

CANADA
Province of Quebec
District of Québec
Division No.: 01-Montréal
Court No.: 500-11-056208-198
Estate Nos.: 41-2501127 and 41-2501133

SUPERIOR COURT
(Commercial Division)
Bankruptcy and Insolvency Act

IN THE MATTER OF THE BANKRUPTCY OF:

4049306 CANADA INC. AND 7763263 CANADA INC. (DBA STEALTH TRANSPORT / STEALTH TRANSPORT ET ENTREPOSAGE)

legal person duly incorporated under the laws of Canada, having its registered office at 1600 32ND Avenue, Lachine, QC H8T 3R1

Debtors

-and-

RICHTER ADVISORY GROUP INC.

Trustee

TRUSTEE'S REPORT TO THE FIRST MEETING OF CREDITORS

On April 1, 2019, pursuant to a motion filed by the Toronto Dominion Bank ("**TD Bank**"), the Honorable Chantal Corriveau of the Quebec Superior Court appointed Richter Advisory Group Inc. ("**Richter**") as interim receiver in respect of 4049306 Canada Inc. ("**404**") and 7763263 Canada Inc. ("**776**") (collectively the "**Companies**" or "**Debtors**"), in accordance with the *Bankruptcy and Insolvency Act* (the "**BIA**").

On April 5, 2019, the Honorable Chantal Corriveau appointed Richter as receiver in respect of the Debtors, with the customary powers, including but not limited to, the collection of accounts receivable, the sale of assets, and control of receipts and disbursements of the Debtors.

On April 18, 2019, the Debtors were assigned into Bankruptcy by the Receiver and Richter was appointed Trustee of the estates of the bankrupts by the Official Receiver, subject to confirmation by the creditors at the first meeting of creditors.

The purpose of this report is to inform all interested parties about the Trustee's preliminary administration and our findings.

The information contained in this report has been prepared based on the books and records of the Companies and from discussions with the Companies' management. The books and records have not been audited or verified by the Trustee and at the time of our review appear to be inaccurate and incomplete. Consequently, the Trustee expresses no opinion whatsoever with respect to the validity, the exactness or the reliability of the information contained herein.

I. INTRODUCTION

The Companies provided various supply chain management services including crossdocking, warehousing, transportation and distribution to a wide variety of clients in Quebec operating from leased premises in Lachine, Quebec. The Companies normally operated 24 hours a day starting Sunday night of each week through Friday evening when operations cease until they reopened again Sunday evening. The Companies' customers are primarily located in Quebec.

The Companies' head office and warehouse facility is located in Lachine (Quebec) in a 65,000 square foot leased facility. At the time of bankruptcy, the Debtors had approximately 30 full-time employees and a further 45 people who operated as contract drivers.

According to the *Registraire des entreprises*, the ownership structure of each company is as follows:

- 404 – Nancy McAleer is listed as the sole shareholder and her husband, Aharon “Harry” Avakian (“**Avakian**”) is listed as the sole officer; and
- 776 – Avakian is listed as the sole shareholder and officer.

At the time of our appointment, Avakian was active in the day-to-day administration of the Companies including preparation of information, overseeing receipts and disbursements and communications with the TD Bank as well as many other creditors. Mrs. McAleer does not appear to be active in either company. In addition to Avakian, during the performance of our duties, we have had numerous interactions with Sotirios “Sam” Labros (“**Labros**”) who are active in running the day-to-day transport and storage operations of the Companies. As further discussed below, Labros made an offer to purchase the assets of the Debtors and continue the operations of the Companies as a new entity.

The Debtors attribute their financial difficulties to:

- Poor financial information systems that did not provide management with proper tools to evaluate the profitability of the Companies; and
- The inability of 404 to collect an accounts receivable of approximately \$1 million from one of its largest customers. Per the books and records of 404, invoices for this account date back to late 2016.

II. ACTIVITIES OF THE INTERIM RECEIVER AND RECEIVER

A) **Interim Receiver:** upon our appointment as Interim Receiver on April 1, 2019, the powers of the Interim Receiver were mainly limited to monitoring of the receipts and disbursements of the Debtors.

B) **Receiver:**

i. **Security and Protective Measures**

Upon our appointment as Receiver on April 5, 2019, Richter engaged the services of an independent company, Gestion Andre Meilleur (“**Meilleur**”), to do the following:

- Inventory of the rolling stock, office equipment and warehouse equipment of the Companies;
- Review of the list of third-party inventory stored on site and comparison of pallet count to Companies records;
- Backup of the Companies’ server, emails and external hard drive; and
- As access to the Companies was limited to a few key employees, the locks and alarm code were initially not changed, but the Receiver had access to the premises. Richter attended at the Companies during regular business hours.

