

Court File No.: CV-21-00665375-00CL

**PRE-FILING REPORT OF KPMG INC.,
IN ITS CAPACITY AS PROPOSED RECEIVER OF**

Victoria Avenue North Holdings Inc.

JULY 26, 2021

Court File No.: CV-21-00665375-00CL

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

**AMERICAN GENERAL LIFE INSURANCE COMPANY and
NATIONAL UNION FIRE INSURANCE COMPANY OF PITTSBURGH, PA.**

Applicants

AND

**VICTORIA AVENUE NORTH HOLDINGS INC.
and THE PARTIES LISTED ON SCHEDULE “A”**

Respondents

**APPLICATION UNDER section 243 of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as
amended, and under Section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43**

**PRE-FILING REPORT OF KPMG INC.
In its capacity as Proposed Receiver**

DATED JULY 26, 2021

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I. INTRODUCTION

1. KPMG Inc. (“**KPMG**” or the “**Proposed Receiver**”) understands that an application will be made before the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) by American General Life Insurance Company (“**AIG**”), and National Union Fire Insurance Company of Pittsburgh, PA. (collectively, the “**Applicants**”) for an order (the “**Appointment Order**”), *inter alia*, appointing KPMG as receiver and manager (in such capacity, the “**Receiver**”) to exercise the powers and duties set out in the Appointment Order, pursuant to section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the “**BIA**”), and section 101 of the *Courts of Justice Act* R.S.O. 1990 c. C. 43, as amended, of i) all of the assets, undertakings and properties, including the Real Properties (as defined in the Appointment Order) of Victoria Avenue North Holdings Inc. (the “**Legal Owner**”) acquired for, or used in relation to the Legal Owner’s business (collectively, the “**Legal Owner’s Property**”), and ii) all right, title and interest of any beneficial owners (the “**Beneficial Owners**”) in and to the Legal Owner’s Property, including the Real Properties and all proceeds thereof, whether held directly or indirectly by the Beneficial Owners for themselves or for others, including the Beneficial Owners.
2. This pre-filing report (the “**Report**”) has been prepared by the Proposed Receiver prior to its appointment as Receiver, should this Court grant the Appointment Order, to provide information to the Court for its consideration in respect of the Applicants’ receivership application (the “**Application**”).

II. PURPOSE OF REPORT

3. The purpose of this Report is to provide this Honourable Court with information pertaining to:
 - (i) background on the Legal Owner, KPMG’s involvement as financial advisor to the Applicants, and selected findings in connection with same;
 - (ii) KPMG’s qualifications to act as Receiver pursuant to the proposed Appointment Order;
 - (iii) the Legal Owner’s forecasted cash flows for the next 6 months; and
 - (iv) the Legal Owner’s estimated funding requirements for the next 6 months, the commercial terms associated with a proposed loan by the Applicants to the Receiver pursuant to the Receiver Term Sheet (as hereinafter defined), and comparison to terms of other loans of similar nature.

III. TERMS OF REFERENCE

4. In preparing this Report and making the comments herein, KPMG has been provided with, or has relied upon certain unaudited, draft, and/or internal financial information, the Legal Owner's records, financial information and projections prepared by the Legal Owner, discussions with the Legal Owner's management (the "**Management**") and information from other third party sources (collectively, the "**Information**"). It should be noted that all of the Information was obtained in our role as financial advisor to the Applicants, which role is discussed below.
5. The Proposed Receiver has reviewed the Information for reasonableness, internal consistency and use in the context in which it was provided. The Proposed Receiver 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 Canadian Auditing Standards ("**CAS**") pursuant to the Chartered Professional Accountants Canada Handbook, and accordingly the Proposed Receiver expresses no opinion or other form of assurance in respect of the Information.
6. Some of the information referred to in this Report consists of financial forecasts and projections. An examination or review of the financial forecast and projections, as outlined in the Chartered Professional Accountants Canada Handbook, has not been performed.
7. Certain information referred to in this Report is based on Management's estimates and assumptions. Such estimates and assumptions are, by their nature, not ascertainable and as a consequence no assurance can be provided regarding the forecasted or projected results. The reader is cautioned that the actual results will likely vary from the forecasts or projections, even if the assumptions materialize, and the variations could be significant.
8. The Proposed Receiver has prepared this Report in connection with the Application to be heard on August 3, 2021. This Report should not be relied on for other purposes.
9. Capitalized terms not otherwise defined herein are as defined in the Applicants' application materials, including the Affidavit of Jacob Baron sworn July 9, 2021 (the "**Baron Affidavit**"). This Report should be read in conjunction with the Baron Affidavit as certain information contained therein has not been included herein to avoid unnecessary duplication.
10. Unless otherwise stated, all monetary amounts noted herein are expressed in Canadian dollars.

