



Court File No. 17-73967

**ONTARIO
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE)
JUSTICE HACKLAND)
FRIDAY, THE
21st DAY OF July , 2023

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

ORDER

THIS MOTION made by Deloitte Restructuring Inc. (the “**Receiver**”) for distributions as a result of the Judgment of the Court of Appeal for Ontario (the “**Appeal Judgment**”) in Court File No. C68855 and Court File No. C69031 dated August 31, 2022 (the “**Appeals**”), the Judgment of the Supreme Court of Canada (the “**SCC Judgment**”) in Court File No. 40465 dated April 13, 2023 (the “**SCC Leave Application**”) **AND THIS MOTION** made by Martin Diegel, barrister and solicitor (“**Mr. Diegel**”), for an Order approving the fees and disbursements of Mr. Diegel rendered in the receivership proceeding herein and directing the Receiver to pay such fees and disbursements, were heard this day at Ottawa.

ON READING the Trial Judgment of the Honourable Justice Hackland dated November 16, 2020, granting judgment following trial (the “**Trial**”) in favour of First National Financial GP Corporation (“**FN**”), in the amount of \$1,473,141.82 (the “**Future Interest**”) in respect of the future interest being claimed by FN on its three mortgages (collectively, the “**FN Mortgages**”) over the properties municipally known as 345 Barber Street, Ottawa (“**345 Barber**”) and 347 Barber Street, Ottawa (“**347 Barber**” and together with 345 Barber, collectively, the “**Properties**”), the Appeal Judgment reversing the Trial Judgment and the Order of the Honourable Justice Hackland, dated March 19, 2021, awarding FN its costs of the Trial (the “**Main Appeal**”), and the SCC Judgment dismissing leave to appeal to the Supreme Court of Canada, and the Consent of First National Financial GP Corporation, Liahona Mortgage Investment Corporation (“**Liahona**”), Golden Dragon Ho 10 Inc. (“**GDH 10**”) and Golden Dragon Ho 11 Inc. (“**GDH 11**”) to this Order (collectively, “**GDH**”), the Notice of Motion of Mr. Diegel and the Affidavit of Jacob Charles Diegel, sworn June 27, 2023 (the “**Diegel Affidavit**”) and on being advised of the consent of the Receiver, FN, Liahona and GDH to the within Order,

1. **THIS COURT ORDERS AND DIRECTS** that the Receiver is to pay to Liahona out of the reserve it is currently holding from the sale of the Properties (the “**Reserve**”) attached as Schedule “A” hereto, 73% of the Future Interest amount that forms part of the Reserve (column 7(ii) of Schedule “A”).

2. **THIS COURT ORDERS AND DECLARES** that the fees and disbursements of Mr. Diegel rendered to GDH in the receivership proceeding herein as set out in the Diegel Affidavit are hereby approved.

3. **THIS COURT ORDERS AND DIRECTS** the Receiver to pay from the portion of the Reserve representing 27% of the Future Interest amount (column 7(ii) of schedule “A”), being GDH’s portion of the Future Interest (the “**GDH Future Interest Reserve**”), the sum of \$340,409.89 to Mr. Diegel. The requirement of any form of direction from GDH, or any other stakeholders of the estates of GDH, to the Receiver to make such payment to Mr. Diegel, is hereby dispensed with

4. **THIS COURT ORDERS AND DIRECTS** the Receiver to set aside the remainder of the GDH Future Interest Reserve, pending further Order of Justice Hackland, or of another judge of the Superior Court of Justice in Ottawa in the receivership proceeding herein (the “**GDH Future Interest Allocation**”).

5. **THIS COURT ORDERS** that subject to allocating the all-inclusive amount of \$25,000.00 for Liahona’s portion of the Receiver’s fees and disbursements since the Appeals were heard until the Receiver’s discharge in the proceeding herein, and subject to the Receiver setting aside the GDH Future Interest Allocation, the Receiver shall disburse to Liahona 73% of the remaining Reserve after payment to Liahona of the amount set out in paragraph 1 above (columns 7(i), 7(iii), 7 (iv) and “surplus cash” of Schedule “A”).

