

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

IN THE MATTER OF 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, AS AMENDED

B E T W E E N:

ROMSPEN INVESTMENT CORPORATION

Applicant

-and-

**HORSESHOE VALLEY LANDS LTD.
and HORSESHOE RIDGE HOMES INC.**

Respondents

**SUPPLEMENTARY MOTION RECORD OF THE RECEIVER,
ROSEN GOLDBERG INC.**

(Motion re: Sale Procedure - Returnable on November 15, 2017)

November 13, 2017

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TAB 1

IN THE MATTER OF THE RECEIVERSHIP OF
Horseshoe Valley Lands Ltd.

Supplement to the Fifth Report of Rosen Goldberg Inc.



ROSEN GOLDBERG
INSOLVENCY & RESTRUCTURING

Court File No. CV-16-11468-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

IN THE MATTER OF SECTION 243 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, AS AMENDED

BETWEEN:

ROMSPEN INVESTMENT CORPORATION

Applicant

- and -

HORSESHOE VALLEY LANDS LTD.
and HORSESHOE RIDGE HOMES INC.

Respondents

SUPPLEMENT TO THE FIFTH REPORT OF ROSEN GOLDBERG INC.

I. INTRODUCTION

1. This Supplement to the Receiver's Fifth Report is being filed to reply to certain statements contained in the Affidavit of James C. Cooper sworn November 6, 2017, in response to the Receiver's pending sale procedure motion returnable on November 15, 2017.
2. Capitalised terms used but not defined herein shall have the meaning ascribed to them in the Fifth Report.



II. PURCHASE PRICE UNDER STALKING HORSE BID

3. Mr. Cooper notes in paragraphs 15 through 17 of his Affidavit that the Lands were listed for sale by CBRE on behalf of HVL for \$29.9 million in the aggregate. CBRE's listing began in August of 2016 until it was cancelled by the Receiver in January of 2017. Mr. Cooper further notes in paragraphs 21 and 22 that the Lands were sold conditionally for \$22 million in September of 2016 with a scheduled closing of November 6, 2016. The purchase transaction was not completed as the purchaser did not waive conditions.

4. Whereas Mr. Cooper relies on HVL's prior efforts to sell the Lands as support for his view that the proposed sale price under the Stalking Horse Bid is too low, the Receiver considers HVL's inability to complete a sale of the Lands during the period of CBRE's listing to be a factor which supports a \$20 million floor price under the proposed Sale Procedure. If, as Mr. Cooper suggests, the fair market value of the Remaining Property has been enhanced by the ongoing development activities of the Receiver, the Sale Procedure, with its attendant modest break fee and Cushman's modest commission structure, should succeed in generating Superior Bids. On the other hand, if the market does not perceive similar value in the Remaining Property, the downside risk will be borne directly by Romspen, whose loan is currently accruing per diem interest of over \$6,700. Moreover, given his view that the Remaining Property is underpriced, it will be open to Mr. Cooper (or a purchaser associated with him), to participate in the Sale Procedure and submit a Superior Bid, subject to meeting the qualified bidding requirements.

III. TEMPORARY WASTE TREATMENT SOLUTION

5. In paragraph 27 of his Affidavit, Mr. Cooper states that the completion of the approval process for Phase 4 is essential to maximize the value of the Remaining Property and requires the Township to approve HVL's interim temporary waste treatment plant pending the Township building a permanent waste water treatment plant. He further states in paragraph 25 of his Affidavit that he consented to the Appointment Order on November 29, 2016, on the condition that the Receiver would pursue approval of and implement the temporary waste treatment plant.



