

District of ONTARIO
Division 09-Toronto
Estate #: 31-2249027
Court # 31-2249027

SUPERIOR COURT OF JUSTICE (IN BANKRUPTCY)

**IN THE MATTER OF THE PROPOSAL OF
1821372 ONTARIO LIMITED
CARRYING ON BUSINESS AS
THE KENNEDY PUBLIC HOUSE
OF THE CITY OF TORONTO
IN THE PROVINCE OF ONTARIO**

REPORT OF TRUSTEE TO THE CREDITORS
(Section 50(5) of the Bankruptcy and Insolvency Act)

Enclosed are the following documents:

- ♦ Notice of Proposal to Creditors;
- ♦ Proposal under Part III, Division I, of the *Bankruptcy and Insolvency Act* (the "**BIA**") lodged with MNP Ltd. (the "**Trustee**") by 1821372 Ontario Limited carrying on business as Kennedy Public House ("**KPH**" or the "**Debtor**") and filed with the Official Receiver on June 5, 2017 (the "**Proposal**");
- ♦ A statement of the Debtor's assets and liabilities as at June 5, 2017;
- ♦ A proof of claim form;
- ♦ Voting letter in the event that you wish to vote in advance of the meeting of Creditors to be convened on June 23, 2017 (the "**Meeting**"); and
- ♦ General proxy.

The following is an outline of the background and financial position of the Debtor, including relevant information that should be of assistance to the Creditors in considering their position with respect to the Proposal.

In preparing this Report and making the comments herein, the Trustee has been provided with, and has relied upon, certain unaudited, draft financial information, the Debtor's books and records, and information from other third-party sources (collectively, the "**Information**"). Except as described in this Report, the Trustee has not audited, reviewed or otherwise attempted to verify the accuracy or completeness of the Information in a manner that would wholly or partially comply with Generally Accepted Assurance Standards pursuant to the CPA Canada Handbook.

Capitalized terms used in this Report are the same as those referenced in the Proposal.

SECTION A - Background

KPH was incorporated under the Ontario Business Corporations Act on April 8, 2010. KPH is a casual dining facility that includes an outdoor patio; it serves bistro style food, craft beer and cocktails. The business operates from leased premises located at 2199 Bloor St West, Toronto, Ontario (the "**Premises**"). Michael Derbyshire ("**Derbyshire**") is the Debtor's sole director, officer and shareholder. KPH's business is seasonal and highly reliant on its outdoor patio business in the spring and summer seasons.

On May 8, 2017 (the "**Filing Date**"), the Debtor filed a Notice of Intention to Make a Proposal (the "**NOI**"). On June 5, 2017, the Debtor filed a proposal pursuant to the BIA (the "**Proposal**"), the general purpose of which is to allow the Debtor sufficient additional time to negotiate and complete a sale of its business and assets on a going concern basis, the proceeds of which will form the basis of the amount to be offered to Creditors under an Amended Proposal.

SECTION B - Summary of the Proposal

This section contains a brief summary of the Proposal, the terms of which would be effective only if the Proposal is accepted by the Creditors and approved by the Court, in accordance with the provisions of the BIA.

The Proposal is a form of holding proposal. The general intent of the Proposal is to allow the Debtor sufficient additional time to negotiate and complete a sale of its business and assets on a going concern basis, the proceeds of which will enable the Debtor to file an Amended Proposal that would provide the Creditors as a whole with a greater recovery compared to any recovery that might be realized if KPH were to become bankrupt.

For the purposes of voting on the Proposal, only the Unsecured Creditors will be entitled to vote on the Proposal. There shall be one (1) class of Unsecured Creditors.

The Proposal contemplates the treatment of creditor claims to be as follows:

- **Secured Creditors** – Secured claims shall be paid by the Debtor in accordance with agreements between the Debtor and the Secured Creditor or as otherwise agreed between the Secured Creditor and the Debtor. For greater clarity, each Secured Creditor shall not be affected by the Proposal, any subsequent Amended Proposal or the proposal proceedings generally commenced by the Debtor under the Act.
- **Preferred Creditors** – The time and provision for payment of all Claims of Preferred Creditors shall be set out in the Amended Proposal, provided that, pursuant to the Amended Proposal, all proven preferred Claims as set out in section 136 of the Act, if any, will be paid in full without interest in priority to all Claims of Unsecured Creditors and in accordance with the scheme of distribution set out in the Act; provided, however, that Preferred Claims of any employees and any former employees equal to the amounts that they would be qualified to receive under subparagraph 136(1)(d) of the Act if the Debtor became bankrupt on the Date of Filing, shall be paid immediately after the Court Approval Date.

