

Court File No: CV-12-9551-00CL

2154015 ONTARIO INC.

SECOND REPORT OF THE RECEIVER

June 22, 2012

Court File No: CV-12-9551-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

BETWEEN:

CANADIAN IMPERIAL BANK OF COMMERCE

Applicant

-AND-

2154015 ONTARIO INC.

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, AS AMENDED

**SECOND REPORT OF PRICEWATERHOUSECOOPERS INC.
IN ITS CAPACITY AS COURT APPOINTED RECEIVER OF THE
PROPERTIES, ASSETS AND UNDERTAKING OF
2154015 ONTARIO INC.**

June 22, 2012

INTRODUCTION

1. By order (the “**Appointment Order**”) of the Honourable Mr. Justice Morawetz of the Ontario Superior Court of Justice (the “**Court**”) dated January 20, 2012 (the “**Date of Appointment**”), PricewaterhouseCoopers Inc. (“**PwC**”) was appointed receiver (the “**Receiver**”) pursuant to section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended, (the “**BIA**”) and section 101 of the *Courts of Justice Act* R.S.O. 1990 c.43, as amended, without security, of all of the properties, assets and undertakings (the “**Property**”) of 2154015 Ontario Inc. (“**215**” or the “**Company**”), pursuant to an application by the Canadian Imperial Bank of Commerce (“**CIBC**” or the “**Bank**”). A copy of the Appointment Order is attached as **Appendix “A”** to this report.
2. The Receiver filed its first report (the “**First Report**”) with the Court on March 20, 2012 (the “**Date of the First Report**”), the purpose of which was to update the Court on the Receiver’s activities from the Date of Appointment to the date of the First Report and to seek an order of the Court approving the sale of certain of the Property. A copy of the First Report is attached hereto as **Appendix “B”**.

PURPOSE OF REPORT

3. This is the second report of the Receiver (the “**Second Report**”), the purpose of which is to update the Court with respect to:
 - a) The activities of the Receiver since the Date of the First Report;
 - b) Claims made by Watford Roof Truss Limited (“**Watford**”) and Pacer Building Components Inc. (“**Pacer**”) against the Bank, the Company and other parties;
 - c) The Receiver’s cumulative statement of receipts and disbursements from the Date of Appointment to June 15, 2012;
 - d) The completion of the sale (the “**Inventory Sale**”) of the Company’s retail and lumber inventory (the “**Inventory**”) to 4536631 Canada Inc. (“**453**”);

- e) The results of the sale (the “**Equipment Sale**”) of the Company’s machinery and equipment (the “**Equipment**”) by Maynards Industries Ltd. (“**Maynards**”);
- f) The Receiver’s review of the validity and enforceability of both the Bank’s security (the “**CIBC Security**”) and Rona Inc’s security (the “**Rona Security**”) in respect of the Property and the opinion thereon of the Receiver’s independent legal counsel, Chaitons LLP (“**Chaitons**”);

And to seek an order of the Court:

- a) Approving the Second Report and the activities of the Receiver as set out herein;
- b) Approving the Receiver’s Statement of Receipts and Disbursements from the Date of Appointment to June 15, 2012;
- c) Authorizing the Receiver to complete a sale of the Rona Shares (as hereinafter defined) owned by 215 and authorizing and directing the Receiver to distribute the net proceeds of sale to Rona Inc. (“**Rona**”) in respect of its secured claim in and to the Rona Shares;
- d) Authorizing and directing the Receiver to make distributions to Watford in the amount of \$14,096.80 and Pacer in the amount of \$5,547.68 in respect of amounts collected by the Receiver that, in accordance with the *Construction Lien Act* R.S.O. 1990, Chapter C.30 (the “**CLA**”), are impressed with a trust for their respective benefit for materials sold to the Company;
- e) Authorizing the Receiver to make such subsequent distributions to Watford and Pacer as the Receiver, in its sole discretion, determines appropriate from any future amounts, if any, collected by the Receiver that are impressed with a trust pursuant to the CLA;

- f) Authorizing and directing the Receiver to make an interim distribution to CIBC in respect of its secured claim with respect to the Property in the amount of \$1,000,000; and
- g) Authorizing the Receiver to make such subsequent distributions to CIBC as the Receiver, in its sole discretion, determines appropriate, subject to the Receiver maintaining sufficient reserves to satisfy the Outstanding Disbursements (as hereinafter defined) and complete the administration of the Receivership Proceedings.

4. Unless otherwise stated, all monetary amounts contained herein are expressed in Canadian dollars. Capitalized terms not otherwise defined are as defined in the Appointment Order.

5. The information contained in this report has been obtained from the books and records and other information of the Company. The accuracy or completeness of the financial information contained herein has not been audited or otherwise verified by the Receiver, and the Receiver does not express an opinion or provide any other form of assurance with respect to the information presented herein or relied upon by the Receiver in preparing this report.

ACTIVITIES OF THE RECEIVER

6. As set out in the First Report, as the Company's operations had essentially been wound down prior to the Date of Appointment, the Receiver's activities were focused on obtaining possession of the Property, dealing with creditors' claims and soliciting offers for the liquidation of the Property.

7. Subsequent to the Date of the First Report, the Receiver's activities included:

- a) Overseeing the Inventory Sale and the Equipment Sale;
- b) Collecting accounts receivable; and

- c) Reviewing and analyzing trust claims under the CLA made by Watford and Pacer.

COMPLETION OF INVENTORY SALE

8. On or about March 26, 2012, subsequent to the Court granting an order approving the Inventory Sale, 453 attended at the Company's premises located at 1277 Wilson Road North, Oshawa, Ontario (the "**Premises**") and commenced the removal of the Inventory. On the same day, 453 paid the remainder of the purchase price owing to the Receiver in respect of its purchase of the Inventory.
9. On April 16, 2012, in accordance with the terms of the Asset Purchase Agreement between the Receiver and 453 (the "**APA**"), 453's right of access to the Premises terminated and the sale of the Inventory to 453 was, at that time, deemed completed.
10. Pursuant to a term of the APA, the Receiver had the option to repurchase any Inventory abandoned (the "**Abandoned Inventory**") or otherwise not removed from the Premises by 453 for \$1. The Receiver exercised its option to repurchase the Abandoned Inventory, which was added to the sale of the Equipment, undertaken on the Receiver's behalf by Maynards.

COMPLETION OF EQUIPMENT SALE

11. On April 19, 2012, the Equipment Sale was conducted by Maynards at the Premises.
12. All of the Equipment that was sold was removed from the Premises shortly after the Equipment Sale was completed. As a result, on April 30, 2012, the Receiver terminated the Company's lease of the Premises and provided possession of the Premises to the Company's landlord.
13. The Auction Services Agreement between the Receiver and Maynards provided for a net minimum guarantee of \$195,000 in respect of the Equipment, with the

Receiver realizing 65% of the total proceeds of sale above \$250,000. The Receiver was also to receive 90% of the gross proceeds of sale for the Abandoned Inventory sold by Maynards included in the Equipment Sale. Maynards provided the Receiver with its final accounting of the Equipment Sale, which indicated that the total proceeds of sale, including the Abandoned Inventory, was approximately \$198,000 (the gross sale proceeds generated by the Abandoned Inventory was approximately \$3,000). Accordingly, the proceeds realized from the Equipment Sale were insufficient to provide any additional recovery in respect of the Equipment.

COLLECTION OF ACCOUNTS RECEIVABLE

14. As at the Date of the First Report, the Receiver had collected approximately \$371,000 of the Company's accounts receivable, which had a book value, at the Date of Appointment, of approximately \$1.2 million (including balances that were aged over one year).
15. As of June 15, 2012, the Receiver has collected approximately \$858,000 in respect of the Company's accounts receivable.
16. In order to collect certain of the accounts receivable, the Receiver instructed Chaitons to register liens in respect of eight of the Company's former customers who were unwilling to pay amounts owed to the Company, which totaled, in aggregate, \$389,940, according to the Company's books and records (the **"Liened Receivables"**).
17. At the date of this Second Report, the Receiver has settled six of the Liened Receivables totaling \$312,097 for proceeds of \$297,323. The Receiver continues to pursue the two remaining Liened Receivables with a book value of \$77,843. The Receiver and Chaitons have been engaged in discussions with the two remaining Liened Receivables' customers and their respective legal counsel, regarding the settlement of the remaining Liened Receivables.

CONSTRUCTION LIEN ACT TRUST CLAIMS

18. As set out in the First Report, following the Receiver's appointment, Szemenyei MacKenzie Godin LLP ("SMG"), legal counsel for both Watford and Pacer, advised the Receiver that Pacer had registered several liens (the "Liens"), pursuant to the CLA, totalling approximately \$128,000 in respect of amounts due to Pacer for materials sold to the Company and delivered to the job sites being completed by certain of the Developers and/or other projects supplied by 215.
19. The Receiver had several discussions with SMG and the Developers and/or owners of the properties subject to the Liens in an effort to have the Liens vacated to enable the Receiver to collect the amounts owing to the Company, review the Liens and bring a motion for the distribution of proceeds realized from the Property in accordance with the priority of creditors thereto.
20. On February 22, 2012, SMG informed the Receiver that Pacer was not willing to vacate the Liens and the Receiver understands that certain of the Developers and/or property owners where the Liens were registered have subsequently settled the Liens directly with Pacer.
21. On or about March 21, 2012, the Receiver received notice of two separate claims (the "Trust Claims") made by Pacer and Watford. Both of the Trust Claims were made against the Company, the Bank and other parties, including the Company's directors. A copy of Pacer's Trust Claim in the amount of \$85,745 is attached hereto as **Appendix "C"**. A copy of Watford's Trust Claim in the amount of \$99,126 is attached hereto as **Appendix "D"**.
22. The Receiver reviewed the Trust Claims and determined that, to date, the Receiver has collected accounts receivable that relate to certain of the invoices Pacer and Watford claimed as unpaid pursuant to the Trust Claims. In total, the Receiver has collected accounts receivable related to two of Watford's unpaid invoices amounting to \$14,096.80, and one of Pacer's unpaid invoices amounting to \$5,547.68 (collectively the "Subcontractor Trust Amounts"). The Receiver has not collected any other amounts related to the Trust Claims.

23. In accordance with the provisions of the CLA, all amounts received on account of a contract or subcontract for an improvement constitute a trust fund for the benefit of the subcontractors and other persons that supplied services or materials to the improvement and are owed monies for their services or materials. Accordingly, the Receiver proposes to distribute the Subcontractor Trust Amounts to Watford and Pacer.

