



COURT FILE NUMBER Q.B. 434 of 2017

COURT COURT OF QUEEN'S BENCH FOR SASKATCHEWAN IN
BANKRUPTCY AND INSOLVENCY

JUDICIAL CENTRE SASKATOON

PLAINTIFF CANADIAN IMPERIAL BANK OF COMMERCE

DEFENDANTS JMV ENTERPRISES LTD.

DOCUMENT **THIRD REPORT OF THE COURT APPOINTED RECEIVER OF
JMV ENTERPRISES LTD.**

DATED APRIL 18, 2018

PREPARED BY DELOITTE RESTRUCTURING INC.

ADDRESS FOR SERVICE AND
CONTACT INFORMATION OF
PARTY FILING THIS DOCUMENT

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INTRODUCTION

- 1) Pursuant to an Order (the "**Receivership Order**") of the Court of Queen's Bench for Saskatchewan in Bankruptcy and Insolvency (the "**Court**") dated March 29, 2017 (the "**Date of Receivership**"), Deloitte Restructuring Inc. ("**Deloitte**") was appointed as receiver (the "**Receiver**"), without security, of all assets, undertakings and properties of JMV Enterprises Ltd. ("**JMV**" or the "**Company**"). A copy of the Receivership Order and other information regarding the receivership can be accessed on Deloitte's website at <http://www.insolvencies.deloitte.ca/en-ca/Pages/JMVEnterprisesLtd.aspx>.
- 2) The Receivership Order was granted as a result of an application by Canadian Imperial Bank of Commerce ("**CIBC**") which was owed approximately \$3.7 million from the Company at the Date of Receivership, plus interest and costs accruing thereafter (the "**CIBC Indebtedness**"). CIBC holds various registered security over all of the Company's present and after-acquired real and personal property, along with a personal guarantee from the former principal of JMV, Mr. Frank Garrett (the "**Guarantor**"), and an assignment of the \$500,000 life insurance policy on the life of the Guarantor (collectively the "**CIBC Security**"). The real property of JMV included eight (8) residential and commercial properties located in and around Regina, Saskatchewan (the "**Properties**").
- 3) The Receiver's independent legal counsel, McKercher LLP ("**McKercher**"), performed an independent review of the validity and enforceability of the CIBC Security and advised that the CIBC Security is valid and enforceable and ranks in priority to the unsecured creditors of JMV and to any subsequently appointed trustee in bankruptcy. The Receiver has also engaged MLT Aikins LLP ("**MLT**") as its counsel on matters not requiring independent advice.
- 4) On May 19, 2017, the Receiver filed its first report to Court (the "**First Report**") to support its application heard on May 26, 2017 (the "**May 26 Application**") to, among other things, seek the Court's approval of the proposal of Colliers International ("**Colliers**") to list the Properties for sale (the "**Colliers Proposal**") and for any sales of the Properties for more than 85% of the appraised values to be completed without further Court approval. The Receiver also sought the Court's approval of the proposals (the "**Auction Proposals**") of Maynards Antique and Fine Art Ltd. and McDougall Auctioneers Ltd. to auction the various artworks owned by JMV (the "**Artworks**"). A confidential supplement to the First Report (the "**First Confidential Report**"), which included the Colliers Proposal, the Auction Proposals and the market value appraisals for each of the Properties that were completed during the period from August 2016 to October 2016 by Ema-Lyn Real Estate Appraisals and Consulting (the "**Property Appraisals**"), was filed in support of the May 26 Application and was sealed in the Court File. Pursuant to the May 26 Application, the Court granted an order approving, among other things, the Colliers Proposal, the Auction Proposals, the interim distribution of funds to CIBC pursuant to the CIBC Security, the sealing of the First Confidential Report, and directing that the Properties could be sold individually or as a whole by the Receiver without further Court approval if the sale price was greater than 85% of the value included in the Property Appraisals (the "**Sale Process Approval Order**").
- 5) On January 5, 2018, the Receiver filed its second report to Court (the "**Second Report**") to support its application heard on January 8, 2018 (the "**Jan 8 Application**") to, among other things, seek the Court's approval of the Receiver's reported actions since the First report and to seek the Court's approval of an offer for the sale and transfer of the Properties described in, and to be sold and transferred under, the purchase and sale agreement dated November 28, 2017 between the

