

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

B E T W E E N :

GEORGE VASTIS

Plaintiff
(Defendant to the Counterclaim)

- and -

HELEN VASTIS

Plaintiff

- and -

CHRISTOS KOMMATAS

Defendant
(Plaintiff to the Counterclaim)

- and -

CALLDRON GAS BARS LTD. and 1195705 ONTARIO INC.,
carrying on business as OLD PRO DRIVING RANGE

Defendants
(Defendants to the Counterclaim)

**MOTION RECORD
(Returnable March 27, 2024)**

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Court File No.: CV-20-00644241-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

B E T W E E N :

GEORGE VASTIS

Plaintiff
(Defendant to the Counterclaim)

- and -

HELEN VASTIS

Plaintiff

- and -

CHRISTOS KOMMATAS

Defendant
(Plaintiff to the Counterclaim)

- and -

CALLDRON GAS BARS LTD. and 1195705 ONTARIO INC.,
carrying on business as OLD PRO DRIVING RANGE

Defendants
(Defendants to the Counterclaim)

**NOTICE OF MOTION
(Returnable March 27, 2024)**

The Fuller Landau Group Inc., in its capacity as court-appointed liquidator and receiver (in these capacities, the “**Liquidator**”) of the undertaking, property and assets of Calldron Gas Bars Ltd. (“**Calldron**”) and 1195705 Ontario Inc. o/a Old Pro Driving Range (“**Old Pro**”, and together with Calldron are the “**Companies**”) will make a motion to the Court, on Wednesday, March 27, 2024, at **11:00 am** or as soon after that time as the motion can be heard, at 330 University Ave, Toronto, Ontario.

PROPOSED METHOD OF HEARING: The motion is to be heard:

- ☐ In writing under subrule 37.12.1(1) because it is on consent or unopposed or made without notice;
- ☐ In writing as an opposed motion under subrule 37.12.1(4);
- ☐ In person;
- ☐ By telephone conference;
- ☒ By video conference.

at the following location

330 University Avenue, Toronto, Ontario, M5G 1R7
Court to provide Zoom link on caselines

THE MOTION IS FOR:

1. An order substantially in the form attached at Tab 3 of this Motion Record, including:
 - (a) if necessary, abridging and validating the time for service and filing of the notice of motion and the motion record contained herein, validating service and dispensing with further service upon any other persons not already served with this notice of motion and motion record so that the motion is properly returnable today;
 - (b) approving the activities of the Liquidator and its counsel as outlined in the Sixth Report of the Liquidator dated March 18, 2024 (the "**Sixth Report**");
 - (c) approving an interim distribution to the Shareholders (as hereinafter defined) of \$100,000,000.00 (the "**Proposed Distribution**");
 - (d) approving the fees and disbursements of the Liquidator and its counsel; and,
 - (e) such further and other relief as counsel may advise and this Honourable Court may permit.

THE GROUNDS FOR THE MOTION ARE:

Background

2. Chris Kommatas ("**Chris**") and George Vastis ("**George**", and together with Chris are the "**Principals**"), are each 50% shareholders of the Companies. The Principals are also the officers and directors of the Companies;
3. on October 11, 2022, after lengthy litigation involving the Principals, Justice Dietrich issued a judgment (the "**Judgment**") that required, among other things, that the Companies be wound up;
4. on December 20, 2022, Justice Dietrich approved an Order for the winding up of the Companies (the "**Winding Up Order**") and the appointment of the Liquidator to facilitate same;

Activities since the Fifth Report of the Liquidator

5. as detailed in the Sixth Report, the Liquidator has, among other things:
 - (a) continued to communicate with, and collect rents from all tenants at each of the real properties owned by Calldron;
 - (b) attend court on January 23, 2024, for the approval of the sale of 10733 and 10365 Highway 7, Acton, Ontario (the "**Acton Property**"), and 9980 Mississauga Road/2055 Bovaird Drive West, Brampton, Ontario (the "**Mississauga Road Property**");
 - (c) continue to work with the Liquidator's tax advisors to finalize tax returns for the November 30, 2023 year end;
 - (d) paid corporate taxes due by January 31, 2024 for Calldron as a result of the capital gain tax payable for the sale of 480 Derry Rd. East, Mississauga, Ontario;
 - (e) obtain tax advice relating to taxes payable from the sale of the Mississauga Road Property;
 - (f) work with legal counsel to successfully close the sale of the Mississauga Road Property;

- (g) issued a distribution to each of the Principals of \$100,000.00 in February 2024, pursuant to the Order of the Honourable Justice Penny, dated November 28, 2023;
- (h) performed other matters with respect to the Liquidators appointment; and
- (i) prepared the Sixth Report;

Proposed Distribution to Principals:

6. following the sale of the Mississauga Road Property, the Liquidator is holding \$122,329,833.82 on account of this matter (the “**Interim Proceeds**”);
7. the only remaining registration against the Companies in the personal property registration database is in favour of CWB Maxium Financial Inc. (“**CWB**”). The CWB registration is with respect to certain leased equipment used for the Driving Range Business (the “**CWB Equipment**”). The Liquidator remains in possession of the CWB Equipment and continues to make payments to CWB in accordance with the terms of its agreement with Old Pro;
8. there are no mortgages registered on title to any of the properties owned by the Companies and further, the Liquidator is not aware of any unsecured creditors that pre-date the Winding Up Order. Following the Winding Up Order, the Liquidator has ensured that payments are made in the ordinary course;
9. Canada Revenue Agency (“**CRA**”) has not completed an audit of the Companies and has not advised the Liquidator that it intends to do so. Accordingly, and based on information available, the Liquidator believes that it has sufficient cash and assets available to address any claims;
10. prior to the Liquidator’s appointment, the Companies filed voluntary disclosure program applications (the “**VDP Applications**”) with respect to undeclared and unremitted tax obligations. The Liquidator, with the consent of the Principals remitted to CRA the amounts listed as owing in the VDP Applications. The VDP Applications were denied by CRA, however, the Liquidator has retained Morris Kepes Winters LLP as tax counsel to address the VDP Applications;
11. in arriving at the Proposed Distribution, the Liquidator calculated what capital gain taxes and other tax payments the Companies would incur if the Proposed Distribution is made;
12. the Liquidator has proposed to hold back \$22,329,833.82 from the Interim Proceeds to:

- (a) pay capital gains tax owing on the sale of the Mississauga Road Property;
- (b) account for the Companies' future income tax obligations;
- (c) create a reserve for ongoing liquidation costs; and
- (d) create a reserve for the Unequal Distribution Argument (as defined in the Sixth Report);

13. accordingly, the Liquidator requests that this Court authorize the Proposed Distribution as follows:

- (a) shareholder loan repayment (George in the amount of \$934,542, and Chris in the amount of \$1,001,956;
- (b) capital dividend payment to each of the Principals in the amount of \$31, 274, 349; and
- (c) non-eligible dividend to each of the Principals in the amount of \$17,757,403;

Other Matters:

14. as outlined in the Fee Affidavits of the Liquidator and Liquidator's counsel, the Liquidator and its counsel are seeking approval of their fees and disbursements for services rendered:

- (a) in the instance of the Liquidator, up to and including to February 29, 2024; and
- (b) in the instance of the Liquidator's counsel, up to and including February 15, 2024;

15. the provisions of the *Bankruptcy and Insolvency Act*, the *Courts of Justice Act*, and

16. such further and other grounds as counsel may advise and this Honourable Court may permit.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the motion:

17. the Sixth Report of the Liquidator dated March 18, 2024, and the Appendices attached thereto; and

18. such further and other evidence as counsel may advise and this Honourable Court may permit.

March 18, 2024

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Lawyers for the Liquidator

TO THE ATTACHED SERVICE LIST

GEORGE VASTIS et al
Plaintiffs

CHRISTOS KOMMATAS et al
Defendants

Court File No.: CV-20-00644241-00CL

CHRISTOS KOMMATAS
Plaintiff by Counterclaim

GEORGE VASTIS
Defendant to the Counterclaim

**ONTARIO
SUPERIOR COURT OF JUSTICE - COMMERCIAL
LIST**

Proceeding commenced at Toronto

**NOTICE OF MOTION
(Returnable March 27, 2024)**

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Lawyers for the Liquidator

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

B E T W E E N:

GEORGE VASTIS

Plaintiff
(Defendant to the Counterclaim)

- and -

HELEN VASTIS

Plaintiff

- and -

CHRISTOS KOMMATAS

Defendant
(Plaintiff to the Counterclaim)

- and -

**CALLDRON GAS BARS LTD. and 1195705 ONTARIO INC., carry on business as OLD
PRO DRIVING RANGE**

Defendants
(Defendant to the Counterclaim)

**SIXTH REPORT OF
THE FULLER LANDAU GROUP INC.
IN ITS CAPACITY AS THE COURT-APPOINTED LIQUIDATOR OF
CALLDRON GAS BARS LTD. and 1195705 ONTARIO INC., carrying on business
as OLD PRO DRIVING RANGE**

March 18, 2024

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- “D”** - Judgment dated October 11, 2022
- “E”** - Fourth Report (without Appendices)
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- “G”** - March 27 Order
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- “I”** - Tax Estimate and Distribution Plan
- “J”** - Emails from counsel agreeing to Proposed Distribution
- “K”** - Affidavit of Fees of David Filice dated March 18, 2024
- “L”** - Affidavit of Fees of Spencer Jones dated March 18, 2024

Court File No. CV-20-00644241-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

BETWEEN:

GEORGE VASTIS

Plaintiff
(Defendant to the Counterclaim)

- and –

HELEN VASTIS

Plaintiff

- and –

CHRISTOS KOMMATAS

Defendant
(Plaintiff to the Counterclaim)

- and –

**CALLDRON GAS BARS LTD. and 1195705 ONTARIO INC., carry on business as OLD
PRO DRIVING RANGE**

Defendants
(Defendant to the Counterclaim)

INTRODUCTION

1. On December 20, 2022 the Honourable Justice Dietrich of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) granted an order (the “**Winding Up Order**”), appointing The Fuller Landau Group Inc. as receiver and liquidator (in these capacities, the “**Liquidator**”) of the property, assets and undertaking of Calldron Gas Bars Ltd. (“**Calldron**”) and 1195705 Ontario Inc. cob as Old Pro Driving Range (“**Old Pro**” and together with Calldron are the “**Companies**”). A copy of the Winding Up Order is

attached as **Appendix “A”** and a copy of the endorsement of Justice Dietrich relating to the Winding Up Order (the “**Winding Up Endorsement**”) is attached as **Appendix “B”**.

2. While the Winding Up Order was granted on December 20, 2022, a signed copy of said Order was not received until December 23, 2022. As such, the Liquidator’s activities with respect to the Companies commenced on December 23, 2022.

PURPOSE OF THE REPORT

3. The purpose of this sixth report to court (the “**Sixth Report**”) is to:
 - a. report on the Liquidator’s activities since the Liquidator’s fifth report to the Court dated January 9, 2024 (the “**Fifth Report**”);
 - b. report on the Liquidator’s work in arriving at a reasonable amount to distribute to the shareholders (the “**Proposed Distribution**”) from proceeds of sale of the real property municipally known as 9980 Mississauga Road/2055 Bovaird Drive West, Brampton, Ontario (the “**Mississauga Road Property**”), and
 - c. recommend to this Court that it make an Order, amongst other things:
 - i. approving this Sixth Report of the Liquidator including the appendices thereto;
 - ii. approving the fees and disbursements of the Liquidator and its counsel;
 - iii. approving the Proposed Distribution to the shareholders of \$100,000,000.00; and
 - iv. for such further and other relief as the Honourable Court may deem just.

TERMS OF REFERENCE

4. In preparing this Sixth Report, and in making the comments herein, the Liquidator has received and relied on certain books and records, financial information, e-mails, correspondence and discussions from Chris Kommatas (“**Chris**”) and his family (the “**Kommatas Family**”), George Vastis (“**George**” and together with Chris are the “**Principals**”) and his family (the “**Vastis Family**”), the Principals’ respective counsel,

counsel to the Companies, the Companies' Accountants and Bob Ware, the operator of the Driving Range Business (as hereinafter defined), amongst others.

5. Except as described in this Sixth Report, the Liquidator has not audited, reviewed, or otherwise attempted to verify the accuracy and completeness of information provided in a manner that would wholly or partially comply with Generally Accepted Assurance Standards pursuant to the Chartered Professional Accountants of Canada Handbook.
6. This Sixth Report has been prepared for the use of this Court and the Companies' stakeholders as general information relating to the Companies' activities. Specifically, this Sixth Report is prepared to assist the Court with respect to approval of the Proposed Distribution. Accordingly, the reader is cautioned that this Sixth Report may not be appropriate for any other purpose. The Liquidator will not assume responsibility or liability for losses incurred by the reader as a result of the circulation, publication, reproduction or use of this Sixth Report in any manner other than that outlined in this paragraph.
7. All capitalized terms not otherwise defined herein shall have the meaning ascribed to them in the First Report. A copy of the First Report (without appendices) is attached as **Appendix "C"**.
8. Unless otherwise noted, all monetary amounts contained in this Sixth Report are expressed in Canadian dollars.

BACKGROUND

9. The Liquidator was appointed following lengthy litigation between the Principals (the "**Shareholder Litigation**") which culminated in a judgment issued by Justice Dietrich on October 11, 2022 (the "**Judgment**"). A copy of the Judgment is attached as **Appendix "D"**.
10. The litigation giving rise to the Judgment related to the management and operation of the Companies. The Principals are 50 percent shareholders, officers and directors of the Companies.

i. Calldron Gas Bars Ltd.

11. Calldron was incorporated in 1984 and its principal business was the acquisition and development of real property. The real property that is currently owned by Calldron (the “**Calldron Real Properties**”) is as follows:
 - a. the real property municipally known as 5495 Eglinton Ave. West, Toronto, Ontario (the “**Eglinton Ave. Property**”) which consists of a leased gas station operating under the “Petro Canada” banner and a Starbucks coffee shop. A sale transaction for the Eglinton Ave. Property was approved by the Court on November 28, 2023, but has not yet closed. It is scheduled to close on March 28, 2024. A copy of the Fourth Report dated November 17, 2023, (the “**Fourth Report**”) provides a summary of the Eglinton Ave. Property sale and is attached (without appendices) as **Appendix “E”**; and,
 - b. the real property municipally known as 10733 Highway #7 and 10365 Highway #7, Acton Ontario (the “**Acton Property**”) which is a 343-acre parcel of land consisting of farmland, certain other buildings and a partially constructed golf course. A sale transaction for the Acton Property was approved by the Court on January 23, 2024, but has not yet closed. It is scheduled to close in late July 2024, but may close earlier if the purchaser advises the Liquidator that they will want to apply some of their Proposed Distribution to close the transaction. A copy of the Fifth Report (without appendices) provides a summary of the Acton Property sale and is attached as **Appendix “F”**.
12. At the time of the Liquidator’s appointment Calldron also owned the real property municipally known as 480 Derry Rd. East, Mississauga, Ontario (the “**Derry Rd. Property**”), and the Mississauga Road Property. However, since the Liquidator’s appointment, both properties have sold:
 - a. the sale of the Derry Rd. Property was approved by this court pursuant to a court order dated July 12, 2023 and subsequently closed on September 14, 2023; and
 - b. the sale of the Mississauga Road Property was approved by this court pursuant to a court order dated January 23, 2024 and subsequently closed on February 22, 2024.

ii. Old Pro Driving Range

13. The Liquidator has also been appointed over the property, assets and undertaking of Old Pro. Old Pro was incorporated in 1996 and its principal business was managing a golf driving range (the “**Driving Range Business**”).
14. Following its appointment, the Liquidator entered into a lease (the “**Driving Range Lease**”) with 1000488601 Ontario Inc. (“**101 Inc.**”) wherein 101 Inc. leased the real property and personal property used for the Driving Range Business through to October 31, 2023. The Court approved the Driving Range Lease pursuant to a Court Order dated March 27, 2023 (the “**March 27 Order**”). A copy of the March 27 Order is attached hereto as **Appendix “G”**.
15. 101 Inc. remitted the monthly lease payments to the Liquidator until the lease expired on October 31, 2023 and was not extended or renewed.
16. The Liquidator is currently negotiating a sale of the miscellaneous assets of Old Pro (the “**Driving Range Assets**”) that are located at the Mississauga Road Property. Pursuant to paragraph 4(o) the Appointment Order, the Liquidator has the authority to sell Property of the Companies without the approval of the court providing that the sale transaction does not exceed \$500,000 and the aggregate of all such transactions does not exceed \$1,000,000. Based on the language of paragraph 4(o) of the Appointment Order, the Liquidator does not believe that a sale of the Driving Range Assets will require court approval.

LIQUIDATOR’S ACTIVITIES

17. The Liquidator has:
 - a. continued to communicate with, and collect rents from, all tenants at each of the Calldron Real Properties (the “**Tenants**”);
 - b. attended Court on January 23, 2024, for the approval of the Liquidator’s Fifth Report to Court and the sale of the Acton Property and Mississauga Road Property as well as ancillary matters;

- c. continued to work with the Liquidator's tax team to finalize the November 30, 2023, financial statements for Calldron and Old Pro and instruct the Liquidator's tax team to finalize and file the tax returns for the November 30, 2023 year ends for both Companies;
- d. paid all corporate taxes due by January 31, 2024 for Calldron as a result of the capital gain tax payable for the sale of the Derry Rd. Property;
- e. obtained tax advice relating to taxes payable from the sale of the Mississauga Road Property, and determined how much of a distribution could be paid to each shareholder;
- f. communicated with Ian Morris of Morris Kepes Winters LLP, with respect to CRA's denial of a Voluntary Disclosure Program application (the "**VDP Application**") filed by the Companies prior to the Liquidator's appointment. The Liquidator has retained Ian Morris to continue to have dialogue with CRA to see how best to get the VDP Application approved. The Liquidator has continued to provide information to Ian Morris so that he may answer some of the queries that CRA has with the VDP Application;
- g. worked closely with its legal counsel to successfully close the sale of the Mississauga Road Property;
- h. issued a further distribution to each of the Principals of \$100,000 in February 2024 pursuant to the powers granted by the court at paragraph four of the Ancillary Order dated November 28, 2023;
- i. communicated with the purchaser of the Mississauga Road Property who may be interested in purchasing the Driving Range Assets;
- j. performed other matters with respect to the Liquidator's appointment; and
- k. prepared this Sixth Report.

INTERIM STATEMENTS OF RECEIPTS AND DISBURSEMENTS

18. Attached as **Appendix "H"** are copies of the Liquidator's Interim Statements of Receipts and Disbursements in respect of both Calldron and Old Pro (the "**Statements**"), which

includes anticipated future disbursements arising from the closing of the Mississauga Road Property sale.

CREDITOR UPDATE TO COURT

19. At paragraphs 35 through 40 of the Fourth Report, the Liquidator outlined its understanding of the creditors for each of the Companies. Specifically:
 - a. there are no mortgages registered on title to the Calldron Real Properties;
 - b. a search of the Personal Property Security Registration Database (the “**PPSR Database**”) disclosed two registrations against one, or both, of the Companies. The first was a registration in favour of Royal Bank of Canada (“**RBC**”) and the second was in favour of CWB Maxium Inc. (“**CWB**”);
 - c. the Liquidator is aware of certain tax obligations that are subject to the VDP Application. The Liquidator has remitted payment to the Canada Revenue Agency (“**CRA**”) in accordance with the amounts listed as owing under the VDP Application;
 - d. CRA has not completed an audit of the Companies and has not indicated to the Liquidator that it intends to audit the Companies; and
 - e. the Liquidator was not aware of any other creditors, including unsecured creditors.
20. The indebtedness owing to RBC has been paid in full. CWB’s registration on the PPSR Database is with respect to leases (the “**CWB Leases**”) relating to some of the Driving Range Assets (the “**CWB Equipment**”). The CWB Equipment remains in the Liquidator’s possession and the Liquidator continues to make payments on the CWB Leases. The Liquidator intends to pay out the CWB Leases in full as part of any sale of the Driving Range Assets and is holding sufficient funds to do so.
21. Since the Fourth Report, the CRA has advised the Liquidator that it has denied the VDP Applications. Based on a review of the letter from CRA, it appears that CRA has the impression that the Companies are subject to insolvency proceedings, rather than liquidation proceedings. As noted above, the Liquidator has retained Ian Morris to address the queries CRA may have with respect to the VDP Application. The Liquidator

believes that Mr. Morris is best served to address these queries as he assisted the Companies in submitting the VDP Applications in the first instance.

PROPOSED INTERIM DISTRIBUTION TO PRINCIPALS

22. The sale price of the Mississauga Road Property was \$122,500,000.00 and the Liquidator is currently holding \$122,329,833.82 inclusive of funds it already had on account and after addressing closing adjustments (the “**Cash Proceeds**”). The Proposed Distribution contemplates a total distribution of \$100,000,000.
23. Following the Proposed Distribution, the Liquidator will be holding the sum of \$22,329,833.82 in cash and will still retain the Eglinton Ave. Property and the Acton Property. As noted above, both the Eglinton Ave. Property and the Acton Property are subject to unconditional purchase agreements and, once closed, will yield additional cash proceeds to the Liquidator.
24. In arriving at the quantum for the Proposed Distribution, the Liquidator employed its tax group to consider the tax attributes of the Companies and calculate the Companies’ tax obligations generally (including capital gain taxes and other tax payments arising from the disposition of the Companies’ assets). A copy of the Tax Estimate and Distribution Plan is attached hereto as **Appendix “I”**.
25. Based on the information it has received, the Liquidator is recommending that the Proposed Distribution be provided to the Principals as follows:
 - a. Shareholder loan repayment (George Vastis \$934,542, Chris Kommatas \$1,001,956);
 - b. Capital dividend each of \$31,274,349; and
 - c. Non-Eligible Dividend each of \$17,757,403.
26. The Proposed Distribution results in Chris receiving \$50,033,708 and George receiving \$49,966,294. The difference in distributions is a result of the unequal amounts owing under the shareholder loans, which are creditor claims and must be satisfied prior to distribution of dividends.

27. The Shareholder loan repayments and the Capital dividends to be paid to the Principals are not taxable in the hands of the Principals. However, the Non-eligible dividends that the Principals will receive will be taxable to them personally.
28. The Liquidator has proposed to hold back \$22,329,833.82 from the Interim Proceeds to: (a) pay capital gains tax owing on the sale of the Mississauga Road Property; (b) account for the Companies' future income tax obligations; (c) create a reserve for ongoing liquidation costs; and (d) create a reserve for the possible Unequal Distribution Argument (as defined below).
29. The Liquidator notes that at various points during the Shareholder Litigation and this proceeding the Principals have suggested that while they are each 50% shareholders of the Companies, each of them may be entitled to a shareholder distribution that is larger than their shareholding interest (the "**Unequal Distribution Argument**"). Neither Principal has advised the Liquidator of a monetary amount claimed under the Unequal Distribution Argument, although there have been inclinations that it might be relatively modest when compared to the overall value of the Companies. As such, in contemplating the Proposed Distribution, the Liquidator created a \$1,000,000 holdback to specifically address the Unequal Distribution Argument. The Liquidator, through counsel, then contacted counsel to the Principals to confirm: (a) the holdback amount for the Unequal Distribution Argument is sufficient for both Principals; (b) any Claims against the Companies under the Unequal Distribution Argument will be limited to the holdback amount; and (c) the Principals will not claim against the Liquidator personally if the holdback is insufficient to satisfy a successful Unequal Distribution Argument. Counsel to both Principals confirmed their clients' agreement. Copies of the e-mail exchanges between Liquidator's counsel and the Principals' counsel are attached hereto as **Appendix "J"**
30. As noted in previous reports, a company related to Chris has acquired the Acton Property and a company related to George has acquired the Eglinton Ave. Property. Both Chris and George have advised the Liquidator that they would like to use a portion of each of their Proposed Distribution to satisfy the purchase price of the Eglinton Ave. Property and the Acton Property respectively. The Liquidator, with the consent of Chris and

George, expects to hold back a portion of the Proposed Distribution to satisfy each of Chris and George's financial obligations under each of the upcoming property sales.

