

**ONTARIO
SUPERIOR COURT OF JUSTICE**

B E T W E E N:

2502461 ONTARIO LTD.

Applicant

- and -

PORTOFINO CORPORATION

Respondent

APPLICATION UNDER Section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c.B-3, as amended and Section 101 of the *Courts of Justice Act*, R.S.O. 1990, c.C-43, as amended

**SUPPLEMENTARY MOTION RECORD
(RETURNABLE MAY 30, 2023)**

May 9, 2023

MILLER THOMSON LLP
One London Place
255 Queens Avenue, Suite 2010
London, ON Canada N6A 5R8

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Lawyers for BDO Canada Limited,
the court-appointed Receiver of
Portofino Corporation

**ONTARIO
SUPERIOR COURT OF JUSTICE**

B E T W E E N:

2502461 ONTARIO LTD.

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TAB 1

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

2502461 ONTARIO LTD.

Applicant

- and -

PORTOFINO CORPORATION

Respondent

APPLICATION UNDER Section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c.B-3, as amended and Section 101 of the *Courts of Justice Act*, R.S.O. 1990, c.C-43, as amended

**SUPPLEMENTARY REPORT TO THE ELEVENTH REPORT TO THE COURT SUBMITTED
BY BDO CANADA LIMITED, AS RECEIVER OF PORTOFINO CORPORATION**

May 9, 2023

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- Appendix A** - Order of Justice Dube dated January 10, 2023
- Appendix B** - Fee affidavit of Michael Prosia for the interim accounts of Miller Thomson LLP sworn May 9, 2023
- Appendix C** - Statement of Receipts and Disbursements

1. Introduction and Background

Introduction

- 1.1 This report is submitted by BDO Canada Limited, in its capacity as Receiver ("**BDO**" or the "**Receiver**") of the assets, undertakings and properties of Portofino Corporation ("**Portofino**" or the "**Company**") acquired for or used in relation to a business carried on by Portofino, including all proceeds thereof (the "**Property**").
- 1.2 On application of Bank of Montreal ("**BMO**"), BDO was appointed as receiver by the Order of Mr. Justice Thomas dated October 29, 2013 (the "**Appointment Order**").
- 1.3 On January 10, 2023, the Receiver brought a motion for, among other things, its discharge as receiver.
- 1.4 In support of that motion, the Receiver submitted an Eleventh Report to the Court dated December 13, 2022 (the "**Eleventh Report**").
- 1.5 The Eleventh Report identified two outstanding matters (the "**Outstanding Matters**") which needed to be determined by the Court, or settled, in order for the Receiver to complete the distribution of all remaining funds in the receivership and be discharged as the Receiver. The Outstanding Matters are summarized below:
 - (a) After the date of the Receiver's appointment, the Miller Canfield law firm applied \$89,184.77 which it was holding in trust for Portofino against unpaid invoices owing to it by Portofino (the "**Miller Canfield Trust Funds**"). The Receiver sought advice and directions from the Court whether Miller Canfield was entitled to do so or whether those funds formed part of the Property over which the Receiver was appointed and should be paid over to the Receiver to be distributed to the secured creditors of Portofino according to their priorities. The Miller Canfield Trust Funds issue is discussed in detail in Section 5 of the Eleventh Report; and
 - (b) The Receiver was holding \$220,000, plus accrued interest, in a segregated trust account from the proceeds of a mortgage as discussed in Section 6 of the Eleventh Report. (the "**Westview Trust Funds**"). The Receiver sought to

transfer those funds from the segregated trust account to the general trust account of the receivership so that those funds may be distributed to the secured creditors of Portofino according to their priorities.

- 1.6 Before the hearing date, an agreement was made to resolve the issue of the Westview Trust Funds, leaving only the Miller Canfield Trust Funds issue to be resolved.
- 1.7 On January 10, 2023, Mr. Justice Dube made an Order (the "**January 10, 2023 Order**"), among other things,:
 - (a) approving various distributions;
 - (b) approving the settlement made with respect to the Westview Trust Funds;
 - (c) establishing a timetable to resolve the issue of the Miller Canfield Trust Funds; and
 - (d) adjourning the request for the Receiver's discharge to a date after the resolution of the issue with respect to the Miller Canfield Trust Funds.
- 1.8 The January 10, 2023 Order is attached hereto as **Appendix A**.
- 1.9 On January 26, 2023, the Receiver distributed \$646,698.36 to WFCU in full satisfaction of Portofino's secured indebtedness to WFCU.
- 1.10 The Miller Canfield Trust Funds issue has now been resolved. Accordingly, the Receiver will be completing the distribution of the available remaining funds to Strosberg Sasso Sutts LLP ("**SSS**") as previously authorized by the Court and seeks its discharge as Receiver.
- 1.11 Unless otherwise defined, capitalized terms in this report have the same meaning as the Eleventh Report.

