

Court File No. CV-17-588264-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
(Commercial List)**

Monday,
August 27, 2018

Justice
CONWAY
BETWEEN:



SALVATOR GALATI

Applicant

and

**VINCENZO TETI, NICOLA MARINO
and 1828700 ONTARIO INC.**

Respondents

**APPLICATION UNDER Section 207(1)(b)(ii) of the *Business Corporations Act*, R.S.O.
1990, Chap. B. 6**

WINDING-UP AND LIQUIDATION ORDER

THIS MOTION, made by Schwartz Levitsky Feldman Inc. in its capacity as the liquidator (in such capacity, the "Liquidator") of 1828700 Ontario Inc. ("182 Ontario") for an Order, among other things, continuing under the supervision of this Court the voluntary winding-up of 182 Ontario Corp. pursuant to section 207 of the *Business Corporations Act*, R.S.O. 1990, c. B.16, as amended (the "OBCA"), was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the First Report to this Court of the Liquidator dated August 16, 2018 (the "First Report") and on hearing the submissions of counsel for the Liquidator and counsel for 182 Ontario, Salvator Galati, Vincenzo Teti, Nicola Marino and Meridian Credit Union,

SERVICE

1. THIS COURT ORDERS that the time for service of the Notice of Motion and the Motion Record is hereby abridged and validated so that this motion is properly returnable today and hereby dispenses with further service thereof.

WINDING UP

2. THIS COURT ORDERS that that the winding-up of 182 Ontario shall continue to be effected and implemented under the supervision of this Court and any further order of this Court.

and that Schwartzowitz Levisky Feldman Inc. is hereby appointed as Liquidator pursuant to the terms of
LIQUIDATOR'S POWERS *this order including Schedule I hereto.*

3. THIS COURT ORDERS that the Liquidator is hereby empowered and authorized, but not obligated, to act at once in respect of the Property and, without in any way limiting the generality of the foregoing, the Liquidator is hereby expressly empowered and authorized to do any of the following where the Liquidator considers it necessary or desirable:

(a) to take possession of and exercise control over the Property and any and all proceeds, receipts and disbursements arising out of or from the Property;

(b) to receive, preserve, and protect the Property, or any part or parts thereof, including, but not limited to, the changing of locks and security codes, the relocating of Property to safeguard it, the engaging of independent security personnel, the taking of physical inventories and the placement of such insurance coverage as may be necessary or desirable;

(c) to manage and operate the Property, including the powers to enter into any agreements, incur any obligations in the ordinary course of business, or cease to perform any contracts of 182 Ontario in respect of the Property;

(d) to engage consultants, appraisers, agents, experts, auditors, accountants, managers, counsel and such other persons from time to time and on whatever basis,

including on a temporary basis, to assist with the exercise of the Liquidator's powers and duties, including without limitation those conferred by this Order;

(e) to purchase or lease such machinery, equipment, inventories, supplies, premises or other assets in respect of the Property or any part or parts thereof;

(f) to receive and collect all monies and accounts now owed or hereafter owing to 182 Ontario in respect of the Property and to exercise all remedies of 182 Ontario in respect of the Property in collecting such monies, including, without limitation, to enforce any security held by 182 Ontario in respect of the Property;

(g) to settle, extend or compromise any indebtedness owing to 182 Ontario;

(h) to execute, assign, issue and endorse documents of whatever nature in respect of any of the Property, whether in the Liquidator's name or in the name and on behalf of 182 Ontario, for any purpose pursuant to this Order;

(i) to initiate, prosecute and continue the prosecution of any and all proceedings and to defend all proceedings now pending or hereafter instituted with respect to 182 Ontario in respect of the Property or the Liquidator, and to settle or compromise any such proceedings. The authority hereby conveyed shall extend to such appeals or applications for judicial review in respect of any order or judgment pronounced in any such proceeding;

(j) to market any or all of the Property, including advertising and soliciting offers in respect of the Property or any part or parts thereof and negotiating such terms and conditions of sale as the Liquidator in its discretion may deem appropriate;

(k) to sell, convey, transfer, lease or assign the Property or any part or parts thereof out of the ordinary course of business,

(i) without the approval of this Court in respect of any transaction not exceeding \$100,000, provided that the aggregate consideration for all such transactions does not exceed \$250,000; and

(ii) with the approval of this Court in respect of any transaction in which the purchase price or the aggregate purchase price exceeds the applicable amount set out in the preceding clause;

and in each such case notice under subsection 63(4) of the *Ontario Personal Property Security Act*, or section 31 of the *Ontario Mortgages Act*, as the case may be, shall not be required, and in each case the *Ontario Bulk Sales Act* shall not apply.