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6. The Receiver was not a party to communications between Mr. Cooper, his lawyers, and Romspen, or its lawyers, regarding the imposition of a term in the Appointment Order requiring the Receiver to pursue approval of or implement a temporary waste treatment plant. There is no such requirement under the Appointment Order and the Receiver would never have agreed to such an open-ended term as a condition of its appointment. Furthermore, the email agreement between counsel marked as Exhibit "D" to Mr. Cooper's Affidavit does not appear to support his assertion that he and Romspen agreed that the Receiver would pursue approval and implement the temporary waste treatment plant. Mr. Cooper's lawyer, who was one of the authors of the agreement embodied in the email, has also not provided any evidence to corroborate Mr. Cooper's interpretation of the email.
7. In paragraph 54 of his Affidavit, Mr. Cooper correctly states that he met with Brahm Rosen of the Receiver on May 15, 2017. His summary of the meeting is not, however, accurate. Although Mr. Rosen did advise Mr. Cooper that the Receiver was pursuing and would continue to pursue development activities, he did not assure Mr. Cooper that the draft plan for Phase 4 was moving forward or that a pre-servicing agreement could or would be in place with the Township by a certain date. Mr. Rosen has had ongoing communications with Mr. Cooper and kept him apprised of the pace and progress of developments. Mr. Cooper has also been communicating with the Receiver's development consultant, Carmen Fruci, as well as with officials from the Township.
8. Since its appointment, the Receiver has incurred in excess of \$812,000 in management and development costs in relation to the Lands and intends to continue incurring significant development-related expenses in relation to the Remaining Property. However, there is significant timing uncertainty associated with obtaining approval of and implementing a temporary waste treatment solution for Phase 4. The Receiver is not prepared to defer the Sale Procedure indefinitely.
9. Mr. Cooper states, in paragraph 57 of his Affidavit, that the Township advised him that approval of an interim sewage treatment solution is expected shortly. Although development efforts regarding an interim sewage solution are indeed continuing, Gerrits Engineering Limited,



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the Receiver's engineering firm, has encountered delays in obtaining input from the Nottawasaga Valley Conservation Authority ("NVCA") and the MOECC. The NVCA recently advised the engineers that it requires, among other things, further information from field crews. The work requested by the NVCA is in progress.

10. The engineers have requested a pre-consultation meeting with the Environmental Approvals Access and Service Integration Branch of the MOECC, but as of this date the MOECC has not scheduled a meeting.

11. The MOECC has advised that the interim sewage solution must be coordinated with a master servicing study involving other lands located within the vicinity of the Remaining Property, which is not complete at this time. Once the master servicing study is near completion, the engineers expect that the requested pre-consultation meeting with the MOECC will be scheduled.

12. The Receiver understands that there will be a public meeting in respect of the master servicing study in December 2017, after which there will be a period to allow for public input. Upon the receipt of public input, HVL will have an opportunity to respond. Given the timeframe, the Receiver estimates that the master servicing study will not be completed until March or April of 2018, at the earliest.

13. The Receiver is also encountering uncertainty regarding the timing of approvals pertaining to water storage and the conclusion of a responsibility agreement with the Township in relation to infrastructure works on Phase 4 and Phase 5.

14. The above-noted processes must be completed in order to proceed to the next stage of planning a detailed design for interim sewage treatment.

15. Unfortunately, it is not feasible to ascertain, with any degree of certainty, whether the enhanced value associated with achieving approval and implementation of a temporary waste treatment solution will exceed the attendant accrual of interest under the Romspen loan and increased professional costs.



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IV. LETTERS OF CREDIT AND CASH SECURITY

16. In paragraph 27 of his Affidavit, Mr. Cooper asserts that the Stalking Horse Bid is in substance a bid for a purchase price of \$17,591,032 (as opposed to \$20 million) by virtue of \$2,408,968.20 worth of irrevocable letters of credit and cash security (the "Accounts Receivable") which form part of the Purchased Assets under the terms of the Stalking Horse Bid. Although he is correct that the Accounts Receivable form part of the Purchased Assets, the net present value of the Accounts Receivable is uncertain. In relation to the \$840,000 letter of credit which Tarion is holding, Tarion has advised that until the process of rectifying deficiencies in homes that were built and sold by HRH prior to the Receiver's appointment is completed, it is unwilling to commit to a position regarding the return of the Tarion letters of credit. Tarion has further advised that it may insist on retaining the letters of credit until the applicable 7 year warranty period for major structural defects expires.