RECEIVER'S STATEMENT OF RECEIPTS AND DISBURSEMENTS

24. The Receiver's statement of receipts and disbursements for the period from the Date of Appointment to June 15, 2012 is summarized as follows:

Statement of Receipts and Disbursements	
For the Period from January 20, 2012 - June 15, 2012	
Receipts	
Cash on hand	15,989
Net Sales	19,690
AR Collections	857,890
Net Inventory Sale Proceeds	400,000
Machinery & Equipment Auction Sale Proceeds	197,701
Insurance Proceeds / Refunds	25,542
Interest Income	1,353
HST Collected	54,560
Total Receipts	1,572,726
Disbursements	
Inventory Purchases	18,755
Salaries & Benefits	134,178
A/R Collection Commission (3%)	11,973
Rent	35,000
Insurance	9,997
Other Operating Expenses	51,956
Receiver Fees & Disbursements	44,248
Legal Fees & Disbursements	51,058
HST (I.T.C)	20,727
HST Paid	52,481
Total Disbursements	430,373
Excess of Receipts over Disbursements	1,142,353

25. At the date of this Second Report approximately \$240,000 in accounts receivable, including the remaining Liened Receivables, remains outstanding. Certain of these accounts receivable are accounts that are greater than one-year old, and include other disputed amounts, the collectability of which is uncertain at this time.

REQUEST FOR APPROVAL OF DISTRIBUTION TO CIBC

OBLIGATIONS OWING TO CIBC

26. Details of the Company's obligations to the Bank are set out in the affidavit of Doug MacLaine of the Bank dated January 16, 2012, sworn in support of the Bank's application for the appointment of the Receiver.

27. The Company's obligations to the Bank, secured by the CIBC Security, are described in, but not necessarily limited to, the following agreements and other documents:

- (a) A General Security Agreement dated April 8, 2010;
- (b) A Subordination Agreement dated March 21, 2011 granted by Rona in favour of CIBC;
- (c) A Priorities Agreement dated April 21, 2011 between Rona and CIBC (the "**Priorities Agreement**"); and
- (d) A Subordination Agreement dated April 15, 2010 granted by Holland Lumber Limited ("**Holland**") in favour of CIBC (the "**Holland Subordination Agreement**").

28. The Bank has advised the Receiver that, as at June 6, 2012, the amount of principal and accrued interest owing by 215 under the credit facilities provided to it by the Bank is approximately \$1,182,000.

PRIORITY

29. Based on a review of registrations made under the *Personal Property Security Act* (Ontario) (the “**PPSA**”), CIBC, Rona, Holland and others have registered their respective security interests against the personal property of the Company. According to the PPSA, the order of registrations is Rona, Holland, CIBC and then other registrants. Pursuant to the Priorities Agreement, Rona subordinated its security interest in and to the Property to CIBC, save and except for the Rona Shares (as defined later in this Second Report). Pursuant to the Holland Subordination Agreement, Holland subordinated its security interest in the Property to CIBC. Other registrations were made after the registration of the CIBC Security.
30. The CIBC Security is subject to prior charges and security interests or claims in respect of the Property, which include:
 - a) The Receiver’s Charge;
 - b) The Receiver’s Borrowing Charge; and
 - c) Statutory claims pursuant to the BIA (the “**BIA Claims**”).

SECURITY OPINION - CIBC

31. The Receiver has obtained an independent, written legal opinion (the “**Security Opinion**”) from Chaitons, with respect to the validity and enforceability of the CIBC Security. Subject to the customary qualifications and limitations contained therein, it is Chaitons’ opinion that the CIBC Security is valid and enforceable and that the CIBC Security ranks in priority to the claims of other secured creditors, in respect of all of the Property other than collateral described as the “First Rank Collateral of RONA”, which are “... shares or securities ... in the capital stock of RONA ...” (the “**Rona Shares**”). The Priorities Agreement indicates that Rona has priority over CIBC in and to the Rona Shares.

OBLIGATIONS OWING TO RONA

32. The Company's obligations to Rona are described in the Commercial License Agreement dated April 1, 2010 entered into between Rona, 215 and others (the "**Rona Security**").
33. Rona has advised the Receiver that, as at March 13, 2012, the amount of principal and accrued interest owing by 215 under the credit facilities provided to it by the Rona is approximately \$1,430,000.

SECURITY OPINION - RONA

34. The Security Opinion provided by Chaitons also addressed the validity and enforceability of the Rona Security and advised that, subject to the customary qualifications and limitations contained therein, it is Chaitons' opinion that the Rona Security is valid and enforceable and that the Rona Security ranks in priority to the claims of other secured creditors, in respect of the Rona Shares.
35. The Receiver understands that 215 owns 5,500 Rona Shares. As per the terms of the Rona Security, the Rona Shares were to be held by Rona either directly or through a third party.
36. The Receiver has been in contact with Rona regarding the Rona Shares and Rona has informed the Receiver that the Rona Shares are currently being held by Computershare, which primarily provides stock registration and transfer agent services. Rona advised the Receiver on June 6, 2012 that it would instruct Computershare to forward the Rona Shares to the Receiver for sale by the Receiver.
37. The Receiver therefore, respectfully requests that the Court authorize the Receiver to complete a sale of the Rona Shares and distribute the net proceeds of sale thereon to Rona.

RECEIVER'S CHARGE

38. The fees of the Receiver and its legal counsel, Chaitons, that have been paid up to June 15, 2012, total approximately \$95,000. In addition, accrued and unpaid fees of the Receiver and its legal counsel as of the date of this Second Report are estimated to be \$80,000, in total (the “**Accrued Costs**”). The Receiver estimates that, in addition to the Accrued Costs, future fees and disbursements of it, and those of its counsel, will be incurred to complete the administration of the Receivership Proceedings (the “**Future Costs**”). The Receiver estimates that the Future Costs will not exceed an additional \$10,000. In order to provide for the Accrued Costs and the Future Costs (together the “**Outstanding Disbursements**”), the Receiver proposes to hold a reserve of approximately \$120,000 being the amount of the Accrued Costs plus the estimated Future Costs and an additional general reserve, subject to the Court granting the order requested by the Receiver as described herein.

RECEIVER'S BORROWING CHARGE

39. Pursuant to paragraph 20 of the Appointment Order, the Receiver was authorized to borrow up to \$200,000 from the Bank, as it considered necessary or desirable. As of the date of this Second Report, no borrowings are outstanding.

BIA CLAIMS

40. As described in the First Report, the Receiver calculated that claims pursuant to section 81.4 (“**81.4**”) of the BIA (the “**81.4 Claims**”) totaled approximately \$37,000. As sufficient realizations were made by the Receiver in respect of the Company’s accounts receivables and inventory, amounts were available to satisfy the 81.4 Claims. Accordingly, based on the Company’s books and records, as of the Date of the Second Report, the Receiver has paid all amounts owing to 215’s former employees to which they are entitled under 81.4.

41. On March 26, 2012, on an application made by CIBC, the Court granted a bankruptcy order in respect of the Company and PricewaterhouseCoopers Inc. was appointed as Trustee in Bankruptcy of 215. PwC has reviewed the Company's books and records to determine the amounts the Company's former employees are entitled to pursuant to section 81.3 ("81.3") of the BIA. As a result of this review, PwC has determined that amounts owing to employees under 81.3 is less than or equal to amounts employees are owed pursuant to 81.4. Accordingly, no amounts in addition to the amounts paid to former employees by the Receiver under 81.4 would have priority over the Bank Security, in respect of statutory charges pursuant to 81.3 or 81.4.
42. The Receiver understands that the Company did not provide a registered pension plan for its employees. Accordingly, the Receiver is not aware of any amounts that could be owing pursuant to section 81.5 or section 81.6 of the BIA.

REQUEST FOR APPROVAL OF DISTRIBUTIONS

43. Subject to this Court's approval, the following summarizes the funds that remain available after the distributions to CIBC, Watford and Pacer described herein (the "Distributions") are completed:

Calculation of Remaining Funds	
Net Receipts over Disbursements	1,142,353
Less:	
CIBC Distribution	(1,000,000)
Watford Distribution	(14,097)
Pacer Distribution	(5,548)
Net Reserve	122,708

Other than the claims described above, the Receiver is not aware of any security interests, liens, charges, encumbrances or other rights of third parties that would have priority over the CIBC Security, with respect to the Property.

44. The Receiver is of the view that, in order to maximize efficiency and avoid the need to seek the approval of the Court to make subsequent distributions to the Bank, Watford and Pacer, it is appropriate, in addition to seeking approval for the Distributions, to seek the Court's approval to make such subsequent distributions to the Bank, Watford and Pacer as the Receiver determines are appropriate, subject to the Receiver maintaining sufficient reserves to complete the administration of the Receivership Proceedings, including payment of any Outstanding Disbursements.
45. The Receiver respectfully requests that the Court authorize the Distributions and such subsequent distributions to the Bank, Watford and Pacer as the Receiver determines are appropriate, subject to maintaining sufficient reserves in order to satisfy the Outstanding Disbursements and complete the administration of the Receivership Proceedings.

RELIEF SOUGHT

46. The Receiver respectfully recommends that the Court issue an order:
 - a) Approving the Second Report and the activities of the Receiver as set out herein;
 - b) Approving the Receiver's Statement of Receipts and Disbursements from the Date of Appointment to June 15, 2012;
 - c) Authorizing the Receiver to complete a sale of the Rona Shares owned by 215 and authorizing and directing the Receiver to distribute the net proceeds of sale to Rona in respect of its secured interest in the Rona Shares
 - d) Authorizing and directing the Receiver to make distributions to Watford in the amount of \$14,096.80 and Pacer in the amount of \$5,547.68 in respect of amounts collected by the Receiver that, in accordance with the CLA, are impressed with a trust for their respective benefit for materials sold to the Company;

- e) Authorizing the Receiver to make such subsequent distributions to Watford and Pacer as the Receiver, in its sole discretion, determines appropriate from any future amounts, if any, collected by the Receiver that are impressed with a trust pursuant to the CLA;
- f) Authorizing and directing the Receiver to make a distribution to CIBC in respect of its secured claim with respect to the Property in the amount of \$1,000,000; and
- g) Authorizing the Receiver to make such subsequent distributions to CIBC as the Receiver, in its sole discretion, determines appropriate, subject to the Receiver maintaining sufficient reserves to satisfy the Outstanding Disbursements and complete the administration of the Receivership Proceedings.

All of which is respectfully submitted on this 22nd day of June, 2012.

PricewaterhouseCoopers Inc.
In its capacity as Receiver of
2154015 Ontario Inc.



