-0235, Ext. 201
 Fax: 613-440-0900
 Email: martin@martindiegel.com
 Website: www.martindiegel.com

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From: Eric Golden <egolden@blaney.com>
Sent: Friday, November 9, 2018 12:29:56 PM
To: Martin Diegel
Cc: Chad Kopach; jsaunders@deloitte.ca; 'Bricks, Hartley (CA - Toronto)'
Subject: RE: Barber

Martin,

You'll appreciate at this stage, any such representations from your client are akin to the boy who cried wolf.

I will get a current rent roll, but it will take some time to get a payout number as that is a moving target until with the recent repairs to the 17 units.

Also, is Chi Ho proposing to sell both properties? Selling only 345 Barber is not an option, meaning that there are consents from the City and Ministry that will also be required.

Further to my last email to you set out below, once the Interim Receivership is terminated, a process is going to have to be put in place regarding various steps relating to the property, including any sale. What is your client's position on my email below?

From: Eric Golden
Sent: November 04, 2018 3:33 PM
To: 'Bricks, Hartley (CA - Toronto)'
Cc: 'Bricks, Hartley (CA - Toronto)'; jrsaunders@deloitte.ca; Chad Kopach
Subject: RE: bulk lease on Barber

Hi Martin,

There are significant arrears under the FN mortgages. Rental revenues can and should be maximized, which has been the Interim Receiver's mandate, and there is no reason to insert a commissioned rental broker into the process at this stage to give up short, medium and long term revenue in return for an immediate revenue bulge at discounted rental rates which devalues the property. Additional concerns with such a bulk rental were set out in my last email to you.

Since Filament's first offer, CLV has rented 7 of the 17 units for combined monthly rent for those 7 units that is \$1,168 higher than the rates offered by Filament, which does not include any rent free periods. CLV advises that it should be able to obtain similar rents, which exceed Filament's revised rental rate offer, for the remaining units within the time of Filament's proposed rent free period. As a result, the Filament deal remains uneconomical.

There is no intention to have the interim receiver market and sell the property. Once the Interim Receiver is discharged, until the FN mortgage arrears are paid out in full, FN may be prepared to enter into a Forbearance Agreement with your client along the following terms:

- CLV remains as property manager.
- No rentals without FN and CLV approval.
- All rental revenue and any other revenue from the mortgaged properties collected by CLV will be remitted to FN, which will be used to fund the FN mortgage, property taxes, and other expenses including the PM, with any surplus going to the FN mortgage arrears.
- CLV will attend to any repairs and/or renovations, with significant repairs requiring FN approval.
- No additional mortgages against the mortgaged properties.
- GDH will be permitted to list the property for sale, but the listing broker can only be selected and retained with FN approval. No sale to take place without FN approval.

Eric Golden
 Partner
 Co-chair, Business Reorganization & Insolvency Group
egolden@blaney.com
 ☎ 416-593-3927 | ☎ 416-596-2049

From: Martin Diegel [<mailto:martin@martindiegel.com>]
Sent: November 01, 2018 2:56 PM
To: Eric Golden
Cc: Chad Kopach
Subject: bulk lease on Barber

Eric, attached is the revised bulk lease subject to receivers approval. Kindly advise.

Regardless, would you update me on the rental situation (a current rent roll would be preferred), as well as whether the mail box and flooding issues are now resolved.

Finally what is the exit strategy for the receiver? Is the plan to market the property and if so what are the details?

Needless to say my client would like to market the property for sale.

Martin

Martin Diegel
Barrister and Solicitor
342 MacLaren Street
Ottawa, Ontario, K2P 0M6

Telephone: 613-567-0235, Ext. 201

Fax: 613-440-0900

Email: martin@martindiegel.com

Website: www.martindiegel.com

From: Martin Diegel [mailto:martin@martindiegel.com]

Sent: November 09, 2018 9:10 AM

To: Eric Golden

Subject: Barber

Eric my client is being approached by multiple parties interested in buying Barber

To eliminate tire kickers would you please forward to me the following as soon as possible:

1 current rent roll

2 amount required to pay out FN (including any amounts owing to the receiver)

3 amount of FN encumbrances in the event there is a qualifying purchaser who FN will allow to assume same