For greater certainty, amounts due or which may become due pursuant to this paragraph do not include Claims for severance or termination pay.

- **Unsecured Creditors** – The time and provision for payment of all Claims of Unsecured Creditors shall be set out in the Amended Proposal.

Payment of the Claims, if any, of Her Majesty in Right of Canada or a province in existence at the Date of Filing shall be paid by the Debtor within six months following the Court Approval Date.

Claims arising in respect of goods supplied, services rendered or other consideration given to the Debtor subsequent to the Date of Filing shall be paid in full by the Debtor in the ordinary course of business, and on regular trade terms.

Immediately upon performance of the Amended Proposal by the Debtor, all Claims against the directors of the Debtor that arose before the Date of Filing and that relate to the obligations of the Debtor where the directors are by law liable in their capacity as directors for the payment of such obligations, shall be compromised and extinguished.

The above description of the Proposal is a summary only, and readers are cautioned that in the event that there is inconsistency between this report and the Proposal, the terms of the Proposal shall govern.

SECTION C - Financial Position and Causes of Difficulties

A summary of the Debtor's fiscal 2016 financial results is set out below:

| Year Ended December 31 (CAD '000s) | F2016 Unaudited |
|---|----------------------------|
| Revenue | \$ 2,195 |
| Cost of Goods Sold | 1,518 |
| Gross Margin | 677 |
| <i>Gross Margin (%)</i> | 31% |
| Expenses | 631 |
| Net Profit before tax | 46 |

The Debtor advises that its financial difficulties are primarily a result of Derbyshire funding, through KPH, his investment in another loss-making restaurant, which drew capital away from KPH and left it without the necessary working capital to operate efficiently.

Year-to-date in fiscal 2017, Derbyshire has advised, and the Trustee has observed through its monitoring of the Debtor's cash flows, that KPH is generating a loss, which is primarily attributable to unfavourable weather conditions which negatively impact patio sales.

SECTION D - Interim Receiver

Not Applicable.

SECTION E - Identification and Evaluation of Assets

As set out in the Debtor's statement of affairs, as at June 5, 2017, (the "SOA") the Debtor's assets and estimated realizable value are as listed below.

| <u>Description</u> | <u>Estimated Realizable Value</u> |
|-----------------------|-----------------------------------|
| Furniture & Equipment | \$ 50,000 |
| Cash | 100 |
| | <hr/> |
| | \$ 50,100 |

SECTION F - Conduct of the Debtor

The conduct of the Debtor does not appear to be subject to censure.

SECTION G - Creditors' Claims

According to the SOA, the Debtor's creditors consist of:

| <u>Creditor Classification</u> | <u>SOA Amount</u> |
|--------------------------------|-------------------|
| Secured (1) | \$ 240,899 |
| Preferred (2) | Unknown |
| Unsecured | 1,050,012 |
| | <hr/> |
| | \$ 1,290,911 |

(1) Secured creditors set out on the SOA are as follows:

| Secured Creditor | Claim |
|------------------------------------|-------------------|
| Bodkin Capital Corporation | \$ 1 |
| Canada Revenue Agency ("CRA") | 209,065 |
| Ontario Ministry of Finance ("MF") | 31,832 |
| National Leasing | 1 |
| Total | <hr/> |
| | \$ 240,899 |

CRA is secured in respect of outstanding source deductions. MF is secured in respect of outstanding employer health tax. The Trustee has not reviewed or verified the security of the Secured Creditors but has no reason to believe it is not enforceable.

(2) KPH may potentially have an obligation to its landlord for percentage rent arrears which would form a Preferred Claim.

SECTION H - Previous Business Dealings with the Debtor

The undersigned Trustee has had no previous dealings with the Debtor.

