



Court File No.:

**ONTARIO
SUPERIOR COURT OF JUSTICE**

COMMERCIAL LIST

B E T W E E N :

Andrew Peek and Constantine Trevor Speis

Applicants

- and -

City & Stay Hotel Group Ltd.

Respondent

**APPLICATION UNDER SECTION 243(1) OF THE *BANKRUPTCY AND
INSOLVENCY ACT*, R.S.C. 1985, C. B-3, AS AMENDED AND SECTION 101 OF
THE *COURTS OF JUSTICE ACT*, R.S.O. 1990, C. C.43**

NOTICE OF APPLICATION

TO THE RESPONDENTS:

A LEGAL PROCEEDING HAS BEEN COMMENCED by the applicant. The claim made by the applicant appears on the following page.

THIS APPLICATION will come on for a hearing on a date to be established by the Commercial List Office

- In person
- By telephone conference
- By video conference

at a link to be provided by the Applicant in advance of the hearing.

IF YOU WISH TO OPPOSE THIS APPLICATION, to receive notice of any step in the application or to be served with any documents in the application, you or an Ontario lawyer acting for you must forthwith prepare a notice of appearance in Form 38A prescribed by the *Rules of Civil Procedure*, serve it on the applicant's lawyer or, where the applicant does not have a lawyer, serve it on the applicant, and file it, with proof of service, in this court office, and you or your lawyer must appear at the hearing.

IF YOU WISH TO PRESENT AFFIDAVIT OR OTHER DOCUMENTARY EVIDENCE TO THE COURT OR TO EXAMINE OR CROSS-EXAMINE WITNESSES ON THE APPLICATION, you or your lawyer must, in addition to serving your notice of appearance, serve a copy of the evidence on the applicant's lawyer or, where the applicant does not have a lawyer, serve it on the applicant, and file it, with proof of service, in the court office where the application is to be heard as soon as possible, but at least four days before the hearing.

IF YOU FAIL TO APPEAR AT THE HEARING, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO OPPOSE THIS APPLICATION BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

Date: August ³⁰~~26~~, 2022

Issued by _____
Local registrar

Address of court office 330 University Avenue
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Counsel for the Respondent.

APPLICATION

1. The applicants make application for an order:
 - (a) if necessary, abridging the time for service of the Notice of Application and the Application Record, validating and deeming good and sufficient service of the foregoing upon the parties set out in the attached Service List, and directing that any further service of the Notice of Application and Application Record be dispensed with;
 - (b) appointing Rosen Goldberg Inc. (“**RGI**”) as first a receiver, and then a receiver and manager, over all of the assets, property and undertakings (the “**Property**”) of the respondent City & Stay Hotel Group Ltd (“**City & Stay**”), pursuant to section 243 of the *Bankruptcy and Insolvency Act* (“**BIA**”) and as receiver pursuant to section 101 of the *Court of Justice Act* (“**CJA**”);
 - (c) granting the receiver and their counsel a charge (the “**Receiver’s Charge**”) over the Property to secure their fees and disbursements in respect of these proceedings;
 - (d) granting a charge (the “**Receiver’s Borrowings Charge**”) over the Property for the purpose of funding the exercise of the powers and duties conferred upon the receiver pursuant to the proposed appointment order; and,
 - (e) Such further and other relief as counsel may advise and this Honourable court may deem just.
2. The grounds for the application are:
 - (a) The respondent operates a boutique hotel located at 296 Brunswick Avenue in Toronto (the “**Hotel**”). The physical building is owned by the 296 Brunswick Avenue Limited Partnership (“**296 LP**”). City & Stay manages the Hotel on the 296 LP’s behalf pursuant to an operating

agreement, and rents the ground floor of the building for its offices and a restaurant.

- (b) The applicants, Andrew Peek (“**Peek**”) and Constantine T. Speis (“**Speis**”), are the respondent’s secured creditors. Both are resident in Toronto.
- (c) Along with Justin Fong (“**Fong**”), City & Stay’s CEO, Speis and Peek are limited partners in 296 LP. Peek is also a shareholder in the corporate general partner.
- (d) Peek, Speis, and Fong were all early shareholders of City & Stay. As shareholders, each applicant signed an unlimited personal guaranty (each a “**Guaranty**”) when City & Stay entered into a credit facility agreement with the Toronto Dominion Bank (“**TD**”) in 2018.
- (e) In or about January of 2021, Peek sold his shares in City & Stay Fong. As part of that agreement, Fong agreed to indemnify Peek for his obligations under the Guaranty.
- (f) In or about April of 2021, Speis sold his shares in City & Stay to Fong. As part of that agreement, Fong agreed to indemnify Speis for his obligations under the Guaranty.
- (g) As security for City & Stay’s obligations to TD under the credit facility, City & Stay granted TD a general security interest over all of its present and after acquired property.
- (h) TD’s security interest was duly perfected and registered under the *Personal Property Security Act*.
- (i) Pursuant to the credit facility agreement and the general security agreement, City & Stay agreed that upon default, TD would have the power to appoint a receiver, or apply to have a receiver appointed by the Court.

