

Court File No. CV-10-8961-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

BETWEEN:

GENERAL ELECTRIC CANADA REAL ESTATE FINANCE INC.
and G.E. EQUIPMENT FINANCING G.P.

Applicant

- AND -

1733073 ONTARIO INC.

Respondent

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

**REPORT OF PRICEWATERHOUSECOOPERS INC.
AS PROPOSED RECEIVER OF
1733073 Ontario Inc.**

MAY 25, 2011

INTRODUCTION

1. PricewaterhouseCoopers Inc. (“**PwC**” or the “**Proposed Receiver**”) understands that an application (the “**Application**”) has been made before the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) by General Electric Real Estate Finance Inc. and G.E. Capital Equipment Financing G.P. (together “**GE**” or the “**Lender**”) for an order (the “**Receivership Order**”) appointing a 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. C.43, as amended, over all the assets, undertakings and properties (the “**Property**”) of 1733073 Ontario Inc. (“**1733073**” or the “**Company**”).
2. PwC is a licensed trustee within the meaning of section 2 of the BIA. PwC has consented to act as Receiver in these proceedings in the event that this Honourable Court grants the Receivership Order.
3. On May 12, 2011, the Court granted an adjournment (the “**Adjournment**”) of the Application seeking a Receivership Order until May 27, 2011, pending the finalization of the terms of a possible sale of the Property by the Company to a third party.
4. As a condition of granting the Adjournment, the Court issued an endorsement authorizing PwC to access the Company’s premises at 250 Consumers Road, Toronto, Ontario (“**Consumers Road**”) for the purpose of reviewing the Company’s books and records (“**Books and Records**”).
5. This report has been prepared by the Proposed Receiver to advise the Court with respect to the outcome of the Proposed Receiver’s attendance at Consumers Road and its review of the Books and Records provided by the Company to date.
6. In preparing this report, the Proposed Receiver has relied upon unaudited and draft, internal financial information of the Company provided to it by the Company. The Proposed Receiver has not audited, reviewed or otherwise attempted to verify the accuracy or completeness of the information provided to it and expresses no opinion, or other form of assurance, in respect of the information contained in this report. The Proposed Receiver reserves the right to refine or amend its comments and findings as further information is obtained or brought to its attention subsequent to the date of this report.
7. Unless otherwise noted, all currency amounts contained in this report are expressed in Canadian dollars.

BACKGROUND

8. 1733073 is controlled by Sivaramalingam (Siva) Suthakaran (“**Suthakaran**”), who is the Company’s sole officer and director, as well as its President. 1733073 owns and operates a 45 room hotel located at 211 Pinnacle Street, Belleville, Ontario. The hotel currently operates under the trade name “**Hotel Quinte**”. The Proposed Receiver understands that GE advanced \$2,600,000 to 1733073 pursuant to a Loan Agreement dated May 25, 2007 and that the loan is in default. Further background information with respect to the Company’s indebtedness to GE is set out in the affidavit of Marc Lapointe, sworn April 20, 2011.

REVIEW OF THE COMPANY’S BOOKS AND RECORDS

ACCESS TO BOOKS AND RECORDS

9. On or about April 21, 2011, GE advised PwC that it was concerned with the lack of financial information it was receiving from 1733073. In connection with the access rights provided to GE pursuant to a general security agreement dated June 4, 2007 between GE and 1733073 (the “**GSA**”), GE wanted PwC to review the Books and Records to assess whether the Company was carrying on business in the ordinary course and whether revenue from the property was being properly accounted for.
10. On April 28, 2011, GE issued a notice to the Company, advising that pursuant to section 7(i) of the GSA, GE would attend at the Company’s premises on May 2, 2011 in order to examine and make copies of the Books and Records, discuss the affairs of the Company with its accountants and officers, and inspect the collateral. A copy of the notice is attached as Appendix “**A**”.
11. On May 3, 2011, PwC attended at the Hotel Quinte and met with Angela Cartwright, the general manager (“**Cartwright**” or the “**GM**”). The GM contacted Suthakaran who was not present at the Hotel Quinte at the time of PwC’s attendance. Suthakaran spoke to a representative of PwC and advised that PwC was not permitted access to any of the Books and Records, however PwC was given an escorted tour of Hotel Quinte. Suthakaran also advised PwC that the Books and Records were located at Consumers Road and any attendance to view such Books and Records would have to be coordinated with the Company’s accountant and/or bookkeeper.
12. GE subsequently contacted Suthakaran, who agreed to allow GE access to Consumers Road on May 4, 2011 to review the Books and Records.