Greg Prince
Senior Vice President



Adam Sherman
Vice President

TAB A

Court File No. CV-12-9551-00CL

ONTARIO

SUPERIOR COURT OF JUSTICE

COMMERCIAL LIST

THE HONOURABLE MR.) FRIDAY, THE 20TH
)
JUSTICE MORAWETZ) DAY OF JANUARY, 2012
)

CANADIAN IMPERIAL BANK OF COMMERCE

Applicant

- and -

2154015 ONTARIO INC.

Respondent

RECEIVERSHIP ORDER

THIS APPLICATION made by Canadian Imperial Bank of Commerce for an Order pursuant to section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the "BIA") and section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended (the "CJA") appointing PricewaterhouseCoopers Inc. as receiver (in such capacities, the "Receiver") without security, of all of the assets, undertakings and properties of 2154015 Ontario Inc. (the "Debtor") acquired for, or used in relation to a business carried on by the Debtor, was heard this day at 330 University Avenue, 8th Floor, Toronto, Ontario.

ON READING the affidavit of Doug MacLaine sworn January 16, 2012 and the Exhibits thereto and on hearing the submissions of counsel for the applicant and on reading the Consent of PricewaterhouseCoopers Inc. to act as the Receiver,

SERVICE

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

APPOINTMENT

2. **THIS COURT ORDERS** that pursuant to section 243(1) of the BIA and section 101 of the CJA, PricewaterhouseCoopers Inc. is hereby appointed Receiver, without security, of all of the assets, undertakings and properties of the Debtor acquired for, or used in relation to a business carried on by the Debtor, including all proceeds thereof (the "Property").

RECEIVER'S POWERS

3. **THIS COURT ORDERS** that the Receiver 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 Receiver is hereby expressly empowered and authorized to do any of the following where the Receiver 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, operate, and carry on the business of the Debtor, including the powers to enter into any agreements, incur any obligations in the ordinary course of business, cease to carry on all

or any part of the business, or cease to perform any contracts of the Debtor;

- (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 Receiver'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 to continue the business of the Debtor or any part or parts thereof;
- (f) to receive and collect all monies and accounts now owed or hereafter owing to the Debtor and to exercise all remedies of the Debtor in collecting such monies, including, without limitation, to enforce any security held by the Debtor;
- (g) to settle, extend or compromise any indebtedness owing to the Debtor;
- (h) to execute, assign, issue and endorse documents of whatever nature in respect of any of the Property, whether in the Receiver's name or in the name and on behalf of the Debtor, 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 the Debtor, the Property or the Receiver, 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 Receiver 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 \$50,000.00, provided that the aggregate consideration for all such transactions does not exceed \$250,000.00 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 Receiver deems appropriate on all matters relating to the Property and the receivership, and to share information, subject to such terms as to confidentiality as the Receiver 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 Receiver, in the name of the Debtor;
- (p) to enter into agreements with any trustee in bankruptcy appointed in respect of the Debtor, including, without limiting the generality of the foregoing, the ability to enter into occupation agreements for any property owned or leased by the Debtor;
- (q) to exercise any shareholder, partnership, joint venture or other rights which the Debtor may have; 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 Receiver 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 the Debtor, and without interference from any other Person.

DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE RECEIVER

4. **THIS COURT ORDERS** that (i) the Debtor, (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 Receiver of the existence of any Property in such Person's possession or control, shall grant immediate and continued access to the Property to

the Receiver, and shall deliver all such Property to the Receiver upon the Receiver's request.

5. **THIS COURT ORDERS** that all Persons shall forthwith advise the Receiver 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 the Debtor, 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 Receiver or permit the Receiver to make, retain and take away copies thereof and grant to the Receiver 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 Receiver due to the privilege attaching to solicitor-client communication or due to statutory provisions prohibiting such disclosure.

6. **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 Receiver for the purpose of allowing the Receiver 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 Receiver in its discretion deems expedient, and shall not alter, erase or destroy any Records without the prior written consent of the Receiver. Further, for the purposes of this paragraph, all Persons shall provide the Receiver with all such assistance in gaining immediate access to the information in the Records as the Receiver may in its discretion require including providing the Receiver with instructions on the use of any computer or other system and providing the Receiver with any and all access codes, account names and account numbers that may be required to gain access to the information.

NO PROCEEDINGS AGAINST THE RECEIVER

7. **THIS COURT ORDERS** that no proceeding or enforcement process in any court or tribunal (each, a "Proceeding"), shall be commenced or continued against the Receiver except with the written consent of the Receiver or with leave of this Court.

NO PROCEEDINGS AGAINST THE DEBTOR OR THE PROPERTY

8. **THIS COURT ORDERS** that no Proceeding against or in respect of the Debtor or the Property shall be commenced or continued except with the written consent of the Receiver or with leave of this Court and any and all Proceedings currently under way against or in respect of the Debtor or the Property are hereby stayed and suspended pending further Order of this Court.

NO EXERCISE OF RIGHTS OR REMEDIES

9. **THIS COURT ORDERS** that all rights and remedies against the Debtor, the Receiver, or affecting the Property, are hereby stayed and suspended except with the written consent of the Receiver or leave of this Court, provided however that this stay and suspension does not apply in respect of any "eligible financial contract" as defined in the BIA, and further provided that nothing in this paragraph shall (i) empower the Receiver or the Debtor to carry on any business which the Debtor is not lawfully entitled to carry on, (ii) exempt the Receiver or the Debtor from compliance with statutory or regulatory provisions relating to health, safety or the environment, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien.

NO INTERFERENCE WITH THE RECEIVER

10. **THIS COURT ORDERS** that no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the Debtor, without written consent of the Receiver or leave of this Court.

CONTINUATION OF SERVICES

11. **THIS COURT ORDERS** that all Persons having oral or written agreements with the Debtor 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, transportation services, utility or other services to the Debtor 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 Receiver, and that the Receiver shall be entitled to the continued use of the Debtor's current 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 Receiver in accordance with normal payment practices of the Debtor or such other practices as may be agreed upon by the supplier or service provider and the Receiver, or as may be ordered by this Court.

RECEIVER TO HOLD FUNDS

12. **THIS COURT ORDERS** that all funds, monies, cheques, instruments, and other forms of payments received or collected by the Receiver from and after the making of this Order from any source whatsoever, including without limitation the sale of all or any of the Property and the collection of any accounts receivable in whole or in part, whether in existence on the date of this Order or hereafter coming into existence, shall be deposited into one or more new accounts to be opened by the Receiver (the "Post Receivership Accounts") and the monies standing to the credit of such Post Receivership Accounts from time to time, net of any disbursements provided for herein, shall be held by the Receiver to be paid in accordance with the terms of this Order or any further Order of this Court.

EMPLOYEES

13. **THIS COURT ORDERS** that all employees of the Debtor shall remain the employees of the Debtor until such time as the Receiver, on the Debtor's behalf, may terminate the employment of such employees. The Receiver shall not be liable for any

employee-related liabilities, including any successor employer liabilities as provided for in section 14.06(1.2) of the BIA, other than such amounts as the Receiver may specifically agree in writing to pay, or in respect of its obligations under sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*.

PIPEDA

14. **THIS COURT ORDERS** that, pursuant to clause 7(3)(c) of the *Canada Personal Information Protection and Electronic Documents Act*, the Receiver shall disclose personal information of identifiable individuals to prospective purchasers or bidders for the Property and to their advisors, but only to the extent desirable or required to negotiate and attempt to complete one or more sales of the Property (each, a "Sale"). Each prospective purchaser or bidder to whom such personal information is disclosed shall maintain and protect the privacy of such information and limit the use of such information to its evaluation of the Sale, and if it does not complete a Sale, shall return all such information to the Receiver, or in the alternative destroy all such information. The purchaser of any Property shall be entitled to continue to use the personal information provided to it, and related to the Property purchased, in a manner which is in all material respects identical to the prior use of such information by the Debtor, and shall return all other personal information to the Receiver, or ensure that all other personal information is destroyed.

LIMITATION ON ENVIRONMENTAL LIABILITIES

15. **THIS COURT ORDERS** that nothing herein contained shall require the Receiver to occupy or to take control, care, charge, possession or management (separately and/or collectively, "Possession") of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, the *Ontario Environmental Protection Act*, the *Ontario Water Resources Act*, or the

Ontario Occupational Health and Safety Act and regulations thereunder (the "Environmental Legislation"), provided however that nothing herein shall exempt the Receiver from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Receiver shall not, as a result of this Order or anything done in pursuance of the Receiver's duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

LIMITATION ON THE RECEIVER'S LIABILITY

16. **THIS COURT ORDERS** that the Receiver shall incur no liability or obligation as a result of its appointment or the carrying out the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part, or in respect of its obligations under sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*. Nothing in this Order shall derogate from the protections afforded the Receiver by section 14.06 of the BIA or by any other applicable legislation.

RECEIVER'S ACCOUNTS

17. **THIS COURT ORDERS** that the Receiver and counsel to the Receiver 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 Receiver and counsel to the Receiver shall be entitled to and are hereby granted a charge (the "Receiver'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 Receiver'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, but subject to sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

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

19. **THIS COURT ORDERS** that prior to the passing of its accounts, the Receiver 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 Receiver or its counsel, and such amounts shall constitute advances against its remuneration and disbursements when and as approved by this Court.

FUNDING OF THE RECEIVERSHIP

20. **THIS COURT ORDERS** that the Receiver 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 \$200,000.00 (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 Receiver 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 "Receiver'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 Receiver's Charge and the charges as set out in sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

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

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

23. **THIS COURT ORDERS** that the monies from time to time borrowed by the Receiver pursuant to this Order or any further order of this Court and any and all Receiver'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 Receiver's Certificates.

SERVICE AND NOTICE

24. **THIS COURT ORDERS** that the Receiver be at liberty to serve 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 electronic transmission to the Debtor's creditors or other interested parties at their respective addresses as last shown on the records of the Debtor and that any such service or notice by courier, personal delivery or electronic 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.

25. **THIS COURT ORDERS** that the Applicant, the Receiver, and any party who has filed a Notice of Appearance may serve any court materials in these proceedings by e-mailing a PDF or other electronic copy of such materials to counsels' email addresses as recorded on the Service List from time to time, and the Receiver may post a copy of any or all such materials on its website at www.pwc.com/car-colonylumber.

GENERAL

26. **THIS COURT ORDERS** that the Receiver may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

27. **THIS COURT ORDERS** that nothing in this Order shall prevent the Receiver from acting as a trustee in bankruptcy of the Debtor.

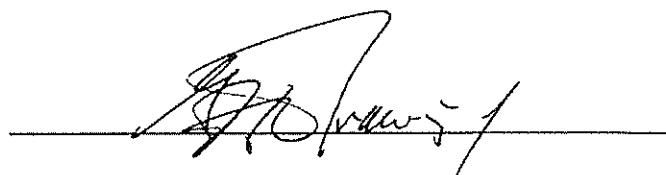
28. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies

are hereby respectfully requested to make such orders and to provide such assistance to the Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.

29. **THIS COURT ORDERS** that the Receiver 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 Receiver 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.