Thanks

Martin

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TAB B

APPENDIX B



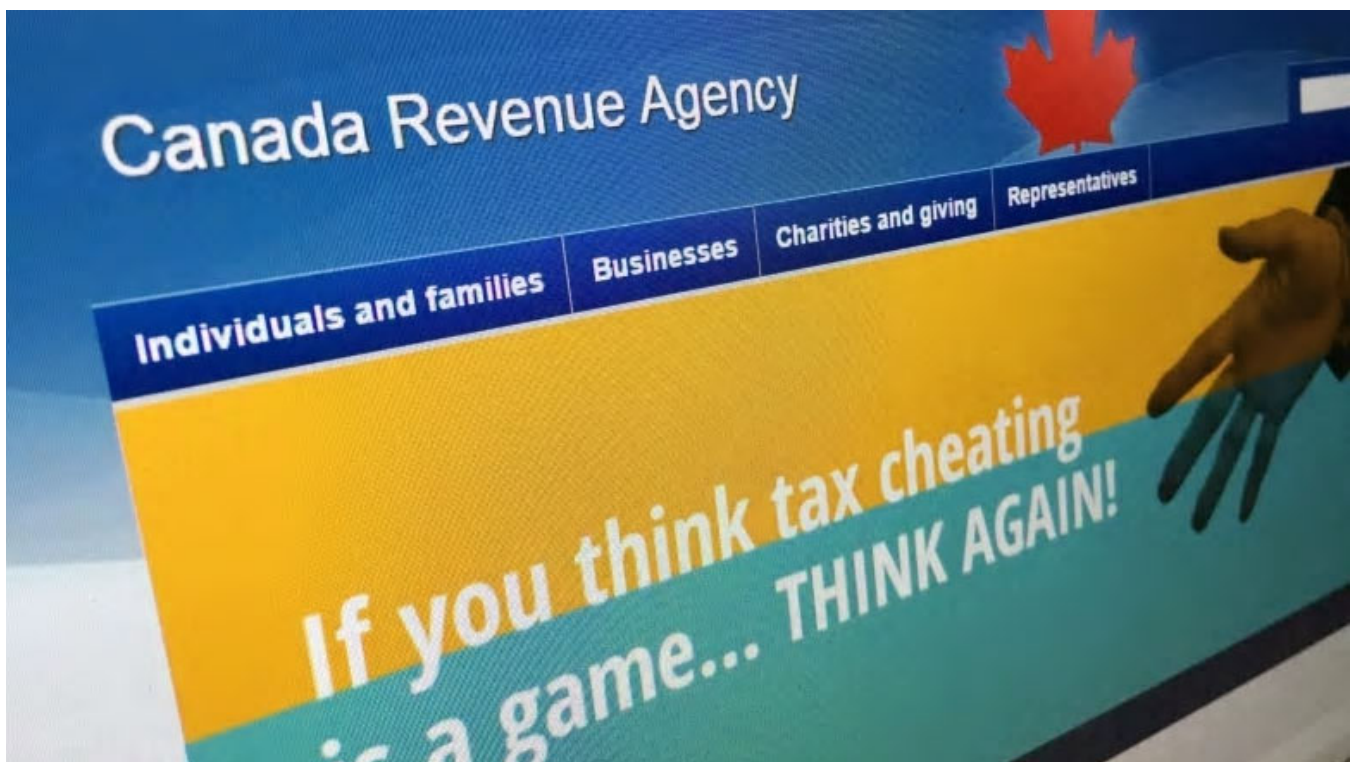
CRA deploys new weapons against tax evasion: Freezing assets, seizing property



Canada Revenue Agency vows it 'won't be the last time' the agency uses this tactic

Elizabeth Thompson · CBC News ·

Posted: Dec 10, 2018 4:00 AM ET | Last Updated: December 10



A warning on the Canada Revenue Agency's website. (Graeme Roy/THE CANADIAN PRESS)

The Canada Revenue Agency is using a new tool in its battle against tax evasion — one that experts say could radically change the way it pursues tax cheats.

For the first time, the agency has used proceeds-of-crime provisions in the law to freeze the assets of individuals charged with tax evasion.