(l) to apply for any vesting order or other orders necessary to convey the Property or any part or parts thereof to a purchaser or purchasers thereof, free and clear of any liens or encumbrances affecting such Property;

(m) to report to, meet with and discuss with such affected Persons (as defined below) as the Liquidator deems appropriate on all matters relating to the Property and the liquidation, and to share information, subject to such terms as to confidentiality as the Liquidator deems advisable;

(n) to register a copy of this Order and any other Orders in respect of the Property against title to any of the Property;

(o) to apply for any permits, licences, approvals or permissions as may be required by any governmental authority and any renewals thereof for and on behalf of and, if thought desirable by the Liquidator, in the name of 182 Ontario in respect of the Property;

(p) to enter into agreements with any trustee in bankruptcy appointed in respect of 182 Ontario, including, without limiting the generality of the foregoing, the ability to enter into occupation agreements for any property owned or leased by 182 Ontario;

(q) to exercise any shareholder, partnership, joint venture or other rights which 182 Ontario may have in respect of the Property; and

(r) to take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations,

and in each case where the Liquidator takes any such actions or steps, it shall be exclusively authorized and empowered to do so, to the exclusion of all other Persons (as defined below), including 182 Ontario, and without interference from any other Person.

DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE LIQUIDATOR

3. THIS COURT ORDERS that (i) 182 Ontario, (ii) all of its current and former directors, officers, employees, agents, accountants, legal counsel and shareholders, and all other persons acting on its instructions or behalf, and (iii) all other individuals, firms, corporations, governmental bodies or agencies, or other entities having notice of this Order (all of the foregoing, collectively, being "Persons" and each being a "Person") shall forthwith advise the Liquidator of the existence of any Property in such Person's possession or control, shall grant immediate and continued access to the Property to the Liquidator, and shall deliver all such Property to the Liquidator upon the Liquidator's request.

4. THIS COURT ORDERS that all Persons shall forthwith advise the Liquidator of the existence of any books, documents, securities, contracts, orders, corporate and accounting records, and any other papers, records and information of any kind related to the business or affairs of 182 Ontario relating to the Property, and any computer programs, computer tapes, computer disks, or other data storage media containing any such information (the foregoing, collectively, the "Records") in that Person's possession or control, and shall provide to the Liquidator or permit the Liquidator to make, retain and take away copies thereof and grant to the Liquidator unfettered access to and use of accounting, computer, software and physical facilities relating thereto, provided however that nothing in this paragraph 5 or in paragraph 6 of this Order shall require the delivery of Records, or the granting of access to Records, which may not be disclosed or provided to the Liquidator due to the privilege attaching to solicitor-client communication or due to statutory provisions prohibiting such disclosure.

5. THIS COURT ORDERS that if any Records are stored or otherwise contained on a computer or other electronic system of information storage, whether by independent service provider or otherwise, all Persons in possession or control of such Records shall forthwith give unfettered access to the Liquidator for the purpose of allowing the Liquidator to recover and fully copy all of the information contained therein whether by way of printing the information onto paper or making copies of computer disks or such other manner of retrieving and copying the information as the Liquidator in its discretion deems expedient, and shall not alter, erase or destroy any Records without the prior written consent of the Liquidator. Further, for the purposes of this paragraph, all Persons shall provide the Liquidator with all such assistance in gaining immediate access to the information in the Records as the Liquidator may in its discretion require including providing the Liquidator with instructions on the use of any computer or other system and providing the Liquidator with any and all access codes, account names and account numbers that may be required to gain access to the information.

6. THIS COURT ORDERS that the Liquidator shall provide each of the relevant landlords with notice of the Liquidator's intention to remove any fixtures from any leased premises at least seven (7) days prior to the date of the intended removal. The relevant landlord shall be entitled to have a representative present in the leased premises to observe such removal and, if the landlord disputes the Liquidator's entitlement to remove any such fixture under the provisions of the lease, such fixture shall remain on the premises and shall be dealt with as agreed between any applicable secured creditors, such landlord and the Liquidator, or by further Order of this Court upon application by the Liquidator on at least two (2) days notice to such landlord and any such secured creditors.