2. Terms of Reference

- 2.1 In preparing this supplementary report to the Receiver's Eleventh Report, the Receiver has relied upon unaudited and draft, internal financial information obtained from the Companies' books and records and discussions with former management and staff (the "**Information**"). The Receiver has not audited, reviewed or otherwise attempted to verify the accuracy or completeness of the Information and expresses no opinion, or other form of assurance, in respect of the Information.

3. Purpose of the Supplementary Report

- 3.1 This constitutes the Receiver's Supplementary Report to the Eleventh Report to the Court (the "**Eleventh Report Supplement**") in this matter and is filed:
- (a) to provide the Court with information on the Receiver's activities since the Eleventh Report;
 - (b) in support of an Order of the Court:
 - (i) Approving the Eleventh Report Supplement and the activities and conduct of the Receiver described therein;
 - (ii) Approving the Receiver's Statement of Receipts and Disbursements for the period October 29, 2013 to April 30, 2023 (the "**Statement of Receipts and Disbursements**"); and
 - (iii) Approving the professional fees and disbursements of BDO as Receiver ("**BDO Fees**");
 - (iv) Approving the professional fees and disbursements of Miller Thomson LLP ("**MT**"), counsel to the Receiver ("**MT Fees**" and collectively with the BDO Fees, the "**Professional Fees**"); and
 - (v) Discharging BDO as Receiver and thereupon releasing BDO from any and all liability.

4. Miller Canfield Trust Funds

- 4.1 The Receiver is advised by Mr. William Sasso of SSS that a settlement was reached in respect of the Miller Canfield Trust Funds (the “**Miller Canfield Trust Funds Settlement**”) under which SSS, as the second ranking secured creditor, will receive \$32,500 paid to it directly.
- 4.2 Pursuant to the January 10, 2023 Order, SSS is to receive the balance of the available funds after payment of the indebtedness owing to WFCU. The WFCU indebtedness was paid by the Receiver on January 26, 2023. Accordingly, the Miller Canfield Trust Funds Settlement does not impact or prejudice any other creditor, and the Receiver does not object to the direct payment of the funds to SSS.

5. Fees and Disbursements of the Receiver and Counsel to the Receiver

- 5.1 Pursuant to Paragraph 19 of the Appointment Order, the Receiver and counsel to the Receiver shall be paid their reasonable Professional Fees in each case at their standard rates and charges. The Receiver and counsel to the Receiver have been granted 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 as security for payment of the Professional Fees
- 5.2 Pursuant to paragraph 21 of the Appointment Order, the Receiver is at liberty, from time to time, to apply reasonable amounts, out of the monies in its hands, against the Professional Fees, incurred at the normal rates and charges of the Receiver or its counsel, and such amounts shall constitute advances against its Professional Fees when and as approved by the Court.
- 5.3 BDO's final account for the period June 1, 2022 to November 21, 2022, which was approved by the January 10, 2023 Order, included an estimate to complete its duties as Receiver in the amount of \$25,000, exclusive of HST.
- 5.4 Due to greater than expected professional time to finalize the Eleventh Report, resolve the ongoing Westview Park Trust Funds and Miller Canfield Trust Funds issues and prepare the Eleventh Report Supplement, the Receiver has exceeded its estimate to complete.
- 5.5 BDO's additional fees to finalize all matters, including attendance at the motion to discharge the Receiver will not exceed \$10,000, exclusive of HST, and will be paid from the funds on hand, prior to the distribution of funds to SSS and the discharge of the Receiver.
- 5.6 The Receiver submits that the hourly rates charged by the Receiver and its staff are commensurate with commercially reasonable rates for mid-market insolvency firms in the Southwestern Ontario region.