13. On May 4, 2011, Suthakaran advised GE that the Company's accountant was not available for the entire week. Suthakaran also advised GE that he would be out of town until Friday, May 5, 2011 and therefore unavailable to meet until after his return.
14. Also, on May 4, 2011, GE advised Suthakaran that it would attend at Consumers Road, the following morning, on May 5, 2011 at 9:00 am and requested that Suthakaran have someone in attendance to meet with GE. Suthakaran agreed.
15. The Proposed Receiver attended at Consumers Road on May 5, 2011, but was again denied access to the Books and Records. As Suthakaran was not present at Consumers Road, the Proposed Receiver met with Janine Deluca ("**Deluca**"), a part-time assistant to Suthakaran, who the Proposed Receiver understands performs administrative tasks for Suthakaran's various companies. Deluca advised the Proposed Receiver that GE, not PwC, had been granted access to the Company's books and records and accordingly Deluca asked PwC to leave the Consumers Road premises.
16. The Proposed Receiver understands that GE spoke to Suthakaran later in the day on May 5, 2011, at which time Suthakaran requested that GE provide him with a list of Books and Records that GE wished to review. The Proposed Receiver understands that GE provided Suthakaran with a list of requested documents on May 5, 2011, but that none of the requested documents were provided to GE prior to the date of the Application.
17. At the Application, in addition to adjourning the hearing of GE's application for the appointment of PwC as receiver, the Court issued an endorsement authorizing PwC access to the Company's premises at Consumers Road for the purpose of reviewing the Books and Records and the account statements.
18. PwC attended at Consumers Road on the afternoon of May 12, 2011 and the morning of May 13, 2011. Neither Suthakaran nor his accountant were available to meet with PwC. Accordingly, the Proposed Receiver met with Deluca, who provided the Proposed Receiver with supervised access to certain of the Books and Records.
19. The Proposed Receiver was advised that the Books and Records were co-mingled with the books and records of Suthakaran's other businesses. Accordingly, Deluca sorted various hard copy files and provided the Proposed Receiver with access to only the Books and Records that she determined pertained to 1733073.
20. The Proposed Receiver was unable to obtain access to all of the Books and Records as certain

records such as bank statements, bank reconciliations, payroll records, accounts receivables, operating reports, HST files, source deductions records, etc. were apparently not located at Consumers Road.

21. The Proposed Receiver asked Suthakaran about the location of the Books and Records that were not located at Consumers Road. Suthakaran advised the Proposed Receiver that some of the Books and Records were in the possession of the Company's accountant, Hirji Financial Consultants ("**HFC**"). In addition, Suthakaran advised that he had engaged TK Pillai ("**Pillai**"), a financial controller to assist him with financial matters in respect of all of his companies (including 1733073), including tax remittances and communication with tax authorities. Suthakaran advised the Proposed Receiver that Pillai was not an employee of 1733073 and that Pillai used his own personal computer for matters related to all of Suthakaran's businesses, including 1733073. The Proposed Receiver understands that Pillai is currently out of the country and is scheduled to return to Canada on May 27, 2011. Accordingly, the Proposed Receiver was unable to meet or speak with Pillai or access any Books and Records that he may have in his possession.
22. On each of May 13, 2011 and May 16, 2011 the Proposed Receiver spoke to Zohar (Jolly) Hirji ("**Hirji**"), who the Proposed Receiver understands is the principal of HFC, who advised the Proposed Receiver that HFC was not in possession of any Books and Records. Hirji further advised the Proposed Receiver that 1733073's payroll records and accounts receivable records were maintained at Hotel Quinte.
23. On May 16, 2011, the Proposed Receiver made multiple attempts to contact Suthakaran to discuss access to the Books and Records that were not located at Consumers Road. Unfortunately, Suthakaran did not respond to the Proposed Receiver's emails or telephone messages. Later that day, PwC emailed Suthakaran a list of outstanding documents as well as a list of questions based on its review of certain of the Books and Records on May 12, 2011 and May 13, 2011. A list of the additional Books and Records requested by the Proposed Receiver is attached hereto as Appendix "**B**" (the "**Additional Records**").
24. On May 17, 2011 the Proposed Receiver again attempted to contact Suthakaran by email and by telephone to discuss access to the Books and Records that were not located at Consumers Road and explanations in respect of certain questions based on its review of certain of the Books and Records. Suthakaran responded and advised the Proposed Receiver that he was focused on closing the sale of the Hotel Quinte and did not have time to gather and/or provide the

information requested by the Proposed Receiver. Suthakaran also advised the Proposed Receiver that GE had agreed to grant him further time to provide the Proposed Receiver with the information that it had requested. The Proposed Receiver was informed by GE that it had not agreed to give Suthakaran extra time to provide the Proposed Receiver with any additional information, including the Additional Records.

