

District of: Ontario
Division No. 08 - Waterloo
Court No. 35-2934066
Estate No. 35-2934066

TRUSTEE'S PRELIMINARY REPORT
IN THE MATTER OF THE BANKRUPTCY OF
HIRA CUSTOM HOMES INC.

Trustee: MNP Ltd.

SECTION A - Background

Hira Custom Homes Inc. (“Hira” or the “Company”) was incorporated in June 2000 and operated as a residential home builder throughout Southwestern Ontario. Kamal Hira (“Kamal”) was the sole registered director. The head office was in Cambridge, Ontario.

The latest externally prepared financial statements are for the year ended December 31, 2019. These statements reflect a net loss for 2019 of \$809,000, a loss of \$282,000 in 2018 and a retained earnings deficit of \$3.4 million. There are no financial statements, external or internal, available since that date. The Trustee has written the external bookkeeper to enquire about what additional records they have available.

The Company attributes its financial difficulty to delays in getting building permits due to the Covid 19 pandemic and resulting lockdowns. While it was taking longer to start the builds costs were increasing. Kamal reports that homes that were being sold for \$200 per square foot were costing \$350-\$400 per square foot to build. The Company was incurring significant losses on every house built and ran out of cash, including more than \$1.6 million in deposits received for homes yet to be built. Operations began to wind down in the Summer of 2022. Hira worked to finish projects it had started, in some cases negotiating higher prices to cover the inflated costs. The final properties were sold with partially completed homes in December 2022 and the proceeds of sale were used to pay down the mortgages. There was no surplus available to Hira.

Being unable to carry on operations the Company shut down operations completely in December 2022. An assignment in bankruptcy was made on April 18, 2023 and MNP Ltd. was appointed as trustee. (the “Trustee”).

CLASS I - Stocks of merchandise

There was no inventory owned by the Company.

CLASS II - Plant, machinery, equipment, and office

There was no equipment owned by the Company at the time of bankruptcy.

CLASS III - Buildings and real estate

The Company owns the vacant land at 10A Knevelt Place (the “Property”). There is no appraisal available, according to Kamal the expected value of the Property is \$525,000. There are two mortgages registered against the Property. The first to Eden Park Holdings (“Eden”) for \$383,615 and the second to Shab Holdings Ontario Inc. (“Shab”) for \$250,000. We understand Shab is owned by Kamal’s son and this second mortgage was previously held by an unrelated third party but assigned to Shab.

The Trustee has not yet received a claim or security documents from either mortgagee. The Trustee has spoken with legal counsel to Eden who is awaiting confirmation of any statutory deemed trusts owing to CRA before deciding how to proceed with its security. The Trustee has issued notice to Shab under subsection 128(1) of the *Bankruptcy and Insolvency Act* requiring proof of its claim and security.

There is also a Certificate of Pending Litigation registered against the Property.

The Trustee will review the security documents once received. A legal opinion on the validity and enforceability of same may be required. If it is determined the two mortgages are valid and enforceable the Trustee will release its interest in the Property to Eden and allow it to liquidate same under power of sale. If the Trustee is not satisfied with the validity and enforceability of either mortgage, options to dispute same will be reviewed with the inspectors appointed at today's meeting.

CLASS IV - Books and records

The Trustee has taken possession of the books and records available and required to administer the bankruptcy.

CLASS V - Other assets

Vehicles

There were four vehicles leased from Halton Auto Lease ("Halton") at the time of bankruptcy. Halton has filed a proof of claim in the bankruptcy confirming the buyouts owing on each lease. Based on average black book value the Trustee believes there may be equity over and above the buyout amounts. The Trustee has advised Halton of its position that this equity should be paid into the bankruptcy estate. Halton disputes this position and believes it is entitled to retain same as ownership of all four vehicles was in its name. Halton advises it does not intend to sell these vehicles but will re-lease them.

The Trustee understands these vehicles are in the possession of Halton. The Trustee believes legal counsel may be required to review the Halton leases and confirm legal entitlement to the equity in these vehicles, if any. This will be discussed further with the inspectors appointed at today's meeting.

Receivables

There are four liens registered under the *Construction Act* totaling approximately \$1,052,000. These liens are for projects worked in by Hira in 2021 and early 2022. These lien actions were being pursued by Hira's former legal counsel, Duncan Linton LLP ("Duncan") who we understand is owed for unpaid professional fees. The Trustee spoke with Duncan who has undertaken to provide a status report of the lien actions.

