

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

B E T W E E N :

**HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO**

Applicant

- and -

**APARTMENTS FOR LIVING FOR PHYSICALLY HANDICAPPED ASSOCIATION**

Respondent

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**FACTUM OF THE APPLICANT,  
HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO**

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July 3, 2018

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TO: **APARTMENTS FOR LIVING FOR  
PHYSICALLY HANDICAPPED ASSOCIATION**  
3185 Forest Glade Drive  
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**PART I: OVERVIEW**

1. Her Majesty the Queen in right of Ontario (“**Ontario**”) seeks orders winding up and appointing a receiver and liquidator over the assets of the respondent corporation, Apartments for Living for Physically Handicapped Association (“**ALPHA**”).
2. ALPHA, a non-profit corporation, was established under the *Corporations Act*<sup>1</sup> to operate a residential housing project for individuals with special needs. In 1994, all of ALPHA’s directors and members resigned in response to a legislative change which they disagreed with. ALPHA has not had any directors, officers or members since that time and has ceased to function as a corporation.
3. Ontario provided for the operation of ALPHA’s housing project from 1994 until 2012, when residents were moved elsewhere. Ontario continues to pay ALPHA’s expenses, including mortgage and property management costs for the now vacant property.
4. Ontario seeks orders for appointment of a receiver and liquidator and for a winding-up of ALPHA to dispose of ALPHA’s assets to pay down its debt; distribute any remaining proceeds to charity; and for the property to be sold for a productive use.

**PART II: FACTS****A. ALPHA and the Housing Project**

5. ALPHA is a corporation without share capital incorporated by Letters Patent issued December 17, 1971 pursuant to the *Corporations Act*.<sup>2</sup>

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<sup>1</sup> R.S.O. 1990, c.C-38 (the “*Corporations Act*”).

<sup>2</sup> Affidavit of Miriam Johnston, sworn April 12, 2018, Application Record at Tab 2 (“**Johnston Affidavit**”) at para. 3

6. ALPHA was formed for the purpose of operating a residential housing project providing housing and attendant care services for low and moderate income individuals with special needs (the “**Housing Project**”).<sup>3</sup>
7. ALPHA’s Letters Patent require that the company operate “without the purpose of gain for its members”. Any profits or other accretions to ALPHA must be used to promote its objects. Upon ALPHA’s dissolution, after the payment of all debts and liabilities, its remaining property must be distributed or disposed of to charitable organizations in Ontario.<sup>4</sup>
8. On June 30, 1977, ALPHA acquired the property located at 3185 Forest Glade Drive in Windsor, Ontario (the “**Premises**”). ALPHA operated the Housing Project at the Premises, providing housing and attendant care services to up to 23 residents in a building containing 13 apartment units.<sup>5</sup>
9. ALPHA’s sole activity since its formation was the management and operation of the Housing Project and the provision of the attendant care program at the Premises.<sup>6</sup>

## **B. History of Control of the Premises**

### ***Proposed Changes to the LTA***

10. On November 23, 1993, Ontario’s Minister of Housing introduced proposed amendments to the *Landlord and Tenant Act* (“**LTA**”) which would extend various protections under the LTA to residents of the Housing Project. Among other things, the amendments

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<sup>3</sup> *Ibid.* at para. 15

<sup>4</sup> *Ibid.* at paras. 16 – 18; Letters Patent of ALPHA, dated December 17, 1971, Application Record, Tab 2B at pg. 50

<sup>5</sup> Johnston Affidavit at paras. 21 - 22

<sup>6</sup> *Ibid.* at para. 3

would require written tenancy agreements for the residents which set out the terms upon which care, meals and charges for the services were being provided.<sup>7</sup>

***Planned Termination of Services by ALPHA in March 1994***

11. ALPHA's board of directors strenuously objected to the proposed amendments. Among other things, board members argued that the company would not be able to alter the care being provided to meet the changing needs of its residents without each resident's consent. The board believed that the proposed amendments were "incompatible with the Government's attendant care program".<sup>8</sup>
12. On December 1, 1993, as a result of these concerns, ALPHA's board of directors advised the Housing Project residents that it had decided to terminate its attendant care program effective March 31, 1994.<sup>9</sup>

***Ontario's efforts to Transfer Responsibility for the Housing Project***

13. On February 3, 1994, Ontario advised ALPHA that arrangements had been made for the Association for Persons with Physical Disabilities of Windsor and Essex County ("APPD") to provide attendant care services to residents of the Housing Project effective April 1, 1994.<sup>10</sup>
14. Discussions between ALPHA and APPD regarding the transfer of responsibility for the Housing Project, including lease negotiations, were not productive.<sup>11</sup>

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<sup>7</sup> *Ibid.* at paras. 23 – 24; Note: The amendments received Royal Assent on May 31, 1994.

