

**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 AND SECTION 68 OF THE *CONSTRUCTION ACT*, R.S.O., 1990, C. c.30, as AMENDED**

**B E T W E E N:**

**IVANO PEGORARO**

Applicant

and

**IN TOUCH RETIREMENT LIVING FOR VEGETARIANS/VEGANS INC.**

Respondent

**FACTUM OF THE APPLICANT**

*(Application returnable April 16, 2024, at 10 a.m.)*

April 15, 2024

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TO: **SERVICE LIST**

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## PART I – OVERVIEW

1. The Applicant Ivano Pegoraro applies for the appointment of Rosen Goldberg Inc., as receiver and manager of the property, assets and undertakings of the Respondent In Touch Retirement Living for Vegetarians/Vegans Inc. (the “**Debtor**”), including, without limitation, the real property known municipally as 64 King Street, in Toronto, Ontario (the “**Property**”).
2. The Debtor is indebted to the Applicant in connection with a first mortgage loan in the principal amount of \$800,000.00 (the “**Loan**”). The Loan matured on September 19, 2023 and has not been repaid, in whole or in part.
3. On January 19, 2024, the Debtor caused formal demand for payment to be made of the amount then owing under the Loan of \$845,985.29 and issued a Notice of Intention to Enforce Security (“**NITE**”) pursuant to section 244 of the *Bankruptcy Insolvency Act* (the “**BIA**”).
4. Notwithstanding the demand and the expiry of the statutory 10 day notice period under the BIA, the Loan remains outstanding.
5. By virtue of its uniqueness, size and heritage designation, the Property is ill-suited to a power of sale proceeding and will require considerable skill and expertise to market and sell effectively.

## PART II – SUMMARY OF FACTS

### A. Background

6. The Debtor is an Ontario company with its registered head office at 78-2676 Folkway Drive, in Mississauga, Ontario.<sup>1</sup>

7. The Property is located at the northeast corner of Rosemount Avenue and King Street, in Toronto. The building on the Property is a local landmark known as the "Tyrrell House" that was built in 1859 for William Tyrrell, a politician in York Township and the Village of Weston, as his grand estate. The Property is designated under the *Ontario Heritage Act* as a property of historic and architectural value or interest.<sup>2</sup>

8. Prior to 2019, the Property was operated as an unlicensed retirement home by the Debtor's sole officer and director, Elaine Lindo. In 2019, the Ontario Retirement Homes Regulatory Authority successfully applied to the Ontario Superior Court of Justice for an Order directing the Debtor and Ms. Lindo to cease operating an unlicensed retirement home on the Property.<sup>3</sup>

### B. Loan and Security

9. The Loan was advanced to the Debtor on December 21, 2022 pursuant to a Promissory Note. The Promissory Note is collaterally secured by a first ranking mortgage registered against the Property on December 21, 2022 as Instrument No. AT6252848. Monthly interest only is payable under the Loan at the rate 7.99% *per annum*.

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<sup>1</sup> Affidavit of Ivano Pegoraro sworn December 22, 2023 ("**Pegoraro Affidavit**") at para 6, Application Record ("**AR**"), Tab 2, p. 28; Exhibit A, Pegoraro Affidavit, AR, Tab 2, pp. 33-39.

<sup>2</sup> Pegoraro Affidavit at para 7, AR, Tab 2, p. 28.

<sup>3</sup> *Retirement Homes Regulatory Authority v. In Touch Retirement Living for Vegetarians/Vegans Inc.*, [2019 ONSC 3401 \(CanLII\)](#).

10. The additional provisions to the mortgage expressly provide that upon default under the mortgage, the Applicant is entitled to appoint a receiver to manage the building and sell the Property.<sup>4</sup>

11. Apart from a registered assignment of rents the Applicant obtained from the Debtor in connection with the mortgage, there are no other encumbrances registered against the Property.<sup>5</sup>

### **C. Default and Demand**

12. The Loan was not repaid upon maturity on September 19, 2023. On January 19, 2024, formal demand was made of the amount then owing of \$845,985.29 and a NITE was issued.<sup>6</sup>

13. On January 30, 2024, the Applicant's lawyers received correspondence from Dalkeith Palmer of the law firm of Prouse, Dash & Crouch LLP in Brampton, requesting an indulgence of a week to respond to the demand.<sup>7</sup>

14. The Applicant's lawyers responded to Mr. Palmer by email on January 30, 2024 and confirmed that the Applicant was agreeable to granting a one week extension before taking any further steps, but no further extension would be granted thereafter.<sup>8</sup>

15. Mr. Palmer appeared on behalf of the Debtor on a limited retainer before Justice Penny at a scheduling appointment on March 19, 2024 and advised the Debtor hoped to refinance. The Applicant has not subsequently received any communication from Mr. Palmer or the Debtor.

### **PART III – THE ISSUE**

16. The sole issue on this application is whether it is just or convenient for the Court to appoint Rosen Goldberg Inc. as receiver on the terms of the proposed receivership order.

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<sup>4</sup> Exhibit D, Pegoraro Affidavit, AR, Tab 2, pp. 60-66.

<sup>5</sup> Exhibit E, Pegoraro Affidavit, AR, Tab 2, p. 68.

<sup>6</sup> Exhibit F, Pegoraro Affidavit, AR, Tab 2, pp. 70-74.