purchaser (the "**Purchaser**") and the Receiver (the "**Second En-Bloc Offer**") and vesting title to the Properties in the name of the Purchaser free and clear of all security interests. A confidential supplement to the Second Report dated January 5, 2018 (the "**Second Confidential Report**"), which included the Second En-Bloc Offer, was filed in support of the Jan 8 Application. Pursuant to the Jan 8 Application, the Court granted an order (the "**Sale Approval Order**") approving, among other things, the Second En-Bloc Offer and the vesting of title to the Properties to the Purchaser, the reported actions of the Receiver, the Receiver's statement of receipts and disbursements to December 31, 2017, the interim distribution of the net proceeds from the sale transaction to CIBC pursuant to the CIBC Security, and the sealing of the Second Confidential Report.

- 6) This report of the Receiver (the "**Third Report**") should be read in conjunction with the First Report and Second Report and capitalized terms used in this Third Report but not defined herein are as defined in the First Report, Second Report or the Receivership Order.

Purpose

- 7) The purpose of this Third Report is to:
- a) Provide the Court with an update of the Receiver's actions since the date of the Second Report; and
 - b) Respectfully recommend that the Court:
 - i. Approve the actions of the Receiver as outlined in this Third Report;
 - ii. Approve an order compelling that Winmar (as defined later in this Third Report) pay the Receiver \$2,108.59 due to Winmar improperly asserting a right of set-off in contravention of the Receivership Order (the "**Winmar Receivable**");
 - iii. Approve the Receiver's Actual and Estimated Statement of Receipts and Disbursements for the period from March 29, 2017 to April 3, 2018 (the "**Final SRD**");
 - iv. Approve the professional fees and disbursements of the Receiver and its counsels as set out herein;
 - v. Approve the discharge of the Receiver after disbursement of all funds held and concluding administrative matters with respect to the filing of final GST and PST returns, submission of a final statutory report to the Office of the Superintendent of Bankruptcy pursuant to section 246(3) of the *Bankruptcy and Insolvency Act* (the "**BIA**"), and performing a final reconciliation of the Receiver's estate bank account; and
 - vi. Provide such further or other relief that the Court considers just and warranted in the circumstances.

Terms of Reference

- 8) In preparing this Third Report, the Receiver has relied upon unaudited financial and other information prepared by the Company's current and former employees, the Company's books and records, and discussions with the Company's former employees and various third parties with knowledge of the Company and its assets and operations. The Receiver has not audited, reviewed or otherwise attempted to verify the accuracy or completeness of the information in a manner that would wholly or partially comply with Generally Accepted Assurance Standards pursuant to the Chartered Professional Accountants Canada Handbook and, accordingly, the Receiver expresses no opinion or other form of assurance in respect of this information. The Receiver may refine or alter its observations as further information is obtained or brought to its attention after the date of this report.
- 9) The Receiver assumes no responsibility or liability for any loss or damage occasioned by any party as a result of the circulation, publication, reproduction, or use of this Third Report. Any use which any party makes of this Third Report, or any reliance or decision to be made based on this Third Report, is the sole responsibility of such party.
- 10) All dollar amounts in this Third Report are in Canadian dollars, unless otherwise indicated.

POWERS OF THE RECEIVER

- 11) The Receivership Order authorized, among other things, the Receiver to borrow up to \$500,000 without further approval of the Court for the purpose of carrying out its duties and powers (the "**Borrowing Facility**"). The Receiver has not required the Borrowing Facility throughout the receivership.