31. Accordingly, the Liquidator requests the authorization of this Court to distribute the Proposed Distribution of \$100,000,000.

FEES AND DISBURSEMENTS OF LIQUIDATOR AND COUNSEL

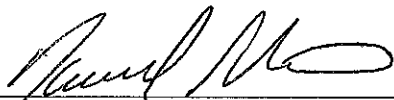
32. The Liquidator's invoices are attached as an Exhibit to the affidavit of David Filice attached hereto as **Appendix "K"**. The total amount of fees and disbursements claimed by the Liquidator for the period from January 1, 2024, to February 29, 2024, inclusive of HST is \$61,897.73 (comprising fees of \$54,209.00, disbursements of \$567.75, and HST of \$7,120.98).
33. Lerner's LLP's invoices are attached as an Exhibit to the affidavit of Spencer Jones attached hereto as **Appendix "L"**. The total amount of fees and disbursements claimed by Lerner's LLP for the period from January 9, 2024 to February 15, 2024, inclusive of HST is \$38,548.98.
34. The Liquidator has reviewed the detailed statements of account provided by counsel and confirms that the services detailed in those documents were in fact provided to the Liquidator. The Liquidator is of the view that the time and disbursements incurred, and hourly rates charged by counsel are fair and reasonable in all respects.

REQUESTS FOR APPROVAL

35. The Liquidator respectfully requests an Order from the Court:
 - a. approving this Sixth Report and the actions of the Liquidator contained therein;
 - b. approving the Proposed Distribution of the excess funds from the sale of the Mississauga Road Property of \$100,000,000.00 as a repayment of Shareholder Loans, Capital Dividend, and Non-Eligible Dividend paid out of Calldron;
 - c. approving the fees and disbursements of the Liquidator and its counsel; and
 - d. such further and other relief as this Court may deem just.

All of which is respectfully submitted this 18th day of March 2024.

The Fuller Landau Group Inc.,
in its capacity as Court appointed Liquidator of
Calldron Gas Bars Ltd. and 1195705 Ontario Inc.
and not in its personal capacity

Per: 

David Filice
Senior Vice President

387517817.1



Court File No. CV-20-00644241-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE)
JUSTICE DIETRICH)
20TH DAY OF DECEMBER 2022

GEORGE VASTIS

Plaintiff
(Defendant to the Counterclaim)

and

HELEN VASTIS

Plaintiff

and

CHRISTOS KOMMATAS

Defendant
(Plaintiff to the Counterclaim)

and

**CALLDRON GAS BARS LTD. and 1195705 ONTARIO INC., carrying on
business as OLD PRO DRIVING RANGE**

Defendants
(Defendant to the Counterclaim)

WINDING UP ORDER

THIS MOTION made by the Parties for an Order further to the Reasons for Judgment and Judgment of Justice Dietrich dated October 11, 2022, and section 207 of the *Business Corporations Act*, R.S.O., 190, c.B.16 as amended (“**OBCA**”) appointing The Fuller Landau Group Inc. (“**Fuller Landau**”) receiver and liquidator (the “**Receiver**”) without security, for the purpose of conducting a wind-up, sales process, and the distribution of the proceeds of all assets, undertakings and properties of the Defendants, Calldron Gas Bars Ltd. and 1195705 Ontario Inc. cob as Old Pro Driving Range (the “**Companies**”) under the supervision of the court, was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the consent of David Filice signed on behalf of The Fuller Landau Group Inc. to act as Receiver and on hearing the submissions of counsel for George Vastis and Helen Vastis, and for Christos Kommatas, and for The Fuller Landau Group Inc.,

SERVICE

1. THIS COURT ORDERS that the time for service of the Notice of Motion and the Motion is hereby abridged and validated so that this motion is properly returnable today and hereby dispenses with further service thereof.

APPOINTMENT OF THE RECEIVER

2. THIS COURT ORDERS that pursuant to the Reasons for Judgment and Judgment of Justice Dietrich dated October 11, 2022, and section 207 of the *OBCA*, The Fuller Landau Group Inc. is hereby appointed Receiver, without security, of all assets, undertakings and properties of the Companies for the purposes of conducting a wind-up, sales process, and the distribution of the proceeds under the supervision of this Court.

3. THIS COURT ORDERS that the Companies shall be wound-up pursuant to section 207 of the *OBCA*.

THE RECEIVER’S POWERS

4. THIS COURT ORDERS that the Receiver is hereby empowered and authorized, but not obligated, to do any of the following where the Receiver considers it necessary or desirable:

- a) to take possession of and exercise control over the estate and effects of the Companies, including the assets, undertakings and properties of the Companies, of every nature and kind whatsoever, and wherever situate, including any and all proceeds, receipts and disbursements arising thereof (the “**Property**”);
- b) to receive, preserve, and protect the Property, or any part or parts thereof, including, but not limited to, the changing of locks and security codes, the relocating of Property to safeguard it, engaging of independent security personnel, the taking of physical inventories and the placement of such insurance coverage as may be necessary or desirable;
- c) to manage, operate, and carry on the business of the Companies, including the powers to enter into any agreements, incur any obligations in the ordinary course of business, cease to carry on all or any part of the business, or cease to perform any contracts of the Companies;
- d) register a copy of this Order and any other Orders in respect of the Property against title to any of the Property;
- e) to engage consultants, appraisers, agents, experts, auditors, accountants, managers, counsel and such other persons from time to time and on whatever basis, including on a temporary basis, to assist with the exercise of the Receiver’s powers and duties, including without limitation those conferred by this Order;
- f) to purchase or lease such machinery, equipment, inventories, supplies, premises or other assets to continue the business of the Companies or any part or parts thereof;
- g) to receive and collect all monies and accounts now owed or hereafter owing to the Companies and to exercise all remedies of

the Companies in collecting such monies, including, without limitation, to enforce any security held by the Companies;

- h) to settle, extend or compromise any indebtedness owing to the Companies;
- i) obtain any and all applicable clearance certificates from governmental authorities, as may be required;
- j) to execute, assign, issue and endorse documents of whatever nature in respect of any of the Property, whether in the Receiver's name or in the name and on behalf of the Companies, for any purpose pursuant to this Order;
- k) to initiate, prosecute and continue the prosecution of any and all proceedings and to defend all proceedings now pending or hereafter instituted with respect to the Companies, the Property or the Receiver, and to settle or compromise any such proceedings. The authority hereby conveyed shall extend to such appeals or applications for judicial review in respect of any order or judgment pronounced in any such proceeding;
- l) to market any or all of the Property, including advertising and soliciting offers in respect of the Property, or any part or parts thereof and negotiating such terms and conditions of sale as the Receiver in its discretion may deem appropriate, and as may be approved by the Court;
- m) to recommend a sales process as to any of the Property, including the real estate assets, either individually or as a whole, and to establish a process whereby each of George Vastis and Chris Kommatas may participate in the bidding process to purchase any of the Property, to be approved by the Court;

- n) after the affairs of the Companies have been fully wound up, make an application to the Court for an order dissolving the Companies;
- o) to sell, convey, transfer, lease or assign the Property, or any part or parts thereof, out of the ordinary course of business:
 - (i) without the approval of this Court in respect of any transaction not exceeding \$500,000, provided that the aggregate consideration for all such transactions does not exceed \$1,000,000.00; and
 - (ii) with the approval of this Court in respect of any transaction in which the purchase price or the aggregate purchase price exceeds the applicable amount set out in the preceding clause;

and in each such case notice under subsection 63(4) of the Ontario *Personal Property Security Act*, [or section 31 of the Ontario *Mortgages Act*, as the case may be,] shall not be required, and in each case the Ontario *Bulk Sales Act* shall not apply.

- p) to apply for any vesting order or other orders necessary to convey the Property or any part or parts thereof to a purchaser or purchasers thereof, free and clear of any liens or encumbrances affecting such Property;
- q) to report to, meet with and discuss with such affected Persons (as defined below) as the Receiver deems appropriate on all matters relating to the Property and the winding-up of the Companies, and to share information, subject to such terms as to confidentiality as the Receiver deems advisable, and as may be approved by the Court;
- r) to apply for any permits, licences, approvals or permissions as may be required by any governmental authority and any renewals

thereof for and on behalf of and, if thought desirable by the Receiver, in the name of the Companies;

- s) to exercise any shareholder, partnership, joint venture or other rights which the Companies may have; and
- t) to take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations.

and in each case where the Receiver takes any such actions or steps, it shall be exclusively authorized and empowered to do so, to the exclusion of all other Persons (as defined below), including the Companies, and without interference from any other Person.

DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE RECEIVER

5. THIS COURT ORDERS that (i) the Companies, (ii) all of their current and former directors, officers, employees, agents, accountants, legal counsel and shareholders, and all other persons acting on its instructions or behalf, and (iii) all other individuals, firms, corporations, governmental bodies or agencies, or other entities having notice of this Order (all of the foregoing, collectively, being "**Persons**" and each being a "**Person**") shall forthwith advise the Receiver of the existence of any Property in such Person's possession or control, shall grant immediate and continued access to the Property to the Receiver, and shall deliver all such Property to the Receiver upon request.

6. THIS COURT ORDERS that all Persons shall forthwith advise the Receiver of the existence of any books, documents, securities, contracts, orders, corporate and accounting records, and any other papers, records and information of any kind related to the business or affairs of the Companies, and any computer programs, computer tapes, computer disks, or other data storage media containing any such information (the foregoing, collectively, the "**Records**") in that Person's possession or control, and shall provide to the Receiver or permit the Receiver to make, retain and take away copies thereof and grant to the Receiver unfettered access to and use of accounting, computer, software and physical facilities relating thereto, provided however that nothing in this paragraph 6 or in paragraph 7 of this Order shall require the delivery of Records, or the granting of access to Records, which may not be disclosed or provided to the Receiver due

to the privilege attaching to solicitor-client communication or due to statutory provisions prohibiting such disclosure.

7. THIS COURT ORDERS that if any Records are stored or otherwise contained on a computer or other electronic system of information storage, whether by independent service provider or otherwise, all Persons in possession or control of such Records shall forthwith give unfettered access to the Receiver for the purpose of allowing the Receiver to recover and fully copy all of the information contained therein whether by way of printing the information onto paper or making copies of computer disks or such other manner of retrieving and copying the information as the Receiver in its discretion deems expedient, and shall not alter, erase or destroy any Records without the prior written consent of the Receiver. Further, for the purposes of this paragraph, all Persons shall provide the Receiver with all such assistance in gaining immediate access to the information in the Records as the Receiver may in its discretion require including providing the Receiver with instructions on the use of any computer or other system and providing the Receiver with any and all access codes, account names and account numbers that may be required to gain access to the information.

NO PROCEEDINGS AGAINST THE RECEIVER

8. THIS COURT ORDERS that no proceeding or enforcement process in any court or tribunal (each, a "**Proceeding**"), shall be commenced or continued against the Receiver except with the written consent of the Receiver as applicable, or with leave of this Court.

NO PROCEEDINGS AGAINST THE COMPANIES OR THE PROPERTY

9. THIS COURT ORDERS that no Proceeding against or in respect of the Companies or the Property shall be commenced or continued except with the written consent of the Receiver or with leave of this Court and any and all Proceedings currently under way against or in respect of the Companies or the Property are hereby stayed and suspended pending further Order of this Court.

NO EXERCISE OF RIGHTS OR REMEDIES

10. THIS COURT ORDERS that all rights and remedies against the Companies, the Receiver, or affecting the Property, are hereby stayed and suspended except with the written

consent of the Receiver or leave of this Court, provided however that nothing in this paragraph shall (i) empower the Receiver or the Companies to carry on any business which the Companies are not lawfully entitled to carry on, (ii) exempt the Receiver, or the Companies from compliance with statutory or regulatory provisions relating to health, safety or the environment, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien.

NO INTERFERENCE WITH THE RECEIVER

11. THIS COURT ORDERS that no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the Companies, without written consent of the Receiver or leave of this Court.

CONTINUATION OF SERVICES

12. THIS COURT ORDERS that all Persons having oral or written agreements with the Companies or statutory or regulatory mandates for the supply of goods and/or services, including without limitation, all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation services, utility or other services to the Companies are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Receiver, and that the Receiver shall be entitled to the continued use of the Companies' current telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Receiver in accordance with normal payment practices of the Companies or such other practices as may be agreed upon by the supplier or service provider and the Liquidator, or as may be ordered by this Court.

RECEIVER TO HOLD FUNDS

13. THIS COURT ORDERS that all funds, monies, cheques, instruments, and other forms of payments received or collected by the Receiver from and after the making of this Order from any source whatsoever, including without limitation the sale of all or any of the Property and the collection of any accounts receivable in whole or in part, whether in existence on the date of this

Order or hereafter coming into existence, shall be deposited into one or more new accounts to be opened by the Receiver (the " **Receiver Accounts**") and the monies standing to the credit of such Receiver Accounts from time to time, net of any disbursements provided for herein, shall be held by the Receiver to be paid in accordance with the terms of this Order or any further Order of this Court.

EMPLOYEES

14. THIS COURT ORDERS that all employees of the Companies shall remain the employees of the Companies until such time as the Receiver, on the Companies' behalf, may terminate the employment of such employees. The Receiver shall not be liable for any employee-related liabilities, including any successor employer liabilities, other than such amounts as the Receiver may specifically agree in writing to pay, or as may be obligated to be paid on behalf of the Companies in accordance with the Companies' statutory, or common law, obligations.

PIPEDA

15. THIS COURT ORDERS that, pursuant to clause 7(3)(c) of the Canada *Personal Information Protection and Electronic Documents Act*, the Receiver shall disclose personal information of identifiable individuals to prospective purchasers or bidders for the Property and to their advisors, but only to the extent desirable or required to negotiate and attempt to complete one or more sales of the Property (each, a "Sale"). Each prospective purchaser or bidder to whom such personal information is disclosed shall maintain and protect the privacy of such information and limit the use of such information to its evaluation of the Sale, and if it does not complete a Sale, shall return all such information to the Receiver, or in the alternative destroy all such information. The purchaser of any Property shall be entitled to continue to use the personal information provided to it, and related to the Property purchased, in a manner which is in all material respects identical to the prior use of such information by the Companies, and shall return all other personal information to the Receiver, or ensure that all other personal information is destroyed.

LIMITATION ON ENVIRONMENTAL LIABILITIES

16. THIS COURT ORDERS that nothing herein contained shall require the Receiver to occupy or manage, by taking possession (“**Possession**”) of any of the Property that might be environmentally contaminated, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment, or relating to the disposal of waste or other contamination including without limitation, the *Canadian Environmental Protection Act*, the *Ontario Environmental Protection Act*, the *Ontario Water Resources Act*, or the *Ontario Occupational Health and Safety Act* and regulations thereunder (the “**Environmental Legislation**”), provided however that nothing herein shall exempt the Receiver from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Receiver shall not, as a result of this Order or anything done in pursuance of the Receiver’s duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

LIMITATION ON THE RECEIVER’S LIABILITY

17. THIS COURT ORDERS that the Receiver shall incur no liability or obligation as a result of its appointment or the carrying out the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part.

RECEIVER'S ACCOUNTS AND CHARGE

18. THIS COURT ORDERS that the Receiver and counsel to the Receiver shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges unless otherwise ordered by the Court on the passing of accounts, and that the Receiver and counsel to the Receiver shall be entitled to and are hereby granted a charge (the “**Administration Charge**”) on the Property, as security for such fees and disbursements, both before and after the making of this Order in respect of these proceedings. The Administration Charge shall form a first charge on the Property in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person.

19. THIS COURT ORDERS that the Receiver and their legal counsel shall pass their accounts from time to time, and for this purpose the accounts of the Receiver and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

20. THIS COURT ORDERS that prior to the passing of its accounts, the Receiver shall be at liberty from time to time to apply reasonable amounts, out of the monies in its hands, against its fees and disbursements, including legal fees and disbursements, incurred at the standard rates and charges of the Receiver or its counsel, and such amounts shall constitute advances against its remuneration and disbursements when and as approved by this Court.

FUNDING OF THE WINDING-UP

21. THIS COURT ORDERS that the Receiver be at liberty and it is hereby empowered to borrow by way of a revolving credit or otherwise, such monies from time to time as it may consider necessary or desirable, provided that the outstanding principal amount does not exceed \$1,000,000.00 (or such greater amount as this Court may by further Order authorize) at any time, at such rate or rates of interest as it deems advisable for such period or periods of time as it may arrange, for the purpose of funding the exercise of the powers and duties conferred upon the Receiver by this Order, including interim expenditures. The whole of the Property shall be and is hereby charged by way of a fixed and specific charge (the "**Borrowings Charge**") as security for the payment of the monies borrowed, together with interest and charges thereon, in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subordinate in priority to the Administration Charge.

22. THIS COURT ORDERS that neither the Borrowings Charge nor any other security granted by the Receiver in connection with its borrowings under this Order shall be enforced without leave of this Court.

23. THIS COURT ORDERS that the Receiver is at liberty and authorized to issue certificates substantially in the form annexed as Schedule "A" hereto (the "**Liquidator's Certificates**") for any amount borrowed by it pursuant to this Order.

24. THIS COURT ORDERS that the monies from time to time borrowed by the Receiver pursuant to this Order or any further order of this Court and any and all Liquidator's Certificates evidencing the same or any part thereof shall rank on a *pari passu* basis, unless otherwise agreed to by the holders of any prior issued Liquidator's Certificates.

SERVICE AND NOTICE

25. THIS COURT ORDERS that the E-Service Protocol of the Commercial List (the "Protocol") is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Protocol (which can be found on the Commercial List website at <http://www.ontariocourts.ca/scj/practice/practice-directions/toronto/e-service-protocol/>) shall be valid and effective service. Subject to Rule 17.05 this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the Rules of Civil Procedure. Subject to Rule 3.01(d) of the Rules of Civil Procedure and paragraph 21 of the Protocol, service of documents in accordance with the Protocol will be effective on transmission. This Court further orders that a Case Website shall be established in accordance with the Protocol with the following URL '<<https://fullerllp.com/active-engagements/Calldron-Gas-Bars-Ltd-and-1195705-Ontario-Inc/>>'.
'.</p>
</div>
<div data-bbox="111 544 889 770" data-label="Text">
<p>26. THIS COURT ORDERS that if the service or distribution of documents in accordance with the Protocol is not practicable, the Receiver is at liberty to serve or distribute this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery or facsimile transmission to the Companies' creditors or other interested parties at their respective addresses as last shown on the records of the Companies and that any such service or distribution by courier, personal delivery or facsimile transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.</p>
</div>
<div data-bbox="111 794 216 811" data-label="Section-Header">
<h3>GENERAL</h3>
</div>
<div data-bbox="111 825 889 897" data-label="Text">
<p>27. THIS COURT ORDERS that the Receiver shall from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder, including as it relates to the winding-up of the Companies which shall be supervised by this Court.</p>
</div>
<div data-bbox="111 941 431 961" data-label="Page-Footer">
<p>DOCSTOR: 17717428
TC:00549188-ITC:00548968-ITC:00546519-1</p>
</div>

28. THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Receiver and Liquidator and their agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Receiver and Liquidator, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver and Liquidator and their agents in carrying out the terms of this Order.

29. THIS COURT ORDERS that the Receiver be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and that the Receiver is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

30. THIS COURT ORDERS that any interested party may apply to this Court to vary or amend this Order on not less than seven (7) days' notice to the Receiver and to any other party likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

A handwritten signature in black ink, reading "Dietrich J.", is written over a horizontal line.

SCHEDULE "A"

BD

LIQUIDATOR'S CERTIFICATE

CERTIFICATE NO. _____

AMOUNT \$ _____

1. THIS IS TO CERTIFY that The Fuller Landau Group Inc., the Receiver (the "**Liquidator**") of certain of the assets, undertakings and properties of acquired for, or used in relation to a business carried on by the Companies, including all proceeds thereof appointed by Order of the Ontario Superior Court of Justice (Commercial List) (the "Court") dated the ____ day of _____, 20__ (the "Order") made in an action having Court file number __-CL-_____, has received as such Liquidator from the holder of this certificate (the "Lender") the principal sum of \$_____, being part of the total principal sum of \$_____ which the Liquidator is authorized to borrow under and pursuant to the Order.

2. The principal sum evidenced by this certificate is payable on demand by the Lender with interest thereon calculated and compounded [daily][monthly not in advance on the _____ day of each month] after the date hereof at a notional rate per annum equal to the rate of _____ per cent above the prime commercial lending rate of Bank of _____ from time to time.

3. Such principal sum with interest thereon is, by the terms of the Order, together with the principal sums and interest thereon of all other certificates issued by the Liquidator pursuant to the Order or to any further order of the Court, a charge upon the whole of the Property (as defined in the Order), in priority to the security interests of any other person, and the right of the Receiver (as defined in the Order) and Liquidator to indemnify themselves out of such Property in respect of its liabilities, remuneration and expenses.

4. All sums payable in respect of principal and interest under this certificate are payable at the main office of the Lender at Toronto, Ontario.

5. Until all liability in respect of this certificate has been terminated, no certificates creating charges ranking or purporting to rank in priority to this certificate shall be issued by the

Liquidator to any person other than the holder of this certificate without the prior written consent of the holder of this certificate.

6. The charge securing this certificate shall operate so as to permit the Receiver and Liquidator to deal with the Property as authorized by the Order and as authorized by any further or other order of the Court.

7. The Liquidator does not undertake, and it is not under any personal liability, to pay any sum in respect of which it may issue certificates under the terms of the Order.

DATED the ____ day of _____, 20__.

The Fuller Landau Group Inc. solely in its
capacity as Liquidator, and not in its personal
capacity

Per: _____

Name:

Title:

GEORGE VASTIS et al.

Plaintiffs

CHRISTOS KOMMATAS

Plaintiff by Counterclaim

-and- CHRISTOS KOMMATAS et al.

Defendants

-and- GEORGE VASTIS

Defendant to the Counterclaim

36

Court File No. CV-20-00644241-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

PROCEEDING COMMENCED AT
TORONTO

ORDER

TEPLITSKY, COLSON LLP

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Tel: (416) 365-9320

Lawyers for the Defendants, Calltron Gas Bars Ltd. and
1195705 Ontario Inc., carrying on business as OLD PRO
DRIVING RANGE and the Defendant (Plaintiff by
Counterclaim), Christos Kommatas

Email for parties served:
Kevin Fisher: kfisher@grllp.com



SUPERIOR COURT OF JUSTICE

COUNSEL SLIP/ENDORSEMENTCOURT FILE NO.: CV-20-00644241-00CLDATE: December 20, 2022NO. ON LIST: 1TITLE OF PROCEEDING: VASTIS ET AL. v. KOMMATAS ET AL.BEFORE JUSTICE: B. DIETRICH**PARTICIPANT INFORMATION****For Plaintiff, Applicant, Moving Party, Crown:**

Name of Person Appearing	Name of Party	Contact Info
Kevin Fisher	George & Helen Vastis	kfisher@grllp.com

For Defendant, Respondent, Responding Party, Defence:

Name of Person Appearing	Name of Party	Contact Info
Catherine Allen	Christos Kommatas	callen@teplitskycolson.com

For Other, Self-Represented:

Name of Person Appearing	Name of Party	Contact Info
Dom Magisano	Counsel to proposed Receiver	dmagisano@lernalers.ca
Spencer Jones (Co-Counsel)	Counsel to proposed Receiver	sjones@lernalers.ca
D. Filice	Proposed Receiver	dfilice@fullerllp.com

ENDORSEMENT OF JUSTICE DIETRICH:

A case conference was held in this matter today, December 20, 2022.

