



District of: Ontario
Division No.: 09 - Toronto
Court No.: 31-2846803
Estate No.: 31-2846803

**IN THE MATTER OF THE BANKRUPTCY OF
AXESS PICKERING LTD.
OF THE CITY OF TORONTO, IN THE PROVINCE OF ONTARIO**

**TRUSTEE'S REPORT TO THE FIRST MEETING OF CREDITORS ON PRELIMINARY
ADMINISTRATION**

I. INTRODUCTION

Upon application by C & K Mortgage Service Inc. and 975393 Ontario Inc. (the “**Receivership Applicants**”), on October 12, 2021 (the “**Receivership Date**”), the Ontario Superior Court of Justice (the “**Court**”) granted an order appointing Alvarez & Marsal Canada Inc. (“**A&M**”) as receiver and manager (the “**Receiver**”), without security, of the current and future assets, undertakings and properties of every nature and kind whatsoever of Axess Pickering Ltd. (“**Axess**” or the “**Company**”), including the lands and premises located at 1525 Pickering Parkway, Pickering, Ontario (the “**Property**”).

Pursuant to an order of the Court dated July 8, 2022 (the “**Distribution and Discharge Order**”), the Receiver was authorized to file an assignment on behalf of Axess. On July 13, 2022 (the “**Bankruptcy Date**”), an assignment in bankruptcy was filed by the Receiver on behalf of Axess and A&M was appointed as licensed insolvency trustee (the “**Trustee**”) of the estate of the bankrupt by the official receiver, subject to affirmation by the creditors of the trustee’s appointment or substitution of another trustee by the creditors.

II. BACKGROUND

Axess was incorporated on February 22, 2019 and is a wholly owned subsidiary of Liberty Hamlets Inc. (“**Liberty**”). Axess is a single purpose entity whose primary asset was the Property. It has no, and has never had any, employees or operations since incorporation.

On March 3, 2019, Liberty entered into an Agreement of Purchase and Sale (the “**Liberty APS**”) with Pine Ridge Management Inc. (“**Pine Ridge**”) to purchase the property for \$10.0 million. On September 12, 2019, the Liberty APS was assigned to Axess by way of an Assignment of Agreement of Purchase and Sale.

On March 1, 2021, Axess acquired the Property from Pine Ridge in exchange for \$10.0 million (the “**Cash Consideration**”) plus an agreement dated February 26, 2021, whereby Axess agreed to sell 10 condo units for \$2 per unit and 16 parking spaces and lockers, at no cost, to Tom Oldman, the President of Pine Ridge (the “**Condominium Sale Agreement**”). The Condominium Sale Agreement was registered on title to the Property.

The Cash Consideration was funded by way of:

- i) a first ranking mortgage of \$8.2 million, registered by the Receivership Applicants on March 1, 2021 (the “**First Mortgage**”);
- ii) a second ranking mortgage of \$1.5 million, registered by Sagewise Capital Corporation on March 1, 2021 (the “**Second Mortgage**”); and
- iii) funding from Liberty in the amount of \$300,000.

Closing costs in respect of the transfer of the Property, including prepaid interest, lender and referral fees, and tax and insurance amounts totaled \$2.6 million, and were funded by:

- i) Liberty in the amount of \$1.7 million; and
- ii) a third ranking charge on the property in the amount of \$883,630, registered by RNV Investments and Gina Batista on June 15, 2021 (the “**Third Mortgage**”).

Based on the books and records of the Company, as of the Receivership Date, Axess’ only transaction was the acquisition of the Property and payment of related closing costs. All development activities and related costs in respect of the Property had been coordinated by Liberty and were to be charged to Axess by way of related party payables.

In November 2019, Liberty constructed a showroom and began marketing ‘Axess Condominiums’, a proposed mixed-use development including a three-storey podium and two-point towers. Liberty was forced to pause marketing efforts in March 2020 due to Covid-19 restrictions. No condominium sale agreements were entered into by Liberty or Axess, and the Axess Condominiums showroom was closed on August 13, 2021.

III. PROPERTY SALE

On November 8, 2021, the Court made an Order which authorized the Receiver to conduct a marketing and sale process for the Property (the “**Sale Process**”), including the engagement of Cushman & Wakefield Inc. (“**C&W**”) to assist in the development and implementation of the Sale Process. Information regarding the steps taken by the Receiver and C&W in connection with the administration of the Sale Process can be found in the Second Report of the Receiver dated January 14, 2022.

On January 20, 2022, the Court made an order which, among other things, approved the transaction (the “**Transaction**”) for the sale of the Property to Pickering Valley Developments Ltd. The Transaction closed on February 10, 2022, for gross proceeds of \$15.3 million.

As approved by the Court, the Receiver made the following distributions from the proceeds of the Transaction (together, the “**Distributions**”):

- i) distributions on February 14, 2022, to the Receivership Applicants, for amounts owing under the Receiver’s borrowings and amounts owing under the First Mortgage, including interest, fees, and legal costs, of \$152,212 and \$8.7 million respectively; and
- ii) distributions on March 1 and March 2, 2022 for amounts owing under the Second Mortgage and the Third Mortgage, including legal fees and costs, of \$1.9 million and \$925,018, respectively.