30. **THIS COURT ORDERS** that the Applicant shall have its costs of this motion, up to and including entry and service of this Order, provided for by the terms of the Applicant's security or, if not so provided by the Applicant's security, then on a substantial indemnity basis to be paid by the Receiver from the Debtor's estate with such priority and at such time as this Court may determine.

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



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

JAN 20 2012

NB

SCHEDULE "A"
RECEIVER CERTIFICATE

CERTIFICATE NO. _____

AMOUNT \$ _____

1. **THIS IS TO CERTIFY** that PricewaterhouseCoopers Inc., the receiver (the "Receiver") of the assets, undertakings and properties 2154015 Ontario Inc. acquired for, or used in relation to a business carried on by the Debtor, including all proceeds thereof (collectively, the "Property") appointed by Order of the Ontario Superior Court of Justice (Commercial List) (the "Court") dated the _____ day of _____, 20____ (the "Order") made in an action having Court file number _____-CL-_____, has received as such Receiver from the holder of this certificate (the "Lender") the principal sum of \$ _____, being part of the total principal sum of \$ _____ which the Receiver 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 Receiver pursuant to the Order or to any further order of the Court, a charge upon the whole of the Property, in priority to the security interests of any other person, but subject to the priority of the charges set out in the Order and in the *Bankruptcy and Insolvency Act*, and the right of the Receiver 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 Receiver 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 Receiver to deal with the Property as authorized by the Order and as authorized by any further or other order of the Court.

7. The Receiver 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 _____, 2012.

PRICEWATERHOUSECOOPERS INC.,
solely in its capacity
as Receiver of the Property, and not in its
personal capacity

Per: _____

Name: _____

Title: _____

BETWEEN:

CANADIAN IMPERIAL BANK OF COMMERCE
Applicant

2154015 ONTARIO INC.

- and -
Respondent

Court File No. CV-12-9551-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

Proceeding commenced at TORONTO

RECEIVERSHIP ORDER

MINDEN GROSS LLP
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rmoses@mindingross.com
Tel: 416-369-4115
Fax: 416-864-9223

Lawyers for Canadian Imperial Bank of
Commerce

TAB B

Court File No: CV-12-9551-ooCL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

BETWEEN:

CANADIAN IMPERIAL BANK OF COMMERCE

Applicant

-AND-

2154015 ONTARIO INC.

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, AS AMENDED

FIRST REPORT OF PRICEWATERHOUSECOOPERS INC.
IN ITS CAPACITY AS COURT APPOINTED RECEIVER OF THE
PROPERTIES, ASSETS AND UNDERTAKING OF
2154015 ONTARIO INC.

March 20, 2012

INTRODUCTION

1. By order (the “**Appointment Order**”) of the Honourable Mr. Justice Morawetz of the Ontario Superior Court of Justice (the “**Court**”) dated January 20, 2012 (the “**Date of Appointment**”), PricewaterhouseCoopers Inc. (“**PwC**”) was appointed receiver (the “**Receiver**”) pursuant to section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended, (the “**BIA**”) and section 101 of the *Courts of Justice Act* R.S.O. 1990 c.43, as amended, without security, of all of the properties, assets and undertakings (the “**Property**”) of 2154015 Ontario Inc. (“**215**” or the “**Company**”), pursuant to an application by the Canadian Imperial Bank of Commerce (“**CIBC**”). A copy of the Appointment Order is attached as **Appendix “A”** to this report.

PURPOSE OF REPORT

2. This is the first report of the Receiver (the “**First Report**”), the purpose of which is to update the Court with respect to:
 - a) The activities of the Receiver since the Date of Appointment;
 - b) The Receiver’s statement of receipts and disbursements from the Date of Appointment to March 12, 2012;
 - c) The claims asserted by various parties for the repossession of property in the Company’s possession;
 - d) The results of the Receiver’s efforts to solicit offers for certain of the Property;
 - e) The sale by the Receiver of the Company’s retail and lumber inventory (the “**Inventory**”) to 4536631 Canada Inc. (“**453**”) and the proposed liquidation of the Company’s machinery and equipment (the “**Equipment**”) by Maynards Industries Ltd. (“**Maynards**”), subject to the Court’s approval;

- f) The key terms of the Asset Purchase Agreement (“**APA**”) dated March 19, 2012 between the Receiver and 453 for the sale of the Inventory (the “**Inventory Sale**”);
- g) The terms of the Auction Services Agreement (“**ASA**”) dated March 19, 2012 between the Receiver and Maynards for the sale of the Equipment (the “**Equipment Sale**”);

And to seek an order of the Court:

- a) Approving the Inventory Sale and vesting the Company’s rights, title and interests in and to the Inventory in 453;
- b) Approving the Equipment Sale (and collectively with the Inventory Sale, the “**Transactions**”) and vesting the Company’s rights, title and interests in and to the Equipment in the ultimate purchaser or purchasers of the Equipment, free and clear of all liens and encumbrances;
- c) Approving the First Report and the activities of the Receiver as set out therein; and
- d) Temporarily sealing the Offer Summary (as hereinafter defined) and the unredacted versions of the APA and ASA pending the closing of the transactions contemplated therein.

3. Unless otherwise stated, all monetary amounts contained herein are expressed in Canadian dollars. Capitalized terms not otherwise defined are as defined in the Appointment Order.

4. The information contained in this report has been obtained from the books and records and other information of the Company. The accuracy or completeness of the financial information contained herein has not been audited or otherwise verified by the Receiver, and the Receiver does not express an opinion or provide any other form of assurance with respect to the information presented herein or relied upon by the Receiver in preparing this report.

BACKGROUND AND CREDITORS

5. The Company carried on business as a Rona dealer pursuant to, *inter alia*, the terms of a Commercial License Agreement dated April 1, 2010, among Rona Inc. (“Rona”), the Company and others, selling lumber and hardware and building supplies from leased premises located at 1277 Wilson Road North, Oshawa, Ontario (the “Premises”).
6. Pursuant to the Commercial License Agreement, the Company granted Rona a general security interest in all of its present and future assets, undertakings and properties. Pursuant to the terms of a subordination agreement, Rona subordinated its interests in the Company’s personal property to CIBC. Rona and CIBC are collectively referred to herein as the “Senior Secured Lenders”.
7. As at the Date of Appointment, the Company was indebted to CIBC in the amount of approximately \$1.14 million, inclusive of costs and interest, and Rona in the amount of approximately \$1.44 million, inclusive of costs and interest.
8. As at the Date of Appointment, the Company owed its unsecured creditors, including trade creditors, approximately \$1 million.
9. The Receiver does not anticipate that a sale or liquidation of the Property will result in sufficient realizations to satisfy the claims of the Senior Secured Lenders.

ACTIVITIES OF THE RECEIVER

10. In addition to the other activities described in this First Report, the Receiver has established a website at www.pwc.com/car-colonylumber, where all materials filed with the Court and all orders granted by the Court in connection with the receivership, will be made available in electronic form.

11. Shortly before the Date of Appointment, PwC met with the Company's principals (the "**Principals**") who advised the Receiver that the Company's operations were to be wound down and that the Company's retail operations had ceased, as a result of a flood at the Premises (the "**Flood**"). Accordingly, the Receiver's activities were focused on obtaining possession of the Property, dealing with creditors' claims and soliciting offers for the liquidation of the Property.

POSSESSION AND PRESERVATION OF THE PROPERTY

12. Subsequent to the Date of Appointment, the Receiver:

- a) Changed the locks at the Premises;
- b) Froze the Company's bank accounts with CIBC and opened new accounts in the name of the Receiver;
- c) Arranged borrowings from CIBC in the amount of \$150,000 to fund the Receiver's activities, as provided for pursuant to paragraph 20 of the Appointment Order;
- d) Contacted the Company's alarm service provider to both delete the existing alarm codes and set up new alarm codes;
- e) Completed a count of the Inventory, Equipment and other assets, including the identification of property that may be subject to property claims pursuant to section 81(1) of the BIA (the "**Section 81(1) Claims**");
- f) Reviewed 215's existing insurance coverage and contacted the Company's insurance broker to request that the Receiver be listed as named insured and loss payee on the Company's insurance policy;

- g) Followed up on claims that may have been filed by the Company in connection with the Flood;
- h) Obtained possession of and reviewed 215's books and records to obtain a better understanding of its financial position;
- i) Contacted Canada Revenue Agency to set up new accounts (source deductions and HST) in the name of the Receiver;
- j) Arranged for the continuation of all essential services, including utilities, to the Premises;
- k) Mailed letters to the Company's accounts receivable debtors, notifying them of their obligation to pay amounts due to 215 to the Receiver; and
- l) With the assistance of PwC's Forensic Technology Services Group, completed a back-up of the Company's electronic books and records, including obtaining images of the software and data contained on a number of computers and servers located at the Premises.

MEETINGS / COMMUNICATIONS WITH THE COMPANY'S EMPLOYEES

- 13. The Receiver has met with the Company's employees to advise them of their rights and entitlements under the provisions of the *Wage Earner Protection Program Act* ("WEPPA") and the limited priority granted to employee claims for wage arrears in accordance with section 81.4 of the BIA (the "**Section 81.4 Claims**").
- 14. As at the date of this Report, the Receiver has terminated all of the Company's employees, including those retained by the Company following the Date of Appointment.

NOTICE TO CREDITORS

15. Pursuant to section 245(1) of the BIA, on January 30, 2012, the Receiver sent notice of its appointment, in the prescribed form, and its first report pursuant to section 246(1) of the BIA to all known creditors of 215, the Office of the Superintendent of Bankruptcy and to the Company.

COMMUNICATIONS WITH CREDITORS, STAKEHOLDERS AND INTERESTED PARTIES

16. Subsequent to the Date of Appointment, the Receiver has had communications with CIBC and has communicated with Rona on matters relevant to it in connection with the receivership proceedings.
17. The Receiver has attended at several meetings with representatives of Arista Homes, H&R Developments and Thornridge Homes (collectively the “Developers”) to discuss:
 - a) The payment of outstanding amounts due from the Developers to the Company; and
 - b) The Receiver’s proposed terms of trade for the continued supply of lumber to complete properties that the Developers currently have under construction, as the Receiver was of the view that assisting the Developers in completing current projects would enhance recoveries of outstanding amounts owing by the Developers to the Company. As a result of the Receiver’s negotiations with each of the Developers, the Receiver agreed to supply terms with each of the Developers.
18. Following the Receiver’s appointment, Szemenyei MacKenzie Godin LLP (“SMG”), legal counsel for Tandelle Truss/Pacer Building Components (the “Truss Supplier”), a creditor of 215, advised the Receiver of the Truss Supplier’s registration of liens (the “Liens”), pursuant to the *Construction Lien Act*, totalling approximately \$128,000 in respect of amounts due to the Truss

Supplier for materials sold to the Company and delivered to the job sites being completed by certain of the Developers and/or other projects supplied by 215.