Order Appointing a Receiver

David Filice of The Fuller Landau Group Inc. ("Fuller Landau") has executed a consent to act as receiver. Fuller Landau has confirmed that it is clear of conflicts. It has retained Domenico Magisano to act as its legal counsel.

Counsel to Mr. Vastis and counsel to Mr. Kommatas having been working on a form of order to appoint Fuller Landau as receiver for the purpose of conducting a wind-up, sales process, and the distribution of all assets, undertakings and properties of Calldron Gas Bars Ltd. and 1195705 Ontario Inc.

The parties came to an impasse on two matters a) whether the receiver should be permitted to encumber the property for the purposes of making distributions to the shareholders; and b) whether the receiver should be required to establish a process whereby each of George Vastis and Chris Kommatas, as well as a corporate entity owned or controlled by them, should be permitted to participate in the bidding process to purchase any of the property to be sold by the receiver.

On the matter of the receiver's authority to encumber the property for the purposes of making distributions, counsel to the receiver and the court were of the same view. The decision on whether the receiver should encumber the property for the purposes of making distributions to the shareholders ought not be made by the receiver but by the court. Such decision would be made on a motion, on notice to the other shareholder and the receiver, with the benefit of a full record.

My reasons for judgment specifically granted each of the shareholders the right to bid on any property sold in the receivership. The reasons did not grant them a right of first refusal or permit them any other preference. Accordingly, this right to bid does not need to be extended to any entity owned or controlled by them. Any such entity would be free to bid in the normal course.

With this guidance, the parties will work to finalize the draft order so a motion may be brought for an order appointing Fuller Landau as receiver.

Distribution of Funds

On consent of each of Mr. Vastis and Mr. Kommatas, a distribution of \$100,000 to each of them (for a total distribution of \$200,000) shall be made as soon as possible from the bank accounts of Calldron Gas Bars Ltd. and 1195705 Ontario Inc.

Dietrich J.

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

B E T W E E N:

GEORGE VASTIS

Plaintiff
(Defendant to the Counterclaim)

- and -

HELEN VASTIS

Plaintiff

- and -

CHRISTOS KOMMATAS

Defendant
(Plaintiff to the Counterclaim)

- and -

**CALLDRON GAS BARS LTD. and 1195705 ONTARIO INC., carry on business as OLD
PRO DRIVING RANGE**

Defendants
(Defendant to the Counterclaim)

**FIRST REPORT OF
THE FULLER LANDAU GROUP INC.
IN ITS CAPACITY AS THE COURT-APPOINTED LIQUIDATOR OF
CALLDRON GAS BARS LTD. and 1195705 ONTARIO INC., carrying on business
as OLD PRO DRIVING RANGE**

March 17, 2023

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“M”	-	Email Exchanges between Company Counsel, Liquidator, and Mr Kommatas’ counsel
“N”	-	Affidavit of Fees of David Filice dated March 16, 2023
“O”	-	Affidavit of Fees of Spencer Jones dated March 17, 2023

Confidential Appendix “1” - Summary of Realtor Proposals

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

B E T W E E N:

GEORGE VASTIS

Plaintiff
(Defendant to the Counterclaim)

- and –

HELEN VASTIS

Plaintiff

- and –

CHRISTOS KOMMATAS

Defendant
(Plaintiff to the Counterclaim)

- and –

**CALLDRON GAS BARS LTD. and 1195705 ONTARIO INC., carry on business as OLD
PRO DRIVING RANGE**

Defendants
(Defendant to the Counterclaim)

INTRODUCTION

1. On December 20, 2022 the Honourable Justice Dietrich of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) granted an order (the “**Winding Up Order**”), appointing The Fuller Landau Group Inc. as receiver and liquidator (in these capacities, the “**Liquidator**”) of the property, assets and undertaking of Calldron Gas Bars Ltd. (“**Calldron**”) and 1195705 Ontario Inc. cob as Old Pro Driving Range (“**Old Pro**” and together with Calldron are the “**Companies**”). A copy of the Winding Up Order is attached as **Appendix “A”** and a copy of the endorsement of Justice Dietrich relating to the Wind Up Order (the “**Wind Up Endorsement**”) is attached as **Appendix “B”**.

2. While the Winding Up Order was granted on December 20, 2023, a signed copy of said Order was not received until December 23, 2023. As such, the Liquidator's activities with respect to the Companies commenced on December 23, 2023.

PURPOSE OF THE REPORT

3. The purpose of this first report to court (the "**First Report**") is to report on the Liquidator's:
 - a. activities since its appointment under the Winding Up Order;
 - b. efforts to manage and maintain the driving range operations (the "**Driving Range Business**") located at 9980 Mississauga Road, Brampton, Ontario (the "**Mississauga Road Property**");
 - c. efforts in soliciting listing proposals from realtors for the marketing and sale of the real property municipally known as 10733 Highway #7 and 10365 Highway #7, Acton Ontario (the "**Acton Property**");
 - d. discussions and correspondence with the Accountants (as defined below) regarding finalization and filing of the Companies' fiscal 2022 financial statements and tax filings; and
 - e. discussions and correspondence regarding Company Counsel's (as defined below) engagement relating to the VDP Submissions (as defined below).
4. In the First Report, the Liquidator is recommending that the Court make an order:
 - a. approving a lease agreement between the Liquidator and Old Pro Managing Management Consulting Ltd. (the "**Tenant**") dated March 14, 2023 (the "**Old Pro Lease**") and authorizing the Liquidator to enter into same;
 - b. approving a listing agreement between the Liquidator and CBRE Limited for the listing of the Acton Property for sale (the "**Listing Agreement**") and authorizing the Liquidator to enter into same;
 - c. authorizing J&J, Chartered Professional Accountants, the Companies' accountants (the "**Accountants**") to finalize the fiscal 2022 financial statements

for the Companies and authorizing the Accountants to prepare tax filings for the Companies for the fiscal 2022 year end;

- d. sealing the Liquidator's summary of listing proposals until the earlier of: (i) the closing a sale of the Acton Property; or (ii) further Order of the Court;
- e. approving the fees and disbursements of the Liquidator and its counsel; and
- f. for such further and other relief as the Honourable Court may deem just.

TERMS OF REFERENCE

- 5. In preparing this First Report, and in making the comments herein, the Liquidator has received and relied on certain books and records, financial information, e-mails, correspondence and discussions from Chris Kommatas ("**Chris**") and his family (the "**Kommatas Family**"), George Vastis ("**George**") and together with Chris are the "**Principals**") and his family (the "**Vastis Family**"), the Principals' respective counsel, Company Counsel, the Accountants and Bob Ware, amongst others.
- 6. Except as described in this First Report, the Liquidator has not audited, reviewed, or otherwise attempted to verify the accuracy and completeness of information provided in a manner that would wholly or partially comply with Generally Accepted Assurance Standards pursuant to the Chartered Professional Accountants of Canada Handbook.
- 7. The Liquidator has prepared this First Report for use by the Court in connection with the relief sought herein. The First Report should not be relied upon for any other purpose.
- 8. Unless otherwise noted, all monetary amounts contained in this First Report are expressed in Canadian dollars.

BACKGROUND

- 9. The Liquidator was appointed following lengthy litigation between the Principals (the "**Shareholder Litigation**") which culminated in a judgment issued by Justice Dietrich on October 11, 2022 (the "**Judgment**"). A copy of the Judgment is attached as **Appendix "C"**.

10. The litigation giving rise to the Judgment related to the management and operation of the Companies. The Principals are 50 percent shareholders, officers and directors of the Companies.
11. Calldron was incorporated in 1984 and its principal business was the acquisition and development of real property. The real property currently owned by Calldron (the “**Calldron Real Property**”) is as follows:
 - a. the Acton Property which is a 343 acre parcel of land consisting of farmland, certain out buildings and a partially constructed golf course;
 - b. the Mississauga Road Property which is a 98 acre parcel of land consisting of farm land, the Driving Range Business, and a leased gas station operating under the “Petro-Canada” banner;
 - c. 5495 Eglinton Avenue West, Toronto, Ontario (the “**Eglinton Ave Property**”) which consists of a leased Petro Canada branded gas station and a Starbucks coffee shop. Of note, during the pandemic the Starbucks coffee shop ceased operations but has continued to pay rent for the premises; and
 - d. 480 Derry Road East, Mississauga, Ontario (the “**Derry Rd Property**”) which consists of a leased Esso branded gas station and car wash.
12. Old Pro was incorporated in 1996 and its principal business was managing the Driving Range Business. Robert Ware had been the general manager of the Driving Range Business since 2005. In addition to Mr. Ware, Old Pro would engage seasonal employees to operate the Driving Range Business.
13. The Liquidator continues to receive rent from all tenants on the Calldron owned real estate and, as further described below, and has made arrangements for the continued operation of the Driving Range Business.

LIQUIDATOR'S ACTIVITIES

(A) General

14. At the inception of its appointment, the Liquidator advised counsel to the Principals that it would provide bi-weekly e-mail summaries of its activities. The e-mail summaries provided are attached as **Appendix "D"**.
15. As part of the Wind Up Endorsement, the Principals were granted an interim distribution of \$100,000 each (the "**Interim Disbursement**") from funds held in the Companies' bank accounts at Royal Bank of Canada (the "**RBC Accounts**"). The Liquidator has received the funds from the RBC Accounts and has now delivered the Interim Disbursement to each of the Principals.
16. Upon its appointment, the Liquidator also engaged with the tenants at the Calldron Real Property generally, and specifically with the gas station tenants at the Mississauga Road Property, the Eglington Ave. Property, and the Derry Rd. Property (the "**Gas Station Tenants**"). As noted above, all of the tenants at the Calldron Real Property continue to pay rent.
17. The Liquidator has been examining the best method to liquidate all of the Calldron Real Property. As further described below, the Liquidator is recommending that it list the Acton Property for sale forthwith. The remaining properties are all partially, or completely, occupied by the Gas Station Tenants.
18. The Liquidator has been provided with copies of leases relating to each of the Gas Station Tenants. All of the leases contain language which the Gas Station Tenants assert, provides them with a right of first refusal ("**ROFR**") with respect to purchase of the underlying real property. The Liquidator continues to have discussions with the Gas Station Tenants regarding the ROFR regarding possible resolutions to this matter. If suitable arrangements cannot be made, the Liquidator may require further direction from the court regarding the applicability and enforceability of the ROFRs in question as they may impact the sales process employed.

(B) **Driving Range Business**

19. At the time of the Liquidator's appointment in December 2022, the Driving Range Business was largely dormant. However, the Liquidator noted that the Driving Range Business had revenues of approximately \$450,000 in 2022 with approximately \$105,000 in net income. With that in mind, the Liquidator began considering options for the continued operation of the Driving Range Business.
20. After taking possession of the Mississauga Rd. Property, the Liquidator engaged in discussions with Robert Ware regarding the Driving Range Business specifically, and the Mississauga Rd. Property, generally. Mr. Ware was generally responsive and cooperative during these meetings and discussions.
21. In assessing the options for operation of the Driving Range Business, the Liquidator was cognisant that it would not be cost-effective for it to be at the Mississauga Road Premises operating and overseeing the Driving Range Business. As such, a third party operator would be required to manage the Driving Range Business in a profitable manner.
22. The Liquidator is aware that Robert Ware is familiar with the Driving Range Business as he has operated said business since 2005. However, the Liquidator is cognisant of allegations made in the Shareholder Litigation regarding management of the Driving Range Business and disclosure of cash receipts. As such, if the Driving Range Business was to operate in 2023, the Liquidator preferred a rental arrangement that contemplates a fixed payment to the Liquidator for use of a portion of the Mississauga Rd. Property and the Old Pro equipment in operating the Driving Range Business (the "**Rental Arrangement**").
23. The Liquidator engaged Mr. Ware in discussions surrounding the Rental Arrangement. Mr. Ware indicated his interest, but asked to conduct some due diligence relating to financial information, and specifically, expenses associated in operating the Driving Range Business.

24. The negotiations between the Liquidator and Mr. Ware resulted in the Old Pro Lease being drafted. A copy of the Old Pro Lease is attached as **Appendix “E”**.
25. The Old Pro Lease contains the following substantive terms:
- a. the Tenant (which the Liquidator understands is owned and operated by Robert Ware) will lease the Driving Range Business’ personal property and the portion of the Mississauga Rd. Property used for the Driving Range Business from the Liquidator;
 - b. the Lease will be for a seven month term commencing on April 1, 2023 at an all-inclusive monthly rent of \$17,360. Gross revenue from the Lease during the seven month period is expected to be \$121,520;
 - c. Mr. Ware will not be an employee of the Companies;
 - d. any people hired by the Tenant will be for the Tenant’s account;
 - e. the Driving Range Business’ equipment will be used by the Tenant on an “as is, where is” basis and the Tenant is responsible for repairs to same;
 - f. the Lease will permit the Liquidator access to the Mississauga Rd. Property during the term of the Old Pro Lease. Further the Liquidator will be authorized to close, or partially close, the Driving Range Business for up to a maximum 5 days, if needed, and there will be no abatement of rent under the Old Pro Lease. This will allow the Liquidator to allow potential purchasers, representatives of the purchasers, or other parties to access the Mississauga Rd. Property without interference from the Driving Range Business; and,
 - g. the Liquidator has the right to terminate the Lease upon 30 days’ notice.
26. Following completion of negotiations with the Tenant on terms for the Old Pro Lease, the Liquidator and its counsel received e-mails from George Tidd and Gary Schramm who represented themselves as the controlling partners of Double Eagle Golf Ltd. Mr. Tidd advised of his company’s interest in managing the Driving Range Business. Copies of the e-mails received from Mr. Tidd and Mr. Schramm are attached as **Appendix “F”**.

27. The Liquidator was contacted by Mr. Schramm to speak about particulars relating to the Driving Range Business and specifically what the Driving Range Business would do for revenue. Mr. Schramm advised the Liquidator that his people would do a drive-by inspection and get back to the Liquidator. On March 17, 2023, Mr. Schramm advised that they were not in a position to make an offer to lease the Driving Range Business.
28. The Liquidator recommends approval of the Lease and the execution of same for the following reasons:
 - a. the financial terms of the Old Pro Lease are comparable to net income that were historically reported in Old Pro's financial statements and tax returns;
 - b. the Old Pro Lease will provide the Liquidator with a fixed revenue from the Driving Range Business without having to account for staffing, weather or other variables in operating the Driving Range Business;
 - c. the Old Pro Lease will limit the Liquidator's involvement with the Driving Range Business thus limiting the Liquidator's costs in managing operations;
 - d. the Liquidator will be able to focus its efforts on maximizing recovery from all of the Calldron Real Property;
 - e. while a formal marketing process was not held for the Driving Range Business the Liquidator, in consultation with other golf industry professionals, believes that the Old Pro Lease provides the best opportunity to maximize net income with the least business risk; and,
 - f. the Old Pro Lease provides liberal access to the Mississauga Rd. Property, including the ability to close, or partially close, the Driving Range Business, without any abatement of rent; and the ability to terminate the Old Pro Lease upon 30 days' notice. Both of these provisions have significant value to the pending marketing and sale process for the Mississauga Rd. Property.

(C) Marketing of Acton Property

29. The Liquidator originally had hoped to market all of the Calldron Real Property at once, however, the possible ROFRs relating to the Derry Rd. Property, the Eglington Ave. Property and the Mississauga Rd. Property, will require the Liquidator to engage in

further discussion, negotiation, and possibly, court direction, regarding the ROFRs and the corresponding sale processes.

30. As a result, and in consultation with the Principals, the Liquidator has decided to proceed with the marketing and sale of the Acton Property as it is not subject to a ROFR.
31. On March 3, 2023, the Liquidator invited seven reputable real estate brokers (the “**Identified Brokers**”) to submit written proposals for real estate broker services for the marketing and potential disposition of the Acton Property (the “**Realtor Proposals**”). As set out in the Liquidator’s invitations, the Realtor Proposals were due on March 13, 2023 (the “**Realtor Proposal Deadline**”). A copy of the Liquidator’s template invitation is attached as **Appendix “G”**.
32. All but one of the Identified Brokers submitted Realtor Proposals by the Realtor Proposal Deadline.
33. As set out in the Liquidator’s invitation for Realtor Proposals, the Liquidator evaluated the Realtor Proposals on the following criteria:
 - a. overall disposition strategy and work plan, including marketing plan;
 - b. experience with asset class and team experience;
 - c. compensation structure; and,
 - d. other criteria as determined relevant by the Liquidator
34. A table providing the Liquidator’s summary of the Realtor Proposals (the “**Realtor Proposal Summary**”) is attached as **Confidential Appendix “1”** to this First Report.
35. The Liquidator is recommending the appointment of CBRE Limited as realtor to market and sell the Acton Property. Subject to the approval of the Court, the Liquidator intends to execute the proposed form of listing agreement (the “**Listing Agreement**”) attached as **Appendix “H”**.

(D) Fiscal 2022 Financial Statements and Tax Filings

36. The Companies’ fiscal year end is November 30. As a result, fiscal 2022 pre-dated the Liquidator’s appointment, however, the 2022 financial statements (the “**2022**

Statements") and tax filings (the "**2022 Filings**" and together with the 2022 Statements are the "**2022 Financial Documents**") remain outstanding.

37. Upon its appointment, the Liquidator met with the Accountants to discuss a variety of matters, including finalizing of the 2022 Accounting Documents. At the initial meeting, the Accountants advised that the 2022 Financial Documents had been completed, but had not been approved by the Principals prior to the Liquidator's appointment. A copy of the 2022 Financial Documents are attached as **Appendix "I"**.
38. The Liquidator has reviewed the 2022 Financial Documents, however, the Liquidator cannot comment or attest to their contents as they relate to financial matters that predate the Liquidator's appointment.
39. The Liquidator shared the 2022 Financial Documents with the Principals and asked that they review and provide their position on approving said documents. Mr. Vastis has provided the Liquidator with his approval, but Mr. Kommatas has not provided his comments and/or approval of the 2022 Financial Documents.
40. The Liquidator recommends that Mr. Jackson be provided with the authorization to finalize the 2022 Statements and complete the 2022 Filings so that all regulatory filings for the Companies are brought current and amounts due are paid on time.
41. Should the 2022 Financial Documents require adjustment in the future, those adjustments can be made at a later date.

(E) Company counsel's files on VDP Submissions

42. As part of the Liquidator's meetings with the Accountants, the Liquidator was advised that in March 2022 the Companies had made the VDP Submissions to the Canada Revenue Agency ("**CRA**"). Copies of the covering letter for the VDP Submissions, providing a summary of the documents that were sent is attached as **Appendix "J"**.
43. The VDP Submissions disclosed that between fiscal 2016 and 2019 Calldron had unremitted HST totalling \$203,936.00 and unremitted Corporate Taxes totalling \$763,294.00. The VDP Submissions also disclosed that between fiscal 2016 and 2019, Old Pro had unremitted HST totalling \$63,787.00 and unremitted Corporate Taxes totalling \$57,453.00.

44. The VDP Submissions appear to have been delivered to CRA by Company Counsel.
45. The Liquidator advised of the VDP Submissions and provided a copy of the VDP Submissions to counsel for each of the Principals. Subsequently, counsel for Mr. Kommatas advised that he was unaware of the VDP Submissions and requested Company Counsel's entire file with respect to the VDP Submissions. The Liquidator also requested a copy of Company Counsel's entire file. The e-mail exchange between Company Counsel, Mr. Kommatas' counsel and Liquidator's counsel is attached as **Appendix "K"**.
46. On February 21, 2023, Company Counsel e-mailed the Liquidator's counsel and provided certain documents from his file, the vast majority of the documents provided were the VDP Submissions and the engagement letters entered into by each of the Companies and Company Counsel.
47. As the VDP Submissions had been previously provided, the Liquidator's counsel provided the balance of the documents received to counsel for each of the Principals. A copy of the e-mail (without attachments) is attached as **Appendix "L"**.
48. Mr. Kommatas' counsel has expressed his client's position that there must be additional documentation in Company Counsel's VDP Submission file and has repeatedly requested a copy of the entire file. In response, Company Counsel has repeatedly directed the matter to the Liquidator by stating either: (a) the Liquidator has the entire VDP Submission file; (b) the Liquidator has not asked for the entire VDP Submission file; or (c) Mr. Kommatas' counsel should be requesting information from the Liquidator. Copies of various e-mails between Company Counsel, the Liquidator's counsel and Mr. Kommatas' counsel are attached as **Appendix "M"**.
49. The Liquidator has been appointed over the Companies who are both solvent. As such, the Principals continue to have a vested interest in the affairs of the Companies, including matters involving the Companies' engaging of counsel. The Liquidator does not believe that it needs to be an intermediary or "gatekeeper" between the Principals and Company Counsel as it pertains to Company Counsel's files and that matter should be resolved between Company Counsel and the Principals. The Liquidator understands that Mr. Kommatas' counsel may wish to obtain some direction from the Court regarding

Company Counsel's files pertaining to the VDP Submissions. In this regard, the Liquidator is not opposed to the Court making an endorsement permitting Company Counsel to speak directly with Mr. Kommatas' counsel regarding the VDP Submissions and the contents of Company Counsel's file.

50. The Liquidator has provided the Principals (through counsel) with the documents it received from Company Counsel. To the extent that Company Counsel has additional documents and/or information in its file, the Liquidator reiterates its request for those documents as they may be relevant to the Liquidator's analysis of the Companies' financial affairs.

FEES AND DISBURSEMENTS OF LIQUIDATOR AND COUNSEL

51. The Liquidator's invoices are attached as an Exhibit to the affidavit of David Filice attached hereto as **Appendix "N"**. The total amount of fees and disbursements claimed by the Liquidator for the period from December 19, 2022, to February 28, 2023, inclusive of HST is \$110,002.34 (comprising fees of \$96,661.50, disbursements of \$685.71, and HST of \$12,655.13).
52. Lerner's LLP's invoices are attached as an Exhibit to the affidavit of Spencer Jones attached hereto as **Appendix "O"**. The total amount of fees and disbursements claimed by Lerner's LLP for the period from December 12, 2022 to March 16, 2023, inclusive of HST is \$110,900.59.
53. The Liquidator has reviewed the detailed statements of account provided by counsel and confirms that the services detailed in those documents were in fact provided to the Liquidator. The Liquidator is of the view that the time and disbursements incurred, and hourly rates charged by counsel are fair and reasonable in all respects.

REQUESTS FOR APPROVAL

54. The Liquidator respectfully requests an Order from the Court:
 - a. approving this First Report and the actions of the Liquidator contained therein;
 - b. authorizing the Liquidator to enter into the Old Pro Lease;

- c. authorizing and directing the Liquidator to enter into the Listing Agreement;
- d. authorizing and directing the Accountant to finalize the 2022 Statements and submit the 2022 Filings to CRA;
- e. sealing confidential appendix 1 until the earlier of: (a) the Liquidator filing a liquidator's certificate confirming that a sale of the Acton Property has closed; or (b) further order of this court;
- f. approving the fees and disbursements of the Liquidator and its counsel; and
- g. such further and other relief as this Court may deem just.

All of which is respectfully submitted this 17th day of March 2023.