Property of Bankruptcy not divisible amongst creditors by virtue of Section 67(b), of the Bankruptcy and Insolvency Act

None known.

Property placed under the guardianship of the Company

None known.

SECTION B

1. Conservatory and protective measures

The business was shut down prior to bankruptcy. The Trustee has taken no conservatory or protective measures.

2. Carrying on business

The business was shut down prior to bankruptcy

SECTION C - Legal proceedings

The Trustee is aware of three legal actions, all of which have been stayed by the bankruptcy. In two actions former customers are suing Hira for incomplete and deficient work and Hira has counterclaimed. In the third action Hira is the plaintiff and the former customer has issued a counter claim, also for deficient and incomplete work. The Trustee will discuss these actions and how to proceed with each with the inspectors appointed at today's meeting.

SECTION D - Provable claims

	As per Statement of Affairs	Claims Received to Date
Unsecured	\$3,939,979	\$3,645,851
Preferred	\$4,000	Nil
Secured	\$633,615	\$160,126
Deemed trust	Nil	Nil
Total	\$4,577,594	\$3,616,977

SECTION E - Secured creditors

The Toronto-Dominion Bank and the Corporation of the City of Waterloo have general security registered against all assets of Hira; however, we are advised there is nothing owing to either creditor.

Halton Auto Lease has numerous equipment leases registered, as discussed above.

The following registrations/charges appear on the title search for the Property:

- Eden Park Holdings Inc. - \$975,000
- Shab - \$320,000
- Jayeshkumar Modi - Certificate of Pending Litigation

SECTION F - Anticipated realizations and projected distribution

There will only be a distribution if the Trustee is able to realize on the vehicle equity, the construction liens, any equity in the Property, or any other asset. The Trustee is not yet able to predict the likelihood of this, or possible recovery amounts.

SECTION G - Reviewable transactions and preferential payment

The Trustee has reviewed the bank statements and financial activity for the twelve month's preceding bankruptcy and identified the following possible preference payments or reviewable transactions

Shareholder Withdrawals

Kamal withdrew approximately \$238,000 during the year preceding bankruptcy. Kamal advises this was normal compensation and would be accounted for as a repayment of his shareholder loan.

Family Member Home

Funds were identified as costs paid by Hira build a home for Kamal's family member. Kamal advises these funds were repaid by the family member. The Trustee has requested evidence of the repayment.

Shab Promissory Note

In 2021 Hira sold 670 shares of Mitchell Woods Inc. (the "Shares"), which represented 50% ownership, to Shab. Shab agreed to pay Hira \$917,698 for the shares and issued a promissory note (the "Promissory Note") for that amount. On March 3, 2023, Shab, Hira, Kamal, Baljit Hira, Amrit Hira, and 2750707 Ontario Inc. ("2750707") entered into another share purchase agreement (the "Transaction") for the Shares. As at the Transaction date the amount due under the Promissory Note including interest was approximately \$1,002,000. Pursuant to the Agreement the Shares

were transferred to 2750707. As a result of the Transaction the Promissory Note was settled in full and in exchange, various obligations owed by Hira were assumed by Shab, including:

- \$336,721 owing to Ivan Pecarski (who we understand is the principal of 2750707);
- \$478,325 owing to Mitchell Woods Inc.;
- \$500,000 (i.e., the value of three lots) owing to Jason Brubacher; and,
- \$174,923 owing to Tarion.

The total value of the assumed debt was \$1,489,978, which is greater than the amount due under the Promissory Note. The Trustee has requested evidence of these amounts that were owing by Hira and intends to investigate the Transaction further to assess whether, in its opinion, the Transaction should be considered a Preference or Reviewable Transaction as defined in Section 95 of the *Bankruptcy and Insolvency*. The results of this investigation will be reviewed with Inspectors appointed at today's meeting.

SECTION H - Other matters

The Trustee has received a deposit of \$25,000 from Kamal to cover the fees and disbursements of the bankruptcy.

Dated at London, Ontario this 9th day of May, 2023.

MNP Ltd.
Licensed Insolvency Trustee of
Hira Custom Homes Inc.



Per: Rob Smith CPA, CA, CIRP, LIT
Senior Vice-President

Waterloo
Court No. **35-2934066**
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IN THE MATTER OF THE BANKRUPTCY OF
HIRA CUSTOM HOMES INC.

Carrying on business in the City of Cambridge,
in the Province of Ontario

TRUSTEE'S PRELIMINARY REPORT

MNP Ltd.
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