19. The Receiver has had several discussions with SMG and the Developers and/or owners of the properties subject to the Liens in an effort to have the Liens vacated to enable the Receiver to collect the amounts owing to the Company, review the Liens and bring a motion for the distribution of proceeds realized from the Property in accordance with the priority of creditors thereto.
20. On February 22, 2012, SMG informed the Receiver that the Truss Supplier was not willing to vacate the Liens and the Receiver understands that certain of the Developers and/or property owners where the Liens were registered have subsequently settled the Liens directly with the Truss Supplier.

SECTION 81(1) CLAIMS

21. The Receiver has received and reviewed a number of the Section 81(1) Claims, including the following:
 - a) A claim by Hull Drafting & Development (“**Hull**”) for the return of drafting tables and other equipment, which were used by Hull on the Premises, as part of its agreement with 215;
 - b) A claim by Nature’s Call for the return of a portable washroom unit;
 - c) A claim by Pitney Bowes Global Credit Services (“**Pitney Bowes**”) for the return of a postage meter weigh platform;
 - d) A claim by Normerica Building Systems Inc. (“**Normerica**”) for the return of certain branded tarping and dispenser system for same;
 - e) A claim by First General Service Solution (“**First General**”) for the return of a garbage disposal bin located at the Premises for the purpose of disposing of any waste materials associated with the building repairs due to the Flood;

- f) A claim by Granite Claims Solutions (“**Granite Claims**”) in respect of certain inventory damaged in the Flood, which damaged inventory was the subject matter of an insurance claim filed by 215. The Receiver has been paid the insurance proceeds in connection with 215’s claim in respect of the damaged inventory;
- g) A claim by PACCAR Leasing Company a division of PACCAR Financial Services Ltd. (“**PACCAR**”) in respect of two (2) trucks used by 215;
- h) A claim by L. Linklater (“**Linklater**”) for the return of a filing cabinet;
- i) A claim by M. Boddy (“**Boddy**”) for the return of a mini-fridge and microwave;
- j) A claim filed by R. DeVincenzo (“**DeVincenzo**”) for the return of miscellaneous personal property, including a desk, paintings and other furniture located on the Premises; and
- k) A claim filed by RCAP Leasing (“**RCAP**”) in connection with an automated paint shaker used by 215 and located at the Premises.

22. The Receiver has completed its review of the Section 81(1) Claims of Hull, Nature’s Call, Pitney Bowes, Normerica, First General, Granite Claims, PACCAR, Linklater and Boddy, and has accepted those Section 81(1) Claims, as filed. The Receiver has released the property subject to those Section 81(1) Claims to the respective claimants.

23. The Receiver is in the process of reviewing the Section 81(1) Claims submitted by DeVincenzo and RCAP and will deal with the property, which is the subject matter of these claims, as appropriate, following the completion of the Receiver’s review.

RECEIVER'S STATEMENT OF RECEIPTS AND DISBURSEMENTS

24. The Receiver's statement of receipts and disbursements for the period from the Date of Appointment to March 12, 2012 is summarized as follows:

Statement of Receipts and Disbursements For the Period from January 20, 2012 - March 12, 2012	
Receipts	\$
Sales	22,249
AR Collections	371,088
Insurance Proceeds	4,956
Total Receipts	398,293
 Disbursements	
Inventory Purchases	20,566
Employee Related Payments	125,292
A/R Collection Commissions	5,765
Rent	26,367
Insurance	9,997
Other Operating Expenses	26,181
Total Disbursements	214,168
Excess of Receipts over Disbursements	184,125

25. The Company's books and records indicate that the book value of its accounts receivable (the "Receivables") as at the Date of Appointment was approximately \$1.2 million. As at March 12, 2012, the Receiver has collected approximately \$371,000 in respect of the Receivables. The Receiver is of the view that realizations in respect of the remaining Receivables may be difficult due to the registration of the Liens and various disputes raised by account debtors contacted by the Receiver.

SECTION 81.4 CLAIMS AND WEPPA

26. The Receiver has reviewed the Company's payroll records and, in accordance with its statutory duties under section 81.4 of the BIA, has prepared an analysis of the Section 81.4 Claims.

27. According to the Receiver's review of the Company's books and records, outstanding wages, vacation pay and recoverable expenses (for salespersons) owed to 215's employees, as of the Date of Appointment, totalled approximately \$48,700, of which, the Receiver determined that approximately \$37,000 represented potential claims under Section 81.4 of the BIA.
28. The Section 81.4 Claims are secured by a charge on the Company's current assets, as defined in the BIA. As set out in the Receiver's Statement of Receipts and Disbursements, the Receiver has realized approximately \$371,000 in respect of the Receivables as at March 12, 2012. Accordingly, there are sufficient realizations from current assets to satisfy the Section 81.4 Claims.
29. The Receiver will continue to comply with its obligations under WEPPA, if any, including providing information to the Company's former employees and/or those employees terminated by the Receiver for the purpose of filing claims under the WEPPA with Service Canada should any such claims arise in the future.

SALES PROCESS

30. As noted previously in this Report, as at the Date of Appointment, the Company's retail operations had ceased as a result of the Flood. Accordingly, immediately after its appointment and after reviewing the Company's Inventory and Equipment, the Receiver began contacting liquidators, lumber suppliers and hardware retailers, including Rona, (collectively, the "**Prospective Purchasers**") to advise of the Receiver's appointment and to describe the Property available for sale. The Prospective Purchasers included parties who regularly liquidate merchandise in insolvency proceedings. The Receiver was also contacted by several hardware and lumber suppliers expressing an interest in 215's Inventory and Equipment (collectively with the Prospective Purchasers, the "**Interested Parties**"). In total, the Receiver contacted fifteen (15) Interested Parties.

31. Interested Parties were asked to submit offers for 215's Property on or before 4:00 p.m. (Eastern Standard Time) on February 10, 2012. Six (6) offers were received with respect to the Inventory and Equipment by February 10, 2012 (the "Initial Offers").
32. Following the Receiver's review of the Initial Offers and taking into consideration that certain of the Initial Offers were conditional on further inspection of the Inventory and Equipment, the Receiver contacted each the Interested Parties to advise them that the Receiver set a deadline for the receipt of final offers for the Property of 12:00 p.m. on February 16, 2012 (the "Final Bid Deadline")
33. Eight (8) offers to purchase and/or auction the Company's Inventory and Equipment were submitted to the Receiver prior to the Final Bid Deadline (the "Final Offers").
34. The Receiver reviewed the Final Offers and prepared a schedule summarizing same (the "Offer Summary"), which is attached hereto as **Confidential Appendix "A"**, which the Receiver has provided to the Court subject to a temporary sealing request. In the event that the Court approves the Inventory Sale and/or the Equipment Sale, but one or both of the Transactions does not close, the Receiver is of the view that efforts to remarket the Company's Inventory and Equipment may be impaired if the Offer Summary is made public at this time.

THE TRANSCATIONS

35. Based on its review of the Final Offers, the Receiver determined that the most favourable alternative available to it was a sale or auction of the Equipment under Maynards' supervision, combined with the sale of the Inventory to 453, a wholly owned subsidiary of Rona.

36. Following its review of the Final Offers, the Receiver contacted both 453 and Maynards to advise that the Receiver wished to proceed with their respective offers and to negotiate definitive agreements in respect of same.
37. On March 19, 2012, the Receiver and 453 executed an APA in respect of the Inventory, a redacted copy of which is attached hereto as **Appendix "B"**. Key elements of the 453 APA include:
 - a) The purchased assets consist of hardware/building supplies and lumber;
 - b) 453 has sole responsibility for removing and transporting the Inventory from the Premises to their final destination;
 - c) Following the closing of the Inventory Sale, the Receiver will provide 453 with access to the Premises between 8 a.m. and 6 p.m. daily, for a period of twenty-one (21) days, excluding statutory holidays, to remove the Inventory;
 - d) In the event 453 does not remove all of the Inventory, 453 and the Receiver have entered into an arrangement whereby the Receiver may repurchase all such Inventory for \$1, at the Receiver's option;
 - e) The Inventory Sale is subject to the approval of the Court and the issuance of an order approving the APA and vesting title in and to the Inventory in 453 free and clear of all claims and encumbrances (the "**453 Vesting Order**"); and
 - f) Closing will take place the next business day following the date of the 453 Vesting Order or such earlier or later date as may be agreed upon by 453 and the Receiver.

38. On March 19, 2012, the Receiver and Maynards executed an ASA in respect of the Equipment, a redacted copy of which is attached hereto as **Appendix “C”**. Key elements of the ASA include:

- a) Upon the execution of the ASA, Maynards shall provide the Receiver with an advance payment towards the net minimum guarantee (“NMG”) with the balance of the NMG being paid to the Receiver no later than one (1) business day prior to the auction date;
- b) The Equipment may be sold by private advance sales and/or at a public auction to be conducted from the Premises. The public auction is to be held no later than April 20, 2012 or such later date as may be agreed to by Maynards and the Receiver; and
- c) The Equipment Sale is subject to the approval of the Court and the issuance of an order approving the ASA and the Equipment Sale and vesting title in and to the Equipment in the ultimate purchaser or purchasers of Equipment.

39. In the event that the Court approves the Inventory Sale and or the Equipment Sale, but one or both of the Transactions does not close, the Receiver is of the view that efforts to remarket the Company’s Inventory and Equipment may be impaired if the APA or the ASA are made public at this time. The Receiver proposes to file unredacted copies of the APA and the ASA with the Court as **Confidential Appendix “B”** and **Confidential Appendix “C”**, respectively. The Receiver is of the view that it is preferable that the unredacted APA and the unredacted ASA remain confidential until the closing of the Inventory Sale and the completion of the Equipment Sale, respectively. Accordingly, the Receiver seeks an order temporarily sealing the unredacted APA and the unredacted ASA pending the closing and/or completion of the Transactions.

TRANSFER OF OWNERSHIP TO CERTAIN EQUIPMENT

40. During the sales process, the Receiver became aware that title to certain of the Company's vehicles (the "**Vehicles**"), which are included in the Equipment Sale, was not registered with 215. Rather, title to the Vehicles was in the name of Colony Ratcliff Lumber Inc. ("**Ratcliff**").
41. After further investigation by the Receiver, including discussions with the Principals, the Receiver understands that by virtue of both an asset purchase agreement dated April 9, 2010 and a general conveyance dated April 9, 2010 entered into between 215 and Ratcliff (the "**Conveyance Documents**"), 215 purchased various assets from Ratcliff, including the Vehicles.
42. Notwithstanding the purchase of the Vehicles from Ratcliff by 215, the Receiver has confirmed with the Ministry of Transportation ("**MTO**") that the registrations for the Vehicles were never transferred from Ratcliff to 215.
43. Following several discussion with representatives of the MTO and after providing the MTO with copies of the Conveyance Documents, the MTO agreed to permit the Receiver to complete the conveyance of the Vehicles from Ratcliff to 215 upon payment of 8% Retail Sales Tax (the "**Tax**"), as the sale of the Vehicles predated the implementation of the Harmonized Sales Tax, based on the actual sale price or the wholesale value of the Vehicles, whichever was greater.
44. The portion of the NMG allocable to the vehicles for the Equipment Sale exceeded the Tax required to be paid to complete the conveyance of the Vehicles from Ratcliff to 215. Accordingly, the Receiver has paid the Tax and title to the Vehicles has been transferred from Ratcliff to 215. Out of an abundance of caution, the Receiver will serve its notice of motion and this Report on the parties with outstanding registrations against Ratcliff.