<sup>8</sup> *Ibid.* at paras. 25 – 26; Letter from Charles Gascoyne, dated April 5, 1994, Application Record, Tab 2E ("**Gascoyne Letter**") at pg. 97

<sup>9</sup> Johnston Affidavit at para. 7; Gascoyne Letter at pg. 98 – 99.

<sup>10</sup> *Ibid.*;

<sup>11</sup> *Ibid.*; Gascoyne Letter at pg. 107 – 113

15. On March 30, 1994, in order to ensure that residents of the Housing Project continued to receive proper care, Ontario passed O. Reg. 191/94 (the “**Regulation**”), which designated ALPHA as subject to the control of the Minister of Community and Social Services.<sup>12</sup>
16. The Regulation, which was made pursuant to section 13 of the *Ministry of Community and Social Services Act*, authorized the Minister to operate and manage ALPHA and to occupy and operate, or arrange for the occupation and operation, of any premises used by ALPHA by a designated person or organization.<sup>13</sup>
17. This authority under the Regulation was transferred to the Minister of Health pursuant to an Order in Council issued on the same day.<sup>14</sup> This authority was extended for a further six months on March 29, 1995, pursuant to another Order in Council.<sup>15</sup>

#### ***Transfer of Responsibility to the Windsor Housing Authority***

18. On March 31, 1994, after further attempts to resolve the dispute with ALPHA were unsuccessful, then Minister of Health Ruth Grier advised Patricia Clancy, ALPHA’s president, that she had designated the Windsor Housing Authority to operate and manage the Housing Project at the Premises pursuant to her authority under the Regulation.<sup>16</sup>
19. Minister Grier noted that the arrangement was an interim one and that it did not affect ALPHA’s status as owner of the Premises. The Minister also noted that the action was

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<sup>12</sup> Johnston Affidavit at paras. 5 and 28; O. Reg. 191/94, Exhibit “I” to the Johnston Affidavit, Tab 2I at pg. 131

<sup>13</sup> *Ibid.*

<sup>14</sup> Order In Council 781/94, dated March 30, 1994, Exhibit “J” to the Johnston Affidavit, Tab 2J at pg. 134

<sup>15</sup> Order In Council 799/95, dated March 29, 1995, Exhibit “N” to the Johnston Affidavit, Tab 2N at pg. 156

<sup>16</sup> Johnston Affidavit at paras. 28 to 34; Letter from Minister Grier to Patricia Clancy, dated March 31, 1994, Exhibit “G” to the Johnston Affidavit, Application Record at Tab 2G; Letter from Minister Grier to the Windsor Housing Authority, dated March 31, 1994, Exhibit “K” to the Johnston Affidavit, Application Record at Tab 2K

necessary because ALPHA's actions "could compromise the health and safety" of the residents.<sup>17</sup>

### ***Resignation of ALPHA's Board of Directors and Members***

20. On July 20, 1994, Lynn Fitzsimmons, the acting President of ALPHA, wrote to Minister Grier to take issue with the government's actions. Ms. Fitzsimmons advised Minister Grier that the interim arrangement was continuing without any movement toward restoring ALPHA's position and that ALPHA had not received information about the use of the Premises or the status of ALPHA's finances.<sup>18</sup>
21. Ms. Fitzsimmons further advised Minister Grier that ALPHA's remaining board members did not believe the Minister intended to end the interim arrangement. She advised the Minister that the board members would all be resigning and that she could expect resignation letters from each individual board member.<sup>19</sup>

### ***Operation of the Premises from 1997 to 2018***

22. The Windsor Housing Authority managed and operated the Housing Project until 1997. Thereafter, the Regional Office of the Ministry of Health entered into an agreement with Marwick Property Management (now known as Larlyn Property Management, "**Larlyn**") to manage the Premises. The agreement with Larlyn remains in place on a month to month basis.<sup>20</sup>