ACTIONS OF THE RECEIVER

- 12) The Receiver has undertaken the following steps with respect to the assets and operations of the Company since the date of the Second Report:
 - a) Corresponded with various creditors and other interested parties in regards to the receivership proceedings;
 - b) Held ongoing discussions with the Property Manager regarding the management of the Properties, including collection of rent from tenants, and coordination of repairs and maintenance to the Properties up until the date of the closing of the Second En-Bloc Offer on January 25, 2018 (the "**Sale Closing Date**");
 - c) Corresponded with the tenants of the Properties in regards to the Second En-Bloc Offer, information around certain rental deposits and assisted in the collection of rents;
 - d) Organized and maintained the utilities for the Properties up to the Sale Closing Date and co-ordinated the closing and transferring of the various accounts to the Purchaser;

- e) Pursuant to the Sale Approval Order, coordinated with counsel on the closing of the Second En-Bloc Offer and prepared various closing and other adjustments;
- f) Corresponded with CIBC and counsel with updates on the receivership and in regards to the sale of the Properties;
- g) Corresponded with the Company's insurance broker in regards to the ongoing insurance coverage and the insurance claim relating to 2352 Smith Street (the "**Insurance Claim**"), as further described later in this Third Report;
- h) Reviewed, negotiated and collected on accounts receivable and other refunds owing to JMV; and
- i) Addressed additional matters as they arose from time to time.

ASSET REALIZATIONS

- 13) Pursuant to the Sale Approval Order, the Receiver and its counsel coordinated and closed the sale of the Properties with the Purchaser on the Sale Closing Date. The Receiver managed the transition of the Properties to the Purchaser and notified the remaining tenants of the sale and coordinated the transfer of the various utilities.
- 14) As part of the closing of the sale of the Properties, the Receiver executed a Mutual Undertaking to Re-Adjust (the "**Undertaking**") with the Purchaser whereby both parties agreed to make any post-closing adjustments in relation to rental receipts, property taxes, utilities and tenant security deposits. To date, the Receiver has identified and confirmed three required adjustments totalling \$4,295 for rent received post-closing and tenant security deposits paid to the Company prior to the Date of Receivership. The Receiver expects to pay these amounts to the Purchaser shortly.
- 15) In addition to the above amounts, the Receiver has identified a further security deposit of \$5,769 (the "**Potential Remaining Deposit Adjustment**") that may have been paid by a tenant prior to the Date of Receivership. The Receiver has requested that the tenant provide evidence to support this deposit, however no evidence has been provided by the tenant to date. The Receiver has undertaken to resolve this Potential Remaining Deposit Adjustment as part of its remaining duties.
- 16) As outlined in the Second Report, the Receiver was notified on December 29, 2017 that significant damage occurred to the property at 2352 Smith Street as a result of water and sewer pipes freezing. The Receiver also notified its insurance broker and a claim was initiated and approved as against the Receiver's insurance policy (the "**Insurance Claim**"). The Receiver is required to pay a \$5,000 deductible (the "**Insurance Claim Deductible**") under the insurance policy upon completion of the repair works. The Receiver has worked with the tenant, insurance broker and the Property Manager to obtain the necessary quotes and information as part of the Insurance Claim. The Receiver understands that the repair work is still ongoing and is expected to be completed by the end of April 2018. The Receiver is not aware of any remaining obligations or issues related to the Insurance Claim. The Purchaser was notified of the issue and proceeded with the sale transaction on the same terms and conditions as outlined in the Second En-Bloc Offer and the Sale Approval Order.

- 17) The only known remaining asset of JMV is the Winmar Receivable. 101146011 Saskatchewan Ltd. o/a Winmar ("**Winmar**") is a restoration company and a tenant in the JMV property located at 305 Dewdney Avenue, Regina, Saskatchewan. The Receiver understands that Winmar completed some restoration work at another property owned by JMV in the Summer of 2016 and offset this outstanding amount of \$2,108.59 (which includes \$550.08 in interest) against its final January 2018 rent payment owing to the Receiver. Winmar improperly asserted a right to set-off the pre-receivership amount owing from JMV against a post-receivership debt owing to JMV. This action by Winmar is in contravention of paragraph 9 of the Receivership Order and the Receiver is attempting to recover this amount through an order of the Court.
- 18) The Receiver is not aware of any other remaining unrealized assets of the Company.