17. In relation to the letter of credit held by the Township and the letter of credit and cash security held by Hydro One, the return of same is conditional upon the successful completion of infrastructure by the ultimate developer of the Remaining Property and it is unknown when that will occur.

18. The Receiver has prepared a comparison of the estimated value of the Remaining Property according to the CBRE Opinion in relation to the \$20 million Purchase Price under the Stalking Horse Bid, a copy of which is attached as **Confidential Appendix 1**. Although the CBRE Opinion does not include and account for the Accounts Receivable, given the timing and uncertainty associated with the recovery of the Accounts Receivable, the Receiver reiterates its view that the Purchase Price payable under the Stalking Horse Bid is within the range of reasonable.

V. COMMUNICATIONS WITH SKYLINE DEVELOPMENTS

19. In paragraph 36 of his Affidavit, Mr. Cooper questions whether the Receiver has had discussions with Skyline Developments ("Skyline"), whose property abuts the Remaining Property. In fact, the Receiver met with Skyline's CEO, Blake Lyon, its CFO, Vadim Shub and



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its Senior VP of Development, Paul Mondell, on February 7, 2017. A number of matters were discussed, including an outstanding, unsecured obligation of HVL to Skyline for sewage usage, the possible closure by Skyline of one of the golf courses and issues regarding sewage treatment. The Receiver also enquired whether Skyline would be interested in purchasing the Lands, in part or in whole. The Receiver did not and has not since obtained any commitments from Skyline affecting the Remaining Property.

VI. PROPOSED AMENDMENT TO SALE PROCEDURE

20. In paragraph 44 of his Affidavit, Mr. Cooper asserts that the originally proposed diligence period is unreasonably short. The Receiver has canvassed Mr. Cooper's concern at length with Romspen and has negotiated an extension of Phase 2 with Romspen until January 31, 2018. The Receiver considers that such extension for Qualified Phase 1 Bidders to conduct due diligence represents a reasonable compromise between Romspen's desire to achieve certainty and halt interest accrual, and Mr. Cooper's desire to see the Remaining Property exposed to the market for a longer period.

21. However, the Receiver does not support Mr. Cooper's view that it would be preferable to market and sell the Remaining Property on the basis of soliciting conditional offers subject to a due diligence period. Such an open ended process is unwarranted in the circumstances. The Lands were previously listed for sale with CBRE and no sales were concluded. Moreover, given the nature and scale of the Remaining Property, the pool of prospective purchasers is likely to be limited. Prospective purchasers are also likely to be sufficiently sophisticated in terms of assessing when the requisite development approvals can be achieved.

VII. PURPORTED INTEREST OF SABI ASHAN

22. In paragraph 63 of his Affidavit, Mr. Cooper refers to a group represented by Sabi Ashan, who met with several Romspen representatives in early October of this year regarding a potential purchase or refinancing of the Remaining Property. The Receiver was advised by Richard Weldon of Romspen, that although he met with Mr. Ashan, no offer or refinancing commitment



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was presented. The Receiver also communicated with Mr. Ashan, although the extent of Mr. Ashan's advice was that he is interested in participating in the Sale Procedure.

All of which is respectfully submitted,

Dated at Toronto, Ontario, this 13th day of November, 2017.

**ROSEN GOLDBERG INC., SOLELY IN ITS CAPACITY AS
COURT-APPOINTED RECEIVER AND MANAGER OF
THE ASSETS OF HORSESHOE VALLEY LANDS LTD.
and HORSESHOE RIDGE HOMES INC.**

Rosen Goldberg Inc.

CONFIDENTIAL

APPENDIX “1”

ROMSPEN INVESTMENT CORPORATION
Applicant

-and- **HORSESHOE VALLEY LANDS LTD. et al.**
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Court File No. CV-16-11468-00CL

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