ii. **Companies Operations**

- Upon its appointment as Receiver, the Court authorized the Receiver to continue or discontinue operations at the Receiver’s discretion. The Receiver determined that it would allow the Companies to continue operations in the normal course while the various realization alternatives are being assessed. This was done to preserve the enterprise value, which would have been significantly impacted had the services stopped. The Receiver did not hire any of the employees or contractors, rather they continued to be employed by the Debtors;
- From April 5, 2019 to April 18, 2019, operations continued on the basis that funds to pay operating costs would be provided by either Avakian or Labros (or a combination thereof) and the Receiver would collect the outstanding receivables. During this time-period, offers were received from Labros to purchase the assets of the Debtors and continue the operations of the Companies. While the offer would have resulted in a loss to the TD Bank in respect of their secured loans (as discussed below), this would have provided for on-going employment for the Debtors’ employees and contractors as well as continued operations to the benefit of the Debtors customers and suppliers. Indeed, Avakian and Labros injected \$94K into the Debtors’ account following the appointment of the Receiver to pay certain payroll and operating costs;
- On April 18, 2019, following the inability of Labros and Avakian to meet ongoing payroll and other obligations, the Receiver (in accordance with the powers granted it) assigned the

Debtors into bankruptcy. Following the bankruptcy, Labros submitted a revised offer to purchase the assets of the Debtors including an undertaking to pay all accrued payroll and operations continued for a further two days to determine if this offer could proceed. Finally, on April 24, 2019, operations of the Debtors ceased as Labros advised he would not be proceeding with his offer as is, due to difficulty in obtaining financing.

C) Bankruptcy:

- The Trustee has implemented the normal security and protective measures including changing the locks of the Companies, alarm code, continuation of insurance and other measures; and
- The Trustee / Receiver has been in contact with numerous customers of the Debtors in connections with the customers' claims to recover their goods which they maintain are in the possession of the Debtors. The Trustee / Receiver is reviewing the various property claims as they are being filed and will report to the Inspectors of the estates.

III. FINANCIAL INFORMATION

The Companies do not produce monthly financial statements. Further, the Companies do not employ a full-time accountant or controller and as such, the available financial information is limited and is not reliable. The Companies' most recent financial statement is for the year ended April 30, 2018 which we summarize below. The Trustee makes no representation or warranty as to the accuracy of said information.

| Stealth Transport Income Statement (Combined) For the year ended April 30, 2018 (in 000's) | Reported (unaudited) |
|---|---------------------------------|
| Revenues | \$ 9,114 |
| Cost of goods sold | <u>6,929</u> |
| Gross profit | 2,185 |
| Administrative expenses | 1,565 |
| Financial expenses | <u>180</u> |
| Net Income (before income taxes) | <u>\$ 440</u> |

While the Companies reported a net income of \$440K as of April 30, 2018, we are unable to validate this unaudited information. This implies an average monthly revenue of \$759K, whereas, the reported average monthly revenue for the past six (6) months approximates \$615K which is 20% lower than the information as of April 30, 2018. This may be indicative that the above financial information reported by the Companies may be overstated.

Further, based on a preliminary review of certain financial information, the Trustee has noted various instances of what appear to be non-business related expenses paid by the Companies. For example, at the time of bankruptcy, the Companies appear to have been leasing eleven (11) cars, most of which were not being driven by employees of the Companies. The Trustee is in the process of attempting to recover the leased vehicles.

IV. STATEMENT OF AFFAIRS

In accordance with the BIA, a Statement of Affairs showing the Debtors' assets and liabilities as at the date of bankruptcy ("**Statement of Affairs**") was prepared from the Companies' books and records and was completed by Richter in its capacity as Receiver. The Statement of Affairs was subsequently amended on May 7, 2019 ("**Amended Statement of Affairs**"). The following summarizes the information contained in the Debtors' Amended Statement of Affairs or books and records which has not been validated by the Trustee:

| Stealth Transport Amended Statement of Affairs As at April 18, 2019 (In \$ CDN) | | | |
|--|------------------------|------------------------|------------------------|
| (in thousands) | 4049306 Canada Inc. | 7763263 Canada Inc. | Combined book value |
| Assets | | | |
| Cash | \$ 113 | \$ - | \$ 113 |
| Accounts receivable | 1,917 | 103 | 2,020 |
| Machinery and equipment | 677 | 24 | 701 |
| Capital leases | 370 | - | 370 |
| Other assets | - | 91 | 91 |
| | <u>3,077</u> | <u>218</u> | <u>3,295</u> |
| Liabilities | | | |
| Secured creditors | | | 1,959 |
| Preferred creditors | | | - |
| Unsecured creditors | | | 3,082 |
| Contingent liabilities | | | - |
| | | | <u>5,041</u> |
| Deficiency | | | <u>\$ (1,746)</u> |

A) Assets

- **Cash (\$113K)**

An amount of \$113K represent funds that were held in Trust by a law firm and remitted to Richter in its capacity as Receiver on April 17, 2019.

- **Accounts Receivable (\$2,020K)**

As per the Companies' books and records, the gross accounts receivable approximate \$2 million of which management estimates approximately \$1 million is not collectible. As previously indicated, management has advised us that one of the Companies' largest customers has not paid invoices dating back to 2017 and the likelihood of collection is in doubt.