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<sup>17</sup> *Ibid.*

<sup>18</sup> Johnston Affidavit at para. 35; Letter from Lynn Fitzsimmons to Minister Grier, dated July 20, 1994, Exhibit "L" to the Johnston Affidavit, Application Record at Tab 2L

<sup>19</sup> *Ibid.*

<sup>20</sup> Johnston Affidavit at para. 41; Management Agreement between Larlyn and Ontario, dated June 17, 1998, Exhibit "O" to the Johnston Affidavit, Application Record at Tab 2O

23. In 2009, it was determined that the Premises were no longer suitable for providing accommodation to physically disabled persons. A 2010 architectural feasibility study estimated the costs of renovating the Housing Project to meet current standards and the needs of clients to be \$3.195 million.<sup>21</sup>
24. In 2012, the residents of the Housing Project were moved to other accommodations. The Premises has been vacant since then. Ontario continues to control ALPHA's affairs and to fund ALPHA's expenses, including the cost of property management at the Premises. There has recently been crime at the Premises, including smashed windows, a break-in, and the theft of cameras.<sup>22</sup>
- C. ALPHA has no directors, officers or members and has not operated since 1994**
25. Inquiries conducted by Ontario in preparation for this proceeding indicate that ALPHA has no directors, officers or members and that ALPHA has not operated since 1994.<sup>23</sup>
26. In September 2017, Ms. Fitzsimmons, ALPHA's former president, confirmed that all of the directors of ALPHA resigned in 1994. Ontario has located resignation letters for six of ALPHA's directors from April 1994.<sup>24</sup>
27. There are a further nine individuals who appear to have been directors in 1994 and for whom Ontario has not been able to locate a written resignation. Ontario has made efforts

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<sup>21</sup> Johnston Affidavit at para. 47

<sup>22</sup> *Ibid.* at paras. 11, 40 and 47 – 48

<sup>23</sup> *Ibid.* at paras. 49 – 59

<sup>24</sup> *Ibid.* at paras. 51 – 54



to contact these directors: one is deceased; four advised they had resigned; three could not be located; and one did not respond to Ontario's inquiries.<sup>25</sup>

28. Charles Gascoyne, another former president of ALPHA, advised Ontario that as far as he recalls ALPHA's only members were its directors at the time of his resignation in April 1994.<sup>26</sup>
29. Out of an abundance of caution, Ontario reviewed ALPHA's available Member Registers, covering the 1971 to 1981 period, and identified 122 individuals who were members of ALPHA.<sup>27</sup>
30. Through 411 and internet searches, it was determined that 18 of these individuals are deceased; 21 appear to be deceased; 11 were confirmed not to be members; and the remaining 72 individuals could not be located.<sup>28</sup>
31. ALPHA's available corporate records include Minutes from annual and general meetings spanning the periods of 1973 to 1975 and 1977 to 1993. There are no Minutes of meetings of directors or members of ALPHA after 1993.<sup>29</sup>
32. The last document filed by ALPHA with the Ministry of Government and Consumer Services was a Special Notice Form 1 under the *Corporations Information Act*, R.S.O.

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<sup>25</sup> *Ibid.*

<sup>26</sup> *Ibid.* at paras. 55 – 57; E-mail from Charles Gascoyne to Carole McKeogh, dated December 4, 2017, Exhibit "S" to the Johnston Affidavit, Tab 2S

<sup>27</sup> *Ibid.*

<sup>28</sup> *Ibid.* at para. 58

<sup>29</sup> *Ibid.* at para. 49

1990, c. C.39 (the “CIA”), dated February 1, 1994. ALPHA has not filed the annual return required under the CIA since then.<sup>30</sup>

#### **D. ALPHA’s Financial Status**

##### *CMHC Mortgage*

33. ALPHA is subject to the Non-Profit “Low Rental” Housing Program (the “**Housing Program**”), the administration of which was transferred from the federal government to Ontario under the Social Housing Agreement with Canada Mortgage and Housing Corporation (“**CMHC**”), dated November 15, 1999 (the “**SHA**”).<sup>31</sup>
34. ALPHA has an outstanding mortgage with CMHC (the “**CMHC Mortgage**”) under the Housing Program. Pursuant to the SHA, Ontario is required to indemnify CMHC for losses, costs and expenses it incurs under the CMHC Mortgage.<sup>32</sup>
35. To prevent a default which would accelerate the full amount owing under the CMHC mortgage to become due, Ontario has been paying down the CMHC Mortgage and has kept it in good standing since 1994.<sup>33</sup>

