

Superior Court of Justice

(Name of Court)

Court File Number FC-19-0058934-0000
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at **50 Eagle Street West, Newmarket, Ontario, L3Y 6B1**
(Court office address)

Form 14A: Affidavit (General)
dated November 10, 2020

Applicant(s)

<p><i>Full legal name & address for service — street & number, municipality, postal code, telephone & fax numbers and e-mail address (if any).</i></p> <p>Maria Zuccaro c/o Lawyer</p>	<p><i>Lawyer's name & address — street & number, municipality, postal code, telephone & fax numbers and e-mail address (if any).</i></p> <p>R. Avery Zeidman Avery Zeidman Professional Corporation Barristers & Solicitors 565 Edgeley Blvd. Concord, Ontario L4K 4G4 Tel: 905-669-7577 ext. 222 Fax: 905-669-5525 avery@zeidmanlaw.com</p>
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Respondent(s)

<p><i>Full legal name & address for service — street & number, municipality, postal code, telephone & fax numbers and e-mail address (if any).</i></p> <p>Frank Zuccaro c/o lawyer</p> <p><u>Co-Respondents (c/o lawyer)</u></p> <p>863704 Ontario Limited</p> <p>Metropolitan Ice Cream Inc.</p> <p>Oraccuz Holding Ltd.</p> <p><u>Added Respondents (c/o Mr. Zeidman)</u></p> <p>Giuseppe Zuccaro</p> <p>Vito Antonio Zuccaro</p> <p>Filomena Zuccaro</p> <p>Affected Party: Dodick Landau Inc. 4646 Dufferin St. Unit #6 North York, ON M3H 5S4 Tel: (416) 736-4357 Fax: 416-649-7725 rahn.dodick@dodick.ca</p>	<p><i>Lawyer's name & address — street & number, municipality, postal code, telephone & fax numbers and e-mail address (if any).</i></p> <p>Frank A. Mendicino Capo Sgro LLP Barrister(s) and Solicitor(s) 7050 Weston Road, Suite 400 Woodbridge, Ontario L4L 8G7 Tel: 905-850-7000 Fax: 905-850-7050 fmendicino@csllp.ca</p> <p>R. Avery Zeidman Avery Zeidman Professional Corporation Barristers & Solicitors 565 Edgeley Blvd. Concord, Ontario L4K 4G4 Tel: 905-669-7577 ext. 222 Fax: 905-669-5525 avery@zeidmanlaw.com</p>
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My name is

(Full legal name)

Larissa Zottola

I live in

(municipality and province)

City of Vaughan, Province of Ontario

dated November 10, 2020

and I swear/affirm that the following is true:

Set out the statements of fact in consecutively numbered paragraphs. Where possible, each numbered paragraph should consist of one complete sentence and be limited to a particular statement of fact. If you learned a fact from someone else, you must give that person's name and state that you believe that fact to be true.

1. I am a law clerk for the lawyer of the applicant/wife and the three added respondents herein and have personal knowledge of the matters herein, except where stated to be on information and belief, in which case the source of my information is R. Avery Zeidman unless otherwise noted, and in which case I verily believe the same to be true.
2. This matter was before Your Honour as a motion on October 8, 2020 at which time an Order was made appointing a receiver/manager of respondents 1 through 4. A copy of Your Honour's endorsement/order is attached as **Schedule "D"** to the Form 14B motion form.
3. Paragraph 5 of Your Honour's Order states that if counsel cannot agree on a receiver, respective nominees for receiver can be submitted to Your Honour via 14B. These are our clients' submissions.
4. It is our client's position that respondents 1-4 do not have standing to respond to this motion, and thus our 14B form indicates this matter is unopposed by them. This position stems from paragraph 4 of Your Honour's October 8, 2020 Order and from the fact that 1-4 respondents have taken no steps since the Order to comply with their obligations as required under the March 11, 2020 and June 29, 2020 Orders. Pr. 4 of the October 8, 2020 Order states:

