

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

BETWEEN:

FIRST SOURCE FINANCIAL MANAGEMENT INC.

Applicant

- and -

2507448 ONTARIO INC.

Respondent

**SUPPLEMENTAL REPORT TO THE THIRD REPORT OF THE RECEIVER OF
581 WELLINGTON STREET WEST, TORONTO, ONTARIO**

December 12, 2019

I. INTRODUCTION

1. By Order of the Ontario Superior Court of Justice (the “**Court**”) dated April 8, 2019, issued and entered on April 26, 2019 (the “**Amended Appointment Order**”) and effective on May 3, 2019, RSM Canada Limited (“**RSM**” or the “**Receiver**”) was appointed as receiver over the lands and premises municipally known 581 Wellington Street West, Toronto, Ontario (the “**Real Property**”) and for all of the assets, undertakings and properties of 2507448 Ontario Inc. (“**250**” or the “**Debtor**”) acquired for, or used in relation to the Real Property, including all proceeds thereof (together with the Real Property, the “**Property**”).
2. The Third Report of the Receiver dated December 3, 2019 (the “**Third Report**”) was filed in connection with a motion by the Receiver seeking approval to make an interim distribution to First Source, the mortgagee having a first charge on the Real Property. The motion is scheduled to be heard on December 13, 2019 (the “**Distribution Motion Hearing Date**”).
3. The purpose of the Third Report was to, *inter alia*,:
 - a) report to the Court on the status of the sale of the Real Property; and
 - b) seek an Order authorizing and directing the Receiver to make the Interim Distribution (as defined in the Third Report).
4. The purpose of this Supplemental Report is to:
 - a) report to the Court on the status of the sale of the Real Property;
 - b) advise the Court of responses the Receiver has received to date regarding the proposed Interim Distribution; and

c) recommend to the Court that the amount of the Interim Distribution to be paid to First Source be set at \$3,937,000.

5. This Supplemental Report should be read in conjunction with the Third Report, including the Terms of Reference contained therein.

II. STATUS OF THE SALE OF THE REAL PROPERTY

6. On December 6, 2019, Counsel for the Purchaser and Substituted Purchaser, Cummings Cooper Schusheim Berliner LLP ("**CCSB**"), informed the Receiver that the Substituted Purchaser was not in a position to complete its purchase of the Real Property on December 9, 2019 and requested that the closing date be deferred to January 2020.
7. The Receiver was not agreeable to extending the closing date to January 2020. After discussions between the Receiver and CCSB, the parties agreed to extend the closing date to December 19, 2019 on terms. Those terms included that the Substituted Purchaser would pay an additional amount to the Receiver on the closing of the Transaction, which amount was calculated taking into account the interest that would be charged by First Source during the period between the Distribution Motion Hearing Date and December 19, 2019.

III. INTERIM DISTRIBUTION

8. As set out in the Third Report, following the closing of the sale of the Real Property, and receipt by the Receiver of the net sales proceeds therefrom, funds will be available for the Receiver to make an interim distribution.

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9. In the Third Report, the Receiver proposed that the Receiver be authorized to pay out, from the net proceeds of sale after payment of property taxes and commissions payable to Avison Young, the following amounts:
- a) to First Source, the Receiver Certificate Advance;
 - b) the Receiver's Expenses, comprising amounts owing to the Receiver and Torkin Manes on account of their respective unpaid accounts; and
 - c) an interim distribution to First Source.
10. As detailed in the Third Report, the Receiver is of the view that it is in the interests of all parties that the amount of the principal advance by First Source, accrued interest thereon as well as any other amounts which are not disputed by any interested party be paid out promptly as an interim distribution to First Source (the total of these being the "**Interim Distribution**").
11. Both 250 and Hasson Pereira, a person claiming to represent the interests of investors in the Third Mortgage, had previously expressed to the Receiver an intention to dispute the propriety of certain amounts claimed by First Source as owing under the terms of its mortgage, but no parties had, as of that date, identified the particular amounts in dispute or provided the Receiver with any explanation as to the specific basis for any such objection.
12. As of the date of this Supplemental Report, the Receiver has received responses from 250 and Mr. Joseph Richard Forget, who the Receiver understands is counsel to certain investors in the third mortgage registered against the Real Property (the "**Third Mortgage Investors**").