25. On May 18, 2011 and 19, 2011, the Proposed Receiver again attempted to contact Suthakaran in order to gain access to the Additional Records, explanations to the questions sent to Suthakaran on May 16, 2011 and to discuss various accounting entries noted by the Proposed Receiver in the Books and Records. Suthakaran did not respond to email messages or voicemail messages left on his business and cell phones. As of the date of this report, the Company had not provided the Proposed Receiver with access to the Additional Records or responded to the questions posed by it based on its preliminary review to date. The Proposed Receiver is not aware of the location of the Additional Records, or of the existence of other Books and Records.

REVIEW OF COMPANY'S BOOKS AND RECORDS

26. The Proposed Receiver reviewed the information provided to it by Deluca, including the most recent financial information that the Company made available to it.

27. On the basis of its preliminary review of certain of the Books and Records made available to it, the Proposed Receiver reports that:

- a) The physical Book and Records of Suthakaran's companies, including 1733073, appear to be co-mingled. The Company's accounting system is also maintained on the same computer as Suthakaran's other businesses;
- b) Suthakaran advised PwC that he uses his own personal computer for Company business including emails, however the Proposed Receiver was not permitted access to Suthakaran's own personal computer and was therefore not able to confirm whether the computer contained any pertinent Company data;
- c) There are two business names on the Company's general ledger – 1733073 and 1698577 Ontario Inc. The Proposed Receiver understands that 1698577 Ontario Inc. is a guarantor of the Company's indebtedness to GE. The Proposed Receiver was unable to confirm with Suthakaran whether the general ledger contained the financial records of 1733073 or of both companies;

- d) The Company's financial statements for the fiscal year ended December 31, 2010 have not been finalized by HFC. The Proposed Receiver reviewed the Company's internal financial statements generated by the Company's accounting system and noted that total revenue for the fiscal year ended December 31, 2010 was \$843,000, a 10.5 % decline from total reported revenue of \$943,000 in the fiscal year ended December 31, 2009;
- e) The Proposed Receiver undertook a preliminary review of the Company's general ledger for fiscal 2010 and noted a significant number of accounting entries impacting the general ledger account called "Share Capital – Siva". The Proposed Receiver was not able to verify whether any of these accounting entries were actual cash transactions or payments from the Company's bank accounts as the Proposed Receiver has not received copies of the Company's bank statements for fiscal 2010;
- f) The accounting records for 1733073 do not appear to have been maintained in 2011. As of May 13, 2011, revenue (hotel room rental and other) did not appear to have been recorded for the months of February, March, April or May 2011;
- g) Hirji advised the Proposed Receiver that HFC only booked hotel revenue based on nightly audit reports provided by the staff at the Hotel Quinte. Although the Proposed Receiver requested copies of these reports, they have not yet been provided. In addition, as revenues do not appear to have been recorded in the general ledger subsequent to January 2011, it is not clear to the Proposed Receiver how the Company is reporting or tracking its revenues;
- h) Choice Hotels Canada Inc. ("**Choice**") terminated its Franchise Agreement with 1733073 effective February 18, 2011, therefore terminating the Company's right to use the Clarion Inn trade name (as discussed herein, 1733073 has rebranded as Hotel Quinte). As a result, the Proposed Receiver understands that 1733073 no longer has access to the Choice reservation system or any other online reservation system. Customers must contact the hotel directly by telephone to determine room availability and rates; and
- i) The Proposed Receiver was not provided access to any Canada Revenue Agency ("**CRA**") files including documents related to HST and source deductions. As such, the Proposed Receiver was unable to determine if there were any amounts outstanding to CRA.

CONCLUSION

28. The Proposed Receiver was engaged by GE to:

- a) examine the books and records of 1733073;
- b) discuss the affairs of the Company with its accountants and officers; and
- c) inspect GE's collateral.

The Proposed Receiver was also authorized by this Honourable Court to review the Books and Records.