NO PROCEEDINGS AGAINST 182 ONTARIO OR ITS PROPERTY

7. THIS COURT ORDERS that from the date of this Order until further order of this Court (the "Stay Period"), no proceeding or enforcement process in any court or tribunal (each, a "Proceeding") shall be commenced or continued against or in respect of 182 Ontario, or the Liquidator, or affecting any of 182 Ontario's current or

future assets, undertakings or properties of every nature and kind whatsoever, and wherever situate, including all proceeds thereof (collectively, the "Property"), except with the written consent of the Liquidator, or with leave of this Court, and any and all Proceedings currently under way against or in respect of 182 Ontario or affecting the Property are hereby stayed and suspended pending further order of this Court.

NO EXERCISE OF RIGHTS OR REMEDIES

7. THIS COURT ORDERS that during the Stay Period, all rights and remedies of any individual, firm, corporation, governmental body or agency, or any other entities (all of the foregoing, collectively being "Persons" and each being a "Person") against or in respect of 182 Ontario or the Liquidator, or affecting the Property, are hereby stayed and suspended except with the written consent of the Liquidator, or leave of this Court, provided that nothing in this Order shall: (i) empower the Liquidator to carry on any business which 182 Ontario is not lawfully entitled to carry on; (ii) exempt the Liquidator from compliance with statutory or regulatory provisions relating to health, safety or the environment; (iii) prevent the filing of any registration to preserve or re-perfect an existing security interest; or (iv) prevent the registration of a claim for lien.

NO INTERFERENCE WITH RIGHTS

8. THIS COURT ORDERS that during the Stay Period, no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, lease, sub-lease, licence or permit in favour of or held by 182 Ontario, except with the written consent of the Liquidator, or leave of this Court.

CONTINUATION OF SERVICES

9. THIS COURT ORDERS that during the Stay Period, all Persons having oral or written agreements with 182 Ontario or statutory or regulatory mandates for the supply of goods and/or services, including, without limitation, all computer software,

communication and other data services, centralized banking services, payroll services, insurance, employee benefits, transportation services, utility, leasing or other services to 182 Ontario, are hereby restrained until further order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Liquidator, and that the Liquidator shall be entitled to the continued use of 182 Ontario's current premises, telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Liquidator in accordance with normal payment practices of 182 Ontario or such other practices as may be agreed upon by the supplier or service provider and the Liquidator, or as may be ordered by this Court.

PROCEEDINGS AGAINST DIRECTORS AND OFFICERS

10. THIS COURT ORDERS that during the Stay Period, no Proceeding may be commenced or continued against any of the former, current or future directors or officers of 182 Ontario with respect to any claim against the directors or officers that arose before the date hereof and that relates to any obligations of 182 Ontario whereby the directors or officers are alleged under any law to be liable in their capacity as directors or officers of 182 Ontario.

THE LIQUIDATOR

11. THIS COURT ORDERS that the Liquidator shall provide any creditor or shareholder of 182 Ontario with information provided by 182 Ontario in response to reasonable requests for information made in writing by such creditor or shareholder addressed to the Liquidator or its legal counsel. The Liquidator shall not have any responsibility or liability with respect to the information disseminated by it pursuant to this paragraph. In the case of information that the Liquidator has been advised by 182 Ontario or the Inspectors is confidential or otherwise material, non-public information, the Liquidator shall not provide such information to creditors or shareholders unless otherwise directed by this Court, or on such terms as the Liquidator and the Inspectors may agree.

12. THIS COURT ORDERS that, in addition to the rights and protections afforded the Liquidator under the OBCA, the Liquidator shall incur no liability or obligation as a result of its appointment or the carrying out of the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part. Nothing in this Order shall derogate from the protections afforded the Liquidator by the OBCA or any applicable legislation

LIQUIDATOR'S ACCOUNTS

13. THIS COURT ORDERS that the Liquidator and counsel to the Liquidator shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges unless otherwise ordered by the Court on the passing of accounts, and that the Liquidator and counsel to the Liquidator shall be entitled to and are hereby granted a charge (the "Liquidator's Charge") on the Property, as security for such fees and disbursements, both before and after the making of this Order in respect of these proceedings, and that the Liquidator's Charge shall form a first charge on the Property in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person.

