



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 **SECOND REPORT OF THE COURT APPOINTED RECEIVER
OF JMV ENTERPRISES LTD.**

DATED JANUARY 4, 2018

PREPARED BY DELOITTE RESTRUCTURING INC.

ADDRESS FOR SERVICE AND
CONTACT INFORMATION OF
PARTY FILING THIS DOCUMENT

Counsel

MLT Aikins LLP
1500, 410 22nd Street East
Saskatoon SK S7K 5T6

Attention: Jeffrey M Lee Q.C. / Paul Olfert

Telephone/Facsimile: 306-975-7136 / 306-975-7145

Receiver

Deloitte Restructuring Inc.
700, 850 – 2nd Street SW
Calgary, AB T2P 0R8

Attention: Jeff Keeble

Telephone/Facsimile: 604-235-4197 / 604-685-0395

Email: jkeeble@deloitte.ca

TABLE OF CONTENTS

INTRODUCTION	1
Purpose	2
Terms of Reference	2
POWERS OF THE RECEIVER.....	3
ACTIONS OF THE RECEIVER	3
PROPERTY SALES PROCESS	4
ARTWORK SALES PROCESS.....	5
LIFE INSURANCE POLICY	6
STATEMENT OF RECEIPTS AND DISBURSEMENTS	6
CONCLUSIONS AND RECOMMENDATIONS	7

APPENDIX

Appendix "A" – Receiver's Statement of Receipts and Disbursements from March 29, 2017
to December 31, 2017

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 life insurance policy on the life of the Guarantor (collectively the "**CIBC Security**"). The real property of JMV includes eight (8) residential and commercial properties located in and around Regina, Saskatchewan (the "**Properties**").
- 3) The Receiver's independent legal counsel, McKercher LLP, has conducted an independent review of the validity and enforceability of the CIBC Security and has 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 is also using MLT Aikins LLP 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. ("**Maynards**") and McDougall Auctioneers Ltd. ("**McDougall**") 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 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) This report of the Receiver (the "**Second Report**") should be read in conjunction with the first report of the Receiver dated May 19, 2017 and capitalized terms used in this Second Report but not defined herein are as defined in the First Report or the Receivership Order.
- 6) In addition to this Second Report, the Receiver has prepared a confidential supplement to the Second Report dated January 5, 2018 (the "**Second Confidential Report**") which the Receiver is seeking to be sealed in the Court file.

Purpose

- 7) The purpose of this Second Report is to:
 - a) Provide the Court with an update of the Receiver's activities since the date of the First Report;
 - b) Respectfully recommend that the Court:
 - i. Approve the reported activities of the Receiver to date in respect of administering these receivership proceedings;
 - ii. Approve 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 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 (whether contractual, statutory, or otherwise), hypothecs, caveats, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, levies, charges, or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise, upon the delivery of a certificate by the Receiver certifying that the transaction contemplated by the offer has concluded; and
 - iii. Approve an Order sealing the Second Confidential Report in the Court file.

Terms of Reference

- 8) In preparing this Second 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 Second Report. Any use which any party makes of this Second Report, or any reliance or decision to be made based on this Second Report, is the sole responsibility of such party.
- 10) All dollar amounts in this Second Report are in Canadian dollars, unless otherwise indicated.

POWERS OF THE RECEIVER

- 11) The Receiver's powers are detailed in Paragraph 3 of the Receivership Order and include, among others, the power to take and maintain possession and control of the assets of the Company; the power to manage, operate and carry on the business of the Company; and, the power to market and sell the assets of the Company (subject to Court approval if any one transaction exceeds \$50,000 or if the aggregate transactions exceed \$100,000).
- 12) The Receivership Order also authorized 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 accessed the Borrowing Facility to date.

ACTIONS OF THE RECEIVER

- 13) The Receiver has undertaken the following steps with respect to the assets and operations of the Company since the date of the First Report:
 - a) Corresponded with various creditors and other interested parties in regards to the receivership proceedings;
 - b) Had 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 where required;
 - c) Corresponded with the tenants of the Properties and assisted in the collection of rent;
 - d) Organized and maintained the utilities and maintenance for the Properties and arranged for the payment of the property taxes;
 - e) Pursuant to the Sale Process Approval Order, executed a listing agreement with Colliers for the sale of the Properties and corresponded with Colliers regarding interested parties, property inspections and assessing offers to purchase the Properties (as further described later in this Second Report);
 - f) Corresponded with CIBC and counsel with updates on the receivership and in regards to offers to purchase the Properties;
 - g) Corresponded with prospective purchasers and counsel regarding offers to purchase the Properties, the terms and conditions of sale and coordinated revisions of the offers;
 - h) Obtained real property reports for the Properties to assist with the sales process;
 - i) Pursuant to the Sale Process Approval Order, executed consignment agreements with Maynards and McDougall for the sale of the Artworks and oversaw the sales process (as further described later in this Second Report);
 - j) Advised the Company's insurance broker of the receivership and confirmed and arranged for amendments to the existing insurance policies to reflect the current state of the Properties;