The Fuller Landau Group Inc.,
in its capacity as Court appointed Liquidator of
Calldron Gas Bars Ltd. and 1195705 Ontario Inc.
and not in its personal capacity

Per: _____



David Filice
Senior Vice President



Court File No. CV-20-00644241-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE MADAM
JUSTICE DIETRICH

)
)
)

TUESDAY, THE 11TH
DAY OF OCTOBER, 2022

B E T W E E N:

(Court Seal)

GEORGE VASTIS

Plaintiff
(Defendant to the Counterclaim)

and

HELEN VASTIS

Plaintiff

and

CHRISTOS KOMMATAS

Defendant
(Plaintiff to the Counterclaim)

and

**CALLDRON GAS BARS LTD. and 1195705 ONTARIO INC., carrying on
business as OLD PRO DRIVING RANGE**

Defendants
(Defendants to the Counterclaim)

JUDGMENT

-2-

THE TRIAL OF THIS ACTION was heard on February 28, 2022, March 1, 2, 3, 4, 7, 8, 9, 10, 11, 23, 24 and 25, 2022, and May 9, 2022, without a jury, via Zoom Videoconference, with the lawyers for all parties in attendance.

ON READING THE PLEADINGS AND HEARING THE EVIDENCE and the submissions of the lawyers for the parties;

1. THIS COURT ORDERS AND ADJUDGES that the Plaintiff, Helen Vastis is not a claimant pursuant to the provisions of the *Business Corporations Act* RSO 1990, c B.16 (“**OBCA**”), and her claims as to damages, declaratory relief and compensation are hereby dismissed.
2. THIS COURT ORDERS AND ADJUDGES that the plaintiff George Vastis shall receive the sum of \$250,000 for executive services provided to Calldron Gas Bars Ltd. and 1195705 Ontario Inc. carrying on business as “Old Pro Driving Range” (the “**Companies**”), which amount shall be deducted from the share of the liquidation proceeds payable to Mr. Christos Kommatas from the sale of the assets of the Companies.
3. THIS COURT ORDERS AND ADJUDGES that both the Plaintiff/Defendant by Counterclaim, George Vastis (“**Mr. Vastis**”), and the Defendant/Plaintiff by Counterclaim, Christos Kommatas (“**Mr. Kommatas**”) are claimants for the purposes of section 245 of the OBCA.
4. THIS COURT ORDERS AND ADJUDGES the winding-up and liquidation of the Companies pursuant to section 207(1)(b)(iv) of the OBCA.

5. THIS COURT ORDERS AND ADJUDGES that a further order shall issue from this court for the appointment of a receiver to facilitate the winding-up and liquidation of the Companies' assets to conduct the sales process, and the distribution of the proceeds under the supervision of the court.
6. THIS COURT ORDERS AND ADJUDGES that if Mr. Vastis and Mr. Kommatas cannot agree on a receiver to facilitate the wind-up, sale process and the distribution of the proceeds, they may seek direction from a judge of the commercial list.
7. THIS COURT FURTHER ORDERS AND ADJUDGES that Mr. Kommatas and Mr. Vastis shall be permitted to participate in the bidding process in the sale of the underlying assets of the Companies as conducted by a receiver appointed by this court.
8. THIS COURT ORDERS AND ADJUDGES, that Mr. Kommatas is not exempt from responsibility or liability for any unreported taxes or unpaid tax liability (including interest and penalties) owing by one or both of the Companies as a consequence of the failure of the directors and officers to report all income earned in the companies.
9. THIS COURT ORDERS that if the parties cannot agree on costs they shall arrange a 9:30am scheduling appointment before this Court.

THIS JUDGMENT BEARS INTEREST at the rate of 2.8 per cent per year commencing on October 11, 2022.

Dietrich J.

(Signature of judge, officer or registrar)

GEORGE VASTIS et al.
Plaintiffs
CHRISTOS KOMMATAS
Plaintiff by Counterclaim

-and-
-and-

CHRISTOS KOMMATAS et al.
Defendants
GEORGE VASTIS
Defendant to the Counterclaim

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Court File No. CV-20-00644241-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

PROCEEDING COMMENCED
AT TORONTO

JUDGMENT

GARDINER ROBERTS LLP

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**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

B E T W E E N:

GEORGE VASTIS

Plaintiff
(Defendant to the Counterclaim)

- and -

HELEN VASTIS

Plaintiff

- and -

CHRISTOS KOMMATAS

Defendant
(Plaintiff to the Counterclaim)

- and -

**CALLDRON GAS BARS LTD. and 1195705 ONTARIO INC., carry on business as OLD
PRO DRIVING RANGE**

Defendants
(Defendant to the Counterclaim)

**FOURTH REPORT OF
THE FULLER LANDAU GROUP INC.
IN ITS CAPACITY AS THE COURT-APPOINTED LIQUIDATOR OF
CALLDRON GAS BARS LTD. and 1195705 ONTARIO INC., carrying on business
as OLD PRO DRIVING RANGE**

November 17, 2023

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**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

B E T W E E N:

GEORGE VASTIS

Plaintiff
(Defendant to the Counterclaim)

- and –

HELEN VASTIS

Plaintiff

- and –

CHRISTOS KOMMATAS

Defendant
(Plaintiff to the Counterclaim)

- and –

**CALLDRON GAS BARS LTD. and 1195705 ONTARIO INC., carry on business as OLD
PRO DRIVING RANGE**

Defendants
(Defendant to the Counterclaim)

INTRODUCTION

1. On December 20, 2022 the Honourable Justice Dietrich of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) granted an order (the “**Winding Up Order**”), appointing The Fuller Landau Group Inc. as receiver and liquidator (in these capacities, the “**Liquidator**”) of the property, assets and undertaking of Calldron Gas Bars Ltd. (“**Calldron**”) and 1195705 Ontario Inc. cob as Old Pro Driving Range (“**Old Pro**” and together with Calldron are the “**Companies**”). A copy of the Winding Up Order is attached as **Appendix “A”** and a copy of the endorsement of Justice Dietrich relating to the Wind Up Order (the “**Wind Up Endorsement**”) is attached as **Appendix “B”**.

2. While the Winding Up Order was granted on December 20, 2022, a signed copy of said Order was not received until December 23, 2022. As such, the Liquidator's activities with respect to the Companies commenced on December 23, 2022.

PURPOSE OF THE REPORT

3. The purpose of this fourth report to court (the "**Fourth Report**") is to:
 - a. report on the Liquidator's activities since the Liquidator's third report to the Court dated June 30, 2023 (the "**Third Report**");
 - b. report on the Liquidator's efforts to sell the real property municipally known as 5495 Eglinton Ave. West, Toronto Ontario (the "**Eglinton Ave. Property**"); and
 - c. recommend to this Court that it make an Order, amongst other things:
 - ii. approving this Fourth Report of the Liquidator including the appendices thereto;
 - iii. sealing Confidential Appendices 1, 2 and 3 of this Fourth Report (collectively, the "**Confidential Appendices**") pending completion of the Transaction (as defined below) or further Order of this Court;
 - iv. approving the agreement of purchase and sale between the Liquidator, as vendor, and George Vastis, in trust for a corporation (the "**Purchaser**"), as purchaser dated September 20, 2023, as amended (the "**Sale Agreement**"), and authorizing the Liquidator to complete the transaction contemplated thereunder (the "**Transaction**");
 - v. vesting in the Purchaser, or as it may direct, Calldron's right, title and interest in and to the property described in the Sale Agreement (the "**Purchased Assets**"), free and clear of any claims and encumbrances, which Purchased Assets primarily consist of the Eglinton Ave. Property;
 - vi. approving the fees and disbursements of the Liquidator and its counsel;
 - vii. approving a distribution to each of the shareholders of \$750,000;

- viii. amending the Winding Up Order to allow the Liquidator to make future distributions to the shareholders without prior Court approval of an amount not exceeding \$1 million, provided the aggregate distributions to the shareholders does not exceed \$5 million; and
- ix. for such further and other relief as the Honourable Court may deem just.

TERMS OF REFERENCE

4. In preparing this Fourth Report, and in making the comments herein, the Liquidator has received and relied on certain books and records, financial information, e-mails, correspondence and discussions from Chris Kommatas (“**Chris**”) and his family (the “**Kommatas Family**”), George Vastis (“**George**” and together with Chris are the “**Principals**”) and his family (the “**Vastis Family**”), the Principals’ respective counsel, Company Counsel, the Accountants and Bob Ware, amongst others.
5. Except as described in this Fourth Report, the Liquidator has not audited, reviewed, or otherwise attempted to verify the accuracy and completeness of information provided in a manner that would wholly or partially comply with Generally Accepted Assurance Standards pursuant to the Chartered Professional Accountants of Canada Handbook.
6. This Fourth Report has been prepared for the use of this Court and the Companies’ stakeholders as general information relating to the Companies’ activities. Specifically, this Fourth Report is prepared to assist the Court with respect to approval of the Sale Agreement and the underlying Transaction and vesting title in the Eglinton Ave. Property in and to the Purchaser together with certain ancillary relief described herein. Accordingly, the reader is cautioned that this Fourth Report may not be appropriate for any other purpose. The Liquidator will not assume responsibility or liability for losses incurred by the reader as a result of the circulation, publication, reproduction or use of this Fourth Report in any manner other than that outlined in this paragraph.
7. All capitalized terms not otherwise defined herein shall have the meaning ascribed to them in the First Report. A copy of the First Report (without appendices) is attached as **Appendix “C”**.

8. Unless otherwise noted, all monetary amounts contained in this Fourth Report are expressed in Canadian dollars.

BACKGROUND

9. The Liquidator was appointed following lengthy litigation between the Principals (the “**Shareholder Litigation**”) which culminated in a judgment issued by Justice Dietrich on October 11, 2022 (the “**Judgment**”). A copy of the Judgment is attached as **Appendix “D”**.
10. The litigation giving rise to the Judgment related to the management and operation of the Companies. The Principals are 50 percent shareholders, officers and directors of the Companies.
11. Calldron was incorporated in 1984 and its principal business was the acquisition and development of real property. The real property that is currently owned by Calldron (the “**Calldron Real Property**”) is as follows:
 - a. 10733 Highway #7 and 10365 Highway #7, Acton Ontario (the “**Acton Property**”) which is a 343-acre parcel of land consisting of farmland, certain other buildings and a partially constructed golf course;
 - b. 9980 Mississauga Road, Brampton, Ontario (the “**Mississauga Road Property**”) which is a 98-acre parcel of land consisting of farm land, the Driving Range Business, and a leased gas station operating under the “Petro-Canada” banner; and
 - c. 5495 Eglinton Avenue West, Toronto, Ontario (the “**Eglinton Ave Property**”) which consists of a leased gas station operating under the “Petro Canada” banner and a Starbucks coffee shop. Of note, during the pandemic the Starbucks coffee shop ceased operations but has continued to pay rent for the premises;
 - i. **The Derry Rd Property**
12. At the time of the Liquidator’s appointment, Calldron owned a fourth property municipally known as 480 Derry Road East, Mississauga Ontario, (the “**Derry Rd. Property**”). As part of its mandate, the Liquidator marketed and sold the Derry Rd.

Property (the “**Derry Rd. Sale**”). A copy of the Third Report (without appendices) provides a summary of the Derry Rd. Sale and is attached as **Appendix “E”**.

13. The Court approved the Derry Rd. Sale and the transaction closed on September 14, 2023. A copy of the Approval and Vesting Order relating to the Derry Rd. Sale, dated July 12, 2023, is attached as **Appendix “F”**.
14. The Liquidator is currently holding the net proceeds of the Derry Rd. Sale and, as part of this Fourth Report, is recommending a partial distribution of these proceeds, as further described below.

ii. Rights of First Refusal

15. The Principals delivered to the Liquidator a number of lease agreements related to the Callidron Real Property (the “**Lease Agreements**”) including certain leases between Callidron and Petro-Canada relating to both the Eglinton Ave. Property (the “**Eglinton Ave. Lease**”) and the Mississauga Rd. Property (the “**Mississauga Rd. Lease**” and together with the Eglinton Ave. Lease are the “**Petro-Canada Leases**”). In its review of the Petro-Canada Leases the Liquidator noted concerns with the language therein purporting to grant Suncor Energy Limited Partners (as successor in interest to Petro-Canada and hereinafter referred to as “**Suncor**”) a right of first refusal (each a “**ROFR**” and collectively the “**ROFRs**”) with respect to each of the Eglinton Ave. Property and the Mississauga Rd. Property.
16. Ultimately, the Liquidator commenced a motion to seek advice and directions regarding the validity and enforceability of the ROFRs (the “**ROFR Motion**”). The ROFR Motion was ultimately settled. The ROFR Motion with respect to the Eglinton Ave Property was resolved between the parties in June 2023 and memorialized by interim agreement dated June 26, 2023 (the “**Interim Agreement**”). A copy of the Interim Agreement is attached hereto (without appendices) as **Appendix “G”**.
17. The balance of the ROFR Motion was settled on the eve of the hearing and was memorialized by Court Order. A copy of the Order of Justice Osborne dated September 12, 2023 (the “**September 12 Order**”) is attached hereto as **Appendix “H”**.

iii. Old Pro Driving Range

18. The Liquidator has also been appointed over the property, assets and undertaking of Old Pro. Old Pro was incorporated in 1996 and its principal business was managing the Driving Range Business.
19. Following its appointment, the Liquidator entered into a lease (the “**Driving Range Lease**”) with 1000488601 Ontario Inc. (“**101 Inc.**”) wherein 101 Inc. leased the real property and personal property used for the Driving Range Business through to October 31, 2023. The Court approved the Driving Range Lease pursuant to a Court Order dated March 27, 2023 (the “**March 27 Order**”). A copy of the March 27 Order is attached hereto as **Appendix “I”**.
20. 101 Inc. remitted the monthly lease payments to the Liquidator until the lease expired on October 31, 2023 and now the Driving Range Business is closed for the season.
21. Section 13(f)(v) of the Driving Range Lease also provides Bob Ware, 101 Inc.’s directing mind, with the option to purchase a 2018 Jeep Grand Cherokee (the “**Vehicle**”) owned by the Companies at an amount equal to fair market value less \$5,000. Mr. Ware exercised this option to purchase and acquired the Vehicle for a purchase price of \$20,000.

LIQUIDATOR’S ACTIVITIES

22. At the inception of its appointment, the Liquidator advised counsel to the Principals that it would provide bi-weekly e-mail summaries of its activities. Subsequent to the Third Report of the Liquidator, summaries of the activities became monthly. The e-mail summaries provided since the Third Report are attached as **Appendix “J”**.
23. In addition to the monthly e-mail summaries, the Liquidator has:
 - a. continued to communicate with, and collect rents from, all tenants at each of the Calldron Real Properties (the “**Tenants**”). Of note, the Liquidator continued to collect rent from the tenant at the Derry Rd. Property until the Derry Rd. Sale closed on September 14, 2023;
 - b. addressed all matters relating to the ROFR Motion, including:
 - i. drafting of court materials, including the Liquidator’s second report dated June 28, 2023;

- ii. engaged in settlement negotiations with Suncor and the Principals relating to the ROFR Motion; and
 - iii. negotiating the Interim Agreement and the terms of the September 12 Order.
- c. continued communication with CBRE Limited regarding its efforts to market and sell the Acton Property pursuant to a listing agreement dated April 14, 2023 (the “**CBRE Listing Agreement**”). The CBRE Listing Agreement expired on October 13, 2023 and the Liquidator (in consultation and communication with the Principals and their counsel) ultimately decided not to extend said listing agreement;
- d. enter into a listing agreement dated October 20, 2023 with Ren/Tex Realty Inc. (“**Rentex**”) with respect to the marketing and sale of the Acton Property (the “**Rentex Listing Agreement**”). The Rentex Listing Agreement is for a 6 month term and is attached hereto as **Appendix “K”**;
- e. obtain tax advice relating to taxes payable from the sale of the Derry Rd. Property, possible tax obligations arising from the possible sale of the Eglinton Ave Property and strategy for addressing taxes that may be payable pursuant to a Voluntary Disclosure Program application (the “**VDP Application**”) filed by the Companies prior to the Liquidator’s appointment.
- f. paid all amounts owing by the Companies under the VDP Application. While the Canada Revenue Agency has not yet reviewed the VDP Application and has not issued amended Notices of Assessments for the Companies, the Liquidator determined that the payment was prudent as a means to stop the accrual of interest and penalties; and
- g. engaged in a competitive bid process to solicit realtors for marketing and sale of the Mississauga Road Property. After receiving six proposals to market and sell the Mississauga Rd. Property, the Liquidator (in consultation with the Principals and their legal counsel) selected Rentex as the successful realtor. The Liquidator entered into a listing agreement with Rentex dated October 17, 2023 and the

Mississauga Rd. Property is listed for sale. The sale process is ongoing and any accepted offer will be subject to court approval.

SALE OF THE EGLINTON AVE. PROPERTY

24. As noted in the Third Report, the Liquidator elected to proceed with Rentex for the marketing and sale of the Eglinton Ave. Property. The Liquidator's decision to retain Rentex was a result of its: (i) knowledge of both the property and the business (a leased gas station); (ii) knowledge of the north Toronto commercial real estate market; (iii) experience in court supervised sales processes; and (iv) Rentex's strong work in marketing and selling the Derry Rd. Property.
25. The Liquidator entered into a listing agreement with Rentex dated July 11, 2023, with a proposed listing price of \$5,799,000. The listing agreement did not contemplate a bid deadline, but rather, contemplated a consideration of offers as they are received. A copy of the listing agreement with Rentex is attached as **Appendix "L"**.
26. The Liquidator received an offer for the Eglinton Ave. Property on September 2, 2023 (the **"Original Accepted Offer"**) which was accepted on September 8, 2023, however, the offer was conditional for 5 business days to permit further due diligence (the **"Conditional Period"**). At the conclusion of the Conditional Period, the proposed purchaser sought a 24% percent price reduction (the **"Reduced Purchase Price"**). The Liquidator, in consultation with Rentex, elected not to proceed with the offer at the Reduced Purchase Price.
27. While there was interest in the Eglinton Ave. Property, the Liquidator did not receive another offer until it received the Sale Agreement.
28. The Sale Agreement is superior to the Original Accepted Offer in that:
 - a. The purchase price is significantly higher than the Reduced Purchase Price offered following the Conditional Period;
 - b. it is higher than the appraised value of the Eglinton Ave Property, as noted in an appraisal obtained by the Principals in July 2019;

- c. it is unconditional, did not require any additional due diligence and acquired the Eglinton Ave Property on an “as is, where is” basis;
 - d. it includes an approximately 10 percent deposit on execution of the Sale Agreement (the “**Initial Deposit**”);
 - e. it includes two further deposits, the first of which is payable upon the Liquidator obtaining an approval and vesting order (at which point the Liquidator can waive its remaining commissions) and the second of which is payable upon the Purchaser obtaining its portion of the Interim Distribution (defined below) which will be directed to the Liquidator. The cumulative amount of the deposits will then represent approximately 35 percent of the purchase price (The “**Additional Deposits**”); and
 - f. provides sufficient time for the Liquidator to address the ROFR on the Eglinton Ave. Property.
29. Following negotiations between the Liquidator and the Purchaser the parties entered into the Sale Agreement on September 20, 2023, and the Purchaser paid the Initial Deposit to the Liquidator. As noted above, the Additional Deposits will be payable shortly after the return of this motion and the Transaction is scheduled to be closed within 6 months of obtaining the approval and vesting order.
30. Following execution of the Sale Agreement and receipt of the Initial Deposit, the Liquidator obtained a non-disclosure agreement from Suncor and subsequently provided them with a copy of the Sale Agreement. On October 19, 2023, Suncor advised the Liquidator that they would waive their ROFR, and that the Liquidator is free to sell the Eglinton Ave. Property to the Purchaser. A copy of the e-mail from Suncor’s counsel to the Liquidator’s counsel dated October 19, 2023 is attached as **Appendix “M”**.
31. The Sale Agreement remains conditional upon receipt of an approval and vesting order substantially in the form of the Commercial List model order. Subject to the approval of this Court, there are no other material conditions to closing the Transaction.
32. A copy of the Sale Agreement with the deposit and purchase price redacted is attached as **Appendix “N”**. The Liquidator recommends that the deposit and purchase price remain

sealed until the closing of the Transaction (the “**Sealing Order**”), because the release of this information could prejudice Calldron’s stakeholders in the event the Transaction does not close. The Liquidator does not believe that any party would be prejudiced by the Sealing Order. An unredacted copy of the Sale Agreement is submitted as Confidential **Appendix “1”**.

33. The Liquidator recommends approval of the Sale Agreement for the following reasons:
- a. the Sale Agreement represents the best offer received for the Eglinton Ave. Property. A summary of offers received for the Eglinton Ave. Property is attached as **Confidential Appendix “2”**;
 - b. the Liquidator is satisfied that in the circumstances, the Eglinton Ave.. Property was sufficiently exposed to the market; and
 - c. the purchase price is reasonable given the appraised value of the Eglinton Ave. Property. A copy of the appraisal commissioned by the Principals from Ellens & Associates dated July 19, 2019 is attached as **Confidential Appendix “3”**.

INTERIM STATEMENTS OF RECEIPTS AND DISBURSEMENTS

34. Attached as **Appendix “O”** are copies of the Liquidator’s Interim Statements of Receipts and Disbursements in respect of both Calldron and Old Pro (the “**Statements**”), which includes anticipated future disbursements arising from the closing of the Derry Rd. Property sale.

PROPOSED INTERIM DISTRIBUTION TO PRINCIPALS

35. Upon its appointment the Liquidator obtained a search of the personal property registration system database (the “**PPRS Database**”) for each of the Companies. The Calldron PPSR Database search disclosed three registrations. Two of the registrations were in favour Royal Bank of Canada (“**RBC**”). The Liquidator obtained copies of RBC’s security document and obtained a legal opinion that, subject to standard assumptions and qualifications, RBC had valid and enforceable security over the property, assets, and undertaking of Calldron.
36. The Liquidator subsequently engaged in discussions with RBC and its counsel regarding the outstanding indebtedness owing. RBC advised that it was owed approximately

\$35,000 on account of its financing of the Vehicle. The Liquidator paid out the balance owing to RBC and RBC discharged its registrations under the PPRS Database.

37. The only remaining registration against the Companies on the PPRS Database appears to be in favour of CWB Maxium Financial Inc. ("**CWB**"). The CWB registration is with respect to certain leased equipment used for the Driving Range Business (the "**CWB Equipment**"). The Liquidator remains in possession of the CWB Equipment and continues to make payments to CWB in accordance with the terms of its agreement with Old Pro. Copies of searches of the Companies on the PPRS Database are attached as **Appendix "P"** and **Appendix "Q"** respectively. Copies of the lease agreement (and amendments) between CWB and Old Pro are attached as **Appendix "R"**.
38. There are no mortgages registered on title to any of the Calldron Real Property. A copy of the parcel searches for each of the Calldron Real Property are attached as **Appendix "S"**, **Appendix "T"**, and **Appendix "U"**, respectively.
39. As noted above, the Liquidator has already remitted all amounts owing under the VDP Application. The VDP Application included amounts that could constitute deemed trust claims against the Companies. Canada Revenue Agency has not completed an audit of the Companies, and has not advised the Liquidator that it intends to audit the Companies. Accordingly, and based on the information available, the Liquidator believes that it has sufficient cash and assets available to address these claims.
40. The Liquidator is not aware of any unsecured creditors that pre-date the Winding Up Order. Further, should there be any unsecured creditors, the Liquidator believes it is holding sufficient cash and assets available to address these claims.
41. The Statements disclose that the Liquidator is currently holding the sum of \$3,485,178 in cash (the "**Interim Proceeds**"). The Liquidator has proposed to hold back \$1,875,000 from the Interim Proceeds to: (a) pay capital gains tax owing on the sale of the Derry Rd. Property; (b) account for the Companies' future income tax obligations; and (c) create a reserve for ongoing liquidation costs. Accordingly the Liquidator requests the authorization of this Court to distribute a shareholder loan repayment to each of the Principals of \$750,000.