14. THIS COURT ORDERS that the Liquidator and its legal counsel shall pass its accounts from time to time, and for this purpose the accounts of the Liquidator and its legal counsel are hereby referred to a judge of the Ontario Superior Court of Justice.

15. THIS COURT ORDERS that prior to the passing of its accounts, the Liquidator shall be at liberty from time to time to apply reasonable amounts, out of the monies in its hands, against its fees and disbursements, including legal fees and disbursements, incurred at the standard rates and charges of the Liquidator or its counsel, and such amounts shall constitute advances against its remuneration and disbursements when and as approved by this Court.

FUNDING OF THE LIQUIDATION

16. THIS COURT ORDERS that the Liquidator be at liberty and it is hereby empowered to borrow by way of a revolving credit or otherwise, such monies from time

to time as it may consider necessary or desirable, provided that the outstanding principal amount does not exceed \$250,000 (or such greater amount as this Court may by further Order authorize) at any time, at such rate or rates of interest as it deems advisable for such period or periods of time as it may arrange, for the purpose of funding the exercise of the powers and duties conferred upon the Liquidator by this Order, including interim expenditures. The whole of the Property shall be and is hereby charged by way of a fixed and specific charge (the "Liquidator's Borrowings Charge") as security for the payment of the monies borrowed, together with interest and charges thereon, in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subordinate in priority to the Liquidator's Charge.

17. THIS COURT ORDERS that neither the Liquidator's Borrowings Charge nor any other security granted by the Liquidator in connection with its borrowings under this Order shall be enforced without leave of this Court.

18. THIS COURT ORDERS that the Liquidator is at liberty and authorized to issue certificates substantially in the form annexed as Schedule "A" hereto (the "Liquidator's Certificates") for any amount borrowed by it pursuant to this Order.

19. THIS COURT ORDERS that the monies from time to time borrowed by the Liquidator pursuant to this Order or any further order of this Court and any and all Liquidator's Certificates evidencing the same or any part thereof shall rank on a *pari passu* basis, unless otherwise agreed to by the holders of any prior issued Liquidator's Certificates.

SERVICE AND NOTICE

20. THIS COURT ORDERS that the E-Service Protocol of the Commercial List (the "Protocol") is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Protocol (which can be found on the Commercial List website at <http://www.ontariocourts.ca/scj/practice/practice-directions/toronto/e-service-protocol/>) shall be valid and effective service. Subject to

Rule ~~17.05~~ this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the Rules of Civil Procedure. Subject to Rule 3.01(d) of the Rules of Civil Procedure and paragraph 21 of the Protocol, service of documents in accordance with the Protocol will be effective on transmission. This Court further orders that a Case Website shall be established in accordance with the Protocol.

21. THIS COURT ORDERS that if the service or distribution of documents in accordance with the Protocol is not practicable, the Liquidator is at liberty to serve or distribute this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery or facsimile transmission to 182 Ontario's creditors or other interested parties at their respective addresses as last shown on the records of 182 Ontario and that any such service or distribution by courier, personal delivery or facsimile transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

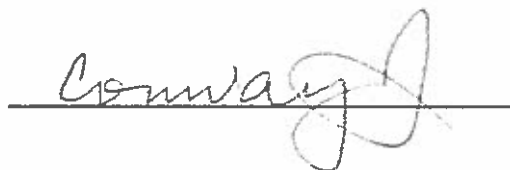
GENERAL

22. THIS COURT ORDERS that Liquidator may from time to time apply to this Court for advice and directions in the discharge of its powers and duties under this Order.

23. THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States, to give effect to this Order and to assist the Liquidator and its respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Liquidator, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Liquidator in any foreign proceeding, or to assist the Liquidator and its respective agents in carrying out the terms of this Order.

24. THIS COURT ORDERS that the Liquidator be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and that the Liquidator is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

25. THIS COURT ORDERS that any interested party (including the Liquidator) may apply to this Court to vary or amend this Order on not less than seven (7) days notice to any other party or parties likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

A handwritten signature in cursive script, appearing to read "Conway", is written over a horizontal line.