Up to now, those provisions have been used only in cases involving suspected terrorist financing or money laundering.

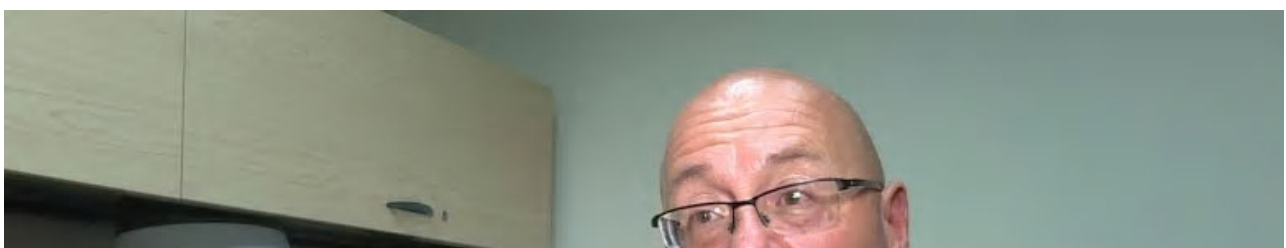
"That is a tool that we have not used in the past," said Stéphane Bonin of CRA's criminal investigations division.

"I can say that this is indeed the first time, but I can promise you that this is not the last time that we [will use] those provisions of the Criminal Code to restrain or seize assets that tax evaders have acquired through their illegal behaviours."

Sending a message

Marc Tassé, a professor with the University of Ottawa's Telfer School of Management, said CRA's decision to use proceeds-of-crime powers to go after tax dodgers will send a message.

"People who might have done some tax evasion already will see it as a game-changer," he said.





University of Ottawa professor Marc Tassé says using proceeds of crime provisions in cases of alleged tax evasion is a 'game-changer.' (CBC)

Tassé said the proceeds-of-crime provisions can also be used to seize property outside of Canada. For example, if the CRA believes that someone has engaged in offshore tax evasion and used the proceeds to buy a vacation home or a yacht, the CRA could freeze or seize those assets.

Using the proceeds-of-crime provisions also can block tactics used by some tax evaders, such as declaring corporate bankruptcy to avoid paying the taxes, said Tassé.

"If they were to file for bankruptcy, the government wouldn't be able to recover anything," he said.

- **GO PUBLIC** [**Air Canada accused of 'lying' to customers to avoid paying up to \\$2,100 for lost luggage**](#)

"But on the other hand, if they're using proceeds-of-crime provisions of the Criminal Code, then at that point they are able to seize it immediately so it protects the assets."

Tassé said the move may prompt some tax scofflaws to quickly take advantage of the CRA's voluntary disclosure program. A taxpayer who comes forward to CRA and makes a voluntary disclosure about tax evasion still has to pay the taxes owed, but can usually avoid prosecution and penalties.

- [Wealthy Canadians hiding up to \\$240B abroad, CRA says](#)
- [CRA audits just 5 Canadians out of hundreds of RBC Panama Papers accounts](#)

The case at the heart of the CRA's initiative pits the agency against an Ottawa couple — Chi Van Ho, 52, and Thanh Ha Thi Nguyen, 49 — who own a number of rental properties.

Case involving rental property income

They are accused of under-reporting their income between January 2008 and December 2013 by \$3.1 million, evading \$523,532 in taxes.

The CRA said that Ho and Nguyen are "the listed shareholders, directors and/or corporate officers in multiple corporations in the business of residential and commercial real estate rentals and property renovation and development."

"The criminal charges against Ho and Nguyen allege that, from 2008 to 2013, multiple schemes were utilized to under-report their taxable income," said the CRA. "The schemes included appropriating funds from multiple corporations under their control for personal purposes, appropriating corporate rental income and manipulation of supplier invoices."

The agency described the investigation that led to the charges as "serious and complex."

Ho and Nguyen were charged in late October. The CRA has seized or restrained six rental properties and an automobile belonging to the couple.

- ['No one is beyond our reach': Canada joins 5-nation alliance to fight tax crime globally](#)
- [Townhouse tenants steaming after hot water cut off](#)

The CRA has been crossing swords with Ho and Nguyen and three of their companies, which operate under the name Golden Dragon Ho, in the Tax Court of Canada since 2015.