AMENDMENT TO THE WINDING UP ORDER

42. Upon the completion of the Transaction, there will be more funds available to distribute to the Principals. However, the Liquidator cannot issue any distributions to the Principals without prior Court approval.
43. The Liquidator has canvassed this issue with the Principals and their legal counsel. The Principals believe it would be both cost effective and beneficial for the Winding Up Order to be amended so that some further distributions may be made to the Principals without approval of this Court. The Principals have agreed to an amendment of the Winding Up Order that would permit the Liquidator to make further distributions without Court approval, providing that:
 - a. no individual distribution to the Principals exceeds \$1,000,000;
 - b. total distributions to the Principals, made without Court approval, shall not exceed the aggregate amount of \$5,000,000; and
 - c. all distributions made without Court approval must be in equal amounts to each Principal.

FEES AND DISBURSEMENTS OF LIQUIDATOR AND COUNSEL

44. The Liquidator's invoices are attached as an Exhibit to the affidavit of David Filice attached hereto as **Appendix "V"**. The total amount of fees and disbursements claimed by the Liquidator for the period from June 1, 2023, to October 31, 2023, inclusive of HST is \$161,936.07 (comprising fees of \$142,435.25, disbursements of \$871.00, and HST of \$18,629.82).
45. Lerner's LLP's invoices are attached as an Exhibit to the affidavit of Spencer Jones attached hereto as **Appendix "W"**. The total amount of fees and disbursements claimed by Lerner's LLP for the period from June 16, 2023 to October 19, 2023, inclusive of HST is \$118,045.17.
46. The Liquidator has reviewed the detailed statements of account provided by counsel and confirms that the services detailed in those documents were in fact provided to the Liquidator. The Liquidator is of the view that the time and disbursements incurred, and hourly rates charged by counsel are fair and reasonable in all respects.


REQUESTS FOR APPROVAL

47. The Liquidator respectfully requests an Order from the Court:
- a. approving this Fourth Report and the actions of the Liquidator contained therein;
 - b. sealing Confidential Appendices 1, 2 and 3 of this Fourth Report (collectively, the “**Confidential Appendices**”) pending completion of the Transaction or further Order of this Court;
 - c. approving the Sale Agreement between the Liquidator and the Purchaser dated September 20, 2023, as amended, and authorizing the Liquidator to complete the Transaction;
 - d. vesting in the Purchaser, or as it may direct, Calldron’s right, title and interest in and to Purchased Assets, free and clear of any claims and encumbrances, which Purchased Assets primarily consist of the Eglinton Ave. Property;
 - e. approving the distribution of the excess funds from the sale of the Derry Rd. Property of \$750,000 to each Principal as a repayment of shareholder loans paid out of Calldron;
 - f. amending the Winding Up Order to allow the Liquidator to issue distributions to the Principals without Court approval for amounts not exceeding \$1 million to each Principal, provided that the aggregate distributions to the Principals does not exceed \$5 million;
 - g. approving the fees and disbursements of the Liquidator and its counsel; and
 - h. such further and other relief as this Court may deem just.

All of which is respectfully submitted this 17th day of November 2023.

The Fuller Landau Group Inc.,

in its capacity as Court appointed Liquidator of
Calldron Gas Bars Ltd. and 1195705 Ontario Inc.
and not in its personal capacity

Per: 

David Filice
Senior Vice President

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

B E T W E E N:

GEORGE VASTIS

Plaintiff
(Defendant to the Counterclaim)

- and -

HELEN VASTIS

Plaintiff

- and -

CHRISTOS KOMMATAS

Defendant
(Plaintiff to the Counterclaim)

- and -

**CALLDRON GAS BARS LTD. and 1195705 ONTARIO INC., carry on business as OLD
PRO DRIVING RANGE**

Defendants
(Defendant to the Counterclaim)

**FIFTH REPORT OF
THE FULLER LANDAU GROUP INC.
IN ITS CAPACITY AS THE COURT-APPOINTED LIQUIDATOR OF
CALLDRON GAS BARS LTD. and 1195705 ONTARIO INC., carrying on business
as OLD PRO DRIVING RANGE**

January 9, 2024

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“E”	-	Fourth Report (without Appendices)
“F”	-	March 27 Order
“G”	-	Listing Agreement for the Mississauga Road Property
“H”	-	Copies of emails to bidders and interested parties dated November 13, 2023
“I”	-	Copies of emails to bidders dated November 23, 2023
“J”	-	Redacted Sale Agreement for the Mississauga Road Property
“K”	-	Listing Agreement for the Acton Property
“L”	-	Redacted Sale Agreement for the Acton Property
“M”	-	Affidavit of Fees of David Filice dated January 9, 2024
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**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

B E T W E E N:

GEORGE VASTIS

Plaintiff
(Defendant to the Counterclaim)

- and -

HELEN VASTIS

Plaintiff

- and -

CHRISTOS KOMMATAS

Defendant
(Plaintiff to the Counterclaim)

- and -

**CALLDRON GAS BARS LTD. and 1195705 ONTARIO INC., carry on business as OLD
PRO DRIVING RANGE**

Defendants
(Defendant to the Counterclaim)

INTRODUCTION

1. On December 20, 2022 the Honourable Justice Dietrich of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) granted an order (the “**Winding Up Order**”), appointing The Fuller Landau Group Inc. as receiver and liquidator (in these capacities, the “**Liquidator**”) of the property, assets and undertaking of Calldron Gas Bars Ltd. (“**Calldron**”) and 1195705 Ontario Inc. cob as Old Pro Driving Range (“**Old Pro**” and together with Calldron are the “**Companies**”). A copy of the Winding Up Order is attached as **Appendix “A”** and a copy of the endorsement of Justice Dietrich relating to the Winding Up Order (the “**Wind Up Endorsement**”) is attached as **Appendix “B”**.

2. While the Winding Up Order was granted on December 20, 2022, a signed copy of said Order was not received until December 23, 2022. As such, the Liquidator's activities with respect to the Companies commenced on December 23, 2022.

PURPOSE OF THE REPORT

3. The purpose of this fifth report to court (the "**Fifth Report**") is to:
 - i. report on the Liquidator's activities since the Liquidator's fourth report to the Court dated November 17, 2023 (the "**Fourth Report**");
 - ii. report on the Liquidator's efforts to sell the real property municipally known as 9980 Mississauga Road/2055 Bovaird Drive West, Brampton, Ontario (the "**Mississauga Road Property**");
 - iii. report on the Liquidator's efforts to sell the real property municipally known as 10733 Highway #7 and 10365 Highway #7, Acton Ontario (the "**Acton Property**") and
 - iv. recommend to this Court that it make an Order, amongst other things:
 - i. approving this Fifth Report of the Liquidator including the appendices thereto;
 - ii. sealing the confidential appendices of this Fifth Report (collectively, the "**Confidential Appendices**") pending completion of the 2 transactions (as defined below) or further Order of this Court;
 - iii. approving the agreement of purchase and sale for the Mississauga Road Property between the Liquidator, as vendor, and Giampaolo Investments Limited (the "**Mississauga Purchaser**"), as purchaser dated November 29, 2023, (the "**Mississauga Sale Agreement**"), and authorizing the Liquidator to complete the transaction contemplated thereunder (the "**Mississauga Transaction**");
 - iv. vesting in the Mississauga Purchaser, or as it may direct, Calldron's right, title and interest in and to the property described in the Mississauga Sale Agreement (the "**Mississauga Purchased Assets**"), free and clear of any

claims and encumbrances, which Mississauga Purchased Assets primarily consist of the Mississauga Road Property

- v. approving the agreement of purchase and sale for the Acton Property between the Liquidator, as vendor, and Chris Kommatas, in trust for a corporation (the “**Acton Purchaser**”), as purchaser dated December 1, 2023, (the “**Acton Sale Agreement**”), and authorizing the Liquidator to complete the transaction contemplated thereunder (the “**Acton Transaction**”);
- vi. vesting in the Acton Purchaser, or as it may direct, Calldron’s right, title and interest in and to the property described in the Acton Sale Agreement (the “**Acton Purchased Assets**”), free and clear of any claims and encumbrances, which Acton Purchased Assets primarily consist of the Acton Property;
- vii. amending the Approval and Vesting Order granted on November 28, 2023 (the “**Eglinton Ave. AVO**”), for the sale approval of 5495 Eglinton Avenue West, Toronto, Ontario (the “**Eglinton Ave. Property**”) to allow the proper name of the entity taking title of the property to be recorded on the amended Vesting Order;
- viii. approving the fees and disbursements of the Liquidator and its counsel; and
- ix. for such further and other relief as the Honourable Court may deem just.

TERMS OF REFERENCE

4. In preparing this Fifth Report, and in making the comments herein, the Liquidator has received and relied on certain books and records, financial information, e-mails, correspondence and discussions from Chris Kommatas (“**Chris**”) and his family (the “**Kommatas Family**”), George Vastis (“**George**” and together with Chris are the “**Principals**”) and his family (the “**Vastis Family**”), the Principals’ respective counsel, Company Counsel, the Accountants and Bob Ware, amongst others.

5. Except as described in this Fifth Report, the Liquidator has not audited, reviewed, or otherwise attempted to verify the accuracy and completeness of information provided in a manner that would wholly or partially comply with Generally Accepted Assurance Standards pursuant to the Chartered Professional Accountants of Canada Handbook.
6. This Fifth Report has been prepared for the use of this Court and the Companies' stakeholders as general information relating to the Companies' activities. Specifically, this Fifth Report is prepared to assist the Court with respect to approval of the Acton Sale Agreement and the Mississauga Sale Agreement and the underlying Acton Transaction and the Mississauga Transaction, and vesting title in the Acton Property and the Mississauga Road Property in and to the respective Purchasers together with certain ancillary relief described herein. Accordingly, the reader is cautioned that this Fifth Report may not be appropriate for any other purpose. The Liquidator will not assume responsibility or liability for losses incurred by the reader as a result of the circulation, publication, reproduction or use of this Fifth Report in any manner other than that outlined in this paragraph.
7. All capitalized terms not otherwise defined herein shall have the meaning ascribed to them in the First Report. A copy of the First Report (without appendices) is attached as **Appendix "C"**.
8. Unless otherwise noted, all monetary amounts contained in this Fifth Report are expressed in Canadian dollars.

BACKGROUND

9. The Liquidator was appointed following lengthy litigation between the Principals (the "**Shareholder Litigation**") which culminated in a judgment issued by Justice Dietrich on October 11, 2022 (the "**Judgment**"). A copy of the Judgment is attached as **Appendix "D"**.
10. The litigation giving rise to the Judgment related to the management and operation of the Companies. The Principals are 50 percent shareholders, officers and directors of the Companies.

i. Calldron Gas Bars Ltd.

11. Calldron was incorporated in 1984 and its principal business was the acquisition and development of real property. The real property that is currently owned by Calldron (the “**Calldron Real Properties**”) is as follows:
 - i. the Acton Property which is a 343-acre parcel of land consisting of farmland, certain other buildings and a partially constructed golf course;
 - ii. the Mississauga Road Property which is a 98-acre parcel of land consisting of farmland, the Driving Range Business, and a leased gas station operating under the “Petro-Canada” banner; and
 - iii. the Eglinton Ave. Property which consists of a leased gas station operating under the “Petro Canada” banner and a Starbucks coffee shop. A sale transaction for the Eglinton Ave. Property was approved by the Court on November 28, 2023, but has not yet closed. It is scheduled to close in late May 2024. A copy of the Fourth Report (without appendices) provides a summary of the Eglinton Ave. Property sale and is attached as **Appendix “E”**.
12. At the time of the Liquidator’s appointment Calldron also owned the Derry Rd. Property, however, a sale of the Derry Rd. Property was approved by court order dated July 12, 2023 and closed on September 14, 2023.

ii. Old Pro Driving Range

13. The Liquidator has also been appointed over the property, assets and undertaking of Old Pro. Old Pro was incorporated in 1996 and its principal business was managing a golf driving range (the “**Driving Range Business**”).
14. Following its appointment, the Liquidator entered into a lease (the “**Driving Range Lease**”) with 1000488601 Ontario Inc. (“**101 Inc.**”) wherein 101 Inc. leased the real property and personal property used for the Driving Range Business through to October 31, 2023. The Court approved the Driving Range Lease pursuant to a Court Order dated March 27, 2023 (the “**March 27 Order**”). A copy of the March 27 Order is attached hereto as **Appendix “F”**.

15. 101 Inc. remitted the monthly lease payments to the Liquidator until the lease expired on October 31, 2023, and now the Driving Range Business is closed for the season. Subject to the Court's approval of the Mississauga Sale Agreement, the Liquidator will then attempt to sell the miscellaneous assets of Old Pro that are located on the premises of the Mississauga Road Property.

LIQUIDATOR'S ACTIVITIES

16. The Liquidator has:
- i. continued to communicate with, and collect rents from, all tenants at each of the Calldron Real Properties (the "**Tenants**");
 - ii. as previously reported in the Fourth Report, the Liquidator entered into a listing agreement with Ren/Tex Realty Inc. ("**Rentex**") dated October 17, 2023, with respect to the marketing and sale of the Mississauga Road Property. A more detailed discussion of the sales process followed for the Mississauga Road Property is described in greater detail below. The Liquidator was directly involved with Rentex in developing the sales process and reviewing offers that were received;
 - iii. continued communication with Rentex with respect to the marketing and sale of the Acton Property pursuant to a listing agreement dated October 20, 2023;
 - iv. review of offers received on the Acton Property and discuss with Rentex how to sign back or not, the various offers;
 - v. attend Court on November 28, 2023, for the approval of the Liquidator's Fourth Report to Court and the sale of the Eglinton Ave. Property as well as ancillary matters;
 - vi. prepare year end reports for the finalization of the November 30, 2023, financial statements for Calldron and Old Pro and instruct the Liquidator's tax team to prepare tax returns for the November 30, 2023 year ends;
 - vii. negotiate a consulting agreement with the successful bidder for the Mississauga Road Property and a 3rd party consultant, so that the Liquidator and the

Mississauga Purchaser could be included in an appeal process of a secondary plan that could affect the zoning of the Mississauga Road Property;

- viii. issue the Court approved loan repayment distributions to the Principals of \$750,000 each. The Liquidator also made a further distribution to each of the Principals of \$350,000 pursuant to the powers granted by the court at paragraph four of the Ancillary Order dated November 28, 2023;
- ix. performing other matters with respect to the Liquidator's appointment; and
- x. preparing this Fifth Report.

SALE OF THE MISSISSAUGA ROAD PROPERTY

- 17. As noted in the Fourth Report, the Liquidator elected to proceed with Rentex for the marketing and sale of the Mississauga Road Property. The Liquidator's decision to retain Rentex was a result of its: (i) vast experience in selling land in the proximity of the Mississauga Road Property (ii) well prepared proposal that was submitted in the competitive bid process to solicit realtors; (iii) experience in court supervised sales processes; and (iv) strong work in marketing and selling the Derry Rd. Property and the Eglinton Ave. Property.
- 18. The Liquidator entered into a listing agreement with Rentex dated October 17, 2023, with an unpriced listing price. The listing agreement contemplated a bid deadline a few weeks after listing. A copy of the listing agreement with Rentex is attached as **Appendix "G"**.
- 19. The Liquidator in conjunction with Rentex set November 9, 2023, as the initial first round of bids to be submitted. This would have allowed interested parties approximately 3-4 weeks to review the data room and submit their bids for the Mississauga Road Property.
- 20. Rentex sent out 129 packages to prospective qualified buyers by November 9, 2023, of which 68 parties signed confidentiality agreements and were allowed access to the data room.
- 21. 10 offers were received by the set bid deadline of November 9, 2023, at 4:00 pm. However, Rentex was advised by two qualified buyers that they were not able to submit

their bids by the bid deadline. In one instance, the qualified buyer was ill and unable to complete the necessary documents, and in the second instance, the authorized signing officers were out of the country. The Liquidator, in consultation with Rentex and the Liquidator's legal counsel, extended the initial bid deadline for all parties to November 21, 2023 (the "**Deadline Extension**").

22. The Liquidator instructed Rentex to notify all bidders of the Deadline Extension. Rentex also reminded all bidders that the Liquidator was seeking unconditional offers and that bidders were encouraged to use the standard form offer prepared by the Liquidator. Finally, Rentex advised all bidders that all offers must be irrevocable until at least November 23, 2023. A copy of the emails sent by Rentex on November 13, 2023, to the parties who had submitted a bid by November 9, 2023 and also to the parties that had expressed an interest are attached as **Appendix "H"**.
23. On November 21, 2023, Rentex received 9 offers by the bid deadline. Upon the Liquidator's review of all the offers and with consultations with legal counsel, it was decided that 3 parties would move into the final round of bidding. On November 23, 2023, Rentex notified the 3 parties that they had been included in the final round of the sales process. A copy of the email notification sent to the 3 bidders is attached as **Appendix "I"**. Rentex also notified all other parties that submitted bids, that they did not make it to the next round and thanked them for their participation.
24. The Liquidator instructed Rentex to seek clarification from each of the 3 bidders on specific points of the proposed purchasers' offers as well as requesting the following:
 - i. An executed copy of a confidentiality agreement. The confidentiality agreement was required as the Liquidator does not intend to publically disclose certain terms of the purchase agreement (including purchase price and deposit amounts) until after closing. A confidentiality agreement from each of the three final bidders would assist in this process; and
 - ii. Information regarding the purchasers' financial wherewithal to close the transaction. As many offers were received through single purpose entities, or "holding companies" the Liquidator requested information regarding the bidder's financial wherewithal to close. Alternatively, the bidder had to provide a significant, non-refundable deposit as a means to mitigate the risk of the buyer not being able to close.

25. The three final bidders were required to submit their amended agreements by no later than 4pm on November 29, 2023 and the offers were required to be irrevocable until 4pm on November 30, 2023.
26. The Offer received from Giampaolo Investments Limited on November 29, 2023, was superior to the other 2 offers and satisfied the Liquidator with respect to the deposit given and the financial ability of the party to close the transaction. The Liquidator accepted the Giampaolo Investments Limited offer on November 30, 2023,
27. The Mississauga Sale Agreement remains conditional upon receipt of an approval and vesting order substantially in the form of the Commercial List model order. Subject to the approval of this Court, there are no other material conditions to closing the Mississauga Transaction. The Mississauga Transaction is scheduled to close 30 days after Court approval.
28. A copy of the Mississauga Sale Agreement with the deposit and purchase price redacted is attached as **Appendix “J”**. The Liquidator recommends that the deposit and purchase price remain sealed until the closing of the Mississauga Transaction (the **“Sealing Order”**), because the release of this information could prejudice Calldron’s stakeholders in the event the Mississauga Transaction does not close. The Liquidator does not believe that any party would be prejudiced by the Sealing Order. An unredacted copy of the Mississauga Sale Agreement is submitted as **Confidential Appendix “1”**.
29. The Liquidator recommends approval of the Mississauga Sale Agreement for the following reasons:
 - i. the Mississauga Sale Agreement represents the best offer received for the Mississauga Road Property during the sale process. A summary of the 9 offers received by the Liquidator by November 21, 2023, and then the final three offers submitted by November 29, 2023 is submitted as **Confidential Appendix “2”**.
 - ii. The Mississauga Sale Agreement represents the best offer including the unsolicited offers that were received by the Liquidator and the Principals prior to the sale process commencing. Copies of the unsolicited offers received by the

Liquidator prior to commencing the sale process for the Mississauga Rd. Property are submitted as **Confidential Appendix “3”**;

- iii. the Liquidator is satisfied that in the circumstances, the Mississauga Road Property was sufficiently exposed to the market; and
- iv. the purchase price is reasonable given the appraised value of the Mississauga Road Property. A copy of the appraisal commissioned by the Principals from Lebow Hicks Appraisal Inc. dated January 7, 2022, is attached as **Confidential Appendix “4”**.

SALE OF THE ACTON PROPERTY

- 30. As noted in the Fourth Report, the Liquidator elected to proceed with Rentex for the marketing and sale of the Acton Property. The Liquidator’s decision to retain Rentex was a result of the CBRE Limited listing agreement expiring on October 13, 2023, and the Liquidator (in consultation and communication with the Principals and their counsel) ultimately decided not to extend said listing agreement. By this time, Rentex had already sold two Calldron properties for the Liquidator and was also retained to sell the Mississauga Road Property. They had provided the Liquidator positive results and there was also a thought that the Mississauga Road Property and the Acton Property could possibly be sold together to one buyer.
- 31. The Liquidator entered into a listing agreement with Rentex dated October 20, 2023, pursuant to which the Liquidator retained Rentex to list and market the Acton Property for sale at a list price of \$10,499,000. A copy of the listing agreement with Rentex is attached as **Appendix “K”**.
- 32. While the listing price was significantly less than the original listing price proposed by CBRE Limited, the lack of activity on the Acton Property together with the offers received during the period that CBRE Limited listed the Acton Property for sale suggested that a listing price reduction was appropriate.
- 33. Upon listing the Acton Property with Rentex, the Liquidator received two offers. One from the Acton Purchaser, and a second offer from another party. The Liquidator notes

that the Acton Purchaser is related to Calldron in that he is a 50% shareholder of Calldron.

34. The offer amount from the Acton Purchaser was above the value of the appraisal obtained by the Principals in January 2022. The second offer contained a higher purchase price, however, it also contained more stringent conditions and a longer conditional period. The second offeror had previously submitted offers for the Acton Property, but the Liquidator could never arrive at an accepted offer with this party due to its unwillingness to remove, or limit, certain conditions. A summary of the two offers received by the Liquidator are submitted as **Confidential Appendix “5”**.
35. Following negotiations between the Liquidator and the Acton Purchaser the parties entered into the Sale Agreement on December 6, 2023, and the Acton Purchaser paid a deposit to the Liquidator.
36. The Sale Agreement ultimately did not have any buyer’s conditions.
37. The Acton Sale Agreement remains conditional upon receipt of an approval and vesting order substantially in the form of the Commercial List model order. Subject to the approval of this Court, there are no other material conditions to closing the Acton Transaction. The Acton Transaction is scheduled to close at the latest, six months after obtaining Court approval. However, the Acton Purchaser has indicated to the Liquidator that they will close sooner if they are in funds from the eventual partial distribution from the proceeds of the Mississauga Transaction.
38. A copy of the Acton Sale Agreement with the deposit and purchase price redacted is attached as **Appendix “L”**. The Liquidator recommends that the deposit and purchase price remain sealed until the closing of the Acton Transaction (the **“Sealing Order”**), because the release of this information could prejudice Calldron’s stakeholders in the event the Acton Transaction does not close. The Liquidator does not believe that any party would be prejudiced by the Sealing Order. An unredacted copy of the Acton Sale Agreement is submitted as **Confidential Appendix “6”**.
39. The Liquidator recommends approval of the Acton Sale Agreement for the Acton Property for the following reasons:

- i. the Acton Sale Agreement represents the best offer received for the Acton Property;
- ii. the Liquidator is satisfied that in the circumstances, the Acton Property was sufficiently exposed to the market (greater than 7 months), and that receipt of a higher offer to that submitted by the Acton Purchaser is unlikely;
- iii. the purchase price is reasonable given the appraised value of the Acton Property. A copy of the appraisals commissioned by the Principals from Ellens & Associates dated January 7, 2022, and Lebow Hicks Appraisals Inc. dated February 8, 2022, are attached as **Confidential Appendix “7”**;

AMENDMENT TO EGLINTON AVE. PROPERTY VESTING ORDER

- 40. At the time that the Court granted the Eglinton Ave. AVO, the purchaser of the Eglinton Ave. Property was “George Vastis in trust for a corporation” and, as such, the Eglinton Ave. AVO lists “George Vastis in trust for a corporation”.
- 41. On December 14, 2023 counsel to the purchaser advised that the purchaser’s name will change from “George Vastis in trust for a corporation” to “1000733305 Ontario Inc.”. As such, the Liquidator is advised by its counsel that an amendment to the Eglinton Ave. AVO is required as the land registry office likely will not register the transfer of the Eglinton Ave. Property to 1000733305 Ontario Inc. unless the Eglinton Ave. AVO specifically provides for it.
- 42. While the Eglinton Ave Transaction is not scheduled to close until May 2024, the Liquidator is seeking this amendment at this time so as to avoid a future court attendance at a later date.