- 5.7 Attached as **Appendix B** is the fee affidavit of Michael Prosia sworn May 9, 2023 containing the interim accounts of MT for the period December 1, 2022 to February 28, 2023, which have been paid by the Receiver.
- 5.8 MT's fees to finalize all matters, including attendance at the motion to discharge the Receiver will not exceed \$5,000, exclusive of HST, and will be paid from the funds on hand, prior to the distribution of funds to SSS and the discharge of the Receiver.
- 5.9 It is the Receiver's opinion that the Professional Fees are fair and reasonable and justified in the circumstances and accurately reflect the work done by the Receiver and MT in connection with the receivership during the relevant periods. The Receiver recommends approval of the Professional Fees by the Court.

6. Remaining Funds and Distribution

- 6.1 As previously noted, on January 26, 2023, the Receiver distributed \$646,698.36, which included per diem interest from November 15, 2022, to WFCU in full satisfaction of Portofino's secured indebtedness to WFCU.
- 6.2 The Receiver's Statement of Receipts and Disbursements is attached as **Appendix C**.
- 6.3 The Receiver is holding remaining funds on hand in the amount of \$161,229. This amount, less the combined fee accruals of BDO and MT not to exceed \$15,000, exclusive of HST, will be distributed to SSS pursuant to the January 10, 2023 Order. This distribution, plus the amount to be paid directly to SSS pursuant to the Miller Canfield Trust Funds Settlement will not exceed Portofino's secured indebtedness to SSS.

7. Conclusion

- 7.1 The Receiver recommends and respectfully requests that this Court:
- (a) approve the Statement of Receipts and Disbursements and the Professional Fees; and
 - (b) grant the Order discharging BDO as Receiver of Portofino Corporation and thereupon releasing BDO from any or all liability.

All of which is Respectfully Submitted this 9th day of May, 2023.

BDO Canada Limited in its capacity as Court Appointed Receiver of the property, assets and undertakings of Portofino Corporation. and not in any personal capacity



Per: Stephen N. Cherniak, CPA, CA, CIRP
Licensed Insolvency Trustee
Senior Vice President

APPENDIX “A”

Court File No.: CV-13-00019866-0000

**ONTARIO
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE)	TUESDAY, THE 10TH
)	
JUSTICE BRIAN D. DUBÉ)	DAY OF JANUARY, 2023

BETWEEN:

2502461 ONTARIO LTD.

Applicant

- and -

PORTOFINO CORPORATION

Respondent

APPLICATION UNDER Section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c.B-3, as amended and Section 101 of the *Courts of Justice Act*, R.S.O. 1990, c.C-43, as amended

ORDER

THIS MOTION, made by BDO Canada Limited (“BDO”), in its capacity as court-appointed receiver (the “Receiver”) of the assets, undertakings and properties of Portofino Corporation (the “Debtor”) pursuant to the Order of the Honourable Mr. Justice Thomas dated October 29, 2013 for an order:

- (a) if necessary, abridging the time for service and filing and validating the method of service of all motion confirmation forms, the Motion Record, including the Notice of Motion and the Eleventh Report of the Receiver dated December 13, 2022 and all appendices thereto (the “Eleventh

Report”), and directing that any further service of same be dispensed with such that this motion is properly returnable on January 10, 2023;

- (b) approving the Eleventh Report and the activities and conduct of the Receiver described therein;
- (c) approving the Receiver to transfer the Westview Trust Funds, as defined in section 6 of the Eleventh Report, together with the accrued interest thereon, to the general trust account for the receivership;
- (d) for advice and directions of the Court with respect to the sum of \$85,000.45, plus interest (the “Miller Canfield Trust Funds”) held by Miller, Canfield, Paddock and Stone, LLP (“Miller Canfield”) at the date of the receivership order as to whether (i) Miller Canfield had a solicitors’ lien against the Miller Canfield Trust Funds, and (ii) Miller Canfield was entitled to apply the Miller Canfield Trust Funds after the date of the receivership order against outstanding invoices owing by Portofino to Miller Canfield for the pre-receivership period or whether the Miller Canfield Trust Funds are required to be paid over to the Receiver to be distributed to the secured creditors of Portofino in accordance with their priority under their security;
- (e) such orders as are necessary to give effect to the advice and directions provided by the Court with respect to the Miller Canfield Trust Funds
- (f) approving the Receiver’s interim Statement of Receipts and Disbursements for the period October 29, 2013 to November 15, 2022 (the “Statement of Receipts and Disbursements”);

