

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

BETWEEN:



DODICK LANDAU INC.

Applicant

and

FRANK ZUCCARO, 863704 ONTARIO LIMITED, METROPOLITAN ICE CREAM INC.
AND ORACCUZ HOLDING LTD.

Respondents

**APPLICATION UNDER SUBSECTION 249 and 250(1) OF THE *BANKRUPTCY AND
INSOLVENCY ACT*, R.S.C. 1985, c. B-3, AS AMENDED AND RULES 14.05(2) AND (3)(g)
AND 41 OF THE RULES OF CIVIL PROCEDURE, R.R.O. 1990**

NOTICE OF APPLICATION

TO THE RESPONDENT

A LEGAL PROCEEDING HAS BEEN COMMENCED by the Applicant. The claim made by the Applicant appears on the following page.

THIS APPLICATION will come on for a hearing (*choose one of the following*)

- In person
- By telephone conference
- By video conference

at the following location:

330 University Avenue, 8th Floor, Toronto, Ontario, M5G 1R7

on a date and time to be set by the Court before a judge presiding over Commercial List

IF YOU WISH TO OPPOSE THIS APPLICATION, to receive notice of any step in the application or to be served with any documents in the application, you or an Ontario lawyer acting for you must forthwith prepare a notice of appearance in Form 38A prescribed by the *Rules of Civil Procedure*, serve it on the Applicant's lawyer or, where the Applicant does not have a lawyer, serve it on the Applicant, and file it, with proof of service, in this court office, and you or your lawyer must appear at the hearing.

IF YOU WISH TO PRESENT AFFIDAVIT OR OTHER DOCUMENTARY EVIDENCE TO THE COURT OR TO EXAMINE OR CROSS-EXAMINE WITNESSES ON THE APPLICATION, you or your lawyer must, in addition to serving your notice of appearance, serve a copy of the evidence on the Applicant's lawyer or, where the Applicant does not have a lawyer, serve it on the Applicant, and file it, with proof of service, in the court office where the application is to be heard as soon as possible, but at least four days before the hearing.

IF YOU FAIL TO APPEAR AT THE HEARING, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO OPPOSE THIS APPLICATION BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

Date MAY 7, 2021

Issued by _____
Local Registrar

Address of court office: Superior Court of Justice 9th
330 University Avenue, 7th Floor
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AND TO: **AVERY ZEIDMAN PROFESSIONAL CORPORATION**
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**Solicitors for Maria Zuccaro, Guiseppe Zuccaro,
Vito Antonia Zuccaro and Filomena Zuccaro**

APPLICATION

1. THE APPLICANT, Dodick Landau Inc. (the “Receiver”) makes application for an Order:
 - (a) If necessary, abridging the time for service and filing of this Notice of Application and the Application Record or, in the alternative, dispensing with same;
 - (b) Advice and directions of this Honourable Court in connection with the fulfillment of its role as Receiver of the assets and undertakings and properties of the Respondents, appointed under section 101 of the *Courts of Justice Act*, pursuant to the Order of the Honourable Justice P.A. Douglas on November 17, 2020 in the Ontario Superior Court of Justice at Newmarket under Family Court file No. FC-19-0058934-0000;
 - (c) Such further and other relief as counsel may request and to this Honourable Court may seem just.
2. THE GROUNDS FOR THE APPLICATION are:

Background

- (a) The Applicant, Dodick Landau Inc. is a Licensed Insolvency Trustee.
- (b) The Respondent Frank Zuccaro (“Frank”) is the principal of the Respondent Corporations (hereinafter collectively referred to as the “Zuccaro Respondents”) and the spouse of Maria Zuccaro (“Maria”). Guiseppe, Vito Antonio and Filomena Zuccaro are the adult children of the Frank and Maria.