SEALING ORDER REQUEST

- 43. The Liquidator seeks an order sealing Confidential Appendices until the earlier of: (a) closing of the Acton Transaction and/or the Mississauga Transaction respectively; and (b) further order of this Court.
- 44. The Confidential Appendices contain sensitive information relating to the marketing and sale of the Acton Property and the Mississauga Property. If the Confidential Appendices

are not sealed, it could adversely affect a future sale process for either (or both) of the Mississauga Road Property and the Acton Property.

45. The Liquidator has limited its request for a sealing order to commercially sensitive information and has limited the duration of the sealing order request such that the Confidential Appendices should eventually become public record.

FEES AND DISBURSEMENTS OF LIQUIDATOR AND COUNSEL

46. The Liquidator's invoices are attached as an Exhibit to the affidavit of David Filice attached hereto as **Appendix "M"**. The total amount of fees claimed by the Liquidator for the period from November 1, 2023, to December 31, 2023, inclusive of HST is \$54,110.11 (comprising fees of \$47,885.05 and HST of \$6,225.06).
47. Lerner's LLP's invoices are attached as an Exhibit to the affidavit of Spencer Jones attached hereto as **Appendix "N"**. The total amount of fees and disbursements claimed by Lerner's LLP for the period from October 16, 2023, to January 7, 2023, inclusive of HST is \$57,939.91.
48. The Liquidator has reviewed the detailed statements of account provided by counsel and confirms that the services detailed in those documents were in fact provided to the Liquidator. The Liquidator is of the view that the time and disbursements incurred, and hourly rates charged by counsel are fair and reasonable in all respects.

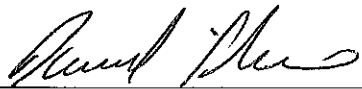
REQUESTS FOR APPROVAL

49. The Liquidator respectfully requests an Order from the Court:
 - i. approving this Fifth Report and the actions of the Liquidator contained therein;
 - ii. sealing the Confidential Appendices pending completion of the Mississauga Transaction and/or the Acton Transaction or further Order of this Court;
 - iii. approving the Mississauga Sale Agreement for the Mississauga Property between the Liquidator and the Mississauga Purchaser dated November 29, 2023, and authorizing the Liquidator to complete the Mississauga Transaction;

- iv. vesting in the Mississauga Purchaser, or as it may direct, Calldron's right, title and interest in and to the Mississauga Purchased Assets, free and clear of any claims and encumbrances, which Mississauga Purchased Assets primarily consist of the Mississauga Road Property;
- v. approving the Acton Sale Agreement for the Acton Property between the Liquidator and the Acton Purchaser dated December 1, 2023, and authorizing the Liquidator to complete the Acton Transaction;
- vi. vesting in the Acton Purchaser, or as it may direct, Calldron's right, title and interest in and to the Acton Purchased Assets, free and clear of any claims and encumbrances, which Acton Purchased Assets primarily consist of the Acton Property;
- vii. amending the Eglinton Ave. AVO to allow the proper name of the entity taking title of the property to be recorded on the amended Vesting Order;
- viii. approving the fees and disbursements of the Liquidator and its counsel; and
- ix. such further and other relief as this Court may deem just.

All of which is respectfully submitted this 9th day of January 2024.

The Fuller Landau Group Inc.,
 in its capacity as Court appointed Liquidator of
 Calldron Gas Bars Ltd. and 1195705 Ontario Inc.
 and not in its personal capacity

Per: 
 David Filice
 Senior Vice President

Court File No.: CV-20-00644241-00CL

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

THE HONOURABLE)	MONDAY, THE 27TH
)	
JUSTICE CONWAY)	DAY OF MARCH, 2023
)	

B E T W E E N :

GEORGE VASTIS

Plaintiff
(Defendant to the Counterclaim)

- and -

HELEN VASTIS

Plaintiff

- and -

CHRISTOS KOMMATAS

Defendant
(Plaintiff to the Counterclaim)

- and -

CALLDRON GAS BARS LTD. and 1195705 ONTARIO INC.,
carrying on business as OLD PRO DRIVING RANGE

Defendants
(Defendants to the Counterclaim)

APPROVAL ORDER

THIS MOTION, made by The Fuller Landau Group Inc., in its capacity as the Court-appointed liquidator and receiver (in these capacities, the “**Liquidator**”) of the undertaking, property and assets of Calldron Gas Bars Ltd. (“**Calldron**”) and 1195705 Ontario Inc. o.a. Old Pro Driving Range (“**Old Pro**”, and together with Calldron are the “**Companies**”) for an order:

- (a) if necessary, abridging and validating the time for service and filing of the notice of motion and the motion record contained herein, validating service and dispensing with further service upon any other persons not already served with this notice of motion and motion record so that the motion is properly returnable today
- (b) approving the activities of the Liquidator and its counsel as outlined in the First Report of the Liquidator dated March 17, 2023 (the “**First Report**”), and the confidential appendix thereto (the “**Confidential Appendix 1**”);
- (c) approving the listing agreement for the sale of the property located at 10733 Highway #7 and 10365 Highway #7, Acton, Ontario (the “**Acton Property**”) between the Liquidator and CBRE Limited (“**CBRE**”) as the listing realtor (the “**Listing Agreement**”) and authorizing the Liquidator to enter into the Listing Agreement;
- (d) approving the lease between Old Pro Management Consulting Ltd. (the “**Tenant**”) and the Liquidator dated March 14, 2023 (the “**Lease**”), and authorizing the Liquidator to enter into the Lease;
- (e) authorizing and directing J&J, Chartered Professional Accountants (the “**Accountants**”) to finalize the Companies’ fiscal 2022 financial statements;
- (f) authorizing and directing the Accountants to prepare and submit the Companies’ tax filings for the 2022 fiscal year; and
- (g) sealing the Confidential Appendix 1 of the First Report, which contains information related to the solicitation of proposals for the sale of the Acton Property, until the earlier of: (i) entering into an unconditional agreement of purchase and sale for the Acton Property, or (ii) a further Order of this Court;
- (h) approving the fees and disbursements of the Liquidator and its counsel;

was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the First Report, the Confidential Appendix 1, the factum, and the affidavits of the Liquidator and its counsel as to fees (the “**Fee Affidavits**”), and on hearing the submissions of counsel for the Liquidator, and counsel for Chris Kommatas (“**Chris**”) and George Vastis (“**George**” and together with Chris are the “**Principals**”), no one appearing for any other person on the service list, although properly served as appears from the affidavit of Jennifer Manning sworn March 17, 2023, filed:

SERVICE

1. **THIS COURT ORDERS AND DECLARES** that the time for service of the notice of motion and the motion record is hereby abridged and validated so that the motion is properly returnable today and hereby dispenses with further service thereof.

APPROVAL OF LISTING AGREEMENT

2. **THIS COURT ORDERS** that the Listing Agreement is hereby approved, and the Liquidator is authorized to execute the Listing Agreement.

APPROVAL OF THE LEASE

3. **THIS COURT ORDERS** that the Lease is hereby approved, and the Liquidator is authorized to execute the Lease.

APPROVAL OF THE 2022 FINANCIAL STATEMENTS

4. **THIS COURT AUTHORIZES AND DIRECTS** the Accountant to finalize the Companies’ fiscal 2022 financial statements.

5. **THIS COURT AUTHORIZES AND DIRECTS** the Accountant to prepare and submit the Companies’ tax filings for the 2022 fiscal year.

SEALING OF CONFIDENTIAL APPENDIX 1

6. **THIS COURT ORDERS** that Confidential Appendix 1, be and is hereby sealed until the earlier of: (i) entering into an unconditional agreement of purchase and sale for the Acton Property; or (ii) further Order of the Court.

APPROVAL OF LIQUIDATOR ACTIVITIES AND FEES

7. **THIS COURT ORDERS** that the activities of the Liquidator, as set out in the First Report and Confidential Appendix 1, are hereby approved.

8. **THIS COURT ORDERS** that the fees and disbursements of the Liquidator and its counsel, as set out in the First Report and the Fee Affidavits, are hereby approved.

FOREIGN RECOGNITION

9. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Liquidator and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the liquidator, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.



Signature of judge

GEORGE VASTIS et al
Plaintiffs

CHRISTOS KOMMATAS et al
Defendants

Court File No.: CV-20-00644241-00CL

CHRISTOS KOMMATAS
Plaintiff by Counterclaim

GEORGE VASTIS
Defendant to the Counterclaim

**ONTARIO
SUPERIOR COURT OF JUSTICE -
COMMERCIAL LIST**

Proceeding commenced at Toronto

APPROVAL ORDER

LERNERS LLP
225 King Street West, Suite 1500
Toronto, ON M5V 3M2

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dmagisano@lernalers.ca
Tel: 416.601.4121

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Tel: 416.601.2358

Lawyers for the Liquidator

CALLDRON GAS BARS LTD.
INTERIM STATEMENT OF RECEIPTS AND DISBURSEMENTS
FOR THE PERIOD DECEMBER 23, 2022 TO MARCH 18, 2024

	\$
RECEIPTS	
Sale of Derry Rd. Property	5,050,000.00
Sale of Mississauga Road Property	122,500,000.00
Deposit on sale of Eglinton Ave. Property	1,200,000.00
Deposit on sale of Acton Property	300,000.00
Cash on Hand at RBC at start of Liquidation	324,460.94
Interest Income	45,463.44
Rents collected	667,216.57
HST collected	105,526.91
Sale of equipment at Acton location	62,010.00
Sale of Jeep	20,000.00
Additional rent collected from tenants	147,678.42
TOTAL RECEIPTS	<u>130,422,356.28</u>
DISBURSEMENTS	
VDP payments for both Calldron and Old Pro	1,094,955.38
Realtor commissions	1,427,000.00
Property taxes	192,035.94
Receiver fees (paid from Calldron account to end of Dec. 2023)	304,184.76
Receiver's legal fees to Jan 15, 2024	337,740.65
Distribution to Shareholders-Repayment of Shareholder loans	2,600,000.00
CRA- corporate taxes for year ended Nov 30, 2022 and 2023	1,383,870.74
CRA- corporate taxes installments for fiscal 2024	273,003.00
CRA- HST remittances to August 31, 2023	115,081.09
Insurance	5,212.08
Utilities	22,526.22
Auction costs and commissions	17,902.00
Gas costs	3,154.69
HST paid	281,633.51
Property Management and related costs	63,557.15
Accounting costs paid to J&J CPA	15,150.00
Tax consulting costs for fiscal 2023 and tax return preparations	13,425.00
Bank charges	453.25
TOTAL DISBURSEMENTS	<u>8,150,885.46</u>
EXCESS OF RECEIPTS OVER DISBURSEMENTS	<u>122,271,470.82</u>
BALANCE AVAILABLE	<u><u>122,271,470.82</u></u>
FUTURE DISBURSEMENTS	
Hold back for future disbursements/equalizations	5,658,470.82
Corporate taxes payable on sale of Mississauga Rd. (estimate)	16,613,000.00
TOTAL FUTURE DISBURSEMENTS	<u>22,271,470.82</u>
AVAILABLE FOR FUTURE SHAREHOLDER DISTRIBUTIONS	<u>100,000,000.00</u>

1195705 ONTARIO INC.
INTERIM STATEMENT OF RECEIPTS AND DISBURSEMENTS
FOR THE PERIOD DECEMBER 23, 2022 TO MARCH 18, 2024

	\$
RECEIPTS	
Cash on Hand at RBC at start of Liquidation	167,015.47
Rents collected	121,520.00
HST collected	15,797.60
Insurance Proceeds	500.00
TOTAL RECEIPTS	<u>304,833.07</u>
DISBURSEMENTS	
Receiver fees (paid from 1195705 Ontario Inc. account to end of Sept.2023)	90,412.00
CRA- corporate taxes for year ended Nov 30, 2022	12,886.18
CRA- HST remittances to November 30, 2022	24,494.34
CRA- Payroll costs for 2022	2,331.78
Insurance	8,857.04
Utilities	1,275.40
Purchase of equipment for Old Pro(commitments made prior to Liquidation Ord	46,965.56
Lease equipment costs	14,676.00
HST paid	22,778.04
Property Management and related costs	4,093.33
Preparation of tax returns for fiscal 2023	5,650.00
Accounting costs paid to J&J CPA	12,050.00
Bank charges	0.40
TOTAL DISBURSEMENTS	<u>246,470.07</u>
EXCESS OF RECEIPTS OVER DISBURSEMENTS	58,363.00
BALANCE AVAILABLE	<u><u>58,363.00</u></u>
FUTURE DISBURSEMENTS	
Hold back for 2024 corporate taxes, HST, and potential other creditors	58,363.00
TOTAL FUTURE DISBURSEMENTS	<u>58,363.00</u>
AVAILABLE FOR FUTURE SHAREHOLDER DISTRIBUTIONS	<u>-</u>

Calldron Gas Bars Ltd.

Sale of 2055 Bovaird Drive West (also referred to as 9980 Mississauga Road)

Tax estimate and distribution plan

Closing date: February 22, 2024

Calldron Gas Bars Ltd. - 2024 corporate income tax (estimated)

Taxable capital gain

Proceeds (land only*)	122,500,000
Real estate commission	(1,225,000)
Net proceeds	121,275,000
Adjusted cost base**	(776,198)
Capital gain	120,498,802
Capital gain inclusion rate	50.00%
Taxable capital gain	60,249,401

Capital dividend account balance as at November 30, 2023 2,299,296

Addition to capital dividend account 60,249,401

62,548,697

*Land is under land lease and improved by the tenant.

**Adjusted cost base

Purchase - January 5, 1988	865,000
Transfer easement - May 30, 2012	(88,800)
Transfer easement - July 10, 2012	(2)
	776,198

Corporate tax payable

Taxable income	60,249,401
Corporate tax rate	50.17%
	30,227,124
Dividend refund*	(13,614,009)
Corporate tax payable (estimated)	16,613,115

NERDTH balance as at November 30, 2023 1,467,300

Addition to NERDTH balance 18,476,483

19,943,783

*Estimated dividend refund on 2024 tax return, based on total other than eligible dividend declared below.
Assumes repayment of shareholder's loan and maximum amount of capital dividends are declared first.

Distribution of after-tax corporate funds

Net proceeds	121,275,000
Corporate tax payable	(16,613,115)
After-tax corporate funds	104,661,885
Holdback amount (estimated)	(4,661,885)
After-tax corporate funds available to distribute	100,000,000

Shareholder loan balances as at February 29, 2024

George Vastis	934,542
Chris Kommatas	1,001,956

Repayment of George Vastis' shareholder loan 934,542

Repayment of Chris Kommatas' shareholder loan 1,001,956

Total capital dividend declared 62,548,697

Total other than eligible dividend declared 35,514,805

Total distribution to individual shareholders **100,000,000**

Victoria L. Gifford

From: James Wortzman <jwortzman@teplitskyllp.com>
Sent: March 15, 2024 11:40 PM
To: Domenico Magisano
Cc: Catherine Allen; kfisher@grllp.com; Beesley, James; David Filice; Joanna Lasocka; Lidia Breda
Subject: *EXT*-Re: Calldron and Old Pro - Proposed Distribution
FilingDate: 03/16/2024 5:34:00 PM

Our client is agreeable to the distribution as proposed by the liquidator. We agree that there are sufficient funds held in reserve for any contingencies.

If you would like to discuss, we can speak Monday.

Sent from my iPhone

On Mar 15, 2024, at 11:29 PM, Domenico Magisano <dmagisano@lerner.ca> wrote:

All

In speaking with the liquidator, I would like to clarify that while there is a holdback of just over \$1 million as a cash reserve for any unequal distribution matters, there will also be additional funds from the sale of the Eglinton Ave Property and the Acton Property. In addition, the Liquidator has been conservative in its holdbacks for taxes and operations, so there is likely to be additional money available. The purpose of the e-mail below is to arrive at a consensus between the shareholders as to how much may be in dispute so that the Liquidator can maximize the interim distribution while reserving a sufficient sum for this possible dispute.

I am happy to discuss with counsel if it will assist.

Regards

Dom

LERNERS
DOMENICO MAGISANO
Partner

 dmagisano@lerner.ca
 416.601.4121 |  416.601.4123
 225 King St. West, Suite 1600, Toronto, Ontario, M5V 3M2



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From: Domenico Magisano

Sent: March 15, 2024 5:17 PM

To: James Wortzman <jwortzman@teplitzskyllp.com>; Catherine Allen <callen@teplitzskyllp.com>;
kfisher@grllp.com; Beesley, James <jbeesley@grllp.com>

Cc: David Filice <dfilice@fullerllp.com>

Subject: Calldron and Old Pro - Proposed Distribution

Good afternoon all,

The Liquidator is in the process of finishing its report regarding a proposed distribution to shareholders. By way of background, the Mississauga Rd. Property sale has closed and the Liquidator is holding \$122,329,933.82 inclusive of funds it already had and net of the closing adjustments on the Mississauga Rd. sale.

The Liquidator is contemplating a \$100,000,000 distribution on return of this motion. This distribution will leave the Liquidator with a \$22,329,833.82 holdback (the "Holdback") together with the Eglinton Ave. Property and the Acton Property, both of which have been sold, but have yet to close. The Holdback is largely intended to address unpaid taxes (including capital gains, corporate taxes and any other tax obligations) together with ongoing liquidation costs, but it also includes an extra 5% (or just over \$1,000,000) to address possible claims that one shareholder is entitled to a greater distribution than the other (an argument we understand each of your clients have made at one point).

We require your clients' confirmation that the \$1,000,000 holdback for unequal distribution claims is sufficient, and that in the event that this is all that is remaining for a final distribution (however unlikely that may be) your clients will limit their claims against the Companies to the \$1,000,000 holdback and will not claim against the Liquidator personally, or in any capacity, for the balance.

We would like to serve our motion material Monday afternoon or Tuesday morning, so your response to the above before end of day Monday would be appreciated.

In closing, I should note that if the unequal distribution issue can be resolved on a consensual basis, and both the Eglinton Ave sale and the Acton sale close on schedule, the Liquidator is hopeful that most, if not all, of its activities can be wrapped up in the next several months.

Regards

Dom

Victoria L. Gifford

From: Fisher, Kevin <kfisher@grllp.com>
Sent: March 17, 2024 3:10 PM
To: Domenico Magisano
Cc: James Wortzman; Catherine Allen; Beesley, James; David Filice
Subject: *EXT*-Re: Calldron and Old Pro - Proposed Distribution

My clients agree.

Regards,
Kevin

Sent from my iPhone



Kevin W. Fisher • Partner

Gardiner Roberts LLP

Bay Adelaide Centre - East Tower, 22 Adelaide St W, Ste. 3600, Toronto, ON M5H 4E3

T 416.865.6641 | F 416.865.6636 | E kfisher@grllp.com

*Recognized by Post City Magazine as one of Toronto's Best Commercial Litigation Lawyers in 2023 as voted by his
Named one of Ontario's Top 10 Regional Firms by Canadian Lawyer Magazine in 2023-24*

On Mar 15, 2024, at 11:29 PM, Domenico Magisano <dmagisano@lerner.ca> wrote:

All

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Dom

<imagec46c03.PNG>

DOMENICO MAGISANO

Partner

<image7d351f.PNG>

dmagisano@lerners.ca

<image5f8a47.PNG>

416.601.4121 |

<image06424b.PNG>

416.601.4123

<image5be950.PNG>

225 King St. West, Suite 1600, Toronto, Ontario, M5V 3M2

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www.lerners.ca

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From: Domenico Magisano

Sent: March 15, 2024 5:17 PM

To: James Wortzman <jwortzman@teplitzskyllp.com>; Catherine Allen <callen@teplitzskyllp.com>;
kfisher@grllp.com; Beesley, James <jbeesley@grllp.com>

Cc: David Filice <dfilice@fullerllp.com>

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Regards

Dom

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ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

B E T W E E N:

GEORGE VASTIS

Plaintiff
 (Defendant to the Counterclaim)

- and –

HELEN VASTIS

Plaintiff

- and –

CHRISTOS KOMMATAS

Defendant
 (Plaintiff to the Counterclaim)

- and –

**CALLDRON GAS BARS LTD. and 1195705 ONTARIO INC., carry on business as OLD
 PRO DRIVING RANGE**

Defendants
 (Defendant to the Counterclaim)

Affidavit of DAVID FILICE
(Sworn March 18, 2024)

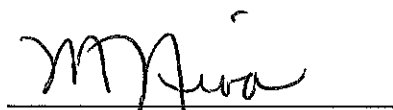
I, David Filice, of the City of Vaughan, in the Province of Ontario **MAKE OATH AND SAY:**

1. I am a Senior Vice President and a licensed Trustee with The Fuller Landau Group Inc., the Court Appointed Liquidator (the “Liquidator”) of Calldron Gas Bars Ltd. and 1195705 Ontario Inc. (the “Companies”), and as such have knowledge of the matters

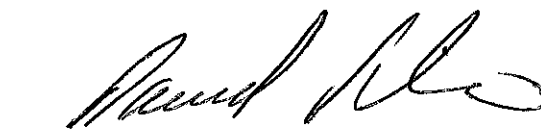
deposed to herein, except where such knowledge is stated to be based on information and belief, in which case I state the source of the information and verily believe such information to be true.

2. The Liquidator was appointed, without security, of all of the assets, undertakings and properties of the Companies by Court Order dated December 20, 2022.
3. The Liquidator has prepared Statements of Account in connection with its appointment as Liquidator detailing its services rendered and disbursements incurred for the period from January 1, 2024 through to the date of February 29, 2024. Attached hereto and marked as **Exhibit "A"** to this my Affidavit are copies of the Statements of Account. The hours detailed in the Statements of Account are charged at the normal billing rates and charges of the personnel of The Fuller Landau Group Inc. and as referenced in the Statements of Account. The average hourly rate in respect of the account is \$478.67.
4. This Affidavit is made in support of a motion to, *inter alia*, approve the activities of the Liquidator and its accounts.

SWORN before me at the City of)
 Toronto, in the Province of Ontario)
 this 18th day of March, 2024.)



A Commissioner, etc.



DAVID FILICE

Minna Linda Niva, a Commissioner, etc.,
 Province of Ontario, for The Fuller Landau
 Group Inc. and its associates and affiliates.
 Expires September 4, 2024.

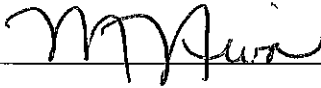
Attached is Exhibit "A"

Referred to in the

AFFIDAVIT OF DAVID FILICE

Sworn before me

This 18th day of March, 2024



Commissioner for taking Affidavits, etc

Minna Linda Niva, a Commissioner, etc.,
Province of Ontario, for The Fuller Landau
Group Inc. and its associates and affiliates.
Expires September 4, 2024.