- k) Corresponded with and provided the required information to Assumption Mutual Life Insurance Company ("**Assumption Life**") in order to realize on the \$500,000 life insurance policy owned by JMV for Mr. Garrett (the "**Policy**") (as further described later in this Second Report);
- l) Reviewed, negotiated and collected on accounts receivable and other refunds owing to JMV; and
- m) Contacted the Canada Revenue Agency ("**CRA**") to request trust audits and to open a new GST account to facilitate GST filings for the period subsequent to the Date of Receivership. CRA has filed a trust claim for a pre-receivership GST claim of \$13,529 (the "**GST Priority Claim**") and an unsecured pre-receivership corporate income tax claim of \$16,300. The Receiver will be paying the GST Priority Claim before its discharge.

PROPERTY SALES PROCESS

- 14) Pursuant to the Sale Process Approval Order, the Receiver entered into an initial four (4) month listing agreement with Colliers on June 7, 2017 (the "**Colliers First Listing Agreement**"). Subsequent to executing the Colliers First Listing Agreement, the Receiver understands that Colliers undertook the following sales and marketing activities:
 - a) Created brochures for each of the Properties and uploaded the brochures to the Colliers Canada website (the "**Colliers Website**") on June 8, 2017;
 - b) Updated the Colliers Website throughout the sales process which the Receiver understands the online views per property have ranged from 400 to 750, depending on the property, during the period from June 2017 to December 2017;
 - c) Posted large 4' x 4' "For Sale" signs at all of the Properties on June 9, 2017 that are visible to significant traffic of between 1,800 and 17,000 vehicles per day, depending on the location;
 - d) Sent email blasts to 36 external agents, 10 local brokerages and all of the Colliers agents in Saskatchewan; and
 - e) Contacted over 60 parties directly to determine their potential interest in the Properties and conducted approximately 80 showings of the Properties to date.
- 15) During the period from June to August 2017, several offers were received for the individual Properties, along with one (1) en-bloc offer for all of the Properties (the "**Initial En-Bloc Offer**").
- 16) The Receiver completed an analysis of the offers received and following discussions with Colliers and CIBC, the Receiver decided to proceed with the Initial En-Bloc Offer on August 22, 2017, which was subject to financing and further due diligence. Unfortunately the Initial En-Bloc Offer failed to close for reasons detailed in the Second Confidential Report.

- 17) Following the collapse of the Initial En-Bloc Offer, the Receiver requested that Colliers outline how it was going to remarket the Properties, including any potential list price revisions and changes in the marketing strategy. After a discussion with CIBC, a new listing agreement was entered into with Colliers on November 24, 2017 that included listing price reductions and an expiry date of February 22, 2018 (the "**Colliers Second Listing Agreement**").
- 18) During the period of the Colliers Second Listing Agreement, a further three (3) offers were received for individual properties along with the Second En-Bloc Offer for all of the Properties. A summary of all of the offers received for the Properties is appended to the Second Confidential Report.
- 19) The Receiver completed a further analysis of the additional offers received and following discussions with Colliers and CIBC, the Receiver decided to proceed with the Second En-Bloc Offer. The Receiver conditionally accepted the Second En-Bloc Offer on November 28, 2017 and a final price amendment was proposed and the final sale conditions were removed by the purchaser on December 19, 2017. The Receiver, after consultation with CIBC and Colliers, conditionally accepted the revised price amendment on December 28, 2017 and the Second En-Bloc Offer became unconditional.
- 20) Subject to the approval of the Court, the Second En-Bloc Offer is expected to close on or around January 12, 2018. The terms of the agreement are more fully described in and a copy of the Second En-Bloc Offer is appended to the Second Confidential Report.
- 21) The Receiver is recommending the acceptance of the Second En-Bloc Offer for reasons outlined in the Second Confidential Report.
- 22) The Receiver has shared and discussed the Second En-Bloc Offer with CIBC, as described in the Second Confidential Report, and CIBC is in agreement with accepting the offer, subject to the approval of the Court.
- 23) The Receiver notes that on December 29, 2017 it was notified by its Property Manager of damage occurring to the property at 2352 Smith Street as a result of water and sewer pipes freezing. This has caused significant damage to the plumbing, interior walls and interior flooring of the property. The Receiver has notified its insurance broker who has initiated a claim against the Receiver's insurance policy and the Receiver is also working with the Property Manager to engage plumbing and property restoration trades to repair the damage to the property. The purchaser has been made aware of the situation and the Receiver does not expect this incident to impede the closing of the sale of the Properties as outlined in the Second En-Bloc Offer.