SECURITY OPINION

45. Chattons LLP (“**Chattons**”), independent counsel to the Receiver, has reviewed the security granted in favour of both CIBC (the “**CIBC Security**”) and Rona (the “**Rona Security**”) by 215. Chattons is in the process of finalizing its opinion on the CIBC Security and the Rona Security, but has informed the Receiver that, based on its review, the CIBC Security and the Rona Security is both valid and enforceable.

CONCLUSION AND RECOMMENDATION

46. The Receiver is of the view that the Inventory Sale and the Equipment Sale represent the best recovery for the Inventory and the Equipment, in the circumstances and recommends that the Court issue an order approving the Inventory Sale and the Equipment Sale as:

- a) The Company was not operating as a going concern as at the Date of Appointment. Accordingly, liquidation was the only viable option available to the Receiver to realize on the Inventory and the Equipment.
- b) The sales process was designed to solicit interest from *bona fide* Interested Parties who would be familiar with the nature of the Inventory and the Equipment;
- d) The market has been extensively canvassed by the Receiver in the sale process.
- e) The further marketing of the Inventory and Equipment would not likely result in greater realizations and may put the Transactions at risk impairing recoveries;
- f) The Transactions represent the best and highest offers received by the Receiver in the sale process; and

g) Based on the estimated realizations from the Property, the Senior Secured Lenders are the only creditors with an economic interest in the Property, and CIBC supports the Inventory Sale and the Equipment Sale and Rona takes no position on the Equipment Sale.

47. The Receiver respectfully recommends that the Court issue an order:

- a) Approving the Inventory Sale and vesting the Company's right, title and interest in and to the Inventory in 453;
- b) Approving the Equipment Sale and vesting the Company's right, title and interest in and to the Equipment in the ultimate purchaser or purchasers of the Equipment, free and clear of all liens and encumbrances;
- c) Approving the First Report and the activities of the Receiver as set out therein, and
- d) Temporarily sealing the Offer Summary, the unredacted APA and the unredacted ASA pending the closing and/ or completion of the transactions contemplated therein.

All of which is respectfully submitted on this 20th day of March, 2012.

PricewaterhouseCoopers Inc.
In its capacity as Receiver of
2154015 Ontario Inc.



Greg Prince
Senior Vice President



Adam Sherman
Vice President

TAB C



Court File No.: 6475/12

ONTARIO
SUPERIOR COURT OF JUSTICE

WATFORD ROOF TRUSS LIMITED

- and -

PLAINTIFF

2154015 ONTARIO INC. operating as COLONY HOLLAND LUMBER INC.,
LUCIO CAIRO, DANIEL JAMES HANNAM, ENRICO DE VINCENZO,
CANADIAN IMPERIAL BANK OF COMMERCE, and BANK OF NOVA SCOTIA

DEFENDANTS

STATEMENT OF CLAIM

TO THE DEFENDANTS

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the Plaintiff. The claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or an Ontario lawyer acting for you must prepare a Statement of Defence in Form 18A prescribed by the Rules of Civil Procedure, serve it on the Plaintiff's lawyer or, where the Plaintiff does not have a lawyer, serve it on the Plaintiff, and file it, with proof of service, in this court office, WITHIN TWENTY DAYS after this statement of claim is served on you, if you are served in Ontario.

If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your Statement of Defence is FORTY DAYS. If you are served outside Canada and the United States of America, the period is SIXTY DAYS.

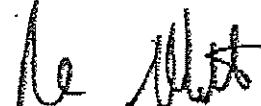
Instead of serving and filing a Statement of Defence, you may serve and file a Notice of Intent to Defend in Form 18B prescribed by the Rules of Civil Procedure. This will entitle you to ten more days within which to serve and file your Statement of Defence.

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

IF YOU PAY THE PLAINTIFF'S CLAIM, and \$750.00, for costs, within the time for serving and filing your Statement of Defence, you may move to have this proceeding dismissed by the court. If you believe the amount claimed for costs is excessive, you may pay the Plaintiff's claim and \$400.00 for costs and have the costs assessed by the court.

Date: March 9, 2012

Issued by


Local registrar

Address of court office:
Ground Floor, Unit "A"
80 Dundas Street
London, Ontario
N6A 6A3

TO: 2164015 ONTARIO INC., operating as
COLONY HOLLAND LUMBER INC.
1277 Wilson Road North
Oshawa, Ontario
L1K 2B8

AND TO: LUCIO CAIRO
327 Metrose Avenue
Toronto, Ontario
M5M 1Z7

AND TO: DANIEL JAMES HANNAM
6120 Shilo Road, R. R. #1
Newtonville, Ontario
L0A 1J0

AND TO: ENRICO DE VINCENZO
110 Bloor Street West, Suite 1309
Toronto, Ontario
M5S 2W7

AND TO: **CANADIAN IMPERIAL BANK OF COMMERCE**

Keele and Lawrence
1400 Lawrence Avenue West
Toronto, Ontario
M6L 1A7

AND TO: **BANK OF NOVA SCOTIA**

Scotia Plaza
40 King Street West
2nd Mezzanine
Toronto, Ontario
M5H 1H1

4
CLAIM

1. The Plaintiff claims:

- (a) Damages in the amount of \$99,126.20;
- (b) A declaration that monies received by 2154015 Ontario Inc., operating as Colony Holland Lumber Inc., Lucio Cairo, Daniel James Hannam, Enrico De Vincenzo, Canadian Imperial Bank of Commerce and/or Bank of Nova Scotia, are subject to a trust on behalf of the Plaintiff;
- (c) A declaration that the defendants, 2154015 Ontario Inc., operating as Colony Holland Lumber Inc., Lucio Cairo, Daniel James Hannam, Enrico De Vincenzo, Canadian Imperial Bank of Commerce and/or Bank of Nova Scotia, have breached the trust provisions of the *Construction Lien Act*, R.S.O. 1990, c.C.43;
- (d) A declaration that the appropriation of funds from any bank account in the name of 2154015 Ontario Inc., operating as Colony Holland Lumber Inc., held by Canadian Imperial Bank of Commerce, constitutes a breach of trust pursuant to the provisions of the *Construction Lien Act*, R.S.O. 1990, c.C.30;
- (e) A declaration that the appropriation of funds from any bank account in the name of 2154015 Ontario Inc., operating as Colony Holland Lumber Inc., held by Bank of Nova Scotia, constitutes a breach of trust pursuant to the provisions of the *Construction Lien Act*, R.S.O. 1990, c.C.30;

- (f) A declaration that the appropriation of monies from any bank account in the name of 2154015 Ontario Inc., operating as Colony Holland Lumber Inc., Lucio Cairo, Daniel James Hannam, Enrico De Vincenzo constitutes a breach of trust pursuant to the provisions of the *Construction Lien Act*, R.S.O. 1990, c.C.30, as amended;
- (g) An Order directing a reference to determine those entitled to participate in the funds appropriated by the Canadian Imperial Bank of Commerce and the degree of their participation;
- (h) An Order directing a reference to determine those entitled to participate in the funds appropriated by the Bank of Nova Scotia and the degree of their participation;
- (i) In the alternative, a declaration that the Defendants have breached their contract with the Plaintiff;
- (j) Pre-Judgment interest pursuant to the agreement between the parties at the rate of 15% per annum from January 10, 2012, to the date of payment or Judgment herein or in the alternative pursuant to the *Courts of Justice Act*, R.S.O. 1990, c. C.43;
- (k) Post-Judgment interest pursuant to the agreement between the parties at the rate of 15% per annum or in the alternative pursuant to the *Courts of Justice Act*, R.S.O. 1990, c. C.43;
- (l) Costs on a substantial indemnity basis;
- (m) Such further and other relief as this Honourable Court deems just.

2. The Plaintiff, Watford Roof Truss Limited, is a corporation duly incorporated pursuant to the laws of the Province of Ontario, having its head office in the Town of Watford, Province of Ontario. At all material times Watford Roof Truss Limited was in the business of supplying building materials, more specifically the sale of custom designed roof trusses.
3. The Defendant, 2154015 Ontario Inc., operating as Colony Holland Lumber Inc., (hereinafter referred to as "2154015 Ontario Inc."), is a corporation duly incorporated pursuant to the laws of the Province of Ontario having its head office in the City of Oshawa, Regional Municipality of Durham, and was at all material times in the business of retail and supply of building materials.
4. The Defendant, Lucio Cairo, is an individual residing in the City of Toronto, and was at all material times an officer and director of the Corporate Defendant, 2154015 Ontario Inc.
5. The Defendant, Daniel James Hannam, is an individual residing in the Town of Newtonville, Regional Municipality of Durham, and was at all material times an officer and director of the Corporate Defendant, 2154015 Ontario Inc.

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6. The Defendant, Enrico De Vincenzo, is an individual residing in the City of Toronto, and was at all material times an officer and director of the Corporate Defendant, 2154015 Ontario Inc.
7. The Defendant, Canadian Imperial Bank of Commerce, (hereinafter referred to as "CIBC") is a chartered bank pursuant to the Bank Act of Canada operating with offices throughout North America and specifically with an office in the City of Toronto, Province of Ontario. CIBC was at all materials times a banking institution utilized by the Defendant, 2154015 Ontario Inc.
8. The Defendant, Bank of Nova Scotia, is a chartered bank pursuant to the Bank Act of Canada operating with offices throughout North America and specifically with an office in the city of Toronto, province of Ontario. Bank of Nova Scotia was at all materials times a banking institution utilized by the Defendant, 2154015 Ontario Inc.
9. The Plaintiff states that on or about October 23, 2008, the Defendant, 2154015 Ontario Inc., applied pursuant to a credit application to have the Plaintiff provide necessary building materials with respect to construction to be completed at various locations. Pursuant to the agreement between the parties, the building materials were delivered to the Defendant, 2154015 Ontario Inc., or as they directed, and invoiced to them on a running account.

10. The Plaintiff states that the Defendant, 2154015 Ontario Inc., did take possession of the said building materials, either directly or through agents, for which payment was not made. The said building materials were then sold by the Defendant, 2154015 Ontario Inc., to individuals or contractors, the proceeds of which were deposited into business accounts of the said Defendant.