Calldron Gas Bars Ltd. and 1195705 Ontario Inc.
Summary of fees

Exhibit "A"

Staff	Years of experience	Rate	Hours	Amount
D. Filice	30	510.00	98.40	50,184.00
M. Niva	20	275.00	13.30	3,657.50
A. Sheth	2	300.00	0.80	240.00
K. Pandhre	1	170.00	0.75	127.50
Subtotal		478.67	113.25	54,209.00

INVOICE

Fuller Landau

Calldron Gas Bars Ltd.
151 Bloor St W, 12th Floor
Toronto, ON M5S 1S4

Invoice No. 169833
Client No. 1309153:01-DAF

January 31, 2024

FOR PROFESSIONAL SERVICES RENDERED:

With respect to our appointment as Court Appointed Liquidator of Calldron Gas Bars Ltd.
for the period January 1, 2024 to January 31, 2024 as set out in the attached time dockets.

OUR STANDARD FEE

D. Filice - 57.90 hrs. @ \$510.00 /hr.
M. Niva - 6.95 hrs. @ \$275.00 /hr.
A. Sheth - 0.80 hrs. @ \$300.00 /hr.
K. Pandhre - 0.41 hrs. @ \$170.00 /hr.

Our fee	\$	31,749.95
Disbursements		567.75
Subtotal		32,317.70
HST		4,201.30
BALANCE DUE	\$	36,519.00

Note: Disbursements = Mail Forwarding Fees

HST Registration No. R130795669

Payment is due on receipt of account. Amount outstanding in excess of thirty days will be charged interest at 12% per annum until paid in full.

Please remit to:

The Fuller Landau Group Inc.
151 Bloor Street West, 12th floor
Toronto, Ontario M5S 1S4
T 416-645-6500
F 416-645-6501

fullerllp.com

INVOICE

Fuller
Landau

Calldron Gas Bars Ltd.

January 31, 2024

Page 2

Please visit the Client Resources section on our website at www.fullerlp.com If you wish to pay your account by Visa or MasterCard

Please remit to:

The Fuller Landau Group Inc.
151 Bloor Street West, 12th floor
Toronto, Ontario M5S 1S4
T 416-645-6500
F 416-645-6501

fullerlp.com

Filters Used:

- Time Expense Date: 1/1/1970 to 1/31/2024
 - Engagement ID: 1309153:01 to 1309153:01

112

Billing Worksheet

Primary Partner - Client Code

Primary Partner: Filice, David (DAF)

Master Client: 1309153 - Caldron Gas Bars Ltd.

1309153:01 - Caldron Gas Bars Ltd. - DAF

WIP		Memo		Rate	Hours	Amount			
—	Client	—	All Other Recoverable Expenses	DAF	31/01/2024	Canada Post - Mail Forwarding (Calldron Gas Bars Ltd.) - 26 JAN 2024	\$0.00	189.25	
—	Client	—	All Other Recoverable Expenses	DAF	31/01/2024	Canada Post - Mail Forwarding (The Old Pro Driving Range) - 26 JAN 2024	\$0.00	189.25	
—	Client	—	All Other Recoverable Expenses	DAF	31/01/2024	Canada Post - Mail Forwarding (1195705 Ontario Inc.) - 26 JAN 2024	\$0.00	189.25	
Client Totals:							\$57.75		
CRI	CBA	CBA53	Banking	KPP	09/01/2024	1195705 Ontario Inc.	\$170.00	0.23	39.10
CRI	CBA	CBA53	Banking	KPP	09/01/2024	Nov 2023 bank reconciliation	\$170.00	0.18	30.60
CBA Totals:							\$69.70		
CRI	REC	REC80	General	DAF	02/01/2024	update call with realtor re status of purchaser of Bovaird and planning appeal, review of reconciliation of Bob Ware for cut-off expenses and approve	\$510.00	1.20	612.00
CRI	REC	REC80	General	DAF	03/01/2024	drafting of court report, email corresp with Bob ware re intro. to purchaser, call with realtor re same	\$510.00	4.10	2,091.00
CRI	REC	REC80	General	DAF	04/01/2024	drafting Court report, dis. with legal re same, obtaining info from realtor re details of sales process	\$510.00	8.30	4,233.00
CRI	REC	REC80	General	DAF	05/01/2024	finalize draft of report and forward to legal, work on affidavit of fees	\$510.00	5.40	2,754.00
CRI	REC	REC80	General	DAF	08/01/2024	further review and changes of court report, work on summary schedules for Conf. appendices, call with legal, call with realtor re status of court approval	\$510.00	5.60	2,856.00
CRI	REC	REC80	General	MLN	08/01/2024	deposit RBC cash in bank; various December banking	\$275.00	0.90	247.50
CRI	REC	REC80	General	DAF	09/01/2024	final changes to report and final review, sign affidavit of fees and forward appendices to legal for serving materials	\$510.00	2.80	1,428.00
CRI	REC	REC80	General	DAF	10/01/2024	review of Notice of Motion and draft Orders and provide comments to legal, call with realtor re enquires re driving range, email exchange with Bob Ware	\$510.00	1.70	867.00

Billing Worksheet

Primary Partner - Client Code

Filters Used:

- Time Expense Date: 1/1/1970 to 1/31/2024
 - Engagement ID: 1309153:01 to 1309153:01

113

Primary Partner: Filice, David (DAF)

CRI REC REC80 General	DAF	11/01/2024	filing NOM on website, call with realtor, review of serving materials and make enquires with legal re changes needed	\$510.00	1.90	969.00
CRI REC REC80 General	MLN	11/01/2024	pay outstanding disbursements; review RT0001 accounts	\$275.00	1.90	522.50
CRI REC REC80 General	DAF	12/01/2024	call with Chris re Driving Range, call with realtor re NOM and other matters	\$510.00	1.80	918.00
CRI REC REC80 General	DAF	15/01/2024	instruct John Terigas to plow entrance to Acton	\$510.00	0.30	153.00
CRI REC REC80 General	DAF	16/01/2024	review of emails and call from George re personal belongings in Acton and getting price details on Mississauga	\$510.00	0.30	153.00
CRI REC REC80 General	MLN	16/01/2024	pay outstanding disbursements	\$275.00	0.55	151.25
CRI REC REC80 General	DAF	17/01/2024	dis. with legal counsel re George personal belongings and NDA for George to sign to give him details of sale of Mississauga	\$510.00	0.60	306.00
CRI REC REC80 General	DAF	19/01/2024	review of VDP correspondence rejection, email corresp with legal counsel re Acton sale and nominee corporation power to get them to close etc.	\$510.00	1.10	561.00
CRI REC REC80 General	DAF	22/01/2024	call with legal re status update for Court attendance, call with Chris's counsel re Direction from Chris re distributions to satisfy closing of Acton, review of draft and approve, receipt of signed Direction, review of Aide Memoir, approve of various disbursements	\$510.00	3.90	1,989.00
CRI REC REC80 General	DAF	23/01/2024	prep for Court, attend Court, call with realtor to let them know deals approved and all offers are now firm, communicate with legal re signed Orders, meet with Gord re VDP appeal and reach out to Dorn to set time to talk to Ian Morris	\$510.00	3.10	1,581.00
CRI REC REC80 General	DAF	24/01/2024	calls with realtor, call with Bob Ware re status of driving range business	\$510.00	1.10	561.00
CRI REC REC80 General	MLN	24/01/2024	various banking	\$275.00	0.70	192.50

Billing Worksheet

Primary Partner - Client Code

Filters Used:

- Time Expense Date: 1/1/1970 to 1/31/2024
 - Engagement ID: 1309153:01 to 1309153:01

114

Primary Partner: Filice, David (DAF)

CRI REC REC80 General	DAF	25/01/2024	call with George re status of sales, removing contents of Acton, removing of assets from Bovaird if new owner does not want to operate driving range, call with legal and realtor re waivers to done	\$510.00	2.30	1,173.00
CRI REC REC80 General	DAF	26/01/2024	review and sign off on waivers for Bovaird and Acton, calls with realtor re same, deal with prop manager re plowing of Acton site, review of draft tax returns for Caldron and follow-up with questions for tax department	\$510.00	3.20	1,632.00
CRI REC REC80 General	DAF	29/01/2024	review of draft tax return and accounting entries. Call with Jennifer re Dec 2022 transactions and adjustments to rental receipts, approval of final adjustments and forward tax payments to be made to Minna, calls with Minna re same, review of amendments to sale agreements prepared by legal counsel.	\$510.00	3.20	1,632.00
CRI REC REC80 General	MLN	29/01/2024	request partial term deposit redemption; update interest to Jan29; issue 2023 and 2024 instalment payments; pay outstanding disbursements	\$275.00	2.60	715.00
CRI REC REC80 General	ATS	30/01/2024	prepared and sent letter to Suncor for reimbursement of property tax re the Miss Rd. Property; sent email to Dave re leased equipment from CWB; sent email to CWB re payout of leased equipment.	\$300.00	0.80	240.00
CRI REC REC80 General	DAF	30/01/2024	review of Old Pro adjustments for y/e and provide details to tax group to complete tax return, call with CRA re remittance forms to make payments, sign cheques and prepare for issuing corporate tax remittances, review of property tax billings to Suncor for Eglinton, call with realtor	\$510.00	2.90	1,479.00
CRI REC REC80 General	MLN	30/01/2024	email re RC0001 payments	\$275.00	0.30	82.50

Billing Worksheet

Primary Partner - Client Code

Filters Used:

- Time Expense Date: 1/1/1970 to 1/31/2024
- Engagement ID: 1309153:01 to 1309153:01

115

Primary Partner: Filice, David (DAF)

CRI REC REC80 General	DAF	31/01/2024	calls with realtor re status of lease for Old Pro, send documents to legal re closing of Bovaird and review of leases re statement of adjustments, payments for corporate taxes and issue cover letter to CRA re installments, 2023 corp. taxes paid at Bank with remittance	\$510.00	3.10	1,581.00
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REC Totals:	65.65	31,680.25
Calldron Gas Bars Ltd.	66.06	32,317.70
Filice, David (DAF)	57.90	29,529.00
Niva, Minna (MLN)	6.95	1,911.25
Pandhre, Kirti (KPP)	0.41	69.70
Sheth, Atulya (ATS)	0.80	240.00
Total Net Wip	66.06	31,749.95

Employee Summary

Primary Partner Filice, David Totals:	WIP	Progress	Net WIP
	\$32,317.70	\$0.00	\$32,317.70
Grand Totals:	WIP	Progress	Net WIP
	\$32,317.70	\$0.00	\$32,317.70

INVOICE

**Fuller
Landau**

Calldron Gas Bars Ltd.
151 Bloor St W, 12th Floor
Toronto, ON M5S 1S4

Invoice No. 170255
Client No. 1309153:01-DAF

February 29, 2024

FOR PROFESSIONAL SERVICES RENDERED:

With respect to our appointment as Court Appointed Liquidator of Calldron Gas Bars Ltd.
for the period February 1, 2024 to February 29, 2024 as set out in the attached time dockets.

OUR STANDARD FEE

D. Filice - 40.50 hrs. @ \$510.00 /hr.
M. Niva - 6.35 hrs. @ \$275.00 /hr.
K. Pandhre - 0.34 hrs. @ \$170.00 /hr.

Our fee	\$	22,459.05
HST		2,919.68
BALANCE DUE	\$	25,378.73

HST Registration No. R130795669

Payment is due on receipt of account. Amount outstanding in excess of thirty days will be charged interest at 12% per annum until paid in full.

Please visit the Client Resources section on our website at www.fullerllp.com if you wish to pay your account by Visa or MasterCard

Please remit to:

The Fuller Landau Group Inc.
151 Bloor Street West, 12th floor
Toronto, Ontario M5S 1S4
T 416-645-6500
F 416-645-6501

fullerllp.com

Filters Used:
- Time Expense Date: 1/1/1970 to 2/29/2024
- Engagement ID: 1309153:01 to 1309153:01

Primary Partner - Client Code

Primary Partner: Filice, David (DAF)

Master Client: 1309153 - Calldron Gas Bars Ltd.
1309153:01 - Calldron Gas Bars Ltd. - DAF

WIP		Memo		Retainer Balance	WIP	Progress	Hours	Net WIP	AR Balance
				0.00	22,459.05	0.00		22,459.05	36,519.00
CRI	CBA CBA53 Banking	KPP	06/02/2024	Dec 2023 Bank Reconciliation 1195705 Ontario Inc.		\$170.00	0.14		23.80
CRI	CBA CBA53 Banking	KPP	06/02/2024	Dec 2023 Bank Reconciliation		\$170.00	0.20		34.00
CRI	REC REC80 General	DAF	01/02/2024	CBA Totals: review of 1195705 tax return and have call with Jennifer re changes to be made, call with Kathy and Chris re further distributions and other VDP status, minutes books, propane supply at Acton, calls with property manager re same		\$510.00	0.34		57.80
							4.20		2,142.00
CRI	REC REC80 General	DAF	02/02/2024	deal with purchaser attend at site, update call with property manager, update for realtor, review of Statement of adjustments and provide comments to legal counsel, sign off on 1195705 corporate tax return 2023		\$510.00	2.20		1,122.00
CRI	REC REC80 General	MLN	02/02/2024	term deposit redemption/renewal; various banking/emails		\$275.00	1.25		343.75
CRI	REC REC80 General	DAF	05/02/2024	review of email corresp		\$510.00	0.80		408.00
CRI	REC REC80 General	DAF	06/02/2024	sign cheques, review of trans. report for details on statement of adjustments		\$510.00	1.30		663.00
CRI	REC REC80 General	MLN	06/02/2024	update term deposit redemption/interest; update rent and property tax wires; pay outstanding disbursements		\$275.00	2.30		632.50
CRI	REC REC80 General	DAF	07/02/2024	review statement of adjustments and provide comments to legal counsel to make changes		\$510.00	1.20		612.00
CRI	REC REC80 General	DAF	08/02/2024	final review of statement of adjustments for Bovaird and speak to legal counsel re final changes, call with Ian Morris re suggestions on what to do next and then caucus with Dom and Gord on how we report to both shareholders what our recommendations are		\$510.00	2.60		1,326.00

Billing Worksheet

Primary Partner - Client Code

Filters Used:

- Time Expense Date: 1/1/1970 to 2/29/2024
- Engagement ID: 1309153:01 to 1309153:01

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Primary Partner: Filice, David (DAF)

CRI REC REC80 General	DAF	09/02/2024	review of corresp, and work on progressing closing of Bovaird property, email to legal counsel re same	\$510.00	2.20	1,122.00
CRI REC REC80 General	DAF	12/02/2024	deal with deposits with Town of Halton Hills and Brampton and dis same with legal counsel to deal with Statement of adjustments, deal with VDP recommendation, approve of legal email draft and forward to all sides, deal with closing issues	\$510.00	2.80	1,428.00
CRI REC REC80 General	MLN	12/02/2024	pay outstanding disbursement	\$275.00	0.40	110.00
CRI REC REC80 General	DAF	13/02/2024	review of NOA re 2023 tax return for Calldron, follow-up with CRA if payments applied correctly, call with Realtor re sale of equipment of Driving Range being delayed until after closing and allow for equipment to stay on site rent free, instruct lawyers to do a simple agreement, make arrangements for Chris to pick up distribution cheque, provide info to legal re closing for Bovaird	\$510.00	2.10	1,071.00
CRI REC REC80 General	DAF	14/02/2024	email corresp with legal re deposit refund from City of Brampton, and call with CRA and resolve issue of payments received and VDP denial, update Minna on CRA discussions	\$510.00	1.60	816.00
CRI REC REC80 General	DAF	15/02/2024	various calls with Dom re VDP and getting Ian retained, email corresp re same, review of final tax returns and file away, deal with leased equipment buyout and email corresp, advise interested parties of delay in dealing with driving range sale	\$510.00	2.80	1,428.00
CRI REC REC80 General	DAF	16/02/2024	review of closing docs, email corresp and with legal re attendance on Feb 20, call with property manager and realtor re same, review of draft lease agreement with purchaser for storing of Old Pro equipment	\$510.00	2.20	1,122.00

Billing Worksheet

Primary Partner - Client Code

Filters Used:

- Time Expense Date: 1/1/1970 to 2/29/2024
 - Engagement ID: 1309153:01 to 1309153:01

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Primary Partner: Filice, David (DAF)

CRI REC REC80 General	DAF	20/02/2024	calls with realtor re update on site attendance at Bovaird site with purchaser, call to Bob Ware re fridges on site and ownership, review of closing documents to prepare for signature	\$510.00	1.40	714.00
CRI REC REC80 General	DAF	21/02/2024	review of closing docs, meet with legal team to sign documents, scan them back to legal team, review of payment from Pattison and decide to hold off on depositing and then forward to new purchaser.	\$510.00	1.80	918.00
CRI REC REC80 General	DAF	22/02/2024	various closing issues and communication with realtor and legal and advising of shareholders of same	\$510.00	3.30	1,683.00
CRI REC REC80 General	DAF	23/02/2024	closing funds confirmed in our account, attend Bovaird site to check mail for last time, update call with John Tertigas re security and site hand over to purchaser	\$510.00	2.60	1,326.00
CRI REC REC80 General	DAF	26/02/2024	finalize filing of Liquidator's certificate, and resigning documents, deal with security issues now that property is sold,	\$510.00	1.60	816.00
CRI REC REC80 General	MLN	26/02/2024	request term deposit for Bovaird sale proceeds; review various with DF	\$275.00	1.30	357.50
CRI REC REC80 General	DAF	27/02/2024	deal with timing of deposits, email corresp with Ian Morris and Bob Jackson re HST for VDP	\$510.00	1.10	561.00
CRI REC REC80 General	DAF	28/02/2024	email corresp with Bob Jackson and Ian Morris, email with Chris' legal counsel for update call	\$510.00	0.60	306.00
CRI REC REC80 General	MLN	28/02/2024	pay outstanding disbursement	\$275.00	0.40	110.00
CRI REC REC80 General	DAF	29/02/2024	review of tax calculations for sale of Bovaird and email corresp with tax group to make changes to assumptions and shareholder balances	\$510.00	2.10	1,071.00
CRI REC REC80 General	MLN	29/02/2024	file 1195705 RT0001 Mar28-Nov30/23 REC Totals: Calldron Gas Bars Ltd.	\$275.00	0.70 46.85 47.19	192.50 22,401.25 22,459.05

Filters Used:
- Time Expense Date: 1/1/1970 to 2/29/2024
- Engagement ID: 1309153:01 to 1309153:01

Primary Partner: Filice, David (DAF)
Employee Summary

Primary Partner - Client Code

Filice, David (DAF)	40.50	20,655.00
Niva, Minna (MLN)	6.35	1,746.25
Pandhre, Kirti (KPP)	0.34	57.80
Total Net Wip	47.19	22,459.05

	WIP	Progress	Net WIP
Primary Partner Filice, David Totals:	\$22,459.05	\$0.00	\$22,459.05
Grand Totals:	\$22,459.05	\$0.00	\$22,459.05

Court File No.: CV-20-00644241-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

B E T W E E N :

GEORGE VASTIS

Plaintiff
(Defendant to the Counterclaim)

- and -

HELEN VASTIS

Plaintiff

- and -

CHRISTOS KOMMATAS

Defendant
(Plaintiff to the Counterclaim)

- and -

CALLDRON GAS BARS LTD. and 1195705 ONTARIO INC.,
carrying on business as OLD PRO DRIVING RANGE

Defendants
(Defendants to the Counterclaim)

**AFFIDAVIT OF SPENCER JONES
(sworn March 18, 2024)**

I, Spencer Jones, of the City of Toronto, in the Province of Ontario, MAKE OATH AND SAY:

1. I am a lawyer with Lerner LLP, counsel to The Fuller Landau Group Inc., in its capacity as receiver and liquidator (the “**Liquidator**”), in these proceedings. As such, I have knowledge of the matters hereinafter deposed, except where stated to be on information and belief, and where so stated, I verily believe that information or belief to be true.
2. Attached and marked hereto as **Exhibit “A”** to this affidavit are copies of the accounts rendered by Lerner LLP to the Liquidator for legal fees and disbursements for the period from January 9, 2024 to February 15, 2024.

3. A total of approximately 87.90 hours were expended by Lerner LLP during the period noted above in performing legal services to the Liquidator, totalling \$33,372.00 in fees, \$784.20 in disbursements, and \$4,392.78 in HST.

4. To the best of my knowledge, the rates charged by Lerner LLP are comparable to the normal hourly rates charged for the provision of similar services by other legal firms in the Toronto market.

5. This affidavit is sworn in connection with a motion for an Order of this Honourable Court to, among other things, approve the fees and disbursements of counsel to the Liquidator, and for no improper purpose.

SWORN BEFORE ME:

☐


in person

☒

by video conference

by Spencer Jones at the City of Toronto, in the Regional Municipality of Metropolitan Toronto, before me at the City of Oshawa, in the Regional Municipality of Durham, on March 18, 2024, in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.

Commissioner for Taking Affidavits (*or as may be*)



Signature of Commissioner (*or as may be*)

Victoria Gifford

Victoria Lois Gifford, a Commissioner, etc.,
Province of Ontario, for Lerner LLP,
Barristers and Solicitors.
Expires November 27, 2025.

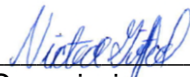


Signature of Deponent
Spencer Jones

THE FOLLOWING IS EXHIBIT “A”

TO THE AFFIDAVIT OF SPENCER JONES

SWORN BEFORE ME (VIRTUALLY) THIS 18th DAY OF MARCH, 2024.



A Commissioner, etc.

Victoria Lois Gifford, a Commissioner, etc.,
Province of Ontario, for Lerner LLP,
Barristers and Solicitors.
Expires November 27, 2025.