##### *ALPHA’s Assets and Liabilities*

36. Based on unaudited financial statements prepared by Larlyn, as of February 28, 2018 ALPHA had **\$1,153,785** in assets, including an operating cash account containing **\$343,227**; reserve investments of **\$141,478**; and capital assets valued at **\$428,370**.<sup>34</sup>

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<sup>30</sup> *Ibid.* at para. 50

<sup>31</sup> *Ibid.* at paras. 8, 42 - 46

<sup>32</sup> *Ibid.*

<sup>33</sup> *Ibid.* at para. 9

<sup>34</sup> *Ibid.* at paras. 60 – 62; Financial Report for the Fiscal Month Ending February 28, 2018, Exhibit “T” to the Johnston Affidavit (“**Financial Report**”), Tab 2T

37. Ontario is paying approximately **\$14,616** per month to cover ALPHA's ongoing expenses and liabilities, including the CMHC Mortgage. These payments totalled **\$156,511** for the 12-month period ending in February 2018. ALPHA also receives grants from the federal government, which totalled **\$8,244** for the same 12-month period. ALPHA has no other sources of revenue.<sup>35</sup>
38. ALPHA's primary creditor is CMHC. The CMHC Mortgage is dated December 18, 1980 with an interest rate of 9 3/8% per annum and a term of 50 years. The CMHC Mortgage is secured by a charge for **\$790,987**, registered against the Premises on December 30, 1980. The amount payable to discharge the CMHC Mortgage as of April 1, 2018 is **\$613,798**, including a **\$146,092** pre-payment penalty.<sup>36</sup>
39. Ontario advanced **\$239,600** to ALPHA for capital purposes ("**Capital Reserve Fund**") in 2012. These funds were advanced on a one-time, project-specific basis and were to be used for ceiling removal, insulation, lighting, smoke detectors, duct dampening, painting and, flooring. These funds were not spent as the decision was made shortly thereafter to move the residents to other premises.<sup>37</sup>
40. While the funds were advanced on the basis that there would be no requirement for repayment, given that ALPHA is no longer operating Ontario takes the position that the funds should be returned.<sup>38</sup>

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<sup>35</sup> Johnston Affidavit at paras. 11 and 60 – 62; Financial Report at pg. 221

<sup>36</sup> Johnston Affidavit at paras. 63 – 64; CMHC Statement of Account, dated March 13, 2018, Exhibit "V" to the Johnston Affidavit, Tab 2V

<sup>37</sup> Johnston Affidavit at paras. 65 – 66; Letter from S. Fitzpatrick, dated March 16, 2012, Exhibit "X" to the Johnston Affidavit, Tab 2X

<sup>38</sup> *Ibid.*; MOHLTC Directive 05-03, dated October 26, 2005, Exhibit "W" to the Johnston Affidavit, Tab 2W

**PART III: LAW & ARGUMENT**

41. The *Corporations Act* and the *Courts of Justice Act*<sup>39</sup> each provide this Court with the authority to grant the requested orders on the basis that they are just and equitable.

**A. Authority to order the winding up of ALPHA**

42. Section 243(d) of the *Corporations Act* provides the Court with the authority to wind up a corporation where it is of the opinion that “it is just and equitable for some reason, other than the bankruptcy or insolvency of the corporation that it should be wound up.”

43. Section 244 of the Act limits who may bring an application for a winding up order. Where the application is made on an involuntary basis, it may be made by the corporation, a shareholder, or a member. Where the application is made on a voluntary basis, it may be made by a liquidator, a contributory or a creditor.

44. Judicial consideration of section 244 has been sparse. In *Singh v. Sandhu*, in the context of a dispute between competing groups of members and directors of a Sikh temple, Justice Brown of this Court held that he did not have the authority under section 243 and 244 of the *Corporations Act* to wind up the company absent a request by a member.<sup>40</sup>

45. However, in *Bank of Montreal v. Owen Sound Golf and Country Club, Ltd.*, Justice Brown granted an application by a receiver for an order winding up the respondent corporation despite a receiver not being amongst the parties expressly authorized to seek a winding up order under section 244.

