

District of Ontario
Division No.: 09 - Toronto
Estate No. 31-2654367
Court No. 31-2654367

IN THE MATTER OF THE BANKRUPTCY OF
NEWGEN RESTAURANT SERVICES INC.
OF THE CITY TORONTO
IN THE PROVINCE OF ONTARIO

Trustee's Preliminary Report to the Creditors

BACKGROUND

1. Newgen Restaurant Services Inc. ("**Newgen**") is a Federal corporation which operated four restaurants under the names Tucker's Marketplace and Smith Bros. Steakhouse Tavern.
2. Newgen operated from leased premises at the following locations in Ontario:

Tucker's Marketplace

15 Carlson Court, Toronto (the "**Dixon Location**")
3110 South Service Road, Burlington (the "**Burlington Location**")
61 York Street, Ottawa (the "**Ottawa Location**")

Smith Bros. Steakhouse Tavern

880 Warden Avenue, Toronto, Ontario (the "**Scarborough Location**")

Causes of Insolvency

3. In response to the Covid-19 pandemic, Newgen closed all four locations on March 14, 2020. It is important to note that Tucker's Marketplace restaurants operated as buffet restaurants. As it became clear that buffet restaurants will have to alter their form of service, that restaurants will be required to operate with capacity restrictions and to maintain physical distancing upon reopening and for the foreseeable future, and as it is expected that customers will be reluctant to return to restaurants as often as they once did, until a meaningful treatment or vaccine for Covid-19 is found, Newgen came to the conclusion that it could not operate profitably and it would not be reopening its restaurants.
4. On June 25, 2020, the Board authorized Newgen to make an assignment into bankruptcy in accordance with the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the "**BIA**").
5. On June 25, 2020, Newgen filed an Assignment in Bankruptcy and on June 26, 2020, the Office of the Superintendent of Bankruptcy appointed RSM Canada Limited ("**RSM**")

as the bankruptcy trustee of Newgen (the "Trustee") subject to affirmation at the First Meeting of Creditors.

SECTION A: PRELIMINARY EVALUATION OF ASSETS

6. According to Newgen's Statement of Affairs, the assets of Newgen as at the date of bankruptcy consist of the following:

Cash on hand	\$ 180.33
Accounts receivable	32,718.43
Machinery, equipment and fixed assets	40,000.00
Other property	<u>2.00</u>
 Total assets	 <u><u>\$72,900.76</u></u>

a) Cash

According to Newgen's Statement of Affairs, the balance in the bank accounts as of June 25, 2020 was \$180.33. On June 26, 2020, the Trustee wrote to Royal Bank of Canada ("RBC") where Newgen's bank accounts were held, to notify RBC of the bankruptcy, request that RBC freeze the Newgen accounts and arrange for the transfer of the balance in Newgen's accounts to the Trustee.

b) Accounts Receivable

According to Newgen's Statement of Affairs, Newgen's accounts receivable as of the date of bankruptcy consisted of the following:

	Book Value	Collectible
Global Tourisme Group	\$4,271.66	\$0.00
Government of Canada	<u>32,178.43</u>	<u>32,718.43</u>
	<u><u>\$36,450.09</u></u>	<u><u>\$32,718.43</u></u>

The account due from Global Tourisme Group ("Global") is on account of goods and services provided. The Trustee has sent a collection letter to Global and has not yet received a response.

The amount due from the Government of Canada is on account of Newgen's application under the Canada Emergency Wage Subsidy ("CEWS") for pay periods leading up to the date of bankruptcy. On June 25, 2020, the amount of \$31,377.20 was received in Newgen's bank account from CEWS. This balance was paid by Newgen to Nolan Grubert (the "Secured Creditor") on account of the RBC Security (defined below).

c) Machinery, equipment and plant

According to the Statement of Affairs, the cost of Newgen's fixed assets was approximately \$1,515,000. The net book value of those fixed assets, according to Newgen's internal financial statements as at June 25, 2020 was approximately \$213,000. The fixed assets include furniture, equipment, and computers located at the Dixon Location and the Scarborough Location.

d) Other Property

Other property included on the Statement of Affairs consists of the following:

- (i) Prepaid Expenses of \$2,206.07 – A retainer was held Rayman, Beitchman LLP in respect of legal services. Subsequent to the bankruptcy filing, the Receiver contact Rayman and was advised that the balance of the retainer was only \$812.21.
- (ii) Metrolinx – This relates to a contingent claim against Metrolinx by Newgen for economic losses sustained by Newgen as a result of the construction of the Eglinton Crosstown LRT being carried out by Metrolinx adjacent to the 880 Warden Avenue location. Newgen is claiming losses of \$500,000; however, Metrolinx has denied any liability for Newgen's losses.