11. The Plaintiff states that regular invoices were delivered to the Defendant, 2154015 Ontario Inc., for the various projects, the particulars of which are as follows:

Invoice	Property	Date	Balance
2010-43537-00	60 Rouge Street, Markham, Ontario	7/20/2010	5,853.40
2011-50238-00	Lot 14, Caledon	9/2/2011	5,085.00
2011-52988-00	Lot 4, Westlakes Estate	9/16/2011	(508.50)
2011-51623-00	9 Woodcrest Drive, Etobicoke, Ontario	9/23/2011	2,479.17
2010-47250-00	369 Toynevale Road, Pickering, Ontario	10/3/2011	5,198.00
2011-51355-00	14912 Jane Street, King Township	10/6/2011	3,615.21
2010-42568-00	7 Trimingham Ct. Richmond Hill, Ontario	10/7/2011	4,491.31
2011-53202-00	17 Blue Springs, Toronto, Ontario	10/13/2011	5,943.80
2011-51709-00	38 Rippleton Road, Toronto, Ontario	10/21/2011	6,997.75
2011-51973-00	89 Cawkers Cove Road, Port Perry, Ontario	11/7/2011	12,920.42
2012-55098-00	89 Cawkers Cove Road, Port Perry, Ontario	1/12/2012	(1,130.00)
2011-53176-00	9634 Wellington Road 42, Erin, Ontario	11/18/2011	3,842.00

2011-53563-00	9634 Wellington Road 42, Erin, Ontario	12/12/2011	7,684.00
2011-53521-00	34 Old Oak Lane, Orangeville, Ontario	11/21/2011	9,322.50
2011-53899-00	95 Harlow Crescent, Woodbridge, Ontario	11/28/2011	3,477.25
2011-53103-00	42 Manor Haven Road, Toronto, Ontario	11/28/2011	5,063.55
2011-54314-00	4648 Conc. Road 1, Newtonville, Ontario	12/13/2011	3,029.19
2011-54605-00	999 Conlin Road, Whitby	12/19/2011	1,898.40
2011-54363-00	4286B Lawrence Avenue, Scarborough, Ontario	12/30/2011	2,926.25
2011-54362-00	4288 Lawrence Avenue, Scarborough, Ontario	12/30/2011	2,926.25
2011-54364-00	4286A Lawrence Avenue, Scarborough, Ontario	1/10/2012	2,926.25
2011-53710-00	28 Lawson Road, Courtice, Ontario		5,085.00
TOTAL:			\$ 99,126.20

12. The Plaintiff states that the Defendant, 2154015 Ontario Inc., has made no payments and despite repeated requests has failed and/or neglected to make payment of the amount outstanding.

13. The Plaintiff states that as at January 10, 2012, the Defendant, 2154015 Ontario Inc., was indebted to the Plaintiff in the sum of \$99,126.20.

14. The Plaintiff states that CIBC and 2154015 Ontario Inc., entered into written agreements whereby the Defendant, CIBC, agreed to advance certain sums to 2154015 Ontario Inc. for the use of 2154015 Ontario Inc., to provide continued and

ongoing financing for its business activities, the particulars of which are not known to the Plaintiff.

15. The Plaintiff further states that pursuant to the agreement between CIBC and 2154015 Ontario Inc., an account was designated into which proceeds from sales were deposited and which account was utilized for the business affairs of the Defendant, 2154015 Ontario Inc., including the receipt of funds from projects.
16. The Plaintiff states that pursuant to the agreement between CIBC and 2154015 Ontario Inc., CIBC appropriated for its own use monies which were monies upon which there was imposed a trust for the benefit of the Plaintiff, the full particulars of which are not known to the Plaintiff.
17. The Plaintiff states that the funds appropriated by CIBC constitutes a trust fund for the benefit of suppliers of materials for the said projects, more specifically the Plaintiff herein, as outlined in paragraph 11 above.
18. The Plaintiff states that the Bank of Nova Scotia and 2154015 Ontario Inc., also entered into written agreements whereby the Defendant, Bank of Nova Scotia, agreed to advance certain sums to 2154015 Ontario Inc. for the use of 2154015 Ontario Inc., to provide continued and ongoing financing for its business activities, the particulars of which are not known to the Plaintiff.

19. The Plaintiff further states that pursuant to the agreement between the Bank of Nova Scotia and 2154015 Ontario Inc., an account was designated into which proceeds from sales were deposited and which account was utilized for the business affairs of the Defendant, 2154015 Ontario Inc., including the receipt of funds from projects.
20. The Plaintiff states that pursuant to the agreement between Bank of Nova Scotia and 2154015 Ontario Inc., Bank of Nova Scotia appropriated for its own use monies which were monies upon which there was imposed a trust for the benefit of the Plaintiff, the full particulars of which are not known to the Plaintiff.
21. The Plaintiff states that the funds appropriated by Bank of Nova Scotia constitutes a trust fund for the benefit of suppliers of materials for the said projects, more specifically the Plaintiff herein, as outlined in paragraph 11 above.
22. The Plaintiff furthermore pleads that the Defendants, Lucio Cairo, Daniel James, Hannam and Enrico De Vincenzo, through numerous financial transactions appropriated monies from various bank accounts in the name of 2154015 Ontario Inc. for purposes inconsistent with their character as trust funds pursuant to the *Construction Lien Act*, R.S.O. 1990, c.C.30, the particulars of which are currently unknown to the Plaintiff.

23. The Plaintiff states that the Defendant, 2154015 Ontario Inc., did receive monies for the price of the building materials provided by the Plaintiff.
24. The Plaintiff states that the said funds received by the Defendant, 2154015 Ontario Inc., formed a trust fund for the benefit of the Plaintiff.
25. The Plaintiff states that the said trust funds were not utilized for the purposes of paying the Plaintiff as required pursuant to the requirements of Section 8(1) of the *Construction Lien Act*, R.S.O. 1990, c.C.30, as amended.
26. The Plaintiff states that the Defendant, 2154015 Ontario Inc., did breach the trust obligations of *The Construction Lien Act*, R.S.O., 1990, c.C.30, as amended.
27. The Plaintiff states that the Defendants, Lucio Cairo, Daniel James Hannam and Enrico De Vincenzo, being the officers and directors of 2154015 Ontario Inc., assented to, or acquiesced in conduct that they knew or reasonably ought to have known amounted to a breach of trust by 2154015 Ontario Inc.
28. The Plaintiff states that as a result of the actions of the Defendants, Lucio Cairo, Daniel James Hannam and Enrico De Vincenzo, they are also indebted to the Plaintiff for the full amount of the monies owing to the Plaintiff due to the breach of trust by 2154015 Ontario Inc.

29. The Plaintiff states that in the alternative, the Defendants have breached their obligation to the Plaintiff by refusing or neglecting to pay the Plaintiff the full amount of monies due and owing to the Plaintiff from the Trust Funds that existed and of which they were aware.
30. The Plaintiff states that the Defendants, Lucio Cairo, Daniel James Hannam and Enrico De Vincenzo, are therefore personally indebted to the Plaintiff in the sum of \$99,126.20 from January 10, 2012, to the date of payment or Judgment herein.

The Plaintiff proposes that this action be tried in the City of London, County of Middlesex.

DATE: March 09, 2012.

SZEMENYEI MacKENZIE GODIN LLP
Law Firm
376 Richmond Street
London, Ontario
N6A 3C7

DAVID A. MacKENZIE (30305R)
Phone: (519)433-8155
Fax : (519)660-4857

Lawyers for the Plaintiff,
Watford Roof Truss Ltd.

Mar. 21, 2012 2:42PM PRIVATE 05912 416-638-5634

No. 7518

WATFORD ROOF TRUSS LIMITED
-and-
2154015 ONTARIO INC., et al
COLONY HOLLAND
LUMBER INC., et al
Defendant

P. Plaintiff

Court File No. 6475/12

ONTARIO

SUPERIOR COURT OF JUSTICE

PROCEEDING COMMENCED AT
LONDON

STATEMENT OF CLAIM

SZEMENYI MACKENZIE GODIN LLP

Law Firm
376 Richmond Street
London ON N6A 3C7

David A. MacKenzie (30305R)
Tel: 519-433-8155
Fax: 519-660-4857

Lawyers for the Plaintiff,
Watford Roof Truss Limited

File Number: 2012001

TAB D

ONTARIO
SUPERIOR COURT OF JUSTICE

Court File No.: 6474/12

PACER BUILDING COMPONENTS INC.

- and -

PLAINTIFF

2154015 ONTARIO INC. operating as COLONY HOLLAND LUMBER INC.,
LUCIO CAIRO, DANIEL JAMES HANNAM, ENRICO DE VINCENZO,
CANADIAN IMPERIAL BANK OF COMMERCE, and BANK OF NOVA SCOTIA

DEFENDANTS

STATEMENT OF CLAIM

TO THE DEFENDANTS

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the Plaintiff. The claim made against you is set out in the following pages.

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Date: March 9, 2012

Issued by



Local registrar

Address of court office:
Ground Floor, Unit "A"
80 Dundas Street
London, Ontario
N6A 6A3

TO: 2154015 ONTARIO INC., operating as
COLONY HOLLAND LUMBER INC.
1277 Wilson Road North
Oshawa, Ontario
L1K 2B8

AND TO: LUCIO CAIRO
327 Melrose Avenue
Toronto, Ontario
M5M 1Z7

AND TO: DANIEL JAMES HANNAM
6120 Shilo Road, R. R. #1
Newtonville, Ontario
L0A 1J0

AND TO: ENRICO DE VINCENZO
110 Bloor Street West, Suite 1309
Toronto, Ontario
M5S 2W7

AND TO: **CANADIAN IMPERIAL BANK OF COMMERCE**
Keele and Lawrence
1400 Lawrence Avenue West
Toronto, Ontario
M6L 1A7

AND TO: **BANK OF NOVA SCOTIA**
Scotia Plaza
40 King Street West
2nd Mezzanine
Toronto, Ontario
M5H 1H1