IV. BACKGROUND, PRIOR KPMG INVOLVEMENT WITH THE LEGAL OWNER AND SELECTED FINDINGS

Background

11. The Legal Owner owns and operates two (2) medical office buildings located in Hamilton, Ontario as follows:

Address	Location	Square Feet
304 Victoria Ave N	Hamilton, Ontario	38,828
414 Victoria Ave N	Hamilton, Ontario	47,271

(collectively, the “**Buildings**”).

12. The Buildings are tenanted primarily by doctors, clinics, and other medical-related occupants. The Legal Owner relies on Prime Real Estate Group Inc. (“**Prime**”), a property management company, to manage the day-to-day operations of the Buildings.
13. Detailed information with respect to the Legal Owner’s business and operations are detailed extensively in the Baron Affidavit. The information contained in this Report represents only a high-level summary of such details to avoid duplication.

KPMG’s Prior Involvement with the Legal Owner

14. On February 26, 2020, KPMG was retained by the Applicants, through their counsel Blake, Cassels & Graydon LLP (“**Blakes**”), as financial advisor (the “**Financial Advisor**”) to the Applicants regarding the Applicants’ loan to the Legal Owner. Since that time, KPMG’s activities have included, *inter alia*:
- (a) reviewing the Legal Owner’s rent rolls, lease agreements, and financial statements;
 - (b) analyzing the Legal Owner’s financial situation;
 - (c) performing physical site visits of the Buildings with a view to confirming occupancy rates and revenues of same;
 - (d) evaluating refinancing efforts of Management in respect of the Legal Owner;

- (e) assisting the Legal Owner in developing a request for proposal in respect of a leasing agent to market and lease-up vacant units within the Buildings;
 - (f) understanding and monitoring the ongoing cash flows of the Legal Owner, including deferred rents receivable as a result of the impact of COVID-19; and
 - (g) planning and preparing for potential formal receivership proceedings.
15. KPMG has worked closely and co-operatively with Management and Prime since the commencement of our engagement as Financial Advisor.

Selected Findings

16. In March, 2020, KPMG requested from Prime and the Legal Owner, harmonized sales tax (“HST”) records evidencing that the Legal Owner had been filing HST returns and remitting HST owing, as required, on a regular basis.
17. Based on the information provided, the Legal Owner appeared to have been filing HST returns on a regular basis, but had significant outstanding HST obligations for the period prior to May 2020. The Proposed Receiver understands that the Legal Owner continues to have significant outstanding HST obligations at this time.

V. KPMG’S QUALIFICATIONS TO ACT AS RECEIVER

18. KPMG can provide the following information to the Court regarding its qualifications to act as Receiver in these proceedings:
- (a) KPMG has extensive knowledge of the Legal Owner’s business and assets including the Real Properties, which should result in significant time and cost efficiencies in these proceedings;
 - (b) KPMG has worked co-operatively with Management and Prime throughout its engagement as Financial Advisor;
 - (c) the KPMG personnel that will be involved with the receivership include those that were involved in its engagement as Financial Advisor, and have extensive experience in Court-appointed mandates (including acting as Court-appointed receiver and manager), dealing with real estate assets, and designing and implementing Court-supervised sale processes.

The Proposed Receiver and its representatives understand the nature of a Court-appointed role and the importance of being independent while acting in such capacity;