STATUTORY CLAIMS AND DUTIES

- 19) The Company's records did not indicate that any amounts were owing to the Canada Revenue Agency ("**CRA**") in relation to payroll source deductions or goods and services tax ("**GST**"). The Receiver requested that CRA complete trust audits on JMV's pre-receivership payroll and GST accounts but this was not done as CRA indicated that the Company was relatively dormant for nine months prior to the Date of Receivership. CRA did file a proof of claim for GST arrears for \$13,530 but only \$1,386 of the total was filed as a deemed trust claim (the "**GST Deemed Trust Claim**"). CRA also filed an unsecured claim for corporate tax arrears of \$16,281. The Receiver has remitted the GST Deemed Trust claim amount to CRA and is not aware of any other priority amounts owing to CRA.
- 20) The Company did not have any employees at the Date of Receivership and the Receiver understands through a review of the Company's records and discussions with former employees that there were no wages or other arrears that would qualify as potential priority claims under the Wage Earner Protection Program Act.
- 21) The Receiver has filed all of the required post-receivership GST returns up to March 31, 2018 and may potentially receive, if there are no outstanding issues with CRA, a GST refund for a maximum of approximately \$14,000 (the "**GST Refund**") after the final GST return is filed with CRA.
- 22) Aside from the filing of the final GST and PST returns, the Receiver has completed all aspects concerning the administration of the receivership and is not aware of any other statutory obligations it is required to fulfill.

CREDITORS

- 23) As noted previously, CIBC is the principal secured creditor of the Company, was owed approximately \$3.7 million (plus interest and costs accruing thereafter) at the Date of Receivership, and has a valid and enforceable security as reported in the Security Opinion. Pursuant to the Sales Process Order and Sales Order, the Receiver has made interim distributions to date to CIBC of \$2.6 million. In addition, on November 3, 2017 Assumption Life paid \$503,534 (the "**Insurance Payout**") to CIBC directly as the full net proceeds payable under the \$500,000 life insurance policy owned by JMV for Mr. Garrett. CIBC has confirmed that, after applying the above payments to its indebtedness, the remaining balance owing to CIBC totals approximately \$791,425 as at April 9, 2018 (the "**CIBC Remaining Indebtedness**").

- 24) Based on the remaining funds available as outlined in the Final SRD attached to this Third Report as "**Appendix B**", the Receiver does not expect any funds to be available to any unsecured creditors of the Company. The Receiver proposes to pay any remaining net funds, after receipt and payment of any final amounts, to CIBC up to the amount of the CIBC Remaining Indebtedness (the "**CIBC Final Distribution**").

FEES AND DISBURSEMENTS OF THE RECEIVER AND ITS COUNSEL

- 25) The Receiver's fees in relation to the administration of the Receivership total approximately \$210,055 (excluding taxes), of which \$179,334 have been paid to date. This total includes a final invoice for Receiver's fees from February 2018 to closing for approximately \$14,498 (excluding taxes).
- 26) McKercher and MLT's fees and disbursements in relation to the administration of the Receivership total approximately \$49,633 (excluding taxes), including estimated fees of \$8,500 to complete the administration.
- 27) The professional fees and disbursements of the Receiver and its counsel are summarized in the Summary of Professional Fees and Disbursements, which is attached to this Third Report as "**Appendix A**".
- 28) In the Receiver's opinion, the services rendered in respect of these fees and disbursements have been duly rendered in response to the required and necessary duties of the Receiver hereunder, and are reasonable in the circumstances. Detailed time records supporting the invoices are available in the offices of the Receiver, McKercher and MLT.

STATEMENT OF RECEIPTS AND DISBURSEMENTS

- 29) The Receiver's Final SRD is attached to this Third Report as "**Appendix B**". As at April 3, 2018, the Receiver held approximately \$233,462 of funds in trust.
- 30) The more significant actual receipts and disbursements in the Receivership and included in the Final SRD are as follows:
- a) Proceeds from the sale of the Properties for \$3.0 million;
 - b) Proceeds from the sale of the Artworks for approximately \$237,000;
 - c) Rental income from the Properties for approximately \$165,000;
 - d) Accounts receivable collections for approximately \$49,000;
 - e) Receiver's fees and disbursements for approximately \$179,000;
 - f) Realtor's commissions on the sale of the Properties for \$120,000;
 - g) Property taxes for the Properties of approximately \$79,000;
 - h) Receiver's legal fees and disbursements for approximately \$41,000;