CLAIM

1. The Plaintiff claims:

- (a) Damages in the amount of \$85,745.34;
- (b) A declaration that monies received by 2154015 Ontario Inc., operating as Colony Holland Lumber Inc., Lucio Cairo, Daniel James Hannam, Enrico De Vincenzo, Canadian Imperial Bank of Commerce and/or Bank of Nova Scotia, are subject to a trust on behalf of the Plaintiff;
- (c) A declaration that the defendants, 2154015 Ontario Inc., operating as Colony Holland Lumber Inc., Lucio Cairo, Daniel James Hannam, Enrico De Vincenzo, Canadian Imperial Bank of Commerce and/or Bank of Nova Scotia, have breached the trust provisions of the *Construction Lien Act*, R.S.O. 1990, c.C.43;
- (d) A declaration that the appropriation of funds from any bank account in the name of 2154015 Ontario Inc., operating as Colony Holland Lumber Inc., held by Canadian Imperial Bank of Commerce, constitutes a breach of trust pursuant to the provisions of the *Construction Lien Act*, R.S.O. 1990, c.C.30;
- (e) A declaration that the appropriation of funds from any bank account in the name of 2154015 Ontario Inc., operating as Colony Holland Lumber Inc., held by Bank of Nova Scotia, constitutes a breach of trust pursuant to the provisions of the *Construction Lien Act*, R.S.O. 1990, c.C.30;

- (f) A declaration that the appropriation of monies from any bank account in the name of 2154015 Ontario Inc., operating as Colony Holland Lumber Inc., Lucio Cairp, Daniel James Hannam, Enrico De Vincenzo constitutes a breach of trust pursuant to the provisions of the *Construction Lien Act*, R.S.O. 1990, c.C.30, as amended;
- (g) An Order directing a reference to determine those entitled to participate in the funds appropriated by the Canadian Imperial Bank of Commerce and the degree of their participation;
- (h) An Order directing a reference to determine those entitled to participate in the funds appropriated by the Bank of Nova Scotia and the degree of their participation;
- (i) In the alternative, a declaration that the Defendants have breached their contract with the Plaintiff;
- (j) Pre-Judgment interest pursuant to the agreement between the parties at the rate of 15% per annum from December 20, 2011, to the date of payment or Judgment herein or in the alternative pursuant to the *Courts of Justice Act*, R.S.O. 1990, c. C.43;
- (k) Post-Judgment interest pursuant to the agreement between the parties at the rate of 15% per annum or in the alternative pursuant to the *Courts of Justice Act*, R.S.O. 1990, c. C.43;
- (l) Costs on a substantial indemnity basis;
- (m) Such further and other relief as this Honourable Court deems just.

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2. The Plaintiff, Pacer Building Components Inc., is a corporation duly incorporated pursuant to the laws of the Province of Ontario, having its head office in the Village of Ilderton, Province of Ontario. At all material times Pacer Building Components Inc., was in the business of supplying building materials, more specifically the sale of custom designed roof trusses.
3. The Defendant, 2154015 Ontario Inc., operating as Colony Holland Lumber Inc., (hereinafter referred to as "2154015 Ontario Inc."), is a corporation duly incorporated pursuant to the laws of the Province of Ontario having its head office in the City of Oshawa, Regional Municipality of Durham, and was at all material times in the business of retail and supply of building materials.
4. The Defendant, Lucio Cairo, is an individual residing in the City of Toronto, and was at all material times an officer and director of the Corporate Defendant, 2154015 Ontario Inc.
5. The Defendant, Daniel James Hannam, is an individual residing in the Town of Newtonville, Regional Municipality of Durham, and was at all material times an officer and director of the Corporate Defendant, 2154015 Ontario Inc.

6. The Defendant, Enrico De Vincenzo, is an individual residing in the City of Toronto, and was at all material times an officer and director of the Corporate Defendant, 2154015 Ontario Inc.
7. The Defendant, Canadian Imperial Bank of Commerce, (hereinafter referred to as "CIBC") is a chartered bank pursuant to the Bank Act of Canada operating with offices throughout North America and specifically with an office in the City of Toronto, Province of Ontario. CIBC was at all materials times a banking institution utilized by the Defendant, 2154015 Ontario Inc.
8. The Defendant, Bank of Nova Scotia, is a chartered bank pursuant to the Bank Act of Canada operating with offices throughout North America and specifically with an office in the city of Toronto, province of Ontario. Bank of Nova Scotia was at all materials times a banking institution utilized by the Defendant, 2154015 Ontario Inc.
9. The Plaintiff states that the Defendant, 2154015 Ontario Inc., applied pursuant to a credit application to have the Plaintiff provide necessary building materials with respect to construction to be completed at various locations. Pursuant to the agreement between the parties, the building materials were delivered to the Defendant, 2154015 Ontario Inc., or as they directed, and invoiced to them on a running account.

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10. The Plaintiff states that the Defendant, 2154015 Ontario Inc., did take possession of the said building materials, either directly or through agents, for which payment was not made. The said building materials were then sold by the Defendant, 2154015 Ontario Inc., to individuals or contractors, the proceeds of which were deposited into business accounts of the said Defendant.

11. The Plaintiff states that regular invoices were delivered to the Defendant, 2154015 Ontario Inc., for the various projects, the particulars of which are as follows:

Invoice	Property	Date	Balance
669488	Lot 56, Cachet, Brampton	24/10/2011	\$ 5,059.54
669620	Lot 55, Cachet, Brampton	11/11/2011	6,265.96
669632	Lot 16, Cachet, Brampton	10/11/2011	6,675.32
669672	Lot 75, Cachet, Brampton	18/11/2011	4,690.19
669725	Lot 54, Cachet, Brampton	24/11/2011	6,079.25
669725	Block 110, Cachet, Brampton	25/11/2011	5,982.66
669796	Block 108, Cachet, Brampton	06/12/2011	5,547.68
669512	49 Codsell	25/10/2011	3,626.88
669553	H & R Engineering	02/11/2011	8,136.00
669554	64 Hazelridge	01/11/2011	20,419.89
669575	68 Davidson	02/11/2011	1,525.50
669693	53 Lotian	22/11/2011	2,877.07
669798	847 Dundas St. W	06/12/2011	3,388.08
669874	62 Langmuir Cres.	20/12/2011	5,472.32
TOTAL:			\$ 85,745.34

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12. The Plaintiff states that the Defendant, 2154015 Ontario Inc., has made no payments and despite repeated requests has failed and/or neglected to make payment of the amount outstanding.
13. The Plaintiff states that as at December 20, 2011, the Defendant, 2154015 Ontario Inc., was indebted to the Plaintiff in the sum of \$86,745.34.
14. The Plaintiff states that CIBC and 2154015 Ontario Inc., entered into written agreements whereby the Defendant, CIBC, agreed to advance certain sums to 2154015 Ontario Inc. for the use of 2154015 Ontario Inc., to provide continued and ongoing financing for its business activities, the particulars of which are not known to the Plaintiff.
15. The Plaintiff further states that pursuant to the agreement between CIBC and 2154015 Ontario Inc., an account was designated into which proceeds from sales were deposited and which account was utilized for the business affairs of the Defendant, 2154015 Ontario Inc., including the receipt of funds from projects.

16. The Plaintiff states that pursuant to the agreement between CIBC and 2154015 Ontario Inc., CIBC appropriated for its own use monies which were monies upon which there was imposed a trust for the benefit of the Plaintiff, the full particulars of which are not known to the Plaintiff.
17. The Plaintiff states that the funds appropriated by CIBC constitutes a trust fund for the benefit of suppliers of materials for the said projects, more specifically the Plaintiff herein, as outlined in paragraph 11 above.
18. The Plaintiff states that the Bank of Nova Scotia and 2154015 Ontario Inc., also entered into written agreements whereby the Defendant, Bank of Nova Scotia, agreed to advance certain sums to 2154015 Ontario Inc. for the use of 2154015 Ontario Inc., to provide continued and ongoing financing for its business activities, the particulars of which are not known to the Plaintiff.
19. The Plaintiff further states that pursuant to the agreement between the Bank of Nova Scotia and 2154015 Ontario Inc., an account was designated into which proceeds from sales were deposited and which account was utilized for the business affairs of the Defendant, 2154015 Ontario Inc., including the receipt of funds from projects.

20. The Plaintiff states that pursuant to the agreement between Bank of Nova Scotia and 2154015 Ontario Inc., Bank of Nova Scotia appropriated for its own use monies which were monies upon which there was imposed, a trust for the benefit of the Plaintiff, the full particulars of which are not known to the Plaintiff.
21. The Plaintiff states that the funds appropriated by Bank of Nova Scotia constitutes a trust fund for the benefit of suppliers of materials for the said projects, more specifically the Plaintiff herein, as outlined in paragraph 11 above.
22. The Plaintiff furthermore pleads that the Defendants, Lucio Cairo, Daniel James Hannam and Enrico De Vincenzo, through numerous financial transactions appropriated monies from various bank accounts in the name of 2154015 Ontario Inc. for purposes inconsistent with their character as trust funds pursuant to the *Construction Lien Act*, R.S.O. 1990, c.C.30, the particulars of which are currently unknown to the Plaintiff.
23. The Plaintiff states that the Defendant, 2154015 Ontario Inc., did receive monies for the price of the building materials provided by the Plaintiff.
24. The Plaintiff states that the said funds received by the Defendant, 2154015 Ontario Inc., formed a trust fund for the benefit of the Plaintiff.

25. The Plaintiff states that the said trust funds were not utilized for the purposes of paying the Plaintiff as required pursuant to the requirements of Section 8(1) of the *Construction Lien Act*, R.S.O. 1990, c.C.30, as amended.
26. The Plaintiff states that the Defendant, 2154015 Ontario Inc., did breach the trust obligations of *The Construction Lien Act*, R.S.O., 1990, c.C.30, as amended.
27. The Plaintiff states that the Defendants, Lucio Cairo, Daniel James Hannam and Enrico De Vincenzo, being the officers and directors of 2154015 Ontario Inc., assented to, or acquiesced in conduct that they knew or reasonably ought to have known amounted to a breach of trust by 2154015 Ontario Inc.
28. The Plaintiff states that as a result of the actions of the Defendants, Lucio Cairo, Daniel James Hannam and Enrico De Vincenzo, they are also indebted to the Plaintiff for the full amount of the monies owing to the Plaintiff due to the breach of trust by 2154015 Ontario Inc.
29. The Plaintiff states that in the alternative, the Defendants have breached their obligation to the Plaintiff by refusing or neglecting to pay the Plaintiff the full amount of monies due and owing to the Plaintiff from the Trust Funds that existed and of which they were aware.

30. The Plaintiff states that the Defendants, Lucio Cairo, Daniel James Hannam and Enrico De Vincenzo, are therefore personally indebted to the Plaintiff in the sum of \$85,745.34 from December 20, 2011, to the date of payment or Judgment herein.

The Plaintiff proposes that this action be tried in the City of London, County of Middlesex.

DATE: March 09, 2012.

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Mar. 21, 2012 2:43PM PRIVATE 05912 416-638-5634

No. 7518

PACER BUILDING COMPONENTS INC.
29
P. Plaintiff

-and-

2154015 ONTARIO INC., *et al*
LUMBER INC., *et al*
Defendant

Court File No. 6474/12

ONTARIO

SUPERIOR COURT OF JUSTICE

PROCEEDING COMMENCED AT
LONDON

STATEMENT OF CLAIM

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