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<sup>39</sup> R.S.O. 1990, c C.43

<sup>40</sup> *Singh v. Sandhu*, 2013 ONSC 3230 at para. 120

46. Justice Brown noted that the receiver had been appointed after the corporation's board of directors resigned *en masse* and was authorized to manage, operate and carry on the corporation's business in concluding that the receiver was entitled to bring the application, despite the express language of section 244, noting:

Section 244(1) of the *Corporations Act* authorizes a corporation to apply to court for a winding-up order. It is well settled that a court possesses the power to authorize a receiver to file an assignment in bankruptcy or consent to a bankruptcy order. In my view the same logic applies to the power of the court to authorize a court-appointed receiver to apply to wind-up a company.<sup>41</sup>

47. While it is not referenced in Justice Brown's decision, Ontario submits that section 245 of the *Corporations Act* authorizes the Court the authority to grant a winding up order upon the application of a party who is not amongst those listed in section 244.

48. Section 245 provides the Court with the broad authority to make any order which it considers just in response to such an application:

245. The court may make the order applied for, may dismiss the application with or without costs, may adjourn the hearing conditionally or unconditionally or **may make any interim or other order as is considered just**, and upon the making of the order may, according to its practice and procedure, refer the proceeding for the winding up and may also delegate any powers of the court conferred by this Act to any officer of the court. [emphasis added]

49. Section 245 tracks the language of section 209 of the *Business Corporations Act* ("*OBCA*"). It has been held that the Court's authority under section 209 is informed by the "just and equitable" jurisdiction for granting a winding up order under section

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<sup>41</sup> *Bank of Montreal v. Owen Sound Golf and Country Club, Ltd.*, 2012 ONSC 557 at paras. 6 - 7

207(1)(b)(iv) of the *OBCA*, which reflects the language of section 243(d) of the *Corporations Act*.<sup>42</sup>

**B. Authority to appoint a receiver and liquidator**

50. If the Court makes an order authorizing the winding up of ALPHA, the Court may appoint a liquidator pursuant to section 246(1) to carry out the winding up and to distribute ALPHA's property. Further, the Court has the authority to appoint a receiver and manager on an interlocutory basis pursuant to section 101 of the *Courts of Justice Act* if it appears just or convenient to do so.
51. Justice Myers recently reviewed the considerations governing the appointment of an interlocutory receiver in *Royal Bank of Canada v. CFNDRS Inc.* Of relevance to this proceeding, the Court "must have regard to all of the circumstances but in particular the nature of the property and the rights and interests of all parties in relation thereto".<sup>43</sup>
52. The Court is also to consider whether the appointment is necessary to enable the receiver to carry out its work and duties more efficiently. It is not essential for the moving party to establish that it will suffer irreparable harm if a receiver is not appointed.<sup>44</sup>
53. After reviewing the factors in the context of a creditor with a contractual right to appoint a receiver, Justice Myers concluded, "context is everything and each case turns on its own facts".<sup>45</sup>

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<sup>42</sup> *Liptay v. Liptay-Burghardt*, [2016] 2016 ONSC 3638 (S.C.J.) at paras. 24 - 26

<sup>43</sup> *Royal Bank of Canada v. CFNDRS Inc.*, 2017 ONSC 7661 at paras. 8 - 10

<sup>44</sup> *Ibid.*

<sup>45</sup> *Ibid.* at para. 10

**C. The requested orders are just and equitable**

54. Orders winding up ALPHA and appointing a receiver and liquidator would be just and equitable, as well as convenient, given the unique circumstances of this case.
55. In particular, these orders are just and equitable because they will:
- (a) bring about the formal end of ALPHA, a corporation that effectively ceased to function in 1994 when all of its directors and members resigned;
  - (b) allow for the Premises, which has been vacant since 2012, to be sold and returned to productive use;
  - (c) provide for the payment of ALPHA's primary creditor, CMHC, which has consented to this proceeding; and,
  - (d) allow Ontario to cease paying ALPHA's expenses, a circumstance which began in 1994 in order to ensure the well-being of ALPHA's residents, and which is no longer warranted now that the residents have been moved and the Premises is vacant.
56. ALPHA has no shareholders or members and there does not appear to be any party which would have an interest in ALPHA not being wound up. In particular, ALPHA's Letters Patent are clear that upon its distribution and the payment of its debts, ALPHA's remaining property must be distributed or disposed of to charities within Ontario.
57. It is in the context of these factors that Ontario asks this Honourable Court to exercise its discretion under section 245 to grant the winding up order pursuant to section 243(d).