7. The Trustee will discuss these assets further with the Inspectors.

SECTION B: CONSERVATORY AND PROTECTIVE MEASURES

Fixed Assets

- 8. The Trustee did not take possession of the Dixon Location and the Scarborough Location as the fixed assets located on the leased premises are subject to the interests of the Secured Creditor. Accordingly, the Trustee has no interest in occupying the the leased premises and will be seeking the approval of the inspector(s) to disclaim the leases.
- 9. Prior to the date of bankruptcy, Newgen entered into a Lease Settlement and Release Agreement with the landlord of the Burlington Location to terminate the lease and for the landlord to release Newgen and Champs Food Systems Ltd. ("**Champs**"), the guarantor under the lease, from their obligations under the lease. As part of the consideration for the release of its obligations under the lease and with the concurrence of the Secured Creditor, Newgen agreed to sell to the landlord all of Newgen's equipment, furniture and other supplies used in its business that are located at the Burlington Location.
- 10. Prior to the date of bankruptcy, Newgen entered into an Asset Purchase and Indemnity Termination Agreement with the landlord of the Ottawa Location for the landlord to

release Newgen and Champs, the guarantor under the lease, from their future obligations under the lease save for three months accelerated rent as provided for in the lease. As consideration for the release and in satisfaction of rent arrears owed of more than \$53,000, and with the concurrence of the Secured Creditor, Newgen agreed to convey to the landlord the assets of Newgen (including equipment, furniture, supplies) used in its business at the Ottawa Location. As Newgen also agreed to surrender its right to access the leased premises and the landlord is claiming three months' accelerated rent and has taken possession of the assets, the lease is effectively terminated pursuant to the terms of the lease.

Cash In Bank

11. As set out earlier in this report, the Trustee contacted RBC to request that it freeze Newgen's accounts and transfer the cash balance to the Trustee. Two bank drafts for \$180.33 and \$941.70 were received by the Trustee on July 13, 2020 from RBC. The \$941.70 represents funds received after June 25, 2020.

Books and Records

12. Location of records – Newgen has provided to the Trustee electronic copies of the accounting records that will be required in the administration of the bankruptcy. The electronic records of Newgen are in the possession of Champs, which provided accounting and administrative services to Newgen. We understand that paper copies of Newgen's accounting records are in the possession of Mr. Grubert in his capacity as officer of the bankrupt.

SECTION C: LEGAL PROCEEDINGS

13. The Trustee is not involved in any legal proceedings at this time.

SECTION D: PROVABLE CLAIMS

14. The claims filed by creditors as of 4:00 p.m. on July 14, 2020, are as follows:

	<i>Per Statement of Affairs</i>	<i>Filed as of July 14</i>
Secured creditors	\$ 72,900.76	\$ 43,270.53
Preferred	-	-
Unsecured creditors	4,118,339.27	2,894,947.59
<u>Total</u>	<u>\$4,191,240.03</u>	<u>\$2,938,218.12</u>

15. The Trustee will review the differences between the amounts set out in the Proofs of Claim filed and the amounts included in the SOA.

SECTION E: SECURED CREDITORS

16. The following creditors were identified by a search conducted of the Personal Property Security Act Registration System (“PPSA”) as having a secured interest over the assets of Newgen as at the date of bankruptcy.
- Royal Bank of Canada (the “RBC Security”)
 - Nolan Grubert (the “Grubert Security”)

On June 15, 2020, the RBC Claim was transferred and assigned by RBC to the Secured Creditor.

The Trustee has obtained a written opinion from independent legal counsel that the security granted by Newgen to RBC is valid and enforceable against the estate.

SECTION F: ANTICIPATED REALIZATIONS AND PROJECTED DISTRIBUTION

17. Based on the information set out in this report, the Trustee does not anticipate that there will be any funds available for distribution to unsecured creditors of Newgen.

SECTION G: TRANSFERS AT UNDERVALUE AND PREFERENCE PAYMENTS

18. The Trustee has obtained copies of Newgen’s bank statements for the period June 1, 2019 to present but has not yet undertaken a review of transactions for that period. The Trustee will review this matter further with the Inspectors.

SECTION H: WAGE EARNER PROTECTION PROGRAM (“WEPP”)

19. Included among the unsecured creditors of the Company are approximately 280 former employees who are owed termination pay and severance. In accordance with the WEPP, on June 30, 2020, the Trustee mailed information on the WEPP to the employees who were eligible to apply.

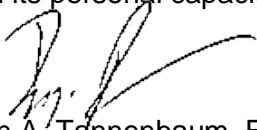
SECTION H: OTHER MATTERS

20. In addition to the foregoing, the Trustee has the following to report:
- i. Third Party Guarantee – The Trustee has received a deposit of \$39,550 from a third party to guarantee the costs of the bankruptcy administration.

- ii. Trustee's Fees – The Trustee has incurred fees of \$26,816.50 (excluding HST) to July 10, 2020. Of this amount, fees of \$16,174.00 were incurred preparing for the bankruptcy filing and the WEPP mailing to Newgen's former employees.
- iii. On June 25, 2020, the Secured Creditor appointed RSM Canada Limited to be its Agent pursuant to the RBC Security and Grubert Security with the limited authority to realize and distribute any monies owing to the Secured Creditor.

Dated at Toronto, Ontario, this 14th day of July, 2020.

RSM CANADA LIMITED in its capacity as
Trustee of the Estate of Newgen Restaurant Services Inc., a bankrupt
and not in its personal capacity



Per: Bryan A. Tannenbaum, FCPA, FCA, FCIRP, LIT
President