

**CITATION:** Bank of Montreal v. Owen Sound Golf and Country Club, 2012 ONSC 557  
**COURT FILE NO.:** CV-11-9306-00CL  
**DATE:** 20120123

**SUPERIOR COURT OF JUSTICE – ONTARIO**

**COMMERCIAL LIST**

**RE:** Bank of Montreal, Applicant

**AND:**

Owen Sound Golf and Country Club, Limited and Kenneth W. Rowe Limited,  
Respondents

**BEFORE:** D. M. Brown J.

**COUNSEL:** J. Simpson, for the Receiver, BDO Canada Limited

Keith Hagedorn, claimant creditor in person

**HEARD:** January 23, 2012

**REASONS FOR DECISION**

**I. Receiver's motion to liquidate debtor corporations**

[1] Last July BDO Canada Limited was appointed receiver of the Owen Sound Golf and Country Club, Limited ("OSGCC") and Kenneth W. Rowe Limited, a wholly-owned subsidiary of the Golf Club which owned property on which a practice facility was located (the "Debtors").

[2] Pursuant to orders of this Court the Receiver sold the Golf Club and ran a claims process for creditors. As a result, last October this Court authorized the Receiver to pay out the secured creditor, BMO, as well as the Canada Revenue Agency. The claims process for the other creditors has been completed, and the Receiver seeks approval to disburse funds to those claimants.

[3] On the return of the motion Mr. Keith Hagedorn, the former chef at the Golf Club, sought leave for an extension of time in respect of the claim which he had filed with the Receiver. Mr. Hagedorn had mailed in his claim before the claims bar date, but his letter was returned due to insufficient postage. By the time he had re-sent his claim he was 10 days past the claims bar date. The Receiver did not oppose the requested extension of time, and during a break in the proceedings the Receiver and Mr. Hagedorn settled his claim for \$5,000.00. Accordingly, I formally grant Mr. Hagedorn an extension of time in which to file his claim, declare that his

claim as filed was received by the Receiver within the permitted extension, and approve the Receiver paying out the agreed upon \$5,000 settlement.

[4] Upon payment of the unsecured creditors the Receiver will hold surplus funds of slightly under \$1 million. The Receiver moves for authorization to place both Debtors into liquidation. The Receiver gave proper notice of this motion. Although no one has appeared to oppose the relief sought, one Club member contacted the Receiver to query its jurisdiction to put the companies into liquidation.

## II. Analysis

[5] Kenneth W. Rowe Limited is incorporated under the *Ontario Business Corporations Act*.<sup>1</sup> OSGCC owns all of the shares of that company. Section 208(1) of the *OBCA* provides that a shareholder may apply to court for a winding-up order. Paragraph 4(r) of the Appointment Order made July 15, 2011 authorized the Receiver “to exercise any shareholder...rights which the Debtors may have”. Therein lies the power of the Receiver to apply to wind-up OSGCC’s subsidiary, Kenneth W. Rowe Limited.

[6] OSGCC is incorporated under the *Corporations Act*.<sup>2</sup> A few days before the appointment of the Receiver the entire Board of Directors of OSGCC resigned. Paragraph 3(c) of the Appointment Order authorized the Receiver to “manage, operate and carry on the business of the Debtors”. As Cumming J. observed in *Ravelston Corp. (Re)*: “When a court-appointed receiver is appointed in the normal course, ‘the receiver-manager is given exclusive control over the assets and affairs of the company and, in this respect, the board of directors is displaced’...The essence of a receiver’s power is to settle liabilities and liquidate assets.”<sup>3</sup>

[7] The Receiver has sold OSGCC’s assets, satisfied the secured creditors, and administered a claims process for unsecured claims. Once the unsecured claims are paid, the Receiver will be left holding surplus proceeds. The shareholders are the next group entitled to claim against those funds, and the Receiver seeks to address that stage in the corporate life of OSGCC by seeking an order to wind-up that company. 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.<sup>4</sup> 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.

[8] In its Supplement to the Second Report the Receiver described the work which must be done in order to identify the current shareholders of OSGCC and proposed a notice and claims bar-like process to deal with claims by shareholders. The process proposed is a reasonable one.

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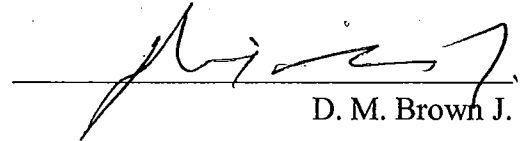
<sup>1</sup> R.S.O. 1990, c. B.16.

<sup>2</sup> R.S.O. 1990, c. C.38.

<sup>3</sup> *Ravelston Corp. (Re)*, [2007] O.J. No. 414 (S.C.J.), para. 61; affirmed 2007 ONCA 135.

<sup>4</sup> *Royal Bank of Canada v. Sun Squeeze Juices Inc.*, [1994] O.J. No. 567 (Gen. Div.), paras. 6 to 10.

[9] Accordingly, I grant the Receiver's motion for orders to wind up the Debtors and to appoint the Receiver as liquidator. I approve the winding-up process it proposes. I grant an order in the form submitted by the Receiver, which I have signed.



D. M. Brown J.

**Date:** January 23, 2012