- (d) KPMG’s fee rates are comparable to other firms with similar capabilities that perform similar work; and
 - (e) KPMG is a trustee within the meaning of section 2(1) of the BIA and has provided its consent to act as receiver (attached hereto as **Appendix “A”**) in these proceedings should the Court grant the Appointment Order.
19. On June 29, 2021, upon application by AIG and affiliated secured lenders, KPMG was appointed as receiver and manager of, among other things, the properties of Southmount Healthcare Centre Inc. and certain other entities (collectively, “**Southmount Et Al.**”), pursuant to an order of this Court (Court file no. CV-21-00664273-00CL). The respondents in the Southmount Et Al. receivership proceedings – whose primary assets are seven (7) medical office buildings in the same asset class as the Buildings – are affiliated with the Legal Owner as the majority of them are indirect subsidiaries of Gross Capital Inc. (“**Gross Capital**”), which, as further detailed in the Baron Affidavit, was assigned into bankruptcy on June 25, 2021. The Proposed Receiver understands that the Legal Owner and Southmount Et Al. were each managed by representatives of Gross Capital. KPMG in its capacity as receiver is also planning to market and sell the Southmount Et Al. real properties, and as such, there are expected to be efficiencies to be realized in terms of i) the Receiver’s efforts to market and sell the Real Properties, and ii) the Receiver’s ongoing communications with key stakeholders in common with these proceedings.
20. Should the Court grant the Applicants’ request to make the Appointment Order, the Receiver intends to engage Applicants’ counsel, Blakes, as its counsel in these proceedings, as well as Norton Rose Fulbright Canada LLP (“**Norton Rose**”) as its independent counsel on legal matters which the Receiver, in its judgment, determines it requires independent advice. The Receiver will obtain a legal opinion on the validity and enforceability of the Applicants’ security, and any other security interests as necessary, from Norton Rose.

VI. CASH FLOW FORECAST

21. The Proposed Receiver, based on its knowledge of the Legal Owner’s business, has prepared a cash flow forecast (the “**Cash Flow Forecast**”) for the purpose of projecting the Legal Owner’s estimated liquidity needs for a period of approximately 6 months from the date of the proposed Appointment

Order (the “**Forecast Period**”). A copy of the Cash Flow Forecast is attached hereto as **Appendix “B”**.

22. A 6-month Forecast Period was chosen to provide the Receiver (if appointed) with time to devise, seek approval of and implement a robust and thorough sale process for the Real Properties.
23. A condensed version of the Cash Flow Forecast, presented monthly, is shown below.

Cash Flow Forecast								
Period Ending	31-Aug-21	30-Sep-21	31-Oct-21	30-Nov-21	31-Dec-21	31-Jan-22	14-Feb-22	Total
Receipts	132,181	132,181	132,181	132,181	132,181	131,535	102,861	895,302
Operating disbursements	(117,968)	(78,418)	(46,211)	(72,857)	(74,186)	(80,425)	(74,843)	(544,909)
Operating cash flow	14,213	53,763	85,971	59,324	57,995	51,110	28,018	350,393
Professional fees	(265,224)	(108,169)	(93,637)	(93,637)	(93,637)	(93,637)	(46,818)	(794,758)
Net cash flow	(251,010)	(54,405)	(7,666)	(34,313)	(35,642)	(42,527)	(18,801)	(444,365)
Opening Cash Balance	50,000	98,990	44,584	36,918	2,605	66,963	24,436	50,000
Net Cash Flow	(251,010)	(54,405)	(7,666)	(34,313)	(35,642)	(42,527)	(18,801)	(444,365)
Receiver's Borrowings	300,000	-	-	-	100,000	-	-	400,000
Closing Cash Balance	98,990	44,584	36,918	2,605	66,963	24,436	5,635	5,635

24. The Cash Flow Forecast, which is premised on the Legal Owner continuing to perform financially in a manner consistent with that of the last three (3) months, forecasts the following:
 - (a) total receipts of approximately \$0.9 million, related to collections of monthly rent; and
 - (b) total operating disbursements and professional fees of approximately \$1.3 million, related to payments to suppliers and property management in order to manage and maintain the Properties and the fees and disbursements of the Receiver, Blakes (in its capacity as counsel to the Receiver) and Norton Rose.
25. The Cash Flow Forecast assumes that no sales of the Real Properties occur during the Forecast Period. In the event that one or both of the Real Properties are sold, the operating cash flows will be revised accordingly and reported to the Court.
26. The Cash Flow Forecast indicates that the Legal Owner will not generate sufficient liquidity to fund operations and these proceedings going forward.
27. The Proposed Receiver understands that certain of the Real Properties may require material capital expenditures. For the purposes of the Cash Flow Forecast, such expenditures have been excluded. If

appointed, the Receiver will obtain further information and determine what, if any such capital expenditures are required.