<sup>7</sup> Exhibit G, Pegoraro Affidavit, AR, Tab 2, p. 76.

<sup>8</sup> Exhibit H, Pegoraro Affidavit, AR, Tab 2, pp. 78-80.

## PART IV – LAW AND ARGUMENT

### D. Rosen Goldberg Inc. Should be Appointed as Receiver and Manager

#### *i. Test to Appoint a Receiver*

17. Pursuant to section 243(1) of the *BIA* and section 101 of the *Courts of Justice Act* R.S.O. 1990,c. C43, as amended, the Court may appoint a receiver and manager where it is “just or convenient” to do so.

18. In determining whether it is just and convenient to appoint a receiver, the Court must have regard to “all of the circumstances, but in particular the nature of the property and the rights and interest of all parties in relation thereto”.

19. In making this determination, courts have been informed by the following factors, among others:<sup>9</sup>

- (a) the need to preserve and maximize the return on the subject property;
- (b) the relationship between the debtor and its creditors;
- (c) the risk of the lender’s security deteriorating; and
- (d) loss of confidence in the debtor’s management.

20. The applicant need not establish that it will suffer irreparable harm if the proposed receiver is not appointed.<sup>10</sup> The appointment of a receiver “becomes even less extraordinary when dealing with a default under a mortgage”.<sup>11</sup>

#### *ii. It is Just and Convenient to Appoint Rosen Goldberg Inc. as Receiver and Manager*

21. Having regard to the foregoing considerations, in the case at bar it is just and convenient to appoint Rosen Goldberg Inc., as receiver and manager given that:

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<sup>9</sup> *BCIMC Construction Fund Corporation et al v. The Clover on Yonge Inc.*, [2020 ONSC 1953](#) at para 45 (“*BCIMC*”).

<sup>10</sup> *Bank of Montreal v Carnival National Leasing Limited*, [2011 ONSC 1007](#) at paras 24 and 28.

<sup>11</sup> *BCIMC*, *supra* note 9 at paras 43-44.

- (a) notwithstanding the issuance of the demand and NITE on January 19, 2024, and the Applicant's agreement to provide a further week extension on January 30, 2024, the Debtor has failed to repay the Loan;
- (b) the statutory notice period under the BIA has expired;
- (c) equity in the Property is eroding with the passage of time and the associated accrual of interest under the Loan;
- (d) by virtue of its uniqueness, size and designation under the *Ontario Heritage Act* as a property of historic and architectural value or interest, the Property is ill-suited to a power of sale proceeding and will require considerable skill and expertise to market and sell effectively;
- (e) Rosen Goldberg Inc. is well regarded as a Court officer for its skill and experience in marketing and selling real estate in Ontario; and
- (f) a Court-appointed receiver will ensure that both my interests and the Debtor's interests are considered and facilitate a fair and transparent marketing and sale process with a view to maximizing realization and achieving a definitive sale of the Property within a reasonable timeframe.

**PART V – ORDER REQUESTED**

22. For the reasons set out above, the Applicant respectfully requests an order appointing Rosen Goldberg Inc. as receiver and manager of the Debtor and the Property.

**ALL OF WHICH IS RESPECTFULLY SUBMITTED**, this 16<sup>th</sup> day of April, 2024.



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**David P. Preger**

Dickinson Wright LLP  
Lawyers for the Applicant



**SCHEDULE "A"**  
**LIST OF AUTHORITIES**

1. *Retirement Homes Regulatory Authority v. In Touch Retirement Living for Vegetarians/Vegans Inc.*, [2019 ONSC 3401 \(CanLII\)](#)
2. *Bank of Montreal v Carnival National Leasing Limited*, [2011 ONSC 1007](#).
3. *BCIMC Construction Fund Corporation et al v The Clover on Yonge Inc.*, [2020 ONSC 1953](#).

**SCHEDULE "B"**  
**TEXT OF STATUTES, REGULATIONS & BY-LAWS**

***Bankruptcy and Insolvency Act, RSC 1985, c B-3***

**Court may appoint receiver**

243 (1) Subject to subsection (1.1), on application by a secured creditor, a court may appoint a receiver to do any or all of the following if it considers it to be just or convenient to do so:

- (a) take possession of all or substantially all of the inventory, accounts receivable or other property of an insolvent person or bankrupt that was acquired for or used in relation to a business carried on by the insolvent person or bankrupt;
- (b) exercise any control that the court considers advisable over that property and over the insolvent person's or bankrupt's business; or
- (c) take any other action that the court considers advisable.

***Courts of Justice Act, R.S.O. 1990, c. C.43***

**Injunctions and receivers**

101 (1) In the Superior Court of Justice, an interlocutory injunction or mandatory order may be granted or a receiver or receiver and manager may be appointed by an interlocutory order, where it appears to a judge of the court to be just or convenient to do so. R.S.O. 1990, c. C.43, s. 101 (1); 1994, c. 12, s. 40; 1996, c. 25, s. 9 (17).

**Terms**

(2) An order under subsection (1) may include such terms as are considered just. R.S.O. 1990, c. C.43, s. 101 (2)

**IVANO PEGORARO**  
Applicant

-and- **IN TOUCH RETIREMENT LIVING FOR VEGETARIANS/VEGANS INC.**  
Respondent

Court File No. CV-24-00745949-00CL

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