58. As was the case with the receiver in *Bank of Montreal v. Owen Sound Golf and Country Club, Ltd.*, discussed above, while Ontario is ostensibly standing in ALPHA's shoes, including managing its affairs and paying its expenses, it is not expressly authorized by section 244 to seek an order winding up the company.
59. Save and except for the Court's exercise of its discretion under section 245, there is no prospect of ALPHA being wound up. ALPHA has no shareholders or members who could apply to wind up the company on an involuntary basis. This lack of shareholders or members also means that it is impossible for a liquidator or creditor to apply for a voluntary winding up order, as there is no one to vote to consent to such an application.
60. The circumstances warrant a just and equitable resolution. An order winding up ALPHA pursuant to section 245 would resolve this impasse.
61. Similarly, the appointment of a receiver and liquidator represents the most convenient and cost-effective process for ensuring the orderly disposition of ALPHA's assets and the winding up of its affairs. In lieu of the relief sought by Ontario in the within application, there is no other prospect of this happening and, given ALPHA's circumstances, the appointment of a receiver and liquidator would be just, equitable and convenient.

**D. The proposed receiver and liquidator**

62. RSM Canada Limited ("RSM") has consented to serving as receiver and liquidator if appointed. RSM is independent and objective in relation to ALPHA and has extensive experience in receivership proceedings, including in realizing upon real estate in a liquidation context.



63. Ontario anticipates that RSM will sell the Premises; apply the sale proceeds and, if necessary, other available funds towards payout of the CMHC Mortgage and ALPHA's other liabilities; identify any funds or assets that may be subject to legacy or other conditions and deal with them as appropriate, or as the court may direct. To the extent there is any remainder, RSM intends to dispose of such assets to appropriate Ontario charities as provided for in the Letters Patent, or as the Court may direct.

**PART V: ORDER REQUESTED**

64. Ontario therefore requests an order pursuant to section 101 of the *Courts of Justice Act* and section 246(1) of the *Corporations Act* appointing RSM as receiver and liquidator; and an order pursuant to section 243(d) of the *Corporations Act* winding up the respondent, ALPHA.

**ALL OF WHICH IS RESPECTFULLY SUBMITTED**

July 3, 2018

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Antonin Pribetic and Ananthan Sinnadurai

Lawyers for the Applicant,  
Her Majesty the Queen in right of Ontario

**Schedule “A”: Authorities Cited**

1. *Singh v. Sandhu*, 2013 ONSC 3230 (S.C.J.)
2. *Bank of Montreal v. Owen Sound Golf and Country Club, Ltd.*, 2012 ONSC 557 (S.C.J.)
3. *Liptay v. Liptay-Burghardt*, 2016 ONSC 3638 (S.C.J.)
4. *Royal Bank of Canada v. CFNDRS Inc.*, 2017 ONSC 7661 (S.C.J.)

## Schedule “B”: Legislation Cited

### ***Corporations Act, R.S.O. 1990, c C.38***

#### **Winding up by court**

**243** A corporation may be wound up by order of the court,

- (a) where the shareholders or members by a majority of the votes cast at a general meeting called for that purpose pass a resolution authorizing an application to be made to the court to wind up the corporation;
- (b) where proceedings have been begun to wind up voluntarily and it appears to the court that it is in the interest of contributories and creditors that the proceedings should be continued under the supervision of the court;
- (c) where it is proved to the satisfaction of the court that the corporation, though it may be solvent, cannot by reason of its liabilities continue its business and that it is advisable to wind it up; or
- (d) where in the opinion of the court it is just and equitable for some reason, other than the bankruptcy or insolvency of the corporation, that it should be wound up. R.S.O. 1990, c. C.38, s. 243.

#### **Who may apply**

**244** (1) The winding-up order may be made upon the application of the corporation or of a shareholder or of a member or, where the corporation is being wound up voluntarily, of the liquidator or of a contributory or of a creditor having a claim of \$200 or more.

#### **Notice**

(2) Except where the application is made by the corporation, four days notice of the application shall be given to the corporation before the making of the application. R.S.O. 1990, c. C.38, s. 244.