- (g) approving the professional fees and disbursements of the Receiver and its legal counsel (the "Professional Fees");
- (h) subject to the payment of the Professional Fees and other residual costs and expenses incurred in the administration of the receivership estate, approving and authorizing the distribution of the balance of the funds held by the Receiver, including the Westview Trust Funds and any amounts to be paid to the Receiver from the Miller Canfield Trust Funds, as follows:
 - (A) to pay \$636,270.29, plus per diem interest, to Windsor Family Credit Union ("WFCU") in full satisfaction of its secured claim against the Property; and
 - (B) to pay the balance of the funds, if any, to Strosberg Sasso Sutts LLP ("SSS") on account if its secured claim against the Property up to the amount owed to SSS.
- (i) subject to the determination by the court of the relief sought in paragraphs (c), (d) and (e) above, discharging the Receiver as receiver of the Property and releasing BDO from any and all liability, save and except for any gross negligence or wilful misconduct on the Receiver's part; and
- (j) such further and other relief as counsel may advise and this Honourable Court deems just.

was heard this day at 245 Windsor Avenue, Windsor, Ontario.

ON READING the Eleventh Report and on hearing the submissions of counsel for the Receiver and such other counsel that were present as listed on the participant information sheet, no one else appearing for any other person on the service list, although duly served as appears from the affidavits of service, filed:

1. **THIS COURT ORDERS** that the time for and method of service of the notice of motion and the motion record are hereby abridged and validated, as necessary, so that this motion is properly returnable today and hereby dispenses with further service thereof.
2. **THIS COURT ORDERS** that the Eleventh Report and the activities and conduct of the Receiver described in the Eleventh Report are hereby approved.
3. **THIS COURT ORDERS** that the Statement of Receipts and Disbursements be and the same is hereby approved.
4. **THIS COURT ORDERS** that the professional fees of the Receiver and its legal counsel, Miller Thomson LLP, as described in the fee affidavits of Stephen N. Cherniak sworn November 24, 2022 and Michael Prosia sworn December 12, 2022, be and the same are hereby approved.
5. **THIS COURT ORDERS** that subject to payment of the Professional Fees and other residual costs and expenses incurred in the administration of the receivership estate, the Receiver be and is hereby authorized and directed to make the following distributions in the following order:
 - (a) firstly, to WFCU up to the amount of \$636,270.29, plus per diem interest thereon, on account of Portofino's secured indebtedness owing to WFCU;

and

- (b) secondly, to SSS up to the amount of Portofino's secured indebtedness owing to SSS.

6. **THIS COURT ORDERS** that the Receiver is authorized and directed:


- (a) to transfer \$165,000 of the Westview Trust Funds, plus accrued interest thereon, from the segregated trust account in which the Westview Trust Funds are being held to the general receivership trust account; and
- (b) to pay to Kirwin Partners LLP, in trust for Westview Park Luxury Gardens 2006) Inc., \$55,000 of the Westview Trust Funds, plus accrued interest thereon.

7. **THIS COURT ORDERS** that the motion for the relief in paragraphs (d) and (e) of the preamble to this Order is adjourned to a date to be fixed by the trial coordinator's office and the following timetable is established:

- (a) responding materials, if any, to be delivered by February 17, 2023;
- (b) reply materials, if any, to be delivered by March 10, 2023;
- (c) cross-examinations, if any, to be completed by March 31, 2023 and undertakings to be fulfilled by April 10, 2023; and
- (d) facta to be filed not less than seven days before the hearing date.

8. **THIS COURT ORDERS** that the motion for the relief in paragraph (i) of the

preamble to this Order is adjourned to a date to be fixed by the trial co-ordinator's office following the date on which the motion for the relief in paragraphs (c), (d) and (e) of the preamble to this Order are resolved by final order(s) or settlement.



Justice, Ontario Superior Court of Justice

2502461 ONTARIO LTD.

Applicant

and

PORTOFINO CORPORATION

Respondent

Court File No: CV-13-00019866-0000

**ONTARIO
SUPERIOR COURT OF JUSTICE**

PROCEEDING COMMENCED AT WINDSOR

ORDER

MILLER THOMSON LLP
One London Place
255 Queens Avenue, Suite 2010
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Tony Van Klink LSO#: 29008M
tvanklink@millerthomson.com
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**Lawyers for BDO Canada Limited, the
Court-Appointed Receiver of Portofino
Corporation**

APPENDIX “B”