- i) Utility payments for the Properties for approximately \$40,000;
 - j) Auctioneer's commissions and costs for the Artworks of approximately \$31,000; and
 - k) Interim distribution to CIBC for \$2.6 million. As outlined previously, the Insurance Payout to CIBC from Assumption Life was made directly to CIBC rather than to the Receiver and this is reflected in the notes to the Final SRD.
- 31) The estimated remaining unpaid disbursements included in the Final SRD (the "**Remaining Unpaid Disbursements**"), are as follows:
- a) \$30,721 (excluding taxes) for Receiver's fees, comprising \$16,223 for Receiver's fees invoiced and unpaid up to January 31, 2018 and \$14,498 for the estimated remaining Receiver's fees to obtain its discharge;
 - b) \$8,500 (excluding taxes) for the estimated remaining legal fees for McKercher and MLT to complete the administration;
 - c) \$10,065 for post-closing sale adjustments as discussed previously in this Report, including the Potential Remaining Deposit Adjustment for \$5,769; and
 - d) \$5,000 for the Insurance Claim Deductible.
- 32) The estimated remaining receipts include the post-receivership GST refund of approximately \$14,000 along with the Winmar Receivable.
- 33) Following collection of the remaining receipts and payment of the Remaining Unpaid Disbursements, it is anticipated that approximately \$195,000 of funds will remain in the Receiver's account for the CIBC Final Distribution.

CONCLUSIONS AND RECOMMENDATIONS

- 34) Based on the foregoing, the Receiver respectfully requests that the Court approve the relief requested in paragraph 7b) of this Third Report.

All of which is respectfully submitted at Calgary, Alberta this 18th day of April, 2018.

DELOITTE RESTRUCTURING INC.

In its capacity as Receiver for the estate of
JMV Enterprises Ltd. and not in its personal capacity



Jeff Keeble, CA, CIRP, LIT, CBV
Senior Vice-President

Appendix A – Summary of Professional Fees and Disbursements

**In the Matter of the Receivership of JMV Enterprises Ltd.
 Summary of Receiver and Legal Invoices
 As at April 18, 2018**

Invoice #	Start Date	End Date	Fees	Subtotal	GST	Total	Notes
<u>Deloitte Restructuring Inc. (Receiver) Invoices</u>							
4331174	26-Mar-17	13-Apr-17	\$ 38,163.00	\$ 38,163.00	\$ 1,908.15	\$ 40,071.15	
4417295	17-Apr-17	2-Jun-17	59,563.80	59,563.80	2,978.19	62,541.99	
4471938	5-Jun-17	28-Jul-17	29,863.80	29,863.80	1,493.19	31,356.99	
4500425	31-Jul-17	30-Sep-17	23,825.40	23,825.40	1,191.27	25,016.67	
4532193	1-Oct-17	31-Oct-17	8,456.40	8,456.40	422.82	8,879.22	
8000021790	1-Nov-17	30-Nov-17	12,392.40	12,392.40	619.62	13,012.02	
45378033	1-Dec-17	31-Dec-17	7,069.20	7,069.20	353.46	7,422.66	
8000064443	1-Jan-18	31-Jan-18	16,223.00	16,223.00	811.15	17,034.15	Unpaid
8000082213	1-Feb-18	Discharge	14,497.80	14,497.80	724.89	15,222.69	Unpaid
Total Receiver			\$ 210,054.80	\$ 210,054.80	\$ 10,502.74	\$ 220,557.54	