Golden Dragon Ho Properties made headlines in June 2017 when tenants in some of its properties complained that the natural gas that heated their homes and powered their hot water tanks had been cut off because the landlord hadn't paid the bills.

Leonard Shore, the lawyer representing the couple in the criminal tax evasion case, said he recently received "voluminous" disclosure materials from the prosecution and is now reviewing them.

Shore said the charges came after a lengthy investigation.

"This has been going on for at least a couple of years ... A couple of years ago they conducted several searches into their companies, into their home, into their place of business."

The case returns to court in January.

Elizabeth Thompson can be reached at elizabeth.thompson@cbc.ca

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TAB C

APPENDIX C



[Home](#) → [Canada Revenue Agency](#) → [CRA Newsroom](#)

→ [Enforcement notifications: compliance actions](#)

Property seized as proceeds of crime in tax evasion case

November 22, 2018

Ottawa, Ontario

Canada Revenue Agency

The Canada Revenue Agency (CRA) announced today that six rental properties and an automobile belonging to two Ottawa residents recently charged with tax evasion were seized and/or restrained using the proceeds of crime provisions of the *Criminal Code*. This marks the first time the proceeds of crime provisions have been used in a tax evasion investigation.

On October 23, 2018, Chi Van Ho (Ho) and Thanh Ha Thi Nguyen (Nguyen) were charged with tax evasion under the *Income Tax Act*. Ho and Nguyen are alleged to have underreported their income totaling \$3,114,100 from January 2008 to December 2013, thereby evading \$523,532 in federal income tax. Both Ho and Nguyen were arrested and then released with court imposed conditions.

Ho and Nguyen are the listed shareholders, directors and/or corporate officers in multiple corporations in the business of residential and commercial real estate rentals and property renovation and development.

The criminal charges against Ho and Nguyen allege that, from 2008 to 2013, multiple schemes were utilized to under-report their taxable income. The schemes included appropriating funds from multiple corporations under their control for personal purposes, appropriating corporate rental income and manipulation of supplier invoices.

All case-specific information above was obtained from the court filed records.

The CRA would like to acknowledge the significant collaboration and contribution of the Financial Transactions and Reports Analysis Centre of Canada (FINTRAC) and the Seized Property Management Directorate (SPMD) of Public Services and Procurement Canada (PSPC) to this investigation.

This case is another of the more serious and complex investigations the CRA is taking on. Those who do not fully comply with tax laws place an unfair burden on law-abiding taxpayers and businesses and jeopardize the integrity of Canada's tax base. While investigations take time, the CRA is committed to acting on all serious non-compliance. For the five-year period of April 1, 2013 to March 31, 2018, the courts have convicted 307 taxpayers. This involved \$134 million in federal tax evaded and court sentences totaling approximately \$37 million in court fines and 245.75 years in jail.

If you have made an omission in your dealings with the CRA, made a tax mistake or left out details about income on your tax return, the Agency may give you a second chance to correct your tax affairs and avoid criminal prosecution. The Voluntary Disclosures Program (VDP) may give you the opportunity to come forward, make things right, and have peace of mind. Disclosures that are made before the CRA launches an enforcement action such as an audit or criminal investigation may only result in you having to pay taxes owed plus interest. More information on the VDP can be found on the CRA's website at Canada.ca/taxes-voluntary-disclosures.

The CRA has set up a [free subscription](#) service to help Canadians stay current on the CRA's enforcement efforts.

Associated Links

- [Informant Leads Program](#)
- [Voluntary Disclosures Program](#)

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Contacts

Media Relations
Canada Revenue Agency
416-952-8105
cra-arc.media@cra-arc.gc.ca

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More information

CRA media contact list

Date modified:

2018-11-22

FIRST NATIONAL FINANCIAL GP CORPORATION
Applicant

and

GOLDEN DRAGON HO 10 INC. et al.
Respondents

**ONTARIO
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at **OTTAWA**

**MOTION RECORD
(Returnable December 21, 2018)**

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Lawyers for the Applicant and the Interim
Receiver