#### **Power of court**

**245** The court may make the order applied for, may dismiss the application with or without costs, may adjourn the hearing conditionally or unconditionally or may make any interim or other order as is considered just, and upon the making of the order may, according to its practice and procedure, refer the proceeding for the winding up and may also delegate any powers of the court conferred by this Act to any officer of the court. R.S.O. 1990, c. C.38, s. 245.

#### **Appointment of liquidator**

**246** (1) The court in making the winding-up order may appoint one or more persons as liquidator of the estate and effects of the corporation for the purpose of winding up its affairs and distributing its property.

### **Remuneration**

(2) The court may at any time fix the remuneration of the liquidator.

### **Vacancy**

(3) If a liquidator appointed by the court dies or resigns or the office becomes vacant for any reason, the court may by order fill the vacancy.

### **Removal of liquidator**

(4) The court may by order remove for cause a liquidator appointed by it, and in such case shall appoint another liquidator. R.S.O. 1990, c. C.38, s. 246.

### **Costs and expenses**

**247** The costs, charges and expenses of a winding up by order of the court shall be assessed by an assessment officer. R.S.O. 1990, c. C.38, s. 247.

### **Commencement of winding up**

**248** Where a winding-up order is made by the court without prior voluntary winding-up proceedings, the winding up shall be deemed to commence at the time of service of notice of the application, and, where the application is made by the corporation, at the time the application is made. R.S.O. 1990, c. C.38, s. 248.

### **Winding up after order**

**249** Where a winding-up order has been made by the court, the winding up of the corporation shall be conducted in the same manner and with the like consequences as provided for a voluntary winding up, except that the list of contributories shall be settled by the court unless it has been settled by the liquidator prior to the winding-up order, in which case the list is subject to review by the court, and except that all steps in the winding up are subject to the order and direction of the court. R.S.O. 1990, c. C.38, s. 249.

[...]

### **No proceedings against corporation after court winding up except by leave**

**251** After the commencement of a winding up by order of the court,

- (a) no action or other proceeding shall be proceeded with or commenced against the corporation; and

(b) no attachment, sequestration, distress or execution shall be put in force against the estate or effects of the corporation, except by leave of the court and subject to such terms as the court may impose. R.S.O. 1990, c. C.38, s. 251.

### **Application of ss. 253 to 265, 268**

**252** Sections 253 to 265 and 268 apply to corporations being wound up voluntarily or by order of the court. R.S.O. 1990, c. C.38, s. 252.

### **Where no liquidator**

**253** (1) If from any cause there is no liquidator, the court may by order on the application of a shareholder or member of the corporation appoint one or more persons as liquidator.

### **Idem**

(2) Where there is no liquidator, the estate and effects of the corporation shall be under the control of the court until the appointment of a liquidator. R.S.O. 1990, c. C.38, s. 253.

### **Consequences of winding up**

**254** (1) Upon a winding up,

- (a) the liquidator shall apply the property of the corporation in satisfaction of all its liabilities proportionately and, subject thereto, shall distribute the property rateably among the shareholders or members according to their rights and interests in the corporation;
- (b) in distributing the property of the corporation, the wages of all employees, apprentices and other wage earners in the employment of the corporation due at the date of the commencement of the winding up or within one month before, not exceeding three months wages and for vacation pay accrued for not more than twelve months under the *Employment Standards Act* and the regulations thereunder or under a collective agreement made by the corporation, shall be paid in priority to the claims of the ordinary creditors, and such persons are entitled to rank as ordinary creditors for the residue of their claims;
- (c) all the powers of the directors cease upon the appointment of a liquidator, except in so far as the liquidator may sanction the continuance of such powers. R.S.O. 1990, c. C.38, s. 254 (1); 1993, c. 27, Sched.

### **Distribution of property**

(2) Section 53 of the *Trustee Act* applies with necessary modifications to liquidators. R.S.O. 1990, c. C.38, s. 254 (2).

### **Payment of costs and expenses**

**255** The costs, charges and expenses of a winding up, including the remuneration of the liquidator, are payable out of the property of the corporation in priority to all other claims. R.S.O. 1990, c. C.38, s. 255.