VII. FUNDING REQUIREMENTS

28. The Proposed Receiver understands that the Applicants are prepared to fund the Legal Owner's cash requirements throughout the Forecast Period in order to allow the Receiver to thoroughly market the Real Properties for sale, should the Court see fit to grant the Appointment Order.
29. As shown in the Cash Flow Forecast, it is estimated that commencing immediately after the granting of the Appointment Order, the Legal Owner will require additional liquidity, with required borrowings increasing in each successive month such that total required borrowings reach approximately \$400k by December 31, 2021. Accordingly, it is vital that the Receiver (if appointed) have the ability to borrow additional funds to continue operating the Legal Owner's business – maintaining the Real Properties and preserving their value – while a sale process is devised and implemented. The Proposed Receiver understands that the Applicants are prepared to provide such funding pursuant to the Receiver Term Sheet.
30. As further outlined in the Cash Flow Forecast, it is anticipated that the Receiver will require approximately \$300k as an initial advance immediately following the granting of the Appointment Order.
31. A copy of the proposed Receiver Term Sheet is attached hereto as **Appendix "C"**. Key terms are as follows:
 - (i) purpose: fund the costs of the receivership proceedings, in accordance with the Cash Flow Forecast and as otherwise agreed to between the Applicants and the Receiver;
 - (ii) availability: up to \$500k;
 - (iii) interest rate: 8.95% (compounded annually);
 - (iv) expenses: the Applicants are entitled to reimbursement of all of their reasonable costs and expenses in connection with the Receiver Term Sheet;
 - (v) repayment: upon the realization of net proceeds from the sale of the Real Properties, in accordance with the Appointment Order and the Receiver's Borrowings Charge (as defined in the Appointment Order) or any subsequent orders of the Court;

- (vi) term: initial 6-month period ending February 3, 2022. Prior to expiry, the Applicants shall determine, at their sole discretion (in consultation with the Receiver), whether they are prepared to provide any additional borrowing availability that may be required for the purposes of continuing to pursue a sale process if necessary at that time;
- (vii) events of default: the occurrence of any one or more of the following constitutes an “Event of Default”:
 - a. any termination of the stay of proceedings contained in the Appointment Order;
 - b. any termination of the appointment of the Receiver; or
 - c. any order issued by the Court:
 - 1. granting any other claim or lien in respect of the Real Properties that is *pari passu* with or in priority to the Receiver’s Borrowings Charge;
 - 2. modifying the Receiver Term Sheet, without the prior written consent of the Applicants;
 - 3. approving any sale of the Real Properties (or any portion thereof) without the prior written consent of the Applicants which does not provide for sufficient proceeds to fully repay all of the Obligations (as defined in the Receiver Term Sheet); and
 - 4. reversing, modifying, staying or amending the Appointment Order without the written consent of the Applicants; and
- (viii) security: the Receiver’s Borrowings Charge, being a charge over all of the Real Properties, which charge is in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person (as defined in the Appointment Order) but subordinate in priority to the Receiver’s Charge (as defined in the Appointment Order) and the charges set out in S 14.06(7), S 81.4(4), and S 81.6(2) of the BIA.

32. The Proposed Receiver is of the view that the proposed quantum of borrowings pursuant to the Receiver Term Sheet is reasonable based on the Cash Flow Forecast, providing some excess availability for dealing with any unanticipated matters. Further, the Proposed Receiver is of the view that the economic terms of the Receiver Term Sheet are reasonable in the circumstances. The Proposed

Receiver notes that an Event of Default gives the Applicants the ability to terminate the facility – even if there is remaining undrawn availability at that date – which could create an inability on the part of the Receiver to fund certain post-filing obligations, unless and until the Real Properties are monetized (the Receiver has a first ranking priority charge over the Real Properties to secure the Receiver’s fees and disbursements, the value of which are expected to significantly exceed the borrowing limit).

33. The Proposed Receiver is of the view that – based on the key economic terms of other super priority (i.e. DIP) loans approved by various Canadian Courts during 2021 to date (a list of which is attached hereto as **Appendix “D”**) – the annual interest rate of 8.95% contemplated in the Receiver Term Sheet is reasonable in the circumstances and on the lower range of DIP loans reviewed.

34. The Proposed Receiver notes that a substantially similar funding term sheet was approved by this Honourable Court in the Southmount Et Al. receivership proceedings.

All of which is respectfully submitted this 26th day of July, 2021.

KPMG Inc.
In its capacity as Proposed Receiver of
Victoria Avenue North Holdings Inc.

And not in its personal or corporate capacity

Per:



Nick Brearton
CPA, CA, CIRP, LIT
President



George Bourikas
CPA, CA, CIRP, LIT
Vice President