ENTERED AT / INSCRIT À TORONTO
ON / BOOK NO:
LE / DANS LE REGISTRE NO:

AUG 29 2018

PER / PAR: 

SCHEDULE "A"

LIQUIDATOR'S CERTIFICATE

CERTIFICATE NO. _____

AMOUNT \$ _____

1. THIS IS TO CERTIFY that Schwartz Levitsky Feldman Inc., the liquidator (the "Liquidator") of 1828700 Ontario Inc. pursuant to the Order of the Ontario Superior Court of Justice (the "Court") dated the 27th day of August, 2018 (the "Order") appointing the Liquidator, made in an application having Court file number CV- CV-17-588264-00CL, has received from the holder of this certificate (the "Lender") the principal sum of \$ _____, being part of the total principal sum of \$ _____ which the Liquidator is authorized to borrow under and pursuant to the Order.

2. The principal sum evidenced by this certificate is payable on demand by the Lender with interest thereon calculated and compounded [daily][monthly not in advance on the _____ day of each month] after the date hereof at a notional rate per annum equal to the rate of _____ per cent above the prime commercial lending rate of Bank of _____ from time to time.

3. Such principal sum with interest thereon is, by the terms of the Order, together with the principal sums and interest thereon of all other certificates issued by the Liquidator pursuant to the Order or to any further order of the Court, a charge upon the whole of the Property (as defined in the Order), in priority to the security interests of any other person and the right of the Liquidator to indemnify itself out of such Property in respect of its remuneration and expenses.

4. All sums payable in respect of principal and interest under this certificate are payable at the main office of the Lender at Toronto, Ontario.

5. Until all liability in respect of this certificate has been terminated, no certificates creating charges ranking or purporting to rank in priority to this certificate shall be issued by the Liquidator to any person other than the holder of this certificate without the prior written consent of the holder of this certificate.

6. The charge securing this certificate shall operate so as to permit the Liquidator to deal with the Property as authorized by the Order and as authorized by any further or other order of the Court.

7. The Liquidator does not undertake, and it is not under any personal liability, to pay any sum in respect of which it may issue certificates under the terms of the Order.

DATED the _____ day of _____, 20__.

Schwartz Levitsky Feldman Inc., solely in its capacity as Liquidator, and not in its personal capacity

Per: _____

Name:

Title:

Schedule A to Court endorsement

Schedule 1 to Court order.

1. Mr. Galati will make payment to Meridian Credit Union ("Meridian") in the amount of \$300,000 by no later than 5 pm on August 31, 2018.
2. 1878351 Ontario Limited ("187") will ^{irrevocably} direct the tenants of the 3rd and 4th floor of the property at 520-524 Ellesmere Road, Scarborough, Ontario (the "Property") to make all rent payments to Schwartz Lewinsky Feldman Inc. and 187 further agrees immediately forward to SLF any ("SLF") rents that it receives in connection with the Property.
3. 187 will provide SLF with a rent roll, copies of any lease and any other agreements governing the ^{3rd and 4th floor} tenancies of the Property.
4. Mr Galati will provide a commitment letter for a refinancing of the Property to SLF by no later than September 2018.
5. SLF will provide to Meridian copies of any and all information that it receives pursuant to this order.
6. SLF will immediately forward to Meridian any rent collected ~~in connection with~~ from 187's sub-tenants or rent that 187 collects in connection with the 3rd and 4th floors of the Property.
7. The appointment of SLF is without prejudice to the right of Meridian to seek the appointment of their own Rec in regards to both or any one of 187 or 18287000 Inc.

SALVATOR GALATI

Applicant

-and-

Court File No. CV-17-588264-00CL
VINCENZO TETI, NICOLA MARINO and
1828700 ONTARIO INC.
Respondents

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)
PROCEEDING COMMENCED AT
TORONTO

WINDING-UP ORDER

PALIARE ROLAND ROSENBERG ROTHSTEIN LLP
155 Wellington Street West
35th Floor
Toronto, ON M5V 3H1
Tel: 416.646.4300
Fax: 416.646.4301

Jeffrey Larry (LSO# 44608D)
Tel: 416.646.4330
jeff.larry@paliareroland.com

Lindsay Scott (LSO #60275G)
Tel: 416.646.7442
lindsay.scott@paliareroland.com

Lawyers for the Liquidator