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

IN THE MATTER OF THE RECEIVERSHIP OF CALLDRON GAS BARS LTD. AND 1195705
ONTARIO INC. cob as OLD PRO DRIVING RANGE
BILL OF COSTS OF SOLICITOR TO COURT APPOINTED RECEIVER

From January 9, 2024 to January 15, 2024

FEES :

<u>Date</u>	<u>Lawyer</u>	<u>Time</u>	<u>Description</u>
January 9, 2024	VLG	5.30	Review and revise draft orders; Revise Eglinton AVO; Review and revise Fifth Report; Draft, review and revise Fee Affidavit of S. Jones; Review and revise notice of motion; Various emails with client; Call with D. Magisano re same
January 9, 2024	DMW	0.10	Review draft Orders; Instructions to S. Tomlinson
January 9, 2024	DNM	0.40	Emails re finalizing report and preparing orders; Discussion with V. Gifford re same
January 9, 2024	SWJ	0.40	Correspondence regarding report and fee affidavit
January 10, 2024	DMW	0.20	Review draft Vesting Orders; Email from D. Filice; Review S. Tomlinson's email on Vesting Orders
January 10, 2024	DNM	1.00	Review and amend draft orders; Review and amend notice of motion; Emails re same
January 10, 2024	VLG	4.00	Review and revise notice of motion, draft orders, and service list; Prepare fee affidavit; Various emails and phone calls re same
January 11, 2024	DMW	0.10	Review draft Vesting Orders
January 11, 2024	DNM	0.30	Finalize and serve liquidator's motion record
January 11, 2024	VLG	1.40	Complete bookmarking and hyperlinking of Motion Record; Tend to service re same
January 11, 2024	SET	1.00	Bovaird property; Review APS and draft Order; Prepare draft Application for Vesting Order; Review emails regarding realtor; Email to D. Woodward regarding revisions to draft Order
January 11, 2024	SET	0.60	Eglinton property - Review draft Order; Review draft Application for Vesting Order; Email to D. Woodward

<u>Date</u>	<u>Lawyer</u>	<u>Time</u>	<u>Description</u>
			regarding draft Order amendments
January 11, 2024	SET	1.00	Highway 7 property - Review APS and draft Order; Prepare draft Application for Vesting Order; Review emails regarding realtor; Email to D. Woodward regarding revisions to draft Order
January 15, 2024	DMW	0.40	Review Bovaird, Eglinton Road and Highway 7 Orders; Review prior RO approved Orders

OUR FEE HEREIN: \$ 5,487.00
 HST ON FEES: \$ 713.31
 TOTAL FEES AND HST: \$ 6,200.31

<u>Lawyer</u>	<u>Hours</u>	<u>Rate</u>	<u>Amount</u>
Domenico N. Magisano	1.70	\$800.00	\$1,360.00
David M. Woodward	0.80	\$580.00	\$464.00
Spencer W. Jones	0.40	\$440.00	\$176.00
Victoria L. Gifford	10.70	\$270.00	\$2,889.00
Sue E. Tomlinson	2.60	\$230.00	\$598.00

TAXABLE DISBURSEMENTS:

Teraview – Search	184.35	
55 ECORE Entity Profile Report Fee	23.40	
55 ECORE Entity Profile Report	8.00	
TOTAL TAXABLE DISBURSEMENTS	215.75	
Plus HST	28.05	
TOTAL TAXABLE DISBURSEMENTS: (INCL TAX)		243.80
TOTAL FEES, DISBURSEMENTS AND TAXES		<u>\$6,444.11</u>

Court File No. CV-20-00644241-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

IN THE MATTER OF THE RECEIVERSHIP OF CALLDRON GAS BARS LTD. AND 1195705
ONTARIO INC. cob as OLD PRO DRIVING RANGE
BILL OF COSTS OF SOLICITOR TO COURT APPOINTED RECEIVER

From January 16, 2024 to February 15, 2024

FEES :

<u>Date</u>	<u>Lawyer</u>	<u>Time</u>	<u>Description</u>
January 16, 2024	DMW	1.20	Meeting with S. Tomlinson on the draft Vesting Orders; Email to M. Allen on the new owner for the property; Review APS for Highway 7 property and issue on HONI Option to Purchase; Review M. Allen's email; Email to J. Racco on the lawyer's purchaser and name of the purchaser taking title; Review J. Racco's response and email to M. Goose to confirm name of entity taking title; Email to V. Gifford with comments on draft Orders; Review M. Allen's email confirming how Giampaolo is taking title; Emails with M. Goose on the entity taking title for that deal; Emails with V. Gifford on amendments
January 16, 2024	SET	0.60	Meeting with D. Woodward regarding draft Orders; Obtain copy of HR785402; Emails to and from D. Woodward; Email to D. Woodward regarding Order amendments
January 16, 2024	VLG	0.80	Prepare and upload motion record to caselines; Emails re form of orders
January 16, 2024	DNM	0.30	Emails re draft forms of order and new names for purchaser
January 17, 2024	SWJ	1.00	Drafting of NDA; Review of correspondence regarding same
January 17, 2024	DNM	0.50	Call with K. Fisher; Email report to client re same
January 18, 2024	DMW	1.00	Review revised Vesting Orders; Review notes on revisions; Emails with S. Tomlinson and V. Gifford; Review amended Orders with S. Tomlinson; Review S. Tomlinson comments on the Orders and email to V. Gifford with comments
January 18, 2024	DNM	0.20	Emails re revisions to the draft orders
January 18, 2024	VLG	0.80	Review and revise order; Emails re same
January 19, 2024	SWJ	0.30	Correspondence regarding motion and NDA
January 19, 2024	DMW	0.40	Review D. Magisano email on Kommatas APS and concerns about completion of the deal; Review OBCA; Review APS and file with S. Tomlinson on any formal assignment; Email to D.

<u>Date</u>	<u>Lawyer</u>	<u>Time</u>	<u>Description</u>
			Magisano and D. Filice on the APS and ability to assign; Review emails from D. Filice, Teplitsky on the APS assignment issue
January 19, 2024	DMW	1.10	Review Highway 7/ Acton, Mississauga Road/ Bovaird and Eglinton Orders, Applications, PINs and Agreements and approve final form of RO submission for pre-approval; Emails with M. Allen on the company for Mississauga Road/ Bovaird and instructions to S. Tomlinson; Review email from M. Allen's instructions to S. Tomlinson
January 19, 2024	SET	1.00	Update draft Applications for Vesting Orders (Eglinton, Bovaird and Highway 7 properties; Emails to and from D. Woodward; Submit draft Application for Vesting Orders to OnLand for pre-approval (Eglinton, Bovaird and Highway 7 properties)
January 19, 2024	VLG	0.80	Review agreements of purchase and sale; Finalizing orders; Emails re same
January 19, 2024	DNM	0.50	Review and amend NDA; Email exchange with G. Vastis counsel; Email exchange with client re VDP denial and disclosure of Mississauga Rd. sale agreement
January 22, 2024	DNM	0.20	Email to J. Wortzman
January 22, 2024	VLG	2.90	Emails re court hearing tomorrow; Prepare participant sheet; Ensure documents uploaded; Email confidential appendices to court; Prepare, finalize, serve and file aide memoire
January 22, 2024	DMW	0.10	Review emails from D. Magisano and D. Woodward on the Egonia deal and terms of assignment of APS from C. Kommatas
January 22, 2024	SWJ	0.70	Correspondence regarding hearing; Review of aide memoire
January 22, 2024	DNM	3.00	Call with counsel to C. Kommatas; Preparation for hearing on Tuesday; Preparation of direction re dividend payments to Acton property; Tend to delivery of unredacted Mississauga Rd. deal to K. Fisher; Preparation of aide memoire
January 23, 2024	VLG	2.20	Review and revise orders; Emails re same
January 23, 2024	SWJ	0.60	Correspondence regarding AVO motion and review of order
January 23, 2024	DMW	0.30	Review D. Filice email and Vastis email on closing; Review Vesting Orders
January 23, 2024	DNM	2.70	Preparation and attendance on motion to approve Mississauga Rd. and Acton sales; Email to court re applicability of Soundair principles in liquidation proceeding; Emails re same; Emails re

<u>Date</u>	<u>Lawyer</u>	<u>Time</u>	<u>Description</u>
			VDP denial
January 25, 2024	DMW	1.20	Review Agreements for Bovaird, Acton and Eglinton and corresponding Vesting Orders; Review Waiver deadlines and closing dates with S. Tomlinson; Review email exchange on the closing and requisition dates between D. Filice and Vastis; Email to Tamara on the APS, Order and possible formal amendment for closing and requisition dates for Eglinton deal/ review Tamara's email on APS amendment; Email to J. Racco on the Waiver for the Bovaird deal; Email to M. Allen with Order and APS and confirmation of requisition and closing dates; Email to M. Goose with Order and APS and confirmation of requisitions and closing dates; Draft APS Amendments
January 25,, 2024	DNM	0.40	Emails re closing matters for both Mississauga Rd. and Acton properties
January 26, 2024	DMW	0.90	Review Waivers for Acton and Bovaird deals; Emails with J. Racco and D. Filice on the Buyer name in the Waivers and the entities taking title to each of the properties, recommendation for formal assignments of the Agreement; Review Assignment of Agreement with S. Tomlinson; Draft APS Amendment for Eglinton; Review signed and acknowledged Waiver on Egonia deal
January 26, 2024	SET	0.20	Eglinton transaction - prepare draft Amendment regarding name change, closing date and assignment provision; Email to D. Woodward
January 26, 2024	DNM	0.40	Emails re amendments to APS for new names and related closing matters
January 29, 2023	SET	0.30	Highway 7 transaction, prepare Amendment to Agreement of Purchase and Sale; Review Agreement; Emails to and from D. Woodward; Amendments
January 29, 2024	SET	0.30	Bovaird transaction, prepare Amendment to Agreement of Purchase and Sale; Review Agreement; Emails to and from D. Woodward
January 29, 2024	DNM	0.40	Emails re orders from approval hearing; Emails re real estate closing matters
January 29, 2024	DMW	1.50	Review signed Waiver on Bovaird deal; Review emails from D. Magisano and S. Tomlinson on the APS Amendments; Email to M. Allen on the dates for the closing and APS Amendment; Draft APS Amendments for Bovaird, Eglinton and Acton; Review and revise APS Amendments; Review file with S. Tomlinson; Emails to D. Filice with APS Amendments and supporting documents; Emails with M. Allen on closing; Emails with D. Filice on signing arrangements for the APS Amendments; Emails to M. Allen,

<u>Date</u>	<u>Lawyer</u>	<u>Time</u>	<u>Description</u>
			Tamara and M. Goose on the APS Amendments
January 30, 2024	SET	0.20	Bovaird transaction - telephone call with M. Allen; Locate and email Justice Osborne's email to M. Allen
January 30, 2024	DNM	0.30	Emails re amendments to purchase agreements
January 30, 2024	DMW	0.60	Review message from M. Allen; Review Amendment; Telephone M. Allen; Meeting with S. Tomlinson on Statement of Adjustments; Emails with M. Allen on the Order! review Order ! instructions to S. Tomlinson; Review signed APS Amendment on Vastis deal from Tamara! emails with Tamara; Email to D. Filice with the signed Amendment
January 31, 2024	SET	1.40	Bovaird transaction - review documentation provided by D. Filice regarding leases and spreadsheet; Prepare draft Statement of Adjustments with calculations; Email to D. Woodward regarding draft calculations
January 31, 2024	DNM	0.30	Emails re upcoming closings
January 31, 2024	DMW	0.70	Review signed Amendments to the Agreement; Emails with Tamara and update to D. Filice; Email to D. Filice with fully signed APS Amendment; Review fully signed Amendment to APS; Telephone J. Racco; Email to Tamara with signed Amendment and update email to D. Filice, J. Racco and D. Magisano with signed Amendment
February 1, 2024	DNM	0.30	Emails re closing of Mississauga Rd Property; Emails re request for site visit
February 1, 2024	SET	0.20	Emails RO regarding pre-approvals of Vesting Orders for Eglinton, Highway 7 and Bovaird; Emails to D. Woodward; Discussion with D. Woodward
February 1, 2024	DMW	0.40	Review Orders ! comments from the RO for Vastis, Giampaolo and Kommatas deals; Review Order comments with S. Tomlinson
February 1, 2024	DMW	0.60	Emails with M. Allen on the proposed property inspection; Review APS on access rights; Email to D. Filice on access ! inspection request; Review D. Filice's confirmation of inspection arrangements and emails with M. Allen on timing; Emails with M. Allen and D. Filice on timing for inspection
February 1, 2024	DMW	0.30	Review draft Statement of Adjustments; Review Leases and APS re the adjustments
February 2, 2024	SET	0.40	Bovaird transaction - review rough calculations with D. Woodward; update Statement and Adjustments; Email to D. Woodward regarding information required for clarification and

<u>Date</u>	<u>Lawyer</u>	<u>Time</u>	<u>Description</u>
			updating Statement of Adjustments; Review email response from D. Filice
February 2, 2024	DNM	0.30	Emails re closing preparations for Mississauga Rd. sale
February 2, 2024	DMW	0.80	Review Leases and D. Filice spreadsheet for the adjustments on the Bovaird deal; Review Statement of Adjustments; Telephone meetings with S. Tomlinson on the adjustments; Review revised Statement of Adjustments and background materials; Email to D. Filice with revised adjustments; Emails with D. Filice and review comments on the draft Statement of Adjustments
February 5, 2024	DNM	0.30	Email from client re VDP and minute books; Email to I. Morris re VDP rejection
February 5, 2024	DMW	0.20	Emails to M. Allen and M. Goose on the APS Amendments
February 6, 2024	SWJ	0.10	Correspondence regarding registration of orders
February 6, 2024	SET	1.20	Bovaird transaction - prepare draft sale documentation; Email to D. Woodward regarding required items, information for closing
February 6, 2024	DMW	0.70	Review email from Faye at M. Allen's office; Telephone Meeting with S. Tomlinson on the draft documents for closing on the Bovaird deal; Review RO comments on the Orders; Emails to D. Magisano, V. Gifford and S. Jones on the RO comments and possible need to amend the Orders; Review emails on the adjustments for the Bovaird deal
February 6, 2024	DNM	0.30	Email exchange with I. Morris re VDP; Email exchange with client
February 7, 2024	DMW	1.90	Prepare draft documents for closing; Review and APS and APS Amendment; Review Orders and Liquidator Certificate; Meetings with S. Tomlinson on draft documents, Law Statement for Vesting Orders and adjustments; Revisions to Draft documents; Review Requisition Letter; Emails to J. Touzin on the minor changes to the Vesting Order for both the Acton and Bovaird deals; Telephone J. Touzin on the Law Statement required for the Vesting Orders; Review emails from D. Filice on the adjustments; Email to M. Allen with draft documents
February 7, 2024	SET	0.30	Bovaird transaction - discussion with D. Woodward; Update draft documents; Prepare draft documents package to purchaser's solicitor; Emails to and from D. Filice
February 7, 2024	DNM	0.50	Emails re Mississauga Rd. Sale; Call with client re VDP denial

<u>Date</u>	<u>Lawyer</u>	<u>Time</u>	<u>Description</u>
February 8, 2024	DMW	1.20	Review D. Filice comments on the adjustments; Review and approve the draft Amended Statement of Adjustments from S. Tomlinson; Email to D. Magisano, S. Jones and V. Gifford on the Vesting Order Approvals from the RO; Review Statement of Adjustments and emails with M. Allen; Email to M. Allen on the pre-approval of the Vesting Order; Prepare for conference call; Telephone M. Allen; Update to D. Magisano and S. Jones on the Vesting Orders
February 8, 2024	SET	1.10	Bovaird transaction - review email and information from D. Filice; Update calculations in Statement of Adjustments; Email to D. Woodward; Telephone discussion with D. Filice regarding Statement of Adjustments
February 8, 2024	DNM	0.80	Call with clients and I. Morris; Call with clients re VDP
February 8, 2024	SWJ	0.10	Correspondence regarding property sale
February 9, 2024	DMW	0.70	Review F. Arellano email on Law Statement 62; Discussions with S. Tomlinson and review D. Filice email on the Farm Rent and the billboard leases; Email to M. Allen on the Farm Rent and with the billboard leases; Review draft documents and signed DRA, emails with F. Arellano; Review signed APS Amendment; Emails with F. Arellano and D. Filice with the APS Amendment
February 9, 2024	DNM	0.30	Emails re VDP denial and correspondence from C. Kommatas
February 12, 2024	DNM	1.00	Emails re deposits with municipalities; Emails re interim distribution to shareholders; Emails re VDP Application status; Review orders to determine reference to receivership
February 12, 2024	DMW	0.80	Email from D. Filice on the deposits for Bovaird and Acton; Email to D. Magisano on next steps; Review statement 62 for the Vesting Order and rest of Vesting Order; Email to F. Arellano and M. Allen with the Vesting Order; Review F. Arellano's email with proposed revisions to the Vesting Order with S. Tomlinson; Emails with D. Magisano and D. Filice on the adjustments, review APS; Email to M. Allen on the Deposits for the Driving Range; Telephone Brampton Planning Department
February 13, 2024	DNM	0.50	Emails re value of driving range equipment; Message to D. Filice; Emails re closing matters for Mississauga Rd. Property
February 13, 2024	DMW	1.00	Email from Jason on the driving range equipment; Emails with M. Allen and D. Filice on farmer, driving range equipment and deposit issue with Brampton; Email to Brampton on details relating to deposit; Emails with D. Filice and M. Allen on driving range equipment and lease buyout, farmer contact information; Emails with D. Filice on the farmer contact and emails to M.

Lerners LLP
 Invoice Number: 40123865
 GST/HST #R119462497

<u>Date</u>	<u>Lawyer</u>	<u>Time</u>	<u>Description</u>
			Allen with farmer contact information
February 14, 2024	DNM	0.40	Emails re forms of order and possible amendments to Mississauga Rd. order
February 14, 2024	SWJ	0.20	Correspondence regarding Bovaird Deal/ Vesting Order and Law Statement on Filing the Liquidator's Certificate
February 14, 2024	DMW	1.00	Review email update from Brampton on the deposit; Email update to M. Allen on the deposit issue; Email update to D. Magisano and D. Filice on the Brampton deposit issue; Review proposed revision to Vesting Order, review approved wording of Vesting Order; Email to M. Allen and F. Arellano on the Undertaking re the Liquidator's Certificate filing with the Court; Email from F. Arellano on draft Undertaking; Draft Undertaking, revisions; Review comments on Vesting Order from F. Arellano and M. Allen; Review file with S. Tomlinson; Email to D. Magisano, S. Jones and V. Gifford on the proposed Lerners undertaking
February 14, 2024	SET	0.20	Bovaird transaction - prepare draft Undertaking from Lerners regarding Liquidator's Certificate
February 15, 2024	DMW	0.50	Review D. Magisano's email on the undertaking; Email to D. Magisano on undertaking and Liquidator's Certificate issue; Review emails relating to wires for closing (amount of wire and possible delays); Email to F. Arellano with draft undertaking; Emails with F. Arellano and M. Allen approving Lerners Undertaking
February 15, 2024	DNM	0.80	Call with D. Filice; Call with I. Morris; Messages from D. Filice and I. Morris; Email to shareholders counsel re VDP matters

OUR FEE HEREIN: \$ 27,885.00

HST ON FEES: \$ 3,625.05

TOTAL FEES AND HST: \$ 31,510.05

<u>Lawyer</u>	<u>Hours</u>	<u>Rate</u>	<u>Amount</u>
Domenico N. Magisano	14.70	\$800.00	\$11,760.00
David M. Woodward	19.10	\$580.00	\$11,076.00
Spencer W. Jones	3.00	\$440.00	\$1,320.00
Victoria L. Gifford	7.50	\$270.00	\$2,025.00
Sue E. Tomlinson	27.40	\$230.00	\$1,702.00

Lerners LLP
Invoice Number: 40123865
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NON -TAXABLE DISBURSEMENTS:

Filing Fee – Motion Record	\$339.00	
TOTAL NON-TAXABLE DISBURSEMENT		\$339.00

TAXABLE DISBURSEMENTS:

Teraview – Search	3.00	
Westlaw Canada	93.00	
Teraview – Execution Certificate	12.85	
2 & 4 Ecore Entity Profile Report Fee	46.80	
2 & 4 Ecore Entity Profile Report	16.00	
68 Ecore Entity Profile Report Fee	23.40	
68 Ecore Entity Profile Report	8.00	
TOTAL TAXABLE DISBURSEMENTS	229.45	
Plus HST	26.40	
TOTAL TAXABLE DISBURSEMENTS: (INCL TAX)		229.45
TOTAL FEES, DISBURSEMENTS AND TAXES		\$32,076.50

GEORGE VASTIS et al
Plaintiffs

CHRISTOS KOMMATAS et al
Defendants

Court File No.: CV-20-00644241-00CL

CHRISTOS KOMMATAS
Plaintiff by Counterclaim

GEORGE VASTIS
Defendant to the Counterclaim

**ONTARIO
SUPERIOR COURT OF JUSTICE -
COMMERCIAL LIST**

Proceeding commenced at Toronto

**AFFIDAVIT OF SPENCER JONES
(sworn March 18, 2024)**

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sjones@lerner.ca
Tel: 416.601.2358

Lawyers for the Liquidator

Court File No.: CV-20-00644241-00CL

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

THE HONOURABLE

)
)
)
)

TUESDAY, THE 27TH

JUSTICE

DAY OF MARCH, 2024

B E T W E E N :

GEORGE VASTIS

Plaintiff
(Defendant to the Counterclaim)

- and -

HELEN VASTIS

Plaintiff

- and -

CHRISTOS KOMMATAS

Defendant
(Plaintiff to the Counterclaim)

- and -

CALLDRON GAS BARS LTD. and 1195705 ONTARIO INC.,
carrying on business as OLD PRO DRIVING RANGE

Defendants
(Defendants to the Counterclaim)

ORDER

THIS MOTION, made by The Fuller Landau Group Inc., in its capacity as the Court-appointed liquidator and receiver (in these capacities, the “**Liquidator**”) of the undertaking, property and assets of Calldron Gas Bars Ltd. (“**Calldron**”) and 1195705 Ontario Inc. o.a. Old Pro Driving Range (“**Old Pro**”, and together with Calldron are the “**Companies**”) for an order:

- (a) if necessary, abridging and validating the time for service and filing of the notice of motion and the motion record contained herein, validating service and dispensing with further service upon any other persons not already served with this notice of motion and motion record so that the motion is properly returnable today;

- (b) approving the activities of the Liquidator and its counsel as outlined in the Sixth Report of the Liquidator dated March 18, 2024 (the “**Sixth Report**”);
- (c) approving an interim distribution to the Principals (as defined below) of \$100,000,000.00;
- (d) approving the receipts and disbursements of the Liquidator; and,
- (e) approving the fees and disbursements of the Liquidator and its counsel;

was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Sixth Report, the factum, and the affidavits of the Liquidator and its counsel as to fees (the “**Fee Affidavits**”), and on hearing the submissions of counsel for the Liquidator, and counsel for Chris Kommatas (“**Chris**”) and George Vastis (“**George**”) and together with Chris are the “**Principals**”), no one appearing for any other person on the service list, although properly served as appears from the affidavit of Victoria Gifford sworn March ____, 2024, filed:

SERVICE

1. **THIS COURT ORDERS AND DECLARES** that the time for service of the notice of motion and the motion record is hereby abridged and validated so that the motion is properly returnable today and hereby dispenses with further service thereof.

THE INTERIM DISTRIBUTION

2. **THIS COURT ORDERS** that the proposed interim distribution of \$100,000,000.00 to the Principals is approved and directs the Liquidator to make said distribution as follows:

- (a) payment to George in the amount of \$934,542 on account of George’s shareholder loans to the Companies;
- (b) payment to Chris in the amount of \$1,001,956 on account of Chris’ shareholder loans to the Companies;
- (c) capital dividend payment to each of the Principals in the amount of \$31,274,349; and

(d) non-eligible dividend to each of the Principals in the amount of \$17,757,403;

APPROVAL OF LIQUIDATOR ACTIVITIES AND FEES

3. **THIS COURT ORDERS** that the activities of the Liquidator, as set out in the Sixth Report, are hereby approved.
4. **THIS COURT ORDERS** that the Liquidators Interim Statements of Receipts and Disbursements, is hereby approved.
5. **THIS COURT ORDERS** that the fees and disbursements of the Liquidator and its counsel, as set out in the Sixth Report and the Fee Affidavits, are hereby approved.
6. **THIS COURT ORDERS** that only the Liquidator, in its personal capacity and only with respect to its own personal liability, shall be entitled to rely upon or utilize in any way the approval of the Sixth Report as detailed in paragraph 3 above.

FOREIGN RECOGNITION

7. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Liquidator and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the liquidator, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.
-

GEORGE VASTIS et al
Plaintiffs

CHRISTOS KOMMATAS et al
Defendants

Court File No.: CV-20-00644241-00CL

CHRISTOS KOMMATAS
Plaintiff by Counterclaim

GEORGE VASTIS
Defendant to the Counterclaim

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

Proceeding commenced at Toronto

ORDER

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Lawyers for the Liquidator

GEORGE VASTIS et al
Plaintiffs

CHRISTOS KOMMATAS et al
Defendants

Court File No.: CV-20-00644241-00CL

CHRISTOS KOMMATAS
Plaintiff by Counterclaim

GEORGE VASTIS
Defendant to the Counterclaim

**ONTARIO
SUPERIOR COURT OF JUSTICE -
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Proceeding commenced at Toronto

**MOTION RECORD
(Returnable March 27, 2024)**

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Toronto, ON M5V 3M2

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Lawyers for the Liquidator