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13. 250 has informed the Receiver that it is disputing \$277,550 of the amount claimed on the First Source Statement.
 14. By e-mail dated December 11, 2019, Mr. Forget, attaching a Billing Statement which appears to have been generated in connection with the First Source mortgage in May 2018, indicated as follows: “here is the first payout statement. It is our position that this figure minus the \$350.00 charge plus a pier diem rate at 9% is the applicable figure that the third mortgage investors ought to bear and that is payable to first source.” A copy of the first payout statement that Mr. Forget appended to his e-mail is attached to this report as Appendix “A”. The Receiver through Torkin Manes has requested that Mr. Forget clarify his position but has not received any further clarification at the time of finalization of this report.
 15. For the purpose of enabling the Receiver to promptly make an interim distribution, the Receiver has sought to obtain agreement with the objecting parties as to an interim distribution amount which could proceed on an unopposed basis, with all other issues relating to the balance of First Source’s claims being deferred to a hearing for advice and directions to be scheduled.
 16. In this regard:
 - a) 250 has advised the Receiver that, provided that the amount which it disputes, set out above, is held back from distribution, it does not oppose interim distribution of the balance of funds to First Source being made; and
 - b) it is the Receiver’s understanding that Mr. Forget’s clients do not oppose repayment of the principal amount of the loan, plus 9% interest calculated to the date of payment.

17. The Receiver has calculated that for the period May 1, 2018 to December 13, 2019, the interest on the mortgage principal amount of \$3,500,000, calculated on a simple and not compounded basis at 9%, would be:

Period	\$
Interest - May 1 2018 to April 30, 2019	\$315,000
Interest - May 1, 2019 to Dec. 19, 2019	201,000
Sub-Total	\$516,000
Less: Payments made	(79,000)
Total Interest	\$437,000

18. The Receiver therefore recommends that (a) the amount of the Interim Distribution to be paid to First Source on the closing of the Transaction be set at \$3,937,000, representing the principal outstanding of \$3,500,000 plus the interest of \$437,000 calculated above; and (b) a hearing for advice and directions in relation to the balance of First Source's claims under its mortgage be scheduled to return on a date in January 2020, in order to permit any interested parties to file such materials in response as they may deem appropriate.

All of which is respectfully submitted to this Court as of this 12th day of December, 2019.

RSM CANADA LIMITED

In its capacity as Court-appointed Receiver of
581 Wellington Street West, Toronto, Ontario
and not in its personal capacity

Per: 
Daniel Weisz, CPA, CA, CFF, CIRP, LIT
Senior Vice President

APPENDIX A

BILLING STATEMENT

FIRST SOURCE
FINANCIAL MANAGEMENT INC.

ACCOUNT NO.	1258.18.01
STATEMENT CLOSING DATE	5/31/2018

STATEMENT SUMMARY

Past Due Amount	+	\$0.00
Current Payment Amount	+	\$26,250.00
Trust/Escrow Payment	+	\$0.00
Other Payments	+	\$0.00
Deferred Charges	-	\$0.00
Minimum Payment Due	=	\$26,250.00
Payment Due Date		6/1/2018
Late Charge Due After 6/2/2018		\$350.00
Maximum Loan Amount		\$3,500,000.00
Current Principal Balance		\$3,500,000.00
Reserve Balance		\$0.00
Impound Balance		\$0.00
Interest Rate		9.000%
Average Daily Balance		\$3,500,000.00
Project Address: 581 Wellington Street W Toronto ON M5V 1G3		

BORROWER

(Wellington St. W., Toronto) 2507448 Ontario Inc.
 581 Wellington Street W
 Toronto ON M5V 1G3

Check here for a change of mailing address or phone number(s). Please provide all corrections on the reverse side.

PLEASE DETACH THE TOP PORTION OF THIS STATEMENT AND RETURN IT WITH YOUR PAYMENT

Please advise us immediately of any discrepancies in the transactions or investment activity on your billing statement or if you contemplate changing your address. When making inquiries by telephone or in writing please give your account number. We urge you to keep this statement with your investment records.

ACCOUNT ACTIVITY

Date	Reference	Description	Reserve	Charges	Credits	Balance
5/1/2018		Balance Forward	\$23,301.37			\$3,500,000.00
5/1/2018	IAD	Payment Received - Thank You	-\$23,301.37			\$3,500,000.00
5/31/2018		Interest Charge		\$26,250.00		\$3,526,250.00
			\$0.00	\$26,250.00	\$0.00	

INTEREST CHARGE SUMMARY

Balance Date	Daily Balance	Days	Daily Periodic Rate	Interest Rate	Interest Charges
5/1/2018	\$3,500,000.00	30	0.025000%	9.000%	\$26,250.00
		30			\$26,250.00

Note: Daily balances exclude reserve balances, impound balances, late charges.