For a detailed description of the receivership proceedings and an overview of the transactions effected therein, creditors should refer to the reports of the Receiver filed in the receivership proceedings (the “**Receiver’s Reports**”), which can be found on the Receiver's website at: <https://www.alvarezandmarsal.com/axess>.

IV. CAUSES OF BANKRUPTCY & FINANCIAL POSITION

Causes of the Company’s insolvency are as outlined in the Receiver’s Reports. As of the Bankruptcy Date, the Company’s creditors have claims in excess of the realized and realizable assets of Axess. The Statement of Affairs reflects a shortfall of assets to liabilities in excess of \$3.5 million.



V. ASSETS

The Company's primary asset, the Property, was sold prior to the Bankruptcy Date. As listed in Axess' Statement of Affairs, the only remaining assets as of the Bankruptcy Date are:

- i) cash held in the Receiver's trust account with the Royal Bank of Canada ("**RBC**") of approximately \$2.97 million ("**Receiver's Cash on Hand**"); and
- ii) accounts receivable totaling \$84,265 owing from the Canada Revenue Agency in respect of outstanding harmonized sales tax ("**HST**") refunds, for HST paid by the Receiver in conjunction with the Receiver's activities. The Trustee expects that this amount is fully collectible.

VI. BOOKS AND RECORDS

As part of the receivership proceedings, the Receiver has taken possession of the Company's books and records and have since maintained the records at A&M's corporate office in Toronto, Ontario.

As such, the Trustee has confirmed that there is reasonable access to the books and records as required for the administration of these bankruptcy proceedings.

VII. CONSERVATORY AND PROTECTIVE MEASURES

Following the Bankruptcy Date, the Trustee opened a trust account at RBC (the "**Trustee's Account**") and caused the Receiver's Cash on Hand to be transferred from the Receiver's trust account to the Trustee's Account.

VIII. CREDITORS

Following the Distributions, all secured creditors of the Company have been repaid in full.

As of the date of this report, the Trustee is only aware of two¹ potential unsecured creditors of Axess: Pine Ridge and Liberty.

The Pine Ridge Claim

A security review by the Receiver's independent counsel, Lax O'Sullivan Lisus Gottlieb LLP, concluded that the Condominium Sales Agreement did not grant a security interest to Pine Ridge or Mr. Oldman. As such, Pine Ridge has an unsecured claim against Axess (the "**Pine Ridge Claim**") which Pine Ridge values in excess of \$12.3 million. The Company's Statement of Affairs lists the Pine Ridge Claim at \$3.0 million. As of the date of this report, the Trustee has not assessed the value of the Pine Ridge Claim.

The Liberty Claim

Based on the books and records of the Company (as received from Liberty and updated by the Receiver), as of the Bankruptcy Date, Axess is indebted to Liberty for approximately \$3.6 million (the "**Liberty Claim**") in respect of costs paid by Liberty on closing of the acquisition of the Property of approximately \$2.0 million and

¹ On February 4, 2022, the Receiver received notice from counsel to a group of creditors of Liberty ("**Liberty Creditors**") who had commenced a claim against Axess. The books and records of Axess do not include any record of amounts owed to, or contracts with, the Liberty Creditors. Pursuant to the Distribution and Discharge Order, the claim against Axess brought by the Liberty Creditors was dismissed by the Court.



costs paid directly by Liberty in respect of development and marketing of the Property of approximately \$1.6 million. The Trustee has confirmed that the Liberty Claim has been assigned to Pine Ridge.

IX. PREFERENCES AND TRANSFERS UNDERVALUE

As part of its statutory duties, the Trustee conducted a preliminary review for preferences and transfers at undervalue by reviewing the Company's bank statements and accounting records, including bank statements for the year preceding the Bankruptcy Date.

Based on the Trustee's preliminary review of the Company's books and records, it appears that Axess' only transaction was the acquisition of the Property and related closing costs. In addition, Axess had one bank account with the Bank of Montreal opened February 2021. Per a review of the Company's bank statements, there has been minimal activity and the only payments made from the account were for bank charges related to returned cheques.

The Trustee has not identified any transactions out of the normal course or that require further investigation and will advise the Inspector(s) should it become aware of any transaction(s) which require further investigation.

X. TRUSTEE'S FEES AND DISBURSEMENTS

Fees and disbursements of the Trustee incurred in course of these proceedings will be paid from the Company's cash balance as at the Bankruptcy Date.

The Trustee's fees will be subject to the provisions of the *Bankruptcy and Insolvency Act* and taxation by the Court.

XI. OTHER MATTERS

Further information relating to these bankruptcy proceedings may be obtained from the Trustee's website at: www.alvarezandmarsal.com/axess.

Dated at Toronto, this 26th day of July, 2022.



Alvarez & Marsal Canada Inc., solely in its capacity as Licensed Insolvency Trustee of Axess Pickering Ltd., and not in its corporate or personal capacity

Per: Stephen Ferguson, Senior Vice President