6. **THIS COURT ORDERS** that following the payments by the Receiver to Liahona in paragraphs 1 and 5 above, the Receiver will have no further monetary obligations to Liahona out of the Reserve, or otherwise, subject only to any future Order made in this proceeding by Justice Hackland, or of another judge of the Superior Court of Justice in Ottawa, regarding the passing of the accounts of the Receiver in connection with the Appeals or otherwise.

7. **THIS COURT ORDERS** that the remaining portion of the Reserve, following the payments to Liahona in paragraphs 1 and 5 above and the payment to Mr. Diegel in paragraph 3 above, be maintained by the Receiver along with the GDH Future Interest Allocation, pending further Order of Justice Hackland, or another judge of the Superior Court of Justice in Ottawa in the underlying receivership proceeding.

8. **THIS COURT ORDERS AND DIRECTS** that Liahona and GDH are entitled to their costs of Trial, and that FN shall pay to Liahona and GDH their Trial costs of \$208,470.25 inclusive of disbursements and HST (the “**Trial Costs Award**”), to be allocated among Conway Baxter Wilson LLP and Mr. Diegel, as they may in their sole and absolute discretion agree, in full and final satisfaction of the Trial costs, and any other claim for costs against FN in the proceeding herein, save and except for the Appeal Costs Award and the SCC Costs Award (as defined below).

9. **THIS COURT ORDERS** that that costs of the Appeals, in the all-inclusive sum of \$73,981.04 inclusive of disbursements and HST (the “**Appeal Costs Award**”), and the costs of the SCC Leave Application in the all-inclusive sum of \$2,400 inclusive of disbursements and HST (the “**SCC Costs Award**”), which are also to be paid by FN, be allocated among Conway Baxter Wilson LLP and Mr. Diegel, Barrister and Solicitor, as they may in their sole and absolute discretion agree, in full and final satisfaction of the Appeal Costs Award and the SCC Costs Award.

10. **THIS COURT ORDERS** that the Trial Costs Award, the Appeal Costs Award and the SCC Costs Award shall be paid by wire transfer to Conway Baxter Wilson LLP in trust. The requirement of any form of direction from Liahona or GDH, or any other stakeholders of the estates of GDH, to FN to make such payment to Conway Baxter Wilson LLP, is hereby dispensed with.

Hackland J.

Justice C.T. Hackland

Issuance Date: July 24, 2023

Schedule "A"

RESERVES HELD BY THE RECEIVER

	7(i)	7(ii)	7(iii)	7(iv)	Surplus Cash	Total
Reserve Balance at July 6, 2023	\$ 25,189.18	\$ 1,473,141.82	\$ 23,570.27	\$ 275,000.00	\$ 197,284.27	\$ 1,994,185.54

Description of Reserves:

- 7(i) - Reserve for the outstanding and future fees and disbursements of the Receiver and its counsel in administering the receivership, including the trial of the
- 7(ii) - Reserve for the prepayment amounts claimed by FN arising from the early payment of its charges against the Property
- 7(iii) - Reserve for an amount equivalent to one (1) year of interest at 1.6% per annum on the Yield Maintenance Penalties, commencing from the date the
- 7(iv) - Reserve for the future legal fees and disbursements of FN in connection with the receivership, including the Trial of Issues

FIRST NATIONAL FINANCIAL GP CORPORATION
Applicant

-and-

GOLDEN DRAGON HO 10 INC. et. al.
Respondents

Court File No. CV-17-73967

ONTARIO
SUPERIOR COURT OF JUSTICE

PROCEEDING COMMENCED AT
OTTAWA

ORDER

DICKINSON WRIGHT LLP
Barristers & Solicitors
199 Bay Street
Suite 2200, P.O. Box 447
Commerce Court Postal Station
Toronto, Ontario, M5L 1G4
Fax: (844) 670-6009

DAVID P. PREGER (36870L)
Email: dpreger@dickinsonwright.com
Tel: (416) 646-4606

Lawyers for the Court-appointed Receiver,
Deloitte Restructuring Inc.