"On a temporary basis, any claims of R1, R2, R3 and R4 are stayed pending full compliance by these respondents with their obligations under the orders of March 11/20 and June 29/20. Until full compliance by these respondents with their obligations under the March 11 and June 29/20 orders, these respondents shall not be entitled to bring motions except a motion to determine whether the stay should be lifted."
5. Although the terms of appointing the receiver are more detailed than in Your Honour's October 8, 2020 Order, I am informed that such/similar terms would need to be agreed upon in an engagement letter with a receiver prior to a receiver agreeing to act, and I am informed that this is why the Superior Court of Justice at Toronto Commercial List came up with a model order for appointing a receiver in order to simplify the process.

dated November 10, 2020

6. Thus, it is our client's position that Your Honour can and should grant the proposed Order as being routine in nature and unopposed. Further, the receiver has consented to the proposed Order we seek. I am informed that the receiver is empowered or can be empowered *nunc pro tunc* by Your Honour to consent on behalf of respondents 1-4, and thus the proposed Order can be made on consent.
7. In searching for a receiver to propose, our law firm contacted three different receivers. Two of those receivers, being Brandon Smith and Brahm Rosen, required financial retainers of \$15,000 and \$10,000 respectively, and thus using them was not practical in the circumstances of this case because the respondents would simply fail to pay, and the receiver would thus fail to act.
8. The third receiver, Mr. Dodick of Dodick Landau Inc., did not request a retainer in his response of October 28, 2020, and he provided a model order used by the Toronto Superior Court of Justice Commercial List as a foundation for an order appointing a receiver/manager and as his form of engagement letter. A copy of the body of Mr. Dodick's email to us of October 28, 2020 and his biography are attached as **Exhibit "A"**, in which he references his fees and the process.
9. Our office wrote the respondents' counsel on October 21, 2020 and again on October 29, 2020 asking for their position about a receiver and/or proposals. To date, we received no response.
10. On October 29, 2020, our office proposed use of Dodick Landau Inc. as the receiver, and we forwarded the information received from them to other counsel. Again, we received no response to date.
11. From October 28, 2020 to now, we have worked with Dodick Landau Inc. in revising appropriately the draft Model Order of the Superior Court of Justice at Toronto Commercial List Court to the current situation and to meet the receiver's concerns about their ability to fund and manage the receivership and to define in reasonable detail the terms of their engagement.
12. We provided Dodick Landau Inc. with copies of whatever relevant information we have including court orders and financial information about the parties going into receivership, including tax returns, financial statements, leases, property searches, and the like so they could be in a position to advise whether they are willing to act.
13. As is the convention in the Superior Court of Justice at Toronto Commercial List, our office has included for His Honour a clean copy of the proposed Order (Schedule "A" to the 14B form), a copy of the Model

dated November 10, 2020

Order used as the foundation by the Commercial Court for Orders appointing receivers (Schedule "B" to the 14B form), and a tracked copy comparing the requested Order to the Model Order (Schedule "C" to the 14B form).

- 14. I am informed by the receiver that they talked to the mortgage lenders about the real estate included in the receivership, and the lenders are satisfied (as is the receiver) that there is sufficient equity to cover the receiver's fees and carrying costs such that priority of any receiver's loans is not needed, and that is why such language was excluded from the proposed Order. In addition, upon review of the materials, the receiver estimated the carrying costs of the King Property and the Densley property to be about \$400,000 per year, which is the proposed limit on the receiver's borrowing. The receiver has advised this limit is reasonable given the respondents claimed no rent is being paid on those properties.
- 15. Dodick Landau Inc. has agreed to act as a receiver if the requested Order is granted. Attached hereto as **Exhibit "B"** is a copy of their email consenting to the Order and authorizing Mr. Zeidman to sign such consent on their behalf.
- 16. Thus, we propose that Dodick Landau Inc. be named as receiver, and we request an Order be granted and issued in accordance with the draft attached as Schedule "A" to the 14B motion form which is being provided to Your Honour in Word format (with changes tracked from the Model Order) as requested by the judiciary in this jurisdiction.
- 17. We shall serve other counsel and Dodick Landau Inc. by email with the 14B motion materials and file the motion form together with proof of service.
- 18. I make this Affidavit for no improper purpose.

Put a line through any blank space on this page.

Sworn/Affirmed before me at:

City of Vaughan

(municipality)

in Province of Ontario

(province, state or country)

on November 10, 2020

(date)

Commissioner for taking affidavits
R. Aven Zeidman

Signature

(This form to be signed in front of a lawyer,
justice of the peace, notary public or commissioner
for taking affidavits.)