**ONTARIO
SUPERIOR COURT OF JUSTICE**

B E T W E E N :

2502461 ONTARIO LTD.

Applicant

- and -

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Respondent

APPLICATION UNDER Section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c.B-3, as amended and Section 101 of the *Courts of Justice Act*, R.S.O. 1990, c.C-43, as amended

FEE AFFIDAVIT OF MICHAEL PROSIA

I, MICHAEL PROSIA, of the City of London, County of Middlesex, in the Province of Ontario, MAKE OATH AND SAY:

1. I am an associate with the law firm of Miller Thomson LLP (“**MT**”), lawyers for BDO Canada Limited, in its capacity as Court-appointed Receiver (the “**Receiver**”) of the property, assets and undertakings of Portofino Corporation and, as such, have knowledge of the matters to which I hereinafter depose.
2. I make this Affidavit in support of the Receiver’s motion for, among other things, having the fees and disbursements of MT, as legal counsel to the Receiver, approved.
3. Attached hereto to this my Affidavit and marked as Exhibit “A” are copies of the invoices (the “**Invoices**”) rendered by MT to the Receiver for fees and disbursements of MT for the period December 1, 2022 through to February 28, 2023 (the “**Period**”). During the Period, the total fees and disbursements billed were \$11,261 and \$25.53 respectively. The HST billed was \$1,467.25. Attached hereto to this my Affidavit and marked as Exhibit “B” is a statement summarizing MT’s fees for the Period. Lawyers and staff at MT have collectively expended a total of 16.9 billable hours in connection


with this matter during the Period as outlined in the summary of fees attached as Exhibit "B".

4. To the best of my knowledge, the rates charged by MT throughout these proceedings are comparable to the rates charged by other firms in the Southwestern Ontario market for the provision of similar services. No premiums have been charged on the invoices.

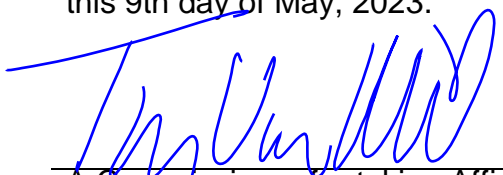
SWORN BEFORE ME:

in person by video conference

With the deponent in the City of London, County of Middlesex, Province of Ontario and the Commissioner in the Municipality of Thames Centre, Province of Ontario in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely this 9th day of May, 2023.

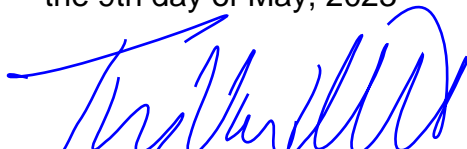


Michael Prosia



A Commissioner for taking Affidavits (or as may be)
(Tony Van Klink)

Attached are Exhibits "A" and "B" to
the Affidavit of Michael Prosia sworn
the 9th day of May, 2023



A Commissioner, Etc.

EXHIBIT "A"

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MILLER THOMSON
AVOCATS | LAWYERS

MILLER THOMSON LLP
ONE LONDON PLACE
255 QUEENS AVENUE, SUITE 2010
LONDON, ON N6A 5R8
CANADA

T 519.931.3500
F 519.858.8511

MILLERTHOMSON.COM

December 31, 2022

Invoice Number 3840873

BDO Canada Limited
633 Colborne Street
Suite 100
London, ON N6B 2V3

Attention: Stephen N. Cherniak

To Professional Services Rendered in connection with the following matter(s) including:

Re: Portofino Corporation
Our File No. 0082873.0012

Date	Initials	Description	Hours
12/01/2022	AVK	Conference call with Receiver and counsel for Tarion	0.30
12/07/2022	AVK	Working on revisions to Eleventh Report; drafting Notice of Motion	2.00
12/12/2022	AVK	Working on revisions to Eleventh Report to Court	0.20
12/12/2022	MAP	Review and execute affidavit for court approval of fees	0.20
12/13/2022	AVK	Working on Eleventh Report to Court and motion record	2.00
12/14/2022	AVK	Finalize motion record; letters to service list, Miller Canfield and Dante Capaldi	0.60
12/15/2022	AVK	Communicating with Mr. Cherniak and Mr. Sasso regarding motion for approval of Eleventh Report and estimated flow of funds	0.30
12/15/2022	AVK	Emails with Mr. Leschied and Mr. Goldberg regarding motion for directions	0.30
12/19/2022	AVK	Telephone call with counsel for Mr. Rizzo	0.10
12/20/2022	AVK	Review correspondence from Mr. Leschied and reply to same	0.40