SECTION I - Informal Meeting with Major Creditors

Not Applicable.

SECTION J - Remuneration of Trustee

All the fees, expenses, legal fees and disbursements of the Trustee and the Debtor on and incidental to the Proposal and the proceedings arising out of the Proposal shall be paid in priority to all Claims of Unsecured Creditors, and shall be paid on the consideration offered to the Unsecured Creditors under the Amended Proposal.

SECTION K - Other

Not applicable.

SECTION L - Statement of Estimated Realizations

As noted above, should the Proposal be accepted, the Debtor will seek to complete a sale of its business, the proceeds of which will enable the Debtor to file an Amended Proposal. It is the Debtor's expectation that a sale of its business as a going concern will generate greater realizations for Creditors than the estimated realizations from the liquidation of the assets set out in Section E above. In the event of a liquidation or immediate bankruptcy, the Debtor's assets would in all likelihood be insufficient to satisfy its Secured Creditor claims and therefore there would be no distribution to Unsecured Creditors.

Upon the filing of the Amended Proposal the Trustee will provide Creditors with an update on the estimated realizations that will show an estimate of the realizations in the event the Amended Proposal is accepted by the Creditors and the Court and in the event the Amended Proposal is rejected and the Debtor is deemed bankrupt.

Preferences and Transactions at Under Value

The Holding Proposal contemplates that Section 95-101 of the BIA will not apply to this Proposal or anticipated in the Amended Proposal.

To assess the reasonableness of this clause, the Trustee will carry out an investigation of the Debtor's books and records to identify any potential preferences or Transactions at Under Value prior to the filing of the Amended Proposal.

SECTION M - Recommendations

The Trustee is supportive of the filing of the Proposal as:

- (i) it would allow the Debtor sufficient additional time to complete a sale of its business and assets on a going concern basis, the proceeds of which will enable the Debtor to file a viable Amended Proposal; and
- (ii) it would provide the Creditors as a whole with a greater recovery compared to any recovery that might be realized under a bankruptcy.

The Trustee is monitoring the Debtor's activities. The Trustee will report on the activities of the Debtor, its progress in negotiating a sale transaction and the status of its filing of an Amended Proposal on or before the Meeting.

SECTION N - Technical Requirements for a Successful Proposal

This Proposal will become effective only if it is accepted by a resolution of the Unsecured Creditors and approved by the Court. To obtain Creditor approval, a simple majority in the number of Unsecured Creditors voting and also representing at least 2/3 of the dollar value of the Unsecured Creditors voting, must vote in favour of the Proposal. If the Unsecured Creditors do not accept the Proposal then the Debtor will be deemed to have made an assignment in bankruptcy and a meeting of creditors in the matter of the bankruptcy will immediately take place.

If the Unsecured Creditors vote to accept the Proposal, Court approval of the Proposal must then be sought. If the Court does not approve the Proposal, the Debtor would be deemed to have made an assignment in bankruptcy and the Trustee will then call a meeting of creditors in the matter of the bankruptcy.

When completing the Proof of Claim form submitted herewith, Creditors should include all outstanding amounts as at May 8, 2017, the date of the filing of the NOI. It is expressly noted and should be clearly understood that the Trustee, in its capacity as Trustee, assumes no personal liability for any claims that Creditors may have against the Debtor either before or after the filing of the NOI or the Proposal.

Creditors may attend, in person or by proxy, the meeting to consider the Proposal, which will be held at the offices of the Trustee located at 111 Richmond Street W, Suite 300 on June 23, 2017 at 10:00 am (EST).

Creditors who do not wish to attend or be represented at the meeting but who wish to vote, may forward their Proofs of Claim and voting letters by either email to echa.odeh@mnp.ca or fax to (416) 323-5242, to the Trustee so as to be received prior to 10:00 am (Toronto Time) on June 23, 2017.

If you should have any questions or comments on the Proposal or this report, please do not hesitate to contact the undersigned.

Dated at Toronto, Ontario, the 12th day of June, 2017.

MNP Ltd.
Trustee acting in re: the Proposal of
1821372 Ontario Limited

Per:



Jerry Henechowicz, CPA, CA. CIRP, LIT