Sworn electronically and confirmed
by me to be the affiant, Larissa Zottolq

This is Exhibit A referred to in the affidavit of Larissa Zottola sworn before me, this 10th day of November 2020

A COMMISSIONER FOR TAKING AFFIDAVITS

Avery Zeidman

From: Rahn Dodick <rahn.dodick@dodick.ca>
Sent: October 28, 2020 4:50 PM
To: Avery Zeidman
Cc: Larissa Zottola
Subject: Re: FW: receivership inquiry
Attachments: receivership-order-EN (1).doc; Rahn Dodick Bio - Update October 2020.pdf

Mr. Zeidman,

Please find attached my biography. Working with me on this engagement will be Naomi Lieberman. Naomi is also a CPA, CIRP and LIT, has over 17 years of experience and has worked with me on all the receiverships listed in my biography. The appointed party would be "Dodick Landau Inc." ("DLI") which is a corporate Licensed Insolvency Trustee and, therefore, is able to act as a Receiver. I personally am the individual Licensed Insolvency Trustee responsible for DLI. The Corporate Receiver is the appointed party.

The document which appoints the Receiver/Manager is the Court's receivership appointment order, and is effectively DLI's engagement letter. I've attached the model receivership appointment order approved by the Superior Court of Justice (Commercial List). (Any modifications to the model order are presented to the Court in clean and black line against the model order and the Court then focuses on the changes to the model order.) If DLI is the proposed Receiver/Manager, and since the appointment order dictates DLI's powers and responsibilities, I would need to agree to any modifications made to the model order. As well, the Order would have to make clear how the receivership will be funded, assuming assets are not liquid and readily available to pay bills, or are encumbered, (e.g. to pay carrying costs of real property, professional fees, etc...). Options for funding include third party retainers, if available, or permitting the Receiver to borrow against assets. As well, prior to our appointment (however, not as a condition to our appointment) we would request whatever information that is available which can describe the nature of the assets DLI is receiving and their location.

Our hourly rates are listed below.

Please let me know if you, or any of the respondents, require additional information about our qualifications, experience or our firm.

Regards,
Rahn

Fees/remuneration

DLI's fees for the Services shall be based on time spent by the relevant professionals in performing the Services, at the following hourly rates:

Rahn Dodick, CPA, CIRP, LIT	Cdn \$395
Naomi Lieberman, CPA, CIRP, LIT	Cdn \$295
Para Professional	Cdn \$195

In addition to the professional fees set out above, DLI shall be reimbursed for all expenses incurred in connection with the performance of the Services. Reasonable and customary out-of-pocket expenses for items such as travel, meals,

accommodations and other expenses specifically related to this engagement will also be charged. The fees and expenses set out above do not include any applicable taxes or duties.

Rahn Dodick, CPA, CA, CIRP, LIT | President

Dodick & Associates Inc. and Dodick Landau Inc.
4646 Dufferin St., Suite 6, Toronto, ON, M3H 5S4
Phone: [416 645 0552](tel:4166450552) | Mobile: [416 520 6455](tel:4165206455) | Fax: [416 649 7725](tel:4166497725)

rahn.dodick@dodick.ca

www.dodick.ca



On Wed, Oct 28, 2020 at 2:11 PM Rahn Dodick <rahn.dodick@dodick.ca> wrote:

Avery,
Thank you for the call and your email.
I will have the info you requested by the end of today.
Rahn

Rahn Dodick, CPA, CA, CIRP, LIT | President

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rahn.dodick@dodick.ca

www.dodick.ca



On Wed, Oct 28, 2020 at 1:50 PM Avery Zeidman <avery@zeidmanlaw.com> wrote:

See below. Thanks.

R. Avery Zeidman

Senior Counsel

Avery Zeidman Professional Corporation

Barristers & Solicitors



Rahn Dodick, CPA, CA, CIRP, LIT
rahn.dodick@dodick.ca
Tel: 416 645 0552

Education and Certifications

- Canadian Association of Insolvency and Restructuring Professionals, Chartered Insolvency and Restructuring Professional
- Office of the Superintendent of Bankruptcy, Licensed Insolvency Trustee
- Chartered Professional Accountants Canada, Chartered Professional Accountant
- Concordia University, Bachelor of Commerce, Accounting

Employment

- Dodick Landau Inc., President, Toronto (2012 - Present)
- Ernst & Young Inc., Vice-President, Toronto (2001 to 2012)
- Richter & Partners Inc., Manager, Toronto (1995 to 2001)

Professional Information

Rahn advises on all aspects of corporate insolvency and restructurings carried out under the Bankruptcy & Insolvency Act, Companies' Creditors Arrangement Act, Courts of Justice Act, and other statutes.