Date	Initials	Description	Hours
12/29/2022	AVK	Receive and review correspondence from Don Leschied and respond to same; email to Dante Capaldi	0.50
12/29/2022	AVK	Preparing motion confirmation form; correspondence to service list;	0.30
12/30/2022	AVK	Email from Dante Capaldi, email to counsel for Dante Capaldi	0.10
Total Hours			7.30

Our Fee: 4,685.00

TK ID	Initials	Name	Title	Rate	Hours	Amount
05403	AVK	A. Van Klink	Partner	\$650.00	7.10	\$4,615.00
05961	MAP	M. Prosia	Associate	\$350.00	0.20	\$70.00

Taxable Disbursements

Delivery	25.53	
Total Taxable Disbursements	<u>25.53</u>	\$25.53

Total Fees and Disbursements \$4,710.53

Ontario HST 13% (R119440766)

On Fees	\$609.05
On Disbursements	\$3.32

Total Amount Due \$5,322.90

E.&O.E.



MILLER THOMSON
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MILLERTHOMSON.COM

28

February 28, 2023

Invoice Number 3859343

BDO Canada Limited
633 Colborne Street
Suite 100
London, ON N6B 2V3

Attention: Stephen N. Cherniak

To Professional Services Rendered in connection with the following matter(s) including:

Re: Portofino Corporation
Our File No. 0082873.0012

Date	Initials	Description	Hours
01/03/2023	AVK	Considering Miller Canfield trust funds issue and email to Jerry Goldberg regarding competing positions of Miller Canfield and Strosberg Sasso	1.20
01/04/2023	AVK	Receive correspondence from Mr. Leschied and Mr. Goldberg and respond to same	0.30
01/05/2023	AVK	Preparing Draft Order; emails with Mr. Leschied regarding Strosberg Sasso secured claim and priority dispute	1.50
01/06/2023	AVK	Correspondence to service list	0.10
01/06/2023	AVK	Telephone call and emails with Mr. Sasso regarding Westview trust funds and Miller Canfield funds	0.20
01/06/2023	AVK	Emails with Mr. Goldberg	0.10
01/09/2023	AVK	Communicating with counsel for ECC No. 122, counsel for Dante Capaldi, Jerry Goldberg and Pat Boyd on behalf of Don Leschied regarding motion to be heard on January 10; communicating with Mr. Cherniak regarding motion and timetable proposed by Don Leschied; communicating with counsel for Scott D'Amore; revising draft order; letter to service list;	2.20



Date	Initials	Description	Hours
		communicating with Mr. Sasso regarding settlement of Westview trust funds issue; further revising draft order; communicating with Mr. Cherniak regarding resolution of Westview trust funds issue; further communications with service list regarding January 10 motion	
01/10/2023	AVK	Attend before Justice Dube on motion to approve Receiver's 11th Report, including preparation for same; telephone call with Bill Sasso; telephone call with Steve Cherniak	2.50
01/11/2023	AVK	Communicating with Mr. Cherniak regarding distributions to be completed pursuant to order of Justice Dube	0.10
01/25/2023	AVK	Communicating with Mr. Cherniak regarding Miller Canfield trust fund issue and assignment of same	0.20
01/25/2023	AVK	Communicating with Mr. Sasso and Mr. Cherniak regarding Miller Canfield trust funds issue	0.30
01/26/2023	AVK	Telephone call with Bill Sasso regarding Miller Canfield trust funds	0.20
01/31/2023	AVK	Letter to service list regarding Order of Justice Dube	0.10
02/02/2023	AVK	Communicating with Mr. Sasso regarding R+D statement for receivership account	0.10
02/21/2023	AVK	Communicating with Mr. Leslie and Mr. Sasso regarding Miller Canfield trust funds issue	0.20
02/22/2023	AVK	Email to John Leslie regarding Miller Canfield Trust Funds issue	0.10
02/28/2023	AVK	Telephone call with John Leslie regarding Miller Canfield trust funds	0.20

Total Hours **9.60**

Our Fee: **6,576.00**



TK ID	Initials	Name	Title	Rate	Hours	Amount
05403	AVK	A. Van Klink	Partner	\$685.00	9.60	\$6,576.00

Ontario HST 13% (R119440766)
On Fees

\$854.88

Total Amount Due

\$7,430.88

E.&O.E.