MLT Aikins LLP (Legal) Invoices

Invoice #	Start Date	End Date	Fees	Disbursements	Subtotal	GST	PST	Total
701235	10-Apr-17	26-May-17	\$ 10,098.00	\$ 541.01	\$ 10,639.01	\$ 529.04	\$ 605.88	\$ 11,773.93
705193	1-Jun-17	28-Jun-17	3,744.00	18.70	3,762.70	188.14	224.64	4,175.48
707974	13-Jul-17	21-Jul-17	4,792.50	70.50	4,863.00	243.19	287.55	5,393.74
711462	9-Aug-17	28-Aug-17	724.50	23.57	748.07	37.34	43.47	828.88
716073	1-Sep-17	1-Sep-17	572.50	0.25	572.75	28.64	34.35	635.74
720045	16-Oct-17	31-Oct-17	945.00	0.25	945.25	47.26	56.70	1,049.21
724843	1-Nov-17	29-Nov-17	1,732.00	8.75	1,740.75	87.04	103.92	1,931.71
730679	5-Dec-17	26-Jan-18	8,857.50	303.00	9,160.50	455.55	531.45	10,147.50
734337	1-Feb-18	23-Feb-18	857.50	0.25	857.75	42.89	51.45	952.09
Estimate to complete			7,500.00	-	7,500.00	375.00	450.00	8,325.00
Total			39,823.50	966.28	40,789.78	2,034.07	2,389.41	45,213.26

McKercher LLP (Legal) Invoices

Invoice #	Start Date	End Date	Fees	Disbursements	Subtotal	GST	PST	Total
240702	28-Mar-17	19-May-17	6,901.50	308.96	7,210.46	360.53	414.09	7,985.08
248882	15-Aug-17	16-Aug-17	622.50	9.84	632.34	31.62	37.35	701.31
Estimate to complete			1,000.00		1,000.00	50.00	60.00	1,110.00
Total			8,524.00	318.80	8,842.80	442.15	511.44	9,796.39
Total Legal			\$ 48,347.50	\$ 1,285.08	\$ 49,632.58	\$ 2,476.22	\$ 2,900.85	\$ 55,009.65

Appendix B – Receiver’s Final
Statement of Receipts and
Disbursements for the Period from
March 29, 2017 to April 3, 2018

**In the Matter of
the Receivership of JMV Enterprises Ltd.
Statement of Receipts and Disbursements
For the Period From March 29, 2017 to April 3, 2018**

Description	As at April 3, 2018	Estimates to Close	Estimated Final Amount	Notes
Receipts				
Sale of property	\$ 3,000,000		\$ 3,000,000	
Sale of artworks	236,489		236,489	
Rental income	164,846		164,846	
Accounts receivable collections	48,784	2,109	50,893	
GST received / refunds	9,317	14,220	23,537	1
Sale of office equipment	7,155		7,155	
Utility refunds	7,454		7,454	
Insurance refunds	848		848	
Funds advanced from insurer	-		-	
PST received	429		429	
Other income	132		132	
Interest	1,398		1,398	
Total Receipts	3,476,852	16,328	3,493,180	
Disbursements				
Receiver's fees and disbursements	179,334	30,721	210,055	
Realtor commissions	120,000		120,000	
Property taxes	79,204		79,204	
Legal fees	41,133	8,500	49,633	
Utilities	39,858		39,858	
Auctioneer's commission/costs	30,567		30,567	
Artworks purchase	27,262		27,262	
Repairs and maintenance	26,974		26,974	
Insurance	19,277		19,277	
Artworks freight	14,936		14,936	
GST paid	23,537		23,537	
GST paid - deemed trust claim	1,386		1,386	
Real property reports	12,350		12,350	
Property manager fees	10,000		10,000	
Security deposit refunds / sale adjustments	4,835	10,065	14,899	2
PST paid	11,298		11,298	
Insurance claim deductible	-	5,000	5,000	
Security monitoring	767		767	
Pest control	603		603	
Filing fees	70		70	
Distribution to CIBC	2,600,000	195,505	2,795,505	3
Total Disbursements	3,243,389	249,791	3,493,180	
Excess of receipts over disbursements	\$ 233,462	\$ (233,462)	\$ -	

Notes:

- 1** The Receiver has a post-receivership GST refund of \$14,220 owing from the Canada Revenue Agency which it expects to collect.
- 2** The Receiver will be required to pay at least \$4,295 in post-closing adjustments for tenant security deposits and rent received post-closing. Subject to further verification, the Receiver may also be required to pay a further \$5,770 post-closing adjustment for a tenant security deposit.
- 3** On November 3, 2017 Assumption Life paid \$503,534 to CIBC directly as the full net proceeds payable under the \$500,000 life insurance policy owned by JMV for Mr. Garrett.