**Powers of liquidators**

**256** (1) The liquidator may,

- (a) bring or defend any action, suit or prosecution, or other legal proceedings, civil or criminal, in the name and on behalf of the corporation;
- (b) carry on the business of the corporation so far as is necessary for the beneficial winding up of the corporation;
- (c) sell in whole or in parcels the real and personal property, effects and things in action of the corporation by public auction or private sale;
- (d) do all acts and execute, in the name and on behalf of the corporation, all deeds, receipts and other documents, and for that purpose use the seal of the corporation;
- (e) draw, accept, make and endorse any bill of exchange or promissory note in the name and on behalf of the corporation;
- (f) raise upon the security of the property of the corporation any requisite money;
- (g) take out in the liquidator's official name letters of administration to the estate of any deceased contributory and do in the liquidator's official name any other act that is necessary for obtaining payment of any money due from a contributory or from a contributory's estate and which act cannot be done conveniently in the name of the corporation;
- (h) do and execute all such other things as are necessary for winding up the affairs of the corporation and distributing its property.

\* \* \*

***Business Corporations Act, R.S.O. 1990, c B.16***

**Application of ss. 207-218**

**206** Sections 207 to 218 apply to corporations being wound up by order of the court. R.S.O. 1990, c. B.16, s. 206.

**Winding up by court**

**207** (1) A corporation may be wound up by order of the court,

- (a) where the court is satisfied that in respect of the corporation or any of its affiliates,
  - (i) any act or omission of the corporation or any of its affiliates effects a result,
  - (ii) the business or affairs of the corporation or any of its affiliates are or have been carried on or conducted in a manner, or
  - (iii) the powers of the directors of the corporation or any of its affiliates are or have been exercised in a manner, that is oppressive or unfairly prejudicial to or that unfairly disregards the interests of any security holder, creditor, director or officer; or
- (b) where the court is satisfied that,
  - (i) a unanimous shareholder agreement entitled a complaining shareholder to demand dissolution of the corporation after the occurrence of a specified event and that event has occurred,
  - (ii) proceedings have been begun to wind up voluntarily and it is in the interest of contributories and creditors that the proceedings should be continued under the supervision of the court,
  - (iii) the corporation, though it may not be insolvent, cannot by reason of its liabilities continue its business and it is advisable to wind it up, or
  - (iv) it is just and equitable for some reason, other than the bankruptcy or insolvency of the corporation, that it should be wound up; or
- (c) where the shareholders by special resolution authorize an application to be made to the court to wind up the corporation. R.S.O. 1990, c. B.16, s. 207 (1).

**Court order**

(2) Upon an application under this section, the court may make such order under this section or section 248 as it thinks fit. R.S.O. 1990, c. B.16, s. 207 (2).

**Who may apply**

**208** (1) A winding-up order may be made upon the application of the corporation or of a shareholder or, where the corporation is being wound up voluntarily, of the liquidator or of a contributory or of a creditor having a claim of \$2,500 or more. R.S.O. 1990, c. B.16, s. 208 (1).

**Notice**

(2) Except where the application is made by the corporation, four days' notice of the application shall be given to the corporation before the making of the application. R.S.O. 1990, c. B.16, s. 208 (2).

**Power of court**

**209** The court may make the order applied for, may dismiss the application with or without costs, may adjourn the hearing conditionally or unconditionally or may make any interim or other order as is considered just, and upon the making of the order may, according to its practice and procedure, refer the proceedings for the winding up to an officer of the court for inquiry and report and may authorize the officer to exercise such powers of the court as are necessary for the reference. R.S.O. 1990, c. B.16, s. 209.

\* \* \*

***Courts of Justice Act, R.S.O. 1990, c C.43*****Injunctions and receivers**

**101** (1) In the Superior Court of Justice, an interlocutory injunction or mandatory order may be granted or a receiver or receiver and manager may be appointed by an interlocutory order, where it appears to a judge of the court to be just or convenient to do so. R.S.O. 1990, c. C.43, s. 101 (1); 1994, c. 12, s. 40; 1996, c. 25, s. 9 (17).

**Terms**

(2) An order under subsection (1) may include such terms as are considered just. R.S.O. 1990, c. C.43, s. 101 (2).



**HER MAJESTY THE QUEEN IN RIGHT  
OF ONTARIO**

- v -

**APARTMENTS FOR LIVING FOR PHYSICALLY  
HANDICAPPED ASSOCIATION**

Applicant

Respondent

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**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(Commercial List)**

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**APPLICANT'S FACTUM**

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