29. While the Proposed Receiver was able to review and examine certain Books and Records, as of the date of this report it had not been provided access to all of the Books and Records. In addition, Suthakaran did not provide the Proposed Receiver with responses to various questions raised by the Proposed Receiver or explanations for various accounting entries in respect of the Books and Records made available to it during the course of its preliminary review.

All of which is respectfully submitted on this 25th day of May, 2011.

PricewaterhouseCoopers Inc.

as Proposed Receiver of 1733073 Ontario Inc.
and not in its personal capacity.



Greg Prince
Senior Vice President



Michelle Pickett
Vice President

Appendix A



April 28, 2011

HAND DELIVERED

**1733073 Ontario Inc.
211 Pinnacle Street,
Belleville, Ontario, K8N 3A7**

and

**1733073 Ontario Inc.
47 Moss Grove Trail,
Toronto, Ontario, M2L 2W2**

Dear Sirs:

**Re: Security Agreement granted by 1733073 Ontario Inc. (the "Debtor") in favour of GE
Canada Equipment Financing G.P ("GE") and dated June 4, 2007 (the "General Security
Agreement")**

In accordance with GE's rights under to Section 7(i) of the General Security Agreement, please accept this letter as notice of GE's intention to attend at the property municipally known as 211 Pinnacle Street, Belleville, Ontario (the "**Belleville Property**") on the 2nd of May 2011 at 10:00 am in order to:

- (a) Examine and make copies of the Books and Records;
- (b) Discuss the affairs of the Debtor with its accountants and officers; and
- (c) Inspect the Collateral.

In addition, please accept this letter as notice of GE's intention to attend at the property municipally known as 47 Moss Grove Trail, Toronto, Ontario (the "**Toronto Property**") on the 2nd of May 2011 in order to:

- (a) Examine and make copies of the Books and Records;
- (b) Discuss the affairs of the Debtor with its accountants and officers; and
- (c) Inspect the Collateral

All capitalized terms contained herein and not otherwise defined shall have the meaning ascribed thereto in the General Security Agreement, a copy of which is attached to this letter for your ease of reference.

As required by the General Security Agreement, please ensure that you have resources available to GE at each of the Belleville Property and the Toronto Property to assist in the foregoing, including, without limitation, access to a photocopier.

Yours truly,

Danny Nowak

Danny Nowak
Manager Workout/Restructuring

2300 Meadowvale Blvd.
Mississauga, Ontario L5N 5P9
Canada

T: 905 858 4967
F: 866 993 6123
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Appendix B

1733073 Ontario Inc.

Outstanding Items:

- *Payroll Information*
 - Names and Salaries of all current employees on the payroll
 - Current payroll information
 - How frequently are employees paid
 - How many salary vs. Hourly employees
 - Who sends the information to Ceridian?
 - The latest Ceridian report
 - Source deduction monthly remittances for 2010 and 2011
 - T4 Summary for 2010
 - Assessment from CFA for 2010
- *Banking/Loan Information*
 - Bank statements for all bank accounts (including, BNS, BMO, CIBC) for the period 2007 - 2011
 - Bank Reconciliations for all bank account for the period 2007 -2011
 - All loan agreements with all lenders, other than GE, including line of credits, overdraft facilities, etc.
- *CRA Information*
 - GST/HST Remittances for 2010 and Jan – May 2011
 - Final Assessment for 2010
 - All correspondence in 2010 and 2011 with CRA
- *Financial Information*
 - Current AR sub ledger
 - 2010 Financial Statements
 - The G/L for 2011 does not include any revenue for the period February 1 – May 13, 2011, why not?
 - Cash Flow forecasts (if produced)
 - Intercompany balances between restaurants & bar at hotel
- *Leasing Information*
 - Subleases for the restaurants.
 - I have still not received these from your lawyer. Please ask him to resend them and confirm my email address, which you have to him
 - Lease with church for basement of hotel
 - Lease for 250 Consumers Drive

- *Hotel Information*
 - Current Reservation Records
 - A list of computers and records held at the hotel
 - A detailed current list of Inventory
- *Internal Reporting Information*
 - Nightly Audit Reports for the year 2010 and Jan – May 2011
 - Daily, weekly or monthly occupancy reports for 2010 and the period January 1- May 13, 2011
 - Daily Deposit Slips
- *Details on Utility providers*
 - A list of all utility providers, and outstanding balances and their contact information/mailling address
- *Other Information*
 - Organizational chart
 - Business plan