Rahn has over 22 years of experience carrying out Canadian and cross-border financial advisory, restructuring, and liquidation assignments on behalf of debtors, creditors, shareholders and various other stakeholders, including acting for lenders in the enforcement of their security, acting as Receiver/Trustee during litigation proceedings, assisting debtor companies in the development and implementation of strategic alternatives and performing business plan and critical supplier reviews. Rahn also acts as Estate Trustee of deceased estates during litigation, or without litigation.

Rahn is a licensed insolvency trustee, a chartered insolvency and restructuring professional, and a chartered professional accountant.

Select Receivership Project Experience

- Receiver and Manager of Nordan Group Inc., a designer and manufacturer of multi-material marketing displays. DLI was appointment Receiver by the Bank of Nova Scotia.
- Receiver and Manager of a group of companies which operated as What a Bloom Canada, among other names, an online reseller of fresh flowers. The application to appoint DLI as Receiver was brought by the Toronto Dominion Bank.
- Receiver of Waves e-gaming Inc., operator of a dedicated e-sports facility. DLI was appointed Receiver by Amuka Ventures Inc.
- Receiver of B&M Distribution Inc., a distributor of a variety of products to retail and wholesale bakeries and patisseries. DLI was appointment Receiver by the Bank of Nova Scotia.
- Receiver of Cybersonic Sound Technologies Inc., a producer of mall audio messaging. DLI was appointment Receiver by Korona Group Ltd.
- Receiver of Greencore Composites Inc., a producer of natural fibre reinforced thermoplastic compounded resins used by injection molders, profile extruders and other plastic processes in automotive, consumer and other industrial products. Growthworks Commercialization Fund Ltd., and two other parties, appointed DLI as Receiver.
- Receiver of Mitomics Inc., a molecular diagnostic company engaged in research, development and implementation of medical tests and devices for the early detection of cancers. The application to appoint DLI as Receiver was brought by two individuals.
- Receiver of Skymark Health and Fitness Inc., a chiropractic treatment clinic and exercise facility. DLI was appointed Receiver by a private lender.
- Receiver of True North Hardwood Plywood Inc., a manufacturer of plywood located in northern Ontario. The application to appoint DLI as Receiver was brought by Hillmount Capital Inc.

Contact Information

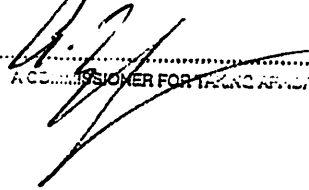
Dodick Landau Inc.
4646 Dufferin St., Suite 6, Toronto, ON, M3H 5S4
Office: 416 645 0552, Mobile: 416 520 6455
E mail: rahn.dodick@dodick.ca
Website: www.dodick.ca

Avery Zeidman

From: Rahn Dodick <rahn.dodick@dodick.ca>
Sent: November 9, 2020 1:10 PM
To: Avery Zeidman
Cc: Larissa Zottola
Subject: Re: Zuccaro receivership draft order amended

Yes, looks good. You can sign the consent form on my behalf.
thanks
Rahn

This is Form B referred to in the
affidavit of Larissa Zottola
signed on the 10th
day of November 2020


A COMMISSIONER FOR TRADING AFFAIRS

Rahn Dodick, CPA, CA, CIRP, LIT | President

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On Mon, Nov 9, 2020 at 1:08 PM Avery Zeidman <avery@zeidmanlaw.com> wrote:

Plases see further revised draft Order reinserting what you requested. Do we have your consent for such a draft order to be issued by the court, and if so, do I have your authority to sign such consent form on your behalf? Thank you.

R. Avery Zeidman

Senior Counsel

Avery Zeidman Professional Corporation

Barristers & Solicitors

565 Edgeley Blvd.

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