ARTWORK SALES PROCESS

- 24) Pursuant to the Sale Process Approval Order and the approval of the Auction Proposals, the Receiver entered into consignment agreements with McDougall on June 7, 2017 and Maynards on June 8, 2017.
- 25) Under the terms of the Maynards consignment agreement, Maynards advanced approximately \$29,000 to the Receiver (the "**Maynards Advance**") to pay outstanding monies owed to the two galleries for the additional artworks that were being held by the galleries due to non-payment by the Company (the "**Additional Artworks**"). Upon receipt of these funds, both galleries forwarded the Additional

Artworks to Maynards for inclusion in their auction and the ultimate net sale prices exceeded the Maynards Advance.

- 26) The McDougall artwork auction was completed on July 31, 2017 and resulted in gross sales of approximately \$25,000. Following the deduction of auctioneer commissions and storage costs, the Receiver realized net proceeds from this sale of approximately \$16,000.
- 27) The Maynards artwork auction was completed on October 18, 2017 and resulted in gross sales of approximately \$211,000. Following the deduction of auctioneer commissions, transportation charges and return of the funds advanced by Maynards, the Receiver realized net proceeds from this sale of approximately \$146,000.

LIFE INSURANCE POLICY

- 28) As outlined in the First Report, JMV owned the Policy but no claim had been filed against the Policy as a death certificate had not been issued due to the ongoing investigation by the coroner into the circumstances surrounding Mr. Garrett's unfortunate death.
- 29) The Receiver obtained the coroner's report on October 27, 2017 which indicated that Mr. Garrett died as a result of an accidental drowning. Following receipt of the coroner's report, the Receiver completed and compiled all of the required documents and filed a claim against the Policy on October 30, 2017.
- 30) On November 3, 2017 Assumption Life paid \$503,534 as full net proceeds payable under the Policy. The Receiver notes that this receipt is not reflected in the Statement of Receipts and Disbursements attached as Appendix "A" as the payment from Assumption Life was made directly to CIBC rather than to the Receiver. CIBC has advised that this receipt has been applied against the outstanding balance of the CIBC Indebtedness.

STATEMENT OF RECEIPTS AND DISBURSEMENTS

- 31) Attached as Appendix "A" is a Statement of Receipts and Disbursements reflecting the administration of the JMV receivership for the period from March 29, 2017 to December 31, 2017. As at December 31, 2017, the Receiver held approximately \$65,000 of funds in trust.
- 32) As at the date of this report, the Receiver has realized sufficient funds from the sale of the Artworks and ongoing rental receipts to not require access to the Borrowing Facility.
- 33) Should the proposed sale of the Properties not be approved by the Court or not close, the Receiver will require access to the Borrowing Facility to fund the payment of ongoing repairs and maintenance, property taxes, other holding costs and the Receiver's ongoing professional fees and costs prior to the receipt of any funds from the sale of the Properties.
- 34) Pursuant to the Sale Process Approval Order and assuming the Second En-Bloc Offer closes, the Receiver is proposing to pay out any excess funds in the estate to CIBC up to the amount of the CIBC Indebtedness.

CONCLUSIONS AND RECOMMENDATIONS

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

All of which is respectfully submitted at Calgary, Alberta this 4th day of January, 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 – Receiver’s Statement
of Receipts and Disbursements for
the Period from March 29, 2017 to
December 31, 2017

**In the Matter of
the Receivership of JMV Enterprises Ltd.
Statement of Actual Receipts and Disbursements
For the Period From March 29, 2017 to December 31, 2017**

Description	Amount
Receipts	
Sale of artworks	\$ 236,489
Rental income	162,146
Accounts receivable collections	48,784
GST received	9,083
Sale of office equipment	7,155
Utility refunds	6,975
PST received	429
Other income	132
Interest	54
Total Receipts	<u>471,247</u>
Disbursements	
Receiver's fees and disbursements	127,591
Property taxes	75,346
Auctioneer's commission/costs	30,567
Legal fees	28,741
Artworks purchase	27,262
Utilities	26,990
Repairs and maintenance	16,194
Insurance	15,274
Artworks freight	14,936
GST paid	13,152
Real property reports	12,350
Property manager fees	9,000
Security deposit refunds	4,835
PST paid	2,554
Security monitoring	767
Pest control	335
Filing fees	70
Total Disbursements	<u>405,963</u>
Excess of receipts over disbursements	<u><u>\$ 65,284</u></u>