EXHIBIT "B"
Miller Thomson's Fees

	<u>Year of Call</u>	<u>Rate 2022</u>	<u>Rate 2023</u>	<u>Inv. #3840873</u> <u>December 31, 2022</u>	<u>Inv. #3859343</u> <u>February 28, 2023</u>	<u>Total</u> <u>Invoices</u>
Hours						
T. Van Klink	1988	\$650.00	\$685.00	7.10	9.60	16.70
M. Prosia	2014	\$350.00	N/A	0.20	0.00	0.20
				<u>7.30</u>	<u>9.60</u>	<u>16.90</u>
Total \$						
T. Van Klink	1988	\$650.00	\$685.00	\$4,615.00	\$6,576.00	\$11,191.00
M. Prosia	2014	\$350.00	N/A	\$70.00	\$0.00	\$70.00
				<u>\$4,685.00</u>	<u>\$6,576.00</u>	<u>\$11,261.00</u>
Summary						
Fees				\$4,685.00	\$6,576.00	\$11,261.00
Disbursements				\$25.53	\$0.00	\$25.53
HST				\$612.37	\$854.88	\$1,467.25
Total				<u>\$5,322.90</u>	<u>\$7,430.88</u>	<u>\$12,753.78</u>

2502461 ONTARIO LTD. and PORTOFINO CORPORATION
Applicant Respondent

Court File No. CV-13-00019866-0000

ONTARIO
SUPERIOR COURT OF JUSTICE

Proceeding commenced at WINDSOR

AFFIDAVIT OF MICHAEL PROSIA
SWORN MAY 9, 2023

MILLER THOMSON LLP
One London Place
255 Queens Avenue, Suite 2010
London, ON Canada N6A 5R8

Tony Van Klink LSO#: 29008M
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Lawyers for BDO Canada Limited,
Court-Appointed Receiver of
Portofino Corporation

APPENDIX “C”

**BDO Canada Limited Court Appointed Receiver of
Portofino Corporation
Statement of Receipts and Disbursements
October 29, 2013 through April 30, 2023**

Receipts:

Sale of condominium units and surface parking	\$ 16,964,509.00	
Less: real estate commissions (incl. HST)	(656,938.27)	
Less: property tax arrears	(424,295.35)	
Less: ECC No. 122 common fees	(36,959.02)	
Less: closing adjustments	(18,567.49)	
Add: HST collected on parking and unfinished units	260,545.88	
		\$ 16,088,294.75
Unit rental income		1,978,587.60
Westview Trust Funds (Jan. 10, 2023 Order)		170,852.58
Funds in Court re: Betschel's Kitchen Centre Inc.		159,530.86
Holdback funds re: Portofino sub-trades		119,789.96
Letter of Credit cost reimbursement		64,408.22
VTB mortgage payout		47,500.00
Parking space rental		41,914.69
Security re: Dalfidan Action		31,368.69
Interest earned		30,833.99
HST refund		7,971.76
Miscellaneous litigation		497.88
		18,741,550.98

Disbursements:

City of Windsor - property taxes	3,060,155.01	
Receiver's fees	1,188,093.71	
ECC No. 122 - common fees	786,233.64	
Miller Thomson LLP - Receiver's legal fees	461,535.04	
HST paid on disbursements	264,788.63	
HST remitted	250,138.22	
Repairs & maintenance	237,927.74	
Settlement of Dalfidan litigation	80,000.00	
Sutts, Strosberg LLP- legal fees	78,662.72	
Property management fees	70,000.00	
Bond premiums	55,689.00	
Utilities	41,559.74	
Advertising	40,346.72	
BMO - Letter of Credit fees re Valente litigation	39,074.26	
Valente litigation - costs award	30,393.34	
Appraisal fees	15,014.50	
Insurance	12,021.48	
Accounting fees	11,050.00	
Commission paid re: rentals	3,650.00	
Tarion Warranty Corporation fees	2,500.00	
Other professional fees	1,972.00	
Corporate income tax	695.14	
Miscellaneous expenses	668.00	
Valente litigation - interest on settlement	628.36	
Bank charges	607.50	
Receiver General - receivership filing fee	70.00	
		6,733,474.75

Excess receipts over disbursements

\$ 12,008,076.23

Represented by:

Payments to Secured Creditors

2502461 Ontario Ltd. / Windsor Family Credit Union	\$ 11,846,846.40
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Funds Held by Receiver

Balance in Receiver's account at April 30, 2023	161,229.83
	\$ 12,008,076.23

TAB 2

Court File No.: CV-13-00019866-0000

**ONTARIO
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE)	TUESDAY, THE 30TH
)	
JUSTICE)	DAY OF MAY, 2023

BETWEEN:

2502461 ONTARIO LTD.

Applicant

- and -

PORTOFINO CORPORATION

Respondent

APPLICATION UNDER Section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c.B-3, as amended and Section 101 of the *Courts of Justice Act*, R.S.O. 1990, c.C-43, as amended

ORDER

THIS MOTION, made by BDO Canada Limited (“BDO”), in its capacity as court-appointed receiver (the “Receiver”) of the assets, undertakings and properties of Portofino Corporation (the “Debtor”) pursuant to the Order of the Honourable Mr. Justice Thomas dated October 29, 2013 for an order:

- (a) approving the Receiver’s Statement of Receipts and Disbursements for the period October 29, 2013 to April 30, 2023 (the “Statement of Receipts and Disbursements”);
- (b) approving the professional fees and disbursements of the Receiver and its legal counsel (the “Professional Fees”);

- (c) discharging the Receiver as receiver of the Property and releasing BDO from any and all liability, save and except for any gross negligence or wilful misconduct on the Receiver's part; and
- (d) such further and other relief as counsel may advise and this Honourable Court deems just.

was heard this day at 245 Windsor Avenue, Windsor, Ontario.

ON READING the Eleventh Report and the Supplementary Report to the Eleventh Report (the "Supplementary Report") and on hearing the submissions of counsel for the Receiver and such other counsel that were present as listed on the participant information sheet, no one else appearing for any other person on the service list, although duly served as appears from the affidavits of service, filed:

1. **THIS COURT ORDERS** that the Supplementary Report and the activities and conduct of the Receiver described therein are hereby approved.
2. **THIS COURT ORDERS** that the Statement of Receipts and Disbursements be and the same is hereby approved.
3. **THIS COURT ORDERS** that the professional fees of Miller Thomson LLP, as described in the fee affidavit of Michael Prosia sworn May 9, 2023, and the fee accruals of the Receiver and its legal counsel, Miller Thomson LLP, as described in the Supplementary Report, be and the same are hereby approved.
4. **THIS COURT ORDERS** that upon the Receiver filing a certificate (the "**Discharge Certificate**") certifying that it has completed the administration of the receivership estate, the Receiver shall be and is hereby discharged as Receiver of the assets, undertakings and properties of the Debtor, provided however that notwithstanding its discharge herein (a) the Receiver shall remain Receiver for the performance of such incidental duties as may be required to complete the administration of the receivership herein, and (b) the Receiver shall continue to have the benefit of the provisions of all Orders made in this proceeding, including all approvals, protections and stays of proceedings in favour of BDO Canada in

its capacity as Receiver.

5. **THIS COURT ORDERS AND DECLARES** that upon the filing of the Discharge Certificate, BDO Canada shall be and is hereby released and discharged from any and all liability that BDO Canada now has or may hereafter have by reason of, or in any way arising out of, the acts or omissions of BDO Canada while acting in its capacity as Receiver herein, save and except for any gross negligence or willful misconduct on the Receiver's part. Without limiting the generality of the foregoing, BDO Canada is hereby forever released and discharged from any and all liability relating to matters that were raised, or which could have been raised, in the within receivership proceedings, save and except for any gross negligence or willful misconduct on the Receiver's part.

Justice, Ontario Superior Court of Justice

2502461 ONTARIO LTD.

Applicant

and

PORTOFINO CORPORATION

Respondent

Court File No: CV-13-00019866-0000

**ONTARIO
SUPERIOR COURT OF JUSTICE**

Proceeding Commenced at WINDSOR

ORDER

MILLER THOMSON LLP

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Court-Appointed Receiver of Portofino
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2502461 ONTARIO LTD.

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Respondent

Court File No.: CV-13-00019866-0000

**ONTARIO
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at WINDSOR

**MOTION RECORD
(RETURNABLE MAY 30, 2023)**

MILLER THOMSON LLP

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**Lawyers for BDO Canada Limited,
the court-appointed Receiver of
Portofino Corporation**