During the course of our review of the books and records of the Companies, we noted that the accounts receivable listings that were being provided to the TD Bank on a monthly basis were overstated. Following a discussion with Avakian as well as with the Companies' external IT provider, the Companies advised that there was a programming error such that partial payments by customers were not being properly applied to outstanding receivables, thus leaving the entire original invoice in the accounts receivable listings.

Richter, in our capacity as Receiver, has overseen the efforts of several of the Debtors' employees in updating the receivable records and is following up with all customers in respect of outstanding accounts. It is too preliminary at this stage to comment on the overall realization value of the receivables. As of the date of this report, the Receiver has collected \$130K.

- **Machinery and Equipment (\$677K)**

Included in the machinery and equipment are various trailers, tractors, racking and other warehouse assets owned by the Companies. The Amended Statement of Affairs reflects an estimated net realizable value \$81K. The Receiver is in the process of reviewing leases and other various documents to determine the ownership of the machinery and equipment. Upon completion of the analysis of the asset ownership, the Receiver may commence a sale by tender process to realize upon these assets.

- **Capital Leases (\$370K)**

The Receiver will assess if any equity exists on the current capital leases to realize upon. The Amended Statement of Affairs does not reflect any recovery on account of capital leases.

- **Other Assets (\$91K)**

As per the Companies' books and records, other assets consist of prepaid expenses and deposits. The Amended Statement of Affairs does not reflect any recovery of other assets.

B) Liabilities

The Companies do not maintain separate accounts payable listings for 404 and 776 and as such, the reported liabilities presented below are presented on a combined basis. It is important to note that the exact amount of the Debtors' liabilities as at April 18, 2019, will only be determined once all proofs of claim have been submitted by the creditors and have been compiled and analyzed by the Trustee.

Nonetheless, the following is a summary of the Companies' liabilities based upon preliminary information.

- **Secured Creditors / Priority Creditors**

As per the Amended Statement of Affairs and books and records, the Companies' secured/priority creditors are as follows:

- Employees – \$60K (security interest over the Companies' short-term assets by virtue of s. 81.3 of the BIA). Amount based on the maximum secured portion per employee (\$2,000) to be adjusted based on the actual amounts owed;
- The TD Bank – \$1,859 million (first rank security interest on all assets of the Debtors); and
- Business Development Bank of Canada ("**BDC**") in the amount of \$257K. The BDC holds a second ranking security position on the receivables.

The Companies' Amended Statement of Affairs indicates that there is approximately \$40K owing to the Canada Revenue Agency and Revenu Quebec for unpaid deductions at source.

The Trustee has received a secured claim from the Royal Bank of Canada in the amount of \$146K with respect to specific equipment under lease. The Trustee is currently in the process of evaluating this claim.

The Trustee has received an opinion from Kugler Kandestin as to the validity and enforceability of the security of the TD Bank as well as that of the BDC and RBC. A copy of this opinion will be provided to the Inspectors to be appointed.

- **Preferred Creditors**

The Trustee is not aware of any amounts owing to any government authorities which would be considered a priority. Notice has been sent to all employees and other possible preferred creditors and the ultimate amount of this category of claims will only be subsequently determined. As of the date of this Report, one landlord claim has been received which will be reviewed at the appropriate time.

- **Unsecured Creditors and Property Creditors**

According to the Amended Statement of Affairs, unsecured ordinary creditors total approximately \$3.1 million. As of the date of this Report, the Trustee has not received sufficient proofs of claim to assess the actual amount owed to the ordinary unsecured creditors. In addition, the Trustee has received numerous claims from creditors who claim ownership of property held by the Debtors.

V. SUMMARY OF THE PRELIMINARY ADMINISTRATION

A) Books and Records

The Trustee has taken possession of the books and records and made copies of the Companies' server, emails and external hard drive.

B) Security and Protective Measures

As described above, Richter has taken the necessary security and protective measures including:

- Changing the locks and alarm codes;
- Continuing the Companies' insurance program;
- Engaging a third party to oversee the control of the premises; and
- Inventory of the rolling stock, office equipment and warehouse equipment of the Companies.

Richter has opened trust bank accounts in its capacity of Receiver and Trustee and has also redirected the Companies' mail to its office.

C) Sale by Tender

The Receiver is considering proceeding with a call for tenders to acquire the fixed assets of the Debtors in the week commencing May 13, 2019. An update on the sales process will be provided to the Inspectors named at the first meeting of creditors.

D) Reviewable Transactions and Preferential Payments

The Trustee will discuss with the Inspectors the scope of the review of payments to creditors and related parties preceding the date of the bankruptcy which may be reviewable, preferential or undervalue as defined within the meaning of the BIA.

VI. ANTICIPATED REALIZATION AND PROJECTED DISTRIBUTION

As of the date hereof, based on the estimated realizable value of the assets, the value of the amounts due to the secured creditors, the Trustee does not anticipate that there will be any dividends available to the preferred and ordinary creditors.

DATED AT MONTREAL, this 9th day of May 2019.

Richter Advisory Group Inc.
Licensed Insolvency Trustee



Andrew Adessky, CPA, CA, MBA, CIRP, LIT
Administrator of the Bankruptcy