- (c) Maria commenced an Application in the Ontario Superior Court at Newmarket in 2019 under Family Court File No. CV-19-0058934-0000 for, *inter alia*, support and equalization (the “Matrimonial Proceedings”).
- (d) Within the Matrimonial Proceedings various Orders were made as against the Zuccaro Respondents for interim payments and for disclosure which were breached. As a result, the Honourable Justice P.A. Douglas made an Order on October 8, 2020 that a Receiver would be appointed to ensure compliance by the Zuccaro Respondents (the “October 2020 Order”).
- (e) On November 17, 2020, the Honourable Justice P.A. Douglas made a further order appointing Dodick Landau Inc. as Receiver pursuant to section 101 of *The Courts of Justice Act* (the “Receivership Order”) of all assets, undertakings and properties of the Zuccaro Respondents.
- (f) The Receivership Order followed the form of the Commercial Court Model Order. It also specifically authorized the Receiver to list and sell 2 specific properties, namely 76 Densley Avenue Toronto, Ontario (the “Densley Property”) and 3815 King Road, King City, Ontario (the “King Property”) and to utilize the proceeds of the sales to fund the receivership.
- (g) The Receiver was authorized to borrow monies not exceeding \$400,000 to fund the exercise of its powers and duties and the Receiver has to date borrowed \$251,823.30, inclusive of fees.

The Densley Property

- (h) The Receiver has entered into an Agreement of Purchase and Sale dated March 5, 2021 and amended March 29, 2021 (the “Densley APS”) for a sale of the Densley Property. Particulars of the valuations obtained by the Receiver and the Densley APS were provided to Maria upon execution of a Non-Disclosure and Confidentiality Agreement (the “NDA”) and Maria has consented to the closing of the Densley APS. Particulars have been offered to the Frank Respondents but they have declined to sign the NDA and have declined to request any information or to take any position with respect to the Densley APS.

- (i) The Receiver requires an Approval and Vesting Order to complete the Densley APS. The matter is of some urgency as the purchaser’s financing is time sensitive and the Receiver is operating on borrowed funds. The Newmarket Family Court is not experienced in commercial matters relating to the implementation of Receivership Orders and there is no procedure available for scheduling short unopposed proceedings for Vesting Orders or for scheduling other matters on a timely basis for advice and directions on matters relating to the fulfillment of the Receiver’s duties.

The Other Assets

- (j) The Receiver has not yet taken possession of the King Property.

- (k) The Receiver may require an Approval and Vesting Order if there is a sale in the future of the King Property.

- (l) The Receiver has taken possession of the assets of the Respondent Metropolitan Ice Cream Inc. and is in the process of selling them through auction. The Receiver may require further orders in connections with the transfer of title in connection with the sale of those and other assets of the Zuccaro Respondents from time to time throughout the implementation of the Receivership Order.
- (m) The Zuccaro Respondents have failed to cooperate with the Receiver and have failed to respond to any requests for information or access. It is not anticipated that the Zuccaro Respondents will consent to any requests made by the Receiver to assist with the implementation of its roles and duties, although the Receiver does not anticipate any opposition from the Zuccaro Respondents either.
- (n) The Commercial Court is uniquely qualified to address the issues that will arise with respect to the Receiver's implementation of its mandate under the Receivership Order.
- (o) Sections 249 and 250(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended.
- (p) Rules 14.05(2) and (3)(g) and 41 of the Rules of Civil Procedure, R.R.O. 1990. Reg. 194, as amended; and
- (q) Such further and other grounds as counsel may advise and this Court may permit.

3. THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the application:

- (a) Affidavit of Rahn Dodick with attached exhibits, sworn; and
- (b) Such further and other evidence as counsel may advise and this Honourable Court may permit.

May ~~5~~⁷, 2021

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DODICK LANDAU INC.
Applicant

FRANK ZUCCARO, et al.
and Respondents

Court File No. CV-21-00661928-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
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OF THE RULES OF CIVIL PROCEDURE, R.R.O. 1990
Proceeding commenced at Toronto

NOTICE OF APPLICATION

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File Number: 12574-001