- (j) On or about June 22, 2022, TD sent a demand letter to City & Stay, as well as Peek and Speis, advising that City & Stay was in breach of its obligations, and demanding payment in full of all outstanding amounts. This letter was accompanied by a notice under s. 244(1) of the *BIA*.
- (k) On or about July 6, 2022, TD and City & Stay entered into a forbearance agreement, pursuant to which City & Stay:
 - (i) Acknowledged that it was in default of its obligations.
 - (ii) Acknowledged that it had received a notice of TD's intention to exercise its security interest under s.244(1) of the *BIA*.
 - (iii) Agreed that, as of June 21, 2022, its total indebtedness to TD was \$487,389.19, and that this amount was valid and accurate.
 - (iv) Agreed that the security interest could be enforced at any time.
 - (v) Agreed that it would consent to the appointment of a receiver.
 - (vi) Signed a consent to the appointment of a receiver.
- (l) Despite TD's forbearance, City & Stay was unable to repay the indebtedness in accordance with the terms and conditions set out in the aforementioned forbearance agreement.
- (m) On or about August 16, 2022, Peek and Speis paid TD \$542,526.73 in satisfaction of the Guaranties.
- (n) The obligations guaranteed, as well as TD's security interest, were assigned to Peek and Speis pursuant to a written agreement.
- (o) Further, Peek and Speis are entitled to step into TD's position as a secured creditor (and as the beneficiary of Fong's Guaranty) as sureties under the *Mercantile Law Amendment Act*.

- (p) City & Stay does not have the funds to repay the indebtedness. City & Stay is operating at a loss, and does not have the cash flow to maintain its business and pay its obligations, including the indebtedness.
- (q) Since at least June 2021, the respondent has made various attempts to secure additional debt or equity funding for its business to solve its ongoing liquidity problems, all of which were unsuccessful.
- (r) Peek and Speis, as secured creditors, are now entitled to appoint a receiver
- (s) The respondent consented to the appointment of a receiver.
- (t) It is just and convenient that a receiver be appointed over the Property.
- (u) RGI is a licensed trustee under the BIA and has agreed to act as receiver, if so appointed.
- (v) The respondent has a liquor sales license. Upon that license being transferred to RGI as receiver, RGI has also agreed to act as manager.
- (w) If necessary, the applicants are prepared to lend funds to cover the costs of a receivership, including adequate funds to bridge the respondent's ongoing cash flow deficiency in order to maintain its operations, up to \$50,000, provided that the receiver is authorized to borrow such funds and such borrowings are secured by a borrowing charge in priority to all other security interests in favour of any person, as is customary. Alternatively, the respondent's landlord has expressed a willingness to loan funds on the same basis.
- (x) Section 243 of the BIA.
- (y) Section 101 of the CJA.

(z) Rules 1.04, 2.01, 2.03, 3.02 and 38 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg 194, as amended.

(aa) Such further and other grounds as counsel may advise and this Honourable Court may accept.

3. The following documentary evidence will be used at the hearing of the application:

(a) The Affidavit of Constantine T. Speis, to be affirmed; and

(b) Such further and other evidence as counsel may advise and this Honourable Court may permit.

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AUGUST ~~26~~, 2022

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| <p>MILLER THOMSON LLP 40 King St. W #5800 Toronto, ON M56 3S1</p> <p>Larry Ellis Tel: 416.595.8693 Email: lellis@millerthomson.com</p> <p>Sam Massie Tel: 416.595.8641 Email: smassie@millerthomson.com</p> <p><i>Counsel for the Respondent.</i></p> | <p>WEIR FOULDS LLP 66 Wellington St. W # 4100 Toronto, ON M5K 1B7</p> <p>Philip Cho Tel: 416.619.6296 Email: pcho@weirfoulds.com</p> <p><i>Counsel for the Proposed Receiver</i></p> |
| <p>ROSS NASSERI LLP 123 John St #300 Toronto, ON M5V 2E2</p> <p>Mark Ross Tel: 416.593.7107 Email: mross@rossnasseri.com</p> <p><i>Counsel for the 296 Brunswick Ave, LP, the Respondent's Landlord.</i></p> | <p>MINISTRY OF FINANCE (ONTARIO) LEGAL SERVICES BRANCH College Park, 11th Floor 777 Bay Street Toronto, ON M5G 2C8 Tel. 905.440.2476</p> <p>Steven Groeneveld (Steven.Groeneveld@ontario.ca)</p> |
| <p>DEPARTMENT OF JUSTICE CANADA #400-120 Adelaide Street West Toronto, ON</p> | |

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Peek et. al. City & Stay Hotel Group Ltd.
Applicants and Respondent

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Proceeding commenced at **TORONTO**

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